

IN THE MATTER OF THE APPLICATION OF)
QWEST CORPORATION REGARDING)
RELIEF UNDER SECTION 271 OF THE)
FEDERAL TELECOMMUNICATIONS ACT OF)
1996, WYOMING'S PARTICIPATION IN A)
MULTI-STATE SECTION 271 PROCESS, AND)
APPROVAL OF ITS STATEMENT OF)
GENERALLY AVAILABLE TERMS)
)

Docket No. 70000-TA-00-599
(Record No. 5924)

Final Report to the
Wyoming Public Service Commission

“Report on Unbundled Network Elements”
(Group 4 Report)

Prepared on Behalf of the Wyoming Public Service Commission

October 24, 2001



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Final Report to the Wyoming Public Service Commission

“Report on Unbundled Network Elements”

(Group 4 Report)

Prepared on Behalf of the Wyoming Public Service Commission

I. Introduction:

Scope of this Report

The Federal Telecommunications Act of 1996 (“the Act”) contains the following definition of network elements:

The term “network element” means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.¹

Section 271 of the Act lists specific requirements that must be met by any Bell Operating Company (“BOC”) seeking approval to provide interLATA services, as Qwest is seeking here. Under Section 271(a)(2)(B), Qwest must establish, among other things, that it has entered binding agreements with competitors to provide nondiscriminatory unbundled access to its network elements in accordance with Sections 251(c)(3) of the Act. This portion of Section 271 contains the 14 checklist items with which Qwest must comply to obtain FCC approval to provide in-region interLATA services. When read in conjunction with the definition of network elements, it is clear that many of the checklist

¹ Telecommunications Act of 1996, 47 U.S.C., Section 3(a)(45).

items concern access by competitive local exchange carriers (“CLECs”) to network elements.

The Group 4 Report on UNEs, issued by Liberty Consulting, covers the following four checklist items and sub-categories under each checklist item:

Checklist Item 2 – Access To Unbundled Network Elements (UNEs)

- UNEs Generally
- UNE Platform and Other Combinations

Checklist Item 4 – Access to Unbundled Loops (Loops)

- Loops
- Line Splitting
- NID

Checklist Item 5 – Access to Unbundled Local Transport (Transport)

- Transport
- EELs

Checklist Item 6 – Access to Unbundled Local Switching (Switching)

- Switching

In addition, the Group 4 Report distributes the issues arising under each checklist item into one of the following categories: 1) Issues deferred to another workshop, 2) Issues resolved during this workshop, 3) Issues decided in earlier workshops, and 4) Issues remaining in dispute at the conclusion of the workshop, for which a recommended resolution is offered.

These comments by QSI on the Group 4 Report are addressed primarily to the last category: issues that remained in dispute at the conclusion of the workshop for which the Group 4 Report offers a recommended resolution. QSI notes that certain issues

considered as resolved issues in the Group 4 Report should be flagged or highlighted for one reason or another. QSI notes, as it has in the past, that those issues considered resolved should be considered resolved pending the results of OSS testing. QSI also briefly highlights one issue categorized as an issue decided in an earlier workshop because of its importance and three issues that are categorized as Issues Deferred to Another Workshop for the purpose of flagging these issues for the Commission as they should be addressed in future workshops or other proceedings.

II. Disputed Issues – Background:

The following Section of this Report to the Commission contains QSI's preliminary review and analysis of the disputed issues remaining in this proceeding, namely, the issues which were not resolved during the Workshop proceeding, and/or those issues remaining in dispute subsequent to the Facilitator's proposed issue resolutions contained in the Report. For the 30 issues that remained in dispute at the conclusion of the workshop, the Group 4 Report discusses the positions and arguments of the parties and provides a recommended resolution for that issue accompanied by an explanation of the reasoning underlying the recommendation.

Issues which could not be resolved as a result of the Workshop process came from each of the four general categories contained in Group 4 discussed above. Those categories are:

UNEs:

Item two of the 271 competitive checklist addresses nondiscriminatory access to unbundled network elements, hereafter referred to as UNEs. The Telecommunications

Act of 1996 requires Qwest and other incumbent local exchange companies to provide access to UNEs “on rates, terms and conditions that are just, reasonable and nondiscriminatory.” 47 U.S.C. Section 251(c)(3). The checklist item 2 portion of the report first addresses general UNE issues, and then UNE platform, or UNE-P, and other combinations. Qwest’s SGAT Section 9 sets forth the general terms that govern access to UNEs.

Loops:

Item 4 of the competitive checklist requires that Qwest and other incumbent local exchange companies provide “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.” 47 U.S.C. Section 271(c)(2)(B)(iv). The FCC further defined the loop as “a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises.”² The UNE Remand Order modified this definition to include “all features, functions and capabilities of the transmission facilities, including dark fiber and attached electronics (except those used for the provision of advanced services, such as DSLAMS) owned by the incumbent LEC, between an incumbent LEC’s central office and the loop demarcation point at the customer premises.”³

Also treated under this topic are two subsidiary issues:

- Line Splitting – Line splitting refers to the situation where two different CLECs provide both the voice and data service over a single loop, which Qwest provides.
- NID – The NID is defined as “any means of interconnection of end-user premises wiring to the incumbent LEC’s distribution plant, such as a cross-connect device

² *Local Competition First Report and Order*, para. 380.

³ *UNE Remand Order*, paragraph 167.

used for that purpose.”⁴ Qwest is required to unbundle subloop elements and NIDs.

Transport:

Checklist Item 5 of the Section 271 checklist of the Telecommunications Act addresses access to unbundled local transport. Qwest is required to provide local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services. 47 U.S.C. Section 271(c)(2)(B)(v).

Enhanced Extended Links or EELs. In the UNE Remand Order, EELs were defined as being “comprised of unbundled loops, multiplexing/concentrating equipment, and dedicated transport...” are also addressed in this section.

Switching:

Checklist item 6 requires Qwest to provide “[l]ocal switching unbundled from transport, local loop transmission, or other services”. Section 271(c)(2)(B)(vi). The FCC in the Local Competition Order⁵ identified local switching as an unbundled network element, and this was confirmed in the UNE Remand Order:

*[w]e require incumbent LECs to provide local switching as an unbundled network element.*⁶

The FCC did find an exception to this rule under certain market circumstances:

We find that, where incumbent LECs have provided nondiscriminatory, cost-based access to combinations of loop and transport unbundled network elements, known as the enhanced extended link (EEL), requesting carriers are not impaired

⁴ *UNE Remand Order*, paragraph 233.

⁵ *Id.* at paragraphs 410-427.

⁶ *UNE Remand Order*, at paragraph 253.

without access to unbundled switching for end users with four or more lines within density zone 1 in the top 50 metropolitan statistical areas (MSAs).⁷

III. Review and Analysis of Disputed Issues:

CHECKLIST ITEM 2

Checklist item 2 requires nondiscriminatory access to UNEs. In addition, Section 251(c)(3) of the Act requires incumbent local exchange carriers such as Qwest to provide access to UNEs “on rates, terms and conditions that that are just, reasonable and nondiscriminatory.” Group 4 Report, page 16. The Group 4 Report separates Checklist Item 2 issues into “UNEs Generally” issues and “UNE Platform and Other Combinations” issues.

UNES Generally, Issue 1: Construction of New UNEs

Report page 21, Qwest comments page 8, AT&T comments page 1.

Background:

Electric Lightwave (ELI), XO, and AT&T argued singly and in combination that Qwest has various obligations to construct new facilities for CLECs that ask for them. Some of the facilities CLECs said they should be able to have constructed on request are loops and EELs. The CLECs argued generally that Qwest had an obligation to build facilities for them because Qwest could build them for itself. The CLECs also argued that the rates Qwest could charge for such construction should be cost-based (TELRIC) rather than actual costs.

⁷ Id.

Qwest argued that the FCC's First Report and Order concerning the implementation of local competition provisions of the Act limited its unbundling obligation "to existing LEC facilities," and therefore it has no obligation to build new facilities for CLECs except where required to by law for itself. Qwest also cited a passage of the UNE Remand Order that reiterated the unbundling obligation of incumbent carriers did not extend to building new transport facilities.

CLECs responded to the restriction about transport unbundling by asserting the FCC specifically addressed that UNE and therefore there was no restriction on the obligation for other UNEs because they were not similarly cited.

Qwest also argued that new construction should be viewed differently than its existing network. Whereas Qwest had acquired the existing facilities in an environment of regulation, the new competitive telecommunications allowed CLECs to build facilities for themselves with the expectation they could be joined to the Qwest network in a nondiscriminatory manner.

The Facilitator noted that Qwest resolved one objection by AT&T by agreeing to provide new facilities built as part of its carrier-of-last-resort obligation at the same price a Qwest retail customer would pay. Otherwise, Qwest does not have an obligation to carry out construction at the CLECs' request, even though the support for this position submitted by Qwest does not really address the issue. Rather, the finding is that Qwest does not have the same sort of advantage as an incumbent for new facilities that it does for existing facilities. The CLECs can carry out such construction for themselves. Moreover, any cost differences in CLEC versus Qwest construction are not relevant. If

Qwest has advantages, a point not proven or seriously addressed by the evidence, they are advantages it has full rein to exploit on its behalf.

