

10/10/02

AT: T: Worldcom
Comments
from

11/12/02

Order Re: Checklist
Items 2, 4, 5, 16

- ~~07/01/02 - Midcontinent's Post Hearing Brief;~~
- ~~07/01/02 - AT&T's Brief Regarding Public Interest;~~
- ~~07/01/02 - AT&T's Brief Regarding Qwest's Change Management Process;~~
- ~~07/01/02 - Response Brief of AT&T Regarding Paper Workshop Issues;~~
- ~~07/01/02 - AT&T's Responsive Post-Hearing Brief to Qwest's Post-Hearing Brief in Support of the QPAP and Request for Additional Supplementation of the Record;~~
- ~~07/01/02 - AT&T's Response to Qwest's Opening Post-Hearing Brief on Emerging Services;~~
- ~~07/01/02 - AT&T's Brief Regarding Qwest's Interconnection Obligations;~~
- ~~07/01/02 - AT&T's Brief on Checklist Items 2, 5 and 6 and Section 272 Compliance;~~
- ~~07/01/02 - Response Brief of AT&T Regarding Checklist Item 4 - Unbundled Loops and Checklist Item 11 - Local Number Portability;~~
- ~~07/02/02 - Intervenor Black Hills FiberCom's Response to Qwest's Post-Hearing Brief;~~
- ~~07/03/02 - AT&T's Comments on the ROC OSS Final Report;~~
- ~~07/03/02 - Qwest's Verified Comments;~~
- ~~07/03/02 - Request for Confidential Treatment;~~
- ~~07/03/02 - Staff's Comments;~~
- ~~07/10/02 - Midcontinent's Joinder in Staff's Position on Public Interest;~~
- ~~07/15/02 - Transcript of Hearing held 7/11/02;~~
- ~~07/17/02 - Qwest's Overview Reply Brief;~~
- ~~07/17/02 - Qwest's Post-Hearing Reply Brief on Compliance with the 14-Point Competitive Checklist;~~
- ~~07/17/02 - Qwest's Reply Brief in Support of the QPAP;~~
- ~~07/17/02 - Qwest's Post-Hearing Reply Brief on General Terms and Conditions, Section 272, and Track A;~~
- ~~07/17/02 - Qwest's Post-Hearing Reply Brief on the Public Interest;~~
- ~~07/17/02 - Qwest's Post-Hearing Reply Brief Regarding Change Management;~~
- ~~07/17/02 - Qwest's Exhibit 92;~~
- ~~07/17/02 - Qwest's Exhibit 93;~~
- ~~07/17/02 - Certificate of Service;~~
- ~~07/22/02 - Motion for Withdrawal of Counsel (Gregory J. Bernard);~~
- ~~07/22/02 - Request for Confidential Treatment of Information;~~
- ~~08/12/02 - Qwest Performance Results - Regional and South Dakota - July 2001 - June 2002;~~
- ~~09/19/02 - Procedural History; Order Regarding Checklist Items 3, 7, 8, 9, 10 and 12;~~
- ~~09/19/02 - Order Regarding Checklist Items 1, 11, 13 and 14;~~
- ~~09/25/02 - Qwest's Notice of Updated Statement of Generally Available Terms and Conditions;~~
- ~~09/27/02 - AT&T's Motion to Reopen and Supplement the Record;~~
- ~~09/30/02 - Qwest's Request for Acceptance of PO-20 for Inclusion in the QPAP;~~
- ~~09/30/02 - Memorandum in Support of Qwest's Request for Acceptance of PO-20 for Inclusion in the QPAP;~~
- ~~10/07/02 - Certificate of Service;~~
- ~~10/10/02 - AT&T and WorldCom's Comments on Qwest's Proposed PO-20 Measurement;~~
- ~~10/10/02 - Opposition of Qwest to AT&T's Motion to Reopen and Supplement the Record;~~
- ~~10/16/02 - AT&T's Notice of Supplemental Authority Regarding PO-20;~~
- ~~10/24/02 - Notice of Supplemental Authority Denying AT&T's Motion to Reopen the Record;~~
- ~~10/25/02 - Notice of Supplemental Authority Denying AT&T's Motion to Reopen the Record;~~
- ~~11/12/02 - Order Regarding General Terms and Conditions and Track A;~~
- ~~11/12/02 - Order Regarding Checklist Items 2, 4, 5, and 6;~~
- ~~12/18/02 - Qwest's Notice of Updated Statement of Generally Available Terms~~

Amman



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October 9, 2002

Via Overnight Mail

Debra Elofson
Executive Director
SD Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

RECEIVED

OCT 10 2002

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

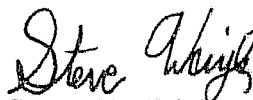
Re: In the Matter of the Analysis into Qwest Corporation's Compliance with
Section 271(c) of the Telecommunications Act of 1996.
Docket No. TC01-165

Dear Ms. Elofson:

Enclosed for filing are the original and ten copies of AT&T and
WorldCom, Inc.'s Comments on Qwest's Proposed PO-20 Measurement.

Please call me if there are any questions with regard to this filing.

Very truly yours,


Steven H. Weigler

SW/jb

Enclosures

cc: Service List



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE ANALYSIS INTO QWEST)
CORPORATION'S COMPLIANCE WITH SECTION)
271(C) OF THE TELECOMMUNICATIONS ACT OF)
1996)

Docket No. TC01-165

AT&T AND WORLDCOM, INC.'S
COMMENTS ON QWEST'S PROPOSED PO-20 MEASUREMENT

AT&T Communications of the Midwest, Inc. ("AT&T") and WorldCom, Inc. ("WorldCom") hereby submit this Response in Opposition to Qwest Corporation's ("Qwest") Request for Acceptance of PO-20. AT&T and WorldCom oppose adoption of PO-20 for the following reasons:

I. The PO-20 PID Should Be Developed Through a Collaborative Process.

As an initial matter, AT&T and WorldCom object to Qwest's unilateral PID development and its rush to receive the Commission's approval. There is no advantage to deviating from a process analogous to the PID development process that effectively produced prompt resolution to PID development issues. Historically, the collaborative process reduced the possibility that there would be multiple, state-specific versions of a PID for both the CLECs and Qwest to contend with. Clearly, a collaborative approach is the best approach to use. The relationships between Qwest, the CLECs and the Regulators already exist.

Furthermore, Qwest made no effort to discuss PO-20 with CLEC representatives or to work with parties to complete development of PO-20 other than to discuss the measure as part of the June 27, 2002 Arizona TAG conference call. AT&T and WorldCom both filed comments on June 27, 2002, in Arizona related to PO-20. In

addition, at the July 30th Arizona Final 271 Workshop, Eschelon identified concerns related to PO-20. At that time, AT&T and WorldCom also expressed their concern that Qwest had not yet responded to their comments dated June 27, 2002. To date, the parties have not received any response from Qwest to either the written or oral comments.

While AT&T and WorldCom believe the collaborative approach is the only appropriate approach for PID development, the remainder of these comments will identify some of AT&T and WorldCom's specific concerns with what is and is not part of Qwest's PO-20 proposal. In addition, attached to these comments, as **Attachment A**, are AT&T and WorldCom's redlined revisions to and questions about Qwest's proposed PO-20 PID.

II. The LSR Should Be Compared to the Post-Provisioning LSR

A significant flaw is evident in Qwest's PO-20 proposal. Qwest's proposed PO-20 measurement limits the scope of its comparison of order entries to those present on the LSR and the resulting Service order(s). This structural limitation deprives CLECs of necessary and appropriate insight into the data that form the basis for the metric. The post-provisioning Customer Service Record ("CSR") would be a more appropriate comparison to the LSR that is issued. In this way, if necessary, a CLEC could perform its own analysis and verification of PO-20 calculations that would not be possible if the PO-20 analysis is limited to a comparison between the LSR and the resultant service orders. If this change is not made, CLECs have no access to Qwest-generated service orders, and they will be unable to verify the accuracy of Qwest's Service order. A comparison between the LSR and the post-provisioning CSR also permits a determination to be made

that what was ordered was actually installed. Qwest's proposal compares what was ordered to what should be installed.

III. The Scope of Products and Services Proposed by Qwest is Too Limited.

Qwest's measurement proposal only includes product reporting for combined reporting of UNE-P POTS and Resale and combined reporting of analog unbundled loops and two-wire non-loaded unbundled loops. In contrast, the Service order accuracy measurement for SBC Texas has no such limitation;¹ instead, it includes all "completed (non-flow through) service orders submitted via LEX/EDI that are provisioned as requested on the CLEC submitted LSR."² There is no policy reason, except to let Qwest off the hook, to limit the scope of the measurement to only UNE-P/resale and unbundled loop services as Qwest proposes. Rather, as in Texas, the scope should be expanded to include all of the products and services that Qwest provides to CLECs.

IV. The Scope of Service Order Fields to Be Examined is Too Limited.

Qwest's proposed PO-20 measurement limits the scope of the service order examination to the CLEC ID, date and time the CLEC sent the LSR, CLEC purchase order number, customer name and address information, the billing account number and the due date provided on the FOC. Qwest's proposal ignores many important service order fields. The ROC OSS test identified numerous examples of Qwest inappropriately assigning the application date for an order. Despite the known history of human errors associated with the assignment of the application date, Qwest's proposal fails to include the application date field within the scope of PO-20. Instead, Qwest examines the "D/Tsent" field. The D/Tsent field contains the date and time that the CLEC sent the

¹ See Attachment B, Appendix Performance Measurements Business Rules (Version 2.0) - TX (T2A), 5/08/02, Measurement 12.1 - Percent Provisioning Accuracy for non-flow through orders.

² *Id.*

order to Qwest. A Qwest representative is going to use the D/Tsent field to determine whether or not the LSR is complete and accurate, and will use the Qwest business rules to determine an application date for the order. Qwest's proposal fails to explicitly include the application date as one of the fields examined for accuracy. Qwest apparently admits that the application date field will not be examined when it identifies the D/Tsent field name as "Date sent to help ID App." While Qwest's description of the field is certainly cryptic, it appears that the D/Tsent field is the date sent to help identify the application date – not the actual application date. Whether or not Qwest is actually examining the accuracy of its application date assignment for an order is a topic that needs collaborative discussion and clarification by Qwest.

Qwest's proposal also utterly fails to examine any of the services and features that were ordered on the LSR. Ensuring that the services and features ordered by the CLEC and contained in the LSR get entered into the associated service order(s) should be one of the primary purposes of any service order accuracy measurement. An appropriate Service order accuracy measurement should compare the USOCs and PIDs that were contained on the LSR to the USOCs and PIDs that were actually installed by Qwest.

It appears that Qwest modeled its proposed PO-20 Service Order Accuracy Measurement on the OR-6 Order Accuracy Measurement developed in the Verizon region.³ However, unlike the Qwest measurement proposal, Verizon explicitly identifies "[f]eatures (for Resale, UNE-P and Switching Orders)" as "fields that will be reviewed by Verizon."⁴ It should also be noted that the Texas provisioning accuracy measurement

³ See Attachment C, New Jersey Carrier-to-Carrier Guidelines Performance Standards and Reports, October 2001, measurement OR-6 Order Accuracy ("Verizon OR-6").

⁴ *Id.*

includes the services and features requested by the CLEC as fields to be examined.⁵ For purposes of feature comparison between LSRs and service orders, Qwest's proposal is woefully inadequate compared to what other bell operating companies ("BOCs") are capable of doing..

In addition to a failure to examine the ordered features and services, Verizon includes categories of LSR fields that Qwest does not propose to review. Verizon's additional categories include:

- Billed Telephone Number
- Telephone Number (if applicable, required for resold POTS, Platform and LNP/INP)
- Ported TN (if applicable, required for LNP/INP)
- Circuit ID (if applicable, required for Specials and loops)
- Directory Listing Information (if changing and appropriate)
- E911 Listing Information (if changing and appropriate)
- Application Date
- Remarks (if applicable)⁶

The number of fields to be examined in Qwest's PO-20 measurement also falls short of the number of fields examined in SBC's Service order accuracy measurement. SBC's measurement 12.1 includes many more fields than the eleven fields that Qwest proposed to examine. Qwest's failure to include critical information such as the customer's telephone number, the circuit ID (for unbundled loops) and E911 information render Qwest's proposed PO-20 measurement of very little use.

⁵ See Attachment B, Appendix Five. Fields examined by SBC include, "ACT- Activity (Compare ACTION CODE associated to USOC as verification)," "FA - FEATURE ACTIVITY (compare ACTION CODE associated to USOC as verification)," and "FEATURE - FEATURE CODE (Compare to USOC on service order)".

⁶ Verizon OR-6.

V. Many of The Fields That Qwest Proposes to Examine are Subject to Up Front Edits in Qwest's Service Order Processor

Six of the eleven fields that Qwest proposes to be examined as part of the PO-20 measurement are customer address related. Qwest's proposal to check the accuracy of the address information on the Service order is not very remarkable in that Qwest's service order processor will immediately reject the Service order back to the Qwest representative if the address information is inaccurate. For example, if the Qwest order typist mistakenly enters the service address street name on the service order, Qwest's service order processor will immediately reject the order and the Qwest order typist can immediately correct the error. The address-related edit and error checking capabilities of Qwest's service order processor make it highly unlikely that Qwest's random sample of Qwest orders turn up any errors on the six address-related fields. Nevertheless, checking for valid addresses is a commendable feature of Qwest's service order processor.

However, as part of a service order accuracy measurement, Qwest's choice of those fields instead of fields more prone to human error and not subject to the same edits and error checks as the address-related fields (e.g., telephone number fields, feature related fields, circuit ID fields, and remarks fields) designs the measurement to inappropriately inflate the service order accuracy measurement as high as possible.

VI. Qwest's Methods and Procedures For Collecting PO-20 Data Need to be Better Understood.

Apart from some of the key elements of an appropriate service order accuracy measurement that are missing from Qwest's proposal, there are also parts of Qwest's proposal that beg for further clarification. For example, Qwest should clarify when a service order is or is not "accurate." In addition, Qwest should clearly define how it "randomly" selects service orders throughout its region.

Likewise, it is unclear what Qwest's exclusion of "[o]rders that cannot be matched to a corresponding LSR" means. The inability of Qwest to relate a service order(s) to an LSR would appear to be a problem that could have occurred because Qwest failed to properly include the LSR on the corresponding service order(s). Rather than excluding those types of service orders, the more appropriate approach would be to count them as inaccurate service orders. The Commission should demand that Qwest better explain the intent of such an exclusion before the Commission approves this measurement.

AT&T and WorldCom believe they understand why Qwest would propose that "[o]rders generated from LSRs with non-fatal errors" be excluded from the PO-20 results. Qwest, however, needs to provide additional clarity on how Qwest intends to "operationalize" the exclusion. For example, if in Qwest's process of randomly selecting orders it comes across an order generated from an LSR with a non-fatal error, does that count against the 20 orders per day? Thus, the construct methods and procedures that make up data collection for PO-20 are too vague to simply approve.

VII. Qwest's Proposed Tier II Payment Amounts Are Too Low.

While Qwest borrowed extensively from the Verizon OR-6 Order Accuracy Measurement in developing the PO-20 PID, Qwest avoided the payment amounts that Verizon would pay for failures to meet the OR-6 Order Accuracy benchmark. Under Qwest's PO-20 proposal, depending upon how far from the benchmark Qwest's performance deviates, the payment amounts start at \$500 and end at \$7,500. In contrast, in New Jersey, Verizon's payment amounts for failing to meet the benchmark start at \$15,000 for a minor miss, escalate to \$30,000 for a moderate miss and end at \$75,000 for a major miss.⁷ Furthermore, the New Jersey payment amounts escalate for consecutive months of deficient performance. In the fourth consecutive month of OR-6 Order Accuracy misses, the New Jersey payment amounts would be \$60,000 for a minor miss, \$120,000 for a moderate miss and \$300,000 for a major miss.⁸

Moreover, comparing the proposed PO-20 payment plan to Qwest's own QPAP, Qwest's proposed PO-20 payment amounts are also low. For example, the per measurement payments for misses of performance measurements GA-1, 2, 3, 4 and 6 start at \$1,000 and escalate to \$30,000.⁹ The per measurement payments for misses of the PO-1, OP-2 and MR-2 measurements start at \$1,000 and end at \$15,000.¹⁰

There is no reason to set the payment amounts for PO-20 less than the Verizon payment amounts and the amounts for similar type measures already in the QPAP, except to inappropriately give Qwest a break. To reflect the importance of the service order

⁷ *In the Matter of Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, Long-Distance Services in New Jersey*, Joint Declaration of Elaine Guerard, Julie A. Conry and Marilyn C. Devito, December 2001, pp. 67 - 69.

⁸ *Id.*

⁹ Qwest QPAP, § 7.4

¹⁰ *Id.*

accuracy measurement and to provide Qwest with a meaningful and significant incentive to meet the required benchmarks, AT&T and WorldCom propose the following payment amounts:

TIER-2 PER MEASUREMENT PAYMENTS TO STATE FUNDS

I. Measurement	A. Performance	B. State Payment
II. PO-20		
Resale POTS/UNE-POTS	1% or lower	\$15,000
	>1% to 3%	\$35,000
	>3% to 5%	\$50,000
	>5%	\$75,000
Unbundled Loops (Analog and Non-Loaded 2-Wire).	1% or lower	\$15,000
	>1% to 3%	\$35,000
	>3% to 5%	\$50,000
	>5%	\$75,000

VIII. As Qwest Develops the Capability to Check the Accuracy of All Service Orders, the PO-20 Measurement Should be Classified as a Tier 1 Measurement.

It appears that Qwest proposed PO-20 as a Tier 2 per measurement performance measurement because it currently lacks the capability to check the accuracy of anything but a manual sample of a small number of service orders. As Qwest develops the necessary mechanized capabilities, the Commission should require Qwest to: (a) check the accuracy of all service orders, (b) provide state and CLEC-specific reporting of results and (c) make Tier 1 payments to CLECs on a per occurrence basis. This suggested approach is similar to the way payments are made in the Texas plan. In the Texas plan, all manually processed service orders are examined, and the measurement

was classified as a Tier 1 – High.¹¹ The approach proposed by AT&T and WorldCom, or Texas—rather than Qwest’s approach—actually provide some incentive for Qwest meet the standard.

IX. The PO-20 Benchmark Should Be Collaboratively Developed Contingent Upon The Fields Included in the Service order Accuracy Measurement.

The benchmark for the PO-20 measurement should consider the number and type of fields that are to be examined. If, like Qwest’s proposal, the number of fields examined are few and the fields should be easy for Qwest to accurately populate, the benchmark should be quite high. In contrast, if the PO-20 measurement ends up with a very broad scope of fields examined, then the benchmark may be set at a lower level, but not less than comparable benchmarks.

The optimum approach for setting a benchmark is to first collaboratively determine the fields to be examined and then collaboratively develop the benchmark. AT&T and WorldCom suggest that the Commission follow that approach. In the alternative, because Qwest has chosen to only include a few, easy to accurately populate fields as part of its PO-20 measurement, AT&T and WorldCom suggest a benchmark of 98%.

X. Conclusion.

The Commission should reject Qwest’s Request for Acceptance of PO-20 for the foregoing reasons. Instead, AT&T and WorldCom request that the Commission order Qwest to collaboratively work, as suggested herein, to make PO-20 a worthwhile measurement.

¹¹ Texas Performance Measurement 12.1.

Respectfully submitted this 9th day of October, 2002.

