DIVIDER

STATE OF NORTH DAKOTA

□INFORMATION TECHNOLOGY DEPARTMENT

SFN 2053 (4-2002)

PU-439-03-295
Public Service Commission
Local Competition
Investigation 03
Filed 6/2/2003 **Closed 2/9/2006**

Anderson, Lori D.

From: Bauske, Shelly A.
Sent: Monday, January 22, 2007 11:00 AM
To: Anderson, Lori D.
Subject: FW: Case No. PU-439-03-295 - Utility Valuation

Hi Lori

Please docket this. Thank you.

From: Geiger, Gloria A.
Sent: Monday, January 22, 2007 10:47 AM
To: Bauske, Shelly A.
Subject: RE: Case No. PU-439-03-295 - Utility Valuation

Thank you, please docket this email in the case.

Gloria Geiger
North Dakota Public Service Commission
600 E Boulevard 12th Floor Dept 408
Bismarck ND 58505-0408
701-328-2401
fax 701-328-2133

From: Bauske, Shelly A.
Sent: Monday, January 22, 2007 10:30 AM
To: Geiger, Gloria A.
Subject: Case No. PU-439-03-295 - Utility Valuation

Hi Gloria

Per my conversation with Illona, the $47.64 in this case will not be billed due to the number of parties involved (31).

If you have any questions, please give me a call. Thank you.

OFFICE OF ADMINISTRATIVE HEARINGS

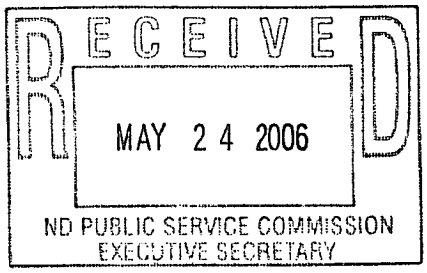
STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C. Hoberg
DIRECTOR

701-328-3260
Fax 701-328-3254
oah@state.nd.us
www.nd.gov/oah

May 23, 2006

Mr. William W. Binek
Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480



Re: Qwest Corporation
Local Competition Investigation
Case No. PU-439-03-295
OAH File No. 20030389

Dear Mr. Binek:

On November 26, 2003, you requested the designation of an administrative law judge from this office to preside as a procedural hearing officer in the matter of Qwest Corporation (PU-439-03-295) - a local competition case. A hearing was scheduled for May 10-14, 2005. However, on February 25, 2004, the Commission granted a motion to stay this proceeding. On January 11, 2006, in response to my inquiry, you informed me that an indefinite stay was still in effect. On May 22, 2006, in response to my inquiry, you informed me that the Commission closed this case on February 9, 2006. Accordingly, I am closing our file on this matter and returning that portion of the record I have in my possession to you. Enclosed are copies of documents that have been transmitted to us, as well as originals and copies of documents received while the file was in our possession, for filing with the official agency record of this matter.

Thank you for your attention to this matter.

Sincerely,

Allen C. Hoberg
Administrative Law Judge

ACH/eap

Encl.

cc: Qwest Corporation

249 PU-439-03-295 Pages: 1

Letter closing ALJ's file

by Office of Administrative Hearings
05/24/2006 CC: Comm Legal Illona

Public Service Commission
Receipt of Payment

Receipt# 6549

Received: 4/28/2006 Check# 13157 for $123.33

Subject: Utility Valuation - Prior Biennium

Docket # PU-439-03-295

IdeaOne Telecom Group LLC
3239 39TH ST SW
Fargo ND 58104-6900

248 **PU-439-03-295** Pages: 1

Receipt# 6,549 $123.33

by IdeaOne Telecom Group LLC

04/28/2006

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

ORDER CLOSING INVESTIGATION

February 8, 2006

Under section 251(c)(3) of the Telecommunications Act of 1996, incumbent local exchange carriers (ILECs) have the duty to provide nondiscriminatory access to telecommunications network elements on an unbundled basis to competitive local exchange carriers. The Federal Communications Commission (FCC) is required to determine specific unbundled network elements (UNEs) that must be provided.

In December 2001, the FCC initiated a proceeding to re-examine the network element unbundling obligations of ILECs. On February 20, 2003 the FCC adopted its Triennial Review Order (*TRO*), including a new list of UNEs. For a significant group of issues, the FCC required state commissions to complete their analyses and reviews within nine months from the effective date of the *TRO*. The *TRO* was appealed to the United States Court of Appeals for the District of Columbia Circuit (Court).

On June 18, 2003 the Commission opened an investigation to address issues related to the *TRO*. On February 13, 2004 the Commission issued an Interim Stay of the procedural schedule to provide time for parties to respond concerning the implications of a stay until the Court made its decision. A March 2, 2004 Court decision on appeal vacated many of the FCC's rules and vacated the FCC's delegation of authority to state commissions. On April 14, 2004 the Commission continued indefinitely the stay in this proceeding.

On December 14, 2005 the Commission issued a notice that it intended to close this investigation and provided opportunity for comments by January 20, 2006 concerning the implications of closing the proceeding. No comments were received in opposition to closing the investigation.

The Commission finds it is appropriate to close the investigation.

Order

The Commission orders this proceeding is closed.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **9th day of February, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, **12** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order Closing Investigation

The envelopes were addressed as follows:

Robert M Pomeroy Jr
Holland & Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village CO 80111
Cert. No. 7004 2510 0004 8815 2650

Jason Topp
Qwest Services Corporation
200 S 5th St 395
Minneapolis MN 55402
Cert. No. 7004 2510 0004 8815 2667

Gary B Witt
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202
Cert. No. 7004 2510 0004 8815 2674

Marilyn Foss Atty for MCI
P O Box 2216
Bismarck ND 58502-2216

Cert. No. 7004 2510 0004 8815 2681

Mr Thomas F Kelsch
Kelsch Kelsch Ruff & Kranda
P O Box 1266
Mandan ND 58554-7266
Cert. No. 7004 2510 0004 8815 2698

Steven E Noack Atty for IdeaOne
500 2nd Ave N Ste 514
Fargo ND 58108-2783

Cert. No. 7004 2510 0004 8815 2704

Deborah H Harwood
Integra Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton OR 97006-6902

Cert. No. 7004 2510 0004 8815 2711

Dan Lipschultz Atty for McLeod, U S Link
Moss & Barnett
4800 Wells Fargo Ctr
90 S 7th St
Minneapolis MN 55402-4129
Cert. No. 7004 2510 0004 8815 2728

Dick Thronson Manager
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59623-0600
Cert. No. 7004 2510 0004 8815 2735

Patrick Durick Atty for Midcontent Comm
P O Box 400
Bismarck ND 58502-0400

Cert. No. 7004 2510 0004 8815 2742

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. **7004 2510 0004 8815 2759**

Walter F Eggers III Atty for AT&T
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne WY 82001-3162
Cert. No. 7004 2510 0004 8815 2766

Sharon Helbling further deposes and says that on the **9th day of February, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, **11** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of:

Order Closing Investigation

Scott Macintosh
Qwest Corporation
P O Box 5508
Bismarck ND 58506-5508

Michael C Strand
P O Box 5237
Helena MT 59604-5237

Mary Lohnes
Midcontinent Communications
5001 W 41st St
Sioux Falls SD 57106

Steven D Lysne
SRT Communications Inc.
P O Box 2027
Minot ND 58702-2027

Jim Howard
John Staurulakis Inc
Eagandale Corporate Ctr Ste 310
1380 Corporate Ctr Curve
Eagan MN 55121

Michel L Singer Nelson
WorldCom Inc
707 26th St Ste 4200
Denver CO 80202

Thomas F Dixon
WorldCom Inc
707 26th St Ste 4200
Denver CO 80202

William A Haas
McLeodUSA
Tech Park
6400 C St SW
Cedar Rapids IA 51404

Lesley J Lehr
WorldCom Inc
707 26th St Ste 4200
Denver CO 80202

Bob Johnson
IdeaOne Telecom
3239 39th St SW
Fargo ND 58104

Peter Healy
TDS Metrocom Inc
525 Junction Rd Ste 6000
Madison WI 53717

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **9th day of February, 2006**.

Notary Public

SEAL

Public Service Commission
State of North Dakota

Official Mail 600 E BOULEVARD AVE DEPT 408
BISMARCK ND 58505-0480

RESORTED FIRST CLASS

FEB 09 06 ND

02 0.37 1

PB METER 7143726 U.S. POSTAGE

RECEIVED
FEB 22 2006
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

ATTEMPTED NOT KNOWN

THOMAS F DIXON
WORLDCOM INC
707 26TH ST STE 4200
DENVER CO 80202

A*S*Y*T*85*0*0*C

Public Service Commission
State of North Dakota

Official Mail 600 E BOULEVARD AVE DEPT 408
BISMARCK ND 58505-0480

RESORTED FIRST CLASS

FEB 09 06 ND

02 0.37 1

PB METER 7143726 U.S. POSTAGE

RECEIVED
FEB 22 2006
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

ATTEMPTED NOT KNOWN

LESLEY J LEHR
WORLDCOM INC
707 26TH ST STE 4200
DENVER CO 80202

58505-0480 *9*N85*0205

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **15th day of February, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order Closing Investigation

The envelope was addressed as follows:

Deborah H Harwood
Integra Telecom
1201 NE Lloyd Blvd Ste 500
Portland OR 97232-1259
Cert. No. 7004 2510 0004 8815 2834

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **15th day of February, 2006**.

Notary Public

SEAL

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

Public Service Commission
State of North Dakota

Official Mail 600 E BOULEVARD AVE DEPT 408
BISMARCK ND 58505-0480

CERTIFIED MAIL™

7004 2510 0004 8815 2711

RETURN RECEIPT REQUESTED

DEBORAH H HARWOOD
INTEGRA TELECOM
19545 NW VON NEUMANN DR STE 200
BEAVERTON OR 97006-6902

X 970 NO 1 105 I 01 02/12/06
FORWARD TIME EXP RTN TO SEND
:INTEGRA TELECOM INC
1201 NE LLOYD BLVD STE 500
PORTLAND OR 97232-1259

RETURN TO SENDER

97006X6933
58505%0480

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Deborah L Harwood
Integra Telecom
19545 NW Von Neumann Dr
Ste 200
Beaverton Or 97006-6902

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (*Printed Name*)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (*Extra Fee*) ☐ Yes

2. Article Number
(*Transfer from service label*) 7004 2510 0004 8815 2711

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **14th day of February, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order Closing Investigation

The envelope was addressed as follows:

Steven E Noack Atty for IdeaOne
215 30th St N
Moorhead MN 56561-1077
Cert. No. 7004 2510 0004 8815 2827

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Sharon Helbling

Subscribed and sworn to before me
this **14th day of February, 2006**.

Sandra L. Scott
Notary Public

SEAL

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

246 **PU-439-03-295** Pages: 1

Affidavit of Service

by Public Service Commission
02/14/2006 CC: Comm Legal Illona . .

Public Service Commission
State of North Dakota

Official Mail 600 E BOULEVARD AVE DEPT 408
BISMARCK ND 58505-0480

CERTIFIED MAIL™

7004 2510 0004 8815 2704

RETURN RECEIPT REQUESTED

$4.64
PITNEY BOWES
02 1A
0143776
U.S. POSTAGE

OTF
64

STEVEN E NOACK ATTY FOR IDEAONE
500 2ND AVE N STE 514
FARGO ND 58108-2783

58102#4850

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PA-439-03-395

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Steven E Maack
500 2nd Ave N Ste 54
Fargo ND 58108-2783

A. Signature
X
☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label) 7004 2510 0004 8815 2704

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

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Robert M Pomeroy Jr
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200 S 5th St 395
Minneapolis MN 55402
Cert. No. 7004 2510 0004 8815 2667

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1875 Lawrence St Ste 1575
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Cert. No. 7004 2510 0004 8815 2674

Marilyn Foss Atty for MCI
P O Box 2216
Bismarck ND 58502-2216

Cert. No. 7004 2510 0004 8815 2681

Mr Thomas F Kelsch
Kelsch Kelsch Ruff & Kranda
P O Box 1266
Mandan ND 58554-7266
Cert. No. 7004 2510 0004 8815 2698

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4800 Wells Fargo Ctr
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Dick Thronson Manager
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P O Box 600
Scobey MT 59623-0600
Cert. No. 7004 2510 0004 8815 2735

Patrick Durick Atty for Midcontent Comm
P O Box 400
Bismarck ND 58502-0400

Cert. No. 7004 2510 0004 8815 2742

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. **7004 2510 0004 8815 2759**

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2515 Warren Ave Ste 450
Cheyenne WY 82001-3162
Cert. No. 7004 2510 0004 8815 2766

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Order Closing Investigation

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Qwest Corporation
P O Box 5508
Bismarck ND 58506-5508

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P O Box 5237
Helena MT 59604-5237

Mary Lohnes
Midcontinent Communications
5001 W 41st St
Sioux Falls SD 57106

Steven D Lysne
SRT Communications Inc.
P O Box 2027
Minot ND 58702-2027

Jim Howard
John Staurulakis Inc
Eagandale Corporate Ctr Ste 310
1380 Corporate Ctr Curve
Eagan MN 55121

Michel L Singer Nelson
WorldCom Inc
707 26th St Ste 4200
Denver CO 80202

Thomas F Dixon
WorldCom Inc
707 26th St Ste 4200
Denver CO 80202

William A Haas
McLeodUSA
Tech Park
6400 C St SW
Cedar Rapids IA 51404

Lesley J Lehr
WorldCom Inc
707 26th St Ste 4200
Denver CO 80202

Bob Johnson
IdeaOne Telecom
3239 39th St SW
Fargo ND 58104

Peter Healy
TDS Metrocom Inc
525 Junction Rd Ste 6000
Madison WI 53717

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **9th day of February, 2006**.

Notary Public

SEAL

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

APPROVED
DATE: 2-8-06
kmc

MOTION

February 8, 2006

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission close the Public Service Commission's Local Competition Investigation, Case No. PU-439-03-295.

PJF

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

ORDER CLOSING INVESTIGATION

February 8, 2006

Under section 251(c)(3) of the Telecommunications Act of 1996, incumbent local exchange carriers (ILECs) have the duty to provide nondiscriminatory access to telecommunications network elements on an unbundled basis to competitive local exchange carriers. The Federal Communications Commission (FCC) is required to determine specific unbundled network elements (UNEs) that must be provided.

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Order

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PUBLIC SERVICE COMMISSION

Susan E. Wefald	Tony Clark	Kevin Cramer
Commissioner	President	Commissioner

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
JAN 27 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

January 25, 2006

Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION
CASE NO. PU-439-03-295

The Rural Telephone Company Group (RTCG) submits this comment in the above matter pursuant to a request from the Commission for comments.

The RTCG advises the North Dakota Public Service Commission (PSC) that they have no opposition to the PSC closing its investigation.

Don Negaard

jt

242 PU-439-03-295 Pages: 1
Comments - No opposition to Commission closing its investigation
by Rural Telephone Company Group by Don Negaard, A
01/27/2006 CC: Comm Legal Illona . .

Public Service Commission
Receipt of Payment

Receipt# 6455

Received: 1/18/2006 Check# 71545 for $13.33

Subject: Utility Valuation

Docket # PU-439-03-295

SRT Communications, Inc.
3615 N Broadway P O Box 2027
Minot ND 58702-2027

241 **PU-439-03-295** Pages: 1

Receipt# 6,455 $13.33

by SRT Communications, Inc.

01/18/2006

Public Service Commission
Receipt of Payment

Receipt# 6454

Received: 1/12/2006 Check# 98722 for $13.32

Subject: Utility Valuation

Docket # PU-439-03-295

North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

240 **PU-439-03-295** Pages: 1

Receipt# 6,454 $13.32

by North Dakota Telephone Company

01/12/2006

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

January 4, 2006

Steven E Noack
Attorney for IdeaOne
PO Box 2783
Fargo ND 5818-2783

RE: Case No. PU-439-03-295

Dear Mr. Noack:

Enclosed is a copy of a statement approved by the Public Service Commission for expenses incurred in Case No. PU-439-03-295.

This statement was originally sent on December 1, 2004 and our records indicate that payment has not been received. N.D.C.C. § 49-21-01.7 requires that expenses for these proceedings be billed by the Public Service Commission and must be paid for by the telecommunications company involved in the proceeding.

Please send your check made payable to the Public Service Commission for the amount due as soon as possible to clear this account.

Thank you.

Sincerely,

William W. Binek
Chief Counsel

239 PU-439-03-295 Pages: 3

Reminder letter re statement

by Public Service Commission
01/04/2006 CC: Comm Legal Illona

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

January 4, 2006

Steve Lysne
SRT Communications
PO Box 2027
Minot ND 58702-2027

RE: Case No. PU-439-03-295

Dear Mr. Lysne:

Enclosed is a copy of a statement approved by the Public Service Commission for expenses incurred in Case No. PU-439-03-295.

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Please send your check made payable to the Public Service Commission for the amount due as soon as possible to clear this account.

Thank you.

Sincerely,

William W. Binek
Chief Counsel

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

January 4, 2006

David Dircks
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

RE: Case No. PU-439-03-295

Dear Mr. Dircks:

Enclosed is a copy of a statement approved by the Public Service Commission for expenses incurred in Case No. PU-439-03-295.

This statement was originally sent on December 1, 2004 and our records indicate that payment has not been received. N.D.C.C. § 49-21-01.7 requires that expenses for these proceedings be billed by the Public Service Commission and must be paid for by the telecommunications company involved in the proceeding.

Please send your check made payable to the Public Service Commission for the amount due as soon as possible to clear this account.

Thank you.

Sincerely,

William W. Binek
Chief Counsel

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **21st day of December, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Notice of Intent to Close Investigation

The envelope was addressed as follows:

Steven E Noack Atty for IdeaOne
P O Box 1077
Moorhead MN 56561-1077
Cert. No. 7003 2260 0001 3516 1560

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **21st day of December, 2005**.

Notary Public

SEAL

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

CERTIFIED MAIL™

Public Service Commission
State of North Dakota

Official Mail 600 E BOULEVARD AVE DEPT 408
BISMARCK ND 58505-0480

7003 2260 0001 3516 1287

PB METER 7143726 U.S. POSTAGE 4.42

RETURN RECEIPT REQUESTED

RETURNED TO SENDER
REASON FOR RETURN
Unclaimed
Addressee moved
Insufficient address
No such number
No such office in state
Do not remail in this envelope

STEVEN E NOACK ATTY FOR IDEAONE
500 2ND AVE N STE 514
FARGO ND 58108-2783

Notice
1st Notice
2nd Notice
Refused

OTF
6/22

58102#4850

PA-439-03-395

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Steven E Noack
500 2nd Ave Ste 514
Fargo ND 58108-2783

A. Signature

X ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1287

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **15th day of December, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, **13** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Notice of Intent to Close Investigation

The envelopes were addressed as follows:

Robert M Pomeroy Jr
Holland & Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village CO 80111
Cert. No. 7003 2260 0001 3516 1232

Melissa K Thompson
Qwest Corporation
1801 California St
Denver CO 80201
Cert. No. 7003 2260 0001 3516 1249

Tim Goodwin
Qwest Corporation
1801 California St Ste 4900
Denver CO 80202
Cert. No. 7003 2260 0001 3516 1256

Marilyn Foss Atty for MCI
P O Box 2216
Bismarck ND 58502-2216

Cert. No. 7003 2260 0001 3516 1263

Mr Thomas F Kelsch
Kelsch Kelsch Ruff & Kranda
P O Box 1266
Mandan ND 58554-7266
Cert. No. 7003 2260 0001 3516 1270

Steven E Noack Atty for IdeaOne
500 2nd Ave N Ste 514
Fargo ND 58108-2783

Cert. No. 7003 2260 0001 3516 1287

Deborah H Harwood
Integra Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton OR 97006-6902

Cert. No. 7003 2260 0001 3516 1294

Dan Lipschultz Atty for McLeod, U S Link
Moss & Barnett
4800 Wells Fargo Ctr
90 S 7th St
Minneapolis MN 55402-4129
Cert. No. 7003 2260 0001 3516 1300

Dick Thronson Manager
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59623-0600
Cert. No. 7003 2260 0001 3516 1317

Patrick Durick Atty for Midcontent Comm
P O Box 400
Bismarck ND 58502-0400

Cert. No. 7003 2260 0001 3516 1324

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. **7003 2260 0001 3516 1331**

Walter F Eggers III Atty for AT&T
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne WY 82001-3162
Cert. No. 7003 2260 0001 3516 1348

Gary B Witt
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202
Cert. No. 7003 2260 0001 3516 1355

Sharon Helbling further deposes and says that on the **15th day of December, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, **11** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of:

Notice of Intent to Close Investigation

Scott Macintosh
Qwest Corporation
P O Box 5508
Bismarck ND 58506-5508

Michael C Strand
P O Box 5237
Helena MT 59604-5237

Mary Lohnes
Midcontinent Communications
5001 W 41st St
Sioux Falls SD 57106

Steven D Lysne
SRT Communications Inc.
P O Box 2027
Minot ND 58702-2027

Jim Howard
John Staurulakis Inc
Eagandale Corporate Ctr Ste 310
1380 Corporate Ctr Curve
Eagan MN 55121

Michel L Singer Nelson
WorldCom Inc
707 26th St Ste 4200
Denver CO 80202

Thomas F Dixon
WorldCom Inc
707 26th St Ste 4200
Denver CO 80202

William A Haas
McLeodUSA
Tech Park
6400 C St SW
Cedar Rapids IA 51404

Lesley J Lehr
WorldCom Inc
707 26th St Ste 4200
Denver CO 80202

Bob Johnson
IdeaOne Telecom
3239 39th St SW
Fargo ND 58104

Peter Healy
TDS Metrocom Inc
525 Junction Rd Ste 6000
Madison WI 53717

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **15th day of December, 2005**.

Notary Public

SEAL

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

APPROVED
DATE: 12-14-05
KMF

MOTION

December 14, 2005

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission issue a Notice of Intent to Close Investigation in the Public Service Commission's Local Competition Investigation, Case No. PU-439-03-295.

PJF

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

NOTICE OF INTENT TO CLOSE INVESTIGATION

December 14, 2005

Under section 251(c)(3) of the Telecommunications Act of 1996, incumbent local exchange carriers (ILECs) have the duty to provide nondiscriminatory access to telecommunications network elements on an unbundled basis to competitive local exchange carriers (CLECs). The Federal Communications Commission (FCC) is required to determine specific unbundled network elements (UNEs) that must be provided.

In December 2001, the FCC initiated a proceeding to re-examine the network element unbundling obligations of ILECs. On February 20, 2003 the FCC adopted its Triennial Review Order (*TRO*), including a new list of UNEs. For a significant group of issues, the FCC required state commissions to complete their analyses and reviews within nine months from the effective date of the *TRO*. The *TRO* was appealed to the United States Court of Appeals for the District of Columbia Circuit (Court).

On June 18, 2003 the Commission opened an investigation to address issues related to the *TRO*. On February 13, 2004 the Commission issued an Interim Stay of the procedural schedule to provide time for parties to respond concerning the implications of a stay until the Court made its decision. A March 2, 2004 Court decision on appeal vacated many of the FCC's rules and vacated the FCC's delegation of authority to state commissions. On April 14, 2004 the Commission continued indefinitely the stay in this proceeding.

The Commission is seeking comments concerning the implications of closing this proceeding. **Comments are due by January 20, 2006**.

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Illona Jeffcoat-Sacco, Executive Secretary.

PUBLIC SERVICE COMMISSION

Susan E. Wefald **Commissioner**	**Tony Clark** **President**	**Kevin Cramer** **Commissioner**

235 **PU-439-03-295** Pages: 1

Notice of Intent to Close Investigation

by Public Service Commission
12/14/2005 CC: Comm Legal Illona . .

Public Service Commission
Receipt of Payment

Receipt# 6128

Received: 1/28/2005 Check# 889334 for $123.32

Docket # PU-439-03-295

Subject: Utility Valuation

McLeodUSA
P. O. Box 3177
Cedar Rapids IA 52406-3177

234 **PU-439-03-295** Pages: 1

Receipt# 6,128 $123.32

by McLeodUSA

01/28/2005

Public Service Commission
Receipt of Payment

Receipt# 6127

Received: 1/28/2005 Check# 11509986 for $486.36

Docket # PU-439-03-295

Subject: Utility Valuation

.

AT&T
PO Box 598018
Orlando FL 32859

233	**PU-439-03-295**	Pages: 1
	Receipt# 6,127 $486.36	
	by AT&T	
	01/28/2005	

Public Service Commission
Receipt of Payment

Receipt# 6121

Received: 1/25/2005 Check# 179927 for $123.32

Subject: Utility Valuation

Docket # PU-439-03-295

Integra Telecom
19545 NW Von Neumann Dr #220
Beaverton OR 97006

232	**PU-439-03-295**	Pages: 1
	Receipt# 6,121 $123.32	
	by Integra Telecom	
	01/25/2005	

Public Service Commission
Receipt of Payment

Receipt# 6112

Received: 1/11/2005 Check# 4132 for $123.32

Subject: Utility Valuation

Docket # PU-439-03-295

Missouri Valley Communications, Inc.
P. O. Box 600
Scobey MT 59263

231	**PU-439-03-295**	Pages: 1
	Receipt# 6,112 $123.32	
	by Missouri Valley Communications, Inc.	
	01/11/2005	

Public Service Commission
Receipt of Payment

Receipt# 6107

Received: 1/5/2005 Check# 28465 for $37.18

Subject: Utility Valuation

Docket # PU-439-03-295

Polar Communications Mutual Aid Corporation

Park River ND 58270

230	**PU-439-03-295**	Pages: 1
	Receipt# 6,107 $37.18	
	by Polar Communications Mutual Aid Corporation	
	01/05/2005	

Public Service Commission
Receipt of Payment

Receipt# 6104

Received: 1/5/2005 Check# 39394 for $13.33

Subject: Utility Valuation

Docket # PU-439-03-295

Red River Telecom, Inc.
P. O. Box 136
Abercrombie ND 58001

229 **PU-439-03-295** Pages: 1

Receipt# 6,104 $13.33

by Red River Telecom, Inc.

01/05/2005

Public Service Commission
Receipt of Payment

Receipt# 6103

Received: 1/5/2005 Check# 39394 for $13.33

Subject: Utility Valuation

Docket # PU-439-03-295

Prefile balance $. Notify

Red River Rural Telephone Association

Abercrombie ND 58001

228 **PU-439-03-295** Pages: 1

Receipt# 6,103 $13.33

by Red River Rural Telephone Association

01/05/2005

Public Service Commission
Receipt of Payment

Receipt# 6101

Received: 1/5/2005 Check# 10572 for $13.32

Docket # PU-439-03-295

Subject: Utility Valuation

.

Moore & Liberty Tele Co.

Enderlin ND 58027

227 PU-439-03-295 Pages: 1

Receipt# 6,101 $13.32

by Moore & Liberty Tele Co.

01/05/2005

Public Service Commission
Receipt of Payment

Receipt# 6099

Received: 1/5/2005 Check# 1004418876 for $486.33

Docket # PU-439-03-295

Subject: Utility Valuation

.

MCI
22001 Loudoun County Parkway
Ashburn VA 20147

226	**PU-439-03-295**	Pages: 1
	Receipt# 6,099 $486.33	
	by MCI	
	01/05/2005	

Public Service Commission
Receipt of Payment

Receipt# 6098

Received: 1/5/2005 Check# 1500051520 for $123.32

Docket # PU-439-03-295

Subject: Utility Valuation

U.S. Link, Inc.
102 Main Street
Pequot Lakes MN 56472

225	**PU-439-03-295**	Pages: 1
	Receipt# 6,098 $123.32	
	by U.S. Link, Inc.	
	01/05/2005	

Public Service Commission
Receipt of Payment

Receipt# 6095

Received: 1/5/2005 Check# 101053 for $13.33

Docket # PU-439-03-295

Subject: Utility Valuation

Prefile balance $. Notify

West River Telecommunications Cooperative

Hazen ND 58545

224	**PU-439-03-295**	Pages: 1
	Receipt# 6,095 $13.33	
	by West River Telecommunications Cooperative	
	01/05/2005	

Public Service Commission
Receipt of Payment

Receipt# 6086

Received: 12/21/2004 Check# 13688 for $13.32

Subject: Utility Valuation

Docket # PU-439-03-295

Midstate Communications, Inc.
P. O. Box 400
Stanley ND 58784-0400

223 **PU-439-03-295** Pages: 1

Receipt# 6,086 $13.32

by Midstate Communications, Inc.

12/21/2004

Public Service Commission
Receipt of Payment

Receipt# 6084

Received: 12/21/2004 Check# 43111 for $13.32

Subject: Utility Valuation

Docket # PU-439-03-295

Midstate Telephone Co.

Stanley ND 58784

222 **PU-439-03-295** Pages: 1

Receipt# 6,084 $13.32

by Midstate Telephone Co.

12/21/2004

Public Service Commission
Receipt of Payment

Receipt# 6082

Received: 12/21/2004 Check# 51504 for $26.66

Subject: Utility Valuation (also pd for Turtle Mountain)

Docket # PU-439-03-295

United Telephone Mut Aid Corp

Langdon ND 58249

221	**PU-439-03-295**	Pages: 1
	Receipt# 6,082 $26.66	
	by United Telephone Mut Aid Corp	
	12/21/2004	

Public Service Commission
Receipt of Payment

Receipt# 6080

Received: 12/21/2004 Check# 28061 for $13.32

Docket # PU-439-03-295

Subject: Utility Valuation

Northwest Communications Cooperative

Ray ND 58849

220 PU-439-03-295 Pages: 1

Receipt# 6,080 $13.32

by Northwest Communications Cooperative

12/21/2004

Public Service Commission
Receipt of Payment

Receipt# 6077

Received: 12/21/2004 Check# 500331579 for $3,000.89

Subject: Utility Valuation

Docket # PU-439-03-295

Qwest
5325 Zuni St Room 728
Denver CO 80221

219	**PU-439-03-295**	Pages: 1
	Receipt# 6,077 $3,000.89	
	by Qwest	
	12/21/2004	

Public Service Commission
Receipt of Payment

Receipt# 6073

Received: 12/21/2004 Check# 86473 for $13.32

Subject: Utility Valuation

Docket # PU-439-03-295

BEK Communications Cooperative

Steele ND 58482

218 **PU-439-03-295** Pages: 1

Receipt# 6,073 $13.32

by BEK Communications Cooperative

12/21/2004

Public Service Commission
Receipt of Payment

Receipt# 6070

Received: 12/21/2004 Check# 740329 for $123.33

Subject: Utility Valuation

Docket # PU-439-03-295

Midcontinent Communications
410 So. Phillips Ave.
Sioux Falls SD 57104-6824

217 PU-439-03-295 Pages: 1

Receipt# 6,070 $123.33

by Midcontinent Communications

12/21/2004

Public Service Commission
Receipt of Payment

Receipt# 6069

Received: 12/21/2004 Check# 11390 for $13.32

Subject: Utility Valuation

Docket # PU-439-03-295

Inter-Community Telephone Company
PO Box 8
Nome ND 58062-0008

216	**PU-439-03-295**	Pages: 1
	Receipt# 6,069 $13.32	
	by Inter-Community Telephone Company	
	12/21/2004	

Public Service Commission
Receipt of Payment

Receipt# 6066

Received: 12/21/2004 Check# 64487 for $39.96

Subject: Utility Valuation

Docket # PU-439-03-295

Dickey Rural Telephone Cooperative

Ellendale ND 58436

215 PU-439-03-295 Pages: 1

Receipt# 6,066 $39.96

by Dickey Rural Telephone Cooperative

12/21/2004

Public Service Commission
Receipt of Payment

Receipt# 6064

Received: 12/21/2004 Check# 103239 for $15.03

Docket # PU-439-03-295

Subject: Utility Valuation

Consolidated Telcom
507 S Main
Dickinson ND 58601

214	**PU-439-03-295**	Pages: 1
	Receipt# 6,064 $15.03	
	by Consolidated Telcom	
	12/21/2004	

Public Service Commission
Receipt of Payment

Receipt# 6060

Received: 12/21/2004 Check# 44121 for $13.33

Subject: Utility Valuation

Docket # PU-439-03-295

Reservation Telephone Cooperative

Parshall ND 58770

213 **PU-439-03-295** Pages: 1

Receipt# 6,060 $13.33

by Reservation Telephone Cooperative

12/21/2004

Public Service Commission
Receipt of Payment

Receipt# 6058

Received: 12/21/2004 Check# 12850 for $13.32

Subject: Utility Valuation

Docket # PU-439-03-295

Griggs County Tele Co.

Cooperstown ND 58425

212 PU-439-03-295 Pages: 1

Receipt# 6,058 $13.32

by Griggs County Tele Co.

12/21/2004

APPROVED
DATE: 12-1-04
KMF

MOTION

December 1, 2004

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission bill the parties for costs incurred to date in Case No. PU-439-03-295, Public Service Commission, Local Competition, Investigation.

210 PU-439-03-295 Pages 5

Utility Valuation Motion/Letter/Billing Statement
by Public Service Commission

12/01/2004 CC: Comm Legal Ilona ALJ

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

December 1, 2004

Scott Macintosh
Qwest Corporation
PO Box 5508
Bismarck ND 58502-5508

Walter F Eggers III
Attorney for AT&T
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne WY 82001-3162

Michel Singer Nelson
MCI
707 17th St Ste 4200
Denver CO 80202

Steven E Noack
Attorney for IdeaOne
PO Box 2783
Fargo ND 58108-2783

Patrick Durick
Attorney for Midcontinent Communications
PO Box 400
Bismarck ND 58502-0400

Dick Thronson Manager
Missouri Valley Communications Inc
PO Box 600
Scobey MT 59623-0600

Dan Lipschultz
Attorney for McLeodUSA and U S Link
Moss & Barnett
4800 Wells Fargo Center
90 S 7th St
Minneapolis MN 55402-4129

Deborah J Harwood
Integra Telecom of North Dakota Inc
19545 NW Von Neumann Dr Ste 200
Beaverton OR 97006-6902

Jerome Tishmack
BEK Communications Cooperative
PO Box 230
Steele ND 58482-0230

Paul Schuetzler
Consolidated Telcom
Consolidated Communications Networks Inc
PO Box 1077
Dickinson ND 58601-1077

Keith Larson
Dakota Central Telecommunications Cooperative
Daktel Communications LLC
PO Box 299
Carrington ND 58421-0299

Mark Scallon
Dickey Rural Telephone Cooperative
Dickey Rural Communications Inc
Dickey Rural Access Inc
PO Box 69
Ellendale ND 58436-0069

Ray Brown
Griggs County Telephone Company
PO Box 506
Cooperstown ND 58425-0506

Keith Anderson
Inter-Community Telephone Company LLC
PO Box 8
Nome ND 58062-0008

Mark Wilhelmi
Midstate Telephone Company
Midstate Communications Inc
PO Box 400
Stanley ND 58784-0400

Ray Brown
Moore & Liberty Telephone Company
PO Box 66
Enderlin ND 58027

Dave Dircks
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

Dwight Schmitt
Northwest Communications Cooperative
PO Box 38
Ray ND 58849-0038

David Dunning
Polar Communications Mutual Aid Corp
Polar Telecommunications Inc
Polar Telcom Inc
PO Box 270
Park River ND 58270-0270

Jeff Olson
Red River Rural Telephone Association
Red River Telecom Inc
PO Box 136
Abercrombie ND 58001-0136

Royce Aslakson
Reservation Telephone Cooperative
PO Box 68
Parshall ND 58770-0068

Steve Lysne
SRT Communications Inc
PO Box 2027
Minot ND 58702-2027

Kenneth Carlson
United Telephone Mutual Aid Corporation
Turtle Mountain Communications Inc
PO Box 729
Langdon ND 58249-0729

Albert Grosz
West River Telecommunications Cooperative
PO Box 467
Hazen ND 58545-0467

RE: Case No. PU-439-03-295
Public Service Commission
Local Competition
Investigation

Enclosed is a copy of the statement approved at the December 1, 2004 Public Service Commission meeting for the expenses incurred to date in Case No. PU-439-03-295.

Under N.D.C.C. 49-21-01.7, these expenses are billed through the Valuation Fund and must be paid for by the telecommunications company involved.

Please make your check payable to the *Public Service Commission.*

Sincerely,

Gloria Geiger
Admin Staff Officer
701-328-2401

Enc.

c: Don Negaard
Pringle & Herigstad
PO Box 1000
Minot ND 58702-1000

Mary Lohnes
Midcontinent Communications
5001 W 41st St
Sioux Falls SD 57106

Gary B Witt
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202

Billing Statement

December 1, 2004

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

Bill To:

Qwest Corporation	$3,000.89
AT&T (Intervened 9/11/03)	486.36
MCI (Intervened 9/24/03)	486.33
IdeaOne (Intervened 11/5/03)	123.33
Midcontinent Communications (Intervened 11/5/03)	123.33
Missouri Valley Communications, Inc (Intervened 11/5/03).	123.32
McLeodUSA (Intervened 11/5/03)	123.32
U S Link (Intervened 11/5/03)	123.32
Integra Telecom of North Dakota, Inc. (Intervened 11/5/03)	123.32
BEK Communications Cooperative (Intervened 11/20/03)	13.32
Consolidated Telcom (Intervened 11/20/03).	13.32
Consolidated Communications Networks, Inc. (Intervened 11/20/03) (Withdrew 1/14/04)	1.71
Dakota Central Telecommunications Cooperative (Intervened 11/20/03)	13.32
Daktel Communications LLC (Intervened 11/20/03; Withdrew 2/25/04)	10.53
Dickey Rural Telephone Cooperative (Intervened 11/20/03)	13.32
Dickey Rural Communications, Inc. (Intervened 11/20/03)	13.32
Dickey Rural Access, Inc. (Intervened 11/20/03)	13.32
Griggs County Telephone Company (Intervened 11/20/03)	13.32
Inter-Community Telephone Company LLC (Intervened 11/20/03)	13.32
Midstate Telephone Company (Intervened 11/20/03)	13.32
Midstate Communications Inc (Intervened 11/20/03)	13.32
Moore & Liberty Telephone Company (Intervened 11/20/03)	13.32
North Dakota Telephone Company (Intervened 11/20/03)	13.32
Northwest Communications Cooperative (Intervened 11/20/03)	13.32
Polar Communications Mutual Aid Corporation (Intervened 11/20/03)	13.32
Polar Telecommunications, Inc. (Intervened 11/20/03)	13.32
Polar Telcom, Inc. (Intervened 11/20/03; Withdrew 2/25/04)	10.54
Red River Rural Telephone Association (Intervened 11/20/03)	13.33
Red River Telecom, Inc. (Intervened 11/20/03)	13.33
Reservation Telephone Cooperative (Intervened 11/20/03)	13.33
SRT Communications, Inc. (Intervened 11/20/03)	13.33
United Telephone Mutual Aid Corporation (Intervened 11/20/03)	13.33
Turtle Mountain Communications, Inc. (Intervened 11/20/03)	13.33
West River Telecommunications Cooperative (Intervened 11/20/03)	13.33

Expenses Incurred to Date:

Illona A. Jeffcoat-Sacco	
ROC Registration (9/28-29/03)	$ 130.00
ROC Expenses (9/28-29/03)	649.95
ROC Airline (9/28-29/03)	298.50
Meals/Lodging (10/03)	116.70
Jerry Lein Meals (10/03)	6.00
Bill Binek Meals (10/03)	6.00
ND Dept. of Transportation Motor Pool (10/03)	81.81
Advertising Costs (9/24, 10/28, 11/7, 12/3/03)	2,958.38
Office of Administrative Hearings (11/03 – 5/04)	782.07
Total	**$5,029.41**

Send Payment and a Copy of this Statement To:

Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480

Federal Tax ID 45-0309764

APPROVED
DATE: 4-14-04
KME

MOTION

April 14, 2004

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission continue indefinitely the stay in this proceeding.

PJF/sdh

209 PU-439-03-295 Pages: 1

Motion to continue indefinitely the stay in this proceeding
by Public Service Commission

04/14/2004 CC: Comm Legal PUD (3) ALJ .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sandra L. Scott deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **25th day of March, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **23** envelopes with first class postage, fully prepaid, securely sealed and each containing a photocopy of:

> **Administrative Law Judge Allen Hoberg's letter dated March 24, 2004, to AT&T concerning Pending Motions**

The envelopes were addressed as follows:

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Holland & Hart LLP
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Madison WI 53717

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IdeaOne Telecom
3239 39th St SW
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Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **25th day of March, 2004**.

Notary Public

SEAL

CHARLENE A MAGSTADT
Notary Public
State of North Dakota
My Commission Expires Jan 7, 2010

OFFICE OF ADMINISTRATIVE HEARINGS

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1707 North 9th Street
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Allen C. Hoberg
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March 24, 2004

RECEIVED
MAR 24 2004
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

Ms. Illona Jeffcoat-Sacco
Executive Secretary
ND Public Service Commisison
600 E. Boulevard Avenue
Bismarck, ND 58505

Re: Local Competition Investigation – Case No. PU-439-03-295
OAH File 20030389

Dear Ms. Jeffcoat-Sacco:

Enclosed is a copy of the letter addressed to Gary Witt in regard to the captioned matter. Please serve it on the parties involved in the above matter except Mr. Witt and Mr. Kuntz, who have already been served. I have retained a copy for my file.

Sincerely,

Allen C. Hoberg
Administrative Law Judge
Hearing Officer

ACH/ljc

Enc.

Ms. Sandi Scott, PSC

207 PU-439-03-295 Pages: 1
Letter re ALJ's letter to AT&T re Motion to Strike
by Office of Administrative Hearings
03/24/2004 CC: Comm Legal PUD (3) ALJ

OFFICE OF ADMINISTRATIVE HEARINGS

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March 24, 2004

RECEIVED
MAR 24 2004
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

Mr. Gary B. Witt
AT&T Law Dept.
1875 Lawrence Street – Suite 1575
Denver, CO 80202

RE: Public Service Commission Local Competition Investigation - PU-439-03-295
Pending motions – Renewal
OAH File No. 20030389

Dear Mr. Witt:

In light of the stay in this proceeding, I do not believe that it is necessary at this time to rule on AT&T's March 2, 2004, "Motion to Strike..." When the stay is lifted and this proceeding continues at some future date, Qwest and other parties will be given an opportunity to respond and there will be a ruling on the motion.

This posture, inaction on currently pending motions, applies to all other pending motions, too.

When the stay is lifted and this proceeding continues at some future date, any party with a motion pending before the Commission will renew, briefly, in writing, the motion, if they expect a ruling on that motion. Then, all parties wishing to respond will have ten days from the date of the written renewal of the motion to respond, before a ruling is made on the motion.

Thank you for your attention to this matter. Copies of this letter will be served on all of the parties in this matter.

Sincerely,

Allen C. Hoberg
Administrative Law Judge
Hearing Officer

ACH/ljc

cc: Mr. Daniel S. Kuntz
Ms. Illona Jeffcoat-Sacco (w/enc.)

206 PU-439-03-295 Pages: 1
Copy of ALJ's letter to AT&T re Motion to Strike
by Office of Administrative Hearings
03/24/2004 CC: Comm Legal PUD (3) ALJ

220 North Fifth Street
Bismarck, ND 58501

Mel A. Kambeitz
Director, Legislative and Regulatory
North Dakota

220 North Fifth Street
Bismarck, ND 58501
701.222.6813
701.222.6976 fax

Qwest

RECEIVED
MAR 19 2004
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

March 18, 2004

Ms. Illona Jeffcoat-Sacco, Executive Secretary
N.D. Public Service Commission
600 E Boulevard Avenue
Bismarck, ND 58505-0480

Dear Ms. Jeffcoat-Sacco:

As you are aware, on March 2, 2004 the D.C. Circuit Court of Appeals issued its decision after review of the FCC's Triennial Review Order, vacating many of the FCC's rules on UNEs (unbundled network elements) provided pursuant to Section 251 of the Telecommunication Act. In light of the Court's decision, we have developed a product offering that will enable CLECs to continue to use the Qwest network to provide service to their customers.

Consistent with FCC Chairman Powell's remarks at NARUC encouraging industry cooperation, we have sent the enclosed letter to all of our existing CLEC customers that use UNE-P. We intend to work with our CLEC customers to quickly negotiate revisions to their interconnection agreements and to implement this alternative product as seamlessly and as cost effectively as possible.

If you have any questions, please contact me at 222-6813.

Sincerely,

Mel Kambeitz
Director

Enclosures
MAK/gkb

303 PU-2342-01-296 Pages: 18
Letter re DC Circuit Court of Appeals decision by Qwest Corporation
03/19/2004 CC: Comm Legal PUD (3)

205 PU-439-03-295 Pages: 18
Letter re DC Circuit Court of Appeals decision by Qwest Corporation
03/19/2004 CC: Comm Legal PUD (3) ALJ

Announcement Date: 12-Mar-04
Effective Date: Not Applicable
Document Number: INTC.03.12.04.A.001080.Unbundling_Order
Notification Category: Interconnection Contract & Product

Target Audience: Selected CLECs
Subject: D.C. Circuit Court – Decision
Unbundling services

Please route to those in your company who have responsibility for your Interconnection Contract Agreement and Product purchases.

With the recent D.C. Circuit Court of Appeals decision we know there is much confusion in the telecommunications marketplace, particularly as it pertains to the continued availability of mass market switching. We want to assure you that we are committed to keeping you and your customers on the Qwest network. With this goal in mind, we have established a team of individuals who are prepared to discuss creative solutions to your wholesale service needs.

Under the terms of the Court's decision, many of the FCC's unbundling regulations, specifically those relating to mass market switching, will be vacated in 60 days. Qwest representatives are ready to discuss with you various options to seamlessly transition your UNE-P service to other service options, including a service that is comparable in structure and functionality to UNE-P.

Qwest would like to meet with you to assure the functionality, affordability and continuity of the wholesale services you obtain from us. We believe that these discussions can establish a mutually beneficial business relationship that will form the cornerstone of a long term partnership in the provision of local telecommunications services.

Qwest supports competition in all communications markets. Millions of customers in the Qwest region receive local telephone services from competitive providers. We owe it to these customers to proactively remove the market uncertainty for those carriers that provide local service using UNE-P. If you would like to meet with a Qwest representative to discuss these options in greater detail, please call your sales representative, «FName» «LName» on «AM_Phone».

SUBJECT : Product Notice:GN: Interconnection Agreement associated with D C Circuit Court Order - Unbundling Services
Notification Type :Product,
States :AZ,CO,IA,ID,MN,MT,ND,NM,NE,OR,SD,UT,WA,WY
Business Types :CLEC,

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drosedahl@newaccess.cc	Dan Rosedahl	New Access Communications Inc	3/12/2004 3:11
travis@nexgencom.com	Travis DeCamp	NexGen Integrated Communications LC	3/12/2004 3:11
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lbell@oneeighty.com	Linda Bell	One Eighty Communications	3/12/2004 3:11
smarx@svtv.com	Sandy Marx	OrbitCom Inc.	3/12/2004 3:11
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jjordan@oregontelecom.com	Jim Jordan	Oregon Telecom Inc	3/12/2004 3:11
spadula@popp.com	Sarah Padula	POPP Communications	3/12/2004 3:12
ctennessen@popp.com	Corinn Tennessen	POPP Communications	3/12/2004 3:12
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ebaird@popp.com	Emily Baird	POPP Communications	3/12/2004 3:12
Jbritton@phonesforall.com	Jennifer Britton	Phones For All	3/12/2004 3:12
barry.casey@phonesforall.com	Barry Casey	Phones For All	3/12/2004 3:12
rhoffman@pnpt.com	Roger Hoffman	PinPoint Communications Inc.	3/12/2004 3:12
john@premiertelco.com	John Gray	Premier Communications Inc	3/12/2004 3:12
jrhoden@mind.net	Jeff Rhoden	Prime Time Ventures LLC	3/12/2004 3:12
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ellen.fuller@mail.sprint.com	Ellen Fuller	Sprint	3/12/2004 3:12
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pkohler@z-tel.com	Paul Kohler	Z-Tel Communications Inc	3/12/2004 3:12

Customers With No Contacts

CUSTOMERNAME	CCDBID
Anderson Consulting	2262
Avix Technologies Inc.	1605
Aztec Cable Communications	3537
Best Buy	2660
Cap Gemini Ernst & Young	2241
Central Oregon Cell Inc	3560
Compass Communications	1379
Coordinated Access	5781
Dif Computer Services	2286
Essential.Com Inc	2700
Exario Telecom Inc.	2607
Global Comunications	3603
IES	897
InTTec Inc	1033
InfoView	3620
Integrated Regional Network Enterprise	2526
Inter-Tel Inc.	3138
Interactive Technologies.Com	3625
Maverix.net	1311
MaxCom	2569
Midstate Telecom Inc.	2542
Mobile Comms Corp of America	3663
Mobius Communications	2380
NetLink	3674
NetMark	2504
NetWork Two Comm	3678
New World Telecomrnunications	1704
Northwest Telecom	3686
Obleton Consulting	3220
One World Telecom	3693
Onewest Inc	1216
Oregon Mobile Inc	3697
Oregon Trail Internet Inc.	2527
Paragon Communications	3705
PhoneTel Technologies	3712
SkyTel Corp	3742
Spring Valley	3757
T&L Communications	3764
TAG Telecommunications	1638
TTI Telecommunications Inc	3790
Tri Corners Telecom	1191
Universal Communications Networks	2282
Upper Rio Grande Telecom	1192
Vertical Telco LLC	3164
WCIC	1719
Xpedius	5271

INTERNAL STAFF MAIL LOG

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dsalomo@qwest.com	Dione Salomonson	Service Manager	3/12/2004 3:10
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pdelait@qwest.com	Pamela DeLaittre	Service Director	3/12/2004 3:10
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Pamela.Jenkins@qwest.com	Pamela Jenkins	Sales Manager	3/12/2004 3:10
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ADMINSTAFFLOG

Announcement Date: 12-Mar-04
Effective Date: Not Applicable
Document Number: INTC.03.12.04.A.001080.Unbundling_Order
Notification Category: Interconnection Contract & Product

Target Audience: Selected CLECs
Subject: D.C. Circuit Court – Decision Unbundling services

With the recent D.C. Circuit Court of Appeals decision we know there is much confusion in the telecommunications marketplace, particularly as it pertains to the continued availability of mass market switching. We want to assure you that we are committed to keeping you and your customers on the Qwest network. With this goal in mind, we have established a team of individuals who are prepared to discuss creative solutions to your wholesale service needs.

Under the terms of the Court's decision, many of the FCC's unbundling regulations, specifically those relating to mass market switching, will be vacated in 60 days. Qwest representatives are ready to discuss with you various options to seamlessly transition your UNE-P service to other service options, including a service that is comparable in structure and functionality to UNE-P.

Qwest would like to meet with you to assure the functionality, affordability and continuity of the wholesale services you obtain from us. We believe that these discussions can establish a mutually beneficial business relationship that will form the cornerstone of a long term partnership in the provision of local telecommunications services.

Qwest supports competition in all communications markets. Millions of customers in the Qwest region receive local telephone services from competitive providers. We owe it to these customers to proactively remove the market uncertainty for those carriers that provide local service using UNE-P. If you would like to meet with a Qwest representative to discuss these options in greater detail, please call your sales representative, «FName» «LName» on «AM_Phone».
SUBJECT : Interconnection Notice: GN: DC Circuit Court Unbundling Order - Services
Notification Type :Contract,SGAT,Interconnection Contract,
States :AZ,CO,IA,ID,MN,MT,ND,NM,NE,OR,SD,UT,WA,WY
Business Types :CLEC,

CONTACTS MAIL LOG

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jgrimsha@acninc.com	Jodie Grimshaw	ACN Communications Services Inc	3/12/2004 2:39
dstevanovski@acninc.com	David Stevanovski	ACN Communications Services Inc	3/12/2004 2:39
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kschoegje@atgi.net	Kathy Schoegje	ATG	3/12/2004 2:39
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harold.smith@integratelecom.com	Harold Smith	Integra Communications	3/12/2004 2:40
stanley.florando@integratelecom.com	Stan Florando	Integra Communications	3/12/2004 2:40
Greg.gallagher@integratelecom.com	Gregory Gallagher	Integra Communications	3/12/2004 2:40
bunny.hanson@integratelecom.com	Bunny Hanson	Integra Communications	3/12/2004 2:40

susan.mindheim@integratelecom.com	Susan Mindheim	Integra Communications	3/12/2004 2:40
roxanne.richards@integratelecom.com	Roxanne Richards	Integra Communications	3/12/2004 2:40
roger.maxwell@integratelecom.com	Roger Maxwell	Integra Communications	3/12/2004 2:40
randy.randall@integratelecom.com	Randy Randall	Integra Communications	3/12/2004 2:40
jim.phillips@integratelecom.com	Jim Phillips	Integra Communications	3/12/2004 2:40
Katie.Sherman@integratelecom.com	Katie Sherman	Integra Communications	3/12/2004 2:40
lisa.remme@integratelecom.com	Lisa Remme	Integra Communications	3/12/2004 2:40
tracy.hartman@integratelecom.com	Tracy Hartman	Integra Communications	3/12/2004 2:40
scott.ables@integratelecom.com	Scott Ables	Integra Communications	3/12/2004 2:40
julie.abernathy@integratelcom.com	Julie Abernathy	Integra Communications	3/12/2004 2:40
dan.stoll@integratelecom.com	Daniel Stoll	Integra Communications	3/12/2004 2:40
LMH@iowatelecom.com	Lon Hopkey	Iowa Telecom Communications	3/12/2004 2:40
businesssales@libertybelltelecom.com	Jay Weber	Liberty Bell Telecom LLC	3/12/2004 2:40
chris.poynter@lightyearcom.com	Chris Poynter	Lightyear Communications Inc	3/12/2004 2:40
Dimitri@clandt.com	Dimitri Mandelis	Local Tel	3/12/2004 2:40
john@clandt.com	John Seabeck	Local Tel	3/12/2004 2:40
annette.smith@mci.com	Annette Smith	MCI	3/12/2004 2:40
geoffrey.melton@mci.com	Geoff Melton	MCI	3/12/2004 2:40
will.r.smith@mci.com	Will Smith	MCI	3/12/2004 2:40
jennifer.watson@mci.com	Jennifer Watson	MCI	3/12/2004 2:40
leilani.hines@mci.com	LeiLani Hines	MCI	3/12/2004 2:40
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thomas.f.dixon@mci.com	Tom Dixon	MCI	3/12/2004 2:40
Pat.chow@mci.com	Pat Chow	MCI	3/12/2004 2:40
karen.burgess@mci.com	Karen Gillis-Burgess	MCI	3/12/2004 2:40
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Harrison.Mayfield@mci.com	Harrison Mayfield	MCI	3/12/2004 2:40
susan.a.travis@mci.com	Susan Travis	MCI	3/12/2004 2:40
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ggeorge@marathon.net	Geoff George	Marathon Communications	3/12/2004 2:40
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karen_viste@mmi.net	Karen Viste	Midcontinent Communications	3/12/2004 2:40
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spadula@popp.com	Sarah Padula	POPP Communications	3/12/2004 2:40
Jbritton@phonesforall.com	Jennifer Britton	Phones For All	3/12/2004 2:40
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rhoffman@pnpt.com	Roger Hoffman	PinPoint Communications Inc.	3/12/2004 2:40
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kmutch@priorityonetel.com	Kelly Mutch	PriorityOne Telecommunications Inc	3/12/2004 2:40
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steve.moore@mail.sprint.com	Steve Moore	Sprint	3/12/2004 2:40
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patty.buell@uslink.com	Patty Buell	U S Link Inc.	3/12/2004 2:40
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julie.pickar@uslink.com	Julie Pickar	U S Link Inc.	3/12/2004 2:40
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kelly.tiegen@uslink.com	Kelly Tiegen	U S Link Inc.	3/12/2004 2:40
jackie.diebold@uslink.com	Jackie Diebold	U S Link Inc.	3/12/2004 2:40
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jennifer.arnold@uslink.com	Jennifer Arnold	U S Link Inc.	3/12/2004 2:40
donna.dix@uslink.com	Donna Dix	U S Link Inc.	3/12/2004 2:40
missi.carner@uslink.com	Missi Carner	U S Link Inc.	3/12/2004 2:40
lance.bragstad@uslink.com	Lance Bragstad	U S Link Inc.	3/12/2004 2:40
craig.chiodi@uslink.com	Craig Chiodi	U S Link Inc.	3/12/2004 2:40
cnelson@uci.net	Craig Nelson	Unicom	3/12/2004 2:40
mike@uci.net	Mike Daughtry	Unicom	3/12/2004 2:40
kcorby@uci.net	Julie Archuleta	Unicom	3/12/2004 2:40
vilaire@comcast.net	Stan Efferding	VCI Company	3/12/2004 2:40
provisioning@vilaire.com	Malia Tasi	VCI Company	3/12/2004 2:40
amandas@vilaire.com	Amanda Silva	VCI Company	3/12/2004 2:40
melvin@vlld.com	Melvin Reams	ValuTel Communications	3/12/2004 2:40
ed@vlld.com	Ed Keefer	ValuTel Communications	3/12/2004 2:40
katripp@vartec.net	Karla Tripp	VarTec Telecom	3/12/2004 2:40
mavila@vartec.net	Monica Avila	VarTec Telecom	3/12/2004 2:40
dayoung@vartec.net	David Young	VarTec Telecom	3/12/2004 2:40
dscott1@vartec.net	Dorian Scott	VarTec Telecom	3/12/2004 2:40
caldis@vartec.net	Charlie Aldis	VarTec Telecom	3/12/2004 2:40
industrynotices@vartec.net	Jana Thomas	VarTec Telecom	3/12/2004 2:40
pschulz@vartec.net	Peter Schulz	VarTec Telecom	3/12/2004 2:40
jinman@vartec.net	Janie Inman	VarTec Telecom	3/12/2004 2:40
pzacharie@vartec.net	Patricia Zacharie	VarTec Telecom	3/12/2004 2:40
dmwhite@vartec.net	Morgan White	VarTec Telecom	3/12/2004 2:40
dlkarins@vartec.net	Dan Karins	VarTec Telecom	3/12/2004 2:40
marty.patrovsky@comspanusa.net	Marty Patrovsky	Wantel Inc	3/12/2004 2:40
john.stadter@wantel.net	John Stadter	Wantel Inc	3/12/2004 2:40
qwestmailings@z-tel.com	Qwest Mailings	Z-Tel Communications Inc	3/12/2004 2:40
launch-now.notify@accenture.com	James McCluskey	Z-Tel Communications Inc	3/12/2004 2:40
mreith@z-tel.com	Michael Reith	Z-Tel Communications Inc	3/12/2004 2:40
jjones@z-tel.com	Jacqueline Jones	Z-Tel Communications Inc	3/12/2004 2:41
dburkhardt@z-tel.com	Don Burkhardt	Z-Tel Communications Inc	3/12/2004 2:41
tracyp@z-tel.com	Tracy Pledger	Z-Tel Communications Inc	3/12/2004 2:41
wjamison@z-tel.com	Wendy Jamison	Z-Tel Communications Inc	3/12/2004 2:41
bneal@z-tel.com	B J Neal	Z-Tel Communications Inc	3/12/2004 2:41

Customers With No Contacts

CUSTOMERNAME	CCDBID
Anderson Consulting	2262

Avix Technologies Inc.	1605
Aztec Cable Communications	3537
Best Buy	2660
Cap Gemini Ernst & Young	2241
Central Oregon Cell Inc	3560
Compass Communications	1379
Coordinated Access	5781
Dif Computer Services	2286
Essential.Com Inc	2700
Exario Telecom Inc.	2607
Global Comunications	3603
IES	897
InTTec Inc	1033
InfoView	3620
Integrated Regional Network Enterprise	2526
Inter-Tel Inc.	3138
Interactive Technologies.Com	3625
Maverix.net	1311
MaxCom	2569
Midstate Telecom Inc.	2542
Mobile Comms Corp of America	3663
Mobius Communications	2380
NetLink	3674
NetMark	2504
NetWork Two Comm	3678
New World Telecommunications	1704
Northwest Telecom	3686
Obieton Consulting	3220
One World Telecom	3693
Onewest Inc	1216
Oregon Mobile Inc	3697
Oregon Trail Internet Inc.	2527
Paragon Communications	3705
PhoneTel Technologies	3712
SkyTel Corp	3742
Spring Valley	3757
T&L Communications	3764
TAG Telecommunications	1638
TTI Telecommunications Inc	3790
Tri Corners Telecom	1191
Universal Communications Networks	2282
Upper Rio Grande Telecom	1192
Vertical Telco LLC	3164
WCIC	1719
Xpedius	5271

INTERNAL STAFF MAIL LOG

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creigh.johnson@qwest.com	Creigh Johnson	Sales Manager	3/12/2004 2:40
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phahn@qwest.com	Patty Hahn	Sales Manager	3/12/2004 2:40
mfaamau@qwest.com	Michelle Faamausili	Service Manager	3/12/2004 2:40
ballstrj@qwest.com	Joel Balistreri	Sales Manager	3/12/2004 2:40

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LJSANCH@qwest.com	Linda Sanchez Steinke	3/12/2004 2:41
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EXECUTIVE SECRETARY

March 19, 2004

Ms. Illona Jeffcoat-Sacco
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue -- 12th Floor
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Re: Local Competition Investigation -- Case No. PU-439-03-295

Dear Ms. Jeffcoat-Sacco:

On February 25, 2004, the Commission approved a motion to stay this proceeding for a period not to exceed 60 days. Notwithstanding the stay, AT&T Communications of the Midwest, Inc. ("AT&T") filed a motion on March 2, 2004 to strike portions of the prefiled testimony and exhibits of Qwest witnesses Dennis Pappas and Lynn Notarianni. Although Qwest resists AT&T's motion, it believes a response to the motion is unnecessary and inappropriate during the pendency of the stay. If the Commission disagrees and intends to consider AT&T's motion during the stay, we request that Qwest be so advised and be given a reasonable opportunity to respond to the motion.

If the stay is lifted and this proceeding continues at some future date, Qwest requests that it be given a reasonable opportunity to respond to AT&T's motion. The lack of a response to AT&T's motion during the stay should not be construed as a concurrence by Qwest to the motion or a waiver by Qwest of its right to respond to the motion.

Sincerely,

Daniel S. Kuntz

204 PU-439-03-295 Pages: 2

Letter re stay & AT&T's motion to strike portions of Qwest's testimony by Qwest Corporation by Dan Kuntz, Attorney

03/22/2004 CC: Comm Legal PUD (3) ALJ

c: Allen C. Hoberg
Scott Macintosh
Melissa Thompson
Parties of Record

P:\DKUNTZ\11337 Triennial Review\letters\l-js.doc

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MAR - 3 2004
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

March 2, 2004

Via Overnight Mail

Mr. Jon Mielke, Executive Director
North Dakota Public Service Commission
State Capitol Building
600 East Boulevard
Bismarck, ND 58505

Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of AT&T's Motion to Strike Portions of Testimony and Exhibits of Qwest Witnesses Dennis Pappas and Lynn Notarianni. A copy of this motion is being sent to the hearing officer and served on the parties to this proceeding.

Sincerely,

Gary B. Witt

Gary B. Witt

Enclosures

cc: Service List

203 PU-439-03-295 Pages: 1

Cover letter re Motion to Strike Portions of Testimony & Exhibits of Qwest by AT&T Communications of the Midwest, Inc

03/03/2004 CC: Comm Legal PUD (3) ALJ

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MAR - 3 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AT&T'S MOTION TO STRIKE PORTIONS OF TESTIMONY AND EXHIBITS OF QWEST WITNESSES DENNIS PAPPAS AND LYNN NOTARIANNI

AT&T Communications of the Midwest, Inc. ("AT&T") moves to strike portions of the testimony and exhibits of Qwest witnesses Dennis Pappas and Lynn Notarianni. Mr. Pappas and Ms. Notarianni improperly submit and rely on testimony filed with the Washington Utilities and Transportation Commission by an independent consultant, Ms. Lorraine Barrick, on behalf of Qwest. Based on Qwest's filing, it appears to AT&T that Qwest does not intend for Ms. Barrick to be a witness in this North Dakota proceeding. As such, this Public Service Commission ("Commission") should strike Ms. Barrick's Washington testimony and exhibits from this case, and strike those portions of Mr. Pappas and Ms. Notarianni's testimony that rely on Ms. Barrick's Washington testimony.[1]

In support of this Motion, AT&T states:

1. Ms. Barrick's Washington testimony appears as Exhibit DP-25 to Mr. Pappas and Ms. Notarianni's direct testimony in this case.[2] In addition to Ms. Barrick's

[1] On February 25, 2004, the Commission entered an order staying these proceedings for an indefinite period of time. AT&T files this motion to preserve its rights, but does not ask the Commission to rule on this motion immediately.

[2] Direct Testimony of Dennis Pappas and Lynn Notarianni on behalf of Qwest Corporation (January 23, 2004) ("Pappas/Notarianni North Dakota Testimony").

testimony, Exhibit DP-25 includes the "Report of Lorraine Barrick," with attachments. AT&T moves the Commission to strike Exhibit DP-25 in its entirety, as well as the following portions of Mr. Pappas and Ms. Notarianni's testimony, which rely on Ms. Barrick's Washington testimony and suggest that Ms. Barrick is testifying in this North Dakota proceeding:

a. page 17, lines 19-29;

b. page 54, lines 6-8 (starting with "Representatives from . . .");

c. page 78, lines 9-15;

d. page 79, lines 5-21;

e. page 80, lines 1-10;

f. page 136, line 13 (strike "Both Hitachi Consulting and");

g. page 143, line 15 (strike "and Ms. Lorraine Barrick")

h. page 148, lines 12-17 (starting with "Ms. Lorraine Barrick . . .")

i. page 151, lines 8-22;

j. page 152, lines 1-5; and

k. page 153, lines 7-8 (strike "as well as the review and test of the BCHP by an independent third party.").

2. Ms. Barrick is a certified public accountant and the sole proprietor of Lorraine Barrick LLC.[3] Qwest hired Ms. Barrick to review its Batch Hot Cut process. Ms. Barrick received assistance in her review from a team of consultants with Hitachi Consulting.[4]

[3] Direct Testimony of Lorraine Barrick on behalf of Qwest Corporation, Washington Utilities and Transportation Commission, Docket No. UT-033044, at p.1 (attached as Exhibit DP-25 to Pappas/Notarianni North Dakota Testimony).
[4] *Id.*

3. Ms. Barrick's testimony, report and exhibits in Washington describe her review of Qwest's proposed Batch Hot Cut process. According to Ms. Barrick, the scope of her work for Qwest included:

- Gaining an understanding of the existing hot cut process;
- Studying Qwest's hot cut performance to date;
- Reviewing the proposed [Batch Hot Cut] process, as well as public CLEC comments and concerns regarding that process;
- Comparing the current hot cut process to the proposed [Batch Hot Cut] process;
- Developing a testing plan to be used to judge the quality and efficiency of the proposed [Batch Hot Cut] process;
- Making recommendations for process improvement; and
- Observing commercial tests of the [Batch Hot Cut] process.[5]

4. Qwest identified Ms. Barrick as an outside expert witness and filed her testimony in Triennial Review proceedings in six states in the Qwest region: Washington, Oregon, Utah, Arizona, Colorado and Minnesota. However, in North Dakota, Qwest has simply attached Ms. Barrick's Washington testimony and exhibits to the testimony of Mr. Pappas and Ms. Notarianni.[6]

5. The Commission should strike Ms. Barrick's testimony from the record in this proceeding. Qwest has not designated Ms. Barrick as a witness and, as such,

---

[5] *Id.* at 2.

[6] Qwest also attached Ms. Barrick's testimony, report and exhibits to Mr. Pappas's testimony in Iowa, New Mexico and Nebraska.

AT&T and the other parties to this case will be denied an opportunity to cross-examine Ms. Barrick in this North Dakota proceeding.

6. There is no provision of North Dakota administrative law that allows one witness to submit the testimony of another witness. Instead, North Dakota law prohibits Qwest's submission of Ms. Barrick's testimony, report and exhibit as part of Mr. Pappas and Ms. Notarianni's presentation in this case. This Commission's Rules of Procedure state:

> . . . Written testimony of any witness may be received when properly supported by the oral testimony of its author on direct examination **subject to cross-examination** and motion to strike.[7]

7. This is not the case of a Qwest employee adopting the testimony of another Qwest employee. Ms. Barrick is an independent consultant. Cross-examination of Mr. Pappas and Ms. Notarianni will not be sufficient to meaningfully challenge Ms. Barrick's testimony and report. Mr. Pappas and Ms. Notarianni cannot testify to Ms. Barrick's methodology, her mental impressions and the bases of her conclusions and recommendations. In Washington, AT&T and other parties have planned extensive cross-examination of Ms. Barrick. However, in North Dakota, by submitting Ms. Barrick's testimony and report as an exhibit, Qwest has prevented all parties and the Commission from cross-examining Ms. Barrick.

[7] N.D. Admin. Code § 69-02-05-02 (emphasis added).

CONCLUSION

8. Qwest improperly submitted Ms. Barrick's Washington testimony, report and exhibits into the record of this North Dakota proceeding. Ms. Barrick is not a witness in this case and, as such, AT&T and other parties will not have an opportunity to cross-examine Ms. Barrick before this Commission. Qwest's use of Ms. Barrick's testimony is inconsistent with North Dakota law. As such, AT&T respectfully moves the Commission for an order striking Mr. Pappas and Ms. Notarianni's Exhibit DP-25 in its entirety. In addition, AT&T respectfully requests that the Commission strike the following portions of Mr. Pappas and Ms. Notarianni's testimony:

a. page 17, lines 19-29;

b. page 54, lines 6-8 (starting with "Representatives from . . .");

c. page 78, lines 9-15;

d. page 79, lines 5-21;

e. page 80, lines 1-10;

f. page 136, line 13 (strike "Both Hitachi Consulting and");

g. page 143, line 15 (strike "and Ms. Lorraine Barrick")

h. page 148, lines 12-17 (starting with "Ms. Lorraine Barrick . . .")

i. page 151, lines 8-22;

j. page 152, lines 1-5; and

k. page 153, lines 7-8 (strike "as well as the review and test of the BCHP by an independent third party.").

Respectfully submitted this 2nd day of March, 2004.

AT&T COMMUNICATIONS OF THE MIDWEST, INC.

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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

MAR - 3 2004

PUBLIC SERVICE COMMISSION EXECUTIVE SECRETARY

Public Service Commission Local Competition Investigation	)))	Case No. PU-439-03-295

AFFIDAVIT OF SERVICE

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The undersigned, being duly sworn, deposes and says that I am over the age of 18 years and, on the 2nd day of March, 2004, I served AT&T's Motion to Strike Portions of Testimony and Exhibits of Qwest Witnesses Dennis Pappas and Lynn Notarianni to the service list by U.S. Mail.

Janet Keller

Janet Keller

Subscribed and sworn to before me
this 2nd day of March, 2004.

Adam Walczak

Notary Public

My Commission expires: 1/22/06

NOTARY PUBLIC
ADAM W. WALCZAK
STATE OF COLORADO

My Commission Expires 1/22/06

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Case No. PU-439-03-295

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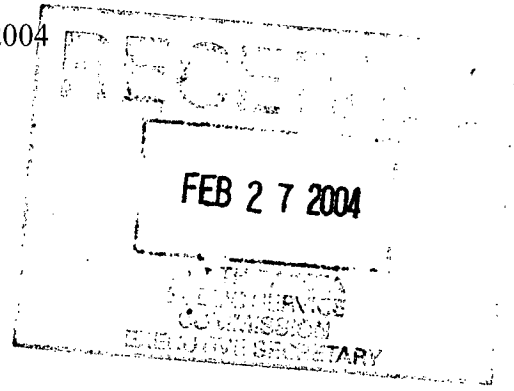
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February 26, 2004



Via Overnight Mail

Mr. Jon Mielke, Executive Director
North Dakota Public Service Commission
State Capitol Building
600 East Boulevard
Bismarck, ND 58505

Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of AT&T's Response to Qwest's Motion to Strike AT&T Testimony Regarding Electronic Loop Provisioning. A copy of this motion is being sent to the hearing officer and served on the parties to this proceeding.

Sincerely,

Gary B. Witt

Gary B. Witt

Enclosures

cc: Service List

201 PU-439-03-295 Pages: 1

Cover letter re AT&T's Response to Qwest's Motion to Strike By AT&T Communications of the Midwest, Inc.

