Arizona Corporation Commission
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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A.MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF U. S. WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996

DOCKET NO. T-00000A-97-0238

DECISION NO. 64836

OPINION AND ORDER

Open Meeting
May 17, 2002
Phoenix, Arizona

BY THE COMMISSION:

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Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. The Federal Telecommunications Act of 1996 ("1996 Act") added Section 271 to the Communications Act of 1934. The purpose of Section 271 is to specify the conditions that must be met in order for the Federal Communications Commission ("FCC") to allow a Bell Operating Company ("BOC"), such as Qwest Corporation ("Qwest" or the "Company"), formerly known as US WEST Communications, Inc. ("US WEST")[1] to provide in-region interLATA services. The conditions described in Section 271 are intended to determine the extent to which local phone service is open to competition.

2. Section 271 (c)(2)(B) sets forth a fourteen point competitive checklist which specifies the access and interconnection a BOC must provide to other telecommunications carriers in order to satisfy the requirements of Section 271. Section 271 (d)(2)(B) requires the FCC to consult with State commissions with respect to the BOC's compliance with the competitive checklist. Also, Subsection

[1] For purposes of this Order, all references to US WEST have been changed to Qwest.

(d)(2)(A) requires the FCC to consult with the United States Department of Justice.

3. Section 271 (c)(2)(B)(iv) of the 1996 Act requires a section 271 applicant to provide or offer to provide access to "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."

4. Section 271 (c)(2)(B)(ii) of the 1996 Act requires a section 271 applicant to show that it offers "[n]ondiscriminatory access to network elements in accordance with the requirements of Sections 251 (c)(3) and 252 (d)(1).

5. Section 251(c)(3) establishes an incumbent LEC's "duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of [Section 251] . . . and Section 252."

6. In the *Bell Atlantic New York Order*[2] the FCC stated that the ordering and provisioning of network elements has no retail analogue, and it therefore looks to whether the BOC's performance offers an efficient competitor a meaningful opportunity to compete.

7. In the *Second BellSouth Louisiana Order*[3] the FCC stated that one way the BOC can demonstrate compliance with Checklist Item No. 4 is to submit performance data evidencing the time interval for providing unbundled loops and whether due dates are met. The BOC must also provide access to necessary support functions, including maintenance and repair.

8. In Decision No. 60218 (May 27, 1997) this Commission established a process by which Qwest would submit information to the Commission for review and a recommendation to the FCC whether Qwest meets the requirements of Section 271 of the 1996 Act.

9. On February 8, 1999, Qwest filed a Notice of Intent to File with the FCC and Application for Verification of Section 271(c) Compliance ("Application"), and a Motion for

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[2] 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, Memorandum Opinion and Order, FCC 99-404 (Rel. Dec. 22, 1999).

[3] Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, As Amended, to Provide In-Region InterLATA Services in Louisiana, CC Docket No. 98-121, FCC 98-271 (Rel. Oct. 13, 1998).

Immediate Implementation of Procedural Order. On February 16, 1999, AT&T Communications of the Mountain States, Inc. ("AT&T"), GST Telecom, Inc. ("GST"), Sprint Communications Company, L.P. ("Sprint"), Electric Lightwave, Inc. ("ELI"), MCI Worldcom, Inc., on behalf of its regulated subsidiaries ("WorldCom"), and e-spire Comunications, Inc. ("e-spire") filed a Motion to Reject Qwest's Application and Response to Qwest's Motion.

10. On March 2, 1999, Qwest's Application was determined to be insufficient and not in compliance with Decision No. 60218. The Application was held in abeyance pending supplementation with the Company's Direct Testimony, which was ordered pursuant to Decision No. 60218 and the June 16, 1998 Procedural Order. On March 25, 1999, Qwest filed its supplementation.

11. By Procedural Order dated October 1, 1999, the Commission bifurcated operational Support System ("OSS") related Checklist Elements from non-OSS related Elements.

12. By Procedural Order dated June 12, 2000, the Commission instituted a collaborative workshop process to evaluate the OSS-related Checklist Items, the Performance Incentive Plan, Section 272, Track A and the Public Interest Analysis. The June 12, 2000 Procedural Order directed Staff to file draft proposed findings of fact and conclusions of law for review by the parties within 20 days of each Checklist Item being addressed. Within ten days after Staff filed its draft findings, the parties were directed to file any proposed additional or revised findings and conclusions. Staff had an additional ten days to issue its Recommended Report.

13. For "undisputed" Checklist Items, Staff submits its Report directly to the Commission for consideration at an Open Meeting. For "disputed" Checklist Items, Commission Staff submits its Report to the Hearing Division, with a procedural recommendation for resolving the dispute.

14. Arizona undertook a comprehensive Third Party Independent Test of Qwest's OSS. This test includes an examination of the time interval for providing unbundled loops and whether the due dates are met. Qwest has begun to submit performance data related to providing unbundled loops. The OSS test and Qwest's performance data will show whether Qwest is informing CLECs of the status of their orders and how responsive Qwest is in providing access to necessary support functions, including maintenance and repair.

15. On March 5, 2001, the first Workshop on Checklist Item No. 4 (Loops) took place at

Hewlett-Packard's offices in Phoenix. Qwest relied on its Supplemental Affidavit filed on July 21, 2000. On November 3, 2000, AT&T and WorldCom filed additional comments. Covad filed initial comments on March 2, 2001. Qwest filed rebuttal comments on February 19, 2001. Parties appearing at the Workshop included Qwest, AT&T, WorldCom, Sprint, Covad, Communications Workers of America ("CWA") and the Residential Utility Consumer Office ("RUCO").

16. On May 14, 2001, a second Workshop convened to resolve outstanding issues regarding Checklist Item No. 4.

17. At the conclusion of the workshops on loops, the parties were unable to reach agreement on a number of issues. AT&T filed its Statement of Position on the impasse issues on June 25, 2001, and WorldCom, Covad and Qwest filed their Statements of Position on June 19, 2001.

18. On September 14, 2001, Staff filed its Proposed Findings of Fact and Conclusions of Law ("Proposed Findings").

19. AT&T, WorldCom and Covad filed comments on Staff's Proposed Findings on October 2, October 9 and October 4, 2001, respectively.

20. In its Proposed Findings, Staff proposed resolutions to impasse issues and concluded that the record was not sufficient to determine if Qwest had complied with Checklist Item No. 4. Staff reopened the record.

21. Qwest filed its Supplementation on September 24, 2001. Other parties filed comments to Qwest's supplementation on October 5, 2001.

22. On February 19, 2002, Qwest filed Supplemental Authority related to Checklist Item 4.

23. On February 20, 2002, Staff filed its Final Report on Checklist Item No. 4 ("Final Report"). A copy of Staff's Final Report is attached hereto as Exhibit A and incorporated herein by reference.

24. On March 4, 2002, Qwest filed Comments on the Final Report.

25. On April 26, 2002, Staff filed Comments on Qwest's Comments to the Final Report. In part, Staff's Comments modify and clarify some of its recommendations contained in the Final Report.

26. On May 1, 2002, AT&T file a Reply to Comments of Commission Staff on Qwest's Comments on Staff's Final Report.

Disputed Issue No. 1 – Should fiber loops (or OCn) be offered on an Individual Case Basis ("ICB") or should they be standard products with rates and intervals. Also, should Qwest revise its loop intervals in Exhibit C of its SGAT?

27. Qwest has developed rates for OCn loops, which it will include in Exhibit A to its SGAT. Although it no longer offers OCn loops at ICB rates, it will continue to provision these loops on a ICB because it provisions them to itself on an ICB. The CLECs' concerns with the ICB process is being addressed in the General Terms and Conditions Workshop and is also being addressed in the Wholesale Price Docket.

28. The CLECs argue that certain standard loop provisioning intervals in Exhibit C of Qwest's SGAT should be shortened. Originally, the dispute on intervals involved DS1; 2 and 4 wire analog loops; 2 and 4 wire nonleaded loop; ADSL; ISDN; conditioned loops; and repair intervals. Through subsequent negotiations and workshops in other regions the parties were able to reach consensus on many of the intervals. Thus, Staff reports that currently the remaining disputes involve the intervals for DS-1 Loops, conditioned loops and the repair interval.

29. Regarding standard provisioning intervals, Qwest argues that the intervals in Exhibit C of the SGAT were an integral consideration in the development of performance indicators definitions ("PIDs") for percent commitments met and installation interval in negotiations between Qwest and CLECs in the Arizona Technical Advisory Group ("TAG"). Qwest asserts that the CLECs have not presented evidence that would support shortening the intervals.

30. In the Final Report, Staff recommends that where Qwest has reached agreement in other regions for shorter intervals than contained in its SGAT, that such intervals should be imported into its Arizona SGAT. Qwest has agreed to do this. In addition, with regard to the provisioning of dark fiber and OCn loops, Staff believes that the 20 day time period or interval set out in paragraph 3.1 of Appendix I of Qwest's SGAT is reasonable and consistent with the language referenced by WorldCom. However, Staff recommends that certainty would be enhanced if Qwest adopted a notification procedure similar to that in the Pacific Bell Interconnection Agreement. Staff recommends Section 3.2 of Appendix I be modified as follows:

> Qwest shall provide CLEC information regarding the location, availability and performance of any ICB provisioned circuits within five (5) days for a records based answer and seven (7) business days for a field based answer,

> after receiving a request from the CLEC. Within such time periods, Qwest shall send to CLEC written confirmation of the availability of the ICB provisioned circuits. The Qwest representative authorized to commit to intervals, shall meet with CLEC's representative within seven (7) business days of receipt of the request from CLEC to negotiate intervals, Qwest shall provide its proposed provisioning intervals in all cases within 20 days.

31. With respect to the remaining disputed intervals in Arizona, Staff notes that Qwest's SGAT contains the following standard intervals for DS-1: for 1 – 24 lines, nine business days; for 25 or more lines, ICB. Staff believes that further segregation of these intervals is required, for while it may be reasonable to provide 24 lines in nine business days, provisioning one DS-1 in nine business days appears excessive. Staff recommends that Qwest modify the standard intervals for DS1 as follows: 1 – 8 lines, five days; 9-16 lines, seven days; 17-24 lines, nine days; and 25 or more lines, ICB. Staff believes these provisioning intervals are more reasonable. With regard to conditioned loops, Staff believes that a 15 day standard interval is reasonable. Finally, Staff believes that the 24 hour repair interval contained in Appendix C is reasonable. Staff states that under this interval, Qwest is committing to clear all troubles, including those requiring dispatch, in 24 hours. Staff states that Qwest must still provide CLECs with repair service in intervals on par with what its retail affiliate provides. Under the Arizona Performance Assurance Plan, Qwest will be penalized if it does not perform repairs on par with its retail affiliate.

32. In its March 4, 2002 Comments, Qwest objects to Staff's proposed language for Section 3.2 because it could be broadly interpreted to encompass dark fiber, subloops and transport. Qwest proposed the following alternative:

> For fiber and OCn loops described in Section 9.2.2.3.1 of this SGAT, Qwest shall provide CLEC information regarding the location, availability, and performance of fiber and OCn loops within five (5) business days for a records based answer or within seven (7) business days for a field based answer, after receiving a request from the CLEC. Within such time periods, Qwest shall send CLEC written confirmation of the availability of the loop. The Qwest representative authorized to commit to intervals, shall meet with CLEC's representative within seven (7) business days of receipt of the request from CLEC to negotiate intervals, Qwest shall provide its proposed provisioning intervals in all cases within 20 days of the meeting.

Qwest also objected to Staff's proposed resolution for provisioning intervals for DS-1 loops. Qwest believes intervals should first be discussed in the TAG.

33. Staff does not object to Qwest's proposed language for Section 3.2. Staff continues to

support its recommended DS-1 intervals. Staff believes that since the issue was discussed at the workshop and went to impasse, it is appropriate to resolve the dispute outside of the TAG.

34. We adopt Qwest's proposed language for Section 3.2 of Appendix I of the SGAT. We further find that Staff's recommended intervals are reasonable and should be adopted. Qwest should revise its SGAT to the extent necessary to comply with our findings herein.

DISPUTED ISSUE NO. 2: Whether Qwest should be required to provide CLECs access to its Loop Facilities Assignment Central System ("LFACS") database and concerns about Loop Provisioning where Qwest uses Integrated Digital Loop Carrier (IDLC).

35. Although the CLECs state that the parties have resolved the original disputed issue concerning Integrated Digital Loop Carrier (IDLC) provisioning processes, AT&T requests access to Qwest's Loop Facilities Assignment and Control System ("LFACS") databases, and access to any other database or source that contains information regarding Qwest's loop plant. AT&T asserts that CLECs need the ability to understand, in those areas where IDLC has been deployed, what spare copper facilities are available, including loop fragments, to determine whether to actively market to that area.

36. Qwest states that it provides a significant amount of information to CLECs regarding loop makeup and allows CLECs access to information through various means including the Raw Loop Data ("RLD") tool accessed through IMA-GUI and IMA-EDI, Qwest's ADSL qualification, Qwest's POTS conversion to Unbundled Loop Tool, Qwest's Megabit Qualification Tool, and Qwest's wire center RLD tool, each of which is described in SGAT Section 9.2.2.8. Qwest argues that to provide direct access to LFACS, Qwest would have to substantially modify the database to make it perform functions it cannot perform now. Qwest claims AT&T's request for direct access is problematic because LFACS contains loop information on every Qwest unbundled loop, and for every other CLEC obtaining unbundled loops from Qwest.

37. AT&T argues that Qwest's position is contrary to clear and unequivocal obligations established by the FCC in the *UNE Remand Order*[4] and recent Section 271 Orders. The *UNE Remand Order* at ¶ 427 provides:

[4] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 15 FCC Rcd 3696 (Nov. 5, 1999).

> We clarify that pursuant to our existing rules, an incumbent LEC must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced service equipment the requesting carrier intends to install. Based on these existing obligations, we conclude that, at a minimum, incumbent LECs must provide requesting carriers the same underlying information that the incumbent LEC has in any of its own databases or other internal records.

AT&T also cited the following from the *SWBT Kansas/Oklahoma Order*[5]:

> In this proceeding, we require a BOC to demonstrate for the first time that it provides access to loop qualification information in a manner consistent with the requirements of the *UNE Remand Order*. In particular, we require SWT to provide access to loop qualification information as part of the pre-ordering functionality of OSS. In the *UNE Remand Order*, we required incumbent carriers to provide competitors with access to all of the same detailed information about the loop that is available to themselves, and in the same time frame, so that a requesting carrier could make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the requesting carrier intends to install. At a minimum, SWET must provide carriers with the same underlying information that it has in any of its own databases or internal records. We explained that the relevant inquiry is not whether SWBT's retail arm has access to such underlying information but whether such information exists anywhere in SWBT's back office and can be accessed by any of SWBT's personnel. Moreover, SWBT may not "filter or digest" the underlying information and may not provide only information that is useful in the provision of a particular type of xDSL that SWBT offers. SWBT must provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code or on any other basis that SWBT provides such information to itself. Moreover, SWBT must also provide access for competing carriers to the loop qualifying information that SWBT can itself access manually or electronically.

38. In its Proposed Findings, Staff had recommended that AT&T's request for access to the LFACS database could be satisfied through the availability of the information in Qwest's Raw Loop tool ("RLDT") accessed through IMA-GUI and EDI, Qwest's ADSL Qualification tool, Qwest's POTS Conversion to Unbundled Loop tool, Qwest's Megabit Qualification tool and Qwest's Wire Center Raw Loop Data tool. In response, AT&T argued that Staff's original position inappropriately limited the information that Qwest must provide to CLECs to the information that is available to

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[5] *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, CC Docket No. 00-217, FCC 01-29, ¶ 121 (released January 22, 2001).

Qwest's retail representatives, and would allow Qwest to filter or digest the loop and loop plant information by allowing Qwest to determine the information that it loads onto the raw loop data tool. AT&T asserts that it needs access to the loop and loop plant information so it can make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services that it intends to install.

39. AT&T claims that during the workshop process it has been difficult to obtain information from Qwest regarding where loop and loop plant information resides. AT&T states that in the Colorado loops workshop, Qwest conceded that at least some loop plant information was in LEIS and LEAD, which are subsets of LFACS and that Qwest engineers have access to this information. Qwest has the ability to use LFACS to locate loop information. Step 3 of the FOC trial process indicates that once Qwest receives an accurate LSR, it will access LFACS to attempt to assign pairs not in need of conditioning and create a design of the loop. Exhibit 5 Qwest 9 states:

> because LFACS may reveal information not available through the RLDT, especially with regard to loops not already connected to a switch. The RLDT provides information from the Loop Qualification Database ("LQDB"), which in turn is derived from LFACS and other sources. But the LQDB covers only loops connected to a switch. LFACS, on the other hand, contains information for all facilities, even those not connected to a switch, but does not contain some of the information available through the RLDT, such as the results of the MLT.

40. AT&T states that because of the uncertainty Qwest has injected into the record on this issue, the Commission should include a provision in the SGAT stating Qwest's obligation to afford CLECs access to all loop and loop plant information that Qwest employees have access to and, in order to determine where this information resides, the Commission should permit CLECs to audit, on an ongoing basis, Qwest's records, back office systems and databases in Arizona to assure that Qwest is providing non-discriminatory access. This is what Southwestern Bell agreed to provide in Texas and what the Texas Commission has ordered Southwestern Bell to do because of the uncertainty surrounding where this information resides.

41. In its Comments to Qwest supplementation of the record, Covad addressed the Colorado xDSL FOC trial and Qwest's RLDT, stating that Qwest's FOC and loop delivery performance and its pre-qualification tool continue to remain suspect. Covad reports that its review of

orders submitted in the course of the Colorado FOC trial indicate that Qwest's RLDT fails to provide CLECs with meaningful loop make-up information. Covad also asserts that Qwest has failed to show that Qwest is equally subject to the inaccuracy and unreliability of the RLDT in light of its half decade of direct access to and use of updated LFAC information.

42. Qwest supports Staff's recommendation in the Proposed Findings, noting that the Multi-State Facilitator reached a similar conclusion and recommended that Qwest ensure that it provide CLECs with information on spare facilities where IDLC is prevalent. Qwest agreed to implement the Facilitator's recommendation, and agrees to implement the same process in Arizona. Qwest states that AT&T's sole reason for requesting direct access to LFACS was to obtain spare facility information and that Qwest has recently enhanced the Raw Loop Data tool to provide CLECs with spare facility information. Qwest states that using the IMA Facility Check tool, the CLECs can determine if facilities exist to support the requested unbundled loop. Qwest states that after the close of the workshop and completion of the Colorado xDSL FOC trial, the RLDT has been enhanced to include loop make-up information for facilities associated with non-published and non-listed telephone numbers, real time data from LFACS for working telephone numbers and spare or unassigned facilities including sub-segments. Thus, Qwest argues, CLECs do not need direct access to the LFAC database.

43. Upon reconsideration, Staff believes that in its Proposed Findings it interpreted Qwest's obligations under existing FCC rules and regulations too narrowly by comparing only the loop qualification information available to a Qwest retail representative with the information available to a CLEC representative. The *UNE Remand Order* requires Qwest to make available the same underlying information the incumbent LEC has in any of its own databases or other internal records about the loop. Staff says the relevant inquiry is not whether Qwest's retail arm has access to such underlying information but whether such information exists anywhere in Qwest's back office and can be accessed by any of Qwest's personnel. Qwest may not filter or digest the underlying information and may not provide only information that is useful in the provision of a particular type of xDSL that Qwest offers.

44. Staff believes that Qwest has not demonstrated that it provides CLECs with access to

all of the same detailed information about the loop that is available to itself through its databases and other internal records. Staff recommends that Qwest be required to clearly demonstrate through a comprehensive third party evaluation of its loop qualification process, that the same loop information available to any and all of its personnel is available to CLEC personnel, and that it provides access to loop qualification information in a manner consistent with the requirements of the *UNE Remand Order*. Qwest must show that it has not filtered or digested the underlying information and has not only provided information that is useful in the provision of a particular type of xDSL that Qwest offers. Staff states that if it cannot do this satisfactorily by itself or through an independent audit, then it must make the LFACS database itself available to CLECs.

45. On February 19, 2002, Qwest submitted a Test Report by KPMG for ROC OSS Master Test Plan 12.7 dated January 31, 2002 as Supplemental Authority in support of its claim that it should not have to provide direct access to the LFACS database. The KPMG Report evaluated the loop qualification process. Staff states it cannot rely on the KPGM loop evaluation test results alone because Staff is not convinced that KPMG looked beyond what was available to Qwest retail service representatives. Staff believes that Qwest can only rely on the KPMG study if it can establish that KPMG performed the proper inquiry and that the study demonstrates that CLECs have access to the same information available to all Qwest personnel, not just the retail representative in the pre-order stage. Staff believes that CLECs must have an opportunity to comment on the KPMG test evaluation, which they have not had yet in Arizona.

46. Staff acknowledges that Qwest claims there is proprietary information contained in the LFAC database, but Staff believes that Qwest has not provided authority under federal law that it has the right to extract such information.

47. Staff recommends that if Qwest cannot demonstrate that it provides access to loop qualification information consistent with the *UNE Remand Order*, then Qwest must make access to the LFAC database available to CLECs.

48. Staff also recommends that Qwest add the following to its SGAT:

> Qwest shall provide to CLEC, on a non-discriminatory basis, access to the information contained in Qwest's records, back office systems and databases where loop or loop plant information, including information

> relating to spare facilities resides, that is accessible to any Qwest employee or any affiliate of Qwest. An audit shall be conducted by an independent third party selected by the Commission eighteen months after approval of Qwest's Section 271 application, of Qwest's company records, back office systems and databases to determine that Qwest is providing the same access to loop and loop plant information to CLECs to which any Qwest employee has access. Thereafter, audits by an independent third-party selected by the Commission shall be conducted on a periodic basis, but no more often than every 18 months upon request and demonstration of need by a CLEC providing DSL services. Such audit will be in addition to the audit rights contemplated by Section 18 of this Agreement, but the processes for such audit shall be consistent with the processes set forth in Section 18.

49. In its March 4, 2002 Comments on the Final Report, Qwest objects to Staff's "demand" that Qwest re-conduct the KPMG audit of Qwest's loop qualification tools or make major modifications to its LFACS database to provide "direct access." Qwest argues that the Raw Loop Data tool already returns unfiltered, undigested information from Qwest's LFACS database. Qwest states that KPMG confirmed that the LFACS database is the source of loop make up information in the tool. Qwest disagrees with Staff's characterization of the KPMG evaluation, and asserts that KPMG determined that Qwest is providing underlying source information to CLECs at parity. Citing the *UNE Remand Order*, Qwest states that in prohibiting ILECs from filtering and digesting information, the FCC did not order ILECs to provide direct access to their back office systems, nor did it hold that ILECs could not load loop make up information from their back office systems into databases for CLEC use. Qwest states it does this through the Raw Loop Data tool. Qwest states that in the *Verizon Massachusetts Order*, the FCC discussed Verizon's existing interfaces and its efforts to create a permanent interface for access to loop make up information without any concern for the fact that Verizon provides access to loop make up information through its GUI and EDI interfaces. In the *Verizon Rhode Island Order*, the FCC clearly states that Verizon provides mediated access to loop make up information in LFACS, not direct access to the LFACS database itself. Thus, Qwest argues, the FCC never ordered direct access to the incumbent's back office systems, but rather requires access to the loop qualification information which is provided via an interface to the data.

50. Qwest states that the KPMG Report confirmed that the source of the Loop Qualification Database that feeds the Raw Loop Data tool is the LFACS database:

> The LFACS database is Qwest's central repository for loop data. It serves as the source database for the loop data in the LQDB [Loop Qualification

> Database], which is updated with revised LFACS data on a nightly basis. The two databases are synchronized each month. As part of the loop qualification query process, the LQDB also queries a "recent changes" field in the LFACS database. If this query indicates that the LFACS information has been updated, the new LFACS information is populated into the LQDB and is used as the basis for the loop qualification query.

Qwest states that in evaluating whether the internal process flow for loop qualification is consistent for retail and wholesale customers, KPMG confirmed that the internal process flows are consistent for both wholesale and retail operations, "and that the back-end systems provide consistent results for both wholesale and resale queries." KPMG also confirmed that the database(s) used to qualify loops is the same for Qwest as it is for CLECs and that the databases are updated with the same frequency and at the same intervals.

51. To resolve this issue in Arizona, Qwest is offering to implement a manual process to permit CLECs to obtain loop make up information in the event the Raw Loop Data tool fails to provide loop make up information or returns inconsistent information. Qwest would agree to return such information within 72 hours. Qwest's manual process would be similar to SBC's, where engineers investigate the loop make-up to create an LFACS record for the facility, and then make the information available to the CLEC via email or the mediated access to the LFACS.

52. Qwest argues that Staff's recommended SGAT language that permits "audits" is unworkable. Qwest asserts that the "audit is not limited to an audit of loop qualification information, but rather permits audits of any record or database where "loop or loop plant information" resides. Further, Qwest could be subject to audit by every CLEC every 18 months, and Qwest could be subject to multiple, continuous audits by individual CLECs. A CLEC could request an audit even if it has never placed an order for an unbundled loop, does not provide DSL services, or has no need for additional loop qualification information.

53. In its April 26, 2002 Comments, Staff clarifies that it never said that providing access to the LFAC information through an interface is unlawful or the equivalent to filtering the information. Rather, Staff is concerned that CLECs have access to all loop qualification information that is available to all Qwest personnel. Staff believed that Qwest has not demonstrated in Arizona or through the KPMG Reort that equivalent access was available to the extent required by the *UNE Remand Order*. Nor had Qwest demonstrated to Staff's staisfaction that it makes the same or more

information available to CLECs than Verizon or other RBOCs. Staff notes that the CLECs dispute Qwest's claim that it provides the same comprehensive access to loop qualification data as is provided by Verizon and Southwestern Bell. Staff further states that Qwest's offer to perform a manual process is an important option available to CLECs in other RBOC regions, including Verizon's and Southwestern Bell's. With Qwest's implementation of the manual process and its assurances that CLECs will have access to loop qualification data in the same manner and timeframe as is available to Qwest personnel, Staff believes Qwest has met its obligations as long as Qwest formalizes the details of its manual process in the SGAT, and includes all options available to CLECs which are functionally equivalent to those offered by Verizon and Southwestern Bell, including access to actual loop make-up information, access to theoretical or design loop make-up information or the ability to request a manual search of paper records to determine actual loop information in timely manner. Staff continues to support its audit recommendations as an important check in the future that Qwest is meeting its obligations in this regard.

54. In its May 1, 2002 Comments, AT&T supports Staff's analysis and conclusions, and believes it is important that the CLECs have an opportunity to review and comment on any proposed SGAT language.

55. The FCC has been clear that ILECs must provide CLECs with access to all of the detailed information about the loop that is available to the ILEC itself. The FCC has not required direct access to the LFACS database where the ILEC provides the same information by other means. Here, Staff is unsure whether the KPMG Report is as thorough as Qwest claims it to be. Furthermore, at least as of the date of the Final Report, interested parties have not filed comments on the KPMG Report. However, Staff believes that with its offer to implement a manual process for researching loop qualification data, and with modifying its SGAT to include all options, Qwest will meet its obligation regarding access. We agree that if all is as Qwest purports, Qwest has met its obligations to provide access to loop qualification data. However, because the system is yet untested in Arizona, we believe that an independent third-party audit of the back office systems and databases containing loop qualification data is an important component in assuring that Qwest makes the required loop qualification information available on an on-going basis. Thus, we adopt Staff's proposed language

with minor modification (underlined):

> Qwest shall provide to CLEC, on a non-discriminatory basis, access to the information contained in Qwest's records, back office systems and databases where loop qualification information, including information relating to spare facilities resides, that is accessible to any Qwest employee or any affiliate of Qwest. An audit shall be conducted by an independent third party selected by the Commission eighteen months after approval of Qwest's Section 271 application, of Qwest's company records, back office systems and databases to determine that Qwest is providing the same access to loop qualification information to CLECs to which any Qwest employee has access. Thereafter, audits by an independent third-party selected by the Commission shall be conducted on a periodic basis, but no more often than every 18 months, upon request and demonstration of need by a CLEC providing DSL services. Such audit will be in addition to the audit rights contemplated by Section 18 of this Agreement, but the processes for such audit shall be consistent with the processes set forth in Section 18.

We believe an audit 18 months after Qwest obtains 271 approval will provide an important check on whether Qwest's systems are working. Thereafter, CLECs providing DSL may request periodic audits upon a demonstration of need. This provision in conjunction with the requirement of an independent auditor should protect Qwest from unnecessary audits. Qwest should revise its SGAT accordingly. In addition, Qwest should revise its SGAT to include a description of all the options available to CLECS for obtaining loop qualification information. As always, our procedures permit CLECs to comment on the proposed language, and ultimate approval of Qwest's compliance is contingent upon its filing acceptable SGAT language.

DISPUTED ISSUE NO. 3: Concerns regarding Qwest's obligation to build.

56. AT&T argues that Qwest must build loops, and other UNEs for CLECs under the same terms and conditions that Qwest would build network elements for itself (or its retail customers) at cost-based rates.

57. CLECs object to Qwest's decision that CLEC orders that are currently in "held" status will be rejected if there are no facilities and no current construction jobs. Thus, for new services orders placed by CLECs, if no facilities are available and no construction jobs are planned, the LSR will be rejected, rather than placed in held order status. AT&T states the policy appears designed to improve Qwest's PID performance, creating the false impression that Qwest is provisioning network elements to meet CLEC demand. CLECs argue that because Qwest has not instituted a similar policy

for its retail customers, Qwest is discriminating against its wholesale customers by refusing to keep track of CLEC held orders and failing to take those held orders into account in developing its construction plans. CLECs express concerns that Qwest will be able to get in line for new facilities ahead of CLECs because Qwest will always have superior and advance knowledge regarding its own build plans.

58. Covad concurred with AT&T's position and further argued that because Qwest refused to provide any information regarding additional equipment, such as remote DSLAMs or NGDLC or related functionalities, that may be deployed in connection with any and all future network builds, there is no way for Covad to determine whether it can capitalize on the advance notice provided.

59. This issue is similar to disputed issue number 3 for Checklist Item No. 2. In Decision No. 64630 (March 15, 2002), this Commission approved the following SGAT language for Section 9.19:

> Qwest will conduct an individual financial assessment of any request that requires construction of network capacity, facilities, or space for access to or use of UNEs. Qwest will assess whether to build for CLEC in the same manner that it assesses whether to build for itself. Qwest shall treat CLEC orders the same as it would treat its own orders for new or additional service. When Qwest constructs to fulfill CLEC's request for UNEs, Qwest will bid its construction on a case-by-case basis. Qwest will charge for the construction through nonrecurring charges and a term agreement for the remaining recurring charge, as described in the Construction Charges Section. When CLEC orders the same or substantially similar service available to Qwest End User Customers, nothing in this Section shall be interpreted to authorize Qwest to charge CLEC for special construction where such charges are not provided for in a Tariff or where such charges would not be applied to a Qwest End User Customer. If Qwest agrees to construct a network element that satisfies the description of a UNE contained in this agreement, that network element shall be deemed a UNE.

In addition, the Commission ordered Qwest to provide an appendix to the SGAT that contains the objective assessment criteria. In its March 29, 2002 SGAT filing, Qwest included the Section 9.19 language and acknowledged that the SGAT must still contain the assessment criteria.

60. Staff believes that the Commission's resolution of the issue in connection with Checklist Item No. 2 is appropriate and responds to the concerns of all the parties here.

61. Qwest has agreed to notify CLECs through the ICONN database of future construction jobs. SGAT Section 9.1.2.1.4 provides:

> Qwest will provide CLEC notification of major Loop facility builds through the ICONN database. This notification shall include the identification of any funded outside plant engineering jobs that exceeds $100,000 in total cost, the estimated ready for service date, the number of pairs or fibers added, and the location of the new facilities (e.g., Distribution Area for copper distribution, route number for copper feeder, and termination CLLI codes for fiber). CLEC acknowledges that Qwest does not warrant or guarantee the estimated ready for service dates. CLEC also acknowledges that funded Qwest outside plant engineering jobs may be modified or cancelled at any time.

62. It appears that CLEC concerns about Qwest not treating CLEC requests for UNEs the same as it treats its own customer demand, and about Qwest having superior knowledge concerning its construction plans, are being addressed by SGAT Sections 9.18 and 9.1.2.1.4, in conjunction with the forthcoming assessment criteria. We believe that with Qwest's SGAT language and its anticipated compliance with its remaining obligation to amend the SGAT with assessment criteria, this issue is resolved.

DISPUTED ISSUE NO. 4: Should Qwest be permitted to recover loop conditioning costs for loops under 18,000 feet.

63. AT&T argues that Qwest is recovering the cost of loop conditioning in its UNE loop charge, and that this issue was deferred to the pending Wholesale Cost Docket.

64. WorldCom asserts that under accepted engineering principles, loops under 18,000 feet should not have bridge taps or load coils and that any need for conditioning is based on an inefficiently designed loop. Covad concurs with WorldCom.

65. Qwest argues that in the *UNE Remand Order*, the FCC specifically held that ILECs are entitled to recover the costs of conditioning loops less than 18,000 feet. Further, Qwest states, the FCC has rejected the argument that ILECs should not recover conditioning costs because they should not have placed bridge taps or load coils in the network in the first place. Qwest asserts that the FCC's Section 271 Orders also recognize that ILECs are entitled to recover their costs of loop conditioning. Qwest states further that it has voluntarily undertaken a bulk de-loading project to de-load loops less than 18,000 feet in those Arizona wire centers in which DLECs are concentrating their activities. Qwest states that approximately 90 percent of the wire centers in Arizona where CLECs are ordering unbundled loops have been de-loaded as part of the project. Qwest has absorbed the costs of its de-loading project.

66. Staff believes that Qwest's position is in accord with FCC rulings. Staff agrees that Qwest should be entitled to recover the costs of conditioning loops less than 18,000 feet, other than the loops which Qwest conditioned in its bulk de-loading project in Arizona. Although Staff believes that Qwest is entitled to recover the costs of conditioning lines less than 18,000 feet, Staff encourages the Company to follow the lead of other RBOCs that do not impose charges for up to 12,000 feet.

67. FCC rulings permit Qwest to recover the conditioning costs of loops less than 18,000 feet. We defer a determination on the amount of conditioning charges to the Wholesale Cost Docket.

DISPUTED ISSUE NO. 5: Should a CLEC receive a refund of the loop conditioning costs if the customer leaves within one year of installation?

68. AT&T expressed concern regarding the quality and timeliness of delivery of conditioned unbundled loops. AT&T states that an end-user could be adversely affected by poor Qwest performance and abandon the CLEC, but the CLEC would still be obligated to pay the conditioning charge. AT&T proposed the following SGAT language:

> 9.2.2.4.1 If CLECs end user customer, for which CLEC has ordered DSL capable Unbundled Loops from Qwest, (i) never receives x-DSL service from CLEC, (ii) suffers unreasonable delay in provisioning, or (iii) experiences poor quality of service, in any case due to Qwest's fault, Qwest shall refund or credit to CLEC the conditioning charges associated with the service requested. The refund or credit is in addition to any other remedy available to CLEC.

AT&T believes this would be an incentive to Qwest to provide "good" loops.

69. Covad concurs with AT&T.

70. Qwest argues that because conditioning is an activity Qwest undertakes in response to a CLEC request, Qwest is entitled to recover its costs of conditioning loops, regardless of whether the end user ultimately receives DSL service from the CLEC. Qwest argues AT&T's language is vulnerable to a myriad of interpretations. Qwest is not opposed to inserting language in the billing provisions of the SGAT that would entitle a CLEC to a credit of conditioning costs if Qwest fails to perform the conditioning in a workmanlike manner or significantly misses its due date for conditioning due to Qwest fault. Qwest recommends adopting the Multi-State Facilitator's approach:

> Where Qwest fails to meet a due date for performing loop conditioning, CLEC shall be entitled to a credit equal of the amount of any conditioning charges applied, where it does not secure the unbundled loop involved

> within three months of such due date. Where Qwest does not perform conditioning in accord with the standards applicable under the SGAT, CLEC shall be entitled to a credit of one-half of the conditioning charges made, unless CLEC can demonstrate that the loop as conditioned is incapable of substantially performing the functions normally within the parameters applicable to such loop as this SGAT requires Qwest to deliver it to the CLEC. In the case of such fundamental failure, CLEC shall be entitled to a credit of all conditioning charges, except where CLEC asks Qwest to cure any defect and Qwest does so. In the case such cure, CLEC shall be entitled to the one-half credit identified above.