In addition, the Facilitator notes that Qwest should not be exposed to the risk of constructing UNEs for CLECs, a risk it would have to bear if the construction were treated as UNEs and thus subject to TELRIC rates rather than actual costs. Nor do any claims of discrimination hold if the construction obligation is not imposed. Businesses have the right to discriminate in favor of themselves except where specifically prohibited.

Analysis:

- AT&T's objection is that the Facilitator's findings are discriminatory, in part, because the decision to build UNEs would, according to the SGAT at § 9.19, be based on an "individual financial assessment", that would determine whether it is Qwest's best interest to build. AT&T thinks that Qwest should be required to build UNEs for CLECs under that same terms and conditions that it would build them for itself.
- AT&T supports its argument by citing language for the *Local Competition Order* that does not explicitly state that ILECs do not have to build network elements, except for unbundled interoffice facilities. It should be noted that the language does not specifically *require* that UNEs be built upon CLEC request either.
- Additionally, AT&T notes that the FCC has held that ILECs have the obligation to replace UNEs that are being provided to CLECs, and that such an obligation is essentially the same as being required to build UNEs.
- According to AT&T, any holding that would not require Qwest to build network facilities for AT&T would be discriminatory, and would prevent CLECs from having a meaningful opportunity to compete. AT&T provides the example that, if Qwest refuses to build a network element for a CLEC and subsequently provides the service to the same customer, it could easily be concluded that Qwest discriminated against the CLEC (AT&T comments page 4).

- AT&T notes that Qwest did agree to build UNEs if Qwest has an obligation to build under its provider-of-last-resort obligations, but notes that that offer is limited to DS0 loops.
- AT&T feels that the Facilitator's "personal feelings" regarding whether Qwest will or will not recover its investments under the FCC's TELRIC rules are irrelevant.⁸
- AT&T intimates that the Facilitator, by expressing concern regarding Qwest's risk level under AT&T's proposal, is attempting to reinsert a cost analysis into this issue.
- AT&T believes that the Facilitator's findings shift the burden to the CLECs to show that new facilities are appropriate. AT&T believes that this is inappropriate, especially in light of the fact that the FCC has had this issue "squarely before it" in a case involving USTA (see AT&T comments at page 7)
- AT&T disputes the Facilitator's finding that AT&T's proposal would diminish CLEC incentive to engage in facilities-based competition.
- With respect to AT&T's position that Qwest must install electronics on dark fiber, AT&T appears to argue that such a requirement of Qwest would fall under the category of "reasonable modifications", which are required by the FCC. AT&T asserts that absent a requirement that Qwest must install electronics on dark fiber, Qwest could inventory and retain dark fiber entirely for its own use.
- AT&T argues that if its proposal is not accepted (both with respect to dark fiber and obligation to build in general), that CLECs will not have non-discriminatory access to UNEs, thereby violating FCC standards.

Further Analysis:

- Mr. Steese provided clarification at the oral arguments regarding the ILEC obligation to replace UNEs that it provides to CLECs. According to Mr. Steese, the replacement obligation occurs when a UNE provided to a CLEC *breaks*. In

⁸ It should be noted that AT&T misstates the Facilitator here. The Facilitator's Report at page 24 actually reads: "First, there is a substantial risk that Qwest will not recover actual costs *in the event that AT&T's proposal is accepted.*" [emphasis added]

- other words, Qwest is under no obligation to replace every UNE that it provides to a CLEC, every time it provides a UNE to a CLEC, only to replace UNEs that do not function as intended. This clarification refutes AT&T's argument.
- Mr. Steese also noted that under carrier of last resort obligations, Qwest is essentially required to provide the means of providing voice service – and nothing beyond. Therefore, AT&T's arguments that Qwest must provide other loops, including high-capacity loops is unfounded.
 - Finally, Mr. Steese supports Qwest's position with respect to electronics with a recent FCC decision from Pennsylvania.
 - AT&T's arguments cited in support of its position were not “we win because”, but “we don't lose because”. Clearly, Qwest's support is much stronger than AT&T's.
 - CAS recommends that the Commission withhold recommendation on this issue until some period of time has elapsed for negotiation and operation of agreements containing the SGAT's provisions, and until review of the report concerning the QPAP.

Recommendation:

No Commission Action Required. The Commission may wish to withhold recommendation regarding this issue until a review of the QPAP can be analyzed (in accordance with the CAS recommendation).

QSI does note that the distinction between modifying existing facilities, which is an ILEC requirement, and building new facilities can sometimes be blurred, but the FCC has sought to clarify that difference. As the Facilitator notes, by doing so the FCC indicates new construction should not be viewed as some sort of extensive modification. Thus, putting limits on the construction obligation of Qwest appears to be an appropriate choice in the new environment where CLECs do not face the barriers to undertaking such projects themselves. Additionally QSI agrees with the Facilitator that it is important to consider the Act's *purpose*. It is clear that the incentive to consider facilities-based competition would be impacted by AT&T's proposal. QSI believes that the Act intended

for facilities-based competition to be a goal to be achieved by the Act, and that AT&T's proposal would interfere with that goal.

UNES Generally, Issue 2: Commingling UNEs and Tariffed Services on the Same Facilities

Report page 27, Qwest comments page 9, AT&T did not comment.

Background:

ELI and XO asked that the SGAT allow them to use the same facility to carry UNE and tariffed services, specifically special access. The companies argued that as long as the arrangement did not allow for bypass of special access, the intent of the FCC's regulations is not violated. ELI and XO noted that allowing commingling of the traffic would lower their costs. AT&T asked that the SGAT be amended to allow for connection of UNEs and finished services. Like the other two CLECs contesting the issue, AT&T said the existing SGAT would create a barrier to entry by forcing CLECs to build a second network when the first network had sufficient capacity to handle the commingled traffic it proposed.

Qwest cited FCC rulings prohibiting commingling of UNEs and special transport, which affects the provision of loops and loop-transport combinations to which it is willing to commit to in the SGAT.

The Facilitator noted that there is no basis for XO's and ELI's claim that using the same facilities for special access and UNEs does not constitute commingling in the correct circumstances. The FCC ban on bringing them together in the way XO and ELI desire is temporary and due to be addressed once the issue of effects on access charges

has been studied. Until that time, Qwest can continue to deny CLECs the arrangement requested by XO and ELI.

The request of AT&T, on the other hand, to connect UNEs and finished services is not banned by the FCC ruling. Therefore, the SGAT should be amended to allow such connections as are not specifically addressed by the FCC. Specific language for Section 9.23.1.2.2 is provided to accomplish this goal.

Analysis:

- Qwest notes in its comments that it had added language to the SGAT in response to direction from the Facilitator. That language has been added at § 9.23.1.2.2.
- AT&T did not dispute the Facilitator's findings on this issue in its comments.
- CAS agrees with the Facilitator's recommendation.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

The ban on loop and loop-transport connections may be lifted someday by the FCC, but Qwest's SGAT can continue to restrict such connections until that time.

UNES Generally, Issue 3: OSS Testing

Report page 29, Qwest comments page 9, AT&T comments page 13.

Background:

AT&T asked that the SGAT provide for procedures for carrier-to-carrier testing of such systems as new OSS releases. The argument of AT&T is that CLECs need a test environment separate from the OSS in service so that upgrades can be checked before being put into service. AT&T also wanted the ability to test Qwest's OSS for its volume

capacity, stating that future large-scale market entry by CLECs would be jeopardized if the capability of the Qwest system is not testable.

Qwest said the SGAT provides for testing and that the 271 OSS third-party test in progress addresses AT&T's concerns. Besides these general objections to AT&T's proposal, Qwest had several specific objections to AT&T language addressing such issues as requiring Qwest to test what Qwest referred to as non-standard interfaces, the standards by which testing would be evaluated, and the subject matter of pre-order testing.

The Facilitator noted that the matter of a stand-alone test environment in which CLECs can test their ability to work with Qwest's OSS is deferred to the conclusion of the ROC OSS third-party test. Waiting will avoid disrupting that testing, among other advantages. In the absence of any CLEC-indicated need for an immediate resolution, deferring the issue is the best course.

However, the Facilitator also states that the issue of access to testing is valid. CLECs need the flexibility to manage their product introductions and the like with confidence they will not be harmed by problems with Qwest's OSS. Specific language for Section 12.2.9.3.5 is recommended. This language will give CLECs an avenue for pursuing testing they feel they need. The language provides for a negotiation process, during which Qwest can suggest that previous testing addresses the issues and therefore additional testing is unnecessary. CLECs, however, can resort to either the dispute resolution procedures of the SGAT or state commission expedited resolution if they do not feel the comprehensive testing they desire is going to be made available. The costs of the testing shall be assigned in either resolution process, with the requesting CLEC

bearing them unless it is shown other CLECs should share them because they also share the benefits.

AT&T's other requests were denied by the Facilitator.