02/27/2004 CC: Comm Legal PUD (3) ALJ .

FEB 2 7 2004

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AT&T'S RESPONSE TO QWEST'S MOTION TO STRIKE AT&T TESTIMONY REGARDING ELECTRONIC LOOP PROVISIONING

AT&T Communications of the Midwest, Inc. ("AT&T") responds to Qwest's motion to strike portions of the direct testimony of AT&T's witness, Robert V. Falcone, concerning Electronic Loop Provisioning ("ELP").[1] The Public Service Commission ("Commission") should deny Qwest's motion to strike for the following reasons:

1. Mr. Falcone's ELP testimony is relevant to this proceeding because AT&T's ELP proposal provides a benchmark against which Qwest's batch hot cut process can be measured. AT&T's ELP proposal demonstrates the level of performance a batch hot cut process must achieve in order to cure the impairment found by the Federal Communications Commission ("FCC").

2. The FCC gave state commissions wide discretion to develop solutions to the hot cut impairment problem. Although the FCC did not adopt AT&T's ELP proposal at the federal level, the Triennial Review Order ("TRO") does not prohibit state commissions from adopting ELP, or comparing ELP to Qwest's batch hot cut proposals. The FCC stated the batch process should provide customers of competitive

[1] Qwest cites Mr. Falcone's Arizona testimony in the first footnote to its Motion to Strike. For purposes of this response, AT&T assumes Qwest is moving this Commission to strike portions of Mr. Falcone's testimony in North Dakota.

200 PU-439-03-295 Pages: 8
Response to Qwest's Motion to Strike AT&T's Testimony Re Elec Loop
by AT&T Communications of the Midwest, Inc
02/27/2004 CC: Comm Legal PUD (3) ALJ

local exchange carriers ("CLECs") with the same experience as Qwest's customers, and AT&T's ELP proposal provides an effective guide to the level of performance needed to reduce impairment. Mr. Falcone's ELP testimony is relevant to this Commission's batch hot cut analysis, even if the Commission does not adopt AT&T's ELP proposal.

3. The FCC identified a number of inherent difficulties in the incumbent local exchange carriers' ("ILECs") current hot cut processes (TRO, ¶422) and recognized those barriers are the result of the ILECs' historical local monopoly. TRO, ¶465. The FCC also recognized that customers feel these deficiencies and CLECs are likely to lose customers as a result of these problems. TRO, ¶¶ 466.

4. In contrast to the current batch hot cut proposals by the ILECs (which involve the physical and manual transfer of a customer's line from an ILEC to a CLEC switch), the FCC recognized that when an ILEC connects and disconnects a customer, it makes an efficient software change, as opposed to a manual change. TRO, ¶465. The FCC directed states to review evidence of reliable performance and implement a batch hot cut process that is *as efficient* as the ILECs own process. TRO, ¶ 512 fn. 1574 (state commissions should ensure that ILEC to CLEC transfers are made "as promptly and as efficiently as" ILEC transfers using unbundled local switching).

5. Although a batch hot cut process may mitigate impairment, it will not eliminate the current state of impairment. TRO, ¶¶423, 475. Indeed, the FCC recognized that CLECs could continue to be impaired after implementation of the batch hot cut process required by the TRO. TRO, ¶¶512, 526 (requiring continuing review of impairment). Mr. Falcone's ELP testimony is relevant not only to measure Qwest's

batch hot cut proposals, but also to identify a remedy to the impairment that will continue if Qwest's proposals are adopted and implemented.

6. In its motion to strike, Qwest relies on the FCC's determination that "an ELP process . . . would require significant and costly upgrades to the existing local network . . ." Qwest's Motion to Strike at pp. 5 (quoting TRO, ¶491). However, the FCC based its order solely on the record that it reviewed. The TRO, which requires a state-specific and more granular analysis than the study conducted at the federal level, does not prohibit states from examining the benefits of ELP in the context of this case. In fact, the FCC specifically noted it would reexamine ELP if the hot cut processes it mandated do not adequately handle necessary volumes. TRO, ¶491.

7. Next, Qwest cites SBC's suggestion that the ELP proposal would be costly. Qwest's Motion to Strike at p. 5 (citing TRO, ¶491). SBC estimated that the entire cost to implement ELP could be greater than $100 billion. TRO, ¶491 fn. 1524. This was a single, nationwide estimate of costs; and, although the FCC cited this estimate in the TRO, it does not reflect the cost that Qwest would incur. More importantly, regardless of SBC's cost estimate, ELP's performance levels are relevant to this proceeding as a comparison to Qwest's batch hot cut proposals.

8. Qwest also relies on the Oregon ALJ's decision to remove ELP from the Oregon "issue list." The Oregon ALJ's decision was based primarily on the "extensive amount of work" that needs to be done in the proceeding without the addition of the ELP issue, not on a determination that ELP was irrelevant. *See* Qwest's Motion to

Strike at pp. 5-6 (quoting Transcript of Oregon Prehearing Conference).[2] The Oregon Commission has scheduled one week of hearings in this case, while the North Dakota hearing is scheduled for two weeks. There is adequate time in this proceeding to compare Qwest's batch hot cut proposal to ELP.

CONCLUSION

9. The FCC decided not to adopt ELP at the time it heard the case, based on the record in its proceeding. However, the TRO does not prohibit states from considering or even adopting ELP. The FCC directed state commissions to "approve and implement a batch cut migration process – a seamless, low-cost process for transferring large volumes of mass market customers . . ." TRO, ¶423. ELP is relevant to this proceeding because it provides a useful measure of the performance of Qwest's hot cut proposal. The Commission should receive testimony describing ELP because that testimony is relevant to the adequacy of Qwest's proposal and the Commission's analysis.

AT&T respectfully requests that the Commission deny Qwest's motion to strike portions of Mr. Falcone's testimony.

[2] The Nebraska Public Service Commission denied Qwest's motion to strike on February 25, 2004. The Public Utility Commission of Oregon granted Qwest's motion to strike on February 24, 2004. The Washington Utilities and Transportation Commission granted Qwest's motion to strike on February 13, 2004. The Washington Commission found, "given the number of issues the parties have presented in their prefiled testimony, there is no time to spend on issues [such as ELP] that the FCC has not directed states to investigate or address." Washington Commission's "Prehearing Conference Order; Order Granting Qwest's Motion to Modify Order No. 08 and Strike Portions of Testimony; Denying Qwest's Request for a Delay in the Procedural Schedule," at pp. 6-7, ¶18, dated February 13, 2004.

RESPECTFULLY SUBMITTED this 26th day of February, 2004.

AT&T COMMUNICATIONS OF THE MIDWEST, INC.

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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	)))	Case No. PU-439-03-295

AFFIDAVIT OF SERVICE

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The undersigned, being duly sworn, deposes and says that I am over the age of 18 years and, on the 26th day of February, 2004, I served AT&T's Response to Qwest's Motion to Strike AT&T Testimony Regarding Electronic Loop Provisioning to the service list by U.S. Mail.

Janet Keller
Janet Keller

Subscribed and sworn to before me
this 26th day of February, 2004.

Adam W Walczak
Notary Public

My Commission expires: 1/22/06

NOTARY PUBLIC
ADAM W. WALCZAK
STATE OF COLORADO
My Commission Expires 1/22/06

SERVICE LIST
Case No. PU-439-03-295

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525 Junction Road , Suite 6000
Madison, WI 53717

William A. Haas
McLeodUSA
6400 C Street SW
Cedar Rapids, IA 52404

Dick Thronson
Manager
Missouri Valley Communications, Inc.
P.O. Box 600
Scobey, MT 59623-0600

Michael C. Strand
P.O. Box 5237
Helena, MT 59604-5237

Jim Howard
John Staurulakis, Inc.
Eagandale Corporate Center, Suite 310
1380 Corporate Center Curve
Eagan, MN 55512

Don Negaard
Pringle & Herigstad, P.C.
20 SW 1st Street
P.O. Box 1000
Minot, ND 58702

Thomas F. Kelsch
Kelsch Kelsch Ruff & Kranda
P.O. Box 1266
Mandan, ND 58554-7266

Steven D. Lysne
SRT Communications, Inc.
P.O. Box 2027
Minot, ND 58702-2207

Allen C. Hoberg
Administrative Law Judge
Procedural Hearing Officer
1707 North 9th Street
Bismarck, ND 58501-1882

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Jon H. Mielke

600 E Boulevard Ave. Dept. 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@psc.state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

February 26, 2004

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000

Dear Mr. Negaard:

On February 25, 2004, the Commission acknowledged Daktel Communications, L.L.C. and Polar Telcom, Inc.'s request to withdraw its intervention in Case No. PU-439-03-295. A copy of the motion is enclosed.

Sincerely,

Sharon Helbling
Public Utilities Division

sdh

199 PU-439-03-295 Pages: 1

Letter to Negaard re approval of request to withdraw its intervention by Public Service Commission

02/26/2004 CC: Comm Legal PUD (3) ALJ

APPROVED
DATE: 2-25-04
KNE

MOTION

February 25, 2004

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission grant Daktel Communications, L.L.C. and Polar Telcom, Inc.'s requests to withdraw their intervention in the Public Service Commission's local competition investigation, Case No. PU-439-03-295.

PJF/sdh

198 PU-439-03-295 Pages: 1

Motion granting Daktel & Polar request to withdraw intervention by Public Service Commission

02/25/2004 CC: Comm Legal PUD (3) ALJ

MOTION

APPROVED
DATE: 2-25-04
KME

February 25, 2004

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission grant a stay in Case No. PU-439-03-295 for a length of time to be determined by future Commission action, not to exceed 60 days from today's date.

PJF/sdh

197 PU-439-03-295 Pages: 1
Motion granting a stay
by Public Service Commission
02/25/2004 CC, Comm Legal PUD (3) ALJ

MEMORANDUM

To: Commissioners Clark, Cramer and Wefald
Jon Mielke

From: Bill Binek and Pat Fahn

RE: Working Session on Request for Temporary Stay
Local Competition Investigation, Case No. PU-439-03-295

Date: February 13, 2004

On February 12, 2004, the Commission received electronically a request for a temporary stay of the procedural schedule and discovery in this proceeding. The motion was filed by USLink, Inc, McLeod USA Telecommunications services, Inc, IdeaOne TelecomGroup, LLC and Integra Telecom of North Dakota, Inc. (CLECs). The Request is for the Commission to stay this case until such time as the D.C. Circuit Court issues a written order in the pending TRO appeal.

The CLECs have requested the stay because of the uncertainty surrounding the appeal that has been argued before the D.C Circuit Court. There seems to be a strong feeling within the industry as a whole that the D.C. Circuit will find that the FCC overstepped its authority in delegating impairment determinations for mass market switching to state commissions.

Qwest had called Illona on the afternoon of February 11th to advise that a request for a stay would be filed by a couple of CLECs. Qwest indicated to Illona that it will not be objecting to the request and will not object if a stay puts the proceeding out past 9 months. (See Illona's e-mail February 11, 2004). Qwest suggested that an interim stay right away might be appropriate with a formal decision at the next regular meeting because some discovery responses and rebuttal testimony is due soon.

The CLECs position is that this proceeding imposes substantial burdens on them, and they are facing rapidly approaching deadlines for filing responses to discovery and rebuttal testimony. The CLECs state that because of the substantial concerns and questions raised by the Court, it is likely that the Court decision will have a significant impact on the TRO proceeding in this docket. The CLECs state they are not aware of any party opposing this motion, and that Qwest has agreed to extend its discovery response deadlines consistent with such stay.

On February 11th the Commission received a state TRO proceeding update from Brad Ramsey. Brad stated that at the last Tcom Conference call he was asked his opinion whether the oral argument before the D.C. Circuit provided sufficient impetus for delaying ongoing "9 mo" proceedings. Brad's response was that it did not.

Brad provides these opinions in his memo:

- The FCC's delegation of authority to the states to determine impairment issues will likely be reversed and there is likely to be a request to the Supreme Court by the states or the FCC or other party for stay of the reversal. Brad advises that the States and NARUC support the stay request.
- A delay of state proceedings will undermine the request for stay because it adds to the ILEC arguments that states don't want to move forward with the task.
- Brad recommends the states continue their TRO proceedings for that reason and also that, even if state authority to determine impairment is removed, the FCC may request that states TRO proceeding records be forwarded to support any FCC determinations of impairment.
- At arguments before the DC Circuit, there was no indication real questioning of the impairment standards adopted by the FCC.

Staff thinks a decision on the stay must be made in light of pressing February 15 deadline for discovery and February 17 deadline for rebuttal testimony. Staff is recommending an interim stay for a short period to allow parties to respond to the CLEC request for stay. The Commission could hold a special meeting today to grant an interim stay. The interim stay would request comments from the parties to address the current TRO schedule and the implications on a stay until the DC Court makes its decision on the FCC TRO order. The deadline for comments could be February 20, a Commission worksession could be February 23, and Commission action on the request for stay could be February 25. If the Commission chooses to deny the request for stay, the deadlines for discovery and rebuttal testimony could be extended two weeks beyond the date of that action.

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **26th day of February, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **13** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order Granting Trade Secret Protection

The envelopes were addressed as follows:

Robert M Pomeroy Jr
Holland & Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village CO 80111
Cert. No. 7002 2410 0003 4911 4561

Tim Goodwin
Qwest Corporation
1801 California St Ste 4900
Denver CO 80202
Cert. No. 7002 2410 0003 4911 4585

Mr Thomas F Kelsch
Kelsch Kelsch Ruff & Kranda
P O Box 1266
Mandan ND 58554-7266
Cert. No. 7002 2410 0003 4911 4608

Deborah H Harwood
Integra Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton OR 97006-6902

Cert. No. 7002 2410 0003 4911 4622

Dan Kuntz Atty for Qwest
P O Box 1695
Bismarck ND 58502-1695

Cert. No. 7002 2410 0003 4911 4578

Marilyn Foss Atty for MCI
P O Box 2216
Bismarck ND 58502-2216

Cert. No. 7002 2410 0003 4911 4592

Steven E Noack Atty for IdeaOne
500 2nd Ave N Ste 514
Fargo ND 58108-2783

Cert. No. 7002 2410 0003 4911 4615

Dan Lipschultz Atty for McLeod, U S Link
Moss & Barnett
4800 Wells Fargo Ctr
90 S 7th St
Minneapolis MN 55402-4129
Cert. No. 7002 2410 0003 4911 4639

195 PU-439-03-295 Pages: 3
Affidavit of Service
by Public Service Commission
02/26/2004 CC: Comm Legal PUD (3) ALJ

Dick Thronson Manager
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59623-0600
Cert. No. 7002 2410 0003 4911 4646

Patrick Durick Atty for Midcontent Comm
P O Box 400
Bismarck ND 58502-0400

Cert. No. 7002 2410 0003 4911 4653

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. 7002 2410 0003 4911 4660

Walter F Eggers III Atty for AT&T
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne WY 82001-3162
Cert. No. 7002 2410 0003 4911 4677

Gary B Witt
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202
Cert. No. 7002 2410 0003 4911 4684

Sharon Helbling further deposes and says that on the **26th day of February, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **12** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of:

Order

Scott Macintosh
Qwest Corporation
P O Box 5508
Bismarck ND 58506-5508

Michael C Strand
P O Box 5237
Helena MT 59604-5237

Mary Lohnes
Midcontinent Communications
5001 W 41st St
Sioux Falls SD 57106

Steven D Lysne
SRT Communications Inc.
P O Box 2027
Minot ND 58702-2027

Jim Howard
John Staurulakis Inc
Eagandale Corporate Ctr Ste 310
1380 Corporate Ctr Curve
Eagan MN 55121

Susan Travis
WorldCom Inc
707 26th St Ste 4200
Denver CO 80202

Thomas F Dixon
WorldCom Inc
707 26th St Ste 4200
Denver CO 80202

Michel L Singer Nelson
WorldCom Inc
707 26th St Ste 4200
Denver CO 80202

Lesley J Lehr
WorldCom Inc
707 26th St Ste 4200
Denver CO 80202

William A Haas
McLeodUSA
Tech Park
6400 C St SW
Cedar Rapids IA 51404

Peter Healy
TDS Metrocom Inc
525 Junction Rd Ste 6000
Madison WI 53717

Bob Johnson
IdeaOne Telecom
3239 39th St SW
Fargo ND 58104

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **26th day of February, 2004**.

Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

APPROVED
DATE: 2-25-04
KMF

MOTION

February 25, 2004

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission adopt the Order Granting Trade Secret Protection to Qwest Corporation in the Public Service Commission's Local Competition Investigation, Case No. PU-439-03-295.

PJF

194 PU-439-03-295 Pages: 1

Motion adopting Order Granting Trade Secret Protection by Public Service Commission

02/25/2004 CC: Comm Legal PUD (3) ALJ

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

ORDER GRANTING TRADE SECRET PROTECTION

February 25, 2004

On January 15, 2004, Qwest Corporation (Qwest) filed an application for a protective order limiting the disclosure of trade secret information provided in response to discovery requests served by the Commission in this proceeding. Qwest provides the general description of the nature of the information sought to be protected, as follows:

General Description of the Nature of the Information Sought to be Protected

A. Confidential Attachment A to Qwest's response to Switching Request A-14 (Qwest 14) provides summary information about Qwest's residential and business customers, and the revenues gained by serving those customers.
B. Confidential Attachment A to Qwest's response to Switching Request A-15 (Qwest 15) describes costs of switches purchased by Qwest from 1999 to the present and initial line counts for those switches.
C. Confidential Attachment A to Qwest's response to Switching Request A-17 (Qwest 17) describes each Qwest switch in North Dakota and its capabilities.
D. Confidential Attachment A to Qwest's response to Loop Migration Request A-14 (Qwest 31) describes the number of Qwest technicians trained and capable of transferring a line from an ILEC switch to the CLEC facility as a part of the hot cut process.
E. Confidential Attachment A to Qwest's response to Loop Migration Request A-18 (Qwest 35) describes the staffing arrangements for North Dakota wire centers, and the dispatching central office locations from which roving technicians would be sent.

Qwest states that Confidential Attachment A to Qwest's response to Switching Request A-14 (Qwest 14) reflects specifics regarding Qwest's revenue information that it is not required to disclose in public reports, and information about customers and customer revenues that is confidential to both Qwest and its customers.

Qwest states that the information in Confidential Attachment A to Qwest's response to Switching Request A-15 (Qwest 15) and Confidential Attachment A to

193 PU-439-03-295 Pages: 3
Order Granting Trade Secret Protection
by Public Service Commission
02/25/2004 CC: Comm Legal PUD (3) ALJ

Qwest's response to Switching Request A-17 (Qwest 17) is an important part of its cost and network structure and provides information about the location and services available to its North Dakota customers.

Qwest states that Confidential Attachment A to Qwest's response to Loop Migration Request A-14 (Qwest 31) and Confidential Attachment A to Qwest's response to Loop Migration Request A-18 (Qwest 35) provides a view into Qwest's management, staffing and cost structures.

Qwest states that the information it seeks to protect is proprietary to Qwest and its customers and is available only to those Qwest employees and representatives who have a need to know the information to perform their duties and responsibilities. Qwest states that it does not disclose this information outside the company except under the terms of strict agreements or orders to maintain the confidentiality of the information.

Qwest states that competitors or potential competitors of Qwest that provide local exchange service and other telecommunications service would obtain economic value from the disclosure or use of the information. Competitors and potential competitors of Qwest in North Dakota include AT&T, McLeod Telemanagement, Inc., MCIWorldCom, Consolidated Communications Network, Sprint Corporation, IdeaOne Telecom Group and any other provider of telecommunications services in North Dakota or any of the other states in which Qwest operates.

N.D.C.C. Section 47-25.1-01(4) defines "trade secret" as:

> "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:
>
> a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by other persons who can obtain economic value from its disclosure or use; and
>
> b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Commission staff (Staff) filed a response to Qwest's request for trade secret protection. Staff believes that Qwest's application satisfies the requirements of N.D.C.C. Chapter 47-25.1 which allows the Commission to grant trade secret protection in this proceeding, and that the information Qwest seeks to protect qualifies as "trade secret" as that term is defined in N.D.C.C. § 47-25.1-04. Staff position is that responses to discovery requests are not at this time a part of the Commission's official record, but once filed with the Commission are records that are open to the public unless protected as trade secret documents.

The Commission's process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.

Order

The Commission Orders:

1. Qwest Corporation's application for trade secret protection is GRANTED.

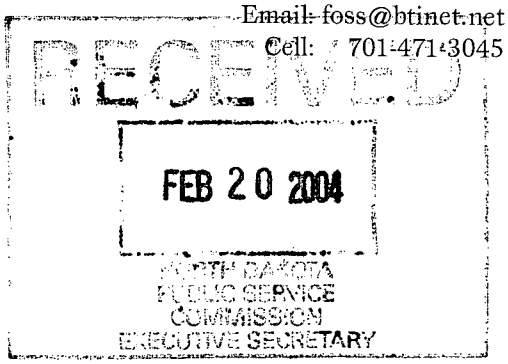
2. This Order does not constitute precedent for subsequent trade secret decisions by the Commission.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

MARILYN FOSS
- Attorney at Law -
Post Office Box 2216
Bismarck, ND 58502-2216

Phone: 701-355-4538
Fax: 701-355-4539
Email: foss@btinet.net
Cell: 701-471-3045



February 20, 2004

Jon H. Mielke, Executive Director
North Dakota Public Service Commission
State Capitol Building
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

HAND-DELIVERED

RE: Case No. PU-439-03-295
Public Service Commission
Local Competition Investigation

Dear Mr. Mielke:

Enclosed for filing are an original and seven copies of the following:

1. MCI's Motion to Strike and Response to Qwest Corporation's Comments on Motion to Temporarily Stay Procedural Schedule

2. Certificate of Service for same.

I have also provided a copy of this motion to Administrative Law Judge Hoberg via Email and ordinary mail.

Please advise me if you have any questions about this.

Thank you.

Sincerely Yours,

Marilyn Foss

Marilyn Foss
Counsel for MCI

c: Client, Parties, ALJ Hoberg

192 PU-439-03-295 Pages: 1

Cover Letter re MCI's Motion to Strike & Response to Qwest's Comments by MCI Telecommunications Corporation by Marilyn Fc

02/20/2004 CC: Comm Legal FUD (3) ALJ

RECEIVED
FEB 20 2004
STATE OF NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission **Local Competition Investigation**	**Case No. PU-439-03-295**

MCI'S MOTION TO STRIKE AND RESPONSE TO QWEST CORPORATION'S COMMENTS ON MOTION TO TEMPORARILY STAY PROCEDURAL SCHEDULE

MCI WorldCom Communications Inc. and MCImetro Access Transmission Services, LLC (collectively "MCI") respectively submit this motion to strike in response to the comments of Qwest regarding the motion of US Link, McLeod, Integra, and Idea One for a delay in the procedural schedule and discovery in the above-captioned matter.

Qwest asserts, at page 2 of its comments, that "In fact, in contrast to AT&T and MCI, Qwest has been urging the Commissions to finish their cases within this 9-month timeframe . . . ." This is a complete misstatement of MCI's position. MCI has **never** advocated that the state proceedings not be completed within the timeframe established under the Triennial Review Order.

Qwest does correctly note, at page 5 of its comments, that MCI has not objected in other states where a similar request for a stay of proceedings has been made. Here, consistent with the position that MCI has taken in other states. MCI does not oppose the request for a stay, nor does it support that request.

191 PU-439-03-295 Pages: 4
Motion to Strike & Response to Qwest's Comments on Motion to Temp Stay by MCI Telecommunications Corporation
02/20/2004 CC: Comm Legal PUD (3) ALJ

Dated: February 20, 2004.

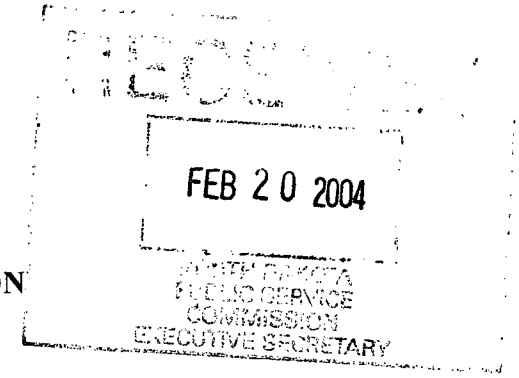
Marilyn Foss

Marilyn Foss, ND ID No. 03474
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Telephone: 701-355-4538
Fax: 701-355-4539

GRAY, PLANT, MOOTY, MOOTY & BENNETT, P.A.
Gregory Merz, Atty. No. 185942
500 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Telephone: (612) 632-3000

Attorneys for MCIMETRO ACCESS TRANSMISSION SERVICES LLC and MCI WORLDCOM COMMUNICATIONS, INC. ("MCI")

GP:1553890 v1



STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission	)	
	)	**Case No. PU-439-02-295**
Local Competition Investigation	)	

CERTIFICATE OF SERVICE

Marilyn Foss hereby certifies that on the 20th day of February, 2004, a copy of MCI'S MOTION TO STRIKE AND RESPONSE TO QWEST CORPORATION'S COMMENTS ON MOTION TO TEMPORARILY STAY PROCEDURAL SCHEDULE was served on the parties via U.S. Mail or Email as follows:

VIA EMAIL

Qwest
Tim Goodwin
tim.goodwin@qwest.com

Daniel Kuntz
dkuntz@zkslaw.com

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Janet Keller
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Thomas F. Kelsch
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McLeod USA
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Rural Telephone Group
Don Negaard
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VIA MAIL AND/OR EMAIL

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Mike Strand
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Administrative Law Judge
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1707 N. 9th Street
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ahoberg@state.nd.us

Marilyn Foss

Marilyn Foss, Attorney for MCI, ND ID No. 03474

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.

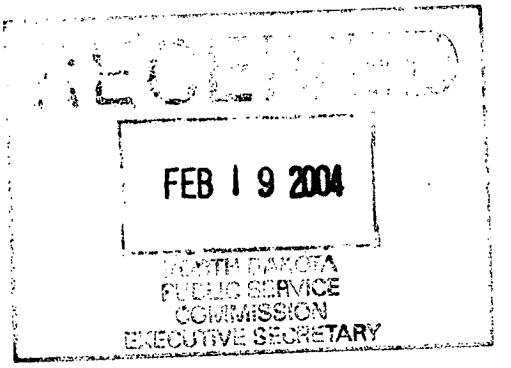
DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
MARK R. HAYS
BRENT M. OLSON
DENISE C. HAYS
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OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

ROGER O. HERIGSTAD
(1919-2003)



February 19, 2004

VIA FAX TRANSMISSION & REGULAR MAIL

Jon Mielke, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION
CASE NO. PU-439-03-295

This letter is to advise you that we support the stay that has been granted by the Public Service Commission and would propose that the stay be extended until after a decision has been issued by the D.C. Circuit Court of Appeals.

Don Negaard

jt

cc: Service List

190 PU-439-03-295 Pages: 2
Letter supporting Motion for Stay
by Rural Telephone Company Group by Don Negaard.
02/19/2004 CC: Comm Legal PUD (3) ALJ .

Service List

Mary B. Tribby
AT&T Law Department
1875 Lawrence Street, Suite 1575
Denver, CO 80202

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AT&T Law Department
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Denver, CO 80202

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Holland & Hart LLP
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Deborah H. Harwood
Integra Telecom
19545 NW VonNeumann Drive,
Suite 200

Tim Goodwin
Qwest Services Corporation
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Denver, CO 80202

Patrick Durick
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Thomas F. Kelsch
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Marilyn Foss
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Susan Travis
WorldCom, Inc.
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Denver, CO 80202

Steven E. Noack
Attorney at Law
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Fargo, ND 58108-2783

Dan Kuntz
Attorney at Law
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Bismarck, ND 58502-1695

Dan Lipschultz
Moss & Barnett
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90 South 7th Street
Minneapolis, MN 55402-4129

Dick Thronson, Manager
Missouri Valley Communications
P.O. Box 600
Scobey, MT 59623-0600

Robert M. Pomeroy Jr.
Holland & Hart
8390 East Crescent Parkway, Suite 400
Green Village, CO 80111

ZUGER KIRMIS & SMITH

COUNSELORS AND ATTORNEYS AT LAW

Lyle W. Kirmis
Lance D. Schreiner, P.C.
James S. Hill, P.C.
Patrick J. Ward
Rebecca S. Thiem, P.C.
Daniel S. Kuntz, P.C.
Jerry W. Evenson, P.C.
Lawrence A. Dopson
Lawrence E. King, P.C.
Tracy Vigness Kolb, P.C.
Shawnda R. Reid
Constance N. Hofland
Paul R. Sanderson
Aaron K. Webb

316 North Fifth Street
Provident Building
P.O. Box 1695
Bismarck, ND 58502-1695
(701) 223-2711
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www.zkslaw.com
email: zkslaw@zkslaw.com

Of Counsel
John A. Zuger

Thomas O. Smith
1944-2001

RECEIVED
FEB 19 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

February 19, 2004

Mr. Jon Mielke
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

Re: Local Competition Investigation -- Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of Qwest Corporation's Comments on the Motion to Temporarily Stay the Procedural Schedule and Discovery in the Public Service Commission's Local Competition Investigation – Case No. PU-439-03-295. We will also be forwarding the Commission an electronic copy of these Comments.

Please contact me if you have any questions.

Sincerely,

Daniel S. Kuntz

Enclosures

c: Scott Macintosh
Tim Goodwin
Parties of Record

189 PU-439-03-295 Pages: 1
Cover letter re Comments
by Qwest Corporation by Dan Kuntz, Attorney
02/19/2004 CC: Comm Legal PUD (3); ALJ .

RECEIVED
FEB 19 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	Case No. PU-439-03-295

QWEST CORPORATION'S COMMENTS ON MOTION TO TEMPORARILY STAY PROCEDURAL SCHEDULE AND DISCOVERY

Qwest supports the motion of US Link, McLeod, Integra, and Idea One for a 60-day delay in the schedule for this proceeding, and a temporary stay of discovery.

1. Oral Argument Before The DC Circuit Signaled That The TRO's Delegation of the Mass Market Switching Cases Would Be Rejected.

As the Commission is aware, the Federal Communications Commission's ("FCC") Triennial Review Order ("TRO") is on appeal to the D.C. Circuit Court of Appeals. At issue in the appeal, among other issues, is the question of whether the FCC has jurisdiction under the Telecommunications Act of 1996 to delegate to the states the responsibility of conducting the impairment analysis which is at the core of this docket. On January 28, 2004, the D.C. Circuit Court of Appeals heard oral argument on the appeal of the FCC's Triennial Review Order. Observers of the court hearing seem to all be in agreement that the Court will find that the FCC did not have authority to delegate to the States the decision of what constitutes "impairment" and thus what network elements have to continue to be unbundled pursuant to the Telecommunications Act of 1996.

The date upon which the Court will release its decision is uncertain. However, the D.C. Circuit issued an expedited schedule for briefing leading up to the January 28, 2004 oral argument; thus, it is reasonable to expect a decision on the appeal within the net 30 to 60 days.

2. *The Requested Postponement Prevents Wasted or Counterproductive Proceedings While Maintaining Needed Flexibility to Act Promptly Once Appellate Proceedings Are Concluded.*

The current proceedings before the State Commissions are complex and resource intensive. Qwest is very cognizant of the demands being placed upon the Commissions, other parties, and itself by virtue of the TRO's directive that the state cases need to be completed within 9 months, or by July 2, 2004. In fact, in contrast to AT&T and MCI, Qwest has been urging the Commissions to finish their cases within this 9-month timeframe, presuming that the TRO is lawful and effective. However, given the course of the oral argument at the Court, and the overwhelming view that delegation is most likely to be found "unlawful", the Motion to Stay is an eminently practical solution.

First, if the delegation is found to be "unlawful" in the Court decision, then the States will lose all jurisdiction to move forward. If the guidelines and presumptions made by the FCC are overturned, or some portion of them, the basis for the state cases and the requisite testimony submitted to date will become meaningless as well. Any money and resources spent on these cases will then become a waste. Given the state

budget constraints and the parties' economic situations, waiting to see what the Court decision has to say before moving forward makes good sense.[1]

Second, no interest is served by continuing these proceedings in the hope that some portion of the factual record might be useful to the FCC in the future, even if the DC Circuit rejects the delegation of the mass market impairment decision to the states. Some have commented that the FCC may rely on the State record in making its decision on remand. However, the FCC has made no indication that they will or even can rely on the States in the remand proceeding, and further proceedings at this time may well answer a question that will not be asked on remand, and leave unanswered questions that will need to be resolved on remand. If delegation and the guidelines and presumptions in the TRO are found unlawful, and if the FCC then asks for State assistance, new and different state proceedings likely would be needed in the future. No one can yet know what issues might be relevant on a remand, how those issues might fit into a determination of impairment, or what facts might be relevant to such a determination, before appellate proceedings are completed. Without this knowledge, further proceedings could be a waste, or even be counterproductive and introduce unnecessary confusion into any state or FCC proceedings on remand.

To avoid prematurely answering the difficult questions of what facts or legal issues might be relevant on remand, and how those facts might fit into an impairment determination, the Motion to Stay presents a practical solution. If the Commission moves all procedural dates out 60 days and puts discovery on hold until the Decision is

---

[1] Outside of this 9-month mass market switching case, there are several provisions of the TRO that require ILECs' and CLECs' compliance. Regardless of whether a stay is granted in this mass market switching case, Qwest will ensure that its actions and agreements comply with the TRO's mandates for as long as they remain the law of the land.

released, if there appears to be jurisdiction and value to continuing, the procedural dates will be in place to continue. In the meantime, the States' and the parties' resources can be conserved.

3. *The Requested Stay Does Not Conflict With The Commission's Obligation to Act on the Mass Market Switching Case.*

The requested stay can be granted without prejudice to the Commission's obligation to act promptly to resolve the mass market switching case. First, there is no requirement for the Commission or any party to this proceeding to request a stay of the 9-month deadline from the FCC. The procedural framework for the 9-month cases is different from the 90-day proceedings. In the 90-day proceedings, the TRO specifically directed States to file with the FCC within the 90-day timeframe, if they believed there was enough evidence to overturn the FCC presumption of no impairment. Then, the FCC would make the final decision about impairment in the enterprise market.

In contrast, in the 9-month proceedings, the FCC delegated the final decision on impairment for the mass-market switching, high capacity loops, and transport areas to the States. Even assuming that delegation is upheld, the only repercussion in the TRO for going beyond the 9-month timeframe is that a party may file with the FCC claiming a "failure to act." See TRO, ¶ 527. The Commission should harbor no concern that any such motion will be filed. ***Even if the DC Circuit decision upholds delegation to the States, Qwest will not claim "failure to act" based on the 60 day delay.*** Qwest understands that the sole purpose of moving the dates 60 days and halting discovery is to conserve resources while at the same time maintaining jurisdiction to promptly restart and complete proceedings, consistent with the resolution of appellate proceedings, as and if necessary.

Indeed, Qwest is the only party that could conceivably be prejudiced by any delay. If these proceedings are delayed, the only result is that the status quo is maintained, and CLECs will continue to be able to obtain UNE-P at the mass market level. While Qwest certainly believes that carriers and competition are not impaired without access to UNE-P at the mass market level, in the interest of justice and conservation of resources, Qwest is willing to accept the short pause requested in order to receive guidance from the DC Circuit's opinion.

4. No Party Objects to the Stay, and Most States in the Qwest Region Have Stayed Proceedings.

Importantly, Qwest is aware of no party that has or will object to the requested stay. In other states, some parties, notably MCI and AT&T, have not objected, but have simply remained silent. This is certainly understandable, as no party – and this includes Qwest and probably many state commissions – want to be seen as prejudging the DC Circuit's decision. However, waiting for guidance from the DC Circuit's guidance on the key issue of delegation makes practical sense and exhibits appropriate deference to the DC Circuit as well as the FCC.

Beyond considerations of appearance, however, the fact that several smaller CLECs have requested the stay, others have openly commented in support of the stay, and that no party objects to the stay, should speak loudly to the Commission. The Commission should respond favorably, and thus encourage the cooperative efforts of the parties to these proceedings to conserve resources and proceed carefully.

Further, although not binding on this Commission, the Commissions of most states in Qwest's region where 9-month cases are pending have approved similar stays or postponements. The Commissions in Arizona, Nebraska, Oregon, Utah, Minnesota,

and Colorado[2] have all granted extensions or delays of at least 30 days to allow the parties, staff, and the Commission's resources to be conserved pending the D.C. Circuits decision, while at the same time making sure that proceedings move forward with all due speed.

In view of these considerations – the uncertainty of the appeal of the TRO and the issues, if any, that might remain after the appellate process, the other practicalities presented in the Motion to Stay, the lack of any prejudice to any party if a stay is granted, the lack of any objection to the requested stay, and the clear trend of state commission decisions granting such stays, Qwest supports the Motion to Stay.

Dated this 19th day of February, 2004.

Respectfully submitted,

Daniel S. Kuntz (ID #03490)
ZUGER KIRMIS & SMITH
P.O. Box 1695
Bismarck, ND 58502-1695
(701)223-2711

Thomas Dethlefs
Tim Goodwin
Qwest Services Corporation
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Denver, CO 80202
303-672-5823

ATTORNEYS FOR QWEST CORPORATION

[2] As the Commission may recall, Qwest withdrew its mass market switching cases in South Dakota, Idaho, Montana, and Wyoming. No formal motion for delay has been filed in Iowa or New Mexico, and the Washington Commission denied a requested delay.

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	))	Case No. PU-439-03-295

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA	)
	: ss.
COUNTY OF BURLEIGH	)

The undersigned, being duly sworn, deposes and says that: I am a United States citizen, over 18 years of age, and on February 19, 2004, I served a copy of the attached:

Qwest Corporation's Comments on Motion to Temporarily Stay Procedural Schedule and Discovery

by placing a true copy in a postage paid envelope or envelopes addressed to each person named below, at the address stated below, which is the last known address of the addressee, and by depositing said envelope in the United States mail at Bismarck, North Dakota.

Mary B. Tribby
AT&T Law Dept
1875 Lawrence St., Suite 1575
Denver, CO 80202

Marilyn Foss
Attorney at Law
P.O Box 2216
Bismarck, ND 58502-2216

Gary B. Witt
AT&T Law Dept.
1875 Lawrence St., Suite 1575
Denver, CO 80202

Susan Travis
WorldCom Inc.
707 17th Street, Suite 4200
Denver, CO 80202

Walter F. Eggers III
Holland & Hart LLP
2515 Warren Avenue, Suite 450
Cheyenne, WY 82001-3162

Steven E. Noack
500 2nd Ave. N., Ste. 514
Fargo, ND 58108-2783

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **17th day of February, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **13** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Interim Stay and Notice of Working Session

The envelopes were addressed as follows:

Robert M Pomeroy Jr
Holland & Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village CO 80111
Cert. No. 7002 2410 0003 4911 4431

Dan Kuntz Atty for Qwest
P O Box 1695
Bismarck ND 58502-1695

Cert. No. 7002 2410 0003 4911 4448

Tim Goodwin
Qwest Corporation
1801 California St Ste 4900
Denver CO 80202
Cert. No. 7002 2410 0003 4911 4455

Marilyn Foss Atty for MCI
P O Box 2216
Bismarck ND 58502-2216

Cert. No. 7002 2410 0003 4911 4462

Mr Thomas F Kelsch
Kelsch Kelsch Ruff & Kranda
P O Box 1266
Mandan ND 58554-7266
Cert. No. 7002 2410 0003 4911 4479

Steven E Noack Atty for IdeaOne
500 2nd Ave N Ste 514
Fargo ND 58108-2783

Cert. No. 7002 2410 0003 4911 4486

Deborah H Harwood
Integra Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton OR 97006-6902

Cert. No. 7002 2410 0003 4911 4493

Dan Lipschultz Atty for McLeod, U S Link
Moss & Barnett
4800 Wells Fargo Ctr
90 S 7th St
Minneapolis MN 55402-4129
Cert. No. 7002 2410 0003 4911 4509

187 PU-439-03-295 Pages: 3
Affidavit of Service
by Public Service Commission
02/17/2004 CC: Comm Legal-PUD (3) ALJ

Dick Thronson Manager
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59623-0600
Cert. No. 7002 2410 0003 4911 4516

Patrick Durick Atty for Midcontent Comm
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Bismarck ND 58502-0400

Cert. No. 7002 2410 0003 4911 4523

Don Negaard
Pringle & Herigstad
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Minot ND 58702-1000
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Walter F Eggers III Atty for AT&T
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Cheyenne WY 82001-3162
Cert. No. 7002 2410 0003 4911 4547

Gary B Witt
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202
Cert. No. 7002 2410 0003 4911 4554

Sharon Helbling further deposes and says that on the **17th day of February, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **12** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of:

Order

Scott Macintosh
Qwest Corporation
P O Box 5508
Bismarck ND 58506-5508

Michael C Strand
P O Box 5237
Helena MT 59604-5237

Mary Lohnes
Midcontinent Communications
5001 W 41st St
Sioux Falls SD 57106

Steven D Lysne
SRT Communications Inc.
P O Box 2027
Minot ND 58702-2027

Jim Howard
John Staurulakis Inc
Eagandale Corporate Ctr Ste 310
1380 Corporate Ctr Curve
Eagan MN 55121

Susan Travis
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202

Thomas F Dixon
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202

Michel L Singer Nelson
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202

Lesley J Lehr
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202

William A Haas
McLeodUSA
Tech Park
6400 C St SW
Cedar Rapids IA 51404

Peter Healy
TDS Metrocom Inc
525 Junction Rd Ste 6000
Madison WI 53717

Bob Johnson
IdeaOne Telecom
3239 39th St SW
Fargo ND 58104

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **17th day of February, 2004**.

Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

APPROVED

DATE: 2-13-04

KnF

MOTION

February 13, 2004

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission adopt the Interim Stay and Notice of Working Session in the Public Service Commission's Local Competition Investigation, Case No. PU-439-03-295.

PJF

186 PU-439-03-295 Pages: 1

Motion adopting Interim Stay and Notice of Working Session by Public Service Commission

02/13/2004 CC: Comm Legal PUD (3) ALJ .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

INTERIM STAY AND NOTICE OF WORKING SESSION

February 13, 2004

On February 12, 2004, the Commission received a request for a temporary stay of the procedural schedule and discovery in this proceeding pending issuance of a written order from the United States Court of Appeals for the District of Columbia in the appeal of the Federal Communications Commission's (FCC) Triennial Review Order (TRO) from USLink, Inc. McLeod USA Telecommunications Services, Inc, IdeaOne Telecom Group, LLC, and Integra Telecom of North Dakota, Inc. (collectively CLECs). The CLECs further request an expedited order to temporarily stay the February 17, 2004 deadline to file batch cut testimony, pending a final decision on this motion to stay the Commission's TRO proceeding.

The CLECs have requested the stay because of the substantial burden on all parties and perhaps nonparties in relation to a February 15 deadline for discovery from Qwest and burden on parties in relation to the February 17, 2004 deadline to file batch cut testimony.

The CLECs state that, given the substantial concerns and questions raised by the Court, it is likely that the Court decision will have a significant impact on the TRO proceeding in this docket, possibly requiring the proceeding to be abandoned, appreciably altered or restarted.

The Commission has determined that an interim stay should be granted to allow time for parties to respond to the motion, and the implications of a stay until the Court makes its decision. The deadline for comments will be February 19, 2004.

A **working session** on this matter will be held beginning **9 a.m. CST, February 23, 2004** in the Commission hearing room, State Capitol, 12th Floor, Bismarck, North Dakota 58505. For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Jon Mielke, Executive Secretary.

Order

The Commission orders:

1. This proceeding is stayed on an interim basis through February 25, 2004.
2. The deadline for responding to discovery from Qwest is stayed on an interim basis.
3. The deadline for filing rebuttal testimony on the hot cut process is stayed on an interim basis.
4. Comments on the stay request are due February 19, 2004.

PUBLIC SERVICE COMMISSION

"NAY"		
Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

PEARCE & DURICK

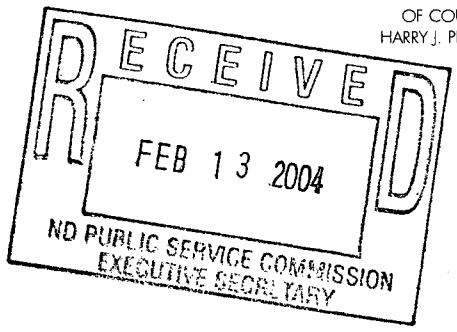
WILLIAM R. PEARCE 1910-1978
WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE •
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE ◆
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JONATHAN P. SANSTEAD

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TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

OF COUNSEL
HARRY J. PEARCE

February 12, 2004



Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

RE: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Commissioners:

Enclosed for filing is the original and seven copies of **MIDCONTINENT COMMUNICATIONS RESPONSE IN SUPPORT OF MOTION OF USLINK, INC.; MCLEODUSA TELECOMMUNICATION SERVICES, INC.; IDEAONE TELECOM GROUP, LLC; AND INTEGRA TELECOM OF NORTH DAKOTA, INC. TO TEMPORARILY STAY PROCEDURAL SCHEDULE AND DISCOVERY** and the **Affidavit of Mailing**.

Thank you for your attention to this matter.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf
Enclosures.
cc w/enc: Ms. Mary Lohnes
All Counsel of Record

184 PU-439-03-295 Pages: 1

Cover letter re Response in Support of Motion to Temp Stay Etc. By Midcontinent Communications

02/13/2004 CC: Comm Legal PUD (3) AL

RECEIVED
FEB 13 2004
PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION	)	Case No. PU-439-03-295
LOCAL COMPETITION	)	
INVESTIGATION	)	

MIDCONTINENT COMMUNICATIONS RESPONSE IN SUPPORT OF MOTION OF USLINK, INC.; MCLEODUSA TELECOMMUNICATION SERVICES, INC.; IDEAONE TELECOM GROUP, LLC; AND INTEGRA TELECOM OF NORTH DAKOTA, INC. TO TEMPORARILY STAY PROCEDURAL SCHEDULE AND DISCOVERY

COMES NOW Midcontinent Communications and files this response in support of the Motion by USLink, Inc., McLeodUSA Telecommunications Services, Inc.; IdeaOne Telecom Group, LLC, and Integra Telecom of North Dakota, Inc. to temporarily stay procedural schedule and discovery. For the reasons given in support of the motion to temporarily stay procedural schedule and discovery by USLink, Inc., McLeodUSA Telecommunications Services, Inc.; IdeaOne Telecom Group, LLC, and Integra Telecom of North Dakota, Inc., Midcontinent Communications files this Response in support of said motion and urges the Commission to grant said motion on an expedited basis.

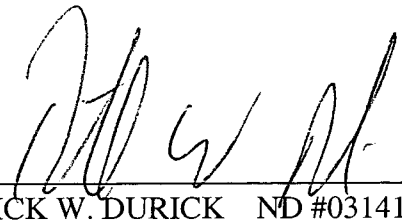
WHEREFORE, Midcontinent Communications respectfully requests that the Commission stay the above-captioned case until such time as the United States Court of Appeals for the District of Columbia issues a written Order in the pending TRO appeal.

DATED this *12* day of February, 2004.

183 PU-439-03-295 Pages: 4

MidContinent's Response in Support of Motion to Temporarily Stay etc by Midcontinent Communications

02/13/2004 CC: Comm Legal PUD (3) ALJ



PATRICK W. DURICK ND #03141
PEARCE & DURICK
P. O. Box 400
314 E. Thayer Avenue
Bismarck, ND 58502-0400
(701) 223-2890

Attorneys for Midcontinent Communications

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Qwest Corporation
Local Competition
Investigation

Case No. PU-439-03-295

CERTIFICATE OF SERVICE BY MAIL

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Renee Friesz hereby certifies that on February *12*, 2004, she served a copy of the attached **MIDCONTINENT COMMUNICATIONS RESPONSE IN SUPPORT OF MOTION OF USLINK, INC.; MCLEODUSA TELECOMMUNICATION SERVICES, INC.; IDEAONE TELECOM GROUP, LLC; AND INTEGRA TELECOM OF NORTH DAKOTA, INC. TO TEMPORARILY STAY PROCEDURAL SCHEDULE AND DISCOVERY**, by placing a true and correct copy thereof in an envelope, and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota. addressed to the following:

Marilyn Foss
P. O. Box 2216
Bismarck, ND 58502-2216

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Dan Lipschultz
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Debra Harwood
Integra Telecom
19545 NW VonNeumann Dr., Suite 200
Beverton, OR 97006-6902

Renee Friesz

Subscribed and sworn to before me this *12* day of February, 2003.

Notary Public

My commission expires:

JEANNE A. FEIST
Notary Public State of North Dakota
My Commission Expires MARCH 7, 2007

MOSS & BARNETT
A Professional Association

4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129
Telephone 612.347.0300
Facsimile 612.339.6686
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THOMAS A. KELLER III
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RICHARD J. JOHNSON
ROBERT J. LUKES
JAMES A. RUBENSTEIN
THOMAS R. SHERAN
EDWARD J. BLOMME
JEFFREY L. WATSON
THOMAS J. SHROYER
DAVID P. JENDRZEJEK
CURTIS D. SMITH
DAVE F. SENGER
MITCHELL H. COX
MICHAEL J. BRADLEY
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SUSAN C. RHODE
THOMAS A. JUDD
DEANNE M. GRECO
CASS S. WEIL
GLEN E. SCHUMANN
JANNA R. SEVERANCE
M. CECILIA RAY
NANCY M. KISKIS
BARRY LAZARUS
RONALD A. EISENBERG
PAUL B. ZISLA
BRIAN T. GROGAN
J. MICHAEL COLLOTON
ERIC J. OLSEN
JOSEPH G. MATERNOWSKI
WILLIAM A. CUMMING
JAYMES D. LITTLEJOHN
MICHAEL R. NIXT
JAMES F. BALDWIN
DAVID S. JOHNSON
PHILIP J. YOUNG
ARTHUR W. DICKINSON
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GREGORY J. WILEY
TIMOTHY L. GUSTIN
YURI B. BERNDT
JERRIE M. HAYES
KELLI A. ENDERS
ELIZABETH H. KIERNAT
MELISSA A. BAER
JAMES J. VEDDER
MICHAEL S. PONCIN
JANA AUNE DEACH
CINDY J. ACKERMAN
ANTHONY A. DORLAND
LORIE A. KLEIN
TERESE A. WEST
ANDREA R. SCOTT
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OF COUNSEL
ARTHUR J. GLASSMAN

DAN LIPSCHULTZ
612.347.0306
LipschultzD@moss-barnett.com

RECEIVED
FEB 12 2004
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

February 12, 2004

VIA FEDERAL EXPRESS

Jon Mielke
Executive Secretary
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing with your office are the original and seven copies of the Motion to Temporarily Stay Procedural Schedule and Discovery submitted on behalf of USLink, Inc.; McLeodUSA Telecommunications, Inc.; IdeaOne Telecom Group, LLC; and Integra Telecom of North Dakota, Inc. in the above-referenced case. We are also filing an electronic version of the Motion with your office today. Parties are being served by electronic mail and/or United State Mail.

Sincerely,

MOSS & BARNETT
A Professional Association

Dan Lipschultz

DL/jjh
Enclosures
cc: All Parties of Record
656397/1

182 PU-439-03-295 Pages: 3

Letter re Motion to Temporarily Stay Procedural Schedule & Discovery & by USLink, McLeodUSA, IdeaOne & Integra

02/12/2004 CC: Comm Legal PUD (3) ALJ

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

In Re: Public Service Commission
Local Competition Investigation

Case No. PU-439-03-295

Kim R. Manney, being first duly sworn on oath, deposes and states that on the 12th day of February, 2004, copies of the Motion to Temporarily Stay Procedural Schedule and Discovery in the above referenced matter were delivered electronically, by Federal Express or US Mail to the following:

Jon Mielke
Executive Secretary
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

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Kim R. Manney

SWORN TO BEFORE ME this
12th day of February, 2004

NOTARY PUBLIC

CYNTHIA KAY ANDERSON
Notary Public
Minnesota
My Commission Expires Jan. 31, 2005

RECEIVED
FEB 12 2004
PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition Investigation

Case No. PU-439-03-295

MOTION OF USLINK, INC.; MCLEODUSA TELECOMMUNICATION SERVICES, INC.; IDEAONE TELECOM GROUP, LLC; AND INTEGRA TELECOM OF NORTH DAKOTA, INC. TO TEMPORARILY STAY PROCEDURAL SCHEDULE AND DISCOVERY

USLink, Inc.; McLeodUSA Telecommunications Services, Inc.; IdeaOne Telecom Group, LLC; and Integra Telecom of North Dakota, Inc. (collectively, "CLECs") hereby request that the North Dakota Public Service Commission ("Commission") temporarily stay the procedural schedule and discovery in the above-captioned case ("TRO Case") pending issuance of a written order from the United States Court of Appeals for the District of Columbia ("Court") in the appeal of the Federal Communications Commission's ("FCC") Triennial Review Order ("TRO"). The CLECs further request an expedited order to temporarily stay the February 17 deadline to file batch cut testimony, pending a final decision on this motion to stay the TRO proceedings.

As grounds for this request, CLECs state:

1. This proceeding has imposed a substantial burden, particularly in relation to discovery, on all parties and many nonparties. The burdens have fallen particularly hard on smaller carriers, such as the CLECs filing this motion, who do not have the resources to respond to the voluminous discovery requests seeking detailed information about their business operations. Much of the discovery to date seeks highly confidential, competitively sensitive details of the CLECs' business operations, posing a serious risk of harm to their business

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Motion to Temporarily Stay Procedural Schedule & Discovery by USLink, McLeodUSA, IdeaOne & Integra
02/12/2003 CC: Comm Legal PUD (3) ALJ

interests, in spite of the protections built into the Protective Order. Given their relatively small size, the CLECs do not have large legal or regulatory departments to handle the burdens of this proceeding. Therefore, they must hire outside counsel at considerable expense or forego other activities and proceedings to attempt to meet these burdens. Moreover, the CLECs operations personnel must devote substantial time and resources to evaluate and respond to the multiple discovery requests and filings of the other parties. This inevitably diverts resources from the CLECs' day-to-day business operations. Such a diversion of resources does not serve the interests of the CLECs or their North Dakota customers.

2. The CLECs and other parties currently face rapidly approaching deadlines to respond to discovery, including a February 15 deadline to respond to discovery from Qwest. The CLECs and other parties also face a fast-approaching deadline of February 17 to file rebuttal testimony regarding the batch hot cut process.

3. The TRO, under which the above-captioned case is being conducted, is currently on appeal before the Court. At issue in the pending appeal, among other issues, is the question of whether the FCC has jurisdiction under the Telecommunications Act of 1996 to delegate to the states the responsibility of conducting the impairment analysis, which is at the core of the TRO Case.

4. The Court heard oral argument in the pending appeal on January 28, 2004. Although impressions of observers to the oral argument are not conclusive, reports from many observers indicate that the Court expressed serious concern over whether the FCC had the authority to delegate impairment determinations for mass market switching to the State Commissions. Observations regarding the oral argument can be found in the January 28, 2004 issue of TR Daily, a copy of which is attached as Exhibit A.

5. Given the substantial concerns and questions raised by the Court, it is likely that the Court decision will have a significant impact on the TRO proceeding in this docket, possibly requiring the proceeding to be abandoned, appreciably altered or restarted. As a result, motions seeking to stay state commission TRO proceedings have already been filed in other states such as Colorado, Washington and Nebraska. Copies of those filings are attached as Exhibits B, C and D respectively. Similarly, the Virginia Commission has issued an Order, staying its TRO proceedings indefinitely. *See* Exhibit E.

6. In light of the substantial uncertainty associated with the pending federal appeal, it appears reasonable to stay the proceeding until that uncertainty is resolved by an Order from the Court. Therefore, in order to avoid the unnecessary expenditure of considerable time and resources by the Commission and all parties, the CLECs request that the Commission temporarily stay discovery in the above-captioned docket until the Court issues an Order in the pending TRO appeal. If the state TRO proceeding is still viable under the Court Order, then the CLECs propose that a new schedule be set, consistent with the intervals in the current schedule.

7. The CLECs are not aware of any party opposing this motion. In addition, Qwest has agreed to extend its discovery response deadlines consistent with such a stay.

WHEREFORE, the CLECs respectfully request that the Commission stay the above-captioned case until such time as the United States Court of Appeals for the District of Columbia issues a written Order in the pending TRO appeal. To avoid the unnecessary expenditure of time and resources to the greatest extent possible, the CLECs respectfully request expedited

consideration of this motion and an expedited order temporarily staying the February 17, 2004 deadline to file batch cut testimony.

Dated this 12th day of February 2004.

Respectfully submitted,

By: _____
Dan Lipschultz

MOSS & BARNETT
A Professional Association
4800 Wells Fargo Center
90 S Seventh Street
Minneapolis, MN 55402
Telephone: 612.347.0306

Attorneys on Behalf of USLink, Inc., McLeodUSA Telecommunications Services, Inc.; IdeaOne Telecom Group, LLC, and Integra Telecom of North Dakota, Inc.

EXHIBIT A

Hunsinger, Jean J.

From: trdaily@tr.com
Sent: Wednesday, January 28, 2004 6:21 PM
To: Dan Lipschultz
Subject: TR Daily, 28 January, 2004

Telecommunications Reports presents....

TRDaily
Jan. 28, 2004

For a Web version of today's TRDaily, go to
http://www.tr.com/online/trd/2004/td012804/index.htm

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Vodafone Posts 4.3M Quarterly Customer Additions

CAPITAL MARKETS
TRDaily Telecom Index Falls 1.4%
Broadcom Lays Funding, M&A Groundwork
Dex Media Floats $250M Bond Offering

PERSONNEL
New Chairman At OPASTCO
UbiquiTel Technology Chief
Skyworks Board Addition

****
TELECOM REGULATION
****

JUDGES CRITICIZE `TRIENNIAL REVIEW' ORDER
FOR DELEGATING TOO MUCH AUTHORITY TO STATES

Federal appeals court judges today criticized the FCC for delegating such broad authority to state public utility commissions in its "triennial review" order (TRO), which has been challenged by all segments of the industry since its release last August. The appeals court, however, questioned what the alternative would be if state authority was vacated.

In oral arguments this morning before the U.S. Court of Appeals in Washington, FCC attorney John Ingle was riddled with hostile questioning from the three-judge panel as to why the Commission believed that it was lawful to punt to the states the power to play such a major role in determining which network elements competitive carriers should continue to have access to and whether they'll continue to be able to provide local exchange service using the unbundled network element-platform (UNE-P).

"There's nothing in the statute nor in case law to support state delegation," Judge Harry T. Edwards said in response to Mr. Ingle's argument that the Commission stands to prevail on its decision to delegate authority. "You could have delegated to any guy or girl on the street" that proved to be helpful to the Commission in tackling the difficult issues in the triennial review, he added. Judge Edwards said it was "amusing" the way the Commission says in one section of the TRO that the states have no authority over unbundling but "lo and behold, the FCC delegates its authority to the states."

Where the Commission says in the TRO that states have no authority is an "overstatement," Mr. Ingle said. He pointed to the power granted to states in section 252 of the 1996 Telecommunications Act over arbitration proceedings for interconnection agreements. Judge Edwards, however, cut off Mr. Ingle, saying that he was overreaching. Just because Congress gave states specific authority over arbitrating interconnection agreements doesn't mean that they have authority under section 251c) unbundling rules, Judge Edwards said. "That 251 argument is hurting your case."

"Some of your arguments are out of context," said Judge A. Raymond Randolph. "We need to determine what the statute says, and the end of the argument is that the FCC has to make the decision." Judge Edwards added, "This is what we told you in USTA," referring to the same three-judge panel's 2002 pro-Bell decision in "U.S. Telecom Association v. FCC," in which the court remanded the Commission's unbundling rules. The rules were previously remanded in 1997.

Don Verrilli, counsel for competitive local exchange carriers (CLECs), tried to explain to the court that the FCC didn't delegate actual decision-making authority to the states but rather delegated a fact-finding role to the state commissions, which addresses the court's previous ruling in USTA v. FCC that the Commission must undertake a granular analysis of unbundling rules.

Despite clear frustration with the Commission for delegating authority to the states in determining unbundling for mass-market switching, transport facilities, high-capacity loops, and dark fiber, the court pressed counsel for the Bell companies to provide an alternative remedy should state authority be vacated.

"Assuming we agree with you, what remedy would we have," Judge Edwards asked Michael K. Kellogg, counsel for USTA and the four Bell companies, who led off the two-hour oral argument. "Where does that leave your clients," he asked. "In limbo?"

Senior Judge Stephen F. Williams said, "If we agree with you on the delegation issue, do we say that all the rules are vacated?"

Mr. Kellogg said that the court should vacate certain aspects of the TRO (not the broadband aspects, he noted), remand the rules to the Commission, and provide "even more specific guidance" than the court did in USTA v. FCC. As for where that would leave the Bell companies, Mr. Kellogg acknowledged that there are various agreements at the state commissions.

In addition to addressing the state delegation issue, the judges also

questioned the Commission's decision to maintain discounted access to incumbent local exchange carrier (ILEC) facilities, especially UNE-P, for CLECs and interexchange carriers (IXCs).

Judge Williams specifically questioned whether the FCC, in keeping the ILEC facilities unbundled, had made a determination that IXC's are indeed impaired without access to network elements at TELRIC [total-element long-run incremental cost] rates. He said it may be "farfetched" to determine that IXC's are impaired. Mr. Ingle said the FCC had made this impairment finding "in general" with respect to CLECs and IXCs.

Judge Williams further raised questions over whether a competitor should be able to use the network access requirements under section 271 of the Act to combine ILEC network elements when unbundling obligations no longer exist under section 251c)(3).

"With regard to UNE platform, it seems fairly clear that the court is not comfortable with the FCC's having delegated much of its role to the states," said Anna-Maria Kovacs of Regulatory Source Associates LLC. "The court also did not appear convinced that hot cuts pose an insurmountable entry barrier." She added, "Thus, it seems most likely to us that the impairment decision will be placed back directly in the FCC's hands for market-by-market determination that goes beyond the hot cut issue."

Analysts with Legg Mason Wood Walker, Inc., said "The judges were more guarded about a potential remedy, bolstering our sense that this remains a potential problem for Bell attempts to gain more near-term relief, even if they win a positive ruling." They added, "The judges didn't dismiss the possibility that FCC could still assign the states some sort of fact-finding role. We also expect the case to be appealed, possibly to the full D.C. Circuit, and then to the Supreme Court." "In short, it was a good day for the Bells and a bad one for the IXCs and many CLECs, but the question of a remedy and timing remains a key variable," Legg Mason added.

James Bradford Ramsay, general counsel to the National Association of Regulatory Utility Commissioners, said he was interested in the judges questioning of the incumbent carrier side as to an alternative to the state authority. "What do we do? What's the remedy?" Mr. Ramsay asked. "It may be a bad day for the CLECs but it's far from clear that it's a good day for the ILECs. . . . They might not get very much more relief." He added, "If they do in fact wipe the delegation [requirement], it's very likely that the states will transfer their records" to the FCC.

Although most the questioning from the judges focused on the state delegation issue, Jonathan Askin, general counsel for the Association for Local Telecommunications Services (ALTS), said, "Whether the FCC is the arbiter, or has the right to delegate some decision-making or fact-finding authority to the states, does not affect the self-evident proposition that the 'local loop' is the paradigmatic 'bottleneck' facility which must be made equally available to all competitors if consumers are to see the ultimate benefits of a competitive telecommunications marketplace."

"Even if the court vacates and remands the FCC's decision, CLECs will continue to be able to provide service and attract customers," added John Windhausen Jr., president of ALTS. "CLECs' access to the Bell and other ILEC networks is governed by intercarrier interconnection contracts." He said, "These contracts are approved by the states and cannot be changed until the state utility commissions decide to change them."

A spokeswoman for WorldCom, Inc., said, "We are hopeful that the D.C. court of appeals will rule in favor of maintaining the FCC's local

competition rules, protecti[illegible]che benefits of consumer choice[illegible] lower rates and better customer service." - Margaret Boles, mboles@tr.com

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JUDGES' VIEWS ON BROADBAND ISSUES
AREN'T CLEAR AT `TRIENNIAL REVIEW' HEARING

The "triennial review" order's broadband provisions, which largely benefited incumbent local exchange carriers, today took a back seat to the question of whether the FCC wrongly gave state commissions too much authority over whether to retain the unbundled network element platform (UNE-P). Both parts of the order were the focus of oral arguments today in the U.S. Court of Appeals in Washington (see separate story).

Because the direction of the appeals court judges was so clear on UNE-P, whether they will also reject the FCC's decisions against broadband unbundling may be a closely watched issue as lawyers on all sides await the court's decision, which is expected as early as February.

Three broadband issues in particular got some attention during today's oral arguments - the decision of FCC not to require the Bells to unbundle new broadband facilities and whether the Commission wrongly decided that section 271 of the Telecommunications Act of 1996 does not require the Bells to provide CLECs access to the "checklist" items at nondiscriminatory rates, and rules for hybrid copper-fiber.

Unlike the state delegation issue, where the court largely showed its hand, observers were left with little to go on in predicting how justices might rule on this equally critical set of issues. "It's really hard to read the tea leaves because the bench was kind of quiet," one observer said. "One of the reasons for the court's silence could be if they're going to reverse the FCC on UNE-P, they're going to send the decision back on broadband as well for an economic analysis."

"We did not get a clear sense of the courts' views on the broadband portion of the order," analyst Anna-Maria Kovacs said in a research report. "There were far fewer questions than there were on the UNE platform portion, and they were far less insistent. There was some discomfort expressed with the FCC's national rules in the broadband arena. However, there also seemed to be some indication of a willingness to grant deference to the FCC."

An ILEC attorney said on the whole he was pleased with how the oral arguments unfolded on the broadband issues from the standpoint of his side. "The judges didn't raise any concerns with fiber-to-the-home or with linesharing, it was only with the unbundling of hybrid copper loops that they raised some concerns," the source said. "There was some question about whether the FCC fully explained its justification for the unbundling decision. We think on balance the record is going to be there."

In an exchange that is getting some attention, Judge A. Raymond Randolph questioned Michael K. Kellogg, an attorney for the ILECs on what he saw as a potential contradiction in his arguments.

Judge Randolph noted that in the first part of the morning's argument, Mr. Kellogg had contended that the FCC was wrong to cite a national finding of impairment as justification for mandating a state-by-state review of UNE-P. The justice noted that he later contended the FCC was perfectly correct to find nonimpairment nationally to justify not requiring broadband unbundling.

"In the first hour, you argued that [analysis] had to be market-by-

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

REGARDING THE UNBUNDLING OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS PURSUANT TO THE TRIENNIAL REVIEW ORDER -- INITIAL COMMISSION REVIEW.	)	DOCKET NO. 03I-478T
REGARDING ADOPTION OF A BATCH HOT CUT PROCESS PURSUANT TO 47 C.F.R. § 51.319(d)(2)(ii).	)	DOCKET NO. 03I-485T

MOTION OF THE COLORADO OFFICE OF CONSUMER COUNSEL TO TEMPORARILY STAY DISCOVERY IN THE CAPTIONED DOCKETS AND EXTEND ALL PROCEDURAL DATES BY APPROXIMATELY TWO MONTHS AND REQUEST TO SHORTEN RESPONSE TIME TO THIS MOTION

The Colorado Office of Consumer Counsel ("OCC"), through its counsel, submits its motion requesting that the Colorado Public Utilities Commission ("PUC" or the "Commission") temporarily stay discovery and amend the procedural schedules set by the Commission in Docket Nos. 03I-478T and 03I-485T by extending all procedural deadlines by approximately 60 days. As grounds for this request, the OCC states:

1. On October 31, 2003, the Commission issued Decision No. C03-1225, Order Opening Docket and Establishing Procedural Requirements in Docket No. 03I-478T (the "TRO" docket). The procedural schedule allowed three rounds of prefiled testimony from the parties with Qwest Corporation ("Qwest") filing its Direct Testimony on January 26, all other parties filing Answer Testimony on March 1 and filing of Rebuttal and Cross-Answer Testimony on March 22, 2004. Ten days of hearing were reserved beginning April 12, 2004. Subsequently, the Commission granted motions filed on behalf of several parties allowing all parties to file testimony concurrently on all three

filing dates. The Commission also moved the hearings to the weeks of April 19 and April 26, 2004.

2. On November 5, 2003, the Commission issued Decision No. C03-1250, Order Opening Docket and Procedural Directives, in Docket No. 03I-485T (the "Batch Hot Cut" or "BHC" docket). This order allowed all parties to file direct testimony on January 23 and reply testimony on February 17, 2004. By Decision No. R04-0112-I, issued on January 30, 2004, Administrative Law Judge Dale E. Eisley set the hearings in the BHC docket for April 28, 29, and 30, 2004, or if necessary, May 3, 4 and 5, 2004.

3. The OCC is a party in both the TRO and the BHC dockets. At this point in time, after the filing of direct testimony in both dockets, the OCC is inundated, having to review the testimony of 18 witnesses in the TRO and 7 witnesses in the BHC. In addition, the OCC is reviewing responses to data requests propounded by several parties in the TRO docket and preparing follow-up data requests in preparation for the next round of testimony in both dockets. Suspending the procedural schedule in both dockets will allow the OCC staff adequate time to review and analyze this data.

4. As the Commission may be aware, the Federal Communications Commission's ("FCC") Triennial Review Order is on appeal to the District of Columbia Circuit Court of Appeals. At issue in the appeal, among other issues, is the question of whether the FCC has jurisdiction under the Telecommunications Act of 1996 to delegate to the states the responsibility of conducting the impairment analysis which is at the core of both the TRO and BHC dockets.

5. Oral argument was held in the appeal of the FCC's TRO on January 28, 2004. Although impressions of observers to the oral argument are not conclusive, reports

from several observers indicate that the Court expressed concern over whether the FCC had the authority to delegate impairment determinations for mass market switching to the State Commissions. The OCC believes that it is likely that the Court decision will have a significant impact on the PUC TRO and BHC proceedings, which could require these proceedings to be abandoned, appreciably altered or restarted.

6. The D.C. Circuit Court issued an expedited briefing schedule leading up to the January 28, 2004 oral argument; thus, it is reasonable to expect a decision on the appeal in the near future. Therefore, in order to avoid the unnecessary expenditure of considerable time and resources by the Commission and all parties, the OCC requests that the Commission temporarily stay discovery in the captioned dockets until March 29, 2004 and suspend the TRO and BHC procedural schedules, for approximately two months. This interval will allow time for the Commission to take into consideration any decision issued during that time by the D.C. Circuit Court in the appeal of the FCC's TRO order. The date proposed for propounding new discovery in both dockets preserves the interval between direct testimony and the next round of testimony in each docket.

7. The OCC requests that the Commission amend the procedural schedule in the TRO and BHC dockets as follows:

March 29:	Discovery resumes
April 19:	Batch Hot Cut Rebuttal Testimony
May 3:	TRO Answer Testimony
May 24:	TRO Rebuttal Testimony
June 21:	TRO and BHC hearings run consecutively for 10 business days.
July 26:	TRO Statements of Position

8. The OCC requests that the Commission shorten response time to this motion to Tuesday, February 10, 2004, at noon. In support of this request, the OCC states that on Thursday, February 05, 2004, Counsel for the OCC provided an electronic copy of this motion, as filed, to counsel for all parties who filed direct testimony in either the TRO or the BHC dockets as well as to all persons listed on the pleadings service list in both dockets. Therefore, all active parties have sufficient notice of this motion so that they can file a response, if they choose to do so, by noon on Tuesday, February 10, 2004. If the Commission grants the request for shortened response time, the Commission may consider this motion at its weekly meeting on February 11, 2004.

WHEREFORE, the OCC requests that the Commission amend the procedural schedules in Dockets 03I-478T and 03I-485T as related in detail above and shorten response time to this motion to noon on February 10, 2004.

Dated this 5th day of February 2004.

Respectfully Submitted,

KEN SALAZAR
Attorney General

BY: _____

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ATTORNEYS FOR THE COLORADO
OFFICE OF CONSUMER COUNSEL

EXHIBIT C

Qwest
1600 7th Avenue, Room 3206
Seattle, Washington 98191
Phone: (206) 345-1574
Facsimile (206) 343-4040

Lisa A. Anderl
Associate General Counsel
Regulatory Law Department

February 10, 2004

Via E-Mail and Overnight Mail

Ms. Carole J. Washburn, Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: Docket No. UT-033044 - Triennial Review
Request for Delay

Dear Ms. Washburn:

Qwest hereby requests a 60-day delay in the schedule for this proceeding, and a temporary stay of discovery. This request was discussed today at the prehearing conference, and Qwest is now submitting its request in writing.