71. Staff recommends the Multi-State Facilitator's language be modified as follows:

> Where Qwest fails to meet a due date for performing loop conditioning, CLEC shall be entitled to a credit equal of the amount of any conditioning charges applied, where it does not secure the unbundled loop involved within ~~three~~ one month of such due date. Where Qwest does not perform conditioning in accord with the standards applicable under the SGAT, CLEC shall be entitled to a credit of one-half of the conditioning charges made, unless CLEC can demonstrate that the loop as conditioned is incapable of substantially performing the functions normally within the parameters applicable to such loops as this SGAT requires Qwest to deliver it to the CLEC. In the case of such fundamental failure, CLEC shall be entitled to a credit of all conditioning charges, except where CLEC asks Qwest to cure any defect and Qwest does so. In the case such cure, CLEC shall be entitled to the one-half credit identified above.

72. Staff's recommended remedy is reasonable and addresses Qwest's concerns that the remedy should be self-executing and not subject to unnecessary interpretation of what constitutes unreasonable delay and poor performance. AT&T's proposed language appears more prone to disputes of interpretation. Staff's reduction of the trigger for the CLEC to receive a credit to one month is appropriate, as a three-month delay is unreasonably long. Qwest should revise its SGAT accordingly.

DISPUTED ISSUE NO. 6: Should Qwest's Spectrum Management positions be adopted?

73. In general, spectrum compatibility is the ability of loop technology to reside and operate in the same or an adjacent "binder group" as another loop technology. Spectrum management refers to loop plant administration, such as binder group management, and other deployment practices that are designed to result in spectrum compatibility, preventing harmful interference between services and technologies that use pairs in the same cable.

74. The CLECs claim that Qwest installs T-1s that knock CLECs out of service and

prohibit the implementation of DSL in the future. Qwest opposed language that would explicitly require it to convert its T-1s to alternative technology where its facilities are causing interference. AT&T states that the FCC has clearly determined that T-1s are "known disturbers" and has established an exception to the first-in-time rule for T-1s.

75. The CLECs support SGAT language regarding Spectrum Management that they believe best reflects competitively neutral spectrum management practices, is consistent with FCC Orders and advances the goals of Section 706 of the 1996 Act to "encourage the deployment on a reasonable and timely basis of advance telecommunications capability to all Americans." CLECs claim the FCC requires ILECs to disclose information with respect to rejection of rquests for service based on spectrum compatibility and places the burden of proof on the ILEC to demonstrate significant degradation in performance of services based on spectrum compatibility issues. CLECs state Qwest's SGAT contains no such requirements and leaves spectrum management within the control of Qwest with no explanation to CLECs of alleged compatibility problems.

76. WorldCom argues that Qwest's SGAT language that contains spectrum compatibility limitations restricts rolling out loop technology that is not consistent with emerging technologies and prevents CLECs from meeting customer needs. WorldCom requests that to be consistent with FCC requirements, the SGAT should be changed to read as follows:

> Qwest will provision BRI-ISDN, DS1, or DS3 capable or SDSL capable Loops in areas served by Loop facilities and/or transmission equipment. In the event Qwest believes that the provisioning of such a service is not compatible with the Loop facilities und/or transmission equipment, Qwest will disclose to requesting carrier, in writing, within 10 calendar days of the request to provision such a service, Qwest's basis for believing that provisioning the requested service is not compatible with the Loop facilities and/or transmission facilities. Qwest will bear the full burden of demonstrating incompatibility with the requested order. Claims of spectrum incompatibility must be supported with specific and verifiable supporting information. Qwest will adhere to and incorporate industry standards in regard to spectrum compatibility as they become available.
>
> If Qwest claims a service is significantly degrading the performance of other advanced services or traditional voice band services, then Qwest must notify the affected carrier and allow that carrier a reasonable opportunity to correct the problem. Any claims of network harm must be supported with specific and verifiable supporting information.

77. Qwest states that in the *Line Sharing Order* and *Line Sharing Reconsideration Order*,

the FCC established general rules regarding spectrum management and turned to the Network Reliability and Interoperability Council ("NRIC"). Qwest cites paragraph 204 of the *Line Sharing Order* that states in pertinent part: ". . . Competitive LECs must provide Incumbent LECs information on the type of technology they seek to deploy including spectrum class information . . ." Thus, Qwest asserts that the FCC requires CLECs to disclose to ILECs information on CLEC deployment of DSL technology so that incumbents can maintain accurate records and resolve potential disputes. Qwest argues that CLECs must disclose their deployment of advanced services technology as part of the FCC's national spectrum policy. Qwest requires this information in the event of an allegation of disturbance and to determine if a service can be provided on a specific binder group. Qwest states to the extent such CLEC information is proprietary, Qwest will maintain the confidentiality of the information in accordance with FCC rules and provisions of the SGAT addressing protection of proprietary information.

78. Qwest asserts the FCC has authorized state commissions to determine the disposition of known disturbers. Qwest states it is complying with this FCC policy and managing its T-1s in a way that considers the innovative technology needs of CLECs by appropriately segregating disturbers. Qwest places T-1s in a separate binder group from other DSL services. Qwest says its services are not automatically taking precedence over new entrant services and accordingly, there is no basis to require further dislocation of T-1 facilities.

79. AT&T states that Qwest has plans to deploy its ADSL and VDSL terminals in remote premises throughout its region, which as it becomes widespread, will cut off whole neighborhoods from being able to obtain advanced services from competitive providers. AT&T states that these technologies are barriers to entry because they interfere with the performance of central office based CLEC services, making such services unavailable. AT&T requests that the Commission require Qwest to deploy its technology in a spectrally compatible manner in order to ensure that this nascent area of competition is allowed to flourish and is not encumbered by Qwest's actions in deploying remote DSL and repeaters.

80. WorldCom states that on September 14, 2001, the fifth Network Reliability and Interoperability Council (NRIC V) proposed a new recommendation that calls for the rescission of the

FCC requirement to disclose PSD Mask information upon loop order/provisioning. In making its recommendation, the NRIC V stated that since the FCC issued the *Line Sharing Order*, "implementation of these rules have proven to be incomplete, slowing the deployment of DSL services and causing both loop owners and service providers to incur undue expense."

81. Staff notes that the FCC designated the NRIC as an advisory body on spectrum compatibility standards and spectrum management policies. The NRIC final report is due out in 2002. Staff believes that any interim process development prior to the issuance of the NRIC report would be premature. Therefore, Staff recommends that since the FCC relies on NRIC for the development of these standards, parties should await a final decision by the FCC on spectrum compatibility standards and spectrum management policies.

82. Staff recommends to revise SGAT Section 9.2.6.5 as follows:

> Upon notification, the causing carrier shall promptly take action to bring its facilities/technology into compliance with *industry standards* <u>and FCC guidelines, rule and regulations.</u>

Staff believes the inclusion of the above-language will ensure that any facilities or technology will be brought into compliance with existing adopted industry standards to FCC guidelines.

83. Qwest agreed to include SGAT language in Arizona as recommended by the Multi-State Facilitator. Staff agreed that Qwest's proposal is reasonable with small modification as follows:

> Where CLEC has deployed central-office based DSL services serving a reasonably defined area. Qwest must, upon request of a CLEC, take appropriate measures to mitigate the demonstrable adverse effects on such service that arise from Qwest's use of repeaters or remotely deployed DSL service in that area. It shall be presumed that the costs of such mitigation will not be chargeable to any CLEC or to any other customers. Qwest shall have the right to rebut this presumption by demonstrating to the commission by a preponderance of the evidence that the incremental costs of mitigation would be sufficient to cause a substantial effect upon other customers (including but not limited to CLECs securing UNEs) if charged to them. Upon such showing, the commission may determine how to apportion responsibility for those costs, including, but not limited to CLECs taking services under this SGAT. <u>Notwithstanding, if Qwest must make changes to meet future NRIC and FCC standards, any costs Qwest incurs to meet these standards shall be borne solely by Qwest and shall not be passed on to the CLECs</u>.

Comments, Qwest opposes the inclusion of the final sentence. Qwest states it is premature to preclude Qwest from seeking any cost recovery since no one knows what standards or recommendations NRIC will finally adopt or what requirements the FCC will approve with respect to spectrum management. Qwest argues that to the extent FCC rules either do not prohibit ILECs from seeking cost recovery or expressly permit cost recovery or cost sharing, Qwest should be permitted to seek cost recovery before the Commission.

85. In its April 26, 2002 Comments Staff concurs with Qwest and recommends that the last sentence be changed as follows:

> In the event Qwest believes it is entitled to cost recovery for future NRIC or FCC standards relating to remote deployments, Qwest may request such cost recovery in a proceeding in which Staff, the parties and the Commission have an opportunity to evaluate Qwest claims.

86. We find that Staff's recommended SGAT additions to SGAT Sections 9.2.6.5 and 9.2.6.6 are reasonable and represent a fair solution to an important issue where federal standards are currently in flux. The presumption is that Qwest shall bear the costs of meeting future federal standards, and Qwest bears the burden of proof to demonstrate otherwise. Qwest should revise its SGAT accordingly.

DISPUTED ISSUE NO. 7: Should Qwest perform cooperative testing on certain orders?

87. Covad asserts that Qwest regularly fails and refuses to deliver loops to Covad that are capable of supporting xDSL services. Covad claims that Qwest bills Covad for cooperative testing on every order it submits, even when testing is not performed, and until recently, Qwest did not track whether or not it performed cooperative testing. Covad charges that Qwest technicians fail to adhere to the agreement to perform cooperative testing, and that this impairs Covad's ability to compete effectively with Qwest for xDSL users.

88. Qwest states that it has taken measures to correct operational problems that may have prevented adherence to the processes applicable to Covad orders. Qwest states it is committed to working with carriers to ensure the process works smoothly for both carriers. Qwest is now tracking whether it meets its commitments to perform cooperative testing with CLECs and will send e-mail results of the test within two business days. Qwest will waive the entire cost of coordinated

installation if it fails to perform the coordinated testing which it was otherwise obligated to perform.

89. In its Proposed Findings, Staff stated it believes that Qwest's efforts to improve its performance of cooperative testing addresses a portion of the CLECs' concerns, but fail to address CLEC concerns that Qwest is not delivering a good loop. Thus, Staff recommended that Qwest be required to waive the charge for cooperative testing where it does not do the testing as promised, and to do the testing later (within the first 30 days after the customer receives service) at its own expense. Staff believed that the issues with respect to Qwest's provisioning of loops needed to be resolved on the record for Qwest to be found in compliance with Checklist Item No. 4.

90. Qwest states that as shown in SGAT Sections 9.2.2.9.3 and 9.2.2.9.5.3, it waives charges and performs cooperative testing at its own expense when Qwest misses the test due to its own fault. It also will waive the nonrecurring charge of the basic installation with Cooperative Testing option for those orders on which no Cooperative Testing was performed due to Qwest's fault. Qwest states that data from its tracking system show that Qwest routinely and consistently performs requested Coordinated Testing on CLEC behalf and that between July 23, 2001 and September 23, 2001, it met its Cooperative Testing obligations 94.5 percent of the time. Further, Qwest says the data show that on-time performance for analog loops improved from 88.4 percent in March to 98.98 percent in July. Given the performance data, Qwest believes it is meeting the FCC standard.

91. AT&T claims it is premature to reach conclusions regarding Qwest's performance on Coordinated Installation. AT&T states that its data differs from Qwest's.

92. Staff believes that the performance data Qwest submitted supports the conclusion that it is providing a good loop to CLECs "in most instances." Staff states the data problems or PID accuracy expressed by Covad are being reviewed by Liberty Consulting. Staff recommends that Qwest's performance regarding loop provisioning be finally determined from the results of the OSS test in Arizona and from more recent performance data.

93. We concur with Staff. Qwest's commitments to waive charges where it fails to meet Cooperating Testing dates addresses CLEC concerns. We believe that the serious issues raised by CLECs that Qwest is not providing a good loop is better resolved as part of the OSS test where the performance data is being thoroughly scrutinized. We defer judgment on whether Qwest is providing

"good loops" to our deliberations on the OSS test report.

DISPUTED ISSUE NO. 8: Complaints regarding Qwest policy on employees who engage in anti-competitive behavior.

94. Covad charges that Qwest has failed to take steps to ensure the cessation of improper and anti-competitive technician behavior. Covad states that Qwest technicians have (1) encouraged Covad end-users to use providers other than Covad, including Qwest; (2) stolen Covad loop pairs and used those pairs for Qwest services; (3) failed to show up for the Covad install after pressuring the end-user to use Qwest's services, and (4) misinformed Covad customers regarding a loop's capabilities of running a Covad-offered service. Covad charges that the Code of Conduct and associated "reminders" have been ineffective in eliminating anti-competitive behavior. Covad asserts that "reminders" are accompanied by conflicting or confusing verbiage that permits improper technician conduct.

95. In its Proposed Findings, Staff recommended that: in addition to the Code of Conduct, Qwest develop separate guidelines in "plain English" that establish appropriate behavior with respect to Qwest competitors; Qwest employees receive annual training on the guidelines and the Code of Conduct; employees be required to sign an affidavit that they will not and have not engaged in any violations of the guidelines or engaged in anti-competitive conduct; Qwest managers should be trained in the complaint process; and that the complaint process be memorialized in the SGAT and published in Qwest's web–site.

96. Qwest argues that it has instituted policies and procedures that prohibit "anti-competitive" behavior: (1) Qwest has policies that prohibit misconduct, including alleged "anti-competitive" conduct by its employees; (2) it has processes in place to investigate CLEC allegations and inform the CLEC of the results of the investigation; (3) Qwest has informed its employees in "plain English" of their obligations to CLECs under the Code of Conduct; (4) Qwest takes appropriate corrective action in response to allegations of misconduct; and (5) Qwest already requires its employees to reaffirm their commitment to the Code of Conduct annually. Employees are required to sign the Code of Conduct as a condition of employment, and violation of the Code is punishable by discipline up to, and including termination. Managers are responsible for their employees attesting to

the Code of Conduct and training for managers includes training on allegations of misconduct. Qwest provides training videos for technicians that includes reminders of the Code of Conduct.

97. Staff believes that Qwest has satisfied all of Staff's recommendations on this issue in Staff's Proposed Findings, except one. In the Final Report, Staff continues to recommend that the process for resolving CLEC complaints be memorialized in Qwest's SGAT.

98. In its March 4, 2002 Comments, Qwest states it would be inappropriate and unwieldy to attempt to dictate the process and Qwest policies for addressing allegations of anti-competitive behavior by Qwest employees in the SGAT. Qwest states it needs flexibility to adapt its employee practices and policies to address different types of CLEC allegations. Qwest proposed language to address Staff's concerns.

99. Staff believes that Qwest's proposed SGAT language addresses Staff's concerns. Staff recommends the following language for SGAT Section 5.29.2 (Staff's recommended addition in bold):

> If any time CLEC believes that a Qwest employee has engaged in unlawful behavior with respect to CLEC, CLEC may report the incident to the Account Team in writing, describing in detail all facts upon which CLEC's belief is based. Qwest will investigate the allegations, and within three (3) business days after Qwest has received written notification from the CLEC of the allegations, inform CLEC that the matter is being investigated. Qwest will keep the CLEC informed throughout the investigation and will advise **in writing** of the investigation outcome. Due to confidentiality issues, Qwest may not be in a position to disclose all of the findings to CLEC. However, Qwest will provide nonconfidential findings.

100. Because Qwest technicians have first hand contact with end-users, it is critical that Qwest have clear policies against anti-competitive behavior and that such policies be enforced. It appears that Qwest is taking appropriate actions to train its employees in proper conduct vis a vis competitors, and it seems reasonable that Qwest needs some flexibility in being able to investigate and deal with different types of CLEC complaints. The proposed SGAT language informs CLECs how they can lodge complaints about anti-competitive behavior. Accordingly, we adopt Staff's recommendation in its April 26, 2002 Comments and direct Qwest to update its SGAT accordingly.

DISPUTED ISSUE NO. 9: Reciprocity of trouble isolation charges and specifics

of Qwest's charges.

101. In its June 14, 2001 Brief, AT&T reports that with Qwest's revisions to its SGAT, this issue is closed. Qwest's March 29, 2002 SGAT filing permits CLEC access to the NID for testing, as requested by AT&T.

102. AT&T argues that Qwest already recovers the cost of trouble isolation in its unbundled loop rates, and thus, language included in SGAT Sections 9.2.5.2 and 9.2.5.3 regarding the imposition of a "maintenance of Service charge" are inappropriate.

103. Staff states that this issue is closed and believes that the cost of testing should be deferred to the Arizona Wholesale Pricing Docket.

104. We concur with Staff. The parties should address the appropriate amount of charges under SGAT Section 9.2.5.2 and 9.2.5.3 in the Wholesale Cost Docket.

DISPUTED ISSUE NO. 10: Should Qwest provide access to Mechanized Loop Testing ("MLT") even though Qwest does not provide that functionality to itself.

105. AT&T asserts that a CLEC needs the ability to perform, or to have performed on its behalf, MLT before provisioning of that loop in order to verify that the loop can support the services the CLEC intends to provide over that loop. Qwest claims that MLT cannot be done by a CLEC or on the CLEC's behalf because the test is invasive and may affect another provider's customer's service. AT&T argues, however, that Qwest concedes that it has the ability to perform MLT on its switched based services and that it performed a MLT on every copper loop in its network to obtain information for the provisioning of its Megabit service. AT&T argues that under the SGAT, CLECs do not have the same ability and thus, Qwest is not providing loops at parity. AT&T requests access to the same information to which Qwest personnel have access, which includes the ability to perform MLT prior to the provisioning of an unbundled loop. Covad concurs with AT&T.

106. Qwest opposes the demand because (1) Qwest retail representatives cannot perform MLT on a pre-order basis; (2) MLTs are performed as a part of a repair; (3) MLT is an invasive test that takes the customer's service down for a period of time; (4) MLT is a switch-based test that requires the loop to be connected to Qwest's switch; (5) no other BOC provides CLECs with a pre-order MLT; and (6) Qwest has already given CLECs non-discriminatory access to MLT information through the Raw Loop Data ("RLD") tool.

107. Staff agreed with Qwest that it does not have to provide MLT for pre-orders. However, Staff also had concerns about the quality of loops. Staff believed that the MLT pre-order would offer the CLECs the ability to ensure that a good loop is delivered where cooperative testing has not worked. Staff did not know how Qwest could demonstrate that it is providing good loops without cooperative testing or MLT pre-order.

108. Qwest provided performance data for the period April to July 2001, that show it provided trouble free analog loops 95.33 percent of the time, which meets the FCC standard that allows trouble less than 5 percent of the time. Similarly, it met the 5 percent standard for 2-wire loops in each month except July. Qwest asserts the data show that Qwest is providing loops in good working order. Furthermore, Qwest asserts, its performance will be tracked under the Performance Assurance Plan.

109. Staff continues to believe that Qwest is not required to provide pre-order MLT. Staff states that while the performance data provided by Qwest shows that it is providing good loops most of the time, Staff recommends deferring the resolution of Qwest's ultimate performance to the final report on the OSS test and to a review of more recent commercial data.

110. We agree with Staff's recommendation. With Qwest's efforts to improve its performance of cooperative testing and the information available to CLECs through the Raw Loop Data tool, and the fact that Qwest's retail representatives cannot perform MLT, we will not require Qwest to provide a pre-order MLT at this time. We cannot conclude here, without the results of the OSS test and analyzed performance data, if Qwest is meeting its obligation to provide trouble free loops. We defer our determination of that issue to our consideration of the OSS final report.

DISPUTED ISSUE NO. 11: Whether Qwest will re-designate interoffice facilities as loop facilities after all other loop facilities have been utilized.

111. AT&T argues that if the distribution facilities are exhausted between two Qwest offices, and Qwest receives orders for UNE loops that could be filled by re-designating those facilities as distribution facilities, Qwest should be required to do so. AT&T asserts that Qwest can re-designate interoffice transport facilities as loops for itself and should be required to do so for CLECs.

112. Qwest argues that AT&T's demand is unfounded under the 1996 Act and unreasonable

in terms of the technical configuration of Qwest's network. Qwest states it does not re-designate interoffice facilities as loops for itself, and thus is not required to do so for CLECs. Qwest states its general practice is to transition Interoffice Facilities ("IOF") to loop facilities when an entire IOF copper plant is retired and replaced by fiber. Qwest asserts that AT&T presented no evidence demonstrating that converting IOF to loop facility on an ad hoc basis is technically advisable given Qwest's plant configuration. Furthermore, Qwest states AT&T did not present evidence that Qwest is treating CLECs differently than it treats itself.

113. In its Proposed Findings, Staff requested more information from Qwest as to why it is not technically feasible to re-designate IOF as distribution facilities. Staff further recommended that Qwest specify in its SGAT that it tries to re-use IOF copper plant as distribution when an entire IOF copper plant is retired and replaced by fiber, and how it will make the information available to CLECs.

114. In Comments to the Proposed Findings, AT&T argued that Qwest has the burden of proof to demonstrate technical infeasibility, rather than AT&T having to prove that it is technically feasible. AT&T claimed that all wires are equally available for access as loop facilities.

115. Qwest submitted transcript records from Colorado, Washington and Oregon in response to Staff's request for more information. Qwest provided more information concerning the configuration of its facilities in support of its position.

116. Staff believes that Qwest has responded to its concerns through its supplementation of the record, and Staff recommends that Qwest not be required to convert individual IOF to distribution facilities. Staff continues to recommend that Qwest include in its SGAT its general practice to "reuse" IOF facilities whenever the entire IOF copper plant is retired and replaced by fiber and the facilities are in good enough shape to use as loop facilities.

117. We concur with Staff. Qwest's refusal to convert facilities as requested is reasonable as Qwest has demonstrated the technical problems with such re-designation on an ad hoc basis and does not perform the same re-designation on its own behalf. Qwest should revise its SGAT as recommended by Staff, including how it will make the information available to CLECs when it converts the entire IOF copper plant after conversion to fiber.

COLORADO FOC TRIAL RESULTS

118. In Colorado Qwest conducted a two-month trial to determine the propriety of moving from a 24 hour FOC to a 72 hour FOC for xDSL loops (two wire non-loaded loops, ISDN compatible loops and x DSL-1 loops). Under the new process all xDSL orders will be included in the FOC Performance Measure. Additionally, the 72 hour FOC allows Qwest adequate time to verify the existence of appropriate facilities and if not, to determine if Qwest can find alternative facilities to accommodate the CLEC request. Qwest provided data that FOC process improvements resulted in better performance that exceeded the 90 percent benchmark. Qwest has stated it will bring the process improvements from the FOC trial to Arizona. The CLECs dispute the data results and business rules under which the test was conducted. Ultimately, however, the CLECs agreed that Qwest could take its request for a 72 hour FOC to the ROC and Arizona TAG process. The CLECs argued that Qwest's performance could be more accurately measured as part of the OSS Test process.

119. Staff states that the overall issue of provisioning CLECs with quality loops in a timely manner focuses mainly on the issues of Coordinated Installations, Cooperative Testing and FOC Performance. Staff recommends that, on the basis of Qwest's supplemental filing, and conditioned on satisfactory performance in the OSS Test, and subject to bringing the FOC process improvements to Arizona (which Qwest has committed to do, but which has not yet been done to Staff's knowledge) that Qwest be considered in conditional compliance with Checklist Item No. 4.

CONCLUSIONS OF LAW

1. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-281 and 40-282 and the Commission has jurisdiction over Qwest.

2. The Commission, having reviewed the Final Report on Qwest's Compliance with Checklist Item No. 4 dated February 20, 2002, approves and adopts the Final Report, as modified herein.

3. The Commission cannot make a final determination on Qwest's compliance with Checklist Item No. 4, until the Commission confirms that Qwest has passed relevant performance measurements in the third-party OSS test.

4. The Commission's determination of Qwest's compliance with Checklist Item No. 4 is

conditioned on Qwest's passage of the OSS test, implementation of the FOC process improvements in Arizona, and filing of SGAT language that complies with the Findings and Conclusions herein.

ORDER

IT IS THEREFORE ORDERED that the Final Report dated February 20, 2002, on Qwest Corporation's Compliance with Checklist Item No. 4, is hereby adopted as modified, conditioned on Qwest Corporation passing the relevant OSS test and modifying its SGAT to comply with the Findings and Conclusions herein.

IT IS FURTHER ORDERED that Qwest Corporation shall file by May 31, 2002, a revised SGAT incorporating the Findings and Conclusions herein.

IT IS FURTHER ORDERED that CLECs and other interested parties shall have ten days following Qwest Corporation's filing of the revised SGAT to file written comments concerning the proposed SGAT language.

IT IS FURTHER ORDERED that Commission Staff shall file within twenty days of Qwest Corporation's filing, its recommendation to adopt or reject the proposed SGAT language and a procedural recommendation for resolving any remaining dispute.

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IT IS FURTHER ORDERED that an audit shall be conducted by an independent third party selected by the Commission 18 months after approval of Qwest Corporation's Section 271 application, of Qwest's company records, back office systems and databases to determine that Qwest is providing the same access to loop qualification information to CLEC's to which any Qwest employee has access. Thereafter, audits by an independent third-party selected by the Commission shall be conducted on a periodic basis, but no more often than every 18 months upon request and demonstration of need by a CLEC providing DSL services.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 21st day of MAY, 2002.

for BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

SERVICE LIST FOR: U S WEST COMMUNICATIONS, INC. (SECTION 271)

DOCKET NO. T-00000A-97-0238

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IN THE MATTER OF QWEST CORPORATION'S SECTION 271 APPLICATION

ACC Docket No. T-00000A-97-0238

FINAL REPORT ON QWEST'S COMPLIANCE

With

CHECKLIST ITEM: NO. 4 - UNBUNDLED LOOPS

FEBRUARY 20, 2002

DECISION NO. 64836

I. FINDINGS OF FACT

A. PROCEDURAL HISTORY

1. On March 5, 2001, the first Workshop on Checklist Item No. 4 (Loops) took place at Hewlett-Packard's offices in Phoenix. Parties appearing at the Workshops included Qwest Corporation[1], AT&T, MCI WorldCom, Sprint, Covad, Communications Workers of America ("CWA") and the Residential Utility Consumer Office ("RUCO"). Qwest relied upon its Supplemental Affidavit filed on July 21, 2000. Additional Comments were filed on November 3, 2000 by AT&T and WorldCom. Covad filed initial comments on March 2, 2001. Qwest filed Rebuttal Comments on February 19, 2001.

2. On May 14, 2001, a second follow-up workshop was conducted discussing remaining issues regarding Loops.

3. The Parties resolved many issues at the two Workshops held on March 5, 2001, and May 14, 2001. Outstanding issues from the March 5, 2001 Workshop included a commitment by the parties to address take back issues for resolution at the follow-up workshops held on May 14, 2001. At the conclusion of the May 14, 2001 workshop, a number of issues remained to be resolved. Staff issued its Proposed Findings of Fact and Conclusions of Law and its proposed resolution of all impasse issues on loops on September 14, 2001. AT&T, WCom and Covad filed comments on Staff's Proposed Findings of Fact and Conclusions of Law on October 3, October 9 and October 4 respectively.

4. In its Proposed Findings of Fact and Conclusions of Law, Staff also found that there was insufficient information in the record to determine that Qwest complied with Checklist Item 4. Consequently Staff reopened the record and allowed Qwest to supplement the record with additional information and evidence to demonstrate its compliance. Qwest filed its Supplementation on September 24, 2001. Other Parties filed comments to Qwest's supplementation on October 5, 2001. Staff's findings with regard to Qwest's supplementation and parties' comments are also included herein. After giving due consideration to the comments of the parties, following is Staff's Final Report on Checklist Item 4.

[1] As of the date of this Report, U S WEST Communications, Inc. has merged with Qwest Corporation, which merger was approved by the Arizona Commission on June 30, 2000. Therefore, all references in this Report to U S WEST have been changed to Qwest.

B. DISCUSSION

1. Checklist Item No. 4

a. FCC Requirements

5. Section 271(c)(2)(B)(iv) of the Telecommunications Act of 1996 requires a section 271 applicant to provide or offer to provide access to "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."

6. Section 271(c)(2)(B)(ii) of the Act requires a 271 applicant to show that it offers "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251 (c)(3) and 252(d)(1)."

7. Section 251(c)(3) establishes an incumbent LECs "duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of [section 251] . . . . and section 252".

8. In previous Section 271 Orders, the FCC has generally stated that the ordering and provisioning of network elements has no retail analogue, and it therefore looks to whether the BOC's performance offers an efficient competitor a meaningful opportunity to compete. Bell Atlantic New York Order at para. 269.

9. The FCC stated in the Second BellSouth Louisiana Order that one way the BOC can demonstrate compliance with Checklist Item 4 is to submit performance data evidencing the time interval for providing unbundled loops and whether due dates are met. The BOC must also provide access to necessary support functions, including maintenance and repair.

10. The BOC must also provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested. In order to provide the requested loop functionality, such as the ability to deliver ISDN or xDSL services, the BOC may be required to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities, with the competing carrier bearing the cost of such conditioning.

11. The BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses integrated digital loop carrier ("IDLC") technology or similar remote concentration devices for the particular loop sought by the competitor.

The costs associated with providing access to such facilities may be recovered from competing carriers.

12. As part of allowing a competitor to combine its own facilities with an incumbent LEC's loops, a BOC must provide cross-connect facilities between an unbundled loop and a competing carrier's collocated equipment at prices consistent with Section 252(d)(1) and on terms and conditions that are reasonable and nondiscriminatory under Section 251(c)(3). ILECs must also provide access to unbundled network interface devices so that requesting carriers can connect their own loop facilities at that point.

b. Background

13. In its Local Competition First Report and Order, the FCC defined a local loop as "a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and an end user customer premises." Id. This definition includes different types of loops, including "two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals.

14. Arizona is undertaking a comprehensive Third Party Independent Test of Qwest's OSS. This test includes an examination of the time interval for providing unbundled loops and whether due dates are met. In addition, Qwest has begun to submit performance data evidencing the time interval for providing unbundled loops and whether due dates are met. The OSS test and Qwest's own data will also show whether competing carriers are informed of the status of their order and how responsive the BOC is in providing access to necessary support functions, including maintenance and repair.

15. The TAG developed extensive performance measurements in order to monitor its performance in providing unbundled loops to CLECs. Id. As part of the Arizona Third Party OSS Test, the following provisioning and repair measures have been established for unbundled loops. Id. The following performance measures apply to the provision or repair of unbundled loops:

> OP-3 - Installation Commitments Met – evaluates the extent to which Qwest installs service by the scheduled due date.
>
> OP-4 – Installation Interval – focuses on the average time to install service.
>
> OP-5 – New Service Installation Quality – evaluates the number of new orders that are trouble free for 30 days following installation. Additionally it focuses on the percentage of new service installations that experienced a trouble report during the period from the installation date to the date the order is posted complete.

OP-6 – Delay Days – evaluates the average number of days that late orders are completed beyond the due date.

OP-7 – Coordinated "Hot Cut" Intervals – focuses on the time involved to disconnect a customer from the Qwest network and connect it to the CLEC.

OP-13 – Coordinated Cuts On Time – evaluates the timeliness of coordinated installations and the percent of orders started prior to the scheduled time without the CLECs approval.

MR-3 – Out of Service Cleared within 24 Hours – evaluates the timeliness of out service repair for 2 /4-wire analog loops, 2-wire non-loaded loops and ADSL qualified loops.

MR-4 – All Troubles Cleared within 48 Hours – evaluates the repair timeliness of all types of trouble cases for 2 /4-wire analog loops, 2-wire non-loaded loops and ADSL qualified loops.

MR-5 – All Troubles Cleared within 4 Hours – evaluates the timeliness of repair for 4-wire non-loaded loops, ISDN capable DS1 capable, and DS3 capable loops.

MR-6 – Mean Time to Restore – focuses on how long it takes to restore service.

MR-7 – Repair Repeat Report Rate –focuses on the number of repeated trouble reports for the same loop received within 30 days.

MR-8 – Trouble Rate – evaluates the number of troubles as a percentage of the total number of loops in service.

MR-9 – Repair Appointment Met – evaluates the extent to which repairs service by the appointment date and time.

c. Position of Qwest

16. On July 21, 2000, Qwest Witness Karen Stewart provided Supplemental Testimony stating that FCC Rule 319 requires Qwest to make both two wire analog and four-wire analog or digital unbundled loops available. 5-Qwest-2 at p. 94. Qwest is also required to offer two-wire and four-wire loops conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals.

17. Qwest, through both its SGAT, Section 9.2.2, and various interconnection agreements, has a concrete and specific legal obligation to furnish loops as required by the Federal Act and FCC Orders:

- Two-Wire Analog Loop - is a voice-grade facility that provides continuity from the Qwest serving Central Office Main Distributing Frame or equivalent to the end user's Network Interface Device (NID). This loop provides a two-wire analog interface and a circuit that supports 300 to 3000 Hz analog services. The buyer specifies a signaling format.

- Four-Wire Analog Loop - is a data-grade facility that provides continuity from the Qwest serving Central Office Main Distributing Frame or equivalent to the NID. This loop provides a four-wire interface and a circuit that supports 300 to 3000 Hz analog services requiring separate send and receive transmission paths.

- Two-Wire Non-Loaded Loop - is a two-wire facility from the Qwest serving Central Office Main Distributing Frame or equivalent to the NID. It is a metallic circuit with no load coils and, depending on the service that the CLEC intends to transmit, a limited length of bridge tap. This circuit supports analog and digital services. Pre-order loop make-up information provides the CLEC with data to determine if a re-used loop needs conditioning.

- Four-Wire Non-Loaded Loop - is a four-wire facility from the Qwest serving Central Office Main Distributing Frame or equivalent to NID. It is a metallic circuit with no load coils. This circuit supports analog and digital services requiring separate send and receive transmission paths.

- Basic Rate ISDN (BRI)-Capable Loop - is a facility that provides three digital channels from the Qwest serving Central Office Main Distributing Frame (MDF) or equivalent to the NID. This loop provides a two-wire Basic Rate ISDN 144kbps customer-useable interface channelized as 2B + D. The ISDN-capable loop can support some types of xDSL service, such as IDSL. Pre-order loop make-up information provides the buyer with data to make this determination.

- DS1-Capable Loop - is a facility that provides a very high speed digital channel from the Qwest serving Central Office Main Distributing Frame (MDF) or equivalent to the NID. This loop provides a four-wire 1.544Mbps customer-useable interface that may be channelized as 24 DS-Os. The DS-1 capable loop was developed for those instances where a 4-wire non-loaded loop is not available or where a loop, due to its length, is unable to meet the parameters necessary to support HDSL service. Pre-order loop make-up information provides the buyer with data to make this determination.

- DS3-Capable Loop - is a facility that provides a transmission path between a Qwest Central Office Network Interface (DS-3) and an

equivalent demarcation point at an end user location. The DS-3 Capable Loop transports bi-directional DS-3 signals with a nominal transmission rate of 44.736 MBPS that meets the design requirements specified in Technical Publications 77384 (Unbundled Loop) and 77324 (DS3).

