**BEFORE THE ARIZONA CORPORATION COMMISSION**

Arizona Corporation Commission
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WILLIAM A.MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

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

DOCKET NO. T-00000A-97-0238

DECISION NO. 64630

**ORDER**

Open Meeting
, 2002
Phoenix, Arizona

**BY THE COMMISSION:**

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

**FINDINGS OF FACT**

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

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

3. Section 271(c)(2)(B)(ii) of the 1996 Acts requires a section 271 applicant to show that

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

it offers "[n]ondiscriminatory access to network elements on an unbundled basis" in accordance with "the requirements of sections 251(c)(3) and 252(d)(1)."

4. Section 251(c)(3) of the 1996 Act requires incumbent LECs' ("ILECs") to provide "nondiscriminatory access to network elements on an unbundled basis" in accordance with the "requirements of this section and Section 252." Section 251(d)(1) of the 1996 Act requires the FCC to establish regulations to determine which network elements must be provided on an unbundled basis.

5. Section 251(d)(2) of the 1996 Act requires the FCC, when determining what network elements should be made available, to consider, at a minimum, whether "access to such network elements as are proprietary in nature is necessary," and whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."

6. In its *UNE Remand Order*[2], the FCC applied the "necessary and impair" analysis and released its revised list of unbundled network elements ("UNEs") under Section 251(c)(3) which included, as set forth in Rule 51.319, loops, sub-loops, NIDS, local circuit switching, dedicated and shared transport, dark fiber, signaling, call-related databases, and Operations Support Systems ("OSS").

7. Pursuant to Section 251(c)(2), such interconnection must be (1) provided "at any technically feasible point within the carrier's network;" (2) "at least equal in quality to that provided by the local exchange carrier to itself or . . . [to] any other party to which the carrier provides interconnection;" and (3) provided on rates, terms, and conditions that are "just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of [section 251] . . . and section 252.

8. Section 252(d)(1) states that "[d]eterminations by a State Commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of [section 251(c)(2)] . . . (A) shall be (i) based on cost . . . of providing the interconnection . . . and (ii) nondiscriminatory,

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[2] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, FCC 99-238, (Rel November 5, 1999).

and (B) may include a reasonable profit."

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

10. On February 8, 1999, Qwest filed a Notice of Intent to File with the FCC and Application for Verification of Section 271(c) Compliance ("Application"), and a Motion for Immediate Implementation of Procedural Order. On February 16, 1999, AT&T Communications of the Mountain States, Inc. ("AT&T"), GST Telecom, Inc. ("GST"), Sprint Communications Company, L.P. ("Sprint"), Electric Lightwave, Inc. ("ELI"), MCI WorldCom, Inc., on behalf of its regulated subsidiaries ("MCIW"), and e-spire Communications, Inc. ("e-spire") filed a Motion to Reject Qwest's Application and Response to Qwest's Motion.

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

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

13. In its December 8, 1999 Procedural Order, the Commission instituted a collaborative workshop process to evaluate the non-OSS Checklist Items. The December 8, 1999, Procedural Order directs Commission Staff to file draft proposed findings of fact and conclusions of law for review by the parties within 20 days of each Checklist Item being addressed. Within ten days after Staff files its draft findings, the parties are to file any proposed additional or revised findings and conclusions. Staff has an additional ten days to issue its Final Recommended Report.

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

15. On October 10, 2000, the first Workshop on Checklist Item No. 2 (Unbundled Network Elements – UNEs) took place at Qwest's offices in Phoenix. Parties appearing at the

Workshop included Qwest, AT&T, Sprint, ELI, MCIW, e-spire, Eschelon Telecom of Arizona, Allegiance Telecommunications, Z-Tel Communications, Inc. and the Nebraska Public Service Commission. Qwest relied on its Supplemental Affidavit filed on July 21, 2000. AT&T, MCIW, e-spire, Z-Tel and Eschelon filed Additional Comments on September 21, 2000. Qwest filed Rebuttal Comments on September 29, 2000, and Supplemental Rebuttal Comments on October 31, 2000.

16. On November 20, 2000, another Workshop convened to resolve outstanding issues regarding Checklist Item No. 2, and on April 9, 2001, a follow-up workshop convened on UNE Combinations.

17. The parties were unable to resolve many issues at the workshops, and Checklist Item No. 2 is a "disputed" checklist item.

18. On May 18, 2001, Qwest, AT&T and MCIW filed briefs on the disputed Checklist Item No. 2 issues.

19. Pursuant to the June 12, 2000, Procedural Order, on October 19, 2001, Staff filed its Proposed Findings of Fact and Conclusions of Law for Checklist Item No. 2 – Access to Unbundled Network Elements ("Proposed Findings").

20. Qwest, AT&T and MCIW filed Comments on Staff's Proposed Findings on October 29, 2001.

21. On December 24, 2001, Staff filed its Final Interim Report on Qwest's Compliance with Checklist Item No. 2 Unbundled Network Elements ("UNEs") ("Interim Report"). On February 4, 2002, Staff filed an errata that affected pages 57, 61 and 62 of the Interim Report.[3] A copy of Staff's corrected Interim Report is attached hereto as Exhibit A and incorporated herein by reference.

22. In its Interim Report findings at paragraph 4, Staff states: "critical components necessary to determine Qwest's compliance with Checklist Item 2 have not yet been completed, including the results of the independent Third Party Test of Qwest's Operational Support Systems ("OSS"), a demonstration by Qwest that it has an effective and workable Change Management Process ("CCIMP") in place, and the evaluation of Qwest's Stand-Alone Test Environment

[3] The Errata Filing did not make substantive changes to the Interim Report.

("SATE")." Because critical issues remain outstanding, and because of concerns raised regarding Qwest's provisioning of UNE-P which have not yet been resolved, Staff recommends a finding of noncompliance at this time. Staff further states that it is submitting the Checklist Item No. 2 Report as an interim Final Staff Report so that the Commission can resolve the impasse issues at this time, pending completion of the Final OSS Report by Cap Gemini Ernst & Young Telecom Media and Networks ("CGE&Y").

23. On January 9, 2002, AT&T filed Comments on Staff's Interim Report. In addition to specific comments on disputed issues, AT&T continues to disagree with Staff's summary of the OSS test and believes a number of statements in the Interim Report related to the OSS test are not correct. AT&T disagrees with the statement at paragraph 25 that the test was carried out in accordance with the Master Test Plan and Test Standards Document ("TSD"). In various pleadings with the Commission, AT&T has alleged a number of examples of CGE&Y failing to comply with the TSD. Further, AT&T states, it has outstanding comments on a number of Incident Work Orders ("IWOs") that were prematurely closed and that the Test Advisory Group ("TAG") has not yet addressed. AT&T cautions the Commission against relying on the accuracy of Staff's summary of the OSS test in the Interim Report.

24. We note AT&T's concerns with the OSS testing process. We will address issues concerning the OSS test itself when we consider the Final Report that will address the OSS test, the Change Management Process, and SATE. We cannot evaluate AT&T's charges relating to the OSS testing process in the context of the Interim Report. Consequently, we do not intend our acceptance of the Interim Report, as modified herein, to be our final determination of whether the OSS test was conducted satisfactorily. The description of the OSS process contained in the Interim Report provides important background information, however, the conduct of the OSS test itself is not critical to the resolution of the non-OSS impasse issues addressed herein.

25. We find that the existing record is sufficiently developed to resolve the disputed issues addressed in the Interim Report relating to Checklist Item No. 2 without a hearing.

**DISPUTED UNE ISSUES**

26. Disputed Issue No. 1a is whether Qwest will provide a SATE by July 31, 2001.

27. A SATE is a test environment that mirrors the production environment. CLECs assert they require access to a stable testing environment that provides the means to certify that a CLEC's OSS will interact smoothly with Qwest's OSS. In addition, prior to issuing a new software release or upgrade, the BOC must provide a testing environment that mirrors the production environment in order for competing carriers to test the new release.

28. Staff states that Qwest made its SATE available on July 31, 2001, as it had committed to the parties. Staff states that Hewlett-Packard ("HP") is evaluating Qwest's SATE to determine whether it is consistent with what the FCC has approved in prior Section 271 applications and will meet the CLECs' expressed needs. Staff believes the SATE is a critical component of the Section 271 application and thus requires a full and fair review by the Commission. Staff further states that without a complete evaluation of the SATE and resolution of any outstanding issues, it cannot recommend that the Commission find Qwest in compliance with Checklist Item No. 2. Nonetheless, because Qwest made its SATE available on July 31, 2001, Staff considers this disputed issue to be moot.

29. Disputed Issue No. 1a is moot. We will evaluate the SATE itself when we consider Staff's Final Report on OSS related issues.

30. Disputed Issue No. 1b is whether Qwest will provide the CLECs with new software releases or upgrades in the SATE prior to implementing those changes in the actual production environment.

31. Qwest's SGAT Sections 12.2.9.4.1 and 12.2.9.4.2 provide:

> 12.2.9.4.1 For a new software release or upgrade, Qwest will provide CLEC a testing environment that mirrors the production environment in order for CLEC to test the new release. For software releases and upgrades, Qwest has implemented the testing processes set forth in Section 12.2.9.3.2, 12.2.9.3.3 and 12.2.9.3.4.
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> 12.2.9.4.2 For a new software release or upgrade, Qwest will provide CLEC the stand alone testing environment, as set forth in Section 12.2.9.3.2, prior to implementing that release or upgrade in the production environment.

32. Staff believes that pre-production notification to CLECs of any new IMA software versioning release or related change to the OSS systems is essential to efficient and effective service

provisioning. Staff also believes that Qwest should modify its SATE to reflect the proposed versioning changes sufficiently ahead of the scheduled introduction to its production environment to allow the CLECS to develop training materials, test new releases, instruct service representatives and modify CLEC systems to accommodate changes. In its Proposed Findings, Staff recommended that Qwest revise its SGAT to provide that Qwest will give CLECs at least 30 days advance notification of any new software release or upgrades to its production OSS, and that coincident to such notification, will modify its SATE to reflect such proposed production changes.

33. In response to Staff's Proposed Findings, AT&T stated that because Qwest supports existing versions six months after a new release, it is not necessary to complete all testing the day of a new release. AT&T recommends that the CLECs and Qwest continue to discuss the issue. AT&T believes that the parties should agree to language that establishes a predetermined number of days for advance notice and release of the SATE and Electronic Data Interchange ("EDI") development specifications.

34. MCIW states that it can support the availability of SATE for testing at least 30 days prior to the actual release date. MCIW states the CMP Redesign Team is considering the following language from the Ordering and Billing Forum ("OBF") 2233a3 concerning the provisioning of documentation:

> Notification for customer impacting release, which may include customer initiated requests, provider initiated request and regulatory changes, will typically occur at least 73 calendar days prior to implementing the release. This notification may include draft business rules. Customers have fifteen (15) calendar days from the initial publication of draft documentation to provide comments/questions on the documentation.
>
> Technical specifications will be produced and distributed to customers 66 calendar days prior to implementation.
>
> Final business rules and technical specifications for the release will be published at least 45 calendar days prior to implementation.
>
> For customer impacting releases, more or less notification may be provided based on severity and the impact of changes in the release. For example, the provider can implement the change in less than 45 calendar days with customer concurrence.

35. Staff believes that the language being considered in the CMP redesign process is

reasonable and would appear to address AT&T's concerns. Staff recommends that the parties be required to come to agreement on SGAT language addressing these issues within 20 days of Commission approval of the Interim Report, and to the extent the parties cannot agree in 20 days, Staff proposes that it draft the necessary SGAT language.

36. We share the CLECs' and Staff's concerns that it is important that Qwest provide meaningful advance notice of software modifications or related changes to the OSS, and that the SATE should be modified sufficiently in advance of the scheduled production introduction to allow CLECs time to accommodate the changes. The SGAT should specify a minimum number of days for advance notice, release of the SATE and release of the EDI development specifications. Because the parties have not suggested specific time frames for advance notice and release of documentation, they have not had the opportunity to comment on specific proposals. Nor do we have a specific proposal to consider. The proposed CMP Redesign language appears to be a good start. We direct the parties to continue negotiating specific minimum timelines and to keep Staff informed of any progress. If the parties are unable to negotiate a compromise within 20 days of the effective date of this Order, Staff shall make its own recommendation for appropriate language. Staff should include its recommendation to accept the parties' negotiated terms, or those Staff proposes in its Final Report on OSS matters. The parties may then comment on Staff's recommendations in conjunction with the Final Report.

37. Disputed Issue 1c is whether Qwest will negotiate with CLECs on a case-by-base basis to provide comprehensive production testing.

38. AT&T claims that Qwest's SGAT fails to provide for CLEC testing in a comprehensive and integrated manner. AT&T argues that none of Qwest's proposed test environments provide an environment sufficiently robust to permit verification that preordering, ordering, billing, provisioning and maintenance and repair processes will work to allow large scale market entry.

39. Qwest states that it is not opposed to legitimate production testing and that SGAT Section 12.2.9.3 specifically provides for extensive testing during EDI development. As an example of its willingness to negotiate with CLECs on a case-by-case basis, Qwest cites the experience in

Minnesota where Qwest and AT&T entered into an agreement for UNE-P testing.

40. AT&T points out that it had to file a complaint with the Minnesota Public Utilities Commission to get Qwest to negotiate the terms of a comprehensive production test. AT&T believes specific language concerning comprehensive testing is required because of Qwest's unwillingness to come to the actual terms of a test.

41. Staff agrees with AT&T and recommends that the parties work together to develop appropriate language concerning comprehensive production testing. Staff proposes that the parties be given 20 days from the date of this Decision to submit consensus SGAT language. To the extent the parties cannot agree on appropriate language, Staff recommends that it draft language to address the issue.

42. We believe that specific SGAT language addressing comprehensive testing is important to preventing further disputes. We will adopt Staff's proposal, and direct the parties to negotiate testing language. AT&T's proposal appears to be a good starting point for negotiations. Staff shall incorporate the result of the parties' negotiations, or its own recommended language, in its Final Report addressing the OSS test and related matters.

43. Disputed Issue No. 1d is whether AT&T's proposed SGAT terms concerning comprehensive production testing are appropriate and should be included in the SGAT.

44. AT&T argues that Qwest's SGAT should contain language that explains the testing options available to the CLEC to evaluate Qwest's OSS and interfaces.

45. Qwest had argued against AT&T's language because it claims it has worked with CLECs on a case-by-case basis to provide comprehensive testing and the proposed language is not needed. Qwest also argues that AT&T's proposed comprehensive production test is duplicative as it is part of the OSS test. Qwest has expressed a willingness to negotiate an appropriate production test procedure, on a case-by-case basis when (1) a CLEC has legitimate business plans to enter the local market; and (2) the CLEC demonstrates that its business plans require a level of testing beyond controlled production testing.

46. Staff agrees with AT&T that the SGAT should contain language which clearly spells out Qwest's obligation to provide for testing. Consistent with its recommendations concerning issues

1b and 1c, Staff recommends that the parties have 20 days to reach agreement on appropriate SGAT language to address the SATE terms and conditions, and if they do not reach agreement, that Staff should submit proposed language.

47. We agree that the SGAT should contain specific language on testing procedures. Consistent with our findings concerning the previous issues, we believe that the parties should have an opportunity to reach consensus. Staff should include its recommendation concerning appropriate language in the its Final Report concerning OSS and related matters.

48. Disputed Issue No. 1e is Qwest's opposition to some of AT&T's proposed revisions to the SGAT.

49. AT&T proposed specific SGAT language affecting Sections 12.2.9.3.1 to 12.2.9.3.4 concerning production testing.

50. Qwest opposed AT&T's specific proposals.

51. Staff recommends that the parties be required to jointly develop appropriate SGAT language using Qwest's language as a starting point. If the parties are unable to reach agreement on SGAT language within 20 days, Staff recommends that it be allowed to draft appropriate SGAT language.

52. As we stated in response to previous disputed items concerning production testing, we believe the SGAT should contain specific language concerning testing to avoid future disputes. We direct the parties to negotiate consensus language using Qwest's proposed language as a starting point. The parties should keep Staff informed of their progress and if unable to reach consensus in 20 days from the effective date of this Order, Staff should propose its own solution. Staff shall include the results of the negotiation and Staff's recommendation in its Final Report on OSS matters.

53. Disputed Issue No. 2 is whether Qwest should be required to supply regeneration for UNEs to CLECs' point of access without cost.

54. This is the same issue as addressed in Decision No. 64216 (November 20, 2001) as Disputed Issue No. 1 for Checklist Item No. 5 concerning transport. This issue also arose in the Arizona Wholesale Cost Docket, where Qwest agreed it would not require a CLEC to pay for regeneration when there exists another available collocation location where regeneration would not

be required or where there would have been such location had Qwest not reserved space for its future use.

55. Staff recommends that the SGAT be modified to remove Qwest's ability to charge for regeneration where there exists another available collocation location where regeneration would not be required, or where there would have been such location, had Qwest not reserved space for its future use in the affected premises.

56. Staff's recommendation is consistent with our Order in Decision No. 64216 (November 20, 2001) concerning Checklist Item No. 5. Qwest has already modified its SGAT to reflect this obligation concerning regeneration charges. Consequently, this issue has been resolved.

57. Disputed Issue No. 3 is whether Qwest is obligated to construct UNEs for CLECs other than certain types of unbundled loops and line ports.

58. Qwest's SGAT provides that Qwest will provide CLECs access to UNEs provided that facilities are available. AT&T argues that Qwest is obligated to build network elements on a nondiscriminatory basis for CLECs and that Qwest must build UNEs for CLECs under the same terms and conditions that Qwest would build such facilities for itself or its retail customers at cost-based rates.

59. AT&T and MCIW object to SGAT Section 9.19 that provides Qwest will construct network capacity, facilities, or space for access to or use of UNEs only upon Qwest's determination of the acceptability of Qwest's individual financial assessment.

60. AT&T argues that the FCC explicitly limited an ILEC's obligation to provide interoffice facilities to existing facilities, but has not pronounced explicit limitations for other network elements. AT&T opposes Qwest's position that it does not have to light unused dark fiber and make it available as dedicated transport because it has no obligation to build UNEs. AT&T asserts that if dark fiber is in place, Qwest should not be able to claim that it does not have to light the fiber to meet orders for dedicated transport. Otherwise, AT&T argues Qwest is permitted to reserve the dark fiber for its own use and negate the obligation to provide dedicated transport. The CLECs want the Commission to clarify that Qwest is obligated to build UNEs, except dedicated transport, on a nondiscriminatory basis at cost-based rates.

61. Qwest argues there is no statute, rule or case that imposes upon it the obligation to construct all UNEs. Qwest argues the 1996 Act requires access only to an ILEC's existing network. According to SGAT Section 9.1.2.2, Qwest will build loops and switch ports if Qwest would be legally obligated to build such facilities to meet its Provider of Last Resort ("POLR") obligation to provide basic local exchange service or its Eligible Telecommunications Carrier ("ETC") obligation to provide primary local exchange service. Qwest argues the CLECs have options if Qwest is not obligated to build. A CLEC may submit a request to build under Section 9.19, a CLEC can build the facilities itself, or obtain them from another party.

62. Qwest also argues that although it is required to unbundle dark fiber, the FCC has not required ILECs to add or upgrade electronics for dedicated transport facilities.

The FCC's *UNE Remand Order* at para. 324 states:

> In the Local Competition First Order and Report the Commission limited an Incumbent LEC's transport unbundling obligations to existing facilities, and did not require Incumbent LEC's to construct facilities to meet a requesting carriers requirements where the Incumbent LEC has not deployed transport facilities for it own use . . . We do not require Incumbent LEC's to construct new transport facilities to meet specific competitive LEC point-to point demand requirements for facilities the Incumbent LEC has not deployed for its own use.

63. The Eight Circuit Court of Appeals in *Iowa Utilities Board v FCC* held "[w]e also agree with petitioner that subsection 251(c)(3) implicitly requires access to only an Incumbent LEC's existing network, . . . not to a yet un-built superior one."

64. Staff believes there is no dispute that Qwest must construct facilities if Qwest would be legally obligated to build such facilities to meet its POLR or ETC obligations. Staff concurs that CLECs cannot demand that Qwest construct network additions or modifications on behalf of the CLECs. Staff also agrees with AT&T that Qwest must provide CLECs with UNEs on the same terms and conditions that it provides UNEs to itself or to its retail customers. Staff notes that Qwest has stated that it would evaluate a CLEC's request for "special construction" utilizing similar criteria to that Qwest uses to determine whether to construct facilities for retail customers, and that Qwest has agreed to provide CLEC notification of major loop facility builds through the ICONN database.

65. Staff believes it is important that Qwest treat CLEC orders the same as it would its own. Staff recommends that Qwest should be required to amend SGAT Section 9.19 to state: "Qwest will assess whether to build for CLEC in the same manner that it assesses whether to build for itself. Qwest shall treat CLEC orders the same as it would treat its own orders for new or additional service." Staff further recommends that the SGAT, or an appendix, contain objective assessment criteria.

66. Staff's proposed addition to SGAT Section 9.19 accurately states Qwest's legal obligation to construct facilities at CLEC request. We agree with Staff that Qwest should modify its SGAT accordingly, including the assessment criteria it will employ in considering such requests. In response to AT&T's concerns expressed in its January 9, 2002 Comments to the Interim Report, we note that the CLECs are entitled to UNEs at cost-based rates.

67. Disputed Issue No. 4 is whether Qwest may prohibit connecting UNEs with finished services for a CLEC.

68. Qwest SGAT Section 9.23.1.2.2 provides in pertinent part:

> UNE Combinations will not be directly connected to a Qwest finished service, whether found in a tariff or otherwise, without going through a Collocation, unless otherwise agreed to by the parties . . .."

69. The CLECs assert that the FCC does not allow limits on the use of UNEs and does not employ the words "finished services". They argue that connection is allowed at any technically feasible point and Qwest has not shown that accessing UNEs by connecting the UNE to a finished service is not technically feasible. They claim the restriction requires CLECs to construct their own networks because traffic cannot be aggregated on the same trunk groups. AT&T argues that FCC limitations on certain connections of UNEs to tariffed services does not extend to all UNEs.

70. Qwest argues the FCC has ruled that ILECs can prohibit commingling. In its *Supplemental Order Clarification*,[4] the FCC held:

> We further reject the suggestion that we eliminate the prohibition on "co-

[4] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order Clarification*, FCC-00-183 (June 2, 2000), para. 28.

> mingling" (i.e. combining loops or loop-transport combinations with tariffed special access services) in the local use options discussed above. We are not persuaded on this record that removing this prohibition would not lead to the use of unbundled network elements by IXCs solely or primarily to bypass special access services. We emphasize that the co-mingling determinations we make in this order do not prejudge any final resolution on whether unbundled network elements may be combined with tariffed services. We will seek further information on this issue in the Public Notice that we will issue in early 2001.

71. Staff states that the FCC prohibition contained in para. 28 of its *Supplemental Order Clarification* applies to loops or loop-transport combinations with special access services. Staff states the FCC's concern was that interexchange carriers would use UNEs for the sole purpose of bypassing special access service. Staff believes that Qwest's proposed SGAT language is too broad and recommends that Qwest revise its SGAT to remove the restriction against combining UNEs with "finished services," except where specifically sanctioned by FCC rules and regulations which currently prohibit commingling of loops or loop-transport combinations with special access.

72. We concur with Staff's recommendation. The FCC prohibition against commingling is not as encompassing as Qwest's current SGAT language. Qwest should revise its SGAT to conform with Staff's recommendation.

73. Disputed Issue No. 5 is whether it is appropriate to include Local Interconnection Service ("LIS") in the definition of "Finished Services".

74. Qwest has conceded this issue and has deleted LIS from the definition of "Finished Services" in SGAT Section 4.23(a). Thus, LIS trunks may be connected with UNEs, and this issue is resolved.

75. Disputed Issue No. 6 is what Qwest may say to CLEC customers who misdirect their calls to Qwest's offices.

76. This issue is the same as that addressed in Decision No. 64060 (October 3, 2001) concerning Checklist Item No. 14 – Resale.

77. Staff recommends the same resolution as in Decision No. 64060.

78. We agree. Qwest has already revised SGAT Section 6.4.1[5] to reflect our order in

[5] The relevant portion of SGAT Section 6.4.1 provides: "CLECS end users contacting Qwest in error will be instructed to contact CLEC; and Qwest's end user contacting CLEC in error will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the current provider can be determined, misdirected calls received by either Party will be referred to the proper provider of local Exchange Service;

Decision No. 64060. This issue has been resolved.

79. Disputed Issue No. 7 is how to price lines one to three after a CLEC adds a fourth line in Zone 1 of one of the top 50 MSAs.

80. Qwest argued that the FCC's *UNE Remand Order* is clear that unbundled switching is available at UNE rates for CLEC end user customers "with three lines or less." The FCC has determined that ILECs do not have to unbundle switching for customers in Density Zone One with four or more lines.

81. Staff states that the Commission addressed this issue in Decision No. 64214 (November 20, 2001) concerning Checklist Item No. 6, in which the Commission held that the line count distinction be made on a per customer basis within Density Zone One, rather than on a per location basis. Staff recommends the same resolution as in Decision No. 64214.

82. The issue we addressed in conjunction with Checklist Item No. 6 – Switching was phrased slightly different than the current dispute, although the impact and import are the same. Consistent with our finding in Decision No. 64214, we agree with Qwest and Staff that for customers with four or more lines in Density Zone One, all lines should be priced at market rates.

**DISPUTED ENHANCED EXTENDED LINKS ("EEL") ISSUES**

83. The First Disputed EEL Issue is whether Qwest should apply a termination liability assessment ("TLA") to tariffed services converted to UNEs.

84. AT&T argues that CLECs should not have to pay the TLAs for the private line/special access circuits they wish to convert to EELs. AT&T asserts that it is reasonable to waive the TLAs because the CLECs have paid the higher rates since they provisioned the private lines/special access because Qwest refused to provision the circuits as UNEs in the first instance as required by law.

