

**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

SEPTEMBER 14, 2001

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 Corporation¹, 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. Following are Staff's Proposed Findings of Fact and Conclusions of Law and its proposed resolution of all impasse issues on loops.

B. DISCUSSION

1. Checklist Item No. 4

a. FCC Requirements

4. 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."

5. 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)."

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 WES T have been changed to Qwest.

6. 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”.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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

12. 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.

13. 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.

14. 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

15. 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.

16. 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 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.

17. 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.

18. 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 copper 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.

19. 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.

20. 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.

21. Qwest has undertaken a series of bulk deloading projects in Arizona which 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.

22. 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.

23. 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.

24. 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.*

25. 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 segment 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.*

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.*

31. 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.*

32. 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.*

33. 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.

34. 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.*

35. 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

36. 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.

37. 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.

38. 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.

39. 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

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

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

47. 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.

48. 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.

49. 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.

50. 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.

51. 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.

52. 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.

53. 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.*

54. 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.*

55. 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.

56. 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.

57. AT&T stated its concerns over Qwest’s SGAT in that 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.

58. 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.

59. 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.

60. 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.

61. 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.

62. 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.

63. 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.

64. 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.*

65. 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.*

66. 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.*

67. 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

68. 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.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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.

74. 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.

75. 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.

76. 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.

77. 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.

78. 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.

79. 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.

80. 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.

81. 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.

82. 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.

83. 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.

84. 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.

85. 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.

86. 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.

87. 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.

88. 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.

89. 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.

90. 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.

91. 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.*

92. 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.*

93. 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 DLS 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.*

94. 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.

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 anticompetitive behavior.

95. 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.

96. 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.

97. 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.

98. In the Workshops, Covad also referenced several (3) policy 3-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.

99. 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.

100. 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.

101. 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.

102. 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

103. 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.

104. 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.

105. 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.

106. Regarding performance measurements, Qwest, along with the Arizona Technical 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.

107. 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.

108. 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.

109. 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.

110. 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.

111. 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.

112. 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.

113. Regarding Section 9.2.2.2, Qwest agrees with AT&T’s request to drop the 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.

114. 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.

115. 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.

116. 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.

117. 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.

118. 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.

119. 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.

120. 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.

121. 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.

122. 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.

123. 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.

124. 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.

125. 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.

126. 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.

127. 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.

128. 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.

129. 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.

130. 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.

131. 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.

132. 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.

133. 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.

134. 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.

135. 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.

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

137. 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.

138. 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.

139. 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

140. 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

141. 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.

142. 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.

143. 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.

144. 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.

145. 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.*

146. 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.

147. 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.*

148. 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.*

149. 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) relates 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.*

150. 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.*

151. 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.

152. 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

153. 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.

154. 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. Nonetheless, 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 recommends that Qwest be required to also include the new provisioning intervals in Arizona.

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

155. 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.

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

157. 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.

158. 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.

159. 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 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

160. 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

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

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.

161. 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. Staff does not believe that such access would be appropriate at this time for the following reasons. Staff believes 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. 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.

162. 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 finds that based upon the record, Qwest has 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.

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

a. Summary of Qwest and CLEC Positions

163. 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.*

164. 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.*

165. 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 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 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.*

166. 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

167. 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.

168. Staff would agree with AT&T that Qwest's new policy appears to be inconsistent with Qwest's policy for its retail customers. Staff also tends to agree 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.

169. Additionally, 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.

170. Staff, therefore, recommends 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 recommends that Qwest be required to make conforming changes to its SGAT language.

171. In addition, 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.

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

172. 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.

173. 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.

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

175. 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

176. 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.

177. 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, however, Staff would note that this position does not appear to be consistent with Qwest's position in the Wholesale Pricing Docket. The actual costs and charges associated with conditioning should be resolved in the Wholesale Pricing 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? (Loop-8(c))

a. Summary of Qwest and CLEC Positions

178. 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.

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

180. 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.

181. 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. Discussion and Staff Recommendation

182. 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.

183. 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.

184. Staff believes that Qwest's proposal is 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.

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

a. Summary of Qwest and CLEC Positions

185. 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.

186. 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.

187. 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.

188. 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.

189. 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 not 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.*

190. 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.

191. 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.

192. 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.

193. 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.

194. 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

195. 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 Rhythms language stating that it is consistent with FCC rules and advances goals of Section 706 of the Act.

196. 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.

197. 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.

198. 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.

199. 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* and FCC guidelines, rules and regulations.

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

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

a. Summary of Qwest and CLEC Positions

201. Covad argued that Qwest regularly fails and refuses to deliver loops to 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.

202. 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.

203. 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.

204. 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 process 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 emailed 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

205. 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.

206. Nonetheless, 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."

207. While part of Covad's concern has been addressed herein; the failure of Qwest to deliver a good loop in all cases has not been resolved to Staff's satisfaction. Staff believes that one way to rectify this is 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 is concerned with the number and seriousness of the issues raised by the CLECs in this Workshop. In Staff's opinion, Covad and AT&T have raised some very serious issues with respect to Qwest's provisioning of loops to which Qwest has not effectively responded on the record. Staff believes these issues need to be resolved on the record for Qwest to be found in compliance with Checklist Item 4.

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

208. 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.

209. 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.

210. 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

211. 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

212. Staff believes that more can be done, 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.

213. 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.

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.

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 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.

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

a. Summary of Qwest and CLEC Positions

214. 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

215. 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

216. 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.*

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

218. 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.*

219. 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.*

220. 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

221. 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.*

222. 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.

223. The information contained in the Raw Loop Data tool is the same required data Qwest uses to qualify Qwest's retail DSL service. Therefore, as Qwest states it is providing parity in this regard and should not have to offer MLT on preorder. Nonetheless, Staff is 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 Qwest is correct that it really has no legal obligation to offer MLT preorder, Qwest should be required to provide loops that are in good working order and the CLECs should be assured of that from the start. The record does not show how Qwest intends to do this without cooperative testing or MLT preorder.

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

224. 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 to 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.*

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

226. 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 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

227. 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.

227. 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.

228. Staff concurs with Qwest on this issue. 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. However, Staff would like more in the way of an explanation from Qwest as to why it is not technically feasible to do as AT&T suggests. Qwest should however 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.

g. Verification of Compliance

229. 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.

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

231. If our analysis stopped here with consideration of the SGAT language only, Staff would recommend that Qwest be found in compliance with Checklist Item 4.

232. However, the CLECs and in particular Covad and AT&T, have raised some very serious issues based upon actual experience with Qwest's provisioning of loops in Arizona. We recognize that Qwest claims 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 has put in place have not been determined to be effective in resolving the problems raised.

233. 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 is nothing in the record 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.

234. 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 has not done this so some of the assertions of the CLECs stand un rebutted 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.

235. 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 is 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 believes 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 remain for which no solution has 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.

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

237. Another very serious problem 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.

238. Given the seriousness of the allegations, Staff cannot at this time recommend that Qwest be found to comply with Checklist Item 4. 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.

239. Finally, Staff recommends that the record on Checklist Item 4 be reopened and that Qwest be allowed to supplement the record 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.

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 not fully demonstrated that it complies with the requirements of Checklist Item 4. In order for Staff to be able to recommend to the Commission that Qwest meets the requirements of Checklist Item 4, Qwest must address the concerns raised herein.

11. Qwest’s compliance with Checklist Item 4 is also contingent on its passing any relevant performance measurements in the Third-Party OSS test now underway in Arizona.