**AT&T COMMUNICATIONS OF THE
MIDWEST, INC.**

By: _____

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PO-20 – Manual Service Order Accuracy – 11 Jun 02 Proposal

Purpose: Evaluates the degree to which Qwest accurately processes CLECs' Local Service Requests (LSRs), which are electronically-submitted and manually processed by Qwest, into Qwest Service Orders that are provisioned accurately into Qwest databases.	
Description: Measures the percentage of Qwest service orders that are populated correctly, and provisioned correctly into Qwest databases in specified data fields, with information obtained from CLEC LSRs. <ul style="list-style-type: none"> Includes only service orders created from CLEC LSRs that Qwest receives electronically (via IMA-GUI or IMA-EDI) and manually processes in the creation of service orders, regardless of flow through eligibility, subject to exclusions as specified below. Includes only LSR/service orders, from the product reporting categories specified below, that request inward line/loop, port, listing, number portability, or and feature activity (Change, New, and Transfer order types), are assigned a due date by Qwest (this "assigned a due date" term needs to be clarified), and are completed/closed (this "completed/closed" term needs to be clarified) in the reporting period. Change order types included in this measurement consist of all C "change" orders with "I" and "T" action-coded line/loop, port, listing, number portability, or and feature USOCs. Service orders evaluated in this measurement are either (1) those selected randomly ^{NOTE 1} and manually inspected for accuracy as defined herein (AT&T Question: Since service order processing is a regional activity, what is the means by which Qwest will assure the random sample includes all three regions?), or (2) when Qwest develops mechanized capabilities for this measurement as specified in the Availability section below, all service orders satisfying the above criteria. (the mechanized sampling procedure needs to be explained as well.) A service order will be classified as "accurate" and thus counted in the numerator in the formula below when evaluation (by whom and by what standard is "accuracy" determined?) determines that the fields specified in the Service Order Fields Evaluated section below (per the indicated phases), when populated on the LSR, are all accurate, as applicable, on the service order and the resulting Qwest database. Accuracy is defined as the contents of the specified fields, in the service orders and databases involved in provisioning the service, matching the information from the relevant fields as provided in the latest version of associated the LSR which generated the service order(s). 	
Reporting Period: One month	Unit of Measure: Percent
Reporting Comparisons: CLEC Aggregate	Disaggregation Reporting: Region-wide
Formula: $\frac{\text{((Number of accurate service orders) + (Number of evaluated service orders completed in the reporting period))}{\text{Number of evaluated service orders}} \times 100$	
Exclusions: <ul style="list-style-type: none"> Cancelled service orders. Orders generated from LSRs with non-fatal errors. Orders that cannot be matched to a corresponding LSR. This needs to be explained. 	
Product Reporting: <ul style="list-style-type: none"> Resale POTS and UNE-P (POTS) Unbundled Loops (Analog and Non-Loaded 2-wire) 	Standard: Diagnostic (until six month PAP review)
Availability: Under Development: <ul style="list-style-type: none"> Phase 0 - Manual, random sampling approach: Jun 02 results reported in the Jul 02 report. Phase 1 - Mechanized approach, replacing manual approach: TBD 	Notes: <ol style="list-style-type: none"> Manually-selected orders will consist of 20 random, qualifying orders per day per product reporting category, specified above, from throughout Qwest's 14-state local service region. (How will the measure deal with volumes of qualifying orders that

PO-20 – Manual Service Order Accuracy (continued)

are fewer than 20?)

Service Order Fields Evaluated (by Phase of implementation) – these need to be amended to include USOCs, FIDs, and related data that CLEC LSRs specify and that are to be provisioned accordingly. As listed below, the fields are inadequate because they fail to deal with necessary and integral ordering data. It is inconceivable that this proposed measure would not address LSR-specified products and services (USOCs and FIDs) which must be provisioned as requested. The Remarks entries (below) fail to identify the Qwest databases that reflect the LSR entries, as provisioned into the Qwest systems. Examining the LSR form and the service order is inadequate validation because CLECs have no visibility into service orders, but do have access to post-provisioning CSRs).

Phase 0 – (01 Jun 02 Forward) Random sampling approach; Manual comparison of the fields from the LSR to the Service Order:

	Field Code	Field Name	Remarks
	CCNA	CLEC ID	Order entry validated from LSR Form
	CLEC D/Tsent	Date sent to help ID App	Order entry validated from LSR Form
	Name	Name of Customer	Listed Name if no DL form with LSR; Order entry validated from End User Form
	SANO	Service Address Number	Order entry validated from End User Form
	SASD	Service Address Direction	Order entry validated from End User Form
	SASN	Service Address Street Name	Order entry validated from End User Form
	LD1	LOC	Apartment, Floor, etc.; Order entry validated from End User Form
	LV1	LOC #	Order entry validated from End User Form
	City	City name	Order entry validated from End User Form
	State	State name	Order entry validated from End User Form
	Zip	ZIP code	Order entry validated from End User Form
	PON	Purchase Order Number	Order entry validated from LSR Form
	BAN1	BTN/GRP	Order entry validated from LSR Form in the Bill section
	Date/ FOC'd date	Due Date on Order	Order entry validated from LSR FOC sent to the CLEC

Phase 1 – (Dates TBD) First phase of mechanized measurement

	Field Code	Field Name	Remarks
	Same as Phase 0	Same as Phase 0	

Future Phase – TBD in Long Term PID Administration; Additional fields included in mechanization, if any

	Field Code	Field Name	Remarks
	TBD	TBD	

TABLE OF CONTENTS
PERFORMANCE MEASURES (VERSION 2.0)

I.	RESALE POTS, RESALE SPECIALS AND UNES	1
A.	Pre-Ordering/Ordering	1
	Performance Measurement Numbers:	
1	Average Response Time For OSS Pre-Order Interfaces (Deleted Effective 7/1/01)	1
1.1	Average Response Time for Manual Loop Make-Up Information	2
	Orders	3
2	Percent Responses Received within "X" seconds – OSS Interfaces	4
4	OSS Interface Availability	6
4.1	Pre-Order Backend System Database Query Availability (Deleted Effective 7/1/01)	8
5	Percent Firm Order Confirmations (FOCs) Returned on time for LSR requests	9
5.1	Percent Firm Order Confirmations (FOCs) for XDSL-capable loops & Line Sharing Returned Within "X" Hours (Deleted Effective 7/1/01)	13
5.2	Percent Firm Order Confirmations (FOCs) Returned within X days on ASR requests	14
6	Average Time to Return FOC (Deleted Effective 7/1/01)	16
6.1	Average Time to Return DSL FOC's (Deleted Effective 7/1/01)	17
7.1	Percent Mechanized Completions Notifications Available Within one Day of Work Completion	18
9	Percent Rejects	19
10	Percent Mechanized Rejects Returned Within one hour of receipt of LSR	20
10.1	Percent Manual Rejects Received Electronically and Returned Within X Hours	21
10.2	Percentage of Orders that receive SWB-caused Jeopardy Notifications	22
11	Mean Time to Return Mechanized Rejects (Deleted Effective 7/1/01)	23
11.1	Mean Time to Return Manual Rejects that are Received Electronically via LEX or EDI (Deleted Effective 7/1/01)	24
11.2	Average SWB-caused Jeopardy Notification Interval	26
12	Mechanized USOC Provisioning Accuracy	26
12.1	Percent Provisioning Accuracy for non-flow through orders	27
13	Order Process Percent Flow Through	28
13.1	Overall Percent LSR Process Flow Through	29
B.	Billing	31
	Performance Measurement Numbers:	
14	Billing Accuracy	31
15	Percent of Accurate and Complete Formatted Mechanized Electronic Bills via EDI or BDT	32
16	Percent of Accurate Usage Records transmitted (of those records that are subject to active CLEC review) via the "Extract Return File" process	34
17	Billing Completeness	36
17.1	Service Order Posting	38
18	Mechanized Electronic Billing Timeliness EDI and BDT (Wholesale Bill)	39
19	Daily Usage Feed Timeliness	40
C.	Miscellaneous Administrative	41
	Performance Measurement Numbers:	
22	Local Service Center (LSC) Grade of Service (GOS)	41
23	Percent Busy in the Local Service Center (LSC) (Deleted Effective 7/1/01)	42
25	Local Operations Center (LOC) Grade of Service (GOS)	43

12.1 Measurement	
Percent Provisioning Accuracy for non-flow through orders	
Definition:	
Percent of completed (non-flow through) service orders submitted via LEX/EDI that are provisioned as requested on the CLEC submitted LSR.	
Exclusions:	
<ul style="list-style-type: none"> • Flow through service orders as identified in PM 13 • Cancelled Orders • Rejected orders due to CLEC caused errors 	
Business Rules:	
This measurement compares all fields listed in Attachment 5 as submitted on the LSR to the associated service order that provisioned the requested services. SWBT commits to make a good faith effort to maintain the list in Attachment 5 with any new fields that can be compared mechanically (e.g. features, PIC, etc.) when those fields have a legitimate impact on the customer.	
Levels of Disaggregation:	
<ul style="list-style-type: none"> • None 	
Calculation:	Report Structure:
(# of completed, non-flow through service orders with fields provisioned as ordered on the LSR's ÷ total non-flow through service orders completed * 100	Reported by individual CLEC, CLECs and SWBT
Measurement Type:	
Tier 1 – High	
Tier 2 – None	
Benchmark:	
95%	

Performance Measurements
Appendix Five

LSR FIELD, FIELD NAME and FEATURES

PHASE 1

CC - COMPANY CODE

LSR NO. - LOCAL SERVICE REQUEST NUMBER

ACT - ACTIVITY (Compare ACTION CODE associated to USOC as verification)

PQTY - PORT QUANTITY

REQTYP - REQUISITION TYPE AND STATUS

CFA - CONNECTING FACILITY ASSIGNMENT

CHC - COORDINATED HOT CUT = Y

DFDT - DESIRED FRAME DUE TIME

PORTED # - PORTED TELEPHONE NUMBER

STREET - STREET ADDRESS (END USER'S) - (SA field on the service order)

PIC - INTERLATA PRESUBSCRIPTION INDICATOR CODE (LNP only)

LPIC - INTRALATA PRESUBSCRIPTION INDICATOR CODE (LNP only)

FA - FEATURE ACTIVITY (Compare ACTION CODE associated to USOC as verification)

FEATURE - FEATURE CODE (Compare to USOC on service order)

Comparison will be based on the USOCs associated with the FEATURES listed below:

Caller ID - Anonymous Call Rejection

Improved data transmission for POTS lines

900 Call Restriction (AR, KS, MO, OK) (Blocks 1+700 also)

900/976 Call Restriction - end user requested - Initial Request (TX Only)

900/976 Call Restriction - end user requested - Subsequent Request (TX Only)

Toll Restriction (Blocks: 0+, 0-, 1+, 1+900, 1+976, 1+700, 1+411, 1+555-1212, 10XXX)

Call Forwarding - Busy Line / Don't Answer

Three-Way Calling

Simultaneous Call Forwarding

Speed Calling 30

Speed Calling 8

Call Forwarding

Call Waiting

Call Forwarding - Busy Line

Call Forwarding - Don't Answer

Preferred Number Service - Optional Local Unmeasured / Unlimited Usage Charge - EMS / EACS Additive

Local TeleBranch - Optional Unmeasured / Un-limited Usage Charge

Local TeleBranch - Unmeasured / Un-limited Usage

Hot Line

Circle Hunt - per line arranged for hunting.

Circle Hunting - Bus. 1-Element Measured 1-Party, Multi-Line Hunting and Trunks; Residence 1-Party & Trunks

Preferential Hunting - per line arranged for hunting.

Preferential Hunting Business 1 Element Measured 1-Party, Multi-Line Hunting and Trunks; Residence 1-Party and Trunks

Series Hunting - per line arrange for hunting (Also called Series Completion, Regular or Rotary Hunting.)

Series Handling per Line - Business 1 Element Measured 1-Party; Residence 1-Party
Improved voice transmission for trunks
Caller ID - Per Line Blocking
Night Number Terminal Arrangement - associated with working Telephone Number
Night Number Terminal Arrangement - associated with Terminal
Selective Call Forwarding
BizSaverSM A
BizSaverSM D
BizSaverSM B
BizSaverSM C
THE WORKSSM
THE WORKSSM w/o NMP
THE WORKSSM w/o Call Waiting
THE WORKSSM w/o Caller ID & w/o Call Waiting
THE WORKSSM w/o ESX
THE WORKSSM w/o ESX & NMP
THE WORKSSM Plus w/ 1+SaverSM
THE WORKSSM w/o NMP & NSD & w/ 1+SaverSM
THE WORKSSM Plus w/ OS3
THE WORKSSM w/o NMP & NSD
THE WORKSSM w/ NMP & NSD
THE WORKSSM w/o Caller ID
THE WORKSSM w/o Caller ID & w/o Remote Access to Call Forwarding
THE WORKSSM w/o Remote Access to Call Forwarding
THE WORKSSM w/o RC3
THE WORKSSM w/o NMP & RC3
THE WORKSSM w/o Remote Access to Call Forwarding & w/o Call Waiting
THE WORKSSM w/o Caller ID & w/o Remote Access to Call Forwarding & w/o Call Waiting
THE WORKSSM w/o ESX & RC3
THE WORKSSM w/o RC3, ESX & NMP
THE WORKSSM Plus w/o Call Waiting & w/1+SaverSM
THE WORKSSM Plus w/o Call Waiting & w/o Caller ID & w/ 1+SaverSM
THE WORKSSM Plus w/o Call Waiting & w/o Caller ID
THE WORKSSM w/ NMP & NSD; w/o AYK
THE WORKSSM w/o ESX
Caller ID - Calling Name Delivery
Caller ID - Caller ID Credit with 1+SaverSM
International (IDD) Blocking
Caller ID - Calling Number Delivery
Priority Call
Network Provisioning USOC for lines equipped with Call Return, Call Blocker, Auto Redial, Priority Call, Selective Call Forwarding

Auto Redial
Call Return
Call Trace - Per Successful Activation
Call Blocker
Auto Redial Per Activation
Call Return Per Activation
Priority Installation - (PI) Prime Service Vendor or Subcontractor
Priority Installation - (PI) Secondary Service Vendor or Subcontractor

Preferred Number Service without Unique Ring - 800 Service
Preferred Number Service without Unique Ring - Local
Preferred Number Service without Unique Ring - InterLATA
Preferred Number Service without Unique Ring - IntraLATA
Toll Terminal Trunks - Toll Billing
Priority Restoration - (PR) PR Level Implementation - Secondary Vendor or Subcontractor
Priority Restoration - PR Level change on an existing service - Subcontractor
Administration & Maintenance of TSP Service - Prime Service Vendor
Administration & Maintenance of TSP Service - Subcontractor
Preferred Number Service with Unique Ring - 800 Service
Preferred Number Service with Unique Ring - Local
Preferred Number Service with Unique Ring - InterLATA
Preferred Number Service with Unique Ring - IntraLATA
Remote Access to Call Forwarding
TeleBranch & Local TeleBranch - add'l Access Path
TeleBranch - Intrastate / Interexchange, non-Bell Exchange Company Access Path
TeleBranch - Interstate / Interexchange, non-Bell Exchange Company Access Path
TeleBranch - Interstate / Interexchange Access Path
TeleBranch - Interstate / Intraexchange Access Path
Local TeleBranch - First Access Path
TeleBranch - Interstate / International Access Path
TeleBranch - Intrastate / IntraLATA & Intrastate / InterLATA Access Path
TeleBranch - Interstate / 800 Interexchange Access Path
TeleBranch - Intrastate / 800 Interexchange Access Path
Caller ID - Caller ID Value Package Plus with 1+ SaverSM
Caller ID - Caller ID Value Package with 1+SaverSM
Caller ID - Caller ID Value Package
Caller ID - Convenience Plus
BASICS
Caller ID - Caller ID Value Package / Convenience Plus
Voice Dial Discount
Preferred Number Service with Unique Ring - CFN Account
800/976 Call Restriction - Mandatory - Subsequent Application (TX Only) (Charge Applies)
800/976 Call Restriction - Mandatory - Initial Application (TX Only)
Toll Restriction (Lifeline/Tel-Assistance end users)
Secondary Line Control
SCOCS - Charge per system
Toll Terminal Trunks - Pseudo Terminals
TOUCH-TONE, per C.O. Trunk
TOUCH-TONE, per line
Toll Terminal Trunks - Toll Charge Telephone Number
TOUCH-TONE, per line
Voice Dial - Directory-30, per Primary Line
Voice Dial - Directory-50, per Primary Line
Voice Dial - Directory-75, per Primary Line
Voice Dial - Shared Directory-30, per Secondary Line
Voice Dial - Shared Directory-50, per Secondary Line
Voice Dial - Shared Directory-75, per Secondary Line
Warm Line
WireWorxSM - Contract Option 2 - Selected Accounts - Multiline - Per jack - WireWorx billing applies

WireWorxSM - Contract Option 1 - All Accounts - Multiline - Per jack
 WireWorxSM - Contract Option 2 - Selected Accounts - Multiline - Per access line - WireWorx billing applies
 WireWorxSM - Contract Option 1 - All Accounts - Multiline - Per access line
 WireWorxSM - Contract Option 1 - All Accounts - Single Line
 WireWorxSM - Contract Option 2 - Selected Accounts - Single Line - WireWorx billing applies
 WireWorxSM - Contract Option 2 - Selected Accounts - Single Line & Multiline - WireWorx billing does not apply
 Improved data transmission for POTS lines
 Installation & Maintenance - CLEC Authorization required for regulated work (CLEC only)
 Installation & Maintenance - End user authorization for regulated work is permitted while SWB installation technician is on premise

Call Forwarding - Busy Line / Don't Answer

Call Forwarding - Busy Line

Call Forwarding - Don't Answer

LNFN - LISTED FIRST NAME

LNLN - LISTED NAME LAST

LTY - LISTING TYPE

PHASE 2 - (Requires the addition of FIDs to the Service Order Extract to perform the compare)

BA - BLOCKING ACTIVITY

BLOCK

HA - HUNT GROUP ACTIVITY

HID - HUNTING ID

HNTYP - HUNTING TYPE GROUP

OTN - OUT TELEPHONE NUMBER

FLOOR - EU FLOOR

ROOM - EU ROOM

BLDG - EU BUILDING

CITY - EU CITY, VILLAGE, TOWNSHIP, ETC.

STATE - EU STATE

ZIP CODE - EU ZIP CODE

LALO - LISTED ADDRESS LOCATION

LANO - LISTED ADDRESS HOUSE NUMBER

LASN - LISTED ADDRESS STREET NAME

LATH - LISTED ADDRESS THOROUGHFARE

LAZC - LISTED ADDRESS ZIP CODE

LTN - LISTED TELEPHONE NUMBER

PHASE 3 - (WTN and CKT Leg Expansion)

TN/ECCKT - TELEPHONE NUMBER/EXCHANGE COMPANY CIRCUIT ID

NC - NETWORK CHANNEL CODE

NCI - NETWORK CHANNEL INTERFACE CODE

FPI - FREEZE PIC INDICATOR

FPI - FREEZE PIC INDICATOR

Caller ID - Per Line Blocking - Access Code Restriction Group

Voice Dial - Advanced Service Interface Feature

SCOCS - Call Screening Code assignment

Preferred Number Services - Call Forwarding Number

TeleBranch - Call Forwarding Number

Call Forwarding - Busy Line / Don't Answer - Call Forwarding Number

Call Forwarding - Busy Line
Call Forwarding - Don't Answer
Directory Assistance Call Completion Screening
Disabled Person Discount
Voice Dial - Foreign Language
Preferred Number Service - Group Size
TeleBranch - Group Size
Simultaneous Call Forwarding - Group Size
Warm Line - Hot Line Service Number
Intercept Referral Service
Line Class Code (for any call restriction)
Toll Terminal Trunks - Line Class Code
Line Treatment Group Number (DMS) (for any call restriction)
Personalized Ring - Multiple Number Call Forward Inhibit
CUSTALRT - Customer Alerting - Message Service System
No Charge - Directory Assistance
Voice Dial - Network Facility Access
Night Number Terminal - Non-Hunting Number
Night Number Terminal - Night Service Fixed (TN or TER to which a Night Number is bridged)
Toll Terminal Trunks - Outward Dial Only
Remote Access to Call Forwarding - Personal Identification for Remote Access
Preferred Number Service with Unique Ring - Primary Number
Personalized Ring
Caller ID - Per Line Blocking - Privacy
Priority Service Authorization Number
Restrict Casual Use
Call Forwarding - Don't Answer - Ringing Cycle
Call Forwarding - Busy Line / Don't Answer - Ringing Cycle
Preferred Number Service with Unique Ring - CFN Account
Preferred Number Service with Unique Ring - Ringing Pattern
Simultaneous Call Forwarding - Simulated Facility Group
Preferred Number Service - Simulated Facility Group
TeleBranch - Simulated Facility Group
Voice Dial - Shared Voice Dialing Directory
Toll Terminal Trunks - Special Toll Guiding
Preferred Number Service - TN
Preferred Number Service with Unique Ring - Telephone Number
Personalized Ring - TN for Dependent Number(s)
Secondary Line Control
Tele-Communications Service Priority
Warm Line Timeout
RTY - RECORD TYPE

PIC - INTERLATA PRESUBSCRIPTION INDICATOR CODE- (Remaining non-LNP WTNs)
LPIC - INTRALATA PRESUBSCRIPTION INDICATOR CODE-(Remaining non-LNP WTNs)
LST - LOCAL SERVICE TERMINATION
HTN - HUNTING TELEPHONE NUMBER
HTSEQ - HUNTING SEQUENCE

**New Jersey
Carrier-to-Carrier Guidelines
Performance Standards and Reports**

October 2001

Function:**OR-6 Order Accuracy****Definition:**

Order accuracy is defined as the percentage of orders completed as ordered by the CLEC. Two dimensions will be measured. The first is a measure of orders without Verizon errors (Metric OR-6-01). The second measure is focused on the percentage of fields that are populated correctly (Metric OR-6-02).

Local Service Request Confirmation ("LSRC") accuracy is also measured. (Metric OR-6-03).