- ADSL-Qualified Loop – is a two-wire facility from the Qwest serving Central Office Main Distributing Frame or equivalent to the NID. It is a metallic circuit with no load coils and, and a limited length of bridge tap. A pre-order qualification tool indicates if cable and equipment records show that facilities exist to support the ADSL qualified loop or other types of xDSL services. This OSS functionality provides CLECs with immediate access to loop make-up data, including loop length; bridge tap length; insertion loss for non-loaded loops; circuit type – copper or pair gain; number of wires; and load coil type. With this pre-order information, CLECs can determine whether they desire loop conditioning or repeaters compatible with the xDSL technology they prefer.

- xDSL-I Capable Loop - is a facility that provides a transmission path between a Qwest serving wire center network Interface and the Demarcation Point located at the End User's designated premises. The XDSL-I Capable Loop transports bi-directional, two-wire, Digital Subscriber Line signals with a nominal transmission rate of 160 kbit/s and will meet the performance requirements specified in Technical Publication 77384. It shall permit access to 144 kbit/s, un-channelized payload, of user bandwidth for clear transport of xDSL-I Services.

Id. at p. 94-96. Qwest will also provide other unbundled fiber and high capacity loops to CLECs where facilities are available on an individual case basis as required by the *UNE Remand Order*. Id.

18. Qwest further defines the specifications, interfaces, and parameters associated with Unbundled Loops in Technical Reference Publication No. 77384 and the SGAT. 5-Qwest-2 at p. 97.

19. Loop conditioning is the term used to describe the process of removing load coils and bridge taps from existing copper loops. 5-Qwest-2 at p. 98. In most cases, the data portion of the loop will not work correctly if there are load coils or certain amounts of bridged taps on the loop. Id. Load coils were originally used in the network to boost signals in long cooper loops. Id. As Qwest began to place fiber-fed digital carrier to replace long loops in the network, long copper loops were shortened and re-used, in part, for other customers closer to the central offices. Id. Therefore, existing copper loops, which at one time needed load coils to provide voice service over longer distances, now may be utilized closer to the central office, since load coils are not a hindrance to analog traffic. Id. However, digital service often will not work properly with a load coil on the loop, thereby requiring it to be removed. Id.

20. Bridge tap is used to provision telephone services economically, as it can assist in clearing and preventing held orders. 5-Qwest-2 at p. 99. Given the flux in growth demands, the telephone plant that was once designed to serve one area can now be "bridged" in to serve new areas experiencing growth. Id. If a loop is not being used at its intended location, and an end-user within close proximity of the spare loop location needs an additional loop, bridged tapping into the spare loop location is possible to provide telephone service to the new end-user. Id. However, it is possible, over a period of time, for multiple bridged taps with varying lengths to accrue on the original cable pair since when the new end-user no longer needs the bridged loop, work is generally not undertaken to remove the bridged tap. Id. at p. 100.

21. Load coils, line extenders, bridge taps, and mixed copper gauges, all of which are suitable for voice services, degrade most digitized signals in the loop and, hence, have to be removed when a loop is used for a data service. 5-Qwest-2 at p. 100. Therefore, to minimize these effects, digitized loops typically are "conditioned" by removing load coils and excessive bridge taps.

22. Qwest has undertaken a series of bulk deloading projects in Arizona where the Company went through and removed the load, and therefore, the loops do not have to be conditioned as the CLECs purchase those loops. Tr. at p. 19.

23. Throughout first quarter 2000, Qwest assigned the standard interval according to the Standard Interval Guide for all 2-Wire Non-Loaded Loops, regardless of the need for conditioning. 5-Qwest-2 at p. 101. Qwest is in the process of establishing a Standard Interval for Conditioning whereby if the loop qualification tool identifies that the loop requires conditioning, then the CLECs would be given the new standard interval. Id. This change will be implemented in August 2000 and will provide the CLECs with a standard installation interval that mirrors the provisioning process. Id. At the March 5th Workshop, Qwest Witness Liston indicated that Qwest had shortened the interval for conditioning. During the year 2000, Qwest had a 24 calendar day interval, which was reduced to 15 days. Tr. at p. 19.

24. Qwest's SGAT provides for loop conditioning in several different situations:

- Qwest will "condition" the loop by removing load coils and excess bridge taps (i.e., "unload" the Loop). The CLEC is charged a non-recurring charge for the cable unloading and bridge tap removal in addition to the Unbundled Loop installation nonrecurring charge.

- A CLEC may request a Basic Rate ISDN-capable loop. Qwest will review the available loops and take steps to condition, and/or place extension technology, as necessary for the CLEC to deliver Basic Rate ISDN service over the loop. Additional charges apply for conditioning and extension technology.

- When a CLEC requests a DS1-capable loop, Qwest will install the electronics at both ends including any intermediate repeaters.

- When a CLEC requests an ADSL Qualified Loop, Qwest will pre-qualify the requested circuit by utilizing the existing telephone number or address to ensure it meets ADSL specifications. If a circuit qualifies for ADSL then conditioning is not required. The qualification process ensures the CLEC that the circuit complies with the design requirements specified in Technical Publication 77384.

5-Qwest-2 at p. 102.

25. Qwest also has a contractual obligation, per the FCC's Local Competition First Report and Order, to provide unbundled loops to CLECs regardless of whether IDLC or similar technologies are utilized by Qwest to provide service to a particular address. 5-Qwest-2 at p. 103. New IDLC allows Qwest to groom from the high-speed channel, a single DS-1 or DS-0 channel. Id. at p. 104. That channel or its analog equivalent is delivered to the CLEC at the appropriate Interconnection Distribution Frame, or its collocation space. Id. Qwest's prices for two-wire and four-wire unbundled loops in Arizona were established in the Consolidated Cost Docket. Id.

26. Qwest Witness Liston testified that Qwest was the first ILEC in the country to offer a mechanized loop make-up process and that it offered the ADSL loop qual tool before the UNE Remand Order made it a requirement. Tr. at p. 20. In October 1999, Qwest released OSS version 4.2 that includes a pre-order "loop qualifying tool" which includes a yes/no qualifier to make sure the facility is capable of handling ADSL service and loop makeup information. 5-Qwest-2 at p. 105; Tr. at p. 20. The tool enables the CLECs to anticipate if conditioning is required and/or to determine if a prospective loop might or might not support their xDSL service. Id. The IMA/EDI loop qualification tool the following raw, non-manipulated cable make-up data:

- Total loop length

- Bridged tap length

- Loop type copper or pair gain

- Load coil type

- Number of wires and insertion loss for non-loaded loops (in decibels) calculated at 196-kilohertz frequency with 135-ohm terminations.

Id. The raw loop data toll provides extensive loop make-up information, provides the type of loads, the bridge tap length, the setment length and it is strictly a loop make-up tool. Tr. p. 21. This was released in September of 2000 with release 6.0 IMA. Tr. at p.

21. Qwest scheduled a change to its OSSs', specifically, the IMA/EDI system change which was scheduled for 4Q2000. Id. at p. 106. The system update will also enable CLECs to obtain raw loop data for multiple telephone numbers at one time. Id. In addition to providing the CLECs with loop make-up information on pre-order IMA/EDI basis, Qwest will introduced a mechanized bulk wire center loop make-up tool. Id.

27. The next tool does conversion with POTS to the unbundled loop. Tr. at p. 21. It shows the CLEC if it's a copper facility or pair gain, and it also indicates if there loads on that facility or not. Tr. at p. 21. This was released on 3.3 of IMA. Id. Qwest also offers a MegaBit qualification tool and it provides the CLECs with the exact same information as Qwest's retail sales would see if they wanted to find out whether or not the Qwest retail MegaBit product could be sold. Tr. at 21. This was released in IMA 5.0. The CLEC puts in the telephone number and address information, and the screen will tell whether the loop is MegaBit qualified. Id. If its not qualified, it tells the CLEC why. Id. Finally, there is an ISDN qualification tool which lets one know by address, if there are spare facilities that would support ISDN. Tr. at p. 22. All of these tools are preorder functions in IMA. Tr. at p.22. The last tool that is available is a Web-based tool, and it provides all of the raw loop data by wire center. Tr. p. 22. It requires a digital certificate. CLECs have the ability to go into the Web site, and there is a list in alphabetical order of all wire centers. Id. They select the wire center and then receive the raw loop data for the entire wire center. Id.

28. The installation interval for unbundled loops varies based the type of loop, the number of loops being installed in one location, and the city. 5-Qwest-2 at p. 110. Cities are grouped into two categories classified as high and low density areas. Id. Phoenix, Tucson and Flagstaff are the only Arizona cities classified as high density. Id. Qwest provides the CLECs with a complete list of all the standard intervals in the SGAT and the Interconnection Service Interval Guide, located at http://www.uswest.com/wholesale/guides/sig/resale/index.html. Id. at p. 111.

29. For high density areas, the following standard intervals apply:

- 2 and 4 Wire Analog Loops, 2 and 4 Wire Non-Loaded Loops, ISDN Capable, ADSL Qualified, and DS1 up to 8 loops will be installed in 5 business days.
- DS3 Capable up to 3 loops will be installed in 7 business days.
- XDSL-I up to 8 loops will be installed in 10 business days.

Id.

30. Every time unbundled loop provisioning involves re-use of facilities (a change of local service providers), the loop must be disconnected from Qwest's switch and re-connected to the CLEC's switch. 5-Qwest-2 at p. 111. When this occurs, the

customer is briefly without service. Id. The proposed Qwest SGAT contains five options for installing unbundled loops:

- Basic Installation (Existing Service) (Qwest does the conversion and test internally).
- Basic Installation with Performance Testing (New Service) (This gives the CLEC the opportunity to receive copies of what the performance test results were).
- Basic Installation with Cooperative Testing (This is a basic installation with no special time or appointment where Qwest coordinates with the CLEC for a cooperative test).
- Coordinated Installation With Cooperative Testing (This option has a specific appointment time and also cooperative testing, with the test results provided to the CLEC).
- Coordinated Installation Without Coordinated Testing (Existing Service) (This is strictly an appointment time with no testing with the CLEC).

Tr. pps. 23-24. The coordinated installation options allow the CLEC to designate a specific appointment time when Qwest will deliver the requested unbundled loop. Id. at p. 112. Coordinated installation provides the CLEC with the ability to establish a specific service installation time for its customer, allowing both the CLEC and their end user to pre-plan for minimal service interruption. Id. Seventy-one percent of LSRs in Arizona call for coordinated installation. Tr. p. 91. When the coordinated installation involves an existing customer they are often referred to as "Hot Cuts". Of the 7,601 coordinated installations that were performed in June 2000, approximately 80% were "Hot Cuts". Id. The remaining 20% of the coordinated installations were for customers not previously served by Qwest, or "new loops". Id. at p. 113. Qwest indicated that for OP-13 (percent on time for coordinated installations), its preliminary January, 2001 results showed 64% on time for coordinated installations, both with or without cooperative testing. Tr. at p. 92.

31. Qwest maintains unbundled loops in Arizona utilizing a defined maintenance and repair flow which delineates the tasks performed by Qwest personnel to maintain unbundled loops. 5-Qwest-2 at p. 113. A CLEC can report repair problems by issuing repair tickets using Electronic Bonding-Trouble Administration ("EB-TA") or by calling Qwest's repair center. Id.

32. Qwest provisions unbundled loops in Arizona utilizing a provisioning flowchart which delineates the tasks performed by Qwest personnel to install an unbundled loop. 5-Qwest-2 at p. 108. A CLEC first utilizes pre-order transactions to gather information necessary for their loop order. Id. at p. 108. The CLEC then orders an unbundled loop by submitting a Local Service Request ("LSR") via Interconnection

Mediated Access ("IMA"), Electronic Data Interchange ("EDI"), or facsimile (fax). Id. The CLEC order is processed and entered into the Qwest service order processor ("SOP") which then issues a Firm Order Confirmation ("FOC") to the CLEC. Id. All of this is the current normal ordering procedure for the CLEC. Id. From this point, the order is processed using the same downstream systems and personnel that process orders for Qwest service offerings, such as private line service or basic exchange access service. Id. When Qwest provisions an unbundled loop, a central office technician must be dispatched to run jumpers connecting the unbundled loop to the CLEC's facilities as specified on the LSR by the CLEC. Id.

33. From a provisioning standpoint, there is no exact retail analogue to an unbundled loop. Id. at p. 109. All parties to this docket agreed that Qwest met its performance obligations for provisioning loops if it met or exceeded average commitments met and installation intervals for POTs with a dispatch. Id. As agreed to by the parties, Qwest must now provision unbundled loops, on average, by set intervals. Id. Qwest is committed to providing unbundled loops within the required intervals and has established performance measures and processes to ensure successful provisioning. Id.

34. Regarding unbundled loop performance measurements results, for OP-3 - Analog Installation Commitments Met - in July 2000 the TAG established a new benchmark of 90% Commitments Met. 5-Qwest-2 at p. 117. For the first quarter 2000, according to Qwest, the percent of commitments met for analog loops exceeded the retail results and exceeded the new benchmark for three months. Id. For OP-4 - Analog Installation Interval – again in July 2000, this benchmark measure interval was changed to 6 days in high density areas and 7 days in low density areas. Id. In the urban areas, Qwest states that it provisioned analog loops in less time than it installed residence and business services with a dispatch. Id. at p. 118. However, the new benchmark was not achieved in the first quarter. Qwest is actively working on process improvements that include more efficient use of mechanization and installation technician resources to reduce the installation interval for analog loops to meet the new benchmark. Id. For UNE-P, the measurement is whatever the retail service is. So if it's a UNE-P ISDN line, it would be measured against Qwest retail ISDN. If it was a UNE-P residential POTS, it would be measured against residence POTS. Tr. at p. 28.

35. According to Qwest, the "Trouble Rate" (MR-8), which measures the percentage of lines in service that experience trouble in any one month compared to the total number of lines in service, demonstrates that CLECs consistently experience a lower trouble report rate for analog loops, as compared to Qwest's retail residential customers. 5-Qwest-2 at p. 118. However, the results for analog loops versus retail business services show performance for CLECs that falls below retail in the four months reported. Id. Qwest is currently reviewing the underlying data since there was less than a percent difference in the trouble report rates between the business service and analog unbundled loops. Id.

36. According to Qwest, the measurement "Out-of-Service Cleared within 24 Hours," (MR-3), which measures the percentage of time that Qwest clears an out-of service situation within 24 hours of receipt of notification, demonstrates that Qwest consistently clears out of service troubles within 24 hours for CLECs at rates that are nondiscriminatory as compared to Qwest's retail end users. 5-Qwest-2 at p. 119

37. According to Qwest, the measurement, "All Troubles Cleared within 48 Hours," (MR-4), which measures the percentage of time that Qwest clears all trouble reports, whether it be out-of-service or otherwise, on non-designed services within 48 hours from notification, demonstrates that Qwest consistently clears trouble within 48 hours for CLECs at rates that are nondiscriminatory, and in fact superior, as compared to Qwest's retail results. 5-Qwest-2 at p. 119.

38. According to Qwest, the measurement, "Mean Time to Restore," (MR-6), which measures the average time Qwest takes to resolve repair requests, demonstrates that in all months of the reporting period, Qwest provided superior performance results for CLECs who purchased analog unbundled loops. 5-Qwest-2 at p. 120.

39. Finally, according to Qwest, the measurement, "Repair Repeat Report Rate," (MR-7), which measures the percentage of repair reports that are reported again within 30 days of the first report, indicates that Qwest is generally repairing trouble effectively and in a nondiscriminatory manner. 5-Qwest-2 at p. 120. In the four month reporting period, Qwest states that the Qwest Repair Repeat Report Rate was better for three of the four months for analog unbundled loops. Id. 26.

40. There are 9 CLECs currently purchasing unbundled loops from Qwest in Arizona and as of the end of April 2000, Qwest had 9,033 unbundled loops in service served from 46 different wire centers. 5-Qwest-2 at p. 107. In her March, 2001 testimony, Qwest Witness Liston stated that as of that time, Qwest had approximately 15,000 unbundled loops in service, with about 6% being analog loops. Tr. p. 17.

d. Competitors' Position

41. In their July 22, 1999, preliminary statements of position on Qwest s compliance with all Checklist Items, AT&T stated that Qwest does not provide unbundled loops at any technically feasible point and fails to provide loops of the same quality as those Qwest uses to provide services to its own customers. In some cases, Qwest is refusing to provide access to the complete loop, claiming that part of the loop is "inside wire". AT&T also states that Qwest has put illegal restrictions on the use of unbundled loops and double charges for providing conditioned loops. Additionally, Qwest policies improperly restrict access to loops provisioned using Integrated Digital Loop Carrier. Qwest has also failed to produce performance results data on the retail analogue of the maintenance and repair of unbundled loops. Qwest has failed to demonstrate that the provision of unbundled loops to CLECs is done in a manner that provides a CLEC with a meaningful opportunity to compete. AT&T reported that the

unbundled loop data that Qwest has provided shows that, on average, Qwest never meets its unilaterally defined standard installation intervals for unbundled loops. The data also shows that Qwest meets its commitments to CLECs for unbundled loop orders less frequently than it does for similarly situated Plain Old Telephone Service ("POTS") customers.

42. MCIW stated that Qwest does not comply with this Checklist Item since Qwest does not provide unbundled loops at any technically feasible point and fails to provide loops of the same quality as those Qwest uses to provide services to its own customers. Qwest is also failing to provide local loop transmission in a nondiscriminatory manner to MCIW subsidiaries. Qwest has also refused to provide access to the complete loop claiming that part of the loop is "inside wire". Also, since the unbundled loop is a network element, there is very little data that allows MCIW to determine if it is receiving unbundled loops in a manner that is at a level of quality at least equal to the level that Qwest provides to itself. MCIW also states that Qwest has failed to provide MCIW with adequate and detailed business rules and processes which are necessary to support the pre-ordering, ordering, provisioning, maintenance and billing of DSL capable loops.

43. e-spire stated that Qwest does not provide loops to e-spire in the same manner, efficiency and timing that it provides loops to itself and its customers. Qwest's performance in "cutting over" a loop from Qwest to e-spire is unacceptable because Qwest often does the cutover at the wrong time or in the wrong manner which provides difficulties for e-spire and its new customer.

44. NEXTLINK stated that Qwest does not provide unbundled loops at any technically feasible point and fails to provide loops of the same quality as those Qwest uses to provide services to its own customers. Qwest refuses to provide access to "extended loops" and has not provided adequate access to loops provisioned on IDLC or from offices served by remote switches. Qwest has also failed to produce performance results data on the retail analogue of the maintenance and repair of unbundled loops. Finally, Qwest also lacks an adequate procedure for coordinated cutover of loops either with or outside normal business hours.

45. Rhythms stated that Qwest is putting illegal restrictions on the use of unbundled elements and is double-charging CLECs for the provision of so-called "conditioned" loops. Qwest has also improperly restricted access to loops provisioned over digital loop carrier ("DLC") technology. Although Rhythms has not yet been able to request local loops in Arizona because Qwest has not finished providing collocation to Rhythms, its experiences in other states is unacceptable due to an inordinately high number of order rejections related to incorrect Connecting Facility Assignment ("CFA") information. Additionally, many of Rhythms loop orders are being "held" by Qwest for lack of either the distribution or feeder portion of the outside plant facilities. Finally, Qwest also obstructs the deployment of competitive services by providing nearly meaningless FOCs in response to loop orders.

46. Other CLECs filing comments on July 22, 1999, included Cox, ELI, and Sprint. ELI stated it joined in the position statements filed by the other CLECs. Cox stated that it had inadequate information to determine whether Qwest is in compliance with Checklist Item 4. Sprint stated it could not comment on whether Qwest is in compliance with Checklist Item 4 since it has not yet attempted to obtain access to Qwest's unbundled loops in Arizona.

47. AT&T and MCIW also filed initial comments on Checklist Item 4 on November 3, 2000. Covad filed its initial comments March 2, 2001.

48. AT&T had numerous concerns relating to language contained in Qwest's SGAT Section relating to Unbundled Loops. According to AT&T's comments, the language contained in Section 4.34 is deficient. 5-ATT-1 at p. 11. This definition does not reflect the FCC's definition of the loop as set forth in the *UNE Remand Order*. Id. Qwest's definition must be revised to include: inside wire owned by Qwest; all features, functions and capabilities of such transmission facility, including, but not limited to dark fiber, attached electronics (except for DSLAMs) and line conditioning. Id. Further, the demarcation point should be defined as set forth in the *UNE Remand Order*. Also, Qwest's Interconnection and Resource Guide (IRRG) must be revised to be consistent with the FCC's redefinition of the unbundled loop obligations. Id. at p. 12.

49. Regarding Section 9.2 on Qwest's proposed terms and conditions on access to unbundled loops, Qwest fails to demonstrate a contractual commitment to provide access to unbundled loops, as defined by the FCC, in a non-discriminatory manner and in a timely fashion. 5-ATT-1 at p. 12. Additionally, this Section of the SGAT has a number of gaps, failing to address some *key* elements for competitive access which raise a number of questions as to whether Qwest will provide CLECs with a meaningful opportunity to compete. Id.

50. With respect to Section 9.2.1, Qwest should either refer to the definition of Unbundled Loops as provided in Section 4.34 or use the same definition in both places, as revised in accordance with AT&T's comments regarding Section 4.34. 5-ATT-1 at p. 13. Also, the latter part of Section 9.2.1 does not include all of the necessary types of loops. Id. A fourth type should be added to include fiber loops with OC-3 through OC-n capability. Id. In addition, in loop type (iii), the reference should be to "Digital and Digital Capable" loops. Id. The loop description should also include a statement that the Unbundled Loop includes the CLEC's use of all test access functionality, including without limitation smart jacks, for both voice and data purposes. Id.

51. AT&T requests that Qwest should clarify Section 9.2.2.1 that Unbundled Loops will be unbundled from local switching and transport, consistent with the requirements of the Act. 5-ATT-1 at p. 14. Qwest should insert the words "time and manner" after "quality," consistent with the legal standard set forth in the *SBC Texas Order*. Id. Qwest should also describe in the SGAT its processes for cutting over UNE loops and describe the processes Qwest uses to cut over its Megabit service as compared to the processes for cutting over UNE loops. Id. Qwest must also demonstrate that the

"minimal" service disruption for UNE loops is the same as the service disruption for Megabit. Id.

52. SGAT Section 9.2.2.2 describes the analog loops Qwest intends to offer on an unbundled basis and contains a frequency restriction on the loop of 300 to 3000 Hz. which is unwarranted and is contrary to the FCC's loop definition. 5-ATT-1 at p. 14. AT&T states that CLECs should be able to utilize whatever bandwidth is available on the loop. Id. Furthermore, in the last sentence of this section, the words "to the extent possible" should be stricken or an explanation given regarding when it would not be possible to provide the Unbundled Loop. Id. at p. 15. In the *BellSouth Second Louisiana Order* and the *SBC Texas Order*, the FCC states that "[t]he BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses [IDLC] technology . . ." Id. Qwest's SGAT and IRRG are not consistent with this requirement. Id. Qwest should more fully describe its plans to provide unbundled loops when DLC is used to provide the basic loop.

53. Section 9.2.2.3 does not specifically commit itself to providing the necessary electronics required to actually provide the digital capabilities of the particular loop type. 5-ATT-1 at p. 15-16. In the *UNE Remand Order*, the FCC concluded, the definition of the loop includes "attached electronics including multiplexing equipment used to derive the loop transmission capacity" because the definition of a network element is not limited to facilities, but includes features, functions, and capabilities. Id. Qwest's SGAT does not include such a requirement. Id. Where more than one arrangement is available, CLEC should have the ability to select between available technologies. Id. Also, in Section 9.2.2.3, the last sentence states "[c]harges shall apply for conditioning of the digital capable loops, as requested by CLEC, if necessary, as determined by Qwest." Id. This statement is confusing and should be clarified. Id. Finally, in Section 9.2.2.3 which Qwest only offers ADSL loops, Qwest must offer all types of DSL loops, corresponding to the types of loops that Qwest uses to provide service to its own customers. Id. at p. 17.

54. Section 9.2.2.3.1, in which Qwest offers fiber-based loops at SONET transmission rates OC-3 through OC-n on an Individual Case Basis, is also inconsistent with the *UNE Remand Order* since Qwest must provide unbundled access to high capacity loops. 5-ATT-1 at p. 16. CLECs should be able to order any existing high capacity loop pursuant to the established ordering process rather than ICB, which invites delay and expense and fails to provide access to loops "in substantially the same time and manner as [Qwest] does for its own retail service." Id.

55. In Section 9.2.2.4, Qwest proposes to charge CLECs for unloading loops. 5-ATT-1 at p. 17. CLECs should not be required to pay Qwest to upgrade its Qwest network where Qwest inappropriately provisioned load coils in the past. Id. CLECs should not have to pay for the removal of load coils on loops less than 18 kilofeet. Id. Further, when Qwest removes load coils on loops over 18 kilofeet, the CLEC should be reimbursed for any conditioning charges if the customer switches service providers within one year from initial service. Id. AT&T requests that the SGAT be amended to

reflect these concerns. Id. Also, Qwest should affirm that the charges it proposes here be addressed in the appropriate cost case and that they will not be inflated or constitute a barrier to competitors offering service. Id. at p. 18. The conditioning service described in this section should include response time intervals to ensure that the conditioning is accomplished in a timely manner and Qwest should incorporate into the SGAT such intervals. Id. Qwest should also clarify what is intended with respect to the reference in this Section to repeater placement as "Extension Technology". Id.

56. With respect to Section 9.2.2.5 which describes Qwest's offering for ISDN loops, the first sentence should read "Basic Rate ISDN loop," deleting the word "capable." 5-ATT-1 at p. 19. The CLEC would be requesting an ISDN loop, not an ISDN capable loop that could be merely a conditioned copper loop. Id. Qwest asserts that it will dispatch technicians to provide extension technology so that the loop will provide ISDN functionality. Id. If the loop is already providing ISDN to a customer, no additional action is required by the CLEC and the CLEC should not be charged for the installation of ISDN equipment. Id. Also, AT&T states that cross-referencing to the IRRG is unacceptable. Id.

57. AT&T commented that with respect to Section 9.2.2.6, Qwest should be required to provide DS1 and DS3 loops where available, and DS1 and DS3 Capable loops where DS1 and DS3 loops are not available. 5-ATT-1 at p. 20. In addition, Sections 9.2.2.6.1 and 9.2.2.6.2 should be revised and the term "access" should also be removed. Id.

58. AT&T stated its concerns over Qwest's SGAT in that it does not appear to offer CLECs access to unbundled fiber loops. 5-ATT-1 at p. 20. Fiber loops must be made available at SONET speeds of OC3 through OCn, in the same manner and in the same locations that Qwest makes them available to itself or to its retail customers and Qwest must add such language to the SGAT. Id.

59. Regarding Section 9.2.2.7, Qwest must provide loops, including digital loops, in a non-discriminatory manner. 5-ATT-1 at p. 20. AT&T requests that this Section be modified to affirmatively state that CLECs can order digital loops in areas where they are available or where it is technically feasible to provide them. Id. at p. 20-21. It should also be affirmatively stated that an existing digital loop can be transferred from Qwest to the CLEC if the customer so chooses. Id. The word "capable" should be removed from this Section. Id. Finally, the last sentence should be either removed or changed to provide some limitations on the control Qwest can exert on the use of cables since the sentence is very vague and overly broad. Id. AT&T proposes the following language in order to ensure non-discriminatory treatment with respect to spectrum management issues:

> *A request by CLEC will be treated in a non-discriminatory manner with regards to spectrum management as Qwest treats itself or its affiliates. To the extent that industry forums have convened and recommended guidelines for the non-discriminatory treatment of spectrum management and loop*

assignment within loop feeder and distribution cables, Qwest shall follow these recommendations.

Id.

60. Section 9.2.2.8 regarding the conditioning of ADSL loops should be expanded to include other forms of DSL, as well. 5-ATT-1 at p. 21. Qwest should address the design requirements of the referenced Technical Publication 77384 at the workshop and provide copies to the CLECs. Id. Qwest should also amend this Section to reflect that information will be made available so that pre-qualification may be done by the requesting CLEC. Id. at p. 22. AT&T proposed the following language:

> *Qwest shall make available to CLEC on a non-discriminatory basis all loop qualification information available to Qwest. Such access shall be made available in a non-discriminatory manner identical to that which Qwest and its affiliates use to access this data. This data includes, but is not limited to: (1) the composition of the loop material, such as fiber optics, copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. Qwest must supply all loop qualification information and subsequent changes to such information necessary to enable CLEC to determine whether it can offer service to an end-user based on an individual address, zip code of the end users in a particular wire center, NXX code, or any other basis on which Qwest provides such information to itself or any of its affiliates. Qwest shall provide such information in electronic means in a format acceptable to CLEC using interfaces to be agreed upon.*

61. Qwest should also make available on an ongoing basis those of its central offices that support xDSL services. Id. AT&T proposes the addition of the following language:

> *Within ten (10) days after the Effective Date of this Agreement, Qwest shall provide CLEC with an initial written report identifying the Qwest Central Offices that support the provisioning of xDSL capable Loops. Qwest shall update such report on a quarterly basis, but in no event later than Qwest makes such information available for use by its advanced*

> *services division, Qwest's own customers, a Qwest affiliate or any other entity. If Qwest expands xDSL capability for itself or its affiliates in a Qwest Central Office where physical collocation space is exhausted or is projected by Qwest to exhaust within six (6) months, then Qwest shall be required to make alternative, reasonable, prompt and effective collocation arrangements available to CLEC so that CLEC is able to take advantage of the same xDSL capabilities that Qwest and its affiliates may utilize in that Central Office.*

Id. at p. 22-23.

62. AT&T recommends that Qwest, in Sections 9.2.2.9.1 and 9.2.2.9.2, which describe basic installation of loops, describe in more detail in the SGAT the processes by which basic installation is accomplished. 5-ATT-1 at p. 23. Qwest must address the installation process, including the "required parameter limits" in the workshop and provide their operations manuals for review so that the CLECs can determine if their processes are adequate and will meet the legal standards established in the Act and by the FCC rules and orders. Id. Also, the reference to the WORD document and/or the service order in Section 9.2.2.9.2 is vague and undefined and Qwest should clarify what this means. Id.

63. AT&T states that Sections 9.2.2.9.3 and 9.2.2.4, which provide the only detail available regarding Qwest's coordinated installation process with testing, are insufficient. 5-ATT-1 at p. 23. First, Qwest must provide a detailed explanation in the workshop on exactly how these processes will work, along with copies of the relevant technical publication mentioned in these Sections (Technical Publication 77384). Id. Second, Qwest does not specify the timeframes in which the CLEC can postpone cutovers that have been ordered for a particular time and must be delayed due to CLEC or end user needs. Id. Third, the testing listed for digital loops is not adequate to determine if the loops are providing the digital capability required. Id. at p. 24. Qwest must specify the digital tests that are required to adequately test the digital capability that the loop must provide. Id. Fourth, Qwest must add fiber loops to the list of digital loops. Id. Fifth, Qwest must permit access to ISDN, DS1, DS3 and xDSL loops, in addition to "Capable" loops or "Qualified" loops in Section 9.2.2.9.3. Id.

64. AT&T states that Section 9.2.2.11 is contrary to law and is unacceptable. 5-ATT-1 at p. 24. Qwest should be required to provide and maintain unbundled loops in accordance with applicable federal and state law. Id. Specifically, the third sentence in this Section does not comply with FCC rules and appears to be unnecessary. Id. at p. 25. Also, the fourth sentence in Section 9.2.2.11 reads: "[t]ransmission characteristics may vary depending on the distance between CLEC's end user and Qwest's end office and may vary due to characteristics inherent in the physical network." Id. While this may be true for analog loops, it cannot be true for digital loops. Id. In addition, the last two sentences need to be explained as to the type of changes that might occur and any actual or contemplated changes occurring now or that will occur in the next few years. Id. at p.

26. Finally, at the end of this Section, Qwest reserves the right to make modifications and changes to its unbundled loops. Id. Although AT&T does not object in principal to this reservation, AT&T is concerned that Qwest's modifications may create material changes in the quality and character of Qwest's unbundled loops and/or CLEC's ability to access them. Id. AT&T's concern is that such modifications may not be of a nature to affect "network interoperability," but could alter the nature of an unbundled loop or require a different method or point of access. Id. AT&T requests that Qwest provide examples of the kinds of modifications that would affect "network interoperability" that would require advance notice. Id.

65. AT&T had many concerns regarding Section 9.2.2.12 which describes Qwest's policy on switching customers back to Qwest service if so directed by the end-user. 5-ATT-1 at p. 26. First, Qwest must abide by the FCC slamming rules for local service. Id. at p. 27. A reference to Qwest's binding obligation to do so should be included in this Section. Id. Second, AT&T is concerned that Qwest may attempt a win-back of a customer even before the loop is provisioned. Id. Third, Section 9.2.2.12 should clarify that the CLEC should not be required to pay the non-recurring charges if Qwest wins back the customer before the loop has been provisioned. Id. A Qwest win-back within two weeks of cutover should trigger a credit to the CLEC equal to the non-recurring charge. Id. A CLEC should be able to charge Qwest for the work the CLEC will be required to do on the CLEC end when the loop is moved back to Qwest. Id. Fourth, Section 9.2.2.12(a) assumes that the end-user customer, by giving direction to Qwest to disregard the CLEC order, has been slammed, thus entitling Qwest to obtain the $100.00 windfall it established in Section 5.3 of the SGAT. Id. This violates the CLECs' due process rights and the liability provisions of the FCC and Arizona slamming rules. Id. Qwest is not entitled to the $100.00 under the SGAT or any slamming rule without first proving a slamming violation. Id. at p.28. Furthermore, Qwest should pay the CLEC the cost to switch the customer away from the CLEC (typically $ 5.00) and it should not be permitted to recover from the CLEC any nonrecurring charges when Qwest entices the customer to disregard the CLEC UNE loop order. Id. Finally, AT&T underscores that Qwest has no ability to dictate the contractual relationship between the CLEC and a third party end-user. Id.

66. Regarding Section 9.2.2.13 which specifies the conditions under which Qwest can access facilities and lines furnished by Qwest on the premises of CLEC's end user, Qwest is asserting a right of access to customer property that the CLEC in no way controls. 5-ATT-1 at p. 28. The CLEC has no right to give Qwest access to a customer's premises other than those rights that the CLEC may have acquired from Qwest in the first place. Id. Qwest should either delete this Section or amend it so that it makes sense. Id. at p. 29. Also, there is no provision in the SGAT to allow CLECs access to the unbundled loops they are using, either at the central office or at the customer premise. Id. The SGAT must be amended to give the CLEC access to appropriate subloop locations. Id. The additions to the SGAT for CLEC access to loops could be made in Section 9.2.2.14. Id. This Section is unnecessary, as it is already addressed in Section 9.2.1. Id.

67. AT&T expressed concern over Section 9.2.2.15 which requires the CLEC to issue a disconnect order to Qwest for any loop where the loop has been relinquished by an end-user and the loop is required by Qwest or another CLEC. 5-ATT-1 at p. 29. The Qwest requirement would require the CLEC to give the loop back to Qwest to provision as they see fit. Id. The CLEC may have agreements with the new end-user moving into the location that will require the loop to remain in place, and these contract commitments must take precedence over a disconnection request from Qwest. Id. at p. 29-30. At the very least there should be some reasonable time limits specified in this Section that allow the CLEC to retain the loop for a specified period of time before acceding to a Qwest request to have the loop returned. Id.