85. Qwest argues this is not an issue that affects 271 compliance, but in the spirit of cooperation has offered to waive TLAs if four conditions are met:

(1) CLEC's private line circuit(s) was ordered or augmented between October 9, 1999 (the effective date of the Ninth Circuit Decision) and May 16, 2001 (the date of its

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however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLECs or Qwest's end users who call the other Party seeking such information.

proposal);

(2) Qwest did not have to build facilities to install the private line circuits at issue to meet CLEC's request;

(3) CLEC identifies and communicates in writing to Qwest on or before August 1, 2001, each circuit it believes qualifies under this proposal; and

(4) Each private line circuit so identified qualifies under one of the three local use options contained in SGAT Section 9.23.3.7.2 and CLEC identifies which option each circuit qualifies under.

86. AT&T argues that the first condition is too restrictive and that the beginning date should extend back to August 8, 1996 when the FCC issued its First Report and Order establishing UNEs.

87. Staff believes that Qwest's proposal is reasonable, except that the closing date in the first condition for identifying qualifying circuits should be extended to "30 days after the Arizona Commission's Order approving Checklist Item 2", and that the deadline for communicating the request in the third condition should be extended to "90 days after the Arizona Commission's Order approving Checklist Item 2."

88. Qwest's compromise proposal, with some modification is reasonable. In its Brief on this issue, Qwest doesn't state why the date of the Ninth Circuit Court of Appeal's Decision in *US West v MFW*, should control which converted private line circuits should not incur TLAs. Presumably, Qwest chose this date as the time when the Ninth Circuit clarified that ILECS must combine unbundled elements. The Eighth Circuit had invalidated the FCC regulation that forbids ILECs from separating network elements, and the Ninth Circuit believed the Supreme Court's interpretation of the 1996 Act undermined the Eighth Circuit's conclusion the regulation was inconsistent with the 1996 Act. AT&T continues to argue that the obligation to provide enhanced extended links (the combination of loops and transport), existed from the date of the FCC's *First Report and Order* (August 8, 1996) when the regulation was enacted. AT&T's argument has some merit, although we believe that until the Supreme Court Decision in *AT&T v Iowa Utilities Board*, 119 S. Ct. 721 (January 25, 1999), the validity of the FCC regulation was uncertain. The Ninth

Circuit, in upholding the regulation, relied on the United States Supreme Court decision. Thus, we believe the date of the U.S. Supreme Court decision, January 25, 1999, also represents a reasonable date for determining which converted circuits should be exempt from the TLAs. Consequently, absent an FCC decision on the issue, we believe Qwest's SGAT Section 9.23.3.12 should include the following provision:

> Qwest will not apply TLA if all of the following conditions are met:
>
> (1) CLEC's private line circuit(s) was ordered or augmented between January 25, 1999, and 30 days after the Arizona Corporation Commission's Order approving Checklist Item 2 Impasse Issues;
>
> (2) Qwest did not have to build facilities to install the private line circuits at issue to meet CLEC's request;
>
> (3) CLEC identifies and communicates in writing to Qwest on or before 90 days after the Arizona Corporation Commission's Order approving Checklist Item 2 Impasse Issues, each circuit it believes qualifies under this proposal; and
>
> (4) Each private line circuit so identified qualifies under one of the three local use options contained in SGAT Section 9.23.3.7.2 and CLEC identifies which option each circuit qualifies under.

89. The Second Disputed EEL Issue is whether CLECs can commingle UNEs and special access or private line circuits.

90. Qwest's SGAT Section 9.23.3.7.2.7 provides that Qwest will not provision an EEL combination (that is a combination of loop and transport elements) or convert Private Line/Special Access to an EEL if Qwest records indicate that service "will be connected directly to a tariffed service."

91. MCIW argues that this restriction is improper, and that the FCC in Decision 00-183 provides that an EEL must meet the local use restrictions.

92. Qwest asserts that this commingling issue is the same as the Checklist Item No. 1 (UNE) Disputed Issue No. 4.

93. Consistent with its earlier recommendation related to Checklist Item No. 1, Staff

recommends that Qwest modify its SGAT. Staff states there is no basis to extend the requirement of a significant amount of local exchange service to other than a loop/transport combination. In response to MCIW's claim that Qwest agreed to language that resolved this issue in another jurisdiction, Staff states that if Qwest has agreed with the parties to language in other jurisdictions, Staff would support use of that language in Arizona.

94. We find Qwest should revise its SGAT to limit the local use restriction to the loop/transport combination. If Qwest has agreed to language in other jurisdictions that resolves this issue consistent with our finding herein Qwest should include such language in its Arizona SGAT.

95. The Third Disputed EEL Issue is whether Qwest may apply a "grooming charge" to eliminate commingling to allow for the conversion of a special access circuit or private line to an EEL.

96. Qwest states that e-spire is the only CLEC to raise this issue. Qwest believes that e-spire does not want to pay tariffed charges to make changes to a special access circuit or a private line. Qwest argues that there is no supportable basis to demand that Qwest reconfigure its existing network at no charge to facilitate the conversion to UNE rates. Qwest asserts that if a CLEC makes changes to a circuit purchased from a tariff, the CLEC must pay the tariffed rates for that change.

97. Staff notes that neither e-spire nor any other CLEC briefed this issue. Staff recommends that costing issues such as this be resolved in the Wholesale Pricing Docket.

98. In general, Qwest is allowed to recover its reasonable costs of providing UNEs. To the extent this is a dispute about the amount of the tariffed charge, it is properly addressed in the Wholesale Cost Docket. If the dispute is about whether it is appropriate to charge for this service at all, this would appear to be the proper docket, however, the incomplete record before us does not allow us to resolve this issue. Given the CLECs' apparent lack of interest in this issue, we do not believe that our decision to defer resolution affects Qwest's ultimate compliance with Checklist Item No. 2.

99. The Fourth Disputed EEL Issue is whether internet traffic be considered local traffic for purposes of the local use restriction.

100. Qwest states that the FCC requires that CLECs provide a "significant amount of local

exchange traffic service" in order to obtain EELs from ILECs.

101. CLECs want Internet Service Provider ("ISP") traffic bound for the Internet to count towards the requirement of a "significant amount of local exchange service."

102. Qwest argues that in its *ISP Remand Order*,[6] the FCC has found that calls bound for the Internet are interstate in nature.

103. Staff believes that in light of the *ISP Remand Order*, Qwest's position is correct and ISP traffic should not be counted toward the local use requirements of EELs.

104. We concur.

## CONCLUSIONS OF LAW

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

2. The Commission, having reviewed the Interim Report on Qwest's Compliance with Checklist Item No. 2 dated December 24, 2001, and corrected on February 4, 2002, approves and adopts the corrected Final Interim Report on Qwest's compliance with Checklist Item No. 2, as modified herein.

3. The Commission cannot make a final determination on Qwest's compliance with Checklist Item No. 2, until the Commission confirms that Qwest has passed relevant performance measurements in the third-party OSS test, has an effective and workable Change Management Process in place, and has implemented an effective Stand-Alone Test Environment.

## ORDER

IT IS THEREFORE ORDERED that the Final Interim Report dated December 24, 2001 on Qwest's compliance with Checklist Item No. 2, as corrected on February 4, 2002, is hereby adopted as modified.

IT IS FURTHER ORDERED that Qwest Corporation shall file by March 29, 2002, a revised SGAT incorporating the Findings and Conclusions herein.

---

[6] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 , and 99-68, Order on Remand and Report and Order, (rel. April 27, 2001).

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

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

IT IS FURTHER ORDERED that Qwest and other interested parties shall continue to negotiate consensus SGAT language to resolve issues 1b through 1e, consistent with our findings, and if the parties are unable to reach consensus within 20 days of the effective date of this Order, Staff shall propose such language. Staff shall include its recommendations in its Final Report on OSS-related matters.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 15 day of March, 2002.

Christopher C Kempley for BCM

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____
JR:dap

64630

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

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# IN THE MATTER OF QWEST CORPORATION'S SECTION 271 APPLICATION

# ON QWEST'S COMPLIANCE

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

# FINAL INTERIM REPORT ON QWEST'S COMPLIANCE

## With

## CHECKLIST ITEM: NO. 2 - ACCESS TO UNBUNDLED NETWORK ELEMENTS (UNEs)

## DECEMBER 24, 2001

64630

DECISION NO. _____

# I. FINDINGS OF FACT

## A. PROCEDURAL HISTORY

1. On October 10, 2000, the first Workshop on Checklist Item No. 2 (Unbundled Network Elements - UNEs) took place at Qwest's offices in Phoenix. Parties appearing at the Workshops included Qwest Corporation[1], AT&T, MCI WorldCom (MCIW), Sprint, Electric Lightwave, Inc., e-spire Communications, Inc., Eschelon Telecom of Arizona, Allegiance Telecommunications, Z-Tel Communications, Inc. and the Nebraska Public Service Commission. Qwest relied upon its Supplemental Affidavit filed on July 21, 2000. Additional Comments were filed on September 21, 2000 by AT&T, WorldCom, e-spire, Z-Tel and Eschelon. ELI filed comments September 22, 2000. Qwest filed Rebuttal Comments on September 29, 2000 and supplemental rebuttal comments on October 31, 2000.

2. On November 10, 2000, an additional Workshop was conducted on Checklist Item 2. On April 9, 2001, a follow-up workshop was conducted on UNE Combinations.

3. The Parties resolved many issues at the three Workshops. Outstanding issues from the October 10, 2000 Workshop included a commitment by the parties to address take back issues for resolution at the follow-up workshops held on November 10, 2000, and April 9, 2001.

4. Staff submitted its proposed Findings of Fact and Conclusions of Law on October 19, 2001 in accordance with the Commission's June 12, 2000 Procedural Order. Because many issues could not be resolved between the parties, Checklist Item 2 is considered a disputed Checklist Item. In addition, critical components necessary to determine Qwest's compliance with Checklist Item 2 have not yet been completed, including the results of the independent Third Party Test of Qwest's Operational Support Systems ("OSS"), a demonstration by Qwest that it has an effective and workable Change Management Process ("CCIMP") in place, and the evaluation of Qwest's Stand-Alone Test Environment ("SATE"). Many of these issues are not anticipated to be fully resolved until January of next year. Because all of these critical issues remain outstanding, and because of concerns raised regarding Qwest's provisioning of UNE-P which will not be resolved until the results of OSS re-testing are made available, Staff continues to recommend an overall finding of noncompliance at this time. Staff is submitting the Checklist Item 2 report as an interim Final Staff Report so that the Commission can resolve the impasse issues at this time, pending completion of the OSS Final OSS Report by Cap Gemini Ernst & Young Telecom Media and Networks ("CGE&Y").

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[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.

# B. DISCUSSION

## 1. Checklist Item No. 2

### a. FCC Requirements

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

6. Section 251(c)(3) of the Act requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis" in accordance with "the requirements of this section and Section 252." Id. Section 251(d)(1) of the Act requires the FCC to establish regulations to determine which network elements must be provided on an unbundled basis. Id.

.7. Section 251(d)(2) of the Act requires the FCC, when determining what network elements should be made available, to consider, at a minimum, whether "access to such network elements as are proprietary in nature is ***necessary***," and whether "the failure to provide access to such network elements would ***impair*** the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." Id. at p. 48.

8. In its UNE Remand Order[2], the FCC applied the "necessary and impair" analysis and subsequently released its revised list of UNEs under Section 251(c)(3) which included, as set forth in Rule 51.319, loops, sub-loops, NIDs, local circuit switching, dedicated and shared transport, dark fiber, signaling, call-related databases, and Operations Support Systems (OSS). Id.

9. The FCC UNE Remand Order determined that an ILEC could limit the availability of the unbundled switching UNE only if a CLEC had access to EELs. 5-Qwest-2 at p. 88. Specifically:

> 278. . . . As described more fully below, we find that requesting carriers are not impaired without access to unbundled local circuit switching when they serve customers with four or more lines in density zone 1 in the top 50 metropolitan statistical areas (MSAs), as set forth in Appendix B, where incumbent LECs have provided nondiscriminatory, cost-based access to the enhanced extended link (EEL) throughout density zone 1.
>
> 288. Need for Enhanced Extended Link. Our conclusion that competitors are not impaired in certain circumstances without access to unbundled switching in density zone 1 in the top 50 MSAs also is

[2] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order, FCC 99-238, (Rel. November 5, 1999)("UNE Remand Order").

predicated upon the availability of the enhanced extended link (EEL). As noted in Section VI(B) above, the EEL allows requesting carriers to serve a customer by extending a customer's loop from the end office serving that customer to a different end office in which the competitor is already collocated. The EEL therefore allows requesting carriers to aggregate loops at fewer collocation locations and increase their efficiencies by transporting aggregated loops over efficient-high capacity facilities to their central switching location.

10. Section 252(d)(1) of the Act states that "[d]eterminations by a State commission of the just and reasonable rate for . . . network elements for purposes of [section 251(c)(3)] . . . (A) shall be (I) based on the cost . . . of providing the . . . network element . . . and (ii) nondiscriminatory, and (B) may include a reasonable profit."

### 1. Access to Operational Support Systems

11. The FCC has determined that access to OSS functions falls squarely within an incumbent LEC's duty under Section 251(c)(3) to provide unbundled network elements under terms and conditions that are nondiscriminatory and just and reasonable, and its duty under Section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable. See In the Matter of the Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLaTA Service in the State of New York, CC Docket no. 99-295, Memorandum Opinion and Order (Rel. December 22, 1999)("Bell Atlantic New York Order").

12. For OSS functions that are analogous to those that a BOC provides to itself, its customers or its affiliates, the nondiscrimination standard requires the BOC to offer requesting carriers access that is equivalent in terms of quality, accuracy, and timeliness. Id. at para. 85. The BOC must provide access that permits competing carriers to perform these functions in "substantially the same time and manner" as the BOC. Id.

13. For OSS functions that have no retail analogue, the BOC must offer access "sufficient to allow an efficient competitor a meaningful opportunity to compete." Id. at para. 86. In assessing whether the quality of access affords an efficient competitor a meaningful opportunity to compete, the FCC examines, in the first instance, whether specific performance standards exist for those functions. Id. If such performance standards exist, the FCC evaluates whether the BOC's performance is sufficient to allow an efficient competitor a meaningful opportunity to compete. Id..

14. The FCC analyzes whether the BOC has met the nondiscrimination standard for each OSS function using a two-step process. Id. at para. 87. First, the FCC determines whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of

the OSS functions available to them. Id. Under this inquiry, a BOC must demonstrate that it has developed sufficient electronic and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions. Id. at para. 88. For example, a BOC must provide competing carriers with the specifications necessary for carriers to design or modify their systems in a manner that will enable them to communicate with the BOC's systems and any relevant interfaces. Id. In addition a BOC must disclose to competing carriers any internal business rules and other formatting information necessary to ensure that a carrier's requests and order are processed efficiently. Id. Finally a BOC must demonstrate that its OSS is designed to accommodate both current demand and projected demand for competing carrier's access to OSS functions. Id.

15. Second, the FCC assesses whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter. Id. Here the FCC examines performance measurements and other evidence of commercial readiness to ascertain whether the BOC's OSS is handling current demand and will be able to handle reasonably foreseeable demand volumes. Id. at para. 89. The most probative evidence that OSS functions are operationally ready is actual commercial usage. Id. Absent data on commercial usage, the Commission will consider the results of carrier-to-carrier readiness of a BOC" OSS.

16. As part of its analysis, the FCC looks at the systems, databases, and personnel on which Qwest relies in support of its claim that it provides access to OSS on a nondiscriminatory basis. The FCC also examines Qwest's change management process and the technical assistance that Qwest offers to competing carriers seeking to use its OSS. The FCC also examines Qwest's provision of access to the critical OSS functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing.

### 2. Access to Combinations of Network Elements

17. In the Ameritech Michigan Order[3], the FCC emphasized that the ability of requesting carriers to use unbundled network elements, as well as combinations of unbundled network elements, is integral to achieving Congress' objective of promoting competition in the local telecommunications markets. Bell Atlantic New York Order, para. 230.

18. In the Bell Atlantic New York Order, the FCC examined whether the BOC had demonstrated that it provided competitors combinations of network elements that are already preassembled in their network, as well as nondiscriminatory access to unbundled network elements, in a manner that allows competing carriers to combine those elements themselves.

19. The FCC promulgated rules on combinations of network elements. Rule 315 contains six provisions; the most prominent of which is Rule 315(b), which requires ILECs to provide CLECs with pre-existing combinations of UNEs. Id. Although the

[3] 12 FCC Rcd. At 20651.

Eighth Circuit Court of Appeals vacated the entirety of Rule 315, the United States Supreme Court reinstated Rule 315(b). Id. The United States Court of Appeals for the Ninth Circuit in a series of decisions has determined that Qwest must provide access to all types of combinations listed in Rule 315, in addition to pre-existing combinations of UNEs. Id. at p. 51. Qwest has three combination obligations at present in Arizona: (1) Qwest must provide access to pre-existing combinations of elements pursuant to Rule 315(b), (2) Qwest must provide CLECs with the ability to combine individual network elements on their own, and (3) In Arizona, Qwest must provide access to new combinations, whether they be UNEs Qwest ordinarily combines, UNEs Qwest does not ordinarily combine, or combinations of Qwest UNEs with CLEC UNEs. Id.

## b. Background

### 1. OSS

20. OSS refers collectively to the systems, databases, and personnel used by the ILEC to provide services to customers in an accurate and timely manner as well as to ensure the quality of those services. Bell Atlantic New York Order at para. 8, fn. 12. The FCC has consistently found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition. Id.

21. The FCC has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition. Bell Atlantic New York Order at para. 83. New entrants must have access to the functions performed by the incumbent's OSS in order to formulate and place orders for network elements or resale services, to install service to their customers, to maintain and repair network facilities, and to bill customers. Id. The FCC has determined that without nondiscriminatory access to the BOC's OSS, a competing carrier "will be severely disadvantaged, if not precluded, from fairly competing " in the local exchange market. Id.

22. Arizona currently has underway an extensive independent Third-Party test of Qwest's OSS. The ACC retained CAP Gemini Ernst & Young Telecom Media and Networks ("CGE&Y") as its Test Administrator to conduct an independent, third party test of the readiness of Qwest's OSS interfaces, documentation and processes. Over the course of the last two years, CGE&Y evaluated over 1,000 transactions relating to pre-ordering, ordering, provisioning, maintenance and repair, billing, and relationship management and infrastructure by performing extensive transaction and operational tests. The ACC commissioned Hewlett-Packard ("HP") to function as a pseudo-CLEC, working with Qwest business rules, creating and tracking orders, logging trouble tickets etc. HP also established electronic bonding with Qwest, translating back and forth between business and EDI rule formats and resolving problems missing orders and responses. CGE&Y and HP used operational tests to evaluate the results of Qwest's day-to-day operational management and change management processes to determine if they functioned in accordance with Qwest documentation and expectations.

23. CGE&Y and HP's test was very broad, examining all stages of the relationship between Qwest and competing carriers, including the initial relationship, performing daily operations, and maintaining the relationship. Both the application-to-application electronic data interchange ("EDI"} and the terminal type web-based graphical user interface ("GUI"} were tested. CGE&Y and HP performed pre-ordering, ordering, provisioning, maintenance and repair, billing, relationship management and infrastructure test to evaluate the functional capabilities and determine whether competing carriers receive a level of service comparable to Qwest's retail service. Documentation was evaluated for usefulness, correctness and completeness. CGE&Y and HP also performed stress volume tests of Qwest's systems.

24. The testing included the functionality for pre-order/order, provisioning, maintenance and repair and billing. Specific product types included were resale (with parity tests against the retail equivalents), UNE-P, UNE-L (with and without number portability), and number portability.

25. The test utilized Friendlies, or actual volunteers. They received packets of information from the Test Administrator detailing the types of transactions the Friendly would be required to originate, the dates required, and any documentation they are required to create to document their test calls. The test was carried out in accordance with the Master Test Plan ("MTP") and Test Standards Document ("TSD"). The MTP sets forth the approach, scope, focus, timeline, roles and responsibilities, testing phases and all associated required activities for the testing of the CLEC access that Qwest provides to its OSS. The MTP is essentially a map for how the Arizona OSS tests were to be conducted. The MTP listed Test Scenario level detail and other high level requirements describing how the tests would be conducted. The exact testing methodology for each test, including both entrance and exit criteria, was set forth in the TSD. It provided detailed Test Cases within the Scenarios, Scripts and other exact specifications as to how the tests would be conducted. Both documents were the result of extensive negotiation and collaboration among the members of the Test Advisory Group ("TAG"). The TAG consists of the ACC, its consultant Doherty and Company ("DCI"), the Test Administrator, the Pseudo-CLEC, Qwest and those CLECs and other participants who desire to participate.

26. The tests were performed by the CLEC and Pseudo-CLEC in a live environment. The Test Administrator and Pseudo-CLEC maintained the greatest degree of "blindness" practical. The level of blindness was governed in part by the January 25, 2000 paper entitled Arizona Corporation Commission Staff Report on the Process Issues Raised by the Competitive Local Exchange Carriers (the "Openness Report").

27. The test included a formal test exception process, through what were called Incident Work Orders ("IWOs"), which formed the basis for retesting when an interface, system or process tested by the Pseudo-CLEC/Test Administrator does not meet established criteria, standards or expectations, in order to resolve the IWO.

28. The test consisted of the following components:

- Functionality Test – The Functionality Test was designed to provide information that the ACC can use to address the ability of Qwest's OSS to provide operational functionality to CLECs. The test included a test of Qwest's processes including pre-ordering, ordering, provisioning, maintenance & repair (M&R) and billing. The test will focus on resale, UNE-P, UNE-Loop, UNE-Loop with number portability, and number portability. The tests involved the collection of data in a controlled manner pursuant to specified test procedures, using specified input data.

- Retail Parity Evaluation – The Retail Parity Evaluation Test was designed to provide the ACC with information with which to directly evaluate parity of Qwest's OSS. The test was a comparison of the ability of a CLEC representative using one of Qwest's OSS interfaces to provide an overall comparable level of service and experience to the level of service and experience that a Qwest representative can provide using Qwest's standard internal OSS interfaces. The Retail Parity Evaluation test was designed to provide the ACC with information with which to directly evaluate parity of Qwest's OSS versus Qwest's retail operations. The test provided for comparing OSS responsiveness as well as comparing the quality of the data accessed by the representatives. The test provided for comparing OSS responsiveness as well as comparing the quality of the data screens presented to the representative.

- Capacity Test – The Capacity Test was designed to provide information which the ACC could use to assess the capability of Qwest's OSS to handle loads equal to or greater than those projected by the various CLEC participants for estimated volumes projected one year from the date of the running of the Capacity Test. The volumes were determined by the Test Administrator using projected volumes provided by both Qwest and the CLECs. The test included a review of procedures associated with computer systems scalability and staff scalability to determine, under stated assumptions, whether or not Qwest's systems, operations and processes were predictably capable of handling CLEC loads in the future, both projected and unexpected.

- Relationship Management Test – The Relationship Management test provided information that the ACC could use to determine whether the methods, procedures and information which Qwest employs to communicate with the CLECs are effective. The evaluation examined: 1) the CLEC Account Establishment Process, 2) the CLEC Account Management Processes, 3) the CLEC Training Process, 4) the Interface Development Process, and 5) the Qwest Co-provider Industry Change Management Process.

- Performance Measurement Evaluation - The Performance Measurement Evaluation was designed to provide the ACC with statistically valid assessments of the performance measures established to evaluate Qwest's performance in providing service to the CLECs. The assessment included reviews of performance Measurement data collection and analysis (including an evaluation of the processes and procedures that Qwest employs to collect data and calculate performance measurements), a performance evaluation over a three-month consecutive period specified by the ACC, Functionality and Capacity tests and Performance Measurement verification. Additionally, the assessment will determine if the reported Qwest results and data are consistent with how the performance measures are described in the Service Performance Indicator Definitions ("PIDs").

29. The ACC established a collaborative process through which it developed, in conjunction with Qwest and competing carriers, a set of measures for reporting of performance in various areas. Like New York and other Commissions that have gone before it, under the framework adopted by the ACC, CGE&Y determines whether any difference in Qwest's performance compared to its retail operations is statistically significant, and provides a figure indicating the degree of statistical significance. For measures where there is a benchmark, Qwest's actual performance is compared to the benchmark.

30. If there is no statistically significant difference between Qwest's provision of service to competitive LECs and its own retail customers, the FCC looks no further. Similarly, if there is no difference between the Qwest provision of service CLECs and the performance benchmark, the FCC looks no further.

31. If there is a statistically significant difference or it Qwest does not meet a benchmark, the ACC and FCC will examine the evidence further to make a determination whether the statutory nondiscrimination requirements are met.

32. In performing the tests, CGE&Y and HP conducted the test in a military-style, or a "test until you pass" approach, unless the TAG decided that further testing was not necessary.

33. In summary, the CGE&Y and HP test was both independent and blind. Neither CGE&Y nor HP had a reporting relationship to Qwest. Pursuant to their contracts, both CGE&Y and HP reported directly to the ACC. All meetings, including executive sessions, between CGE&Y and HP and Qwest were noticed to all TAG members. CGE&Y and HP were very careful to ensure that they did not receive preferential treatment. Those procedures are set forth in the Openness Report appended to the Master Test Plan.

34. The Final Report of CGE&Y, the Test Administrator of the Arizona independent Third Party OSS Test is expected to be issued in several months.

## 2. Change Management

35. Another critical component of Checklist Item 2 relates to the processes, systems and procedures Qwest has in place for the purpose of communicating to CLECs the request for, or introduction of, new products and services and the upgrades of Qwest systems with which the CLECs interface in the conduct of company to company business. A workable Change Management Process is integral to the successful accomplishment of competition in the rapidly changing local telephone market. The process must be an open one which provides timely access by CLECs to forthcoming changes, in an effort to minimize problems at the time of change introduction.

36. Qwest initially provided relatively short preparatory time for CLECs. In addition, CLECs had very little meaningful input into the Qwest Change Management Process ("CICMP"). In addition to the need for improvements in these areas, a need to expand the process to cover products and services was identified. The ACC's Independent Third Party Test Administrator, CGE&Y, identified many deficiencies with the Qwest Change Management Process early on in its test of Qwest's OSS through the issuance of an IWO. That IWO remains open pending resolution of the identified deficiencies by Qwest.