Analysis:

- AT&T proposed language that it characterizes as being “more comprehensive” than Qwest’s, and makes changes to the language proposed by Qwest. AT&T recommends the language contained in Attachment A to this Report.
- Recently, Qwest proposed language for the “stand-alone test environment”. It appears that Qwest has added such language to the SGAT at §12.2.9.3.2, but AT&T feels that no 271 relief should be granted until such a time as the stand-alone test environment is actually available – paper promises are not sufficient.
- AT&T also says that Qwest’s proposed language does not provide for testing by the CLEC in a comprehensive manner, but rather, provides for testing in separate, specific, limited applications. Nothing exists that provides a robust test environment that would really put the CLEC’s and Qwest’s process “through the ringer”.
- AT&T states that its requests for testing are not unique, and that similar testing is being provided by Qwest in MN, and provided by other RBOCs in NY, MA, PA, VA, and GA.
- AT&T states that Qwest has limited its controlled production testing to few customers, and offers no capability for CLECs to test UNE-P or UNE offerings. AT&T’s proposal would allow for 1000 lines to be tested.

- AT&T argues that it should be allowed to perform carrier-to-carrier testing, rather than using new customers as test subjects, thereby exposing AT&T to potential problems that could have been avoided. Therefore, AT&T thinks the commissions should adopt AT&T's proposed language.
- The Facilitator offered the following language in place of AT&T's language in effort to resolve this issue:

Upon request by a CLEC, Qwest shall enter into negotiations for comprehensive production test procedures. In the event that agreement is not reached, the CLEC shall be entitled to employ, at its choice, the dispute resolution procedures of this agreement or expedited resolution through request to the state commission to resolve any differences. In such cases, CLEC shall be entitled to testing that is reasonably necessary to accommodate identified business plans or operations needs, accounting for any other testing relevant to those plans or needs. As part of the resolution of such dispute, there shall be considered the issue of assigning responsibility for the costs of such testing. Absent a finding that the test scope and activities address issues of common interest to the CLEC community, the costs shall be assigned to the CLEC requesting the test procedures.

- AT&T is “greatly disturbed” by this language. AT&T feels that requiring CLECs to disclose business plans to its competitor is plainly not appropriate.
- The Facilitator has also deferred deciding the stand-alone issue, even though, according to AT&T, it is necessary to decide this issue before 271 relief can be granted.
- The Facilitator also notes that the AT&T proposed language could disrupt the ROC 3rd party testing that is currently underway. AT&T says that there is no evidence that the 3rd party testing would be delayed.

- AT&T does not like the provision requiring negotiation, saying that it would provide an opportunity for Qwest to hinder CLEC entry into the market.
- Qwest notes in its comments that it has added the Facilitator's language as § 12.2.9.8.

Further Analysis:

- Mr. Steese reported that consensus had been reached with respect to this issue.

Recommendation:

No Commission Action Required.

CHECKLIST ITEM 4

Checklist Item 4 involves access to unbundled loops. The loop is the facility which connects a central office to an end-use customers' premise. A loop typically connects distribution frames in a central office and network interface devices (NIDs) at the various premises. The loop is defined so that it may include features, functions and capabilities of the transmission facilities, including dark fiber and attached electronics.

Line splitting and NIDs are dealt with in this section as well. Line splitting involves two CLECs providing voice and data services over a Qwest loop. It is similar to line sharing (addressed in the Group 3 Report on Emerging Services), where Qwest and a CLEC split the provisioning over the Qwest loop. NIDs, meanwhile, are the devices by which customers interconnect with a LEC's distribution system. Qwest is required to unbundle NIDs and any subloop elements used in interconnection. Group 4 Report, page

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Loops: Unresolved Issues**Loops, Issue 1: Standard Loop Provisioning Intervals**

Report Page 48, Qwest comments page 10, AT&T comments page 21.

Background:

AT&T wanted several standard provisioning intervals for loops shortened. AT&T justified the request on the grounds that some intervals were discriminatory and did not give CLECs a meaningful opportunity to compete. AT&T also said the current loop provisioning intervals in the SGAT would create conflicts with quality of service standards in several states. Qwest asserted its Quick Loops program shortening intervals for two-wire unbundled loops would address many CLEC concerns, and added language to the SGAT to reflect these shortened intervals. Qwest argued the other loop intervals had been agreed to by CLECs in the ROC OSS Test selection of performance measure standards and should remain unchanged.

The Facilitator noted that the ROC process loop intervals were developed in a process where all parties had a chance to participate. Absent the presentation of evidence demonstrating these intervals are out of date or not effective in providing CLECs competitive opportunities he found that, the intervals should not be changed. The repair intervals for loops in the SGAT are not identical to the standards set by several states. It is possible that CLECs therefore are put at risk in these states (what about Wyoming??). However, no CLEC has presented evidence to support this possibility and thus there is no reason to change the intervals.

Analysis:

- AT&T disagrees that the intervals established in the SIG should be given substantial weight, or any weight whatsoever, because it was not ever presented to the ROC for its review and approval.
- AT&T and others should have the right to confront evidence presented by Qwest – the Facilitator’s decision deprives them of their right.
- The Facilitator’s decision improperly shifts the burden from Qwest to the CLECs – according to AT&T.
- AT&T notes that even Qwest has proposed changes to the SIG, and that therefore, it is obvious that Qwest does not believe that the SIG has been agreed to and cannot be changed.
- There has never been any discussion regarding whether the SIG intervals are appropriate at the ROC.
- According to AT&T, it is Qwest’s responsibility to prove that its proposed intervals are correct, not CLECs’ responsibility to show that they are not correct.
- AT&T feels that the Facilitator has ignored AT&T’s substantial evidence which shows the intervals to be discriminatory.
- Currently, Quick Loop only applies to loops that do not require number porting. AT&T says that Quick Loop should be made available for loops with number portability required.
- Qwest claims that it has increased some intervals to correspond with retail intervals. QSI notes that in Group 3, Qwest provided wholesale intervals which

were shorter than retail intervals for something. Is Qwest willing to do the same thing for this issue?

- AT&T objects to the revised intervals, which are increased over the intervals Qwest had committed to in previous years, which also happen to be the intervals AT&T is proposing in this case. Qwest missed these intervals, but rather than responding by improving its service, Qwest has instead, just increased its intervals.
- AT&T notes that BST has 5-day intervals, and that Qwest should comply with those intervals committed to by BST.
- AT&T notes that repair intervals proposed by Qwest are also overstated, and that 12 hour intervals are appropriate. AT&T notes that Qwest's mean time to restore in the wholesale side is currently running at 4 hours – thereby making 12 hours realistic.
- AT&T argues that parity is not measured by state-set standards, but by what Qwest provides to its retail customers. In fact, AT&T notes that it could be that Qwest's intervals could impair CLECs' ability to meet state-set standards. Utah and New Mexico have 5-day intervals in place that CLECs have to react to – Qwest's intervals would not allow compliance.
- Additionally, Wyoming rules require providers to clear not less than ninety percent of all out-of-service trouble reports during any three-month period within 24 hours. Qwest's standard would make it impossible for CLECs to meet that standard.

- AT&T therefore recommends that the Facilitator's recommendations be rejected in their entirety, and that language corresponding to AT&T's comments be adopted instead.

Further Analysis:

- Mr. Steese notes that the requirement is that the intervals provided to CLECs be at parity with the intervals for retail service. Clearly, that is the case in this situation.
- Due to the activities involved (involving coordination) with porting a number, the Quick Loop product can not be offered as AT&T had suggested. However, Qwest is continuing to look at how to make the process more efficient.
- Mr. Steese refuted AT&T's argument that the SGAT is not consistent with Wyoming regulations, providing metrics to support his argument.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

QSI does note that AT&T has not proposed language that would suit its needs, but rather leaves that up to the Commissions. It would appear that if this issue was extremely important to AT&T, that it would have propose specific language, rather than taking a risk on the commissions coming up with language that is suitable.

Loops, Issue 2: Loop Provisioning and Repair Intervals – Utah

Report Page 51, Qwest did not provide comments, AT&T comments page 29.

Background:

XO said that many SGAT intervals for installation and service exceed Utah rules. Qwest said XO's complaint mischaracterized the Utah regulations as rules, asserting that

guidelines is a more appropriate description. Qwest also says many of the Utah guidelines are ready for change following their review in the ROC process.

The Facilitator notes that State rules should take precedence unless Utah wants to change its regulations to match the rest of the region.

Analysis:

- The resolution of the immediately preceding issue adequately addresses the relationship between generally applicable intervals and unique state requirements.

Recommendation:

No Commission Action Required.

Loops, Issue 3: Reciprocity of Trouble Isolation Charges

Report Page52 , Qwest comments page11, AT&T did not comment.

Background:

AT&T asserted Qwest can charge CLECs for isolating troubles on the CLEC side of a demarcation point, while there is no similar ability for CLECs to charge Qwest for isolating troubles on its side of the point. Qwest countered by saying if CLECs were cost-conscious, they could attempt to isolate the trouble first before turning to Qwest for help. Qwest eventually agreed, and modified its SGAT to make changes acceptable to the CLECs. AT&T wanted two more changes: CLEC access to NIDs and to preserve the ability to challenge the issue of double recovery of trouble isolation costs in future cost proceedings.

The Facilitator notes that the CLECs' request for NID access is reasonable. He recommended specific language to incorporate this idea in the SGAT. The cost issue was deferred to the cost dockets of the various states.

Analysis:

- The Facilitator asked Qwest to add a clause to the SGAT that would allow CLECs NID access for testing purposes in those cases where access at the demarcation point will not suffice to allow required loop testing.
- Qwest added the Facilitator's proposed language.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

Loops, Issue 4: Delays in the Roll-Out of ADSL- and ISDN-Capable Loops

Report Page 52, Qwest comments page 11, AT&T did not comment.