Methodology:

Order Accuracy: Verizon will use a manual audit process of sampled orders. A statistically valid random sample of approximately 400 orders for Resale and 400 orders for UNE each month, (20 orders randomly sampled each Business day for Resale and UNE, respectively) will be pulled. Verizon will compare required fields on the latest version of the LSR to the completed Verizon service order(s).²⁰

The fields that will be reviewed by Verizon will include, but not be limited to:

- Billed Telephone Number
- RSID or AECN
- PON Number
- Telephone Number (if applicable, required for resold POTS, Platform and LNP/INP)
- Ported TN (if applicable, required for LNP/INP)
- Circuit ID (if applicable, required for Specials and loops)
- Directory Listing Information (if included)
- E911 Listing Information (if changing and appropriate)
- Features (for Resale, UNE-P and Switching orders)
- Application Date
- Due Date
- Remarks (if applicable)

Exclusions:

- Orders that are entered by the CLEC and flow through.
- Orders that are submitted via fax, when electronic capability is available.
- CLEC Aggregate excludes Verizon Affiliate data.

Performance Standard

Metric OR-6-01: 95% of orders without Verizon errors.

Metric OR-6-02: No standard. (Covered by Metric OR-6-01.)

Metric OR-6-03: Not more than 5% of LSRCs resent due to Verizon error.

Report Dimensions**Company:**

- CLEC Aggregate

Geography:

- State

²⁰ Verizon will correct service order errors discovered by it in performing measurements under this Metric OR-6. Verizon will notify the applicable CLEC of such a correction.

Sub-Metrics		
OR-6-01	% Accuracy - Orders	
Products	Resale	UNE
Calculation	Numerator	Denominator
	Count of Orders Sampled less Orders with Verizon Errors for specified product.	Count of Orders Sampled for specified product.
OR-6-02	% Accuracy - Opportunities	
Products	Resale	UNE
Calculation	Numerator	Denominator
	Count of Fields Sampled less fields with Verizon errors for specified product.	Count of fields sampled for specified product.
OR-6-03	% Accuracy - Local Service Request Confirmation	
Products	Resale	UNE
Calculation	Numerator	Denominator
	Count of LSRCs resent due to Verizon error	Count of LSRCs

change to this measurement so that it reports the percentage of all orders received that are rejected, rather than the ratio of rejects to confirmed orders. Neither the New Jersey BPU nor the New York PSC has established a standard for this measurement, because the provision of correct information on an order is within the CLECs' control. Ms. McLean, Mr. Wierzbicki, and Ms. Webster describe the training and assistance that Verizon provides to CLECs to help them reduce the number of orders that are rejected.

61. "Percent Flow Through" (OR-5) measures the percent of valid orders received through the electronic ordering interfaces that are processed directly into the SOP without manual intervention. Verizon measures flow through for both resale and UNE orders in three different ways. First, it measures "total" flow through (OR-5-01), where the denominator is all electronically received valid orders, whether or not they are of a type that is designed to flow through to the SOP. Second, it measures "simple" flow through (OR-5-02), which includes orders for basic POTS services only.

62. Third, it measures "achieved" flow through (OR-5-03), which is the percent of orders designed to flow through that actually do flow through. Prior to November 2001, Verizon was inadvertently scoring certain resale orders that did flow through as if they had not. Verizon corrected this error in a system release in October 2001. See McLean/Wierzbicki/Webster Decl. The performance standard established for the achieved flow through measurement is 95%; the guidelines do not establish a standard for the total or simple flow through measurements. In addition, the New York PSC has recently approved the elimination of the "simple" flow through measurement.

63. "Order Accuracy" (OR-6) measures whether electronically submitted orders (or orders submitted via fax when no electronic capability is available) that are

manually entered into the SOP (i.e., that do not flow through) match the CLEC's service request. Verizon's review team manually audits a random sample of 400 Resale and 400 UNE orders per month and compares up to twelve (depending on the order type) required fields on the latest version of the LSR submitted by the CLEC to the completed Verizon service order. Verizon reports both the percent of orders without mismatches — "Percent Accurate Orders" (OR-6-01) — and the percent of audited fields on the orders that are not mismatched — "Percent Opportunities" (OR-6-02). Orders that have at least one "mismatch" are scored as being inaccurate. Finally, Verizon measures the "Percent Accurate LSRCs" (OR-6-03), defined as the percentage of LRSCs resent as a result of Verizon errors. In October 2001, Verizon completed the systems work necessary for it to measure OR-6-03. Verizon will begin reporting OR-6-03 with the November data month; previously OR-6-03 was reported as under development. The New Jersey BPU established a standard of 95 percent for OR-6-01 and a standard of not more than 5 percent for OR-6-03. OR-6-02 is reported for diagnostic purposes only; the New York PSC recently approved the elimination of this measurement.

64. Verizon also reports three measurements that reflect its performance in returning status notices for orders submitted over the EDI interface. These measurements are based on the measurements developed in connection with the March 9, 2000 Consent Decree between the Commission and Verizon. See Bell Atlantic-New York, Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service In the State of New York, Adopted Consent Decree and Terminated Investigation, FCC 00-92, File No. EB-00-IH-0085 (March 9, 2000).

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2002, the original and 10 copies of AT&T and WorldCom, Inc.'s Comments on Qwest's Proposed PO-20 Measurement were sent by overnight delivery service to:

Debra Elofson
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

and a true and correct copy was sent by U.S. Mail on October 9, 2002, addressed to:

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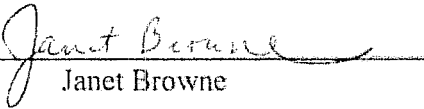
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OCT 16 2002

Steven H. Weigler
Senior Attorney
Law & Government Affairs

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weigler@lga.att.com

October 15, 2002

Via Overnight Mail

Debra Elofson
Executive Director
SD Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Re: In the Matter of the Analysis into Qwest Corporation's Compliance with
Section 271(c) of the Telecommunications Act of 1996,
Docket No. TC01-165

Dear Ms. Elofson:

Enclosed for filing are the original and ten copies of AT&T's Notice of
Supplemental Authority Regarding PO-20 in this matter.

Please call me if there are any questions with regard to this filing.

Very truly yours,

A handwritten signature in black ink that reads "S. H. Weigler".

Steven H. Weigler

SW/jb

Enclosures

cc: Service List



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OCT 16 2002

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE ANALYSIS INTO QWEST)
CORPORATION'S COMPLIANCE WITH SECTION)
271(C) OF THE TELECOMMUNICATIONS ACT OF)
1996)

Docket No. TC01-165

AT&T'S NOTICE OF SUPPLEMENTAL AUTHORITY REGARDING PO-20

AT&T Communications of the Midwest, Inc. submits this notice of supplemental authority with regard to Qwest's proposed PO-20 measurement.

The Colorado Commission Order Denying Motion states that "PO-20 as currently defined will result in more confusion and errors in reporting."¹ The Commission further stated "(we) believe the best way to handle the development of a PID is with the upfront input and collaboration of all parties."² For these reasons, the Colorado Public Utilities Commission denied Qwest's Request for Acceptance of PO-20 for Inclusion in the Colorado Performance Assurance Plan.

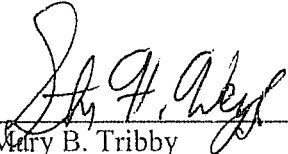
The Notice of Commission Action from the Montana Public Service Commission directs Qwest to develop PO-20 using a collaborative process that includes other interested parties.

¹ Order Denying Motion, In the Matter of Qwest Corporation's Colorado Performance Assurance Plan, Colorado Public Utilities Commission, Docket No. 02M-259T, Decision No. C02-1029 (September 18, 2002) at p.3.

² *Id.*

Respectfully submitted on October 15, 2002.

**AT&T COMMUNICATIONS
OF THE MIDWEST, INC.**

By:  _____
Mary B. Tribby
Steven H. Weigler
1875 Lawrence Street, Suite 1575
Denver, Colorado 80202
(303) 298-6957

Decision No. C02-1029

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02M-259T

IN THE MATTER OF QWEST CORPORATION'S COLORADO PERFORMANCE
ASSURANCE PLAN.

ORDER DENYING MOTION

Mailed Date: September 24, 2002
Adopted Date: September 18, 2002

I. BY THE COMMISSION

Statement

1. On August 19, 2002, Qwest Corporation (Qwest) filed a Request for Acceptance of PO-20 for Inclusion in the Colorado Performance Assurance Plan (CPAP). In this request, Qwest states that in an *ex parte* discussion with the Federal Communications Commission (FCC) concerning Qwest's application for § 271 approval, Docket No. WC 02-148, Qwest agreed that it would request that this Commission accept Qwest's proposed PO-20 with a 95 percent benchmark standard for inclusion in our CPAP. The PO-20 measurement is defined to capture data on Manual Service Order Accuracy.

2. Qwest requests that the PO-20 definition attached to its request, be included in § 7.4 of the CPAP which contains

the payment amounts for other Tier 2 regional measurements. Qwest also proposes payment amounts for non-conformance.

3. On August 30, 2002, AT&T Communications of the Mountain States, Inc., and TCG Colorado (AT&T) and WorldCom, Inc. (WorldCom), jointly filed a Response in Opposition to Qwest's Request for Acceptance of PO-20. AT&T and WorldCom object to Qwest's "unilateral PID development and its rush to receive the Commission's approval." They state that the collaborative approach that has been used historically is the best approach to use. AT&T and WorldCom state that Qwest has made no attempt to work with other parties on this Performance Indicator Definition (PID) development other than during one TAG call in Arizona, at which many concerns were raised.

4. AT&T and WorldCom, while they believe the collaborative approach is the only appropriate approach for PID development, do continue in their comments to identify many areas of concern with PO-20 and the way it is currently defined.

5. In Commission Decision No. C02-718 in Docket No. 011-260T, we required Qwest to:

work with interested parties to complete development of a PID for manual service order accuracy. This PID shall be added to the CPAP at the first six-month review.

The PID can be developed through a functioning long-term PID administration process. The lack of such a process does not extend Qwest's time to complete

development of a PID for manual service order accuracy. If parties cannot reach agreement on a PID, then Qwest shall file its proposed PID with the Commission. The Commission will then seek comment on Qwest's proposal and make a decision before completion of the first six-month review of the CPAP.

If parties reach agreement on a PID for manual service order accuracy before the first six-month review of the CPAP, then Qwest shall file the PID for Commission approval pursuant to § 18.9 of the CPAP.

The standard for the PID initially shall be diagnostic. At the second six-month review of the CPAP, a benchmark will be established and the PID for manual service order accuracy will be added as a Tier 1B measure to the CPAP, unless parties agree that Qwest's performance does not warrant the addition of such a PID to the CPAP.

6. We see no reason to deviate from our original decision. As stated in Decision No. C02-718, we see the need to address the human error concern, but believe the best way to handle the development of a PID is with the upfront input and collaboration of all parties. While we acknowledge Qwest has entered into an agreement with the FCC to request the acceptance of Qwest's defined PO-20 from the state commissions, our concern that PO-20 as currently defined will result in more confusion and errors in reporting outweighs our concerns about waiting until the first six-month review for inclusion. Just as an example, Qwest has indicated that PO-20 should be a Tier 2

Ensurance, when we clearly stated in our decision that it should be a Tier 1B.

7. At the August 22, 2002 Weekly Meeting, the Commission shortened response time to Qwest's request. Since response time to the request has now expired we vacate our prior order as moot.

II. ORDER

A. The Commission Orders That:

1. Qwest Corporation's Request for Acceptance of PO-20 for inclusion in the CPAP is denied.

2. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 18, 2002.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF the Investigation)	UTILITY DIVISION
into Qwest Corporation's)	
Compliance with Section 271 of the)	DOCKET NO. D2000.5.70
Telecommunications Act of 1996)	

NOTICE OF COMMISSION ACTION

On October 8, 2002, at a regularly scheduled work session, the Montana Public Service Commission (Commission) denied Qwest Corporation's request to accept its proposed performance indicator definition to measure manual service order handling accuracy (called PO-20) for inclusion in the Qwest performance assurance plan.

The Commission directs Qwest to develop PO-20 using a collaborative process that includes other interested parties and to refile the resulting performance measurement as part of the Commission's first six-month review of the performance assurance plan.

BY THE MONTANA PUBLIC SERVICE COMMISSION

GARY FELAND, Chairman
JAY STOVALL, Vice Chairman
BOB ANDERSON, Commissioner
MATT BRAINARD, Commissioner
BOB ROWE, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2002, the original and 10 copies of AT&T.'s Notice of Supplemental Authority Regarding PO-20 were sent by overnight delivery service to:

Debra Elofson
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

and a true and correct copy was sent by U.S. Mail on October 15, 2002, addressed to:

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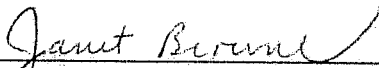
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OCT 24 2002

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UTILITIES COMMISSION

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Mary S. Hobson
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October 23, 2002

VIA OVERNIGHT DELIVERY

Debra Elofson, Executive Director
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501

Re: **NOTICE OF SUPPLEMENTAL AUTHORITY DENYING AT&T'S
MOTION TO REOPEN THE RECORD**
Docket No. TC01-165

Dear Ms. Elofson:

Enclosed please find an original and ten copies of the **NOTICE OF SUPPLEMENTAL
AUTHORITY DENYING AT&T'S MOTION TO REOPEN THE RECORD.**

Thank you for your consideration of this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Mary S. Hobson".

Mary S. Hobson

:blg
Enclosure



RECEIVED

OCT 24 2002

SOUTH DAKOTA PUBLIC
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Rapid City SD

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October 23, 2002

VIA OVERNIGHT DELIVERY

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Karen Cremer, Staff Attorney
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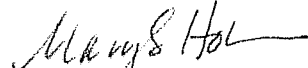
Richard S. Wolters, Senior Attorney
AT&T
1875 Lawrence Street - Room 1575
Denver, CO 80202

**Re: NOTICE OF SUPPLEMENTAL AUTHORITY DENYING AT&T'S
MOTION TO REOPEN THE RECORD
Docket No. TC01-165**

Dear Counsel:

This is to advise you that Qwest has filed with the South Dakota Public Utilities Commission an original and ten copies of its Notice of Supplemental Authority Denying AT&T's Motion to Reopen the Record. A copy is enclosed for your file.

Very truly yours,


Mary S. Hobson

:big
Enclosure

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RECEIVED

OCT 24 2002

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE ANALYSIS INTO)
QWEST CORPORATION'S COMPLIANCE)
WITH SECTION 271(C) OF THE)
TELECOMMUNICATIONS ACT OF 1996)

DOCKET TC 01-165

**NOTICE OF SUPPLEMENTAL AUTHORITY DENYING AT&T'S MOTION TO
REOPEN THE RECORD**

On or about September 26, 2002, AT&T filed a Motion to Reopen and Supplement the Record in South Dakota. AT&T filed a similar motion in Colorado. This Notice of Supplemental Authority attaches the Order Denying Motion from the Colorado Public Utilities Commission which denies AT&T's Motion to Reopen the Record based on Section 272.¹ The Colorado Order makes the following determinations in the process of denying AT&T's Motion:

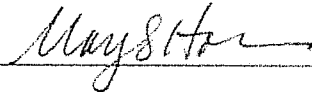
It is clear to us that the main, if not only, reason for Qwest's withdrawal of its § 271 applications at the FCC is the review of Qwest's long distance affiliate and the accounting safeguards Qwest has in place. For efficiency of our resources and the resources of Qwest and other interested carriers and parties, we see no reason to force Qwest to participate in proceedings concerning identical issues raised in 14 states, as well as the FCC. We have received no indication from the FCC that it requires, or even would appreciate, a further investigation at the state level.²

¹ *Order Denying Motion*, Colorado Public Utilities Commission, Docket No. 02M-260T; Decision No. C02-1154 (October 16, 2002) ("Colorado Order").

² *Id.* at p.4.

Dated this 23rd day of October 2002.

Respectfully submitted,

By: 

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Telephone: (208) 387-4277

John L. Munn
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Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of October, 2002, the foregoing NOTICE OF SUPPLEMENTAL AUTHORITY DENYING AT&T'S MOTION TO REOPEN THE RECORD was served upon the following parties as follows:

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Brandi L. Gearhart, PLS
Legal Secretary to Mary S. Hobson
Stoel Rives LLP

Decision No. C02-1184

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02M-260T

IN THE MATTER OF THE COLORADO PUBLIC UTILITIES COMMISSION'S
RECOMMENDATION TO THE FEDERAL COMMUNICATIONS COMMISSION
REGARDING QWEST CORPORATION'S PROVISION OF IN-REGION, INTERLATA
SERVICES IN COLORADO.

ORDER DENYING MOTION

Mailed Date: October 18, 2002
Adopted Date: October 16, 2002

I. BY THE COMMISSION

Statement, Findings, and Conclusions

On September 19, 2002, AT&T Communications of the Mountain States, Inc., and TCG Colorado (together AT&T), filed a Motion to Reopen and Supplement the Record in Docket No. 02M-260T. In its motion, AT&T requests this Commission reopen the record in the § 271 proceedings in order to allow admission of additional evidence relating to Qwest Corporation (Qwest) and its new § 272 affiliate.

AT&T asserts that Qwest's recent withdrawal of its § 271 applications with the Federal Communications Commission (FCC) because "there have been questions raised regarding [Qwest's] plans to restate our financial statements for prior periods,"³

³ http://www.qwest.com/about/media/pressroom/1,1720.1107_current,00.html

confirm the continuing importance of a BOC's compliance with § 272. In a statement issued on this matter on September 10, 2002, FCC Chairman Powell stated that "questions remain regarding whether Qwest has complied with the safeguards set forth by Congress in § 272 of the Act."

AT&T's motion seeks to reopen these proceedings arguing that the Commission's recommendation is based on an outdated record that has been shown to be inadequate for Qwest to obtain in-region, interLATA authority. AT&T recommends that this Commission adopt a procedure that contains the following five components: 1) Qwest should file testimony and exhibits demonstrating that Qwest and its § 272 affiliate are in compliance with § 272; 2) discovery must be permitted of Qwest's filing; 3) competitive local exchange carriers and other interested parties must be given an opportunity to file comments; 4) Qwest should have an opportunity to reply; and 5) the Commission should make a new recommendation that Qwest is in compliance with §§ 271 and 272.

On September 20, 2002, Qwest filed its response in opposition to AT&T's motion to reopen the proceedings in Docket No. 02M-260T. In its response, Qwest asserts that this Commission previously conducted an exhaustive examination of Qwest's showing of compliance with § 272. Qwest asserts that, "this Commission should reject that blatantly self-serving effort to push back the date on which the consumers of this state will enjoy the

benefits of greater long-distance competition." Further, Qwest states that it will re-file with the FCC and that it will demonstrate to that body that it is making entries in its books, records, and accounts for all new transactions in accordance with Generally Accepted Accounting Principles. Qwest sees no basis in the AT&T Motion for additional procedures, beyond the usual comment rounds, necessary for the FCC to make a determination that Qwest has met the requirements of both §§ 271 and 272.

On September 25, 2002, AT&T filed a Reply to Qwest's Opposition. In its Reply, AT&T states that Qwest's proposal in its Opposition does not allow this Commission any opportunity to adequately evaluate whether Qwest has corrected the problems related to § 272. AT&T reiterates that this Commission should grant AT&T's motion and provide sufficient time to review Qwest's new § 272 affiliate and Qwest's accounting practices.

On September 30, 2002, Qwest filed a Notice of Supplemental Authority Regarding AT&T's Motion to Reopen and Supplement the Record. In the Supplemental Authority, Qwest stated that on September 26, 2002, the Washington Utilities and Transportation Commission issued an order denying AT&T's Motion to Reopen the § 271 proceeding in that state.

We deny AT&T's request to re-open our § 271 proceeding. We reviewed Qwest's compliance with § 272 of the Act in Docket No.

97I-198T, specifically in Volume No. VII and the associated reports and decisions. We determined, based on testimony and legal briefs, that Qwest had complied with the requirements of § 272.

It is clear to us that the main, if not only, reason for Qwest's withdrawal of its § 271 applications at the FCC is the review of Qwest's long distance affiliate and the accounting safeguards Qwest has in place. For efficiency of our resources and the resources of Qwest and other interested carriers and parties, we see no reason to force Qwest to participate in proceedings concerning identical issues raised in 14 states, as well as the FCC. We have received no indication from the FCC that it requires, or even would appreciate, a further investigation at the state level.

II. ORDER

The Commission Orders That:

AT&T Communications of the Mountain States, Inc., and TCG Colorado's Motion to Reopen and Supplement the Record is denied. This Order is effective on its Mailed Date.

ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
October 16, 2002.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners



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OCT 25 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

October 24, 2002

VIA OVERNIGHT DELIVERY

Debra Elofson, Executive Director
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501

**Re: NOTICE OF SUPPLEMENTAL AUTHORITY DENYING AT&T'S
MOTION TO REOPEN THE RECORD
Docket No. TC01-165**

Dear Ms. Elofson:

Enclosed please find an original and ten copies of the **NOTICE OF SUPPLEMENTAL
AUTHORITY DENYING AT&T'S MOTION TO REOPEN THE RECORD.**

Thank you for your consideration of this matter.