37. Qwest has since established a CICMP Redesign Team (which includes CLECs) to address these and other issues, and define a series of action items to develop and implement an enhanced CICMP. Principle issues being addressed include the following:

- Design and implementation of an enhanced CICMP
- Development and implementation of a dispute resolution process
- Incorporation of the change management process in Qwest's Statement of Generally Available Terms and Conditions
- Definition of voting rights for all parties
- Resolution of the issue of a Qwest veto power
- Establishment of prioritization rules

38. Qwest filed with the Commission its first update on the CICMP redesign process in mid-October. Staff has not had an opportunity to review the update. Qwest intends to file additional updates on agreements reached and progress made on its CICMP redesign efforts overall on a regular basis in the future. A workshop on Qwest's redesigned CMP took place on December 17 and 18, 2001. The systems redesign process is expected to be completed in late January.

### 2. Unbundled Network Elements

39. Using combinations of unbundled network elements provides a competitor with the incentive and ability to package and market services in ways that differ from the BOCs' existing service offerings in order to compete in the local telecommunications market.

40. That are a variety of methods that the ILEC should provide to allow competitive carriers to combine unbundled network elements with their own facilities. For instance, in addition to the standard physical and virtual collocation arrangements, there may be a need for smaller physical collocation cages, shared collocation cages, and cageless collocation arrangements. Bell Atlantic also offered eleven "Assembly Room" and "Assembly Point" arrangements which do not require conditioned space and take less time to implement than caged collocation arrangements. Bell Atlantic New York Order at para. 232.

41. The ILEC must also make available access to preassembled combinations of network elements. For example, Bell Atlantic provided to competitors more than 152,000 preassembled platforms of network elements, including the loop switch combination ("UNE-P") out of certain central offices, as well as local switching elements in combination with other shared elements, such as shared transport, shared tandem switching, operator services, directory assistance, and SS7 signaling. Bell Atlantic New York Order at para. 233. In addition Bell Atlantic provided Enhanced Extended Loops ("EELS"), a combination of loops and transport. Id.

## c. Position of Qwest

42. On July 21, 2000, Qwest Witness Karen A. Stewart provided Supplemental Affidavit Testimony indicating that Qwest meets the requirements of Checklist Item 2 through its SGAT, which creates a concrete and specific legal obligation for Qwest to provide CLECs in Arizona with UNEs upon request in conformance with Sections 251 and 271 of the Act. 5-Qwest-2 at p. 4. Qwest also has processes in place to make each UNE available to CLECs upon request and has developed performance indicators (PIDs) so CLECS and the Commission can assess how well Qwest is making UNEs available. Id.

43. Qwest's SGAT Section 9.1.2 provides CLECs nondiscriminatory access to unbundled network elements:

> Qwest shall provide non-discriminatory access to unbundled network elements on rates, terms and conditions that are non-discriminatory, just and reasonable. Qwest shall provide to CLEC on a non-discriminatory basis unbundled network elements of substantially the same quality as the network facilities that Qwest uses to provide service to its own end-users within a reasonable timeframe and with a minimum of service disruption. Id. at p. 49. Qwest further defines the terms and conditions, rate elements,

> ordering process and maintenance information for each of the revised list of FCC UNEs in Sections 9.1 to 9.18 and Sections 12 and 17of its Arizona SGAT. Id.

44. Qwest must also satisfy Section 271's checklist requirements and therefore, must continue to offer unbundled switching to all competitors in all areas (including the Phoenix MSA) because access to local circuit switching is item 6 on the checklist. Id. at p. 49. Qwest also complies with the FCC's EELs requirements. Qwest will offer stand-alone unbundled circuit switching to CLECs (at market based rates) in areas that are "Density Zone One" for use by businesses with four lines or more. Id. at p. 49-50. Qwest will not provide combinations of unbundled elements that include local circuit switching in these specific Phoenix-Mesa MSA central offices for businesses with four or more lines. Id. The reason for the latter is that Qwest must provide access to combinations of "UNEs"; in Density Zone One of the Phoenix-Mesa MSA, unbundled switching is not a UNE and, therefore, combinations including switching are no longer combinations of "UNEs". Id.

45. As reflected by SGAT Section 9.23.3.1, Qwest also provides CLECs with access to preexisting combinations of UNEs:

> Qwest shall provide CLEC with non-discriminatory access to UNE Combinations, meaning: (a) of substantially the same quality as the comparable services that Qwest provides service to its own retail end-users, (b) in substantially the same time and manner as the comparable service that Qwest provides to its own retail end-users and (c) with a minimum of service disruption.

5-Qwest-2 at p. 51. The combinations that Qwest provides includes UNE-Platform ("UNE-P") and combinations of dedicated transport and unbundled loop ("UNE-C"). Id. Standard UNE Combinations are generally available in five (5) categories: 1FR/1FB Plain Old Telephone Service ("POTS"); ISDN – either Basic Rate or Primary Rate; Digital Switched Service ("DSS"); PBX Trunks and Local Exchange Private Line ("UNE-C-PL"). Id.

46. Retail and/or Resale 1FR/1FB lines are available to CLEC as a UNE Combination. Id. at p. 52. UNE-P POTS is comprised of the following unbundled network elements: Analog - 2 wire voice grade loop, Analog Line Side Port, Shared Transport and, if desired, Vertical Features. . . . Id.

47. Retail and/or Resale ISDN lines are available to CLECs as a UNE Combination. Id. There are two types of UNE-P-ISDN:

> Basic rate (UNE-P-ISDN-BRI) - UNE-P-ISDN-BRI is comprised of the following unbundled network elements: Basic ISDN Capable Loop, BRI Line Side Switch Port and Shared Transport. Id. at p. 53.

Primary rate (UNE-P-ISDN-PRI) - UNE-P-ISDN-PRI is comprised of the following unbundled network elements: DS1 Capable Loop, PRI Trunk Port and Shared Transport. Id.

48. Retail and/or Resale Digital Switched Service (DSS) are available to CLEC as a UNE Combination. Id. at p. 53. UNE-P-DSS is comprised of the following unbundled network elements: DS1 Capable Loop, Basic and DID Trunks and Shared Transport. . . . Id.

49. Retail and/or Resale PBX Trunks are available to CLEC as a UNE Combination. Id. There are two types of UNE-P-PBX: Analog Trunks and Direct Inward Dialing (DID) Trunks. UNE-P-PBX is comprised of the following unbundled network elements: 2/4 Wire Analog Loop, Analog/DID Trunks, and Shared Transport. . . . Id.

50. Retail and/or Resale private line circuits are available to CLEC as a UNE Combination. Id. There are many types of Private Line Local Exchange UNE Combinations and Qwest will provide access to the following as a standard offering: UNE-C-PL circuits are comprised of the following unbundled network elements: DS1/DS3 Capable Loop, DS1/DS3 Unbundled Dedicated Interoffice Transport and multiplexing. . . . Id. at p. 53-54.

51. With respect to UNE-C-PL, on June 2, 2000, the FCC released a supplement to its UNE Remand Order concerning the ability of carriers to utilize combinations of dedicated transport and loop in lieu of special access circuits. Id. at p. 54. The FCC found that such circuits are not available for conversion into combinations of UNEs unless they are carrying a "significant amount of local exchange traffic." Qwest has modified its SGAT language (Section 9.23.3.6.2.2) which tracks the FCC's decision almost verbatim. Id. at p. 55.

52. If a CLEC desires access to a different UNE Combination, the CLEC may request access through the BFR Process set forth in SGAT Section 17. Id. at p. 56. In addition, as demand materializes, Qwest will continue to expand its list of standard UNE combinations. Id.

53. CLEC may connect UNEs in any technically feasible manner. Qwest will provide CLEC with the same features, functions and capabilities of a particular element that Qwest provides to itself, so that CLEC can provide any telecommunications services that can be offered by means of the element. Qwest shall provide such unbundled network elements in a manner that allows CLEC to combine such elements in order to provide telecommunications service. Id. Several options are available to the CLECs to combine two or more UNEs. Id. One such method would be where a CLEC could obtain caged-physical, cageless-physical, or virtual collocation and order various unbundled network elements from Qwest. Id. at p. 56-57. Another option available to CLECs could be the Interconnection Collocation Distribution Frame ("ICDF") which is available to

those CLECs who do not wish to collocate their own equipment in a Qwest central office. Id.

54. Qwest will provide CLECs with access to new combinations, whether they be UNEs. Qwest ordinarily combines UNEs. Qwest does not ordinarily combine, or combinations of Qwest UNEs with CLEC UNEs. 5-Qwest-2 at p. 59. SGAT Section 9.23.3.8 states:

> CLEC may request access to and, where appropriate, development of, additional UNE Combinations pursuant to the Bona Fide Request Process in CLEC's Agreement. In its BFR request, CLEC must identify the specific combination of UNEs, identifying each individual UNE by name as described in this Agreement.

55. In order to simplify the CLEC's ordering process, Qwest has adopted a process similar to resale in that UNE combinations are ordered via an LSR. 5-Qwest-2 at p. 59. Rather than process conversions from retail and/or wholesale as two orders, Qwest has developed a UNE Combination service order process that will use a single LSR. Id. Qwest believes a single LSR approach will provide a simple and effective order processing for the CLEC. Id. at p. 60. Standard service intervals for each UNE Combination are identified in the UNE-P and UNE Combination Resource Guide, which includes the Standard Interval Guide for Interconnection and Resale Services. Id. Qwest will work pro-actively with CLECs to provide project management support for processing large volumes of conversions. Id.

56. Qwest will maintain facilities and equipment that comprise the service provided to CLEC as a UNE Combination. Id. at p. 61. SGAT Section 9.23.7 makes this clear. Id. Qwest will also maintain standard UNE combinations in Arizona utilizing defined maintenance flows. Id.

57. Qwest is participating in the Arizona Test Advisory Group ("TAG") to identify performance measurements for access to UNE combinations. Id. at p. 62. The Cap Gemini Ernst & Young ("CGEY") OSS test will specifically test Qwest's ability to provide CLECs nondiscriminatory access to combinations of unbundled network elements. Id. Additionally, in the Capacity Test, the parties to the Arizona Third Party OSS Test and Workshops and Qwest agreed to an incremental percentage increase to the test volumes for September, 2001 LSRs to account for increased order activity due to access to UNE combination arrangements. Id.

58. When a CLEC desires a unique unbundled network element that is not included in its interconnection agreement or the SGAT, the CLEC can submit a bona fide request ("BFR") to Qwest which is outlined in SGAT Section 17.0:

59. Any request for interconnection or access to an unbundled network element or ancillary service that is not already available as described herein shall be treated as a BFR. Qwest shall use the BFR Process to determine the terms and timetable

for providing the requested interconnection, access to UNEs or ancillary services, if available, and the technical feasibility of new/different points of Interconnection. Qwest will administer the BFR Process in a non-discriminatory manner. Id. at p. 62-63. If a CLEC's interconnection agreement does not contain a UNE available within the SGAT, Qwest will amend their agreement, on an expedited basis, to include the UNE without the need for the BFR process. Id. at p. 64.

60. Qwest offers CLECs access to EELs in the Phoenix Main and Phoenix North central offices. 5-Qwest-2 at p. 89. Qwest has a concrete legal obligation to provide EELs in it effective SGAT. Id.

61. Qwest has developed two standard EEL offerings: 1) Two-Point EEL, and 2) Multiplexed EEL . 5-Qwest-2 at p. 89. The Two-Point EEL consists of an unbundled loop directly connected to unbundled dedicated interoffice transport. Id. The Multiplexed EELs offer increased flexibility for a CLEC serving multiple customers in a single Qwest wire center. Id. It consists of central office based multiplexing equipment connected to dedicated interoffice transport. Id.

62. Qwest is responsible for the design, connection, and maintenance of the EEL service on an end to end basis. 5-Qwest-2 at p. 90. EELs are available in a variety of bandwidths including: DS3; DS1; DSL; and DS0. Id. Specifications, interfaces and parameters for EELs are described in Qwest's Technical Publication 77403. Id. As of July 1, 2000, Qwest has not provisioned any EELs in Arizona. Id.

## d. Competitors' Position

63. In their July 22, 1999, preliminary statements of position on Qwest's compliance with all Checklist Items, AT&T stated that Qwest is not meeting the conditions of Checklist Item 2 for several reasons: Qwest is not providing nondiscriminatory access to network elements at any technically feasible point; Qwest has refused to provide access to network elements in combination contrary to Supreme Court rulings and FCC orders; Qwest has required the use of intermediate frames to access unbundled elements; Qwest has refused to allow CLECs to interconnect directly to Qwest frames and equipment where Qwest commonly accesses network elements for its own use and for provisioning service to its customers and Qwest has proposed new tariffs that would limit CLEC access to large apartment complexes and other multiple dwelling units ("MDUs"), as well as malls and other developments AT&T Ex. 1 at p. 4. Qwest has also not proven that it is providing nondiscriminatory access to its OSS. Id. at p. 5. Qwest also has an inadequate set of measures and processes to gauge the quality of the OSS access that it provides to CLECs. Id. at p. 6. Finally, Qwest has failed to offer pricing for combinations of network elements and has not offered de-averaged rates for unbundled loops. Id. at p. 7-8.

64. MCIW stated that Qwest has failed to meet the conditions of Checklist Item 2 for the following reasons: 1) Qwest is not providing nondiscriminatory access to network elements at any technically feasible point, 2) Qwest does not provide CLECs

access to network elements in the same manner it provides access to network elements for its own use, and 3) Qwest is not providing access to network elements in combination. MCIW September 7, 1999 Preliminary Statement of Position at p. 4. Also, MCIW stated that there was very little data that allows MCIW to determine if it is receiving service that is at a level of quality at least equal to the level that it provides to itself. Id. at p. 5. Additionally, the rates established for UNEs are arbitrary and do not comply with the requirements of the Federal Act. Id.

65. Sprint stated that it could not comment on Qwest's claim that it met the requirements for Checklist Item 2 in that Sprint has not yet attempted to order UNEs from Qwest in Arizona. Sprint September 7, 1999 Preliminary Statement of Position at p. 3. Sprint, however, is concerned about attempting to order UNEs from Qwest because Qwest's stated position that it is not legally obligated to offer UNEs. Id. at p. 3-4. Sprint expressly reserves the right to offer factual and legal arguments in opposition to Qwest's claim that it offers nondiscriminatory access to its OSS. Id.

66. Cox stated that Qwest is not in compliance with Checklist Item 2, particularly with respect to access to OSS. Cox September 7, 1999 Preliminary Statement of Position at p. 3-4. Cox stated that its customer service representatives ("CSRs") often are unable to provide the same responsiveness to their customers (as compared to Qwest CSRs) due to limitations in Qwest's IMA interface and other available means of communications with Qwest. Id.

67. e-spire stated that Qwest has not complied with Checklist Item 2 in that Qwest has either refused access to network elements (e.g., frame relay network elements) or has failed to provide nondiscriminatory access to network elements. e-spire September 7, 1999 Preliminary Statement of Position at p. 4. e-spire also stated that Qwest's processes for transferring customers to e-spire who will be using Qwest loops or other UNEs is wholly inadequate and not equal to what Qwest provides its own customers using similar network elements. Id.

68. NEXTLINK stated that Qwest is not meeting the conditions for Checklist Item 2 for several reasons: Qwest is not providing nondiscriminatory access to network elements at any technically feasible point; Qwest has refused to provide access to network elements in combination contrary to Supreme Court rulings and FCC orders; Qwest has not provided "extended loops" from offices where NEXTLINK is not collocated; Qwest has not established adequate procedures for coordinated cutovers within or outside normal business hours; Qwest has refused NEXTLINK's requests for certain elements, i.e., SS7 connectivity and AIN triggers; Qwest has required the use of intermediate frames to access unbundled elements; Qwest has refused to allow CLECs to interconnect directly to Qwest frames and equipment where Qwest commonly accesses network elements for its own use and for provisioning service to its customers; Qwest has not proven that it is providing nondiscriminatory access to its OSS; Qwest has an inadequate set of measures and processes to gauge the quality of the OSS access that it provides to CLECs; Qwest has failed to develop many of the OSS performance measures that the FCC has determined are required and Qwest has failed to produce the required

data on the performance it provides to itself. NEXTLINK September 7, 1999 Preliminary Statement of Position at p. 3-5.

69. Rhythms stated that Qwest has yet to identify an electronic bonding interface sufficient for any DSL-based advanced services provider to build a scaleable business. Rhythms September 7, 1999 Preliminary Statement of Position at p. 4. Rhythms also stated that it has been unable to get from Qwest any pre-ordering information about loops, including which loops are currently available and which need special "conditioning" in order to be DSL-capable. Id. Qwest has been equally deficient in its ordering, provisioning, repair and maintenance, and billing capabilities. Id.

70. Other CLECs filing comments on July 22, 1999, included ELI. ELI stated it joined in the position statements filed by the other CLECs.

71. On September 21, 2000, AT&T, MCIW, e-spire and Eschelon filed additional and updated comments on Checklist Item 2. Z-Tel filed its comments September 22, 2000. MCIW filed supplemental testimony April 6, 2001.

72. Regarding unbundled network elements, AT&T commented that SGAT Section 9.1.1 sets forth a mechanism by which the SGAT will be modified as a consequence of changes in what Qwest terms "Existing Rules." AT&T 4-1 at p. 18. Everything included in Section 9.1.1 has been addressed by other sections of the SGAT. Id. at p. 19. For example Section 2.2 of the SGAT is nearly identical to Section 9.1.1. Id. AT&T recommends that Section 9.1.1 be deleted because it is redundant and outdated. Id. Additionally, AT&T recommends that Qwest revise Section 2.2 to reflect what AT&T believes is Qwest's more recent positions regarding its legal requirements. Id. Also, AT&T anticipates a need to examine the requirements of Section 2.2 and develop a better mechanism to manage changes to Existing Rules in a future workshop. Id. Finally, AT&T restates its' request that Qwest provide a detailed inventory of its present challenges to "Existing Rules" and identify the sections of the SGAT that may change as a consequence of Qwest's possible success. Id.

73. Regarding Section 9.1.2 of Qwest's SGAT, which appears to be an attempt by Qwest to track the statutory requirements imposed on Qwest to provide access to UNEs, AT&T stated that Qwest's provisions do not capture the requirements of the Act. AT&T 4-1 at p. 19. Further, Qwest does not capture the appropriate standards to be followed in providing access to UNEs and thus AT&T proposes that this Section be modified. Id.

74. Section 9.1.3 of the SGAT sets forth certain use restrictions on CLEC's access to UNEs which are unclear to AT&T as to whether Qwest's language allows for the permitted uses identified by the FCC. AT&T 4-1 at p. 20. Qwest includes, in addition to access to UNEs, a specific use restriction on "ancillary services," that Qwest has decided to describe in Section 10 of the SGAT. Id. Qwest's reference here is also unclear, and Qwest should identify what ancillary services CLECs are prohibited from

using to provide special or switched access services. Id. AT&T believes Qwest should formulate a more tailored provision consistent with the *UNE Remand Order*. Id.

75. Section 9.1.4 describes certain requirements for connecting UNEs with an "Interconnection Tie Pair ("ITP"). AT&T 4-1 at p. 21. Qwest should not charge CLECs any kind of recurring charge for the ITP and should add an additional kind of demarcation point as subsection 9.1.4(d) within this SGAT Section. Id.

76. Section 9.1.6 requires CLECs to be solely responsible for end-to-end transmission and circuit functionality for all UNEs (but not, apparently, for UNE combinations). AT&T 4-1 at p. 21. This provision must not give rise to an implication that Qwest will never be responsible for, at a minimum, assisting in or accommodating certain testing of UNEs in order to confirm their functionality, or for providing testing of the UNE when necessary for the maintenance and repair of the element. Id. Qwest must assure CLECs that the access to UNEs afforded to CLECs in the SGAT includes all of the access necessary for determining end-to-end transmission and circuit functionality. Id. Qwest should insert in this section an affirmative obligation to assist CLECs upon a reasonable request to confirm functionality or other operating parameters of the UNE. Id. Additionally, Qwest should insert in this section a representation that a CLEC's access will permit all required testing for determining end-to-end transmission and circuit functionality. Id. Finally, Qwest must modify this provision to make clear that Qwest is responsible for testing individual elements at the request of the CLEC when Qwest's maintenance and repair activities require it. Id.

77. AT&T wants Qwest to modify Section 9.1.7 of its SGAT to include all external intervals as part of the SGAT. AT&T 4-1 at p. 22. Qwest makes reference to Exhibit C, which contains intervals for installation of unbundled loops, but states that installation intervals for other UNEs are "provided for herein or in the Interconnect and Resale Resource Guide." Id. Qwest should identify, UNE by UNE, what intervals are specified in the IRRG and once identified, Qwest should incorporate into the SGAT such intervals, as long as they are reasonable and provide access to UNEs as required by the Act and the FCC and any performance assurance plan adopted by the Commission. Id.

78. AT&T has concerns over Section 9.1.9, in which Qwest reserves the right to make changes to its network. AT&T 4-1 at p. 22. Qwest's modification may create material changes in the quality and character of Qwest's UNEs and the access to UNEs. Id. AT&T's concern is that such modifications may not be of a nature to affect "network interoperability" but could change the nature of a UNE or require or make available a different method or point of access. Id. at p. 23. AT&T requests that Qwest provide examples of the kinds of modifications that would affect "network interoperability" that would require advance notice pursuant to FCC rules. Id.

79. AT&T wants Qwest to delete Section 9.1.10 of the SGAT that imposes a channel regeneration charge on CLECs where "the distance" between Qwest's network and the CLEC's collocation space or ICDF frame "is of sufficient length to require regeneration." AT&T 4-1 at p. 23. Such charges are unreasonable and discriminatory. Id. Qwest should supply fully functional UNEs or reasonable access. Id.

80. SGAT Section 9.1.12 describes certain "Miscellaneous Charges" to be assessed by Qwest in the provision of UNEs and access to UNEs. AT&T 4-1 at p. 23. The SGAT should specifically identify the circumstances under which these charges will apply. Id. Furthermore, the law requires that such rates be just, reasonable and nondiscriminatory. Id. AT&T believes that any parallel proceedings accompanying these workshops must consider whether these additional and miscellaneous charges are necessary, just, reasonable and nondiscriminatory. Id. at p. 23-24.

81. SGAT Section 9.19 identifies Qwest's policy on construction charges that would apply in certain UNE contexts. AT&T 4-1 at p. 24. The terms of this paragraph and its inclusion in the UNEs section creates some ambiguity as to its application. Id. Additionally, this section appears to be inconsistent in some respects with Section 19.0 of the SGAT, which is a similar provision. Id. AT&T suggests that the language regarding construction charges be eliminated from this section and also that Qwest describe with precision the ancillary and finished services that apply under Section 19.0. Id. The list of finished and ancillary services should not include services (or "products") that Qwest inappropriately categorizes as "finished" or "ancillary." Id.

82. Regarding Section 9.9, Qwest identifies an "Unbundled Customer Controlled Rearrangement Element" ("UCCRE") as an element within this section of the SGAT. AT&T 4-1 at p. 44. UCCRE does not appear on the FCC's national list of UNEs, nor has the Commission separately identified it as an element. Id. AT&T requests that Qwest provide a more detailed description of the UCCRE and the purpose for including it in the SGAT. Id. at p. 45. Presently, Section 9.9.1 of the SGAT describes the UCCRE as a "means by which CLEC controls the configuration of unbundled network elements (UNEs) or ancillary services on a near real time basis through a digital cross connect device." Id. AT&T is concerned that the SGAT may be construed to require CLECs to utilize the UCCRE as the sole means to access all the features or function of a UNE or to combine UNEs which is clearly prohibited by the Act and FCC rules. Id.

83. Regarding combinations of unbundled elements, SGAT Sections 4.60 and 4.61 definitions are deficient. AT&T 4-1 at p. 46. Qwest's definition of "Unbundled Network Element Platform (UNE-P)" in Section 4.61 fails to include all the network elements that must ordinarily be provided as part of UNE-P. Id. Such list should be amended to include references to the NID, Tandem Switching, Dedicated Transport, Signaling and SCPs/Databases and a reference that it includes any other network elements necessary to provide basic local exchange service. Id. Section 4.6.2 also "includes" only two types of combinations -- UNE-P and Private Line Combinations. The definitions should be rewritten to eliminate any ambiguity that UNE-P and UNE-Combinations are limited to pre-existing or combined UNEs or any specific types of combinations. Id. at p. 46-47.

84. SGAT Section 9.23.1 relate to Qwest's general terms applicable to all UNEs. AT&T 4-1 at p. 47. The Ninth Circuit Court has determined that Rules 315(c) -

(f) are not inconsistent with the Act; therefore, Section 9.23 in its entirety should be amended to include the obligations contained in Rules 315(c) - (f). Id. Qwest purports to provide to the CLECs "access" to UNE combinations in Sections 9.23.1.1 and 9.23.1.2, but does not purport to provide the UNE combinations themselves. Id. Qwest should amend Section 9.23.1.1 to provide CLECs with the combinations themselves, as well as access to the combinations. Id.

85. Additionally, Qwest sets forth certain restrictions on UNE combinations in Section 9.23.1.2 which must be replaced with language that tracks more closely with FCC orders on point. AT&T 4-1 at p. 47-48. For the reasons described above in AT&T's comment regarding Section 9.1.1 - namely, that the section is redundant, unnecessary and unclear - AT&T believes that Qwest's language should be deleted and replaced with language as follows that assures the CLECs' ability to get UNE combinations:

> 9.23.1.2.1 In no event shall Qwest require CLEC to purchase any UNE Combinations in conjunction with any other service or element. Qwest shall place no use restrictions or other limiting conditions on UNE Combinations purchased by CLEC under the terms of this Agreement.

Id. This language is consistent with 47 C.F.R. § 51.309, which prohibits the ILEC from imposing any "limitations, restrictions or requirements on requests for, or the use, unbundled network elements..." and is also consistent with 47 C.F.R. § 51.315(d). Id. at p. 49.

86. SGAT Section 9.23.1.2.2 restricts the use of combinations by disallowing the connection of combinations to Qwest "finished services" without using collocation. Id. at p. 49. This restriction is open-ended, depending on the whim of Qwest's product definitions for finished services and as such, language is needed to give CLECs access to UNE combinations at any technically feasible point. Id.