68. Regarding Section 9.2.3.3 which addresses rate elements for basic rate ISDN and DS1 loops, AT&T states that DS3 loops have been omitted from the introductory sentences of the Section and must be added. 5-ATT-1 at p. 30. CLECs should have the option of selecting the transmission technology they desire, if more than one method is being used in the serving area. Id. The SGAT should also be amended to afford CLECs access to ISDN, DS1 and DS loops as well as "Capable" loops. Id. AT&T recommends this Section be modified as follows:

> *Digital Loops - Basic rate ISDN, DS1 and DS3 Loops. Basic rate ISDN, DS1, and DS3 Loops or ISDN, DS1 and DS3 capable loops may be requested by the CLEC as needed. Unbundled digital Loops are transmission paths carrying specifically formatted and line coded digital signals from the NI on an end user's premises to a Qwest CO-NI. Basic Rate ISDN, DS1 and DS3 or Basic Rate ISDN, DS1 and DS3 capable unbundled digital Loops may be provided using a variety of transmission technologies including but not limited to metallic wire, metallic wire based digital loop carrier and fiber optic fed digital carrier systems. DS3 capable loops will be provided on a fiber optic transmission technology. CLEC will determine the specific transmission technology by which the Loop will be provided if alternatives are available. Such technologies are used singularly or in tandem in providing service. DC continuity is not inherent in this service. Charges may apply for conditioning of the digital Loops, as requested*

69. AT&T stated that Qwest must provide rate elements for fiber loops. 5-ATT-1 at p. 31. The SGAT has omitted any section on rate elements for fiber loops and Qwest must add this rate element. Id.

70. Regarding Section 9.2.3.6 which describes certain "Miscellaneous Charges", AT&T notes that CLECs have been subjected to numerous additional and "miscellaneous" charges in attempting to secure access to loops. 5-ATT-1 at p. 31. The SGAT should specifically identify the circumstances under which these charges will apply since the law requires that such rates be just, reasonable and nondiscriminatory. Id.

71. Language proposed by Qwest in Section 9.2.3.7 on out-of-hours installations for unbundled loops more properly belongs in Section 9.2.4 on ordering. 5-ATT-1 at p. 31-32. AT&T states that from a substantive point of view, the hours that Qwest is offering are too restrictive on evenings and weekends. Id. The hours listed in Section 9.2.3.7.1 do not match with the operational hours given in Section 10.2.10.3, the SGAT section on number portability. Id. Qwest must have a consistent policy that clearly defines their operational hours during the normal business day and after-hours policies. Id.

72. AT&T recommended that the portion of Section 9.2.3.7.2 that requires CLECs to provide forecasts for out-of-hours coordinated installations at least two weeks prior to CLECs placing an order in a given state should be removed from the combination section and put in the forecast section of the SGAT. 5-ATT-1 at p. 32. AT&T believes that a general section on forecasting should be developed that applies for all sections of the SGAT where forecasting is necessary and that discussion of such a generic provision should be deferred to the workshop where the general terms and conditions are addressed. Id.

73. AT&T also stated that the third sentence of Section 9.2.3.7.6 is unacceptable in that the CLECs must be able to rely on the FOC as a commitment that the order will be worked as specified. 5-ATT-1 at p. 33. This provision is directly contrary to Section 4.24 of the SGAT, which defines "Firm Order Confirmation Date" or "FOC" as:

> . . . the notice Qwest provides to CLEC to confirm that the CLEC Local Service Order (LSR) has been received and has been successfully processed. *The FOC confirms the schedule of dates committed to by Qwest for the provisioning of the service requested.* (Emphasis added.)

AT&T proposes the following replacement language for this sentence:

> *The FOC is both an acknowledgement of receipt of a valid order and a commitment that the order will be worked as specified in the FOC and completed by the FOC date.*

Id. AT&T is also concerned about the last statement of this Section which states: "[t]he FOC for orders requesting over 24 unbundled loops will be treated on an ICB basis." for the same reasons discussed under Section 9.2.4.4. Id.

74. Regarding Section 9.2.4.1, AT&T has encountered issues surrounding unbundled loops that are not associated with the OSS interface. 5-ATT-1 at p. 33. There are problems that occur between the ordering and installation that require more investigation. Id.

75. AT&T also expressed concern over Section 9.2.4.2 in that this Section has not been revised to reflect the new FCC guidelines on Local Proof of Authorization. 5-ATT-1 at p. 34. Qwest must abide by the FCC rules and modify the SGAT accordingly. Id.

76. AT&T expressed concern over Sections 9.2.4.4, 9.2.4.5 and 9.2.4.6. 5-ATT-1 at p. 34. In Section 9.2.4.4, Qwest restricts the number of orders that can be "issued at the same address." Id. AT&T believes that Qwest meant this to read "issued for the same address." Id. The way the sentence is written, it could mean that a CLEC ordering center, located at one address, could only place 25 orders per day which is clearly not acceptable. Id. If Qwest means that orders are limited for a customer location, there are still some issues that must be addressed. Id. It is not clear what is meant by "order" in the Section. Id. Requiring ICB for orders in excess of 24 per location, whatever the interpretation of this language, does not demonstrate a "concrete and specific" legal obligation to furnish loops . . . in the quantities that competitors demand." Id. at p. 34-35. AT&T recommends that this limitation be removed. Id. Also, AT&T has great concern regarding the installation intervals for the various types of loops. Id. Qwest recently lengthened its standard intervals for private line services from 5 days to 9 days. Id. This lengthening of intervals indicates problems with Qwest's ability to deliver new loops in a timely manner. Id. Qwest has removed the provisioning intervals from the SGAT and, instead, cross- references the IRRG. Id. AT&T objects to terms and conditions being set forth in the IRRG rather than the SGAT. Id. The SGAT should set forth the standard intervals for the provisioning of UNE loops. Id.

77. In Sections 9.2.5.2 and 9.2.5.3, Qwest does not offer to pay the CLEC for trouble isolation when the CLEC spends time and resources to determine the problem is a Qwest loop issue. 5-ATT-1 at p. 36. Language should be added to the SGAT to include a provision requiring Qwest to pay the CLEC for trouble isolation when the problem resides in the Qwest loop. Id. The SGAT requires the CLEC to pay trouble isolation charges when the trouble is found to be an inside wire or user terminal problem. Id. This is unreasonable as a large percent of Qwest's loop repair troubles turn out to be problems with end-user equipment. Id. If Qwest charges the CLEC for this type of trouble isolation, the CLEC will be double charged. Id.

78. Finally, AT&T states that the Qwest IRRG provisions should not be controlling and that the SGAT should control. 5-ATT-1 at p. 36. In Qwest's IRRG section describing Qwest's UNE loop product, Qwest includes numerous reference to the Single Point of Termination ("SPOT") frame, stating that the UNE loop will be cross-connected to the SPOT frame. Id. These same concerns apply equally to any requirement that UNE loops traverse the SPOT frame. Id. at p. 37. Qwest has agreed, however, to permit CLECs to bypass the SPOT frame and direct connect to Qwest's COSMIC. Id. The IRRG UNE loop section has not been revised to reflect this agreement and must be amended to permit direct access to UNE loops at the COSMIC. Id.

79. MCIW stated in their Comments that the proposed SGAT lacks sufficient detail to satisfy the minimum requirements for Unbundled Local Loops under the Act and FCC regulations. 5-WCom-1 at p. 3. Additionally, Exhibit A to the SGAT does not contain just and reasonable pricing as determined by the Arizona Corporation Commission. Id. Moreover, the unbundled loop rate is not de-averaged in accordance with the interim rates set in Arizona and only contains a statewide averaged rate. Id.

80. Specifically, MCIW requested modification to Section 9.2.1 to conform its definition to comply with the FCC UNE Remand Order. 5-WCom-1 at p. 4. Qwest's definition does not include mention of the features, functions and capabilities of the transmission facilities, nor is it clear on the demarcation point for the loop. Id. MCIW requests the following definition replace Qwest's Loop definition found in Section 9.2.1 to conform to the relevant FCC requirements:

> *Qwest offers non-discriminatory access to Unbundled Loops. The Loop Network Element includes all features, functions, and capabilities of the transmission facilities between an Qwest's central office, and the loop demarcation point at the customer premises. Such features, functions, and capabilities include dark fiber, line conditioning, certain inside wire and attached electronics owned by Qwest, except the electronics used for the provision of advanced services, such as DSLAMs).*

Id. at p. 4-5.

81. The language in Section 9.2.2.3.1 regarding Qwest's general obligation to provide unbundled fiber and high capacity loops to CLECs is insufficient and Qwest includes exclusionary language that binds it to only provide such portions of the loop "where facilities are available and existing on an ICB basis." 5-WCom-1 at p. 5. Denying CLECs access to fiber and high capacity loops because of a lack of facilities ensures CLECs are not able to meet customer needs where Qwest has failed to install adequate facilities. Id. Qwest's rates for retail services and rates for wholesale services include revenues to allow Qwest to expand its network to account for new growth. Id. While Qwest relies heavily on pricing certain activity on an "ICB", there is no process contained in the SGAT describing how the ICB process works. Id. Without such an explanation of the ICB process in the SGAT, CLECs are left to Qwest's determination of cost and consequent pricing with no speedy recourse. Id. at p. 6. MCIW proposes that Section 9.2.2.3.1 be changed to read as follows:

> *Qwest shall provide other unbundled fiber and high capacity loops to CLEC(s). Such loops will be provided on a fiber optic transmission technology capable of supporting any OCn level. Parties will cooperate to determine the specific transmission technology by which the unbundled loop will be provided.*

Id. at p. 6.

82. Regarding Section 9.2.2.4, MCIW is unable to find a non-recurring price for cable unloading and bridge tap removal or a Unbundled Loop installation non-recurring charge in Exhibit A. 5-WCom-1 at p. 6. These services are not priced at just and reasonable rates to ensure CLECs are charged in accordance to competitive practices and in a non-discriminatory basis. Id. MCIW does not believe such non-recurring charges are appropriate.

83. In Section 9.2.2.7 of the SGAT, Qwest's spectrum compatibility limitation places restrictions on rolling out loop technology that is not be consistent with emerging technologies and prevents CLECs from meeting customer needs. 5-WCom-1 at p. 7. The FCC addressed the means by which an ILEC can make such restrictions. (See, FCC Decision No. 99-48 at paragraphs 70 through 91, which address Spectrum Management.) Id. These paragraphs oblige the ILEC to disclose information with respect to rejection of requests for such services based on spectrum compatibility, and places the burden upon the ILEC to demonstrate significant degradation in performance of services based on spectrum compatibility issues. Id. Qwest's Section 9.2.2.7 contains no such requirements and leaves spectrum management completely within the control of Qwest with no explanation to CLECs of Qwest alleged spectrum compatibility problems. Id. Consistent with FCC requirements, MCIW requests that Section 9.2.2.7 be changed to read as follows:

> *Qwest will provision BRI-ISDN, DS1, or DS3 capable or ADSL capable Loops in areas served by Loop facilities and/or transmission equipment. In the event Qwest believes that the provisioning of such a service is not compatible with the Loop facilities and/or transmission equipment, Qwest will disclose to requesting carrier, in writing, within 10 calendar days of the request to provision such a service, Qwest's basis for believing that provisioning the requested service is not compatible with the Loop facilities and/or transmission facilities. Qwest will bear the full burden of demonstrating incompatibility with the requested order. Claims of spectrum incompatibility must be supported with specific and verifiable supporting information. Qwest will adhere to and incorporate industry standards in regard to spectrum compatibility as they become available.*
>
> *If Qwest claims a service is significantly degrading the performance of other advanced services or traditional voice band services, then Qwest must notify the affected carrier and allow that carrier a reasonable opportunity to correct the problem. Any claims of network harm must be supported with specific and verifiable supporting information.*

Id.

84. MCIW opposes the broad language in Section 9.2.2.12 that allows Qwest to disregard a CLEC's order for Unbundled Loops. 5-WCom-1 at p. 8. CLECs must have the opportunity to resolve such a conflict before the end user is automatically, and unilaterally by Qwest's determination, reconnected to the original local service provider, which is the equivalent of slamming. Id. Qwest should direct the end user to the CLEC's single point of contact and Qwest should contact the CLECs single point of contact and not take the action proposed in Section 9.2.2.12. Id. MCIW proposes that Section 9.2.2.12 read:

> *If there is a conflict between an end user (and/or its respective agent) and CLEC regarding the disconnection or provision of Unbundled Loops, Qwest will contact CLEC, or CLEC's agent, as the single point of contact for its end users' service needs, including without limitation, sales, service design, order taking, provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, billing, collection and inquiry. CLEC shall inform its end users that they are end users of CLEC. CLEC's end users contacting Qwest will be instructed to contact CLEC.*

Id.

85. Regarding Section 9.2.2.13, which allows Qwest to access customer premises, Qwest should be required to coordinate such activity with the CLEC and the affected CLEC end user customer before conducting such activity. 5-WCom-1 at p. 8. MCIW requests the following modifications to section 9.2.2.13:

> *Facilities and lines furnished by Qwest on the premises of the end user up to and including the NID or equivalent are the property of Qwest. Qwest shall have reasonable access to all such facilities for network management purposes. Qwest will coordinate entry dates and times with appropriate CLEC personnel and end user customer to accommodate testing and inspection of such facilities and lines in connection with such purposes or upon termination or cancellation of the Unbundled Loop service to remove such facilities and lines. Such entry is restricted to testing and inspection of Qwest's own property in that facility. Entry for any other purpose is subject to the audit provisions in (Audit section) of this agreement.*

Id. at p. 9.

86. Regarding Section 9.2.3.7.6, Qwest indicates it will provide FOCs to CLEC's according to the PO-5 performance measure. 5-WCom-1 at p. 9. MCIW has been repeatedly informed by Qwest, that a FOC is not a firm order "commitment", but rather a firm order "confirmation". Id. MCIW requests clarification on the definition and

meaning of the FOC as this wording is confusing and contrary to current understanding. Id. MCIW stated that it assumes that the language found in Section 20 means that Qwest will include the Performance Indicator Definitions also known as the "PIDs" into the SGAT. Id. MCIW requests that performance measure language found in PO-5 be added to the SGAT to include the intervals for orders requesting unbundled local loops. Id.

87. Covad stated that Qwest has failed, a significant portion of the time, to provision loops (1) on the first Firm Order Commitment or (2) on time. 5-Covad-1 at p. 2. Qwest's failings place Covad in the unfair position of having to explain to its customers why provisioning is not going to take place as scheduled – because Qwest misinformed Covad of the installation date or missed the installation altogether. Id. at p. 3. Covad's relationships with its customers are put at risk because of Qwest's continued failure to provision meaningful and accurate FOC dates. Id. The Commission must ensure that such disparate treatment ceases immediately by demanding that the FOC date provided by Qwest has a measurable level of credibility and that Qwest meet its obligation to timely provisioning. Id. Covad stated that it has met and communicated with Qwest on numerous occasions regarding Qwest's poor FOC and provisioning performance. Id. It appears that Qwest has made moderate improvements on its 72-hour FOC and on time performance. Id. However, Covad must be assured that Qwest's previous abysmal On-Time and FOC Performance, which reached as low as 54% and 67% respectively in 2000, will not be repeated. Id. at p.4.

88. With regard to held and cancelled orders, Covad stated that Qwest has placed, at its peak, close to 600 of Covad's orders as "held." 5-Covad-1 at p. 4. Compounding this failure is Qwest's failure to inform Covad when such orders will be provisioned. Id. This situation places Qwest at an unfair competitive advantage in the DSL space because they cannot, or will not, share this information with Covad – information which Covad suspects Qwest shares with its own retail customers. Id.

89. Covad maintains that it is told that no facilities exist to provision a loop. 5-Covad-1 at p. 4. In more than one instance, Covad has been told by its end-users that Qwest informed them that facilities are not available for their Covad order, but would be available if they choose Qwest. Id. at p. 5. Covad requests that the Commission fully investigate why Qwest is seemingly unable to find facilities or find them in a reasonable period of time to promote competition in Arizona. Id.

90. Additionally, beginning in July 1999, Covad has repeatedly requested that Qwest provide it with its plan for capital investment (i.e. by central office), so that Covad can sell its product intelligently in locations where services would likely be available. 5-Covad-1 at p. 5. Qwest has refused to respond to these requests. Id. Covad also provided forecasts, by central office, to Qwest, so that Qwest could use this data in planning and building facilities but that information does not seem to have improved Covad's ability to get its lines provisioned. Id. Providing forecasts is merely a labor-intensive process for Covad that has no real impact and appear to be little more than a device for Qwest to gain access to Covad's marketing strategies with no tangible improvements in Covad's ability to get the services it has forecasted. Id.

91. Covad has also asked Qwest how it was tracking the progress on how it is addressing the held order issue. 5-Covad-1 at p. 5. Qwest responded that it did not track that information. Id. Qwest's abysmal held order performance and seeming inability to monitor and resolve the problem forced Covad to begin canceling orders because numerous customers had been waiting several weeks to months for their service. Id. at p. 6. Covad's relationship with its customers has been seriously compromised, if not lost altogether, because of Qwest's repeated inability to provision Covad's orders for xDSL-capable loops. Id. While in the past few months it might appear that Qwest is improving its "held order" percentage, the reduction in Qwest's held orders is the result of Covad being forced to cancel hundreds of orders internally after an order has been held for more than 30 days and the increase in line sharing orders. Id.

92. Covad also stated that Qwest fails to perform acceptance testing on a significant number of loops. 5-Covad-1 at p. 7. This failure raises a number of potential issues. Id. To the extent that an inoperable loop is delivered, Covad is forced to open a trouble ticket in order to reach resolution. Id. Covad should not have to open a trouble *repair* ticket on a loop that was not properly *provisioned* in the first instance. Id. To correct the acceptance testing problem, Covad has, on several occasions, met with Qwest field personnel to help them understand Covad's requirements and to share with them test equipment suggestions, despite the fact that Covad's loop requirements are not much different than Qwest's. Id. at p. 8. Qwest must train its technicians and personnel to follow proper procedure, as that is the reason Qwest has cited for poor performance and absent significant improvement in Qwest's cooperative testing effort, acceptance testing is nothing more than a needless expense and waste of time for Covad. Id.

93. Covad went on to state that perhaps more alarming and equally damaging to Covad's relationship with its customers is the host of anti-competitive behaviors in which Qwest technicians have engaged across Qwest territory. 5-Covad-1 at p. 8. In Arizona, , Covad states that Qwest technicians have (1) encouraged Covad end-users to use providers other than Covad, including Qwest; (2) stolen Covad loop pairs and used those pairs for Qwest services, despite in person protests from the Covad customer; (3) failed to show up for the Covad install after pressuring the end-user to use Qwest services; and (4) misinformed Covad customers regarding a loop's capabilities of running a Covad-offered service. Id. Competitors need support from the Commission and assurance from Qwest that this anti-competitive, discriminatory treatment will cease immediately and completely. Id. at p. 9. Covad requests that the Commission demand that Qwest technicians cease all anti-competitive behavior and that Qwest provide an accounting of what is actually done to rectify these situations instead of providing meaningless assurances that the issues are taken care of only to occur again. Id.

94. Finally, Covad stated that for over a year, it has requested that Qwest provide a product that would allow Covad to purchase repeaters on DSL orders at a commercially reasonable price. 5-Covad-1 at p. 10. Although this issue has been repeatedly discussed on weekly conference calls, and Qwest has confirmed that Covad should have access to such a product, Qwest refuses to make this necessary DSL product

available. Id. Qwest's delay tactics create competitive harm in that smaller CLECs like Covad are forced needlessly and repeatedly to expend resources in an attempt to increase its ability to serve its customers without any resolution. Id.

95. On August 2, 2001, Covad filed a Motion to Leave to Supplement the Record for Checklist Item 4.[2] On August 7, 2001, Qwest filed its response to Covad's Motion for Leave to Supplement the Record for Checklist Item 4.

96. In the Workshops, concern was expressed by Covad as to the accuracy of Qwest's loop qual tool and raw loop data tool. Tr. at pps. 41 and 42. CLECs claimed that the accuracy of Qwest's tool is so inaccurate that it frequently has problems. Id. A major concern of Covad was it not being able to offer services to some customers who would have a loop that would qualify because the data within the tool reflects that it has too long a loop or that it is on digital loop carrier. However, if Covad actually did a test on the loop, you would find that you actually are physically within serving distance for Covad. Id. Covad indicated that at a May 31st meeting, Covad told Qwest that only 30% of the loop length in the prequalification tools were accurate. Tr. at p. 355. Covad also indicated that it had experienced a lot of downtime since the raw loop data tool was implemented. Tr. at p. 353.

97. At the Workshops, AT&T also expressed its opinion that OP-13 was showing some serious problems on coordinated cutovers. Tr. at pps. 102-103. AT&T noted that this was corroborated by its own experience in that they were having serious problems with coordination as well. Tr. p. 103.

98. At the Workshops, AT&T also stated that the processes that Qwest has had in place for ordering higher speed loops such as DS3s. Tr. at p. 127. As a result, AT&T continues to order DS3s as private lines, even when they should be ordering many of them as loops. Id. AT&T also expressed concern with Qwest's position that they will offer OC3 but on an ICB basis. Tr. p. 128. AT&T elaborated that its particularly problematic if there is a situation where Qwest is offering service, OC3 to an end user today and the customer wants to add an additional OC3 loop. They come to AT&T and say that they'd rather get this from AT&T than from Qwest. Even though its obvious that the capability is there, because Qwest is already providing it, AT&T can't even give them a set date when it could provide that service. That does not afford AT&T a meaningful opportunity to compete. Tr. at p. 201.

99. In the Workshops, Covad also referenced several (3) policy e-mails that Qwest had issued in approximately the same time frame that contained policy or operational changes that affected the CLECs which the CLECs were told they had to abide by, regardless of whether or not its in an interconnection agreement. Tr. at p. 235.

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[2] Covad filed comments relating to a theft of Covad equipment from four separate Qwest Colorado central offices after the Arizona workshops concluded. Since these incidents occurred in Colorado and no evidence was produced by Covad that indicated this was occurring in Arizona, Staff does not address these thefts per se but focuses its discussion on Covad's description of Qwest's anticompetive behavior.

100. There was also a lot of concern expressed by the CLECs at the Workshops about multiple FOCs. Covad stated that they've had situations where time after time customers have had to stay home from work to have Qwest come to their home only to find that Qwest didn't come and then Covad has to contact the partner again, the ISP partner and explain to them that they would have to reschedule. The person takes another day off work and it becomes necessary to reschedule again. This is extremely irritating to their customers. Tr. at pps. 373-374. Covad stated that the problem of multiple FOCs has happened a lot and that Covad has lost customers because of it. Tr. at p. 375. Covad stated that the multiple FOC problem is their primary problem right now with Qwest. Tr. at p. 375. Covad stated that it has lost, in the Qwest territory, millions of dollars in revenue for orders, from business that it cannot process because the orders because they have either gone held or they've been forced to cancel them, and the number is in the thousands of orders. Tr. at p. 384. This also takes a lot of time on Covad employee's part. Tr. at pps. 384-385. Covad expressed concern that as of March, it knew of no plan by Qwest to do anything about the held order problem except work them on a one-by-one basis. Tr. at p. 385. AT&T echoed this problem at the Workshops stating that it is also having problems getting timely FOCs and accurate FOCs for unbundled loops. Tr. at p. 381.

101. Sprint inquired whether Qwest tracked and reported held orders for its retail services. Tr. at p. 391. Qwest stated that it did but it was different because it tracked held orders on primary lines, not secondary lines. Id.

102. While there was a lot of discussion at the Workshops about a Colorado trial looking at the multiple FOC issue, among others, Covad was concerned that it sounded very similar to the trial Covad had already done with Qwest and that nothing indicated that what came out of the Colorado trial would be more reliable. Tr. at p. 377.

103. Covad expressed concern at the May, 2001 Workshop that with the UNE forecast requirement being withdrawn by Qwest, Qwest would no longer attempt to accommodate reasonable and foreseeable CLEC demand. Tr. at pps. 1300-1301.

e. Qwest Response

104. In its February 21, 2001 written response, Qwest addressed several of the CLECs concerns. Qwest made a number of general comments regarding its SGAT. Specifically, in response to the CLECs' concerns as to the possibility that these documents could change without a formal review, Qwest has made a commitment in previous workshops to include changes to the IRRG and the Technical Publications as part of the formal change control process ("CICMP"). 5-Qwest-5 at p. 2-3. Technical Publications can be obtained at www.qwest.com/techpub. Id. at p. 3.

105. In response to AT&T's reference to the inconsistencies between the IRRG and the SGAT, Qwest has recently updated the IRRG to match the SGAT and remove references to the SPOT frame 5-Qwest-5 at p. 3. The IRRG can be found at http://www.qwest.com/wholesale/solutions/clecFacility/UNB4-O.html. Id.

106. To address AT&T's concern regarding the term "capable" loops, when Qwest uses the term capable, it assures that the loop is going to pass the NC/NCI specified signal, consistent with industry Standards. 5-Qwest-5 at p. 3. Qwest will build the capable loop using whatever equipment it takes, such as subscriber loop carrier or range extenders, to insure that the loop meets the standards. Id. at p. 4. The term Compatible means the unbundled loop complies with the ordered Network Channel ("NC") and Network Channel Interface Codes ("NCI"). Id. The revised SGAT definitions of both the loop and the NID clearly indicate that the features, functions and capabilities are included. Id. Thus, when Qwest provides a loop or a NID, per the definition, that provisioning includes the functionalities associated with the service. Id.

107. Regarding performance measurements, Qwest, along with the Arizona Test Advisory Group ("TAG"), have developed performance measurements and requirements. 5-Qwest-5 at p. 4. The Performance Indicator Definitions (PIDs) explicitly state the measurement, the method of calculation, any exclusions or exceptions and a benchmark performance that is necessary to demonstrate Qwest is providing the service to the CLECs as required. Id. at p. 4-5. The PIDs are all included in the Third Party OSS Test and are being closely examined and tested. Id. Qwest does not believe that it is necessary to include additional performance language in the SGAT. Id.

108. With regard to pricing, Qwest's current systems do not allow Qwest to bill deaveraged loop prices based on mileage in Arizona. 5-Qwest-5 at p. 5. Qwest is billing the CLECs the Arizona Commission approved rates. Id.

109. With respect to specific SGAT sections, Qwest agrees with MCIW and AT&T's recommendation to change the definition of the unbundled loop to coincide with the FCC UNE Remand definition. 5-Qwest-5 at p. 6. The new definition states:

> *"Local Loop Transmission" or "Loop" or "Unbundled Loop" is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC Central Office and the loop demarcation point at an end user's premises, including inside wire owned by the incumbent LEC. The local loop network element includes all features, functions, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to, dark fiber, attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), and line conditioning. The local loop includes, but is not limited to, DS1, DS3, fiber, and other high capacity loops.*

Id. at p. 6-7. This revised definition complies with the FCC UNE Remand definition, and demonstrates Qwest has a concrete specific legal obligation to provide all types of loops with their attendant functions, features and capabilities. Id.

110. Qwest also agreed that the definition at Section 9.2.1 should match the one presented in the definition section 4.34. 5-Qwest-5 at p. 6. The unbundled loop definition has been changed to match the language in Section 4.34. Id. Additionally, Qwest has revised its definitions of both loops and NIDs in accordance with the FCC decisions and national standards. Id. at p. 7. The recommendation of AT&T to include all types of loops is, therefore, totally unnecessary and does not meet the national standard definitions as they advocated before the FCC. Id.

111. Qwest did not accept AT&T's request to include in the Unbundled Loop definition reference to the CLECs having access to do their own testing of all the loop functionality, "including without limitation smart jacks, for both voice and data purposes." 5-Qwest-5 at p. 7. Qwest's definition relies on the FCC language and since this proposal is not in that language, Qwest did not include it. Id.

112. Regarding Section 9.2.2.1, AT&T requests the unbundled loop definition be clarified that the loop is unbundled from switching and transport. 5-Qwest-5 at p. 8. Since Qwest has now adopted the definition of the FCC, per AT&T's request, it is not appropriate to alter that definition to further some unknown goal of AT&T. Id. at p. 8-9. Therefore, Qwest is unwilling to change the definition. Id.

113. Qwest disagrees with AT&T's assertion that the provisioning of a UNE loop should be compared to the provisioning of MegaBit (now called Qwest DSL Service). 5-Qwest-5 at p. 8. These issues have been resolved through the TAG and Qwest proposes that Section 9.2.2.1 read as follows:

> *Qwest shall provide CLEC, on a non-discriminatory basis, Unbundled Loops of substantially the same quality as the Loop that Qwest uses to provide service to its own end-users. These loops shall be provisioned in accordance with Exhibit C and the performance metrics set forth in Section 20 and with a minimum of service disruption.*

Id.

114. Regarding Section 9.2.2.2, Qwest agrees with AT&T's request to drop th reference to "300 to 3000 Hz" frequency. 5-Qwest-5 at p. 9. Since Qwest has included the term "voice grade" in the product name description for the 2-wire and 4-wire analog loops it is no longer necessary to include the frequency range. Id. Also, AT&T's concern about loops provisioned using IDLC technology is no longer an issue. Id. Qwest will look for alternative ways to provision the loop if the customer is served by IDLC. Id. Qwest proposes the following language for Section 9.2.2.2:

> *Analog (Voice Grade) Unbundled Loops are available as a two-wire or four-wire voice grade, point-to-point configuration suitable for local exchange type services within the analog voice frequency range. For the two-wire configuration, CLEC must specify the signaling option. The actual Loop facilities may utilize various technologies or combinations of*

> *technologies. If Qwest uses Integrated Digital Loop Carrier (IDLC) systems to provide the local Loop, to the extent possible, Qwest will make alternate arrangements to permit CLEC to order a continuous Unbundled Loop.*

Id. This definition is consistent with the FCC's UNE Remand Order. Id. at p. 10.

115. With respect to AT&T's concern that Section 9.2.2.3 implies that Qwest only provides ADSL loops, Qwest believes that the change in the loop definition 4.3.4 to include "...the attached electronics..." solves AT&T's concern that Qwest has not made the commitment to provide the digital equipment to provide the digital capabilities of the loop. 5-Qwest-5 at p. 10. AT&T also disagrees with the sentence in the SGAT that states that Qwest will determine the transmission technology by which the loop will be provided. Id. The UNE Remand Order does not require that Qwest pre-qualify loops for the CLECs, rather the FCC requires that Qwest provide the underlying loop make-up "so that the requesting carrier can make an independent judgement about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install." Id. at p. 10-11. The CLECs assert that 9.2.2.3 is somewhat misleading because it inadvertently omitted the Non-Loaded Loop type. Id. Due to that omission, Qwest agrees to modify this section. Id. However, Qwest does not believe that the FCC UNE Remand Order requires the ILEC to give the CLECs the option to choose the transmission technology, when choices exist. Id. Qwest's writing of 9.2.2.3 complies with the FCC's UNE Remand Order and Qwest will not remove the language associated with Qwest selecting the transmission technology. Id.

116. Qwest does agree that the wording of the last sentence regarding conditioning charges is confusing. 5-Qwest-5 at p. 12. Qwest proposes the last part of 9.2.2.3 to read:

> *Digital Capable Loops – DS-1 and DS-3 Capable Loops, Basic Rate (BRI) ISDN Capable Loops, 2/4 Wire Non-Loaded Loops, ADSL Compatible Loops and xDSL-I Capable Loops. Unbundled digital loops are transmission paths capable of carrying specifically formatted and line coded digital signals. Unbundled digital Loops may be provided using a variety of transmission technologies including but not limited to metallic wire, metallic wire based digital loop carrier and fiber optic fed digital carrier systems. Qwest will determine the specific transmission technology by which the Loop will be provided. Such technologies are used singularly or in tandem in providing service. DC continuity is not inherent in this service. If conditioning is required, then the CLEC pre-approved conditioning charges shall apply.*

Id. Per the FCC's Order, Qwest will provide CLECs with access to fiber and high capacity loops. Id.

117. Qwest does not agree to MCIW's proposed changes regarding Section 9.2.2.3. 5-Qwest-5 at p. 13. MCIW claimed that Qwest reported "that it provisions 3 lines per customer to anticipate growth". Id. MCIW fails to mention that the 3 pair model only applies to the distribution plant in single family residential communities and does not relate to fiber or high capacity loops. Id.

118. Regarding Section 9.2.2.4, both Covad and AT&T argued that Qwest should not be allowed to recover conditioning costs on loops that are less than 18 kilofeets. 5-Qwest-5 at p. 13. CLECs presented this argument to the FCC and lost with the FCC in the UNE Remand Order clearly ruling:

> "We agree that networks built today normally should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter. Nevertheless, the devices are sometimes present on such loops, and the incumbent LEC may incur costs in removing them. Thus, under our rules, the incumbent should be able to charge for conditioning such loops."

Id. Qwest has been fully authorized by the FCC to charge a CLEC who orders conditioning done on a loop. Id. Also, AT&T's proposal includes that if AT&T pays for line conditioning and then loses its customer within one year from the date of installation, that Qwest should be willing to reimburse AT&T for its losses. Id. at p. 14. It would be unreasonable for Qwest and hence its customers, to pay for AT&T's costs of losing a customer and therefore, Qwest will not make this change. Id.

119. Regarding Section 9.2.2.5, Qwest already made AT&T's requested change and has expanded the loop type name to say Basic Rate ISDN. 5-Qwest-5 at p. 15. Qwest does not have end to end control of the facility and therefore, Qwest can only provide a loop capable of ISDN, and not ISDN service. Id.

120. With regard to AT&T's concern that it would be charged when Qwest used Extension Technology even if no action was required, Qwest stated that it will only charge for Extension Technology if it is requested by the CLEC but the Qwest design based on technology standards did not require the Extension Technology equipment. 5-Qwest-5 at p. 15-16. Qwest proposes that section 9.2.2.5 read as follows:

> *When CLEC requests a Basic Rate ISDN capable or an xDSL-I Loop, Qwest will dispatch a technician, if necessary, to provide Extension Technology (as defined in the Product Catalog), that takes into account for example: the additional regenerator placement, Central Office powering, Mid-Span repeaters, if required, BRITE cards in order to provision the Basic Rate ISDN capable and xDSL-I Loop, and Total Reach (currently under development). Extension Technology may be required in order to bring the circuit to the specifications necessary to accommodate the requested service. If the Circuit Design requires Extension Technology, to bring it up the design standards, it will be added by Qwest, at no charge. Extension Technology can also be*

> *requested by CLEC to meet their specific needs. If Extension Technology is requested by CLEC, but is not required to meet the technical standards, then Qwest will provide the requested Extension Technology and will charge CLEC. Qwest will provision ISDN (BRI) Capable and xDSL-I Capable loops using the specifications in the Technical Publication 77384 Issue G Refer to that document for more information. CLEC will be charged an Extension Technology recurring charge in addition to the Unbundled Loop recurring charge, if applicable, as specified in Exhibit A of this Agreement. The ISDN Capable Loop may also require conditioning (e.g., removal of loads or bridge tap*

Id.

121. The concerns raised by AT&T regarding Sections 9.2.2.6 and 9.2.2.7 are the same concerns expressed by AT&T over the use of the word "capable" which Qwest states is correct as currently written. 5-Qwest-5 at p. 16. Qwest does not have end-to-end control of the loop so all it can do is provide a loop which meets the design parameters defined for the loop type requested by the CLEC and include any optics, electronics or functionalities on that facility. Id. at p. 17. Qwest proposes Section 9.2.2.6 read as follows:

> *For DS1 or DS3 Capable Loop, Qwest will provide the necessary electronics at both ends including any intermediate repeaters. In addition, CLEC will have access to these terminations for testing purposes.*

Id.

122. Also, Qwest has expanded Section 9.2.2.7 of the SGAT to say that Qwest will provide in writing any order rejection notices associated with spectrum management problems. Id. Qwest proposes that Section 9.2.2.7 read as follows:

> *Qwest is not obligated to provision BRI-ISDN, xDSL-I, DS1, or DS3 capable or ADSL compatible Loops in areas served by Loop facilities and/or transmission equipment that are not compatible with the requested service. To avoid spectrum conflict within Qwest facilities, Qwest may control the use of certain cables for spectrum management considerations. Qwest will provide in writing the reason why an order was rejected for Spectrum management reasons.*

Id.

123. Section 9.2.2.8 specifically addresses the ADSL Compatible Loop, not all xDSL loops and the pre-ordering function associated with loop make-up. 5-Qwest-5 at p. 17-18. Qwest introduced the ADSL Compatible Loop at the request of numerous CLECs and prior to the FCC Remand Order that places the qualification responsibility on the

CLECs. Id. CLECs can purchase Non-Loaded 2/4 Wire loops with or without conditioning to support xDSL service. Id.