Very truly yours,

Mary S. Hobson

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Enclosure



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OCT 25 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

TO: [illegible]
FROM: [illegible]
DATE: [illegible]
BY: [illegible]
RE: [illegible]

STATE OF SOUTH DAKOTA
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
[illegible]

October 24, 2002

VIA OVERNIGHT DELIVERY

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Karen Cremer, Staff Attorney
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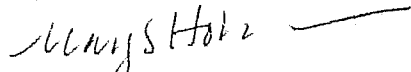
Richard S. Wolters, Senior Attorney
AT&T
1875 Lawrence Street - Room 1575
Denver, CO 80202

**Re: NOTICE OF SUPPLEMENTAL AUTHORITY DENYING AT&T'S
MOTION TO REOPEN THE RECORD
Docket No. TC01-165**

Dear Counsel:

This is to advise you that Qwest has filed with the South Dakota Public Utilities Commission an original and ten copies of its Notice of Supplemental Authority Denying AT&T's Motion to Reopen the Record. A copy is enclosed for your file.

Very truly yours,


Mary S. Hobson

:blg
Enclosure

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BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

RECEIVED

OCT 25 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

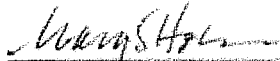
IN THE MATTER OF THE ANALYSIS INTO)
QWEST CORPORATION'S COMPLIANCE) DOCKET TC 01-165
WITH SECTION 271(C) OF THE)
TELECOMMUNICATIONS ACT OF 1996)

NOTICE OF SUPPLEMENTAL AUTHORITY DENYING AT&T'S MOTION TO
REOPEN THE RECORD

Qwest Corporation ("Qwest") hereby files its notice of supplemental of authority regarding AT&T's Motion to Reopen and Supplement the Record concerning 272 issues. On October 24, 2002, the Minnesota Public Utilities Commission held oral argument on AT&T's similar motion filed in Minnesota. The Minnesota commission unanimously denied AT&T's motion.

AT&T has filed essentially the same motion in all fourteen Qwest states. To date, eleven states have denied AT&T's motion and no state has granted it.

RESPECTFULLY SUBMITTED this 24th day of October, 2002.

By: 
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Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of October, 2002, the foregoing NOTICE OF SUPPLEMENTAL AUTHORITY DENYING AT&T'S MOTION TO REOPEN THE RECORD was served upon the following parties as follows:

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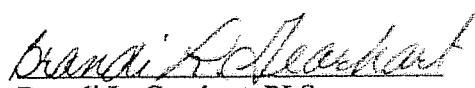
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Brandi L. Gearhart, PLS
Legal Secretary to Mary S. Hobson
Stoel Rives LLP

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE ANALYSIS OF)	ORDER REGARDING
QWEST CORPORATION'S COMPLIANCE)	GENERAL TERMS AND
WITH SECTION 271(c) OF THE)	CONDITIONS AND TRACK A
TELECOMMUNICATIONS ACT OF 1996)	TC01-165

The procedural history for this docket is set forth in the Commission's order regarding checklist items 3, 7, 8, 9, 10, and 12. At its October 17, 2002, meeting, the Commission found that Qwest has met the Track A requirements. In order for the Commission to find that Qwest is in substantial compliance with respect to its provisions concerning general terms and conditions, Qwest shall make the revisions as required below. Qwest shall make a compliance filing with these revisions, including a redlined version of the changes.

FINDINGS REGARDING GENERAL TERMS AND CONDITIONS AND TRACK A

GENERAL TERMS AND CONDITIONS

Qwest stated that its South Dakota SGAT sets forth the general terms and conditions that protect each party's rights under the contract. Qwest Exhibit 56 at 4. Qwest stated that through various state proceedings, as well as other negotiations, many of the issues regarding the general terms and conditions provisions have been resolved, and the issues that remain have been significantly narrowed. *Id.* In addition, Qwest asserted:

Qwest has incorporated the latest version of the general terms and conditions provisions of its South Dakota SGAT the parties' consensus agreements from other workshops, the language recommended by the South Dakota Commission Staff ("Staff") (which uniformly adopts the language and resolutions proposed by the Multistate Facilitator), and the language ordered by commissions participating in the Multistate Proceedings. These general terms and conditions are also contained in the KMC Agreement, Qwest's interconnection agreement with KMC Telecom V, Inc. Accordingly, the language in the South Dakota SGAT and the KMC Agreement represents Qwest's most recent general terms and conditions offering and reflects numerous compromises and consensus provisions that were painstakingly negotiated with CLECs.

Id. at 5.

Disputed Issues Regarding General Terms and Conditions¹

1. New Section 1.7.2

Midcontinent's Position

Midcontinent proposed adding a new section 1.7.2 which would require "Qwest to offer new products and services at the same rates, terms, and conditions as existing products and services when these products and services are comparable." Midcontinent Exhibit 38 at 10. Midcontinent's concern was two-fold. First, Midcontinent asserted nothing "would prevent Qwest from substituting products with slightly different features at higher prices, or substituting products that eliminate unique features that may be necessary for a CLEC offering[.]" *Id.* Second, Midcontinent contended "that

¹ Although AT&T prefiled comments on general terms and conditions, it did not submit the comments into the record.

new products and services may be withheld from CLECs until after they are offered to Qwest retail customers." *Id.*

Qwest's Position

Qwest first noted that proposed section 1.7.2 was rejected by the Multi-state Facilitator because the Facilitator found that there were already sufficient methods for resolving disputes related to the terms and conditions in Qwest's SGAT and the proposed language would introduce uncertainty into the process. Qwest Exhibit 56 at 8. Qwest pointed to its existing section 5.1.6 which obligates Qwest to offer new products and services in accordance with the applicable law and regulations. *Id.* at 9. In addition, section 1.7.1.2 provides that a CLEC may negotiate an amendment with different rates, terms, and conditions than what Qwest has provided for a new product or service. *Id.* at 10. Qwest further asserted that trying to determine whether the services were comparable or if the rates, terms, and conditions were substantially the same would only lead to delay and expense. *Id.* at 11.

Commission's Finding

The Commission finds proposed section 1.7.1.2 is unnecessary. The proper focus for new products and services is not whether they are comparable to existing or discontinued products and services but whether the new products and services comply with the applicable law and regulation. Qwest cannot eliminate features of a product that are necessary for a CLEC's provisioning of services if Qwest is required to make those features available to a CLEC.

2. Violation of Retail Service Standards

Midcontinent's Position

Midcontinent proposed that a provision be included in the SGAT which would transfer state commission levied sanctions against the retail provider to the wholesale provider if violation of service standards are due to poor provisioning of service by the wholesale provider. Midcontinent Exhibit 38 at 12-13. Midcontinent was "concerned that without a provision in the SGAT, the wholesale provider may be indemnified leaving the retail provider or CLEC subject to commission sanctions for something over which the CLEC has little control." *Id.*

Qwest's Position

Qwest asserted that a provision of this type would only serve to limit the Commission's ability to address liability for service quality violations. Qwest Exhibit 56 at 11.

Commission's Finding

The Commission finds that a provision transferring any Commission sanctions levied against a retail provider to the wholesale provider, if the wholesale provider is at fault, is an unnecessary provision. The Commission will determine any sanctions for any violation of service standards within a proceeding conducted by the Commission. Liability, if any, will be determined based on the facts peculiar to each case.

3. Arbitration Provision in Section 5.18.1

FiberCom's Position

In its post-hearing brief, Black Hills FiberCom requested that section 5.18.1 be revised in order to clearly state that arbitration cannot be compelled, but must be agreed to by both parties. Intervenor Black Hills FiberCom, L.L.C.'s Response to Qwest Corporation's Post-Hearing Brief at 9-

12. Specifically, FiberCom stated that the language in section 5.18 is unclear on whether a party can be forced into arbitration upon the filing of a request for arbitration, or instead may refuse the arbitration request and proceed in one of the alternative forums. *Id.* at 10-11.

Qwest's Position

Qwest contended that the language in section 5.18 does not compel arbitration. Qwest Corporation's Opening Post-Hearing Brief on General Terms and Conditions, Section 272, and Track A at 19-20. Qwest cites to a sentence in section 5.18.1 which provides that "[e]ach Party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction." *Id.* at 20.

Commission's Finding

As noted by Black Hills FiberCom, section 5.18.3 states that the Federal Arbitration Act governs the arbitrability of a dispute. Under this Act, there is a presumption in favor of arbitration, a presumption reinforced by section 5.18.1 of the SGAT that states that dispute resolution under section 5.18 is the preferred but not exclusive remedy. The Commission finds that the language in section 5.18.1 must be clarified to make it absolutely clear that a request for arbitration is merely an offer to arbitrate which is nonbinding unless both parties agree to proceed to arbitrate. The Commission instructs Qwest to add this additional language to section 5.18.

4. Location of Arbitration

FiberCom's Position

FiberCom next raised an issue regarding the location of the arbitration. Intervenor Black Hills FiberCom, L.L.C.'s Response to Qwest Corporation's Post-Hearing Brief at 12-13. The SGAT language provides that "[t]he arbitration proceedings shall occur in the Denver, Colorado metropolitan area or in another mutually agreeable location." Qwest Exhibit 81 (section 5.18.3). Black Hills FiberCom states that "a small CLEC in South Dakota would likely not have the time or resources to conduct arbitration in Denver, far away from its principal place of business. This will very likely have a chilling effect on a CLEC's willingness to proceed in arbitration on 'smaller' issues that arise." Intervenor Black Hills FiberCom, L.L.C.'s Response to Qwest Corporation's Post-Hearing Brief at 12.

Qwest's Position

Qwest responded that no other CLEC had raised a concern about the location of the arbitration and that Qwest's witness could not recall an instance where the parties had not chosen an agreeable location. Qwest Corporation's Opening Post-Hearing Brief on General Terms and Conditions, Section 272, and Track A at 20.

Commission's Finding

The Commission first notes that the fact no other CLEC raised a concern is irrelevant. The Commission finds FiberCom's concern that arbitration in Denver could have a chilling effect on a CLEC's decision to bring up disputes is a valid concern. The Commission directs Qwest to change the language to provide that the party raising the dispute may choose to have the arbitration conducted in the city of its principal place of business or at any other mutually agreeable location.

5. *Discovery in Arbitration Proceedings*

FiberCom's Position

Black Hills FiberCom objected to section 5.18.3.2 which concerns discovery in arbitration proceedings as follows:

There shall be no discovery except for the exchange of documents deemed necessary by the Arbitrator to an understanding and determination of the Dispute. Qwest and CLECs shall attempt, in good faith, to agree on a plan for such document discovery. Should they fail to agree, either Qwest or CLEC may request a joint meeting or conference call with the Arbitrator. The Arbitrator shall resolve any Disputes between Qwest and CLEC, and such resolution with respect to the need, scope, manner and timing of discovery shall be final and binding.

FiberCom stated that it objects to the language and asserted that the provision could be "interpreted by an arbitrator as a presumption of exclusion of evidence rather than inclusion in those situations where requested discovery materials may bear moderate or marginal relevance, but might lead to discovery of relevant evidence." Intervenor Black Hills FiberCom, L.L.C.'s Response to Qwest Corporation's Post-Hearing Brief at 13. FiberCom further asserted that the AAA and JAMS rules already provide for discovery procedures. *Id.*

Qwest's Position

Qwest stated that expedited procedures and treatment of discovery are why arbitration may be chosen to resolve a dispute. Hearing Transcript of April 24, 2002, at 11.

Commission's Finding

The Commission finds that since arbitration proceedings already have rules for discovery, there is no need for the first sentence. The Commission directs Qwest to remove the first sentence of section 5.18.3.2 and the word "such" in the second sentence.

6. *Statute of Limitations*

FiberCom's Position

Black Hills FiberCom objected to section 5.18.5 which limits the bringing of disputes arising out of the SGAT to two years after the cause of action accrues. Intervenor Black Hills FiberCom, L.L.C.'s Response to Qwest Corporation's Post-Hearing Brief at 13-14. FiberCom noted that Qwest had agreed to change the language in its initial brief, but FiberCom objected to the revised language also. *Id.* at 14. FiberCom proposed that the language be entirely deleted or revised to state as follows:

Any dispute arising out of this agreement must be brought by either party within the time for bringing such action provided by South Dakota law.

Id.

Qwest's Position

Qwest further revised the language in its post-hearing reply brief. Qwest Corporation's Post-Hearing Reply Brief on General Terms and Conditions, Section 272, and Track A at 4. Qwest proposed the following language for section 5.18.5:

No dispute, regardless of the form of action, arising out of this agreement, may be brought by either Party more than two (2) years after the cause of action accrues, unless otherwise provided under South Dakota law.

Commission's Finding

The Commission finds FiberCom's proposed language is preferable. It clearly states that South Dakota statute of limitations apply. FiberCom's language leaves no doubt as to the applicable statute of limitations.

Commission's Finding on General Terms and Conditions

The Commission finds that upon making the changes as stated above, the Commission will find that Qwest's general terms and conditions are in substantial compliance with section 271.

TRACK A

In order for the FCC to approve a BOC's application to provide in-region, interLATA services, a BOC must demonstrate that it satisfies the requirements of either section 271(c)(1)(A), commonly referred to as Track A, or 271(c)(1)(B), commonly referred to as Track B. Qwest filed pursuant to Track A. Section 271(c)(1)(A) provides:

(A) Presence of a facilities-based competitor. A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 of this title specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in section 153(47)(A) of this title, but excluding exchange access) to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier. For the purpose of this subparagraph, services provided pursuant to subpart K of part 22 of the Commission's regulations (47 C.F.R. 22.901 et seq.) shall not be considered to be telephone exchange services.

The FCC has concluded that this provision requires a BOC to demonstrate the following: (1) that the BOC has one or more binding agreements with CLECs that have been approved under section 252; (2) that the BOC provides access and interconnection to unaffiliated competing providers of telephone exchange service; (3) that these unaffiliated competing providers provide telephone exchange service to residential and business subscribers; and (4) that these unaffiliated competing providers offer telephone exchange service either exclusively or predominantly over their own facilities in combination with the resale of the telecommunications services of another carrier. Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543, 20577-99, ¶¶ 62-104 (1997) ("Ameritech Michigan Order").

Existence of Binding Interconnection Agreements

Qwest stated that as of August 31, 2001, the Commission had approved 26 wireline interconnection agreement entered into among Qwest and other carriers. Qwest Exhibit 2 at 5. Qwest stated that it also relies on its filed SGAT to establish compliance with the Track A requirements. Qwest Exhibit 1 at 11.

Provisioning of Access and Interconnection to Competing Carriers

The FCC has stated that this requirement does not require that competing carriers receiving access or interconnection have a certain geographic service range, nor does it require that they have placed a substantial volume of orders or achieved a minimum market share. *Ameritech Michigan Order* at ¶¶ 76-77. Qwest stated that it complies with this provision because all of the Commission approved wireline interconnection agreements are with competing providers who are unaffiliated with Qwest. Qwest Exhibit 1 at 11. Qwest asserted that 16 competing carriers were actively purchasing wholesale services. Qwest Exhibit 2 at 5.

Existence of Competing Residential and Business Service Suppliers

The FCC has stated that the relevant question under this standard is whether competing carriers are collectively serving both residential and business customers, not whether any single carrier is serving both groups. *Ameritech Michigan Order* at ¶ 82. Qwest stated that in South Dakota there were 17,803 unbundled loops and 5,548 residential resold lines and 11,153 business resold lines as of August 31, 2001. Qwest Exhibit 2 at 6. In addition, Qwest estimated that there were 22,217 residential bypass lines and 9,947 business bypass lines, based on ported numbers and white pages data available to Qwest regarding lines served by facilities-based CLECs. *Id.* Qwest stated that these numbers represented an estimated total CLEC market share of 22.4%. *Id.* Qwest further pointed out that these estimates were low since Black Hills FiberCom alone, as a facilities-based competitor, stated that it was serving 26,035 residential access lines and 13,412 business access lines as of April 19, 2002. Qwest Exhibit 3 at 1-2.

Existence of Facilities-Based Competitors

Qwest stated that it easily meets this requirement since, as stated above, Black Hills FiberCom was serving 26,035 residential access lines and 13,412 business access lines as of April 19, 2002. Qwest Exhibit 3 at 1-2. Midcontinent is also serving residential and business access line in South Dakota via its own facilities. Qwest Exhibit 4 at 1-2.

Disputed Issues Regarding Compliance with Track A Requirements

1. Demonstration of Compliance

FiberCom's Position

Black Hills FiberCom stated that Qwest's Petition should be denied for failure to meet its burden of proof under Track A. Intervenor Black Hills FiberCom, L.L.C.'s Response to Qwest Corporation's Post-Hearing Brief at 3. FiberCom stated that "Qwest has pointed to not a single binding agreement with a South Dakota CLEC to demonstrate checklist compliance as required by Track A." *Id.* at 4. FiberCom argued that Qwest's recently offered KMC interconnection agreement as proof of its compliance with Track A is not satisfactory because it is not yet in effect and there is no evidence that KMC is an actual competing provider. *Id.* at 3-4. In addition, FiberCom asserted that since the SGAT has been changed by Qwest, it no longer is the same as the KMC Interconnection Agreement. *Id.* at 4.

Qwest's Position

Qwest stated the FiberCom's argument is moot because KMC Telecom has opted into the SGAT that Qwest submitted to show checklist compliance in this proceeding. Qwest Corporation's Post-Hearing Reply Brief on General Terms and Conditions, Section 272, and Track A at 19. Qwest also stated that the Act and the FCC's orders concerning section 271 orders allow "a BOC to use an SGAT or its equivalent to prove checklist compliance in a Track A application." *Id.* Qwest further

stated that it "demonstrated in its pre-filed rebuttal testimony that it complied with each of the checklist items through both the SGAT and the KMC agreement." *Id.* at 20.

Commission's Finding

As stated in the recitation of the procedural history of this case, the Commission considered an earlier motion from FiberCom requesting denial of Qwest's Petition based on its Track A arguments. Midcontinent had also submitted a Motion for Definition of Track A Analysis. At its March 28, 2002, meeting, the Commission considered Black Hills FiberCom's Motion for Order Denying Petition, and Midcontinent's Motion for Definition of Track A Analysis. After considering the arguments of the parties, the Commission voted to grant Midcontinent's Motion. The Commission found that Qwest may not rely solely on its SGAT to prove compliance with the 14 point checklist but should also use interconnection agreements and any other evidence to demonstrate to the Commission that it is in compliance with the checklist items. Subsequently, Qwest submitted the KMC Interconnection Agreement, in which KMC Telecom opted into Qwest's SGAT. Qwest Exhibit 56 (attached as Exh. LBB-GTC-1). The KMC Interconnection Agreement was approved by the Commission at its August 15, 2002, meeting.

The Commission finds that Qwest has shown that it is in compliance with the Track A requirements. First, Qwest has signed numerous binding interconnection agreements that have been approved by the Commission. Qwest has stated that under its interconnection agreements, "Qwest offers and provides local interconnection trunks, unbundled loops, unbundled transport and switching, unbundled directory assistance services and operator services, 911 services, collocation, poles, ducts, conduits, right-of-way, number portability, and/or white pages listings to facilities-based CLECs." Qwest Exhibit 1 at 12. The FCC has stated that section 271(c)(1)(A) does not require each interconnection agreement to include every possible checklist item. *Amentech Michigan Order* at ¶ 72.

Second, the Commission finds that Qwest is providing access and interconnection to unaffiliated competing providers of telephone exchange service. Qwest has shown that it is providing wholesale services to a number of competing, unaffiliated carriers.

Third, the Commission finds that Qwest has shown the existence of competing carriers providing service to both business and residential customers. Qwest provided estimates of the numbers of business and residential lines served by competitors and further pointed out that its own estimates were low since Black Hills FiberCom alone, as a facilities-based competitor, stated that it was serving 26,035 residential access lines and 13,412 business access lines as of April 15, 2002.

Fourth, the Commission finds that Qwest has shown the existence of facilities-based competitors. Black Hills FiberCom is a facilities-based competitor and Midcontinent is also serving residential and business access line in South Dakota via its own facilities.

Commission's Finding on Compliance with Track A

The Commission rejects FiberCom's arguments on this issue and finds that Qwest has demonstrated that it meets the standards imposed by section 271(c)(1)(A), as well as the FCC's four criteria.

Verification of Compliance With This Order

As stated above, in order for the Commission to find that Qwest is in substantial compliance with section 271, Qwest shall make the following revisions to its general terms and conditions: 1) Qwest shall put language in section 5.18 stating that a request for arbitration is merely an offer to arbitrate which is nonbinding unless both parties agree to proceed to arbitrate; 2) Qwest shall revise its SGAT language to provide that the party raising a dispute may choose to have the arbitration

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conducted in the city of its principal place of business or at any other mutually agreeable location; 3) Qwest shall remove the first sentence of section 5.18.3.2 and the word "such" in the second sentence regarding discovery conducted in arbitration proceedings; and 4) Qwest shall revise its SGAT language for section 5.18.5 to read that any dispute must be brought within the time for bringing such action as provided under South Dakota law. Qwest shall make a compliance filing with these revisions, including a redlined version of the changes. Qwest does not need to file its entire SGAT, but may file only the affected sections. At the conclusion of this proceeding, Qwest will then file its entire SGAT showing all of the revisions required by the Commission.