87. Additionally, SGAT Section 9.23.1.2.3 further reserves Qwest's rights to limit UNEs if there is some change in law and is therefore discriminatory. AT&T 4-1 at p. 50. For this reason, and the reasons discussed above with respect to Sections 9.1.1 and 9.23.1.2.1, AT&T recommends that this language be deleted and be modified as follows:

> 9.23.1.2.3 In addition to the UNE Combinations provided by Qwest to CLEC hereunder, Qwest shall permit a CLEC to combine any Network Element or network elements provided by Qwest with another Network Element, other network elements or other services (including Access Services) obtained from Qwest or with compatible network components provided by CLEC or provided by third parties to CLEC to provide Telecommunications Services to CLEC, its affiliates and to CLEC end users.

88. Regarding SGAT provisions applicable to all UNE combinations in Section 9.23, Qwest must add additional terms to assure its compliance with the checklist item. AT&T 4-1 at p. 50. First, CLECs need affirmative language that will allow the addition of new UNEs as they become available and the ability to incorporate those UNEs into combinations. Id. Second, Qwest must add language to the SGAT to assure that CLECs have the ability to acquire combinations and to combine combinations with other unbundled elements or Qwest services. Id. at p. 51. Third, Qwest must add language to assure CLECs that Qwest will provide proper demarcation points between UNEs, if desired by the CLEC. Id. Fourth, language must be added to the SGAT to assure that Qwest will not add "glue" charges to the combinations that it is providing to the CLEC. Id. at p. 52. Fifth, Qwest must include language in the SGAT that assures CLECs that Qwest will not disconnect UNEs that are currently combined unless the CLEC specifically requests that they be separated. Id. Sixth, Qwest must provide language that allows CLECs to order ancillary equipment with UNEs and UNE combinations since without this language, Qwest will be able to block a legitimate combination by refusing to provide ancillary equipment that is needed to connect or interface between two UNEs in a combination. Id. at p. 52-53.

89. AT&T was also concerned over SGAT Section 9.23.2 which contains the specific list of the combinations that Qwest is offering. AT&T 4-1 at p. 53. CLECs should be able to order the combinations of unbundled elements and ancillary equipment permitted by law: all combinations of network elements and ancillary services that are currently or ordinarily combined in the Qwest network or if such combination is not ordinarily combined, all combinations of elements that are technically feasible to combine. Id. *Local Competition Order*, ¶ 22. Section 9.23.2 limits CLECs to five categories of combinations which FCC rules and state law does not allow Qwest to do. Id. AT&T also proposes additional forms of UNE combinations and states that Qwest must develop generic language that does not prohibit the development of UNE combinations not enumerated under the SGAT. Id. at p. 54.

90. SGAT Section 9.23.3.1 sets forth Qwest's obligation to provide non-discriminatory access to UNE combinations. AT&T 4-1 at p. 54. This section must be amended to require that Qwest maintains for CLECs no more service disruptions for UNE combinations than are experienced by Qwest customers using the same type of facilities. Id. Qwest must also provide substantially the same quality of service as Qwest provides to itself or its end users. Id.

91. AT&T expressed concern over the section that identifies UNE-P-POTS since it was not clear and the language suggests that Qwest may withhold features from UNE-P-POTS. AT&T 4-1 at p. 55. Because the term does not include a definite article ("the") or a clearer modifier ("all of the") there is some suggestion that "Vertical Features" may not include all features that Qwest customers are able to obtain on a POTS line or that must be made available under 47 C.F.R. § 51.319(c)(1)(A)(iii). Id. Therefore, the SGAT must be amended to provide that the CLECs can order any, all, or any combinations of the features, functions and capabilities of the switch. Id.

92. SGAT Section 9.23.3.3 describes another variety of the UNE-P combinations, UNE-P-PBX, which Qwest has apparently not yet fully defined. AT&T 4-1 at p. 55. Qwest must list the features that can be ordered with UNE-P-PBX and those that cannot be ordered. Id. The CLEC should be able to order any, all or any combinations of features, functions and capabilities that Qwest can provide to its customers or that is available on the Qwest switch, or by any other means. Id. at p. 55-56.

93. SGAT Section 9.23.3.4 describes another variety of UNE-P: UNE-P-DSS. AT&T 4-1 at p. 56. Qwest has apparently not yet fully defined this combination and must list the features that can be ordered with UNE-P-DSS and those that cannot be ordered. Id. The CLEC should be able to order any, all or any combination of features, functions and capabilities that Qwest can provide to its customers or that is available on the Qwest switch, or by any other means. Id.

94. SGAT Section 9.23.3.5 describes another category of UNE-P: UNE-P-ISDN. AT&T 4-1 at p. 56. Qwest apparently has not yet fully defined this combination and must list the features that can be ordered with UNE-P-ISDN and those that cannot be ordered. Id. The CLEC should be able to order any, all or any combination of features, functions or capabilities for its customers that Qwest can provide to its customers or that is available on the Qwest switch, or by any other means; therefore, Qwest must modify this provision to eliminate the ambiguity and comply with the law. Id.

95. SGAT Section 9.23.3.6 describes another category of UNE combination: Private Line Local Exchange UNE Combinations – UNE-PL-X. AT&T 4-1 at p. 57. Here, it appears that Qwest intends that this section embody the temporary restriction on a requesting carrier's use of local exchange and exchange access services established by the FCC through its UNE Remand Order which imperfectly captures the FCC's orders on this issue. Id. Qwest must recognize that the constraint imposed by the FCC is a temporary one designed to avoid a possible reduction in contributions to universal service prior to full implementation of access charge and universal service reform. Id. The UNE Combination tentatively identified by Qwest here falls into that category of UNE combinations that (once the full restriction is eliminated), will need to be revised and broadened. Id. Therefore, the SGAT should include a provision that permits CLECs to convert special access to UNE combinations if the CLEC meets the terms of a waiver granted by the FCC. Id.

96. Also in Section 9.23.3.6, Qwest has defined DS1 capable loops as the sole loop element in this category of UNE combinations. Id. Qwest has not provided even a meager description of other private line type combinations, such as DS0, DS3, SONET OCn. Id. at p. 58. The FCC has specifically stated that ILECs like Qwest must provide the full variety of private line combinations and therefore, Qwest should modify the SGAT to offer these combinations and describe how they will be offered. Id. Additionally, although UNE-PL is the only variety of private line combination addressed in the SGAT, Qwest has not completely defined UNE-PL for DS1 in Section 9.23.3.6.

Id. Qwest must not only broaden this provision to allow access to all types of private line offerings, it must also provide additional detail on each private line combination, including the DS1 private line combination. Id. This will require conforming changes throughout the provisions that follow Section 9.23.3.6. Id.

97. In SGAT Section 9.23.3.6.2, Qwest establishes a prohibition on use of UNE combinations when the element is "either a special access circuit or is otherwise used primarily as a basis to avoid payment of Switched Access charges" which has no direct support in applicable law. AT&T 4-1 at p. 58. The language in the SGAT is ambiguous as to exactly what circumstances a CLEC may obtain the UNE combinations at issue and Qwest must eliminate the terms "or is otherwise used primarily as a basis to avoid payment of Switched Access charges." Id. at p. 59.

98. SGAT Section 9.23.3.6.2.1 includes a prohibition on the use of a UNE combination if private line service utilizes shared-use billing. AT&T 4-1 at p. 59. Qwest should demonstrate where this specific prohibition is found in applicable law and if it cannot, this provision should be deleted. Id.

99. Qwest should confirm the intent of SGAT language in Section 9.23.3.6.2.2 and remove any ambiguity suggesting that a UNE without multiplexing would not require collocation. AT&T 4-1 at p. 59.

100. SGAT Section 9.23.3.6.2.2.3 proposes language that does not appear in the FCC's *Supplemental Order Clarification* where this option is described. AT&T 4-1 at p. 59-60. This provision is not included in the FCC's description of this option, and Qwest should clarify its use here. Id.

101. In order to track the provisions of the FCC's orders, AT&T proposed that the first sentence of Section 9.23.3.6.2.3 be revised to read "Upon CLEC's certification to Qwest in the form of a letter that the combination of elements is carrying a significant amount of local exchange traffic, Qwest will convert a special access circuit to a UNE Combination." AT&T 4-1 at p. 60. AT&T also advocated the insertion of an affirmative obligation by Qwest to convert circuits to UNEs without delay and also that the last sentence of this section should be deleted. Id.

102. AT&T expressed its concerns over SGAT Section 9.23.3.6.2.5 which incorporates a provision that permits Qwest to perform audits of the CLECs records to ensure compliance. AT&T 4-1 at p. 60. Subsection (e) purports to allow Qwest to exercise its audit rights more frequently than once per year if an earlier audit discloses noncompliance. Id. Qwest's assertion of a right to conduct what is implied to be a limitless number of audits in such circumstances is not contemplated by law and is unreasonable. Id. The phrase "unless an audit finds noncompliance" must be deleted. Id. In addition, subsection (g) needs to be clarified to provide that, although these audits are not to be counted against the parties other audit rights, Qwest's other audit rights may not be exercised for investigation into these UNE combinations. Id. Finally, Qwest must

specify in an additional subsection, that audits should not be used as a pre-requisite to provisioning combinations. Id. at p. 61.

103. AT&T also suggested that Qwest must add an additional provision that provides, in accordance with the *Supplemental Clarification Order*, that once a CLEC has provided self-certification that it is providing a significant amount of local exchange service, the process for conversion should be "simple and accomplished without delay." Id. at p. 61. Qwest must add a provision making clear that conversion will be made promptly after a CLEC self-certifies. Id.

104. Regarding SGAT Section 9.23.3.7, UNE-P and Centrex, it is not clear what Centrex type UNE combinations Qwest is offering. AT&T 4-1 at p. 61. Paragraph 9.23.3.7.1 should be stricken and paragraph 9.23.3.7 should affirmatively provide for specific Centrex controls and features that are provided by the switch or by the signaling network as required by the FCC's rules. Id. at p. 61-62.

105. AT&T stated that Qwest is limiting UNE combinations to the set vaguely described in the SGAT and that additional combinations will be needed by the CLECs. AT&T 4-1 at p. 62. Language provided in Section 9.23.3.8 to add combinations using the BFR process is not acceptable standing alone. Id. Qwest cannot meet its obligations for providing combinations by forcing CLECs to use the BFR process for many of the combinations that they need. Id. Additionally, the following combinations should be specifically added, and Qwest must provide draft language to accommodate the following forms of UNE combinations: UNE-P-POTS with High Speed Data (xDSL), UNE-P-ISDN with High Speed Data (xDSL), CLEC Loop Termination, Unbundled Dark Fiber Combinations, Transport Combinations and Enhanced Extended Loop. Id. at p. 62-64.

106. AT&T is also concerned over SGAT Section 9.23.3.9.7 which seems to suggest that Qwest cannot routinely process more than 500 orders per month for UNE-P lines which is unacceptable and unlawful. AT&T 4-1 at p. 64. Qwest has an obligation under checklist item 2 to provide nondiscriminatory access to its operations support systems. Id. at p. 65. Obviously, Qwest processes more than 500 retail orders a month through its OSS. Id. This provision is discriminatory and should be deleted. Id.

107. AT&T recommends deleting Section 9.23.3.10 in that it requires that all termination liabilities under any services arrangement be paid in full before an end user can be converted to a UNE combination customer of the CLEC. AT&T 4-1 at p. 65. This provision will prevent any CLEC from being able to obtain a customer without that customer first resolving the arrangement with Qwest *to Qwest's satisfaction*. Id. The result of this provision is that it is enormously anti-competitive and should be deleted. Id.

108. Regarding SGAT Section 9.23.3.11, this section contains language describing the billing for customers that are converted from resale to UNE-P. AT&T 4-1 at p. 65. There is no excuse for Qwest to be late in processing a conversion order, and certainly there is no excuse for delay in converting the billing. Id. at p. 66. The present provision creates a disincentive for Qwest's prompt conversion of resale customers. Id.

109. Regarding forecasts for UNE Combinations, AT&T recommends removal of Section 9.23.3.12 from the combination section and placement into the forecast section of the SGAT. AT&T 4-1 at p. 66.

110. Regarding Section 9.23.3.16, AT&T states that this section unlawfully imposes limitations on the use of UNE switching in some situations. AT&T 4-1 at p. 66. AT&T notes that the FCC has never ruled that UNE-P is unavailable under the circumstances in which FCC has established the single exception to unbundled local switching and that the FCC has limited the use of UNE switching in Density Zone 1 areas in some MSAs. Id. Section 9.23.3.16 needs to be revised by Qwest to more clearly state the limitations that the FCC imposed. Id.

111. Section 9.23.4.1.4 states Qwest's position that the nonrecurring charge for each element in a combination be assessed to the CLEC, regardless of whether or not Qwest actually does any work. AT&T 4-1 at p. 66-67. This is not just and reasonable, and falls far short of the requirements of the Act and therefore, the paragraph should be modified to limit nonrecurring costs to reasonable charges for actual work done by Qwest in combining elements. Id.

112. AT&T requests that Qwest clarify the requirements on the ordering system for UNE combinations as dictated in Section 9.23.5.1. AT&T 4-1 at p. 67. In the SGAT section on EELs, Qwest states that EELs are ordered via an ASR. Id. The EEL is a UNE combination, very much like UNE-P Private Line and there is no explanation why one is ordered via LSR and the other via ASR. Id.

113. Regarding Section 9.23.5.3 on service intervals for UNE combinations, Qwest's proposed standard intervals should be put into the SGAT and discussed in the workshop to assess their merits. AT&T 4-1 at p. 68. Also, Section 9.23.5.4 states that order volumes may impact service intervals and that this sentence should be removed, as it seems to give Qwest justification and approval for missing service interval dates. Id. Qwest must scale its systems to meet service needs. Id.

114. Regarding Section 9.23.5.6 which establishes a process for termination of service and billing for terminated service, there is no comparable provision requiring Qwest to not provide this type of information to Qwest marketing personnel. AT&T 4-1 at p. 68. Qwest should modify this provision by including a statement that Qwest will not provide its marketing organization with the name of the new provider. Id.

115. AT&T is aware that there are several problems with Qwest's implementation of UNE-P. AT&T 4-1 at p. 68. First, it seems that Qwest is not providing all features with the unbundled switch or the combination of switch and signaling. Id. at p. 69. Qwest has not indicated to CLECs which features will not be provided and the reason they will not be provided and also explain the technical reason for not providing the features. Id. Second, it appears that Qwest will not have systems interfaces in place for ordering UNE-P until late in 2000 or early in 2001 and this puts the testing of these features in question. Id.

116. AT&T stated that Qwest must provide the EEL where the EEL is currently provisioned and combined in Qwest's network. AT&T 4-1 at p. 69. In Arizona, Qwest must also combine the elements that comprise the EEL, even if Qwest is not currently utilizing that same combination. Id. Qwest chooses to comply with the FCC's order on the EEL by creating a section under Section 10, the part of the SGAT Qwest has developed to describe and incorporate "Ancillary Services." Id. The language for the EEL combination should be Section 9, Unbundled Network Elements. Id. Qwest should also confirm that cost-based UNE rates will be applied to the EEL. Id.

117. AT&T requests that Qwest modify Section 10.9.1 which limits the transport for EEL to DS0, DS1 or DS3. AT&T 4-1 at p. 69. There is no reason that OCn transport cannot be ordered by the CLEC and this section should be revised to permit these additional transport methods. Id. at p. 69-70.

118. Section 10.9.1.1. has no operational function and carries no information regarding the provisioning of EELs. AT&T 4-1 at p. 70.

119. AT&T comments that Section 10.9.2.5 requires that the CLEC virtually collocate concentration equipment in order to provide concentration capacity. AT&T 4-1 at p.70. The Qwest requirement for the CLEC to collocate its own DLC is not efficient engineering when Qwest is already using DLC. Id. Qwest should be required to let CLECs utilize Qwest DLC when available. Id. When Qwest is providing service to loops over DLC, the CLEC should be allowed to use the Qwest DLC to aggregate loops onto DS1 facilities and the SGAT should affirmatively provide for this configuration. Id. Additionally, Section 10.9.2.5 should be amended to exclude situations where Qwest is already using DLC. Id.

120. Section 10.9.2.8 restricts EEL service to locations where existing facilities are available. AT&T 4-1 at p. 70. When facilities are not available for EEL service, the CLEC should be allowed to use Qwest unbundled switching in an unrestricted manner. Id.

121. Finally, EEL transport should include OCn capability. AT&T 4-1 at p. 71. SONET transport is a common method of aggregation for loops and should be required of Qwest. Id. EEL multiplexing should be offered at OCn rates as well. Id. SONET Add/Drop multiplexing is needed with SONET transport. Id. DS0 Low Side Channelization and DS0 MUX Low Side Channelization cards may already be included in the multiplexing rate elements. Id. While Qwest is assuming this is a separate element, the cost case should determine where costs for channel cards belong as part of multiplexing. Id. Rate elements will be needed for CLEC use of Qwest concentration capability. Id. Also, Section 10.9.3.5 is a repeat of virtual collocation costs. Id.

122. MCIW stated in its comments that Qwest has avoided prompt compliance with the clear requirements in existing MCIW contracts to provide combined elements for either loop-transport combinations (defined by the FCC as Enhanced Extended Link

or "EELs") or full service port and loop combinations (frequently referred to as Unbundled Network Elements Platform or "UNE-P"). MCIW 4-1 at p. 3. Additionally, MCIW's overall experience attempting to obtain Qwest unbundled network elements has been marked by unreasonable requests regarding contract amendments, unnecessary delay, and repeated refusal to provision MCIW's orders that Qwest is required to provide under existing contracts. Id. at p. 6. Qwest, on a number of occasions, has told MCIW it must amend its current interconnection agreements in order for it to process MCIW's orders. In addition to an unnecessary contract amendment, Qwest requires MCIW, as well as other CLECs, to complete a lengthy product questionnaire before Qwest will process its UNE combinations orders. Id. at p. 5. Although MCIW does not object to providing billing and other relevant information necessary for Qwest to process MCIW orders, the questionnaire serves as another roadblock to Qwest actually provisioning combinations of unbundled network elements. Id. Qwest's product questionnaire is unnecessary lengthy, the current version is some 43 pages long, and much of the information requested is duplicative or appears to be marketing sensitive. Id. Also, as part of the ordering process, Qwest requires CLECs to obtain a billing account number. Id. Qwest has informed MCIW that it can expect to wait *three to four weeks* for Qwest to load the appropriate rates into the Qwest billing system before it may place an order. Id. This is an unreasonably long period of time and only serves to stall competition by delaying CLEC orders. Id. Qwest has also repeatedly refused to convert the local customer connections ordered by MCIW to EEL's – a simple loop and transport combination. Id. As a result Qwest has improperly charged MCIW interstate special access charges that are far in excess of the state approved rates for UNE combinations. Id. This overcharge by Qwest has now accumulated to approximately $16,000,000 of which nearly half is for Colorado connections, and remains a disputed issue between the companies. Id.

123. MCIW stated that SGAT Section 9.23.1.2, which allows CLECs to access combinations of network elements in accordance with 47 C.F.R. 51.315(b), is interpreted by Qwest very narrowly. MCIW 4-1 at p. 6. This Commission has recognized that Qwest's narrow interpretation would limit competitors to using UNE combinations to serve end users who already have Qwest service and prevent competitors from providing that same user additional services or different features than those already provided by Qwest. Id. at p. 6-7. This would limit customer choice, preventing end users from gaining the benefits of competition. Id. Qwest must combine network elements that are normally combined in Qwest's network and therefore, MCIW proposes that this section be amended. Id.

124. MCIW also had concerns with Section 9.23.2, which states that UNE combinations are available in five (5) categories. MCIW 4-1 at p. 7. By specifying only five categories, Qwest unreasonably limits CLECs access to UNE combinations and could prevent CLECs from gaining access to all combinations currently available in Qwest's network. Id. Qwest's proposed language is both discriminatory and in violation of state and federal law. Id. If however, Qwest's specific categories are allowed to remain in the SGAT, then Qwest should be required to expand the categories of UNE combinations frequently found in the Qwest network and those most likely to be used by

competitors. Id. The UNE-P section should be updated to include other combinations that CLECs are likely to request. Id. at p. 8.

125. MCIW expressed concern over SGAT Section 9.23.1.2.2 which provides that UNE combinations will not be directly connected to a Qwest finished service, whether found in a tariff or otherwise, without going through a collocation. MCIW 4-1 at p. 8. Qwest has failed to define a "finished service" and without such a definition, Qwest is given unilateral ability to control when a CLEC would be required to collocate in this situation. Id. Second, there is no legal basis upon which Qwest can rely to allow them to restrict CLECs in such a manner. Id. Therefore, MCIW recommends that this section be rejected.

126. Regarding certifying "significant amount of local exchange traffic", MCIW has recently filed a request with the FCC for a waiver of the provisions of the FCC's *Supplemental Order Clarification* to make clear that MCIW has a right under the FCC's unbundling rules to convert exclusively local circuits leased under Qwest's special access tariffs to unbundled network elements. MCIW 4-1 at p. 9. MCIW proposes that the SGAT be revised to reflect that any such waiver would apply once granted by the FCC. Id.

127. Regarding Qwest's standard product offerings, SGAT Sections 9.23.3.3, 9.23.3.4, 9.23.3.5 and 9.23.3.6 all provide that the "[t]he standard offering is under development" which should be rejected. MCIW 4-1 at p. 9. Qwest cannot avoid its obligation by stating in its proposed SGAT that its product offering is "under development" and is therefore unavailable to CLECs. Id.

128. MCIW's comments regarding intervals in Section 9.23.5.3 are that they should be included in the body of the SGAT or agreement. MCIW 4-1 at p. 10. This is preferable to referencing an external document over which Qwest has unilateral control. Id. MCIW proposes that once the measurements are available from the separate performance measurement proceeding, Qwest should be required to revise its SGAT accordingly. Id.

129. Also, Qwest's SGAT Section 9.23.3.9.7 limits the application of the standard for more than 500 UNE-P lines in any one month, which is unacceptable, since this does not constitute commercial volumes. Id. at p. 11. This low limit will excuse Qwest from adhering to the standard interval and should be rejected. Id. Other Sections that provide a "way out" regarding its provisioning of service include 9.23.3.11, 9.23.5.3 and 9.23.5.4. Id. All such language should be removed from the terms of the SGAT and reasonable Service Guarantee payments should be added as a financial incentive for Qwest to meet the required intervals. Id. at p. 12.

130. SGAT Section 9.23.3.12 regarding forecasts should be rejected. MCIW 4-1 at p. 12. MCIW proposes the alternative of providing Qwest with an anticipated range of order volumes that would be useful to Qwest in gauging their overall ordering system requirements and could be provided for a six-month period, updated quarterly. Id.

131. Regarding Qwest's notice of termination of service contained in Section 9.23.3.14, MCIW recommends that the SGAT include specific notice requirements, which would include requiring Qwest to provide CLECs a specified number of days before Qwest terminates service. MCIW 4-1 at p. 13. MCIW proposes that Qwest provide for at least 90 days notice before terminating UNE combination service in order for CLECs to contact their end user customers to make alternate arrangements regarding their service. Id. Also, Qwest should be required to cooperate with the CLEC in converting these end users to alternative service. Id.

132. Regarding Section 9.23.3.9.2 on branding of operator service ("OS") and directory assistance ("DA"), to the extent that Qwest is unable to offer a choice of branding to CLECs, Qwest should not be allowed to brand its own OS or DA services with Qwest's brand. MCIW 4-1 at p. 13-14.

133. MCIW expressed concern over Section 9.23.4.1.2 on the rates and charges Qwest may recover. MCIW 4-1 at p. 14. Since Qwest cannot separate unbundled network elements that it currently combines, Qwest should not be able to recover multiple non-recurring charges for work that has not been performed. Id. MCIW proposes that a reasonable and prudent cost for providing combined elements would be a single non-recurring charge where two or more network elements are ordered in combinations. Id. Additionally, MCIW proposes Section 9.23.4.2 be revised to state that this Commission will ultimately decide whether such rates will be retroactively applied. Id.

134. MCIW also seeks clarification on Section 9.23.4.3 which provides that the CLEC is responsible for billing its end user customer for all miscellaneous charges and surcharges required by statue, regulation or otherwise required. Id. at p. 14-15. MCIW proposes that such surcharges be specifically listed in this section of the SGAT rather than leaving them undefined. Id.

135. Section 9.23.4.5 provides that Qwest will have a reasonable amount of time to implement system or other changes necessary to bill CLEC for rates and charges associated with UNE combinations. MCIW 4-1 at p. 15. MCIW proposes that Qwest be required to implement necessary system changes in 30 days from date of Commission action determining the newly adjusted rates for UNE Combinations. Id.

136. MCIW stated in its comments that Qwest has also repeatedly refused to convert the local customer connections ordered by MCIW to EEL's – a simple loop and transport combination. MCIW 4-1 at p. 5. As a result Qwest has improperly charged MCIW interstate special access charges that are far in excess of the state approved rates for UNE combinations. Id. This overcharge by Qwest has now accumulated to approximately $16,000,000 of which nearly half is for Colorado connections, and remains a disputed issue between the companies. Id.

137. e-spire stated in their comments that Qwest has interpreted the *Supplemental Order Clarification* in a manner that acts as a barrier to entry. e-spire 4-1 at p. 1. Qwest's affidavit and proposed SGAT language do not appear to modify Qwest's improper interpretation of the *Supplemental Order Clarification.* Id.

138. e-spire went on to state that it has requested 34 special access circuits be converted to a UNE-Combination all of which have been refused. e-spire 4-1 at p. 1-2. Qwest's refusal is based on two issues: (i) an alleged "co-mingling" of circuits and (ii) e-spire's failure to negotiate an amendment to the existing interconnection agreement between e-spire and Qwest. Id. Unless Qwest changes its position, it is not meeting its obligations under Section 271. Id.