124. Qwest stated that regarding Section 9.2.2.9, the performance measures associated with quality of the installation process are included as part of the agreed upon PIDs. 5-Qwest-5 at p. 18. The Arizona TAG and the CLECs have collectively agreed upon these measures and it is not necessary to repeat that requirement in the SGAT. Id. The formatting of this section has been changed to reflect the fact that testing is not restricted to the Coordinated Installation with Cooperative Testing only. Id. The testing information has been moved to its own sub-section 9.2.2.9.6. Id.

125. With regard to Sections 9.2.2.9.2 and 9.2.2.9.3, Qwest agreed that the description of the coordinated installation options should include the fact that Qwest will accept up to a 30-minute CLEC delay. 5-Qwest-5 at p. 18. This language has been added to the SGAT. Id. at p. 19.

126. Qwest also agreed that the specifications in the technical publications are not Qwest's sole obligation for the provisioning of loops and proposed that Section 9.2.2.11 read as follows:

> *Transmission characteristics may vary depending on the distance between CLEC's end user and Qwest's end office and may vary due to characteristics inherent in the physical network. Qwest, in order to properly maintain and modernize the network, may make necessary modifications and changes to the Unbundled Loops, ancillary and finished services in its network on an as needed basis. Such changes may result in minor changes to transmission parameters. Changes that affect network interoperability require advance notice pursuant to the Notices Section of this Agreement.*

5-Qwest-5 at p. 20.

127. With respect to AT&T and MCIW's concerns regarding Section 9.2.2.12, Qwest can not completely accept the MCIW proposal because it places Qwest in a coordination and mediator role. 5-Qwest-5 at p. 21. Qwest does agree to direct the end user to the respective CLEC. Id. However, AT&T's proposal that Qwest pay the CLECs if the end user customer returns to Qwest is beyond the scope of a 271 proceeding. Id. Qwest proposed the following SGAT language:

> *If there is a conflict between an end user (and/or its respective agent) and CLEC regarding the disconnection or provisioning of Unbundled Loops, Qwest will advise the end user to contact their CLEC and Qwest will initiate contact with CLEC.*

Id.

128. With respect to AT&T and MCIW's concerns regarding Qwest's access to facilities located on the end-user's premises, Qwest agrees with their comments and proposes the following SGAT language:

> *Facilities and lines furnished by Qwest on the premises of CLEC's end user up to and including the NID or equivalent are the property of Qwest. Qwest shall have reasonable access to all such facilities for network management purposes. Qwest will coordinate entry dates and times with appropriate CLEC personnel to accommodate testing and inspection of employees and agents may enter said premises at any reasonable hour to test and inspect such facilities and lines in connection with such purposes or upon termination or cancellation of the Unbundled Loop service to remove such facilities and lines. Such entry is restricted to testing and inspection of Qwest's own property in that facility. Entry for any other purpose is subject to audit provisions in (Audit section) of this agreement.*

Id. at p. 21-22.

129. In response to AT&T's concern that the SGAT should include language about the CLEC's right to access unbundled loops it is leasing, including access at subloop locations, Qwest stated that it is not obligated to allow a CLEC to access a loop at any point along its route, including subloops. Id. Qwest states that what AT&T wants is unreasonable and outside the scope of what the FCC has required ILECs to provide and therefore, Qwest is unwilling to adopt AT&T's proposed language. Id. at p. 22-23.

130. Qwest does agree to clarify Section 9.2.2.15, however, it does not agree with AT&T's primary assertion. 5-Qwest-5 at p. 23. The primary purpose of this section is to prevent a CLEC from holding the end-user's facilities hostage. Id. There is no way for Qwest to know that the end-user moved without receiving a disconnect order from the CLEC. Id. Qwest proposed the following language:

> *When requested by Qwest (via a Loss Alert from the new Local Service Provider (LSP)), the circuit belonging to CLEC will be disconnected. This action is taken by Qwest on Unbundled Loop services where the Loop has been relinquished by an end-user and that Loop is required by Qwest or another CLEC LSP to provide service to that end-*

Id.

131. Section 9.2.3 addresses rate elements and Qwest believes it is redundant and unnecessary to define the products again. 5-Qwest-5 at p. 23. Therefore, Qwest proposes to retain the current language. Id. at p. 24.

132. Qwest disagrees with AT&T over Section 9.2.3.3 regarding the use of the term "capable" and providing the CLECs with the ability to select the transmission technology when options exist. 5-Qwest-5 at p. 24. Qwest does agree that this section

should include DS3 and the restriction that these loops should only be ordered if the Non-Loaded Loop does not meet the CLEC's technical parameters is unnecessary. Id. Qwest proposed the following language:

> *DS-1 and DS-3 Capable Loop, Basic Rate (BRI) ISDN, ADSL Compatible Loop and xDSL-I Capable Loop Recurring and Non-Recurring rates.*

133. Regarding Section 9.2.3.6, AT&T points out that the Miscellaneous Charges are not all identified in the SGAT, nor are the circumstances delineated when they apply. 5-Qwest-5 at p. 24. Qwest agrees with this comment and is in the process of defining these elements in the SGAT. Id.

134. Regarding Section 9.2.3.7.1, Qwest agrees that the language regarding Out of Hours Coordinated Installations should be moved. 5-Qwest-5 at p. 24. Qwest agrees to move Sections 9.2.3.7.1, 9.2.3.7.2 and 9.2.3.7.3 to the end of Ordering Section 9.2.4. Id. at p. 25. Also, Qwest understands that the SGAT contains two different business hours for different types of work activities. Id. The hours listed in this section of the SGAT reflect Qwest installation business hours. Id. These hours are the same as Qwest has in place for retail installation and therefore, it does not agree to change the business hours in Section 9.2. Id.

135. Qwest does agree to eliminate the forecast requirement for Out of Hours installations as described in Section 9.2.3.7.2. 5-Qwest-5 at p. 25. Qwest proposed a new section 9.2.4.10.2. Id.

136. With regard to Section 9.2.3.7.6, Qwest agreed (in the Colorado workshop) to strike this section and expand Section 9.2.4.3.. 5-Qwest-5 at p. 25. Qwest also agrees to make the same changes to the Arizona SGAT. Id.

137. Regarding Section 9.2.4.1, Qwest does not believe any additional information is necessary in this section. 5-Qwest-5 at p. 26.

138. Regarding Section 9.2.4.2, Qwest agrees with AT&T that the Terms and Conditions section of the SGAT regarding Local Proof of Authorization needs to be evaluated. 5-Qwest-5 at p. 26. Qwest recommends that this be done during the General Terms and Conditions workshop. Id.

139. Qwest has made some changes to Section 9.2.4.4. 5-Qwest-5 at p. 26. Qwest expanded the hours that it will accept complete and accurate LSRs and still consider the application date as that day. Id. In light of AT&T's comments, Qwest has changed the wording to clearly indicate that the 25-loop limit does not apply to the CLEC, but rather the end user location. Id. Qwest believes that the required installation performance levels have been addressed by the PIDs. Id. Qwest proposes a change to the installation intervals for DS1 to better align the installation interval with the approved installation PID benchmark. Id. at p. 27. Qwest proposed changing the DS1 intervals to align with retail DS1. Id. However, Qwest will leave the wholesale DS3 interval at 7

days regardless of the end user's location. Id. Qwest proposes the following 9.2.4.4 SGAT language:

> *The installation intervals for the Analog, Non-Loaded Loops and Digital Capable Loops are defined in Exhibit C. The interval will start when Qwest receives a complete and accurate Local Service Request (LSR). This date is considered the start of the service interval if the order is received prior to 7:00 p.m. The service interval will begin on the next business day for service requests received after 7:00 p.m. This interval may be impacted by order volumes and load control considerations. If more than twenty-five orders are issued at the same end user address, the request will be handled on an individual case basis.*

Id.

140. Finally, AT&T's suggestion that Qwest pay the CLECs when the trouble is found to belong with the Qwest's facilities is unacceptable. 5-Qwest-5 at p. 27. AT&T further stated that Qwest is double-billing a CLEC if trouble is found to be in an inside wire or end user terminal problem. Id. at p. 28. That is not true in that Qwest assesses a CLEC exactly the same as it would its own end-user customer – with a separate, discrete Trouble Isolation Charge (TIC). Id. Such a charge is equally fair for a CLEC to pay. Id.

f. DISPUTED ISSUES

141. At the conclusion of the March 5, 2001 and May 14, 2001 workshops, the parties were unable to agree on a number of issues that went to impasse involving loops. Statements of Positions on the impasse issues were filed by AT&T on June 15, 2001 and MCIW, Covad and Qwest on June 19, 2001.

DISPUTED ISSUE NO. 1: Whether fiber loops or OCn loops should be at Individual Case Basis (ICB) or standard product with rates and intervals. Also, should Qwest revise its loop intervals set forth in Qwest Exhibit C? (Loop-2(b))

a. Summary of Qwest and CLEC Positions

142. AT&T stated Qwest agreed to offer OCn loops to requesting CLECs on an ICB basis. AT&T June 14, 2001 Brief at p. 7. However, AT&T has concerns regarding the ICB process which it will address in the General Terms and Conditions Workshop. Id.

143. Regarding Qwest's loop intervals, AT&T argued that a number of the standard intervals set forth in Exhibit C for Unbundled Loops should be revised. AT&T Brief at p. 8. Specifically, the standard intervals for 1(a) 2/4 Wire Analog Loops, 1(b) 2/4 Wire Non-Loaded Loops, 1DS-1 Loops, and 1(h) Repair Intervals for Basic 2-Wire

Analog are too long to provide the CLEC a meaningful opportunity to compete and should be revised. Id. AT&T offered the following rationale for its revisions. For Intervals 1(a) and 1(b), conversions for these loops require simple jumpering and migration work. Id. at p. 9. There is no reason why this work should take more than three days. Id. Qwest has already responded to AT&T's proposal on 1(a) by offering Quick Loop, which is loop conversion without number portability and indicated that it was examining extending Quick Loop to loops with number portability. Id. at p. 9-10. The availability of Quick Loop for loops with number portability would resolve AT&T's issues with 1(a) and should be required. Id. With respect to Interval 1(d), DS-1 loops, Qwest proposed the very intervals AT&T is requesting. Id. Qwest now claims that it lengthened these intervals because those are the intervals that exist on the retail side and, therefore, the intervals in Exhibit C are parity. Id. However, Qwest did not seek the approval or agreement of the workshop participants for these changes. Id. AT&T objects to Qwest's revised intervals in that Qwest should be required to establish an appropriate interval and meet that interval. Id. at p. 11. Qwest should be required to revise its DS-1 intervals. Id. As for 1(h), AT&T believes that an 18-hour interval on repair is more than sufficient given Qwest performance on mean time to restore. Id.

144. Regarding the provisioning of OCn loops at standard rates and intervals, Covad stated that it concurred with AT&T's Post-Workshop Brief on Loops, Line Splitting and NIDs on this issue. Covad June 19, 2001 Brief at p. 7. Covad also agreed with AT&T's position regarding appropriate intervals for Exhibit C, Sections 1(b), 1(d) and (h). Id. However, for the interval for conditioned loops 1(g), Qwest's current interval of fifteen days is inappropriately and improperly elongated when examined against the information provided by Qwest to Covad during the course of the Emerging Services Workshop. Id. From a practical standpoint, a ten-day interval for conditioned loops is eminently feasible. Id. at p. 8. The only impediments to a ten-day interval are constraints imposed by Qwest on itself in the form of insufficient staffing or inefficient allocation of work. Id. Because the indisputable facts demonstrate that a shorter interval is practically and realistically feasible, Qwest should adhere to that interval. Id.

145. MCIW stated that the language in Section 9.2.2.3.1 is insufficient and Qwest includes exclusionary language that binds it to only provide such portions of the loop "where facilities are available and existing on an ICB basis." WCom June 19, 2001 Brief at p. 1-2. MCIW also stated that denying CLECs access to fiber and high capacity loops because of a lack of facilities ensures CLECs are not able to meet customer needs where Qwest has failed to install adequate facilities. Id. at p. 2. Qwest's rates for retail services and rates for wholesale services include revenues to allow Qwest to expand its network to account for new growth. Id. The wholesale rates, both for recurring charges and non-recurring charges, established for interconnection services, all unbundled elements, and resold services include sufficient revenues to ensure Qwest is able to construct new network and re-enforce existing network. Id. Finally, while Qwest relies heavily on pricing certain activity on an "ICB", there is no process contained in the SGAT describing how the ICB process works and without such an explanation of the ICB process in the SGAT, CLECs are left to Qwest's determination of cost and consequent

pricing with no speedy recourse. Id. Accordingly, MCIW proposes that Section 9.2.2.3.1 be changed to read as follows:

> *Qwest shall provide other unbundled fiber and high capacity loops to CLEC(s). Such loops will be provided on a fiber optic transmission technology capable of supporting any OCn level. Parties will cooperate to determine the specific transmission technology by which the unbundled loop will be provided.*

146. MCIW went on to state that Qwest must build loops, and other UNEs, for CLECs under the same terms and conditions that Qwest would build network elements for itself (or its retail customers) at cost-based rates. Id. at p. 3. If Qwest refuses to build a network element for a CLEC and subsequently provides the service to the same customer, it can easily be concluded that Qwest discriminated against the CLEC because Qwest built the facility on *some* terms and conditions, terms and conditions that should have been provided to the CLEC. Id.

147. Although Qwest recently issued a policy statement indicating its agreement to build DS0 loops if Qwest has an obligation to build under its provider-of-last-resort obligations, Qwest's offer does not go far enough and does not comply with the Act and the FCC's rules. Id. at p. 4.

148. MCIW argued that the language "provided that facilities are available" should be stricken from SGAT sections 9.2.4.3.1.2.4, 9.23.1.4, 9.23.1.5, 9.23.1.6 and 9.23.3.7.2.12.8 and any other conforming changes required to remove any limitation of Qwest obligation to build and that permit Qwest to reject LSRs for no facilities available, rather than allowing such orders to go held. WCom Br. at p. 5. Also, SGAT section 9.19 should be amended with the first sentence of this section amended to read:

> "Qwest will conduct an ~~individual~~ ~~financial~~ assessment of any request which requires construction of network capacity, facilities, or space for access to or use of unbundled loops." Id.

149. The Commission should also make clear that under section 9.1.2 of the SGAT and related provisions, Qwest is obligated to build UNEs, except dedicated transport, on a nondiscriminatory basis at cost-based rates under section 252(d). Id.

150. Qwest responds that the parties reached consensus on the OCn issue in the Multi-State workshop and in Arizona; therefore, this aspect of issue Loop 2(b) is closed. Qwest June 19, 2001 Brief at p. 7. The other aspect of issue Loop 2(b) related to several of the provisioning intervals contained in Exhibit C to Qwest's SGAT. Id. at p. 7-8. Qwest states that the Commission should reject AT&T's attempts to shorten the Exhibit C intervals for two principal reasons. Id. First, during the workshop, Qwest demonstrated that the intervals in Exhibit C were an integral consideration in the development of the performance indicator definitions ("PIDs") for OP-3 (percent commitments met) and OP-4 (installation interval) in negotiations between Qwest and

CLECs in the Arizona Technical Advisory Group ("TAG"). Id. at p. 8-9. The PIDs were in large part based on the intervals set forth in Exhibit C to Qwest's SGAT, and were developed through a collaborative process with the CLECs. Id. Second, neither AT&T nor any other CLEC presented evidence that would support shortening the Exhibit C intervals. Id. The Commission should approve the loop provisioning intervals contained in Exhibit C to Qwest's SGAT. Id.

151. While AT&T claims that regardless of the inextricable link between the PIDs and the Exhibit C intervals, it should be permitted to challenge the loop intervals, that it presented no evidence that would support modifying them as their demands are based on nothing more than its assertion that they should be shorter. Id. It presented no evidence that the current intervals impede its ability to compete or that Qwest offers its retail customers shorter intervals. Id. Again, Qwest states that the Commission should uphold the Exhibit C loop intervals. Id.

152. In addressing MCIW's comments regarding the claim that Qwest must build high capacity loop facilities, Qwest stated that it provides OCn facilities to its own retail customers in all but two states (not Arizona) on an ICB basis. Qwest Brief at p. 62. Qwest has no demand from CLECs for OCn facilities but has committed in SGAT Section 9.2.2.3.1 to provide OC3, OC12, OC48 and OC192 loops and to provision them on a non-discriminatory basis. Id. Where there is no reasonably foreseeable demand for this loop type, Qwest believes that offering OCn facilities on an ICB basis is consistent with its obligations under the Act. Id. Under Section 9.1.2.1, Qwest has agreed that it will construct loop facilities that are required to fulfill Qwest's obligations as a provider-of-last-resort (referred to as "POLR obligations") or as an Eligible Telecommunications Carrier ("ETC") to obtain Federal universal high cost funds. Id. at p. 63. Nevertheless, MCIW demands that Qwest go beyond this commitment and construct high capacity loops for it on demand. Id. MCIW cites no rule that requires Qwest to construct facilities or to take the even more extraordinary step of construction OCn facilities on demand. Id. at p. 65.

153. MCIW also claimed in its brief that "any other holding" than requiring Qwest to build OCn facilities on demand for CLECs "would allow Qwest to deny a CLEC's request for a UNE and then build the network element itself to provide the service to the same customer." Id. at p. 66. MCIW, however, completely ignores that it or any other CLEC is fully capable of building that same network element itself on any terms and conditions it deems appropriate. Id. That is not to say that Qwest will never construct loop facilities for CLECs. Id. Section 9.1.2.1 provides that Qwest will construct loop facilities to meet its POLR obligations. Id. Thus, Qwest has not only agreed to build facilities where required to meet its POLR obligations, it has also agreed to hold an order if there is a pending job that would satisfy the CLEC request, and it has offered to share certain build information with CLECs. Id. at p. 68. MCIW's claim that Qwest must go farther and build other loop facilities on demand is unreasonable and unwarranted.

b. Discussion and Staff Recommendation

154. As Qwest notes, the parties have subsequently reached agreement on the first subpart of this impasse issue in the Multistate workshop and in Arizona. In addition, discussion on Qwest's ICB process was deferred to the Workshop on General Terms and Conditions ("GT&C") and it is also being addressed in the Wholesale Pricing Docket. Therefore, by agreement of the parties, this issue will be addressed in both the GT&C Workshop and the Wholesale Pricing Docket.

155. The other open issue relates to Qwest's intervals and reference to Exhibit C. Qwest is correct that the intervals discussed were an integral part of the development of the PIDs for both OP-3 (Percent Commitments Met) and OP-4 (Installation Interval) that took place between Qwest and the CLECs in the TAG. AT&T was involved in the development of the PIDs that directly relate to the intervals discussed in Qwest's Exhibit C. Staff believes that any concerns over intervals should be addressed in the TAG. In its Proposed Findings of Fact and Conclusions of Law, Staff stated that to the extent Qwest has been ordered or Qwest has agreed within the context of any other 271 Workshop within its region to shorten those intervals, Staff recommended that Qwest be required to also include the new provisioning intervals in Arizona.

156. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, AT&T states that it is Staff's position that CLECs are essentially barred in this proceeding from proposing changes to the Standard Interval Guide ("SIG") because the SIG intervals were an integral part of the development of the PIDs for both OP-3 and OP-4. AT&T Comments at pps. 1-2. AT&T states that Staff's conclusions are wholly improper, violate numerous rules of evidence and procedure and result in the adoption of discriminatory service intervals. AT&T Comments at p. 2. The Staff's conclusions, according to AT&T, ignore unrefuted evidence presented by AT&T of what was considered in both the TAG and ROC process, ignore the fact that there were disagreements of the parties on the few intervals that Qwest brought to the TAG and ROC process and how those issues were resolved for purposes of commencing the test and why they were resolved for testing purposes in that manner. AT&T Comments at p. 2. AT&T further states that the SIG was never presented to the ROC or to the TAG for approval. *Id.* AT&T further states that Qwest did not present any evidence that any of the SIG intervals or PID measures it proposed were at parity. Id. Instead, according to AT&T, Qwest simply asserted that the measures represented parity or, if there was no retail analog, that they were otherwise appropriate. Id. Because the parties could not agree on OP-4 and OP-3 and loop intervals, the parties agreed to use a benchmark for analog loops, non-loaded loops and ADSL-qualified loops as the pass-fail criteria. Id.

157. AT&T also states that Staff allowed Qwest to unilaterally alter the original "agreed-to intervals" for the DS1 intervals proposed in the SIG, without CLEC consent or other authorization by the State Commission. AT&T Comments at p. 6. AT&T stated that the initial filing Qwest witness Karen Steward made for DS-1 loop intervals were the same intervals that existed in the SIG at the time the PIDs were developed. Qwest subsequently changed those intervals unilaterally because the revised intervals

represented retail parity. AT&T Comments at p. 6. AT&T objects to Qwest's revised intervals and disputes that the measures represent parity or provide CLECs with a meaningful opportunity to compete. AT&T Comments at p. 7. AT&T states that it is the largest purchaser of DS-1s from Qwest on the retail side. *Id.*

158. AT&T, however, does concede that its concerns with regard to analog loops have been addressed through Qwest's recent revisions to the SIG to add Quick Loop with LNP. AT&T Comments at p. 6. It states that irregardless of this, it has raised concerns about other loop intervals that should be addressed by the Commission. *Id.*

159. Finally, AT&T argues that the repair intervals established in the SIG do not reflect retail parity. AT&T Comments at p. 8. Qwest proposes in its SIG a 24 hour repair interval. *Id.* AT&T states that Qwest's reliance on a state commission 24-hour repair interval is not appropriate since parity is measured based upon the service Qwest provides to its retail customers, itself or its affiliates, not the standard established by State commissions. *Id.* According to AT&T that is the only measure that will provide CLECs with a meaningful opportunity to compete, particularly where Qwest is performing better than the state service standard. *Id.* AT&T states that for Qwest's retail customers, its mean time to restore is 10 hours and that is the parity figure that should be used as the basis for establishing the wholesale service interval. *Id.* Thus, the 12 interval proposed by AT&T is clearly appropriate and should be reduced to a 10 hour interval to be at parity with retail. *Id.*

160. In its Comments to Staff's Proposed Findings, WorldCom stated that it prefers standard intervals and that in a negotiated interconnection agreement with Pacific Bell effective September 25, 2001, MCImetro has provisions for standard intervals for dark fiber. WorldCom Comments at p. 2. In the same interconnection agreement, OCn loops and dedicated transport are provided at the same intervals as for a regular loop and dedicated transport. Id. They are not treated as a separate product, according to WorldCom, but as just one flavor of loop/transport. Id. WorldCom proposes the following language:

> Qwest shall provide to CLEC information regarding the location, availability and performance of Unused Transmission Media within five (5) business days for a records based answer and ten (10) business days for a field based answer, after receiving a request from CLEC ("Request"). Within such time period, Qwest shall send to CLEC written confirmation of availability of the Unused Transmission Media ("Confirmation"). From the time of the Request to ninety (90) days after the confirmation, Qwest shall reserve such requested Unused Transmission Media for CLEC's use and may not allow any other party to use such media, including Qwest.
>
> Qwest shall make unused transmission Media available to CLEC within twenty (20) business days after it received written confirmation from CLEC that the Unused Transmission Media previously deemed available by Qwest is wanted for use by CLEC. This includes identification of

> appropriate connection points (e.g. Light Guide Interconnection (LGX or splice points) to enable CLEC to connect or splice CLEC provided transmission media (e.g. optical fiber) or equipment to the Unused Transmission Media.

161. Qwest seeks clarification of two points in Staff's Proposed Findings of Fact and Conclusions of Law. First, Qwest states it has developed rates for OCn loops, which will be included in Exhibit A to the SGAT. *Id.* Qwest states that it no longer provides OCn loops at an "ICB" rate. *Id.* Qwest states, however, that provisioning of such is still on an ICB basis because Qwest provisions such loops for itself on an ICB basis. *Id.* Second, Qwest agrees that to the extent Qwest has voluntarily reduced any interval in Exhibit C, it will carry forward that consensus to Exhibit C of the Arizona SGAT. *Id.* Qwest, however, does not agree that if it has been ordered to shorten the intervals in any other states within its region, it should be required to import those back to Arizona. *Id.* Qwest states that some states may order Qwest to reduce certain Exhibit C loop intervals to conform to state-specific wholesale service quality rules in effect in those particular states. *Id.* Qwest further states that it does not believe it is appropriate to overturn loop intervals that were negotiated in Arizona with the full participation of the Arizona CLECs by imposing random state service quality rules in Arizona. *Id.* Qwest states that Staff should revise paragraph 154 of the Report to delete the reference to "ordered" changes to the Exhibit C intervals. *Id.*

162. After considering the extensive comments of the parties, Staff believes that several changes to its original impasse resolution are in order. First, Staff commends Qwest for developing and offering OCn loops at standard rates now, rather than on an ICB basis. With regard to the provisioning of dark fiber and OCn loops, Staff believes that the 20 day time period or interval set out in paragraph 3.1 of Appendix I of Qwest's SGAT is reasonable and consistent with the language from the Pacific Bell Interconnection Agreement ("ICA") referenced by WorldCom. However, Staff believes that it would provide more certainty for the CLECs if Qwest followed a notification procedure similar to that contained in the Pacific Bell ICA. Therefore, Staff recommends that Qwest modify Section 3.2 of its SGAT to read as follows:

> Qwest shall provide CLEC information regarding the location, availability and performance of any ICB provisioned circuits within five (5) days for a records based answer and seven (7) business days for a field based answer, after receiving a request from the CLEC. Within such time periods, Qwest shall send to CLEC written confirmation of the availability of the ICB provisioned circuits. The Qwest representative authorized to commit to intervals, shall meet with CLEC's representative within seven (7) business days of receipt of the request from CLEC to negotiate intervals. Qwest shall provide its proposed provisioning intervals in all cases within 20 days.

163. The second issue on which parties sought reconsideration pertains to the standard intervals contained in Appendix C of the SGAT. Staff agrees with Qwest that it

would be inappropriate to require Qwest to implement in Arizona, all lower intervals ordered by another State commission in the Qwest region. Staff believes that to the extent impasses exist with respect to standard intervals, this Commission should resolve them for CLECs operating in Arizona. Nonetheless, to the extent agreements were reached in other States on the impasses issues, as with all other Checklist Items, Qwest should be required to import those agreements back into Arizona and has agreed to do so. At the time of the Arizona workshop on this subject, there were 7 impasse issues relating to standard intervals identified by the parties: 1) DS1, 2) 2 and 4 wire analog loop, 3) 2 and 4 wire nonloaded loop, 4) ADSL, 5) ISDN, 6) conditioned loops and 7) repair intervals. The parties agreed to try to resolve these impasses in other region workshops. The parties were successful in resolving many of them and those agreements will be imported back into Arizona. However several remain which were not resolved. The impasse issues remaining include: 1) DS1, 2) conditioned loops and 3) repair interval.

164. Appendix C to Qwest's current SGAT contains the following standard intervals for DS1: 1) 1-24 lines 9 business days; 2) 25 or more lines ICB. Staff believes that further segregation of these intervals is necessary. It may be reasonable to provide 24 lines in 9 business days; but the provisions of 1 DS1 in 9 business days appears to be excessive. Therefore, Staff recommends that Qwest be required to modify the standard intervals for DS1 contained in Appendix C of its SGAT as follows: 1) 1-8 lines 5 days; 2) 9-16 lines 7 days; 3) 17-24 lines 9 days; and 4) 25 or more lines ICB. Staff believes that these provisioning intervals are more reasonable.

165. With regard to conditioned loops, Staff believes that a 15 day standard interval is reasonable. Finally, Staff also believes that the 24 hour repair interval contained in Appendix C is reasonable. Through that interval in Appendix C, Qwest is merely committing to clear all troubles, including those requiring dispatch, in 24 hours. It does not mean, as AT&T suggests in its Comments, that Qwest does not have to provide parity service. Qwest must still provide CLECs with repair service in intervals on par with what its retail affiliate provides. Under the Arizona Performance Assurance Plan, Qwest will be penalized if it does not perform repairs on par with its retail affiliate.

DISPUTED ISSUE NO. 2: Concerns regarding provisioning loops where Qwest uses Integrated Digital Loop Carrier (IDLC). (Loop 4(b))

a. Summary of Qwest and CLEC Positions

166. While AT&T stated in its Brief that the issues surrounding IDLC provisioning processes are now resolved, it should be made clear in the order issued on this Checklist Item that Qwest remains obligated to provision loops served by IDLC and that the ultimate objective of the steps outlined in the Workshop and to be addressed in the technical publication is to ensure that CLEC/DLECs have access to unbundled loops served using IDLC. AT&T Brief at p. 13. Additionally, AT&T requests direct access to Qwest's Loop Facilities Assignment and Control System ("LFACS") database, and access to any other database or source that contains information regarding Qwest's loop

plant. Id. at p. 14. CLECs need the ability to understand, in those areas where IDLC has been deployed, what spare copper facilities are available, including loop fragments, to determine whether to actively market to that area. Id. at p. 14. Although Qwest asserts that it cannot provide access to LFACs because it contains information proprietary to Qwest, other CLECs or end user customers, AT&T would support a provision that would restrict CLEC use of information contained in LFACs, or other databases that may be made available, for proper purposes and not for gathering competitive information of competing carriers or specific to end users. Id. at p. 16. AT&T is certain that accommodation can be made to ensure no improper access to or use of proprietary information results from CLEC access to LFACs. Id.

167. Covad stated that it concurred with AT&T's Post-Workshop Brief on this issue. Covad June 19, 2001 Brief at p. 10.

168. On July 12, 2001, Qwest filed a Memorandum in Support of Motion to Strike Portions of AT&T's Post Workshop Brief. Qwest stated that this issue was closed by agreement of the parties and requested that the Commission strike those portions of AT&T's brief that pertain to Loop 4(b). Id. at p. 2.

169. Qwest stated that it provides a significant amount of information to CLECs regarding loop makeup and allows CLECs access to information through various means including the RLD tool accessed through IMA-GUI and IMA-EDI, Qwest's ADSL qualification, Qwest's POTS Conversion to Unbundled Loop Tool, Qwest's MegaBit Qualification Tool, and Qwest's wire center RLD tool, each of which is described in SGAT § 9.2.2.8. [3] If ordered to provide direct access to LFACS, Qwest would have to substantially modify the LFACS database to make it perform functions it cannot perform now, at apparently Qwest's own expense. Id. at p. 2. The FCC has held that incumbent LECs are not required to create mechanized loop qualification tools for CLECs. Id. AT&T's demand exceeds the requirement of the Act. Id. AT&T's demand for direct access to LFACS is also problematic because LFACS contains loop information on every Qwest unbundled loop and, of course, for every other CLEC obtaining unbundled loops from Qwest. Id. at p. 5. Neither AT&T nor any other CLEC has presented compelling evidence that direct LFACS will provide it with any additional loop makeup information than available through the RLD tool. Id. at p. 6. Therefore, the Commission should find and recommend that Qwest has met its obligation to provide CLECs with loop makeup information and is not required to provide direct access to LFACS. Id. at p. 10-11.

170. On July 23, 2001, AT&T filed its Response to Qwest's Motion to Strike. AT&T opposed Qwest's motion on several grounds. Id. at p. 1. First, with respect to the discussions in the Brief that describe the commitments made by Qwest in Arizona to provide access to loops served by IDLC, AT&T's Brief simply memorializes those commitments and states that, based upon those commitments, AT&T agreed to close that issue. Id. at p. 1-2. AT&T simply wanted to ensure that the record fully and accurately

[3] Exhibit B – Qwest's Preliminary Response to AT&T's Demand for Direct Access to Qwest's LFACS Database.

reflected why this issue was closed by AT&T. Id. Accordingly, there is no basis to strike such discussions from the Arizona Brief. Id. Second, Qwest asserts that all portions of the Brief that discuss direct access to Qwest's LFACs database should be stricken because AT&T failed to raise the issue in the Arizona workshop. Id. AT&T has raised this issue in every other Workshop on Loop issues and to the extent access to LFACs was not raised in Arizona, it was due to oversight on the part of AT&T – not because this was not an issue of concern in Arizona or because AT&T chose not to do so, as Qwest suggests. Id. CLECs should be provided with direct access to any database, including LFACs, that contains information regarding Qwest's loop plant so that they can determine, among other things, the extent to which Qwest has facilities in locations where the CLEC seeks to provision service to customers and to determine if those facilities are capable of providing the services the CLEC seeks to provide or the customer is demanding. Id. at p. 2-3. Because this issue has been addressed in every other jurisdiction to date, AT&T recommends that the discussions on this issue from the Multistate and Colorado be incorporated into the record in Arizona and be used for purposes of briefing and resolving this issue, in the same way that the Multistate record on Spectrum Management has been incorporated into the record in Arizona. Id. at p. 4-5.

b. **Discussion and Staff Recommendation**

171. The AIL stated that this issue had been closed by the parties. AT&T stated in its Brief that Qwest made changes to SGAT Section 9.2.2.2.1 and outlined processes for provisioning loops that use IDLC technology, and acknowledged that with these changes this issue was closed. However, Staff sees no need to strike the discussion on this issue in the AT&T Brief as requested by Qwest since the discussion merely sets forth AT&T's understanding of the agreements that led to the issue's closing.

172. In the context of this issue, AT&T raised another issue that apparently had been raised in other region workshops, but not Arizona. While proper procedure would have required AT&T to raise this issue sooner in the process, Staff will address it in any event. AT&T requests direct access to Qwest's LFACs database. In its Proposed Findings of Fact and Conclusions of Law, Staff did not believe that such access would be appropriate at this time for the following reasons. Staff believed that Qwest has made information available to the CLECs through its numerous loop qual tools which Qwest has represented is the same information to which its retail representatives have access. In its Proposed Findings of Fact and Conclusions of Law, Staff also found that absent evidence demonstrating that such information is insufficient or of inferior quality to what Qwest's own retail representatives have access, Staff is hesitant to order that the CLECs have access to yet another Qwest database, particularly when issues of confidentiality are present.

173. In its Proposed Findings of Fact and Conclusions of Law, Staff found that AT&T's request for access to the LFAC's database should be satisfied through the availability of such information in Qwest's Raw Loop Data tool accessed through IMA-GUI and EDI, Qwest's ADSL Qualification tool, Qwest's POTS Conversion to Unbundled Loop tool, Qwest's MegaBit Qualification tool and Qwest's Wire Center Raw

Loop Data tool. Additionally, some of the information contained in the LFACs database is proprietary and the information could be utilized to gather competitive information of competing carriers. While restriction on the use of such information is helpful, there is no way to police such activities and it ultimately could be exploited for other means. Therefore, Staff found that based upon the record, Qwest had met its obligations to provide CLECs with loop makeup information and Staff will not require Qwest to provide direct access to LFACS at this time.

175. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, AT&T states that Qwest is required to provide access to its LFACs database and any other database or source that contains information regarding Qwest's loop plant. AT&T Comments at p. 9. AT&T states that Staff's conclusion is contrary to clear and unequivocal obligations established by the FCC in the *UNE Remand Order* and recent Section 271 Orders. *Id.* AT&T went on to argue that the FCC has made clear that CLECs must have access to the same loop and loop plant information that Qwest employees have access to (not just Qwest's retail representatives) and such information may not be filtered by Qwest. *Id.* AT&T cites the following passage from the *UNE Remand Order:*

> We clarify that pursuant to our existing rules, an incumbent LEC must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install. Based on these existing obligations, we conclude that, at a minimum, incumbent LECs must provide requesting carriers the same underlying information that the incumbent LEC has in any of its own databases or other internal records.