Background:

Rhythms stated that Qwest did not promptly make ADSL- and ISDN-capable loops available. The discussion also indicates that the products were offered earlier than CLECs were able to order them as a wholesale product from Qwest, partially due to Qwest's delay in adding them to its list of available products. Rhythms testified it had to go to the Colorado PUC to get a response to its requests for orders. Qwest responded that there was low demand for the products and therefore putting effort into making them available wholesale was not warranted.

The Facilitator noted that Qwest has a point that it need not provide standardized offerings for every product it offers, and products for which there is low-demand are in this category. However, if Qwest takes this stance, it also must be prepared to respond quickly when it receives requests for such products. Qwest must express its intent to comply with this expectation in the comments it files to this Group 4 Report. These comments will then be incorporated into the General Terms and Conditions portion of the forthcoming Group 5 Report.

Analysis:

- Qwest complied with the Facilitator's requirement to provide a formal expression of its intent with respect to moving in an expeditious manner as outlined in the Report, and noted that this topic will be addressed in greater detail in the workshop and resulting Report comments relating to General Terms and Conditions.
- CAS believes that the Wyoming Commission should look to Qwest for a firm commitment to bulk deload projects across Wyoming service territory.

Recommendation:

No Commission Action Required. QSI notes that should the Commission wish to get a firm commitment to bulk deload from Qwest that it can be done in another forum, such as the TELRIC case.

Loops, Issue 5: Cooperative Testing Problems

Report Page 53, Qwest comments page12, AT&T did not comment.

Background:

Rhythms testified it has had problems gaining cooperation from Qwest in testing loops as they are installed. Rhythms asserted Qwest failed to perform requested tests, failed to provide test results, failed to provide notice of testing, and provided incorrect test results. Rhythms gave up asking for tests because it was not satisfied with the service it was receiving. Qwest said it did not possess enough information to provide a meaningful response to Rhythms' assertions. Qwest did say it nevertheless has taken steps to improve its testing performance including upgrading installation personnel training as a result of efforts to comply with the ROC OSS testing, a new center to coordinate installations, and measures that would make installations less a matter of perfect coordination.

The Facilitator noted that Qwest's record of addressing the problem are steps in the right direction and sufficient for the time being.

Analysis:

- In light of the Facilitator's findings, no changes were ordered.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

Loops, Issue 6: Spectrum Compatibility

Report Page 54, Qwest comments page 12, AT&T comments page 29.

Background:

Telecommunications carriers may have traffic carried simultaneously on the same transmission lines. Spectrum compatibility addresses the ability of these facilities to carry all the traffic without significant degradation of the signal quality of any carrier's traffic. Rhythms testified that certain equipment, and especially T1 lines, create signal quality problems for advanced services, which include high-speed connections like ADSL. Rhythms wants T1s treated differently than other facilities because of this characteristic. Rhythms asked that Qwest be obligated to remove T1s deployed after the SGAT goes into effect that disturb CLECs' signals. It did not ask for the removal of existing T1s that cause disturbance, but noted its position that it was entitled to under FCC rules. Rhythms also said that Qwest has been slow in tracing the source of problems in spectrum compatibility and that it must provide information on orders that would be made superfluous if its proposal concerning T1s is adopted.

AT&T supported many of Rhythms' arguments regarding T1 deployment and ordering information. AT&T suggested that Qwest be allowed to seek waivers where it could show it had no alternatives to leaving T1s in place. AT&T added that Qwest's deployment of remote DSL facilities sometimes interfered with competitors' DSL services and that Qwest was not responding adequately to remove that interference.

Qwest replied first to the remote deployment issue, saying the FCC wanted the issue decided in industry groups, which it said were meeting with a target report date of January 2002. Qwest said that process should be allowed to run its course rather than being duplicated in the Multistate process. Qwest also said that the way it deploys remote facilities does not cause the problems the CLECs allege.

Regarding interference, Qwest says its practice of segregating T1s is adequate and endorsed by the FCC. When the practice proves inadequate, Qwest says it commits to taking additional steps. Qwest also said it needs the ordering information and that CLEC concerns about it being used to competitive advantage by Qwest are addressed by FCC rules strictly limiting the use of the information to technical issues.

The Facilitator notes that there are three issues to resolve: (a) treatment of T1s, (b) remote DSL and repeater deployment, and (c) provision of NC/NCI codes on LSRs.

Treatment of TIs

The Facilitator indicates that the FCC's decision to leave the treatment of TIs to the states makes clear that the circumstances applicable in individual states should be the foundation for deciding what to do about them. The Facilitator goes on to say that § 9.2.6.4 is circular, and proposes alternative language, which Qwest has added to the SGAT.

Remote DSL Deployment

The Facilitator notes that Rhythms and AT&T have not shown good reason to act in advance of the NRIC report that the FCC expects to use to make a decision regarding this issue. He continues to say that it would not, therefore, be appropriate to move to incorporate into the SGAT technical standards proposed by the two CLECs before the FCC comes out with national standards. However, he also notes that in the mean time, it would also not be appropriate to allow Qwest to take actions, in the absence of any standards, that could give it undue competitive advantages. The Facilitator concludes that it would be reasonable to require Qwest, pending further deliberations at the national level, to respond to actual CLEC deployments that can be disrupted by Qwest network actions, such as the use of repeaters, further noting, that in order for Qwest to do that, Qwest must know where CLEC facilities of the types affected are being installed. The Facilitator resolves this issue by requiring Qwest to take reasonable actions when given specific information about network locations where its own repeater use, or remote DSL deployment could disrupt central office based CLEC DSL services. The Facilitator proposed language that would accommodate such a result, and Qwest has made the appropriate changes in SGAT § 9.2.6.6.

NC/NCI Codes

The Facilitator found that Rhythms and AT&T's argument that Rhythms' overall approach would essentially moot the need for this information to be supplied to Qwest had no foundation, that Qwest has a legitimate need for such information, and that LSRs are the most effective means of providing the information. The Facilitator also noted that Qwest should provide prompt information to all concerned regarding the impacted

facilities. The Facilitator further emphasized that since such information is sensitive, that its use must be limited to spectrum management purposes, and that only those needing to know the information shall have access to it. The Facilitator made no specific recommendations for changes to the SGAT. Nevertheless, Qwest has added language at § 9.2.6.2 to reflect its commitment to maintain the confidentiality of this information.

Analysis:

Treatment of T1s

- With respect to treatment of T1s, AT&T concedes that the Facilitator's proposed language is an improvement over Qwest's. However, AT&T recommends that it be modified to state:

“Qwest also agrees that any future “known disturber” defined by the FCC or the Commission will be managed as required by the FCC rules and orders and industry standards.”

- This language, according to AT&T is necessary in order to deal with the potentiality that all relevant obligations will not be incorporated into FCC rules.

Further Analysis – T1 Issue:

- Mr. Steese noted that the language change requested by AT&T is not necessary, that Qwest is already required to do the things the added language requires. He also noted that AT&T's proposed language could actually hinder the process by creating a concern regarding “proposed” but not adopted industry standards.

Remote DSL Deployment

- With respect to the Facilitator's decision regarding remote DSL deployment, AT&T feels that the Facilitator has missed the point, in that the Facilitator concluded that it would not be appropriate to adopt blanket requirements given the fact that there is currently no demonstrated CLEC commitment to bring advanced services to the seven states.

- AT&T feels that the correct way to evaluate this problem is to establish rules now, that set the ground rules for ensuring that CLECs' future plans will not be encumbered by Qwest's actions in deploying remote DSL and repeaters.
- AT&T also feels that the Facilitator has erred in saying that the issue comes down to who will pay for the removal of disturbers.
- AT&T does not want to provide Qwest with any competitively sensitive information regarding what services it is providing (in order to allow Qwest to remove disturbers in those areas). Rather, AT&T wants Qwest to deploy its network in such a way that whatever AT&T chooses to deploy, and wherever AT&T chooses to deploy it, the network will be compatible.
- QSI notes that this issue may be resolved in the upcoming TELRIC case, where there should be scrutiny given to whether Qwest's TELRIC recurring rates in fact do recover the cost associated with a network that would support advanced services. If it is shown that indeed, Qwest is recovering the costs associated with a network that has been assumed to support advanced services, the issue of who pays for removal of disturbers will be resolved.
- AT&T recommends that Qwest should be required to discontinue deployment of known disturbers in its remote deployments, and the obligation the Facilitator places on CLECs to disclose competitively sensitive information to Qwest should be eliminated.

Further Analysis – Remote DSL Issue:

- Mr. Steese notes that there is a possibility that the FCC may change rules regarding the necessity to provide sensitive data, but until then, Qwest requires such information. Mr. Steese emphasized that Qwest protects such data provided by CLECs, so that it is impossible for Qwest to gain any competitive advantage through its use. The Facilitator has imposed this requirement many times in the SGAT with respect to the treatment of such information.

NC/NCI Codes

- AT&T also comments on the disclosure of NC/NCI codes. AT&T notes that this information is highly proprietary and competitively sensitive.
- AT&T also notes that this information is not reliable. AT&T also notes that the FCC requirement cited by Qwest was an interim measure.
- Finally, AT&T states that if CLECs are ordered to provide such information, that spectral mask or NC/NCI codes should be provided by Qwest on a reciprocal basis.