It is therefore

ORDERED, that Qwest shall make a compliance filing as described above; and it is

FURTHER ORDERED, that the parties shall have ten days following Qwest's filing of its revised SGAT to file written comments concerning the revisions; and it is

FURTHER ORDERED, that the Commission finds Qwest in substantial compliance with section 271 with respect to the general terms and conditions of its SGAT and Track A, subject to Qwest making the revisions as ordered above.

Dated at Pierre, South Dakota, this 12th day of November, 2002.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: *Neldine Kaeb*

Date: 11/12/02

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Robert K. Sahr
ROBERT K. SAHR, Commissioner

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE ANALYSIS OF)	ORDER REGARDING
QWEST CORPORATION'S COMPLIANCE)	CHECKLIST ITEMS 2, 4, 5,
WITH SECTION 271(c) OF THE)	AND 6
TELECOMMUNICATIONS ACT OF 1996)	TC01-165

The procedural history for this docket is set forth in the Commission's order regarding checklist items 3, 7, 8, 9, 10, and 12. At its October 17, 2002, meeting, the Commission found that, subject to its findings regarding Qwest's Operational Support Systems (OSS), Qwest is in substantial compliance with checklist items 2, 5, and 6. In order for the Commission to find that Qwest is in substantial compliance with checklist item 4, Qwest shall make the revisions as required below. Qwest shall make a compliance filing with these revisions, including a redlined version of the changes.

FINDINGS REGARDING CHECKLIST ITEMS 2, 4, 5, and 6¹

CHECKLIST ITEM 2

Section 271(c)(2)(B)(ii) requires Qwest to provide to other telecommunications carriers "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." Section 251(c)(3) imposes upon Qwest the following duties:

The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

When determining what network elements should be made available, the FCC considers whether the "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." 47 U.S.C. § 251(d)(2). Section 252(d)(1) describes how state Commissions determine rates for interconnection and provides that such rates must be "(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and (ii) nondiscriminatory, and (B) may include a reasonable profit."

The FCC has set forth a minimum list of unbundled network elements that incumbent LECs must provide to competing carriers on an unbundled basis. The list includes local loops and subloops; network interface devices (NIDs); switching capability; interoffice transmission facility network elements; signaling networks and call-related databases; and operations support systems.²

Qwest stated that it provides access to UNEs in substantially the same manner as it provides UNES to itself. Qwest Exhibit 62 at 2. If Qwest does not provide access to the UNE to itself, Qwest

¹ This order includes the issues that the parties refer to as "emerging services" issues.

² 47 C.F.R. § 51.319. The Commission will discuss operations support systems and the change management process in a separate order.

claimed that it provides the CLEC with a meaningful opportunity to compete. *Id.* Qwest stated that CLECs have exclusive use of a UNE and the UNE's features, functions, or capabilities "for a set period of time, except as is expressly permitted or required by existing law or rules." *Id.* at 6. Qwest further explained that it retains the obligation to test, maintain, repair, and replace UNEs as necessary. *Id.* at 6-7. Qwest stated that it provides access at any technically feasible point. *Id.* at 8. Qwest also asserted that where facilities are not available, it "will build facilities dedicated to an end user if Qwest would be legally obligated to build such facilities to meet its obligation as a provider of last resort or its obligation as an eligible telecommunications carrier to provide basic local exchange service." *Id.* at 8-9.

With respect to UNE combinations, Qwest maintained that it combines network elements that are ordinarily combined on Qwest's network if the facilities are available. *Id.* at 10. In addition, a CLEC can combine a Qwest UNE with another Qwest UNE or with network components provided by the CLEC or provided by third parties to a CLEC. *Id.* If a UNE combination is not provided as a standard combination, then a CLEC may request access through the Special Request Process. *Id.*

Qwest currently provides two standard UNE combinations: Enhanced Extended Loop (EEL) and Unbundled Network Elements -- Platform (UNE-P). Qwest Exhibit 55 at 2. An EEL is a combination of a loop and dedicated interoffice transport that might include multiplexing or concentration capabilities. Qwest Exhibit 62 at 10. An EEL allows a CLEC "to access unbundled loops for end users without having to collocate in the central office in which those loops terminate." *Id.* According to Qwest, no CLEC has requested an EEL in South Dakota. *Id.* at 2.

A UNE-P combination includes "a loop, a switch port, switch use, shared transport use, and optional vertical switch features. UNE-P combinations also include access to interLATA and intraLATA toll service, access to 911 emergency services, access to operator services and directory assistance service, and directory listings." *Id.* at 6. Qwest claimed that, as of August 31, 2002, it provides 16,411 UNE-P combinations to five CLECs in South Dakota. *Id.*

Disputed Issues

AT&T submitted verified comments prior to the hearing concerning checklist item 2. However, AT&T never offered the comments during the hearing and, therefore, they are not part of the record. After the hearing, AT&T submitted its "brief" on checklist items 2, 5, and 6 and section 272 which consisted of two pages. The "brief" merely attached AT&T's verified comments and stated that "[t]o the extent that those comments are not already a part of the record in this proceeding, AT&T attaches those comments as [Exhibit A] to this brief and incorporates the legal analysis and arguments as though fully set forth herein." AT&T Brief on Checklist Items 2, 5, and 6 and Section 272 Compliance. AT&T stated that "[w]hile AT&T did not present a witness at the hearings to sponsor these comments, they continue to reflect AT&T's position on the legal issues presented to the Commission for resolution."

The Commission declines to accept into the record prefiled comments that were not offered at the hearing and never became a part of the record. A party that fails to introduce comments into the record at the hearing, may not attach that testimony or comments to a brief filed after the hearing in an attempt to make the comments or testimony a part of the record. This obviously would allow a party the luxury of making whatever comments it chose to make not subject to cross-examination by other parties to the proceeding. The Commission further declines to attempt to ascertain which issues AT&T would consider to be legal issues contained in the comments. The Commission notes that the comments contain numerous factual statements that were not subject to cross-examination at the hearing.

Commission's Finding on Checklist Item 2

Subject to the Commission's findings regarding OSS, the Commission finds Qwest is in substantial compliance with this checklist item.

CHECKLIST ITEM 4

Section 271(c)(2)(B)(iv) requires Qwest to provide to other telecommunications carriers access to the "local loop transmission from the central office to the customer's premises, unbundled from local switching or other services." The FCC has defined the local loop "as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC. . . ." 47 C.F.R. § 51.319(a)(1).

Qwest stated that it offers the following types of unbundled loops: (1) 2-wire and 4-wire voice-grade/analog loops; (2) four types of high-capacity loops (DS-1 capable loops, DS-3 capable loops, OCn loops, and dark fiber loops); and (3) four types of loops that generally can be grouped together in the category of "xDSL capable" loops (2-wire and 4-wire nonloaded loops, Basic Rate ISDN capable loops, asymmetrical digital subscriber line compatible loops, and xDSL-I capable loops). Qwest Exhibit 12 at 6-10. Qwest also provides CLECs with line conditioning. *Id.* at 12.

Qwest stated that it provides several tools designed to enable a CLEC to obtain data on loop facilities. *Id.* at 14. A CLEC orders an unbundled loop by completing a Local Service Request (LSR) and submitting it manually or over an electronic interface. *Id.* at 18. When Qwest receives an LSR, Qwest asserted that the order is processed using the same systems that process orders for Qwest's retail service offerings. *Id.* at 24. Repair problems may be reported by issuing repair tickets through the Electronic-Bonding-Trouble Administration interface or by calling Qwest's repair center. *Id.* at 38

With respect to NIDS, Qwest said that it allows "CLECs to connect their own loop facilities to on-premises wiring through Qwest's NID or at any other technically feasible point." *Id.* at 46. According to Qwest, it offers three types of NIDs: 1) a Simple NID, typically found in a single family residence or small business; 2) a Smart NID which provides special testing capabilities; and 3) an MTE NID, associated with Multi-tenant environments. *Id.* at 49. Qwest asserted that, in South Dakota, it has provisioned 1,392 NIDS in conjunction with unbundled loops but no stand-alone NIDs. *Id.* at 51

Qwest stated it offers five types of line splitting arrangements: 1) line splitting, which occurs when a CLEC provides an end user both voice and data service using a UNE-P for voice service; 2) loop splitting, which occurs when a CLEC leases an unbundled loop from Qwest and, by itself or in partnership with a data LEC, provides both voice and data service on the same loop; 3) EEL splitting, which enables a CLEC to provide both voice and data over a copper EEL facility; and 4) line sharing. *Id.* at 51-53. Qwest said that it provides line sharing by offering nondiscriminatory access to the high-frequency portion of a local loop on which Qwest provides the voice service to end users. Qwest Exhibit 65 at 3-4.

Pursuant to the UNE Remand Order, Qwest must also offer the subloop as an unbundled network element. *Id.* at 16. The FCC's rule provides as follows:

The subloop network element is defined as any portion of the loop that is technically feasible to access at terminals in the incumbent LEC's outside plant, including inside wire. An accessible terminal is any point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points may include, but are not limited to, the pole or pedestal, the network interface device, the minimum point of entry, the single point of

interconnection, the main distribution frame, the remote terminal, and the feeder/distribution interface. The requirements in this section relating to subloops and inside wire are not effective until May 17, 2000.

(i) Inside wire. Inside wire is defined as all loop plant owned by the incumbent LEC on end-user customer premises as far as the point of demarcation as defined in Sec. 68.3 of this chapter, including the loop plant near the end-user customer premises. Carriers may access the inside wire subloop at any technically feasible point including, but not limited to, the network interface device, the minimum point of entry, the single point of interconnection, the pedestal, or the pole.

(ii) Technical feasibility. If parties are unable to reach agreement, pursuant to voluntary negotiations, as to whether it is technically feasible, or whether sufficient space is available, to unbundle the subloop at the point where a carrier requests, the incumbent LEC shall have the burden of demonstrating to the state, pursuant to state arbitration proceedings under section 252 of the Act, that there is not sufficient space available, or that it is not technically feasible, to unbundle the subloop at the point requested.

(iii) Best practices. Once one state has determined that it is technically feasible to unbundle subloops at a designated point, an incumbent LEC in any state shall have the burden of demonstrating, pursuant to state arbitration proceedings under section 252 of the Act, that it is not technically feasible, or that sufficient space is not available, to unbundle its own loops at such a point.

(iv) Rules for collocation. Access to the subloop is subject to the Commission's collocation rules at Secs. 51.321 through 51.323.

(v) Single point of interconnection. The incumbent LEC shall provide a single point of interconnection at multi-unit premises that is suitable for use by multiple carriers. This obligation is in addition to the incumbent LEC's obligation to provide nondiscriminatory access to subloops at any technically feasible point. If parties are unable to negotiate terms and conditions regarding a single point of interconnection, issues in dispute, including compensation of the incumbent LEC under forward-looking pricing principles, shall be resolved under the dispute resolution processes in section 252 of the Act.

47 C.F.R. § 51.319 (a)(2).

Qwest stated that it provides CLECs with unbundled access to subloops under nondiscriminatory terms and conditions. Qwest Exhibit 65 at 17. Qwest said that it divides accessible terminals into two categories: 1) "MTE terminals" which are defined as terminals within a building in a multiple tenant environment or accessible terminals which are physically attached to the building; and 2) "detached terminals" which are all other accessible terminals. *Id.* at 17.

Disputed Issues³

1. Porting to Unbundled Local Loops

Midcontinent's Position

Midcontinent stated that Qwest had ported business customers ahead of the scheduled time, before Midcontinent was ready to accept the traffic. Midcontinent Exhibit 38 at 7. Midcontinent asserted that this early porting left its new customers without service. *Id.*

³ FiberCom raised some issues regarding unbundled loops in its prefiled testimony but chose not to put the testimony into the record.

In its post-hearing brief, Midcontinent stated that "the issue here is not whether [problems] occurred and were eventually corrected, but whether Qwest's zeal for eliminating problems in the future will continue past its receipt of 271 interLATA long distance authority." Midcontinent's Post Hearing Brief at 8-9.

Qwest's Position

Qwest stated the incidents were isolated and that Qwest has trained its technicians in the Sioux Falls Wire Center on order reading and interpretation. Hearing Transcript of April 23, 2002, at 172. Qwest also responded that its test results for coordinated installation performance were excellent. *Id.* at 196.

Commission's Finding

As with the problems Midcontinent experienced with directory listings, the Commission recognizes that even a relatively small number of errors in listings can impact a small CLEC's relationship with its customers. Although the Commission believes this issue has been taken care of, the Commission again notes that it shares Midcontinent's concern that Qwest's attention to Midcontinent's problems may wane if Qwest is granted 271 approval. The Commission may address this concern in other portions of its orders regarding section 271 approval.

2. Costs for Testing to Isolate Network Trouble

Midcontinent's Position

Midcontinent also brought up the issue of payments for testing to isolate problems on the network. Midcontinent Exhibit 38 at 9-10. Midcontinent stated that if a CLEC requests Qwest to investigate a problem without first investigating the problem itself, Qwest will charge the CLEC for the test even if the trouble exists on Qwest's network. *Id.* at 9. Midcontinent also stated that in some instances Qwest will close a trouble ticket, stating the trouble was not a Qwest problem, but if the CLEC requests escalation, Qwest will then discover it was, in fact, a Qwest problem. *Id.* at 9-10.

Qwest's Position

Qwest noted that a CLEC always has the option of performing trouble isolation testing itself. Qwest Exhibit 13 at 12. Qwest asserted that it is reasonable for Qwest to be reimbursed for performing a test when the CLEC elects not to perform its own trouble isolation test. *Id.*

Commission's Finding

The Commission finds that a CLEC should not be required to pay for a test that shows the trouble is located on Qwest's network. Although Qwest contends that it incurs a cost by performing a trouble isolation test and thus the CLEC should pay that cost, the Commission finds it is unreasonable for a CLEC to incur costs that are caused by a failure in the Qwest network. Thus, Qwest shall be required to change its SGAT accordingly.

3. Obligation to Build

AT&T's Position

AT&T asserted that Qwest will only build DSO loops for CLECs if Qwest has an obligation to build under its provider-of-last-resort obligations. AT&T Exhibit 12 at 7. AT&T stated this limits Qwest's obligation to build loops only for basic residential and business services. *Id.* AT&T acknowledged that the FCC does not require an incumbent LEC to build interoffice transport for

CLECs, but AT&T contended there is no FCC restriction on requiring an incumbent LEC to build DS-1, DS-3, and other high capacity circuits. *Id.* at 7, 9. AT&T asserted that CLECs are already paying for the building of new facilities in the prices they pay for UNEs because fill factors are used in the calculation of UNE prices. *Id.* at 11. AT&T contended that "[t]he effect of using fill factors, especially low fills, is that the CLEC is being charged to build new facilities in order to ensure that the fill level remains constant and Qwest does not run out of capacity." *Id.*

Qwest's Position

Qwest asserted that the FCC rules and case law provide that there is no obligation on an incumbent LEC to construct new, high capacity facilities on behalf of CLECs. Qwest Exhibit 13 at 42. In response to AT&T's claim that CLECs already are paying for new facilities, Qwest stated that the UNE prices are the result of cost studies that "estimate the costs of building a network to replace the existing network using least-cost, forward-looking technology. Because these studies build a replacement of the current network, they do not include investment for new facilities that CLECs may request." *Id.* at 44. Further, in its post-hearing reply brief, Qwest stated that it will include language in its compliance filing that provides that if facilities are not available, Qwest shall maintain the CLEC's order as pending for a period of 30 days, and, if facilities become available within that 30 days, Qwest will notify the CLEC. Qwest Corporation's Post-Hearing Reply Brief on Compliance with the 14-Point Competitive Checklist at 22-23.

Commission's Finding

The Commission notes that both parties refer to the following language from the FCC's *UNE Remand Order*:

Notwithstanding the fact that we require incumbents to unbundle high-capacity transmission facilities, we reject Sprint's proposal to require incumbent LECs to provide unbundled access to SONET rings. In the Local Competition First Report and Order, the Commission limited an incumbent LEC's transport unbundling obligation to existing facilities, and did not require incumbent LECs to construct facilities to meet a requesting carrier's requirements where the incumbent LEC has not deployed transport facilities for its own use. Although we conclude that an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures, we do not require incumbent LECs to construct new transport facilities to meet special competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use.

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Dkt. No. 96-98, FCC 99-238, 15 FCC Rcd 3696, ¶ 324 (rel. Nov. 5, 1999) ("*UNE Remand Order*").

AT&T's interpretation of this paragraph is that it only limits an incumbent LEC's obligation to build interoffice facilities to existing facilities and "[f]or all other UNEs, Qwest has an obligation to build to meet CLEC demand throughout its service territory." AT&T Exhibit 12 at 10. Qwest's interpretation is that this language provides that an incumbent LEC's obligation to unbundle facilities applies only to the incumbent's existing network. Qwest Exhibit 13 at 43.

The Commission finds that Qwest is not required to build new, high-capacity facilities as requested by AT&T. The Commission agrees with the Multi-state Facilitator that such new construction would require Qwest to take investment risks in new facilities. See Qwest Exhibit 25 at 25. As stated by the Facilitator, UNE rates are monthly in nature and, generally, do not contain minimum term commitments, meaning Qwest could be significantly under-compensated in cases where CLECs abandon UNEs before the new investment is recovered. *Id.* at 24. This position is

also consistent with the FCC's belief that facilities based competitors are less dependent than other competitors on an incumbent LEC's network and thus, "have the greatest ability and incentive to offer innovative technologies and service options to the consumers." First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, CC Docket Nos. 96-98, 88-57, FCC 00-366, ¶ 4 (rel. Oct. 25, 2000). Nothing prevents a CLEC from constructing the facilities itself.

In addition, a CLEC may request that Qwest construct the UNE under the special construction provisions of section 9.19. Qwest Exhibit 81 (section 9.19). The Commission further approves of Qwest's proposed additional language which provides that if facilities are not available, Qwest shall maintain the CLEC's order as pending for a period of 30 days, and, if facilities become available within that 30 days, Qwest will notify the CLEC. Qwest has committed to including this language in its compliance filing.

4. Line Conditioning Charge

AT&T's Position

AT&T contended that Qwest should not be allowed to charge a line conditioning fee because "Qwest is already recovering the cost of conditioning in its UNE loop charge." AT&T Exhibit 12 at 13. However, if the Commission allows the charge, AT&T requested that Qwest be required to return the charge if Qwest's performance causes the end user to abandon the CLEC. *Id.* at 14. To that end, AT&T proposed revising section 9.2.2.4.1 of the SGAT to require Qwest to refund or credit the conditioning charges if, due to Qwest's fault, the end user never receives the service, suffers unreasonable delay in provisioning, or experiences poor quality service. *Id.*

Qwest's Position

Qwest first pointed out that AT&T provided no support for its claim that Qwest already recovers loop conditioning charges in the loop rate. Qwest Exhibit 13 at 15. With respect to the refund issue, Qwest stated that AT&T's proposed refund language is too vague and difficult to implement. *Id.* at 16. Qwest noted that, as requested by the Multi-state Facilitator, Qwest's current SGAT language identifies specific instances where a CLEC is entitled to a total or partial refund. *Id.* Those circumstances include if Qwest fails to meet a due date and the CLEC customer does not connect within three months or if Qwest fails to condition the loop in accordance with the applicable SGAT standards. *Id.*

Commission's Finding

The Commission finds that the current SGAT language, with the modifications proposed by the Facilitator, set forth sufficient and clear circumstances under which a CLEC may receive a partial or total refund of line conditioning charges. The Commission will defer the issue of whether there should be line conditioning charges to the cost proceeding, wherein a party may introduce evidence to support its position that Qwest is already recovering these costs.

5. Access to Loop Qualification Data

AT&T's Position

AT&T requested that Qwest provide CLECs access to all loop qualification data "that any Qwest employee has access to, including LFACS [Loop Facilities and Assignment Control System]

database, and any other database or back office information that contains information regarding Qwest's loop plant." AT&T Exhibit 12 at 16. AT&T stated it needs this information in order to obtain accurate information and to learn whether spare facilities and fragments of loops can be made available by Qwest. *Id.*

AT&T pointed out that the FCC, in its *UNE Remand Order*, has required incumbent LECs to "provide requesting carriers the same underlying information that the incumbent LEC has in any of its own databases or internal records." *UNE Remand Order* at ¶ 427. The FCC further stated:

[A]ccess to loop qualification information must be provided to competitors within the same time intervals it is provided to the incumbent LEC's retail operations. To the extent such information is not normally provided to the incumbent LEC's retail personnel, but can be obtained by contacting incumbent back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information.

Id. at ¶ 431.