139. Regarding the co-mingling issue, Qwest apparently believes the FCC statements about co-mingling allow it to charge e-spire for re-grooming and rolling DS-1 circuits from aggregated DS-3 circuits. e-spire 4-1 at p. 2. e-spire states that Qwest's position is without basis and is merely a barrier to entry. Id. Qwest apparently believes that the aggregation of various types of traffic over the same high-capacity transport facility justifies its refusal of e-spire's request for conversion of special access circuits to EELs. Id. It is cost prohibitive to require a local carrier to deploy what amounts to an additional transport network in order to separate dedicated end-user traffic from ancillary traffic. Id. at p. 4. The practical effect of Qwest's position would require the deployment of exactly this form of cost-prohibitive and inefficient network design and prevent CLECs from using the excess capacity on DS-3 or high-capacity circuit for additional functionality. Id. e-spire does not claim that the entire DS-3 transport facility should be converted to UNE pricing but that only the special access portion of the DS-3 facility constitutes the interoffice transport elements of the EEL and therefore, should be subject to conversion to UNE pricing. Id. e-spire believes it properly has certified that the special access circuits it has requested to be converted to EELs are used to provide a significant amount of local exchange traffic to customers per the FCC's *UNE Remand Order*, *UNE Remand Supplemental Order* and *Supplemental Order Clarification*. Id. Because Qwest refused e-spire's request, it has failed to meet its Section 271 obligations regarding UNE-Combinations. Id. at p. 5.

140. Regarding the interconnection amendment issue, that requirement acts as a barrier to entry because it delays the conversion process due to the need to negotiate an amendment and obtain Commission approval of the amendment. e-spire 4-1 at p. 5. E-spire states that an amendment is unnecessary and that a simple ordering process should be sufficient for such conversions. Id.

141. Z-Tel stated in their comments that the Commission should require Qwest to implement and support a UNE-P product similar to that mandated by the State Commissions in New York and Texas. Z-Tel 4-1 at p. 2. To ensure mass market competition, Commission rulings on the UNE-P and other UNE-related items must be implemented by Qwest quickly and made available to competitors on an expedited basis. Id. at p. 3. Z-Tel recommends that the Commission implement an expedited process for adopting interconnection agreements under section 252(i) of the Federal Communications

Act, and develop expedited processes for the implementation of Commission decision. Id. at p. 3-4.

142. Z-Tel also stated that the development of mass-market competition requires that CLECs have the ability to obtain new as well as existing UNE-P combinations. Id. at p. 4. Without "new" UNE-P combinations, CLECs will have only a limited ability to develop and maintain long-term relationships with end users. Id.

143. Additionally, Z-Tel stated that mass market competition requires that the Commission set reasonable non-recurring charges for basic operations support system transactions, such as UNE-P migrations. Id. at p. 4. High non-recurring OSS charges for a basic customer migration greatly constrains mass market competition due to the number of months it would take a CLEC to recoup this charge. Id. at p. 4-5. It also discourages the incumbent from improving OSS functionality. Id. Z-Tel believes that the non-recurring OSS provisioning charge for a UNE-P migration should approximate the non-recurring cost of a long distance "PIC" change, which presently costs approximately $5.00. Id. Maintaining reasonable OSS charges for UNE-P migrations will encourage Qwest to improve the efficiency of its OSS. Id.

144. Z-Tel also commented that UNE-P migration orders must flow through Qwest's OSS and be provisioned quickly and with certainty. Id. at p. 6. CLECs must receive Firm Order Confirmations ("FOCs") and provisioning must be completed in short and predictable time frames. Id. Obtaining these goals requires that the incumbent completely replace manual processes with electronic processes for UNE-P migrations. Id. The Commission should mandate that Qwest take the steps necessary to implement fully automated OSS for UNE-P migrations and provisions such as UNE-P migrations in short and predictable intervals. Id.

145. Finally, Z-Tel stated that the Commission should clarify the CLECs may utilize UNE combinations, including UNE-P to originate and deliver any type of call within a LATA, including intraLATA toll calls. Id. at p. 6. Basic principles of nondiscrimination require that CLECs should have the ability to complete intraLATA toll calls in the same way in which Qwest completes such calls – using the existing interoffice network purchased as part of the UNE-P, and not through an access provider. Id. at p. 7. Z-Tel recommends that the Commission adopt this approach to help ensure that competitors can compete in the mass market against Qwest using the UNE combinations, such as the UNE-P. Id.

146. Eschelon stated in its comments that regarding ordering UNE Combinations, Qwest either has no processes in place or does not follow them. Eschelon 4-1 at p. 3. Qwest has failed to provide information necessary for processing orders, given delayed or incorrect responses to inquiries, and appeared to fight processing of orders for UNE combinations nearly every step of the way. Id. Qwest's processes and policies not only cause unnecessary and anti-competitive delay and resource expenditures, but also they have resulted in adverse customer-impacting situations. Id. at p. 4. Customers have experienced feature loss, disruption of long distance service, and

***service outages*** when Qwest has processed Eschelon's orders for UNE-P-POTS. Id. Significant improvement is needed in Qwest's documentation, support, training, policies, methods, procedures, and systems with respect to UNE combinations. Id.

147. Eschelon went on to state that Qwest refuses to process any order for any combination of UNEs until two prerequisites are met: 1) Qwest has required the CLEC to sign a contract amendment, even when the CLEC has an existing contract requiring Qwest to provide UNE combinations, and 2) Qwest will wait until after an amendment is negotiated to complete updates to its system. Eschelon 4-1 at p. 5. Both of these pre-conditions cause lengthy, unnecessary delays and constitute anti-competitive barriers to market entry and expansion. Id.

148. Regarding the contract amendment, Qwest has told Eschelon that it will not accept orders for UNE combinations anywhere in its territory, except Minnesota, without a contract amendment. Eschelon 4-1 at p. 5. Other problems include Qwest's proposed amendment which requires Eschelon to pay nonrecurring charges for "each unbundled network element that comprise the UNE Combination.". Id. at p. 7. This coincides with SGAT Section 9.23.4.1.2, which is inconsistent with this Commission's ruling in the Qwest-Sprint arbitration. Id. Qwest has not deleted this language or confirmed that it will not require a separate charge for each individual element combined if Eschelon signs the proposed Amendment. Id. Also, the proposed amendment contained an over-reaching provision regarding termination liability that was substantially the same as the following provision Section 9.23.3.10 of the SGAT. Id. Under this provision, obtaining UNE combinations is conditioned upon payment of a debt to Qwest by a third party over which CLECs have no control. Id. at p. 8. Qwest has no basis for placing this condition upon availability of UNE combinations. Id.

149. Regarding types of combinations, Qwest claims to comply with the law by providing three types of UNE combinations: (1) "preexisting", (2) "CLEC performed" and (3) "new" Eschelon 4-1 at p. 30.

150. Eschelon states that Qwest has taken the position that "pre-existing" combinations are "limited to those elements actually combined at the time of the request on behalf of the specific customer to whom the CLEC intends to provide service". Eschelon 4-1 at p. 31. This narrow definition of the term "pre-existing" should be rejected and all references to the term be deleted from the SGAT and any document outlining Qwest's obligation to provide UNE combinations. Id. at p. 33.

151. Additionally, Eschelon comments that the language dealing with quality of service should be more specific. Id. at p.34. There is no reason that service should be disrupted when changing a customer to UNE-P-POTS, which Qwest's account team has indicated often involves only translations work. Id. Addressing this issue in the SGAT, in addition to adopting appropriate measures and remedies, should provide an incentive to Qwest to make these improvements and eliminate unnecessary customer disrupting events. Id. Also, Eschelon stated that Qwest needs to make clear its product offerings since Eschelon has been told by Qwest that many are not available at all at this time. Id.

at p. 34-35. These types of inaccuracies and conflicting information are more examples of Qwest's unreliability processes and practices. Id. at p. 36.

152. Eschelon stated that Qwest's SGAT generally outlines Qwest's obligation to provide unbundled switching. Eschelon 4-1 at p. 37. In light of Eschelon's experience in attempting to obtain an accurate list of the features that are available with UNE-P, the SGAT should be more specific on this issue, at least with respect to UNE combinations. Id. Qwest should commit in the SGAT to documenting and making readily available (preferably in electronic form), a list of features that Qwest is obligated to provide including Centrex. Id. Qwest should also provide the USOCs for those features just as it does for its "available for resale" list of features. Eschelon 4-1 at p. 37. Qwest should mechanize all of these features so CLECs can actually order them with UNE combinations and commit to provide features either individually or in packages. Id. Qwest should commit to allowing CLECs to order packages with one USOC (as Qwest's own retail representatives do), instead of requiring CLECs to list the features separately. Id. Qwest should also state in its SGAT that it will provide features that the switch is capable of proving, regardless of whether Qwest offers them to retail customers. Id. The SGAT should state that the use of the BFR process is only required when a feature is ordered for the first time, and Qwest does not offer it to its retail customers but the switch is capable of proving it. ID. The SGAT should be clear that these provisions apply to UNEs and UNE combinations. Eschelon 4-1 at p. 38.

153. Eschelon also stated that the use of the BFR process is time-consuming and can be costly and should be minimized as much as possible. Id. at p. 38. The BFR process should be used only in limited circumstances when Qwest demonstrates that it does not provide the requested combination in the ordinary operation of its network, and this is the first request to do so. Id. at p. 40 The SGAT should also indicate that, if Qwest begins to combine elements differently, Qwest will provide such combinations to CLECs at the same time on a nondiscriminatory basis, without requiring use of the BFR process. Id.

154. Regarding the second type of combination, "CLEC Performed" combinations, Eschelon points out that it has had problems with the collocation process in Qwest's territory. Id. at p. 41. Problems with collocation have related primarily to availability of transport, LIS trunking, and tie pairs which have resulted in serious delays due to Qwest's capacity shortages. Id. Eschelon states that it is skeptical that the methods presented by Qwest will operate as smoothly in practice as described in Qwest's testimony and SGAT. Id.

155. Finally, regarding "New Combinations" the distinction should be clarified between new ***lines*** in combinations that Qwest provides in the ordinary operation of its network and combinations that Qwest does not currently provide. Id. at p. 42. At a minimum, Qwest is required to provide new lines with combinations of the type ordinarily found in Qwest's network pursuant to Rule 315(b). Id.

156. Under the provisioning process, Eschelon states that Qwest's provisioning process is undeveloped and support is inadequate. Id. at p. 42. Qwest's testimony and SGAT raise issues relating to 1) ordering on a single order form, 2) service intervals, 3) project management support for Large Number of Conversions, 4) billing, and 5) Release 6.0, including Centrex conversions. Id.

1) Ordering on a Single Order Form

Qwest indicates that it has simplified ordering of UNE combinations by adopting a process that uses a single order, or local service request ("LSR"). Eschelon 4-1 at p. 42. Despite this language and the statements in Qwest's testimony, Qwest has suggested in discussions relating to Qwest's proposed Amendment that Qwest will require CLECs that have not signed its proposed Amendment to use multiple orders to request UNE combinations. Id. at p. 43. Because of the uncertainty created by Qwest's suggestion, however, the SGAT should include a provision that Qwest shall provision UNEs either individually or in combination using a single order. Id.

2) Service Intervals

Qwest indicates that the standard service intervals for each UNE combination are identified in the UNE-P and UNE Combination Resource Guide, which includes the Standard Interval Guide ("SIG") for Interconnection and Resale Services. Id. at p. 44. Eschelon's interconnection agreement with Qwest in Arizona provides that the parties must mutually agree before intervals in the SIG may be applied. Id. Nevertheless, Eschelon learned recently that Qwest had plans to change its systems to automatically edit Eschelon's desired due dates against Qwest's SIG dates. Id. Eschelon has legitimate concerns about the practical implementation of the statements in Qwest's testimony and SGAT about standard service intervals. Id. at p. 46.

3) Project Management Support for Large Numbers of Conversions

Eschelon has a long-standing request, repeatedly made, for additional support, including additional account team personnel and project managers. Id. at p. 46. Eschelon has requested both additional account team support and, for certain situations project managers and to date, Qwest has not assigned the additional personnel needed to support Eschelon's account adequately. Id. Qwest's commitment to provide project management support is stated in its testimony, but Eschelon could not find it in the SGAT. Id. at p. 47. Qwest's proposal to cap its orders at 500 per month demonstrates that it is unprepared at this time to handle current demand for conversion orders even for basic UNE-P-POTS orders. Id. Also, with respect to when pricing for UNE combinations begins to

apply, the provision delays the availability of UNE-P pricing even longer than it has already been delayed. Id. at p. 48. Therefore, CLECs should be entitled to the difference between the resale price and the UNE-P price for any resold lines (including 1FB, Centron, and Centrex) that they would have ordered as UNE-P had it been available from commencement of business to present and going forward. Id. at p. 49.

4) Billing and Carrier Charges

Eschelon stated that generally, the billing and repair centers are the least timely and responsive at Qwest. Id. at p. 50. Eschelon needs accuracy, comprehensiveness, and timeliness in the billing process for all services and products, including combinations of UNEs. Id. at p. 51.

5) Release 6.0 and Centrex Conversions

Eschelon states that despite its inclusion on the list of CRs for Release 6.0, Eschelon's understanding is that making UNE-P-Centrex available is not part of IMA release 6.0. Id. at p. 51. Eschelon has made inquiry upon inquiry about how to convert Centrex lines to UNE combinations. Id. at p. 52. Eschelon asks Qwest to provide Centrex with UNE combinations and to simply tell Eschelon how this may be accomplished and at what rate. Id.

157. Eschelon also commented on Qwest's maintenance support for local orders which is wholly inadequate. Id. at p. 53. The centers are among the least timely and responsive at Qwest including problems with UNE-P-POTS orders. Id.

158. Eschelon notes that combinations of UNEs have been described simply as "UNE platform UNE-P POTS". Id. at p. 53. This seems to suggest that testing is limited to Qwest's basic UNE-P-POTS "product.". Id. Eschelon believes that the measurements should not be limited in this manner. Id. Regarding performance measures, Eschelon is unaware of any metrics with respect to the change management process. Id. at p. 54. Intervals need to be established for the distribution of Qwest's change management notification and documentation, along with metrics to report Qwest's compliance with those intervals. Id.

159. Finally, Eschelon states that Qwest should not be allowed to use the BFR process to fill gaps in its compliance with the law. Id. at p. 55. As stated in Eschelon's earlier comments, the BFR process is time-consuming, can be costly, difficult to monitor and may result in discriminatory treatment among carriers. Id.

160. ELI stated in their comments that the SGAT outlines product offerings and provisioning processes regarding UNEs and UNE combinations but in many cases, however, these processes have either not been commercially tested or, in the instances ELI has placed orders for additional requirements not included in the SGAT, have been

encountered causing provisioning delays. ELI 4-1 at p. 2. ELI is also concerned that Qwest has failed to meet its provisioning obligations by only offering DS1 & DS3 "capable" loops instead of the required "High Capacity Loops" including OCn Loops. Id. Further, Qwest offers a BFR process for products beyond their "standard" offering again introducing processes which are cumbersome and costly for the CLEC. Id. ELI submits that Qwest should be required to formulate specific provisioning processes for all product offerings and UNEs. Id.

161. Additionally, Qwest has failed to demonstrate adequate provisioning intervals for all UNEs by excluding specific intervals from its SGAT and, instead, referring CLECs to documents beyond the jurisdiction of the SGAT. ELI 4-1 at p. 3. ELI submits that Qwest must be required to support its provisioning intervals with self-executing remedies for non-compliance of such provisioning intervals. Id.

### e. Qwest Response

.162. In its September 29, 2000 rebuttal affidavit, Qwest addressed several concerns of AT&T, MCIW, e-spire, Eschelon and Z-Tel.

163. With respect to AT&T's concern regarding Qwest's definition of UNE-P in Section 4.61.1 of the SGAT, Qwest agreed to modify the definition of UNE-P to clarify it includes the unbundled network elements that are necessary to provide the loop-switch-port combination requested. Qwest 4-1 at p. 7. However, some of the items listed by AT&T are already included in the UNEs listed and Qwest is concerned that listing these UNEs separately could be confusing when a less knowledgeable CLEC is doing rate comparisons. Id. Qwest proposed SGAT language is as follows:

> 4.61 "Unbundled Network Element Platform (UNE-P)" – is a combination of unbundled network elements, including Unbundled Loop, Unbundled Local Switching and Shared Transport and unbundled network elements <u>necessary to support the loop-switch-port combination requested</u>. There are several forms of UNE-P, including <u>but not limited to,</u> single line residence, single line business, and PBX Trunks.

Id. Qwest also agreed to remove the word "pre-existing" from Section 4.6.2 to address AT&T's concern that this section be re-written to eliminate any ambiguity that UNE-P and UNE-Combinations are not limited to pre-existing or combined UNEs or any specific types of combinations. Id. at p. 8.

164. Regarding SGAT Section 9.0 on Unbundled Network Elements, Qwest agreed to delete Section 9.1.1 addressing AT&T's concern that it is redundant and outdated. Qwest 4-1 at p. 9.

165. AT&T raised concerned over Section 9.1.2 in that it imperfectly captures the appropriate FCC standards to be followed in providing access to UNEs and proposed

suggested language. Qwest 4-1 at p. 10. Qwest would agree to more closely quote the FCC standards noted by AT&T in paragraphs 490-491 of the UNE Remand Order. Id. at p. 11. However, the actual SGAT language proposed by AT&T also "imperfectly captures" the FCC language in the referenced paragraphs. Id. Qwest does object to AT&T's language in Section 9.1.2 regarding state wholesale and retail service quality standards which are beyond the scope of this workshop. Id. at p. 12. Qwest also objected to AT&T's proposed indemnity language in Section 9.1.2.1 in that indemnity issues are clearly covered in Sections 5.8 and 5.9 of the SGAT. Id.

166. With regard to AT&T's concern over Section 9.1.3 and whether it allows all permitted use of UNEs under FCC rules, Qwest will allow all permitted uses of UNEs per current FCC rules. Qwest 4-1 at p. 12. Also, AT&T requested identification of what ancillary services CLECs are prohibited from as substitutes for special or switched access. Id. Qwest states that "ancillary services" generally refers to the list of ancillary services contained in Appendix A of the SGAT. Id.

167. Qwest did not agree to AT&T's recommendation that the recurring charges for ITPs be eliminated in Section 9.1.4. Qwest 4-1 at p. 14. However, Qwest did agree to add the additional kind of demarcation point as identified in AT&T's comments as a subsection 9.1.4(d) and make conforming changes:

> (d) if CLEC elects to use a direct connection from their collocation space to the distribution frame serving a particular element

168. Regarding Section 9.16, AT&T believes Qwest should insert in this section a representation that a CLEC's access will permit all required testing for determining end-to-end transmission and circuit functionality. Qwest 4-1 at p. 14. Qwest agrees that CLECs will have access to UNEs at the collocation-established network demarcation point to perform all technically feasible testing to determine end-to-end transmission and circuit functionality. Id. Upon a reasonable request by the CLEC, Qwest will confirm functionality or other operating parameters testing of the UNE consistent with the rates and charges for such testing as identified in Exhibit A SGAT under 9.20 Miscellaneous Elements. Id. at p. 15. AT&T also recommended that Qwest insert in this section an affirmative obligation to assist CLECs upon a reasonable request to confirm functionality or other operating parameters of the UNE. Id. at p. 14. Further, AT&T believes Qwest must modify this provision to make clear that Qwest is responsible for testing individual elements at the request of the CLEC when Qwest's maintenance and repair activities require it. Id. at p. 14-15. Qwest also agreed to modify this provision to make clear that Qwest will test individual elements at the reasonable request of the CLEC when Qwest's maintenance and repair activities require it. Id. at p. 15. Such testing will be consistent with testing appropriate to the individual UNE being tested and subject to 12.3.4 Trouble Isolation section of the SGAT. Id.

169. To address many CLECs concerns over Qwest identifying by UNE, what intervals are specified in the IRRG per Section 9.1.7, Qwest amended Exhibit C of the SGAT on 7/21/2000 to include installation intervals as specified in the IRRG for each

UNE included in this workshop. Qwest 4-1 at p. 16. Qwest will also add to Exhibit C the appropriate list of installation intervals for UNE-Combinations. Id.

170. Regarding SGAT Section 9.1.8, AT&T was concerned Qwest's modifications may create material changes in the quality and character of Qwest's UNEs and the access to UNEs. Qwest 4-1 at p.16. Qwest states that minor changes to transmission parameters of UNEs will not alter the technical parameters (i.e., interface requirements) tied to individual services provisioned over the UNE. Id. at p. 17. Qwest has agreed to modify it SGAT language to reflect examples of changes that affect network interoperability. Id.

171. Qwest did not agree to AT&T's recommendation to delete Section 9.1.9 regarding channel regeneration charges. Qwest 4-1 at p. 18. Qwest will agree, however, to review how regeneration costs could be added to the EICTs and ITPs in the Arizona cost docket. Id.

172. Qwest did agree to address AT&T's concern to identify specifically, the circumstances under which "Miscellaneous Charges" will apply. Qwest 4-1 at p. 19. Qwest will identify when these charges will apply at the point in time the other general sections of the SGAT are reviewed. Id.

173. To address AT&T's concerns over Section 9.9 regarding Unbundled Customer Controlled Rearrangement (UCCRE), Qwest stated that UCCRE is the wholesale version of "Command-a-Link". Qwest 4-1 at p. 31. Command-a-Link, like UCCRE, allows the IXC to configure elements through the manipulation of ports on the Digital Cross-Connect System (DCS). Id. The First Report and Order required ILECs to provide digital cross connect capabilities to CLECs in the same manner an ILEC offers it to Interexchange carriers. Id. Qwest offers the CLEC UCCRE to provide the same Command-a-Link functionality to CLECs. Id.

174. Qwest disagreed with AT&T regarding construction charges in Section 9.19. Qwest 4-1 at p. 43. Qwest states that this section is not inconsistent with Section 19.0 as AT&T asserts. Id. To address AT&T's request for description of ancillary and finished services, Qwest stated that "ancillary services" generally refers to the list of ancillary services contained in Appendix A of the SGAT. Id. at p. 44. In the context of the SGAT, a "finished service" is a complete end to end service that is provided to a wholesale or retail customer. Id. This would generally include everything other than UNEs or UNE combinations. Id. Given the volume and variety of finished services, Qwest cannot provide a comprehensive list in this section. Id.

175. Regarding a variety of CLEC concerns as to the Unbundled Network Elements Combinations section of the SGAT (9.23), Qwest is in the process of redrafting Section 9.23. Qwest 4-1 at p. 44. Many of the CLECs' concerns relate to their fundamental skepticism that Qwest will provide the combinations required by the FCC, and whether the SGAT commits Qwest to comply with the applicable laws and regulations relating to UNE combinations. Id. Qwest is committed to providing all

required forms of UNE combinations and will addresses this issue in the revised Section 9.23. Id. While several CLECs have submitted extensive testimony regarding alleged problems they have had in the past with the former U S WEST when they attempted to negotiate terms to order UNE-P, Qwest does not agree with many of these allegations and will instead focus its commitment to meeting its complete obligations in regard to UNE Combinations. Id. at p. 45.

176. In regard to several CLEC requests that all references to the term "pre-existing" be deleted from the SGAT, Qwest has agreed to remove these references. Qwest 4-1 at p. 45.

177. At the request of several CLECs, Qwest has agreed to modify Section 9.23 to limit nonrecurring costs to reasonable charges for actual work done by Qwest in combining elements and provisioning the requested combination. Qwest 4-1 at p. 46.

178. Additionally, several CLECs identified that the FCC has stated expressly that the test for "Significant Amount of Local Exchange Traffic" is a "temporary" constraint until it resolves the issues in the Fourth NPRM. Qwest 4-1 at p. 46. Qwest believes the FCC concept of "temporary" requirement for significant local exchange service on EELs can be addressed in the change of law provision in Section 2.2, along with other possible changes in legal requirements. Id.

179. At the request of AT&T, Qwest will include language in the SGAT that assures CLECs that Qwest will not disconnect UNEs that are currently combined, unless the CLEC specifically requests that they be separated. Qwest 4-1 at p. 46.

180. To address Z-Tel's concern that the Commission implement an expedited process for adopting interconnection agreements under section 252(i) of the federal Communications Act, and develop expedited processes for the implementation of Commission decisions, Qwest feels that this would be better addressed in the SGAT docket so that all interested parties can participate. Qwest 4-1 at p. 46.

181. At the request of several CLECs to have the SGAT amended to provide that the CLECs can order any, all, or any combinations of the features, functions and capabilities of the switch, Qwest indicates that Section 9.23 will state that the CLECs can order any, all, or any combinations of the features, functions and capabilities of the switch, as required by law. Qwest 4-1 at p. 46.

182. Finally, Qwest provides some comments on e-spire's statements regarding the co-mingling and aggregation of EEL-eligible special access circuits onto a high-capacity DS-3 transport facility that also carries ancillary services. Qwest 4-1 at p. 47. Qwest recommends that the e-spire proposal requiring Qwest to permit unbundled loop-transport combinations to be combined with its tariffed special access services be deferred. Id. Qwest believes the FCC is in the best position to rule on the merits of this request. Id.

## f. Workshops

183. In the first Workshop, Qwest clarified that if the CLEC interconnection agreement has a provision for combinations, then the CLEC would not need a formal addendum. Tr. pps. 38-39. If the CLEC does have combination language in its SGAT but it is missing any particular UNEs in its interconnection agreement , Qwest will default in the State. Tr. p. 39. Thus, Qwest's position is that if the CLEC has an interconnection agreement without a cost-based nonrecurring charge or the CLEC does not have shared transport or it does not have OC-12 level transport that it wants with an EEL combination, then the CLEC would default to the SGAT absent anything else. Tr. p. 39. The expectation would be however that the CLEC would have an actual interconnection agreement amendment that would capture all of the details. Tr. p. 39. Part of the process of capturing all of the details is exactly what is it that a CLEC wants to order. Id. If you go look at the UNE-P combination, it refers to unbundled switching. Id. If you go into the unbundled switching section, there's a list of vertical features that are available with unbundled switching. If a CLEC wants features above and beyond that list, they are available on an ICB basis. Id. p. 40.