Further Analysis – NC/NCI Codes Issue:

- Mr. Steese notes that Qwest already turns over spectral mask information on a reciprocal basis, and has no problem doing so.

Recommendation:

Treatment of TIs

No Commission Action Required – QSI agrees with the PIR.

Remote DSL Deployment

No Commission Action Required – QSI agrees with the PIR.

NC/NCI Codes

No Commission Action Required – QSI agrees with the PIR. QSI notes that the CAS concurs with the Facilitator.

Loops, Issue 7: Conditioning Charge Refund

Report Page 61, Qwest comments page 14, AT&T comments page 36.

Background:

AT&T lodged a request for refunds for charges CLECs pay to have loops conditioned if a CLEC loses a customer within a year of the work. Later, it amended the request to offering a new Section 9.2.2.4.1 that would give CLECs refunds for such work if they never served the served the customer, experienced long delays in conditioning, or had poor quality of service, but only if Qwest was at fault.

Qwest objected to refunds in principle and specifically said the issue of fault was difficult to ascertain. Qwest agreed to refunds as an acceptable notion, but preferred dealing with them as a billing issue.

The Facilitator notes that this issue is an example of why parties often agree to liquidated damages because there is an issue with merit but harm is difficult to prove and fault difficult to assign. The Hearing Examiner offers a resolution in the form of additional SGAT language. The language makes the issue a line conditioning matter, rather than a billing matter. The language states CLECs shall receive full refunds when Qwest fails to meet a line conditioning due date and a CLEC does not gain the customer any time in the succeeding three months. CLECs shall receive one-half refunds if Qwest's conditioning is not performed in accordance with SGAT standards, unless CLEC can show the conditioned loop is incapable of providing the service as obligated by Qwest in the SGAT. In these circumstances, the CLEC shall receive a full refund, unless it requests Qwest to address the problem and Qwest does so successfully, in which case the CLECs receive a one-half refund.

Analysis:

- The Facilitator's proposed language is:

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

- AT&T requests that the Facilitator's proposed language be modified to require Qwest to credit the CLEC conditioning charge where the CLEC does not secure the UNE Loop within 15 days rather than the 3 months proposed by the Facilitator.
- AT&T makes this recommendation because "[T]hree months is an unreasonably long period of time for the CLEC to be out both the Loop it requested and the conditioning charges it paid".
- This recommendation is consistent with Qwest's interval for conditioning a loop, which is also 15 days.

Further Analysis:

- Mr. Steese notes that the Facilitator's decision would prevent gaming from occurring from the CLEC side. In other words, the Facilitator's decision prevents CLECs from getting conditioning done at prices that are less than what the established costs would support.
- It was also established at the oral arguments that de-loading or conditioning could be addressed during the cost case.

Recommendation

No Commission Action Required – QSI agrees with the PIR.

Loops, Issue 8: Pre-Order Mechanized Loop Testing

Report Page 62, Qwest comments page 14, AT&T comments page 36.

Background:

AT&T wants to be able to perform mechanized loop testing, which it asserted Qwest does for itself. The testing provides information about the loop that CLECs can use in business decisions; however, it does temporarily disrupt service.

Qwest said it does not do mechanized loop testing except for repairs. Moreover, it said CLECs can obtain the information they need in a manner consistent with how it is available to Qwest personnel from the Raw Loop Data Tool. The ROC OSS test, Qwest said, will verify this claim.

The Facilitator notes that given the possibility for disruption of customers if mechanized testing is allowed, that Qwest does not use it for its own purposes, and that it does provide CLECs the loop information in the same way it provides it to itself, there is no reason to order Qwest to allow CLECs to perform such testing.

Analysis:

- AT&T states that the Facilitator is incorrect when he says that “there is sufficient evidence to conclude that Qwest does not generate pre-order information through mechanized loop testing in service its own end user”. Qwest did do a one-time MLT test on all copper loops in its system for the benefit of what was known as its Megabit service.
- The Facilitator even concedes that Qwest can do such testing whenever it wants.
- AT&T correctly notes that CLECs do not have the same ability, which raises a parity issue.

- AT&T also points out that, according to the *UNE Remand Order*, RBOCs are required to provide carriers with the same underlying information that they have in any of their own databases or internal records for pre-ordering, loop qualification purposes. Further, RBOCs may not offer filtered or digested information in place of the actual raw data. QSI notes that the Raw Loop Dta Tool likely contains data that would fall into this category.
- Qwest has admitted in the Washington workshop that the test lasts less than a minute.
- AT&T asks that the Commission either 1) allow the CLECs to conduct pre-order MLTs, or 2) to restrict Qwest's ability to ever do such testing for its own use in the future.

Further Analysis:

- Mr. Steese notes that Qwest has closed all of the gaps that prevented CLECs from having access to the exact same data that Qwest does. Therefore, AT&T's recommendations are not founded.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

Loops, Issue 9: Access to LFACs and Other Loop Information Databases

Report Page 64, Qwest comments page 15, AT&T comments page 40.

Background:

AT&T wanted access to LFACs, a system that it thought would provide it information about unbundling IDLC loops for use as UNEs. AT&T contended it needed the information about copper loop availability even when Qwest did not because CLECs unbundle the element whereas Qwest does not. Qwest resisted, saying LFACs does not have the capability AT&T is asking for, requiring modification of the system, and that

confidentiality concerns exist. Qwest said another tool that would provide the information, Facility Check, will be available no later than December 2001.

The Facilitator notes that AT&T is correct that parity is not the appropriate standard given unique CLEC needs. CLECs are entitled to the information about the availability of copper loops to make marketing decisions. LFACs, however, is not the appropriate system. The Facilitator offers specific additional SGAT language that gives CLECs access to what they need through the systems Qwest deems appropriate. Qwest can mediate the access to allow for proprietary or confidentiality concerns. Moreover, CLECs shall pay incremental costs of modifying Qwest systems to make the information available.

Analysis:

- AT&T complains that gaining information regarding where loop or loop plant information resides in databases/back office systems that are accessible by Qwest employees is like “pulling teeth”.
- AT&T noted that other CLECs have had this problem with other ILECs, and that SBC has agreed to provide and the Texas Commission has Ordered SBC to allow CLECs to audit, on an ongoing basis, the company’s records, back office systems and databases in each state, to assure that SBC is providing nondiscriminatory access.
- AT&T, therefore, proposes that the Facilitator’s language be modified to include a provision that states “CLECs shall have the ability to audit Qwest’s company records, back office systems and databases in each of the relevant states to

determine that Qwest is providing the same access to loop and loop plant information to CLECs that Qwest's employees have access".

- o AT&T also notes that the FCC has made it clear that CLECs must have access to this loop and loop plant information for loop qualification purposes. Therefore, AT&T recommends that the Facilitator's language be revised as follows:

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

- o In order to solve the mediation problem, AT&T further recommends that the following language replace the Facilitator's mediation language.

CLEC agrees the access afforded to CLEC to Qwest's records, back office systems and databases and the use by the CLEC of any information obtained under this section shall be limited to performing loop qualification and spare facilities checks.

- o AT&T notes that the Facilitator has used this approach in other places in the report to protect the confidentiality of CLEC information.
- o CAS supports the Facilitator's recommendation that Qwest be required to offer information that would allow CLECs to make a reasonably complete identification of the copper facilities available in areas where Qwest has deployed significant amounts of integrated digital loop carrier.

Further Analysis:

- Mr. Steese notes that KPMG is already doing a back office audit by virtue of the ongoing OSS testing.
- Additionally, Mr. Steese notes that the Raw Loop Data tool provides CLECs with access to unfiltered data – the very same data that is available to Qwest itself – consistent with FCC requirements. Therefore, it appears that Qwest is in compliance on this issue and is not discriminating against AT&T or any other CLEC.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

Line Splitting Issue 1. Limiting Line Sharing to UNE-P

Report Page 68, Qwest comments page 15, AT&T comments page 48.

Background:

AT&T and Rhythms testified that Qwest did not make access to line sharing broad enough in the SGAT. The CLECs wanted such access to be available through loops, EELs, and reselling, as well as UNE-P. Qwest agreed to such loop splitting, but wanted clarification of the responsibilities of the CLECs in that situation. Qwest argued demand for EELs is too low to expend effort on making it a product. Qwest also said resale is similar to UNE-P, so it is meeting its obligations through that offering. CLECs also argued that Qwest's offers of availability for EELs and other line splitting did not offer firm timetables for availability.

The Facilitator notes that CLECs have not demonstrated Qwest is slow in making line splitting available. In addition, there is little demand for EELs generally, let alone as split loops, so Qwest need not make it a product as long as it remains willing to respond to special requests for split EELs. He also states that Qwest is correct that resale splitting is not a valid concern. CLECs need to acquire the UNE-P, then split it among themselves.