AT&T contended that Qwest's claim that the information on LFACS is available on the raw loop data tool is inaccurate because information on loop conditioning and spare facilities is not included. AT&T Exhibit 12 at 20. AT&T also maintained that Qwest has the ability to access the LFACS' database, and other databases and has manual review processes to provision service to its customers. *Id.* at 26. In addition, AT&T requested that audit language be added to ensure that CLECs have parity access to the back office loop information. *Id.* at 22.

Qwest's Position

Qwest asserted that the underlying database that serves the retail Qwest DSL tool is the same underlying database that is used to populate the IMA Raw Loop Data tool. Qwest Exhibit 13 at 24. Qwest further maintained that it provides CLECs with access to spares and partially connected facilities through the IMA Raw Loop Data tool. *Id.* at 27. Qwest stated that it will "implement a manual process in South Dakota to permit CLECs to obtain loop make up information in the unlikely event the Raw Loop Data or IMA Loop Qualification tool fail [sic] to provide loop make up information for a particular address or telephone number or it returns inconsistent information." *Id.* at 30.

In its post-hearing reply brief, Qwest agreed to include language that was developed in Arizona which further refines Qwest's obligation to conduct a manual search. Qwest Corporation's Post-Hearing Reply Brief on Compliance with the 14-Point Competitive Checklist at 32. With respect to the audit issues, Qwest responded that an audit is unnecessary because KPMG already conducted an audit and found that "Qwest provides CLECs with loop qualification information at parity with itself." Qwest Corporation's Post-Hearing Reply Brief on Compliance with the 14-Point Competitive Checklist at 35.

Commission's Finding

The Commission finds that Qwest has continued to address CLEC concerns regarding access to loop qualification information. For example, the language regarding Qwest's obligation to conduct a manual search that Qwest states it will now include was favorably cited to in AT&T's post-hearing brief. See Response Brief of AT&T Regarding Checklist Item 4 -- Unbundled Loops and Checklist Item 11 -- Local Number Portability at 21-22. The Commission assumes that Qwest will then delete the last four sentences in section 9.2.2.8 which contains similar language. With these changes and given the KPMG audit, it would appear that Qwest has met the FCC requirements regarding access to loop information.

However, the Commission is concerned that a CLEC will continue to have access to the same information concerning Qwest's loops that is available to Qwest. In order to ensure this, the Commission agrees with AT&T that Qwest must add a provision which will allow a CLEC to request an audit of Qwest's records, back office systems, and databases. The Commission instructs Qwest to add the following language to section 9.2.2.8:

CLEC may request an audit of Qwest's company's records, back office systems, and databases pertaining to Loop information pursuant to Section 18 of this Agreement.

6. Access to Pre-order Mechanized Loop Testing

AT&T's Position

AT&T requested that it be allowed access to mechanized loop testing (MLT). AT&T Exhibit 12 at 27. AT&T stated that MLT enables a carrier to test a loop and retrieve information regarding the loop length, as well as other characteristics. *Id.* AT&T claimed that Qwest has the ability to perform an MLT on a copper loop connected to its switch at any time and has "performed thousands of MLTs on its copper loops to pre-qualify its own loops for its Megabit service." *Id.* at 31.

Qwest's Position

Qwest replied that MLT is a repair test, is not designed to be used as a qualification tool for loops, and provides misleading loop length information. Qwest Exhibit 13 at 17. In addition, Qwest stated that MLT loop length is incorporated into the Raw Loop Data Tool if the data is not otherwise available. *Id.* at 18. Qwest further stated that since MLT is a repair test, a CLEC's access to MLT would result in the CLEC's access to a non-customer's working line. *Id.* at 18-19. Qwest noted that a CLEC does have MLT access for repair purposes when the CLEC is the customer for that telephone number. *Id.* Qwest also maintained that it loaded MLT information into the Raw Loop Data tool for baseline information only and it may not reflect the actual distance of a loop. *Id.* at 34. Qwest stated that the same MLT information available to Qwest is also available to CLECs, and Qwest's DSL qualification process does not rely on the MLT distance because of its inaccuracy. *Id.* at 35.

Commission's Finding

The FCC requires an incumbent LEC to provide CLECs with the same information on a pre-order basis that the ILECs provide to their own operations personnel. *UNE Remand Order* at ¶ 427. The Commission finds that a CLEC has access to loop information in the Raw Loop Data Tool which incorporates the MLT loop length, if the data is not otherwise available. Further, the Commission agrees with Qwest that MLT is a repair tool, not a pre-ordering tool, and finds that Qwest is not required to make MLT available to CLECs on a pre-order basis.

7. Standard Intervals for Unbundled Loops

AT&T's Position

AT&T contended that the standard intervals for DS-1 Loops and the repair intervals for basic 2-wire analog loops are too long to provide the CLEC a meaningful opportunity to compete and are discriminatory and anticompetitive. AT&T Exhibit 12 at 31. A standard interval is the interval in which Qwest commits to provide a particular UNE to the CLEC, and is the interval the CLEC will rely on in providing information to its retail customer. *Id.* AT&T recommended that the intervals be shortened to 5-7 business days as opposed to 9 business days, depending on the number of lines. *Id.* at 35. AT&T claimed that Qwest had proposed the same intervals AT&T is now recommending in prior versions of Qwest's Exhibit C but then lengthened the intervals to be consistent with the

intervals that exist on the retail side. *Id.* at 35-36. AT&T stated that "poor service on the retail side should not be used to drive parity decisions on the wholesale side." *Id.* at 36. AT&T noted that some state commissions have shortened the intervals applicable to DS-1 loops. *Id.* at 36-37. With respect to the repair interval, AT&T requested that it be shortened from 24 hours to 18 hours. *Id.* 37-38.

Qwest's Position

Qwest stated that the intervals were decided upon in the ROC process. Qwest Exhibit 13 at 3. Qwest further stated that performance results for South Dakota demonstrates that CLECs have been receiving better installation performance than Qwest's retail customers, thus, CLECs have been given a meaningful opportunity to compete. *Id.* at 5. Qwest claimed that, with the exception of the Arizona staff recommendation, the other two states which required modified intervals did so based upon their state-specific service quality requirements or commitments made in the U S West-Qwest merger. *Id.* at 6. Qwest pointed out that South Dakota does not have service quality rules relating to installation intervals for DS-1 service. *Id.*

Commission's Finding

The Commission finds that Qwest's argument that these intervals were decided upon in the ROC process, which AT&T disputes, does not prohibit this Commission from establishing different intervals. As AT&T pointed out, other state commissions have shortened the standard intervals for DS-1 loops. In addition, the fact that some of these revisions may have been based on the state's service standards, whether wholesale or retail, does not mean that the lack of such service standards, prevents this Commission from determining what are reasonable intervals.

Currently for DS-1 loops, Qwest's SGAT lists a standard interval of nine business days for 1-24 lines. Qwest Exhibit 81 (attached exhibit C). For 25 or more lines, the interval is determined on an individual case basis. *Id.* However, the Commission notes that standard intervals for other unbundled loops are broken down into smaller increments, with varying intervals. For example, the standard intervals for 2/4 wire analog loops are five business days for 1-8 lines, six business days for 9-16 lines, seven business days for 17-24 lines, and on an individual case basis for 25 or more lines. Qwest has not set forth any compelling reasons for not similarly segregating the intervals for DS-1 lines. It would certainly appear reasonable to expect that a smaller number of lines can be provisioned in a shorter time period. Thus, the Commission directs Qwest to change its standard intervals for DS-1 loops as follows: 1-8 lines, five business days; 9-16 lines, seven business days; 17-24 lines, nine business days; and 25 or more lines on an individual case basis. With respect to the repair interval, the Commission finds that a 24-hour interval for repairs is reasonable.

8. Redesignation of Interoffice Facilities

AT&T's Position

AT&T requested that Qwest "redesignate fiber spans between Qwest offices as loop facilities if Qwest's distribution facilities in that area are at exhaust." Exhibit 12 at 39.

Qwest's Position

Qwest agreed to this in its reply testimony. Qwest Exhibit 13 at 50.

Commission's Finding

The Commission finds this issue is resolved.

9. Access to Loops Using IDLC

AT&T's Position

AT&T stated that Qwest has made considerable progress in the steps it will take to provision Integrated Digital Loop Carrier (IDLC) loops and those new processes are reflected in section 9.2.2.2.1. AT&T Exhibit 12 at 41. AT&T stated it agreed to close this issue but wanted this Commission to make clear that Qwest is obligated to provision loops served by IDLC. *Id.* at 42.

Qwest's Position

Qwest stated it agreed with this obligation. Qwest Exhibit 13 at 49.

Commission's Finding

The Commission finds that Qwest is obligated to provision loops served by IDLC as reflected by section 9.2.2.2.1. See Qwest Exhibit 81 (section 9.2.2.2.1).

10. Availability of Line Splitting

AT&T's Position

AT&T stated that Qwest should be required to provide line splitting on all forms of loops, including loop combinations, as a standard offering, on an unlimited basis. AT&T Exhibit 12 at 51. AT&T stated that Qwest only makes line splitting available for loops provided via its UNE-P POTS offering. *Id.*

Qwest's Position

Qwest stated that the demand for EELs is limited and there have been no requests for EEL splitting. Qwest Exhibit 13 at 55. Qwest stated it offers EEL splitting on a special request basis. *Id.* at 56. Qwest predicted that the demand for EEL splitting will stay at zero since line splitting is distance sensitive and an EEL is, by definition, serving an end user in a different wire center. *Id.*

Commission's Finding

The Commission finds that Qwest is not required to offer EEL splitting as a standard offering, given its limited demand, and, most likely, its continued limited demand in the future.

11. Definition of a NID

AT&T's Position

AT&T contended that Qwest's definition of a NID, in section 9.5.1 of the SGAT, provides access to a terminal only when such terminal constitutes the demarcation between a customer's inside wire and Qwest's network. AT&T Exhibit 12 at 53. AT&T asserted that when Qwest owns the inside wire, the CLEC must obtain access to the NID terminal via the subloop processes. *Id.* AT&T requested specific rules be made for access to all NIDs. *Id.* at 54.

Qwest's Position

Qwest stated that the SGAT language already makes stand-alone access to NIDs of all types available. Qwest Exhibit 13 at 58. Qwest stated that the only access that CLECs are unable to receive through section 9.5.1 is access to a NID that also includes access to a loop or subloop

element. *Id.* at 59. A CLEC may obtain access to a subloop through section 9.3, and, Qwest stated, in that circumstance, the NID comes with the access to the subloop. *Id.* Qwest asserted that standard processes for all forms of NID access is unreasonable and unnecessary. *Id.* at 58.

Commission's Finding

The FCC has defined the NID to include "all features, functions, and capabilities of the facilities used to connect the loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism." *UNE Remand Order* at ¶ 233. The FCC did not include inside wiring as part of the definition, nor did it include the NID as part of any subloop element. *Id.* at ¶ 235.

The Commission finds that Qwest is not required to set forth standardized processes for access to all NIDs. Stand-alone access to NIDs is available in section 9.5. This section provides that if a CLEC seeks access only to a NID, it may do so pursuant to section 9.5.

12. Removal of Qwest's Connection Wires from the NID

AT&T's Position

AT&T stated that Qwest should be required to remove Qwest's loop connections from the NID, absent technical infeasibility. AT&T Exhibit 12 at 57. AT&T claimed that this may be necessary in order to free capacity on the NID so the CLEC can provide service to the customer. *Id.* at 56. AT&T stated that a Bell System Practice explicitly permits a procedure called "capping off," which involves removing the Qwest circuit from the NID and tying it down. *Id.* 57. To implement this procedure, AT&T proposed revising the last sentence of section 9.5.2.1 to read "[a]t no time should either Party remove the other Party's loop facilities from the other Party's NID without appropriately capping off the other Party's loop facilities." *Id.* at 60.

Qwest's Position

Qwest opposed removal of its wires, claiming it has the right to retain its existing network. Qwest Exhibit 13 at 60. Qwest stated that an additional NID may be placed next to the existing NID to provide the CLEC access. *Id.* In addition, Qwest raised safety concerns and claimed removal of its "distribution facilities from the protector field of the NID would violate electrical safety codes, which require surge protectors or over voltage protectors on communications conductors." *Id.* In addition, Qwest stated that the Bell System Practice, cited to by AT&T, concerned situations where the NID is removed from the home altogether, thus removing the protection field also. *Id.* at 59.

Commission's Finding

The Commission finds that Qwest is not required to remove its facilities from the NID. The Commission cannot lightly dismiss Qwest's concerns regarding safety posed by capping off wires. If there is not sufficient capacity on the existing NID, a CLEC may place an additional NID in order to provide the CLEC access. The Commission rejects AT&T's proposed revision to section 9.5.2.1.

13. Access to Outboard Splitters

AT&T's Position

AT&T asserted that "Qwest should be required to provide access to outboard splitters that it places in its central offices and remote terminals and make them available on a line-at-a-time or shelf-at-a-time basis." AT&T Exhibit 12 at 43. AT&T stated that this issue is the same for line splitting and line sharing. AT&T Exhibit 14 at 37. AT&T asserted that "[a]ccess to Qwest-owned

splitters will serve to advance competition for DSL service and bundles of voice and data service, and as such, are very much in the public interest." AT&T Exhibit 12 at 48. AT&T acknowledged that the FCC had not required ILECs to provide access to splitters in the SBC/Texas 271 order. *Id.* at 44-45. However, AT&T contended:

The FCC's decision to not impose a requirement on ILECs to provide access to ILEC-owned splitters in its review of the SBC § 271 Application should not defer any state commission from imposing such a requirement on Qwest. It is my understanding that the state commissions are free to establish additional procompetitive requirements that are consistent with the Act, and the FCC's implementing rules and orders.

Id. at 45.

Qwest's Position

Qwest stated that the FCC has held that ILECs have no obligation to provide POTS splitters to CLECs. Qwest Exhibit 66 at 5. Qwest pointed out that the FCC first addressed this issue in the Line Sharing Order, where the FCC held that ILECs have the option of providing line splitters or allowing CLECs to place splitters in the ILEC's central offices. *Id.*

Qwest quoted the FCC's SBC Texas Order wherein it said:

AT&T alleges that this is the only way to allow the addition of xDSL service onto UNE-P loops in a manner that is efficient, timely, and minimally disruptive. Furthermore, AT&T contends that competing carriers have an obligation to provide access to all the functionalities and capabilities of the loop, including electronics attached to the loop. AT&T contends that the splitter is an example of such electronics and that it is included within the loop element.

We reject AT&T's argument that SWBT has a present obligation to furnish the splitter when AT&T engages in line splitting over the UNE-P. . . . We did not identify any circumstances in which the splitter would be treated as part of the loop, as distinguished from being part of the packet switching element. That distinction is critical, because we declined to exercise our rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the packet switching element, and our decision on that point is not disputed in this proceeding.

The UNE Remand Order cannot fairly be read to impose on incumbent LECs an obligation to provide access to their splitters.

Id. at 3-4. Qwest stated that the FCC believes that providing CLECs with the option of owning their own line splitters is an advantage to the CLEC, as it ensures the ILEC cannot limit the CLEC's ability to deploy competitive services. *Id.* at 5.

Commission's Finding

The Commission notes that the Multi-state Facilitator found that Qwest was not obligated to provide access to splitters. The Facilitator stated:

It is very clear that existing FCC requirements provide no basis for obliging Qwest to provide splitters and make them available to CLECs on a line-at-a-time basis. Neither has the evidence in this proceeding provided any basis for concluding that a requirement for such access is necessary or appropriate. There is no evidence to support a conclusion that CLEC installation of splitters would impose distance, cable length, or central-office space problems. . . .

That CLECs could gain greater economies if Qwest combined CLEC and its own splitter needs for purchasing and maintenance purposes is not the issue. The same is true for virtually every other item of equipment used by both ILECs and CLECs, from trunks to switches. . . . Therefore, there is not a basis for concluding that Qwest fails to meet checklist requirements by declining to provide splitters at its central offices for use by CLECs in support of line sharing.

Qwest Exhibit 24 at 15. Commission Staff agreed with these findings. Staff Exhibit 1 at 54. The Commission also agrees and finds that SGAT section 9.4.2.1.1 should not be revised to reflect AT&T's request. The Commission finds the current SGAT language appropriately conveys the necessary Qwest and CLEC obligations.

14. Line Sharing Over Fiber Loops

AT&T's Position

AT&T contended that Qwest should be obligated to provide line sharing over fiber loops. AT&T stated that although the FCC used the word "copper" in its *Line Sharing Order*, the FCC subsequently made it "clear in the *Line Sharing Reconsideration Order* that the requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop (e.g., where the loop is served by a remote terminal)." AT&T Exhibit 14 at 37. AT&T stated that the FCC clarified this "to prevent incumbent LECs from closing off competition by migrating its service to fiber." *Id.* AT&T contended that Qwest expressly limits line sharing to the copper portion of the loop in section 9.4.1.1. *Id.* at 38. AT&T also asserted that Qwest has not "provided any evidence that line sharing over a fiber fed loop is not technically feasible." *Id.*

Qwest's Position

Qwest claimed that it is the first ILEC in the country to offer line sharing to CLECs, but at this point the only technically feasible way to "line-share" is when the loop is made of clean copper. Qwest Corporation's Post-Hearing Brief on Emerging Services at 11. Qwest further claimed that this is not a disputed point, but that AT&T still seeks to require Qwest to "line-share" over fiber based on a "hyper-technical (and illogical) reading of a FCC decision." *Id.*

Qwest asserted that in the *Line Sharing Reconsideration Order* "the FCC clarified that ILECs such as Qwest must allow CLECs to 'line share' the *distribution portion of the loop* where the signal is then split, and allow the CLEC's data to be carried over fiber to some different location." *Id.* at 12 (emphasis in original). Qwest admitted that the FCC "acknowledged that there may be additional ways to implement line sharing where there is fiber in the loop, which would turn on the inherent capabilities of the equipment ILECs have deployed." Qwest Exhibit 66 at 10. Based on this, Qwest asserted that the FCC then initiated two further notices of proposed rulemaking seeking comments on the technical feasibility of "line sharing" over fiber-fed loops but that the FCC had not yet imposed any additional obligations. *Id.* Qwest claimed the CLEC demand for additional line sharing obligations are the type of obligations the FCC intends to study. *Id.* at 10-11. Qwest asserted that AT&T's request that Qwest delete reference to copper loops in SGAT section 9.4.1 and broaden the scope to other loops would create a false impression that it is technically feasible to "line share" over any type of facility. *Id.* at 11.

While Qwest maintained that line sharing currently requires a copper loop, Qwest agreed to add SGAT language that would automatically allow line sharing over additional technologies as those technologies are identified, and where Qwest has deployed those technologies for its own use. See Qwest Exhibit 81 (section 9.4.1.1) The SGAT language also provides that rates, terms, and conditions may need to be modified to provide access over the newly identified and deployed technology. *Id.*

Commission's Finding

The Commission notes that the Multi-state Facilitator found that there was no evidence that supported "a conclusion that Qwest fails to provide any technically feasible form of line sharing over fiber." Qwest Exhibit 24 at 19. When discussing a possible new line sharing option, the Facilitator further stated that "the language of SGAT Section 9.4.1.1 is already expansive enough to address the option, should it prove a feasible and effective one." *Id.* The Commission finds that the SGAT language agreed to by Qwest, which incorporates new line sharing technologies as they are identified and deployed by Qwest, to be reasonable. The Commission also finds that the SGAT language comports with FCC rules. This Commission cannot agree to ordering Qwest to provide that which has not been shown to be technologically feasible, but can agree that the SGAT should be flexible enough to consider new options if and when they become available. It appears to this Commission that the SGAT language is flexible.

15. Subloop Access at MTE Terminals

AT&T's Position

AT&T stated that it was seeking "access to the on-premises wiring, essentially a piece of (usually) copper twisted wire pair that extends in a multi-tenant environment ("MTE") from the NID to the individual units." AT&T Exhibit 14 at 2. AT&T said that when the FCC redefined the NID, it did so to "include all features, functions, and capabilities of the facilities used to connect the loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism." AT&T Exhibit 14 at 6 (citing *UNE Remand Order* at ¶ 233). AT&T asserted that "[t]he FCC specifically defined the NID to include any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant, such as a cross-connect device used for that purpose." *Id.* AT&T further stated:

In the *UNE Remand Order*, the FCC redefined the loop to extend from a distribution frame in the incumbent LEC central office to the demarcation point at the customer's premises. The demarcation point is where control of wiring shifts from the carrier to the subscriber or premises owner. Accordingly, the NID is not necessarily the demarcation point. Instead, it is precisely where AT&T requires unencumbered access, a readily identifiable cross-connection point because it is the first cross-connection point after the incumbent LEC distribution plant crosses the property line of the building owner.

Id. at 6-7. AT&T stated that Qwest believes that the NID is always the demarcation point and that this limits a CLEC's access when Qwest asserts ownership of the on-premises wiring. *Id.* at 5.