As the Commission is aware, the Federal Communications Commission's ("FCC") Triennial Review Order ("TRO") is on appeal to the D. C. Circuit Court of Appeals. At issue in the appeal, among other issues, is the question of whether the FCC has jurisdiction under the Telecommunications Act of 1996 to delegate to the states the responsibility of conducting the impairment analysis which is at the core of this docket. Oral argument was held on January 28, 2004. Although impressions of observers to the oral argument are not conclusive, reports from several observers indicate that the Court expressed concern over whether the FCC had the authority to delegate impairment determinations for mass market switching to the state commissions. It is likely that the Court decision will have a significant impact on this proceeding, which could require this proceeding to be abandoned, appreciably altered, or restarted.

At issue for this Commission is the extraordinary amount of time and effort that will be expended by all parities to this proceeding leading up to and including the currently scheduled March hearings. Thousands of pages of testimony and exhibits have been filed by 29 witnesses, and cross examination will likely exceed the allotted two week hearing schedule. With the likely possibility that the proceedings could be abandoned or altered by the Court, Qwest believes that a significant expenditure of resources can be stemmed by simply delaying the docket.

The D.C. Circuit Court issued an expedited schedule for briefing leading up to the January 28, 2004 oral argument; thus, it is reasonable to expect a decision on the appeal in the near future. Therefore, in order to avoid the unnecessary expenditure of considerable time and resources by the Commission and all parties, Qwest requests that the Commission temporarily stay discovery (both responses and new requests) in this case until April 12, 2004 and suspend the TRO and BHC procedural schedules, for approximately two months. This interval will allow time for the Commission to take into consideration any decision issued during that time by the D.C. Circuit Court in the appeal of the TRO. Qwest requests that the Commission amend the procedural schedule in this dockets follows:

April 12, 2004:	Discovery resumes
May 7, 2004:	File BHC Rebuttal Testimony and TRO Rebuttal Testimony
June 7 – 11 and June 28 – July 2, 2004:	Hearings

For the Commission's additional information, Qwest states that other parties have filed similar requests for delay in Colorado and Nebraska, and that the New Mexico Commission is considering delay on its own motion. No decision has been made in any of those states as of this time.

Finally, Qwest notes that no party opposed this delay at the prehearing conference and that no party will be prejudiced by this delay, as any delay in determination of the issues in this matter simply means that the status quo, including provision of UNE-P, remains in place during the interim. Qwest further commits that it will not claim a "failure to act" under paragraph 527 of the TRO in connection with the delay sought herein.

Sincerely,

Lisa A. Anderl

LAA/llw
Enclosures
cc: Service List (via e-mail and U.S. Mail)

EXHIBIT D

FILED

FEB 6 2004

NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of The Commission, on its own motion, seeking to conduct a 9-month proceeding as contemplated by the Federal Communications Commission in its Triennial Review order adopting new rules for network unbundling obligations.	))))))	APPLICATION NO. C-3026 **MOTION FOR TEMPORARY STAY**

ALLTEL Nebraska, Inc. ("ALLTEL"), through its legal counsel, respectfully submits this Motion requesting that the Nebraska Public Service Commission (the "Commission") temporarily stay discovery and amend the procedural schedule set by the Commission in this Application by extending all procedural deadlines by approximately 60 days. As grounds for this request, ALLTEL states as follows:

1. On October 28, 2003, the Commission issued its Procedural Order No. 1 (the "Procedural Order") in this Application and established a schedule for this proceeding. Subsequently, on December 31, 2003, the Hearing Officer entered an Order extending the deadlines for completion of discovery. Further, on January 28, 2004, the Hearing Officer entered an Order granting leave to AT&T Communications of the Midwest, Inc. and TCG Omaha, Inc. (collectively "AT&T") and to MCImetro Access Transmission Services and MCI Worldcom Communications, Inc. (collectively "MCI") to serve discovery requests in excess of the 50-interrogatory limit, and such Order also modified the discovery schedule.

2. The Procedural Order also established a schedule for the filing of prepared testimony in this case, direct testimony being currently due on March 1, 2004 and filing of rebuttal testimony being scheduled for April 5, 2004. The Commission has scheduled hearings in this matter for the period of April 26 through May 7, 2004.

3. The only interested incumbent local exchange carriers that have filed notices herein framing the scope of the cases to be presented to the Commission are Qwest Corporation ("Qwest") and ALLTEL. Both Qwest and ALLTEL have notified the Commission of their intentions to present mass market switching cases in this proceeding. AT&T, MCI and McLeod Telecommunications Services, Inc. ("McLeod") are the primary competitive local exchange carriers that have, to date, actively participated in this proceeding.

4. As the Commission may be aware, the Triennial Review Order ("TRO") entered by the Federal Communications Commission ("FCC") is on appeal to the District of Columbia Circuit Court of Appeals (the "Circuit Court Appeal").[1] At issue in the Circuit Court Appeal, among other issues, is the question of whether the FCC has jurisdiction under the Telecommunications Act of 1996 to delegate to the states the responsibility for conducting the impairment analysis that is at the core of this proceeding.

5. Oral argument was held in the Circuit Court Appeal on January 28, 2004. Although impressions by observers of the oral argument are not conclusive, press reports by several observers indicate that the Court of Appeals expressed significant concern as to whether the FCC possesses the authority to delegate impairment determinations for mass market switching to the state commissions. It is likely that the decision in the Circuit Court Appeal will have a significant impact on the TRO and therefore, this proceeding, which could require this proceeding to be abandoned, appreciably altered or recommenced.

---

[1] *United States Telecom Association v. Federal Communications Commission,* Cases No. 00-1012, 00-1015, 03-1310, 03-1424, et al., before the United States Circuit Court of Appeals for the District of Columbia.

6. The District of Columbia Circuit Court of Appeals issued an expedited briefing schedule leading up to the January 28, 2004 oral argument. Thus, it appears to be reasonable to expect a decision in the Circuit Court Appeal in the near future. Therefore, in order to avoid the unnecessary expenditure of considerable time and resources by the Commission and all parties, as well as certain non-parties, ALLTEL requests that the Commission temporarily stay discovery in this Application, and suspend the schedule established by the Procedural Order, for approximately two months to specific dates to be determined by the Hearing Officer or the Commission. This interval will allow time for the Commission to take into consideration any decision issued during that time in the Circuit Court Appeal. If the Court rules sooner rather than later in this interval and does not make determinations that drastically alter the scope or need for this proceeding then the Commission could certainly recommence this proceeding with new procedural time frames.

7. Legal counsel for ALLTEL has been in communication with legal counsel for Qwest, AT&T, MCI and McLeod with regard to their respective positions concerning this Motion. ALLTEL's legal counsel has been advised that AT&T will neither support nor oppose the Motion; that MCI does not support the Motion; that McLeod does support the Motion; and that Qwest will not oppose the Motion.

8. Due to the pendency of a significant number of discovery requests served among parties and on non-parties to this proceeding, the current schedule for responding to such discovery requests, and the significant burden on parties, non-parties, the Commission and its Staff to process all pending discovery matters, ALLTEL submits that the best interests of all concerned will be served by the Commission's favorable ruling on

this Motion at its Grist meeting scheduled for February 11, 2004. In support of this request, ALLTEL states that on Friday, February 6, 2004, legal counsel for ALLTEL provided an electronic copy of this Motion to all persons on the service list maintained by the Commission for this proceeding.

WHEREFORE, ALLTEL requests that the Commission temporarily stay discovery in this proceeding and suspend the schedule established by the Procedural Order for approximately two months to specific dates to be determined by the Hearing Officer or the Commission.

Dated this 6th day of February 2004.

Respectfully Submitted,

ALLTEL Nebraska, Inc.

By: Paul M. Schudel

Paul M. Schudel, #13723
James A. Overcash, #18627
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508
(402) 437-8500
(402) 437-8558 Fax

And

Stephen B. Rowell
Stephen T. Refsell
ALLTEL Communications, Inc.
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Mailstop: 1269 B5-F11-C
(501) 905-5637
(501) 905-5489 (Fax)
Its Attorneys

COMMONWEALTH OF VIRGINIA

EXHIBIT E

STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 30, 2004

APPLICATION OF

VERIZON VIRGINIA INC. AND
VERIZON SOUTH INC.

CASE NO. PUC-2003-00170

For authority to cease providing unbundled switching in certain markets and unbundled dedicated transport on certain routes as unbundled network elements under 47 U.S.C. § 251(c)(3)

ORDER

On November 5, 2003, Verizon Virginia Inc. and Verizon South Inc. (collectively, "Verizon") filed an application with the State Corporation Commission ("Commission") requesting that the Commission grant Verizon authority to discontinue providing the unbundled switching element for mass market customers in limited geographic areas, as well as the bundled dedicated transport element on certain enumerated routes as unbundled network elements under 47 U.S.C. § 251(c)(3). Verizon asks the Commission to find that carriers are not impaired without access to unbundled switching in the markets listed in Verizon's testimony and that carriers are not impaired without access to unbundled dedicated transport for the routes enumerated in Verizon's testimony.

Verizon states that the Federal Communications Commission's ("FCC") Triennial Review Order ("TRO") assigned to state commissions the task of the targeted, granular unbundling analysis using the FCC's federal guidelines to make impairment determinations for certain network elements. Verizon asserts that its application and accompanying testimony demonstrate that the FCC's non-impairment standards have been satisfied for unbundled switching and dedicated transport in the identified markets.

On December 3, 2003, we issued a Preliminary Order that, among other things, required publication of notice, permitted interested persons to file notices of participation, and invited initial and reply briefs on certain preliminary questions attendant to the Commission's authority in this matter.

On January 9, 2004, the Commission's Staff ("Staff"), Verizon, AT&T Communications of Virginia, LLC ("AT&T"), Sprint Communications Company of Virginia, Inc., Central Telephone Company of Virginia and United Telephone-Southeast, Inc. (collectively, "Sprint"), MCI Worldcom Communications of Virginia, Inc. ("MCI"), and Cavalier Telephone, LLC ("Cavalier") filed initial briefs. On January 23, 2004, Staff, Verizon, and MCI filed reply briefs.

AT&T, Sprint, and MCI state that the FCC's delegation of authority to the states in this matter is lawful. Conversely, Verizon contends that the FCC's delegation is unlawful. Verizon explains that the TRO is on appeal to the United States Court of Appeals, wherein Verizon has sought a writ of mandamus arguing that the FCC's delegation to the states of authority to make unbundling determinations is illegal.

However, Verizon also asserts that the Commission should not exercise its discretion to "defer" this issue under § 56-265.4:4(B)(4) of the Code of Virginia. Verizon states that the interests of all parties in the Commonwealth are best served by the Commission acting promptly in this case, that the Commission's refusal to hear this case would keep Virginia in unbundling purgatory even longer, and that the Commission's analysis and findings likely would be the basis for an impairment decision by the FCC if the TRO's delegation of authority to the states is found to be unlawful by federal courts.

Staff also concludes that the FCC lacks authority to delegate this matter to state commissions. Staff states that while express statutory authority is not necessarily required for

delegation, the federal 1996 Telecommunications Act ("Act") explicitly permits the FCC to delegate certain matters but contains no express authorization allowing the FCC to delegate its obligations regarding impairment findings under § 251(d)(2) of the Act. Staff asserts that there is little reason for the Commission to act where its jurisdiction is not firmly established. Staff urges the Commission to wait for the final federal appellate ruling on this question before proceeding further in this matter.

In addition, Staff is unaware of any substantive ruling that the Commission can reach in this proceeding that is not subject to change as a result of the pending federal appeals of the TRO. Verizon, AT&T, and Sprint also suggest that any determination reached by the Commission in this case is subject to change, or may be mooted, by the pending appeals. However, Verizon contends that the real question the Commission must decide at this point is whether we should "discharge the responsibilities of" a state commission under § 56-265.4:4(B)(4) of the Code of Virginia or exercise our discretion to defer this case. Verizon asserts that the Commission is clearly in the best position to decide what is best for the Commonwealth and respectfully urges the Commission to quickly take this case and make the necessary trigger determinations.

NOW UPON CONSIDERATION of Verizon's application, the pleadings, and the applicable law, we are of the opinion and find that this case shall be continued pending further order of the Commission.

We find it has not been established that the FCC's delegation of authority to the Commission in this matter is lawful. Indeed, Verizon, the applicant in this proceeding, firmly asserts that the FCC's delegation of authority to this Commission is illegal. Staff also concludes that the FCC lacks authority to delegate this matter to the Commission. Consequently, we will

defer acting on Verizon's request in its application until it is established that the Commission has appropriate jurisdiction under the Act to perform the actions delegated by the FCC in the TRO.

Accordingly, IT IS HEREBY ORDERED THAT this matter is continued pending further order of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

GRAY PLANT

500 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-3796

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Fax: 612 632-4444

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Suite 600
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320 252-4414
Fax: 320 252-4482

Mr. Gregory R. Merz
6126-632-3257
gregory.merz@gpmlaw.com

RECEIVED
FEB 13 2004
SOUTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

February 11, 2004

To: *See* Attached Service List

Re: *Public Service Commission Local Competition Investigation*
Case No.: PU-439-03-295
Our File No.: 4329346/96329

Dear Counsel:

Enclosed and served upon you please find MCI's Second Set of Discovery Requests to Qwest Corporation along with the Affidavit of Service.

Sincerely,

Gregory Merz

GRM/jlp
Enclosures

cc: Lesley Lehr (w/o encls.)

GP:1550702 v1

180 PU-439-03-295 Pages: 1
Cover letter re MCI's 2nd Set of Discovery Requests to Qwest
by MCI Telecommunications Corporation
02/13/2004 CC: Comm Legal PUD (3) ALJ

Public Service Commission
State of North Dakota

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FEB 13 2004
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Jon H. Mielke

600 E Boulevard Ave. Dept. 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@psc.state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

February 13, 2004

Mr. Jon H. Mielke
Public Service Commission
600 E Boulevard Ave. Dept. 408
Bismarck, ND 58505-0480

RE: **Public Service Commission**
Local Competition
Investigation
Case No. PU-439-03-295

Dear Jon:

Enclosed for filing in the above referenced case are the original and seven copies of the **Staff Response to Qwest's Application Requesting Trade Secret Protection for Responses to Commission's Preliminary Discovery Requests**.

Thank you.

Sincerely,

William W. Binek
Chief Counsel

WWBsls
Enclosure

C: Parties of Record

179 PU-439-03-295 Pages: 1
Cover letter re filing
by Public Service Commission by Bill Binek
02/13/2004 CC: Comm Legal PUD (3) ALJ

RECEIVED
FEB 13 2004
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

STAFF RESPONSE TO QWEST'S APPLICATION REQUESTING TRADE SECRET PROTECTION FOR RESPONSES TO COMMISSION'S PRELIMINARY DISCOVERY REQUESTS

On January 15, 2004, Qwest Corporation (Qwest) filed an application for a protective order limiting the disclosure of trade secret information provided by Qwest in response to discovery requests served by the Commission in this proceeding. Qwest provides the general description of the nature of the information sought to be protected, as follows:

General Description of the Nature of the Information Sought to be Protected.

The information sought to be protected is:

A. Confidential Attachment A to Qwest's response to Switching Request A-14 (Qwest 14) provides summary information about Qwest's residential and business customers, and the revenues gained by serving those customers.

B. Confidential Attachment A to Qwest's response to Switching Request A-15 (Qwest 15) describes costs of switches purchased by Qwest from 1999 to the present and initial line counts for those switches.

C. Confidential Attachment A to Qwest's response to Switching Request A-17 (Qwest 17) describes each Qwest switch in North Dakota and its capabilities.

D. Confidential Attachment A to Qwest's response to Loop Migration Request A-14 (Qwest 31) describes the number of Qwest technicians trained and capable of transferring a line from an ILEC switch to the CLEC facility as a part of the hot cut process.

E. Confidential Attachment A to Qwest's response to Loop Migration Request A-18 (Qwest 35) describes the staffing arrangements for North Dakota wire centers, and the dispatching central office locations from which roving technicians would be sent.

Qwest states that all of the information it seeks to protect is confidential and proprietary to Qwest and is not publicly disclosed. Qwest states that in a competitive telecommunications marketplace, the information sought to be protected is highly sensitive and its public disclosure would place Qwest at a competitive disadvantage.

Specifically, with regard to Confidential Attachment A to Qwest's response to Switching Request A-14 (Qwest 14), Qwest states that the information reflects specifics regarding Qwest's revenue information that it is not required to disclose in public reports, and information about customers and customer revenues that is confidential to both Qwest and its customers.

Specifically, with regard to Confidential Attachment A to Qwest's response to Switching Request A-15 (Qwest 15) and Confidential Attachment A to Qwest's response to Switching Request A-17 (Qwest 17), Qwest states that the information is an important part of its cost and network structure and provides information about the location and services available to its North Dakota customers.

Specifically, with regard to Confidential Attachment A to Qwest's response to Loop Migration Request A-14 (Qwest 31) and Confidential Attachment A to Qwest's response to Loop Migration Request A-18 (Qwest 35), Qwest states that this information, if disclosed publicly, would disadvantage Qwest as it provides a view into Qwest's management, staffing and cost structures.

Qwest states that the information it seeks to protect is proprietary to Qwest and its customers and is available only to those employees and representatives who have a need to know the information to perform their duties and responsibilities, and that it does not disclose this information outside the company except pursuant to the terms of strict agreements or orders to maintain the confidentiality of the information.

Qwest states that competitors or potential competitors of Qwest that provide local exchange service and other telecommunications service would obtain economic value

from the disclosure or use of the information. Competitors and potential competitors of Qwest in North Dakota include AT&T, McLeod Telemanagement, Inc., MCIWorldCom, Consolidated Communications Network, Sprint Corporation, IdeaOne Telecom Group and any other provider of telecommunications services in North Dakota or any of the other states in which Qwest operates.

The present application deals with responses to discovery requests. Responses to discovery requests are not at this time a part of the Commission's official record, but once filed with the Commission are records that are open to the public unless protected as trade secret documents. Staff believes that Qwest's application satisfies the requirements of N.D.C.C. Chapter 47-25.1 which allows the Commission to grant trade secret protection in this proceeding, and that the information Qwest seeks to protect qualifies as "trade secret" as that term is defined in N.D.C.C. § 47-25.1-04. The Commission's process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.

For reasons set forth above staff recommends that the Commission grant Qwest's Application Requesting Trade Secret Protection in this case.

Dated February 13, 2004.

William W. Binek
Chief Counsel

RECEIVED
FEB 13 2004
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sandra L. Scott deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **13th day of February, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **25** envelopes with first class postage, securely sealed and each containing a photocopy of:

> **Staff Response to Qwest's Application Requesting Trade Secret Protection for Responses to Commission's Preliminary Discovery Requests**

The envelopes were addressed as follows:

Robert M Pomeroy Jr
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Qwest Corporation
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Steven E Noack Atty for IdeaOne
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Moss & Barnett
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177 PU-439-03-295 Pages: 3
Affidavit of Service
by Public Service Commission
02/13/2004 CC: Comm Legal PUD (3) ALJ

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William A Haas
McLeodUSA
Tech Park
6400 C St SW
Cedar Rapids IA 51404

Bob Johnson
IdeaOne Telecom
3239 39th St SW
Fargo ND 58104

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **13th day of February, 2004**.

Notary Public

SEAL

SUSAN K. RICHTER
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 15, 2004

ZUGER KIRMIS & SMITH

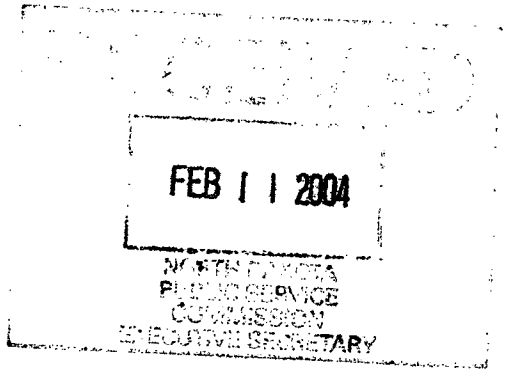
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Lyle W. Kirmis
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Of Counsel
John A. Zuger

Thomas O. Smith
1944-2001



February 11, 2004

Mr. Jon Mielke
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

Re: Local Competition Investigation -- Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing in the above-referenced proceeding is the original and seven copies of a Motion For Reconsideration of the Hearing Officer's Order dated February 4, 2004 regarding Information Requests in this proceeding. A copy of the motion is being sent to the Hearing Officer and served on the parties.

Please contact me if you have any questions regarding this motion.

Sincerely,

Daniel S. Kuntz

Enclosures

c: Allen Hoberg, Hearing Officer
Scott Macintosh
Tim Goodwin
Tom Dethlefs
Parties of Record

176 PU-439-03-295 Pages: 1
Cover letter re Motion for Reconsideration
by Qwest Corporation by Dan Kuntz, Attorney
02/11/2004 CC: Comm Legal PUD (3) ALJ

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

FEB 1 1 2004
NORTH DAKOTA PUBLIC SERVICE COMMISSION EXECUTIVE SECRETARY

Public Service Commission Local Competition Investigation	Case No. PU-439-03-295

MOTION FOR RECONSIDERATION

Qwest Corporation ("Qwest") moves the Hearing Officer for reconsideration of its Order dated February 4, 2004 regarding discovery requests in this proceeding. Specifically, Qwest asks the Hearing Officer to reconsider that portion of the Order denying Qwest's Motion for the Public Service Commission to Issue Information Requests to nonparty CLECs.

On January 15, 2004, Qwest filed its motion for the Commission to issue Information Requests to nonparty Competitive Local Exchange Carriers ("CLECs") that are certified or registered to provide local exchange telecommunications service in North Dakota and which have not intervened as parties in this proceeding. The motion was made based upon discussions between the parties and the Commission Staff at the workshop held in this proceeding on November 24, 2003. At the workshop, the participants discussed mechanisms to obtain information from nonparty CLECs that would be needed by the Commission to properly consider and determine the issues in the case. That information includes the extent to which CLECs are providing local exchange telecommunications services to residential and business customers in North

175 PU-439-03-295 Pages: 4
Motion for Reconsideration
by Qwest Corporation by Dan Kuntz, Attorney
02/11/2004 CC: Comm Legal PUD (3) ALJ

Dakota exchanges through switching equipment owned or controlled by the CLEC.[1] While the parties can obtain and present such information to the Commission for themselves and for each other through written discovery and testimony, there is not a convenient discovery method to obtain necessary information from nonparty CLECs providing the relevant telecommunications services. In the absence of the Commission exercising its power to obtain this information from the nonparty CLECs through Information Requests, the parties would be required to issue subpoenas and conduct depositions of nonparty CLECs under Rule 30(b)(6), N.D.R.Civ.P. This would be unduly expensive and inconvenient to both the parties and the nonparty CLECs.

The workshop participants agreed that a preferable method to obtain such information was through the issuance of Information Requests by the Commission to nonparty CLECs. Parties were invited to submit proposed Information Requests to the Commission for consideration in issuing requests to nonparty CLECs. This proposal was addressed in the Commission's discovery order dated on January 14, 2004:

> At the Commission's TRO workshop on November 12, 2003, the parties discussed developing and submitting, jointly or individually, an abbreviated discovery request for CLECs that have not intervened in this proceeding. The Commission has not received any abbreviated discovery request proposals for Commission distribution to non-intervening CLECs.

In response to the Commission's order, Qwest filed its Motion to Issue Information Requests on January 15, 2004.

The RTCG companies subsequently sought to limit direct discovery requests from MCI and Qwest including discovery requests regarding their CLEC affiliates. In

---

[1] In the *Matter of Review of Section 251 unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking, ¶ 135 (rel. Aug. 21, 2003).

reply to the RTCG companies, Qwest suggested that as an alternative to Qwest's discovery, the RTCG affiliates could respond to the shortened list of Information Requests that Qwest proposed to the Commission. While responses by the RTCG affiliates to either the written discovery or the Information Requests was acceptable to Qwest, there is nonetheless a separate need for nonparty CLECs to provide the information in response to Qwest's Information Requests. Discovery directed to nonparty CLECs is not a reasonable alternative to the Information Requests because of the cost and inconvenience.

No party has objected to Qwest's proposed Information Requests to the nonparty CLECs. Accordingly, Qwest asks the Hearing Officer to reconsider that portion of its Order denying Qwest's Motion to Issue Information Requests to nonparty CLECs or alternatively to schedule oral argument on Qwest's motion.

Dated this 11th day of February, 2004.

Respectfully submitted,

Daniel S. Kuntz (ID #03490)
ZUGER KIRMIS & SMITH
P.O. Box 1695
Bismarck, ND 58502-1695
(701)223-2711

Thomas Dethlefs
Tim Goodwin
Qwest Services Corporation
1801 California Street, Suite 4900
Denver, CO 80202
303-672-5823

ATTORNEYS FOR QWEST CORPORATION

P:\DKUNTZ\11337 Triennial Review\pleadings\motion for reconsideration.doc

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	))	Case No. PU-439-03-295

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA	)
	: ss.
COUNTY OF BURLEIGH	)

The undersigned, being duly sworn, deposes and says that: I am a United States citizen, over 18 years of age, and on February 11, 2004, I served a copy of the attached:

Motion For Reconsideration

by placing a true copy in a postage paid envelope or envelopes addressed to each person named below, at the address stated below, which is the last known address of the addressee, and by depositing said envelope in the United States mail at Bismarck, North Dakota.

Mary B. Tribby
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Denver, CO 80202

Marilyn Foss
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Mandan, ND 58554-1266

Robert M. Pomeroy, Jr.
Holland & Hart
8390 E. Crescent Parkway, Ste. 400
Green Village, CO 80111

Karol A. Cossette

Subscribed and sworn to before me, today, February 11, 2004.

NOTARY PUBLIC
State of North Dakota
My commission expires: 1/24/08

KATHI OSTEEN
Notary Public
State of North Dakota
My Commission Expires Jan. 24, 2008

Kathi Osteen

PEARCE & DURICK

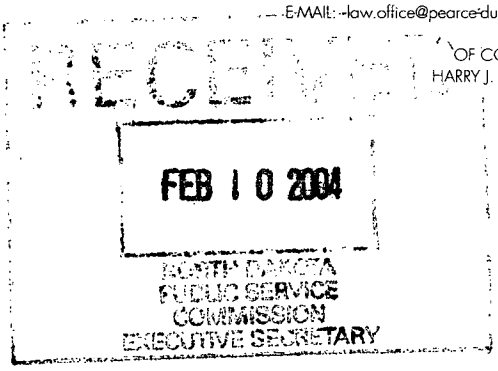
WILLIAM R. PEARCE 1910-1978
WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE •
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE •
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JONATHAN P. SANSTEAD

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E-MAIL: law.office@pearce-durick.com

OF COUNSEL
HARRY J. PEARCE

February 9, 2004



Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

RE: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Commissioners:

Enclosed is the original signature page for MIDCONTINENT COMMUNICATIONS RESPONSES TO MCI'S FIRST DISCOVERY REQUEST TO CLECS, which was filed with the Commission on February 5, 2004. Please substitute this page for the copy in the original documents.

Thank you for your attention to this matter.

Sincerely,

PEARCE & DURICK

Patrick W. Durick

PATRICK W. DURICK

PWD/jf
Enclosures.
cc w/o enc: Ms. Mary Lohnes

174 PU-439-03-295 Pages: 1

Original Signature page for Responses to MCI's 1st Discovery Request to CLECs by Midcontinent Communications

02/10/2004 CC: Comm Legal PUD (3) ALJ

ZUGER KIRMIS & SMITH

COUNSELORS AND ATTORNEYS AT LAW

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Patrick J. Ward
Rebecca S. Thiem, P.C.
Daniel S. Kuntz, P.C.
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Paul R. Sanderson
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Of Counsel
John A. Zuger

Thomas O. Smith
1944-2001

FEB - 9 2004

EXECUTIVE SECRETARY

February 9, 2004

Mr. Jon Mielke
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

Re: Local Competition Investigation -- Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing in the above-referenced proceeding are the original and seven copies of the Motion by Qwest Corporation to Strike AT&T Testimony Regarding Electronic Loop Provisioning. A copy of this motion is being sent to the hearing officer and served on the parties to this proceeding.

Please contact me if you have any questions regarding this motion.

Sincerely,

Daniel S. Kuntz

Enclosures

c: Allen Hoberg, Hearing Officer
Scott Macintosh
Tim Goodwin
Tom Dethlefs
Parties of Record

173 PU-439-03-295 Pages: 1
Cover letter + Motion to Strike
by Qwest Corporation by Dan Kuntz, Attorney
02/09/2004 CC: Comm Legal PUD (3) ALJ

FEB - 9 2004
PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission **Local Competition Investigation**	**Case No. PU-439-03-295**

MOTION TO STRIKE AT&T TESTIMONY REGARDING ELECTRONIC LOOP PROVISIONING

Qwest Corporation ("Qwest") hereby moves to strike the portions of AT&T witness Robert V. Falcone's January 23, 2004 Direct Testimony that are addressed to "electronic loop provisioning" (or "ELP").[1] Mr. Falcone spends over a third of his batch hot cut testimony advocating a loop unbundling proposal that he *concedes* the FCC explicitly rejected.[2] The *Triennial Review Order* specifically declined to have state commissions consider ELP as part of their nine-month cases,[3] and AT&T's attempt to reintroduce these excluded issues through Mr. Falcone's testimony is improper.

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1 Direct Testimony of Robert V. Falcone filed on Behalf of AT&T Communications of the Mountain States, Inc. and TCG Phoenix (Collectively "AT&T"), *In the Matter of ILEC Unbundling Obligations as a Result of the Federal Triennial Review Order*, Docket No. T-00000A-03-0369 (Ariz. Corp. Comm'n filed January 23, 2004) ("Falcone Direct"). In particular, Qwest seeks to strike page 2, lines 19-21 (from "and describes" through the end of the paragraph); page 3, lines 10-12 (from "Finally" through the end of the paragraph); page 35, line 13 through page 55, line 17 in its entirety; and the first two paragraphs of Exhibit 2.

2 *See* Falcone Direct at 53:1-5 ("In response to AT&T's advocacy regarding electronic loop provisioning to the FCC, the RBOCs complained that ELP would cost hundreds of millions of dollars and take years to implement — and the FCC did not adopt [AT&T's] approach.") (capitalization altered); *id.* at 54 n.53 (conceding that "the FCC has not yet adopted and required the implementation of AT&T's Electronic Loop Provisioning architecture") (italics omitted).

3 Report and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* 18 FCC Rcd 16978 ¶ 491 (2003) ("*Triennial Review Order*").

Background

As the FCC explained,[4] and as Mr. Falcone agrees,[5] AT&T's "electronic loop provisioning" proposal seeks to have incumbent LECs such as Qwest "packetize" their networks from end to end. The proposal would require Qwest to make massive upgrades to its outside loop plant and central office equipment (or simply replace that plant and equipment outright) in order to carry *all* calls —voice as well as data — in a packet-switched protocol instead of the circuit-switched protocol used today.[6] Qwest would be required to disconnect all of its feeder facilities from its circuit switches and reconnect them to new ATM-protocol "gateways," which would in turn connect to all CLEC switches as well as back to Qwest's own equipment.[7] Although AT&T's proposal has never been tested or proved workable on any large scale, the theory behind this hypothetical network architecture is to enable voice traffic from a given customer to be packet switched to a CLEC's network without physically connecting the customer's loop to that CLEC's switch.

AT&T presented this same proposal to the FCC in the proceedings leading up to the *Triennial Review Order*. The FCC rejected it in the plainest terms possible. The FCC noted that "the evidence in the record suggests that an ELP process, to be effective, would require significant and costly upgrades to the existing local network at

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4 *See Triennial Review Order* ¶ 491 ("AT&T's ELP proposal proposes to 'packetize' the entire public switched telephone network for both voice and data traffic . . . .").

5 *See* Falcone Direct at 45:22-46:1 ("Under ELP . . . equipment would be deployed or upgraded to digitize and packetize *all* traffic, not just the traffic in the high-frequency portion of the loop, as with the ILECs' current NGDLC architecture.") (emphasis in original).

6 *See id.* at 45:17-19 (conceding that ELP would require upgrades to "ILEC outside loop plant, ILEC central offices, and equipment used by all local carriers . . . that choose to use a traditional circuit-switched network to carry voice traffic").

7 *See id.* at 47:6-23.

both the remote terminal and central office."[8] The FCC credited an estimate that "to 'packetize' the entire public switched telephone network for both voice and data traffic" would cost "more than $100 billion."[9] In addition, the FCC credited arguments that "AT&T's proposal would entail a fundamental change in the manner in which local switches are provided and would require dramatic and extensive alterations to the overall architecture of every incumbent LEC local telephone network."[10] Finally, the FCC concluded that ELP simply had not been proven workable: "[T]he record in this proceeding does not support a determination that electronic provisioning is currently feasible."[11]

For all these reasons, the FCC "decline[d] to require ELP at this time."[12] The FCC also rejected AT&T's related "impairment" argument, which suggested "that unbundled switching for voice-grade loops is essential until incumbent LECs offer an electronic loop provisioning (ELP) method of transferring large volumes of local customers in the mass market from one carrier to another."[13] Instead, the FCC directed state commissions to adopt batch hot cut processes that retain the manual cutovers contained in the existing hot cut process, but realize "efficiencies associated with performing tasks once for multiple lines that would otherwise have been performed on a line-by-line basis."[14] The FCC made clear that adoption of such a process could

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8 *Triennial Review Order* ¶ 491.

9 *Id.*

10 *Id.*

11 *Id.* ¶ 488 n.1517.

12 *Id.* ¶ 491.

13 *Id.*

14 *Id.* ¶ 489.

"mitigate[]" the "loop access barriers contained in the record,"[15] even though it was fully aware that this batch hot cut process would still have a manual form of loop provisioning at its core.

AT&T filed the testimony of Robert Falcone on Hot Cut and Batch Migration Processes on January 23. The testimony proffers the very same impairment argument (and the very same non-solution) that the FCC rejected. Mr. Falcone argues that this Commission should find "impairment" so long as Qwest uses *any* type of hot cut process — even if it adopts exactly the kind of batch hot cut process the *Triennial Review Order* contemplates.[16] He then spends twenty pages arguing that the Commission should adopt the same electronic loop provisioning proposal that the *Triennial Review Order* rejected.[17] Mr. Falcone concedes, as he must, that "the FCC did not adopt [AT&T's] approach"[18] and "has not . . . required the implementation of AT&T's Electronic Loop Provisioning architecture."[19] Yet he nevertheless suggests that the same FCC order that explicitly *rejects* ELP somehow also *authorizes* state commissions to adopt whatever cures for "impairment" they happen to see fit — including the very same ELP proposal the FCC specifically refused to require.[20]

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15 *Id.* ¶ 487.

16 *See* Falcone Direct at 35:14-21; *id.* at 55:10-13 ("Even the best manual processes that could be operationalized today, including batch migration processes, cannot satisfy the requirements needed to eliminate the CLECs' operational impairment in attempting to compete for mass-market customers.").

17 *See id.* at 35:21-55:17.

18 *Id.* at 53:1-5 ("In response to AT&T's advocacy regarding electronic loop provisioning to the FCC, the RBOCs complained that ELP would cost hundreds of millions of dollars and take years to implement — and the FCC did not adopt [AT&T's] approach.") (capitalization altered).

19 *Id.* at 54 n.53.

20 *Id.*

Discussion

1. As Mr. Falcone himself is forced to concede, the identified portions of AT&T's testimony proffer exactly the same electronic loop provisioning arguments that the FCC unambiguously rejected. AT&T presented the same impairment theory and ELP proposal to the FCC that it is presenting here, and the FCC explicitly "decline[d] to require ELP at this time."[21]

The *Triennial Review Order* expressly finds that "the record in this proceeding does not support a determination that electronic provisioning is currently feasible,"[22] and notes that "an ELP process . . . would require significant and costly upgrades to the existing local network," crediting estimates that it would cost over $100 billion to implement nationwide.[23] Far from implying that state commissions must find impairment in their nine-month cases unless they adopt electronic loop provisioning (as Mr. Falcone suggests), the *Triennial Review Order* specifically *rejected* that argument, and instead directed state commissions to adopt batch hot cut processes in their nine-month cases that would continue to rely on the manual transfer of loops.[24] AT&T's testimony completely disregards the *Triennial Review Order*'s instructions for the nine-month cases and asks the state commissions to spend their time on an inquiry the *TRO* specifically rejected. It should therefore be stricken from the record.

The ALJs hearing the Oregon *TRO* cases have already rejected AT&T's attempt to ignore the *TRO* and inject its ELP proposal back into these dockets. When AT&T

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21 *Triennial Review Order* ¶ 491.

22 *Id.* ¶ 488 n.1517.

23 *Id.* ¶ 491.

24 *Id.* ¶ 488.

proposed an issues list in Oregon that included a question asking whether "electronic loop provisioning [can] obviate the need for a hot cut process,"[25] the ALJs specifically directed AT&T to remove it. Electronic loop provisioning, they held, was "beyond the specific areas of inquiry set forth in the TRO."[26] In the words of the presiding Judge,

> Issue 29, for example, regarding electronic loop provisioning, there's a very specific discussion by the FCC on that [in the *TRO*], where they decline to address that at this point in time. And I don't see, given the extensive amount of work, we're going to have to do in the next nine months, how the Oregon Commission can possibly deal with that issue in the context of this proceeding.[27]

Given the *Triennial Review Order*'s unambiguous holdings with respect to ELP, the ALJs' ruling was exactly right. This Commission should rule the same and strike the identified portions of Mr. Falcone's testimony.

2. As noted above, Mr. Falcone is forced to concede that, while AT&T presented its ELP proposal to the FCC, "the FCC did not adopt [AT&T's] approach,"[28] and in fact "the FCC has not . . . required the implementation of AT&T's Electronic Loop Provisioning architecture."[29] Mr. Falcone nevertheless suggests that the *Triennial Review Order* gives state commissions unbounded remedial authority to adopt whatever "mitigating measure[s]" they see fit to address whatever impairments they identify —

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[25] Letter from Steven H. Weigler, AT&T, to Samuel J. Petrillo, ALJ, *et al.*, Docket UM 1100, at Attachment A, p. 4 ¶ 29 (Or. Pub. Util. Comm'n Oct. 13, 2003).

[26] Transcript of Prehearing Conference, *Investigation To Determine, Pursuant to Order of the Federal Communications Commission, Whether Impairment Exists in Particular Markets If Local Circuit Switching for Mass Market Customers Is No Longer Available As an Unbundled Network Element*, Docket UM 1100, at 6:8-9 (Or. Pub. Util. Comm'n Oct. 15, 2003).

[27] *Id.* at 6:12-18.

[28] Falcone Direct at 53:1-5 (capitalization altered).

[29] *Id.* at 54 n.53.

even measures like ELP that the FCC has specifically rejected.[30] The Commission should reject this argument as well.

It is nonsense to suggest that the same FCC order that explicitly rejects ELP as unworkable, unproven, and prohibitively expensive somehow also authorizes state commissions to require that very same thing. More generally, AT&T's suggestion that the *Triennial Review Order* gave state commissions plenary authority to adopt whatever remedial measures they see fit is incorrect. The only paragraph of the *Triennial Review Order* that AT&T cites for this proposition says just the opposite: "In this section, we ask state commissions to take *certain* actions designed to alleviate impairment in the markets over which they exercise jurisdiction."[31] And the next paragraphs specify exactly what those "certain" actions are. The FCC "conclude[s] that the loop access barriers contained in the record may be mitigated through the creation of a batch cut process," and accordingly orders that "State commissions must approve, within nine months of the effective date of this Order, a batch cut migration process to be implemented by incumbent LECs that will address the costs and timeliness of the hot cut process."[32] Nothing in the *Triennial Review Order* gives the states a roving mandate to ferret out and fix alleged impairments, let alone permits them to disregard the one remedy the FCC specifies in favor of another that the FCC specifically rejected.

Again, AT&T's argument has already been rejected elsewhere. In Oregon, AT&T sought to expand that docket's issues list to include a question asking generically what remedial actions that state's commission might take to alleviate impairments, citing the

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30 *Id.* (citing *Triennial Review Order* ¶ 486).

31 *Triennial Review Order* ¶ 486 (emphasis added).

32 *Id.* ¶¶ 487-88.

same (inapposite) part of the *Triennial Review Order* that it cites here. The ALJs rejected AT&T's request as contrary to the *Order*: "The inquiry posed in Paragraphs 460 and 486 requires States to take *certain* actions to alleviate impairment in markets, *but does not give them authority to consider issues or adopt remedial obligations beyond those specified by the FCC.*"[33] The ALJs correctly acknowledged that the "certain actions" the FCC specified all relate to the adoption of a batch hot cut process.[34] This Commission should likewise reject AT&T's arguments.

Conclusion

AT&T's attempt to ignore the *Triennial Review Order*'s explicit rejection of its electronic loop provisioning proposal and smuggle ELP back into the nine-month cases is improper. Qwest respectfully asks the Commission to strike from the record the portions of Mr. Falcone's January 23 testimony identified in footnote 1.

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[33] Ruling, *Investigation To Determine, Pursuant to Order of the Federal Communications Commission, Whether Impairment Exists in Particular Markets If Local Circuit Switching for Mass Market Customers Is No Longer Available As an Unbundled Network Element*, Docket UM 1100, at 2 (Or. Pub. Util. Comm'n Nov. 14, 2003) (emphasis added).

[34] *Id.* (noting that the *Triennial Review Order* paragraph authorizing states to take "certain" remedial actions "immediately precedes the FCC's discussion of the batch hot cut process that the States must approve within nine months of the effective date of the TRO").

Dated: Monday, February 09, 2004.

Respectfully submitted,

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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	))	Case No. PU-439-03-295

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA	)
	: ss.
COUNTY OF BURLEIGH	)

The undersigned, being duly sworn, deposes and says that: I am a United States citizen, over 18 years of age, and on February 9, 2004, I served a copy of the attached:

Motion to Strike AT&T Testimony Regarding Electronic Loop Provisioning

by placing a true copy in a postage paid envelope or envelopes addressed to each person named below, at the address stated below, which is the last known address of the addressee, and by depositing said envelope in the United States mail at Bismarck, North Dakota.

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Karol A. Cossette

Subscribed and sworn to before me, today, February 9, 2004.

NOTARY PUBLIC
State of North Dakota
My commission expires: 1/24/08

Kathi Osteen

KATHI OSTEEN
Notary Public
State of North Dakota
My Commission Expires Jan. 24, 2008

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.

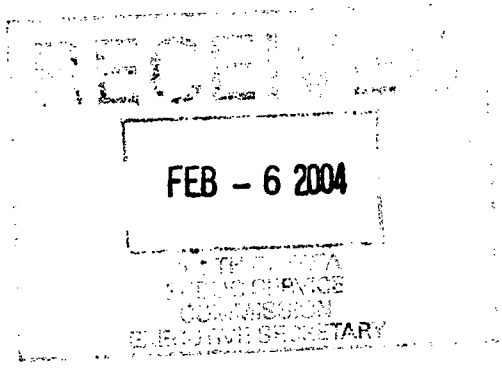
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February 5, 2004

Jon Mielke, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION
CASE NO. PU-439-03-295
OAH File No. 20030389

Enclosed herewith are the signature pages for the responses of Daktel Communications, L.L.C., and Polar Telecom, Inc., to MCI's Discovery Requests to CLECs. These responses were mailed to the PSC on February 2 for filing in the above proceeding. We have included an original and seven copies of each signature page.

Don Negaard

jt

Enclosures

cc/enc: Service List

170 PU-439-03-295 Pages: 1

Letter re signature pages for responses to MCI's Discovery Requests to CLEC's by Daktel Communications, LLC

02/06/2004 CC: Comm Legal PUD (3) ALJ .

171 PU-439-03-295 Pages: 1

Letter re signature pages for responses to MCI's Discovery Requests to CLEC's by Polar Telcom, Inc.

02/06/2004 CC: Comm Legal PUD (3) ALJ .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sandra L. Scott deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **6th day of February, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **13** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Administrative Law Judge's February 4, 2004 Order

The envelopes were addressed as follows:

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Sandra L. Scott further deposes and says that on the **6th day of February, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **12** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of:

Order

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Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **6th day of February, 2004**.

Notary Public

SEAL

SUSAN K. RICHTER
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 15, 2004

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

ORDER
February 4, 2004

On January 14, 2004, the Commission issued a discovery order in regard to Qwest's discovery requests of party ILECs. Since the issuance of that order Qwest filed a January 15, 2004, Motion to Issue Information Requests, asking, in the alternative to its discovery requests of party ILECs, that the Commission issue Information and Document Requests, which were attached to its motion, to all CLECs certified or registered to provide local exchange telecommunications service in North Dakota and which have not intervened as parties in this proceeding. The parties have apparently made all of their responses and replies to the motion and the Hearing Officer has been asked to rule on the motion. *See* N.D. Admin. Code § 69-02-02-08.

This is discovery and the "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party ... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." N.D.R.Civ. P. 26 (b)(1). The Commission has broad authority to obtain information it deems necessary with regard to its proceedings. *See* N.D.C.C. § 49-02-02; N.D. Admin. Code § 69-02-01-08. However, the ALJ agrees with counsel for the RLECs that this action should be adjudicated in regard to the real parties in interest, the parties in this action, if possible.

There is an alternative to Qwest's Motion, first proposed by Qwest only in regard to party ILECs, one dealt with, but not entirely, by the Commission's January 14, 2004, Order. The Commission did not directly rule whether RTCG members (rural ILECs), which are parties to

Order

by Office of Administrative Hearings by Allen Hoberg, Al
02/06/2004 CC: Comm Legal Illona . .

this proceeding and subject to discovery, should be required to answer Qwest's discovery requests to the extent that they are providing Qualified Services by themselves or through affiliate CLECs. Under the rules of civil procedure regarding discovery, they may be required to respond to that request. The information sought appears to be relevant and reasonably calculated to lead to the discovery of admissible evidence. The alternative is for the Commission to issue Information Requests to nonparty CLECs, which is authorized under N.D.C.C. § 49-02-02 and N.D. Admin. Code § 69-02-01-08, but not advisable.

Accordingly, the Public Service Commission orders that the Qwest's January 15, 2004, Motion to Issue Information Request is DENIED, but only because the alternative sought by Qwest is the better approach in discovery. RTCG members (rural ILECs) which are parties to this proceeding and subject to discovery, are required to answer Qwest's discovery requests to the extent that they are providing Qualified Services by themselves or through affiliate CLECs. Any appropriate specific objection to a specific request may be invoked under the rules of civil procedure. Any appropriate trade secret protection may be sought or invoked in accordance with Commission rules. *See* N.D. Admin. Code ch. 69-02-09. Of course, violations of trade secret protection may be pursued under N.D.C.C. ch. 47-25.1.

Dated at Bismarck, North Dakota, this 4th day of February, 2004.

State of North Dakota
Public Service Commission

By: _____
Allen C. Hoberg
Administrative Law Judge
Procedural Hearing Officer
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501-1882
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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the **ORDER** was emailed and that a true and correct copy was mailed, inside mail, at the State Capitol, on the 4 day of February, 2004, to:

Public Service Commission
Attn.: Sandi
600 E. Boulevard Avenue - Dept. 408
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OFFICE OF ADMINISTRATIVE HEARINGS
Allen C. Hoberg, Administrative Law Judge

Lisa J. Carney

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February 5, 2004

RECEIVED
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NORTH DAKOTA
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EXECUTIVE SECRETARY

Public Service Commission
Capitol
600 East Boulevard Avenue
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RE: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Commissioners:

Enclosed for filing is MIDCONTINENT COMMUNICATIONS RESPONSES TO MCI'S FIRST DISCOVERY REQUEST TO CLECS and the Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf
Enclosures.
cc w/enc: Ms. Mary Lohnes
All Counsel of Record

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Cover letter re response to MCI's 1st Discovery Request to CLECS by Midcontinent Communications by Patrick W Durick,
02/05/2004 CC: Comm Legal PUD (3) ALJ .

• ALSO LICENSED IN MINNESOTA • ALSO LICENSED IN

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.

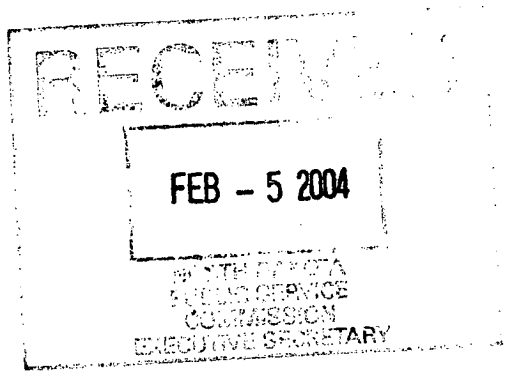
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OF COUNSEL
HERBERT L. MESCHKE

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THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

ROGER O. HERIGSTAD
(1919-2003)



February 4, 2004

Jon Mielke, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION
CASE NO. PU-439-03-295

Enclosed are an original and seven copies of a Motion of Daktel Communications, L.L.C., and Polar Telecom, Inc., for Withdrawal as Interveners in the above matter, including a Certificate of Service.

Don Negaard

jt

Enclosures

cc/enc: Service List

165 **PU-439-03-295** Pages: 1

Cover letter re Motion for Withdrawal as Interveners
by Daktel Communications, Inc. by Don Negaard, Atty

02/05/2004 CC: Comm Legal PUD (3) ALJ .

166 **PU-439-03-295** Pages: 1

Cover letter re Motion for Withdrawal as Interveners
by Polar Telcom, Inc. by Don Negaard, Atty.

02/05/2004 CC: Comm Legal PUD (3) ALJ .

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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NORTH DAKOTA PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

MOTION OF DAKTEL COMMUNICATIONS, L.L.C.,
AND POLAR TELECOM, INC.,
FOR WITHDRAWAL AS INTERVENERS

Daktel Communications, L.L.C., and Polar Telecom, Inc., interveners in the Public Service Commission's local competition investigation, Case No. PU-439-03-295, hereby move the Commission for permission to withdraw as interveners in said proceedings.

Dated this 4th day of February, 2004.

PRINGLE & HERIGSTAD, P.C.

By: Don Negaard, ID #03598
Attorneys for Daktel Communications, L.L.C.,
and Polar Telecom, Inc.
Second Floor, Bremer Bank Building
20 1st Street SW
P.O. Box 1000
Minot, ND 58702-1000
(701) 852-0381

163 PU-439-03-295 Pages: 3
Motion of Daktel Communication & Polar Telecom for Withdrawal as Interveners by Daktel Communications, inc by Don Negaard, Attor
02/05/2004 CC: Comm Legal PUD (3) ALJ

164 PU-439-03-295 Pages: 3
Motion of Daktel Communication & Polar Telecom for Withdrawal as Interveners by Polar Telcom, inc
02/05/2004 CC: Comm Legal PUD (3) ALJ

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Motion of Daktel Communications, L.L.C., and Polar Telecom, Inc., was served by mail on the 4th day of February, 2004, on the following:

Marilyn Foss
Attorney for MCI
P.O. Box 2216
Bismarck, ND 58502-2216

Thomas R. O'Donnell
Holland & Hart, LLP
555 17th Street, Suite 3200
Denver, CO 80202-3979

Dan Lipschultz
Moss & Barnett
4800 Wells Fargo Center
90 South 7th Street
Minneapolis, MN 55402-4129

Dick Thronson, Manager
Missouri Valley Communications, Inc.
P.O. Box 600
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Dan Kuntz
Attorney for Qwest
P.O. Box 1695
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Steven Noack
500 2nd Avenue North, Suite 514
Fargo, ND 58508-2783

Patrick Durick
Attorney for Midcontinent Comm.
P.O. Box 400
Bismarck, ND 58502-0400

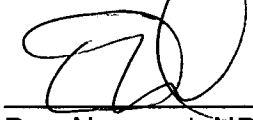
Michael C. Strand
P.O. Box 5237
Helena, MT 59604-5237

Tim Goodwin
Qwest Corporation
1801 California Street, Suite 4900
Denver, CO 80202

Debra Harwood
Integra Telecom
19545 NW VonNeumann Drive, Suite 200
Beaverton, OR 97006-6902

Mary Lohnes
Midcontinent Communications
5501 West 41st Street
Sioux Falls, SD 57106

Gary B. Witt
AT&T Law Department
1875 Lawrence Street, Suite 1575
Denver, CO 80202



Don Negaard, ND Bar ID #03598
Attorneys for Daktel Communications,
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NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
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February 2, 2004

Jon Mielke, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION
CASE NO. PU-439-03-295

Enclosed for filing in the above matter are an original and seven copies of each of the following documents:

1. Response of Daktel Communications, L.L.C., to MCI's Discovery Requests to CLECs.

2. Response of Polar Telecom, Inc., to MCI's Discovery Requests to CLECs.

Don Negaard

jt

Enclosures

cc: Service List

161 PU-439-03-295 Pages: 1

Cover letter re Response to MCI's Discovery Requests to CLECs by Daktel Communications, LLC by Don Negaard, Attc

02/03/2004 CC: Comm Legal PUD (3) ALJ .

162 PU-439-03-295 Pages: 1

Cover letter re Response to MCI's Discovery Requests to CLECs by Polar Telcom, Inc by Don Negaard, Attorney

02/03/2004 CC: Comm Legal PUD (3) ALJ .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **29th day of January, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **13** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order Granting Amended Intervention

The envelopes were addressed as follows:

Robert M Pomeroy Jr
Holland & Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village CO 80111
Cert. No. 7003 1680 0004 9646 3900

Dan Kuntz Atty for Qwest
P O Box 1695
Bismarck ND 58502-1695

Cert. No. 7003 1680 0004 9646 3917

Tim Goodwin
Qwest Corporation
1801 California St Ste 4900
Denver CO 80202
Cert. No. 7003 1680 0004 9646 3924

Marilyn Foss Atty for MCI
P O Box 2216
Bismarck ND 58502-2216

Cert. No. 7002 2410 0003 4911 4240

Mr Thomas F Kelsch
Kelsch Kelsch Ruff & Kranda
P O Box 1266
Mandan ND 58554-7266
Cert. No. 7002 2410 0003 4911 4257

Steven E Noack Atty for IdeaOne
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Cert. No. 7002 1410 0003 4911 4264

Deborah H Harwood
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Beaverton OR 97006-6902

Cert. No. 7002 2410 0003 4911 4271

Dan Lipschultz Atty for McLeod, U S Link
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4800 Wells Fargo Ctr
90 S 7th St
Minneapolis MN 55402-4129
Cert. No. 7002 2410 0003 4911 4288

160 PU-439-03-295 Pages: 3
Affidavit of Service
by Public Service Commission
01/29/2004 CC: Comm Legal PUD (3) ALJ

Dick Thronson Manager
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59623-0600
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Patrick Durick Atty for Midcontent Comm
P O Box 400
Bismarck ND 58502-0400

Cert. No. 7002 2410 0003 4911 4301

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. 7002 2410 0003 4911 4318

Walter F Eggers III Atty for AT&T
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne WY 82001-3162
Cert. No. 7002 2410 0003 4911 4325

Gary B Witt
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202
Cert. No. 7002 2410 0003 4911 4332

Sharon Helbling further deposes and says that on the **29th day of January, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **12** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Scott Macintosh
Qwest Corporation
P O Box 5508
Bismarck ND 58506-5508

Michael C Strand
P O Box 5237
Helena MT 59604-5237

Mary Lohnes
Midcontinent Communications
5001 W 41st St
Sioux Falls SD 57106

Steven D Lysne
SRT Communications Inc.
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Minot ND 58702-2027

Jim Howard
John Staurulakis Inc
Eagandale Corporate Ctr Ste 310
1380 Corporate Ctr Curve
Eagan MN 5512

Susan Travis
WorldCom Inc
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Denver CO 80202

Thomas F Dixon
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202

Michel L Singer Nelson
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202

Lesley J Lehr
WorldCom Inc
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William A Haas
McLeodUSA
Tech Park
6400 C St SW
Cedar Rapids IA 51404

Peter Healy
TDS Metrocom Inc
525 Junction Rd Ste 6000
Madison WI 53717

Bob Johnson
IdeaOne Telecom
3239 39th St SW
Fargo ND 58104

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **29th day of January, 2004**.

Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

APPROVED

DATE: 1-28-04
KMF

MOTION

January 28, 2004

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission adopt the Order Granting Amended Intervention in the Public Service Commission's Local Competition Investigation, Case No. PU-439-03-295.

PJF

159 PU-439-03-295 Pages: 1

Motion adopting Order Granting Amended Intervention
by Public Service Commission

01/28/2004 CC: Comm Legal PUD (3) ALJ

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

ORDER GRANTING AMENDED INTERVENTION

January 28, 2004

On October 24, 2003, the Rural Telephone Company Group (RTCG) filed a Petition to Intervene in this proceeding on behalf of the Rural Telephone Company Group (RTCG). The RTCG is comprised of BEK Communications Cooperative, Consolidated Communications Networks, Inc., Consolidated Telcom, Dakota Central Telecommunications Cooperative, Dakota Central Telcom I, Inc., Dickey Rural Telephone Cooperative, Dickey Rural Communications, Inc., Dickey Rural Access, Inc., Griggs County Telephone Co, Inter-Community Telephone Company, L.L.C., Midstate Telephone Company, Midstate Communications Inc., Moore and Liberty Telephone Company, North Dakota Telephone Company, Northwest Communications Cooperative, Polar Communications Mutual Aid Corporation, Polar Telecommunications, Inc., Polar Telcom, Inc., Red River Rural Telephone Association, Red River Telecom, Inc., Reservation Telephone Cooperative, SRT Communications, Inc., Turtle Mountain Communications, Inc., United Telephone Mutual Aid Corporation, and West River Telecommunications Cooperative.

On November 20, 2003 the Commission granted the RTCG's petition to intervene.

On January 14, 2004 the Commission granted the request of Consolidated Communications Networks, Inc. to withdraw as an interventor.

By letter dated January 15, 2004 the RTCG indicated that it had erroneously included Dakota Central Telecom I, Inc, as an intervening member of the RTCG rather than Daktel Communications, L.L.C., and asked to substitute Daktel Communications, L.L.C. for Dakota Central Telecom I, Inc.

Order

The Commission orders:

1. The petition of the Rural Telephone Company Group, to amend its intervention in this proceeding is granted and Daktel Communications, L.L.C. is substitute for Dakota Central Telecom I, Inc.

158 PU-439-03-295 Pages: 2
Order Granting Amended Intervention
by Public Service Commission
01/28/2004 CC: Comm Legal PUD (3) ALJ

2. Admission as an intervenor shall not be construed as recognition by the Commission that an intervenor might be aggrieved by an order of the Commission in this case.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

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OF COUNSEL
HERBERT L. MESCHKE

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MARK F. PURDY
JAN M. SEBBY

ROGER O. HERIGSTAD
(1919-2003)

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JAN 28 2004
NORTH DAKOTA
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COMMISSION
EXECUTIVE SECRETARY

January 27, 2004

Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION
CASE NO. PU-439-03-295

We are responding to an email of last week requesting comment before the staff meeting of the PSC to discuss the discovery issues pending before the PSC which are on the administrative agenda for Wednesday, January 28.

1. **RURAL ILECS**

First of all, we do not think anyone objects to the Rural ILECs being excluded from MCI and Qwest discovery and only requiring answers where the RLEC is providing Qualified Services in a Qwest service area. MCI has responded in writing saying so and Qwest has responded by saying they have no objection as long as the RLECs respond with information on behalf of their affiliated CLECs.

We represent three ILECs who have affiliated CLECs. We honor the separate corporate existence of each entity and the CLECs are separate legal entities. Two of the CLECs are parties to this proceeding; one is no longer. The question of this third CLEC, which is an affiliate of Consolidated Telecom, is subject to a pending motion by Qwest to allow discovery on non-party CLECs.

It is the position of the RLECs, and we think the correct interpretation of Rule 17 of the North Dakota Rules of Civil Procedure, that any action should be prosecuted by the real party in interest. With respect to the new discovery sought by Qwest, the real party in interest is the CLEC, not the ILEC.

157 PU-439-03-295 Pages. 4
Response to e-mail re discovery
by Rural Telephone Company Group by Don Negaard,
01/28/2004 CC: Comm Legal PUD (3) ALJ .

Another example is another ILEC-affiliated CLEC in this matter, IdeaOne. We do not represent this CLEC, and they are making a separate appearance in this matter. It would not seem logical that each ILEC that owned a piece of IdeaOne should be required to answer on behalf of that entity.

We represent to the PSC and to the other parties that the two CLECs who are parties to this matter have responded and will respond on their own behalf to discovery. Although not a party any longer, the Consolidated-affiliated CLEC would, as a separate entity, respond to any PSC-generated discovery. We object to any effort to impose an obligation on a legal entity to answer the discovery of a different, separate legal entity.

2. CLEC DISCOVERY

There is a concern amongst the two CLECs who are parties to this matter, Polar Telcom, Inc., and Daktel Communications, L.L.C., that the discovery being sought in this matter is not necessary for the PSC to perform the analysis the FCC has delegated to the states. Although the title of the case is "Local Competition Investigation," the case is not really about that at all. This case is a proceeding to investigate whether there is impairment to competitors in Qwest's service areas.

The FCC stated in its TRO that the policy of the regulators in this country has been and should be to encourage investment in facilities that provide competition. (See comments in paragraph 22 at pages 22-23 of the TRO discussing prior FCC orders and Section 252(d)(2) mandates from Congress.)

The FCC also stated that the key question is not a micro-analysis of entry that has occurred but whether it has occurred using non-incumbent ILEC facilities. "We decline to determine impairment based on a certain level of retail competition because Section 252(d)(2) requires us to ask whether requesting carriers are "impaired," not whether certain thresholds of retail competition have been met." (FCC TRO paragraph 1140, page 78.) As noted by these two CLECs in their answers filed with the PSC, they are competing using their own facilities and do not believe they are impaired in doing so.

The FCC stated that more analysis would be conducted, where appropriate. These CLECs believe the fact they are competing in two communities using their own facilities is evidence enough. They have taken the initiative by investing in their facilities rather than using UNEs.

The danger this proceeding poses to these two CLECs, and any other CLEC that is asked questions that require sensitive data to be shared with competitors and potential

competitors, is that the very investment they have taken the initiative to make is at risk when their investment in competitive entry and their entire business plan is placed on public record. They appreciate that the Commission's Rules require non-disclosure to be signed by persons asking for access to this information, but as a practical matter they have no means of enforcement of the Rule if a competitor should improperly use the information requested. It would be very difficult to prove.

In its TRO, the FCC stated it did not wish to engage in an analysis of competitors but rather in an analysis of whether barriers to entry currently exist. These two CLEC parties submit this question has been answered by the fact of their business decision, not in the detail of their current operations.

3. NON-PARTY DISCOVERY

The PSC should limit the discovery on non-parties to questions that are relevant for the same policy reasons as those noted above. Due to the possibility of recurring proceedings and with due regard to non-parties that are competing as CLECs in today's market, the discovery should be limited to determining in which Qwest markets non-parties are competing using non-Qwest facilities and Qwest facilities. The analysis should end there, without a micro-analysis of a non-party's business and operating plans.

Again, the non-parties that are participating using facilities available to them can state what facilities are being used and what general types of customers are being served. There is no need to eviscerate the patient to see how the patient is doing. To lay the internal workings wide open after the CLEC has invested a considerable amount of resources in developing a business plan and customer goodwill discourages similar investment in the future.

For these reasons, the Rural ILECs and two affiliated CLECs resist extensive discovery requests.

CONCLUSION

There seems to be no debate that the Rural ILECs should not be required to answer any discovery in this matter unless they are providing Qualified Services in a Qwest service area. The issue of CLEC discovery should be treated totally different and separate from this issue.

The two CLECs who are parties to this matter resist and request that they not be obligated to respond to discovery that requires a micro-analysis of their operations. We believe a

hearing would be helpful on this issue if discussions amongst the parties are not productive.

The RTCG requests that discovery to non-party CLECs be limited in scope for the same reasons that CLEC discovery be limited. Again, a hearing would be helpful on these issues if discussions are not productive.

Don Negaard

jt

cc: Service List

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PRINGLE & HERIGSTAD, P.C.

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DAVID J. HOGUE
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ROGER O. HERIGSTAD
(1919-2003)

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NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

January 26, 2004

Jon Mielke, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION
CASE NO. PU-439-03-295

Enclosed herewith are the signature pages for the responses of Polar Telcom, Inc., and Daktel Communications, L.L.C., to the Preliminary Discovery Requests which were previously filed with your office. We have included an original and seven copies of each signature page.

Don Negaard

jt

Enclosures

cc: Service List

156 PU-439-03-295 Pages: 3

Signature pages for responses of Polar Telecom & Daktel Communications by Don Negaard, Attorney

01/27/2004 CC: Comm Legal PUD (3) ALJ .

RECEIVED
JAN 27 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

Dated this 15th day of January, 2004.

DAKTEL COMMUNICATIONS, L.L.C.

Keith A Larson

By: Keith A. Larson, Manager
630 5th Street North
Carrington, ND 58421

RECEIVED
JAN 27 2004

Dated this 15th day of January, 2004.

POLAR TELECOM, INC.

By: David L. Dunning, Exec. Vice President
110 4th Street East
Park River, ND 58270

ZUGER KIRMIS & SMITH

COUNSELORS AND ATTORNEYS AT LAW

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Lance D. Schreiner, P.C.
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Patrick J. Ward
Rebecca S. Thiem, P.C.
Daniel S. Kuntz, P.C.
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Of Counsel
John A. Zuger

Thomas O. Smith
1944-2001

RECEIVED
JAN 27 2004
ARY

January 26, 2004

Mr. Jon Mielke
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

Re: Local Competition Investigation Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of an Affidavit of Mailing in the above-referenced proceeding. Thank you for your assistance.

Sincerely,

Karol A. Cossette, PLS

Karol A. Cossette, PLS
Secretary to Daniel S. Kuntz

Enclosures

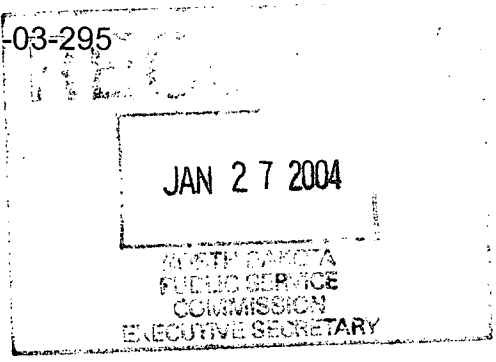
155 PU-439-03-295 Pages: 1
Cover letter re Affidavit of Service
by Qwest Corporation
01/27/2004 CC: Comm Legal PUD (3) ALJ

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission)
Local Competition Investigation)

Case No. PU-439-03-295



AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA)
: ss.
COUNTY OF BURLEIGH)

The undersigned, being duly sworn, deposes and says that: I am a United States citizen, over 18 years of age, and on January 23, 2004, I served a copy of the attached:

Testimony of Teresa K. Million; Direct Testimony of Dennis Pappas and Lynn Notarianni; An Application Requesting Trade Secret Protection

by placing a true copy in a postage paid envelope or envelopes addressed to each person named below, at the address stated below, which is the last known address of the addressee, and by depositing said envelope in the United States mail at Bismarck, North Dakota.

Mary B. Tribby
AT&T Law Dept
1875 Lawrence St., Suite 1575
Denver, CO 80202

Marilyn Foss
Attorney at Law
P.O Box 2216
Bismarck, ND 58502-2216

Gary B. Witt
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Susan Travis
WorldCom Inc.
707 17th Street, Suite 4200
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Walter F. Eggers III
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500 2nd Ave. N., Ste. 514
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Robert M. Pomeroy, Jr.
Holland & Hart
8390 E. Crescent Parkway, Ste. 400
Green Village, CO 80111

Karol A. Cossette

Subscribed and sworn to before me, today, January 23, 2004.

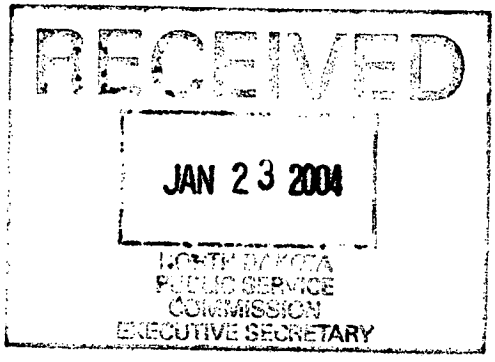
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January 22, 2004

Via Overnight Mail

Mr. Jon Mielke, Executive Director
North Dakota Public Service Commission
State Capitol Building
600 East Boulevard
Bismarck, ND 58505

Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of the Direct Testimony of Robert V. Falcone on behalf of AT&T Communications of the Midwest, Inc. on the Hot Cut and Batch Migration Processes.

Sincerely,

Janet Keller

Janet Keller

Enclosures

cc: Service List

153 PU-439-03-295 Pages: 3

Cover letter re testimony & Certificate of Service
by AT&T Communications

01/23/2004 CC: Comm Legal PUD (3) ALJ .

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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	)))	Case No. PU-439-03-295

AFFIDAVIT OF SERVICE

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The undersigned, being duly sworn, deposes and says that I am over the age of 18 years and, on the 22nd day of January, 2004, I served the Direct Testimony of Robert V. Falcone on behalf of AT&T Communications of the Midwest, Inc. on Hot Cut and Batch Migration Processes to the service list by U.S. Mail.

Janet Keller

Janet Keller

Subscribed and sworn to before me
this 22nd day of January, 2004.

Adam W. Walczak

Notary Public

My Commission expires: 1/22/06

NOTARY PUBLIC
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STATE OF COLORADO

My Commission Expires 1/22/06

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Case No. PU-439-03-295

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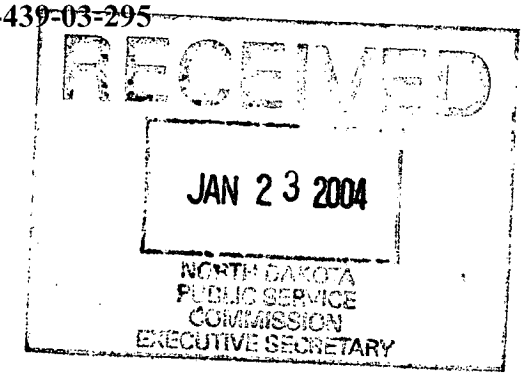
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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295



DIRECT TESTIMONY

OF

ROBERT V. FALCONE

ON BEHALF OF

AT&T COMMUNICATIONS OF THE MIDWEST, INC.

HOT CUT AND BATCH MIGRATION PROCESSES

JANUARY 23, 2004

152 PU-439-03-295 Pages: 63
Direct Testimony of Robert V Falcone
by AT&T Communications
01/23/2004 CC: Comm Legal PUD (3) ALJ

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME FOR THE RECORD.

A. My name is Robert V. Falcone.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am a self-employed telecommunications and management consultant retained by AT&T to assist with its efforts on the TRO hearings in the states.

Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL BACKGROUND AND EMPLOYMENT EXPERIENCE.

A. I hold a B.S. in Business Administration from Adelphi University, Garden City, New York. Additionally, I attended a number of technical and business related courses offered by the AT&T School of Business when I was employed by AT&T on a full time basis. My career with AT&T began in 1970, working in a large central office in New York City. One of my first assignments with AT&T, which lasted for about eight-months, was a frameman. In this assignment my responsibility was to install and remove cross connections on various central office frames. For the next seven years I worked as a switchman in a central office performing switch provisioning and maintenance activities. In 1978, I was promoted to a first level manager responsible for the software administration of the New York City 4ESS switching complexes. As a first level manager I subsequently held various assignments in AT&T's operations and engineering departments. In 1986, I was promoted to a second level manager responsible for AT&T's access engineering in the Northeast. I also held assignments as a product

implementation manager in Bell Laboratories, project manager for the implementation of a new circuit switched network in Canada in a joint venture with Unitel of Canada and implementation manager for AT&T's conversion of its access network to SS7 out-of-band signaling. In 1994, I was promoted to a District Manager responsible for headquarters support of AT&T's local market network implementation. In 1997, I was promoted to a Division Manager responsible for supporting the AT&T regions with local market entry initiatives. I retired from AT&T in June of 1998. After retiring from AT&T, I have worked as a self-employed consultant for numerous clients, including AT&T, CompTel, BearingPoint (formerly KPMG Consulting) and Liberty Consulting. While working as a subcontractor with BearingPoint I was the group leader for BearingPoint's Systems Engineering Organization on the incumbent local exchange carrier ("ILEC") Operational Support System ("OSS") testing team. In this role I was responsible for the test planning, test bed development and test execution for BearingPoint's various ILEC OSS Section 271 testing efforts, including the Regional "ROC" test of Qwest's OSS.