Analysis:

- In its comments, Qwest noted that the Facilitator noted that “[I]oops are split, services are not”.
- The Facilitator also found that Qwest’s proposed limitation was reasonable, and did not recommend any changes to the SGAT.
- AT&T in its comments said that the Facilitator had once again failed to address the main dispute between the parties.
- AT&T cites language from an FCC Order that appears to prohibit ILECs from imposing the limitations the Facilitator has agreed to. AT&T asks that Qwest be required to affirm in the SGAT that it is required to provide line splitting on all loop types. This language would prevent Qwest from refusing to provide loop splitting “down the road”.
- AT&T also complains that the SRP is time consuming, even if demand is low.
- AT&T proposes that Qwest should be required to revise § 9.21 of the SGAT to clearly set forth its obligation to provide line splitting on all loops and loop combinations. Additionally, the SGAT should be revised to clearly state that Qwest will offer EEL splitting as a standard offering and to state the terms and conditions of such an offering.

Further Analysis:

- Mr. Steese notes that it is impossible to provide line splitting on certain types of loops, therefore, Qwest can not be obligated to provide line splitting on loops that can not be split. QSI agrees with Mr. Steese's arguments.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

Line Splitting Issue 2: Liability for Actions by an Agent

Report Page 69, Qwest comments page 16, AT&T did not comment.

Background:

The parties generally worked out the details of responsibilities where two CLECs split a Qwest loop. The issues included the need for and which CLEC is the customer of record, who can call Qwest, who is responsible for harm, and so forth. One issue remains, which is Qwest wants the CLEC of record responsible if third parties wrongfully obtain the passwords and other security identification. CLECs said that was not appropriate.

The Facilitator notes that CLECs should bear the responsibility for misuse of information wrongfully obtained from them. Qwest is responsible only if it released the information and it is used wrongfully to harm the CLEC.

Analysis:

- AT&T sought to expand the liability provision set forth in Qwest's SGAT § 9.2.1.7.3.

- The Facilitator noted that the SGAT already covers the only valid issue raised by AT&T, and that no change to the SGAT is required.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

ADDITIONAL Line Splitting Issue: Line-At-A-Time Access to Splitters

Report Page 67, Qwest did not comment, AT&T comments page 43.

Background:

AT&T commented that Qwest should be obligated to provide access to “outboard” splitters in its central offices and remote terminals. AT&T also said that CLECs should be able to gain access to them for a single line or a single shelf.

Analysis:

- The Facilitator found that this issue was identical to an issue already addressed in the Group 3 Report (Line Sharing: Ownership of and Access to Splitters). The Facilitator held that no new arguments or evidence was presented here that would change the resolution of that issue.
- AT&T disputes the Facilitator’s finding that no new evidence has been presented, in that Qwest has finally revealed the type of splitters it is deploying in its central office.
- This new evidence, according to AT&T, shows that it is technically feasible for CLECs to access Qwest’s splitters on at least a shelf-at-a-time basis, and that Qwest should be directed to provide such access.
- According to AT&T, Qwest’s own witnesses have admitted that such access is possible.
- AT&T supports its arguments by noting that the FCC ruled in 47 C.F.R. § 51.319(a)(1) that CLECs purchasing UNEs are entitled to “all capabilities of the loop including the low and high-frequency spectrum portions of the loop . . .”,

- that in the *Line Sharing Order*, the FCC found that the high frequency portion of the loop is a capability of the loop, in the *UNE Remand Order*, that ILECs must afford CLECs access to all of the UNE's features, functions, and capabilities, including attached electronics, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element, specifically including DSL services", reiterating that the loop includes "attached electronics" if such electronics are necessary to fully access the loops features, functions, and capabilities in order to provide service to the end-user.
- AT&T argues that based on this language, the splitter is a feature, function or capability of the loop that must be provided to the CLEC.
 - Qwest, bases its argument that such access is not required on an FCC decision that did not require such access. However, AT&T notes that in that decision, the FCC merely notes that it has not yet exercised its rulemaking authority on the issue, and that therefore, the cites used by Qwest are not dispositive as to what state commissions may order to promote the development of competition an the broader availability of advanced services.
 - AT&T further argues that in spite of the order cited by Qwest, a Texas arbitrator required SWBT to provide access to splitters on a line-at-a-time basis. The Texas Commission affirmed the arbitrator's finding.
 - This Texas decision further found that the denial of line-at-a-time access prohibits UNE-P providers from achieving commercial volumes, and would inhibit the rapid deployment of advanced services to a broader cross section of consumers, as required by § 706 of the Act.
 - AT&T also notes that although Qwest attempts to distinguish this Texas ruling by claiming that it is based upon the notion that SWBT was allowing an affiliate line-at-a-time access. However, AT&T points out that the rationale used in the Texas order is much broader than simply dealing with an affiliate issue.

Further Analysis:

- Mr. Steese argued convincingly, that the issue addressed in Texas was an affiliate issue, therefore, the decision does not apply to this case, since no affiliate relationships are at issue here.
- Mr. Steese also notes that every commission that has considered this issue has agreed with Qwest's arguments.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

**NIDs Issue 1: “NID” Definition and Access to Terminals Where Qwest Owns
Facilities in the Direction of the End User**

Report Page 72, Qwest comments page 16, AT&T comments page 52.

Background:

AT&T wants multitenant environments (MTEs) to be declared NIDs, while Qwest wants them considered MTE access as subloop access. At stake is whether collocation is required by CLECs when they want access to MTEs.

The Facilitator notes that the parties have not raised any issues not raised in the Group 3 Report for Subloop Unbundling issue 1, Subloop Access at MTE Terminals. He therefore says that there is no reason to change the resolution issued in the Group 3 Report. That ruling said Qwest's position better comports with the FCC rulings that govern the access, yet in individual circumstances Qwest should ease the letter of that ruling because it does not make sense. Thus, once again, the issues of service reliability, safety, work efficiency, cost, and engineering and operating practices should govern relationships between Qwest and the CLECs.

Analysis:

- AT&T disputes the Facilitator's comment that AT&T is still seeking to argue that MTE terminals are NIDs – an issue that was dealt with in Group 3. AT&T argues that in fact, they are simply attempting to ensure that Qwest does not eliminate, through its narrowing of the FCC's broad definition of NIDs, access that is contemplated by the FCC.
- AT&T states that Qwest's NID definition (found at § 9.5.1) unlawfully limits access to a terminal only when such terminal constitutes the demarcation between a customer's inside wire and Qwest's network – a definition that is much narrower than the definition used by the FCC, which refers to the function of the terminal, rather than the hardware itself.
- AT&T is particularly concerned with respect to MTE terminals, and notes that the FCC has made a clear determination that incumbent LECs have used the MTE chokepoint as a means to severely inhibit competition.
- In order to avoid this situation, AT&T believes that Qwest must be required to revise the definition of NID in its SGAT to be consistent with the FCC's definition.

- FCC NID definition:

The **network interface device network** element is defined as any means of interconnection of end-user customer premises wiring to the incumbent LEC's distribution plant, such as a cross connect **device** used for that purpose. An incumbent LEC shall permit a requesting telecommunications carrier to connect its own loop facilities to on-premises wiring through the incumbent LEC's **network interface device**, or at any other technically feasible point.⁹

- Qwest NID definition:

⁹ 47 C.F.R. § 51.319(b),

9.5.1 The Qwest NID is defined as any means of interconnection of on-premises wiring and Qwest's distribution plant, such as a cross connect device used for that purpose. Specifically, the NID is a single-line termination device or that portion of a multiple-line termination device required to terminate a single line or circuit at a premises. If CLEC seeks to access a NID as well as a Subloop connected to that NID it may do so only pursuant to Section 9.3. If CLEC seeks to access only a NID (i.e., CLEC does not wish to access a Subloop connected to that NID), it may only do so pursuant to this Section 9.5. Qwest shall permit CLEC to connect its own Loop facilities to on-premises wiring through Qwest's NID, or at any other technically feasible point. The NID carries with it 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. Although the NID provides the connection to the customer premises wiring, it may not represent the demarcation point where Qwest ownership or control of the intra-premises wiring ends. The NID contains a protective ground connection that protects the customer's on-premises wiring against lightning and other high voltage surges and is capable of terminating media such as twisted pair cable. If CLEC orders Unbundled Loops on a reuse basis, the existing drop and Qwest's NID, as well as any on premises wiring that Qwest owns or controls, will remain in place and continue to carry the signal over the customer's on-premises wiring to the end user's equipment. Notwithstanding the foregoing, an Unbundled Loop and any Subloop terminating at a NID shall include the existing drop and the functionality of the NID as more specifically set forth in Section 9.2. The NID is offered in three (3) varieties:

- In its comments, Qwest notes that the Facilitator found that Qwest's interpretation of the FCC's pronouncements is consistent with the FCC's language.
- CAS cautions the Commission, but offers no specific recommendation with respect to that caution.

Further Analysis:

- Mr. Steese noted that this issue has been resolved in a Washington Workshop.

Recommendation:

No Commission Action Required.

NIDs Issue 2: Protector Connections

Report Page 73, Qwest comments page 17, AT&T comments page 56.

Background:

AT&T wants Qwest to be required to remove its loop connections to NIDs. Qwest's position it is not obligated to take this step. AT&T says the policy denies CLECs access to NID features and functions. AT&T asks for an amendment to Section 9.5.2.1 to require Qwest to remove its connections.

The Facilitator notes that AT&T's requested amendment did not appear until briefing. Qwest did not answer in its brief, almost certainly because it felt there was need to respond based on the workshop events. AT&T's request is not supported by evidence or witnesses and as noted is late. There is no basis for accepting its request.