Qwest's Position

Qwest stated that this issue appears to be an unnecessary holdover from the time when Qwest demanded collocation in MTE terminals. Qwest Exhibit 66 at 15. According to Qwest, the SGAT "allows CLECs to access NIDs (demarcation points) and MTE terminals (when subloop is sought) in exactly the same way." *Id.* Qwest maintained that this is merely a terminology issue and the only issue is what terminals are called when they are stand-alone products versus what the terminals are called when they have an accompanying subloop. *Id.* at 16. Qwest stated that AT&T is contending that any accessible terminal containing a protector in an MTE is a NID and subject to the FCC's rules on access to the unbundled NID. *Id.* at 15-16.

Qwest stated that the crux of the disagreement between AT&T and Qwest turns on the FCC's description of a subloop and a NID. *Id.* at 17. What AT&T seeks, according to Qwest, is the ability to gain access to Qwest subloop elements without utilizing the processes set forth in section 9.3.

Qwest Corporation's Post-Hearing Brief on Emerging Services at 28. Qwest, quoting the UNE Remand Order, states that the FCC held that "competitors purchasing a subloop at the NID . . . will acquire the functionality of the NID for the subloop portion they purchase." *Id.* (citing *UNE Remand Order* at ¶ 235.) Qwest decided that, based on this statement, the FCC has determined that there is no need to include the NID as part of any other subloop element. *Id.* at 28-29. Qwest stated:

CLECs can, therefore, order one of three items from Qwest: (1) unbundled loops (includes the NID); (2) subloop elements (includes the NID); or (3) unbundled stand alone NIDs. To obtain unbundled loops, SGAT § 9.2 governs; to obtain subloops SGAT § 9.3 governs; and to obtain stand-alone NIDS, SGAT § 9.5 governs.

Id. at 28.

Commission's Finding

The Commission notes that the Multi-state Facilitator took a different approach to this issue. The Facilitator stated:

As one might expect, AT&T took a position on the NID definition question that would eliminate the 90-day collocation intervals, and would allow it fairly free access to the terminal involved. No more surprisingly, Qwest took a contrary position. However, neither position comports with what we consider to be the less dogmatic and a more pragmatic approach that is required here. . . .

Therefore, the resolution of this issue (outside the context of in- or on-building MTE Terminals) should not try to define the problem away generally by recourse to broad FCC NID and collocation definitions and requirements, which are not helpful in this particular context. There should rather be recognition in the SGAT of the need to address the particulars of access to "accessible" terminals for subloop elements. The following SGAT language will accomplish this purpose:

(a) For any configuration not specifically addressed in this SGAT, the conditions of CLEC access shall be as required by the particular circumstances. These conditions include: (1) the degree of equipment separation required, (2) the need for separate cross-connect devices, (3) the interval applicable to any collocation or other provisioning requiring Qwest performance or cooperation, (4) the security required to maintain the safety and reliability of the facilities of Qwest and other CLECs, (5) the engineering and operations standards and practices to be applied at Qwest facilities where they are also used by CLECs for subloop element access, and (6) any other requirements, standards or practices necessary to assure the safe and reliable operation of all carriers' facilities.

(b) Any party may request, under any procedure provided for by this SGAT for addressing non-standard services or network conditions, the development of standard terms and conditions for any configuration(s) for which it can provide reasonably clear technical and operational characteristics and parameters. Once developed through such a process, those terms and conditions shall be generally available to any CLEC for any configuration fitting the requirements established through such process.

(c) Prior to the development of such standard terms and conditions, Qwest shall impose in the six areas identified in item (1) above only those requirements or intervals that are reasonably necessary.

Qwest Exhibit 24 at 29-30.

This Commission understands the difficulty of clearly defining access points in broad, complex networks. The Commission is aware of AT&T's and other CLECs' concerns, and realizes that no current resolution will result in a clear operating protocol. The Commission expects all parties to continue in an effort to achieve improved standardization and efficiency. The Commission finds the pragmatic approach suggested by the Facilitator, and incorporated by Qwest in sections 9.3.1.1.2, 9.3.1.1.3 and 9.3.1.1.4, offers a rational way to advance toward a more comprehensive and adaptive working document.

16. Requiring LSRs for Access to Premise Wiring at MTEs

AT&T's Position

AT&T asserted that the CLEC access parameter for internal wiring should be technical feasibility and claimed that Qwest has complicated this process far beyond what was previously in place for Qwest itself or CLECs. AT&T Exhibit 14 at 12-16. AT&T discussed how Qwest has not, in the past, required LSRs, that Qwest gives inadequate reasons, if any reason at all, for requiring LSRs, and that what will result is that the CLECs will be completing inventories of Qwest facilities that Qwest has not bothered to update. *Id.* at 14-16. AT&T contended that, instead of submitting an LSR for access to on-premises wiring, a CLEC need only submit a monthly statement to Qwest specifying the cable and pairs employed by the CLEC and the addresses of the MTEs to which the CLECs have gained access. *Id.* at 12.

Qwest's Position

Qwest continued to argue the need for an LSR. Qwest stated "[t]he LSR contains information Qwest requires for billing, tracking inventory, and identifying the circuit for maintenance and repair purposes." Qwest Exhibit 66 at 20. Qwest noted it had agreed to the Facilitator's proposed language which allows CLECs to submit an incomplete LSR the first time the CLEC accesses the subloop elements at an MTE. *Id.* at 19. The language was incorporated into section 9.3.5.4.7 as follows:

9.3.5.4.7 For access to Qwest's on-premises MTE wire as a Subloop element, CLEC shall be required to submit an LSR, but need not include thereon the circuit-identifying information or await completion of LSR processing by Qwest before securing such access. Qwest shall secure the circuit-identifying information, and will be responsible for entering it on the LSR when it is received. Qwest shall be entitled to charge for the Subloop element as of the time of LSR submission by CLEC.

Qwest pointed out that AT&T does not object to submitting LSRs to customers with ported numbers, which occurs in a majority of the cases. *Id.* at 21. Thus, Qwest asserted that for the remaining cases, AT&T was proposing a non-standard process that does not eliminate costs but instead increases them. *Id.*

Commission's Finding

The Commission notes the Facilitator found that LSRs are a necessary tool for Qwest. Among the reasons are: 1) since Qwest is entitled to bill for wiring it owns, it is entitled to regularly and completeness for billing; 2) LSRs provide an efficient tool for getting information; 3) LSRs provide information for repair requests; 4) since customers will continue to switch carriers, Qwest needs to have control of information about the serving facilities; and 5) the creation of reliable information will reduce service delays when carriers are switched or new service is initiated. Exhibit 24 at 31-32. While the Facilitator agreed with Qwest regarding the necessity of LSRs for CLEC access to Qwest's on-premises wire as a subloop element, the Facilitator proposed revisions that:

1) lessen costs; 2) does not delay, because of LSR requirements, customer switches where number portability is not required; and 3) that would allow for LSR submission after CLEC service begins. *Id.* at 32

The Commission finds that the revisions proposed by the Facilitator strike a reasonable balance between the CLECs' concerns and those of Qwest. The Commission finds that Qwest has agreed to adopt the Facilitator's recommended SGAT language, and that this language, while limiting the CLECs' burden, also provides Qwest with necessary information.

17. CLEC Facility Inventories

AT&T's Position

AT&T requested that three changes be made to Qwest's SGAT language regarding CLEC facility inventories: 1) Qwest must clarify its language to conform with Qwest's agreement "that a CLEC can access subloop elements during the creation of the inventory of the CLEC's terminations" and that under no circumstance should there be a five-day inventory requirement; 2) AT&T should not have to create a cable pair inventory for Qwest so Qwest can track repair calls and bill appropriately; 3) AT&T should not have to pay for an inventory fee like the one found in section 9.3.6.4.1. AT&T Exhibit 14 at 17-18. AT&T asserted that Qwest had conceded the fee issue in other jurisdictions. *Id.*

Qwest's Position

Qwest asserted that, contrary to AT&T's claims, AT&T merely tells Qwest of the cable count and Qwest then creates the inventory. Qwest Exhibit 66 at 23. As for timing, Qwest stated that it has a process that allows CLECs to submit the LSR and process the order before the inventory is completed. *Id.* Qwest agreed to insert the following language into section 9.3.3.5: "If a CLEC requires immediate access to the subloop, then the CLEC may access the subloop element prior to the completion of the inventory per Section 9.3.5.4.7." *Id.* at 24.

Commission's Finding

The Commission finds that the revisions proposed by the Facilitator in the preceding issue and the revisions made by Qwest resolve this issue. The revisions strike a reasonable balance between the CLECs' concerns and those of Qwest. The Commission finds that it is reasonable for Qwest to want to establish necessary inventory information, but on a basis that addresses the CLECs' timing concerns. The Commission further finds that any costs associated with the establishing of an inventory is necessarily addressed in the cost docket, not here.

18. Creation of a Website to Identify MTE Locations

AT&T's Position

AT&T claimed that because Qwest has indicated it needs up to ten days to determine MTE on-premises wiring ownership, and given that AT&T will continue to capture on-premises wiring to provide services, Qwest should post its ownership of the various locations once it is determined. AT&T Exhibit 14 at 18-19. AT&T contended that the CLECs will then know if they need to notify Qwest for payment and repair, or when they can access the MTE without notifying Qwest. *Id.* at 19. AT&T stated that the alternative is to have each CLEC build its own database which would be inefficient, less accurate, and would result in databases that would not be able to communicate with each other. *Id.*

Qwest's Position

Qwest asserted that there are literally tens of thousands of MTE locations in Qwest's fourteen state region and it would be an extreme burden for Qwest to create and maintain a web site. Qwest Corporation's Brief on Emerging Services at 35. Qwest also stated that such a website would have little practical utility as Qwest must notify CLECs within two days of intrabuilding cable ownership once ownership has already been determined. *Id.* at 35-36. Qwest stated that it will require a CLEC far more than two days to bring its facilities into the MTE. *Id.* at 36. Since CLECs know weeks, or perhaps months ahead, which locations they will seek to serve before they deliver service, Qwest contended that the two day interval will not cause a delay. *Id.*

Commission's Finding

A database for fourteen states listing inventoried, on-premises MTE wiring ownership can be expected to be a very large and detailed cache of information. The Commission finds that Qwest's maintenance of a website in addition to the Qwest in-house database for this type of information will add a significant cost. The benefit, if any, resulting from the maintenance of the website is questionable given Qwest's obligation to provide this information within two days from a CLEC request. The Commission finds that Qwest should not be obligated to provide a website with duplicative MTE on-premises wiring information. The Commission finds that CLECs will be provided adequate service with the Qwest obligation to provide a two day response.

Commission's Finding on Checklist Item 4

The Commission finds that in order for this Commission to find that Qwest is in substantial compliance with Checklist Item 4, Qwest shall make the following changes: 1) Qwest shall change its SGAT language to provide that a CLEC is not responsible for trouble isolation testing charges if the trouble is determined to be on Qwest's network; 2) with respect to the issue regarding access to loop qualification data, Qwest shall include the language developed in Arizona regarding Qwest's obligation to conduct a manual search and Qwest shall add language regarding the ability of a CLEC to request an audit of Qwest's records and databases pertaining to loop information; and 3) with respect to standard intervals for DS-1 loops, Qwest shall make the following changes: for 1-8 lines, the interval shall be five business days; for 9-16 lines, seven business days; for 17-24 lines, nine business days; and for 25 or more lines the interval shall be determined on an individual case basis.

CHECKLIST ITEM 5

Section 271(c)(2)(B)(v) requires Qwest to provide to other telecommunications carriers "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." The FCC requires incumbent LECs to provide nondiscriminatory access to interoffice transmission facilities on an unbundled basis to a requesting telecommunications carrier. 47 C.F.R. § 51.319(d). Interoffice transmission facility network elements include both dedicated transport and shared transport. 47 C.F.R. § 51.319(d)(1). Dedicated transport is defined by the FCC "as incumbent LEC transmission facilities, including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers. . . ." 47 C.F.R. § 51.319(d)(1)(i). Shared transport is "defined as transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC network." 47 C.F.R. § 51.319(d)(1)(ii).

Qwest stated that it offers dedicated transport in DS0 through OC-192 bandwidths through a single transmission path between Qwest end offices, serving wire centers, or tandem switches in the same LATA and state. Qwest Exhibit 63 at 5. If dedicated transport facilities are a part of a UNE

combination, Qwest asserted that it performs requested and necessary cross connections between UNEs in the same manner that it would perform such cross connections for its own end user customers; the CLEC performs cross connections if transport is ordered separately. *Id.* at 5-6. Qwest stated that as of August 31, 2001, it had provided three unbundled dedicated transport facilities for two CLECs in South Dakota. *Id.* at 6.

Qwest explained that the transport between Qwest wire centers is called Unbundled Dedicated Interoffice Transport ("UDIT") which is a distance-sensitive, flat-rated bandwidth-specific interoffice transmission path. *Id.* Transport between a Qwest wire center and a CLEC wire center is called Extended Unbundled Dedicated Interoffice Transport ("E-UDIT") which is a flat-rated, bandwidth-specific interoffice transmission path. *Id.* at 6-7.

With respect to shared transport, Qwest stated it provides such facilities between end office switches, between end office and tandem offices, and between tandem switches in its network. *Id.* at 8. Qwest explained that it offers unbundled shared transport in conjunction with unbundled local switch ports and as part of its UNE-P offering. *Id.* at 9.

Qwest also stated that it offers a CLEC "access to Qwest's digital cross-connect system and provides the means by which a CLEC can control the configuration of unbundled network elements or ancillary services on a near real-time basis" through a capability called Unbundled Customer Controlled Rearrangement Element ("UCCRE"). *Id.* at 10. UCCRE is available in Qwest wire centers that contain a digital cross-connect system that is UCCRE compatible. *Id.* Qwest further stated that it had not received any request for UCCRE in South Dakota. *Id.*

With respect to dark fiber, Qwest asserted that, consistent with the FCC's orders, it offers both interoffice and loop dark fiber. Qwest Exhibit 64 at 27. Qwest explained that unbundled dark fiber is a deployed, unlit fiber optic cable or strands that connect two points within Qwest's network. *Id.* Qwest stated that dark fiber is lit by attaching electronics and the CLEC is responsible for obtaining and connecting electronic equipment to the unbundled dark fiber. *Id.* at 28. Qwest asserted that:

Qwest provides unbundled dark fiber of substantially the same quality as the fiber facilities that Qwest uses to provide service to its own end user customers and within a reasonable time frame. Qwest reserves a nominal quantity (not more than five percent of the fibers in a sheath or two strands, whichever is greater) of fibers in a cable to maintain network survivability and reliability. Qwest does not reserve fiber for unknown and unspecified future growth; it retains for its own use only fiber that has been specifically earmarked to serve customers needs in the near future.

Id. at 28-29.

Disputed Issues⁴

⁴ AT&T's comments regarding emerging services, which include some checklist item 5 issues, were offered and received into evidence at the hearing. However, AT&T did not offer its verified comments concerning other checklist item 5 issues during the hearing. Therefore, with the exception of checklist item 5 comments that were contained in its emerging services comments, the other checklist item 5 comments are not part of the record. After the hearing, AT&T submitted its "brief" on checklist items 2, 5, and 6 and section 272 which consisted of two pages. The "brief" merely attached AT&T's verified comments and stated that "[t]o the extent that those comments are not already a part of the record in this proceeding, AT&T attaches those comments as [Exhibit A] to this brief and incorporates the legal analysis and arguments as though fully set forth herein." AT&T Brief on Checklist Items 2, 5, and 6 and Section 272

1. *Affiliate Obligations to Provide Access to Dark Fiber*

AT&T's Position

AT&T asserted that "Qwest's SGAT violates the Act because it fails to permit CLECs to lease the in-region facilities of Qwest Corp's affiliates pursuant to Sections 251 and 252 of the Act." AT&T Exhibit 14 at 20. AT&T contended that "Qwest and its affiliates are 'successors and assigns' of USWC and are therefore 'ILECs' as defined by the Act." *Id.* at 23. AT&T stated:

Interpreting the statute to *not* require QCI and its affiliates to be subject to the unbundling obligations of the Act would be to encourage the merged entity to "sideslip" § 251's requirements by offering telecommunications services and investing in future network infrastructure through its wholly owned affiliates. In its merger application in Colorado, QCI stated that it intended to combine the corporations' assets, operations and network infrastructure and to plan build outs jointly to achieve synergies that would benefit the public interest and the merged entity's shareholders. This combined operation is a successor and assign of an ILEC, USWC. For these reasons, the Commission should require Qwest to add language to its SGAT that clarifies that QCI and its affiliates are obligated to unbundle their in-region facilities, including dark fiber.

Id. at 25-26 (emphasis in original).

Qwest's Position

Qwest stated that Qwest Communications International ("QCI") is the surviving entity of the merger with U S WEST. Qwest Exhibit 68 at 2. QCI is a holding company that owns a variety of subsidiaries, which Qwest described as separate corporations with defined assets and operations, and two of the subsidiaries control significant telecommunications networks that provide telecommunications pursuant to federal or state authority. *Id.* Qwest asserted that Qwest Communications ("QC"), the successor to the old U S WEST Communications, Inc., is the only Qwest entity that has ever provided local exchange services in South Dakota. *Id.*

Qwest Communications Corporation ("QCC"), the successor to the pre-merger Qwest's businesses, holds Qwest's nationwide long distance network and provides only non-local exchange services in South Dakota. *Id.* Qwest further stated that "QC has not sought to avoid section 251(c) obligations by moving local network facilities or elements from QC to its affiliates and having the affiliates lease them back to QC or provide the service themselves." *Id.* at 3.

In its post-hearing brief, Qwest asserted the FCC has specifically considered how the unbundling obligations of section 251(c)(3) apply to carriers that provide both incumbent local exchange and long distance services, and that the FCC has rejected AT&T's argument. Qwest Corporation's Post-hearing Brief on Emerging Services at 19. Qwest maintained that none of QC's affiliates meet the "successor or assign" requirements of section 251(h). *Id.* at 16.

Compliance. AT&T stated that "[w]hile AT&T did not present a witness at the hearings to sponsor these comments, they continue to reflect AT&T's position on the legal issues presented to the Commission for resolution." For the same reasons as stated in its findings regarding checklist item 2, the Commission declines to accept into the record prefiled comments that were not offered at the hearing and never became a part of the record.

Commission's Finding

The Commission notes that the Multi-state Facilitator rejected AT&T's argument. The Facilitator found as follows:

AT&T's argument depends principally upon the notion that Qwest cannot deny the applicability of the "successor and assign" provision of Section 251(h) on the grounds that QCI and its affiliates were not providing local service on the date the Act was enacted. However, AT&T does not confront the issues raised by the fact that they are not doing so now either, except through Qwest. . . .

The record here contains no evidence that the Qwest corporate structure has been developed or is being used to deny access to dark fiber in cases where it would, absent such structure, be required to be made available. In fact, AT&T has not grounded its argument at all on such a plan or scheme, choosing instead to rely upon the cases cited to support an obligation of all Qwest affiliates to unbundle generally, exactly as if they were Qwest itself. AT&T cited no authority for such a proposition, nor is its propriety evident. Its application would eradicate for ILECs any distinction in lines of business, treating a non-ILEC as if it were an ILEC, apparently on the sole basis of its having affiliation with and some of the same kinds of facilities that ILECs use to provide local service. The notion that Congress envisioned such an interpretation is nowhere evident in the Act, nor is it even consistent with general utility regulatory principles, which allow for utilities to separate regulated and nonregulated operations (if done properly) without making them equally subject to regulation.

Qwest Exhibit 24 at 53. The Facilitator then concluded that "there is no basis in the record for requiring dark fiber or other unbundling by affiliates because they are successors and assigns." *Id.* at 54.

However, the Facilitator went on to find that if "Qwest has access rights for itself, it should not refuse them to provide access rights for CLECs." *Id.* at 10. The Facilitator then found that "the SGAT should be changed to provide that Qwest is required to offer access not only to that which it owns directly, but to all dark fiber to which it has a right to access under agreements with any other party, affiliated or not. Moreover, the test should not be based upon the type or form of such agreement, but rather upon the nature and degree of the access that it provides to Qwest." *Id.* at 11.

The Commission agrees with the Facilitator's reasoning and similarly rejects AT&T's argument. In addition, the Commission notes that Qwest has included the language proposed by the Facilitator in section 9.7.1 of the SGAT regarding access to dark fiber which is not owned by Qwest. While Qwest purports to maintain a separation between its affiliates, common sense dictates that as we move forward, efficiencies may be gained by jointly using affiliates' facilities. It makes little sense for Qwest to not enter into arrangements if the existing level of available capacity translates into a "buyer's market." The Commission sees these arrangements as one part of Qwest's effort to develop an efficient local network, a network that must be shared with CLECs.