184. At the first Workshop, Qwest also clarified its position on UNE-P. If there is working service today, Qwest will allow CLECs to do conversions of preexisting lines to the combinations of UNEs. Tr. at p. 47. In addition, when there is no working service, but all of the elements exist and could be combined on placement of an order, then Qwest is going to agree to do new when all of the unbundled network elements exist. Tr. at p. 47. Finally, there is the concept of combining elements that are not normally combined in the Qwest network. According to Qwest, this is a classic ICB and BFR process. Tr. p. 50.

185. As far as BFR versus ICB, Qwest Witness Steward explained that ICB would apply when there are terms and conditions for the UNEs, but the CLEC wants those UNEs combined in a slightly different manner. Tr. at p. 51. BFR is where Qwest needs to do a technical feasibility study from ground zero. Id. Part of the current BFR process is confirming whether what the CLEC is asking for is actually an unbundled network element. Id.

186. Qwest spent a lot of time in the first Workshop differentiating between UNE-P and EELs. With EELs, if unbundled switching is no longer available because it is not a UNE, one of the requirements from the FCC to removing it as a UNE is to make sure that a CLEC could get access to the loop to reach their own switch. Tr. pps. 60-61. In this finished service arrangement, it was anticipated that there might be some need for MUXing. Tr. p. 61. Qwest stated that the old EEL that was removed was a finished service. Tr. p. 64. The new EEL is truly a combination of UNEs. Id. UNE-PL was renamed EEL and placed in that section. Tr. pps. 67-68. Thus, any combination of loop and transport will be considered an EEL. Tr. p. 65. The UNE-P product has the switch in it. Tr. at p. 67. The UNE-P consists of the standard combinations that Qwest provides that combine loop, switching and shared transport. Id. p. 69.

187. Qwest also reemphasized its position on the availability of AIN features to CLECs. Qwest does not provide access to ANI features. The platform for ANI is available for CLECs to develop their own software for unique ANI features. Tr. p. 76. Thus, if a CLEC were to migrate one of those customers, they would have to provide the AIN features in some other manner or the customer would lose that feature. Tr. p. 77. In response to one of the CLEC's concerns that there was no definitive list of the AIN features, Qwest developed a list of their retail AIN features. Tr. at p. 79. In fact Qwest will put on its website a list of all of the AIN USOCs and features and their availability to that CLECs will have a heads up in dealing with their end user customers. Tr. at pps. 79-80. There are some features, however, that are provided on either the UNE-P platform or through AIN. Tr. p. 81. An example of this is call forwarding. Id. While initially the AIN features would be listed on the Qwest website, the long-term impacts and how it will be integrated into Qwest's OSS systems have not been determined. Tr. p. 87.

188. However, Qwest Witness Stewart stated at the Workshop that when a CLEC buys UNE-P, that incorporates the list of standard features that are in the unbundled switching section. That list includes about 75 percent of all the features that one would see on a customer bill, but it does not include 100 percent. Tr. pps. 87-88. Qwest also will provide a list of features by USOC and post them to their website of features by USOC that have already been loaded. Tr. p. 88. Thus, CLECs would know the list of USOCs that another CLEC has already obtained and they would be available on UNE-P platform. Tr. p. 88.

189. On October 31, 2000, Qwest filed a supplemental rebuttal affidavit of Karen Stewart to address a number of issues from the October 11 –13 workshops.

190. Several parties expressed concerns about the requirement to have an addendum to their interconnection agreement to order UNE-P service. Qwest 4-6 at p. 4. There also appeared to be some uncertainty regarding the pick and choose rules that apply to the SGAT Section 1.8. Id. Section 1.8 provides that CLECs can pick and choose the entire SGAT or sections of the SGAT by merely sending a notice to Qwest. Id.

191. Qwest did agree to delete the change of law provisions from Section 9 and replace them per the CLECs request. Qwest 4-6 at p. 6. Several CLECs suggested that Section 9 include other specific language regarding changes in law. Id. Qwest has not included those proposed changes in the SGAT in that Qwest has applied the same standard for CLEC-proposed changes as it did for its own. Id.

192. To address AT&T's concern to revise the SGAT to clarify that the CLEC is receiving "access" to UNEs, Qwest has revised Section 9. Qwest 4-6 at p. 6. Qwest has also added language to Section 9.1.2 of the SGAT, which incorporates the FCC's explanation of "access to" a UNE in Paragraph 268 of its First Interconnection Order. Id.

193. Qwest has agreed to change the references in Section 9 to refer to "end user customer" to clarify in response to AT&T's concern the terms "end-user" and "end user customer". Qwest 4-6 at p. 7.

194. Qwest has voluntarily agreed to combine unbundled network elements on behalf of CLECs throughout its region, despite the fact that the Eighth Circuit has vacated all sections of Rule 315 that required ILECs to combine UNEs. Qwest 4-6 at p. 18. Qwest has agreed to provide access to UNEs that it has combined on behalf of the CLEC, whether they be UNEs Qwest ordinarily combines, UNEs Qwest does not ordinarily combine (to the extent technically feasible), or combinations of Qwest UNEs with CLEC UNEs. Id. To address the CLECs request to spell these changes out in the SGAT, Qwest added Sections 9.23.1.4, 9.23.1.5 and 9.23.1.6 to the SGAT. Id.

195. Qwest has also agreed to charge cost-based nonrecurring charges to recover its costs in combining elements. Qwest 4-6 at p. 19. Qwest has also agreed, at the CLECs request, to change Section 9.23.4.1.2 to reflect that nonrecurring charges would be compliant with Existing Rules. Id.

196. Qwest has agreed to incorporate revised language into Section 9.23.1.2 of the SGAT on behalf of MCIW as follows:

> Qwest will offer to CLEC UNE Combinations, on rates, terms and just, reasonable and non-discriminatory in accordance with the terms and conditions of this Agreement and the requirements of Section 251 and Section 252 of the Act, the applicable FCC rules, and other applicable laws. The methods of access to UNE Combinations described in this section are not exclusive. Qwest will make available any other form of access requested by CLEC that is consistent with the Act and the regulations thereunder. CLEC shall be entitled to access to all combinations functionality as provided in FCC rules and other applicable laws.

Qwest 4-6 at p. 19. Qwest did not agree to add AT&T's proposed language to 9.23.1 since it was not consistent with the law and was unnecessary since Qwest adopted the MCIW language listed above. Id. at p. 20.

197. To address Eschelon's concern that it could not determine with certainty which features were available for use with UNE-P, Qwest has added additional enhancements to the IRRG for the UNE-P standard products. Qwest 4-6 at p. 20.

198. Qwest initially developed two products, one to handle conversion of combinations of loop and dedicated transport to EEL (then called UNE-C-PL) and one to handle Qwest's obligation to combine loop and dedicated transport in Zone 1 of the top 50 MSAs (then called EEL). Qwest 4-6 at p. 20-21. At the request of CLECs that the products be combined, Qwest submitted language combining the products into one EEL product. Id. However, because Qwest had implemented two different processes to

provision the two products, the SGAT defined two EEL options, EEL Provisioning (EEL-P) and EEL Conversion (EEL-C). Id. The CLECs asked about the distinction between the two. Id. Qwest stated: EEL-C is a conversion of an existing circuit to an EEL. Id. EEL-C uses an LSR process and can be ordered on a single LSR. EEL-P is a new combination of loop and transport. It uses an ASR process. EEL-P without multiplexing can be ordered on a single ASR, while EEL-P with multiplexing requires two ASRs. Id. A change or augment to an EEL-C or an EEL-P can be ordered using the same process the CLEC used when first ordering the EEL. Id.

199. The CLECs objected to the limitation of bandwidths for EELs. Qwest 4-6 at p. 21. Qwest agreed to revise the SGAT to indicate that any existing bandwidths are available. Id. DSO, DS1 and DS3 bandwidths are standard products while other bandwidths can be ordered through the special request process explained in Exhibit F of the SGAT. Id.

200. The CLECs objected to the fact that the SGAT did not track exactly the FCC's language setting forth the three options for establishing that an EEL will carry a substantial amount of local traffic. Qwest 4-6 at p. 21. Qwest has agreed to change the SGAT in Section 9.23.3.7.2.2 to track the FCC's language. Id.

201. At MCIW's request, Qwest has agreed to add language to SGAT Section 9.23.3.7.2.3. Qwest 4-6 at p. 22. The SGAT follows the procedure developed by the FCC, which allows CLECs to submit a certification letter indicating that an individual combination of loop and transport meets for conversions to UNEs. Id. Qwest agreed that the certification could be delivered by "other mutually agreed upon solution" and thus added this requested language to the SGAT. Id. .

202. AT&T requested that Qwest indicate that it would provision the EEL once it received the certification letter, and that it would not insist upon an audit as a prior prerequisite to provisioning an EEL. Qwest 4-6 at p. 22. Qwest has revised the SGAT to indicate that once Qwest receives a certification, it will provision the EEL, unless Qwest has knowledge that the circuit does not qualify for conversion to EEL. Id.

203. To address AT&T's concerns, Qwest also clarified that it may not use any other audit rights it may have pursuant to an interconnection agreement between CLEC and Qwest to audit for compliance with the local use requirements. Qwest 4-6 at p. 22. Additionally, Qwest clarified that, although CLEC has an obligation to maintain appropriate records to support its certification, it has no obligation to keep any records that it does not keep in the ordinary course of its business. Id.

204. Qwest has included in the SGAT a provision that it would conduct no more than one audit per year, "unless an audit finds non-compliance." Qwest 4-6 at p. 22. AT&T objected to this phrase and alleged that it was inconsistent with FCC language. Qwest indicated, however, that the FCC uses the phrase "unless an audit finds non-compliance" in its Supplemental Order Clarification. Id.

205. CLECs indicated that they have applied to the FCC for waivers of the local use requirement, and asked that the possibility of such waivers be added to the SGAT. Qwest 4-6 at p. 23. Qwest has agreed to add the following language to Section 9.23.3.7.1 of the SGAT:

> 9.23.3.7.1 Unless CLEC is specifically granted a waiver from the FCC which provides otherwise, and the terms and conditions of the FCC waiver apply to CLEC's request for a particular EEL, . . . Id.

206. The CLECs asked if Qwest could develop a process for identifying and ordering combinations different than the SGAT identified standard combinations. Qwest 4-6 at p. 23. Qwest has developed a stream-lined and standardized process for CLECs to request access to additional combinations in the Qwest network as a combination of UNEs. Id. As demand materializes, Qwest will continue to expand its list of standard UNE combinations. Id.

207. Qwest, in an earlier version of the SGAT, referred to the standard intervals set for in its IRRG. Qwest 4-6 at p. 24. The CLECs objected and suggested that the intervals be set forth in the SGAT. Id. Qwest has agreed to comply with that request. Id.

208. Qwest has agreed to AT&T's request that it should not disconnect UNEs that are currently combined unless the CLEC specifically requests that they be separated. Qwest 4-6 at p. 24. Qwest's new SGAT language is reflected in Section 9.23.1.3.

209. Qwest has agreed to Eschelon's suggested language that pre-existing UNE combinations be provisioned without disruption. Qwest 4-6 at p. 24. Qwest has added to Section 9.23.1.3. the following language from Section 2.2.30.3 of Attachment 8 of Eschelon's Colorado contract:

> When CLEC orders in combination UNEs that are currently interconnected and functional, such UNEs shall remain interconnected and functional without any disconnection or disruption of functionality.

Id. at p. 24.

210. Qwest did not agree to AT&T's proposed language to be added to SGAT Section 9.23.1.2.2 or 9.23.1.2.3. Qwest 4-6 at p. 25. Qwest did agree to allow CLECs to combine UNEs with other UNEs, but it did not agree to allow any UNE to be connected to "other services". Id. at p. 26.

211. Regarding AT&T's request to add a new Section to the SGAT as 9.23.1.3, Qwest stated that the language would be unnecessary in light of other changes made by Qwest. Qwest 4-6 at p. 26.

212. Qwest stated that it believed the proposed language by AT&T to Section 9.23.1.4 is unnecessary in light of changes it has made to Section 9. Qwest 4-6 at p. 27. Qwest also stated that it is unclear of the meaning of "to combine network elements made

available by Qwest with other contiguous Qwest network elements or Qwest Access Services." Id. Additionally, Qwest cannot agree to allow without restriction UNEs to be combined with Qwest Access Services. Id.

213. Qwest has addressed CLECs concerns that it will provide proper demarcation points between UNEs, if desired by the CLEC. Qwest 4-6 at p. 27. Qwest has addressed these issues in the changes it has made to the SGAT. Id. at p. 28.

214. To address AT&T's concern that language be added to the SGAT to assure that Qwest will not add "glue" charges to the combinations that it is providing to the CLEC, Qwest has addressed this issue with its agreement to charge cost-based nonrecurring charges, which has been incorporated in Section 9.23.4.1.2. Qwest 4-6 at p. 28.

215. Qwest stated that AT&T requested language that allows CLECs to order ancillary equipment with UNEs and UNE combinations. Qwest 4-6 at p. 28. Qwest indicated that it was unclear what ancillary services exist other than multiplexing, which Qwest already provides. Id. at p. 29.

216. Qwest did agree to AT&T's request to list features that can be ordered with its standard UNE-P offerings by making them available on its website. Qwest 4-6 at p. 29.

217. E-spire expressed concern that Qwest is charging a "grooming" charge to eliminate commingling to allow for conversion to EEL. Qwest 4-6 at p. 29. Qwest stated that a CLEC may choose the way it will adapt its circuits to meet the FCC local use requirements. Id. If a CLEC changes a circuit pursuant to a tariff, it must pay the tariffed rates for that change. Id.

218. AT&T stated that Qwest must develop products called UNE-P-POTS with High Speed Data and UNE-P-ISDN with High Speed Data. Qwest 4-6 at p. 29. The FCC has made clear that DSL need not be provided with UNE-P and therefore, there is no reason for Qwest to develop these products. Id.

219. Qwest stated that AT&T's request that it develop a product called CLEC Loop Termination, which is the combination of switch port and shared transport, already exists by its definition (shared transport is ordered with unbundled switching). Qwest 4-6 at p. 30.

220. AT&T suggested that Qwest develop unspecified products involving UNE combinations with transport and dark fiber. Qwest 4-6 at p. 30. CLECs can order additional combinations using the Special Request Process and if significant demand exists, Qwest will develop a standard product. Id.

221. MCIW stated that in every switch location where Qwest can brand its own name, Qwest should be able to re-brand with the CLEC's specified branding. Qwest 4-6

at p. 30. Qwest stated that it does just that in that in every switch in Arizona, Qwest will brand with CLEC's name, its choice of name, or no name. Id.

222. Several CLECs have objected to the language "CLEC agrees to work in good faith with Qwest, on all issues, including, if necessary, extending standard provisioning intervals, if CLEC orders and/or projects orders for more than 500 UNE-P lines in any one month." Qwest 4-6 at p. 30. To satisfy CLEC concerns regarding this language, Qwest has removed it. Id.

223. Several CLECs have objected to the language in Section 9.23.3.10 that states "all applicable Termination Liability Assessment (TLA) or minimum period charge whether contained within tariffs, contracts or any other applicable legal document, will apply and must be paid in full by the responsible Party before the combination of elements is available for conversion into a UNE Combination.". Qwest 4-6 at p. 30. Qwest stated that this language is entirely appropriate as the FCC has found that reasonable TLAs are acceptable and do not create 271 issues. Id. at p. 31.

224. Several CLECs have objected to Section 9.23.3.11, which provided that: "If CLEC requests that an existing resale end-user be converted into a UNE Combination, the resale rate will continue to apply until the date Qwest completes conversion of the order into UNE Combination pursuant to the standard provisioning intervals set forth in this Section." Qwest 4-6 at p. 31. Also, MCIW asked for language providing that it would not be billed for a UNE combination until the last UNE is provisioned. Id. To address these concerns, Qwest has replaced the old Section 9.23.3.11 with the following language:

> CLEC will not be assessed UNE rates for UNEs ordered in combination until access to all UNEs that make up such combination has been provisioned to CLEC as a combination, unless it is not technically feasible to provision a UNE until a later time.

Id.

225. At the request of several CLECs who have complained about the forecasting section of Section 9.23, Qwest agreed to remove this section and rely on the general forecasting provisions of the SGAT. Qwest 4-6 at p. 31.

226. Regarding MCIW's proposal that Qwest must provide at least 90 days notice before terminating UNE combination service in order for CLECs to contact their end user customers to make alternate arrangements regarding their service, Qwest stated that it will agree to comply with the notice provisions of state law and Commission Rules. Qwest 4-6 at p. 31.

227. Qwest agreed to MCIW's proposal that section 9.23.4.2 be revised to state, "Upon the compliance filing by Qwest, the Parties will abide by the adjusted rates on a going-forward basis, *or as ordered by the Commission*. Qwest 4-6 at p. 31.

228. Qwest has agreed, at the suggestion of the CLECs, to remove SGAT language that intervals "may be impacted by order volumes and load control considerations." Qwest 4-6 at p. 32.

229. Qwest did not agree with AT&T's suggestion that Section 9.23.5.6 be amended to add "Qwest will not provide CLEC or Qwest retail marketing organization with the name of the other service provider selected by the end user." Qwest 4-6 at p. 32. This language is inappropriate in the SGAT in that Qwest's obligations regarding competitive information are independent of the SGAT and there is no need to add additional language. Id.

## g. Disputed Issues

**DISPUTED ISSUE NO. 1a: Whether Qwest will provide a Stand-Alone Testing Environment by July 31, 2001? (SGAT § 12. 2.9.3.2; CL2-1a)**

### a. Summary of Qwest and CLEC Positions

230. AT&T asserts that the FCC has taken the position that the ILEC must provide a test environment that mirrors the production environment. AT&T May 18, 2001 at p. 12. The issue terminology in briefs for this environment is the "Stand- Alone Test Environment", hereinafter referred to as the "SATE". Id. at p. 13.

231. AT&T maintains that competing carriers need access to a stable testing environment that provides the means to certify that a CLEC's OSS will interact smoothly and effectively with Qwest's OSS as modified. In addition, prior to issuing a new software release or upgrade, the BOC must provide a testing environment that mirrors the production environment in order for competing carriers to test the new release. If competing carriers are not given the opportunity to test new releases in a stable environment prior to implementation, they may be unable to process orders accurately and unable to provision new customer services without delays. Id. at p. 12-13.

232. AT&T states that Qwest did not propose SGAT language until very recently and in Arizona Qwest did not commit to have the SATE available prior to the filing for section 271 relief. Id. at p. 13. Subsequently in the brief, AT&T seems to accept that Qwest has now made such a commitment. However, AT&T suggests that Qwest was noncommittal as to when the test environment would be available for new releases, but acknowledges that Qwest subsequently amended its language to make clear it would provide the SATE for new software releases or upgrades prior to implementing such releases. Id.

233. AT&T summarized its position by saying that a SATE is necessary to meet Checklist Item 2 and should be incorporated in the SGAT and the Commission should adopt a compliance standard that requires a stand-alone environment being actually available.

234. Qwest's position is that SGAT § 12.2.9.3.2 obligates Qwest to provide a SATE to take pre-order and order requests, pass them to the stand-alone database, and return responses to CLECs during their development of EDI. Qwest May 18, 2001 Brief at p. 3. Qwest's view is that the impasse issue concerned Qwest's provision of the date by which the SATE will be available and has responded to that issue directly in its Brief. Id. Qwest has agreed in the Brief to make the SATE available on or before July 31, 2001. Id.

**b. Discussion and Staff Recommendation**

235. Qwest did make its SATE available on July 31, 2001, as previously committed to the parties. Hewlett-Packard ("HP") has been independently retained to critically evaluate the Qwest proposed SATE to determine whether it is consistent with what the FCC has approved in prior Section 271 applications and will meet the expressed needs of the CLECs. As part of the proposal development process, the ACC solicited comment from members of the TAG on HP's proposal to evaluate Qwest's SATE. The ACC subsequently reviewed the comments provided by TAG members with HP for consideration and possible inclusion in the HP proposal. Furthermore, the ACC has conducted a number of review sessions with HP as it has developed and revised its proposed scope of work for HP's proposed evaluation of the Qwest SATE. It is the opinion of the ACC that Qwest's SATE will be a critical component of any 271 application that it eventually submits to the FCC for consideration and necessitates a full and fair review by the ACC prior to submission. This is a large and complicated undertaking. The interim report on HP's evaluation of Qwest's SATE was published by HP on November 30, 2001. A workshop was held on the Report on December 12, 2001. A Final Report by HP is expected to be issued on December 21, 2001. The Final Report will be subject to another workshop in January, 2002. However, with the resolution of this critical issue outstanding, Staff cannot at this date recommend that the Commission find Qwest to be in compliance with Checklist Item 2. Nonetheless, because Qwest did make its SATE available on July 31, 2001, Staff considers this disputed issue to now be moot.

**DISPUTED ISSUE NO. 1b: Will Qwest make the stand-alone test bed available prior to an IMA versioning release? (SGAT § 12. 2.9.4.2; CL2-1b)**

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

236. This issue relates specifically to whether Qwest intends, as an ongoing practice, to provide CLECs new software releases or upgrades in the SATE prior to implementing those changes in the actual production environment. Qwest Brief at p. 3. Qwest states that this issue was closed during the proceedings conducted on April 10-11. Id. Qwest further maintains that the agreement reached by the parties on this issue is reflected in the SGAT §§ 12.2.9.4.1 and 12.2.9.4.2, which appear in Exhibit 4 Qwest 26.

Id. This language also appears in the SGAT attached to the Qwest Brief as Exhibit A and is shown below.

> 12.2.9.4.1 For a new software release or upgrade, Qwest will provide CLEC a testing environment that mirrors the production environment in order for CLEC to test the new release. For software releases and upgrades, Qwest has implemented the testing processes set forth in Section 12.2.9.3.2, 12.2.9.3.3 and 12.2.9.3.4.
>
> 12.2.9.4.2 For a new software release or upgrade, Qwest will provide CLEC the stand alone testing environment, as set forth in Section 12.2.9.3.2, prior to implementing that release or upgrade in the production environment.

237. AT&T's Brief on this issue is combined with what Qwest identified as CL-2-1a, which was described in the above issue. To restate, AT&T's position (which is based on the *Bell Atlantic New York Order)*, SATE must be made available "prior to issuing a new software release or upgrade". AT&T May 18, 2001 Brief at p. 13. Further, AT&T believes that the SATE must be made available in order to meet Checklist Item 2 criteria. Id.

238. Qwest maintains that it is obligated, per Section 12.2.9.3.2 of the SGAT, to provide a stand-alone database and return responses to CLECs during their development of EDI. Qwest has also agreed to provide the date by which the stand-alone environment would be made available to the CLECs for their use.

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

239. Qwest has not provided the parties, and the CLECs have not proposed, a specific point in time when notice of new software releases or upgrades should be made to the interested parties. Staff is of the opinion that pre-production notification to CLECs of any new IMA versioning release or related change to the OSS systems is absolutely essential to efficient and effective service provisioning. It is also the opinion of Staff that Qwest must modify its SATE to reflect the proposed versioning changes sufficiently ahead of the scheduled introduction to its production environment so as to allow the CLECs to develop training materials, test new releases, instruct service representatives and modify CLEC systems to accommodate changes. Based upon these requirements, Staff recommended in its Proposed Findings of Fact and Conclusions of Law that the SGAT be modified to reflect Qwest's obligation to provide CLECs at least 30 days advance notification of any new software release or upgrades to its production OSS at least 30 days prior to introduction and coincident with such notification to modify its SATE to reflect such proposed production changes.

240. In its Comments on Staff's Proposed Findings of Fact and Conclusions of Law, AT&T states that this matter is complex. Comments at p. 6. AT&T sated that after receipt of the specifications, it can take 4 to 6 weeks to develop the CLEC side of the interface. Id. After the CLECs develop their side of the interface, testing can begin. Id.

Although the SATE should be made available before the release or upgrade in the production environment, AT&T states that it should not be forgotten that Qwest does support the existing version 6 months after a new release. Id. So it is not necessary to have the ability to complete all testing the day of a new release. Id. AT&T recommended that the issue be subject to further discussions between the CLECs and Qwest in a workshop. Id. AT&T believes that the parties should agree to language that establishes a predetermined number of days for advance notice and release of the SATE prior to the introduction of the release or upgrade in the production environment. The parties should also establish a minimum number of days for release of the EDI development specifications prior to the release or upgrade of the production environment. Id.

241. WorldCom stated that it was willing to support the availability of SATE for testing at least 30 days prior to the actual release date. Comments at p. 3. With respect to the question of how far in advance of the release of SATE or IMA versioning will Qwest provide the necessary documentation such that CLECs can adequately prepare systems and staff for the changes, WorldCom stated that the following language from OBF 2233a3 is under review by the CMP Redesign Team:

> Notification for customer impacting releases, which may include customer initiated requests, provider initiated requests and regulatory changes, will typically occur at least 73 calendar days prior to implementing the release. This notification may include draft business rules. Customers have fifteen (15) calendar days from the initial publication of draft documentation to provide comments/questions on the documentation.
>
> Technical specifications will be produced and distributed to customers 66 calendar days prior to implementation.
>
> Final business rules and technical specifications for the release will be published at least 45 calendar days prior to implementation.
>
> For customer impacting releases, more or less notification may be provided based on severity and the impact of the changes in the release. For example, the provider can implement the change in less than 45 calendar days with customer concurrence.

242. Staff believes that the language being considered in the CMP redesign process is reasonable and would also appear to address the concerns expressed by AT&T. Staff recommends that the parties be required to come to agreement on SGAT language addressing these issues within 20 days of Commission approval of this Interim Report. To the extent the parties cannot come to agreement in 20 days, Staff recommends that it draft the necessary language for inclusion in the SGAT.

**DISPUTED ISSUE NO. 1c: Whether Qwest will negotiate with CLECs, on a case-by-case basis, to provide comprehensive production testing? (CL2-1c)**

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

243. AT&T argues that language proposed by Qwest fails to provide for testing by the CLEC in a comprehensive and integrated manner. AT&T May 18, 2001 Brief at p. 14. AT&T contends that Qwest's proposed language provides for connectivity testing, a stand-alone testing environment, interoperability testing and controlled production. Id. AT&T states that each of these testing proposals has a specific, limited application and does not permit CLECs to adequately test system interfaces. Id. AT&T also expresses specific concern that it be provided means to test systems in a SATE environment under situations contemplated in a high volume commercial setting.