Q. WHAT ISSUES DOES THIS TESTIMONY ADDRESS?

A. This testimony describes the current hot cut process, addresses the adequacy of certain components of Qwest's batch process and describes a long-term solution that is necessary to remove the impairment CLECs face without access to unbundled local switching.

Q. HOW IS YOUR TESTIMONY ORGANIZED?

A. First, I describe the current hot cut process. Second, I discuss the findings of the Federal Communications Commission ("FCC") in the Triennial Review Order ("*TRO*")[1] regarding the current hot cut process. I summarize the FCC's conclusion that CLECs are impaired without access to unbundled local switching as a result of economic and operational impairment, among other things, related to the hot cut process and describe certain aspects of the FCC's directions to the Commission regarding the FCC's finding of impairment. Third, my testimony provides recommendations on evaluating the proposed batch process. Fourth, I discuss the deficiencies and inadequacies in Qwest's proposal. Finally, I discuss why an electronic provisioning process is necessary to truly eliminate the impairment.

II. BACKGROUND: THE HOT CUT PROCESS

Q. WHAT IS A HOT CUT?

A. Whenever a customer seeks to move his or her local service from one switch-based carrier to another, the connection between the customer's loop and the original carrier's switch must be broken and a new connection must be established between that loop and the new carrier's switch. Because the customer's loop is lifted or "cut" while it is still in active service (*i.e.*, the loop is "hot"), the process used to transfer loops has become known as a "hot cut." The hot cut process

[1] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003) (hereinafter *"TRO"*).

involves two separate changes to the customer's service that must be coordinated to occur at approximately the same time: (1) the manual transfer of the customer's loop from one carrier's network to another's (the loop cut); and (2) the porting of the customer's telephone number (including the timing of the associated software changes and disconnection of the original carrier's switch translations), so that inbound calls to the customer can be routed to the new carrier's switch using the customer's existing telephone number.

Q. DOES A HOT CUT CAUSE THE CUSTOMER TO LOSE SERVICE?

A. Yes. This occurs in two ways. The first is a complete loss of dial tone. From the time the customer's loop is disconnected from the ILEC's switch until it is reconnected to the competitive local exchange carrier's ("CLEC") switch, the customer has no dial tone and is completely out of service. Second, from the time the customer's loop is reconnected to the CLEC's switch until the customer's number is successfully ported to the CLEC's switch, the customer cannot receive any incoming calls. That is because, until the appropriate change message is received by the Number Portability Administration Center ("NPAC"), the NPAC database indicates that calls should be routed to the ILEC's switch. If calls are sent to the ILEC's switch after the customer's loop has been physically moved, they are unable to complete.

Q. HOW DID THE FCC ADDRESS THE ISSUE OF HOT CUTS?

A. In the *TRO*, the FCC reviewed substantial data provided by both ILECs and CLECs and found, on a national basis, that competing carriers providing voice service to mass market customers are impaired without access to unbundled local

circuit switching.[2] This finding was based, in part, on clear evidence regarding the economic and operational barriers caused by the hot cut process.[3] The FCC recognized that "whether a customer was previously being served by the competitive LEC using unbundled local switching (*i.e.*, using UNE-P), or by the incumbent itself, a hot cut must be performed [if unbundled local switching is no longer available]."[4] I will address the details of the FCC's impairment finding with respect to hot cuts later in my testimony.

Q. HOW DOES THE HOT CUT PROCESS DIFFER FROM PROVIDING SERVICE USING UNE-P?

A. UNE-P is a simple process that is ordered and provisioned electronically. With UNE-P, there is no need to perform any physical work in the ILEC's central office or outside loop plant to migrate an existing ILEC customer to a CLEC that is providing service using UNE-P. The migration from ILEC-retail to CLEC-UNE-P service only requires the ILEC to make software changes. Thus, there is little chance for error and the customer does not have to lose service during the migration, because the service is being provided through the use of the ILEC's switch. This eliminates the need for a physical transfer of the customer's loop, as well as the need to port the customer's telephone number to another switch. Consequently, CLECs offering service via UNE-P may almost always provide service to the customer very quickly, often on the same day the customer signs-up for service with the CLEC.

---

[2] *TRO* at ¶459.
[3] *Id.*; *see also TRO* at ¶ 473 ("Our national finding of impairment is based on the combined effect of all aspects of the hot cut process on competitors' ability to serve mass market voice customers.").
[4] *Id.* at ¶ 465.

A hot cut, in sharp contrast, is a complex, highly manual process. It requires significant coordination between both the ILEC and a CLEC. Both carriers must perform multiple tasks in the hot cut ordering and provisioning processes, and both parties must coordinate these operations in the proper, agreed-upon sequence. If the many steps of the hot cut process are not performed in that exact sequence -- and properly coordinated between both carriers -- and if the ILEC does not complete its downstream processes correctly and timely, the customer will experience a service outage that is much longer than the unavoidable outage associated with this process.

Q. PLEASE DESCRIBE THE ADDITIONAL STEPS OF MIGRATING A CUSTOMER FROM AN ILEC TO AT&T USING A HOT CUT AS OPPOSED TO THE UNE-P PROCESS.

A. When a CLEC uses its own switch to serve mass market local customers with a UNE-L architecture, the processes needed to change local carriers are much more complex, manual and costly than for UNE-P, requiring physical work to transfer the customer's loop from one carrier's switch to another's. For example, the CLEC must assign the customer to facilities in its switch and equipment; both the CLEC and the ILEC must conduct a series of number porting activities; and the ILEC must perform numerous manual provisioning and testing activities in its central office and sometimes in the field. A summary of all the additional technical steps involved in a hot cut is contained in **Exhibit 1** attached to my testimony. Not only are there significantly more steps involved in a hot cut, but

also those steps must be coordinated if a cut is to be successful in limiting the time the customer is out of service.

III. THE FCC'S FINDINGS REGARDING THE CURRENT HOT CUT PROCESS

Q. WHAT DEFICIENCIES DID THE FCC FIND WITH THE CURRENT HOT CUT PROCESS?

A. The FCC made numerous findings regarding the inadequacy of the current hot cut process. These findings confirm the concerns AT&T has raised about hot cuts in the past and demonstrate why AT&T moved away from UNE-L hot cuts as a method to provide service to its customers.

First, the FCC recognized that deficiencies in the hot cut process are seen and felt by customers. It found that the problems and delays associated with hot cuts "prevent[ ] the competitive LEC from providing service in a way that mass market customers have come to expect."[5] This is a substantial problem because "competition is meant to benefit consumers, and not create obstacles for them."[6]

Second, the FCC recognized that CLECs are likely to lose customers as a result of these problems. "Service disruptions also will influence customer perceptions of competitive LECs' ability to provide quality service, and thus affect competitive LECs' ability to attract customers."[7] Specifically, the FCC found that the "record

[5] *TRO* at ¶ 466.
[6] *Id.* at ¶ 467.
[7] *Id.* at ¶ 466.

shows that customers experiencing service disruptions generally blame their provider, even if the problem is caused by the incumbent."[8]

Third, the FCC recognized that many of the problems with hot cuts are inherent in the process. The FCC concluded, based on the evidence presented, that "hot cut capacity is limited by several factors, such as the labor intensiveness of the process, including substantial incumbent LEC and competitive resources devoted to coordination of the process, the need for highly trained workers to perform the hot cuts, and the practical limitations on how many hot cuts the incumbent LECs can perform without interference or disruption."[9]

Fourth, the FCC focused specifically on the unavoidable limitations on the volume of hot cuts the ILECs could perform. The FCC found that CLECs were impaired because hot cuts could not be performed in the volumes that would occur in the mass market: "[h]aving reviewed the record evidence, we find that it is unlikely that incumbent LECs will be able to provision hot cuts in sufficient volumes absent unbundled local circuit switching in all markets."[10] The FCC specifically rejected ILEC arguments that the FCC's findings in section 271 proceedings regarding hot cuts demonstrated lack of operational impairment. The FCC correctly found that the number of hot cuts in the current market environment "is not comparable to the number that incumbent LECs would need to perform if unbundled switching were not available for all customer locations

[8] *Id.* at ¶ 467.
[9] *Id.* at ¶ 465.
[10] *Id.* at ¶ 468.

served with voice-grade loops."[11] Thus, the issue here is that there is "an *inherent limitation* in the number of manual cut overs that can be performed, which poses a barrier to entry that is likely to make entry into a market uneconomic."[12]

Finally, the FCC concluded that ILEC promises, regarding the ability to perform some volume of hot cuts that had never been requested, cannot be relied upon to demonstrate adequate performance. Specifically, the FCC found that "incumbent LECs' promises of future hot cut performance [are] insufficient to support a FCC finding that the hot cut process does not impair" CLECs.[13]

In short, the FCC found "ample testimony in the record" on the CLECs' operational and economic difficulties with hot cuts.[14] It recognized that "hot cuts frequently lead to provisioning delays and service outages and are often priced at rates that prohibit facilities-based competition for the mass market."[15]

Q. PLEASE SUMMARIZE THE FCC'S NATIONAL FINDING OF IMPAIRMENT REGARDING THE HOT CUT PROCESS.

A. Based in large part on its conclusions outlined above, the FCC made a "national finding that competitive carriers providing service to mass market customers are impaired without unbundled access to local circuit switching" and set out a plan to help mitigate the "inherent difficulties" with the ILECs' hot cut processes.[16] The FCC's plan included asking the state commissions to "approve and implement a batch cut migration process – a *seamless, low-cost process for*

[11] *Id.* at ¶ 469.
[12] *Id.* (emphasis added).
[13] *Id.* at n. 1437.
[14] *Id.* at ¶ 466.
[15] *Id.*
[16] *Id.* at ¶¶ 422-423.

transferring large volumes of mass market customers . . . ."[17] This batch cut process must "render the hot cut process more efficient and reduce per-line hot cut costs."[18] It must also "address the costs and timeliness of the hot cut process."[19]

Q. WHAT DOES THE FCC MEAN BY "BATCH CUT PROCESS"?

A. The FCC defined a batch cut process as a seamless, low-cost process for transferring large volumes of mass market customers.[20] The FCC found that "the hot cut process could be improved if cut-overs were done on a bulk basis, such that the timing and volume of the cut over is better managed," and the non-recurring costs reduced.[21] Indeed, the FCC found that "such improvements are likely to be *essential* to overcome the operational impairment that competitors face in serving mass market customers. *Without such improvement*, the record shows that *carriers are likely to be unable to economically serve a market characterized by low margins.*"[22]

Q. DID THE FCC FIND CURRENT ILEC PROCESSES FOR CONVERTING CUSTOMERS IN BULK TO BE SUFFICIENT?

A. No. The FCC found that "[p]roject managed cut-overs involve the conversion of a number of lines at one time, pursuant to provisioning requirements and intervals negotiated by the incumbent and the competitive LEC. We find that these approaches are not sufficiently developed or widespread enough to adequately

[17] *Id.* at ¶ 423 (emphasis added).
[18] *Id.* at ¶ 460.
[19] *Id.* at ¶ 488.
[20] *Id.* at ¶ 487.
[21] *Id.* at ¶ 474.
[22] *Id.* (emphasis added).

address the impairment created by the loop cut over process. The evidence in the record demonstrates that the carriers that have used project-managed cut-overs have used them only for business customers, and only after acquiring the customer through a means that offered the use of incumbent LEC loops and switches in combination."[23]

The FCC also noted "the record evidence indicates that incumbent LECs are not well-equipped to handle hot cut volumes even with the existence of a procedure to manage bulk migrations on a project-managed basis."[24]

Q. DID THE FCC OFFER ANY DIRECTION FOR STATE COMMISSIONS REGARDING BATCH CUT PROCESSES?

A. The FCC found that a seamless, low-cost batch cut process for moving mass market customers from one carrier to another is necessary, ***at a minimum***, for carriers to compete effectively in the mass market.[25] The FCC's Order directs state commissions to approve, within nine months of the effective date of the Order, a batch cut migration process to be implemented by the incumbent LECs that will address the costs and timelines of the hot cut process.[26] More specifically, it requires state commissions to do the following:

- Adopt a batch cutover "increment" for migrating customers served by unbundled loops combined with unbundled local circuit switching to

[23] *Id.* at ¶ 474.
[24] *Id.* at ¶ 487, n. 1516.
[25] *Id.* at ¶ 487.
[26] *Id.* at ¶ 488. A state commission may decline to institute a batch cut process, provided that it instead issues *detailed* findings regarding the volume of UNE-L migrations that could be expected if competitive LECs were no longer entitled to unbundled local circuit switching, that the incumbent can be expected to meet that demand in a timely and efficient manner using the existing hot cut process, and that the non-recurring costs associated with the hot cut process are not an entry barrier. *Id.* at ¶ 490. Failure to develop a process, however, does not relieve the state commission of its obligation to analyze whether requesting carriers are impaired without access to unbundled switching.

unbundled stand-alone loops. In other words, states should decide the appropriate volume of loops that should be included in the "batch."

- In conjunction with incumbent LECs and competitive LECs, approve specific processes to be employed when performing a batch cut. The FCC "expect[s] these processes to result in efficiencies associated with performing tasks once for multiple lines that would otherwise have been performed on a line-by-line basis."

- Determine whether the ILEC is capable of migrating batch cutovers in a timely manner.

- Adopt TELRIC rates for the batch cut process. These rates should reflect the efficiencies associated with batch migration of loops to a competitive LEC's switch, either through a reduced per-line rate or through volume discounts.[27]

Q. ARE THERE OTHER ISSUES RELATED TO BATCH CUTS THAT THE FCC DIRECTED THIS COMMISSION TO CONSIDER?

A. Yes. The FCC also directed state commissions to consider whether (or the extent to which) temporary or "rolling access" to UNE-P would address all identified impairment.[28] Rolling access to UNE-P is not adequate to "cure" the many operational and economic issues for the reasons described in other AT&T testimony. However, should the Commission make a finding that all economic and operational impairment would be eliminated by a batch hot cut process, AT&T believes the use of rolling UNE-P is required. Indeed, AT&T is not aware of any methodology for transferring "batches" of customers that would not require the customers to first be acquired by the CLEC.[29] Therefore any batch migration process developed by this Commission should be based on the

[27] *TRO* at ¶ 489.
[28] *TRO* at ¶ 524.
[29] The FCC stated that "we find that the availability of unbundled local switching – even on a temporary basis – may enable competitors to acquire customers, aggregate them, and migrate them to the carriers' own switch in a manner *that would not be feasible if the customers each had to be migrated individually* upon signing up with the competitive LEC." *TRO* at ¶ 522 (emphasis added).

assumption that the CLEC has already acquired the customer using UNE-P before moving it to a UNE-L/CLEC switch network configuration. Further, as acknowledged by the FCC, "competitive LECs may face difficulties in accumulating enough customers to justify batch line migration processing *in both new central offices* and existing collocations."[30] Accordingly, if rolling access is established by this Commission, it should include sufficient time for CLECs to accumulate enough customers to justify collocation, and enough time to then establish the collocation in new central offices or to augment existing collocation arrangements where necessary.

IV. RECOMMENDATIONS ON EVALUATING THE BATCH PROCESS

Q. DID THE FCC IDENTIFY A STANDARD AGAINST WHICH AN ILEC'S HOT CUT PROCESS SHOULD BE MEASURED?

A. Yes. In describing a hot cut process that demonstrated "consistently reliable performance," the FCC recognized that for the migration of customers, UNE-P should be the standard of performance. The FCC stated: "This review is necessary to ensure that customer loops can be transferred from the incumbent LEC main distribution frame to a competitive LEC collocation *as promptly and efficiently as incumbent LECs can transfer customers using unbundled local circuit switching*."[31] Thus, the appropriate comparison must be whether the ILEC can move customers served by UNE-L at the same volumes and performance levels as UNE-P. This is perfectly logical, since CLECs would be forced to

[30] *Id.* at ¶ 522 (emphasis added).
[31] *TRO* at n. 1574 (emphasis added).

abandon UNE-P and substitute UNE-L if they were denied access to unbundled local switching.

Moreover, such a standard is required in order to provide parity to all carriers that seek to provide a bundle of both local and long distance services to mass market customers. ILECs today can (and do) add large numbers of long distance customers through the electronic PIC process, which is very comparable to the electronic provisioning process used to provide UNE-P service. If CLECs cannot have the same ability to add local customers, they are seriously impaired in their ability to provide similar bundled offers. Indeed, the RBOCs themselves have recognized that the ability to offer such bundles is a major competitive advantage in fending off CLECs and/or winning back CLEC local customers. Further, since the FCC's impairment standard requires a review of all costs and revenues a CLEC would incur, including long distance, CLECs must have the same ability to offer local/long distance bundles as the ILEC.

Q. WHAT CHARACTERISTICS SHOULD BE INCLUDED IN ANY BATCH CUT PROCESS CONSIDERED BY THIS COMMISSION?

A. While any batch process will still continue to contain the same manual steps as the current process, making it difficult to significantly reduce the economic and operational impairment, the development of a batch cut process by this Commission would be of some benefit to competition, because it would facilitate CLECs' use of non-ILEC facilities in the limited situations where it is otherwise feasible to do so. From AT&T's perspective, the process should, at a minimum, address the elements contained in **Exhibit 2** attached.

Q. WILL THE IMPLEMENTATION OF A BATCH PROCESS ELIMINATE ECONOMIC IMPAIRMENT?

A. No. First, the efficiency gains realized from a manual batch process will likely be too incremental to result in substantial reduction of the overall costs required to extend mass market loops to CLEC switches. And even if the ILEC charges for hot cuts were reduced, that would affect only one of many additional costs that only CLECs face in attempting to provide service using non-ILEC switches. Critically, a batch provisioning process does not relieve any of the economic impairment that results from the collocation, collocation equipment and backhaul costs that a CLEC must incur to connect the ILEC loop to its switch.

Q. WILL THE IMPLEMENTATION OF A BATCH PROCESS ELIMINATE OPERATIONAL IMPAIRMENT?

A. No. The batch hot cut process does not eliminate any of the manual steps necessary to perform a hot cut. It also does not eliminate the need to physically change out the customer's facilities for those customers that are on Integrated Digital Loop Carrier ("IDLC"). Any process that relies on multiple manual steps to achieve a customer migration to another carrier is going to be subject to human error and therefore is unsatisfactory for serving the mass market.

V. QWEST'S BATCH PROCESS

Q. CAN YOU DESCRIBE QWEST'S CURRENT BATCH PROPOSAL?

A. No. AT&T spent 8 days in meetings reviewing and discussing Qwest's proposal. Qwest's initial proposal evolved over time. Qwest made a new, conditional

proposal near the end of discussions, and AT&T is not sure if that proposal is still outstanding or was withdrawn because the CLECs did not accept all of the conditions. However, notwithstanding the proposal Qwest ultimately submits, there are a number of issues that were discussed and that Qwest and the CLECs agreed are at impasse. These impasse issues are fundamental to any batch process Qwest proposes.

Q. WHY DO YOU CLAIM THAT THE IMPASSE ISSUES ARE FUNDAMENTAL?

A. Because the impasse issues go to the very basis of the FCC's finding of impairment. The FCC stated:

> "we find the overall impact of the current hot cut process raises competitor's costs, lowers the quality of service, and delays the provisioning of services, thereby preventing them [CLECs] from serving the mass market in the large majority of locations."[32]

Qwest's current batch hot cut proposal will further raise the CLECs' internal costs, will lower the quality of the hot cut process and will further delay the provisioning of service.

The FCC told the states to decide the appropriate volume of loops to be included in the batch, approve specific, efficient, and cost effective processes to be used when performing a batch, and determine whether the ILEC is capable of migrating customers using the process in a timely manner.[33] All of the impasse issues are directly related to these issues. Qwest's proposal, therefore, falls far short of the goals sought to be achieved by the FCC.

[32] *TRO* at ¶ 473.
[33] *TRO* at ¶ 489.

A. Size of the Batch

Q. WERE THE CLECS AND QWEST ABLE TO COME TO AN AGREEMENT ON THE SIZE OF THE BATCH?

A. No. Qwest's initial proposal was that the minimum size of the batch should be 25 loops. The maximum size of the batch would be 100 loops. The total per central office would be 100 loops per day for all CLECs. Therefore, if a CLEC puts in an order for 100 loops in one batch, that is the entirety of the loops that could be cut that day in the central office using the batch process.

Q. DID QWEST'S PROPOSAL CHANGE DURING THE MEETINGS?

A. It would be more accurate to say it became more refined. Qwest would not change its original proposal of a maximum batch of 100 loops per day per central office. It did not agree to lower the 25 loop minimum order size for a batch, but it did agree to process the batch even if some of the 25 loops were rejected from the batch.

Q. DOES AT&T DISAGREE WITH THE REQUIREMENT THAT THE BATCH INCLUDE AT LEAST 25 LOOPS?

A. Yes. There is no reason that there should be a minimum batch size. Once the order is placed, efficiencies should begin on the second cut. In fact, Qwest's current hot cut rates are reduced beginning with the second hot cut on an order, even if technically a multi-loop order is not considered a batch. Qwest argues there would be no efficiencies if, for example, it had to have central office or field technicians cut over less than 25 loops. However, under the current process, it

has to dispatch central office or field technicians if there is an order for one loop. Therefore, an order containing more than one loop would save a trip or trips to an unmanned central office. Even in manned central offices Qwest has admitted there are efficiencies to be gained from the elimination of some processes for a multi-loop order.[34]

The Qwest proposal is voluntary, not mandatory, according to Qwest. Therefore, Qwest may receive multiple orders from a CLEC on the same day or over a number of days for the same central office that will have different installation intervals, because it does not have 25 loops to submit as a batch. Qwest does not explain how this is more efficient, nor can it.

Q. DOES AT&T AGREE WITH THE 100 LOOP MAXIMUM PER BATCH?

A. No. AT&T has concerns that Qwest's proposal unnecessarily limits a CLEC's flexibility.

AT&T does not agree with the reasons Qwest provided to limit the size of the batch. Qwest makes two primary arguments against increasing the maximum number of loops that can be cut over in a day. The first is that no CLEC should need to do more than 100 in a central office in a day. In support of that argument, Qwest has stated that it can adequately transition the existing UNE-P base to UNE-L over the transition period established by the FCC[35] using the maximums

[34] Qwest Batch Hot Cut Forum, TR 281-282 (Dec. 2, 2003): "For example, just to walk over to analyze the orders and for the technician to pull all that stuff together, if they do that once for 25 orders, that's cheaper than if they did it once for each order and kept doing it over and over again for each separate order. So there's some real savings that are realized by the CO tech for that; a lot of analysis stuff; they only have to do entries into the system one time, they don't have to keep doing them multiple times." This is true whether it is 25 orders or 2 orders. It is simply a matter of degree.

[35] *TRO* at ¶ 532.

established by Qwest. Its second primary argument is that diseconomies of scale are created if it has more than one two-person team working on hot cuts in a central office at the same time. Qwest claims that if there is more than one two person team of technicians working on hot cuts at the same time, their central office technicians will be running into one another when doing work on the frames.

Qwest's second argument should also be rejected. Even if it were true that there are diseconomies of scale when more than one two-person team is migrating unbundled loops in a central office, Qwest could overcome that problem by simply having more than one shift in which it works batch hot cuts.

Q. SHOULD THE FOCUS BE ON TRANSITIONING THE EMBEDDED BASE OF UNE-P CUSTOMERS?

A. No. Though the batch process, if priced correctly and implemented in such a manner that it does not increase the risk of an extended outage for the CLEC's customers, may be used to facilitate the migration of the embedded base, AT&T believes that Qwest is inappropriately fixating on the transition of the existing base of UNE-P customers and failing to take into account migration of new UNE-L customers from Qwest to the CLECs or from CLEC to CLEC.[36] Without UNE-P, UNE-L volumes will significantly increase over current levels and increase the need and use of a batch process.

[36] A customer being served by a switch-based CLEC using UNE-L may lose that customer to another switch-based CLEC using UNE-L.

The FCC noted that CLECs have used UNE-L to serve small market segments, however, "no competitive carrier relies on hot cuts to offer services to significant numbers of customers served by voice grade loops."[37] The FCC further noted that some ILECs limited the number of hot cuts they would perform per day or per central office.[38] The FCC found an "inherent limitation in the number of manual cut overs that can performed, which poses a barrier to entry that is likely to make entry into a market uneconomic."[39] Qwest has not explained why its "limitation" passes muster and the limitations cited by the FCC did not. It cannot, because the FCC has equated any limitation to an entry barrier.

In addition, even for the embedded base, Qwest's argument is overly presumptuous, and it should be rejected. Qwest is presuming to know that CLECs will never find efficiencies in having more than 100 loops cut over in an office in a single day. In fact, if a CLEC has 200 UNE-P lines in a central office, it would be more efficient for the CLEC to have those lines converted at one time rather than in two or more days. Qwest's refusal to increase the maximum number of lines prevents CLECs from gaining efficiencies they could obtain.

Q. WHAT ABOUT QWEST'S SECOND CONCERN REGARDING TECHNICIANS RUNNING INTO EACH OTHER? IS THIS A VALID CONCERN?

A. The second issue raised by Qwest is the issue of technicians running into each other while working on the frames. First, most of the more active central offices

[37] *TRO* at ¶ 468.
[38] *Id.*
[39] *TRO* at ¶ 469.

are very large with large main distribution frames ("MDF"). Generally speaking in these offices this should not be a problem. Qwest's response is that it uses intermediate frames ("ICDFs"), and the other ILECs do not. It claims it is more difficult for multiple teams of technicians to be working on the ICDF at the same time than it is on the MDF. Any limitation due to the use of an ICDF was created by Qwest, and Qwest's decision to interject an ICDF should not be used to make the batch process less advantageous to the CLECs.

CLECs initially opposed the Qwest requirement of an ICDF. During the section 271 proceedings they argued for the ability to connect directly to the MDF. Qwest fought this for years. CLECs had no choice but to use the ICDF. Subsequently, Qwest relented, but a lot of CLEC infrastructure was already in place, and the use of a direct connection to the MDF is priced higher by Qwest, making its use less favorable. Since Qwest built in whatever limitations that it claims exist, it should find a method around them. This it can do by simply extending the limited hours it plans to do batch hot cut work.

Q. WHAT IS AT&T'S RECOMMENDATION ON THE MINIMUM SIZE OF THE BATCH?

A. Two. However, that recommendation is made in the absence of critical information. The first key piece of information that is lacking is the knowledge of whether CLECs will have access to rolling UNE-P as a customer acquisition tool. The second key piece of information is the price of a batch hot cut. Without rolling access to UNE-P, the minimum should be two. However, if rolling UNE-P is allowed then the minimum may be central office specific. In central offices

where there is a great deal of activity, a minimum of 10 or 20 lines may be reasonable, as it should not take a CLEC long to build up this quantity to qualify for a batch hot cut project. In smaller offices, where migration activity is likely to be nominal, the minimum needed to qualify for a batch job may remain as little as two or three lines. Of course, the price the Commission determines for the batch hot cut will significantly influence whether a CLEC uses the process and the economics of varying batch sizes.

Q. WHAT IS AT&T'S RECOMMENDATION ON THE MAXIMUM SIZE OF A BATCH?

A. Given that even the most efficiently designed batch hot cut process that can be developed using current technologies will still not eliminate any of the manual work associated with the customer migration process or the associated economic and operational barriers, AT&T understands why Qwest has to set a maximum limit on the number it can do. As opposed to the electronic methods used to transfer an unlimited number of customers to a new long distance carrier or to a new local carrier using UNE-P, CLECs will always be gated by any hot cut process. The "seamless, low cost" design envisioned by AT&T just cannot be achieved using technologies (the MDF) that were patented in the 19th century. AT&T's concern with the 100 per day per central office limit is that there is no flexibility with Qwest's proposal. Any CLEC who has outstanding orders for large batch jobs is going to be able to preclude other CLECs from being able to initiate a batch job in the same office. Any maximums set must consider that

there will be multiple CLECs trying to compete for customers in the same office and all will need to be able to avail themselves of the batch process.

Recognizing that, from a capacity perspective, this inherently manual process cannot be significantly improved, AT&T recommends that the maximum size of the batch be increased to 200 loops per central office per day. This assumes two shifts of Qwest technicians performing batch hot cuts.

B. The Specific Process

Q. YOU INDICATED EARLIER YOU COULD NOT DESCRIBE QWEST'S BATCH PROCESS. WERE THERE ANY IMPASSE ISSUES THAT ARE RELATED TO THE PROCESS?

A. Yes. There are a number of impasse issues. First, Qwest wants to limit the time of day the hot cuts in a batch are performed from 3 a.m. to 11 a.m. Second, Qwest has proposed creating a new web-based tool to communicate order status. Third, Qwest has disqualified IDLC and line split loops from a batch. Fourth, the standard five-day interval should be maintained. Fifth, the process does not allow migration by telephone number ("TN") and street address name ("SANO").

1. The Time When the Hot Cuts are Performed

Q. WHAT TIME OF DAY DOES AT&T WISH THE HOT CUT TO BE PERFORMED?

A. First of all, AT&T does not want the time for performing the actual hot cut[40] to be restricted from 3 a.m. to 11 a.m. Considering that the bulk of the manual work associated with a loop migration involves the pre-wiring and testing, which Qwest has agreed to perform prior to the day of the actual hot cuts, the actual lift and lay is all we are talking about. CLECs should be able to identify the specific time of day for performing the lift and lay. AT&T recognizes there may be more than one request for a particular time, but the CLEC should be able to request a time for the cut to accommodate the needs of its customers. Qwest responded to this request for flexible cutover times by stating that the CLEC can check the web-based status tool to determine when a batch has started or a CLEC could use a process that Qwest identified as "trap and trace." Although Qwest's proposals will tell the CLEC when the process has started, they require the CLECs to take affirmative steps to obtain the information. Furthermore, Qwest's proposals do not permit the CLECs to select the window when the cuts are performed, which may limit the CLEC's ability to use the batch process for select customers.

[40] By actual hot cut AT&T means the action of putting the customer out of service by removing the customer's existing connecting to the Qwest switch and connecting the customer's loop to the CLEC's collocated equipment

Q. WHY DOES AT&T WANT THE ABILITY TO SCHEDULE THE CUTS ANY TIME OF DAY?

A. Because hot cuts put customers out of service and prevent customers from making and receiving telephone calls, all customers are affected by the cutover process. Businesses are very concerned about being out of service during their business hours. Qwest's response is that there are other options available to CLECs to do coordinated cuts. This is yet another restriction on a process envisioned by the FCC to make the hot cut process more efficient. The fact is, AT&T is not asking to do a coordinated cut; it simply wants to be able to schedule the time of the cut. Qwest's second argument is that it reduces efficiency. AT&T disagrees. First, Qwest has not provided any evidence to demonstrate that it would be less efficient to schedule a batch of 5 or 95 loops at 1 a.m. rather than 9 a.m. It is AT&T's position that it is more efficient to do a batch of these loops at 1 a.m. than 5 -95 separate coordinated cuts. A batch should be more efficient at any time of the day than doing a similar number of loops on an individual case basis.

2. CLEC Notification

Q. WHAT IS AT&T'S CONCERN WITH THE WEB-BASED TOOL YOU MENTIONED?

A. One of the issues with any hot cut process is notification to the CLECs of the commencement and completion of the actual hot cut. Under the existing hot cut procedures, for a basic hot cut, the CLEC is notified by telephone when the cut is complete. For coordinated cuts, Qwest notifies the CLEC by telephone call when a hot cut is commenced and completed. Qwest proposes to develop a new web-

based tool that CLECs will have to periodically check to determine the status of the batch orders. This means that a CLEC will have to constantly review the web-based tool to confirm order completion, since the CLEC cannot port the numbers with NPAC until the process is completed. A telephone call upon completion of the hot cut is the current method used to notify the CLEC of order status.

Q. IS AT&T SUGESTING SOME OTHER METHOD OF NOTIFICATION?

A. As I noted, Qwest presently contacts the CLECs by telephone of the completion of a hot cut. For this same notification associated with batch hot cut jobs Qwest originally proposed sending an email. After a number of concerns were raised by the CLECs, Qwest proposed the web-based tool. Though such a tool may be a step in the right direction, the current design being put forth by Qwest places additional monitoring obligations on CLECs that do not exist now. In addition, it requires CLECs to use a tool that does not take advantage of existing CLEC OSS development. Whatever efficiencies Qwest may obtain through the use of this web-based tool are achieved at the expense of the CLECs.

Q. WHY DO YOU SAY THAT QWEST'S PROPOSAL DOES NOT TAKE ADVANTAGE OF EXISTING OSS?

A. CLECs have expended considerable sums to design and build OSS that are compatible with Qwest's OSS. Qwest provides two interfaces – an IMA GUI and IMA EDI. The GUI is web-based. The EDI is not. AT&T, for example, uses EDI. Instead of receiving a message using EDI, AT&T will have to review the web-based tool. It would be more efficient for the CLECs to receive messages over EDI. Additionally, such a notification method would be "pushed" out to the

CLECs upon completion of the hot cut as opposed to the CLECs having to have someone continually request updates to the web-based tool to determine whether or not their customer's line has been cutover to trigger them to port the customer's number. Either Qwest's web-based solution or the EDI solution will require some development effort on the parts of Qwest and CLECs. As a general matter, if AT&T is going to be performing development work, it would rather have the work performed as part of its existing EDI systems rather than on a web based, proprietary, Qwest system.

3. IDLC and Line Split Loops

Q. YOU TESTIFIED THAT QWEST HAS DISQUALIFIED IDLC LOOPS AND LINE SPLIT LOOPS FROM THE BATCH PROCESS. HOW DOES THAT AFFECT THE BATCH PROCESS?

A. It means, for example, that existing UNE-P customers served by loops using IDLC cannot be converted to UNE-L as part of the batch process. Qwest, once again, claims a loss of efficiency. However, once again, Qwest is placing conditions on the batch process that are not presently imposed on basic and coordinated cuts.

Qwest suggests that these lines can be handled using the present processes. AT&T believes this is unacceptable for a number of reasons. The number of IDLC loops in some central offices is not insignificant. Not only will CLECs be prevented from using the batch process for these loops, all the inherent limitations of the current process will continue to exist. The FCC specifically found that the

inherent difficulties of the current hot cut process creates impairment requiring CLEC access to unbundled local switching.[41] The batch process ultimately adopted is supposed to be a low-cost and cost-effective one.[42] CLECs with customers served by IDLC loops will be denied the cost savings of the batch process. In addition, a CLEC will have to develop or modify internal systems and processes to identify that a loop is served by IDLC and then employ separate processes and work flows depending upon the response.

4. Standard Interval

Q. WHAT SHOULD THE INTERVAL BE FOR THE BATCH PROCESS?

A. The current standard interval for an unbundled loop hot cut order when there are 1 – 8 lines at a single location is 5 days.[43] Qwest is proposing that the more efficient batch hot cut process standard interval be 7 days. It is an oxymoron to assert that a "more efficient" hot cut process takes longer to execute than the existing process. In addition, this too is a difficult question to answer without first knowing whether CLECs will have access to rolling UNE-P and the price of the batch hot cut process. Without access to UNE-P as a customer acquisition tool, the batch hot cut interval cannot exceed the current interval for a hot cut of five days for orders of 1-8 lines. There is no limit on the number of hot cut orders a CLEC can place with less than 8 loops and still receive the 5-day standard

[41] *TRO* at ¶ 422.
[42] *TRO* at ¶¶ 423 & 489.
[43] The vast majority of hot cuts will require less than 8 lines at a single location.

interval.[44] Consequently, there is no reason a more efficient process should be longer than the less efficient loop-by-loop process.

Q. IF THE CLEC IS ALREADY SERVING THE CUSTOMER USING UNE-P, DOES IT MATTER WHAT THE INTERVAL IS?

A. During any transition of existing UNE-P customers from UNE-P to UNE-L, the interval is less critical. However, if the batch process is expected to be used for the acquisition of new CLEC UNE-L customers, then 5 days is the maximum a new customer should have to wait to switch to the new CLEC.

5. Migration by TN and SANO

Q. EXPLAIN WHAT YOU MEAN BY MIGRATION BY TN AND SANO.

A. Currently, on a conversion from UNE-P to UNE-L, Qwest requires that the CLEC populate many address-related fields on the LSR. Once the CLEC submits the LSR, Qwest compares those many address-related fields to its own internal information. If the information does not match Qwest's internal information, the order is rejected. In contrast, when a customer is migrated from Qwest retail to CLEC UNE-P, the CLEC need not populate all of the address-related fields on the LSR. Instead, the CLEC only needs to provide on the LSR the customer's telephone number and street address number (the street address number field on the LSR is called the SANO). It is less work for the CLEC to create an LSR using only the customer's telephone number and SANO, and the order is less prone to errors and rejection than if the CLEC had to populate all of the address

[44] Though there is no advertised limit to the number of orders, Qwest really has never been put to the test to determine if they would be able to provide a 5-day interval considering today's modest hot cut volumes.

related fields. For a transfer of CLEC UNE-P customer to a UNE-L platform, since the customer is already an existing customer of the CLEC, MCI proposed, and AT&T supports, that the use of the customer's TN and SANO be sufficient. This would speed up the order process for the CLECs and eliminate the problem of orders being rejected or dropping out for manual handling where the address-related information on the LSR does not exactly match the address information in Qwest's internal systems. In other words, it would permit the CLECs to be more efficient, assuming the process is reasonably priced. Qwest has acknowledged there is no technical limitation that prevents Qwest from modifying its interfaces to do migrations by TN and SANO.

Q. IF QWEST HAS AGREED THERE IS NO TECHNICAL LIMITATION, WHAT IS THE PROBLEM?

A. MCI wants the process to be agreed to by Qwest as part of the batch process and ordered as a regulatory change to ensure the change is made along with all the other changes that will need to go through the change management process ("CMP") to implement the batch process. MCI submitted its proposal to CMP in December 2003. However, there is no assurance that MCI's proposal will be prioritized high enough to be included in the next release. By making the MCI request a requirement of any batch process, it could be considered a regulatory change and be given priority under the CMP guidelines.

Q. SHOULD MCI'S PROPOSAL BE A REQUIREMENT OF ANY BATCH PROCESS?

A. Yes. There is no question the change can be done. By incorporating MCI's proposal, the CLEC will be able to process orders more quickly and fewer orders will drop out of the batch. This is more efficient for both parties, and it makes it more likely that a CLEC will use the batch hot cut process.

C. Timely Processing of Hot Cuts

Q. HAS QWEST PROVIDED ANY EVIDENCE THAT IT CAN HANDLE THE VOLUMES OF BATCH CUTS THAT WILL BE NECESSARY DURING THE TRANSITION FROM UNE-P TO UNE-L?

A. Qwest did provide some exhibits that it claimed demonstrated that it can handle the volumes necessary to transition from UNE-P to UNE-L. However, the data included in the exhibits was very limited. It did not incorporate any Qwest winbacks, CLEC-to-CLEC hot cuts or regular hot cuts that are not part of the batch, at the option of the CLEC or by design. Nor did Qwest include any of the normal day-to-day activity that occurs on its frames, such as troubleshooting and repairing customer service problems and installation of new service.

The FCC found the inability of the ILECs to process sufficient volumes of hot cuts as a real impairment.[45] Qwest's evidence is insufficient to overturn the FCC's initial finding of impairment.

[45] *TRO*, ¶¶ 468-469.

Q. HAS QWEST OFFERED TO PROVIDE ANY EVIDENCE THAT THE PROCESS IT PROPOSES WILL WORK?

A. No. One could argue that the process has not been established, so there is nothing to test. The question then becomes, once the process is adopted, should Qwest be required to demonstrate that the process works. AT&T would answer the question affirmatively.

Q. WHAT KIND OF DEMONSTRATION DO YOU PROPOSE?

A. AT&T believes the batch process should be tested by an independent third party by migrating a significant number of Qwest's retail customers from one Qwest switch to another Qwest switch using the proposed process.

D. Rates

Q. UP TO NOW THERE HAS BEEN NO DISCUSSION OF RATES. DID QWEST GIVE THE CLECS ANY IDEA WHAT THE FINAL PROCESS WOULD COST?

A. Not specifically, and this caused considerable frustration on the CLECs' part. During the first set of meetings AT&T and the other CLECs asked what the rate would be under Qwest's initial proposal. Qwest responded that it had not done a cost study. The CLECs advised Qwest that it was impossible for CLECs to evaluate Qwest's initial proposal and the different issues if they did not have some idea of what the cost would be. Qwest finally responded, stating that if its proposal was adopted, there may be a cost savings of approximately 20 to 30%,

possibly 40%, off of the original hot cut study cost of approximately $75.[46] After further discussion, Qwest stated the number could be around $45 per loop. However, according to Qwest, any changes to the proposed process would reduce efficiency and raise costs. The batch process has gone through so many iterations it is impossible for anyone to guess what the final process would cost the CLECs. The FCC expects the ultimate process to be a low-cost, cost-effective one. There is no assurances this will happen, and Qwest's proposed rates for the "more efficient" batch hot cut process could conceivably be higher than the rates for the "less efficient" loop-by-loop process.

Qwest made it quite clear that it believes the rates set by state commissions for basic and coordinated cuts are too low. However, if the state commissions set a rate that exceeds the current rates, there will be no incentive for the CLECs to use the batch process, and the CLECs will continue to use the current processes. Furthermore, the impairment the FCC determined to exist because of the current hot cut processes will continue to exist. The result will be that Qwest must continue to provide unbundled local switching at TELRIC rates.

Q. WHAT DOES AT&T RECOMMEND THE COMMISSION DO WITH RESPECT TO SETTING RATES?

A. The first concern is setting the proper rate. If the rate is set too high any batch process the Commission ultimately establishes may not be useful to the CLECs. It is AT&T's understanding based on statements made by Qwest that it will be

[46] It should be noted that the current price for a coordinated hot cut without cooperative testing is generally around $60 and the price for a basic installation of a new loop is around $55.

filing a cost study with its direct case. Not only will the CLECs be seeing Qwest's final proposal for the first time, they will also be seeing the cost study for the first time. AT&T's cost experts are already working on economic impairment and business case *TRO* issues in all of Qwest' jurisdictions. It will be very difficult to adequately review Qwest's cost study during the limited time provided in this proceeding. If there is considerable disagreement over the study, it may be best to adopt an interim rate subject to true up and subsequently schedule sufficient time to more thoroughly review the study and adopt permanent rates.

E. Performance Measures

Q. HAS QWEST RECOMMENDED ANY METHOD OF EVALUATING ITS PERFORMANCE UNDER ANY BATCH PROCESS THAT IS ADOPTED?

A. No. Qwest did not recommend a method for evaluating the batch process except for deferring the matter to long-term PID administration. This is a mystery to AT&T because the FCC stated that the state commission may require that ILECs "comply with an average completion metric, including any further disaggregation of existing loop performance metrics (*i.e.*, quality or maintenance and repair metrics), for provisioning high volumes of loops."[47] Qwest said performance measures and metrics were not an issue for the batch forum, and any discussion on performance metrics should be handled in long-term PID administration meetings.[48] CLECs subsequently asked Qwest which of the existing PIDs would apply to loops provisioned under the batch process. After much prodding from

[47] *TRO* at ¶ 489.

[48] Qwest did state that it recommends that specific measures regarding the batch process be addressed in long-term PID administration and that batch process measures be moved to the top of the list.

the CLECs, Qwest did say that the loops in a batch would be covered by the analog loop performance measures but the CLECs would have to review each PID to see if there were exclusions that would apply.[49]

Q. WHAT, IF ANYTHING, DOES AT&T RECOMMEND THE COMMISSION DO WITH RESPECT TO PERFORMANCE MEASURES?

A. The Commission should make it clear to Qwest that the loops in a batch should be included in the current PIDs, unless excluded by specific language in a specific PID. The parties should be directed to address measurements related to the batch process in long-term PID administration. In addition, once the performance measurements are developed, the Commission should require PAP modifications to provide financial incentives for Qwest to meet its batch hot cut performance obligations.

VI. ELECTRONIC LOOP PROVISIONING

Q. WILL A BATCH HOT CUT PROCESS ELIMINATE THE IMPAIRMENT THAT CLECs EXPERIENCE WHEN THEY COMPETE FOR LOCAL SERVICE CUSTOMERS?

A. As I stated earlier, no. Experience with the development of long distance competition has shown that effective mass market competition is critically dependent on customers' ability to change carriers quickly, accurately and inexpensively. Both the current method of performing hot cuts and the one contemplated by the *TRO* are manual processes. Both are labor-intensive and,

[49] Qwest did state that it believed OP-4, OP-7 and OP-13 would not apply to the batch process.

thus, considerably more expensive and error-prone than an electronic, or software-controlled, process such as, for example, the processes already in place that allows virtually unlimited numbers of mass market customers to change local providers, when UNE-P is used, or long distance providers overnight. As has proven to be the case with long distance competition, competitors will not have a reasonable opportunity to compete for customers' local telephone patronage until there is a quick, accurate and inexpensive way for them to switch carriers.

Q. IS TECHNOLOGY CHANGING IN WAYS THAT WILL HELP MAKE IT EASIER TO SHIFT CUSTOMER LOOPS FROM ONE LOCAL CARRIER TO ANOTHER?

A. Yes. We are in the midst of a "generational" change from the analog generation, distribution and transmission of signals from the customer's premises to the central office and switched through the use of circuit-switching technology to a fully digital generation, distribution and transmission of signals all the way to the customer using packet switch technology. Because the industry is in the midst of this transition, the Public Switched Telephone Network ("PSTN") is a combination of "legacy" and modernized technologies that the ILECs have cobbled together in the most efficient way feasible *for them to be the sole providers of service to mass market end-users.* This is the most crucial point for regulators to understand in addressing loop migration issues going forward: the ILECs have begun the transition to a digital, packet network design that achieves its greatest efficiency *with one provider of service—the incumbent.* If there is ever to be effective facilities-based local competition, regulators will have to

implement what a combination of antitrust litigation and regulatory oversight forced in the long-distance market: a transition to a network design that achieves economic and engineering efficiency for multiple carriers.

Q. HOW CAN REGULATORS ENSURE THAT CONSUMERS WILL BE ABLE TO MOVE AS EASILY AMONG LOCAL CARRIERS AS THEY ALREADY DO AMONG LONG DISTANCE CARRIERS?

A. There is a means available that uses currently available technology and is adaptable to the differing ILEC approaches to loop provisioning. This is a process that AT&T has generically referred to as "electronic loop provisioning" ("ELP"). This approach allows the provisioning of loops used for local service to be operationally and competitively neutral, making it the local service counterpart of "equal access" in the long distance market. ELP would take advantage of technology that can digitize and packetize end-user signals (both voice and data) so that the signals can be readily routed from one LEC service provider to another. In this environment, consumers would be able to change their local carrier seamlessly, and no carrier would have inordinate advantages in competing for a mass market customer's business. This is in sharp contrast to the current, hard-wired, manual connections from customer premises to ILEC central offices. Implementation of such an electronic provisioning process would create permanent virtual circuits that could use software commands to shift loops from one carrier to another quickly and inexpensively, with no loss or degradation of service.

Q. ARE THERE OTHER BENEFITS THAT ELP WOULD CREATE THAT WOULD LESSEN CLEC ECONOMIC AND/OR OPERATIONAL IMPAIRMENT?

A. Yes. Today, because mass-market customers are primarily serviced *via* analog-voice grade loops, CLECs must deploy a capital intensive backhaul infrastructure that digitizes, multiplexes and concentrates signals so that they can be reliably and efficiently transported to a CLEC's switching center. In a digital, packet local access network, which is what ELP would create, the need for such collocation and equipment is mitigated to a large extent because end-user signals would be handed off to the carrier in a digital rather than analog format.

Q. THIS CASE IS ABOUT THE CONTINUED AVAILABILITY OF THE LOCAL SWITCHING UNBUNDLED NETWORK ELEMENT. WHY SHOULD REGULATORS GET INVOLVED IN SUCH AN EXERCISE NOW?

A. In the *TRO*, the FCC found, on a national basis, that CLECs are impaired in their provision of local exchange service by the expense, delay and service degradation caused by the current, manual process of shifting loops from an ILEC switching platform to switching provided by competing carriers. The FCC thus directed the states to determine whether, and to what extent, that impairment could be reduced by the implementation of a "batch" process for manually shifting loops from ILEC switching to non-ILEC switching. This should logically prompt state regulators to question whether, in an age of digital processing, any manual, labor-intensive, and error-prone system for customer migration will ever be efficient

enough, both economically and technically, to support robust local exchange competition.

To ask the question, however, is to suggest its answer: there will only be an opportunity for effective local competition when local loop migrations are as efficient, swift and economical as changing local carriers through the use of UNE-P or changing long distance carriers through use of the PIC process.

Q. HAVEN'T THE ILECs BEGUN DIGITIZING THE LOCAL DISTRIBUTION NETWORK?

A. Yes. Increasingly, ILECs have deployed digital loop carrier ("DLC") equipment, often located away from the central office and closer to the customer premises. The DLC and associated equipment converts the communications signals coming over copper loops into a digital format, so they can be transported more efficiently to the ILEC LSO.

In a generic DLC configuration, a copper loop runs from the customer's premise to a serving area interface ("SAI"). This portion of the loop is known as the distribution plant. The SAI is a point where the copper distribution "sub-loop" from a number of customers terminates. Typically, the loops are cross-connected to additional copper facilities that connect the SAI to a Remote Terminal ("RT"). RTs are often located in enclosures in the ILEC's outside plant – *i.e.*, the RT is located somewhere between the customer premise and the ILEC LSO. A Remote Terminal typically houses the DLC and other equipment that converts analog

voice communications into a digital format.[50] There, all communications from loops on the DLC are multiplexed (to increase the efficiency of use of costly transmission facilities) and are transmitted to the ILEC LSO through facilities (either fiber or copper wire) commonly known as the "feeder" portion of the local loop. With some DLC systems (called integrated DLC or "IDLC"), traffic carried over the feeder plant is terminated directly onto the ILEC's local circuit switch, and is not demultiplexed. In such arrangements, an individual customer's traffic arrives at the central office commingled with other customers' traffic in a manner that is either difficult or costly to separate, or both.

Q. HOW DOES THE INTRODUCTION OF DIGITAL TECHNOLOGY IN THE LOCAL DISTRIBUTION PLANT AFFECT THE EASE OF TRANSFERRING LOOPS AMONG CARRIERS?

A. Where IDLC architecture is employed, it is even more difficult to switch a customer's voice-grade loop to a competing carrier's facilities. To switch a customer's IDLC loop to another carrier, the incumbent carrier must be able to separate that customer's traffic from the other traffic that is commingled on the feeder facility. Unfortunately, the available processes for removing the customer's loop from the IDLC can be even more cumbersome than where the loop runs directly to the LSO. One common method is to remove the customer's loop from the IDLC equipment in the RT and place it back onto an old "spare"

[50] Where the copper loops are sufficiently short, DLC equipment can just as easily be placed in the ILEC LSO. This is what CLECs must do in order to access a voice-grade loop via a hot cut. They place in their collocation arrangements the DLC equipment that digitizes and multiplexes traffic from voice-grade loops for backhaul to their switches. The duplication of DLCs in both ILEC and CLEC networks is one of the inefficiencies that electronic loop provisioning would eliminate.

copper loop that extends from the customer's premises to the central office. This method, however, requires an additional set of manual processes – in addition to the hot cut described above. This is often disadvantageous to both the customer and its new carrier, because any spare copper loop has necessarily been placed out of service, often because it offers inferior quality to the digital service provided over the IDLC loop. Moreover, where IDLC has been employed from the outset, such as in newly constructed areas, there may simply be no spare copper loop at all. Another disadvantage is that spare copper loop necessarily is longer than a DLC loop, lowering the loop's available bandwidth, compared to a DLC loop.

Other methods for removing a loop from IDLC so that it could be made available to a competitor are equally daunting. For example, the ILEC could install demultiplexing equipment before the feeder facility terminates into the ILEC circuit switch. That would demultiplex *all* of the traffic from a DLC-fed feeder and re-convert the traffic from a digital to an analog format. Traffic from the particular loop used to serve the customer won by the competing carrier would then be separated through the hot cut procedure from traffic carried on the other loops, and then connected to the competing carrier's facilities in collocated space. But then the CLEC would have to convert the analog signal *again* to digital format, using its own DLC, before transporting it to the CLEC switch. There are obvious inefficiencies, both economic and engineering, in the multiple signal conversions and duplicate DLC equipment that the carriers have to deploy in this scenario.

Thus, regardless of whether a voice-grade loop is connected to IDLC or terminates directly to the MDF in an ILEC central office, CLECs that compete for local service must endure a difficult process that necessarily requires extensive manual work on the ILEC's facilities, resulting in a greater expense and, often, lower-quality service.

Q. IS THERE ANYTHING ABOUT THE WAY ILECs ARE MANAGING THE TRANSITION TO A PACKETIZED ACCESS NETWORK THAT WOULD ASSIST IN MAKING VOICE-GRADE LOOP MIGRATION MORE EFFICIENT?

A. Fortunately, yes. In order to see how loop migration could be rendered seamless and electronic, it is helpful to examine how ILECs are introducing advanced services, such as Digital Subscriber Line ("DSL") service, into their local networks. Such an examination presents one path to electronically based loop migrations, so long as the ILECs engineer their transition to a packet-based architecture in a manner that includes the prospect of multiple carriers, rather than creating a two-class system in which ILEC service is provided over modern, digital access facilities and CLECs are relegated to the oldest and least efficient access facilities.

Q. HOW ARE SOME ILECs INTRODUCING "NEXT GENERATION DIGITAL LOOP CARRIER" ("NGDLC") TECHNOLOGY INTO THEIR NETWORKS?

A. The ILECs are increasingly deploying NGDLC technology, to enable them to provide both DSL and plain old telephone service ("POTS") on the same copper loop. This architecture is illustrated in the figure below:

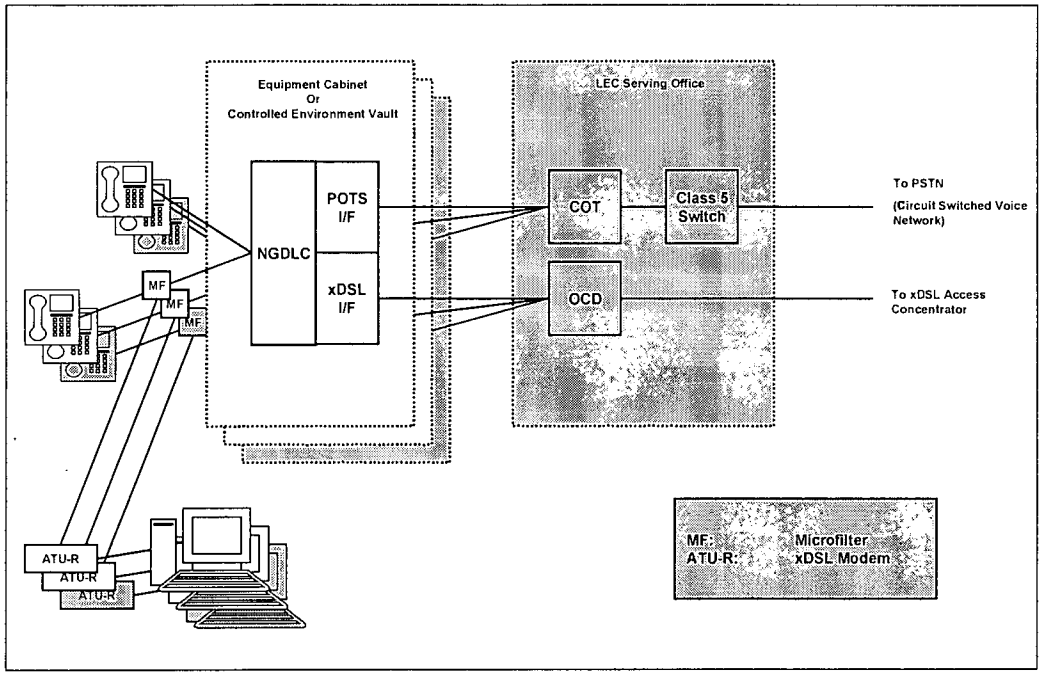


FIGURE 1: Typical ILEC NGDLC Architecture (Basic)

Traffic originating with customers (at left) is transmitted over copper loops to a Remote Terminal equipped with NGDLC equipment. At this crucial step in the process, voice traffic, which occupies the low-frequency spectrum of the loop, is treated differently from high-speed data traffic, which occupies the high-frequency spectrum of the loop. Typically, the NGDLC takes end-user voice signals and (i) converts the analog voice signals to a digital format, (ii) multiplexes those signals using a time division multiplexing ("TDM") protocol (thus commingling voice traffic from many loops) and (iii) directs them to their own, separate fiber feeder facility that is connected to the ILEC LSO. At that point, the commingled signals are directed to a Central Office Terminal (COT)

and from there to the ILEC's circuit switch. For high-speed data traffic, the NGDLC buffers, concentrates and multiplexes the traffic, using the Asynchronous Transmission Mode ("ATM") protocol, and directs the data signals to a separate fiber feeder facility that transmits them to the ILEC Central Office, where they are cross-connected to an Optical Concentration Device ("OCD") or ATM module. From there, the data signals are transported to the ILEC's data network.

Q. SO, IN THE CONTEXT OF PROVIDING DSL SERVICE, ARE THE ILECs CREATING TWO SEPARATE FEEDER SYSTEMS, ONE FOR VOICE AND ONE FOR DATA?

A. Yes. This is the beginning of what I was referring to above when I spoke of a "two-class" system for voice and data. In addition to the different processing and routing of the types of traffic, there are separate feeder facilities for each. And there are not simply two feeders – one for voice and one for data – but, for reliability purposes, each of those feeders requires a back-up, so four feeder facilities must be in place for the system to operate reliably.

Q. HOW IS THE HIGH-SPEED DATA TRAFFIC HANDLED IN THE REMOTE TERMINAL?

A. Figure 1 above shows the Remote Terminal where the NGDLC equipment processes and sends data to an Optical Concentration Device in the ILEC LSO, using ATM transmission protocol. The ATM access architecture establishes a "permanent virtual circuit" ("PVC") between the end user's premises and the OCD in the ILEC central office. PVCs are "virtual," rather than physical, because they are defined in the software of networking devices. The virtual connection is

"permanent" only in the sense that it is a static connection between two points so long as the controlling software directs it to be. Such connections or paths can readily be changed or redefined through the use of software commands. As a result, the NGDLC system provides a software-controlled cross-connection between an input and output port based upon cell header information and an internal -- but updateable -- table that identifies which two ports should be connected. The physical circuits attached to the ports need not change, but the destination of the traffic they carry can be changed by software commands that alter the headers in the ATM cells. In short, once physical loop connections become "virtual," traffic destinations and, thus, routing, can be changed electronically through the use of software commands, rather than by "hands on the network" (*i.e.*, the dispatch of technicians to undertake physical rearrangement of circuits).

Q. WHAT CHANGES TO THE NETWORK WOULD THE DEPLOYMENT OF ELECTRONIC LOOP PROVISIONING REQUIRE?

A. The upgrades necessary to implement ELP architecture divide into three segments: ILEC outside loop plant, ILEC central offices, and equipment used by all local carriers (CLECs and ILECs) that choose to use a traditional circuit-switched network to carry voice traffic.

Q. HOW WOULD THE ILEC'S OUTSIDE PLANT NEED TO BE MODIFIED TO ACCOMPLISH ELECTRONIC LOOP PROVISIONING?

A. Under ELP, the key difference is that equipment would be deployed or upgraded to digitize and packetize *all* traffic, not just the traffic in the high-frequency

portion of the loop, as with the ILECs' current NGDLC architecture. The packetization would be performed by "true" Next Generation DLC ("tNGDLC") equipment, which includes a functionality known as a voice cell processing. Where an ILEC has already deployed a remote DLC, that equipment would be upgraded to tNGDLC. Where customer loops terminate at the ILEC central office, tNGDLC functionality would be deployed at the CO.

The tNGDLC and its associated voice cell processor will digitize and convert voice signals into cells (or, for terminating calls, from cells into a bit stream, and then an analog voice signal). Thus, unlike current NGDLC, tNGDLC will process all traffic into the ATM packet format. This will enable end-users to continue using their existing CPE for traditional voice service.[51]

After being packetized by the tNGDLC equipment, all of a customer's traffic is transported over a multiplexed fiber facility to the ILEC CO (or within the CO for tNGDLC that is deployed in the CO itself). This is a significant improvement over the outside plant architecture that ILECs have deployed for DSL services. The architecture in place today -- which uses an ATM facility to transport data and a time-division-multiplexed ("TDM") facility for voice transmissions -- is an inefficient and costly design, because it uses two parallel facilities (each of which is typically backed-up with an alternative facility) to transport traffic between the very same points – the RT and the central office. By contrast, where all the traffic

[51] Customers that want advanced services, such as additional derived voice lines, DSL-based services, and/or other high-speed data services, would need to install compatible CPE, and the associated DLC equipment would need the appropriate line card electronics. This is similar to the requirement that customers who today subscribe to DSL-based service must install a DSL modem to work with their computer.

is packetized, as with ELP architecture, one common feeder facility can carry commingled voice and high-speed data traffic between the tNGDLC and the ATM module.

Q. HOW WOULD THE ILEC CENTRAL OFFICE CHANGE TO ACCOMMODATE LOOP EQUAL ACCESS?

A. To implement loop equal access, feeder facilities would not connect directly to the ILEC circuit switch. Rather, as with data traffic in the current ILEC NGDLC environment, the fiber feeder would be cross-connected to an ATM module (the ATM module is analogous to the OCD under an ILEC NGDLC architecture). That module serves as a multiplexer that allows both sub-tending tNGDLC equipment and loop facilities to be shared among all local carriers' networks. The ATM module serves as the point of demarcation between the ILEC loop plant and the networks of all local carriers, including the ILEC.

Thus, the ATM module would serve as the "gateway" for carriers to access their retail customers' loops. This is appropriate because, as with "ordinary" NGDLC technology, the ATM module is the point at which all of the packetized communications converge for all the loops served by the feeder facility. For originating traffic, the ATM module would sort out the commingled traffic carried by sub-tending tNGDLC and associated feeder facilities and direct it to the customer's chosen carrier, whether ILEC or CLEC. For terminating traffic, the ATM module would sort cells received from various carriers so that they are "cross-connected" – by the software-controlled PVC – to the correct RT and customer facility.

Each local carrier seeking to serve customers whose loops terminate at an LSO, including the ILEC, would connect appropriate facilities to the ATM module to transport its end-user traffic to its own network. By connecting to the ATM module, any CLEC could readily access the facilities used to serve all end-users connected to the central offices where the ATM is located. All competing carriers, including the ILEC, would be assigned one or more physical ports on the ATM module so that it could direct traffic from their end-users for transport to their network based upon the PVCs established for their customer-carrier combinations. Depending on how the ELP architecture is deployed,[52] the ATM port could represent the only "collocation" that would be required to serve customers at certain ILEC LSOs, thus reducing the CLEC's "backhaul penalty." Even where a CLEC may be required, or would desire, to collocate as it does today, much of the electronics necessary in today's collocation would be eliminated.

The ATM module and the associated tNGDLC located at the RT allow a customer to switch local carriers electronically, with no manual or physical changes to the underlying facilities, because, as described earlier, ATM technology creates a permanent virtual circuit for each customer. If a customer wishes to change service providers, software commands directed to the ATM module and the associated tNGDLC electronics at the RT allow the existing path to one carrier's network to be re-directed to a different carrier's network.

[52] For example, a tandem ATM module could be deployed that would aggregate signals from many sub-tending ATM modules located at different ILEC LSOs, thus significantly reducing a competitor's collocation needs.

Q. HOW WOULD ALL CARRIERS HAVE TO ADAPT TO DEALING WITH THE PACKETIZED VOICE TRAFFIC STREAMS THAT ARE NECESSARY TO ENSURE LOOP EQUAL ACCESS?

A. All local carriers that choose to serve customers using a traditional circuit-switched network would need to deploy ATM-compatible equipment as a "voice gateway" (also known as "VoATM gateways"). For transmissions from the circuit-switched PSTN that will be terminated to the customer, the VoATM gateway converts TDM-based voice traffic to ATM cells. For originating traffic, the VoATM gateway processes the voice packets to meet the GR-303 or GR-8 protocol, which are the typical interface requirements for connecting the local loop to a Class 5 switch. DLCs equipped with these interfaces are commonly found in local carriers' networks. Vendors of VoATM gateways use a GR-303 or GR-8 interface to preserve the carriers' investment in Class 5 switching equipment. As a result, despite the modernization of the loop architecture, end users will continue to have access to all Class 5 switch features without any modification to the switching network itself.

Q. WHAT EXACTLY WILL ELECTRONIC LOOP PROVISIONING ACCOMPLISH?

A. Nothing less than "loop equal access"; that is, the ability for a customer to choose any facilities-based local exchange carrier without excessive delays in effecting a change of carrier, without losing service for any period of time, and without degrading service quality. As with long distance equal access, this can be anticipated to unleash a flood of investment by those eager to capitalize on a truly

open telecommunications market and place significant competitive pressure on market prices for all telecommunications services.

Even from the narrow perspective of the ILEC community itself, current, manual methods of shifting loops from one carrier to another violate a basic rule of telephone engineering: "no hands on the network." It is a well-established decision rule in general engineering practices, including those of the telecommunications industry, that, whenever possible, it is preferable to implement a system that requires less, rather than more, manual intervention – since such intervention is costly, slow, and prone to introduce errors and problems into the network that would not have occurred if there were no "hands on the network."

From the perspective of overall network efficiency – as well as of each carrier's individual efficiencies – ELP also provides a big advantage. Recall that, under current conditions, where ILECs have placed DLC in their distribution network, there is inefficient repeated multiplexing and demultiplexing when a CLEC receives the traffic from the ILEC at its collocation space. Under ELP, a CLEC can receive its traffic in a fully multiplexed form and transport it in that form as far into its network as it finds desirable and economic. Thus, there is no need for separate DLC equipment in ILEC central office collocation space.

A similar benefit to all carriers is the fact that, in many central offices, CLECs will simply not need traditional collocation space. To transport traffic to their switches, they can simply build, purchase or lease transmission to the ATM modules in a number of ILEC central offices, concentrate their traffic as they

collect it and then deliver it to their serving switch. Again, this reduces the demand for central office floor space, as well as the expense CLECs incur in renting and maintaining collocation space. If an ILEC established a fiber ring to connect all ATM modules in a given geographic area, CLECs would need only "tap into" one spot on the ring to collect their packetized traffic from all central offices on the ring. This is efficient for both CLEC and ILEC, and reduces wasteful, duplicative and costly "backhaul" than CLECs using UNE-L must now undertake.

Further, while using existing technology, electronic loop provisioning would permit customers to have better access to higher-speed and advanced services, which CLECs need not forgo because of the impracticability of replicating some or all of the existing ubiquitous loop distribution network. There are no services that ELP would eliminate – and many that it would enable. In addition, ELP of the kind AT&T describes above would permit the potential standardization of wireline broadband interfaces, which, in turn, could encourage new broadband applications and new advanced services networks.

But, make no mistake, at its core, AT&T's ELP proposal is designed to make local exchange competition possible in the face of the virtually unconquerable obstacles presented by the task of replicating, in its entirety, the ILEC local loop plant: a task that would be necessary for CLECs to address the mass market without using ILEC loops. And, as AT&T has shown and as the FCC has found as a matter of law (*TRO* at ¶¶ 464-475), the lack of equal access to loops is the

main impediment today to the development of effective local exchange competition.

Q. BUT ISN'T ELP A SPECULATIVE DEPLOYMENT OF UNTESTED TECHNOLOGY?

A. Not at all. Every aspect of AT&T's electronic loop provisioning proposal uses equipment that is available from vendors today, and technology and functionality that carriers are using today. For example, in AT&T Laboratories, AT&T has developed a laboratory trial that demonstrates the technical feasibility of ELP. The trial employs the use of a Zhone MALC tNGDLC, a Lucent CBX-500 ATM module, and a Pardyme/Jetstream VoATM gateway. Moreover, large portions of the current outside plant deployed in the ILECs' distribution and feeder systems will remain in place, unchanged. Best of all, carriers will remain free to stick with current, circuit-switching technology, migrate to advanced switching, including so-called "soft switches," or use any combination of technologies that they find practical and economic.

Q. IN RESPONSE TO AT&T'S ADVOCACY REGARDING ELECTRONIC LOOP PROVISIONING TO THE FCC, THE RBOCs COMPLAINED THAT ELP WOULD COST HUNDREDS OF MILLIONS OF DOLLARS AND TAKE YEARS TO IMPLEMENT – AND THE FCC DID NOT ADOPT YOUR APPROACH. DOESN'T THAT SUGGEST THAT STATES SHOULD STEER CLEAR OF YOUR NOTION OF LOOP EQUAL ACCESS?

A. No. As state regulators well know, the RBOCs (and other ILECs) *always* exaggerate the costs of changes to their networks that they do not originate themselves – especially ones that will facilitate competition. State regulators, moreover, know of the hundreds of millions of dollars that CLECs and their investors have spent in attempting to make a success of their entry into local exchange markets – and how little they have to show for it to date, because of RBOC intransigence and their continual operation of the levers of monopoly power. Regulators want to protect not only the investment by CLECs and their shareholders and investors, but regulators' own considerable investment of time, money and effort in making competition work – and they are beginning to see that, without loop equal access, all that investment may go down the drain.

Secondly, AT&T is not contending that loop equal access can be accomplished in a "flash cut." It took years for long distance equal access to be fully implemented at a substantial cost, but the rewards in lowered prices and, even more important, growth in the use of telecommunications have tremendously benefited state and local economies (in addition to the growth of the US GNP). AT&T is not

recommending an attempted "flash cut" to electronic loop provisioning, but the "digital train" is leaving the station – and it is leaving without the voice communications that form the bulk of most consumers' use of the telephone network.

Finally, as outlined above, what is happening "under the radar" is the development of two separate, but unequal, networks within the national public switched telephone network: a high-speed, state-of-the-art data network that the RBOCs are scheming to keep entirely to themselves and a lower-tech, rapidly obsolescing voice network that they are slowly and begrudgingly beginning to share with competitors. AT&T is convinced that a future of telecom "haves" and "have nots" could be avoided with some smart investment today and regulatory prodding to facilitate its accomplishment.[53]

By contrast, the loop equal access future that AT&T envisions evokes the well-established adage, "A rising tide raises all boats." Loop equal access – and the electronic loop provisioning architecture described in this testimony – will bring a future where all telecommunications traffic – from POTS ("plain old telephone service") to PANS ("powerfully amazing new services") – will ride on the technologically most advanced platform that ingenious minds can invent, and where the powerful economic engine of competition ensures that those services

[53] Although it is true that the FCC has not yet *adopted* and required the implementation of AT&T's Electronic Loop Provisioning architecture, state regulators should not overlook the fact that the FCC did not forbid the states from investigating or adopting it themselves. And it is clear that, in the *TRO*, the FCC did direct the states to consider *all* sources of "impairment" to CLECs' competitive entry and to take measures to mitigate or eliminate them, consistent with the Order's rulings. *TRO* at ¶ 486. AT&T's ELP proposal is just such a necessary "mitigating measure."

are delivered at the lowest cost, in the most efficient manner, and with the fastest pace of innovation that the economy can support.

VII. CONCLUSION

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. The process of migrating customers to a CLEC-owned switch using an ILEC loop, the so-called "hot cut process," is extremely dependent on manual work, rendering the process prohibitively expensive, highly error prone with resulting impacts to customer service, and not scalable to handle reasonable commercial volumes. As such, CLECs will remain impaired by any manual hot cut or loop migration process. Even the best manual processes that could be operationalized today, including batch migration processes, cannot satisfy the requirements needed to eliminate the CLECs' operational impairment in attempting to compete for mass-market customers. Accordingly, this Commission should develop and approve a comprehensive review process to insure any process put forth by Qwest will deliver as advertised and could evaluate the extent to which CLECs remain impaired. Furthermore, the Commission should evaluate and adopt AT&T's ELP proposal as a solution to removing CLEC impairment.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

Exhibit 1

STEPS NECESSARY TO COMPLETE A HOT CUT

Before AT&T even submits an order for a hot cut, AT&T must conduct activities in addition to those activities required for a UNE-P migration.