2. Access to Dark Fiber in Joint Build Arrangements

AT&T's Position

AT&T's second dark fiber issue is whether Qwest must unbundle dark fiber it does not own in joint build arrangements. AT&T described this issue as follows:

"Joint Build Arrangement" means any arrangement between Qwest and another party to jointly or separately construct, install and/or maintain conduit, innerduct or fiber across a single route or routes. This arrangement will permit either or both Qwest and the third party to use the other's conduit, innerduct or fiber for transport of telecommunications traffic over such route or routes. This type of arrangement includes, among other things, meet point arrangements with third parties. Qwest has testified that it will make available dark fiber that exists in these arrangements up to Qwest's side of the meet point. However, it refuses to permit CLECs to obtain access to any rights that Qwest has to the use of the facilities of the third party.

AT&T Exhibit 14 at 26. According to AT&T, Qwest's SGAT fails to include even the basic right of nondiscriminatory access to its control and/or rights-of-way that exist in joint build arrangements. *Id.* at 27. AT&T stated that to the extent any joint build arrangement provides Qwest with rights to use a third party's facilities, including the dark fiber available on that particular route, "Qwest must permit CLECs equal access to those facilities at just and reasonable rates and terms." *Id.* at page 28.

Qwest's Position

In response, Qwest asserted that AT&T wants Qwest to unbundle dark fiber it does not own in meet point arrangements. Qwest Exhibit 66 at 35. Qwest stated that it "cannot and will not unbundle such dark fiber belonging to other entities." *Id.* Qwest maintained that sections 9.7.1 and 9.7.2.20 provide that "Qwest will unbundle all the dark fiber it owns and controls in the route, but it cannot, nor is it obligated to, unbundle dark fiber it does not own or control. For the portion of the route that Qwest does not own or control, the CLEC must go to the owner of that dark fiber and strike an agreement, which is what Qwest did." *Id.* Qwest claimed that "[t]o provide Qwest's traffic rights to CLECs at TELRIC rates (which is necessarily implied by unbundling) when CLEC does not have to take over Qwest's duties under the arrangement with the third party could actually be unlawfully discriminatory against Qwest and possibly the third party." *Id.* at 36.

Commission's Finding

The Commission notes that the Multi-state Facilitator took a different approach to this issue and found that "[t]he standard to which Qwest should be held here is similar to that set forth in the proposed resolution of the immediately preceding issue [affiliate obligations to provide access to dark fiber]. It has nothing to do with the fiber ownership criterion that Qwest would apply." Qwest Exhibit 24 at 55. The Facilitator stated:

The primary consideration is whether the agreement with the third party gives Qwest, with respect to the fiber owned by the third party, sufficient access rights to make it analogous to facilities that "carriers keep dormant but ready for service" and that are "in place and easily called into service." These are the key tests that the FCC applies in defining dark fiber to which CLECs are entitled. The language set forth in the proposed resolution of the immediately preceding issue accommodates this definition.

The secondary consideration is whether Qwest will have acted in good faith with respect to the imposition of any limits on its ability to make available to CLECs the Qwest fiber access rights obtained from the third party. There will certainly be cases where Qwest cannot enter agreements that it needs with third parties, except where Qwest is willing to restrict access rights to its own use. However, it should not be presumed that this will always be the case; where it is not, Qwest should not have the ability to "tie its own hands" in a manner that, while unlikely to hurt Qwest at all, may become an undue constraint on competition. Qwest may be forced to deal with insistent third parties on terms that are not friendly to future competition, but it should

not benefit from its own failure to accommodate future CLEC access. The "good faith" provision of the language recommended to resolve the immediately preceding dispute accomplishes this goal.

Id. at 55-56.

The Commission agrees with the Facilitator that where joint build arrangements effectively give Qwest sufficient access rights to dark fiber facilities that may be dormant, but which stand ready for service, Qwest should make those facilities available to CLECs. The Commission finds that the Facilitator's proposed SGAT language, as referenced in the preceding section, accomplishes this purpose and requires Qwest to act in good faith when bargaining for these rights.

3. Application of a Local Exchange Usage Requirement to Dark Fiber

AT&T's Position

AT&T asserted that section 9.7.2.9 should be eliminated because the usage test that Qwest applies to dark fiber should only be applied to Enhanced Extended Links ("EELs"), not dark fiber. AT&T Exhibit 24 at 19. AT&T claimed that the dark fiber usage test is impermissible under the language of the FCC Remand Order and the FCC's rules, and is technically infeasible. *Id.*

AT&T stated the usage test is impermissible because the test is to be applied to an EEL, which the FCC indicates is a combination of unbundled loop and transport elements. AT&T's response to Qwest Corporation's Opening Post-Hearing Brief on Emerging Services at 2. AT&T contended there is no FCC restriction on the use of loops and transport used independently or for loop and transport combinations that are combined by the CLEC at a collocation. *Id.* AT&T stated that dark fiber is not a loop nor is it transport. *Id.* Thus, AT&T maintained that the usage restriction only relates to EELs, which could be used in place of special and switched access, and dark fiber is not a substitute for special or switched access. *Id.* In addition, AT&T contended the usage test is technically infeasible because the test is meant to apply to a single end user but dark fiber is typically used for multiple end users. *Id.* at 19-20.

Qwest's Position

Qwest contended that dark fiber is not a UNE itself, but is a version of loop and transport, and the local exchange traffic restriction applies to combinations of loop and transport, which could be in whole, or in part, dark fiber. Qwest Exhibit 66 at 38. Qwest stated that the restriction is imposed "to prevent unbundling requirements from interfering with access charge and universal service reform." *Id.* Qwest maintained that "an unfettered unbundling obligation would erase large amounts of access charge revenue" and that without the local service restriction, dark fiber loop and transport unbundling could threaten access revenues and universal service. *Id.* at 38-39.

In its post-hearing brief, Qwest asserted that the UNE's purpose is to allow competitors to lease portions of Qwest's network to carry local traffic. Qwest Corporation's Post-Hearing Brief on Emerging Services at 24. Qwest expected that without the restriction CLECs will order new special access circuits (which are designed to carry non-local traffic) as EELs. *Id.* In order to prevent this, Qwest stated that the FCC, in its *Supplemental Order Clarification to the UNE Remand Order*, required that a requesting carrier must provide a significant amount of local exchange service over a particular facility in order to obtain unbundled loop-transport combinations. *Id.*

Commission's Finding

The Commission notes that the Multi-state Facilitator cited to the *UNE Remand Order* which states that the loop element as well as the transport element can consist of dark fiber and that EELs

are not a separate UNE but consist of an unbundled loop connected to unbundled dedicated transport. Qwest Exhibit 24 at 57. The Facilitator quoted the FCC in its *Supplemental Order Clarification* in which it stated that "IXCs may not substitute an incumbent LEC's unbundled loop-transport combinations for special access services unless they provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer." *Id.* (citing *Supplemental Order Clarification*, In the Matter of Implementation of the Local Competition Provision of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 00-183 (rel. June 2, 2000) at ¶ 8.) The Facilitator concluded that "[t]here is no doubt that a loop-transport combination that includes dark fiber remains a loop-transport combination. The logic behind the FCC's concern about access charges is in no way diminished because the facilities providing the combination were unlit before a CLEC gained access to them." Qwest Exhibit 24 at 57.

This Commission, like the FCC, must be concerned about the role access facilities and access charges play in balancing customer burdens. There are many ways to construct service provision and rates to effectively lessen one customer's burden at the expense of another. AT&T's attempt to bypass access burdens by hyper-technical definition of dark fiber functionalities is but one of those ways. Dark fiber that has the functionality of a loop and which is connected to dedicated transport, has the combined functionality of an EEL. The Commission finds that Qwest's position is the correct position.

Commission's Finding on Checklist Item 5

Subject to the Commission's findings regarding OSS, the Commission finds Qwest is in substantial compliance with this checklist item.

CHECKLIST ITEM 6

Section 271(c)(2)(B)(vi) requires Qwest to provide to competing carriers "[l]ocal switching unbundled from transport, local loop transmission, or other services." Pursuant to FCC rule, Qwest must provide nondiscriminatory access to local circuit switching capability and local tandem switching capability on an unbundled basis. 47 C.F.R. § 51.319(c).

Local circuit switching capability, which includes tandem switching capability, is defined as line-side facilities, which include, but are not limited to, the connection between a loop termination at a main distribution frame and a switch line card; trunk-side facilities, which include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a switch trunk card; and all features, functions, and capabilities of the switch. 47 C.F.R. 51.319(c)(1).

Qwest contended that it provides the unbundled local circuit switching element to CLECs in a nondiscriminatory manner. Qwest Exhibit 47 at 5. Qwest stated that it offers analog and digital line ports and several type of trunk ports. *Id.* at 6. In addition, Qwest asserted it offers unbundled tandem switching in accordance with the federal Act and applicable FCC rules. *Id.*

With a CLEC's purchase of an unbundled switching element, Qwest stated it provides the CLEC "with access to all vertical switch features, which are software attributes on end office switches, that the switch is capable of providing, including, but not limited to, custom calling, CLASS features, and Centrex capabilities, as well as any technically feasible customized routing, automatic message accounting ("AMA") recording, and call type blocking options." *Id.* at 8. Qwest stated that it also allows a CLEC to require, through its special request process, activation of features that are in the switch but that Qwest does not provide to its retail end users. *Id.* Qwest stated a CLEC may also request a feature that is not currently in the switch through the special request process. *Id.* Qwest contended that a CLEC can order customized routing if it wants to have some or all of its traffic routed differently than Qwest's end user traffic. *Id.* at 13. Qwest asserted that no CLECs in South Dakota have requested stand-alone unbundled switching. *Id.* at 14. But Qwest noted that

CLECs in South Dakota have purchased the UNE-P service, which includes unbundled switching. *Id.* Qwest claimed that as of August 31, 2002, it was providing 16,411 UNE-P combination services to five CLECs in South Dakota. *Id.*

With respect to packet switching, the Commission notes that the FCC has defined packet switching as follows:

The packet switching capability network element is defined as the basic packet switching function of routing or forwarding packets, frames, cells or other data units based on address or other routing information contained in the packets, frames, cells or other data units, and the functions that are performed by Digital Subscriber Line Access Multiplexers, including but not limited to:

- (ii) The ability to terminate copper customer loops (which includes both a low band voice channel and a high-band data channel, or solely a data channel);
- (iii) The ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches;
- (iv) The ability to extract data units from the data channels on the loops, and
- (v) The ability to combine data units from multiple loops onto one or more trunks connecting to a packet switch or packet switches.

47 C.F.R. § 51.319 (c)(4).

Qwest is only required to provide packet switching under the following circumstances:

An incumbent LEC shall be required to provide nondiscriminatory access to unbundled packet switching capability only where each of the following conditions are satisfied. The requirements in this section relating to packet switching are not effective until May 17, 2000.

- (i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);
- (ii) There are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer;
- (iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access multiplexer in the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by paragraph (b) of this section; and
- (iv) The incumbent LEC has deployed packet switching capability for its own use.

47 C.F.R. § 51.319 (c)(5).

Qwest stated that its "obligation to unbundle packet switching depends upon whether Qwest has placed DSLAMs in a remote terminal." Qwest Exhibit 65 at 36. Qwest further asserted that it currently has a limited number of remotely deployed DSLAMs but that it has announced plans to remotely deploy DSLAMs on a broader scale. *Id.* at 37.

1. Packet Switching - Sufficiency of Spare Loops

AT&T's Position

The first disputed issue is whether Qwest has fully implemented the FCC's rule regarding the availability of spare copper loops. One of the conditions under which Qwest must provide unbundled packet switching is if "[t]here are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer. . . ." 47 C.F.R. § 51.319 (c)(5)(ii). With respect to this second condition, AT&T requested that SGAT language be changed to read as followed:

9.20.2.1.2 There are *insufficient* copper loops available capable of *adequately* supporting the xDSL services the requesting carrier seeks to offer.

AT&T Exhibit 14 at 36. AT&T asserted that:

When a CLEC seeks to offer DSL service in competition with an ILEC (or its data affiliate) that has deployed its DSLAM functionality at the remote terminal, the CLEC will invariably be unable to provide a DSL service that operates with "the same level of quality" (e.g., data rates) as that provided by the ILEC or its data affiliate if the data CLEC must rely on "home run" copper.

Id. at 34. AT&T contended that its "proposed language minimizes the impairment that CLECs experience by limitations on the availability of packet switching." *Id.* at 36.

Qwest's Position

Qwest noted that it had "literally copied" the FCC rule word-for-word into the SGAT at section 9.20.1.2. Qwest Exhibit 66 at 42. Qwest stated that AT&T is seeking to add to the existing legal obligations under the rule and the FCC orders. *Id.* at 43. Qwest further contended that such issues are beyond the scope of this proceeding because section 271 proceedings must look at compliance with the existing law. Qwest Corporation's Opening Post-Hearing Brief on Emerging Services at 3. Qwest pointed to the Southwestern Bell Telephone (SWBT) Kansas/Oklahoma 271 proceeding where the same issue arose. *Id.* at 4. Qwest cited the FCC Order where the FCC held, according to Qwest, that SWBT had satisfactorily established a sufficient legal obligation because the SGATs at issue "incorporate verbatim the criteria adopted in our UNE Remand Order to establish when

⁵ AT&T's comments regarding emerging services, which include some checklist item 6 issues, were offered and received into evidence at the hearing. However, AT&T did not offer its verified comments concerning other checklist item 6 issues during the hearing and, therefore, with the exception of checklist item 6 comments that were contained in its emerging services comments, these comments are not part of the record. After the hearing, AT&T submitted its "brief" on checklist items 2, 5, and 6 and section 272 which consisted of two pages. The "brief" merely attached AT&T's verified comments and stated that "[t]o the extent that those comments are not already a part of the record in this proceeding, AT&T attaches those comments as [Exhibit A] to this brief and incorporates the legal analysis and arguments as though fully set forth herein." AT&T Brief on Checklist Items 2, 5, and 6 and Section 272 Compliance. AT&T stated that "[w]hile AT&T did not present a witness at the hearings to sponsor these comments, they continue to reflect AT&T's position on the legal issues presented to the Commission for resolution." For the same reasons as stated in its findings regarding checklist item 2, the Commission declines to accept into the record prefiled comments that were not offered at the hearing and never became a part of the record.

packet switching will be made available." *Id.* Thus Qwest claims any attempt to impose additional obligations fail as a matter of law.

Qwest also claimed these arguments fail on the facts, as inserting the modifier "adequately" adds vagueness and potential for conflict, and would require a factual inquiry to establish adequacy. *Id.* Qwest maintained that replacing "no" with "insufficient" further confuses the required service levels. *Id.* at 5.

In addition, Qwest asserted that AT&T's argument that the availability of copper loops will pose an impediment to AT&T's ability to obtain unbundled packet switching is moot as a practical matter. *Id.* Qwest explained that it must have remotely employed a DSLAM in order for packet switching to be unbundled, and will remotely deploy a DSLAM only if existing loops are too long to support xDSL. *Id.* Qwest stated that this means that where the fourth unbundling condition, remotely deploying a DSLAM, is met, as a practical matter the second condition, no xDSL capable copper loops, is also met. *Id.* at 5-6.

Commission's Finding

The Commission first notes that Qwest revised its SGAT language following the hearing and it now states:

9.20.2.1.2 There are no spare copper Loops available capable of supporting the xDSL services the requesting Carrier seeks to offer, or capable of permitting CLEC to provide the same level of quality advanced services to its End User Customer as Qwest.

Qwest Exhibit 81 (section 9.20.2.1.2). In a footnote, Qwest stated it agreed to the underlined language at the request of CLECs. *Id.* The Commission finds that Qwest's SGAT language should be adopted. While there may be questions regarding copper versus DSLAM alternatives, no party has made any showing that the FCC's directives result in an insufficient alternative for the CLECs. While the Commission understands the limitations of DSL and the distance limitations for copper loop and would like to see those limitations overcome, the Commission agrees that Qwest's SGAT language follows both the spirit and the letter of FCC directives.

2. Unbundled Packet Switching

AT&T's Position

The second packet switching issue raised by AT&T centers on whether Qwest must unbundle packet switching when a DSLAM is deployed in a remote terminal. This relates to the third condition in the FCC's rule regarding when a LEC is required to provide unbundled packet switching. An incumbent LEC must provide unbundled packet switching if it "has not permitted a requesting carrier to deploy a Digital Subscriber Line Access multiplexer in the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by paragraph (b) of this section." 47 C.F.R. § 319(c)(30)(B)(iii).

AT&T requested that the Commission require Qwest to unbundle packet switching "when it is economically infeasible for a CLEC to remotely deploy DSLAMs." AT&T Exhibit 14 at 28. AT&T listed a variety of economic reasons why a CLEC will not remotely deploy DSLAMs. AT&T Exhibit 14 at 29. Among the reasons listed by AT&T were: significant deployment costs, construction lead times, inadequate economies of scale, and the capture of only a small percentage of customers. *Id.* AT&T asserted that:

Qwest presented no technical reason to deny unbundled packet switching in this circumstance, it only argued that as a policy matter, it decided to limit its unbundling to those circumstances outlined in the FCC Rule. Qwest is not harmed by this Commission requiring it to unbundle packet switching when it is uneconomical for a CLEC to collocate a remote DSLAM. Qwest is only faced with competition for customers it would not otherwise face.

Id. at 33. AT&T proposed the following language revisions:

9.20.2.1.3 Qwest has placed a DSLAM for its own use in a remote Qwest Premises but: (i) Qwest has not permitted CLEC to collocate its own DSLAM at the same remote Qwest Premises, or (ii) from CLEC's perspective it would be uneconomical for CLEC to collocate its own DSLAM at the same Qwest Premises, or (iii) collocating a CLEC's DSLAM at the same Qwest Premises will not be capable of supporting xDSL services at Parity with the services that can be offered through Qwest's Unbundled Packet Switching.

Id. at 32.

Qwest's Position

Qwest stated that its current SGAT language tracks the FCC's third condition in Rule 319(c)(3)(B)(iii) and that "AT&T is clearly trying to expand the FCC rule on the subject." Qwest Corporation's Opening Post-Hearing Brief on Emerging Services at 7. Once again, Qwest stated that a section 271 proceeding is not the proper forum for adding new legal obligations. *Id.* Qwest also quoted the Multi-state Facilitator on this issue, who rejected AT&T's request for additional unbundling. The Facilitator stated, in part:

As an initial matter, AT&T's language solution substantially overreaches even its own definition of the problem. It does so by making a CLEC's own and not unbiased perspective on economics the basis for deciding whether the FCC's established conditions for the unbundling of packet switching should be overridden. . . . In fact, much more than an addition to the FCC requirements is anticipated; the request is to replace an operational condition with an economic one, which would serve to redefine the applicable FCC standard entirely. It is difficult to imagine that the FCC has utterly failed to consider any relevant economic considerations. . . .

There is simply no sound basis for deciding that the FCC conditions regarding DSLAM collocation should be supplemented by the addition of an economic feasibility test.

Commission's Finding

The Commission notes that Commission Staff agreed with the Multi-state Facilitator's conclusions and the Commission finds these conclusions to be compelling. AT&T has presented no evidence or argument to establish any basis for considering otherwise. Even supposing this Commission did wish to consider the one-sided economic test implied in AT&T's proposed SGAT revision, AT&T has clearly not made any attempt to develop a record adequate for the Commission to order the revisions as requested by AT&T. The Commission finds that Qwest's language is sufficient.

Commission's Finding on Checklist Item 6

The Commission finds Qwest is in substantial compliance with this checklist item.

Verification of Compliance With This Order

As stated above, in order for the Commission to find that Qwest is in substantial compliance with section 271, Qwest shall make the following revisions regarding checklist item 4: 1) Qwest shall change its SGAT language to provide that a CLEC is not responsible for trouble isolation testing charges if the trouble is determined to be on Qwest's network; 2) with respect to the issue regarding access to loop qualification data, Qwest shall include the language developed in Arizona regarding Qwest's obligation to conduct a manual search and Qwest shall add language regarding the ability of a CLEC to request an audit of Qwest's records and databases pertaining to loop information; and 3) with respect to standard intervals for DS-1 loops, Qwest shall make the following changes: for 1-8 lines, the interval shall be five business days; for 9-16 lines, seven business days; for 17-24 lines, nine business days; and for 25 or more lines the interval shall be determined on an individual case basis. Qwest shall make a compliance filing with these revisions, including a redlined version of the changes. Qwest does not need to file its entire SGAT, but may file only the affected sections. At the conclusion of these proceedings, Qwest will then file its entire SGAT showing all of the revisions required by the Commission.

It is therefore

ORDERED, that Qwest shall make a compliance filing as described above; and it is

FURTHER ORDERED, that the parties shall have ten days following Qwest's filing of its revised SGAT to file written comments concerning the revisions; and it is

FURTHER ORDERED, that the Commission finds Qwest in substantial compliance with the checklist items as listed above, subject to the Commission's review of the OSS results and subject to Qwest making the revisions as ordered above.

Dated at Pierre, South Dakota, this 12th day of November, 2002.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Neilino Kaelo</u>
Date:	<u>11/12/02</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Robert K. Sahr
ROBERT K. SAHR, Commissioner