244. AT&T also argues that none of Qwest's proposed test environments provide an environment sufficiently robust to permit verification that preordering, ordering, billing, provisioning, and maintenance and repair processes will work to allow large scale market entry. Id. at p. 15. AT&T suggests that its counterproposal provides for such testing. Id. Further, AT&T argues that their proposal to Qwest in this matter is not unique and a number of other RBOCs are participating in the same types of tests as proposed. Id.

245. In response to AT&T's assertions, Qwest maintains that it is not opposed to legitimate production testing by CLECs. Qwest May 18, 2001 Brief at p. 4. According to Qwest, Section 12.2.9.3 of the SGAT specifically provides for extensive testing during EDI development, including controlled production testing, to validate the ability of a CLEC to successfully transmit EDI data. Id. In addition, Qwest asserts it is willing to provide CLECs a stand-alone testing environment prior to implementing a new software release or upgrade to the OSS production environment. Id. Qwest points to its Minnesota interconnection agreement as representative of its commitment to CLEC support. This specific issue arose as a consequence of a request by AT&T, in Minnesota, that Qwest agree to production scale testing of UNE-P residential service involving 1,000 or more lines. Id. According to Qwest, the issue has recently been resolved in Minnesota, wherein Qwest and AT&T entered into an agreement for UNE-P testing. Id. Qwest argues in this proceeding that the Minnesota agreement demonstrates Qwest's willingness to negotiate with CLECs, on a case-by-case basis, concerning production testing. Id. Qwest believes the only issues left to be addressed by this Commission are subparts d) and e) of CL 2-1 which relate to AT&T's proposed SGAT language.

**b. Discussion and Staff Recommendation**

246. The example cited of Minnesota stands as at least one example where Qwest and AT&T have entered into a mutually acceptable agreement for large volume UNE-P testing. In its Proposed Findings of Fact and Conclusions of Law, Staff noted that it believed that AT&T and the other CLECs were entitled to some language in

Qwest's SGAT or their own interconnection agreements which addressed the availability of the SATE, preproduction notification to CLECs of any new IMA versioning releases and the terms and conditions for comprehensive production testing. Staff believed that the Qwest proposed language provides a good starting point. Staff recommended that Qwest and the CLECs work on appropriate language as part of the HP evaluation of Qwest's SATE with HP's assistance.

247. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, AT&T pointed out that it had to file a complaint with the Minnesota Public Utilities Commission to get Qwest to negotiate the terms of a comprehensive production test. Id at 7. AT&T states that it was the unwillingness of Qwest to come to the actual terms of a test, even though the Minnesota interconnection agreement generally provided for such testing, that caused AT&T to propose specific, comprehensive language. Id. AT&T also objects to the use of Qwest's proposed language as a "good starting point." Id. AT&T states that Qwest has no language on comprehensive production testing because it proposes that parties negotiate on a case-by-case basis. Comments at pp. 7-8. AT&T also opposed Staff's proposal that Qwest and the CLECs work on appropriate language as part of the HP evaluation of Qwest's SATE, with HP's assistance. AT&T argued that advocating or supporting a particular party's language or position makes it more difficult for HP to maintain its independence in its evaluation of SATE. Comments at p. 8. WorldCom agreed that language needs to be developed to address the availability of the SATE, preproduction notification to CLECs of any new versioning releases, and the terms and conditions for comprehensive production testing. Comments at p. 4.

248. Upon reconsideration, Staff agrees with AT&T that the parties should work together to develop appropriate language separate and apart from HP's evaluation of the SATE, which has been completed for the most part. Moreover, since Qwest's proposed language does not address comprehensive production testing, the parties should develop new language to address the issues raised. Staff recommends that the parties be given 20 days from the date this interim report is approved to submit agreed upon SGAT language. To the extent the parties cannot agree on appropriate SGAT language, Staff recommends that it be allowed to draft SGAT language which address these issues.

**DISPUTED ISSUE NO. 1d: Whether AT&T's proposed SGAT terms concerning comprehensive production testing are appropriate and should not be included in the SGAT? (SGAT § 12. 2.9.3.5; CL2-1d)**

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

249. AT&T argues that the SGAT does not presently contain any language on testing of Qwest and CLEC operations support systems ("OSS") and interfaces. AT&T Brief at p. 11. AT&T proposes inclusion of testing language to the Arizona SGAT that it considers more comprehensive than that contained in Qwest's proposal. Id. at p. 12.

250. AT&T maintains that a fundamental question underlying this issue is whether there needs to be language in the SGAT that explains the testing options

available to the CLEC to properly evaluate Qwest and its OSS and interfaces. Id. at p. 12. AT&T argues that their inability to reach agreement with Qwest for a broader range of tests in Minnesota – even after months of negotiation - supports their claim that specific language is needed in the SGAT; and that without such contract language, any complaint would have been very difficult to pursue in the Minnesota example. Id. AT&T states that it is crucial that the SGAT clearly spell out Qwest's obligation to provide for comprehensive testing. Id.

251. Qwest argued against AT&T's proposed SGAT language for three primary reasons. Qwest May 18, 2001 Brief at p. 5. First, Qwest holds the opinion that it has worked with CLECs to provide comprehensive and effective testing procedures and the scope of testing AT&T seeks to have adopted is not necessary - particularly for products that, in the opinion of Qwest, evidence a proven track record like UNE-P. Id. Second, Qwest argues that the comprehensive production test proposed by AT&T is duplicative and needless. Id. In Qwest's opinion, the IMA-EDI interface will be thoroughly tested by Hewlett-Packard, the pseudo-CLEC, in the course of the current OSS testing exercise. Id. Qwest commits to fix any significant problems identified in the current OSS testing process being conducted by HP and CGE&Y. Id. Qwest submits the opinion that the language proposed by AT&T will only test Qwest's ability to provision UNEs, not how Qwest's systems work with the CLEC's systems and as such would only serve to duplicate the Arizona OSS test. Id. at p. 5-6. Third, Qwest maintains that AT&T's purported interest in production volume testing of residential UNE-P is not supported by their actions. Id. Qwest states that AT&T has not ordered UNE-P which Qwest maintains indicates AT&T has no real plans to use UNE-P to enter the local market. Id.

252. Qwest restates its willingness to negotiate an appropriate production test procedure, on a case by case basis but only when: (1) a CLEC has legitimate business plans to enter the local market; and (2) the CLEC demonstrates that its business plans require a level of testing beyond controlled production testing. Id. at p. 6.

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

253. As evidenced in the above discussion, Staff agrees with AT&T that the SGAT should contain language which clearly spells out Qwest's obligation to provide for such testing. In its Proposed Findings of Fact and Conclusions of Law, Staff recommended that the parties use Qwest's proposed language as a starting point and that Qwest and the CLECs work to develop appropriate language during HP's evaluation of the SATE, with HP's assistance. AT&T raised the same objections to Staff's proposed resolution of this issue as in the previous impasse issues involving SATE. Comments at p. 8. Upon reconsideration, Staff recommends that the parties be given 20 days to come to agreement on appropriate SGAT language. If the parties cannot come to agreement in 20 days, Staff recommends that it draft appropriate SGAT language to address the Qwest SATE's terms and conditions.

**DISPUTED ISSUE NO. 1e: Qwest opposition to some of AT&T's other proposed revisions to the SGAT (SGAT § 12. 2.9.3.1 to 12.2.9.3.4; CL2-1e)**

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

254. Similar to the argument presented in CL2-1c, AT&T argues that Qwest's proposed language fails to provide for testing by the CLEC in a comprehensive manner and in the volumes and settings required. AT&T May 18, 2001 Brief at p. 14. In the opinion of AT&T, each of the Qwest proposed testing proposals relates to a specific, limited application and does not permit CLECs the means to test whether the Qwest systems and interfaces, and CLEC systems and interfaces built to Qwest's specifications, -- work as contemplated in a commercial setting in commercial volumes. Id.

255. AT&T point out the applicability of the Qwest proposed tests to a CLEC's operational performance. Connectivity testing "establishe[s] the ability of the trading partners to send and receive EDI data effectively. Id. at p. 14. In the opinion of AT&T, the stand-alone test environment provides CLECs the means to process preorder and order test accounts in a predetermined environment that mirrors the production environment. Id. "Interoperability testing verifies CLEC's ability to send correct EDI transactions through the EDI/IMA system edits successfully." Id. Controlled production essentially provides the CLEC to place a limited number of actual orders using valid account and order data that are provisioned on Qwest's systems. Id. In the opinion of AT&T, only controlled production testing allows end-to-end testing; however, AT&T maintains this testing is very limited and requires the use of live customers. Id. The CLEC must, therefore, find customers willing to put their telephone service at risk. Id. at p. 14-15.

256. AT&T further contends that none of Qwest's proposed testing environments provide the robust test environment needed to verify that the preordering, ordering, billing, provisioning and maintenance and repair processes will work to allow large scale market entry. Id. at p. 15. In contrast, AT&T suggests its proposal will allow for such testing. Id. Further, AT&T argues that its proposal is not unique and a number of other RBOCs are participating in similar types of tests as that proposed for adoption in Arizona. Id.

257. Qwest states in its comments that AT&T's additional references to "CORBA" and other application-to-application interfaces as alternatives to the EDI interface is needless, and Qwest is reluctant to make commitments concerning other unidentified interfaces. Qwest May 18, 2001 Brief at p. 6-7. Qwest, however, will agree to the stand-alone paragraph AT&T proposes to add to § 12.2.9.3.1. Id.

258. Separately, Qwest takes exception with AT&T's proposal to add language to §§ 12.2.9.3.2 and 12.2.9.3.3, that indicates stand-alone testing and interoperability testing, "[w]hile separate from the production environment . . .will be designed such that the results of testing . . . will be identical to the results produced in the production

environment." Id. at p. 7. (See Exhibit 4 AT&T 7). Qwest objects to the AT&T addition for three reasons. First, Qwest maintains that the SGAT already provides for production testing in § 12.2.9.3.4. Id. Second, Qwest argues that the statement that testing is separate from the production environment is needless. Id. Third, Qwest asserts that any suggestion that testing and production results must be "identical" sets up a standard that is vague. Id.

259. Qwest also opposes AT&T's proposal to add language to § 12.2.9.3.2, that suggests all "pre-order queries" in the stand-alone test environment will be subjected to the same edits as production orders. Id. at p. 7. (See Exhibit 4 AT&T 7). The stand-alone test environment will employ fictional customer data. Id. According to Qwest, CLECs using that environment will not have access to real customer data in Qwest's Legacy systems. Id. Consequently, Qwest argues pre-order queries cannot be subjected to the same edits as production orders. Id.

260. Finally, Qwest argues that the proposed language in §§ 12.2.9.3.2 and 12.2.9.3.3 concerning "a new Qwest release," as well as the proposed language in § 12.2.9.3.4 concerning "when Qwest migrates its OSS interfaces," are unnecessary. Id. at p. 7-8.

**b. Discussion and Staff Recommendation**

261. In its Proposed Findings of Fact and Conclusions of Law, Staff adopted as its resolution to this impasse issue, its recommendation on the previous two impasse issues which would have required the parties to use Qwest's proposed language as a starting point, while working toward consensus language as part of HP's evaluation of Qwest's SATE, with HP's assistance.

262. AT&T filed comments on Staff's Proposed Findings of Fact and Conclusions of Law on this issue similar in nature to those on the prior impasse issues. However, AT&T noted that it believes Qwest's language would be a good starting point in this instance. Comments at pp. 8-9. Upon reconsideration, Staff recommends that the parties be required to jointly develop appropriate SGAT language using Qwest's language as a starting point. If the parties are unable to reach agreement on SGAT language within 20 days, Staff recommends that it b e allowed to draft appropriate SGAT language.

**DISPUTED ISSUE NO. 2: Should Qwest be required to supply, without cost, regeneration for UNEs to CLECs point of access? (CL-2-10)**

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

263. AT&T argued this issue under the discussion of disputed issue No.1 (TR-5) for Checklist Item 5 – Transport. In those comments, AT&T argued that CLECs should not pay for regeneration from the interoffice frame to the CLECs' collocation

since Qwest has control over the location of the CLECs' collocation arrangements. AT&T May 18, 2001 Brief at p. 35. As long as Qwest has the sole ability to determine the location of the CLECs' collocation arrangements, the CLECs should not have to pay for regeneration charges. Id. at p. 35-36.

264. Covad also argued this issue under the discussion of disputed issue No.1 (TR-5) for Checklist Item 5 – Transport. In those comments, Covad argued that the Qwest SGAT directly and indirectly charges CLECs for channel regeneration in two different circumstances. Covad May 18, 2001 Brief at p. 3. First, as stated in SGAT Section 9.1.10, a CLEC must pay a regeneration charge where "the distance from the Qwest network to the leased physical space . . is of sufficient length to require regeneration." Id. Second, as stated in SGAT Sections 9.6.2.1 and 9.6.2.2, CLECs must supply their own channel regeneration and associated equipment for transport transmission facilities. Id. This results in an "additional cost" and is therefore prohibited under controlling law. Id. at p. 4. Qwest seeks to disregard the clear import of the *Second Report and Order*, arguing that regeneration is "necessary," as contemplated by the United States Court of Appeals for the District of Columbia in *GTE Serv. Corp. v. FCC*, 205 F.3d 416, 423, 424 (D.C. Cir. 2000). Id. Qwest's argument is fundamentally flawed because channel regeneration may never be deemed "necessary", as a matter of law, since regeneration should never be required in the first place. Id. at p. 4-5. Therefore, Covad recommends that the Commission order Qwest to modify its SGAT to include the requirement that all transport delivered by Qwest to CLECs be accompanied by a sufficient and proper template signal. Id.

265. Qwest argument here is the same argument Qwest proposes for impasse issue TR-5 under Checklist Item 5 – Transport. Qwest stated that AT&T is simply trying to avoid paying for the costs it causes Qwest to incur. Qwest May, 18, 2001 Brief at p. 8. Qwest states that costs can be recovered in one of two ways, both of which are acceptable to Qwest- averaged across UDITs, or the cost of regeneration can be applied in a situation-specific fashion. Id. When Qwest (U S WEST) first developed its Expanded Interconnection Channel Terminations (EICT) functionally to provide a CLEC access to a UNE in its collocation space, it included the "jumper" functionality and regeneration as required. Id. During arbitration proceedings, Qwest was required to remove the charges for regeneration, and to charge regeneration only when required and as requested by the CLEC. Id. By taking the contrary position now, AT&T is attempting to force Qwest into a position where it is not able to recover its costs. Id.

266. Further, with regard to AT&T's claims that Qwest has control over where a CLEC is collocated, AT&T's premise is neither factually nor legally correct. Id. at p. 8. The selection of collocation space is not without practical limits, especially in those wire centers with high demand for collocation and limited additional space options. Id. Where regeneration is unavoidable, CLECs should incur the cost of this service as part of the cost of accessing UNEs. Id. at p. 9. Neither the law nor the constitution requires Qwest to provide services to CLECs at no cost and therefore, Qwest is entitled to recover its costs associated with providing access to UNEs. Id.

294. In Staff's Proposed Findings of Fact and Conclusions of Law, Staff supported the CLEC comments. Staff stated that the Commission is adopting this performance assurance plan under not only State law, but the Telecommunications Act of 1996 as well. Furthermore, the PAP is designed largely to ensure Qwest's continued compliance with the market opening requirements of the Federal Act and Section 271 of the Federal Act. Therefore, Staff did believe that the Commission has the authority to institute a PAP which imposes penalties in the event of Qwest's noncompliance.

295. Qwest did submit comments on this issue in response to Staff's initial report. Qwest states that without Qwest consent to the PAP penalties, all penalties must be made to the State of Arizona. The Commission is not legally able to mandate that Qwest make penalty payments directly to CLECs. Staff continues to support its prior recommendation. The Commission may require that Qwest make payments directly to CLECs absent Qwest's consent.

## J. Verification of Compliance

296. The proposed PAP outlined herein will act to ensure continued compliance by Qwest Corporation with the Act's market opening measures after Qwest receives 271 authorization.[39] This is important since one factor the FCC examines in 271 applications, is whether there exists adequate measures or incentives for the BOC to continue to satisfy the requirements of section 271 after entering the long distance market. The FCC has previously stated that the existence of a satisfactory performance monitoring and enforcement plan is probative evidence that the BOC will continue to meet its section 271 obligations after such a grant of authority.

297. The Arizona PAP is modeled on the Texas plan, which the FCC has said would be effective in practice. *Bell Atlantic New York Order*, 15 FCC Rcd at 4166-67, para. 433. The Arizona PAP includes the five characteristics which the FCC considers to be substantial evidence of the effectiveness of any such plan: 1) the potential liability provides a meaningful and significant incentive to comply with the designated performance standards, 2) the plan contains clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; 3) the plan contains a reasonable structure that is designed to detect and sanction poor performance when it occurs; 4) the plan contains a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal, and

[39] This report rejects any suggestion that Qwest's implementation of a PAP is an option insofar as Section 271 compliance is concerned. As Ameritech recognized in 1997, without "'concrete, detailed performance standards and benchmarks for measuring Ameritech's compliance with its contractual obligations and impos[ing] penalties for noncompliance,' Ameritech's statutory nondiscrimination obligations are only 'abstractions.'" In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Michigan, CC Docket No. 97-137, Evaluation of The United States Department of Justice, at 40 (June 25, 1997) (available at http://www.usdoj.gov/atr/public/comments/sec271/ameritech1147.htm ) (quoting Ameritech Brief at 85).

272. The FCC's rules require that the ILEC provision network elements to CLECs on terms and conditions no less favorable than the terms and conditions under which the ILEC provides such elements to itself. Id. at p. 4-5. The FCC explicitly limited an ILEC's obligation to provide interoffice facilities to existing facilities, the FCC made no explicit limitations for the other network elements, whether for rural or non-rural ILECs, and no such limitation can be inferred. Id.

273. AT&T makes specific language suggestions such as the language "provided that facilities are available" should be stricken from SGAT sections 9.23.1.4, 9.23.1.5, 9.23.1.6 and 9.23.3.7.2.12.8. Id. at p. 8. Furthermore, SGAT section 9.19 should be amended in that the first sentence of this section should be 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. 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. at p. 8-9.

274. AT&T went on to state that Qwest alleges it does not have to light unused dark fiber and make it available as dedicated transport because it has no obligation to build UNEs. Id. at p. 6. Qwest argues it does not have to change out electronics to increase capacity of the fiber. Id. at p. 7. Qwest has taken the FCC statement that does not have to build dedicated transport to extremes. Id.

275. Qwest has not made any arguments that it need not provide unused copper capacity. Id. at p. 7. Similarly, if the dark fiber is in place, Qwest should not be permitted to claim that it does not have to do what is necessary to call that dark fiber into service to meet orders for dedicated transport. Id. To permit Qwest to hold dark fiber back and not use it for dedicated transport demand effectively reserves the dark fiber for its own use and would negate the obligation to provide dedicated transport. Id.

276. The FCC also has stated that ILECs must make reasonable modifications to provide access to UNEs. Id. at p. 7. Lighting the dark fiber or replacing the electronics are a reasonable accommodation. Id. The FCC has "conclude[d] that the obligation imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements." Id. The FCC noted that "to the extent incumbent LECs incur costs to provide interconnection or access under sections 251(c)(2) or 251(c)(3), incumbent LECs may recover such costs from requesting carriers." Id.

277. MCIW argued that in section 9.19, Qwest agrees to construct network capacity, facilities, or space for access to or use of UNEs, <u>only</u> upon Qwest's determination of the acceptability of an individual financial assessment, which Qwest performs. MCIW May 18, 2001 Brief at p. 7. Qwest should not be able to make this unilateral decision without the ability of the CLEC to challenge the decision. Id. at p. 7-

8. MCIW suggests specific provisions should be added to the SGAT to allow the CLEC to challenge Qwest if the decision is made not to construct, through appropriate dispute resolution procedures. Id.

278. Qwest argued that there is no statute, rule or case that imposes upon Qwest the obligation to construct all UNEs. Qwest May 18, 2001 Brief at p. 12. Qwest, at the workshop, presented SGAT language setting forth its obligations to build UNEs and that this language exceeds Qwest's legal obligations:

279. According to Section 9.1.2.1, if facilities are not available, Qwest will build facilities dedicated to an end user customer if Qwest would be legally obligated to build such facilities to meet its Provider of Last Resort (POLR) obligation to provide basic local exchange service or its Eligible Telecommunications Carrier (ETC) obligation to provide primary basic local exchange service. CLEC will be responsible for any construction charges for which an end user customer would be responsible. In other situations, Qwest does not agree that it is obligated to build UNEs, but it will consider requests to build UNEs pursuant to Section 9.19 of this Agreement.

> 9.1.2.2 Upon receipt of an LSR or ASR, Qwest will follow the same process that it would follow for an equivalent retail service to determine if assignable facilities exist that fit the criteria necessary for the service requested. If available facilities are not readily identified through the normal assignment process, but facilities can be made ready by the requested due date, CLEC will not receive an additional FOC, and the order due date will not be changed. Id. at p. 9-10. Qwest argues that The Telecommunications Act created UNEs for the purpose of giving CLECs access to the incumbent LEC's existing network not to force ILECs to build networks for CLECs. Id. at p. 11. It is clear that the Act requires "access to *only* an incumbent LEC's *existing* network." Id. The obligation to provide access to UNEs in 251(c)(3) of the Act does not require Qwest to build or construct facilities for CLECs. Id.

280. Qwest has agreed in the SGAT to build loops and switch ports when necessary to meet its COLR and ETC obligations. Id. at p. 11. Qwest also agrees in the SGAT to perform incremental facility work. Id. Furthermore, CLEC's still have options if Qwest is not required to build. Id. A CLEC can submit a request to build under Section 9.19, a CLEC can self-provision, and a CLEC can obtain the facility from a third party. Id.

281. Qwest disagrees with the stated AT&T position that Qwest must build for UNEs if it builds for retail. Id. at p. 11. Qwest does not agree to add electronics or upgrade electronics for UDIT or EUDIT. Id. at p. 12.

282. Qwest also argues that the FCC does not require the installation of electronics in CLEC wire centers. Id. at p. 13. The FCC has not instituted a requirement that ILECs add or upgrade electronics for dedicated transport facilities. Id. The FCC has imposed on ILECs an obligation to unbundle dark fiber but neither the UNE Remand

Order nor any subsequent FCC decision states that the ILEC must also provide the electronics at the CLEC end of the fiber or add or upgrade electronics. Id.

283. Qwest further argues that the addition or upgrade of electronics constitutes the construction of new facilities not incremental facility work. Id. at p. 13-14. CLECs are also asking that Qwest "upgrade" existing electronics to add capacity to the network. Id. Qwest argues that this is not part of providing Qwest's *existing* network to CLECs. Id.

**b. Discussion and Staff Recommendation**

284. Qwest stated that SGAT Sections 9.1.2.1 and 9.1.2.2 meet and actually exceed Qwest's legal obligations. It quotes the UNE Remand Order at paragraph 324 which states:

> "In the Local Competition First Order and Report the Commission limited an Incumbent LEC's transport unbundling obligations to existing facilities, and did not require Incumbent LEC's to construct facilities to meet a requesting carriers requirements where the Incumbent LEC has not deployed transport facilities for its own use. . . . We do not require Incumbent LEC's to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities the Incumbent LEC has not deployed for its own use."

285. Qwest also cited the Eighth Circuit in *Iowa Utilities Board v. FCC*[4] which held that CLECs are entitled to unbundled access to only Qwest's existing network:

> "We also agree with petitioners that subsection 251(c)(3) implicitly requires access to only an Incumbent LEC's existing network, . . . not to a yet un-built superior one."

286. AT&T only stated that in its *Local Competition Order*, the FCC does not explicitly state that the ILECs do not have to build network elements, except for unbundled interoffice facilities (which Qwest does not dispute), quoting paragraph 451, which states in part:

> ". . . we expressly limit the provision of unbundled interoffice facilities to the existing Incumbent LEC facilities. . ."

287. MCIW disagreed with Qwest's ability to make this unilateral decision without the ability of the CLEC to challenge it.

288. In its Proposed Findings of Fact and Conclusions of Law, Staff recommended that Qwest be required to construct new facilities for the CLECs to the

[4] *Iowa Utilities Board v. FCC*, 120 F.3d 753, 813 (8th Cir. 1977).

same extent it would construct such facilities for itself to fulfill its COLR or ETC obligations. In addition, Qwest may be required to construct or make additions for certain types of unbundled loops and line ports based on FCC rules and decisions. None of the FCC rulings or Court decisions support imposing upon Qwest any further obligation to construct new facilities beyond the "existing" network on behalf of the CLECs. This, of course, presumes that within the "existing" network, to the extent additional capacity is needed, Qwest will provide it. Otherwise what would be the purpose behind the intricate and complex forecasting process that is undertaken between Qwest and the CLECs. Staff recommended that Qwest modify its SGAT language to be consistent with this recommendation.

289. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, Qwest challenges and requests clarification of the last three sentences of paragraph 288. Comments at p. 3. Qwest states that the CLECs objected to any forecasting requirement for UNEs and that now there is no forecasting process at all undertaken between Qwest and the CLECs regarding UNEs. Qwest requests that the Commission reverse the Proposed Order, and adopt Qwest's proposed SGAT language which would require Qwest to evaluate a CLEC's request for special construction utilizing similar criterion to that Qwest uses to determine whether to construct facilities for retail customers. Comments at p. 5. Qwest's concern is to prevent the situation where a CLEC can demand that Qwest build a network on the CLEC's behalf. Qwest argues that the outcome would not only be unsupported by any authority, it contradicts the Act, controlling precedent, relevant FCC guidance and decisions from other state commissions. Id.

290. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, AT&T argues that Qwest must build UNEs for CLECs on a nondiscriminatory basis pursuant to section 251(c)(3). Comments at p. 9. AT&T states that the FCC has held that this obligation means that Qwest must provide to CLECs UNEs on the same terms and conditions that it provides UNEs to itself or to its retail customers. Id. AT&T states that Qwest has made it clear that in numerous jurisdictions that it may not agree to build a facility for a CLEC but decide to build the same facility for a retail customer which is discriminatory. Comments at p. 9.