- AT&T negotiates a due date with the customer based on the standard intervals for loop migrations that are lengthier than UNE-P intervals. For business customers, a cutover time must also be negotiated to ensure the service outage does not impact the operation of the customer's business.
- AT&T conducts an inventory of facilities and electronically assigns the customer's loop to specific facilities in AT&T's switch, to equipment located in ATT-owned collocation space and to a Connecting Facility Assignment ("CFA") that will be used by the ILEC to connect the customer's loop to AT&T's collocated equipment.
- AT&T accesses the ILEC's LFACs database to confirm that the availability of the CFA information in both companies' databases match.

After completing these activities, AT&T prepares and submits the Local Service Request ("LSR"). After submission of the LSR, the ILEC begins its activities.

- The ILEC checks its CFA database to ensure the CFA on the order matches its inventory.
- The ILEC issues the number portability "trigger" order by setting switch triggers which will ensure the customer receives intra-switch calls between the period of time the CLEC ports the number to its switch until the ILEC disconnects the telephone number in its switch.
- The ILEC inputs the order into its backend systems to create the internal service orders that will be needed to accomplish the migration.

Then the ILEC returns the Firm Order Confirmation ("FOC") to AT&T. Unlike UNE-P, after receiving the FOC, AT&T and the ILEC cannot rely on the electronic systems to flawlessly provision the service. Instead, a complicated set of activities occurs, activities that must be coordinated if the cut is to be successful for the customer.

- AT&T confirms with the customer the specific time and date when the hot cut is scheduled to take place based on the information in the FOC.

- AT&T verifies that dial tone is being delivered from its switch to the CFA in the collocation cage.
- AT&T alerts the National Number Portability Administration Center ("NPAC") that reprogramming is needed to move the customer's telephone number from the ILEC to AT&T by sending an electronic "create" message to the Administrator. This begins the process of porting the customer's telephone number. This "create" message prompts NPAC to send a message to the ILEC to ensure the ILEC consents. The ILEC responds with a confirm message to NPAC.

After AT&T completes these activities, the ILEC completes other activities necessary to a hot cut that are not required for a UNE-P conversion.

- The ILEC determines whether the facilities currently being used by the customer can be reused. For example, if the customer is on Integrated Digital Carrier Loop ("IDLC"), the facilities cannot be reused and spare non-IDLC facilities must be identified and assigned to this customer.
- The ILEC pre-wires the cross-connection frames.
- The ILEC confirms the presence of dial tone from AT&T's switch at the main distribution frame..
- Upon receipt of the "create" message from NPAC, the ILEC will send a "concur" message back to NPAC.
- The ILEC verifies that the proper phone number is on the loop that is to be cut over.

After these activities, the ILEC contacts AT&T to determine whether the cut can proceed as scheduled. During this call the ILEC may also provide essential information such as test results. Assuming nothing has gone wrong, on the day of the cut over, the ILEC and AT&T will continue their activities.

- The ILEC ensures it has the correct line for the cut.
- The ILEC verifies dial tone on the line at the ILEC MDF.
- The ILEC monitors the line and, when idle, removes at the MDF the old cross connection jumper that connected the customer's loop to the ILEC's switch and terminates the pre-wired cross connection from the CLEC's CFA to the customer's loop.

- The ILEC provisioning center contacts AT&T to advise that the conversion is complete.
- AT&T then conducts its own tests to ensure that all lines have been successfully migrated.
- If testing is successful, AT&T sends an "activate" message to NPAC advising that the customer's number should be ported to AT&T's switch.

The cut, however, is still not complete.

- Upon receipt of the activate message from NPAC, the ILEC completes the disconnect order and sends an "unlock" message for the E911 database administration to allow AT&T access to the E911 database record for the ported number.
- Then AT&T migrates the 911 record by updating the Automatic Location Indicator ("ALI") database to identify AT&T as the local service provider. This ALI information supports the Public Safety Answer Point ("PSAP") which receives 911 calls.
- The ILEC must remove the old cross connections from its frame to free up the ILEC's switch port for another customer.

Only then is the hot cut complete.

MINIMUM REQUIREMENTS FOR BATCH HOT CUT PROCESS[1]

OVERALL

- As an initial matter, because it is based primarily on manual work, the batch process should be recognized as an interim solution with limited opportunities for improvement over the current individual hot cut process. Therefore, to more effectively reduce CLEC impairment, the Commission should develop a plan with specific timeframes to move to an electronic solution that requires fundamental changes to the ILECs' network architecture that currently creates operational and economic barriers to competitive entry to serve mass market customers.

- Any hot cut issue raised by any party that is not solved through the development and implementation of a batch process should be documented for further review by the Commission.

APPLICABILITY/SCOPE

- The batch process must include all mass market customers, all types of loops used to serve such customers and all types of transfers between all LECs. Thus, the process should be insensitive to the identity of the previous carrier and the technology that carrier uses to provide service. In addition, the process should not require CLECs to perform any pre-order activity to "qualify" that an unbundled loop can be migrated. In addition to existing UNE-P customers served over copper and UDLC at a minimum, the process must apply to:

    - IDLC loops
    - UNE-L based line splitting
    - CLEC to CLEC migrations

VOLUME/CAPACITY

- The batch process must support efficient migration of a sufficient quantity of unbundled loops (equivalent to LD PIC changes/UNE-P volumes/churn of ILEC win-backs/CLEC to CLEC) to support a fully competitive mass market at quality levels no less than those achieved when using UNE-P.

- Size of batch

    - The batch should be sized to permit the CLEC and ILEC to achieve cost efficiencies.

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[1] Many of the issues identified in this exhibit are currently under discussion between the parties at the Qwest Batch Hot Cut Workshops that begin on December 1, 2003.

- The batch (as well as the number of batches per day) should be sized to accommodate the overall number of migrations required to achieve the scale needed to handle mass volumes.

PROCESS REQUIREMENTS

- The batch process must operate in conjunction with an existing electronic customer acquisition process (*i.e.*, UNE-P).

- The ILEC should provide CLECs the capability to identify which UNE-P customers/lines are eligible for a batch on a mechanized and batch basis (*e.g.*, the CLEC should not be required to do one-by-one prospective queries to determine if the conditions necessary to include a specific line in a batch are or are not met). The ILEC should also establish the electronic ability to provide a specific batch of potential telephone numbers to a CLEC when the conditions for a batch have been met.

- After receiving the notification from the ILEC that the conditions for a batch cut over are met, the CLEC must have sufficient lead-time to advise its customers of the need to reprogram features such as voice mail and speed dialing. .

- The CLEC should have the ability to schedule hot cuts and batch hot cuts at any point in a twenty-four hour day with the costs insensitive to the scheduled time of the hot cut (as in an electronic system such as UNE-P).

- "Batches" should be CLEC specific, *i.e.*, each "batch" should only apply to one CLEC.

- The batch process must be developed to provide equivalent OSS functionality to UNE-P transactions, including:

    - Equivalent electronic pre-ordering and ordering capability
    - Equivalent levels of flow-through for ordering and provisioning systems to increase accuracy and lower costs.
    - Directory Listings must remain as-is when converting from UNE-P to UNE-Loop

- Real-time electronic notification must be available for order status, testing status, and notification of individual loop cut completion.

- The Commission should include in its analysis the feasibility of interim automation of hot cut provisioning as part of the batch process.

CUSTOMER CARE

- There must be a self-executing process to immediately switch customers back to UNE-P if an individual cut fails, with follow-up electronic communication from the ILEC to the CLEC indicating the cause of the failure, how the ILEC will remedy the failure and when the customer can be migrated to an unbundled loop. The rolling interval for affected loops/customers should restart.

ECONOMIC

- The batch process design must result in significant cost reduction for all involved parties.

VALIDATION, TESTING AND QUALITY ASSURANCE

- ILECs must prove they have systemic capability to handle the provisioning of hot cuts at volumes anticipated across all its markets in the absence of unbundled local switching. Therefore, once designed, the batch cut process must be subject to both pre-implementation and post implementation testing. Pre-implementation testing should include third party "time and motion" study of the hot cut process, and third party-monitored ILEC testing using its own collocation and migration of significant numbers of its own customers through hot cuts from direct connection to its switch to its collocation equipment installed to operate as a pseudo-CLEC specifically for this test. Post-implementation "testing" would include on-going commission review to determine if the batch hot cut process meets the needs of commercial mass markets in a manner that permits effective and efficient competition.

- The Commission must direct the ILEC to investigate, report and eliminate any negative impacts of large scale migration from UNE-P to UNE-L from the following:

    - E-911 "unlocks"
    - Number porting
    - Repair databases
    - Billing system migrations, such as from Carrier Access Billing System ("CABS") to Customer Record Information System ("CRIS")
    - Provisioning systems such as Trunks Integrated Records Keeping System ("TIRKS")
    - Directory listing and assistance

- The Commission must direct the ILEC to investigate, report and eliminate any negative impact of large-scale migration from UNE-P to UNE-L on local network interconnection trunking and tandem performance.

- The Commission must direct the ILEC to report at a central office level the current number of working IDLC access lines and the spare parallel copper or UDLC facilities available to migrate these lines to should the IDLC loop customers wish to change their local service provider. It should also provide its plans to provide an unbundled loop when spare parallel copper or UDLC facilities are not available.

- The process must include a method to insure CFA inventories between and among ILECs and CLECs are initially accurate and remain reconciled.

- Competitors must be guaranteed easy access to collocation sites, including the right to use reasonably qualified contractors (*i.e.*, ILEC should not be allowed to dictate the identity of contractors, provided they meet a reasonable skill set)

PERFORMANCE STANDARDS AND ASSURANCE

- Batch cut and other associated loop performance standards should be equivalent to performance for migrating a customer from retail to UNE-P.

- Key performance measurement factors must be in place:

    - Continue to measure at the most granular level feasible for each activity (FOC, rejection, missed appointment, cuts on time, service outage, etc.)
    - Create new measures for key activities unique to batch process, e.g. percentage of batches started on time and completed on time.
    - Eliminate current exclusions in performance measures for projects/batches
    - Create, if not currently in place, measures for percent service outages during conversion, and average recovery time of outages
    - Revise/establish benchmarks to drive performance that protects end-users

- Self-executing financial consequences must be in place for ILEC failures to meet required performance standards. For all conversion service outages, these consequences should be commensurate with the average net revenue times the average life of the customer

Following are additional requirements should the Commission establish only temporary access to UNE-P:

- There must be exceptions to any established time limits that customers may remain in UNE-P "acquisition mode" pending placement into a batch for transition to UNE-L. These include:

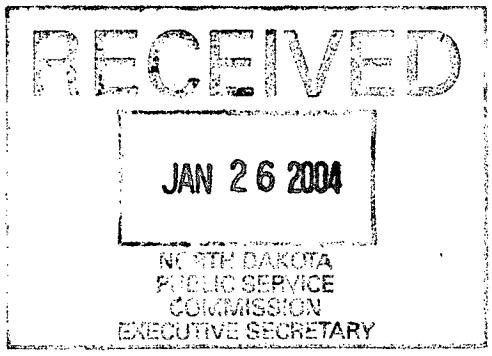
    - The time needed to add new CLEC equipment (*e.g.*, DLC in collocation) or to augment CLEC facilities (e.g. transport) when the expansion or

augmentation is not complete for reasons beyond its reasonable planning or control

- The time needed to augment collocation space
- Cases of ILEC collocation space exhaust
- The ILEC's inability to migrate customers to UNE-L within prescribed time frames
- ILEC failure to meet non-discriminatory service standards, including increased incidences of customer outages as a result of the manual hot cut process.

VOGEL
Law Firm

Steven E. Noack
Phone: 701.356.6380 | Fax: 701.476.7676 | snoack@vogellaw.com



January 23, 2004

Public Service Commission
Capitol Building
600 East Boulevard Avenue
Bismarck, ND 58505

RE: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Commissioners:

Enclosed for filing is an original and seven copies of IdeaOne Telecom Group, LLC's APPLICATION FOR TRADE SECRET PROTECTION. The trade secret material is enclosed in a separate, sealed envelope marked "Trade Secret - Private."

Also enclosed is an original and seven copies of IDEAONE TELECOM GROUP, LLC'S RESPONSES TO PRELIMINARY DISCOVERY REQUESTS - QWEST ROC STATE TRO PROCEEDINGS (Public Copy).

If you have any questions please feel free to contact me.

Very truly yours,

Steven E. Noack

SEN\kb
Enclosures

151 PU-439-03-295 Pages: 3
Cover letter & Certificate of Service
by IdeaOne Telecom Group LLC by Steve Noack, Atto
01/26/2004 CC: Comm Legal PUD (3) ALJ

Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

RECEIVED
JAN 26 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA)
) ss
COUNTY OF CASS)

AFFIDAVIT OF SERVICE BY MAIL

Karen Blixt, being first duly sworn on oath, does depose and say: She is a resident of Amenia, North Dakota of legal age and not a party to or interested in the above entitled matter.

On January 23, 2004 affiant served the within:

APPLICATION FOR TRADE SECRET PROTECTION AND IDEAONE TELECOM GROUP, LLC'S RESPONSES TO PRELIMINARY DISCOVERY REQUESTS - QWEST ROC STATE TRO PROCEEDINGS (Public Copy)

by placing a true and correct copy in envelopes addressed as follows:

Deborah J. Harwood
General Counsel/Vice President
Integra Telecom
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Mary B. Tribby
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Denver, CO 80202

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Mandan, ND 58554-1266

Robert M. Pomeroy, Jr.
Holland & Hart
8390 E. Crescent Parkway, Ste. 400
Green Village, CO 80111

and causing them to be placed in the mail at Fargo, North Dakota with first-class postage prepaid.

Karen Blixt

Karen Blixt

Subscribed and sworn to before me this 23rd day January, 2004.

Lori Thrall

(SEAL) Notary Public

LORI THRALL
Notary Public
State of North Dakota
My Commission Expires Feb. 1, 2009

RECEIVED
JAN 26 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

APPLICATION FOR TRADE SECRET PROTECTION

IdeaOne Telecom Group, LLC ("IdeaOne") hereby requests trade secret protection in this administrative proceeding.

In response to the North Dakota Public Service Commission's discovery request, IdeaOne requests confidential trade secret protection for its answers to the following interrogatories:

A.3
A.5
C.2

In support of its application, IdeaOne provides the following information as required by North Dakota Administrative Code § 69-02-09-01.

1. General description of the nature of the information sought to be protected.

   Interrogatory A.3 requests the total number of voice grade equivalent lines that are provided to IdeaOne's customers from Qwest Co-location Wire Center in Fargo, North Dakota.

   Interrogatory A.5 requests the number of residential and business voice grade lines from the Qwest Co-location Wire Center in Fargo, North Dakota.

   Interrogatory C.2 requests the cost of IdeaOne's switch and the number of lines equipped.

2. Explanation of why the information derives independent economic value, actual potential, from not being generally known to other persons.

   The information sought respecting customers is proprietary market information

respecting the very core of IdeaOne's business. It identifies the number of lines and the breakdown its business and residential lines.

The information sought respecting IdeaOne's switch cost and number of lines equipped is proprietary financial information respecting capital investment and capacity.

IdeaOne will negotiate and seek confidentiality agreements with all participants of this proceeding. It needs the same protection at the PSC level to prevent future competitors or any other interested party from obtaining this information and using it in a competitively detrimental manner to IdeaOne.

Any marketing and financial information which can be accessed publicly may be used by competitors and potential competitors of IdeaOne to determine IdeaOne's business plan, including targeted customer base, marketing strategies, financial weaknesses and strengths. This information may be utilized to undercut IdeaOne's position in the marketplace.

3. Explanation why the information is not readily ascertainable by proper means by other persons.

IdeaOne is a privately held limited liability company and is not required by law to prepare financial information for public disclosure or to otherwise disclose its information to the public. This information is not published in any public format or otherwise made available to any party. Consequently, the proprietary nature of this information should not be compromised through IdeaOne's participation in the local competition investigation.

4. General description of the persons or entities that would obtain economic value from disclosure or use of the information.

Any current competitor or future competitor of IdeaOne would obtain economic value from this information. In the highly competitive telecommunications environment, there are numerous potential new entrants into the telecommunications marketplace such as: new CLEC's, cable TV providers, internet providers, and wireless companies. Within the Fargo-Moorhead area, there are numerous potential telecommunications providers poised to enter the market.

5. Specific description of known competitors and competitor's goods and services that are pertinent to the tariff or rate filing.

This information does not relate to a tariff or rate filing. Nevertheless, all current telecommunication providers in the Fargo/Moorhead market and all future competitors would derive value by having access to such information.

6. Description of the efforts used to maintain the secrecy of the information.

As set forth in Paragraph 3 above, IdeaOne is not required to disseminate this information to the public. Indeed, the information is not available to any persons other than the Company's management. In this proceeding, IdeaOne will not release this information in a discovery format to any participant unless such participant enters into a mutually acceptable confidentially agreement.

Based upon all of the information provided above, the Commission should grant to IdeaOne, its request for trade secret protection for the information specified. Thus, IdeaOne respectfully requests that the Commission approve this Application for Trade Secret Protection and issue an appropriate protective order preventing disclosure of IdeaOne's information to the public.

Dated this 21st day of January, 2004.

VOGEL LAW FIRM

By Steven E. Noack

Steven E. Noack
Attorneys for IdeaOne Telecom Group, LLC
218 NP Avenue
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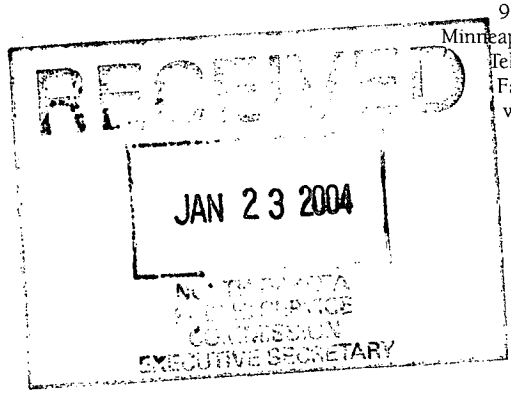
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ARTHUR J. GLASSMAN

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January 23, 2004

VIA FEDERAL EXPRESS

Jon Mielke
Executive Secretary
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing with your office are the original and seven copies of the Direct Testimony of Patty Lynott submitted on behalf of McLeodUSA Telecommunications, Inc. in the above-referenced case. We are also filing an electronic version of the Testimony with your office today.

Sincerely,

MOSS & BARNETT
A Professional Association

Dan Lipschultz

DL/jjh
Enclosures
cc: William Haas
All Parties of Record
651375/1

149 PU-439-03-295 Pages: 3

Cover letter re Testimony & Certificate of Service
by McLeodUSA Telecommunications Services, Inc. by

01/23/2004 CC: Comm Legal PUD (3) ALJ

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

In Re: Qwest Corporation Interconnection/
Wholesale Price Investigation

Case No. PU-2343-01-296

Kim R. Manney, being first duly sworn on oath, deposes and states that on the 23rd day of January, 2004, copies of the Direct Testimony of Patty Lynott in the above referenced matter were delivered by Federal Express, U.S. mail and/or electronically, to the following:

Jon Mielke
Executive Secretary
North Dakota Public Service Commission
State Capitol
600 East Boulevard
Bismarck, ND 58505-0480

John Sango
US Link, Inc.
102 Main Street
PO Box 327
Pequot Lakes, MN 56472

James S. Walter
702 Communications
702 Main Avenue
Moorhead, MN 56560

Bob Johnson
Idea One Telecom
3239 39th Street SW
Fargo, ND 58104

William A. Haas, Esq.
McLeodUSA, Inc.
Tech Park
6400 C Street SW
Cedar Rapids, IA 52404

Daniel S. Kuntz
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Electronic Service Only to:

Sandi Scott	Illona Jeffcoat-Sacco	Pat Durick
Gina Buchholtz	Janet Keller	Patrick Fahn
William Binek	Les Leeb	Robert Pomeroy
Don Negaard	Marilyn Foss	Scott Macintosh
W. Eggers	Mary Lohnes	Susan Travis
Gary Witt	Mel Kambeitz	Thomas Dethlefs
Mike Strand	Steve Noack	Rostberg

Kim R. Manney

SWORN TO BEFORE ME this
23rd day of January, 2004

NOTARY PUBLIC

CYNTHIA KAY ANDERSON
Notary Public
Minnesota
My Commission Expires Jan. 31, 2005

NORTH DAKOTA PUBLIC SERVICE COMMISSION

DOCKET NO. PU-439-03-295

DIRECT TESTIMONY OF

PATTY LYNOTT

On Behalf of

MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.

RECEIVED
JAN 23 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

I. Introduction and Qualifications

1. **Q: Please state your name, business affiliation and address.**

A: My name is Patty Lynott. I am Director of Service Delivery-Line for McLeodUSA Incorporated, parent company of McLeodUSA Telecommunications Services, Inc. (McLeodUSA). My business address is 6400 C Street SW, PO Box 3177, Cedar Rapids, Iowa 52406-3177.

2. **Q: Please describe your business experience and background.**

A: I obtained a Bachelor of Arts degree from Loras College, Dubuque, Iowa, with a major in Communications/Public Relations and a minor in Computers. I started my business career in the Provisioning and Service Delivery fields at Teleconnect, which was subsequently purchased by MCI. I joined McLeodUSA in 1993 and have worked in Service Delivery, Network Operations, Provisioning and ILEC Relations. I have 17 years of experience in the telecommunications industry.

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Direct Testimony of Patty Lynott
by McLeodUSA Telecommunications Services, Inc. by
01/23/2004 CC: Comm Legal PUD (3) ALJ

3. **Q: Please describe your responsibilities as Director, Service Delivery-Line.**

A: I am responsible for all aspects of customer service delivery, including order entry, order management, coordination, provisioning, installation, testing and activation. I am responsible for managing a staff of approximately 150 employees. My duties also include setting departmental goals and expectations to achieve established corporate financial and operational targets. Finally, I am responsible for driving continuous process improvements in service delivery intervals, quality of delivered service and productivity.

II. Purpose of Testimony

4. **Q: What is the purpose of your direct testimony?**

A: The purpose of my direct testimony is to address three issues with respect to the Batch Hot Cut (BHC) process. First, I will highlight several key issues to McLeodUSA that remain in dispute resulting from the BHC collaborative that have been conducted on a Qwest region-wide basis with ILECs, CLECs, State Commissioners and staff over the past 2 months. Second, I will address the issue of whether the BHC process, if approved by the North Dakota Commission should apply to all North Dakota markets served by Qwest or only the Metropolitan Statistical Areas (MSA) where Qwest is challenging the FCC's impairment finding in the unbundled switching case. Third, I will discuss the results of testing the proposed Qwest BHC processes by McLeodUSA during the past month.

5. **Q: What are the key issues in McLeodUSA's view that remain in dispute from the BHC collaborative?**

A: From a macro level, there are several key issues that are critical to accomplish the FCC's goal of devising an efficient, economical and seamless migration process that minimizes customer impact and maximizes effective and irreversible competition among CLECs and ILECs. Let me briefly list several key issues and then address each issue in more detail.

First, a BHC process must be economical. The FCC correctly identified a major impairment for facilities-based CLECs is the high non-recurring charges (NRCs) charged by ILECs.

Second, a BHC process must be scaleable and efficient in order to handle the volume of migrating (1) the existing, embedded UNE-P base, (2) future Qwest Retail-to-CLEC UNE-L orders, (3) CLEC to CLEC and (4) new customers that have never had service. In our opinion, a scalable and efficient process includes having the ability to cut large volumes of customers in one (1) central office (CO) per CLEC with minimal impact to customers. This would provide an opportunity for providers to wholesale local services to other carriers. An automated end-to-end process that results in shorter intervals for the customer is key to scalability.

Third, a BHC process should include intervals that are in parity with the ILEC's current UNE-P and retail intervals. Without parity, the value of a BHC process is significantly diluted.

Fourth, a BHC process must encompass IDLC loops and customer loops that have been requested for the first time. Degradation of voice service and unacceptable customer downtime result if CLECs do not have continued access to IDLC loops. Customers requesting new service at a location where there are no facilities to reuse should also be included in this process.

Fifth, a BHC process should be tested and performance measures should be established and easily incorporated into an approved remedy plan before a State Commission makes a finding of non-impairment.

Let me now address each of these issues in more detail that have been identified during the BHC collaborative meetings held during the last few months.

6. **Q: Do the NRCs proposed by Qwest in this Batch Hot Cut process meet your definition of "economical?"**

A: None of us know yet. Qwest's pricing and cost studies for the BHC process will not be filed until January 23, 2004. Based on the predominantly labor-intensive BHC process being proposed by Qwest, which is very similar to today's current hot cut process, I believe it is very likely that the proposed BHC NRCs will be a disputed issue.

Because competitive providers will not see Qwest's proposed pricing of NRCs until January 23, 2004, thereby limiting time to review, conduct additional discovery and investigate whether the proposed pricing is TELRIC-compliant, McLeodUSA urges the Commission to conduct a

separate proceeding to establish TELRIC-compliant NRCs for the BHC process.

To make UNE-L facilities-based service economically viable to the point that a valid finding of non-impairment can be made, McLeodUSA believes that the NRCs for any BHC process must at least be much closer, if not comparable, to the current UNE-P NRCs. Current NRCs for UNE-P and UNE-L in North Dakota are $57.85 and $59.81, respectively.

In addition, final Commission-approved NRCs for batch hot cuts must apply to (1) the embedded UNE-P base, (2) new Retail to CLEC customers, (3) CLEC to CLEC orders and (4) new customers with new service. The Commission must require Qwest's cost studies to address all four of these scenarios.

The FCC correctly identified that the current NRCs charged to CLECs to convert a customer from UNE-P to UNE-L are an economic barrier to facilities-based competition. Indeed, the current level of NRCs for UNE-L conversions formed one of the primary underpinnings of the FCC's national finding of impairment in the mass market switching case.

7. **Q: Do you contend that Qwest's proposed BHC process is <u>not</u> scaleable?**

A: Yes. We do not believe that Qwest's BHC process is scaleable based on past experience, results of recent testing of Qwest's proposed process that I will discuss in detail later in my testimony and practical, common sense.

First, our company's experience with Qwest's current process, which involves a much smaller number of lines compared to the future volume of lines if UNE-P goes away, demonstrates that its current process is not scaleable. McLeodUSA has previously submitted orders to convert the embedded base in 47 COs in Colorado in 2003. Our average order included between 25-50 lines per CO per day. Frequently, Qwest would delay our conversions due to "resource constraints." McLeodUSA has submitted Retail to Une-L orders totaling 100 lines per day per CO in the past, and Qwest has denied these orders due to "resource constraints."

Furthermore, McLeodUSA has experienced poor quality on orders in other States when converting a retail customer from Qwest to McLeodUSA. The reason is due to Qwest focusing resources on converting the embedded UNE-P/M base for McLeodUSA. If UNE-P goes away, there will be a huge volume of embedded UNE-P lines that will need to be converted. Qwest's resources are constrained today. Its resources will be further constrained in the future.

Second, based on results from our recent testing of Qwest's proposed BHC process, we do not believe that Qwest can meet its 100-line per day per CO promise. I will further discuss our tests later in my testimony.

Third, common sense leads to the conclusion that Qwest's process is not scaleable. Qwest proposes a daily cap of 100 lines in total per central office for all CLECs. Such a limitation would prevent providers from even considering the opportunity to wholesale local services to other carriers. In

addition, State Commissions should require that any BHC process be available for new customers ordering new service. Qwest agrees that its BHC process applies to (1) the embedded UNE-P base, (2) new Retail to CLEC customers and (3) CLEC to CLEC orders. Expanding this process to include new customers ordering new service will increase the number of lines that must be processed. Churn in the mass market customer base is considerable and must also be incorporated into any analysis regarding the potential scalability of any proposed BHC process.

Finally, McLeodUSA believes that any pre-order, order or post-order functionality to support any BHC process must be developed in both EDI and GUI. Qwest has proposed to build the functionality of a status tool that identifies if an order is jepped, when the cut has started or is completed in a Web-based tool. Such a tool, however, is not tied to EDI, and Qwest has not agreed to develop the same functionality in EDI. McLeodUSA should not be forced to go outside of its primary OSS interface in order to utilize this BHC process. Having dual systems creates inefficiencies in the process.

8. **Q: You previously mentioned intervals as a key issue to your Company when converting a customer onto McLeodUSA's switch and service. Does Qwest's proposed interval satisfy McLeodUSA?**

A: No. Qwest is currently proposing a 7-business day interval. This is too long. Instead, McLeodUSA believes that Qwest should set provisioning standards and intervals that are at parity with the existing UNE-P and retail

processes in North Dakota. Qwest's current interval for UNE-P is 3 business days. Qwest's current interval for UNE-L non-coordinated hot cuts is 5 business days based on the existing Interconnection agreement. Therefore, Qwest's 7-business day proposed interval is a step backward in our goal to lower barriers to competition.

Furthermore, Qwest currently offers a product called "Quick Loop" that reuses existing facilities and converts lines to UNE-L in only three (3) days. Our understanding is that the Quick Loop product applies to all orders, except those that require (1) a coordinated hot cut, (2) a dispatch of a Qwest technician or (3) involve an IDLC loop. This current Quick Loop product is more efficient (3 days) than Qwest's proposed BHC proposal (7 days). McLeodUSA strongly recommends to Commissions to include customers that have never had service as part of the Quick Loop product. Quick Loop would provide an opportunity to wholesale mass market service to other providers.

I think it is also important to emphasize that McLeodUSA has extensive experience with converting lines from UNE-P to UNE-L. In 2003, we completed approximately 99,000 conversions from our embedded UNE-P customer base, of which approximately 2,900 lines were in North Dakota. McLeodUSA completed these conversions in a 5 business day interval for coordinated hot cuts for business and residential customers. Therefore, Qwest's BHC proposal, which is supposed to result in a more efficient

process, results in a less efficient process. This result should be unacceptable to State Commissions.

Finally, let me propose a solution that would reduce Qwest's proposed interval from seven (7) days to four (4) days. In Exhibit 10 filed by Qwest in the collaborative meetings, Qwest proposes a 7-Business day interval. On day 1 the CLECs are asked to have translations ready for the cut. If there are any discrepancies on CFAs, Qwest will notify the CLEC on day 3 by noon and the CLEC could submit their supplemental changes by 7 PM on day 3. This would eliminate 1 day in the process. Qwest's Exhibit 10 also shows no work being performed on Day 5 and Day 6. These two additional days could be eliminated in the process, thereby reducing the interval from 7 days to 4 days.

9. **Q: Does McLeodUSA contend that the scope of the BHC must include IDLCs and new customer lines?**

A: Yes. A BHC process must include both IDLCs and new customers with new lines for several reasons. First, customer downtime will increase without IDLC access. McLeodUSA believes that timeframes for performance of the batch cuts should be based upon the preferences of end user customers, not traditional business hours. Qwest contends that IDLCs should not be included in a BHC process, because IDLCs require Qwest to send out a dispatch. In contrast, SBC must also send out a dispatch with IDLC cuts, but SBC correctly recognizes that IDLCs must be included in the scope of any BHC process.

In addition, customers that are currently on IDLCs loops and being converted onto UDLC loops or home-run copper loops experience downtime of up to four (4) hours today. McLeodUSA suggests that customers should have the option of experiencing this downtime in off-hours that better meet their business needs. Qwest should be required to provide an off-hours option to minimize any customer impact.

Second, customers experience degradation of voice service and quality without IDLC access. When a customer on a connected-through copper loop or a UDLC system switches to McLeodUSA as a local service provider, that customer would typically remain on the same physical loop, and thus the quality of the loop received by McLeodUSA would generally be the same as the quality of the loop used by the RBOC to serve that same customer. When a customer currently served by IDLC chooses to switch to McLeodUSA, however, that customer is removed from the IDLC and moved to either a connected-through copper loop, or a UDLC system.

The result is that customers experience a substantial degradation in service quality, for both voice and dial-up data service applications, such as fax machines, modems, and credit card validation machines. For standard voice services, moving the customer off IDLC typically results in reduced voice volume and clarity, leading to an increased number of customer complaints. Degradation affects not just what Qwest might characterize as "broadband" service, but standard dial-up services and facsimile transmissions as well. For example, a customer moved from IDLC to

UDLC will experience a minimum of one "new" digital-to-analog (D/A) conversion, and is very likely to experience reduced modem speeds. It is also important to recognize that the loop qualification and makeup data does not provide a mechanism to anticipate these problems, since that data only pertains to the makeup of the customer's existing loop. In cases where the customer is moved from IDLC to either UDLC or a connected-through copper loop, no information is available to competitors about the characteristics of the loop to which the customer will be moved. The real-world effects, on both customers and competitors, of the refusal to allow access to IDLC-provided loops are tremendous.

Due to the resulting degradation of service, McLeodUSA has had to reconvert customers back onto UNE-P. McLeodUSA has experienced this degradation of service in some other Qwest states. McLeodUSA proposes that facilities be reused when a customer is on an IDLC, so that the same level of service the customer experienced with Qwest is the same service they receive with all CLECs.

Finally, McLeodUSA also proposes that new customers that have never had service at their location also be included in the BHC process. This will ensure parity of service to all customers.

10. **Q: Do you believe that testing of a BHC process must be performed prior to a Commission making a final determination on impairment?**

A: Of course. Testing of any new process of this magnitude must be performed in order to ensure that consumers are not negatively impacted. McLeodUSA strongly suggests that all systems that Qwest is proposing and the new process be tested and results measured and provided to all CLECs and commissions prior to releasing this as a certified process. McLeod also strongly suggests that thru the LTPA additional measurements be incorporated as needed.

11. **Q: Regarding testing, you mentioned earlier that McLeodUSA has performed tests on Qwest's proposed BHC processes during the past month. What are your findings and recommendations?**

A: McLeodUSA accepted Qwest's offer to test its proposed BHC process. Let me first explain our reasoning and then describe the tests, the results of those tests and finally our recommendations to State Commissions.

McLeodUSA agreed to test Qwest's proposed BHC process, because we have a genuine desire to promote effective and irreversible competition by obtaining a result that leads to a scaleable, economic and efficient process to convert (1) the current embedded UNE-P base, (2) future Qwest retail to CLEC UNE-L orders, (3) CLEC to CLEC orders and (4) new orders for customers with new service. We participated in these tests with good-faith intentions and a willingness to test the proposed process, suggest recommendations for improvements and then retest the process to see if a workable and affordable solution was possible.

During a 4-week period starting in December, 2003, McLeodUSA participated in two different tests with Qwest to convert current lines from UNE-P to UNE-L. Trial #1 occurred from December 10 through December 18 and consisted of converting 25 lines per day in the Pillsbury, MN, central office. During this time, Qwest converted a total of 50 lines. We prepared a timeline, see Exhibit ___ (PL-1), that describes the steps followed by McLeodUSA and Qwest. The test lasted five business days, using the industry practice of counting the day an order was submitted as Day 0. On Day 0 (December 10), McLeodUSA issued LSRs (Local Service Requests) for 25 lines to be converted from UNE-P to UNE-L service in the Pillsbury CO. On December 11, we issued LSRs for an additional 25 lines in this same CO. On Day 0, Qwest issued a Service Order, completed the assignments and issued FOC (firm order commitment) dates to McLeodUSA. On Day 1, Qwest created a spreadsheet in the QCCC. No work was performed from Day 2 through Day 4. Finally, on Day 5, Qwest (1) checked for CLEC dial tone, (2) conducted the pre-wiring, (3) performed the manual lift and lay process, (4) checked Qwest and CLEC dial tone, (5) updated the Order status via an email to McLeodUSA and (6) completed the Order. All of these procedures were consistent with the BHC process proposed by Qwest.

12. **Q:** **What were the results from Test #1 to convert 50 lines in total?**

A: The length of time to accomplish the highly manual process of converting 25 lines totaled approximately 4 hours. McLeodUSA never received any

validation that all orders submitted in the batch were included on the Qwest spreadsheet created in the QCCC and sent to the CO. Consequently, the Qwest technician incorrectly sorted the spreadsheet by cable pair, which resulted in redoing the pre-wiring. Qwest supposedly queried an access data base every 30 minutes, but McLeodUSA did not receive updates every 30 minutes on the status of the batch. Qwest notified McLeodUSA at the beginning and end of the batch cuts, but not when individual lines were completed. The result of not receiving real time notification that the cut was completed was that customers were unable to receive incoming calls for up to 90 minutes.

13. **Q:** **Notwithstanding the results from Test #1, did McLeodUSA agree to participate in a subsequent testing with Qwest? If so, what were the results?**

A: Yes. After Test #1, we offered Qwest a list of ways to improve the process, including, but not limited to, reducing the time that customers were not able to receive incoming phone calls, adding a validation step to ensure that all orders get included on the spreadsheet prepared at the QCCC and receiving more timely updates on the status of the batch. Based, in part, on representations from Qwest that process improvements would be implemented, McLeodUSA participated in a second test.

Trial #2 began on January 12, 2004, and consisted of converting 26 lines in Burlington, Iowa, and 25 lines in Boise, Idaho. We prepared a second timeline, see Exhibit ____ (PL-2), that describes the process and

steps completed by both McLeodUSA and Qwest. In comparing Exhibits 1 and 2, you will notice that the only process change implemented by Qwest dealt with the timing of performing the pre-wiring and checking for dial tone. In Trial #2, Qwest conducted the pre-wiring and checked for dial tone on Day 3. On Day 5, between 3 am – 11 am, Qwest performed (1) the manual lift and lay process, (2) checked for dial tone, (3) updated the Order status via an email to McLeodUSA and (4) completed the conversion process.

One key data point that we tracked very closely involved the length of time it took Qwest to convert each batch of 25 lines. Qwest had one team of 2 central office technicians (COTs) located in both Boise and Burlington working our 25-line orders. For each 25-line Order, it took Qwest the following lengths of time to perform these 3 key functions to complete the orders:

1. Pre-wiring took approximately 2 hours.
2. Lift and Lay and completing out orders in WAFA took approximately 1 hour, 20 minutes.
3. Disconnect the Jumpers took 15 minutes.

Therefore, the time for Qwest to convert 25 lines totaled over 3.5 hours. Extrapolating this result, it would take Qwest approximately 7 hours to convert 50 lines and 14 hours to convert 100 lines.

It is interesting to note that Qwest proposes in its BHC process that it can convert 100 lines per day per CO with a team of two (2) dedicated

technicians during an 8-hour period from 3 am – 11 am, Monday through Friday. Based on our results in Trial #2, Qwest's proposed 8-hour window would limit it to converting a maximum of 50 - 60 lines per day per CO. Furthermore, McLeodUSA recently converted 75 lines per day in the Burlington CO under the current UNE-L process with a 5-business day interval. This would lead to the conclusion that the current process is more scaleable than the proposed BHC process. Consequently, we caution State Commissions about the feasibility of Qwest's ability to convert 100 lines per CO per day.

I also want to highlight some positives that Qwest changed in Trial #2. Qwest implemented the dial tone check after the pre-wire, which eliminated the quality error in Trial 1. Qwest also performed the pre-wire on DVA (Day 2-3) in Qwest's Exhibit 10 to allow the CLECs an opportunity to fix any dial tone issues that occur before the day of cut.

14. **Q:** **Is there any other current product offered by Qwest that would be more efficient and economical to CLECs?**

A: Yes. Quick Loop is a product offered by Qwest that reuses existing facilities and converts lines to UNE-L in only three (3) days. The Quick Loop product applies to all orders, except those that: (1) require a coordinated hot cut, (2) require a technician dispatch or (3) involve an IDLC loop. We prepared a time line, see Exhibit ____ (PL-3), that describes this current Quick Loop product, which is more efficient (3 days) than Qwest's proposed BHC proposal (7 days). Until a more efficient and

cost effective BHC process is devised, McLeodUSA strongly advocates that CLECs should be permitted to use Qwest's Quick Loop product to convert (1) the embedded UNE-P base, (2) future Qwest retail to UNE-L orders, (3) CLEC to CLEC orders and (4) new service for new customers. That being said, McLeodUSA does not believe that the Quick Loop product is adequate for BHC purposes.

15. **Q: Based on your results of testing Qwest's proposed BHC processes, what are McLeodUSA's recommendations to State Commissions?**

A: We make the following recommendations. First, Qwest's BHC process is too manual and, therefore, is not scaleable. Our tests concluded that the Qwest process can only convert a maximum of 50 - 60 lines per day per central office. Second, the scope of any batch hot cut process must include (1) the embedded UNE-P base, (2) future Qwest retail to UNE-L orders, (3) CLEC to CLEC orders and (4) new service for new customers. Third, Qwest's Quick Loop product is more efficient (3 days) than the proposed BHC process (7 days). It is critical that State Commissions ensure that the Quick Loop product applies to all four types of orders listed above. Finally, because we have not yet seen Qwest's proposed NRCs, we reserve the right to comment after further analysis.

16. **Q: Finally, Qwest might contend that the establishment of a BHC process is unnecessary for some, but not all, of its markets in North Dakota. Qwest's contention is likely based on the fact that Qwest is not contesting the FCC's national finding of impairment relating to ILEC**

provisioning of unbundled switching to serve "mass market" residential customers in all North Dakota markets. Do you agree with Qwest's contention that a BHC process should apply only in certain MSAs?

A: No. Regardless of where Qwest challenges the FCC's national impairment finding for unbundled switching to serve "mass market" customers, all customers and competition throughout North Dakota will benefit by applying an efficient, economical and seamless BHC process in all markets served by Qwest.

McLeodUSA serves "mass market" customers in many of the additional North Dakota markets located throughout North Dakota. We serve these customers and utilize both the UNE-P and the UNE-L platforms. It is clear that policy makers are keen on encouraging UNE-L "facilities-based" competition and less reliance on UNE-P. McLeodUSA has been working towards this goal. By the end of 2003, McLeodUSA serves approximately one million access lines, of which 66% are UNE-L. In North Dakota, we have over 6,000 lines on UNE-L. In order to justify continued investment, however, competitive providers need a batch hot cut process in all markets throughout North Dakota that is efficient, economical and seamless. Without a BHC process across all Qwest markets throughout North Dakota at reasonable NRCs, the economics will likely favor continued use of UNE-P in those additional markets over UNE-L. To date, McLeodUSA has approximately 6,300 UNE-P lines in

North Dakota. Again, a ruling that Qwest does not have to make the BHC process available to a CLEC outside of the non-impairment means that Qwest would be successfully forcing its competitor to use a less efficient, more costly process to compete with Qwest. Moreover, when the time comes to challenge the impairment finding in other markets, there will be that many more UNE-P CLEC customers to migrate that have been installed in the interim rather than on a UNE-L platform. That result clearly seems contrary to the clear goal of promoting facilities-based competition.

17. **Q: Does this conclude your prepared direct testimony?**

A: Yes.

Exhibit of Patty [illegible]ott McLeodUSA Direct Testimony [illegible] Batch Hot Cut Testimony

TRIAL 1

	DAY 0	DAY 1	DAY 2	DAY 3	DAY 4	Day 5
CLEC	CLEC issues LSR's					
QWEST	Service Order Issued	Creation of the Spreadsheet in QCCC				CO Pre-wiring- DT troubles reported to CLEC via email.
	Assignments done (Design in Des Moines)					CO Lift & Lay- DT, ANI. Order status updated via email to CLEC.
	IMA/EDI FOC issued					Orders completed in WAFA

PL-1

TRIAL 2

	DAY 0	DAY 1	DAY 2	DAY 3	DAY 4	Day 5
CLEC	CLEC issues LSR's	CLEC switch Translations by midnight				
QWEST	Service Order Issued			CO Pre-wiring- DT/ANI and Polarity troubles reported to CLEC via email.		CO Lift & Lay- DT, ANI. Order status updated via email to CLEC.
	Assignments done (Design in Des Moines)					Orders completed in WAFA
	IMA/EDI FOC issued					
	Creation of the Spreadsheet in QCCC					

PL-2

CURRENT- Quickloop- Reuse- 3 day interval

	DAY 0	DAY 1	DAY 2	DAY 3	DAY 4	Day 5
CLEC	CLEC issues LSR's					
QWEST	Service Order Issued	CO Pre-wiring?		CO Lift & Lay- DT, ANI. Order status updated via phonecall to CLEC.		
	Assignments done (Design in Des Moines)			Orders completed in WAFA		
	IMA/EDI FOC issued					

PL-3

PU-439-03-295

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1. Article Addressed to:
Derrick D Harwood
Ortega Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton OR 97006-6902

A. Signature
X MFields ☐ Agent ☐ Addressee

B. Received by (Printed Name) MFields
C. Date of Delivery 12-21

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

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1. Article Addressed to:
Steven E Noack
PO Box 1077
Moorhead MN 56561-1077

A. Signature
X Jennifer L Mattson ☒ Agent ☐ Addressee

B. Received by (Printed Name) Jennifer Mattson
C. Date of Delivery 12/23/05

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
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4. Restricted Delivery? (Extra Fee) ☐ Yes

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1. Article Addressed to:
Robert M Tomsky Jr
Holland & Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village CO 80111

A. Signature
X ☐ Agent ☑ Addressee

B. Received by (Printed Name) R Rnueve
C. Date of Delivery 12/19/05

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
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4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1232

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1. Article Addressed to:
Jim Topham
Qwest
1801 California St Ste 1900
Denver Co 80202

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 12/20/5

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1256

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1. Article Addressed to:
Gary B Witt
Asst G Law Dept
1875 Lawrence St Ste 1515
Denver Co 80202

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

DEC 22 2005

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1355

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dawn K Thompson
Qwest
1801 California St
Denver Co 80201

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 12/19/5

D. Is delivery address different from item 1? ☑ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1249

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1. Article Addressed to:
Dan Popeschultz
Mont Bandit
4800 Wells Fargo Ctr
90 S 7th St
Minneapolis MN 55402-4129

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery
12-19-05

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1300

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1. Article Addressed to:
Dirk Thomson
Missouri Valley Communications
PO Box 600
Sidney MT 59623-0600

A. Signature
X Valerie Henderson ☐ Agent ☐ Addressee

B. Received by (Printed Name) Valerie Henderson | C. Date of Delivery 12-19-05

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1317

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SENDER: COMPLETE THIS SECTION

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1. Article Addressed to:
Walter F Eggers III
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne WY 82001-3162

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
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☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1348

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PM-05-650 PM-05-651

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1. Article Addressed to:
Dan Kantz
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501

A. Signature
X [Agent] [Addressee]

B. Received by (Printed Name) [illegible] C. Date of Delivery 12-7-05

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1492

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1. Article Addressed to:
Patrick Durick
PO Box 400
Bismarck ND 58502-0400

A. Signature
X [Agent] [Addressee]

B. Received by (Printed Name) Kathryn Crawford C. Date of Delivery 12/19/05

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1324

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Thomas J Kalash
PO Box 1266
Mandan ND 58554-7266

A. Signature
X [Agent] [Addressee]

B. Received by (Printed Name) L Kerne C. Date of Delivery 12-16-05

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1270

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PU-439-03-295

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Marilyn Foss
PO Box 2216
Bismarck ND 58502-2216

A. Signature
X Marilyn Foss ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

BISMARCK ND 16 DEC 15 3:50

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1263

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Don Negaard
Thorpe + Hengtgen
PO Box 1000
Minot ND 58702-1000

A. Signature
X Cheryl Hanson ☐ Agent ☐ Addressee

B. Received by (Printed Name) Cheryl Hanson | C. Date of Delivery 12/16/05

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

DEC 16 2005

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1331

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-439-05-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Deborah Harwood
Integra Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton OR 97006-6902

A. Signature
X M.G Fields ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 12 23

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Arti... (Tra...

PS Fc... 102595-02-M-1540

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Deborah Harwood
Integra Telecom
19545 NW Von Neumann Dr
Ste 200
Beaverton Or 97006-6902

A. Signature
X Mike Fields ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 3-1

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4622

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dan Lipschultz
Moss & Barnett
4800 Wells Fargo Ctr
90 S 7th St
Minneapolis Mn 55402-4129

A. Signature
X Jan Magnuson ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 3-1-04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4639

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-154

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Jim Lordwin
Qwest Corporation
1801 California St Ste 4900
Denver Co 80202

A. Signature
X Michael Dye ☐ Agent ☐ Addressee

B. Received by (Printed Name) Michael Dye C. Date of Delivery 3/4

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4585

PL-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Gary L Witt
Atty Law Dept
1875 Lawrence St Ste 1575
Denver Co 80202

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) K M FERGUSON
C. Date of Delivery 3/6

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4684

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PL-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Walter J Eggers III
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne Wy 82001-3162

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Jeri Moreno
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 46[illegible]7

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-154

PL-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Don Meggard
Prenger Heriqtad
PO Box 1000
Minot ND 58702-1000

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Angela Keller
C. Date of Delivery FEB 27 200

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4660

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-154

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Patrick Durick
PO Box 400
Bismarck ND 58502-0400

A. Signature
X [signature] ☑ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery
2-27-04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4653

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Thomas J Kalsch
PO Box 1266
Mandan ND 58554-1266

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) L. Reiner | C. Date of Delivery
2-27-04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4608

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dan Kunz
PO Box 1695
Bismarck ND 58502-1695

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery
2/2/04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4578

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PH-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Marilyn Foss
PO Box 2216
Bismarck ND 58502-2216

A. Signature
X Marilyn Foss ☐ Agent ☒ Addressee

B. Received by (Printed Name) | C. Date of Delivery
2-27-04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4592

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-154

PH-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Steven E Noack
500 2nd Ave N Ste 514
Fargo ND 58108-2783

A. Signature
X [redacted] Frahm ☐ Agent ☐ Addressee

B. Received by (Printed Name) Sherry Frahm | C. Date of Delivery 2-1-04

D. Is delivery address different from item 1? ☒ Yes
If YES, enter delivery address below: ☐ No
215 30th St N
Moorhead, Mn. 56560

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4615

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-154

PH-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Marilyn Foss
PO Box 2216
Bismarck ND 58502-2216

A. Signature
X Marilyn Foss ☐ Agent ☐ Addressee

B. Received by (Printed Name) MARILYN FOSS | C. Date of Delivery 2/20/04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No
N

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4462

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-154

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dick Thronson
Missouri Valley Communications
PO Box 600
Scobey MT 59623-0600

A. Signature
X Valerie Landeen ☐ Agent ☐ Addressee

B. Received by (Printed Name) Valerie Landeen
C. Date of Delivery 2-20-04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4516

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dick Thronson
Missouri Valley Communications
PO Box 600
Scobey MT 59623-0600

A. Signature
X Valerie Landeen ☐ Agent ☐ Addressee

B. Received by (Printed Name) Valerie Landeen
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4646

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dan [redacted]ipochuck
Moss Barnett
4800 Wells Fargo Ctr
90 S 7th St
Minneapolis MN 55402-4429

A. Signature
X Jan Magnu[redacted] ☐ Agent ☐ Addressee

B. Received by (Printed Name)
C. Date of Delivery 2-19-04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4509

PY-439-03-290

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Robert M Pomeroy Jr
Holland & Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village Co 80111

A. Signature
X [redacted] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 2-20

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4431

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Walter Eggers III
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne Wy 82001-3162

A. Signature
X Cathy Balser ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 2-20-04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4547

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Gary B Witt
OGC Law Dept
1875 Lawrence St Ste 1575
Denver Co 80202

A. Signature
X [redacted] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery FEB 20 200

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☑ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4554

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Jim Goodwin
Quest Corporation
1801 California St Ste 4900
Denver Co 80202

A. Signature
X [redacted] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [redacted] C. Date of Delivery 2/20/4

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4455

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Steven Noack
500 2nd Ave N Ste 514
Fargo ND 58108-2783

A. Signature
X Sherry Frahm ☐ Agent ☐ Addressee

B. Received by (Printed Name) Sherry Frahm C. Date of Delivery 2-20-04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4486

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Patrick Durick
PO Box 400
Bismarck ND 58502-0400

A. Signature
X Renee Frieze ☐ Agent ☐ Addressee

B. Received by (Printed Name) RENEE FRIEZE C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4523

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dan Kuntz
PO Box 1695
Bismarck ND 58502-1695

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] C. Date of Delivery 2/18/04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4448

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Thomas J Kelsch
PO Box 1266
Mandan ND 58554-1266

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) LKreiner C. Date of Delivery 2-18-04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4479

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Don Hegaard
Ring [redacted] Trust
PO [redacted] 1000
Minot ND 58702-1000

[redacted] C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

FEB 18 2004

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4530

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Walter F Eggers III Atty for AT&T
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne WY 82001-3162

A. Signature
X Jeri Moreno ☐ Agent ☐ Addressee

B. Received by (Printed Name) Jeri Moreno
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7002 2410 0003 4912 1040

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-103

03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dick Thronson Manager
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59263-0600

A. Signature
X Valerie Landeros ☐ Agent ☐ Addressee

B. Received by (Printed Name) Valerie Landeros
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7002 2410 0003 4912 5246

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Patrick Durick Atty for Midcontent Comm
P O Box 400
Bismarck ND 58502-0400

A. Signature
X Kris Jennings ☒ Agent ☐ Addressee

B. Received by (Printed Name) KRIS JENNINGS
C. Date of Delivery 2/12/04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7002 2410 0003 4912 1026

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Steven E Nowak Atty for IdeaOne
500 2nd Ave N Ste 514
Fargo ND 58108-2783

A. Signature
X Sherry Frahm ☐ Agent ☐ Addressee

B. Received by (Printed Name) Sherry Frahm
C. Date of Delivery 2/11/04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4912 5215

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

03-295

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000

A. Signature
X Angela Miller ☐ Agent ☐ Addressee

B. Received by (Printed Name) Angela Miller
C. Date of Delivery FEB 10 2004

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4912 1033

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Gary B Witt
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202

A. Signature
X T M Ferguson ☐ Agent ■ Addressee

B. Received by (Printed Name)
C. Date of Delivery FEB 09 2004

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4912 1057

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

PU-437-03-095

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Tim Goodwin
Qwest Corporation
1801 California St Ste 4900
Denver CO 80202

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] C. Date of Delivery 2/9/04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4912 5185

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

PU-437-03-095

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robert M Pomeranz
Holland & Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village CO 80111

A. Signature
X SLeFevre ☐ Agent ☐ Addressee

B. Received by (Printed Name) Stacy LeFevre C. Date of Delivery 2/9/04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4912 5161

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Deborah K Harwood
Integra Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton OR 97006-6902

A. Signature
X Mari Callow ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 2-9

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article
(Trans

PS Form

2595-02-M-1035

03-245

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dan Kuntz Atty for McLeod, USA Inc
Moss & Barnett
4800 Wells Fargo Ctr
90 S 7th St
Minneapolis MN 55402-4129

A. Signature
X Jan Magnuson ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 2-9-04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4912 5239

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-103

PU-43985-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr Thomas F Kelsch
Kelsch Kelsch Ruff & Kranda
P O Box 1266
Mandan ND 58554-7268

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 2-9-04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4912 5208

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-103

PU-439[illegible]-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dan Kuntz Atty for Qwest
P O Box 1695
Bismarck ND 58502-1695

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 2/9/04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4912 5178

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

PY-427-03-295

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Deborah Harwood
Integra Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton Or 97006-6902

A. Signature
X M Fields ☐ Agent ☐ Addressee

B. Received by (Printed Name) M. Fields
C. Date of Delivery 2-2-04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4271

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Walter E Eggers III
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne Wy 82001-3162

A. Signature
X [redacted] Baker ☐ Agent ☐ Addressee

B. Received by (Printed Name)
C. Date of Delivery 2-2-04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4325

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Robert M Pomeroy Jr
Holland & Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village Co 80111

A. Signature
X K Knueven ☐ Agent ☐ Addressee

B. Received by (Printed Name) K Knueven
C. Date of Delivery 2-2

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3900

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

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- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Don Hegaard
Aingle x Herigstad
PO Box 1000
Minot ND 58702-1000

A. Signature
X Angela Keller ☐ Agent ☐ Addressee

B. Received by (Printed Name) Angela Keller C. Date of Delivery JAN 30 04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label) 7002 2410 0003 4911 4318

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

SECTION ON DELIVERY

1. Article Addressed to:
Thomas J Kelch
PO Box 1266
Mandan ND 58554-1266

A. Signature
X Valene Ehrlich ☐ Agent ☐ Addressee

B. Received by (Printed Name) Valene Ehrlich C. Date of Delivery 1/30/04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label) 7002 2410 0003 4911 4257

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-09

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Marilyn Foss
PO Box 2214
Bismarck ND 58502-2216

A. Signature
X Marilyn Foss ☐ Agent ☐ Addressee

B. Received by (Printed Name) MARILYN FOSS C. Date of Delivery 2-2-04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label) 7002 2410 0003 4911 4240

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Gary B Witt
A 121
1875 Lawrence St Ste 575
Denver Co 80202

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery
FEB 02 2004

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4332

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Jim Lodwin
Qwest
1801 California St Ste 4900
Denver Co 80202

A. Signature
X [signature] ☐ Agent ☑ Addressee

B. Received by (Printed Name) MICHAEL LOS | C. Date of Delivery 2-2

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3924

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dick Thronson
Missouri Valley Communications
PO Box 600
Scobey MT 59263-0600

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Laura Johnson | C. Date of Delivery 2-3-04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4295

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-454-03-295

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- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 2/2/04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:
Dan Lipschultz
Moss & Barnett
4800 Wells Fargo Ctr
90 S 7th St
Minneapolis MN 55402-4129

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4288

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

SENDER:

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

THIS SECTION ON DELIVERY

A. Signature
X Sherry Frahm ☐ Agent ☐ Addressee

B. Received by (Printed Name) Sherry Frahm | C. Date of Delivery 2-2-04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:
Steven E Noach
500 2nd Ave N Ste 514
Fargo ND 58102-2783
58102

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4264

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X Sara Carr ☐ Agent ☐ Addressee

B. Received by (Printed Name) Sara Carr | C. Date of Delivery 02/02/2004

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:
Patrick Durick
PO Box 400
Bismarck ND 58502-0400

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4301

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] C. Date of Delivery 1/30/04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:
Dan Kunty
PO Box 1895
Bismarck ND 58502-1695

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3917

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) RKnueven C. Date of Delivery 1/22/04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:
Robert M Pomeroy Jr
Holland & Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village CO 80111

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7001 1940 0005 3425 0456

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-098

PU-439-03-295

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X M Fields ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 1 22

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:
Deborah [illegible]
Integra Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton OR 97006-6902

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7001 1940 0005 3425 0517

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-09

PU-439-03-295

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Steven E. [illegible] for IdeaOne
500 2nd Ave N Ste 514
Fargo ND 58102-4703

A. Signature
X Sherry Frahm ☐ Agent ☐ Addressee

B. Received by (Printed Name) Sherry Frahm
C. Date of Delivery 1-26-04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7001 1940 0005 3425 0500

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Walter F Eggers III Atty for AT&T
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne WY 82001-3162

A. Signature
X Jeri Moren ☐ Agent ☐ Addressee

B. Received by (Printed Name)
C. Date of Delivery 1-23-04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4912 5147

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Don Negaard
Pringle & Herigstad
PO Box 1000
Minot ND 58702-1000

A. Signature
X Angela Keller ☐ Agent ☐ Addressee

B. Received by (Printed Name) Angela Keller
C. Date of Delivery JAN 28 2004

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3849

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dan Lipschultz Atty for McLeod, U S Link
Moss & Barnett
[illegible] Wells Fargo Ctr
90 S 7th St
Minneapolis MN 55402-4129

A. Signature
X Jan Magnuson ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 1-22-04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7001 1940 0005 3425 0524

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU- 439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Robert M Pomeroy Jr
Holland L Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village CO 80111

A. Signature
X Stacy Lefevre ☐ Agent ☐ Addressee

B. Received by (Printed Name) Stacy Lefevre | C. Date of Delivery 1-20-04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3740

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dan Lipschultz
Moss & Barnett
4800 Wells Fargo Ctr
90 S 7th St
Minneapolis MN 55402-4129

A. Signature
X Jan Magnuson ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 1-20-04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3818

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dick Thronson Manager
Missoula Valley Communications Inc
P O Box 606
Seeley MT 59823-0606

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Darla Johnson C. Date of Delivery 1-22-04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7001 1940 0005 3425 0531

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Gary B Witt
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202

A. Signature
X [signature] ☐ Agent ☑ Addressee

B. Received by (Printed Name) C. Date of Delivery 1/22/4

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4912 5154

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Tim Goodwin
Qwest Corporation
1801 California St Ste 4900
Denver CO 80202

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 1/22

D. Is delivery address different from item 1? ☑ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7001 1940 0005 3425 0470

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-09

PZ-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Walter J Eggers III
Holland + Hart LLP
2515 Warren Ave Ste 450
Cheyenne Wy 82001-3162

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3856

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-154

PZ-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Jim Godwin
Qwest
1801 California St Ste 4900
Denver Co 80202

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [redacted] C. Date of Delivery 3/2/04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3764

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-098

PZ-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robert M Pomeroy Jr
Holland + Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village Co 80111

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) R. Knueven | C. Date of Delivery 3-1

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4911 4561

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-154

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Don Heggard
Prenzle + Wrightsil
PO Box 1000
Minot ND 58702-1000

A. Signature
X Cheryl Hanson ☐ Agent ☐ Addressee

B. Received by (Printed Name) Cheryl Hanson
C. Date of Delivery 2/10/06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

FEB 10 2006

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 2759

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Thomas J Kelsch
Kelsch Kelsch Ruff + Kranda
PO Box 1266
Mandan ND 58554-7266

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [illegible]
C. Date of Delivery 2-10-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 2698

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Marilyn Foss
PO Box 2216
Bismarck ND 58502-2216

A. Signature
X Marilyn Foss ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

BISMARCK ND 985U1 FEB 10 2006 USPS

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 2681

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Robert M Pomeroy Jr
Holland & Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village CO 80111

A. Signature
X Stacy LeFevre ☐ Agent ☐ Addressee

B. Received by (Printed Name) Stacy LeFevre
C. Date of Delivery 2-13-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 2650

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Jason Topp
Quest Services Corporation
200 S 5th St #395
Minneapolis MN 55402

A. Signature
X JoAnn Reversing ☐ Agent ☐ Addressee

B. Received by (Printed Name) JoAnn Reversing
C. Date of Delivery 2-13-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 2667

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dan Ligtschultz
Moss & Barnett
4800 Wells Fargo Ctr
90 S 7th St
Minneapolis MN 55402-4129

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name)
C. Date of Delivery 2-13-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 2728

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Deborah L Harwood
Qwest Telecom
1801 NE Lloyd Blvd Ste 500
Portland OR 97232-1259

A. Signature

X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Lindsey Brant

C. Date of Delivery 2-17

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 2834

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dick Thronson
Missouri Valley Communications Inc
PO Box 600
Dudley MT 59623-0600

A. Signature
X Valerie Landeraven ☐ Agent ☐ Addressee

B. Received by (Printed Name) Valerie Landeraven
C. Date of Delivery 2-13-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 2735

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Steven E Roach
215 30th St N
Moorhead Mn 56561-1077

A. Signature
X Jennifer Mattson ☐ Agent ☐ Addressee

B. Received by (Printed Name) Jennifer Mattson
C. Date of Delivery 2/16/6

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 2827

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Walter F Eggers III
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne Wy 82001-3162

A. Signature
X Jeri Moreno ☐ Agent ☐ Addressee

B. Received by (Printed Name) Jeri Moreno
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 2766

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

NOTICE OF INTENT TO CLOSE INVESTIGATION

December 14, 2005

Under section 251(c)(3) of the Telecommunications Act of 1996, incumbent local exchange carriers (ILECs) have the duty to provide nondiscriminatory access to telecommunications network elements on an unbundled basis to competitive local exchange carriers (CLECs). The Federal Communications Commission (FCC) is required to determine specific unbundled network elements (UNEs) that must be provided.

In December 2001, the FCC initiated a proceeding to re-examine the network element unbundling obligations of ILECs. On February 20, 2003 the FCC adopted its Triennial Review Order (*TRO*), including a new list of UNEs. For a significant group of issues, the FCC required state commissions to complete their analyses and reviews within nine months from the effective date of the *TRO*. The *TRO* was appealed to the United States Court of Appeals for the District of Columbia Circuit (Court).

On June 18, 2003 the Commission opened an investigation to address issues related to the *TRO*. On February 13, 2004 the Commission issued an Interim Stay of the procedural schedule to provide time for parties to respond concerning the implications of a stay until the Court made its decision. A March 2, 2004 Court decision on appeal vacated many of the FCC's rules and vacated the FCC's delegation of authority to state commissions. On April 14, 2004 the Commission continued indefinitely the stay in this proceeding.

The Commission is seeking comments concerning the implications of closing this proceeding. **Comments are due by January 20, 2006.**

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Illona Jeffcoat-Sacco, Executive Secretary.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **15th day of December, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, **13** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Notice of Intent to Close Investigation

The envelopes were addressed as follows:

Robert M Pomeroy Jr
Holland & Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village CO 80111
Cert. No. 7003 2260 0001 3516 1232

Melissa K Thompson
Qwest Corporation
1801 California St
Denver CO 80201
Cert. No. 7003 2260 0001 3516 1249

Tim Goodwin
Qwest Corporation
1801 California St Ste 4900
Denver CO 80202
Cert. No. 7003 2260 0001 3516 1256

Marilyn Foss Atty for MCI
P O Box 2216
Bismarck ND 58502-2216

Cert. No. 7003 2260 0001 3516 1263

Mr Thomas F Kelsch
Kelsch Kelsch Ruff & Kranda
P O Box 1266
Mandan ND 58554-7266
Cert. No. 7003 2260 0001 3516 1270

Steven E Noack Atty for IdeaOne
500 2nd Ave N Ste 514
Fargo ND 58108-2783

Cert. No. 7003 2260 0001 3516 1287

Deborah H Harwood
Integra Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton OR 97006-6902

Cert. No. 7003 2260 0001 3516 1294

Dan Lipschultz Atty for McLeod, U S Link
Moss & Barnett
4800 Wells Fargo Ctr
90 S 7th St
Minneapolis MN 55402-4129
Cert. No. 7003 2260 0001 3516 1300

Dick Thronson Manager
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59623-0600
Cert. No. 7003 2260 0001 3516 1317

Patrick Durick Atty for Midcontent Comm
P O Box 400
Bismarck ND 58502-0400

Cert. No. 7003 2260 0001 3516 1324

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. **7003 2260 0001 3516 1331**

Walter F Eggers III Atty for AT&T
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne WY 82001-3162
Cert. No. 7003 2260 0001 3516 1348

Gary B Witt
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202
Cert. No. 7003 2260 0001 3516 1355

Sharon Helbling further deposes and says that on the **15th day of December, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, **11** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of:

Notice of Intent to Close Investigation

Scott Macintosh
Qwest Corporation
P O Box 5508
Bismarck ND 58506-5508

Michael C Strand
P O Box 5237
Helena MT 59604-5237

Mary Lohnes
Midcontinent Communications
5001 W 41st St
Sioux Falls SD 57106

Steven D Lysne
SRT Communications Inc.
P O Box 2027
Minot ND 58702-2027

Jim Howard
John Staurulakis Inc
Eagandale Corporate Ctr Ste 310
1380 Corporate Ctr Curve
Eagan MN 55121

Michel L Singer Nelson
WorldCom Inc
707 26th St Ste 4200
Denver CO 80202

Thomas F Dixon
WorldCom Inc
707 26th St Ste 4200
Denver CO 80202

William A Haas
McLeodUSA
Tech Park
6400 C St SW
Cedar Rapids IA 51404

Lesley J Lehr
WorldCom Inc
707 26th St Ste 4200
Denver CO 80202

Bob Johnson
IdeaOne Telecom
3239 39th St SW
Fargo ND 58104

Peter Healy
TDS Metrocom Inc
525 Junction Rd Ste 6000
Madison WI 53717

Each address shown is the respective addressee's last reasonably ascertainable post office address.

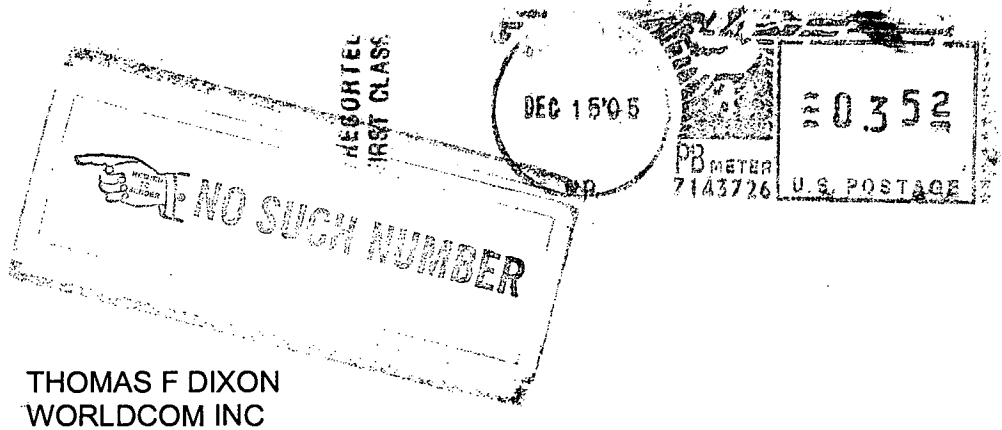
Subscribed and sworn to before me
this **15th day of December, 2005**.

Notary Public

SEAL

Public Service Commission
State of North Dakota

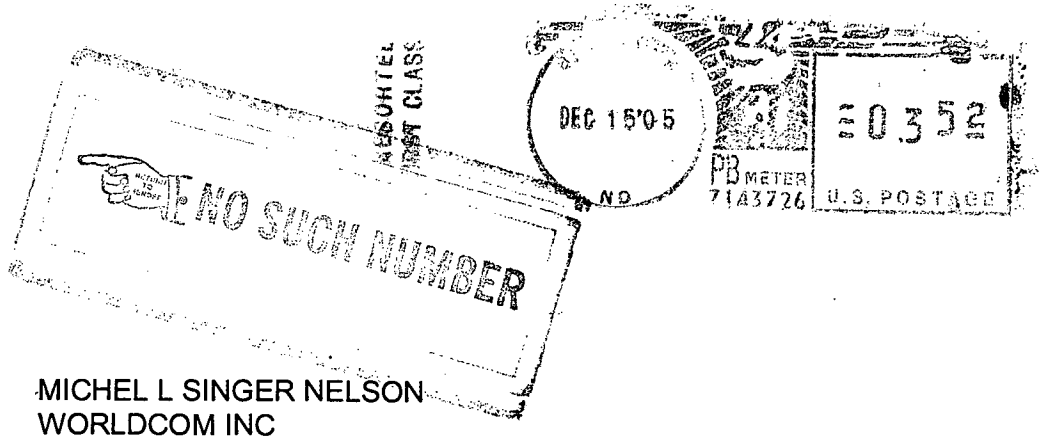
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January 23, 2004

Jon H. Mielke, Executive Director
North Dakota Public Service Commission
State Capitol Building
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

HAND-DELIVERED

RE: Case No. PU-439-03-295
Public Service Commission
Local Competition Investigation

Dear Mr. Mielke:

Enclosed for filing are an original and seven copies of the following:

1. Joint Direct Testimony of Sherry Lichtenberg and Timothy J. Gates On Behalf of WorldCom, Inc. ("MCI") dated January 23, 2004.

2. Qualifications of Timothy J. Gates, Exhibit ____ (TJG-1)

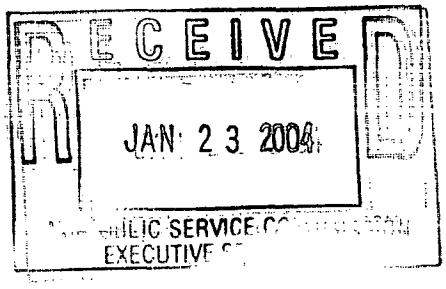
3. Certificate of Service for both documents.

Please advise me if you have any questions about this.

Thank you.