176. AT&T also cited to the following passage from the *Kansas/Oklahoma Order:*

> In this proceeding, we require a BOC to demonstrate for the first time that it provides access to loop qualification information in a manner consistent with the requirements of the *UNE Remand Order*. In particular, we require SWBT to provide access to loop qualification information as part of the pre-ordering functionality of OSS. In the *UNE Remand Order*, we required incumbent carriers to provide competitors with access to all of the same detailed information about the loop that is available to themselves, and in the same time frame, so that a requesting carrier could make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the requesting carrier intends to install. At a minimum, SWBT must provide carriers with the same underlying information that it has in any of its own databases or internal records. We explained that the relevant inquiry is not whether SWBT's retail arm has access to such underlying

> information but whether such information exists anywhere in SWBT's back office and can be accessed by any of SWBT's personnel. Moreover, SWBT may not "filter or digest" the underlying information and may not provide only information that is useful in the provision of a particular type of xDSL that SWBT offers. SWBT must provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code or on any other basis that SWBT provides such information to itself. Moreover, SWBT must also provide access for competing carriers to the loop qualifying information that SWBT can itself access manually or electronically.

177. AT&T claims that Staff's findings inappropriately limit the information Qwest must give CLECs access to the information that is available to Qwest's retail representatives and would inappropriately allow Qwest to filter or digest the loop and loop plant information by allowing Qwest to determine the information it loads onto the raw loop data tool. AT&T Comments at p. 11. AT&T further states that it needs access to the loop and loop plant information so they can make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the requesting carrier intends to install. *Id.* In addition, AT&T states that CLECs need access to this loop information in order to determine whether they can provision service to areas that are served by IDLC loops. AT&T Comments at pps. 11-12.

178. AT&T also states that during the course of the loop workshops, obtaining information regarding where loop or loop plant information resides in Qwest's databases or back office systems that are accessible by any Qwest employee has been like pulling teeth. AT&T Comments at p. 12. AT&T states that in the Colorado Loops workshop, Qwest conceded that at least some loop plant information was in LEIS and LEAD, which are subsets of LFACs and that its engineers have access to this information. Comments at p. 12. AT&T also notes that Exhibit 5 Qwest 9 demonstrates that Qwest has the ability to use LFACs to locate loop information. *Id.* AT&T notes that Step 3 of the FOC trial process indicates that once Qwest receives an accurate LSR, it will access LFACS to attempt to assign pairs not in need of conditioning and create a design of the loop. *Id.* AT&T relies on the following language from Exhibit 5 Qwest 9:

> because LFACS may reveal information not available through the RLDT, especially with regard to loops not already connected to a switch. The RLDT provides information from the Loop Qualification Database (LQDB), which in turn is derived from LFACS and other sources. But the LQDB covers only loops connected to a switch. LFACS, on the other hand, contains information for all facilities, even those not connected to a switch, but does not contain some of the information available through the RLDT, such as the results of the MLT.

179. AT&T states that the CLECs need the ability to determine if they can provision service in an area that is served by IDLC with the services they seek to provide,

just as Qwest engineers do. AT&T states that because of the uncertainty Qwest has injected into the record on this issue, the Commission should include a provisions in the SGAT stating Qwest's obligation to afford CLECs access to all loop and loop plant information that Qwest employees have access to and, in order to determine where this information resides, the Commission should permit CLECs to audit, on an ongoing basis, Qwest's records, back office systems and databases in Arizona, to assure that Qwest is providing non-discriminatory access. This is what SBC agreed to provide in Texas and what the Texas Commission has ordered SWBT to do because of the uncertainty surrounding where this information resides.

180. AT&T recommended the following language be added to the SGAT to afford CLECs access to Qwest's loop information that is permitted under the Act and FCC Orders:

> Qwest shall provide to CLEC on a non-discriminatory basis access to all company's records, back office systems and databases where loop or loop plant information, including information relating to spare facilities, resides that is accessible to any Qwest employee or any affiliate of Qwest. CLECs shall have the ability to audit Qwest's company records, back office systems and databases in each state to determine that Qwest is providing the same access to loop and loop plant information to CLECs that any Qwest employee has access. Such audit will be in addition to the audit rights contemplated by Section 18 of this Agreement, but the processes for such audit shall be consistent with the processes set forth in Section 18. CLEC agrees the access afforded to CLEC to Qwest's records, back office systems and databases and the use by the CLEC of any information obtained under this section shall be limited to performing loop qualification and spare facilities.

181. Covad also addressed the Colorado xDSL FOC trial and Qwest's Raw Loop Data Tool in its Comments to Qwest's Supplementation of the record. It stated that Qwest's FOC and loop delivery performance and its pre-qualification tool continue to remain suspect. In support of its position Covad attached the brief it filed in Colorado regarding the xDSL FOC trial and Qwest's Raw Loop Data Tool. As stated therein, Covad undertook a contemporaneous analysis of the accuracy of the RLDT during the course of the Colorado FOC trial. It pointed out that on a basis of a review of orders submitted by Covad during the course of the FOC trial that Qwest's RLDT suffers from numerous and severe deficiencies and listed five such deficiencies. It further stated that this itemization, standing alone, demonstrates that Qwest's RLDT fails to provide CLECs with meaningful loop make-up information. Covad further stated that Qwest has failed to show that it (Qwest) is equally subject to the inaccuracy and unreliability of the RLDT in light of its half decade of direct access to and use of updated LFAC information. Further, Covad stated that it has not endorsed the RLDT since it does not believe that the RLDT is reliable or accurate.

182. Qwest, on the other hand, supported Staff's proposed Findings of Fact and Conclusions of Law, on this issue. It noted that the Multi-State Facilitator reached a similar conclusion and recommended only that Qwest ensure that it provide CLECs with information on spare facilities where IDLC is prevalent. Qwest Comments at p. 3. Qwest agreed to implement the Facilitator's recommendation, and agrees to implement the same process in Arizona. *Id.* Qwest states that AT&T's sole reason for requesting direct access to LFACs was to obtain spare facility information. Qwest Comments at pps. 3-4. Qwest states that it recently made significant enhancements to the Raw Loop Data tool to provide CLECs with spare facility information. Qwest Comments at p. 4. Qwest goes on to state that in its August 2001 IMA Release 8.0, Qwest modified the Raw Loop Data Tool to include spare or unassigned facilities and partially connected facilities. *Id.* Qwest also states that additionally, using the IMA Facility Check tool, the CLECs have the ability to determine if facilities exist to support the requested unbundled loop. *Id.* This also includes a check of spare facilities. *Id.*

183. As part of its supplementation of the record, Qwest noted that in the Colorado trial Qwest recalculated the accuracy of the RLD Tool. The resultant information is contained in Attachment 4. Qwest similarly recalculated the accuracy of RLD Tool in terms of false positives and false negatives in Arizona. Further, since the close of the workshop and completion of the xDSL FOC trial, Qwest stated that the RLD Tool has been significantly enhanced to include: loop make-up information for facilities associated with non-published and non-listed telephone numbers, real time data from LFACs for working telephone numbers and spare or unassigned facilities including sub-segments. Thus, this additional information confirms the conclusion that the issue has been closed and that the CLECs need not have direct access to the LFACs database.

184. Qwest also provided Staff with a copy of the KPMG Loop Qualification Process Evaluation to support its position that it is meeting its requirements in this regard.

185. Upon reconsideration, Staff believes that in its Proposed Findings of Fact and Conclusions of Law, it interpreted Qwest's obligations under existing FCC rules and regulations too narrowly by comparing only the loop qualification information available to a Qwest retail representative with the information available to a CLEC representative. It is clear from the language relied upon by AT&T from the FCC Orders that the inquiry cannot stop there. The *UNE Remand Order* requires Qwest to make available the same underlying information that the incumbent LEC has in any of its own databases or other internal records about the loop. This obligation requires Qwest to demonstrate that it provides CLECs with access to all of the same detailed information about the loop that is available to itself, and in the same time frame, so that a requesting carrier can make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the requesting carrier intends to install. At a minimum, Qwest must provide carriers with the same underlying information that it has in any of its own databases or internal records. **Most importantly, the relevant inquiry is not whether Qwest's retail arm has access to such underlying information but whether such information exists anywhere in Qwest's back office and can be accessed by any of Qwest's personnel.** Qwest may

not filter or digest the underlying information and may not provide only information that is useful in the provision of a particular type of xDSL that Qwest offers.

186. All in all, the scope of this inquiry is much broader than the analysis performed by Staff in its Proposed Findings of Fact and Conclusions of Law. Staff believes that Qwest must demonstrate that it provides CLECs with access to all of the same detailed information about the loop that is available to itself (not only to its own retail representatives but to other company personnel such as engineers, etc.) through its databases and other internal records. In Staff's opinion, Qwest has not made the required demonstration. Staff recommends that Qwest be required to clearly demonstrate that the same loop information available to any and all of its personnel is available to CLEC personnel, and that it provides access to loop qualification information in a manner consistent with the requirements of the *UNE Remand Order*. If it cannot do this satisfactorily by itself or through an independent audit, then it must make the LFACs database itself available to CLECs.

187. Reliance on the KPMG test results alone at this time is not enough, since it has not been demonstrated to the Staff's satisfaction that KPMG looked beyond what was available to the Qwest retail service representative. Qwest can only rely on the KPMG study if it is established that KPMG performed the appropriate inquiry and that the study conclusively demonstrates that CLECs have the same information available to all Qwest personnel, not just Qwest's retail representative, in the preorder stage. Similarly, the CLECs must have an opportunity to comment on the KPMG Test evaluation concerning Qwest's loop qualification tools, an opportunity they have not yet had in Arizona.

188. While Qwest relies upon the fact that there is competitively sensitive information contained in the LFACs database that is proprietary, to support its position not to allow CLEC access, Qwest does not explain whether it has the right under Federal law to extract this information.

189. In summary, Staff recommends that Qwest demonstrate that it provides access to loop qualification information in a manner consistent with the requirements of the *UNE Remand Order*. To demonstrate compliance with this decision, Qwest must conduct a comprehensive third party evaluation of its loop qualification processes with the participation of any interested CLECs and ACC Staff. As part of this demonstration, Qwest must show that it has not "filtered or digested" the underlying information and has not only provided information that is useful in the provision of a particular type of xDSL that Qwest offers. Qwest must also demonstrate that it provides loop qualification information on the same basis as it provides such information to itself. If Qwest cannot demonstrate through this evaluation that the CLECs have access to the same information about the loop as is available to any and all of Qwest's personnel through any Qwest database and other Qwest internal records, Staff recommends that Qwest be required to make available the LFACs database to CLECs.

190. In addition, Staff recommends that Qwest be required to add the following language to its SGAT:

> Qwest shall provide to CLEC, on a non-discriminatory basis, access to the information contained in Qwest's records, back office systems and databases where loop or loop plant information, including information relating to spare facilities resides, that is accessible to any Qwest employee or any affiliate of Qwest. An audit shall be conducted on a periodic basis, but no more often than every eighteen months, of Qwest's company records, back office systems and databases to determine that Qwest is providing the same access to loop and loop plant information to CLECs to which any Qwest Employee has access. Such audit will be in addition to the audit rights contemplated by Section 18 of this Agreement, but the processes for such audit shall be consistent with the processes set forth in Section 18.

DISPUTED ISSUE NO. 3: Concerns regarding Qwest's obligation to build. (Loop 6)

a. **Summary of Qwest and CLEC Positions**

191. AT&T argued that Qwest must build loops, and other UNEs, for CLECs under the same terms and conditions that Qwest would build network elements for itself (or its retail customers) at cost-based rates. AT&T Brief at p. 17. Qwest has agreed to build DS0 loops if Qwest has an obligation to build under its provider-of-last-resort obligations. Id. at p. 19. This offer is limited to the "first voice grade line per address." Id. Therefore, Qwest's offer does not go far enough and does not comply with the Act and the FCC's rules. Id. Qwest has now determined that orders that are currently in held status will be rejected if there are no facilities and no current construction jobs planned. Id. For new services orders placed by CLECs, if no facilities are available and no construction jobs are planned, the LSR will be rejected, rather than place the order in a held order status. Id. CLECs have expressed a number of concerns with this new policy. Id. First, Qwest's unilateral decision to reject previously held orders and to reject future orders for no facilities available is problematic on several levels. Id. The policy appears to be primarily designed to alleviate Qwest's PID performance, creating the false perception that Qwest is provisioning network elements, and as relevant here, loops, at a quantity that CLECs may demand. Id. Second, AT&T does not believe that Qwest has invoked a similar policy for its retail customers. Id. at p. 20. Therefore, Qwest is discriminating against its wholesale customers in refusing to keep track of CLEC held orders and failing to take those held orders into account in developing its construction plans. Id. Third, CLECs questioned the Qwest ability to get in queue for new facilities ahead of CLECs on the basis that Qwest will always possess superior and advanced knowledge regarding its own build plans. Id. Qwest did agree to add a provision to the SGAT that would provide CLECs with notice of major facilities build. Id. However, the proposed SGAT revision does not completely alleviate CLEC concerns that Qwest will

be able to give its customer preferential treatment in the design, development and access to future facilities builds initiated by Qwest. Id.

192. Additionally, AT&T argued that the language "provided that facilities are available" should be stricken from SGAT sections 9.2.4.3.1.2.4, 9.23.1.4, 9.23.1.5, 9.23.1.6 and 9.23.3.7.2.12.8 and any other conforming changes required to remove any limitation of Qwest obligation to build and that permit Qwest to reject LSRs for no facilities available, rather than allowing such orders to go held. Id. at p. 20. SGAT section 9.19 should be amended. Id. at p. 20-21. The Commission should also make clear that under section 9.1.2 of the SGAT and related provisions, Qwest is obligated to build UNEs, except dedicated transport, on a nondiscriminatory basis at cost-based rates under section 252(d). Id.

193. Covad stated that it concurred with AT&T's Post-Workshop Brief on this issue. Covad Brief at p. 10. However, although Covad accepts Qwest's proposal regarding the provision of notice of Qwest's future funded build plans ($100,000 or greater), it does not alleviate Covad's concerns regarding Qwest's new build and held order policies. Id. First, Covad remains concerned that Qwest will provide to itself, its affiliates, its retail customers or other parties preferential treatment when deciding, currently and in the future, when, where, why and what facilities to build. Id. Second, because Qwest refused to provide any information regarding additional equipment, such as remote DSLAMs or NGDLC or related fuctionalities, that may be deployed in connection with any and all future network builds, there is no way for Covad to determine whether it can capitalize on the advanced notice provided since such equipment will effectively preclude Covad from using that new facility. Id. at p. 11. Finally, Qwest explicitly conditioned its offer on its ability to design and implement software and associated changes necessary to permit such notification. Id. Unless and until Qwest proves that it is consistently and timely providing notice of its future funded build plans, Covad reserves the right to reopen this issue in order to examine and evaluate the reasons for, and impact of, Qwest's' failure to keep its promise. Id.

194. Qwest stated its commitment to share certain facility plans with CLECs by proposing the following language as Section 9.1.2.1.4:

> *9.1.2.1.4 Qwest will provide CLEC notification of major loop facility builds through the ICONN database. This notification shall include the identification of any funded outside plant engineering jobs that exceeds $100,000 in total cost, the estimated ready for service date, the number of pairs or fibers added, and the location of the new facilities (e.g., Distribution Area for copper distribution, route number for copper feeder, and termination CLLI codes for fiber). CLEC acknowledges that Qwest does not warrant or guarantee the estimated ready for service dates. CLEC also acknowledges that funded Qwest outside plant engineering jobs may be modified or cancelled at any time.*

Qwest Brief at p. 3. Qwest states this language adopted by the parties closes Loop issue 6. Id.

b. **Discussion and Staff Recommendation**

195. As stated by Qwest, Staff recalls that proposed language was agreed to by the parties regarding Loop 6. Staff recollects that the CLECs still had a number of concerns that the language did not resolve, however. For instance, AT&T expressed concern in the Workshop and in its Brief, with Qwest's new policy to reject LSRs if no facilities are available and no construction jobs are planned, rather than place the order in "held" status. Brief at p. 19. AT&T found Qwest's new policy to reject previously held orders problematic for several reasons. The policy, according to AT&T, appeared primarily designed to enhance Qwest's PID performance, and would create the false perception that Qwest is provisioning network elements at quantities which the CLECs demand, when in actuality it is doing no such thing. Id. AT&T also stated that Qwest's new policy is inconsistent with its policy for retail customers. Id.

196. In its Proposed Findings of Fact and Conclusions of Law, Staff agreed with AT&T that Qwest's new policy appeared to be inconsistent with Qwest's policy for its retail customers. Staff also agreed with AT&T that on its face this is a form of discrimination against Qwest's wholesale customers, since Qwest is essentially refusing to keep track of CLEC held orders (due to lack of available facilities) and it is further failing to take those held orders into account in developing its construction plans. Id. At the same time, Qwest instituted a new policy to do away with CLEC forecasts. Since Qwest is no longer considering CLEC forecasts for UNEs, the held orders may be more important as a record of demand in particular geographic areas.

197. Additionally, in its Proposed Findings of Fact and Conclusions of Law, Staff agreed with AT&T that the language agreed to which requires Qwest to provide CLECs with notice of major facilities builds, does not alleviate or address CLEC concerns that Qwest may be able to give its customers preferential treatment in the design, development and access to future facilities builds initiated by Qwest. See AT&T Brief at p. 20. Covad also stated in this regard, "...Covad remains concerned that Qwest will provide to itself, its affiliates, its retail customers or other parties preferential treatment when deciding, currently and in the future, when, where, why and what facilities to build." The fact is that if service does come up, Qwest works those on a first come first serve basis. So if the order is still in a held order bucket, it would be worked in the order in which it was received. Tr. at p. 334.

198. Staff, therefore, recommended in its Proposed Findings of Fact and Conclusions of Law that Qwest continue to place wholesale orders in "held" status, or track them in some manner, in cases (where there are insufficient or no available facilities) as it does on the retail side. Staff also recommended that Qwest be required to make conforming changes to its SGAT language.

199. Finally, Staff found in its Proposed Findings of Fact and Conclusions of Law that with regard to Qwest's obligation to build out on behalf of the CLECs, Staff does not believe that Qwest must build out to encompass any and every conceivable CLEC request. On the other hand, Qwest cannot simply ignore the need for additional facilities if customer demand is there. Qwest has acknowledged that it is the Carrier of Last Resort ("COLR") for its service areas in Arizona and as such it is obligated to provide service to all customers within its service areas, and that it will build out as required to meet its COLR and/or Eligible Telecommunications Carrier ("ETC") obligations. Staff believes Qwest should be required to construct additional facilities as it would normally construct in such circumstances if the particular request(s) for service had been made to Qwest rather than the CLEC. Qwest should be required to make conforming changes to its SGAT to reflect this requirement.

200. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, AT&T stated that it agrees with the Staff's conclusions regarding Qwest's new held order policy. AT&T goes on to state that Qwest currently builds facilities for its own retail customers and does not reject orders for its retail customers so that its retail customer's demand is factored into Qwest's build decisions. AT&T Comments at p. 15. Qwest rejects CLEC orders under similar situations and refuses to consider CLEC forecasts in its build decisions. AT&T Comments at p. 15. AT&T claims that this differing treatment clearly discriminates against Qwest's wholesale customers because Qwest refuses to track CLEC demand and by failing to take CLEC held orders into account in developing its construction plans. *Id.* AT&T argues that as a result, Qwest's retail customers will always be ahead of CLECs in the queue for new facilities because Qwest will always possess superior and advanced knowledge regarding its own build plans. *Id.* AT&T states that the existing network is not limited to actual facilities in place. *Id.* AT&T states that the Washington Initial Order requires Qwest to "construct new facilities to any location currently served by Qwset when similar facilities to those locations have exhausted." *Id.*

201. AT&T argues that an additional reason that Qwest must be required to build facilities for CLECs is that CLECs are already paying for the build of new facilities in the price they pay for UNEs. AT&T Comments at p. 16. AT&T states that in Arizona fill factors were used in the calculation of UNE prices. *Id.* The fact that the fill is included in UNE pricing, according to AT&T, means that CLECs are being charged for building new capacity, yet because of Qwest's new policy, only Qwest would be the beneficiary of the new capacity. *Id.* AT&T states that the Report should be clarified to require Qwest to construct UNEs, except for interoffice transport, to meet CLEC demand throughout its service territory. *Id.*

202. AT&T further stated that Qwest has presented no new evidence on Held Orders or construction of Loop Facilities. It goes on to state that, in addition to the requirements of the Act, the only Network Element that the FCC has said ILECs do not have to build is unbundled interoffice facilities. AT&T submitted as evidence of the FCC's intent, Section 251(f) of the *UNE Remand Order*. In this Section the FCC states "although we conclude that an Incumbent LEC's unbundling obligation extends

throughout its ubiquitous transport network, . . . we do not require Incumbent LECs to construct new transport facilities to meet specific Competitive LEC point-to-point demand requirements for facilities that the Incumbent LEC has not deployed for its own use."

203. AT&T further stated that there is absolutely nothing in the Telecommunications Act of 1996 that expresses a preference for CLECs to construct their own networks. Further, AT&T relies on the FCC's statement, which Qwest describes as encouraging CLECs to build their own facilities or "migrate towards facilities based entry" stating that Qwest ignores the latter part of this FCC statement. Finally, AT&T stated that Qwest is discriminating against CLECs by taking retail orders even when facilities are unavailable, while rejecting CLEC orders. AT&T states that Qwest's Held Order policy appears to be primarily designed to alleviate Qwest's PID performance, creating the false impression that Qwest is provisioning network elements including loops at a quantity that CLECs may demand. AT&T acknowledged that the policy change proposed by Qwest to be reflected in the SGAT revision, while helpful, does not completely alleviate the CLEC concerns that Qwest will be able to give its customer preferential treatment in the design, development and access to future facility build initiated by Qwest.

204. Covad, in its response to Qwest's supplementation, stated that persuasive authority shows that Qwest is under an obligation to build loops. Referring to the Washington State Administrative Law Judge's recommendation on the obligation to build, Covad determined that the ALJ concluded that (1) Qwest must provide access to UNE's at any location currently served by Qwest's network; (2) Qwest must construct new facilities to any location currently served by Qwest when facilities in those locations are exhausted; (3) where locations are outside of the area currently served by Qwest's network, Qwest must construct facilities under the same terms and conditions it would construct faculties for its own end-user customers.

205. Covad further stated that Qwests Held Order policy creates a serious issue for CLECs and undermines the reliability of Qwest's performance results. Covad argues that Qwest's new Build policy has the negative effect of allowing Qwest to "self improve" its performance under the PIDs without ever actually improving it's performance, since under the policy, Qwest will reject orders if no facilities will be or are anticipated to be available. Covad concludes that this will circumvent Qwest's wholesale service performance obligations; specifically PID measures OP-6B and OP-15B, simply by rejecting all orders that would go into held status due to a lack of facilities.

206. Qwest stated, in response to Staff's Proposed Findings of Fact and Conclusions of Law that the Act and FCC orders do not require Qwest to construct CLEC networks for them, where Qwest does not have facilities in place to fill a CLEC's order and has no plans to construct such facilities. Qwest Comments at p. 4. Qwest states that it is entirely appropriate for it to reject CLEC orders in such instances. *Id.* Qwest further states that while it is correct that in the past Qwest held CLEC orders, even if Qwest had no compatible facilities to fill the CLEC's request, and never would have compatible

facilities, this is precisely the situation that led to the large number of held orders for Covad which Qwest claims the CLECs vigorously and relentlessly opposed. *Id.*

207. Qwest further claims that it implemented its current policy to respond to these concerns and to give, in the words of Covad, "honesty up front" in the process. Qwest states that Staff's recommendation that Qwest go back to the policy of holding these orders serves nobody. Qwest Comments at p. 5. CLECs are denied reliability and predictability in their expectations, CLEC end users will have no meaningful information on when or if service will ever be provided, and Qwest is required to hold and track orders that will not be filled. *Id.* Qwest agrees with Staff that it has no obligation to construct facilities for CLECs under "any and every conceivable CLEC request," and thus its new policy is sound.

208. Qwest stated that it has also agreed to do the following which it believes responds to many of Staff's concerns:

- For those orders that Qwest has traditionally been required to hold and fill under the Service Quality Tariff Plan (i.e., orders that would fall into Qwest's carrier of-last-resort obligations), Qwest will hold CLEC orders and construct loop facilities for the CLEC if Qwest would have been required to construct such facilities to serve its own end user customers.

- Qwest will agree to amend SGAT Section 9.19 to state: "Qwest will assess whether to build for CLECs in the same manner that it assesses whether to build for itself."

- Qwest agrees to hold CLEC orders and add those orders to a construction request where Qwest has a planned construction job that would satisfy the CLEC's order.

- To permit CLECs to place their orders before construction is even completed, Qwest agrees to provide CLECs with advance information on its loop construction jobs on the ICONN database. The ICONN database information provides the estimated completion date for construction jobs, thereby providing CLECs with both advance information but an estimated due date.

209. Qwest's supplementation also pertained in part to Impasse Issue No. 3. To supplement the record concerning Held Orders, Qwest submitted the Colorado discussion of Held Orders in its supplemental filing. This included a discussion of why CLEC orders had been typically held, and the new policy, which Qwest distributed on March 22, 2001 through the Change Management Process ("CMP") process. In this policy the CLECs were encouraged to tell Qwest how to handle their pending Held Orders. Qwest incorporated this policy in SGAT Section 9.1.2.1.3.2. Qwest cited Covad's witness in the Washington Workshops who stated that she "applaud(s) Qwest's new build policy and honesty in terms of the ability to provision . . ." In Colorado, none of the representatives

of the CLECs present at the hearing was aware of any objection by their companies to Qwest's build policy as posted through the CICMP process.

210. Qwest also reported, in its supplemental filing, on the development of several loop qualification tools described in detail in SGAT Section 9.2.2.8, which permit CLECs to know up-front whether they will encounter any incompatibility problems. This new SGAT language should place the CLECs in a position of not having to place orders to determine if they can provide service; with the ability to make that determination at the front end of the process.

211. Qwest also submitted its regional data on ROC PID OP-15 to supplement the record. Results of this PID show that the number of orders held in the region for facility reasons dropped from 2,719 in September 2000 to 134 in July 2001 for analog (voice) loops, and from 1,841 to 45 during this same period for 2 wire non-loaded (DSL) loops. Qwest also quoted the Service Quality Tariff Plan in Arizona, which requires Qwest to report Held Orders, fill such orders, and pay penalties for delayed installations for retail customer orders for "basic Local Exchange Service" as defined in the Tariff. It further stated that under SGAT Section 9.1.2.1 these are the same orders that Qwest agrees to take and hold for CLECs and for which it commits to construct facilities.

212. Qwest stated, in its supplemental filing, that it believes that Staff's Report reflects a misimpression on Qwest's commitments to build facilities to meet demand. It further stated that its Held Order/Build position is reflected in its proposed SGAT language for Section 9.1.2.1. There, Qwest commits to build facilities to an end-user customer if Qwest would be obligated to do so to meet its Carrier of Last Resort (COLR) obligation under Arizona Law (to provide basic Local Exchange Service or its eligible telecommunication carrier obligation to provide primary basic Local Exchange Service). It further stated that Qwest also commits to follow the same assignment process it would follow for analogous retail service to determine if the facilities are available.

213. In Workshop 5, in direct response to CLEC concerns regarding its Held Order/Build Policy, Qwest believes it made a significant accommodation to CLECs that provides them with precisely the information Covad requested. Qwests commitment, which it negotiated with Covad, is set forth in SGAT Section 9.1.2.4.1.4. In the Washington Loop Workshops, in response to Covad's concern for the lack of information on deployment of Digital Loop Carrier (DLC), Qwest clarified that it provides information regarding where it has deployed or plans to deploy its DSLAMs and remote terminals. Qwest has also committed to post on the Interconnection Database ("ICONN") the Common Language Location Identifier ("CLLI") codes associated with remote terminals where DLCs exist along with the distribution areas. With this information, CLECs will know where Qwest has constructed and plans to construct loop facilities, and can adjust their marketing plans accordingly.

214. Qwest further stated that on August 10, 2001 it notified CLECs regarding the update to the ICONN database, stating that as of September 30, 2001, Qwest will notify CLECs about outside plant growth jobs that exceed $100,000. This will inform

CLECs of the number of copper pairs or fiber strands placed per distribution area in the wire centers, an estimated ready for service date, and final completion date. This information was placed on, along with additional network information, to assist CLECs with determining where and when they can provide service.

215. Qwest's obligation to build was recently addressed by the Hearing Division in its Recommended Opinion and Order ("ROO") on Checklist Item 2. Staff believes that the Hearing Division's proposed resolution is appropriate and reasonable and responds to all of the concerns of the parties expressed here. Accordingly, Staff proposes the same resolution of this impasse as that recommended by the Hearing Division for Disputed Issue No. 3 in the ROO on Checklist Item 2.

DISPUTED ISSUE NO. 4: Should Qwest be permitted to recover loop conditioning costs for loops under 18,000 feet? (Loop 8(b))

a. Summary of Qwest and CLEC Positions

216. AT&T argued Qwest is already recovering the cost of conditioning in its UNE loop charge and that this issue was deferred to the Wholesale Pricing Docket. AT&T Brief at p. 21.

217. MCIW stated that under accepted engineering principles, loops under 18,000 feet should not have bridge taps or load coils and any need for conditioning is based on an inefficiently designed loop by Qwest. WCom June 19, 2001 Br. at p. 5. MCIW also raised this issue in connection with line splitting as found in SGAT Sections 9.21.2.1.5 and 9.21.3.2.2. Id. MCIW also opposes all line conditioning charges if reconditioning is "necessary to assure the quality of the voice service on the UNE-P." Id.

218. Covad stated that it concurred with MCIW's Brief on Issue Loop 8(b). Covad June 19, 2001 Brief at p. 11.

219. Qwest argued that in the *UNE Remand Order,* the FCC specifically addressed the issue of recovery of costs for conditioning loops less than 18,000 feet and held that incumbent LECs are entitled to recover these conditioning costs. Qwest Brief at p. 23. The FCC has already rejected the arguments of some CLECs that Qwest should not be permitted to recover these costs because bridge taps or load coils should not have been placed in the network in the first place. Id. at p. 24. The FCC's Section 271 Orders also recognize that incumbents are entitled to recover their costs of loop conditioning on behalf of CLECs. Id. Qwest's position is consistent with FCC pronouncements. Id. In addition, Qwest has voluntarily undertaken a bulk de-loading project to deload loops less than 18,000 feet in those Arizona wire centers in which DLECs are concentrating their activities. Id. Qwest testified that approximately 90 percent of the wire centers in Arizona where CLECs are ordering unbundled loops have been de-loaded as part of this project. Id. at p. 24-25. Qwest has undertaken this task without seeking cost recovery from CLECs. Id. The Commission should hold that Qwest is entitled to recover the costs of conditioning loops less than 18,000 feet. Id.

of the CLECs present at the hearing was aware of any objection by their companies to Qwest's build policy as posted through the CICMP process.

210. Qwest also reported, in its supplemental filing, on the development of several loop qualification tools described in detail in SGAT Section 9.2.2.8, which permit CLECs to know up-front whether they will encounter any incompatibility problems. This new SGAT language should place the CLECs in a position of not having to place orders to determine if they can provide service; with the ability to make that determination at the front end of the process.

211. Qwest also submitted its regional data on ROC PID OP-15 to supplement the record. Results of this PID show that the number of orders held in the region for facility reasons dropped from 2,719 in September 2000 to 134 in July 2001 for analog (voice) loops, and from 1,841 to 45 during this same period for 2 wire non-loaded (DSL) loops. Qwest also quoted the Service Quality Tariff Plan in Arizona, which requires Qwest to report Held Orders, fill such orders, and pay penalties for delayed installations for retail customer orders for "basic Local Exchange Service" as defined in the Tariff. It further stated that under SGAT Section 9.1.2.1 these are the same orders that Qwest agrees to take and hold for CLECs and for which it commits to construct facilities.

212. Qwest stated, in its supplemental filing, that it believes that Staff's Report reflects a misimpression on Qwest's commitments to build facilities to meet demand. It further stated that its Held Order/Build position is reflected in its proposed SGAT language for Section 9.1.2.1. There, Qwest commits to build facilities to an end-user customer if Qwest would be obligated to do so to meet its Carrier of Last Resort (COLR) obligation under Arizona Law (to provide basic Local Exchange Service or its eligible telecommunication carrier obligation to provide primary basic Local Exchange Service). It further stated that Qwest also commits to follow the same assignment process it would follow for analogous retail service to determine if the facilities are available.

213. In Workshop 5, in direct response to CLEC concerns regarding its Held Order/Build Policy, Qwest believes it made a significant accommodation to CLECs that provides them with precisely the information Covad requested. Qwests commitment, which it negotiated with Covad, is set forth in SGAT Section 9.1.2.4.1.4. In the Washington Loop Workshops, in response to Covad's concern for the lack of information on deployment of Digital Loop Carrier (DLC), Qwest clarified that it provides information regarding where it has deployed or plans to deploy its DSLAMs and remote terminals. Qwest has also committed to post on the Interconnection Database ("ICONN") the Common Language Location Identifier ("CLLI") codes associated with remote terminals where DLCs exist along with the distribution areas. With this information, CLECs will know where Qwest has constructed and plans to construct loop facilities, and can adjust their marketing plans accordingly.

214. Qwest further stated that on August 10, 2001 it notified CLECs regarding the update to the ICONN database, stating that as of September 30, 2001, Qwest will notify CLECs about outside plant growth jobs that exceed $100,000. This will inform

CLECs of the number of copper pairs or fiber strands placed per distribution area in the wire centers, an estimated ready for service date, and final completion date. This information was placed on, along with additional network information, to assist CLECs with determining where and when they can provide service.

215. Qwest's obligation to build was recently addressed by the Hearing Division in its Recommended Opinion and Order ("ROO") on Checklist Item 2. Staff believes that the Hearing Division's proposed resolution is appropriate and reasonable and responds to all of the concerns of the parties expressed here. Accordingly, Staff proposes the same resolution of this impasse as that recommended by the Hearing Division for Disputed Issue No. 3 in the ROO on Checklist Item 2.

DISPUTED ISSUE NO. 4: Should Qwest be permitted to recover loop conditioning costs for loops under 18,000 feet? (Loop 8(b))

a. **Summary of Qwest and CLEC Positions**

216. AT&T argued Qwest is already recovering the cost of conditioning in its UNE loop charge and that this issue was deferred to the Wholesale Pricing Docket. AT&T Brief at p. 21.

217. MCIW stated that under accepted engineering principles, loops under 18,000 feet should not have bridge taps or load coils and any need for conditioning is based on an inefficiently designed loop by Qwest. WCom June 19, 2001 Br. at p. 5. MCIW also raised this issue in connection with line splitting as found in SGAT Sections 9.21.2.1.5 and 9.21.3.2.2. Id. MCIW also opposes all line conditioning charges if reconditioning is "necessary to assure the quality of the voice service on the UNE-P." Id.

218. Covad stated that it concurred with MCIW's Brief on Issue Loop 8(b). Covad June 19, 2001 Brief at p. 11.

219. Qwest argued that in the *UNE Remand Order*, the FCC specifically addressed the issue of recovery of costs for conditioning loops less than 18,000 feet and held that incumbent LECs are entitled to recover these conditioning costs. Qwest Brief at p. 23. The FCC has already rejected the arguments of some CLECs that Qwest should not be permitted to recover these costs because bridge taps or load coils should not have been placed in the network in the first place. Id. at p. 24. The FCC's Section 271 Orders also recognize that incumbents are entitled to recover their costs of loop conditioning on behalf of CLECs. Id. Qwest's position is consistent with FCC pronouncements. Id. In addition, Qwest has voluntarily undertaken a bulk de-loading project to deload loops less than 18,000 feet in those Arizona wire centers in which DLECs are concentrating their activities. Id. Qwest testified that approximately 90 percent of the wire centers in Arizona where CLECs are ordering unbundled loops have been de-loaded as part of this project. Id. at p. 24-25. Qwest has undertaken this task without seeking cost recovery from CLECs. Id. The Commission should hold that Qwest is entitled to recover the costs of conditioning loops less than 18,000 feet. Id.

b. **Discussion and Staff Recommendation**

220. MCIW argues that any need for conditioning loops is based on inefficiently designed loops and opposes any line conditioning charges if conditioning is necessary. Qwest cites the FCC's Local Competition First Report and Order, paragraph 382 in support of recovering loop conditioning costs regardless of loop length, and the UNE Remand Order, paragraph 193, for loops of less than 18,000 feet. Staff believes that Qwest's position is in accord with FCC rulings and concurs that Qwest should be entitled to recover the costs of conditioning loops less than 18,000 feet, other than the loops which Qwest conditioned in its bulk de-loading project in Arizona.