Analysis:

- The Facilitator notes that the evidence presented by AT&T was not authenticated. AT&T responds by noting that this issue was not fully developed during the NID workshop, but has been addressed in subsequent workshops.
- AT&T argues that Qwest is obligated to make space available at the NID unless it is not technically feasible. Qwest said that AT&T's proposal to remove Qwest loop connections violates the National Electric Code.
- AT&T notes that it provided a witness in subsequent loop workshops in which the "Bell System Policy" document was presented. The Facilitator noted in the Report that this document was suspect, and bears an AT&T identification.

- In its comments, AT&T provides a discussion of various sections of the National Electrical Safety Code. Based on this discussion, AT&T requests that the final sentence of § 9.5.2.1 be modified to read:

“At 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.”

Further Analysis:

- Mr. Steese notes that this is a safety issue, and that for those reasons they are not comfortable with AT&T’s proposed language. AT&T’s language (according to Mr. Steese) would allow AT&T to disconnect wires, and just “let them dangle”. This would be in violation of the National Electric Code.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

There appears to be some question as to the completeness of the Workshop record regarding this issue. AT&T’s evidence was suspect. Also, there appears to be a safety issue, and a compliance with National Electric Code issue if AT&T’s proposal were to be adopted.

NIDs Issue 3: CLEC Use of Qwest’s NID Protector Without Payment

Report Page 74, Qwest comments page 17, AT&T did not comment.

Background:

AT&T objected to paying for the use of Qwest NID protectors when it uses its own NID with protectors. AT&T still often connects to the Qwest NID in these

circumstances. AT&T argues that although it connects to the Qwest NID, it does not use its “functionalities.”

The Facilitator notes that AT&T raised the issue in briefing. No factual foundation is raised and Qwest has no chance for a response. These issues aside, AT&T is asking to create the concept of sub-NID unbundling, which is not part of the requirements of unbundling network elements. There is no reason to go any further with this request.

Analysis:

- The Facilitator noted that there is no factual foundation for AT&T’s arguments. AT&T’s proposal was therefore rejected.

Recommendation

No Commission Action Required – QSI agrees with the PIR.

CHECKLIST ITEM 5

Checklist Item 5 involves access to unbundled local transport. Qwest is obligated to provide local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services. EELs, which are unbundled loops, multiplexing/concentrating equipment, and dedicated transport, are also covered in this section of the report. Group 4 Report, page 75

Transport: Unresolved Issues

Transport, Issue 1: SONET Add/Drop Multiplexing

Report Page 76, Qwest comments page 18, AT&T comments page 59.

Background:

AT&T asked that Qwest offer SONET add/drop multiplexing to facilitate CLECs going from OCn to DS3. Qwest relied on the UNE Remand Order to refuse to add this option to its obligations, saying it did not have to unbundle anything other than its existing network.

The Facilitator notes that just as this report found Qwest did not have to undertake new construction for CLECs, it now finds that Qwest need not create multiplexing facilities on behalf of CLECs.

Analysis:

- In its comments, AT&T states that AT&T and Qwest have agreed that Qwest will add the following language to § 9.6.1.2:
“SONET add/drop multiplexing is available on an ICB basis where facilities are available and capacity exists.

Recommendation:**No Commission Action Required.**

This issue is resolved – pending verification that Qwest has agreed to add this language.

Transport, Issue 2: UDIT/EUDIT Distinction

Report Page 77, Qwest comments page 18, AT&T comments page 60.

Background:

Qwest offers both dedicated transport and extended dedicated transport as unbundled products. The extended version, EUDIT, is provided when Qwest transport connects to a

CLEC's facilities, such as a CLEC wire center. UDIT, on the other hand, connects Qwest facilities.

AT&T wants the distinction between the two forms of transport ended. The price of UDIT is distance-sensitive, while the price of EUDIT is not. AT&T argues the pricing policy is an artifact of an environment that no longer applies. Qwest acknowledges as much, but says cost dockets are the appropriate venue for addressing the issue.

AT&T also wants Qwest to be required to provide the electronics necessary to make EUDIT effective. Qwest says such a requirement would force it construct new facilities, which it is not obligated to do on behalf of CLECs.

The Facilitator notes that a cost docket is the appropriate venue for deciding the pricing issue for UDIT and EUDIT. As for the electronics provision issue, the nature of the change requested is that it requires new equipment and thus is more than a modification. Moreover, CLECs are capable of providing the electronics themselves. Therefore, Qwest is not obligated to provide the electronics.

Analysis:

- AT&T notes that the EUDIT is a non-distance-sensitive rate that represents an average and therefore very different from the UDIT which is a distance sensitive rate.
- AT&T notes that since EUDIT is an average, CLECs who choose to build closer than average to the Qwest wire centers lose the cost benefits of doing so. QSI notes that this appears to be a perverse incentive.
- AT&T also notes that because the EUDIT is non-distance sensitive, that it creates a disincentive for CLECs to build their own facilities because it is not reflected to recognize any portion of the facility built by the CLEC (unlike the UDIT).
- AT&T also points out that because there is a rate differentiation between whether CLECs choose to connect to another independent carrier or to Qwest. AT&T

- argues that since CLECs are carriers, that the same ability to obtain dedicated transport on a distance-sensitive rate from Qwest wire centers to the CLEC wire centers should be available.
- AT&T argues that the Facilitator's solution is to deal with this issue in the context of a cost case. AT&T notes that Qwest can continue to discriminate against CLECs until that issue is resolved.
 - QSI notes that AT&T is correct that Qwest has the opportunity to discriminate against CLECs until cost issues deferred to cost proceedings are resolved. However, the Wyoming PSC has such a case pending.
 - With respect to the Facilitator's decision regarding electronics associated with the EUDIT, AT&T says that the Facilitator confuses the issue with the dark fiber issue.
 - AT&T notes that the FCC found that requiring the CLECs to self-provision dedicated transport impairs the CLECs, and that in so finding, included optical terminating equipment in its definition of dedicated transport.

Further Analysis:

- Mr. Steese notes that Qwest has always differentiated between UDIT and EUDIT in case the CLEC was to go out of business. The differentiation makes it more likely that Qwest will be able to recover the costs of providing the element.
- Additionally, Mr. Steese notes that this issue can be addressed further in the cost docket.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

Transport, Issue 3: Commingling UNEs and Connection Trunks

Report Page 79, Qwest comments page 18, AT&T did not comment.

Background:

AT&T said Qwest's prohibition on connecting UNEs to interconnection trunks is not supported by the FCC restriction on connections to finished services. Such trunks (LIS trunks) are not part of tariff services and thus do not fit the category of facilities for which commingling is banned.

The Facilitator notes that Qwest agreed in its brief to drop the restriction, thus settling the issue.

Analysis:

- The issue has been resolved.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

Transport, Issue 4: Applying Local Use Restrictions to Unbundled Transport

Report Page 79, Qwest comments page 19, AT&T did not comment.

Background:

AT&T argues CLECs should be able to use interoffice transport as a substitute for special or switched access services. AT&T says an FCC order restricting loop/transport combinations does not apply to transport only.

The Facilitator notes that Qwest has proposed using less restrictive language in other jurisdictions, language AT&T finds acceptable. Qwest did not take a position on the import of this language, but it is assumed it does not object.

Analysis:

- This issue has been resolved. Qwest has added § 9.6.2.4 to the SGAT which resolves this issue.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

EELs, Issue 1: Limiting Local Use Requirements to Existing Special Access Circuits

Report Page 81, Qwest comments page 19, AT&T did not comment.

Background:

ELI and XO argued at different junctures that limits on local use for special access circuits do not apply to UNE combinations. UNE combinations, they argue, are not conversions. Qwest argues that the limits apply to all combinations, not just special access cases, because the FCC order governing the circumstances discusses maintaining the status quo.

The Facilitator notes that EELs are transport/loop combinations and therefore are subject to the special access restrictions, unless a CLEC can show the facilities combination will carry a significant amount of local exchange traffic. CLECs are in a position to make such showings.

Analysis:

- The Facilitator's PIR was not challenged.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

EELs, Issue 2: Allowing Commingling Where Qwest Refuses to Construct UNEs

Report Page 83, Qwest comments page 20, AT&T comments page 65.

Background:

AT&T argues that CLECs sometimes are forced to acquire DS1 loops not as UNEs, but from a tariff because no other DS1 loops are available and Qwest will not construct them. Qwest refuses to connect these DS1s and unbundled transport because such connection, in Qwest's view, would violate the FCC prohibition on commingling. AT&T asserts CLECs have no choice in the matter and following the prohibition is therefore unfair.

The Facilitator notes that the purpose of the FCC commingling restriction is to prevent carriers from avoiding access charges. CLECs do not have that goal in this situation. In fact, keeping the restriction in place adds access charges they would otherwise not incur. Moreover, the prohibition applies to connecting loops and loop/transport to tariffed services. Here, the loop is the tariffed service. Thus, it is appropriate to allow CLECs to have the connection. The Facilitator suggests SGAT language that provides for this outcome. It provides that CLECs must demonstrate they meet all the conditions for the request to be fulfilled.

Analysis:

- In its comments, AT&T notes that it finds the Facilitator's proposed language to be acceptable, but requests that the words "or other high-capacity" be inserted after the word DS1.
- QSI notes that the Facilitator does not specify where the language will appear in the SGAT.