Sincerely Yours,
Marilyn Foss
Marilyn Foss
Counsel for MCI

c: Client
Parties



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Cover letter re Testimony & Certificate of Service
by MCI Telecommunications Corporation by Marilyn Fo
01/23/2004 CC: Comm Legal PUD (3) ALJ

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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission)
)
Local Competition Investigation)

Case No. PU-439-02-295

CERTIFICATE OF SERVICE

Marilyn Foss hereby certifies that on the 23rd day of January, 2003, a copy of JOINT DIRECT TESTIMONY OF SHERRY LICHTENBERG AND TIMOTHY J GATES ON BEHALF OF WORLDCOM,INC. ("MCI") AND QUALIFICATIONS OF TIMOTHY J GATES was served on the parties via U.S. Mail or Email as follows:

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STATE OF NORTH DAKOTA
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	)	**Case No. PU-439-02-295**
Local Competition Investigation	)	

JOINT DIRECT TESTIMONY

Of

SHERRY LICHTENBERG and TIMOTHY J GATES

On behalf of

WORLDCOM, INC. ("MCI")

January 23, 2004

146 PU-439-03-295 Pages: 78
Joint Direct Testimony of Sherry Lichtenberg & Timothy Gates by MCI Telecommunications Corporation by Marilyn Fo
01/23/2004 CC: Comm Legal PUD (3) ALJ

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I. INTRODUCTION

Q. MS. LICHTENBERG, PLEASE STATE YOUR NAME, OCCUPATION AND EMPLOYER FOR THE RECORD.

A. My name is Sherry Lichtenberg. I am currently employed by MCI as Senior Manager, Operational Support Systems Interfaces and Facilities Development.

Q. MR. GATES, PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.

A. My name is Timothy J Gates. I am a Senior Vice President with QSI Consulting. My business address is 917 West Sage Sparrow Circle, Highlands Ranch, Colorado 80129.

Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION WITH THE FIRM?

A. QSI Consulting, Inc. ("QSI") is a consulting firm specializing in traditional and non-traditional utility industries, econometric analysis and computer aided modeling. I currently serve as Senior Vice President.

Q. MS. LICHTENBERG, PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND AS IT RELATES TO YOUR TESTIMONY IN THIS PROCEEDING.

A. I have twenty-two years of experience in the telecommunications market, fifteen years with AT&T and seven with MCI. I joined MCI in 1996 as a member of the initial team responsible for the development of MCI's local service products, both UNE-P and facilities based. Prior to joining MCI, I held a number of positions at AT&T, including working in the General Departments organization, where I developed methods and procedures and billing and ordering systems for use by the Bell Operating Companies. I was Pricing and Proposals Director for AT&T

Government Markets, and Executive Assistant to the President and Staff Director for AT&T Government Markets. I also held a number of positions in Product and Project Management. My current role with MCI includes designing, managing and implementing MCI's local telecommunications services to residential and small business customers on a mass-market basis nationwide. I support both UNE-P product development and our testing and planning for facilities based competition via UNE-L. I have testified in numerous proceedings before the FCC and state public service commissions including multiple 271 proceedings, network modernization proceedings and a variety of DSL proceedings. In addition, I have worked with the MCI contracts organization to negotiate our interconnection agreements with the incumbents.

Q. MR. GATES PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK EXPERIENCE.

A. I received a Bachelor of Science degree from Oregon State University and a Master of Management degree in Finance and Quantitative Methods from Willamette University's Atkinson Graduate School of Management. Since I received my Masters, I have taken additional graduate-level courses in statistics and econometrics. I have also attended numerous courses and seminars specific to the telecommunications industry, including both the NARUC Annual and NARUC Advanced Regulatory Studies Programs.

Prior to joining QSI, I was a Senior Executive Staff Member at MCI WorldCom, Inc. ("MWCOM"). I was employed by MCI and/or MWCOM for 15 years in various public policy positions. While at MWCOM I managed various functions, including tariffing, economic and financial analysis, competitive

analysis, witness training and MWCOM's use of external consultants. Prior to joining MWCOM, I was employed as a Telephone Rate Analyst in the Engineering Division at the Texas Public Utility Commission and earlier as an Economic Analyst at the Oregon Public Utility Commission. I also worked at the Bonneville Power Administration (United States Department of Energy) as a Financial Analyst doing total electric use forecasts while I attended graduate school. Prior to doing my graduate work, I worked for ten years as a forester in the Pacific Northwest for multinational and government organizations. Exhibit TJG-1 to this testimony is a summary of my work experience and education.

Q. MS. LICHTENBERG, HAVE YOU EVER TESTIFIED BEFORE THIS COMMISSION ("COMMISSION")?

A. No. However, I have testified on telecommunications issues before numerous state commissions, including Texas, California, Nevada, Illinois, Michigan, Indiana, Wisconsin, Ohio, Maryland, Delaware, Pennsylvania, New York, Georgia, Florida, South Carolina, North Carolina, Alabama, Tennessee, and Washington DC, as well as the FCC.

Q. MR. GATES, HAVE YOU EVER TESTIFIED BEFORE THIS COMMISSION?

A. Yes, I have testified before this Commission or filed comments in proceedings before this Commission as stated in the list of proceedings found in Exhibit TJG-1. I have testified more than 200 times in 42 states and filed comments with the FCC on various public policy issues ranging from costing, pricing, local entry and universal service to strategic planning, merger and network issues. As noted

above, a list of proceedings in which I have filed testimony or provided comments is attached hereto as Exhibit TJG-1.

Q. ON WHOSE BEHALF WAS THIS TESTIMONY PREPARED?

A. This joint testimony was prepared on behalf of WorldCom, Inc. and its regulated subsidiaries ("MCI").

II. PURPOSE AND BACKGROUND

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of our testimony is threefold:

(1) we describe for the Commission FCC rule §51.319(d)(2)(ii) and explain the manner by which the Commission can best fulfill its obligations included therein,

(2) we briefly discuss the relationship between rule §51.319(d)(2)(ii) which is the focus of this proceeding, and §51.319(d)(2)(iii) as it relates to impairment faced by CLECs without access to unbundled local switching, and

(3) we evaluate Qwest's "Batch Hot Cut ("BHC") Proposal" in relation to the requirements of rule §51.319(d)(2)(ii) (and to a lesser extent, the impact of Qwest's proposal on issues related to impairment).

III. SUMMARY OF CONCLUSIONS

Q. CAN YOU BRIEFLY SUMMARIZE YOUR PRIMARY CONCLUSIONS?

A. Yes. Our primary conclusions can be categorized and summarized as follows:

Mechanization

(1) The FCC has found that incumbent local exchange carrier ("ILEC") hot cut processes as they currently exist are a source of impairment for carriers attempting to use their own facilities to serve mass market customers. Specifically, the FCC pointed to the overly manual nature of existing hot cut processes as the primary

culprit.[1] Indeed, the FCC specifically identifies the overly manual nature of existing hot cut processes as the primary obstacle to sufficient scalability, sufficient reliability relative to service quality, and affordability. As such, in an effort to improve upon the existing process, the Commission's chief objective in this case should be to encourage a hot cut process that removes, to the utmost extent possible, manual intervention.

Limitations on Order Types

(2) Through MCI's participation in the Qwest Batch Hot Cut Forum, it has become clear that the final proposal Qwest intends to submit with its testimony in this proceeding will exclude some very important order types. Thus, while Qwest proposes to improve its hot cut processes it does not intend to make those improved processes available to some of the most important order types required by CLECs. For example, it appears that Qwest will exclude any order that would require a hot cut (i) from one UNE-L CLEC to another, (ii) for a loop over which a customer's data service is being provided, even if the customer's voice service relies upon the same loop, (iii) to an Enhanced Extended Link ("EEL") and then to a collocation in a second central office so that a carrier can serve customers from a central office where it has no collocation arrangements, (iv) for loops served over integrated digital loop carrier ("IDLC") systems, and (v) customers with line splitting. These types of exclusions will vitiate the benefits of the improved process.

Efficient and Cost-Based

(3) The FCC specifically identified the current non-recurring rates associated with hot cuts as a major factor in its finding of impairment.[2] Likewise, it directed state commissions to reassess hot cut rates based upon its TELRIC rules and to examine efficiencies that might be gained by offering hot cuts in a "batch."[3] To this point, Qwest has provided no cost information or a rate proposal related to its improved hot cut processes. As such, little can be said about Qwest's proposal in this regard except that CLECs will have very limited time to review it. Nonetheless, the

[1] See *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 & 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, (rel. Aug. 21, 2003) ("*Triennial Review Order*" or "*TRO*"). *TRO* ¶465.
[2] *Id.*, ¶470.
[3] §51.319(d)(2)(ii)(A)(4).

rates associated with any process ultimately approved by the Commission will be of paramount importance. One of the primary benefits of the UNE-platform ("UNE-P") is that CLECs can acquire customers in a low cost fashion given the relatively efficient nature of the process. If an improved hot cut process is meant to elevate UNE-L to an operational level sufficient to replace UNE-P for purposes of mass market service delivery, the rates for a hot cut must be highly comparable to those available under UNE-P today (and as such, the process must be of comparable efficiency).

Scalability

(4) The FCC has tasked this Commission with approving an improved hot cut process within a 9 month timeframe. Qwest, in hopes of convincing this Commission that its new process will overcome impairment so that it no longer must unbundle its local switching facilities, has conceptualized an improved process it will ask this Commission to approve. Part and parcel of Qwest's new process will be dramatic system enhancements, re-designed process engineering and a commitment to meet CLEC demands for cuts (meant to provide the necessary scalability for Qwest's largely manual process) but only those hot cuts negotiated and agreed to as part of the "transition plan," despite the fact that that planning process remains a mystery. The Commission must bear in mind that none of Qwest's proposed improvements have been tested; indeed, none of them have even been designed let alone constructed at this point. As such, even if MCI agreed with Qwest's proposed processes verbatim (which it does not), MCI would still have major concerns regarding Qwest's ability (or its incentive) to effectively follow through on a proposal constructed primarily of promises. As such, the manner by which any process ultimately approved by the Commission is tested for commercial use at volumes that would result in a market without UNE-P is of critical importance. Likewise, the performance metrics and penalties that will govern the process over time are of equal importance.

Testing and Monitoring

(5) In simplest terms, in its *Triennial Review Order* the FCC found that CLECs should be allowed to continue purchasing and using UNE-P, because important obstacles existed with respect to their ability to use their own facilities to serve the mass market. Primary amongst those obstacles was the hot cut process that would be required to change a customer from one network to

another absent UNE-P. The FCC found that the hot cut process was time consuming, had a high probability of error (and hence, increased the number of service impacting problems), that it was expensive and ultimately, that it was not scalable to meet the needs of a competitive marketplace the size of that created via UNE-P. Having come to that conclusion, the FCC tasked state commissions with improving the hot cut process to overcome these problems. In fulfilling that task, this Commission should keep squarely in mind that the hot cut process and the UNE-P provisioning process (and Qwest's retail provisioning process) are all meant to accomplish exactly the same task: i.e., connect the customer's loop to the switch that will provide it local service, and that that process cannot be said even to "exist" until it has been developed, tested, and is in use by CLECs. As such, if a facilities-based service model like UNE-L is ever to achieve the type of competitive entry achieved via UNE-P (or if it is to be an effective manner of competing with Qwest's retail services), the hot cut process must be as timely, reliable, scalable and economically viable as both the UNE-P provisioning process, and Qwest's retail provisioning process. As such, while Qwest will undoubtedly tout the many improvements it has made to its existing hot cut process, the Commission must resist evaluating Qwest on how far it has come in improving a relatively poor process, but instead, keep its eye on how far Qwest must still go to reach either of these benchmarks. In doing so, the Commission should always ask itself the following questions when evaluating Qwest's improved process: Will the improved hot cut process work as effectively as either the UNE-P provisioning process or Qwest's retail provisioning process? Will it be as timely? Will it be as reliable? Will it be as scalable? Will it be as economically viable? Unless the answer to each of these questions is "Yes," in MCI's opinion, the improvement process is incomplete.

IV. BATCH HOT CUT REQUIREMENTS

Q. WHAT IS A "HOT CUT" AND WHY ARE HOT CUTS SO IMPORTANT RELATIVE TO THE FCC'S *TRIENNIAL REVIEW ORDER*?

A. At footnote 1409 of its *Triennial Review Order* (¶465), the FCC describes the hot cut process as it is currently accomplished by ILEC's in today's environment:

> 1409...a hot cut is a largely manual process requiring incumbent LEC technicians to manually disconnect the customer's loop, which was hardwired to the incumbent LEC switch, and physically re-wire it to the competitive LEC switch, while simultaneously

> reassigning (*i.e.*, porting) the customer's original telephone number from the incumbent LEC switch to the competitive LEC switch..... From the time the technician disconnects the subscriber's loop until the competitor reestablishes service, the subscriber is without service. Simultaneously, incumbent LEC and competitor technicians must coordinate to ensure that the subscriber's telephone number is "ported" to the competitor's switch so that inbound calls are properly routed to the requesting carrier's switch. This process necessarily disconnects service to the customer for a brief period of time, as the physical connection between the loop and the incumbent LEC switch is broken and then a new connection with the competitive LEC switch is made. [references and cites removed]

Hot cuts are important relative to the FCC's *Triennial Review Order* because the FCC found the largely manual, coordinated hot cut process described above to be a major source of impairment for carriers attempting to serve mass market customers using their own facilities. Hence, state commissions were directed by the FCC to identify ways in which ILECs should improve upon these processes.

Q. HAS MCI PARTICIPATED IN THE QWEST REGION BATCH HOT CUT FORUM IN AN EFFORT TO NARROW ISSUES RELATED TO AN IMPROVED HOT CUT PROCESS FOR QWEST?

A. Yes, it has. MCI has participated actively in the Batch Hot Cut Forum.[4] MCI has participated in these collaborative meetings in an effort to help state commissions, and Qwest, identify ways in which the existing hot cut process can be improved to overcome the economic and operational impairment recognized by the FCC. More specifically, and as we discussed throughout the Batch Hot Cut Forum, MCI's primary concern is with the impact of these new processes on consumers. Indeed, Qwest has agreed to implement a number of the proposals made by MCI,

[4] MCI also participated in BHC collaborative meetings in the SBC and Verizon territories. BellSouth has opposed the collaborative approach used in other regions of the country.

including an on-line scheduling system and an order tracking application that will reduce the need for coordination via telephone calls.

Q. THEN WHY DOES MCI STILL HAVE CONCERNS ABOUT THE QWEST BATCH HOT CUT PROCESS?

A. As we discussed throughout the Batch Hot Cut Forum, MCI's primary concern is with the impact of these new processes on consumers, particularly those consumers with MCI DSL, those served by IDLC, and those customers that are migrating from one CLEC to another.

Q. WILL THE HOT CUT PROCESSES PROPOSED BY QWEST SERVE TO OVERCOME THE OPERATIONAL OR ECONOMIC OBSTACLES RECOGNIZED BY THE FCC RELATIVE TO IMPAIRMENT?

A. No, unless Qwest in its testimony in this proceeding introduces major improvements to its "Final Proposal" provided to the BHC Forum website on January 9, 2004, the resultant processes will not serve to overcome the operational obstacles identified by the FCC. With respect to economic obstacles contributing to impairment, little can be said at this time since Qwest will be presenting its proposed rates for its "improved" hot cut processes (and providing supporting cost documentation) for the first time in its testimony filed in this docket simultaneously with ours.

Q. IS IT REALISTIC TO THINK THAT QWEST COULD DEVELOP A HOT CUT PROCESS CAPABLE OF EFFECTIVELY STREAMLINING THE PROCESS TO ACCOMMODATE VOLUMES CURRENTLY ACHIEVED BY UNE-P IN A 9 MONTH TIMEFRAME?

A. Probably not. The UNE-P provisioning process was developed over 2-3 years of constant work, with the assistance of numerous CLECs, state commissions, consumer groups, and notably, the cooperation of the regional Bell operating

companies ("RBOCs") who were actively seeking §271 approval. Likewise, the automated and efficient processes used by ILECs to provision their own retail services (designed specifically to avoid the type of loop cutover work at issue in this proceeding) were developed over an even longer period. To assume that Qwest, or any ILEC, could achieve similar results in a 9-month timeframe for its hot cut process used to support UNE-L, probably isn't realistic. This is especially true since the parties have had to engage in a debate as to the form of the BHC process. This is not to say that the Batch Hot Cut Forum was not worthwhile, since many agreements were crafted in that process. Moreover, even where agreement could not be achieved, the parties developed a level of understanding that will be valuable in limiting the litigation on the impasse issues.

Q. IS MCI INTERESTED IN AN IMPROVED HOT CUT PROCESS TO BE APPROVED BY THIS COMMISSION CONSISTENT WITH THE FCC'S SCHEDULE, EVEN IF SUCH A PROCESS DOES NOT OVERCOME ALL OF THE OBSTACLES LEADING TO IMPAIRMENT?

A. Yes, but it is clear that a finding of "no impairment" cannot be made without having this process in place, fully tested at commercial volumes and with metrics to ensure continued performance over time. MCI is very interested in any improvements that can be made to the hot cut process either within 9 months, or any time thereafter. MCI is committed to serving mass market customers on its own facilities where it is operationally and economically viable, and is encouraging state commissions to eliminate operational and economic obstacles that stand in its way in that regard. In a telecommunications market reliant so heavily on bundled products, a company's long term viability cannot be sustained in a scenario wherein it relies almost exclusively upon the facilities of its primary

competitor (e.g. UNE-P). To ensure that CLECs can move to this service delivery method without harming customers, MCI recommends that the Commission maintain the national finding of impairment throughout all telecommunications markets in the state until such time as UNE-L can realistically replace UNE-P as a tool for serving mass market customers.

V. QWEST'S BATCH HOT CUT PROCESS

Q. SHOULD THE COMMISSION LIMIT ITS INVESTIGATION TO THE BATCH HOT CUT PROCESS ONLY?

A. No. In an effort to alleviate some of the operational barriers to UNE-L recognized by the FCC, the TRO requires that the states approve a batch hot cut process ("Transition Batch Hot Cut Process") to transition existing UNE-P customers to UNE-L by cutting over unbundled loops in high volumes from Qwest to CLECs.[5] The FCC expected that such a process would enable groups of UNE-P customers to be transitioned to UNE-L simultaneously in batches, thus "result[ing] in efficiencies associated with performing tasks once for multiple lines that would otherwise have been performed on a line-by-line basis."[6] Yet although the FCC recognized that such "a seamless, low-cost batch cut process for switching mass market customers from one carrier to another is necessary, at a minimum, for carriers to compete effectively in the mass market," it did not view this transitioning process as a panacea.[7] Indeed, because this Transition Batch Hot Cut Process only addresses the issue of transitioning to UNE-L the embedded

[5] Id. at ¶¶ 487-490.
[6] Id.
[7] *See, e.g.*, TRO ¶ 423 describing the batch process as mitigating, not necessarily eliminating impairment, ¶487.

base of customers that competitors like MCI have acquired on UNE-P, it is merely one discrete piece of the much larger puzzle that must be assembled before UNE-L can be seen as a viable service delivery method. In practical terms, eliminating the operational barriers associated with the every day hot cut process ("Mass Market Hot Cut Process") – which will be used to move customers to and from multiple carriers in a dynamic competitive market – is far more critical than implementing a Transition Batch Hot Cut Process that is only useful for simultaneously moving batches of UNE-P customers to UNE-L.

Q. DOES MCI HAVE ANY CONCERNS AT THIS TIME ABOUT HOW QWEST IS ADDRESSING BATCH HOT CUTS?

A. Yes. While the Batch Hot Cut Forum was useful in many respects, it is clear that many issues remain unresolved or at impasse.

Q. IS MCI AT IMPASSE ON MOST ISSUES RELATING TO THE PROPOSED QWEST BHC PROCESS?

A. No. To say that MCI is at impasse on most issues would be incorrect. Qwest appears to have made movement in the right direction by listening to the concerns of the CLECs and including some recommended features. For instance, Qwest has agreed to develop a "due date scheduler" and an online order status tool – both of which were recommended by MCI and other CLECs. Nevertheless, and despite the progress made during the Batch Hot Cut Forum, there are issues at impasse and others that are not well defined.

Q. PLEASE SUMMARIZE MCI'S GENERAL CONCERNS WITH QWEST'S PROPOSAL.

A. As discussed earlier in this testimony, MCI's concerns can be summarized into the following categories: (1) Mechanization -- the process must be substantially

more mechanized than existing processes, (2) Limitations on Order Types -- it must be available to all types of transactions a CLEC is likely to encounter in a world where UNE-P no longer exists, (3) Scalability -- it must be capable of handling dramatically increased order volumes without inserting additional delay and/or error into the process, (4) Testing and Monitoring -- it must be governed by performance measures and penalties consistent with the commercial volumes it will be required to support and finally (5) Efficient and Cost Based -- it must be comparable in terms of quality, timeliness, reliability and cost to existing UNE-P provisioning methods or more importantly, Qwest's own retail provisioning processes. We will address each of these areas with respect to Qwest's proposal in this proceeding. Prior to discussing these broad issues, however, we will specifically address the impasse issues that are of concern to MCI.

VI. IMPASSE ISSUES

Q. HOW MANY IMPASSE ISSUES RESULTED FROM THE REGIONAL BATCH HOT CUT FORUM?

A. Based on the record in that Forum, it appears that 19 issues were at impasse for various reasons. MCI was not at impasse on all 19 issues, and our testimony will only address those issues with which MCI has disagreement with Qwest.

Q. PLEASE ADDRESS EACH IMPASSE ISSUE WITH WHICH MCI HAS A CONCERN, AND PROVIDE MCI'S PROPOSED RESOLUTION.

A. We will identify each issue below using the issue number from the BHC forum, final issues matrix, and then discuss the impasse issue and MCI's recommendations.

VII. ISSUE P-5 – IDLC LOOPS

Q. PLEASE DESCRIBE THIS ISSUE AND THE POSITIONS OF THE PARTIES.

A. The issue was phrased, "Whether the Batch Hot Cut process should include loops provisioned over IDLC". Qwest argued that IDLC loops are handled using the standard hot cut process. MCI and other CLECs argue that IDLC loops must be included in the BHC, especially since a large percentage of loops are served over IDLC facilities. Moreover, the extent to which the CLECs are denied a BHC process for a substantial portion of the network seriously calls into question whether economies of scale will be sufficient enough to warrant any attempt on the part of CLECs to implement UNE-L for the remainder of the market, even for those customers for which the hot cut process might be available.

Q. DOES QWEST PROVIDE LOOPS OVER IDLC?

A. Yes, as is reflected in MCI's direct operational impairment testimony, Qwest has a significant number of loops provided over IDLC. That testimony also quantifies the amount of IDLC used by Qwest in this state.

Q. SINCE A SIGNIFICANT NUMBER OF QWEST'S LINES ARE SERVED VIA IDLC SYSTEMS, HOW DOES THAT IMPACT THE BHC PROCESS?

A. Because of these technological challenges associated with unbundling IDLC loops, Qwest has consistently suggested that UNE-L requests for loops served via IDLC must "fall out" of any provisioning process (including "batch" hot cuts) and be provisioned via an extremely expensive and time-consuming manual process. These issues must be addressed and resolved before a finding of non impairment can be entered.

Q. BUT HASN'T QWEST SAID IN THE BATCH HOT CUT FORUM THAT IT WILL CUT OVER THE UNE-P IDLC LOOPS?

A. Yes. But Qwest has indicated that it will not include the IDLC loops in the batch process and will only cut over 10 IDLC loops per day, per "manager's area." According to Mr. Pappas during the Batch Hot Cut Forum, Qwest "...would convert ten UNE-Ps that are on IDLC today, per day, at a single RT [remote terminal]."[8] For example as noted in the BHC forum, in Fort Collins, Colorado, the manager's area would include the cities of Fort Collins, Loveland, Greeley and Berthoud.[9] To be fair, however, Mr. Pappas did note that more urban areas might have a "manager's area" that was limited to one central office. It is clear that converting a dozen or so UNE-P loops a day will not be sufficient given the number of IDLC loops Qwest has in the state.

Q. CAN IDLC BE UNBUNDLED DIGITALLY AS YOU DISCUSS ABOVE?

A. Yes, despite arguments to the contrary from Qwest and the other ILECs, it is technically feasible to routinely unbundle IDLC in a digital format without losing the inherent "integrated" advantages enjoyed by the ILECs' bundled products. Indeed, the FCC in its *Triennial Review Order* noted: "We recognize that it *is* technically feasible (though not always desirable for either carrier) to provide unbundled access to hybrid loops served by Integrated DLC systems."[10] (Emphasis added).

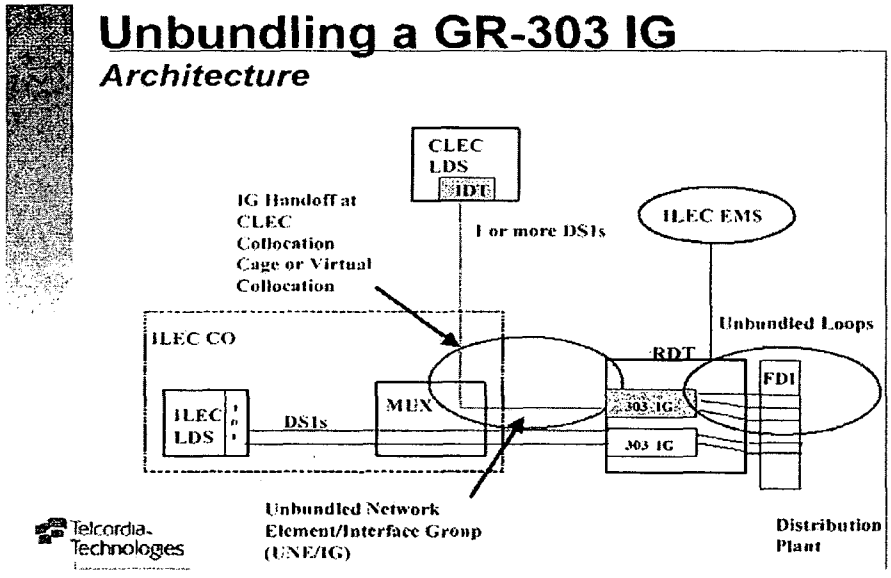
The most advanced IDLC systems engineered and deployed today (GR-303 compliant) have that capability. BellCore (now Telcordia) who developed

[8] See Batch Hot Cut Forum, December 2, 2003, transcript at page 384.
[9] Id. at 390.
[10] See TRO at ¶ 297, n.855.

the GR-303 interface, describes at least two methods by which GR-303 compliant IDLC can be unbundled electronically without requiring a dispatch.

Q. PLEASE DESCRIBE THOSE METHODS.

A. The first method entails the establishment of separate interface groups at the IDLC remote terminal so that a distinct interface group is assigned to a CLEC and passed through a multiplexing device in the central office for purposes of accessing individual lines at the DS0 or DS1 level. This particular unbundling strategy has been discussed for years by industry bodies and has been supported by Telcordia in the past in numerous symposiums. Indeed the following diagram depicting the manner by which this process would work was constructed by Telcordia and provided to the industry in one of its GR-303 symposiums.



Source: Telcordia's GR-303 Access Symposium binder, Tab 4, August 11, 1999.

Q. DO OTHER METHODS OF UNBUNDLING IDLC EXIST?

A. Yes, Telcordia also describes another method relative to sharing GR-303 Interface Groups between the ILEC and the CLEC, using a sidedoor port on the ILEC's

digital switch for purposes of accessing individual DS0s for transfer to the CLEC's switch. The diagram below shows the use of a GR-303 interface group sharing ILEC and CLEC traffic wherein all CLEC traffic is routed through a sidedoor port, supporting a DS1 or DS0 unbundling scenario. This drawing is also taken from Telcordia documentation, this time from Telcordia's most recent issue of *Notes on the Network*, a leading source of engineering documentation relevant to today's telecommunication network. [11]

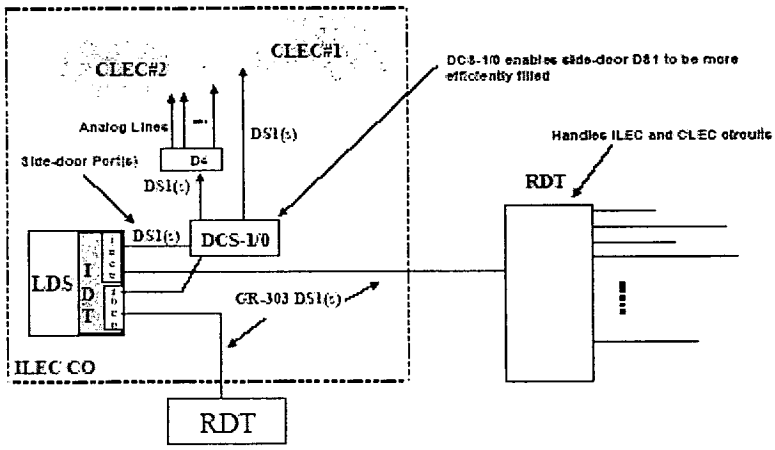


Figure 12-36. IDLC Unbundling Using Sidedoor Port

In the scenario above, unbundled CLEC loops are provisioned as non-locally switched circuits within the IDLC system. Telcordia describes this application as follows:

> While the digital system cross-connect ("DCS"), DCS-1/0, is shown in the figure, it is not a requirement of this architecture. The advantage of using a DCS-1/0 is realized if the CLEC is not fully utilizing a DS1 from the ILEC local digital switch (LDS) to the CLEC, and multiple switch modules with individual digital control units (IDCU) are used by the ILEC. If a DCS-1/0 is placed between the LDS DS1 sidedoor port and the CLEC DS1s, it would permit full utilization of the sidedoor LDS/IDCU hardware by enabling CLEC DS0s to be rearranged in the DCS-1/0 and placed

[11] Examples taken from: Telcordia Notes on the Networks Issue 4, October 2000.

on the individual CLEC DS1s. (See *Notes on the Networks* at Section 12-56)(acronym definitions added).

Q. IN ADDITION TO THE SIMPLE FACT THAT CLECS CAN GAIN ACCESS TO UNBUNDLED CIRCUITS VIA THIS UNBUNDLING METHOD, ARE THERE OTHER ADVANTAGES TO THIS TYPE OF DIGITAL UNBUNDLING?

A. Yes. Not only would either of these methods provide a CLEC unbundled access to the same customer loops the customer enjoys today, without a technician dispatch, it would also mitigate (if not eliminate) the need for manual intervention in the loop provisioning process (*i.e.*, the "hot cut"). Because GR-303 IDLC systems are largely software driven and do not rely upon manual copper wire manipulation for purposes of cross-connecting the derived circuits they support, unbundled loops could be provisioned to a CLEC on an electronic basis, free of any costly or time consuming technician dispatch. As such, this type of IDLC unbundling would go a long way toward providing non-discriminatory access to unbundled loops, and also toward removing impairment caused by the labor intensive and cumbersome hot cut processes supported by Qwest. In short, this type of unbundling once implemented, tested and proven in a commercial setting, would go a long way toward removing the impairment currently faced by mass-market CLECs without access to unbundled local switching.

Q. ARE THERE COMPLEXITIES ASSOCIATED WITH UNBUNDLING IDLC IN THE FASHION YOU HAVE DESCRIBED ABOVE?

A. Yes. Though unbundling IDLC is unarguably feasible, the work required to establish necessary processes and techniques to unbundle IDLC in this fashion in a commercial setting has never been undertaken in earnest by the ILECs. They have simply been provided no incentive to support this type of process that will

only serve to enhance competition in the local market they currently dominate. As such, time and effort must be put toward making this technology a reality. Below we list a number of the obstacles that must be overcome on the road to efficiently unbundling IDLC for purposes of removing impairment:

A. Since each CLEC circuit requires a nailed up DS0, absent additional software functionality or other processes, the ILEC may encounter blocking over the IDLC system as other circuits compete for DS0 channels.

B. The number of sidedoor ports that can be engineered varies depending on the LDS supplier and no standard appears to have emerged. Hence, a concerted effort on the part of the ILEC may be required to standardize this technology for this purpose.

C. There is limited support in existing special services design systems and databases to support sidedoor port circuits. Again, this results primarily from the fact that the vendors design systems based upon the needs of their primary customers and the ILECs have had little incentive in the past to pursue this type of unbundling technology. Hence, this issue could undoubtedly be overcome by the vendors if provided the proper incentive.

D. Other issues regarding security for an IDLC system providing multiple interface groups to multiple CLECs need to be addressed. Likewise, numerous other details associated with sharing test resources, alarms, etc., would require additional development.

Q. WHY SHOULD THE INDUSTRY WORK TOWARD OVERCOMING THESE OBSTACLES?

A. UNE-P allowed CLECs to overcome the many issues we have described above relative to hot cuts and loop provisioning—issues that had heretofore largely stymied local competition via UNE-L. If the FCC and/or this Commission realistically intend for UNE-L to take the place of UNE-P as a competitive service delivery vehicle, then these same problems must be overcome in a different way. we have identified the manner by which that can be accomplished above.

Unbundling IDLC will not be easy. It will require the hard work of the ILECs, the CLECs and, most importantly, state public utility commissions. However, until it is accomplished, CLECs will be impaired without access to UNE switching and UNE-P. It is MCI's hope that addressing the problems in that order (*i.e.*, first fix the IDLC unbundling issue as well as the manual hot cut issue, then decide whether impairment remains) will provide the type of incentive necessary for proper ILEC involvement (contrasted with their general nay-saying relative to these options in the past).

Q. WHAT CONFIDENCE CAN THE COMMISSION HAVE THAT IDLC CAN BE UNBUNDLED AND THAT THESE ISSUES YOU HAVE IDENTIFIED ABOVE CAN BE OVERCOME?

A. Though these issues are real, and real effort will be required to address them, it is important to remind the Commission that Telcordia developed the specifications for the GR-303 platform for unbundling, and has demonstrated their commitment to resolving the issues associated with unbundling, by providing the methods described above. Telcordia has even organized and spearheaded symposia related to unbundling GR-303 equipment. In the final analysis, these types of issues are really no different than the myriad of issues the industry has been addressing for several years relative to the evolution of the network and unbundling in general. The arguments the ILECs make in opposition to IDLC unbundling should remind the Commission of similar arguments the same ILECs made almost 10 years ago when they argued that loops in general could not be unbundled save catastrophic repercussions to the entire network. Those catastrophic events failed to materialize and the same will undoubtedly hold true relative to IDLC unbundling.

Finally, Bell South and SBC include IDLC in their batch hot cut processes. Bell South will use GR303 and other techniques when available. At the very least, Qwest should agree to include IDLC circuits in the batch process even if these circuits must first be cutover only where spare copper is available.

Q. WHAT IS MCI'S PROPOSED RESOLUTION TO THIS ISSUE?

A. The Commission should require Qwest to include IDLC loops in BHC orders.

Q. SHOULD THE HOT CUT PROCESSES ULTIMATELY IMPLEMENTED BY THE COMMISSION EXCLUDE ANY PARTICULAR ORDER TYPES?

A. Generally, no. While there might be a legitimate reason to exclude some particular order type, such exclusion should be the exception as opposed to the rule. Qwest from what we have seen to date appears to make such exclusions common place, thus mitigating the potential benefits of improved hot cut processes. To the extent their efforts are successful, the process in which we are currently engaged is likely to be for naught. If that is the result of this process, then CLECs will have to use the existing hot cut processes.

Q. WHY IS THIS ISSUE IMPORTANT?

A. To the extent CLECs intend to implement a UNE-L strategy, the economics require them to move their embedded base of UNE-P customers to UNE-L. Customers served by UNE-P today are not homogeneous with relation to service type, customer type, or loop type. As such, if Qwest is successful in maintaining the numerous exclusions it has proposed relative to its hot cut processes, there will be a large number of existing UNE-P customers who will not be able to be cutover with the hot cut process. Further, to maintain their customers over any

length of time on a going forward basis, CLECs need to be able to address all customer types represented in their market. That would include, at a minimum, all types of lines that are currently contained within their embedded base.

Q. CAN YOU PROVIDE SOME EXAMPLES OF EXCLUSIONS AND EXPLAIN WHY THEY WOULD DISRUPT THE CLEC'S BUSINESS IF MAINTAINED?

A. Yes, we can provide three of the most important examples. First, Qwest has for the most part stated that its "batch" hot cut processes will not support customer loops currently provided via IDLC facilities (as discussed above), at least not within the same timeframe or at the same costs as other loops. Second, we understand that Qwest will exclude any line that is currently being used for both voice and data services (line sharing or line splitting) from these processes (see below). Third, we also understand that Qwest does not intend to support hot cuts where the receiving carrier is not collocated in the office where an end user's loop is terminated, *i.e.*, it will not allow for hot cuts to take place where EELs are used to gain access to end users by taking the loop from the MDF and connecting it to a collocation at another central office where it can then be transferred to the carrier's switch (or in many circumstances, it has simply not developed the processes needed to provide BHCs in a situation where a carrier uses an EEL).

By including these – and potentially other – prohibitions on the use of BHC processes, Qwest has substantially reduced the percentage of current and future customers' loops that could potentially benefit from the processes which are being designed to mitigate impairment. As such, even with the BHC process advocated by Qwest, CLECs will remain impaired when attempting to serve any

of the mass market customers who happen to fall into these categories, which could easily be well over half of all such customers. For example, it has been our experience that in some central offices, many mass market customers are served via IDLC. Moreover, the extent to which the CLECs are denied a BHC process for a substantial portion of the network seriously calls into question whether economies of scale will be sufficient enough to warrant any attempt on the part of CLECs to implement UNE-L for the remainder of the market, even for those customers for which the hot cut process might be available.

Q. PLEASE DESCRIBE MCI'S PROPOSAL RELATED TO EELS.

A. MCI should be allowed to submit an order that requests a loop housed in Qwest Central Office A, be "cut" to a collocation facility (i.e., an MCI CFA), in Central Office B. When Qwest receives such an order, it should provision on MCI's behalf, as part of its hot cut pre-wiring function, a DS0 EEL extending from Central Office A to MCI's CFA in Central Office B. All ANI testing should be completed via the DS0 EEL, and on DD-2 Qwest should cut the requested loop to the EEL so that MCI dial tone from its collocation in Central Office B is provided to the customer via his/her loop located in Central Office A. Non-recurring charges specific to an EEL/Hot Cut should be computed and presented to state public utility commissions for review before approval.

VIII. ISSUE P-6A and B – LINE SPLIT LOOPS

Q. PLEASE DESCRIBE THIS ISSUE AND THE POSITION OF THE PARTIES.

A. Issue P-6a is described, "Whether the Batch Hot Cut process should include line split loops." Issue P-6b is described, "Whether the Batch Hot Cut process should include UNE-P with ancillary DSL." Qwest argues that including line split loops would eliminate some of the efficiencies of the BHC. The CLECs argue that line split loops are required per the TRO. In addition, CLECs point out that Qwest, among all the other ILECs, is the only one that actually has a process to migrate a line split UNE-P line to a line split UNE-L line without disrupting the customer's data services. Thus, Qwest has the process CLECs need but refuses to implement it as part of its batch process.

Q. WHAT IS MCI'S PROPOSED RESOLUTION TO THIS DISPUTE?

A. The Commission should require Qwest to include line split loops in the BHCs. At ¶ 211 of the TRO it states,

> We also require incumbent LECs to provide competitive LECs the ability to line split, which allows two competitive LECs to split the loops so that one carrier can provide narrowband service and the other can provide broadband service.

There is no good reason to preclude line split loops from the BHC process. Indeed, at ¶ 252 of the TRO the FCC encouraged the ILECs to use the collaborative process to address any OSS changes that might be necessary to support line splitting.

Q. DO YOU ANTICIPATE SITUATIONS IN THAT A UNE-P CUSTOMER WITH LINE SPLITTING WILL MIGRATE TO A UNE-L SCENARIO?

A. Yes. Today there are customers in line splitting scenarios where the voice service is provided via UNE-P. It is likely that a CLEC will want to move that voice

service from UNE-P to UNE-L if UNE-P is no longer available. In that scenario there is no reason to eliminate the loop from the BHC.

Data services are becoming an ever-increasing part of full-service communications packages offered not only by CLECs, but also by Qwest and the other ILECs. And, digital subscriber line ("DSL") growth rates are still dramatic as literally thousands of new DSL subscribers join the ranks of the broadband subscribership every day. As such, it is becoming far more common to encounter subscribers who have DSL services on their existing loop, but want to change either their entire service package, or just their voice services, to another carrier. Either of these scenarios is likely to require a hot cut. Yet, again, Qwest does not plan to support this type of hot cut in its improved processes.

Q. QWEST INDICATES THAT SUCH A SCENARIO WOULD BE CHANGING THE SERVICE FROM A NON-DESIGN SERVICE TO A DESIGN SERVICE, THEREBY ELIMINATING EFFICIENCIES THAT THE BHC WAS DESIGNED TO CAPTURE. DO YOU AGREE?

A. No. The customer was previously receiving voice and data over a loop that was capable of providing the service. Eliminating the ILEC local switching does not eliminate the loop. As such there is no need to "design" the loop since it was already in service and providing both voice and data. The "design" issue is a red-herring and should be ignored. Qwest should be required to include these loops in the BHC.

Q. WHAT IF THERE ARE OTHER TECHNICAL ISSUES ASSOCIATED WITH INCLUDING THE LINE SPLIT LOOPS IN THE BHC?

A. If there are other situations that require attention, then Qwest should work to resolve those issues and not simply refuse to do so. During the Batch Hot Cut

Forum, Mr. Zulevic from Covad explained to the parties how simple the actual cut of line split loop would be.[12] There is no technical reason not to include line split loops in the BHC.

IX. ISSUE P-12 – MIGRATION BY TELEPHONE NUMBER

Q. PLEASE DESCRIBE THIS ISSUE AND THE POSITION OF THE PARTIES.

A. MCI has asked for the capability of migrating a customer by telephone number ("TN") and street address number ("SANO"). Qwest considers this issue outside the BHC implementation process but specifically noted that "...there is no technical limitation precluding Qwest from modifying the edits in its integrated mediated access ("IMA") systems to allow CLECs to enter TN and SANO for UNE-P to UNE-Loop conversions."[13]

Q. HOW DOES MIGRATION BY TN AND SANO BENEFIT THE INDUSTRY?

A. Migration by TN and SANO saves the CLEC considerable time on each local service request ("LSR") by not having to enter the entire customer address. It also eliminates potential errors in the LSR associated with typos or other unique aspects of address notations (i.e., "St." versus "Street"). By saving time for the CLEC and avoiding errors on LSRs (and avoiding the resulting rejects), the industry and the consumer benefit. Since there is no technical limitation precluding Qwest from processing LSRs with TN and SANO, the Commission should require Qwest to do so.

Q. DOES QWEST OPPOSE MIGRATION BY TN AND SANO?

[12] See Batch Hot Cut Forum Exhibit 4.
[13] See Batch Hot Cut Forum Issues List; Issue P-12; Qwest Response dated 12/10/03.

A. Qwest has indicated that it will not oppose MCI Change Request Nos. CR SCR061302-01 and SCR022703-18 that deal with the migrate by TN and SANO issue. [14]

Q. DOES THAT RESOLVE THIS ISSUE?

A. No. The Change Management process can be very time consuming with no guaranty of success. Further, Qwest has indicated that resources for updating IMA releases have been reduced dramatically. The industry should not have to wait for such important enhancements when there is no technical reason not to implement them.

Q. IF THE COMMISSION ORDERS QWEST TO MAKE THIS CHANGE DOES THAT EXPEDITE THE CHANGE MANAGEMENT PROCESS?

A. Yes. When a change is required by a regulatory order the change requests becomes a "regulatory" change request and it then takes priority over non-regulatory CRs. Having an order from this Commission directing Qwest to implement Migration by TN and SANO by a certain date and before any finding of "no impairment", if any, were to become effective for any area within the state will aid the CLECs in their attempts to get this important capability in place sooner.

X. ISSUE P-23 – NOTIFICATION OF BATCH COMPLETION

Q. PLEASE DESCRIBE THIS ISSUE AND THE POSITION OF THE PARTIES.

A. MCI has asked Qwest to consider updating the web-based order status tool more often than once every 30 minutes. MCI recommends that the status tool update at

[14] Id.

least every 10 - 15 minutes so as to limit the amount of time the customer is unable to receive calls.

XI. ISSUE P-27c – LEVEL OF MECHANIZATION

Q. PLEASE DESCRIBE THIS ISSUE AND THE POSITION OF THE PARTIES.

A. MCI has recommended that Qwest investigate the use of automated or robotic frames for central office activities. This type of mechanization is an excellent way to increase capacity and efficiencies which were specific goals of the *Triennial Review Order* for the BHC process. Qwest states that it has evaluated such technologies but has chosen not to implement them.

Q. WHY IS MECHANIZATION IMPORTANT?

A. Each of the obstacles described by the FCC in the *TRO* related to the hot cut process (i.e., timeliness, scalability, reliability, seamlessness and cost) can be addressed with increased mechanization. Indeed, the primary advantage of the UNE-P provisioning process when compared to the hot cut process is the level of mechanization. If done correctly, little or no manual intervention is required to move a customer from one carrier's service to another via UNE-P. This substantially increased level of mechanization in the UNE-P process bears substantial fruit, for example:

(1) The time required to move the customer from one carrier to another is dramatically reduced, from several days to just a few minutes.

(2) The rate of error in the process is dramatically reduced. The largest single component leading to service disruption in the hot cut process is human error.

(3) The process is highly scalable given that software/hardware resources are easily supplemented.

(4) The process is relatively inexpensive. The single most expensive component of any provisioning function is human intervention.

It is this increased level of mechanization, and the resultant benefits, that have made UNE-P such a successful competitive platform. And, unless state regulators are willing to see the substantial progress made by competitors with UNE-P evaporate without it, the hot cut process will need to exhibit the same types of efficiencies.

Q. DOES QWEST RELY HEAVILY UPON MECHANIZATION FOR PURPOSES OF INCREASING THE EFFICIENCY (AND LOWERING THE COSTS) OF ITS RETAIL PROVISIONING PROCESSES?

A. Absolutely. In fact, the FCC at ¶ 465 of its *TRO* made a point of noting the discrepancy between an ILEC's primarily software-driven retail provisioning process, and the manually intensive nature of existing hot cut processes in an effort to illuminate the competitive disadvantage CLECs would face absent access to unbundled local switching (or a dramatically improved/mechanized hot cut process):

> The barriers associated with the manual hot cut process are directly associated with incumbent LECs' historical local monopoly, and thus go beyond the burdens universally associated with competitive entry. Specifically, the incumbent LECs' networks were designed for use in a single carrier, non-competitive environment and, as a result, the incumbent LEC connection between most voice-grade loops and the incumbent LEC switch consists of a pair of wires that is generally only a few feet long and hardwired to the incumbent LEC switch. Accordingly, for the incumbent, connecting or disconnecting a customer is generally merely a matter of a software change. In contrast, a competitive carrier must overcome the economic and operational barriers associated with manual hot cuts. Our finding concerning operational and economic barriers associated with loop access

reflects these significant differences between how the incumbent LEC provides service and how competitive LECs provide service using their own or third-party switches. [emphasis added]

It is important to note that the FCC, in the excerpt above, singles out the disparity between the software driven nature of the ILEC's retail process, compared to the manual nature of the hot cut process, as the primary basis for its finding regarding operational and economic impairment.

Q. DOES TECHNOLOGY EXIST THAT COULD BE USED TO AUTOMATE ACTIVITIES ASSOCIATED WITH BHCS?

A. Yes, and many of the ILECs utilize these technologies for purposes of provisioning retail products with the specific intention of removing manual work steps from their provisioning process. For example, Verizon employs the two most common types of technology that can be used to cutover a loop without manual intervention: (1) automated or mechanized frame systems and (2) electronic loop provisioning via GR-303.[15] There are numerous vendors that provide these automated loop provisioning systems and, not surprisingly, each vendor describes in detail how its system can obviate the need for manual intervention in the cutover process. Examples of vendors who provide electromechanical and micro-relay type frame systems include NHC (www.nhc.com) and Simplernetworks (www.simplernetworks.com), respectively. There are many others as well.[16]

[15] GR-303 is a Bellcore (now "Telcordia") standard around which multiple equipment vendors build "next generation digital loop carrier" systems ("NGDLC").

[16] Other providers include Avaya (Automated Main Distributing Frame System), Oki (Smart MDF) and CON-X (ILEC Central Office Solutions).

Q. PLEASE EXPLAIN THE LIMITATIONS CURRENTLY HINDERING THIS TECHNOLOGY FOR MORE WIDESPREAD USE.

A. For the most part, it appears the largest hindrance with respect to these automated systems is incentive, not technology. Unless required to provide a UNE-L provisioning process approaching the automated efficiency of their retail or UNE-P based services, Qwest has little incentive to consider a technology that will make UNE-L a more viable option. Indeed, Qwest is motivated to delay the implementation of such advances, claiming such advancements are unnecessary, too costly or impossible. As long as Qwest can convince state commissions that the substantially limited manual processes, and the enormous non-recurring charges they require, are sufficient, Qwest has little incentive to automate the process or improve it to any degree beyond that required on a regulatory basis. As such, Qwest spends the majority of its time identifying the limitations of existing equipment rather than describing how it could improve or implement innovative alternatives.

Q. HAS VERIZON DEPLOYED AUTOMATED DISTRIBUTION FRAMES?

A. Yes. In a hearing that was completed just last week, the Verizon witnesses confirmed that the company does use automated distribution frames, albeit not necessarily for BHC purposes. The text of the transcript states:

> Q So for all three of these processes, the provisioning is manual; the movement of the frame is manual?
> A (Witness Maguire) Yes.
> (Witness McLaughlin) With one correction, except in those offices where we do have auto MDFs employed that may have CLEC equipment connected -- my answer was except for those offices where we may have MDFs employed in New

York State that have CLEC equipment connected to them, it would be a manual process.

Q Mr. McLaughlin, what's an automated distribution frame?

A (Witness McLaughlin) It's a mechanical cross connect device that has terminated Verizon equipment for the most part and Verizon cable facilities to it.

Q You caught me off guard, because I was -- had this outline, and we were going to talk about automated distribution frames later, but as long as you mentioned it, let me explore that last answer to that previous question. Does Verizon offer distribution frames today for hot cuts in New York?

A (Witness Nawrocki) Verizon has offered automated MDFs on selected offices. I'm not aware that we have utilized these devices specifically for hot cuts. Typically these devices are in small offices without colocation.[17]

Q So I have two answers which I think are conflicting, and that's why I pursued it. I want to make sure I have the right answer. Between the answer Mr. McLaughlin gave or the answer that Mr. Nawrocki gave, I just want to confirm that there is no CLEC equipment that is attached to automated distribution frames in New York.

A (Witness McLaughlin) My answer was except where they may. I do not have positive information one way or the other.

Q Mr. Nawrocki or anyone else on the panel, is there such a case in New York where a CLEC is attached to an automated distribution frame?

A (Witness Nawrocki) I'm not aware that we have these devices in any office colocation, but I wouldn't disallow it.

Q What do you mean you "wouldn't disallow it"?

A (Witness Nawrocki) To my knowledge, all these devices are in very small or middle offices without colocation. There may be an isolated case, not to my knowledge, where we have some --

[17] Before the State of New York Public Service Commission; Case No. 02-C-1425; Proceedings on Motion of the Commission to Examine the Process and Related Costs of Performing Migration on a More Streamlined (e.g., bulk) Basis; Evidentiary Hearing, Tuesday, January 13, 2004. Cross of Verizon Witnesses McLaughlin and Nawrocki by MCI attorney Curtis Groves.

some telekeyed equipment in the office.

Q If you had that situation, take it hypothetically, do you have plans to use automated distribution frames to perform hot cuts?

A (Witness Maguire) Yes.

Q You do?

A (Witness Maguire) If there is colocation and there are automatic distribution frames, as Mr. McLaughlin pointed out, then we will use that technology to perform hot cuts but, to expand a little bit, I'm not aware of any situation where we have ADFs and colocation.

Q Have you ever tried an application to use ADFs for hot cuts?

A (Witness McLaughlin) Not to my knowledge.

As the Commission can see by this exchange in New York, the technology does exist to automate much of the frame work that is done today by technicians. Qwest's refusal to consider such technology is at odds with the FCC's direction to resolve the overly manual nature of existing hot cut processes. Indeed, the FCC specifically identifies the overly manual nature of existing hot cut processes as the primary obstacle to sufficient scalability, sufficient reliability relative to service quality, and affordability.

Q. ARE THERE ANY RECOMMENDATIONS YOU CAN MAKE TO THE COMMISSION REGARDING THE LONG TERM USE OF TECHNOLOGY TO REDUCE LABOR TIMES, EXPENSES AND THE POTENTIAL FOR ERROR IN THE HOT CUT PROCESS?

A. Yes. If policy makers truly intend for UNE-L to replace UNE-P, such that millions of loops will be "ported" from one carrier to another on a regular basis, technology that automates the loop cutover function is the only way to reach that objective in an efficient manner. Today's "hot cut processes" as briefly described above remain largely manual, labor intensive, and can be made only marginally

more efficient with system and process related improvements.[18] While many of these process and system changes are important and can lead to a more efficient, scalable and low cost hot cut methodology, they completely ignore the largest manually intensive step in the process, *i.e.*, the work of the frame technician to actually cutover the loop.

XII. ISSUE P-29 – COORDINATION OF SYSTEM CHANGES WITH CMP

Q. PLEASE DESCRIBE THIS ISSUE AND THE POSITION OF THE PARTIES.

A. MCI has stated repeatedly that the system changes resulting from the Batch Hot Cut Forum should be made outside of the Change Management Program ("CMP"). Qwest argues that the changes that result from the TRO should be handled through the normal CMP process.

Q. PLEASE EXPLAIN WHY THE CMP IS NOT THE APPROPRIATE FORUM TO ADDRESS CHANGES RESULTING FROM THE TRO.

A. The TRO requirements are unique and extensive. There is currently a backlog of change requests ("CR") that will compete with any changes resulting from the TRO processes. This backlog, combined with Qwest's reduced resources and the time consuming nature of the CMP, means that some important changes will not be made, or that some changes will be delayed.

MCI recommends that the TRO changes be addressed together in a unique release. McLeod also requested that system enhancements associated with the

[18] Qwest has listened to the suggestions of the CLECs and is proposing to implement an electronic "scheduler" and a web based status tool. To the extent Qwest is successful in developing these tools, all parties should benefit from enhanced efficiencies.

BHC process be moved outside CMP as a separate release.[19] Including all the BHC changes (including migrate by TN and SANO) into one release will provide the focus and resources required to implement these changes. If the BHC changes are not done together, the industry risks having some capabilities delayed while others are implemented. Such a disjointed implementation will surely frustrate the intent of the TRO and will not eliminate the finding of impairment.

Q. PLEASE EXPLAIN.

A. The BHC process does not exist unless and until the systems are in place, working and tested under commercial volumes. If all of the features are not present because of CMP priorities, then the system is not yet viable or available as promised. In such a situation, the finding of impairment must remain.

Q. IS THERE A WAY TO AVOID THE DELAYS YOU'VE DISCUSSED?

A. Yes. If the Commission decides that these changes must be evaluated through the CMP, then the Commission should require Qwest to address all the BHC issues together and ensure that they are implemented together as a regulatory change request. Further, the Commission should order Qwest to implement, test and demonstrate that the processes are commercially viable by a certain date and before any finding of "no impairment", if any, were to become effective for any area within the state. Finally, MCI agrees with Covad's suggestion that Qwest allocate additional dedicated resources to address system changes related to the TRO.

[19] See Batch Hot Cut Forum Issues Matrix; Issue P-29.

XIII. ISSUE SC-1 / SC-5 – HANDLING ANTICIPATED VOLUMES

Q. PLEASE DESCRIBE THIS ISSUE AND THE POSITION OF THE PARTIES.

A. This issue relates directly to scalability. Scalability refers to the ILECs' ability to perform BHCs with increases in volumes. The CLECs have raised concerns as to whether Qwest can handle the many transactions that will occur as the result of a find of no impairment and the other day-to-day operations. Qwest claims that it can handle the volumes as it has calculated them over the period allowed for conversion.

Q. WHAT DOES SCALABLE MEAN WITH RESPECT TO THE BHC PROCESS?

A. Scalability refers to the ILECs' ability to perform BHCs with increases in volumes. The BHC process must be capable of handling the migration of the embedded base of UNE-P lines to UNE-L, in addition to expected churn and other cut orders. Scalability is achieved by eliminating manual intervention. As such, and as discussed earlier in this testimony, an automated end-to-end process should be the goal of ILECs seeking scalability for BHCs. Unfortunately, Qwest has ignored the new technologies available today and instead relies almost entirely upon its traditional manual processes.

Q. QWEST CLAIMS THAT ITS BHC PROPOSAL IS SCALABLE. DO YOU AGREE?

A. No. Qwest has eliminated the scalability issue by artificially limiting the size of the batch orders (minimum of 25) and the number of cuts (100) that will be done in any central office on a given day. In other words, Qwest proposes a cap of 100 cuts per day, per central office for all CLECs. So, in Qwest's view, scalability is

not an issue as long as it can cut 100 loops a day in a central office. This approach, however, forces the CLECs to conform to these arbitrary limitations. As you can imagine, given Qwest's intransigent approach to BHCs, the CLECs will have little or no ability to focus cuts in central offices where growth is occurring or in any other prudent or economic manner.[20] More importantly, Qwest's agreements on batch hot cuts are apparently in some way connected to the "transition planning process," but this process remains a mystery.

Q. HASN'T QWEST MADE STATEMENTS TO THE EFFECT THAT THESE HOT CUT MIGRATIONS WILL NOT POSE ANY PROBLEMS?

A. Yes. The industry, however, including Qwest, has had no experience with large volumes of hot cuts. The FCC based its finding of impairment for unbundled local switching on this fact:

> Competitive carriers have shown that, although they have used hot cuts to serve certain small segments of the market, no competitive carrier relies on hot cuts to offer service to significant numbers of customers served by voice-grade loops. Having reviewed the record evidence, *we find that it is unlikely that incumbent LECs will be able to provision hot cuts in sufficient volumes* absent unbundled local circuit switching in all markets.[21] (emphasis added)

Q. HAVE OTHER ILECS EXPRESSED CONFIDENCE IN THEIR ABILITY TO HAVE A SCALABLE PROCESS IN PLACE?

A. Yes. For example, in New York, even based upon its own calculations, Verizon anticipates the need to hire and train literally thousands of new employees just to

[20] During the BHC Forum, for example Qwest indicated that there were 52 CLECs in Colorado. It is mind boggling to think that Qwest's "transition planning" approach combined with its arbitrary 100 cuts per day, per central office, for all CLECs will not result in frustration and inefficiency.
[21] See TRO at ¶ 468.

accommodate the increased volume of hot cut demands.[22] Qwest, on the other hand, has no plans to increase staff whatsoever in order to deal with these needs and instead will dedicate only two central office technicians per central office to do the BHCs. For that reason, Qwest is proposing to limit its BHCs to 100 per central office per day – a number that will be insufficient in many central offices unless the cuts are spread entirely over the timeframe identified by the FCC. In smaller central offices, a team of two technicians may be understandable. In larger central offices, however, Qwest could certainly bring more technicians to the task and accomplish far more than 100 BHCs per day. As the Commission is aware, when the migration of the embedded base begins, the largest central offices will have substantially more BHC requests – perhaps several hundred per CLEC per central office per day. The fact that Qwest, unlike other ILECs, does not see the need to "gear up" in order to accommodate the BHC requests should be a cause for the Commission's concern.

Q. WHAT IS THE MAJOR OBSTACLE TO A SCALABLE HOT CUT PROCESS ON THE PART OF QWEST?

A. The major bottleneck in the hot cut processes advocated by Qwest exists at the MDF or ICDF.[23] As described before, from an operational standpoint (absent installation and implementation of new technology that we discussed earlier), in a UNE-L environment each customer must be rewired manually for purposes of connecting the UNE loop to the receiving CLEC's collocation cage or EEL

[22] See Verizon's Panel Testimony filed October 24, 2003, New York Case No. 02-C-1425, Exhibit V-A, Force Load Model.

[23] Qwest has stated in the Batch Hot Cut Forum that the Qwest CLEC Coordination Center ("QCCC") in Omaha can handle well in excess of 3,600 cut a day. As such, the QCCC does not appear to be a limiting factor.

arrangement. This raises another important factor specific to scalability, *i.e.*, differences between large hot cut jobs undertaken today (or in the past) by Qwest versus the very different hot cut requirements they will face in a market without UNE-P. Currently, large project hot cuts typically involve one or a limited number of individual multi-line business customers wherein the cut, though potentially impacting many loops, is specific to a given customer. Frequently, the loop MDF connections for these groups of multiple lines are centrally located on the frame and typically all of the customers' loops are relatively concentrated geographically on the frame, because they terminate at the same premises. Conversely, a hot cut for a large group of residential, single line customers will generally appear at random frame locations. It is easy to envision frame technicians working on a number of individual large business hot cuts concentrated on a given termination block, however, it is equally as easy to envision the potentially chaotic situation that could develop as a result of multiple technicians working simultaneously on a number of large residential single line hot cut projects involving loops appearing in random locations on the frame. Therefore, even if Qwest were willing to increase its staffing to achieve more hot cuts per day in the short term, such staffing increases should not be considered to be a total or permanent solution to the problem. Such a solution will likely only be achieved through a change in technologies.

Q. TO THE EXTENT UNE-L BECOMES MORE WIDELY IMPLEMENTED, WILL CHURN IMPACT QWEST'S ABILITY TO KEEP UP WITH THE DEMAND FOR HOT CUTS?

A. Absolutely. Churn will become increasingly important and will ultimately drive the rate at which UNE-L migrations grow. MCI has provided its churn rates in its customer impact testimony to give the Commission a sense of the impact churn may have. Moreover, other CLECs may have provided churn rates in discovery responses that should be considered as well. While Qwest would have the Commission ignore CLEC-to-CLEC UNE-L migrations, it should not. In fact, the FCC specifically cited such migrations as a potential area of impairment.[24] Based upon Qwest's statements in the Batch Hot Cut Forum, Qwest does not intend to support CLEC-to-CLEC migrations within its BHC process unless they can be done with no truck roll or other complications. If a CLEC-to-CLEC migration has any complications whatsoever, then the migration must be done using the existing hot cut processes. As such, once a customer is served by a CLEC on UNE-L facilities, the ability of that particular customer to move to another carrier in the future without significant service-impacting problems is in serious doubt. All of the issues which lead to the FCC's finding of impairment without unbundled local switching come into play in such a situation and are compounded by the fact that a third carrier is now involved. Yet Qwest, which by the very nature of its control of the local loop is critical to the process, appears content (indeed, resolute) to leave this issue unaddressed.

[24] See TRO at ¶¶ 471 and 476.

Clearly, if the Commission intends for a customer's loop to be truly portable in a UNE-L environment, this critical issue must be addressed and included in all hot cut processes evaluated, designed, tested, implemented and certified by the Commission. The Commission should recognize that Qwest's ability to meet the demand for BHCs would be impacted by the total number of activities that Qwest must perform to accommodate all types of cuts, regardless of whether those activities occur in a "batch" scenario.

Q. DO YOU HAVE ANY FINAL COMMENTS ON THE SCALABILITY ISSUE?

A. Yes. Qwest notes that "transition planning" will occur prior to the beginning of the migration from UNE-P to UNE-L. It is unclear what this process would entail. Qwest has provided no information on how those meetings might be conducted. Will they be separate meetings with each CLEC? Will they be large industry meetings with all CLECs present? If the parties (whoever that may include) cannot reach agreement on when and where to cut over loops, how will such disagreements be resolved? It seems the entire BHC process and viability is based on a process that Qwest has not yet defined.[25]

XIV. ISSUE V-3 – SIZE OF A BATCH

Q. PLEASE DESCRIBE THIS ISSUE AND THE POSITION OF THE PARTIES.

[25] There is a reference to the Transition Planning at page 3 of BHC Forum Exhibit 9 Section 2, but it says simply, "Transition Planning is expected to take place between Qwest and the CLECs prior to implementation of the Batch Hot Cut Process." While it states that "the transition schedule will establish a central office time line to convert the embedded base within 21 month transition schedule put forth by the FCC in TRO." the devil is in the details.

A. As noted above, Qwest has limited the minimum size of the batch to 25 loops, although it will allow the batch to go through if 5 loops fall out of the batch.[26] MCI has argued that there should be no minimum size of the batch. Other CLECs agree that a minimum batch size is arbitrary.

Q. MIGHT THERE BE TIMES WHEN A CLEC WILL WANT TO SUBMIT A BATCH THAT IS SMALLER THAN 25?

A. Certainly. There is no reason to arbitrarily limit the minimum size of the batch. If a CLEC has five lines it would like to process as a batch, it should be allowed to do so.

Q. QWEST INDICATES THAT IT WILL LOSE EFFICIENCIES IF THE MINIMUM BATCH SIZE IS REDUCED. PLEASE RESPOND.

A. Qwest's statement regarding efficiencies is a pricing issue not an operational one. If the efficiencies are less with a smaller batch then that should be reflected in the price. MCI has consistently stated its expectation that prices will vary with the size of the batch, thereby reflecting the efficiencies and cost savings associated with each.

Q. HOW DO YOU PROPOSE TO SETTLE THIS ISSUE?

A. CLECs should be allowed to submit batch orders of any size. To the extent the size impacts the efficiencies that Qwest may obtain, then those efficiencies should be reflected in the price.

Q. THIS ISSUE ALSO DEALT WITH THE MAXIMUM BATCH SIZE FOR A CENTRAL OFFICE ON A GIVEN DAY. WHAT IS MCI'S RECOMMENDATION IN THIS REGARD?

[26] Qwest states that the batch must include at least 25 lines for a specific CLEC in one central office.

A. MCI recommends a maximum batch size per central office of at least 200 lines. These types of volumes should be achievable by Qwest and would allow CLECs more flexibility if planning their conversions over time.

XV. ISSUE S-2 – INTERVAL FOR THE BATCH

Q. PLEASE DESCRIBE THIS ISSUE AND THE POSITION OF THE PARTIES.

A. Qwest has recommended a seven (7) business day interval for BHCs.[27] The CLECs are requesting a quicker interval ranging from three to five business days.

Q. PLEASE EXPLAIN WHY A SEVEN BUSINESS DAY INTERVAL IS NOT ACCEPTABLE.

A. As stated in the beginning of this testimony, UNE-P is the standard by which a BHC process is judged. Today, Qwest is completing UNE-P orders in three (3) business days or less days. Moreover, UNE-P "conversion as is" for an existing customer can be done on the same day the LSR is received if it is received before noon.[28] Non-coordinated cuts are done in five (5) business days. Finally, as discussed during the BHC Forum, Qwest currently offers a "Quick Loop" service with an interval of 3 business days. With the Quick Loop product, a batch of one to eight lines are cut in three days, eight to sixteen lines are cut in four days and 16 to 24 lines are cut in five days. Given the efficiencies supposedly gained through the "improved" BHC process, certainly Qwest should be able to migrate UNE-P customers to UNE-L in no more than 5 business days. Indeed, during the last day of the Batch Hot Cut Forum the parties had extensive discussions about

[27] See Batch Hot Cut Forum Exhibit 10.
[28] See, Exhibit C to Qwest SGAT.

how to reduce the 7 day interval – by reducing times for both CLEC and Qwest activities.

The BHC process is supposed to be a more efficient process than the current process. The scheduler and the web based status tool should add significant efficiencies and time savings. Indeed, Qwest has estimated a 30 to 40 percent savings for the BHC process. Further, if Qwest is successful in eliminating the many different types of loops (IDLC, line split, ADSL, CLEC to CLEC, etc.) there is no reason why Qwest cannot achieve a five business day interval. The five business day interval should be more than sufficient with all loop types included.

XVI. ISSUE R-1 / R-2 – RATE STRUCTURE AND PRICE

Q. PLEASE DESCRIBE THIS ISSUE AND THE POSITION OF THE PARTIES.

A. At the outset of the Batch Hot Cut Forum, the CLECs stated that is was difficult if not impossible to opine on the BHC proposal without information on price. The trade-offs Qwest was proposing (dialtone check on due date versus dialtone check on due date minus two, for example) could not be evaluated in a vacuum without prices. That vacuum still exists since Qwest has not provided its proposed rates for the BHC process.

Q. EXPLAIN YOUR CONCERNS RELATIVE TO HOT CUT COSTS.

A. The *Triennial Review Order* requires states to "...approve and implement a batch cut process that will render the hot cut process more efficient and reduce per-line

hot cut costs."[29] The FCC specifically identified the current non-recurring rates associated with hot cuts as a major factor in its finding of impairment.[30] Likewise, it directed state commissions to reassess hot cut rates based upon its TELRIC rules and to examine efficiencies that might be gained by offering hot cuts in a "batch."[31]

Q. DO YOU KNOW WHY THE FCC HAS FOCUSED THE STATES ON THE COST OF HOT CUTS?

A. Yes. It is clear that the existing hot cut process is not efficient and it is expensive. Indeed, the FCC states, "The record contains evidence that hot cuts frequently lead to provisioning delays and service outages, and are often priced at rates that prohibit facilities-based competition for the mass market."[32] It is for this reason that the FCC required the states to implement an efficient BHC process to overcome these costs and operational problems. Otherwise, the finding of impairment will remain.

Q. WHAT DID THE FCC FIND WITH RESPECT TO THE CURRENT HOT CUT PROCESS?

A. At paragraph 473 of the *Triennial Review Order* the FCC states, "...we find the overall impact of the current hot cut process raises competitors' costs, lowers their quality of service, and delays the provisioning of service, thereby preventing them from serving the mass market in the large majority of locations."

Q. DOES THE INDUSTRY HAVE EXPERIENCE WITH DETERMINING THE COSTS OF HOT CUTS?

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[29] See TRO at ¶ 460.
[30] *Id.*, ¶470.
[31] §51.319(d)(2)(ii)(A)(4).
[32] See TRO at ¶ 465.

A. Yes. After substantial time and effort, CLECs and state commissions waded through a plethora of ILEC data to conclude that UNE-P provisioning costs were closer to $1 in a migration situation, as opposed to the more than $100 originally advocated by the ILECs. The lesson to be learned from that experience is that ILECs, including Qwest, have an observed propensity to dramatically exaggerate the costs associated with provisioning UNEs and from my experience in reviewing ILEC cost studies in general, and Qwest cost studies specifically, their estimates tend to be based on cost studies that incorporate inefficient procedures or technologies. Likewise, their studies are generally defined by duplicative work steps, exaggerated estimated work times and many other errors all tending toward non-recurring charges substantially in excess of efficiently incurred costs. Although we have yet to see a price proposal for Qwest's hot cut processes, the same will undoubtedly be true of the cost studies that accompany the price proposal. For that reason, it is critical that the Commission understand that the hot cut process will, for the most part, take the place of a UNE-P migration. (*i.e.*, the method by which most mass market customers are changed from one carrier to another today). To the extent non-recurring costs for the hot cut process substantially exceed existing UNE-P migration charges, UNE-L will suffer from an economic disadvantage relative to UNE-P and relative to the ILEC's retail services that are, in large part, similar to a UNE-P migration. MCI is concerned that existing hot cut costs – to the extent they might be applied in the future – and any hot cut charges which may be determined in future proceedings will be inappropriately based upon inefficient processes and technologies and, as a

consequence, set at rates which are too high to allow for economic use of the UNE-L strategy for mass market customers.

Q. WAS IT POSSIBLE TO DEVELOP PRICES AND COST STUDIES BEFORE THE QWEST BHC PROPOSAL WAS FINALIZED?

A. Perhaps not. But it would have been helpful to have prices for the Qwest proposal as it was initially set forth. With that information in place, it would have been easier to estimate the impact of changing the existing proposal.

Q. DID QWEST PROVIDE A RANGE OF POSSIBLE COSTS?

A. Yes. Mr. Brigham provided a very rough cost estimate of $75 for a hot cut and suggested that a BHC might be provided for about $45 per line.[33] He said that Qwest had not done a cost study, but that he was providing the number as an estimate only. Again, it is impossible to provide an opinion on Qwest's hot cut proposal absent a price for the service. Based on Qwest's comments during the Batch Hot Cut Forum, we expect to see proposed rates supported by cost studies in Qwest's testimony in this proceeding. We will comment on those prices and costs in our rebuttal if at all possible.

Q. DO YOU HAVE CERTAIN EXPECTATIONS ASSOCIATED WITH THE PROPOSED PRICES?

A. Yes. The FCC directed state commissions to reassess hot cut rates based upon its TELRIC rules and to examine efficiencies that might be gained by offering hot cuts in a "batch."[34] As such, we expect to see TELRIC compliant cost studies that reflect the efficiencies and improvements in Qwest's BHC process.