221. Staff believes that if there is loading on loops less than 18,000 feet, these loops were probably longer at one time and resulted in load coils or bridge taps in order to assure voice quality on the loop. Qwest has voluntarily undertaken a bulk de-loading project to deload loops less than 18,000 feet in those Arizona wire centers in which DLECs are concentrating their activities. Qwest has stated that approximately 90 percent of the wire centers in Arizona where CLECs are ordering unbundled loops have been de-loaded as part of this project. Qwest states that it is currently absorbing those costs that would otherwise be charged to CLECs as loop conditioning costs.

222. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, WorldCom states that ILECs such as SBC and Bell Atlantic (now Verizon) provide loop conditions for loops up to 12 kft at no charge. Those agreements with those ILECs were negotiated provisions and not arbitrated. Further, BA/Verizon offers conditioning at no charge for loops from 12kft to 18kft. WorldCom states that in the Pacific Bell interconnection agreement, Pacific Bell negotiated provisions agreeing to provide conditioning up to 12 kft. At a minimum, Qwest should follow the lead of the other ILECs and not impose charges for up to 12kft.

223. While Staff maintains its original position on this issue as contained in its Proposed Findings of Fact and Conclusions, i.e. that Qwest should be entitled to recover the costs of conditioning loops less than 18,000 feet, other than the loops which Qwest conditioned in its bulk de-loading project in Arizona, Staff does encourage Qwest to follow the lead of other RBOCs including SBC and Verizon and not impose charges for up to 12 kft.

DISPUTED ISSUE NO. 5: Should a CLEC receive a refund of the loop conditioning costs if the customer leaves within one year of installation? (Loop-8(c))

a. **Summary of Qwest and CLEC Positions**

224. AT&T stated that it is concerned regarding the quality and timeliness of delivery of conditioned unbundled loops. AT&T Brief at p. 21. Under the terms of Qwest's SGAT, the CLEC end users' experience could be adversely affected by Qwest poor performance, causing the end user to abandon the CLEC, and the CLEC would still be obligated to pay the conditioning charges. Id. AT&T originally proposed language that would refund the CLEC a pro rata portion of the conditioning charges if the customer migrated away from the CLEC within a certain period after the service was requested, irrespective of Qwest's fault. Id. AT&T now proposes the following language, which could be a new Section 9.2.2.4.1 in the SGAT:

> *9.2.2.4.1 If CLEC's end user customer, for which CLEC has ordered x-DSL capable Unbundled Loops from Qwest, (i) never receives x-DSL service from CLEC, (ii) suffers unreasonable delay in provisioning, or (iii) experiences poor quality of service, in any case due to Qwest's fault, Qwest shall refund or credit to CLEC the conditioning charges associated with the service requested. This refund or credit is in addition to any other remedy available to CLEC.*

Id. at p. 22. This language would ensure that Qwest is compensated when it performs the loop conditioning in a timely manner and delivers a quality loop, as contracted for by the CLECs. Id. If Qwest fails to do so, the CLEC should not have to bear the conditioning cost. Id. This acts as an incentive for Qwest to perform and works toward making the CLEC whole. Id. The addition of this provision would help ensure that CLECs have a meaningful opportunity to compete consistent with the intent of the Act. Id. at p. 23.

225. Covad stated that it concurred with AT&T's Post-Workshop Brief on this issue. Covad Brief at p. 11.

226. Qwest argued that because conditioning is an activity Qwest undertakes in response to a CLEC request, Qwest believes that it is entitled to recover its costs of conditioning loops, regardless of whether the end user ultimately receives DSL service from the CLEC who requests conditioning. Qwest Brief at p. 25. AT&T proposed its most recent language in Arizona which states that Qwest will refund loop conditioning costs if the customer never receives xDSL service from the CLEC, experiences "unreasonable delay" in provisioning or experiences "poor quality of service" due to Qwest fault. Id. at p. 26. The basic problem with AT&T's proposal is the drafting and implementation. Id. AT&T seeks to have a stand-alone, self-executing refund, but the circumstances under which a refund could be due are variable and subject to interpretation. Id. Terms such as "poor quality," and "unreasonable delay" are subject to

myriad interpretations that do not lend themselves to the self-executing refund AT&T seeks. Id. at p. 27.

227. Qwest is not opposed to inserting language in the billing provisions of the SGAT that would entitle a CLEC to a credit of conditioning costs if Qwest failed to perform the conditioning in a workmanlike manner or significantly missed its due date for conditioning due to Qwest fault. Id. at p. 28. Qwest asserts that to the extent a carrier believes it is entitled to a credit because of Qwest's poor performance, that issue necessarily needs to be addressed in the context of a billing dispute to permit a determination of fault. Id. AT&T's latest Arizona proposed language simply cannot be implemented without a process for determining the reason the end user did not receive xDSL service or the reason for the "unreasonable delay" or "poor quality" service. Id.

b. <u>Discussion and Staff Recommendation</u>

228. AT&T is concerned for quality and timeliness of delivery of conditioned unbundled loops and would like to see language which says that Qwest is compensated when it performs loop conditioning in a timely manner and delivers a quality loop. If Qwest fails to provide loop conditioning in a timely manner or fails to deliver a quality loop, CLECs should not bear conditioning cost.

229. Qwest has offered to insert billing language that would entitle the CLEC to a credit if Qwest failed to perform conditioning adequately or missed the due date.

230. In its Proposed Findings of Fact and Conclusions of Law, Staff stated that it believed that Qwest's proposal was reasonable for the most part and should be adopted with the following modifications.

> "If CLEC's end user customer, for which CLEC has ordered x-DSL capable Unbundled Loops from Qwest, (i) never receives x-DSL service from CLEC or (ii) has experienced a missed due date for conditioning due to Qwest, or (iii) Qwest fails to perform conditioning in a workmanlike manner, Qwest shall refund or credit to CLEC the conditioning charges paid to Qwest by the CLEC. The refund or credit is in addition to any other remedy available to CLEC.

231. In its Comments on Staff's Proposed Findings of Fact and Conclusions of Law, Qwest objected to Staff's impasse resolution. Qwest takes issue with every aspect of the Staff's proposed SGAT language:

> - Subsection (ii) would require Qwest to refund CLEC if Qwest provisioned the conditioned loop on the 16th day rather than the 15th day. Qwest states that all AT&T sought was reimbursement for "unreasonable delay." Qwest believes that AT&T's standard is

subjective and unenforceable; therefore, it continues to take issue with AT&T's language as well.

- Subsection (i) language would allow one CLEC to submit requests for conditioning on behalf of another CLEC; then when the requesting CLEC did not receive xDSL service from Qwest, Qwest would be required to refund the conditioning. This is not an unlikely scenario as CLECs admitted in Colorado workshops that in many instances an end-user customer will request DSL service from more than one DLEC. Moreover, in this scenario Qwest must refund conditioning costs to CLECs if the customer cancels the DSL order for no fault of Qwest's.

- Subsection (iii) requires Qwest to refund conditioning charges if fails to perform the conditioning in a "workmanlike manner." This term is vague, subjective, and will be difficult if not impossible to implement.

- That the refund is in addition to any other remedy is also troublesome to Qwest. Qwest states that CLECs should not be entitled to double recovery for the same performance failure. A performance measure (PID) is currently being negotiated around loop conditioning interval. If CLECs are so interested in connecting penalties to the failure to timely condition loops, a proposed augment to the QPAP is the correct forum to make the request.

232. Qwest asserts that any change to the SGAT concerning this issue is unwarranted and inappropriate. Qwest recommends adoption of the Multi-State Facilitator's language which reads as follows:

> Where Qwest fails to meet a due date for performing loop conditioning, CLEC shall be entitled to a credit equal of the amount of any conditioning charges applied, where it does not secure the unbundled loop involved within three months of such due date. Where Qwest does not perform conditioning in accord with the standards applicable under the SGAT, CLEC shall be entitled to a credit of one-half of the conditioning charges made, unless CLEC can demonstrate that the loop as conditioned is incapable of substantially performing the functions normally within the parameters applicable to such loop as this SGAT requires Qwest to deliver it to the CLEC. In the case of such fundamental failure, CLEC shall be entitled to a credit of all conditioning charges, except where CLEC asks Qwest to cure any defect and Qwest does so. In the case such cure, CLEC shall be entitled to the one-half credit identified above.

233. Upon reconsideration, Staff believes that the concerns noted by Qwest do have some merit. Staff has reviewed the language proposed by the Multi-State Facilitator and finds it acceptable in most respects. Accordingly, Staff proposes that in lieu of the language Staff proposed in its Proposed Findings of Fact and Conclusions of Law, the Multi-State Facilitator's language be utilized with the following modifications:

> Where Qwest fails to meet a due date for performing loop conditioning, CLEC shall be entitled to a credit equal of the amount of any conditioning charges applied, where it does not secure the unbundled loop involved within one month of such due date. Where Qwest does not perform conditioning in accord with the standards applicable under the SGAT, CLEC shall be entitled to a credit of one-half of the conditioning charges made, unless CLEC can demonstrate that the loop as conditioned is incapable of substantially performing the functions normally within the parameters applicable to such loops as the SGAT requires Qwest to deliver it to the CLEC. In the case of such fundamental failure, CLEC shall be entitled to a credit of all conditioning charges, except where CLEC asks Qwest to cure any defect and Qwest does so. In the case of such cure, CLEC shall be entitled to the one-half credit identified above.

DISPUTED ISSUE NO. 6: Should Qwest's Spectrum Management positions be adopted? (Loop 9a, 9b and 9c)

a. Summary of Qwest and CLEC Positions

234. AT&T stated that it supports the revised SGAT language proposed by Rhythms regarding Spectrum Management. AT&T Brief at p. 24. Rhythms proposed language best reflects competitively neutral spectrum management practices, is consistent with FCC Orders and advances the goals of Section 706 of the Act to "encourage the deployment on a reasonable and timely basis of advance telecommunications capability to all Americans." Id.

235. AT&T went on to state that Qwest has a number of problems regarding its SGAT language. Id. at p. 24. First, Qwest opposes SGAT language that would explicitly require Qwest to convert its T-1s to alternative technology where its facilities are causing interference. Id. The FCC has clearly determined that T-1s are "known disturbers" and has established an exception to the first-in-time rule for T-1s. Id. The Rhythms proposal would merely require Qwest to replace T-1s and xDSL technology where the facilities are causing interference. Id. at p. 25. While Qwest acknowledges that T-1s are known disturbers, it seeks to place limiting language on its obligations to change out T-1s. Id. The best way to resolve this dispute is to adopt the Rhythms proposed language, but permit Qwest, if no alternative technology exists in a particular case, to seek a waiver of the requirement from the State commission. Id. at p. 26. Second, Rhythms claimed that Qwest was placing T-1s on binder groups where Rhythms circuits reside and that the T-1s were causing interference sufficient to put Rhythms customers out of service. Id. No

carrier should be placing known disturbers in binder groups that could cause interference. Id. Finally, Rhythms proposes that Qwest be required to follow spectrum management guidelines in remote deployment of DSL and not remotely place facilities that will interfere with DSL services to which AT&T concurs. Id. at p. 27.

236. MCIW argued that Qwest's spectrum compatibility limitation places restrictions on rolling out loop technology that is not be consistent with emerging technologies and prevents CLECs from meeting customer needs. WCom Brief at p. 6. Qwest is required to disclose information with respect to rejection of requests for such services based on spectrum compatibility and also has the burden to demonstrate significant degradation in performance of services based on spectrum compatibility issues. Id. MCIW requests that the SGAT, consistent with the FCC requirements, be changed to read as follows:

> *Qwest will provision BRI-ISDN, DS1, or DS3 capable or ADSL capable Loops in areas served by Loop facilities and/or transmission equipment. In the event Qwest believes that the provisioning of such a service is not compatible with the Loop facilities and/or transmission equipment, Qwest will disclose to requesting carrier, in writing, within 10 calendar days of the request to provision such a service, Qwest's basis for believing that provisioning the requested service is not compatible with the Loop facilities and/or transmission facilities. Qwest will bear the full burden of demonstrating incompatibility with the requested order. Claims of spectrum incompatibility must be supported with specific and verifiable supporting information. Qwest will adhere to and incorporate industry standards in regard to spectrum compatibility as they become available.*
>
> *If Qwest claims a service is significantly degrading the performance of other advanced services or traditional voice band services, then Qwest must notify the affected carrier and allow that carrier a reasonable opportunity to correct the problem. Any claims of network harm must be supported with specific and verifiable supporting information.*

237. MCIW also supports the revised SGAT language proposed by Rhythms regarding Spectrum Management. Id. Rhythms proposed language best reflects competitively neutral spectrum management practices, is consistent with FCC Orders and advances the goals of Section 706 of the Act to "encourage the deployment on a reasonable and timely basis of advance telecommunications capability to all Americans." Id. at p. 7.

238. Covad stated that it concurred with AT&T's Post-Workshop Brief on this issue, which summarizes and is consistent with Rhythm's proposed spectrum management policy. Covad Brief at p. 11. To ensure that Qwest nc use spectrum management to control or limit the ability or right of CLECs to provide services and to compete with Qwest, Qwest must be ordered to revise its spectrum management policy and to incorporate in its entirety Rhythm's spectrum management proposal. Id.

239. Qwest stated that the FCC outlined its national policy for spectrum management in the *Line Sharing Order* and *Line Sharing Reconsideration Order*. Qwest Brief at p. 28-29. In these Orders, the FCC established general rules regarding spectrum management and turned to the Network Reliability and Interoperability Council ("NRIC"), with advice from industry bodies such as T1E1.4, to make recommendations regarding spectrum management and spectrum policy. Id. Network Channel/Network Channel Interface ("NC/NCI") codes are standard industry codes that indicate the type of service deployed on a loop. Id. at p. 30. Qwest is in the process of implementing the NC/NCI codes established by the Common Language Group for spectrum management purposes. Id. While Rhythms opposed the use of NC/NCI codes to order advanced services, the FCC determined that incumbent LECs need information regarding the advanced services deployed on their networks. Id. at p. 31. In fact, it has rejected the very position Rhythms advances and required CLECs to disclose to incumbent LECs information on CLEC deployment of DSL technology so that incumbents can maintain accurate records and resolve potential disputes. Id. Therefore, the requirement that CLECs inform Qwest of their deployment of advanced services technology is not optional since it is a requirement of the FCC's national spectrum policy. Id. Qwest does not seek this information so that it can micromanage spectrum utilization by CLECs or use NC/NCI codes for its own marketing purposes, as AT&T claims. Id. at p. 32-33. Qwest requires this information in the event of an allegation of disturbance and to determine if a service can be provided on a specific binder group. Id. Without information on the types of advanced technology deployed on its network, Qwest cannot fulfill its FCC mandated responsibilities and will be unable to provide carriers information in the event of a spectrum dispute. Id. Also, with respect to Rhythms claim that this information is proprietary and that it should not be required to share it with Qwest, the FCC has also rejected this argument as well. Id. Qwest commits to maintain the confidentiality of this proprietary information in accordance with FCC rules and provisions of the SGAT addressing protection of proprietary information. Id. at p. 34.

240. Qwest went on to state that regarding Rhythms claims that the Commission order Qwest to implement draft recommendations on remote deployment of DSL, it would be premature and an enormous waste of resources to require it to develop processes for a draft proposal that remains under discussion, and therefore subject to change, in industry forums. Qwest Brief at p. 36. Qwest believes it is entirely proper and prudent to wait until NRIC makes a final recommendation on remote deployment issues. Id. at p. 37. Exercising caution will harm no carrier. Id. Rhythms' concern centers on the alleged remote deployment of DSL problems that may have been caused by other incumbent LECs. Id. When Qwest deploys remote DSL, it locates the remote DSL further out in its network than central office-based ADSL will work. Id. Therefore,

Qwest's deployment of remote DSL will not cause an interference problem for central office-based ADSL. Qwest will place its remote DSL further out in the network until NRIC has developed spectrum management guidelines for remote deployment of DSL services. Id. Qwest has committed in SGAT § 9.2.6.1 to implement the NRIC's final recommendation on remote deployment of DSL. Id. The Commission should approve Qwest's spectrum management language for Section 9.2.6 and reject Rhythms' request that Qwest prematurely implement draft guidelines for spectrum management associated with remote deployment of DSL. Id. at p. 39.

241. Qwest also stated that the FCC identified analog T1 as a "known disturber" that can and should be segregated from other advanced services in its *Line Sharing Order*. Qwest Brief at p. 39. Additionally, the FCC also authorized State commissions to determine the disposition of known disturbers. Id. at p. 40. Qwest is complying with this FCC policy and is appropriately managing its T1s in a way that considers the innovative technology needs of CLECs by appropriately segregating disturbers. Id. Qwest's services are not automatically taking precedence over new entrant services and, accordingly, there is no basis to require further dislocation of T1 facilities. Id. Qwest's method for deployment of T1 facilities is to place the T1s in a separate binder group from other DSL services. Id.

242. Both Rhythms and AT&T stated that Qwest installs T1s that knock CLECs out of service and prohibit the implementation of DSL in the future. Id. at p. 41. Qwest disagrees with these assertions in that its engineering guidelines provide that its first choice is to deploy HDSL, a service specifically considered by TIE1, and not to place new T1 span lines out in the field. Id. If Qwest does place a T1 that somehow disturbs the service of another carrier, then Qwest commits in SGAT Section 9.2.6.5 to change that to an HDSL facility wherever possible. Id. Rhythms stated that it wanted Qwest to commit to Rhythms' suggested technology deployment. Id. Qwest, however, is not required to deploy Rhythms' preferred technology so long as the technology Qwest deploys is properly managed, and Qwest commits to move to a less interfering technology whenever possible. Id. Consistent with the FCC's focus on industry resolution of spectrum issues, Section 9.2.6.5 provides that the parties themselves, and particularly the alleged disturber, will cooperate to resolve the spectrum dispute. *Id.* at p. 42. Although Rhythms also stated that its real concern was in distribution facilities far from the central office, Qwest stated that this is a non-issue because if facilities extend far from the central office, Rhythms will not be able to provision DSL service anyway. *Id.* at p. 43. However, in the remote chance that this situation arises, there is a dispute resolution mechanism in the SGAT that will allow the parties to obtain a prompt resolution of the issue. *Id.* Qwest believes that its commitment and practice to segregate T1 facilities on separate binder groups and to move T1 facilities to other technology wherever possible is reasonable and consistent with FCC guidelines. *Id.*

243. Finally, Qwest indicated that the parties agreed that subject to resolution of the impasse issue, Qwest would supply the missing language. Id. at p. 44. Accordingly, Qwest proposed that in § 9.2.6.4 the words "the T1E1" should be substituted for "its". In addition, Qwest proposed that § 9.2.6.5 should read:

"Upon notification, the causing carrier shall promptly take action to bring its facilities/technology into compliance with *industry standards*." *Id.*

b. **Discussion and Staff Recommendation**

244. While Rhythms did not submit a brief on this issue in Arizona, it did propose SGAT language in other jurisdictions. CLECs participating in Arizona have agreed to Rhytiums language stating that it is consistent with FCC rules and advances goals of Section 706 of the Act.

245. Qwest stated that the FCC outlined its national policy for spectrum management in the *Line Sharing Order* and *Line Sharing Reconsideration Order*. In these orders, it established general rules regarding spectrum management and turned to the Network Reliability and Interoperability Council, with advice from industry bodies such as T1E1.4, to make recommendations regarding spectrum management and spectrum policy.

246. Qwest cited the FCC Line Sharing Order, paragraph 204, which states in part: "... Competitive LECs must provide Incumbent LECs information on the type of technology they seek to deploy including spectrum class information ..." (47 C.F.R. §51.23 (b) and (c)). These rules have not been overturned by T1E1.4. The FCC rules that this information (such as NC/NCI codes) are not proprietary (Line Sharing Order, paragraph 201). Therefore, Staff believes Qwest's position is fully supported by FCC decisions and that CLECs must disclose this information.

247. Qwest also stated that the FCC designated the NRIC as an advisory body on spectrum compatibility standards and spectrum management policies. The NRIC final report is due out in January 2002. Staff believes that any interim process development prior to the issuance of the NRIC report would be premature. Therefore, Staff recommends that since the FCC relies on NRIC for the development of these standards, parties should await a final decision by the FCC on spectrum compatibility standards and spectrum management policies.

248. Finally, Qwest stated that it is their practice to place T1s in separate binder groups from other DSL services. Qwest also committed to modify its language in SGAT 9.2.6.4 and 9.2.6.5 to address the CLECs concerns and close out this portion of the impasse. Specifically, Qwest will replace the word "its" in Section 9.2.6.4 with "T1E1". Staff concurs with Qwest's modification with one minor change to its SGAT language relating to Section 9.2.6.5:

> 9.2.6.5 Upon notification, the causing carrier shall promptly take action to bring its facilities/technology into compliance with *industry standards* <u>and FCC guidelines, rules and regulations</u>.

249. In its Proposed Findings of Fact and Conclusions of Law, Staff stated that it believed that the inclusion of this language would ensure that any facilities or technology will be brought into compliance with existing adopted industry standards or FCC guidelines.

250. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, AT&T states that Qwest has testified that it plans to deploy and is in fact deploying ADSL and VDSL terminals in remote premises throughout its region. Comments at p. 17. AT&T states that as this remote deployment becomes more widespread, whole neighborhoods will be cut off from being able to obtain advanced services from competitive providers. *Id.* AT&T also states that following the deployment of Qwest's DSL at a remote terminal, a customer's sole option for advanced services would be for the customer to purchase these services from Qwest. *Id.* Staff's proposed resolution to await further decisions by the FCC, allows Qwest to continue to deploy these technologies in remote locations without regard to whether such deployment will be spectrally incompatible with central office based advanced services. *Id.* Staff believes that Staff's position is contrary to the Act and impedes competition to more rural areas of the State. *Id.* AT&T states that these technologies are barriers to entry because they interfere with the performance of central office based CLEC services, making such services unavailable. *Id.* AT&T states that the Commission should require Qwest to deploy its technology in a spectrally compatible manner in order to ensure that this nascent area of competition is allowed to flourish and is not encumbered by Qwest's actions in deploying remote DSL and repeaters. *Id.*

251. WorldCom, in its Comments to Staff's Proposed Report, contends that the Staff's position is no longer a settled issue. WorldCom states that on September 14, 2001, the fifth Network Reliability and Interoperability Council (NRIC V) proposed a new recommendation. It has now entered the public domain via FCC ex parte presentations. Among other things, this recommendation calls for the rescission of the FCC requirement to disclose PSD Mask information upon loop order/provisioning. WorldCom states that in making the recommendations, the NRIC V, FG3 recommendation states:

> In the interest of wireline spectrum management and spectral compatibility, the FCC issues its Line Sharing Order, which required that certain information be shared between loop owners and those providing services on unbundled or shared copper loops. When the Line Sharing Order was adopted, the requirements for information exchange (a product of the NPRM process) seemed complete, fast and fair. Since that time, implementation of these rules have proven them to be incomplete, slowing the deployment of DSL services and causing both loop owners and service providers to incur undue expense. The recommendations NRIC FG3 propose herein provide foundational understandings,

252. WorldCom goes on to state that while the FCC has yet to act on the recommendation, the latest findings of a technical group responsible for setting industry standards should be given overriding weight. WorldCom states that its new recommendations after careful analysis of the quickly evolving technical scene. *Id.* The new recommendation recognizes, in part, that the policies that supported the original Line Sharing Order, upon which Qwest currently bases its position, has been proven incomplete and unnecessarily costly. *Id.*

253. Qwest, in its Comments on Staff's Proposed Findings of Fact and Conclusions of Law, states it does not take issue with Staff's resolution of this disputed issue. Qwest Comments at p. 7. Nonetheless, Qwest agreed to include the following language recommended by the Multi-State Facilator in its SGAT:

> Where a CLEC demonstrates to Qwest that it has deployed central-office based DSL services serving a reasonably defined area, it shall be entitled to require Qwest to take appropriate measures to mitigate the demonstrable adverse effects on such service that arise from Qwest's use of repeaters or costs of such mitigation will not be chargeable to any CLEC or to any other customer; however, Qwest shall have the right to rebut this presumption, which it may do by demonstrating to the Commission by a preponderance of the evidence that the incremental costs of mitigation would be sufficient to cause a substantial effect upon other customers (including but not limited to CLECs securing UNEs) if charged to them. Upon such a showing, the Commission may determine how to apportion responsibility for those costs, including, but not limited to CLECs taking services under this SGAT.

254. Upon reconsideration, Staff believes that the CLECs have raised some legitimate concerns. Staff accepts Qwest's proposal to include the language recommended by the Multi-State Facilator in its SGAT, with the following modifications:

> Where CLEC has deployed central-office based DSL services serving a reasonably defined area, Qwest must, upon request of a CLEC, take appropriate measures to mitigate the demonstrable adverse effects on such service that arise from Qwest's use of repeaters or costs of such mitigation will not be chargeable to any CLEC or to any other customers. Qwest shall have the right to rebut this presumption by demonstrating to the Commission by a preponderance of the evidence that the incremental costs of mitigation would be sufficient to cause a substantial effect upon other customers (including but not limited to CLECs securing UNEs) if charged to them. Upon such a showing, the Commission may determine how to apportion responsibility for those costs, including, but not limited to CLECs taking services under this SGAT. Notwithstanding, if Qwest must make changes to meet future NRIC and FCC standards; any costs Qwest incurs to meet these standards shall be borne solely by Qwest and shall not be passed on to the CLECs.

DISPUTED ISSUE NO. 7: Should Qwest perform cooperative testing on certain orders? (Loop-10(e))

a. Summary of Qwest and CLEC Positions

255. Covad argued that Qwest regularly fails and refuses to deliver loops t Covad that are capable of supporting xDSL services. Covad June 19, 2001 Brief at p. 12. Compounding the numerous problems created by Qwest's deliberate failure to conduct cooperative testing are the facts that (1) Qwest bills Covad for cooperative testing on every order it submits, even where testing was not performed, and (2) Qwest, until very recently, did not bother to track whether it did or, more likely, did not, perform cooperative testing. Id. at p. 13.

256. Covad stated that Qwest attempted to resolve this issue by offering a "back end" solution; namely, that it will waive the nonrecurring charge for the basic installation with cooperative testing option for those orders on which no cooperative testing was performed due to Qwest's fault. Id. Although this may resolve some of the financial repercussions associated with Qwest's failure to abide by its agreement, it simply does not resolve the core issue giving rise to Covad's complaint and underlying its inability to compete with Qwest – the failure to deliver a good loop. Id.

257. As Covad stated in the Workshop, it has provided Qwest with a toll-free number to facilitate the performance of cooperative testing. Id. at p. 14. Once the outside technician purportedly delivers the loop to Covad, the technician is obligated to call the dedicated number, remain on hold for no more than ten (10) minutes awaiting a Covad employee to pick up the call, then terminate after the ten minutes should no one pick up the call. Id. At that point, the technician is free to deem the circuit accepted and post the completion report. Id. However, Qwest's technicians rarely, if ever, comply with this process. Id. Covad's ACD logs, which track the number of incoming calls, the length of the hold for each incoming call, and the average length of the hold for all calls, show that no Qwest technician ever remained on hold for the entire ten minute period, but instead often hung up immediately or remained on hold an average of three minutes. Id. Qwest's failure and refusal to adhere to the agreement to perform cooperative testing demonstrably and drastically impairs Covad's ability to compete effectively with Qwest for xDSL users. Id. at p. 15.

258. Qwest stated that it appeared that there were operational issues that were impacting the processes that each carrier applied to Covad orders. Qwest Brief at p. 44. It also appeared that the parties may be mis-communicating regarding the proper proces to employ for Covad orders or providing conflicting instructions for those orders. Id. at p. 45. Additionally, it also appeared that Covad and Qwest employees may have implemented "work arounds" that not only disrupted the standard processes but distorted the number of times that Qwest allegedly did or did not perform testing. Id. Qwest remains committed to work through the Covad-Qwest operational issues to ensure that the process runs smoothly for both carriers. Id. In addition, Qwest has made several

changes to its SGAT to address the requests of CLECs. Id. at p. 46. Qwest believes these commitments should resolve any outstanding issues on this score. Id. First, Qwest has always kept records in WFA of Qwest's test results. Id. Qwest is now also tracking if it performed cooperative testing with the CLEC. Id. Second, Qwest committed in several sections of the SGAT to provide CLECs with e-mailed results of Qwest performance tests within two business days of performance of the test. Id. Thus, to the extent Covad believes Qwest is not performing its performance tests, it can seek to add this commitment to its contract. Id. Finally, Qwest recently modified its original offer regarding waiver of charges. Id. Qwest has agreed on a going-forward basis to waive the entire cost of the coordinated installation if it fails to perform cooperative testing with the CLEC based on Qwest fault, *regardless* whether the CLEC elects to forego cooperative testing. Id. at p. 47. Thus, it has agreed to waive not only the costs of the cooperative test, but the installation as well. Id. With these commitments, Qwest has a powerful incentive to perform both its performance and cooperative testing, and CLECs can obtain the hard-copy results of Qwest's performance tests. Id.

b. **Discussion and Staff Recommendation**

259. Covad's concern here is mainly with the process it has in place with Qwest for the performance of cooperative testing. Covad is troubled over the fact that Qwest fails to perform acceptance testing on approximately 40% of the loops delivered to Covad. Qwest has implemented a number of positive steps to address Covad's concerns. It is likely as Qwest claims that "workarounds" or "miscommunications" may have disrupted the standard processes in place and created problems in some instances. To remedy this, Qwest has committed to work more closely with Covad and other CLECs in the future. Qwest is also now tracking whether it meets its commitments to perform cooperative testing with the CLECs. Qwest will send the e-mail results of the test within 2 business days of performance. Finally Qwest will waive the entire cost of coordinated installation if it fails to perform the coordinated testing which it was otherwise obligated to perform. Staff views Qwest's commitments as positive steps to resolving the problems Covad and others have been experiencing with cooperative testing.

260. In its Proposed Findings of Fact and Conclusions of Law, Staff noted that the problem remains that while Qwest has agreed to waive the charge on orders for which testing was not done, it does not resolve Qwest's failure to deliver a good loop in those cases. Covad cited the FCC's Bell Atlantic New York Order, Paragraph 335 and UNE Remand Order, paragraph 13 as requirements for Qwest to provide xDSL capable loops at a "level of quality...sufficiently high to permit effective competition."

261. While part of Covad's concern was addressed; the failure of Qwest to deliver a good loop in all cases was not resolved to Staff's satisfaction. In its Proposed Findings of Fact and Conclusions of Law, Staff stated that it believed that one way to rectify this was to require Qwest to waive the charge where it does not do the testing as promised; but to require Qwest to go ahead and do the testing later (within the first 30 days after the customer receives service) at its own expense. Staff's recommendation was prompted by the number and seriousness of the issues raised by the CLECs in this

Workshop. In Staff's opinion, Covad and AT&T had raised some very serious issues with respect to Qwest's provisioning of loops to which Qwest had not effectively responded on the record. In its Proposed Findings of Fact and Conclusions of Law, Staff believed these issues needed to be resolved on the record for Qwest to be found in compliance with Checklist Item 4.

262. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, Qwest states that its results on cooperative testing in Arizona are excellent. Qwest states that it examined the results of its tracking system and, where any question remained, manually reviewed records. Qwest Comments at p. 9. Thus, Qwest states that its data is solid. *Id.* Qwest also states that its performance measures have now been audited twice and that those audits have found that Qwest is accurately reporting its results. Qwest agreed to permit data reconciliation only to provide further assurances to state commissions on the accuracy of its results. *Id*

263. In response to the specific issue concerning Cooperative Testing, and Staff's suggestion, Qwest stated that it does waive charges and perform Cooperative Testing at its own expense when Qwest misses the test due to its own fault. This is shown in SGAT Sections 9.2.2.9.3 and 9.2.2.9.5.3. Further, in Staff's Checklist Item 4 Report, paragraph 202 quoted Covad as stating that Qwest had attempted to resolve the issue by offering a "backend" solution, namely that it will waive the nonrecurring charge of the basic installation with Cooperative Testing option for those orders on which no Cooperative Testing was performed due to Qwest's fault. Covad further stated that this offer may resolve some of the financial repercussions associated with Qwest's failure to abide by its agreement, but did not resolve the core issue giving rise to Covad's complaint – the failure to deliver a good loop.

264. With the above, Qwest stated that it already satisfies the terms of the Staff's report. Moreover, Qwest stated that Covad agreed in Washington to defer this issue to the OSS Test for final resolution, and suggested to Qwest that this issue be deferred in Arizona to the OSS Test. Further, Qwest reaffirmed that it has implemented a system to track when Cooperative Testing has been requested by CLECs and performed by Qwest. Data from this tracking system show that Qwest routinely and consistently performs requested Cooperative Testing on some CLECs behalf; as follows: between July 23, 2001 and September 23, 2001 Qwest was asked to perform Coordinated Installation with Cooperative Testing on 1,379 Loops. It met its Cooperative Testing obligations on 1,303 Loops or 94.5% of the time. Qwest's data also show an improving trend from August to September, in that in August Qwest completed Cooperative Testing on 94.5% of loop orders received and in September, to date, Qwest completed 96.8% of loop orders received.

265. On the related subject of Coordinated Installations, Qwest stated that since opening the new center in Omaha in March 2001 (to manage all coordinated cutovers [the largest percentage of loops ordered]), on time performance for analog loops improved from 88.54% in March to 98.98% in July, better than the 95% Arizona TAG benchmark.

Qwest also stated that for all other loops on-time performance improved even more, from 64.10% in March to 97.84% in July, again surpassing the 95% benchmark. In its supplemental filing Qwest provided the address of the website on which these data could be verified, for PID OP-13A. Qwest referenced FCC guidance from the Bell Atlantic New York Order, which demonstrates that a BOC satisfies its hotcut obligations if it meets 90% of its installation commitments, if less than 5% of loop installations result in a service outage, and if less than 2% of all loops in service experience trouble. Given the performance data provided, Qwest stated that it meets the FCC standard.

266. Covad, in its Comments filed on October 3, 2001, stated that it is both improper and inappropriate for Qwest to submit evidence on Cooperative Testing and then to assert that such evidence conclusively demonstrates it is provisioning orders in a Section 271-sufficient manner. Covad questions the adequacy of the PIDs as well as the input data for those PIDs. Covad is one of three CLECs (AT&T and WCom being the others) which have requested a region-wide data reconciliation process to compare Qwest's data with data of each of these CLECs. Covad submitted as Exhibit 1 to its comments on Qwest's Supplementation, additional data regarding Qwest's performance of Cooperative Testing in the state of Arizona. Covad states that Qwest continues to fail to perform Cooperative Testing in a manner sufficient to satisfy Section 271, since Covad's data show that Qwest participated in Cooperative Testing on only a mere 33.73% of Covad's xDSL UNE Loops.

267. Further, with respect to this issue, Covad argued that performance results should be submitted in connection with a performance data workshop, and not in connection with a purported Supplementation of the Record on Checklist Item 4. Covad also states that it disagrees with Qwest's solution – a waiver of non-recurring charges for the loop installation, on the basis that it fails to resolve the core issue that Qwest is failing to deliver a good loop.