Further Analysis:

- Mr. Steese noted that Qwest would make the changes proposed by AT&T.

Recommendation:

QSI recommends that AT&T's change be accepted.

EELs, Issue 3: Waiver of Termination Liability Assessments for EELs

Report Page 81, Qwest comments page 20, AT&T comments page 65.

Background:

AT&T states that CLECs had to acquire special access circuits or private lines in the 1996-99 span only because ILECs refused to provide EELs. A 1999 Supreme Court decision found that ILECs had to make EELs available. AT&T reasons that CLECs should not have to pay termination charges to convert from the special access circuits to EELs because they should have access to the EELs in the first place.

XO and ELI take a similar stance, arguing that when they had to acquire special access lines after the 1999 court decision because facilities were not available for EELs, they too should not have to pay termination charges included in the special access agreements they signed as they convert to EELs as facilities are available. CLECs would have met one of two conditions to gain this waiver of termination charges.

Qwest asserts it has no obligation to waive termination liability assessments (TLAs) for special access. Qwest also argues the FCC has said TLAs should not be considered in 271 proceedings.

The Facilitator notes that the public interest is not served by making CLECs abide by agreements they did not want to make and that the courts have found they should not

have had to accept. However, the prices CLECs have paid under some of the agreements have been discounted. Thus, it is not black-and-white that CLECs have suffered financially in all these cases. Qwest offers a waiver of the TLAs under certain conditions, conditions that do not seem justified by any evidence.

The Facilitator proposes SGAT language that provides for a limited period ending November 30, 2001 during which CLECs can identify special access circuits that will qualify for TLA waivers that Qwest must grant. Qwest must also agree to drop certain conditions; however, it can if it chooses try to show Commissions why an obligation-to-build condition should be kept in place.

Analysis:

- AT&T takes issue with the use of the *UNE Remand Order* as the effective date, and proposes that that date be changed to the effective date of the *Local Competition Order*, or August 8, 1996 (striking February 17, 2000). AT&T notes that even though that order was the subject of appeal, that the obligation to provide combination was never stayed.
- QSI notes that the Facilitator did not specify where in the SGAT this language should appear.

Further Analysis:

- Mr. Steese explains that the effective dates are appropriate because Qwest's obligation to create EELs "came into play" only after the issuance of the *UNE Remand Order*.

Recommendation:

No Commission Action Required – QSI agrees with the PIR. Facilitator's proposed language should be placed at SGAT § 9.2.3.2.

EELs, Issue 4: Waiving Local Use Restrictions on Private Lines Purchases in Lieu of EELs

Report Page 87, Qwest comments page 20, AT&T did not comment.

Background:

AT&T states that CLECs using private lines that it could convert to EELs, but chooses not to because of TLAs, should have the option of connecting them to UNEs, which it could do if it did have EELs. Furthermore, AT&T argues that when Qwest refuses to build transport as a UNE, it may respond affirmatively to requests for tariffed facilities (which have higher rates) that serve much the same function. In this situation, AT&T wants the right to connect the tariffed facilities to UNEs. Qwest refuses to make either connection.

The Facilitator notes that the preceding decision to make TLA waivers to CLECs when appropriate will address CLEC concerns for this issue. Hence, no additional action is needed.

Analysis:

- There was no challenge to the Facilitator's decision.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

EELs, Issue 5: Counting ISP Traffic Toward Local Use Requirements

Report Page 88, Qwest comments page 21, AT&T did not comment.

Background:

XO and ELI take the position that ISP traffic should be counted when considering whether CLECs can meet local usage requirements that allow them to commingle traffic. There is no question of evading access charges, the concern leading to the commingling prohibition, as ISP traffic is exempt from access charges. The advantage to CLECs of allowing this change is lowered costs. XO and ELI argue Qwest can provide service to its ISP customers in the desired configuration, so to deny CLECs the same arrangement is discriminatory. Qwest says the ISP Remand Order prohibits counting ISP traffic as local.

As the Facilitator notes, the ISP Remand Order is clear ISP traffic is interstate. However, the FCC may not have considered the consequences of that decision for the situation XO and ELI have raised. XO and ELI have made a good argument, one the FCC should recognize and make adjustments for. It seems, however, that the change will have to occur at the FCC level, because the Report offers no change to the Qwest SGAT that addresses the issue.

Analysis:

- No challenge was made to the Facilitator's decision.
- The Facilitator stops short of explicitly stating resolution of this issue is up to the FCC. However, the absence of a proposed SGAT change or other resolution leads to the conclusion the believes that is where the issue must be settled.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

CHECKLIST ITEM 6

Checklist Item 6 involves access to unbundled local switching. Local switching must be provided as a UNE, a decision the FCC reaffirmed in the UNE Remand Order. There is an exception to the requirement in the 50 largest MSAs. (Only Salt Lake City in the seven states has such an MSA.) If ILECs provide EELs in these areas, they are exempt from the switching requirement in the highest density zone (zone 1) for end customers with four or more lines. Group 4 Report, page 90

Switching, Issue 1: Access to AIN-Provided Features

Report Page 92, Qwest comments page 21, AT&T did not comment.

Background:

The features in question are those that: (a) could be in a particular switch, but have not been loaded; (b) are loaded but not activated in a switch; (c) activated in a switch; and (d) can be available in switches but also through an Advanced Intelligence Network (AIN).

AT&T fears some features may be provided by Qwest to itself through its AIN, then denied to CLECs because they are not available through a switch. Qwest said AT&T has raised an issue that does not apply, as all AIN features are available to CLECs. Qwest further states it makes the development portion of AIN available to CLECs, which satisfies its obligation to make the same capabilities it uses available to CLECs.

The Facilitator notes that Qwest meets all switch obligations, including continuing to provide features after it shifts provision from a switch to AIN. As for the AIN, Qwest does provide the capabilities to CLECs, which enables these companies to develop

features themselves. Requiring Qwest to provide the features it develops is not required and thus is not granted.

Analysis:

- No challenge to the Facilitator's decision.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

Switching, Issue 2: Exemption from Providing Access to Switching in Large Metropolitan Areas

Report Page 93, Qwest comments page 22, AT&T comments page 67.

Background:

Qwest identified end users in Salt Lake City that meet the exemption criteria and did so by the January 1, 1999 qualifying date. AT&T asks that it be allowed to continue serving a customer by switch if the customer has three or fewer lines but later increases to four or more. Qwest said it would provide such service, but at market rates rather than TELRIC rates. AT&T asked for several clarifications to the Section 9.11.2.5.3. In addition to the right to continue serving by switch customers that increase their total lines to four or more, AT&T wanted lines for separate customer locations counted separately, billing arrangements not considered in counting total lines among locations, non-voice lines not counting toward the four-line limit, the high-frequency portion of a line not counting as a line, MTE end users counted separately, and basic-rate ISDN counting as one line. Qwest did not accept the separate locations or billing clarifications, but did accept the final four.

The Facilitator notes that all customer lines exempt from the UNE switching requirement, including the first three lines, shall not be available at UNE rates.

Analysis:

- It is QSI's understanding that the Parties have resolved this issue, and anticipates details of such resolution at the oral arguments.

Further Analysis:

- The issue has not been resolved.
- However, this issue has no impact in Wyoming.

Recommendation:

No Commission Action Required.

Switching, Issue 3: Basis for Line Counts in Applying the Four-Line Exclusion

Report Page 95, Qwest comments page 22, AT&T did not comment.

Background:

The multiple-location business is addressed in this issue rather than the preceding issue, where it is first raised.

The Facilitator notes that the FCC would have said multiple locations for a business should be counted separately if it had meant for that interpretation of the four-line count to apply.

Analysis:

- This issue was not challenged.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

Switching, Issue 4: Providing Switch Interfaces at the GR-303 and TR-088 Level

Report Page 96, Qwest comments page 23, AT&T comments page 69.

Background:

Qwest at first refused to provide CLECs such access, then noted in its brief that it made changes intended to accommodate the request in SGAT Section 9.11.1.1.2.

The Facilitator notes that AT&T was unaware of the language change made by Qwest in the brief. AT&T shall have an opportunity to address the language in the comments to the Group 4 Report before the issue is considered closed.

Analysis:

- In its comments, AT&T noted that the language contained in § 9.11.1.1.2 indeed resolves this issue for AT&T and that the issue can be considered closed. AT&T wants to make sure that the final SGAT does include § 9.11.1.1.2.

Recommendation:

No Commission Action Required – QSI agrees with the PIR.

CAS Participation:

It should be noted that even though the CAS has not offered extensive analysis with respect to this or other reports, that it has been active in putting its position before the Commission. CAS position is that Qwest has not demonstrated that it qualifies for relief, and that although they applaud what is coming out of the SGAT, they want to see how it works in practice.

Additionally, CAS has noted that the SGAT does not operate in a void, and that many other factors, including the TELRIC cost docket will have major impacts on

competition in Wyoming. QSI agrees with the CAS in this area. Nonetheless, as these SGAT items are addressed on an issue-by-issue basis, the analysis must be done as if the SGAT was operating in a void. QSI therefore cautions the Commission to consider the CAS's arguments (looking at the big picture) before it makes any final decisions with respect to a positive recommendation to the FCC.