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[33] See Batch Hot Cut Forum Transcript at page 317 on December 2, 2003.
[34] §51.319(d)(2)(ii)(A)(4).

XVII. ISSUE T-1 – WORKABILITY OF BHC PROPOSAL

Q. PLEASE DESCRIBE THIS ISSUE AND THE POSITION OF THE PARTIES.

A. The issue relates to Qwest's ability to demonstrate that the BHC proposal actually works. The CLECs have argued for some type of testing and monitoring to determine whether the systems work as designed and whether they can work under commercial loads going forward. Qwest has refused to agree to any testing or monitoring other than the existing performance indicators ("PIDs").

Q. IS QWEST'S BHC PROPOSAL MADE UP OF A COMBINATION OF PROCESS CHANGES THAT CAN BE ACCOMPLISHED WITHOUT SIGNIFICANT LEAD TIME, AS WELL AS ENHANCEMENTS THAT WILL REQUIRE FURTHER DEVELOPMENT AND TIME?

A. Yes, it is. Qwest's hot cut proposal is, in our opinion, made up of three primary components:

(1) process and system changes that can be made in a reasonable period of time without substantial likelihood of problems,

(2) process and system changes that will require some industry involvement and could take time to work through the Change Management Process ("CMP"), and

(3) enhancements that show promise toward reducing costly coordination time and providing increased functionality, but which are largely available today only in conceptual format and for which substantial work must be undertaken both to (a) finalize the specifics of the enhancement and then (b) implement the enhancement through the CMP process.

Q. DO YOU HAVE CONCERNS REGARDING ANY OF THESE ENHANCEMENTS?

A. In large part we believe many of the enhancements proposed by Qwest would improve its hot cut processes. Our primary concern is that attempting to conceptualize, design, test and then adopt enhancements of this type (and

magnitude) in a 9 month timeframe is fraught with the potential for disaster. For example, Qwest has suggested that it will design and implement a scheduling tool that will allow CLECs to reserve blocks of time within which they could schedule their hot cut jobs. This scheduling tool is, in concept, an improvement over Qwest's existing process and was requested by MCI and other CLECs. The scheduling tool will eliminate the need to negotiate with Qwest, and it should provide CLECs with some amount of certainty as to the timeframe within which they'll be able to connect customers to their network, and it should allow Qwest to better match its force and load requirements. However, it is clear from the collaborative process that this scheduling tool is still very much "on the drawing board." The same is true of the web-based order status too. Qwest is still conceptualizing how these new systems will work, which systems it will support, what the interface will look like and be capable of, and the business rules surrounding its use. Simply put, the scheduling tool and the web-based order status tools are along way from a reality at this point, and it seems unlikely that Qwest will be able complete its design, implementation and testing within the few months that remain in the FCC's original 9 month window.

Q. ARE THERE OTHER MAJOR SYSTEMS CHANGES THAT SHARE THIS SAME FATE?

A. Yes, there are several. Qwest has stated that it will be updating its web-based order status tool at various points throughout the order provisioning process. Qwest will also be implementing various "timers" and email exchanges and it is not yet clear whether those systems will be updated in time to implement the BHC.

Q. WITH THIS MAJOR SYSTEM WORK AHEAD OF IT, IS IT LIKELY QWEST WILL BE ABLE TO FULLY IMPLEMENT EVEN THE PROCESS IT IS PROPOSING WITHIN THE 9 MONTH WINDOW AVAILABLE IN THIS CASE?

A. No. MCI has offered to work with Qwest's developers to ensure that the system meets MCI's and other CLECs' needs. Hopefully this collaborate effort with speed development and avoid potential problems going forward.

Q. ARE THERE OTHER PROMISES MADE BY QWEST RELATIVE TO ITS HOT CUT PROCESSES ABOUT WHICH YOU ARE SKEPTICAL?

A. Yes. As we discussed above, in our opinion, Qwest's hot cut process can be sufficiently scalable only if it is mechanized to a substantially larger degree than that proposed by Qwest. Given Qwest's unwillingness to investigate and deploy automation, MCI is skeptical about Qwest's ability, as well as its incentive, to follow through on its commitments.

Q. WHAT ARE YOU ATTEMPTING TO PORTRAY TO THE COMMISSION IN YOUR DISCUSSION ABOVE?

A. One of the Commission's most important roles in this proceeding will be to identify all of the enhancements in Qwest's hot cut process that exist today largely as promises. The Commission must then design and implement the proper testing, measurement criteria and incentive structure necessary to ensure that Qwest delivers on those promises. In MCI's mind, the tools most important to this initiative will be (1) a rigorous testing requirement that will test the capabilities of Qwest's processes/systems at a commercial scale comparable to that it would experience given a finding of no impairment, (2) applicable performance metrics aimed at measuring the extent to which Qwest's proposed processes/systems actual perform as promised over time and (3) an incentive

structure that compensates CLECs fairly for any poor performance on Qwest's part. Further, within this proceeding, the Commission should develop some sense of the hot cut volumes Qwest is likely to face given a finding of "no impairment" so as to make itself comfortable with Qwest's ability to accommodate those volumes using the process the Commission ultimately adopts. Using that information the Commission should likewise estimate the increased workforce Qwest would need to procure, train and place in order to meet its promises related to scalability. Finally, the Commission should require of Qwest an implementation plan related to those force enhancements.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

QSI CONSULTING
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Qualifications of Timothy J Gates
Exhibit ____ (TJG-1)

Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.

A. Prior to my current position with QSI Consulting, I was a Senior Executive Staff Member in MCI WorldCom's ("MCIW") National Public Policy Group. In this position, I was responsible for providing public policy expertise in key cases across the country and for managing external consultants for MCIW's state public policy organization. In certain situations, I also provided testimony in regulatory and legislative proceedings.

Prior to my position with MCIW in Denver, I was an Executive Staff Member II at MCI Telecommunications ("MCI") World Headquarters in Washington D.C.. In that position I managed economists, external consultants, and provided training and policy support for regional regulatory staffs. Prior to that position I was a Senior Manager in MCI's Regulatory Analysis Department, which provided support in state regulatory and legislative matters to the various operating regions of MCI. In that position I was given responsibility for assigning resources from our group for state regulatory proceedings throughout the United States. At the same time, I prepared and presented testimony on various telecommunications issues before state regulatory and legislative bodies. I was also responsible for managing federal tariff reviews and presenting MCI's position on regulatory matters to the Federal Communications Commission. Prior to my assignment in the Regulatory Analysis Department, I was the Senior Manager of Economic Analysis and Regulatory Policy in the Legal, Regulatory and Legislative Affairs Department for the Midwest Division of MCI. In that position I developed and promoted regulatory policy within what was then a five-state operating division of MCI. I promoted MCI policy positions through negotiations, testimony and participation in industry forums.

Prior to my positions in the Midwest, I was employed as Manager of Tariffs and Economic Analysis with MCI's West Division in Denver, Colorado. In that position I was responsible for managing the development and application of MCI's tariffs in the fifteen MCI West states. I was also responsible for managing regulatory dockets and for providing economic and financial expertise in the areas of discovery and issue analysis. Prior to joining the West Division, I was a Financial Analyst III and then a Senior Staff Specialist with MCI's Southwest Division in Austin, Texas. In those positions, I was responsible for the management of regulatory dockets and liaison with outside counsel. I was also responsible for discovery, issue analysis, and for the development of working relationships with consumer and business groups. Just prior to joining MCI, I was employed by the Texas Public Utility Commission as a Telephone Rate

Analyst in the Engineering Division responsible for examining telecommunications cost studies and rate structures.

I was employed as an Economic Analyst with the Public Utility Commissioner of Oregon from July, 1983 to December, 1984. In that position, I examined and analyzed cost studies and rate structures in telecommunications rate cases and investigations. I also testified in rate cases and in private and public hearings regarding telecommunications services. Before joining the Oregon Commissioner's Staff, I was employed by the Bonneville Power Administration (United States Department of Energy) as a Financial Analyst, where I made total regional electric use forecasts and automated the Average System Cost Review Methodology. Prior to joining the Bonneville Power Administration, I held numerous positions of increasing responsibility in areas of forest management for both public and private forestry concerns.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL CREDENTIALS.

A. I received a Bachelor of Science degree from Oregon State University and a Master of Management degree in Finance and Quantitative Methods from Willamette University's Atkinson Graduate School of Management. I have also attended numerous courses and seminars specific to the telecommunications industry, including the NARUC Annual and Advanced Regulatory Studies Program.

Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES?

A. Effective April 1, 2000, I joined QSI Consulting as Senior Vice President and Partner. In this position I provide analysis and testimony for QSI's many clients. The deliverables include written and oral testimony, analysis of rates, cost studies and policy positions, position papers, presentations on industry issues and training.

Q. PLEASE IDENTIFY THE JURISDICTIONS IN WHICH YOU HAVE TESTIFIED.

A. I have filed testimony or comments on telecommunications issues in Alabama, Arizona, California, Colorado, Delaware, Georgia, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin and Wyoming. I have also filed comments with the FCC and made presentations to the Department of Justice.

I have testified or presented formal comments in the following proceedings and forums:

Alabama:

October 18, 2000; Docket No. 27867; Adelphia Business Solutions Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

January 31, 2001; Docket No. 27867; Adelphia Business Solutions Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

Arizona:

September 23, 1987; Arizona Corporation Commission Workshop on Special Access Services; Comments on Behalf of MCI.

August 21, 1996; Affidavit in Opposition to USWC Motion for Partial Summary Judgment; No. CV 95-14284, No. CV-96-03355, No. CV-96-03356, (consolidated); On Behalf of MCI.

October 24, 1997; Comments to the Universal Service Fund Working Group; Docket No. R-0000-97-137; On Behalf of MCI.

May 8, 1998; Comments to the Universal Service Fund Working Group; Docket No.R-0000-97-137; On Behalf of MCI.

November 9, 1998; Docket No. T-03175A-97-0251; Application of MCImetro Access Transmission Services, Inc. to Expand It's CCN to Provide IntraLATA Services and to Determine that Its IntraLATA Services are Competitive; Direct Testimony on Behalf of MCI WorldCom, Inc.

September 20, 1999; Docket No. T-00000B-97-238; USWC OSS Workshop; Comments on Behalf of MCI WorldCom, Inc.

January 8, 2001; Docket Nos. T-03654A-00-0882, T-01051B-00-0882; Petition of Level 3 Communications, LLC, for Arbitration with Qwest Corporation; Direct Testimony on Behalf of Level 3.

September 2, 2001; Docket No. T-00000A-00-0194 Phase II – A; Investigation into Qwest's Compliance with Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts; Rebuttal Testimony on Behalf of WorldCom, Inc.

January 9, 2004; Docket No. T-00000A-03-0369; In the Matter of ILEC Unbundling Obligations as a Result of the Federal Triennial Review Order; Direct Testimony on Behalf of WorldCom, Inc. (MCI).

California:

August 30, 1996; Application No. 96-08-068; MCI Petition for Arbitration with Pacific Bell; Direct Testimony on Behalf of MCI.

September 10, 1996; Application No. 96-09-012; MCI Petition for Arbitration with GTE California, Inc.; Direct Testimony on Behalf of MCI.

June 5, 2000; Petition of Level 3 Communications for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

Colorado:

December 1, 1986; Investigation and Suspension Docket No. 1720; Rate Case of Mountain States Telephone and Telegraph Company; Direct Testimony on Behalf of MCI.

October 26, 1988; Investigation and Suspension Docket No. 1766; Mountain States Telephone and Telegraph Company's Local Calling Access Plan; Direct Testimony of Behalf of MCI.

September 6, 1996; MCImetro Petition for Arbitration with U S WEST Communications, Inc.; Docket No. 96A-366T (consolidated); Direct Testimony on Behalf of MCI.

September 17, 1996; MCImetro Petition for Arbitration with U S WEST Communications, Inc.; Docket No. 96A-366T (consolidated); Rebuttal Testimony on Behalf of MCI.

September 26, 1996; Application of U S WEST Communications, Inc. To Modify Its Rate and Service Regulation Plan; Docket No. Docket No. 90A-665T (consolidated); Direct Testimony on Behalf of MCI.

October 7, 1996; Application of U S WEST Communications, Inc. To Modify Its Rate and Service Regulation Plan; Docket No. Docket No. 90A-665T (consolidated); Rebuttal Testimony on Behalf of MCI.

July 18, 1997; Complaint of MCI to Reduce USWC Access Charges to Economic Cost; Docket Nos. 97K-237T, 97F-175T (consolidated) and 97F-212T (consolidated); Direct Testimony on Behalf of MCI.

August 15, 1997; Complaint of MCI to Reduce USWC Access Charges to Economic Cost; Docket Nos. 97K-237T, 97F-175T (consolidated) and 97F-212T (consolidated); Rebuttal Testimony on Behalf of MCI.

March 10, 1998; Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.; Docket No. 97A-494T; Supplemental Direct Testimony on Behalf of MCI.

March 26, 1998; Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.; Docket No. 97A-494T; Rebuttal Testimony on Behalf of MCI.

May 8, 1998; Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.; Docket No. 97A-494T; Affidavit in Response to GTE.

November 4, 1998; Proposed Amendments to the Rules Prescribing IntraLATA Equal Access; Docket No. 98R-426T; Comments to the Commission on Behalf of MCI WorldCom and AT&T Communications of the Mountain States, Inc.

May 13, 1999; Proposed Amendments to the Rules on Local Calling Area Standards; Docket No. 99R-128T; Oral Comments before the Commissioners on Behalf of MCIW.

January 4, 2001; Petition of Level 3 Communications, LLC for Arbitration with Qwest Corporation; Docket No. 00B-601T; Direct Testimony on Behalf of Level 3.

January 16, 2001; Petition of Level 3 Communications, LLC for Arbitration with Qwest Corporation; Docket No. 00B-601T; Rebuttal Testimony on Behalf of Level 3.

January 29, 2001; Qwest Corporation, Inc., Plaintiff, v. IP Telephony, Inc., Defendant. District Court, City and County of Denver, State of Colorado; Case No. 99CV8252; Direct Testimony on Behalf of IP Telephony.

June 27, 2001; US WEST Statement of Generally Available Terms and Conditions; Docket No. 991-577T; Direct Testimony on Behalf of Covad Communications Company, Rhythms Links, Inc., and New Edge Networks, Inc.

Delaware:

February 12, 1993; Diamond State Telephone Company's Application for a Rate Increase; Docket No. 92-47; Direct Testimony on Behalf of MCI.

Florida:

July 1, 1994; Investigation into IntraLATA Presubscription; Docket No. 930330-TP; Direct Testimony on Behalf of MCI.

October 5, 2000; Petition of Level 3 for Arbitration with BellSouth; Docket No. 000907-TP; Direct Testimony On Behalf of Level 3.

October 13, 2000; Petition of BellSouth for Arbitration with US LEC of Florida Inc.; Docket No. 000084-TP; Direct Testimony On Behalf of US LEC.

October 27, 2000; Petition of BellSouth for Arbitration with US LEC of Florida Inc.; Docket No. 000084-TP; Rebuttal Testimony On Behalf of US LEC.

November 1, 2000; Petition of Level 3 for Arbitration with BellSouth; Docket No. 000907-TP; Rebuttal Testimony On Behalf of Level 3.

Georgia:

December 6, 2000; Docket No. 12645-U; Petition of Level 3 for Arbitration with BellSouth; Direct Testimony on Behalf of Level 3.

December 20, 2000; Docket No. 12645-U; Petition of Level 3 for Arbitration with BellSouth; Rebuttal Testimony on Behalf of Level 3.

Idaho:

November 20, 1987; Case No. U_1150_1; Petition of MCI for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

March 17, 1988; Case No. U_1500_177; Investigation of the Universal Local Access Service Tariff; Direct Testimony on Behalf of MCI.

April 26, 1988; Case No. U_1500_177; Investigation of the Universal Local Access Service Tariff; Rebuttal Testimony on Behalf of MCI.

November 25, 2002; Case No. GNR-T-02-16; Petition of Potlatch, CenturyTel, the Idaho Telephone Association for Declaratory Order Prohibiting the Use of "Virtual" NXX Calling; Comments/Presentation on Behalf of Level 3, AT&T, WorldCom, and Time Warner Telecom.

Illinois:

January 16, 1989; Docket No. 83_0142; Appropriate Methodology for Intrastate Access Charges; Rebuttal Testimony Regarding Toll Access Denial on Behalf of MCI.

February 16, 1989; Docket No. 83_0142; Appropriate Methodology for Intrastate Access Charges; Testimony Regarding ICTC's Access Charge Proposal on Behalf of MCI.

May 3, 1989; Docket No. 89_0033; Illinois Bell Telephone Company's Rate Restructuring; Direct Testimony on Behalf of MCI.

July 14, 1989; Docket No. 89-0033; Illinois Bell Telephone Company's Rate Restructuring; Rebuttal Testimony on Behalf of MCI.

November 22, 1989; Docket No. 88-0091; IntraMSA Dialing Arrangements; Direct Testimony on Behalf of MCI.

February 9, 1990; Docket No. 88-0091; IntraMSA Dialing Arrangements; Rebuttal Testimony on Behalf of MCI.

November 19, 1990; Docket No. 83-0142; Industry presentation to the Commission re Docket No. 83-0142 and issues for next generic access docket; Comments re the Imputation Trial and Unitary Pricing/Building Blocks on Behalf of MCI.

July 29, 1991; Case No. 90-0425; Presentation to the Industry Regarding MCI's Position on Imputation.

November 18, 1993; Docket No. 93-0044; Complaint of MCI and LDDS re Illinois Bell Additional Aggregated Discount and Growth Incentive Discount Services; Direct Testimony on Behalf of MCI and LDDS.

January 10, 1994; Docket No. 93-0044; Complaint of MCI and LDDS re Illinois Bell Additional Aggregated Discount and Growth Incentive Discount Services; Rebuttal Testimony on Behalf of MCI and LDDS.

May 30, 2000; Docket No. 00-0332; Level 3 Petition for Arbitration to Establish and Interconnection Agreement with Illinois Bell Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

July 11, 2000: Docket No. 00-0332; Level 3 Petition for Arbitration to Establish and Interconnection Agreement with Illinois Bell Telephone Company; Supplemental Verified Statement on Behalf of Level (3) Communications, LLC.

Indiana:

October 28, 1988; Cause No. 38561; Deregulation of Customer Specific Offerings of Indiana Telephone Companies; Direct Testimony on Behalf of MCI.

December 16, 1988; Cause No. 38561; Deregulation of Customer Specific Offerings of Indiana Telephone Companies; Direct Testimony on Behalf of MCI Regarding GTE.

April 14, 1989; Cause No. 38561; Deregulation of Customer Specific Offerings of Indiana Telephone Companies; Direct Testimony on Behalf of MCI Regarding Staff Reports.

June 21, 1989; Cause No. 37905; Intrastate Access Tariffs -- Parity with Federal Rates; Direct Testimony on Behalf of MCI.

June 29, 1989; Cause No. 38560; Reseller Complaint Regarding 1+ IntraLATA Calling; Direct Testimony on Behalf of MCI.

October 25, 1990; Cause No. 39032; MCI Request for IntraLATA Authority; Direct Testimony on Behalf of MCI.

April 4, 1991; Rebuttal Testimony in Cause No. 39032 re MCI's Request for IntraLATA Authority on Behalf of MCI.

Iowa:

September 1, 1988; Docket No. RPU 88_6; IntraLATA Competition in Iowa; Direct Testimony on Behalf of MCI.

September 20, 1988; Docket No. RPU_88_1; Regarding the Access Charges of Northwestern Bell Telephone Company; Direct Testimony on Behalf of MCI.

September 25, 1991; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Direct Testimony on Behalf of MCI.

October 3, 1991; Docket No. NOI-90-1; Presentation on Imputation of Access Charges and the Other Costs of Providing Toll Services; On Behalf of MCI.

November 5, 1991; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Rebuttal Testimony on Behalf of MCI.

December 23, 1991; Docket No. RPU-91-4; Investigation of the Earnings of US WEST Communications; Inc.; Supplemental Testimony on Behalf of MCI.

January 10, 1992; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Rebuttal Testimony on Behalf of MCI.

January 20, 1992; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Surrebuttal Testimony on Behalf of MCI.

June 8, 1999; Docket NOI-99-1; Universal Service Workshop; Participated on numerous panels during two day workshop; Comments on Behalf of MCIW.

October 27, 1999: Docket NOI-99-1; Universal Service Workshop; Responded to questions posed by the Staff of the Board during one day workshop; Comments on Behalf of MCIW and AT&T.

November 14, 2003; Docket Nos. INU-03-4, WRU-03-61; In Re: Qwest Corporation; Sworn Statement of Position on Behalf of MCI.

December 15, 2003; Docket Nos. INU-03-4, WRU-03-61; In Re: Qwest Corporation; Sworn Counter Statement of Position on Behalf of MCI.

Kansas:

June 10, 1992; Docket No. 181,097-U; General Investigation into IntraLATA Competition within the State of Kansas; Direct Testimony on Behalf of MCI.

September 16, 1992; Docket No. 181,097-U; General Investigation into IntraLATA Competition within the State of Kansas; Rebuttal Testimony on Behalf of MCI.

Kentucky:

May 20, 1993; Administrative Case No. 323, Phase I; An Inquiry into IntraLATA Toll Competition, an Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality; Direct Testimony on Behalf of MCI.

December 21, 2000; Case No. 2000-404; Petition of Level 3 Communications, LLC for Arbitration with BellSouth; Direct Testimony on Behalf of Level 3.

January 12, 2001; Case No. 2000-477; Petition of Adelphia Business Solutions for Arbitration with BellSouth; Direct Testimony on Behalf of Adelphia.

Louisiana:

December 28, 2000; Docket No. U-25301; Petition of Adelphia Business Solutions for Arbitration with BellSouth; Direct Testimony on Behalf of Adelphia.

January 5, 2001; Docket No. U-25301; Petition of Adelphia Business Solutions for Arbitration with BellSouth; Rebuttal Testimony on Behalf of Adelphia.

Maryland:

November 12, 1993; Case No. 8585; Competitive Safeguards Required re C&P's Centrex Extend Service; Direct Testimony on Behalf of MCI.

January 14, 1994; Case No. 8585; Competitive Safeguards Required re C&P's Centrex Extend Service; Rebuttal Testimony on Behalf of MCI.

May 19, 1994; Case No. 8585; Re Bell Atlantic Maryland, Inc.'s Transmittal No. 878; Testimony on Behalf of MCI.

June 2, 1994; Case No. 8585; Competitive Safeguards Required re C&P's Centrex Extend Service; Rebuttal Testimony on Behalf of MCI.

September 5, 2001; Case No. 8879; Rates for Unbundled Network Elements Pursuant to the Telecommunications Act of 1996; Rebuttal Testimony on behalf of the Staff of the Public Service Commission of Maryland.

October 15, 2001; Case No. 8879; Rates for Unbundled Network Elements Pursuant to the Telecommunications Act of 1996; Surrebuttal Testimony on behalf of the Staff of the Public Service Commission of Maryland.

Massachusetts:

April 22, 1993; D.P.U. 93-45; New England Telephone Implementation of Interchangeable NPAs; Direct Testimony on Behalf of MCI.

May 10, 1993; D.P.U. 93-45; New England Telephone Implementation of Interchangeable NPAs; Rebuttal Testimony on Behalf of MCI.

Michigan:

September 29, 1988; Case Nos. U_9004, U_9006, U_9007 (Consolidated); Industry Framework for IntraLATA Toll Competition; Direct Testimony on Behalf of MCI.

November 30, 1988; Case Nos. U_9004, U_9006, U_9007 (Consolidated); Industry Framework for IntraLATA Toll Competition; Rebuttal Testimony on Behalf of MCI.

June 30, 1989; Case No. U-8987; Michigan Bell Telephone Company Incentive Regulation Plan; Direct Testimony on Behalf of MCI.

July 31, 1992; Case No. U-10138; MCI v Michigan Bell and GTE re IntraLATA Equal Access; Direct Testimony on Behalf of MCI.

November 17, 1992; Case No. U-10138; MCI v Michigan Bell and GTE re IntraLATA Equal Access; Rebuttal Testimony on Behalf of MCI.

July 22, 1993; Case No. U-10138 (Reopener); MCI v Michigan Bell and GTE re IntraLATA Equal Access; Direct Testimony on Behalf of MCI.

February 16, 2000; Case No. U-12321; AT&T Communications of Michigan, Inc. Complainant v. GTE North Inc. and Contel of the South, Inc., d/b/a GTE Systems of Michigan; Direct Testimony on Behalf of AT&T. (Adopted Testimony of Michael Starkey)

May 11, 2000; Case No. U-12321; AT&T Communications of Michigan, Inc. Complainant v. GTE North Inc. and Contel of the South, Inc., d/b/a GTE Systems of Michigan; Rebuttal Testimony on Behalf of AT&T.

June 8, 2000; Case No. U-12460; Petition of Level 3 Communications for Arbitration to Establish an Interconnection Agreement with Ameritech Michigan; Direct Testimony on Behalf of Level (3) Communications, LLC.

September 27, 2000; Case No. U-12528; In the Matter of the Implementation of the Local Calling Area Provisions of the MTA; Rebuttal Testimony on Behalf of Focal Communications, Inc.

Minnesota:

January 30, 1987; Docket No. P_421/CI_86_88; Summary Investigation into Alternative Methods for Recovery of Non-traffic Sensitive Costs; Comments to the Commission on Behalf of MCI.

September 7, 1993; Docket No. P-999/CI-85-582, P-999/CI-87-697 and P-999/CI-87-695, In the Matter of an Investigation into IntraLATA Equal Access and Presubscription; Comments of MCI on the Report of the Equal Access and Presubscription Study Committee on Behalf of MCI.

September 20, 1996; Petition for Arbitration with U S WEST Communications, Inc.; Docket No. P-442, 421/M-96-855; P-5321, 421/M-96-909; and P-3167, 421/M-96-729 (consolidated); Direct Testimony on Behalf of MCI.

September 30, 1996; Petition for Arbitration with U S WEST Communications, Inc.; Docket No. P-442, 421/M-96-855; P-5321, 421/M-96-909; and P-3167, 421/M-96-729 (consolidated); Rebuttal Testimony on Behalf of MCI.

September 14-16, 1999; USWC OSS Workshop; Comments on Behalf of MCI WorldCom, Inc. re OSS Issues.

September 28, 1999; Docket No. P-999/R-97-609; Universal Service Group; Comments on Behalf of MCI WorldCom, Inc. and AT&T Communications.

April 18, 2002; Commission Investigation of Qwest's Pricing of Certain Unbundled Network Elements; Docket Nos. P-442, 421, 3012/M-01-1916; P-421/C1-01-1375; OAH Docket No. 12-2500-14490; Rebuttal Testimony on Behalf of McLeod USA Telecommunications Services, Inc., Eschelon Telecom of Minnesota, Inc., US Link, Inc., Northstar Access, LLC, Otter Tail Telecomm LLC, VAL-Ed Joint Venture, LLP, dba 702 Communications.

Mississippi:

February 2, 2001; Docket No. 2000-AD-846; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

February 16, 2001; Docket No. 2000-AD-846; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

Montana:

May 1, 1987; Docket No. 86.12.67; Rate Case of AT&T Communications of the Mountain States, Inc.; Direct Testimony on Behalf of MCI.

September 12, 1988; Docket No. 88.1.2; Rate Case of Mountain States Telephone and Telegraph Company; Direct Testimony on Behalf of MCI.

May 12, 1998; Docket No. D97.10.191; Application of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.; Rebuttal Testimony on Behalf of MCI.

June 1, 1998; Docket No. D97.10.191; Application of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.; Amended Rebuttal Testimony on Behalf of MCI.

Nebraska:

November 6, 1986; Application No. C_627; Nebraska Telephone Association Access Charge Proceeding; Direct Testimony on Behalf of MCI.

March 31, 1988; Application No. C_749; Application of United Telephone Long Distance Company of the Midwest for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

New Hampshire:

April 30, 1993; Docket DE 93-003; Investigation into New England Telephone's Proposal to Implement Seven Digit Dialing for Intrastate Toll Calls; Direct Testimony on Behalf of MCI.

January 12, 2001; Docket No. DT 00-223; Investigation Into Whether Certain Calls are Local; Direct Testimony on Behalf of BayRing Communications.

April 5, 2002; Docket No. DT 00-223; Investigation Into Whether Certain Calls are Local; Rebuttal Testimony on Behalf of BayRing Communications.

New Jersey:

September 15, 1993; Docket No. TX93060259; Notice of Pre-Proposal re IntraLATA Competition; Comments in Response to the Board of Regulatory Commissioners on Behalf of MCI.

October 1, 1993; Docket No. TX93060259; Notice of Pre-Proposal re IntraLATA Competition; Reply Comments in Response to the Board of Regulatory Commissioners on Behalf of MCI.

April 7, 1994; Docket Nos. TX90050349, TE92111047, and TE93060211; Petitions of MCI, Sprint and AT&T for Authorization of IntraLATA Competition and Elimination of Compensation; Direct Testimony on Behalf of MCI.

April 25, 1994; Docket Nos. TX90050349, TE92111047, and TE93060211; Petitions of MCI, Sprint and AT&T for Authorization of IntraLATA Competition and Elimination of Compensation; Rebuttal Testimony on Behalf of MCI.

New Mexico:

September 28, 1987; Docket No. 87_61_TC; Application of MCI for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

August 30, 1996: Docket No. 95-572-TC; Petition of AT&T for IntraLATA Equal Access; Rebuttal Testimony on Behalf of MCI.

September 16, 2002; Utility Case No. 3495, Phase B; Consideration of Costing and Pricing Rules for OSS, Collocation, Shared Transport, Nonrecurring Charges, Spot Frames, Combination of Network Elements and Switching; Direct Testimony on Behalf of the Staff of the New Mexico Public Regulation Commission.

New York:

April 30, 1992; Case 28425; Comments of MCI Telecommunications Corporation on IntraLATA Presubscription.

June 8, 1992; Case 28425; Reply Comments of MCI Telecommunications Corporation on IntraLATA Presubscription.

North Carolina:

August 4, 2000; Docket No. P779 SUB4; Petition of Level (3) Communications, LLC for Arbitration with Bell South; Direct Testimony on Behalf of Level (3) Communications, LLC.

September 18, 2000; Docket No. P779 SUB4; Petition of Level (3) Communications, LLC for Arbitration with Bell South; Rebuttal Testimony on Behalf of Level (3) Communications, LLC.

October 18, 2000; Docket No. P-886, SUB 1; Petition of Adelphia Business Solutions or North Carolina, LP for Arbitration with BellSouth; Direct Testimony on Behalf of Adelphia.

December 8, 2000; Docket No. P-886, SUB 1; Petition of Adelphia Business Solutions or North Carolina, LP for Arbitration with BellSouth; Rebuttal Testimony on Behalf of Adelphia.

North Dakota:

June 24, 1991; Case No. PU-2320-90-183 (Implementation of SB 2320 -- Subsidy Investigation); Direct Testimony on Behalf of MCI.

October 24, 1991; Case No. PU-2320-90-183 (Implementation of SB 2320 -- Subsidy Investigation); Rebuttal Testimony on Behalf of MCI.

December 4, 2002; Case No. PU-2065-02-465; Petition of Level 3 for Arbitration with SRT Communications Cooperative; Direct Testimony on Behalf of Level (3) Communications, LLC.

May 2, 2003; Case No. PU-2342-01-296; Qwest Corporation Price Investigation; Direct Testimony on Behalf of the CLEC Coalition (US Link, Inc., VAL-ED Joint Venture LLP d/b/a 702 Communications, McLeodUSA Telecommunications, Inc. and IdeaOne Telecom Group, LLC).

Oklahoma:

April 2, 1992; Cause No. 28713; Application of MCI for Additional CCN Authority to Provide IntraLATA Services; Direct Testimony on Behalf of MCI.

June 22, 1992; Cause No. 28713; Application of MCI for Additional CCN Authority to Provide IntraLATA Services; Rebuttal Testimony on Behalf of MCI.

Oregon:

October 27, 1983; Docket No. UT 9; Pacific Northwest Bell Telephone Company Business Measured Service; Direct Testimony on Behalf of the Public Utility Commissioner of Oregon.

April 23, 1984; Docket No. UT 17; Pacific Northwest Bell Telephone Company Business Measured Service; Direct Testimony on Behalf of the Public Utility Commissioner of Oregon.

May 7, 1984; Docket No. UT 17; Pacific Northwest Bell Telephone Company Business Measured Service; Rebuttal Testimony on Behalf of the Public Utility Commissioner of Oregon.

October 31, 1986; Docket No. AR 154; Administrative Rules Relating to the Universal Service Protection Plan; Rebuttal Testimony on Behalf of MCI.

September 6, 1996; Docket ARB3/ARB6; Petition of MCI for Arbitration with U S WEST Communications, Inc.; Direct Testimony on Behalf of MCI.

October 11, 1996; Docket No. ARB 9; Interconnection Contract Negotiations Between MCImetro and GTE; Direct Testimony on Behalf of MCI.

November 5, 1996; Docket No. ARB 9; Interconnection Contract Negotiations Between MCImetro and GTE; Rebuttal Testimony on Behalf of MCI.

November 6, 2002; Docket No. UM 1058; Investigation into the Use of Virtual NPA/NXX Calling Patterns; Comments/Presentation on Behalf of Level (3) Communications, LLC.

Pennsylvania:

December 9, 1994; Docket No. I-00940034; Investigation Into IntraLATA Interconnection Arrangements (Presubscription); Direct Testimony on Behalf of MCI.

September 5, 2002; Docket No. C-20028114; Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

Rhode Island:

April 30, 1993; Docket No. 2089; Dialing Pattern Proposal Made by the New England Telephone Company; Direct Testimony on Behalf of MCI.

South Carolina:

Oct. ??, 2000; Docket No. 2000-0446-C; US LEC of South Carolina Inc. Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of US LEC.

November 22, 2000; Docket No. 2000-516-C; Adelphia Business Solutions of South Carolina, Inc. Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

December 14, 2000; Docket No. 2000-516-C; Adelphia Business Solutions of South Carolina, Inc. Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

South Dakota:

November 11, 1987; Docket No. F_3652_12; Application of Northwestern Bell Telephone Company to Introduce Its Contract Toll Plan; Direct Testimony on Behalf of MCI.

May 27, 2003; Docket No. TC03-057; Application of Qwest to Reclassify Local Exchange Services as Fully Competitive; Direct Testimony on Behalf of WorldCom, Inc., Black Hills FiberCom and Midcontinent Communications.

Tennessee:

January 31, 2001; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

February 7, 2001; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

Texas:

June 5, 2000; PUC Docket No. 22441; Petition of Level 3 for Arbitration with Southwestern Bell Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

June 12, 2000; PUC Docket No. 22441; Petition of Level 3 for Arbitration with Southwestern Bell Telephone Company; Rebuttal Testimony on Behalf of Level (3) Communications, LLC.

October 10, 2002; PUC Docket No. 26431; Petition of Level 3 for Arbitration with CenturyTel of Lake Dallas, Inc. and CenturyTel of San Marcos, Inc.; Direct Testimony on Behalf of Level (3) Communications, LLC.

October 16, 2002; PUC Docket No. 26431; Petition of Level 3 for Arbitration with CenturyTel of Lake Dallas, Inc. and CenturyTel of San Marcos, Inc.; Reply Testimony on Behalf of Level (3) Communications, LLC.

Utah:

November 16, 1987; Case No. 87_049_05; Petition of the Mountain State Telephone and Telegraph Company for Exemption from Regulation of Various Transport Services; Direct Testimony on Behalf of MCI.

July 7, 1988; Case No. 83_999_11; Investigation of Access Charges for Intrastate InterLATA and IntraLATA Telephone Services; Direct Testimony on Behalf of MCI.

November 8, 1996; Docket No. 96-095-01; MCImetro Petition for Arbitration with USWC Pursuant to 47 U.S.C. Section 252; Direct Testimony on Behalf of MCI.

November 22, 1996; Docket No. 96-095-01; MCImetro Petition for Arbitration with USWC Pursuant to 47 U.S.C. Section 252; Rebuttal Testimony on Behalf of MCI.

September 3, 1997; Docket No. 97-049-08; USWC Rate Case; Surrebuttal Testimony on Behalf of MCI.

September 29, 1997; Docket No. 97-049-08; USWC Rate Case; Revised Direct Testimony on Behalf of MCI.

February 2, 2001; Docket No. 00-999-05; In the Matter of the Investigation of Inter-Carrier Compensation for Exchanged ESP Traffic; Direct Testimony on Behalf of Level 3 Communications, LLP.

Washington:

September 27, 1988; Docket No. U-88-2052-P; Petition of Pacific Northwest Bell Telephone Company for Classification of Services as Competitive; Direct Testimony on Behalf of MCI.

October 11, 1996; Docket No. UT-96-0338; Petition of MCImetro for Arbitration with GTE Northwest, Inc., Pursuant to 47 U.S.C.252; Direct Testimony on Behalf of MCI.

November 20, 1996; Docket No. UT-96-0338; Petition of MCImetro for Arbitration with GTE Northwest, Inc., Pursuant to 47 U.S.C.252; Rebuttal Testimony on Behalf of MCI.

January 13, 1998; Docket No. UT-97-0325; Rulemaking Workshop re Access Charge Reform and the Cost of Universal Service; Comments and Presentation on Behalf of MCI.

December 21, 2001; Docket No. UT-003013, Part D; Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination; Direct Testimony on Behalf of WorldCom, Inc.

October 18, 2002; Docket No. UT-023043; Petition of Level 3 for Arbitration with CenturyTel of Washington, Inc.; Direct Testimony on Behalf of Level (3) Communications, LLC.

November 1, 2002; Docket No. UT-023043; Petition of Level 3 for Arbitration with CenturyTel of Washington, Inc.; Rebuttal Testimony on Behalf of Level (3) Communications, LLC.

January 31, 2003; Docket No. UT-021569; Developing an Interpretive or Policy Statement relating to the Use of Virtual NPA/NXX Calling Patterns; Comments on Behalf of WorldCom, Inc. and KMC Telecom.

May 1, 2003; Docket No. UT-021569; Developing an Interpretive or Policy Statement relating to the Use of Virtual NPA/NXX Calling Patterns; Workshop Participation on Behalf of MCI, KMC Telecom, and Level (3) Communications, LLC.

August 13, 2003; Docket No. UT-030614; In the Matter of the Petition of Qwest Corporation for Competitive Classification of Basic Exchange Telecommunications Services; Direct Testimony on Behalf of MCI, Inc.

August 29, 2003; UT-030614; In the Matter of the Petition of Qwest Corporation for Competitive Classification of Basic Exchange Telecommunications Services; Rebuttal Testimony on Behalf of MCI, Inc.

West Virginia:

October 11, 1994; Case No. 94-0725-T-PC; Bell Atlantic - West Virginia Incentive Regulation Plan; Direct Testimony on Behalf of MCI.

June 18, 1998; Case No. 97-1338-T-PC; Petition of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.; Rebuttal Testimony on Behalf of MCI.

Wisconsin:

October 31, 1988; Docket No. 05_TR_102; Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges; Direct Testimony on Behalf of MCI.

November 14, 1988; Docket No. 05_TR_102; Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges; Rebuttal Testimony on Behalf of MCI.

December 12, 1988; Docket No. 05_TI_116; In the Matter of Provision of Operator Services; Rebuttal Testimony on Behalf of MCI.

March 6, 1989; Docket No. 6720_TI_102; Review of Financial Data Filed by Wisconsin Bell, Inc.; Direct Testimony on Behalf of MCI.

May 1, 1989; Docket No. 05_NC_100; Amendment of MCI's CCN for Authority to Provide IntraLATA Dedicated Access Services; Direct Testimony on Behalf of MCI.

May 11, 1989; Docket No. 6720_TR_103; Investigation Into the Financial Data and Regulation of Wisconsin Bell, Inc.; Rebuttal Testimony on Behalf of MCI.

July 5, 1989; Docket No. 05-TI-112; Disconnection of Local and Toll Services for Nonpayment -- Part A; Direct Testimony on Behalf of MCI.

July 5, 1989; Docket No. 05-TI-112; Examination of Industry Wide Billing and Collection Practices -- Part B; Direct Testimony on Behalf of MCI.

July 12, 1989; Docket No. 05-TI-112; Rebuttal Testimony in Parts A and B on Behalf of MCI.

October 9, 1989; Docket No. 6720-TI-102; Review of the WBI Rate Moratorium; Direct Testimony on Behalf of MCI.

November 17, 1989; Docket No. 6720-TI-102; Review of the WBI Rate Moratorium; Rebuttal Testimony on Behalf of MCI.

December 1, 1989; Docket No. 05-TR-102; Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges; Direct Testimony on Behalf of MCI.

April 16, 1990; Docket No. 6720-TR-104; Wisconsin Bell Rate Case; Direct Testimony of Behalf of MCI.

October 1, 1990; Docket No. 2180-TR-102; GTE Rate Case and Request for Alternative Regulatory Plan; Direct Testimony on Behalf of MCI.

October 15, 1990; Docket No. 2180-TR-102; GTE Rate Case and Request for Alternative Regulatory Plan; Rebuttal Testimony on Behalf of MCI.

November 15, 1990; Docket No. 05-TR-103; Investigation of Intrastate Access Costs and Intrastate Access Charges; Direct Testimony on Behalf of MCI.

April 3, 1992; Docket No. 05-NC-102; Petition of MCI for IntraLATA 10XXX 1+ Authority; Direct Testimony on Behalf of MCI.

September 30, 2002; Docket No. 05-MA-130; Petition of Level 3 for Arbitration with CenturyTel; Direct Testimony on Behalf of Level (3) Communications, LLC.

October 9, 2002; Docket No. 05-MA-130; Petition of Level 3 for Arbitration with CenturyTel; Reply Testimony on Behalf of Level (3) Communications, LLC.

Wyoming:

June 17, 1987; Docket No. 9746 Sub 1; Application of MCI for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

May 19, 1997; Docket No. 72000-TC-97-99; In the Matter of Compliance with Federal Regulations of Payphones; Oral Testimony on Behalf of MCI.

Comments Submitted to the Federal Communications Commission and/or the Department of Justice

March 6, 1991; Ameritech Transmittal No. 518; Petition to Suspend and Investigate on Behalf of MCI re Proposed Rates for OPTINET 64 Kbps Service.

April 17, 1991; Ameritech Transmittal No. 526; Petition to Suspend and Investigate on Behalf of MCI re Proposed Flexible ANI Service.

August 30, 1991; Ameritech Transmittal No. 555; Petition to Suspend and Investigate on Behalf of MCI re Ameritech Directory Search Service.

September 30, 1991; Ameritech Transmittal No. 562; Petition to Suspend and Investigate on Behalf of MCI re Proposed Rates and Possible MFJ Violations Associated with Ameritech's OPTINET Reconfiguration Service (AORS).

October 15, 1991; CC Docket No. 91-215; Opposition to Direct Cases of Ameritech and United (Ameritech Transmittal No. 518; United Transmittal No. 273) on Behalf of MCI re the introduction of 64 Kbps Special Access Service.

November 27, 1991; Ameritech Transmittal No. 578; Petition to Suspend and Investigate on Behalf of MCI re Ameritech Directory Search Service.

September 4, 1992; Ameritech Transmittal No. 650; Petition to Suspend and Investigate on Behalf of MCI re Ameritech 64 Clear Channel Capability Service.

February 16, 1995; Presentation to FCC Staff on the Status of Intrastate Competition on Behalf of MCI.

November 9, 1999; Comments to FCC Staff of Common Carrier Bureau on the Status of OSS Testing in Arizona on Behalf of MCI WorldCom, Inc.

November 9, 1999; Comments to the Department of Justice (Task Force on Telecommunications) on the Status of OSS Testing in Arizona and the USWC Collaborative on Behalf of MCI WorldCom, Inc.

Presentations Before Legislative Bodies:

April 8, 1987; Minnesota; Senate File 677; Proposed Deregulation Legislation; Comments before the House Committee on Telecommunications.

October 30, 1989; Michigan; Presentation Before the Michigan House and Senate Staff Working Group on Telecommunications; "A First Look at Nebraska, Incentive Rates and Price Caps," Comments on Behalf of MCI.

May 16, 1990; Wisconsin; Comments Before the Wisconsin Assembly Utilities Committee Regarding the Wisconsin Bell Plan for Flexible Regulation, on Behalf of MCI.

March 20, 1991; Michigan; Presentation to the Michigan Senate Technology and Energy Committee re SB 124 on behalf of MCI.

May 15, 1991; Michigan; Presentation to the Michigan Senate Technology and Energy Commission and the House Public Utilities Committee re MCI's Building Blocks Proposal and SB 124/HB 4343.

March 8, 2000; Illinois; Presentation to the Environment & Energy Senate Committee re Emerging Technologies and Their Impact on Public Policy, on Behalf of MCI WorldCom, Inc.

Presentations Before Industry Groups -- Seminars:

May 17, 1989; Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation; May 15-18, 1989; Panel Presentation -- Interexchange Service Pricing Practices Under Price Cap Regulation; Comments on Behalf of MCI.

July 24, 1989; National Association of Regulatory Utility Commissioners -- Summer Committee Meeting, San Francisco, California. Panel Presentation -- Specific IntraLATA Market Concerns of Interexchange Carriers; Comments on Behalf of MCI.

May 16, 1990; Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation; May 14-18, 1990; Presentation on Alternative Forms of Regulation.

October 29, 1990; Illinois Telecommunications Sunset Review Forum; Two Panel Presentations: Discussion of the Illinois Commerce Commission's Decision in Docket No. 88-0091 for the Technology Working Group; and, Discussion of the Treatment of Competitive Services for the Rate of Return Regulation Working Group; Comments on Behalf of MCI.

May 16, 1991; Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation Course; May 13-16, 1991; Participated in IntraLATA Toll Competition Debate on Behalf of MCI.

November 19, 1991; TeleStrategies Conference -- "Local Exchange Competition: The $70 Billion Opportunity." Presentation as part of a panel on "IntraLATA 1+ Presubscription" on Behalf of MCI.

July 9, 1992; North Dakota Association of Telephone Cooperatives Summer Conference, July 8-10, 1992. Panel presentations on "Equal Access in North Dakota: Implementation of PSC Mandate" and "Open Network Access in North Dakota" on Behalf of MCI.

December 2-3, 1992; TeleStrategies Conference -- "IntraLATA Toll Competition -- A Multi-Billion Dollar Market Opportunity." Presentations on the interexchange carriers' position on intraLATA dialing parity and presubscription and on technical considerations on behalf of MCI.

March 14-17, 1993; NARUC Introductory Regulatory Training Program; Panel Presentation on Competition in Telecommunications on Behalf of MCI.

May 13-14, 1993; TeleStrategies Conference -- "IntraLATA Toll Competition -- Gaining the Competitive Edge"; Presentation on Carriers and IntraLATA Toll Competition on Behalf of MCI.

May 23-26, 1994; The 12th Annual National Telecommunications Forecasting Conference; Represented IXCs in Special Town Meeting Segment Regarding the Convergence of CATV and Telecommunications and other Local Competition Issues.

March 14-15, 1995; "The LEC-IXC Conference"; Sponsored by Telecommunications Reports and Telco Competition Report; Panel on Redefining the IntraLATA Service Market -- Toll Competition, Extended Area Calling and Local Resale.

August 28-30, 1995; "Phone+ Supershow '95"; Playing Fair: An Update on IntraLATA Equal Access; Panel Presentation.

August 29, 1995; "TDS Annual Regulatory Meeting"; Panel Presentation on Local Competition Issues.

December 13-14, 1995; "NECA/Century Access Conference"; Panel Presentation on Local Exchange Competition.

October 23, 1997; "Interpreting the FCC Rules of 1997"; The Annenberg School for Communication at the University of Southern California; Panel Presentation on Universal Service and Access Reform.

February 5-6, 2002; "Litigating Telecommunications Cost Cases and Other Sources of Enlightenment"; Educational Seminar for State Commission and Attorney General Employees on Litigating TELRIC Cases; Denver, Colorado.

February 19-20, 2003; Seminar for the New York State Department of Public Service entitled "Emerging Technologies and Convergence in the Telecommunications Network". Presented with Ken Wilson of Boulder Telecommunications Consultants, LLC.

July 25, 2003; National Association of Regulatory Utility Commissioners Summer Committee Meetings; Participated in Panel regarding "Wireless Substitution of Wireline – Policy Implications."

ZUGER KIRMIS & SMITH

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RECEIVED
JAN 23 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

January 23, 2004

Mr. Jon Mielke
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

Re: Local Competition Investigation Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of the Direct Testimony of Qwest Corporation regarding the Batch Hot Cut Process in the above-referenced proceeding. Confidential information contained in the testimony of Dennis Pappas and Lynn Notarianni and in the accompanying exhibits is being submitted with a Trade Secret Application.

Please contact me if you have any questions regarding this filing.

Sincerely,

Daniel S. Kuntz

Enclosures

c: Scott Macintosh
Tim Goodwin
Parties of Record

145 PU-439-03-295 Pages: 1
Cover letter re Direct Testimony of Qwest
by Qwest Corporation by Dan Kuntz, Attorney
01/23/2004 CC: Comm Legal PUD (3) ALJ

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NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission) Case No. PU-439-03-295
Local Competition Investigation)

AN APPLICATION REQUESTING TRADE SECRET PROTECTION

Qwest Corporation ("Qwest") requests the North Dakota Public Service Commission, pursuant to Chapter 69-02-09 of the North Dakota Administrative Code, to issue a protective order limiting the disclosure of trade secret information provided by Qwest in direct testimony and exhibits regarding the Batch Hot Cut Process filed with the North Dakota Public Service Commission in this investigative proceeding.

The trade secret information has been appropriately marked and is submitted in a sealed envelope with this filing.

1. **General Description of the Nature of the Information Sought to be Protected.**

The information sought to be protected is:

A. Pages 30-31 of the Direct Testimony of Dennis Pappas and Lynn Notarianni regarding quantities of conversions of UNE-P to a switching platform provided by Qwest for an individual CLEC.

B. Confidential Exhibit DP-18 to the Direct Testimony of Dennis Pappas and Lynn Notarianni regarding specific CLEC requests to Qwest for manual look-up.

C. Confidential Exhibit DP-19 to the Direct Testimony of Dennis Pappas and Lynn Notarianni regarding quantities of Line Splitting provided by Qwest for CLECs identified by state and CLEC.

D. Confidential Exhibit 14 to Exhibit DP-25 to the Direct Testimony of Dennis Pappas and Lynn Notarianni regarding central office codes for the central office facilities that performed the Batch Hot Curt process during the recent commercial test of the process.

2. An Explanation of Why the Information Derives Independent Economic Value, Actual or Potential, From Not Being Generally Known to Other Persons.

Pages 30 and 31 of the Direct Testimony of Dennis Pappas and Lynn Notarianni provide information regarding quantities of conversions from UNE-P to a switching platform performed by Qwest for a specific CLEC. This information is confidential and proprietary to the CLEC and is not publicly disclosed by Qwest. In a competitive telecommunications marketplace, this type of information is highly sensitive and its public disclosure would place the CLEC at a competitive disadvantage. If disclosed publicly, the information would disadvantage the CLEC as the information reflects specifics regarding the CLEC's business activities.

Confidential Exhibit DP-18 to the Direct Testimony of Dennis Pappas and Lynn Notarianni contains information regarding instances of manual look-up provided by Qwest for specific CLECs. This information is confidential and proprietary to the CLECs and is not publicly disclosed by Qwest. In a competitive marketplace, CLEC specific information is highly sensitive and its public disclosure might place the CLEC at a competitive disadvantage. If disclosed publicly, this information could disadvantage the CLEC

regarding its business activities.

Confidential Exhibit DP-19 to the Direct Testimony of Dennis Pappas and Lynn Notarianni contains information regarding quantities of line splitting provided by Qwest for individual CLECs by state. This information is confidential and proprietary to the CLECs and Qwest and is not publicly disclosed by Qwest. In a competitive telecommunications marketplace, this type of information is highly sensitive and its public disclosure would place the CLEC and Qwest at a competitive disadvantage. If disclosed publicly, this information would disadvantage the CLEC and Qwest because it provides information about the CLEC's and Qwest's business activities.

Confidential Attachment 14 to Exhibit DP-25 to the Direct Testimony of Dennis Pappas and Lynn Notarianni contains information regarding the central office facilities that performed the Batch Hot Cut process during the recent commercial test of the process. Identification of the facilities would identify the CLEC that participated with Qwest in the testing process. The information contained in the exhibit would aid competitors of the CLEC. This information is confidential and proprietary to the CLEC and is not publicly disclosed by Qwest. In a competitive telecommunications marketplace, this type of information is sensitive and its public disclosure could place the CLEC at a competitive disadvantage. If disclosed publicly, this information could disadvantage the CLEC as it provides information regarding the CLEC's business activity.

3. An Explanation of Why the Information is Not Readily Available by Proper Means to Other Parties.

The information at issue is proprietary to Qwest and the affected CLECs and is available only to those employees and representatives of Qwest who have a need to know the information to perform their duties and responsibilities. Qwest does not disclose this

information outside the company except pursuant to the terms of strict agreements or orders to maintain the confidentiality of the information.

4. The General Description of the Persons or Entities that Would Obtain Economic Value from Disclosure or Use of the Information.

Competitors or potential competitors of Qwest and the affected CLECs would obtain economic value from disclosure or use of the information.

5. Specific Description of Known Competitors or Competitor's Goods and Services that are Pertinent to the Information.

Competitors and potential competitors of Qwest and the affected CLECs in North Dakota include AT&T, McLeod Telemanagement, Inc., MCI WorldCom, Consolidated Communications Network, Sprint Corporation, IdeaOne Telecom Group and any other provider of telecommunications services in North Dakota or any of the other states in which Qwest operates.

6. Description of the Efforts Used to Maintain the Secrecy of the Information.

See No. 3 above.

Dated this 23rd day of January, 2004.

Respectfully submitted,

By: _____

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HARD COPY OF Qwest CD-DUD

DOCKET SEQUENCE NO. _____

EXHIBIT DP-3 and of Teresa K Million

CASE NO. PU-439-03-295

ON FILE IN

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STATE OF NORTH DAKOTA

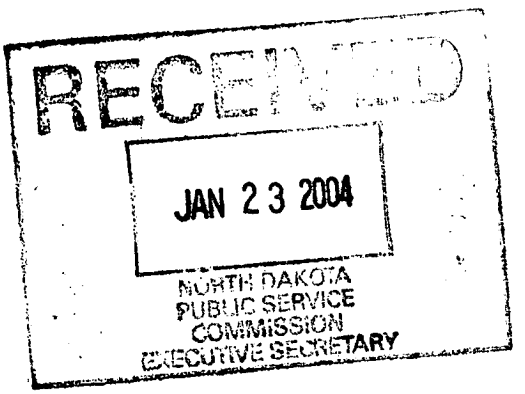
PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION

LOCAL COMPETITION

INVESTIGATION

Case No. PU-439-03-295



DIRECT TESTIMONY OF TERESA K. MILLION

QWEST CORPORATION

JANUARY 23, 2004

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EXECUTIVE SUMMARY

Purpose of Testimony

The purpose of my testimony is to present the nonrecurring Total Element Long Run Incremental Cost ("TELRIC") study used to support the price for Qwest's Batch Hot Cut ("BHC") installation option. In addition, I will present batch hot cut volume estimates demonstrating that Qwest can handle projected batch hot cut order volumes.

TELRIC Principles

The Qwest TELRIC studies identify the *forward-looking* direct costs that are caused by the provision of an interconnection service or network element in the *long run*, plus the forward-looking incremental cost of shared facilities and operations. These studies identify *total element* costs—the average incremental cost of providing the entire quantity of the element. The assumptions, methods, and procedures used in the Qwest cost studies are designed to yield the forward-looking *replacement* costs of reproducing the telecommunications network.

Qwest's TELRIC studies are in complete compliance with the Telecommunications Act of 1996, and are consistent with the FCC's TELRIC principles, as defined in the FCC's First Interconnection Order. The TELRIC cost data presented in my testimony should be utilized to set the price for batch hot cuts.

The Qwest BHC TELRIC Study

Methodology - The Qwest BHC nonrecurring cost study identifies the one-time costs that are incurred at the time a customer's UNE loop is provisioned using the BHC process. These costs result from a CLEC batch order and are labor-related. In addition, the BHC nonrecurring cost study includes the costs Qwest will incur to develop the mechanized systems necessary to support the BHC process, such as the "appointment scheduler" and "batch status tool."

The BHC cost study identifies costs for the activities depicted in the "Proposed Batch Hot Cut Provisioning Flow" provided in Exhibit DP-10 of Mr. Pappas' testimony. The study identifies costs for activities that always must be performed manually (e.g., pre-wiring at the CO frames) and activities that must be performed manually when an order "falls out" of a mechanized process. Based on input from subject matter experts ("SMEs"), the cost study estimates the *work time* associated with each *manual* activity and the *probability* that each manual activity will occur, along with the appropriate labor rate. The time estimates, probabilities and labor rates are used to develop the direct nonrecurring cost of each work activity using the following formula:

Activity time * Probability of Occurrence* Labor Rate = Cost of Activity

The costs for all BHC activities are then aggregated into a total BHC direct nonrecurring cost, and annual cost factors are applied to estimate shared and common costs.

BHC Cost Results - The nonrecurring BHC cost study is provided in Exhibit TKM-1. The BHC nonrecurring cost (TELRIC plus Common) is $45.96 per loop installed.

Analysis of Work Activities - My testimony provides an analysis of the work activities, work times and probabilities for each work center that will be involved when a BHC loop is requested by a CLEC. The study identifies costs for following work centers:

- Interconnection Service Center ("ISC")
- Loop Provisioning Center
- Design Center
- Central Office Resource Administration Center ("CORAC")
- Central Office Technicians
- CLEC Coordination Center ("QCCC")

As described in my testimony, Qwest will experience efficiencies via the BHC process that reduce the cost as compared to the basic loop installation option. Central Office technician time is reduced, and QCCC work is significantly reduced.

Volumes Data

Exhibit TKM-2 provides an estimate of the aggregate Qwest UNE-P migration volumes that would be experienced over the FCC's 27 month migration period. Exhibit TKM-3 provides an analysis of the potential UNE-L volumes in the highest volume office in North Dakota. My testimony describes each of these exhibits in detail, and explains how this data should be used. The testimony of Mr. Pappas and the attached Hitachi Consulting report will draw conclusions from the data and explain how the data should be used in evaluating Qwest BHC proposal.

Recommendation

The Commission should accept the TELRIC study filed by Qwest as basis for the BHC nonrecurring rate.

I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH THE QWEST CORPORATION.

A. My name is Teresa K. (Terri) Million. My business address is 1801 California Street, Room 2050, Denver, Colorado 80202. I am employed by Qwest Services Corporation as a Staff Director in the Public Policy organization. In this position, I am responsible for preparing testimony and testifying about Qwest Corporation's cost studies in a variety of regulatory proceedings.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND EMPLOYMENT EXPERIENCE.

A. I received a Juris Doctor from the University of Denver, College of Law in 1994 and am licensed to practice law in the state of Colorado. I also have a Master of Business Administration from Creighton University and a degree in Animal Science from the University of Arizona.

I have more than 20 years experience in the telecommunications industry with an emphasis in tax and regulatory compliance. I began my career with Qwest, (formerly Northwestern Bell Telephone Company and U S WEST) in 1983. Between 1983 and 1986 I administered Shared Network Facilities Agreements between Northwestern Bell and AT&T that emanated from divestiture. I held a variety of positions within the U S WEST, Inc. tax department over the next ten years, including tax accounting, audit, and state and federal tax research and planning. In 1997, I assumed a position with responsibility for affiliate transactions compliance, specifically compliance with section 272 of the Telecommunications

Act of 1996 (the "Act"). 47 U.S.C. §272. In September 1999, I began my current assignment as a cost witness. In this position, I am responsible for managing cost issues, developing cost methods and representing Qwest in proceedings before regulatory commissions.

Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THIS COMMISSION?

A. No.

Q. HAVE YOU TESTIFIED BEFORE OTHER STATE REGULATORY COMMISSIONS?

A. Yes. I have presented cost testimony before commissions on the issue of determining rates for unbundled network elements ("UNEs") in Arizona, Idaho, Montana, New Mexico, South Dakota, Washington and Wyoming. In addition, I have submitted testimony related to section 272 of the Act in Arizona, Colorado and Nebraska. I have also filed cost testimony in Colorado related to Operator Services.

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II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to present the nonrecurring Total Element Long Run Incremental Cost ("TELRIC") study used to support the price for Qwest's Batch Hot Cut ("BHC") installation option.

Q. PLEASE IDENTIFY THE OTHER QWEST WITNESSES WHO ARE FILING TESTIMONY IN THIS PROCEEDING, AND DESCRIBE HOW THEIR TESTIMONY RELATES TO YOUR TESTIMONY.

A. Mr. Dennis Pappas is providing testimony that describes Qwest's proposed BHC process in detail. Mr. Pappas also presents and describes the proposed BHC provisioning flow Exhibit DP-10, which identifies the work activities required to perform a batch hot cut. Ms. Lynn Notariani provides testimony describing the Operational Support Systems ("OSS") expenditures that Qwest will incur to

implement the additional mechanization necessary to support the BHC process. The costs of the BHC work activities identified by Mr. Pappas and the OSS expenditures identified by Ms. Notariani are incorporated in Qwest's nonrecurring TELRIC study.

III. SUMMARY OF TELRIC PRINCIPLES

Q. PLEASE SUMMARIZE THE OVERALL ECONOMIC PRINCIPLES THAT ARE APPLIED IN QWEST'S TELRIC STUDIES.

A. TELRIC asks what it would cost to replace and operate the telephone network today using the most efficient technology that is reasonably available now, taking as given both the basic geographical design of the network and the characteristics of the world outside the network. Qwest's TELRIC studies identify the forward-looking direct costs that are caused by the provision of an interconnection service or network element in the long run, plus the forward-looking incremental cost of shared facilities and operations. The studies identify total element costs—the average incremental cost of providing the entire quantity of the element.

Q. DO TELRIC STUDIES IDENTIFY RECURRING AND NONRECURRING COSTS?

A. Yes. Recurring costs are the ongoing costs associated with providing a service. These costs are generally investment-related and include both capital costs and operating expenses. Recurring costs are often presented as a flat cost per month or per unit of usage (e.g., minute of use) and are incurred throughout the time period the service is provided to a customer. Nonrecurring costs include the one-time costs that are incurred at the time a customer establishes, disconnects or changes

service. These costs normally result from a customer order and are *predominantly* labor-related.

In this proceeding, Qwest is filing a *nonrecurring* cost study for BHC installations. The assumptions, methods, and procedures used in Qwest's nonrecurring cost study are designed to yield the actual forward-looking nonrecurring costs that Qwest is likely to incur in provisioning unbundled loops using the BHC process.

Q. DO QWEST TELRIC STUDIES CONTAIN REALISTIC FORWARD-LOOKING ASSUMPTIONS?

A. Yes. A TELRIC study must provide a realistic estimate of forward-looking costs. Therefore, Qwest's TELRIC studies focus on the latest technologies and methods of operations that are currently available. Only technologies that are commercially available and currently being used in the industry are included in the studies. Theoretical future technologies are not considered because it is impossible to know how much those technologies will cost, how they will be configured, and whether they will, in fact, ever be commercially available on a scale necessary for Qwest's network. Thus, Qwest's nonrecurring BHC cost study considers the actual provisioning methods and OSS that are either in place today or scheduled to be implemented, rather than theoretical provisioning methods based on unproven technologies.

Q. YOU MENTIONED THAT QWEST'S TELRIC STUDIES IDENTIFY DIRECT COSTS AND THE COST OF SHARED FACILITIES AND OPERATIONS. PLEASE DISCUSS THIS FURTHER.

A. Direct costs are the costs that would be avoided if the network element or service were not offered. In the nonrecurring BHC cost study, the direct costs include the cost of labor to perform specific BHC activities, and the cost of BHC-specific OSS enhancements. Shared (directly attributable) costs are the costs that are generally caused by the provision of a group of elements. In the nonrecurring BHC cost study, the shared costs include support assets expenses, such as office space and computers. Both direct and shared (directly attributable) costs are included in Qwest's TELRIC studies, consistent with the TELRIC definition provided by the FCC in the First Interconnection Order.[1]

Q. DO QWEST'S TELRIC STUDIES INCLUDE COMMON COSTS?

A. Yes. As discussed above, Qwest's nonrecurring studies identify the TELRIC, which includes the direct and shared (directly attributable) costs, for unbundled network elements ("UNEs"). In addition, the study separately identifies an allocation of forward-looking common overhead costs, consistent with the FCC's definition of forward-looking economic cost.[2] These costs (e.g., legal, planning, executive, etc.) are not associated with a specific network element, but represent

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[1] First Report and Order, *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket Nos. 96-98 & 95-185, FCC 96-325 (rel. Aug. 6, 1996) ("*First Interconnection Order*") In paragraph 682 of the *First Interconnection Order*, the FCC stated: "We conclude that, under a TELRIC methodology, incumbent LECs' prices for interconnection and unbundled network elements shall recover the forward-looking costs directly attributable to the specified element, as well as a reasonable allocation of forward-looking common costs. . . . Directly attributable forward-looking costs include the incremental costs of facilities and operations that are dedicated to the element. Such costs typically include the investment costs and expenses related to primary plant used to provide that element. Directly attributable forward-looking costs also include the incremental costs of shared facilities and operations. Those costs shall be attributed to specific elements to the greatest extent possible. For example, the costs of conduits shared by both transport and local loops, and the costs of central office facilities shared by both local switching and tandem switching, shall be attributed to specific elements in reasonable proportions. More broadly, certain shared costs that have conventionally been treated as common costs (or overheads) shall be attributed directly to the individual elements to the greatest extent possible."

[2] 47 CFR §51.505

general costs of doing business. These are real costs that Qwest will continue to efficiently incur on a forward-looking basis. Thus, the nonrecurring BHC cost study includes an allocation of common costs.

Q. HOW SHOULD THE QWEST NONRECURRING BHC COST STUDY BE UTILIZED IN THIS PROCEEDING?

A. The nonrecurring TELRIC study I am presenting should be utilized to set the price for the BHC installation option. The nonrecurring charge for loops installed using the BHC process should be set equal to the TELRIC plus Common cost identified in the BHC cost study, consistent with the FCC's TELRIC pricing methodology.

IV. THE BATCH HOT CUT ("BHC") NONRECURRING COST STUDY

A. Background

Q. WHY IS QWEST PROPOSING A BATCH HOT CUT INSTALLATION OPTION IN THE CURRENT PROCEEDING?

A. In the Triennial Review Order ("TRO")[3] the FCC discusses the need for a batch hot cut process. In the order, the FCC expresses concern that the ILECs' current hot cut processes are limited by their highly manual, resource intensive and customer-impacting nature, and are priced at rates that present barriers to facilities-based competition for mass markets. The FCC also states that its prior finding in section 271 orders—that the ILECs' hot cut processes are adequate—does not allow it to

[3] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability;* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, 98-147, FCC 03-36 (Rel. August 21, 2003) ("TRO") at ¶ 465.

conclude that those current processes can accommodate competition in the mass markets.[4] Thus, the FCC concludes that the loop hot cut issues "may be mitigated through the creation of a batch [hot] cut process"[5] and orders state commissions to approve "within nine months of the effective date of [the TRO], a batch cut migration process to be implemented by incumbent LECs that will address the costs and timelines of the hot cut process."[6] To that end, the FCC requires state regulators to approve both the specific processes and appropriate volume of loops associated with a batch hot cut process, and adopt TELRIC rates for the process they approve.[7]

As explained in detail in Mr. Pappas' testimony, in order to address the FCC's requirements, Qwest, the CLECs and the state commissions have conducted a joint Batch Hot Cut forum to establish a BHC process for Qwest's in-region states. While parties in the forum did not agree on all issues, the proposal outlined by Mr. Pappas is in large part responsive to the issues raised, and agreements reached, in the forum. The BHC cost study Qwest I am providing estimates the nonrecurring cost for the BHC process outlined by Mr. Pappas, and thus reflects many of the agreements reached at the forum.

Q. PLEASE BRIEFLY DESCRIBE THE FORUM PROCESS.

A. On or about November 12, 2003, Qwest submitted its proposal for the BHC process to the state commissions and the CLEC community. The CLECs, in turn, submitted their comments and concerns about the process to the states. The first BHC forum

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4 *Id.* at ¶ 469.
5 *Id.* at ¶ 487.
6 *Id.* at ¶ 488.
7 *Id.* at ¶ 489.

was held on December 1-3, 2003 and the last forum was held on January 6-8, 2004. In these forums, the parties held detailed discussion regarding the BHC process, and an issues list was developed reflecting the parties' positions on the key issues. The final issues list, which is attached as Exhibit DP-1 of Mr. Pappas' testimony, identifies the issues on which the parties reached agreement, as well as the issues that remain at impasse.

Q. HOW HAS THE BHC FORUM PROCESS IMPACTED THE DEVELOPMENT OF QWEST'S NONRECURRING BHC COST STUDY?

A. As noted earlier, Qwest provided its initial BHC proposal on or about November 12, 2003. The process originally proposed by Qwest was designed to provide the CLECs with an alternative that combined maximum efficiency and the lowest possible cost in a batch process. For example, the originally proposed process minimized the work activities and times in the central office, which constitutes the majority of the BHC cost. This was accomplished by eliminating duplicative testing and limiting the number of trips the Central Office Technicians ("COTs") would make to the frame to do pre-wiring and cuts.[8] As Mr. Brigham suggested during the forum, based on a rough estimate of the process as originally proposed, Qwest's TELRIC plus common costs would have been at or below an average of $40-$45 per loop.

As I will discuss in detail below, because of a number of changes Qwest made to the process at the request of the CLECs, Qwest's TELRIC plus common cost for the currently proposed BHC process has increased to $45.96 per loop. This cost is

[8] As described later in my testimony, Qwest originally proposed that both the pre-wiring and hot cut activities be performed on the due date.

still considerably lower than Qwest's cost for the basic loop installation that is available today.[9]

B. General Methodology

Q. WHAT COSTS DOES QWEST'S NONRECURRING BHC TELRIC STUDY IDENTIFY?

A. The Qwest BHC nonrecurring cost study identifies the one-time costs that are incurred at the time a customer's UNE loop is provisioned using the BHC process. These costs result from a CLEC batch order and are labor-related. For example, the BHC study includes the labor costs for a central office technician to run a jumper to connect a loop to a CLEC switch. In addition, the BHC nonrecurring cost study includes the costs Qwest will incur to develop the mechanized systems necessary to support the BHC process, such as the "appointment scheduler" and "batch status tool" ("BST") described in Ms. Notariani's testimony.

Q. PLEASE SUMMARIZE THE GENERAL PROCEDURES THAT QWEST HAS USED TO CALCULATE THE NONRECURRING BHC COSTS

A. Qwest calculated the nonrecurring BHC costs utilizing the following process:

1. The cost analyst, working with a team of experts, identified the one-time activities necessary to perform a BHC installation. The general activities are depicted in the "Proposed Batch Hot Cut Provisioning Flow" provided in Exhibit DP-10 of Mr. Pappas' testimony. Based on this flow, the

[9] As discussed later in my testimony, Qwest estimates the cost of basic installation to be approximately $75 for the first loop and $60 for each additional loop at a customer location. In the states where Qwest is filing its BHC study states have ordered basic installation rates for the first loop between $4.33 and $65.00.

analyst and the team of experts identified specific manual activities required for each step of the process. Establishing unbundled loop service for a customer using the BHC installation option requires activities to be performed by the Interconnection Service Center ("ISC"), the Qwest CLEC Coordination Center ("QCCC"), Central Office Technicians ("COTs") and other groups. Working with the OSS SME, the analyst also identified the OSS costs directly related to the BHC installation process.

2. Based on input from subject matter experts ("SMEs"), the cost analyst estimated the *work time* associated with each of these manual activities, and the *probability* that each activity will occur. For example, the cost analyst evaluated Qwest ISC processes to determine the time needed for service representatives to review an unbundled loop local service request ("LSR"). The analyst also identified the probability that this manual work will be required, based on the estimated ISC "flow through" that is likely to be achieved.

3. The cost analyst then determined, based on current labor data, the appropriate labor rate for the personnel performing each work activity.