291. Staff believes that the points raised by both Qwest and AT&T have merit, and that its recommendation in its Proposed Findings of Fact and Conclusions of Law is obviously in need of clarification. First, there appears to be no dispute that Qwest must construct facilities if Qwest would be legally obligated to build such facilities to meet its Carrier of Last Resort (COLR) obligation to provide basic local exchange service or its Eligible Telecommunications Carrier (ETC) obligation to provide primary basic local exchange service. To clarify Staff's original position, Qwest is certainly not required to construct any and all network additions or modifications that a CLEC may request.[5] This was not Staff's recommendation in its Proposed Findings of Fact and Conclusions of

[5] Qwest states that it has already agreed to perform incremental facility work including conditioning, placing a drop, adding a network interface device, adding a card to existing equipment at the central office or remote locations, adding central office tie pairs, and adding field cross jumpers. Comments at p. 17.

Law. However, Staff agrees with AT&T that Qwest must provide CLEC's with UNEs on the same terms and conditions that it provides UNEs to itself or to its retail customers. In this regard, Qwest states that it would evaluate a CLEC's request for "special construction" utilizing similar criterion to that which Qwest uses to determine whether to construct facilities for retail customers. Qwest Comments at p. 5. Qwest also states that it has agreed to provide CLEC notification of major loop facility builds through the ICONN database. The notice will 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 (distribution area for copper distribution, route number for copper feeder, and termination CLLI codes for fiber). CLECs may then use this information to adjust their planning and marketing strategies accordingly.

292. Qwest's representation that it will consider CLEC requests using the same assessment process it uses for itself to determine whether to build for retail is critical and is really the important point in this discussion. It is also important that Qwest will treat CLEC orders the same as it would its own. Qwest states that if there is a funded construction job pending, it will take the CLEC's order and hold it, notifying the CLEC and holding the order until the construction job is completed. Staff recommends that Qwest be required to amend Section 9.19 of the SGAT as recommended by the Colorado Hearing Commissioner to state "Qwest will assess whether to build for CLEC in the same manner that it assesses whether to build for itself." Qwest should include objective assessment criteria within the SGAT or an appendix to the SGAT, if possible. Qwest should also amend Section 9.19 of the SGAT to further state: "Qwest shall treat CLEC orders the same as it would treat its own orders for new or additional service."

**DISPUTED ISSUE NO. 4: Is prohibition on Qwest connecting UNEs with finished services for a CLEC appropriate? (UNEC-2(A)33)**

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

293. AT&T argues that the SGAT should be amended to remove any prohibition on connecting UNEs to finished services, except where expressly permitted by the FCC. AT&T May 18, 2001 Brief at p. 11. AT&T refers to SGAT section 9.23.1.2.2 which contains wording that prohibits CLECs from connecting UNEs to finished services, unless going through a collocation. Id. at p. 9. AT&T argues that these are not FCC limitations and the words "finished services" are not used by the FCC and the FCC does not allow restrictions on the use of UNEs. Id. AT&T makes the argument that connection is allowed at any technically feasible point and Qwest has not shown that accessing UNEs by connecting the UNE to a finished service is not technically feasible. Id. at p. 9-10. Qwest's restriction requires CLECs to construct their own separate networks because traffic cannot be aggregated on the same trunk groups. Id. at p. 10. AT&T acknowledges that the FCC has limitations on certain connections of UNEs to tariffed services but argues this is does not extend to all UNEs. Id.

294. MCIW makes a similar argument and does not believe the Qwest restriction against connecting UNE-combinations to finished services is appropriate under FCC Rule. MCIW May 18, 2001 Brief at p. 7.

295. Qwest argues that the FCC has ruled that ILECs can prohibit commingling. Qwest May 18, 2001 Brief at p. 15. Qwest quotes the following FCC language as evidence:

> "We further reject the suggestion that we eliminate the prohibition on "co-mingling" (*i.e.* combining loops or loop-transport combinations with tariffed special access services) in the local usage options discussed above. We are not persuaded on this record that removing this prohibition would not lead to the use of unbundled network elements by IXCs solely or primarily to bypass special access services. We emphasize that the co-mingling determinations we make in this order do not prejudge any final resolution on whether unbundled network elements may be combined with tariffed services. We will seek further information on this issue in the Public Notice that we will issue in early 2001."

296. Qwest also notes that the SGAT captures the identical language from the local use options in Sections 9.23.3.7.2.1, 9.23.3.7.2.2, and 9.23.3.7.2.3. Id. at p. 16. The FCC is considering the issue of commingling among other things. Id. Qwest suggests the Commission allow the FCC to rule on this matter and points out that the FCC has indicated it will not deny a 271 application based on interpretive disputes over commingling. Id. at p. 16.

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

297. The current SGAT, Section 9.23.1.2.2, states that: ". . . UNE Combinations will not be directly connected to a Qwest finished service, whether found in a tariff or otherwise, without going through a Collocation, unless otherwise agreed to by the parties. . . ." Notwithstanding this, Qwest states that this issue, often referred to as "commingling" is compatible with FCC rulings, specifically the supplemental order clarification, FCC-00-183 (June 2, 2000) (Supplemental Order Clarification), paragraph 28, which states:

> "We further reject the suggestion that we eliminate the prohibition on "co-mingling" (i.e. combining loops or loop transport combinations with tariffed special access services) and the local use options discussed above. . . we emphasize that the commingling determinations we make in this order do not prejudge any final resolution on whether unbundled network elements may be combined with tariffed services. We will seek further information on this issue in the Public Notice that we will issue in early 2001."

298. AT&T acknowledged this Public Notice, stating that it was issued on January 24, 2001. While MCIW did not reference the FCC Public Notice, however it did offer a general statement that it concurs in the arguments made by AT&T.

299. As is clear from the language cited by Qwest, the only prohibition against combining UNEs with "finished services", pertains to loops or loop-transport combinations with special access services. The concern is that the IXCs could use UNEs for the sole purpose to bypass special access service. Therefore, Qwest's proposed language is too broad and Qwest should be required to remove the restriction against combining UNEs with "finished services", except where specifically sanctioned by FCC rules and regulations which now prohibit commingling of loops or loop-transport combinations with special access.

**DISPUTED ISSUE NO. 5: Whether LIS is appropriate to include in the definition of finished services? (UNEC-2(B))**

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

300. Qwest has conceded this issue and allows Local Interconnection Service (LIS) trunks to be connected with UNEs. Qwest May 18, 2001 Brief at p. 18. Qwest has deleted LIS from the definition of Finished Services in 4.23(a). Id. Qwest has agreed to adopt the resolution achieved by the Washington Commission, such that access to UNEs will be allowed, but commingling and ratcheting of rates will not.

**b. Discussion and Staff Recommendation**

301. Qwest has conceded this issue, allowing Local Interconnection Service (LIS) trunks to be connected with UNEs and has deleted the term LIS from the definition of finished services in the SGAT Section 4-23. Therefore, Staff deems this issue closed.

**DISPUTED ISSUE NO. 6: Contacts with CLEC end user customers by Qwest, and vice versa (i.e., What parties say to misdirected calls to the business office?) (UNEP-9)**

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

302. MCIW argued that Qwest is improperly creating marketing opportunities from misdirected calls by CLEC customers and wants the commission to address the "win back" language. MCIW May 18, 2001 Brief at p. 6-7. MCIW is concerned that customers inadvertently calling Qwest may be subjected to a "win-back" effort and that Qwest will use such inadvertent calls from CLEC customers as a marketing opportunity. Id. at p. 6. MCIW agrees with AT&T's recommendation that the phrase "seeking such information" be added at end of this section to the end of the last sentence. Id. AT&T and MCIW have previously briefed this issue addressing interconnection, collocation and resale impasse issues. Id.

303. Qwest argued that the Commission should reject AT&T's proposed language that would limit Qwest's ability to market its products and services to end-users who call Qwest inadvertently. Qwest May 18, 2001 Brief at p. 21. AT&T's assertion that Qwest not be permitted to market its products and services to CLEC customers who mistakenly contact Qwest's business or repair office limits competition and is an inappropriate restriction on commercial free speech. Id. at p. 18. Id. Qwest states the AT&T position is that carriers can only discuss their products and services with customers who call with a specific request and are seeking such information. Id. Qwest has made several SGAT revisions to address CLEC marketing concerns. Id. Qwest argues the issue of protection of commercial free speech and states that AT&T has not offered anything beyond speculation on the potential harm of Qwest marketing to CLEC customers. Id. at p. 19-20.

**b. Discussion and Staff Recommendation**

304. This issue is the same that was addressed by Staff in its report on Checklist Item 14 – Resale. In that report, Staff stated that it believes that the CLECs have raised a legitimate concern which needs to be addressed. End-users that mistakenly call Qwest should be instructed to contact their respective CLEC without a marketing attempt to solicit business from that end-user by Qwest, unless the end-user specifically requests that information. Moreover, as noted by MCIW, Qwest has already agreed to similar language in its current interconnection agreement with MCIW. Staff, therefore, recommends that AT&T's proposed language should be adopted and that Qwest should modify its SGAT, Section 6.4.1 accordingly.

305. Staff also stated that with the proposed language change requested by AT&T, Section 6.4.1 of Qwest's SGAT would read as follows:

> 6.4.1 CLEC, or CLEC's agent, shall act 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's end users contacting Qwest in error will be instructed to contact CLEC; and Qwest's end users contacting CLEC in error will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of local Exchange Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's end users who call the other Party seeking such information. "

306. Therefore, Staff recommends the same resolution here as the one proposed by Staff for Checklist Item 14.

**DISPUTED ISSUE NO. 7: After CLEC adds a fourth line in Zone 1 of one of the top 50 MSA, are lines 1 to 3 prices at TELRIC or a market-based rate? (UNE-P-10)**

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

307. Qwest argued that the FCC's UNE Remand Order is clear on this point and that unbundled switching is available at UNE rates for CLEC end user customers "with three lines or less." Qwest May 18, 2001 Brief at p. 21. For customers with four or more lines in density zone 1, local switching is not required to be unbundled and is not a UNE. Id. The FCC has made a distinction that end users with three lines or less "reasonably captures the division between the mass market . . . and the medium and large business market." Id. at p. 21-22. It was not the FCC's intention to allow large businesses to order three lines at TELRIC which applies to UNEs and their fourth lines and above at market-based rate. Id. at p. 22.

**b. Discussion and Staff Recommendation**

308. This issue was also addressed under Checklist Item 6 – Switching (SW-9). In its Report on Checklist Item 6, Staff recommended that this requirement be interpreted on a per customer basis within Density Zone One, rather than a per location basis. The FCC's *UNE Remand Order* appears clear on this point, stating that for customers with four or more lines in Density Zone One, local switching is not required to be unbundled and is not a UNE. Therefore, Staff recommends the same impasse resolution as in Checklist Item 6 – Switching (SW-9)

## 1. EEL IMPASSE ISSUES

**DISPUTED ISSUE NO. 1: Should termination liability assessment (TLAs) apply to conversion of tariffed services to UNEs? (EEL-5)**

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

309. AT&T argued that CLECs should not have to pay the TLAs for the private line/special access circuits they wish to convert to EELs. AT&T May 18, 2001 Brief at p. 38. The Commission should order that all TLAs are waived for private line/special access circuits that qualify as EELs. Id. at p. 40. CLECs have already paid the higher rates since the date the circuits were provisioned as private line/special access instead of UNEs. Id. It is therefore reasonable to waive the TLAs because of Qwest's refusal to provision the circuits as UNEs in the first instance as required by law. Id.

310. Qwest stated that it is willing to go beyond its legal obligations and not apply certain TLAs. Qwest May 18, 2001 Brief at p. 22. Qwest also stated that it was not obligated to provide EELs as UNEs. Id. During the time that Qwest (then U S WEST ) was not obligated to provide EELs, CLECs may have chosen to purchase them under special pricing plans as special access circuits or private lines. Id. Qwest

argues that in these cases CLECs have had the benefit of the lower prices. Qwest argues that the FCC has stated that TLAs are not an appropriate issue for 271 cases and quoted the FCC; "We disagree, as stated above, with commenters that believe that a Section 271 application is an appropriate forum to consider instituting a "fresh look" policy (to provide an opportunity for retail and wholesale customers to exit without penalty long term contracts that the carriers have voluntarily entered into with SWBT)." Id. at p. 23.

311. Qwest's modification to 9.23.3.12 is as follows:

> If CLEC is obtaining services from Qwest under an arrangement or agreement that includes the application of termination liability assessment (TLA) or minimum period charges, and if CLEC wishes to convert such services to UNEs or a UNE Combination, the conversation of such services will not be delayed due to the applicability of TLA or minimum period charges. The applicability of such charges is governed by the terms of the original agreement, Tariff or arrangement.

Id. at p. 23. Qwest believes the subject of payment of TLAs should not be addressed in the SGAT docket and that the issue is also before the FCC. Id.

312. Qwest has proposed the following in an effort to resolve the TLA issue Qwest will not apply TLA if all of the following conditions are met.

1. CLEC's private line circuit(s) was ordered or augmented between October 9, 1999 (the effective date of the 9th Circuit decision) and May 16, 2001 (the date this proposal was made);

2. Qwest did not have to build facilities to install the private line circuits at issue to meet CLEC's request;

3. CLEC identifies and communicates in writing to Qwest on or before August 1, 2001, each circuit it believes qualifies under this proposal; and

4. Each private line circuit so identified qualifies under one of the three local use options contained in Section 9.23.3.7.2 of the SGAT and CLEC identifies which option each circuit qualifies under.

Id. at p. 24. Qwest will implement this proposal on an individual case basis with each CLEC if all the conditions are met. Id.

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

313. Qwest has stated that in the spirit of cooperation and compromise, it offers a proposal to resolve the TLA issue, stating that it will not apply TLA if a series of four conditions are met (as described above). In its Proposed Findings of Fact and

Conclusions of Law, absent a decision from the FCC on this issue, Staff concurred with Qwest's proposal with minor exceptions.

314. Staff proposed that condition 1 be modified as follows:

> CLEC's private line circuit(s) was ordered or augmented between October 9, 1999 and 30 days after the Arizona Commission's Order approving Checklist Item 2.~~May 16, 2001 (the date this proposal was made);~~

315. Staff also recommended that condition 3 be modified as follows:

> CLEC identifies and communicates in writing to Qwest 90 days after the Arizona Commission's Order approving Checklist Item 2~~on or before August 1, 2001~~, each circuit it believes qualifies under this proposal; and

Staff believed these modifications will provide CLECs with sufficient time for notification to Qwest in order for Qwest not to apply TLA.

316. In its Comments on Staff's Proposed Findings of Fact and Conclusions of Law, AT&T argues that Qwest's condition 1 was too narrow, requiring that tariffed service be ordered between October 9, 1999 and May 16, 2001. Comments at p. 10. AT&T states that the ILECs have been obligated to provide combinations since the date of the Act. Therefore, AT&T argues that a beginning date of October 9, 1999, ignores Qwest's legal obligation to provide the combination of loops and dedicated transport since 1996. AT&T argues that the beginning date in condition 1 should commence no later than the effective date of the FCC's First Report and Order establishing UNEs released on August 8, 1996. AT&T also objects to Condition 2 exempting facilities which Qwest built to install the private lines.

317. Staff maintains its original position in its Proposed Findings of Fact and Conclusions of Law and continues to believe that its resolution of this issue is the appropriate one.

**DISPUTED ISSUE NO. 2: Can CLECs commingle UNEs and special access or private line circuits? (EEL-10)**

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

318. MCIW argued that Qwest is improperly imposing a restriction on the use of EELs in Section 9.23.3.7.2.7. MCIW May 18, 2001 Brief at p. 8. In section 9.23.3.7.2.7, Qwest states that it will not provision an EEL combination (that is a combination of loop and transport elements) or convert Private Line/Special Access to an EEL if Qwest records indicate that service "will be connected directly to a tariffed service". Id. MCIW argues that FCC Decision 00-183 provides that an EEL must meet the local use restrictions. Id. Paragraph 28 of that decision states:

> We further reject the suggestion that we eliminate the prohibition on "co-mingling" (*i.e.* combining loops or loop-transport combinations with tariffed special access services) in the local usage options discussed above. We are not persuaded on this record that removing this prohibition would not lead to the use of unbundled network elements by IXCs solely or primarily to bypass special access services. We emphasize that the co-mingling determinations that we make in this order do not prejudge any final resolution on whether unbundled network elements may be combined with tariffed services. We will seek further information on this issue in the Public Notice that we will issue in early 2001. (footnotes omitted in MCI brief). Id. MCI requests language agreed to in Washington by Qwest be imported into the Colorado SGAT:
>
> CLEC shall not use EUDIT as a substitute for Switched Access Services, except to the extent CLEC provides such services to its end users customers in association with local exchange services. Pending resolution by the FCC, Qwest will not apply the local use restrictions contained in 9.23.3.7.2. Id. at p. 9.

319. Qwest stated that this issue is the commingling issue and is the same as UNEC-2(A) previously briefed and that the same commingling arguments and authorities presented in the brief on UNEC-2(A) apply to EEL-10 as well. Qwest May 18, 2001 Brief at p. 25

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

320 In its Proposed Findings of Fact and Conclusions of Law, Staff resolved this issue based upon the discussion under UNE-C-2a above. Staff incorporated the same position it took regarding issue UNE-C-2a.

321. The FCC currently prohibits commingling or combining loops or loop-transport combinations with tariffed special access services. Staff recommended that Qwest modify its SGAT provisions to be consistent with this requirement.

322. AT&T, in its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, states that Staff fails to address WorldCom's request that language agreed to by Qwest in other jurisdictions be included in the SGAT to resolve this issue. Comments at p. 11. AT&T also argues that there is no basis to extend the requirement "of a significant amount of local exchange service" to other than a loop/transport combinations. Comments at pp. 12-13. AT&T further states that Qwest's initial language went far beyond any temporary constraint by imposing local use restrictions on dedicated transport from and to all permissible locations. Comments at p. 14.

323. Staff believes that AT&T misunderstood its original recommendation. Staff intent was to resolve the issue just as AT&T stated, i.e., "there is no basis to extend

the requirement of a significant amount of local exchange service to other than a loop/transport combination. Moreover, if Qwest has agreed with the parties to language in other jurisdictions, Staff would support use of that language in Arizona.

**DISPUTED ISSUE NO. 3: Whether Qwest's "grooming charge" to eliminate commingling to allow for conversion to EEL is proper? (EEL-11)**

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

324. Qwest stated that this is an e-spire issue only and that the term "grooming charge" refers to tariffed charges to make changes to a special access circuit or a private line. Qwest May 18, 2001 Brief at p. 25. Qwest's interpretation is that e-spire does not want to pay the tariffed rate for the "grooming charge" when making changes to special access and private line circuits. Id. Qwest argues that this is not acceptable or consistent with FCC orders and there is no supportable basis to demand that Qwest reconfigure its existing network at no charge to facilitate the conversion to UNE rates. Id. If a CLEC makes changes to a circuit purchased from a tariff, the CLEC must pay the tariffed rates for that change. Id.

**b. Discussion and Staff Recommendation**

325. Neither e-spire nor any other CLEC briefed this issue. Staff believes that resolution of costing issues such as this should be resolved in the Wholesale Pricing Docket.

**DISPUTED ISSUE NO. 4: Whether internet (ISP) traffic be considered local traffic for purposes of the local use restriction? (EEL-12)**

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

326. Qwest argued that it provides to CLECs the combination of unbundled loop and transport network elements, or EEL, pursuant to rules established by the FCC. Qwest May 18, 2001 Brief at p. 26. The FCC required that requesting carriers provide a "significant amount of local exchange service" in order to obtain EELs from incumbent LECs. Id.

327. CLECs want ISP traffic bound for the Internet to count toward the requirement of a "significant amount of local exchange service." Id. at p. 26. Qwest points out that no intervenor raised this issue in testimony. Id. Qwest briefs that there are two problems with the CLEC request. First, ISP-bound traffic , including Internet access traffic, jurisdictionally is not local traffic. Id. at p. 27. Second, even if Internet-bound traffic were local in nature, the FCC's rules require that the local traffic must be local voice traffic. Id. Also, the FCC has jurisdiction over all interstate services, including internet-bound traffic. Id. at p. 28. Because the FCC has found that calls

bound for the Internet are interstate in nature, they are not properly considered local calls for the purposes of meeting the "significant local exchange service" traffic requirement necessary for the purchase of EELs. Id. at p. 29. Accordingly, Qwest proposes that its SGAT language at Section 9.23.3.7 be retained without changes. Id.

### b. Discussion and Staff Recommendation

328 . This issue is also related to Checklist Item 5 – Transport (issue TR-5). Covad was the only CLEC to argue this issue under Checklist Item 5. The question regarding Internet Bound Traffic is one in which the FCC's position is still currently evolving. Qwest has agreed not to apply the local use restriction for UDIT pending resolution of the issue by the FCC. Staff believes this is also appropriate to resolve this impasse issue, particularly since while the FCC classifies ISP bound traffic as jurisdictionally interstate, in all other respects the traffic is treated as "local". Staff recommends that Qwest modify its SGAT language accordingly.

329. Qwest, in its Comments on Staff's Proposed Findings of Fact and Conclusions of Law, Qwest argues that the FCC issued a dispositive decision in April, 2001[6], stating that such traffic is interstate and that the state commissions were prevented from finding otherwise. Comments at p. 27. Qwest also argues that it does not treat ISP traffic as local traffic. Id. Additionally, Qwest states that even if it did treat Internet-bound traffic as local, it is immaterial to the question before the Commission whether Internet-bound traffic is interstate or local. Finally, Qwest states that in the Multi-State Workshops, the Facilitator found that it was not appropriate to count ISP traffic as toward local use requirements for EELs. Comments at p. 29. Qwest stated that the CLECs have not contested Qwest on this issue in states that are now deciding reciprocal compensation issues. Comments at p. 30.

330. Upon reconsideration, in light of the FCC 's *ISP Remand Order*, Staff agrees with Qwest that ISP traffic should not be counted toward the local use requirements for EELS.

## h. Verification of Compliance

331. At the October 10, 2000, November 10, 2000 and April 9, 2001 workshops, Checklist Item 2 issues were discussed at length among the parties. The parties were able to resolve almost all of their disputed issues at the workshops. Many other issues were deferred to other workshops. Ultimately, there were a number of issues that the parties were at impasse. Qwest has also agreed that any CLEC may opt into any or all of the provisions agreed to in the Checklist Item 2 workshops.

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[6] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications At of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, and 99-68, Order on Remand and Report and Order, (rel. April 27, 2001)("*ISP Remand Order*").

332. However, because of the number of critical issues that are outstanding and which Qwest has not yet resolved in conjunction with this Checklist Report, a finding that Qwest has not fully demonstrated that it complies with the requirements of Checklist Item 2 is appropriate.

333. First, critical to a finding of compliance on this Checklist Item, is a demonstration by Qwest that it has an effective and workable Change Management Process in place. While recent workshops were held on this issue, Staff's recommendation on this issue must await the Final Workshop in January and the results of the CMP systems redesign meeting currently scheduled for January.

334. Second, Qwest's Stand-Alone Test Environment (SATE) is just now undergoing evaluation by HP. HP's interim evaluation was completed on November 30, 2001 and a workshop was held on December 12, 2001 on the report. HP issued its final evaluation on December 21, 2001. That final evaluation will be discussed at the Final Workshop in January. A reliable and effective non-production testing environment has been part of every successful 271 application to-date. Staff's recommendation with regard to Qwest's SATE must await the Final Workshop in January.

345. Third, the Arizona Independent Third Party OSS Test is still on-going and a final Report by CGE&Y, including re-testing, was just issued on December 21, 2001. Given the overall significance of this testing effort, and the fact that it will be subject to review and comment at the Final Workshop in January, with the last version of the final report to be issued thereafter, until such time and the Commission approves the report Qwest cannot be said to have satisfactorily demonstrated that it meets the requirements of Checklist Item 2.

346. Finally, many concerns were expressed by the parties during the Workshops and in their comments, regarding Qwest's provisioning of UNE-P. To Qwest's credit, it made a tremendous effort to resolve those concerns by proposing many solutions or fixes during the Workshops. As was the case with Checklist Items 4 and 11, the fixes by themselves are not enough. The Staff must now evaluate whether those fixes are actually working in order to determine Qwest's overall compliance. Because retesting involving UNE-P is just now being undertaken as part of the OSS test, it is impossible to determine whether Qwest's fixes are actually working and hence Qwest has not satisfactorily demonstrated that it meets the requirements of Checklist Item 2.

347. Staff recommends that Qwest's compliance with Checklist Item 2 be determined when all of the outstanding issues identified herein have been fully addressed by Qwest.

## 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)(ii) of the Telecommunications Act of 1996 requires a section 271 applicant to offer "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."

8. Section 251(c)(3) of the Act requires BOCs to provide access to network elements pursuant to "conditions that are just, reasonable, and nondiscriminatory . . . ."

9. Section 252(d)(1) of the Act states that "[d]eterminations by a State commission of the just and reasonable rate for . . . network elements for purposes of [section 251(c)(3)] . . . (A) shall be (I) based on the cost . . . of providing the . . . network element . . . and (ii) nondiscriminatory, and (B) may include a reasonable profit."

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

11. Section 251(c)(3) of the Act provides that an incumbent LEC "shall provide such unbundled elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."

12. Section 251(c)(6) provides that an incumbent LEC has the "duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier." Section 251(c)(6) further provides that an incumbent LEC "may provide virtual collocation if the

local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations."

13. As a result of the proceedings and record herein, Qwest has not at this time demonstrated that it complies with the requirements of Checklist Item 2. In order for Staff to be able to recommend to the Commission that Qwest meets the requirements of Checklist Item 2, Qwest must address the concerns raised herein.

14. Qwest's compliance with Checklist Item 2 is also contingent on its passing of any relevant performance measurements in the Third Party OSS test now underway in Arizona, developing an effective CMP process, and having a SATE available which meets FCC requirements. Qwest's compliance is also dependent upon its updating its SGAT with language agreed to in other region Workshops as well as language incorporating the impasse issues set forth herein.