268. AT&T's October 5, 2001 response to Qwest's Supplementation of the Record on Checklist Item 4 stated, that as an initial matter, AT&T generally concurred with the response of Covad. AT&T further stated that it is premature to reach any conclusions regarding Qwest's provisioning of coordinated loop installations and Cooperative Testing. AT&T questioned Qwest's June and July data submitted in its supplemental filing, and the data presented concerning the number of completed Cooperative Tests on loop orders. AT&T also stated that it is likewise premature to reach any conclusions regarding Qwest's performance on Coordinated Installations, since this is an issue it intends to raise in the data workshop scheduled in Arizona in this proceeding. AT&T also referenced the Liberty Consulting data reconciliation of Qwest's performance data, particularly PID OP-13 for which AT&T has identified numerous differences between its data and Qwest's data. AT&T stated that until these data issues are resolved it is premature to reach any conclusions on Qwest's performance in provisioning loops.

269. Staff believes that the performance data submitted by Qwest supports the conclusion that it is providing a good loop to CLECs in most instances. The data

problems or PID accuracy expressed by Covad are now being reviewed by Liberty Consulting. As of the date of this report, Qwest has satisfactorily responded to many of these concerns. Nonetheless, Staff recommends that Qwest's performance be finally determined from the results of the OSS test in Arizona and from more recent performance data that is available from Qwest.

DISPUTED ISSUE NO. 8: Complaints regarding Qwest policy on employees who engage in anti-competitive behavior. (Loop 11(d))

a. **Summary of Qwest and CLEC Positions**

270. Covad argued that Qwest has failed to take the necessary steps to ensure that improper technician behavior ceases. Covad Brief at p. 16. Qwest claims that its technicians are trained and required to behave appropriately as spelled out in Qwest's Code of Conduct ("COC"). Id. However, the COC and associated "reminder" documents have already proven to be ineffective to deter and eliminate the anti-competitive conduct of Qwest's employees. Id. Even where Qwest incorporates information in its COC that would substantively address the improper conduct of its technicians, such language is accompanied by conflicting or confusing verbiage that permits ongoing improper technician conduct. Id. at p. 17. Qwest should be obligated to provide a verified assurance, from the appropriate personnel, that corrective action has been taken for every incident reported by Covad to Qwest. Id. at p. 18. Further, § 271 requires an assurance from Qwest, in the form of properly authenticated documentation, that it has in place both policies prohibiting this type of anti-competitive conduct and a mandatory disciplinary structure to deter anti-competitive conduct in the future. Id. at p. 19.

271. Qwest stated that it did not agree that the instances of behavior identified amount to "anti-competitive" behavior. Qwest June 19, 2001 Brief at p. 47. However, Qwest did state that it does take Covad's allegations extremely serious. Id. Qwest has a Code of Conduct referred to as the Asset Protection Policy, that prohibits employees from engaging in conduct that is disparaging of CLECs or otherwise anti-competitive. Id. at p. 48. Employees are required to sign this Code of Conduct as a condition of employment and violation of the Code is punishable by discipline up to and including termination. Id.

272. Qwest also disagrees with Covad's suggestion that it has not made sufficient efforts to enforce and reinforce its policy. Id. at p. 48. Qwest introduced a January 2, 2001 letter from Joseph Nacchio requiring all Qwest employees to review the Code of Conduct and acknowledge reading it. Id. Qwest also introduced its instructions to supervisor for distributing and emphasizing the Code of Conduct with occupational employees. Id. Qwest further presented evidence on its video training of technicians, which included reminders on the Code of Conduct as it applies to those employees. Id. Qwest also issued a two-page memorandum to all of its network employees that described in detail Qwest's policy for compliance with its obligations under the Act and its intolerance of anti-competitive behavior. Id. at p. 49. The Commission should find

that Qwest's policies and procedures comply with both the letter and the spirit of the Act and the Commission should find that this issue is closed.

b. **Discussion and Staff Recommendation**

273. Qwest appears to be taking positive steps in the right direction to prevent the type of anti-competitive conduct complained of by Covad in the future. Qwest listed numerous examples of its continuing efforts to enforce its Code of Conduct policies, including new training on its Code of Conduct. Nonetheless, the conduct of Qwest employees cited by Covad in its Comments, if true, is reprehensible and cannot be condoned by the Commission. For instance, Covad stated that Qwest technicians have (1) encouraged Covad end-users to use providers other than Covad, including Qwest; (2) stolen Covad loop pairs and used those pairs for Qwest services (3) failed to show up for the Covad install after pressuring the end-user to use Qwest's services, and (4) misinformed Covad customers regarding a loop's capabilities of running a Covad-offered service. Covad Comments at p. 9.[4]

274. In its Proposed Findings of Fact and Conclusions of Law, Staff believed that Qwest could do more, however. For instance Staff agrees with Covad that the language contained in the Code of Conduct may not be in "plain English" such that the average layperson would fully understand the range of conduct prohibited by the Code of Conduct. Tr. at p. 1601. Further, the Code of Conduct or "protection of assets" covers any customer information including CPNI, which dilutes its significance vis a vis Qwest's relationship with its competitors. Tr. at p. 1599. Accordingly, Staff recommends that in addition to the Code of Conduct, Qwest be required to develop separate guidelines in "plain English" which establish appropriate versus inappropriate (anti-competitive) behavior with respect to Qwest's competitors. Qwest's employees should receive annual training on these guidelines and the Code of Conduct. Employees should also be required to sign an Affidavit that they will not and have not engaged in any violations of the guidelines or engaged in any anti-competitive conduct.

275. Additionally, there is a real concern that where the CLEC initially lodges its complaint of anti-competitive conduct with a Qwest "account manager", whether the account manager is sufficiently aware of the processes that Qwest has in place for resolution of such complaints. Qwest was asked during the Workshops to provide the process that is in place to deal with complaints of this nature, but Staff is not aware that the process was ever provided by Qwest and placed into the record. See Tr. p. 1612. Because of the importance of their role in this process, Qwest's account managers should be trained on the complaint process. The account manager should also be required to follow through with the CLECs as to their respective complaints. Staff also recommends

[4] While Covad filed a Motion for Leave to Supplement the Record citing an alleged theft of two routers and some cables from Covad's collocation area in a Colorado central office, Staff agrees with Qwest that it would be difficult to determine in that instance whether this is actually evidence of "anti-competitive" conduct, or whether this was simply an apparent theft, which Qwest is also the victim of in its central offices. Qwest Response at p. 3.

that this process be included by Qwest in the record and that the process be memorialized in the SGAT and published on Qwest's web-site.

276. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, Qwest disputes Covad's allegations that its technicians engage in "anti-competitive" conduct. Qwest Comments at p. 9. Qwest has gone to great lengths to demonstrate its policies prohibiting "anti-competitive" conduct and its processes for investigating allegations when they are received. Qwest Comments at p.9. Qwest states that it:

> - Qwest has policies that prohibit misconduct, including alleged "anti-competitive" conduct by its employees;
>
> - Qwest has processes in place to investigate CLEC allegations and inform the CLEC of the results of the investigation. It is following through on those policies as demonstrated by the evidence Covad itself submitted in this proceeding;
>
> - Qwest already has informed its employees in "plain English" of their obligations to CLECs under the Code; and
>
> - Qwest takes appropriate corrective action in response to allegations of misconduct.
>
> - Qwest already requires its employees to reaffirm their commitment to the Code of Conduct annually.

277. Qwest also states that it objects to the Staff recommendation that Qwest require its employees to sign an affidavit that they will not and have not engaged in any violations of the guidelines or engaged in any anti-competitive conduct." Qwest Comments at p. 10. Qwest states that it has thousands of employees many of which have no contact with the wholesale side of Qwest's business. *Id.* Qwest further states that Staff's requirement is not tailored to any specific sector or segment of Qwest's workforce and, therefore, is both unnecessary for many employees and extraordinarily burdensome. *Id.* Further, Staff's requirement is not necessary since all employees are required to adhere to the Code of Conduct, and violation of the Code is punishable by discipline up to and including dismissal.

278. In its supplemental filing Qwest stated that the Arizona workshop was the first workshop at which Qwest and Covad discussed this issue. It further states that the issue was discussed at length in subsequent workshops and that significant additional information was provided to respond to Covad's concerns (since Covad was the principal complainant on this issue).

279. In order to clarify the record, Qwest stated, in its supplemental filing, that employees are required to sign the Code-of-Conduct as a condition of employment, and

that violation of the code is punishable by discipline up to, and including, termination. Although union contract requirements do not allow Qwest to "force" all employees to sign the code, union employees are governed by the code. If an employee refuses to sign it, the employee is still required to sign a statement that he or she attended an instruction session on the code, and the employee is then held to the terms of the code. The union contract also sets forth the process for investigation of allegations of misconduct.

280. Managers are responsible for their employees attesting to the code-of-conduct, and training for managers includes training on allegations of misconduct. As supporting evidence, Qwest attached a letter from Joseph Naccio dated January 2, 2001, which requires all Qwest employees to review the code-of-conduct and acknowledge reading it. Qwest also provides video training of technicians which includes reminders on the code-of-conduct. On May 17, 2001, Qwest introduced a memorandum describing the process for investigating allegations of anti-competitive behavior, which was also filed with Qwest's supplemental report. On May 24, 2001 Qwest issued a two page memorandum (by electronic mail and by hard copy) to all network employees that described in detail (and in "plain English") Qwest's policy for compliance with its obligations under the Act and its intolerance of anti-competitive behavior. This memorandum, and other documents described above, was attached to Qwest's supplemental filing. When presented with this memorandum in Colorado workshops, counsel for Covad expressed appreciation for Qwest's efforts.

281. Qwest further stated that during the follow-up Washington Loop Workshop on August 1, 2001 Qwest and Covad discussed an incident of theft in Colorado and Qwest's response to it. At the conclusion of this discussion at the Washington follow-up loop workshop, counsel for Covad acknowledged that Qwest had properly kept Covad apprised of Qwest's investigation and the disciplinary action Qwest took, and that Covad appreciated Qwest's request for suggestions on improving security.

282. Staff believes that Qwest, by taking the above broad range of actions identified by it in its comments, has satisfied all of Staff's recommendations but one; that processes for resolution of such complaints be memorialized in the SGAT. Therefore, Staff recommends, that conditioned on memorialization of the relevant processes in the SGAT, Qwest be found in compliance with Checklist Item 4 in this regard.

DISPUTED ISSUE NO. 9: Reciprocity of trouble isolation charges and specifics of Qwest's charges. (Loop 14)

a. Summary of Qwest and CLEC Positions

283. AT&T stated that the issue regarding reciprocity of trouble isolation charges is closed by Qwest's latest revision to this language as reflected in the "frozen" SGAT. AT&T June 14, 2001 Brief at p. 29. However, AT&T requests that Qwest add back the language that permitted the CLEC's access for testing purposes at the NID for testing, in addition to the Demarcation Point, in the third sentence of Section 9.2.5.1. Id. at p. 28-29. AT&T's position is that Qwest already recovers the cost of trouble isolation

in its unbundled loop rates. Id. This assertion is based on the models used by both AT&T and Qwest in the Wholesale Pricing Docket, which models contained a right to recover for this cost in the underlying loop rates. Id. If so, the language found in the beginning of Section 9.2.5.2 and Section 9.2.5.3 is inappropriate, and should be deleted. Id. In the alternative, the Maintenance of Service charge should be $0. Id. AT&T also stated that it will raise this issue in the UNE cost case as appropriate and expects that Qwest will conform its state-specific SGAT to commission findings in those cases. Id.

b. **Discussion and Staff Recommendation**

284. As stated in the Arizona Issues List, this issue has been closed by the parties. AT&T's Brief confirms that this issue is closed, however, the cost of testing should be deferred to the Arizona Wholesale Pricing Docket. Staff concurs that this issue is closed and agrees that any costing concerns should be raised in the Arizona Wholesale Pricing Docket.

DISPUTED ISSUE NO. 10: Should Qwest provide access to Mechanized Loop Testing (MLT) even though Qwest does not provide that functionality to itself? (Loop 24)

a. **Summary of Qwest and CLEC Positions**

285. AT&T stated that a CLEC needs the ability to perform, or to have performed on its behalf, an MLT before provisioning of that loop in order to verify that the loop can support the services the CLEC intends to provide over that loop facility. AT&T Brief at p. 29. Qwest claims that an MLT test cannot be done by a CLEC or on the CLEC's behalf because the test is invasive and may affect another provider's customer's service. Id. However, Qwest has conceded that it has the ability to perform MLT on its switched based services in that it performed a MLT every copper loop in its network in order to obtain information for the provisioning of its Megabit service. Id. at p. 30. Under the SGAT, CLECs do not have that same ability and accordingly, Qwest is not providing loops at parity to CLECs. Id. Qwest's claim that MLT is only performed for repair purposes is also rebutted by Qwest's performance of MLT on all of its copper loops to generate loop qualification data to populate its databases, which Qwest uses for its own Megabit service. Id. AT&T requests access to the same information to which Qwest personnel have access, which includes the ability to perform an MLT prior to the provisioning an unbundled loop. Id. at p. 32. This access is consistent with and required by the *UNE Remand Order*. Id.

286. Covad stated that it concurred with AT&T's Post-Workshop Brief on this issue. Covad Brief at p. 19.

287. Qwest argued that it opposed this demand because (i) Qwest retail representatives cannot perform an MLT on a pre-order basis, (ii) MLTs are performed as a part of repair, (iii) a MLT is an invasive test that takes the customer's service down for a period of time, (iv) a MLT is a switch-based test that requires the loop to be connected to

Qwest's switch, (v) no other BOC provides CLECs with a pre-order MLT, and (vi) Qwest has already given CLECs non-discriminatory access to MLT information through the Raw Loop Data ("RLD") tool. Qwest Brief at p. 50. The information contained in the RLD tool is the same raw loop information that is utilized to qualify Qwest's retail DSL service. Id. at p. 51. AT&T and Covad's demand that Qwest create the functionality to perform a pre-order MLT exceeds all requirements in the Act. Id. at p. 52. There are a number of reasons why the Commission should reject this demand. Id. First, a MLT is a switch-based test, which means the specified loop must be connected to the Qwest switch to perform the MLT. Id. Furthermore, no other BOC is providing CLECs with the ability to perform a MLT on a pre-order basis. Id. at p. 53. AT&T and Covad are demanding that Qwest create functionality that the FCC has not ordered and that no other BOC provides. Id.

288. Qwest went on to state that the MLT is an invasive test. Id. at p. 53. If the test is performed when an end user is on the line, it disconnects them. Id. On a pre-order basis, Qwest or the CLEC serving the end user would have no idea why the end user was experiencing the disconnect. Id. Thus, permitting any curious CLEC to perform random pre-order MLTs could lead to customer disruptions and needless repair calls. Id. The Commission should not order Qwest to create this functionality out of a concern that Qwest is not working to improve the quality of the information in the underlying databases. Id. at p. 55. Qwest is committed to updating the LFACs loop information that feeds the RLD tool as well as Qwest retail tools. Id. Qwest has made a concerted effort to update the database, and the quality and quantity of information in the database has grown dramatically over the past year. Id. Qwest has already populated the RLD tool with MLT information on copper loops in Qwest's 14-state territory. Id. at p. 56. The information Qwest provides not only meets AT&T and Covad's demands, but it exceeds what is available from other BOCs and even what Qwest's own retail sales operations receive. Id.

289. Finally, AT&T and Covad claim that providing CLECs with the ability to perform pre-order MLTs is essentially a "parity" issue. Id. at p. 57. As Qwest reiterated in the workshop, it does not perform MLTs as a pre-order function to provide MegaBit. Id. CLECs and Qwest retail use the same underlying information, including MLT information, to provide qualify a loop. Id. To the extent the database is updated, it is updated for both Qwest and CLECs alike in the same manner and timeframe. Id. The Commission should find that Qwest need not create the functionality for CLECs to perform MLTs on a pre-order basis.

b. **Discussion and Staff Recommendation**

290. AT&T claims that Qwest can run an MLT on a preorder basis and that CLECs cannot which means Qwest is not providing loops to CLECs at parity. Qwest responded in the Workshops that in preorder, the CLEC would not yet own the customer. Thus, there would be no way for Qwest's records to reflect that they have or should be accessing the circuit. Tr. at p. 1756. Qwest stated that in such situations it has a real

concern with allowing open access to testing of circuits by providers that don't own that customer. Tr. at 1756. Essentially, by providing it as a preorder functionality, AT&T or Covad could access a Qwest end-user's customer and put a test on their line or they could do it on each others lines. Id. For this reason, Qwest does not believe that it is appropriate to have open-ended access to a test on a preorder basis. Id.

291. Qwest also responded that the Qwest retail representative cannot perform an MLT, it is an invasive test that takes a customer's service down, is only performed as part of a repair, requires a loop to be attached to a Qwest switch, no other BOC offers it and Qwest has already given CLECs nondiscriminatory access to MLT information through the Raw Loop Data tool. Qwest states that it would have to make significant system enhancements to create an MLT preorder process, and Qwest does not know of anyone in the country that is doing that now. Tr. at p. 1760.

292. The information contained in the Raw Loop Data tool is the same required data Qwest uses to qualify Qwest's retail DSL service. Therefore, Qwest states it is providing parity in this regard and should not have to offer MLT on preorder. In its Proposed Findings of Fact and Conclusions of Law, Staff was still concerned with the issues raised by AT&T and Covad, namely that the CLECs apparently have encountered numerous problems on the quality of the loops delivered. Tr. at p. 1762. MLT preorder would offer the CLECs the ability to ensure that a good loop is delivered, where cooperative testing has not worked. Id. Therefore, while Staff agreed with Qwest that it really has no legal obligation to offer MLT preorder, Staff believed that Qwest should be required to provide loops that are in good working order and the CLECs should be assured of that from the start. In its Proposed Findings of Fact and Conclusions of Law, Staff found that the record did not demonstrate how Qwest intended to do this without cooperative testing or MLT preorder.

293. AT&T disagreed that Qwest does not have a legal obligation to provide MLT, although Staff concluded in its report on Checklist Item 4 that the information contained in the Raw Loop Data Tool is the same data Qwest uses to qualify Qwest's retail DSL service, and therefore, Qwest has no legal obligation to offer MLT on a pre-order basis. AT&T argued that an MLT would allow the CLEC to verify the presence of Digital Loop Carrier or other facilities – valuable information for assessing whether the loop is capable of providing the services the CLEC seeks to offer. AT&T then stated that if Staff position is not altered, the SGAT should be revised to state that Qwest may not, at anytime in the future, use MLT to qualify those loops it uses in its retail services on a pre-order basis. AT&T also stated that Qwest should be audited to ensure that it does not use MLT for pre-order qualification, as it has done in the past.

294. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, Qwest states that it does provide CLECs with such assurances in several different ways. Qwest Comments at p. 12. First, CLECs have the option of performing cooperative testing with Qwest. Id. Second, Qwest claims that the FCC has provided guidance on the acceptable percentage of troubles that CLECs can experience on newly installed analog loops. Specifically, Qwest stated that the FCC has found acceptable

troubles on newly installed circuits of at least 5% or less. *Id.* Qwest tracks such data under its OP-5 metric. According to Qwest the data for analog (voice) loops ordered by AT&T and 2-wire non-loaded (DSL) loops ordered by Covad meet this standard. Qwest Comments at pps. 12-13. For analog loops, Qwest states that it exceeded the 5% standard in two months (April and July) and just missed the 5% standard in May and June. Over the four months analyzed (April through July 2001), Qwest claims that 6752 analog loops of which 6437 did not experience installation troubles. Thus in this 4 month period, 95.33% of analog loops were installed without trouble exceeding the FCC's 5% standard. Qwest Comments at p. 13.

295. Qwest stated that the same is true of 2-wire non-loaded loops. Qwest Comments at p. 13. Qwest's audited performance data shows that Qwest met the FCC's 5% standard in all but July, where it just missed the 5% standard. Over the most recent four months, Qwest states that it provided 2-wire non-loaded loops without trouble 96.98% of the time, well in excess of the FCC's 5% standard. *Id.*

296. According to Qwest, these data show that Qwest is providing CLECs with loops that are in good working order, and CLECs are assured of that from the start. Qwest Comments at p. 14. Additionally, the OP-5 measure is part of the Performance Assurance Plan, so Staff can be assured that the performance will be monitored and Qwest will be penalized if the performance is degraded. *Id.* Qwest has demonstrated to Staff's satisfaction that, based upon its audited performance data, it is providing loops in good working order a large percentage of the time.

297. Staff maintains its original position on this issue which is that Qwest does not have to provide MLT for preorder. While the performance data provided by Qwest shows that it is providing loops in good working condition in most instances, Staff defers the outcome of the issue of Qwest's ultimate performance to CGE&Y's final report on the OSS test in Arizona, and to a review of more recent commercial data.

DISPUTED ISSUE NO. 11: Whether Qwest will redesignate interoffice facilities as loop facilities after all other loop facilities have been utilized? (Loop 25)

a. Summary of Qwest and CLEC Positions

298. AT&T argued that if the distribution facilities are at exhaust between two Qwest offices and Qwest receives orders for UNE loops that could be filled by re-designating those facilities as distribution facilities, Qwest should be required to do so to meet CLEC demand. AT&T Brief at p. 32. Qwest presented no evidence that it was Qwest's policy to not redesignate interoffice facilities as distribution facilities. Id. at p. 33. AT&T is only requesting such re-designation if facilities are at exhaust in order to meet CLEC demand for UNEs, rather than denying the CLEC the ability to serve its customers. Id.

299. Covad stated that it concurred with AT&T's Post-Workshop Brief on this issue. Covad Brief at p. 20.

300. Qwest argued that AT&T's demand is both unfounded under the Act and unreasonable in terms of the technical configuration of Qwest's network. Qwest Brief at p. 59. AT&T claims that Qwest is obligated to re-designate interoffice transport facilities as loops "because they could do that for themselves." Id. at p. 60. AT&T presented no evidence whatsoever to support this blanket assertion. Id. Qwest does not re-designate interoffice facilities as loops for itself. Id. Because Qwest does not re-designate IOF as loop facilities for itself, it is not obligated to do so for the CLECs. Id. Qwest's general practice and part of its engineering process is to transition IOF to loop facilities when an entire IOF copper plant is retired and replaced by fiber. Id. at p. 61. It is and has been Qwest's practice to "reuse" these IOF facilities whenever the entire plant is in good enough shape to use as loop facilities. Id. AT&T presented no evidence demonstrating that converting IOF to loop facility on an *ad hoc* basis is technically advisable given Qwest's plant configuration for IOF. Id. In addition, AT&T presented no evidence that Qwest is treating CLECs differently than it treats itself for purposes of IOF reassignment. Id. The Commission should deny AT&T's demand that Qwest convert working IOF to loop facilities. Id.

b. **Discussion and Staff Recommendation**

301. AT&T says its recommendation makes sense in light of Qwest's refusal to build facilities to meet CLEC demand, and since there is no evidence that it is Qwest's policy not to re-designate interoffice facilities as distribution facilities.

302. Qwest, however, states that it does not re-designate IOF as loop facilities for itself, so there is no parity issue. However, Qwest transitions IOF to loop facilities when an entire IOF copper plant is retired and replaced by fiber.

303. Qwest's general practice and part of its engineering process is to transition IOF to loop facilities when an entire IOF copper plant is retired and replaced by fiber. It is Qwest's practice to "reuse" the IOF facilities whenever the entire plant is in good enough shape to use as loop facilities. No evidence was presented to indicate that it would be technically feasible for Qwest to do this for individual IOF facilities on an ad hoc basis as requested by AT&T. In its Proposed Findings of Fact and Conclusions of Law, Staff requested more in the way of an explanation from Qwest as to why it is not technically feasible to do as AT&T suggests. Staff also requested that Qwest specify in its SGAT its policy with regard to use of IOF copper plant as distribution when an entire IOF copper plant is retired and replaced by fiber, and how it would make such information available to the CLECs on a timely basis.

304. In its Comments to Qwest's supplementation, AT&T continued the position that Qwest should redesignate Interoffice Facilities where loop facilities are at exhaust. AT&T expressed the point of view that the burden of proof is on Qwest to demonstrate technical infeasibility, rather than demonstrating technical feasibility to

redesignate IOF facilities in the manner AT&T has requested. AT&T claimed that access to the loop occurs at the splice box/waffle case, and both IOF and exchange fiber pass through the slice box/waffle case. Therefore, AT&T claimed that all fibers are equally available for access as loop facilities. AT&T further claimed that it is technically feasible to take one of the currently designated IOF fibers and move it within the waffle splice box to the portion where loop access is facilitated, since the positioning in the waffle splice boxes is solely for convenience.

305. AT&T further claimed that, although IOF fiber is typically continuously spliced through to the next central office or exchange, this does not mean that the fiber cannot be stubbed off at the waffle splice case in order to be accessible for use as a loop. It further acknowledged that this work will require some effort by Qwest, but states that it is not difficult or technically infeasible. AT&T finally requested that to the extent Staff's recommendation is not altered, the SGAT be revised to state that Qwest may not redesignate Distribution Facilities as Interoffice Facilities and may not re-designate Interoffice Facilities as Distribution Facilities, and that Qwest should be audited to ensure it does not violate this requirement.

306. By way of explanation, Qwest stated that it and AT&T discussed the issue in Colorado, Washington and Oregon and Qwest provided transcript excerpts to supplement the Arizona record and provide the additional information Staff cites.

307. Qwest stated that IOF fiber is normally at the center of the sheath and has to be continuously spliced in an inside concealed compartment or "waffle case" to the next central office or exchange. Therefore it is not available for redesignation. Further, exchange fiber is spliced on the outside of the waffle case, drops off, tapers down and is peeled off in manholes between central offices, and is not part of the contiguous fibers that go from one central office to another.

308. In summary, Qwest explained that: IOF have a different appearance with the Central Office than exchange fiber. The IOF fiber is normally at the center of the sheath and has to be continuously spliced in an inside compartment, or "waffle case" to the next central office or exchange. Therefore, it is not available for redesignation as loop facilities. Meanwhile, exchange fiber is spliced on the outside of the waffle case, drops off, tapers down and is peeled off in manholes between central offices, and is not part of the contiguous fibers that go from one central office to another. (See May 25, 2001 Colorado Transcript at 110 – 114 for a detailed description).

309. Staff believes that Qwest has responded to its concerns through its supplementation of the record. Staff recommends that Qwest not be required at this time to convert individual IOF to distribution facilities. However, Staff continues to recommend that Qwest include in its SGAT its general practice to "reuse" IOF facilities whenever the entire IOF copper plant is retired and replaced by fiber and the facilities are in good enough shape to use as loop facilities.

F. COLORADA FOC TRIAL REULTS

310. In paragraph 234 of Staff's report on Checklist Item 4, it stated that there were other serious issues raised regarding FOCs and Qwest's policies with respect to them, and that Qwest had committed to bring Colorado changes it would be making to its processes to improve overall performance on FOCs to Arizona in its supplemental filing. Qwest submitted the Colorado Record as a supplement to this record on September 18, 2001. As shown, Qwest conducted a two-month trial to determine the propriety of moving from a 24 hour FOC to a 72 hour FOC for xDSL loops (two wire non-loaded loops, ISDN capable loops, ADSL compatible loops and xDSL-1 Loops).

311. The data from the two-month trial show that Qwest submitted well in excess of 90% of FOCs on time for xDSL type loops (The Arizona TAG set a 90% benchmark for such FOCs). Qwest stated on page 8 of its 9/24/01 Supplementation that, while Covad disputes the percentages, Covad agrees with Qwest that the 72 hour FOC is appropriate. Under the new process all xDSL orders will be included in the FOC Performance Measure. Additionally, the 72 hour FOC allows Qwest adequate time to verify the existence of appropriate facilities and, if no such facilities are readily available, to determine (through an 11 step process) whether Qwest can find alternative facilities to accommodate the CLEC's request. Finally, Qwest stated that it is prepared to bring the process improvements from the FOC trial to Arizona.

312. Finally, AT&T stated that Qwest has failed to demonstrate that its FOC and loop delivery performance and pre-qualification tools are sufficient. AT&T disagrees that the FOC trial provides any meaningful evidence of Qwest's performance. As the Colorado Transcript provided by AT&T reveals, there were significant disputes regarding the data results, and the business rules under which the test was conducted. The CLECs agreed ultimately that Qwest could take its request for a 72-hour FOC to the ROC and TAG (Arizona) processes. In addition the CLECs agreed that Qwest's performance could be more accurately measured as part of the OSS Test Process.

313. In its supplemental filing Qwest cited the new center in Omaha and process improvements. It provided data for the period April through July which indicated significant improvement in on-time performance for analog loops and timing for coordinated cuts. It stated that it does waive the charge for Cooperative Testing if Qwest does not provide this testing properly and timely, and stated that it has implemented a system to track the degree to which it is performing Cooperative Testing when requested.

314. With regard to FOC performance, Qwest supplemented the Arizona Record with Colorado data which shows that it exceeds the benchmark of 90% (with which Covad concurred).

315. The overall issue of provisioning CLECs with quality loops in a timely manner focuses mainly on the issues of Coordinated Installations, Cooperative Testing and FOC Performance. Thus, Staff recommends that, on the basis of the supplemental filing, and on the condition of satisfactory performance through the completion of OSS Testing and, subject to bringing the FOC process improvements to Arizona (which Qwest has committed to do, but which has not yet been done to Staff's knowledge) that Qwest be considered in conditional compliance with Checklist Item 4.

g. Verification of Compliance

316. The parties were able to resolve many of their concerns with Qwest's SGAT through the Workshop process. Staff has resolved the remaining impasse issues and Qwest should be required to revise its SGAT to incorporate those impasse resolutions.

317. Qwest has agreed to allow any and all CLECs the ability to opt into any of the revised SGAT provisions resulting from these Workshops.

318. In its Proposed Findings of Fact and Conclusions of Law, Staff stated that if its analysis stopped here with consideration of the SGAT language only, Staff would recommend that Qwest be found in compliance with Checklist Item 4.

319. However, the CLECs and in particular Covad and AT&T, had raised some very serious issues based upon actual experience with Qwest's provisioning of loops in Arizona. In its Proposed Findings of Fact and Conclusions of Law, Staff recognized that Qwest claimed to have implemented various "fixes" with regard to the allegations raised. However, in some instances, Qwest never supplemented the record as it had agreed to in the Workshops with information to rebut the allegations and the record has now closed. In other instances the fixes have simply not been subject to the light of day yet. In other words, the so-called "fixes" Qwest had put in place have not been determined to be effective in resolving the problems raised.

320. For instance, Qwest Witness Liston referred to an additional mechanization process to track the 72 hour response time for a FOC on xDSL orders. That, according to Witness Liston, is the trigger for the sales representative to determine whether they have received the information back from the network on whether or not Qwest can provision. Although the mechanization process was implemented in the State of Colorado, there was nothing in the record at the time Staff issued its Proposed Findings of Fact and Conclusions of Law to indicate that this process has also been implemented in the State of Arizona. See Tr. at pps. 34-36. In addition Qwest represented that moving the FOC commitment to 72 hours from 24 hours for xDSL loops, it would provide for better communication between the CLEC and Qwest in terms of what the due date would be and Qwest's ability to meet the due date. Tr. p. 1497. However, these issues have never been brought back to Arizona for discussion and resolution, as Qwest indicated that they would be.

321. There were also other serious issues raised regarding FOCs and Qwest's policies with respect to them. There were also serious concerns raised regarding the accuracy of the various Qwest loop qualification databases, which were again to be tested as part of the Colorado trial. Qwest committed to bring the Colorado data back into the Arizona record and the changes it would be making to its processes to improve overall performance on FOCs and database accuracy, two of the primary issues in this case. Tr. at p. 64. Qwest had not done this so some of the assertions of the CLECs stand unrebutted at this time. While Qwest did respond in one Workshop that they had information that database accuracy had gone from 30% accuracy to 80% accuracy, there is nothing to support this or to indicate that the problems raised by the CLECs have experienced a corresponding decrease.

322. At the time Staff issued its Proposed Findings of Fact and Conclusions of Law, serious concerns were raised regarding held orders and the adverse impact this was having on the CLECs ability to compete with Qwest. See Tr. p. 385. It was Staff's understanding that Qwest's response was to do away with the CLEC forecast process, adopt a position that Qwest was not responsible for build outs on behalf of the CLECs, and do away with its held order policy on orders which could not be processed due to lack of availability of facilities. In an attempt to compromise the issue, Qwest agreed to give the CLECs the location of major build out projects that have been funded. While certainly this may be of some benefit to the CLECs, Staff believed the underlying problems are still there and they are such that they cannot help but create obstacles to doing business in Arizona. In short, some serious concerns remained at the time Staff issued its Proposed Findings of Fact and Conclusions of Law for which no solution had been offered by Qwest or agreed to by the parties and/or demonstrated to actually work to resolve the problems, associated with the unavailability of facilities.

323. Further, there were no Qwest policies at that time that would have ensured that once facilities are built that CLECs will have access to them at the same time and basically on a parity basis with Qwest.

324. Another very serious problem at the time was expressed by both AT&T and Covad. Both reported that they were having substantial problems with coordinated conversions to the point where Covad had to stop doing them because its customers were becoming too upset. Tr. p. 502. Covad stated that coordinated conversions were important to it because there are such facility shortages that one of the ways it can help fix that problem is doing a conversion from another line. Tr. p. 502. Qwest has stated that it has a coordination center and is providing training on coordinated installations, but there is nothing in the record to indicate that either AT&T or Covad's concerns have been resolved and that the fixes are working to improve Qwest's performance.

325. Given the seriousness of the allegations, Staff could not in its Proposed Findings of Fact and Conclusions of Law recommend that Qwest be found to comply with Checklist Item 4. At that time, Staff stated that if actual commercial usage data and/or performance data along with the Independent Third Party OSS Test in Arizona

should demonstrate that the concerns expressed by Covad and AT&T are no longer valid or have been addressed by Qwest, or if Qwest or the CLECs submit additional information which indicates that the problems have been resolved, then Staff will modify its recommendation.

326. Staff allowed Qwest an opportunity to supplement the record on Checklist Item 4 with additional information and data to rebut and/or rectify the concerns raised within 10 days; and that other parties be allowed 7 days to respond. Qwest filed its supplementation on September 24, 2001. AT&T and Covad filed comments to Qwest's supplementation of the record on October 5, 2001 and October 9, 2001 respectively. The issues raised in Qwest's supplemental filing will be addressed in a separate report.

327. As a result of the supplementation submitted by Qwest, and Staff's analysis of it and the Comments of the parties, Staff believes that Qwest has demonstrated that its complies with the requirements of Checklist Item 4 subject to review of the results of the OSS test conducted by CGE&Y, and Qwest's implementation of the impasse resolutions recommended by Staff herein.

II. CONCLUSIONS OF LAW

1. 47 U.S.C. Section 271 contains the general terms and conditions for BOC entry into the interLATA market.

2. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-281 and 40-282 and the Arizona Commission has jurisdiction over Qwest.

3. Qwest is a Bell Operating Company as defined in 47 U.S.C. Section 153 and currently may only provide interLATA services originating in any of its in-region States (as defined in subsection (I)) if the FCC approves the application under 47 U.S.C. Section 271(d)(3).

4. The Arizona Commission is a "State Commission" as that term is defined in 47 U.S.C. Section 153(41).

5. Pursuant to 47 U.S.C. Section 271(d)(2)(B), before making any determination under this subsection, the FCC is required to consult with the State Commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).

6. In order to obtain Section 271 authorization, Qwest must, inter alia, meet the requirements of Section 271(c)(2)(B), the Competitive Checklist.

7. Section 271(c)(2)(B)(iv) of the Telecommunications Act of 1996 requires a section 271 applicant to provide or offer to provide access to "[l]ocal loop transmission

from the central office to the customer's premises, unbundled from local switching or other services."

8. Section 271(c)(2)(B)(ii) of the Act requires a 271 applicant to show that it offers "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251 (c)(3) and 252(d)(1)."

9. Section 251(c)(3) establishes an incumbent LECs "duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of [section 251] . . . . and section 252".

10. As a result of the proceedings and record herein, Qwest has demonstrated that it complies with the requirements of Checklist Item 4, subject to satisfactory performance in the OSS test and implementation of the impasse resolutions recommended herein.