4. The time estimates, probabilities and labor rates were used to develop the direct nonrecurring cost of each work activity using the following formula:

Activity time * Probability of Occurrence* Labor Rate = Cost of Activity

5. The nonrecurring costs for each separate activity were aggregated into a direct nonrecurring cost for each step of the BHC process. For example, an aggregate cost for all of the activities performed by the central office technician was developed. The costs for all BHC activities were then aggregated into a total BHC direct nonrecurring cost.

6. Annual cost factors were applied to assign additional administrative and other costs to the direct nonrecurring costs, resulting in the nonrecurring TELRIC. Consistent with the FCC's TELRIC methodology, the expense factors in Qwest's study are based on Qwest's recent costs, with adjustments to those costs to account for known or anticipated changes in productivity and inflation. An appropriate share of common costs was also allocated to derive the total TELRIC + Common costs for the BHC installation.

Q. YOU MENTIONED THAT NONRECURRING COST STUDIES IDENTIFY THE COST OF MANUAL ACTIVITIES. ARE SOME OF THE STEPS IN THE BHC PROCESS MECHANIZED?

A. Yes. Many of the steps required to process a BHC order are mechanized. Mechanized portions of the process are also referred to as "flow through" steps.

Q. DOES QWEST INCLUDE COSTS FOR THESE MECHANIZED FLOW-THROUGH STEPS IN ITS NONRECURRING BHC COST STUDY?

A. No. The Qwest BHC cost study only includes the nonrecurring cost for manual work activities that are likely to be performed by its employees as part of the process. Thus, for example, the study assumes that the process for a CLEC to

submit an LSR to Qwest's ISC is a mechanized flow-through step, where the order may be mechanically entered into the Service Order Processor ("SOP") without ISC intervention. However, while a high percentage of BHC orders will flow though, there is also a percentage of orders that will "fall out," requiring manual handling by the ISC. Thus, the cost analyst, with the help of a team of experts, determines: (1) the manual work activities that would be performed by ISC personnel, and the amount of time required for each activity, in the event that an LSR required manual handling, and (2) what percentage of orders will not "flow through" the mechanized system and would require manual handling. If, for example, 15 of every 100 loop orders submitted to the ISC will fall out for manual handling, the cost analyst calculates a 15% probability of manual handling (i.e., 85% flow through) for ISC activities.[10] Thus, the cost analyst includes only 15% of the ISC time identified in the nonrecurring cost of each order. No time is included for the 85% of orders that flow through the ISC.[11]

Q. DOES THIS MEAN THAT THE NONRECURRING STUDY ONLY REFLECTS TIMES FOR ACTIVITIES ASSOCIATED WITH ORDERS THAT FALL OUT OF THE MECHANIZED PROCESS?

A. No. In addition to times related to fall out, there are work activities included in the nonrecurring study that are always performed manually. For example, the work steps performed by the COT to run jumpers and test circuits are inherently manual processes. Those processes are required for each and every order submitted as part

[10] In the BHC cost study, an 85% flow though is assumed. However, when an order requires manual handling, all manual steps may not be required. Thus, additional probabilities of occurrence may be developed for specific activities when fall out occurs.

[11] As described below, the study does include the costs of developing new OSS for the BHC process that eliminate some manual processing. It does not include the costs of the mechanized processing of an order.

of the BHC process. On the other hand, certain manual steps such as analyzing the spreadsheet or traveling across the office to the frame, are performed for the entire batch at one time. Therefore, the times for those types of activities are spread across the entire batch of 25 orders. Qwest has assumed 25 orders per batch in this calculation because that is the minimum number of orders that could be submitted in a batch.

Certain manual steps may not occur for every order or every batch that is submitted. For example, because Qwest's BHC technician teams will not be located in every CO, the study assumes that the teams of COTs will be required to travel to COs some of the time, although not all of the time. The cost for that travel is spread across the entire batch of 25 orders. If Qwest were required to travel to COs to perform work for minimum batches of 2, as suggested by the CLECs, the cost for travel would be much higher because it would be spread over fewer orders.

Q. YOU MENTIONED THAT THE COST ANALYST WORKS WITH EXPERTS FAMILIAR WITH A NONRECURRING PROCESS TO DEVELOP TIME AND PROBABILITY ESTIMATES FOR USE IN THE COST STUDY. HOW WERE THOSE ESTIMATES DEVELOPED FOR THE BHC PROCESS?

A. Teams of experts, including those that participated in the Batch Hot Cut Forum and worked with the CLECs to define the BHC process, also provided input to the cost analyst for the nonrecurring cost study. In addition, I was able to provide the cost analyst with direction regarding the steps included in the cost study as a result of my own participation in the forum, as well as countless other discussions with these and other experts about the BHC process. While there is no existing process

exactly like the BHC process against which the experts can measure and compare, there are many steps within the BHC process that are similar or the same as steps that currently exist in other installation options. Therefore, for those steps the experts were able to review previous estimates to assist in developing specific task times and probabilities necessary in the BHC process. For the new steps that are proposed in the BHC process Qwest's experts relied on years of experience with provisioning processes, generally, to estimate the times and probabilities.

Q. IN DEVELOPING THE BHC WORK TIMES, DID QWEST CONSIDER THE OBSERVATIONS OF HITACHI CONSULTING IN THE FOUR BATCH HOT CUT TRIALS, AS PRESENTED IN MR. PAPPAS' TESTIMONY?

A. Yes. The report provided by Hitachi provides work time observations for some BHC functions, based on the BHC trials recently performed in four central offices within the Qwest region. These observations are contained in an exhibit to the Hitachi Consulting report, and include the timing of the following work activities: (1) pre-wiring at the IDF and MDF, (2) performing dial tone checks and (3) performing the lift and lay on the due date. Qwest reviewed this information, and has considered these observations in developing its work times for these activities.

Q. HOW HAS QWEST UTILIZED THE HITACHI TIME ESTIMATES IN THE BHC COST STUDY?

A. The Hitachi observations represent a limited set of observations in a small subset of offices, and do not purport to represent a full "time and motion" study. Nonetheless, the information was used by the SMEs in the development of work times for the central office-based activities. The SMEs considered the Hitachi data,

their own experience and observations, and their knowledge of other offices (e.g., office layout) to determine the overall average work activity times that would be experienced throughout the Qwest region. Time estimates must consider the wide variety of central offices in which batch hot cuts will be performed. For example, some offices have a very simple layout, with the MDF, IDF and CO technician office in close proximity. Other offices have the MDF, IDF and CO technician offices on different floors, or even different buildings. Similarly, some offices have a few very small frames, other offices have long frames, positioned in several rows. Finally, in some offices the vertical and horizontal sides of the IDF face in opposite directions, while in others they both face the same direction making them easier to wire. In sum, there is a wide variety of physical layouts in offices, and this must be reflected in the cost study. Thus, the Hitachi report observations are helpful in validating the development of BHC cost study times by Qwest SMEs, but the specific times, which represent a small sample, were not used as the sole basis of the work times in the BHC cost study.

Q. DOES THE NONRECURRING COST STUDY INCLUDE THE COSTS OF DISCONNECTING SERVICE?

A. Yes. The nonrecurring costs include the cost to establish and disconnect service. This is necessary because there are no charges assessed when a UNE or interconnection service is disconnected. Since the disconnection will occur in the future, the disconnection costs are discounted using the 13.07% cost of money and an assumed service life of 2.5 years. Thus, disconnect costs are multiplied by 74% to yield a discounted cost.

Q. ARE YOU PROVIDING THE NONRECURRING BHC TELRIC STUDY AS AN EXHIBIT TO YOUR TESTIMONY?

A. Yes. The nonrecurring BHC cost study Exhibit TKM-1 (Study ID #8158) is provided as an Excel workbook on the compact disc ("CD") that accompanies this testimony. In addition the CD contains the Expense Factors Model and User Manual. The BHC nonrecurring TELRIC is $45.96 per loop installed.

C. Expense Factors

Q. ARE EXPENSE FACTORS APPLIED TO THE DIRECT BHC COSTS?

A. Yes. As described above, expense factors are applied to the direct costs to derive the TELRIC and the TELRIC plus Common costs. This application is consistent with the FCC's TELRIC methodology.

Q. WHAT FACTORS ARE APPLIED?

A. As delineated in the cost study, expense factors for marketing, support asset expenses, and uncollectibles are applied to the direct costs to develop the TELRIC. A common factor is applied to the TELRIC to derive the TELRIC plus Common amount. It should be noted that capital cost factors, maintenance expense factors and network operations factors are not applied in the nonrecurring BHC study since the study does not include investments.

Q. ARE NORTH DAKOTA SPECIFIC COST FACTORS USED IN THE STUDY?

A. No. Qwest has recently updated its factors methodology, and has not yet calculated state specific factors for all states. Therefore, for North Dakota, Qwest has utilized

the factors developed for Washington as a proxy. It is important to note that annual cost factors--especially the factors used in nonrecurring costs studies—do not change significantly between states. Therefore, Qwest believes the use of Washington factors in North Dakota is reasonable.

Q. PLEASE DESCRIBE THE MAJOR FEATURES OF THE EXPENSE FACTOR MODULE.

A. The Expense Factors Module includes several features that make it easy to understand the factor application process and to audit the results. In the Factors Module:

- Expenses and investments are pulled directly from Qwest's standard accounting reports.

- Trending of expenses and investments has been replaced with specific user-defined efficiency and inflation inputs.

- The factor calculation process starts with standard accounting report results (i.e., the books of the firm). Directly assigned costs (i.e., costs that are included elsewhere) and costs that are not applicable to TELRIC studies are removed, and these subtractions are explicitly displayed in the Factors Module. This provides the user with a clear understanding of which costs are included and which costs are not included in the factors.

- All calculations are contained in one workbook.

Please refer to the Expense Factor Module documentation provided on the CD for a detailed description of the factors and an explanation of the factor methodology.

Q. DOES THE EXPENSE FACTORS MODULE ENSURE THAT DOUBLE COUNTING OF COSTS DOES NOT OCCUR?

A. Yes. The model is designed to help the user insure that double counting (or omission) of expenses does not occur. The cost factors are based on historical cost relationships and use the books of account as a starting point. All costs on the books of Qwest are accounted for—costs are explicitly removed if directly assigned in another study or if not applicable to TELRIC studies. The user can clearly see the total costs (booked costs), the removed costs, and the costs that remain in the factors. Thus, for example, the user can see that the business office (e.g., ISC) costs that are separately identified in a nonrecurring cost study are removed from the factors and are not double counted. Likewise, the BHC-related OSS costs included directly in the nonrecurring costs will be removed from future factors calculations.[12]

D. BHC OSS Costs

Q. WHAT OSS COSTS ARE INCLUDED IN THE NONRECURRING COST STUDY FOR THE BHC INSTALLATION OPTION?

A. As I indicated above, the BHC nonrecurring study includes direct costs to develop and establish new OSS specifically to enhance the BHC process. These OSS enhancements include the "appointment scheduler" tool and the BST described in Ms. Notariani's testimony. The OSS enhancements also include the development

[12] Since these expenses are being incurred today, they are not included in the expense factors applied in the BHC cost study, which are based on 2001 expenses.

of the spreadsheet function, which allows the QCCC to pull batch installation data from the Work Force Administrator ("WFA"), and to provide this information to the Central Office Resource Administration Center ("CORAC"), and ultimately the CO technician, in an organized manner that allows the CO technician to be more efficient.

Q. PLEASE DESCRIBE HOW THE OSS COSTS WERE CALCULATED IN THE BHC COST STUDY.

A. First, the total costs for each OSS enhancement were identified. These OSS cost estimates are based on the level of effort ("LOE") documentation discussed in Ms. Notariani's testimony. Qwest has estimated that the total cost to develop and implement the "appointment scheduler" tool and the BST is $900,000, as described in Ms. Notariani's testimony. The estimated cost to develop and implement the mechanization of the spreadsheet for the CO technicians is a little more than $41,500. In each case, the primary cost driver is programmer labor.

These OSS costs are one-time development costs. In the BHC cost study, these costs are spread over the estimated Qwest BHC order volumes—on a levelized basis—for the 27 month implementation schedule envisioned by the FCC.[13] Please see tab labeled "BHC System Enhancement Summary" in the BHC cost study for a spreadsheet that details these calculations. The "per order" OSS costs are added to the other direct nonrecurring costs in the BHC study. Thus, the cost of the BHC OSS development is recovered, along with the nonrecurring installation costs, in the BHC nonrecurring charge per loop.

[13] These volumes, which are described later in my testimony, are included in Exhibit TKM-2.

Q. YOU HAVE EXPLAINED THAT THE NONRECURRING BHC COST STUDY INCLUDES COSTS QWEST WILL INCUR TO DEVELOP THE MECHANIZED SYSTEMS NECESSARY TO SUPPORT THE BHC PROCESS. ARE THE COSTS OF QWEST'S OTHER MECHANIZED SYSTEMS INCLUDED IN THE DIRECT NONRECURRING COST OF THE BHC INSTALLATION OPTION?

A. No. Qwest will only include the systems costs incurred *specifically in support of the BHC process* in its direct nonrecurring costs. This includes the costs to develop the appointment scheduler tool and the batch status tool described in detail in the Notariani testimony, as well as costs to develop the spreadsheet that will be used by CO technicians. The costs of other mechanized systems used in support of Qwest's overall loop provisioning process such as the service order processor ("SOP"), Work Force Administration ("WFA") and TIRKS systems, that also support the BHC process, are not included in the direct BHC nonrecurring costs—they are captured indirectly and are spread among Qwest's retail and wholesale services via expense factor loadings.

Q. WHY DOES QWEST INCLUDE THE BHC OSS COSTS IN NONRECURRING COSTS FOR BATCH HOT CUTS INSTEAD OF INCLUDING THEM IN EXPENSE FACTORS?

A. The costs for the development of OSS specifically developed for the BHC process are included in the direct BHC nonrecurring costs for two reasons. First, there is no way to include these costs in the annual cost factors used in the BHC cost study, since these factors are based on expenses incurred in 2001. These expenditures—which will be incurred predominantly in 2004—are not included in 2001 expenses,

and are thus not included in factors. In addition, it is important to note that the factor development process removes expenses that are recovered elsewhere from the factors. Thus, these OSS costs would be removed from the factors that will be used in the future to assign costs based on 2004 expenses—eliminating any potential double counting of costs. It should also be noted that Qwest has traditionally removed other CLEC-related OSS expenditures from the factors calculation in anticipation of recovering those costs separately.

Second, and most importantly, the costs for OSS enhancements that are directly related to the BHC process should be recovered from BHC customers because it is these customers who have caused these costs to be incurred. It would violate the principle of cost causation to allocate these costs to all retail and wholesale services via factors. In fact, were it not for requests from the CLECs during the Batch Hot Cut Forum, Qwest would not have developed these tools. Qwest's initial proposal for the BHC process did not include either the scheduling tool or the web-based batch status tool and, in fact, Qwest initially intended to provide status notification to the CLECs via e-mail. In the forums, several of the CLECs expressed concern over Qwest's proposal to send status updates automatically through e-mail. For example, Ms. Sprague from McLeod USA stated that she did not want to receive e-mails because of concerns about firewall issues.[14] Ms. Lichtenberg from MCI proposed that "the way to avoid these e-mail – you know, do I get the e-mail, does somebody remember to hit send, is by using an on-line tool…"[15] Therefore, it was at the urging of the CLECs through discussions that took place during the forum that Qwest was convinced to develop these tools for use with the BHC process. As

[14] Sprague, Tr., Dec. 2, 2003 at pg. 238.
[15] Lichtenberg, Tr., Dec. 2. 2003 at pg. 243.

with the FCC's decision to allow ILECs an additional charge for OSS costs related to line sharing, the principle of cost-causation dictates that the OSS costs related to the BHC process be assigned to BHC orders.[16]

E. Analysis of Nonrecurring Cost Activities

Q. HOW DOES THE BHC INSTALLATION OPTION COMPARE TO QWEST'S EXISTING BASIC INSTALLATION OPTION?

A. I will discuss the major differences between the basic loop installation option and the BHC option below. However, there is one important difference between the BHC installation option and the existing basic installation option that is not discussed below. The existing basic hot cut assumes that outside plant technicians will be dispatched 6% of the time due to the installation of new loops at locations where no customer has had service previously, or where no facilities are available for reuse. The BHC process specifically excludes orders requiring the dispatch of an outside plant technician, which reduces costs.

Q PLEASE IDENTIFY THE WORK CENTERS INCLUDED IN THE BHC STUDY.

A. The BHC cost study identifies the work activities, task times and probabilities for each of the work centers represented on the BHC process flows (Exhibit DP-10) that are described in detail in Mr. Pappas' testimony. These work centers include:

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[16] Fourth Report and Order, CC Docket No. 96-98 (rel. December 9, 1999), at ¶ 144, states "We find that incumbent LECs should recover in their line sharing charges those reasonable incremental costs of OSS modification that are caused by the obligation to provide line sharing as an unbundled network element."

- Interconnection Service Center ("ISC")
- Loop Provisioning Center
- Design Center
- Central Office Resource Administration Center ("CORAC")
- Central Office Technicians
- CLEC Coordination Center ("QCCC")

I will discuss the work activity times required for processing a BHC order in each work center, along with the probabilities that each activity will occur. The work centers and activities in the BHC study correspond with the "Proposed Batch Hot Cut Provisioning Flow" ("BHC flow") document that is attached to the testimony of Mr. Pappas as Exhibit DP-10.

1. Interconnection Service Center ("ISC")

Q. PLEASE DESCRIBE THE INTERCONNECTION SERVICE CENTER ("ISC") WORK ACTIVITIES, PROBABILITIES AND TIME ESTIMATES INCLUDED IN THE BHC COST STUDY.

A. The ISC is the center that processes Local Service Requests ("LSRs") submitted by the CLECs via Interconnection Mediated Access ("IMA") Graphical User Interface ("GUI") or IMA Electronic Data Interchange ('EDI'). The cost study assumes that 85% of the LSR orders flow through the ISC electronically, with no need for manual intervention. The orders that flow through are electronically entered into the Service Order Processor ("SOP"). For orders that fall out for manual handling, a service delivery coordinator ("SDC") in the ISC performs a variety of tasks, including but not limited to reviewing the LSR for completeness, verifying the

connecting facility assignment ("CFA"), analyzing the request and determining critical dates, typing the firm order confirmation ("FOC"), inputting the order to the SOP, and handling calls from other groups involved with the order. Some of these tasks occur each time an order is manually handled, and some occur only a portion of the time that an order is handled. The probabilities that individual tasks must be performed when an order falls out for manual handling in the ISC are contained in the "Details Output" tab of the cost study under Probability #1. The total applied time for processing an order in the ISC is 5.71 minutes.[17]

Q. DOES QWEST GAIN EFFICIENCIES IN THE ISC AS A RESULT OF THE BHC PROCESS?

A. No. The submission of LSRs to the ISC is highly mechanized in the current hot cut installation options offered by Qwest, and there are no additional efficiencies to be gained in this center for batch orders. When an order requires manual handling, essentially the same activities must be performed for a batch hot cut and a basic hot cut. With regard to flow through, for the types of loop orders that are "eligible" for the mechanized process Qwest consistently achieves a 96% or higher flow through rate as captured in PID measurement PO-2B. However, it is important to note that not all loop orders that are eligible for the batch hot cut process are also eligible for flow through. The types of orders that are not eligible for ISC flow through (and thus not included in PID measurement PO-2B) include Centrex orders and CLEC to CLEC migration orders (UNE-L to UNE-L).[18] These orders must be submitted to the ISC and processed manually, even when submitted in batches. Qwest's current

[17] The applied time is the weighted work time based on the actual time estimates and the probabilities, i.e., the sum of work time * probability for each activity.

[18] The order types that are not eligible for flow through are listed on the Qwest website at http://www.qwest.com/wholesale/clecs/ordering.html

flow through rate for processing all types of loop orders—including both those eligible and ineligible for flow through—is approximately 48%. While it is likely that the actual flow through for BHC orders may approach 48%, Qwest has conservatively assumed an 85% flow through in the BHC cost study—the same flow though used in the basic loop nonrecurring cost study.

2. Loop Provisioning Center

Q. PLEASE DESCRIBE THE LOOP PROVISIONING CENTER ("LPC") WORK ACTIVITIES, PROBABILITIES AND TIME ESTIMATES INCLUDED IN THE BHC COST STUDY.

A. The LPC group becomes involved with an order when the assigned facilities are inconsistent with the address provided on the customer service record or the assigned facilities cannot be reused and alternative facilities must be investigated. In those cases, the cost study assumes that in a 7.5 hour day, with a stretch objective that each employee will clear 40 requests in a day, it will take on average 11.25 minutes to clear a request for manual assistance. The probability that an order will be handled manually in the LPC is 5% for a total applied work time in this center of 0.56 minutes.

Q. DOES QWEST GAIN EFFICIENCIES IN THE LPC AS A RESULT OF THE BHC PROCESS?

A. Yes. Because the BHC process only applies in cases where the CLEC is able to reuse loop facilities, the probability that an order will drop out for manual handling is assumed to be 5%, which is less than the 15% assumed for the current hot cut processes.

3. Design Center

Q. PLEASE DESCRIBE THE DESIGN CENTER WORK ACTIVITIES, PROBABILITIES AND TIME ESTIMATES INCLUDED IN THE BHC COST STUDY.

A. An order may fall out of the order process at the design step for a variety of reasons including incorrect information in the order, incorrect loop input, or incorrect circuit design. There are several different activities that a designer may need to perform, including screening the order, logging information into the generic order control ("GOC"), designing the circuit and distributing the work order record detail ("WORD") document. A designer may need to perform only one of these functions, or may need to perform several, when a particular order falls out. Therefore, the cost study assumes a different probability of manual handling for each activity. For example, it is expected that design center work will be required 10% of the time, but that the specific activity of "circuit design" will only be needed on 5% of orders (i.e., half of the orders that fall out).

In addition, even if the order flows through the design center initially there are circumstances when the order must be supplemented to correct a CFA. Per the batch hot cut process, this occurs when the COT discovers a "no dial tone" condition during pre-wiring, and the CLEC issues a supplemental order to change the CFA. Although this expected to occur for only 10% of the orders, it will require circuit design and distribution of the WORD document for each supplement. The total applied time for manually processing an order in the design center is slightly more than one minute.

Q. DOES QWEST GAIN EFFICIENCIES IN THE DESIGN CENTER AS A RESULT OF THE BHC PROCESS?

A. Yes. As a result of the assumption that the BHC process only applies in cases where the CLEC is able to reuse facilities, the expectation is that an order will require manual handling on average about 2% to 5% of the time for any given task due to fall out and 10% of the time for circuit design and distribution of supplemental orders. This results in a significantly lower fall out than is assumed in the current hot cut processes, which also includes manual handling for new installations (i.e., locations without previously existing service).

4. Central Office Resource Administration Center ("CORAC")

Q. PLEASE DESCRIBE THE CORAC WORK ACTIVITIES, PROBABILITIES AND TIME ESTIMATES INCLUDED IN THE BHC COST STUDY.

A. The CORAC is the group that receives the mechanically generated spreadsheet for a batch from the QCCC, and mechanically organizes the pre-wiring and hot cut activity at the frame to achieve efficiency. The CORAC loads the work to the COTs to ensure that the BHC CO technician teams are scheduled at the appropriate COs. The work activities to create the spreadsheet entries result when an order falls out of the mechanized process. The activities associated with the spreadsheet are unique to the BHC process and are designed to minimize the time spent by the COTs to pre-wire circuits and perform "lift and lay" functions during the batch hot cut. The applied time estimate for activities performed in this center is 0.23 minutes.

5. Central Office Technicians

Q. PLEASE DESCRIBE THE CO TECHNICIAN WORK ACTIVITIES, PROBABILITIES AND TIME ESTIMATES INCLUDED IN THE BHC COST STUDY.

A. As discussed in detail in Mr. Pappas' testimony, the COTs will work in teams of two to perform batches of hot cuts in the most efficient manner possible. The work performed by the COTs is entirely manual in nature (i.e., there is no flow through), and must be performed for each loop. Primary work tasks included in the cost study include (1) pre-wiring at the Intermediate Distribution Frame ("IDF") and the Main Distribution Frame ("MDF") or COSMIC frame, (2) performing dial tone tests and (3) performing the lift and lay functions during the hot cut. The cost study also includes times for the COT to analyze the spreadsheet that is sent to the COTs from the CORAC, time to travel between offices, time to walk to the frame, time to update information in the work force administration ("WFA") system, and time to remove the old jumpers on the due date. The cost study assumes that the COTs will perform pre-wiring and dial tone tests by the designed, verified and assigned ("DVA") date, and the lift and lay and additional testing on the due date. In addition, the cost study assumes that when a no dial tone condition is found on DVA date, and a supplemental order is issued by the CLEC to change the CFA, the COTs will need to perform additional pre-wire activities. The total applied time assumed in the cost study for the COT function is 20.22 minutes.

Q. WHAT TRAVEL TIME IS ASSUMED IN THE STUDY?

A. The Qwest BHC cost study included 20 minutes of travel time when the team of technicians must travel to a central office to perform batch hot cuts. Depending on the location of the CO the team of 2 technicians works from, in relation to the

location of the CO where the team performs batch hot cuts, the travel time could be anywhere from 10 minutes to well over an hour. Qwest's nonrecurring cost study assumes the teams will travel an average of only 20 minutes to 50% of the COs.

Q. DID QWEST'S INITIAL PROPOSAL FOR THE BHC PROCESS INCLUDE THESE SAME ASSUMPTIONS?

A. No. In its original BHC proposal submitted in November, 2003 (and discussed in the December, 2003 workshops), Qwest proposed that the COTs would perform all of the pre-wire, testing and lift and lay work on the due date, to gain efficiencies. In part, this proposal was a response to the testimony of other parties (CLECs) in various cost dockets, where they have argued that Qwest installation procedures follow "duplicative" steps, and that there is too much "testing" and "verifying." CLECs have consistently argued that Qwest's cost studies assume inefficient processes. For example, in Washington MCI witness Sydney Morrison stated in his testimony "there should be no reason to repetitively verify, validate or check data after its initial establishment in the system or systems."[19]

In response to these pleas from CLECs, Qwest designed a process that created efficiencies. For example, in the original Qwest BHC proposal, it is assumed that since the BHC process includes only reused facilities (i.e., existing customers with facilities that are currently working), it would be more efficient to perform the pre-wire and lift and lay work all on the same day and eliminate duplicative testing, multiple trip to the frame, etc. This process also responded to the FCC's statement

[19] Docket No. UT-003013, Part D, Morrison Direct testimony at pg. 28, lines 16-18.

in the TRO that the objectives for establishing a BHC process include increased efficiencies and reduced cost.[20]

At the BHC forum Mr. Finnegan, representing AT&T, claimed that "what we said or may have said or what Qwest has said in a cost docket, I don't know that that's necessarily relevant."[21] However, during the forum it became evident that the CLECs believed that consolidating the work into a single process on a single day would be unacceptable. For example Mr. Finnegan stated, "One of the concerns AT&T has, and I'm sure other CLECs have as well, is the elimination of the due date minus two prewiring and testing. And I understand from some discussions yesterday Qwest was proposing to eliminate that step to gain some efficiencies and presumably reduce the cost."[22] Ms. Lichtenberg also stated "MCI concurs with AT&T that we need this dial tone check as due date minus two."[23] After weighing, as Mr. Finnegan said, "the potential customer disruption disadvantage [against] any advantage in the price reduction,"[24] Qwest modified its proposal, and agreed to perform the pre-wiring and lift and lay procedures on separate days and to perform dial tone tests on both days. Of course, the requirement to perform these tasks at separate times adds additional work time and cost to the process. Qwest specifically informed the CLECs at the BHC Forum that it believed that moving pre-wiring from due date to DVA would increase the associated NRC by approximately $4. The CLECs agreed to close this issue understanding this cost differential.

[20] TRO at ¶ 489.
[21] Finnegan, Tr., Dec. 2, 2003 at pg. 286.
[22] Finnegan, Tr., Dec. 2, 2003 at pg. 246.
[23] Lichtenberg, Tr., Dec. 19, 2003 at pg. 53.
[24] Finnegan, Tr., Dec. 2, 2003 at pg. 248.

Q. DOES QWEST GAIN EFFICIENCIES IN THE CENTRAL OFFICE AS A RESULT OF THE BHC PROCESS?

A. Yes. By assigning teams of two to the BHC process and performing the activities for a batch 25 lines at a time, there are areas where efficiencies are gained. For example, Qwest's current standard hot cut process assumes 5 minutes to analyze an order because of the number of separate pages on which a COT must look to find the information relevant to the cut. In the BHC process, the COT will receive a spreadsheet with the data for the entire batch organized in a manner that is easily analyzed. The Qwest BHC study assumes 12.5 minutes to analyze the entire batch, which computes to 0.5 minutes per order. In addition, by having teams of two, the time to perform pre-wiring is reduced. Further, the per loop costs of travel to the CO (and travel to the frame) is reduced when technicians perform work on 25 lines at a time. Overall, the time required in the CO for the BHC process is lower than it is for the current hot cut processes.

6. CLEC Coordination Center ("QCCC")

Q. PLEASE DESCRIBE THE WORK ACTIVITIES, PROBABILITIES AND TIME ESTIMATES INCLUDED IN THE COST STUDY FOR THE PROJECT COORDINATOR IN THE QCCC.

A. The work activities in the QCCC have changed significantly as a result of the BHC process. In fact, the BHC process eliminates many of the activities that the QCCC performs for standard hot cuts. The tasks in the QCCC now relate to the generation of the spreadsheet and its distribution to the CORAC, so that it may be used to manage the work in the CO. In addition, there are still manual work activities

involved when a supplemental order is submitted, or if the CLEC requests an order to be "thrown back" to Qwest after the lift and lay is completed.

Q. DOES QWEST GAIN EFFICIENCIES IN THE QCCC AS A RESULT OF THE BHC PROCESS?

A. Yes. First, the mechanized tools developed for this process (e.g., appointment scheduler, BST and spreadsheet) have reduced the amount of time spent on customer contact and updating documentation in WFA. Since the CLEC can check the status tool to see when hot cuts are performed, the need for phone calls is eliminated. Second, the fact that there will be no CFA changes on the due date reduces the work times significantly. The total time estimated for the QCCC is now under 2 minutes. This compares to more than 16 minutes in the current basic hot cut process.

V. STATE-SPECIFIC RATE ISSUES

Q. HOW DOES THE BHC INSTALLATION OPTION COMPARE TO QWEST'S EXISTING BASIC INSTALLATION OPTION?

A. In addition to the changes to the processes that I have discussed above, there is one important difference between the BHC installation option and the existing basic installation option. The existing basic hot cut assumes that outside plant technicians will be dispatched 6% of the time due to the installation of new loops at locations where no customer has had service previously, or where no facilities are available for reuse. Therefore, although there are similarities in the two processes, they are not the same.

Q. IS QWEST'S EXISTING NONRECURRING RATE FOR THE BASIC INSTALLATION OPTION BASED ON THE ASSUMPTIONS CONTAINED IN THE COST STUDY IT FILED PREVIOUSLY IN NORTH DAKOTA?

A. No. Although the North Dakota Commission established an interim rate of $105.79[25] for the first line in the AT&T Arbitration docket, as part of its section 271 filing, Qwest voluntarily reduced its basic installation rate to $55.27. This resulted from benchmarking the North Dakota rate against the same rate in Colorado that was determined to be TELRIC-compliant by the FCC.[26]

Q. DOES QWEST'S NONRECURRING RATE IN NORTH DAKOTA ALLOW IT TO RECOVER THE COSTS IT ESTIMATES FOR THE BASIC LOOP INSTALLATION OPTION?

A. No. During the AT&T Arbitration, Qwest was awarded a cost for the basic loop installation option of $105.79 per order for the first loop. While Qwest has improved its processes and now calculates a rate of approximately $75 per order for a basic hot cut, the current $55.27 rate in North Dakota falls short of recovering Qwest's estimated cost for this process.

Q. IS QWEST'S PROPOSED NONRECURRING RATE FOR THE BHC INSTALLATION OPTION LESS THAN ITS CURRENT RATE FOR THE BASIC LOOP INSTALLATION OPTION IN NORTH DAKOTA?

A. Yes. As discussed above, Qwest's proposed nonrecurring rate for the BHC installation option is $45.96 based on time estimates of just under 43 minutes of processing time. This means that Qwest's time estimate for the BHC process is

[25] AT&T Arbitration, Docket No. PU-453-96-497, 6/23/97.
[26] Sixth Revised, Second Amended SGAT Exhibit A, Docket No. PU-314-00-282, 10/16/02.

approximately 52% of its current time estimate for the basic loop installation process. In addition, this represents a reduction of $9.31 per order below the rate accepted by the North Dakota Commission in Docket No. PU-314-00-282.

V. VOLUME DATA

Q. ARE YOU PROVIDING INFORMATION REGARDING ESTIMATED VOLUMES FOR UNE-P MIGRATIONS?

A. Yes. Exhibit TKM-2 provides an estimate of the aggregate Qwest UNE-P migration volumes that would be experienced over the FCC's 27 month migration period. Exhibit TKM-3 provides an analysis of the potential UNE-L volumes in the highest volume office in North Dakota. I will describe each of these exhibits in more detail below, and will explain how this data should be used. The testimony of Mr. Pappas and the attached Hitachi Consulting report will draw conclusions from the data and explain how the data should be used in evaluating Qwest BHC proposal.

A. QCCC Volumes

Q. WHAT IS THE PURPOSE OF EXHIBIT TKM-2?

A. The purpose of Exhibit TKM-2 is to estimate total *incremental* UNE-L volumes that would be experienced by the Qwest CLEC Coordination Center (QCCC) over the 27 month conversion process, due to the discontinuance of UNE-P. It includes (1) the estimated volume of embedded UNE-P migrations over a 21 month conversion period, along with (2) an estimate of the growth in UNE-L that, if relief had not been granted, would have been experienced as growth in UNE-P. The

exhibit does not include the volume of orders that are UNE-L today, since these orders are assumed to be part of the "business as usual" scenario—these volumes are not a result of the relief sought by Qwest.[27] The exhibit provides overall Qwest volumes, rather than state-specific or central office-specific volumes, since the QCCC in Omaha handles all unbundled loop volumes in all 14 states. In addition, the exhibit only identifies estimated volumes in areas where Qwest has sought relief from its switching obligations.

Q. WHY DOES QWEST ASSUME A 27 MONTH UNE-P CONVERSION TIMEFRAME?

A. As stated in Qwest's initial comments filed in the states on or about November 12, 2003, the FCC set a transition schedule for moving the embedded base of UNE-P lines to unbundled loops (UNE-L). CLECs must submit 1/3 of their embedded UNE-P lines for conversion 13 months after the state commission decision; 1/3 of their UNE-P lines 20 months after the state commission decision; and the last 1/3 of their UNE-P lines 27 months after the state commission decision.[28] Assuming a July 2, 2004 decision from the state commission, that means 1/3 of the embedded base will convert between August 2005 and February 2006; 1/3 of the embedded base will convert between March 2006 and September 2006, and the remainder will convert before April 2007.[29] The FCC also stated that state commission decisions

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[27] All UNE-L orders will be eligible for the BHC process, including the "business as usual" UNE-L orders. However, the purpose of this case is to determine if Qwest can handle UNE-L volumes as a result of relief; that is, whether it can handle the conversion volume, and growth in orders that were previously UNE-P.

[28] 47 C.F.R. §51.319(d)(4)(A).

[29] *TRO* ¶ 532.

eliminating unbundled switching as a UNE will become effective on December 2, 2004.[30]

Q. PLEASE DESCRIBE THE FORMULAE USED TO ESTIMATE VOLUMES IN EXHIBIT TKM-2.

A. As stated in Qwest's earlier comments, in order to calculate the expected monthly volumes in each state, the state commissions should apply the following formulas based on the volumes of UNE-P lines and UNE-L lines in each individual state:

- January 2005 – July 2005: [Inward unbundled loop volume (growth) eligible for the batch hot cut process * percent of UNE-P lines in markets where Qwest is challenging the impairment finding]
- August 2005 – April 2007: [Inward unbundled loop volume (growth) eligible for the batch hot cut process * percent of UNE-P lines in markets where Qwest is challenging the impairment finding] + [Embedded UNE-P base amortized over 21 months * percent of UNE-P lines in markets where Qwest is challenging the impairment finding]

Q. PLEASE DESCRIBE THE CALCULATIONS.

A. Exhibit TKM-2 estimates future volumes of UNE-P migrations and growth in the entire Qwest region using the above formula. With a starting estimated base volume of 800,000 UNE-P lines as of 12-31-03, the analysis assumes growth of 475,000 UNE-P lines in the Qwest 14 state region for 2004, which averages to 39,583 added UNE-P lines per month. Thus, the estimated UNE-P quantities as of 12-31-04 would be 1,275,000.

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[30] 47 C.F.R. §51.319(d)(4).

As noted above, if Qwest is granted relief, and is no longer required to provide unbundled switching in the challenged market areas, it is assumed that Qwest will no longer be required to offer UNE-P in these areas as of December, 2004. Thus, after December, 2004, the volume analysis includes UNE-L volumes due to (1) the migration of the embedded UNE-P base and (2) estimated growth. The analysis assumes a 21 month migration of UNE-P lines to UNE-L beginning in August 2005, and ending in April 2007.

The analysis also considers the fact that Qwest is not challenging its obligation to provide unbundled switching in certain markets, and that Qwest will continue to offer UNE-P in these markets. The initial volumes in the analysis (e.g., 1,275,000 UNE-P lines) are based on *all* Qwest UNE-P lines, and therefore must be adjusted to remove the market areas where Qwest is not seeking relief. Qwest has not yet determined, for all states, the specific markets in which it will seek relief; however, it has determined that it will not seek relief in four states: Idaho, South Dakota, Montana and Wyoming. Thus, in this analysis, UNE-P migration and UNE-L growth volumes in these states have been removed. In addition, Qwest does not anticipate that it will seek relief in all areas in the remaining states. Thus, on a preliminary basis, Qwest estimates that it will seek relief for approximately 64% of its UNE-P lines in the 14 state region. As Qwest determines the specific areas in each state for which relief will be requested, this analysis may be updated.

Q. PLEASE PROVIDE AN EXAMPLE OF HOW THE MONTHLY VOLUMES WERE DETERMINED.

A. To illustrate the monthly volumes calculations, please refer to the calculations for August, 2005. This is the first month where conversions of the embedded base

would occur. Qwest estimates that there will be 659.31 thousand "embedded base" UNE-P lines as of August 1, 2005, when the conversion of the embedded base begins, along with 275.50 thousand UNE-L lines added from January through July, 2005 (that would previously have been UNE-P lines), for a total of 934.81 lines in service. The UNE-L volumes for August would include the inward orders due to growth and the inward orders due to conversion of the embedded base. Qwest has estimated the net growth in UNE-L lines that would have been UNE-P lines to be 15.96 thousand. However, the net growth in lines is not representative of inward order volumes, since there will be outward (disconnect) volumes each month. If the starting in service lines is 934.81 thousand, and the net growth is 15.96 thousand, the end of month service line count is 950.77 thousand. Since we have estimated the churn rate to be 3%, this means that (659.31 * .03) = 19.78 thousand of the embedded base lines will disconnect. In addition, there will be churn on the accumulated aggregation of growth lines (from January, 2005 to August, 2005), which is equal to (275.50 * .03) = 8.26 thousand. Thus, we can determine the inward movement (UNE-L line orders) via the following formula:

BOM lines in service + inward movement –outward movement (churn) = EOM lines in service

934.81 + inward movement – (19.78 + 8.26) = 950.77 thousand

Or

Inward movement = EOM lines in service –BOM lines in service + outward movement

Inward movement = 950.77 - 934.81 +19.78 +8.26 = 44.00 thousand

The quantity of orders resulting from the conversion of the embedded base is (1 / 21) * 659.31 = 31.40. If this is added to the inward volume quantity, the result is

31.40 thousand + 44.00 thousand = 75.40 thousand. This is the estimated inward movement (orders) for UNE-L in August, 2005.

Q. WHAT DO YOU CONCLUDE?

A. Exhibit TKM-2 shows that the maximum inward quantity of UNE-L orders resulting from Qwest being granted switching relief in requested areas will occur in August, 2005, and is estimated to be 75.40 thousand. If we assume 21 business days in a month, this equates to approximately 3600 orders per day. The impact of this is discussed in Mr. Pappas' testimony.

Q. IS THIS ANALYSIS VERY CONSERVATIVE?

A. Yes. First, the analysis assumes that 100% of the UNE-P lines in unimpaired areas will convert to UNE-L. Second, it assumes that all orders will utilize the batch hot cut process. Thus, while this analysis estimates the maximum QCCC volumes that could be experienced, it is likely that a lower quantity of UNE-L BHC volumes will actually be experienced.

B. Central Office Volumes

Q. WHAT IS THE PURPOSE OF EXHIBIT TKM-3?

A. Exhibit TKM-3 estimates the volume of UNE-L orders that will be experienced per day in the busiest central office in North Dakota, if Qwest is relieved of its unbundled switching obligations in the areas requested. This exhibit shows that Qwest will be able to handle the inward UNE-L orders, for both growth and embedded UNE-P base conversions, in the highest volume office in North Dakota.

In the highest volume office, Qwest will be able to handle anticipated volumes with a maximum order quantity of 100 lines per day per office.

Q. PLEASE DESCRIBE THE CALCULATIONS IN EXHIBIT TKM-3.

A. In this exhibit, Qwest evaluates volumes in the highest volume office in North Dakota, based on inward UNE-P quantities between January and September, 2003. Qwest analyzed each central office in North Dakota and determined which office had the highest monthly volume of UNE-P orders. The analysis considers UNE-P orders, because these are the orders that will become UNE-L orders if Qwest is granted switching relief.

The exhibit shows that the average monthly volume in the highest volume office in North Dakota is 874 lines per month, and the highest embedded UNE-P line count as of September, 2003 is 7,234. The 874 volume is divided by 21 to derive a daily UNE-P (now UNE L) volume of 42 per day. The embedded base of 7,234 is divided by 21 months, and 21 days, to derive an embedded UNE-P base conversion volume per day of 16. The two results are added together to yield a total volume of 58 per day. This shows that, even in the highest volume office in North Dakota, Qwest will not need to process more than 100 orders per day over the course of the 21 month conversion time period.

The exhibit also shows the number of days that will be necessary to convert the embedded UNE-P base. It is readily apparent that the conversion can be accomplished well within the 21 month conversion timeframe.

Q. YOU MENTIONED THAT YOU EVALUATED THE HIGHEST VOLUME OFFICE IN NORTH DAKOTA FOR JANUARY THOUGH SEPTEMBER, 2003, AND USED A SEPTEMBER, 2003 EMBEDDED UNE-P LINE COUNT. WHY DIDN'T YOU ADJUST THE UNE-P EMBEDDED BASE TO REFLECT A JANUARY 2005 TIMEFRAME?

A. Since it is very hard to estimate growth on a per central office basis, Qwest did not attempt to estimate line growth by central office.[31] One might argue that the state average projected growth rate should be applied. For example, one might argue that the Qwest growth rates estimated in Exhibit TKM-2 should be utilized to update the UNE-P embedded base lines. This growth rate would project a growth of approximately 60% between September, 2003 to December, 2004. However, in reality, the growth rates in each office are likely to vary substantially. For this reason, Qwest did not use this growth rate to update the embedded base in Exhibit TKM-3.

Q. IF A 60% GROWTH RATE WERE APPLIED TO THE BUSIEST CENTRAL OFFICE, WOULD IT CHANGE THE CONCLUSIONS REACHED IN EXHIBIT TKM-3?

A. No. If the embedded UNE-P quantities were increased from 7,234 to 11,575 (a 60% increase), the conversion amount per day would be 11,575 / 21months /21 days = 26.25 orders per day. This would increase the total volume per day to 68, still well below 100.

[31] Volumes can vary greatly from month to month, and it is difficult to project growth in a particular office. For example, an office may grow from 100 to 2000 UNE-P lines over a nine month time period- a 2000% growth. This does not mean that it will continue to experience 2000% growth in the future.

VI. CONCLUSION

Q. WHAT ACTION SHOULD THE COMMISSION TAKE IN THIS PROCEEDING.

A. The Commission should adopt a nonrecurring price for the BHC installation option based on the TELRIC data provided in my testimony. Consistent with the FCC's TELRIC rules, the Qwest nonrecurring cost study identifies the forward-looking cost to provision UNE loops via a batch process using the most efficient technology that is reasonably available now. This study provides the most reliable TELRIC data available for Qwest's operations in North Dakota.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission

Local Competition — Case No. PU-439-03-295

Investigation

EXHIBITS

OF

TERESA K. MILLION

QWEST CORPORATION

JANUARY 23, 2004

INDEX OF EXHIBITS

The following Exhibits are provided in CD format:

Exhibit	Description
TKM-1	Nonrecurring Cost Study (Study ID #8158)
TKM-2	Qwest UNE-P Aggregate Volumes Analysis
TKM-3	North Dakota UNE-P Central Office Volumes Analysis

Qwest

EXECUTIVE SUMMARY

NORTH DAKOTA

BATCH HOT CUT

NONRECURRING COST STUDY

Study ID #8158

2004

JANUARY 2004

Table of Contents

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A. PURPOSE, SCOPE, AND APPLICATION

This study estimates forward-looking nonrecurring total element long run incremental costs Qwest will incur to provide Batch Hot Cut of Unbundled Analog Loops. Nonrecurring costs represent the one-time costs that are incurred in order to establish and disconnect the service. The study identifies the costs for various work activities involved in providing the service. The study results represent fully allocated 2004 costs and may be used for pricing and other management decisions.

B. DESCRIPTION OF SERVICE

Batch Hot Cut is an installation option available for "batches" of at least 25 loops per CLEC located in the same CO, and up to 100 existing analog loops per CO per day, which do not require the dispatch of a Qwest outside field technician. The Batch Hot Cut process is for the conversion of the embedded base of UNE-P customers and for the conversion and migration of existing analog (voice) service to unbundled analog loops. The cost is per loop.

C. STUDY METHODOLOGY

The Nonrecurring Cost Program (NRC) performs mechanized cost calculations associated with the one time labor expense resulting from a customer request for service. Inputs to the calculations include: labor time, probability of occurrence, labor rate, and expense factors. Formatting commands performed by the program generate Total Element Long Run Increment Cost (TELRIC) results.

Following is a description of the required data inputs:

Time Estimates:
The time estimate is the average amount of time required to perform a particular work function. Time estimates are obtained from subject matter experts who represent the groups doing the work.

Probabilities:
A probability is the percentage of time Qwest performs a particular work function in the provision of a particular service offering. Probabilities are developed from reports and from the input of Subject Matter Experts.

Labor Rates:
Labor rates are based on incurred expense data from the general ledger journal file. The labor rates consist of costs that can be attributed to the function being performed and are forward looking based on the wage/salary index and the consumer price index. Components that make up labor rates include: basic wages, management/supervision/clerical support, benefits, other miscellaneous costs and as appropriate, motor vehicle and general purpose tools.

Expense Factors:
The program applies expense factors to the direct cost. The factors include Commercial Marketing, Network Support, Directly Attributable, and Common.

Once the service provisioning process has been identified, the appropriate times, Probabilities, and labor rate/work group identifies are formatted into NRC Program input data sheets. The process specific input files are then inserted into the NRC Program. The program

user selects run options on a menu, and the NRC program then accesses the appropriate input from the NRC program workbook spreadsheets to calculate cost results.

C. STUDY METHODOLOGY (Cont'd)

The cost calculations consist of Labor Time times Probability of Occurrence times Labor Rate equals Direct Cost. Added to the Direct cost are appropriate Expense Factors that calculate and display **Total Direct (TELRIC)** Total Element Long Run Incremental Cost, **Direct *plus* Network Support, Direct *plus* Network Support *plus* Attributable**, and **Fully Allocated Costs**. (See *Section D, Description of Total Element Long Run Incremental Costs* for detailed description of the various cost levels).

D. DESCRIPTION OF TOTAL ELEMENT LONG RUN INCREMENTAL COSTS

Qwest performs Total Element Long Run Incremental Cost (TELRIC) studies to estimate the economic cost of providing network elements. The Qwest TELRIC studies identify the forward-looking costs associated with the provision of the total quantity of a network element in the long run. The *forward-looking* Qwest TELRIC studies identify the costs that are likely to be incurred in the future, and consider the latest forward-looking technologies and methods of operation that are currently available. These studies are *not* embedded or historical, and do not measure the impact of prior investment decisions by the corporation. The Qwest TELRIC studies also identify the *long run* costs associated with providing a network element—reflecting a time period over which all inputs (including changes in the size of facilities, levels of investment, etc.) can be adjusted.

The Qwest cost study format disaggregates the cost results, on a unitized basis, into the following components:

Investment-Based Costs and Element-Specific Expenses are direct costs. Investment Based Costs are associated with recurring cost elements and include the capital costs (e.g., depreciation, return, and taxes) property taxes, and maintenance costs associated with the investment required for provisioning a network element. Element-specific Expenses are other network element costs such as billing and for non-recurring costs, the labor-related expenses associated with the provision of a network element.

Marketing is a direct product group cost. Marketing costs include product management and sales expenses that Qwest's accounting records typically allow tracking down to a particular product or service group.

Support Assets and Expenses include various administrative costs such as the cost of general-purpose computers and business fees. These costs are not directly associated with a specific network element. However, these costs vary with the provision of all network elements, and are not common to the entire firm.

Total Element Long Run Incremental Costs (TELRIC) represent the sum of all direct and directly assigned / allocated costs (e.g., Investment-Based Costs and Element-Specific Expenses, Marketing, Network Support Assets and Expenses. This measure of costs includes the forward-looking costs incurred in the provision of a network element. This measure of costs is consistent with TELRIC as defined by the FCC.

Indirect and Common Costs are associated with the enterprise as a whole. These costs do vary based on the total size of the firm, but may not vary with the provisioning of individual network elements. These costs are avoidable only with the elimination of the entire firm, and are sometimes referred to as *general overhead costs.*

D. DESCRIPTION OF TOTAL ELEMENT LONG RUN INCREMENTAL COSTS (Cont'd)

Fully Allocated Costs represent the sum of Total Element Long Run Incremental Cost plus Common Costs (TELRIC + CC).

E. STUDY ASSUMPTIONS

The cost factors used in this study are based on 13.07% cost of money.

F. STUDY SUMMARY

Study Summary

Study Name	NORTH DAKOTA BATCH HOT CUT		
Study Requester	*Bob Brigham*		
Type of Study	*Total Element Long Run Incremental Costs (TELRIC)*		
Study ID	#8158		
Completion Date	*January 21, 2004*		
Cost Analyst	*Dan Deffley*		
Cost Models Used	**Model**	**Version**	
	ENRC	*2.29*	
	Cost Factors	*2001WA03E*	
Cost Factors Used	**Factor**		**Effective Date**
	Directly Assigned		*9/03*
	Directly Attributable		*9/03*
	Common		*9/03*
Cost of Money	*13.07%*		
Major Cost Drivers			

G. NONRECURRING COST SUMMARY

BATCH HOT CUT NONRECURRING STUDY 8158

North Dakota
2004

Total Direct Costs and Common Costs

Cost Element	*Direct*	*Marketing*	*Support Assets Expense*	*Uncollectible*	*TELRIC*	*Common*	*TELRIC + Common*	*Detail Page Reference*
BATCH HOT CUT - PER LOOP	$33.42	$1.01	$5.97	$1.02	$41.42	$4.55	$45.96	Pages 1-6

Direct - Direct Costs
Marketing - Marketing
Support Assets Expense - Support Assets Expense
Uncollectible - Uncollectible
TELRIC - Total Element Long Run Incremental Costs
Common - Common Costs
TELRIC + Common - Total Element Long Run Incremental Costs + Common Costs

State: North Dakota

Work Item	Time Minutes	Prob #1	Prob #2	Prob #3	Prob #4	Applied Time (Minutes)	Labor /Hour	Cost
A	B	C	D	E	F	G B * (C Thru F)	H	I H * (G/60)
BATCH HOT CUT - PER LOOP								
ADD								
-SYSTEMS ENHANCEMENTS								
SYSTEMS ENHANCEMENTS								$0.63
Subtotal - SYSTEMS ENHANCEMENTS						**0.00**		**$0.63**
-INTERCONNECT SERVICE CENTER (ISC)								
Probability 1 column (.05, .5, .6, .08) probabilities are percents of time this activity will occur when manual activity is required.								
Probability 2 column (.15) is percent orders that will fall out of IMA for manual handling.								
# preceding work item description is reference to Batch Hot Cut provisioning flow chart								
#3 Review LSR for completeness and accuracy, contractual entries	1	1.000	0.150			0.15	$42.45	$0.11
#4 Verify Connecting Facility Assignment (CFA) for facility/circuit availability	1	0.050	0.150			0.01	$42.45	$0.01
#4 Exchange info, obtain CO, name, address, office type. Access Telephone Address Guide to	3	1.000	0.150			0.45	$42.45	$0.32
#4 CPPD look-up billing USOC's for co-provider	1	0.050	0.150			0.01	$42.45	$0.01
#4 Summary Bill List-Look up Billing Telephone Number, tax code, and bill date	2	1.000	0.150			0.30	$42.45	$0.21
#5 Analyze request to determine co-provider, type of order, and installation option	1	0.050	0.150			0.01	$42.45	$0.01
#5 Determine critical dates	1	1.000	0.150			0.15	$42.45	$0.11
#5 If directory advertising or retail contract or both, issue order to remove information from accou	3	0.500	0.150			0.23	$42.45	$0.16
#5 Populate required fields	3	1.000	0.150			0.45	$42.45	$0.32
#6 Type, review the Firm Order Confirmation (FOC)	2	0.500	0.150			0.15	$42.45	$0.11
#6 Submit to customer Firm Order Confirmation (FOC)	1	1.000	0.150			0.15	$42.45	$0.11
#5 Input order into service order processor. Type and format order for billing and provisioning	10	1.000	0.150			1.50	$42.45	$1.06
#5 Ensure order is successfully distributed to the systems and is ready for provisioning	3	1.000	0.150			0.45	$42.45	$0.32
Handle calls from other departments working the order	5	0.500	0.150			0.38	$42.45	$0.27
Handle calls from CLEC with questions about errored or rejected LSR's	5	0.100	0.150			0.08	$42.45	$0.05
Handle issues including facility, cable&pair	5	0.080	0.150			0.06	$42.45	$0.04
IF SUPPLEMENT ORDER DUE TO CFA CHANGE:								
Probability 1 column (.2) is percent of time no dial tone on DVA will occur.								
Probability 2 column (.5) is percent of time a CFA change will occur if no dial tone on DVA								
#3 Review LSR for completeness and accuracy	0.5	0.200	0.500			0.05	$42.45	$0.04
#4 Verify Connecting Facility Assignment (CFA) for facility/circuit availability	0.5	0.200	0.500			0.05	$42.45	$0.04
#6 Type, review the Firm Order Confirmation (FOC)	2	0.200	0.500			0.20	$42.45	$0.14
#6 Submit to customer Firm Order Confirmation (FOC)	1	0.200	0.500			0.10	$42.45	$0.07
BATCH HOT CUT - PER LOOP (con't)								
#11 Input order into service order processor.	3	0.200	0.500			0.30	$42.45	$0.21
#12 Ensure order is successfully distributed to the systems and is ready for provisioning	3	0.200	0.500			0.30	$42.45	$0.21
#14 Handle calls from other departments working the order	2	0.200	0.500			0.20	$42.45	$0.14
Subtotal - INTERCONNECT SERVICE CENTER (ISC)						**5.71**		**$4.04**
-LOOP PROVISIONING CENTER (LPC)								
Probability 1 column is percent of time manual work required.								
# preceding work item description is reference to Batch Hot Cut provisioning flow chart								

State: North Dakota

Work Item	Time Minutes	Prob #1	Prob #2	Prob #3	Prob #4	Applied Time (Minutes)	Labor /Hour	Cost
A	B	C	D	E	F	G B * (C Thru F)	H	I H * (G/60)
#8 Clear RMA (Request for manual assistance)	11.25	0.050				0.56	$41.82	$0.39
Subtotal - LOOP PROVISIONING CENTER (LPC)						**0.56**		**$0.39**
-DESIGN								
Probability 1 column (.02, .01, .03, .05) is percent of time manual work required.								
# preceding work item description is reference to Batch Hot Cut provisioning flow chart								
#9 Order handling/screening	3	0.020				0.06	$44.25	$0.04
#9 GOC (Generic Order Control) order log	2	0.020				0.04	$44.25	$0.03
#9 Enter WA (Work Authorization) mask	2	0.010				0.02	$44.25	$0.01
#9 Prepare loop input/DRI (Design Related Information)	2	0.020				0.04	$44.25	$0.03
#9 Circuit design	5	0.030				0.15	$44.25	$0.11
#9 Distribute WORD (Work Order Record Detail) document	1	0.050				0.05	$44.25	$0.04
IF SUPPLEMENT ORDER DUE TO CFA CHANGE:								
Probability 1 column (.2) is percent of time no dial tone on DVA will occur.								
Probability 2 column (.5) is percent of time a CFA change will occur if no dial tone on DVA								
#9 Enter WA (Work Authorization) mask	0.25	0.200	0.500			0.03	$44.25	$0.02
#9 Prepare loop input/DRI (Design Related Information)	0.25	0.200	0.500			0.03	$44.25	$0.02
#9 Circuit design	5	0.200	0.500			0.50	$44.25	$0.37
#9 Distribute WORD (Work Order Record Detail) document	1	0.200	0.500			0.10	$44.25	$0.07
Subtotal - DESIGN						**1.01**		**$0.74**
-CENTRAL OFFICE RESOURCE ADMINISTRATION CENTER								
Probability 1 column (2) is activity occuring on prewire and due dates.								
Probability 1 column (.05) is percent of time this activity will occur.								
Probability 4 column (.04) probability is percentage based on 25 loops per batch - 1/25. Activity is per batch.								
# preceding work item description is reference to Batch Hot Cut provisioning flow chart								
#10c Verify CO tech availabiity to work spreadsheet on pre-wire and due date	1	2.000			0.040	0.08	$41.82	$0.06
#10c Create prewire, lift&lay, and disconnect spreadsheet entries	3	0.050				0.15	$41.82	$0.10
Subtotal - CENTRAL OFFICE RESOURCE ADMINISTRATION CENTER						**0.23**		**$0.16**
-CENTRAL OFFICE TECHNICIAN								
BATCH HOT CUT - PER LOOP (con't)								
Probability 1 column is percent of time activity estimated to occur								
Probability 2 column is number of techs performing task								
Probability 3 column is average number of jumpers removed								
Probability 4 (.04) probability is percentage based on 25 loops per batch - 1/25. Activity is per batch.								
# preceding work item description is reference to Batch Hot Cut provisioning flow chart								
PRE-WIRE DATE WORK ACTIVITIES								
#11.1 Travel to Central Office	20	0.500	2.000		0.040	0.80	$46.78	$0.62
#11.2 Analyze spreadsheet	12.5	1.000	1.000		0.040	0.50	$46.78	$0.39
#11.3 Travel to Intermediate Distribution Frame (IDF)	1.5	1.000	2.000		0.040	0.12	$46.78	$0.09
#11.4 Prewire at IDF	2.5	1.000	2.000			5.00	$46.78	$3.90
#11.5 Travel to Main Distribution Frame/COSMIC (MDF)	1.5	1.000	2.000		0.040	0.12	$46.78	$0.09
#11.6 Prewire at MDF/COSMIC	2.5	1.000	2.000			5.00	$46.78	$3.90

State: North Dakota

Work Item	Time Minutes	Prob #1	Prob #2	Prob #3	Prob #4	Applied Time (Minutes)	Labor /Hour	Cost
A	B	C	D	E	F	G	H	I
						B * (C Thru F)		H * (G/60)
#11.7 Perform dial tone check	0.5	1.000	1.000			0.50	$46.78	$0.39
#11.8.1 If no dial tone travel to IDF	1.5	0.200	1.000		0.040	0.01	$46.78	$0.01
#11.8.2 Perform dial tone check	0.5	0.200	1.000			0.10	$46.78	$0.08
#11.8.3 Log note in OSSLOG	1	1.000	1.000			1.00	$46.78	$0.78
#11A If Supplement order due to Connecting Facility Arrangement (CFA) change.....								
#11.a.1 Travel to IDF	1.5	0.100	2.000		0.040	0.01	$46.78	$0.01
#11.a.2 Redo prewire for new CFA	2.5	0.100	2.000			0.50	$46.78	$0.39
DUE DATE WORK ACTIVITIES								
#12.1 Travel to Central Office	20	0.500	2.000		0.040	0.80	$46.78	$0.62
#12.2 Analyze spreadsheet	12.5	1.000	1.000		0.040	0.50	$46.78	$0.39
#12.3 Travel to MDF/COSMIC	1.5	1.000	2.000		0.040	0.12	$46.78	$0.09
#12.4 Due Date dial tone check	0.5	1.000	1.000			0.50	$46.78	$0.39
#12.5 Check Qwest dial tone	0.5	1.000	1.000			0.50	$46.78	$0.39
#16.1 Lift and lay cross-connect	0.5	1.000	2.000			1.00	$46.78	$0.78
#16.2 Log start time in Work Force Administratin (WFA), terminal-enter-return	1.5	1.000	1.000		0.040	0.06	$46.78	$0.05
#16.3 Check CLEC dial tone	0.5	1.000	1.000			0.50	$46.78	$0.39
#16.4 Log completion or jeopardy	1	1.000	1.000			1.00	$46.78	$0.78
#18 Remove jumper of previous service	1	1.000	1.000	1.250		1.25	$46.78	$0.97
IF THROW BACK REQUIRED								
Probability 1 column is percent of time a throw back will occur								
17d Throw back, travel to MDF/COSMIC	1.5	0.050	1.000		0.040	0.00	$46.78	$0.00
17d Rewire to Qwest CO equipment	5	0.050	1.000			0.25	$46.78	$0.19
17d Lift and lay cross-connect	1	0.050	1.000			0.05	$46.78	$0.04
17d Check dial tone	0.5	0.050	1.000			0.03	$46.78	$0.02
Subtotal - CENTRAL OFFICE TECHNICIAN						**20.22**		**$15.77**

-PROJECT COORDINATOR

Probability 1 column (.1, .2) is percent of time manual activity will occur.
Probability 2 column (.5) is percent of time manual activity for CFA change will occur
Probability 4 (.04) probability is percentage based on 25 loops per batch - 1/25. Activity is per batch.

BATCH HOT CUT - PER LOOP (con't)

# preceding work item description is reference to Batch Hot Cut provisioning flow chart								
#10 Screen order in Work Force Administration (WFA-C)	5	1.000			0.040	0.20	$46.78	$0.16
#10 Jeop orders (reject batch) if fewer than 20	1	0.100			0.040	0.00	$46.78	$0.00
#10a Create spreadsheet, email spreadsheet to CORAC	1	1.000			0.040	0.04	$46.78	$0.03
#11a Check for jeop status, check for No Dial Tone status (after DVA)	1	0.200				0.20	$46.78	$0.16
#11a If supplemental order, call design	2	0.200	0.500			0.20	$46.78	$0.16
#17 Monitor status tool and monitor email from CLEC	0.5	1.000				0.50	$46.78	$0.39
IF THROW BACK TO QWEST DIAL TONE REQUESTED								
Probability 1 column is percent of time a cutback/throw back will occur								
Probability 2 column (.9, .1) are percents of time a throw back/cutback email or call from CLEC will occur								
#17d Start cutback per email from CLEC, document OSSLOG	5	0.050	0.900			0.23	$46.78	$0.18
#17d Start cutback per call from CLEC, document OSSLOG	7	0.050	0.100			0.04	$46.78	$0.03
Subtotal - PROJECT COORDINATOR						**1.40**		**$1.09**

State: North Dakota

Work Item	Time Minutes	Prob #1	Prob #2	Prob #3	Prob #4	Applied Time (Minutes)	Labor /Hour	Cost
A	B	C	D	E	F	G	H	I
						B * (C Thru F)		H * (G/60)
DISCONNECT								
-INTERCONNECT SERVICE CENTER (ISC)								
Probability 1 column (.05, .5, .6, .08) probabilities are percents of time this activity will occur when manual activity is required.								
Probability 2 column (.15) is percent orders that will fall out of IMA for manual handling.								
DISCOUNT = PV(0.1307,2.5, , 1) = .74								
Review LSR for completeness and accuracy, contractual entries	1	1.000	0.150	0.740		0.11	$42.45	$0.08
Verify existing account (access CSR in BOSS/CARS) and obtain closing bill address.	1	1.000	0.150	0.740		0.11	$42.45	$0.08
Type, review and submit to customer the Firm Order Confirmation (FOC)	2	0.800	0.150	0.740		0.18	$42.45	$0.13
Input order into service order processor. Type and format order for billing and provisioning	10	0.700	0.150	0.740		0.78	$42.45	$0.55
Populate required fields	2	1.000	0.150	0.740		0.22	$42.45	$0.16
Ensure order is successfully distributed to the systems and is ready for provisioning	3	0.500	0.150	0.740		0.17	$42.45	$0.12
Subtotal - INTERCONNECT SERVICE CENTER (ISC)						**1.57**		**$1.11**
-LOOP PROVISIONING CENTER (LPC)								
Probability is % manual work required.								
Probability 2 column DISCOUNT = PV(0.1307,2.5, , 1) = .74								
Clear RMA (Request for manual assistance)	11.25	0.020	0.740			0.17	$41.82	$0.12
Subtotal - LOOP PROVISIONING CENTER (LPC)						**0.17**		**$0.12**
-DESIGN								
Probability 1 column (.02) are % manual work required.								
Probability 2 column DISCOUNT = PV(0.1307,2.5, , 1) = .74								
Order handling/screening	5	0.020	0.740			0.07	$44.25	$0.05
GOC (Generic Order Control) order log	6	0.020	0.740			0.09	$44.25	$0.07
Enter WA (Work Authorization) mask	5	0.010	0.740			0.04	$44.25	$0.03
BATCH HOT CUT - PER LOOP (con't)								
Disconnect circuit	5	0.030	0.740			0.11	$44.25	$0.08
Distribute WORD (Work Order Record Detail) document	2	0.050	0.740			0.07	$44.25	$0.05
Subtotal - DESIGN						**0.38**		**$0.28**
-CENTRAL OFFICE FRAMES								
Probability 1 column (.75) is percent of estimated orders that are Retail or UNE-P to UNE-L (Disconnect not previously recovered)								
Probability 2 column DISCOUNT = PV(0.1307,2.5, , 1) = .74								
Analyze order	5	0.750	0.740			2.78	$46.78	$2.16
Walk time to MDF/COSMIC	1.5	0.750	0.740			0.83	$46.78	$0.65
Remove cross-connect at MDF/COSMIC	1	0.750	0.740			0.56	$46.78	$0.43
Walk time to IDF	1.5	0.750	0.740			0.83	$46.78	$0.65
Remove cross-connect at IDF	3	0.750	0.740			1.67	$46.78	$1.30
Complete work request in WFA-DI (Work Force Administration - Dispatch In Module)	1	0.750	0.740			0.56	$46.78	$0.43
Subtotal - CENTRAL OFFICE FRAMES						**7.22**		**$5.63**
-PROJECT COORDINATOR								

State: North Dakota

Work Item	Time Minutes	Prob #1	Prob #2	Prob #3	Prob #4	Applied Time (Minutes)	Labor /Hour	Cost
A	B	C	D	E	F	G B * (C Thru F)	H	I H * (G/60)
Probability 2 column DISCOUNT = PV(0.1307,2.5, , 1) = .74								
Screen WFA (Work Force Administration) for circuit	2	1.000	0.740			1.48	$46.78	$1.15
Notify customer	2	1.000	0.740			1.48	$46.78	$1.15
Complete circuit in WFA/C (Work Force Administration - Control Module)	2	1.000	0.740			1.48	$46.78	$1.15
Subtotal - PROJECT COORDINATOR						**4.44**		**$3.46**
Total For Service:						**42.91**		**$33.42**

BATCH HOT CUT - PER LOOP (con't)

		Cost Calculation		Cost Factor	Cost
		B	C	D	E
227	**Direct Cost**				$33.42
228					
229					
230					
231					
232					
233	***Marketing***				
234	Product Management Expense	**D234*E227**		0.016357	$0.55
235	Sales Expense	**D235*E227**		0.013750	$0.46
236	Product Advertising Expense	**D236*E227**		0.000000	$0.00
237					
238	**Support Assets Expense**	**D238*(E227+SUM(E234:E236)**		0.173446	$5.97
239					
240	**Uncollectible**	**D240*(E227+E244+SUM(E234**		0.022663	$1.02
241					
242	***TELRIC***	**E227+SUM(E234:E240)**			$41.42
243					
244	Common	**D244*(E227+SUM(E234:E238)**		0.112556	$4.55
245					
246	***TELRIC + Common Costs***	**E242+E244**			$45.96

BATCH HOT CUT SYSTEM ENHANCEMENTS SUMMARY
Demand estimates from volume analysis for UNE-P Mass Markets Migrations

MONTH-YEAR	DEMAND	PRESENT VALUE
JAN-2005	42210	42850
FEB-2005	42490	42032
MAR-2005	42760	41844
APR-2005	43030	41654
MAY-2005	43280	41445
JUN-2005	43530	41235
JUL-2005	43770	41016
AUG-2005	75400	69894
SEP-2005	74640	68444
OCT-2005	73890	67026
NOV-2005	73170	65658
DEC-2005	72470	64329
JAN-2006	71780	63030
FEB-2006	71120	61778
MAR-2006	70460	60545
APR-2006	69830	59357
MAY-2006	69200	58188
JUN-2006	68590	57054
JUL-2006	68000	55953
AUG-2006	67410	54870
SEP-2006	66830	53812
OCT-2006	66250	52770
NOV-2006	65680	51753
DEC-2006	65100	50743
JAN-2007	64510	50283
FEB-2007	63900	49271
MAR-2007	63230	48229
APR-2007	61880	46691
TOTAL PRESENT VALUE OF DEMAND		**1501752**

BHC SYSTEM ENHANCEMENTS EXPENSE

APPOINTMENT SCHEDULER AND STATUS TOOL	$900,000

SPREADSHEET-CORAC	$15,338.20	
SPREADSHEET-QCCC	$26,181.76	
TOTAL SYSTEM ENHANCEMENTS EXPENSE		**$941,520**
TOTAL SYSTEM ENHANCEMENTS EXPENSE / TOTAL PVD		**$0.63**

IT SYSTEM ENHANCEMENTS EXPENSE	$900,000.00

CORAC
SPREADSHEET DEVELOPMENT EXPENSE

	HOURS	LABOR RATE	TOTAL
CORAC TRAINER	40	$57.70	$2,308.00
CORAC Trainer training each of 6 CORACS at 20 houres each	120	$57.70	$6,924.00
CORAC Trainee (SPOC) trained at each of 6 CORACs at 20 hours each	120	$41.82	$5,018.40
License fee = $40.00 at 6 CORACs and 1 Developer station (7x$40)			$280.00
CORAC Trainer download IT software at each of 7 stations at 2 hours each	14	$57.70	$807.80
TOTAL CORAC SPREADSHEET DEVELOPMENT EXPENSE			**$15,338.20**

QCCC
SPREADSHEET DEVELOPMENT EXPENSE

	HOURS	LABOR RATE	TOTAL
SERVICE REPRESENTATIVE DEVELOP MACRO EXPRESS/DATABASE	424	$46.78	$19,834.72
SALARY GRADE 4 MANAGER DEVELOP INTERACTION BETWEEN MACRO EXPRESS AND WEB BASED TOOL	8	$45.84	$366.72
SALARY GRADE 4 MANAGER TRAIN BHC PROCESS (1 @ 8 HOURS)	8	$45.84	$366.72
OCCUPATIONAL TRAINING (15 @ 8 HOURS)	120	$46.78	$5,613.60
TOTAL QCCC SPREADSHEET DEVELOPMENT EXPENSE			**$26,181.76**

Volume Analysis for UNE-P Mass Markets Migrations
2004 Forecast (Thousands)

	Jan-04	Feb-04	Mar-04	Apr-04	May-04	Jun-04	Jul-04	Aug-04	Sep-04	Oct-04	Nov-04	Dec-04
UNE-P Balance	800.00	839.58	879.17	918.75	958.33	997.92	1,037.50	1,077.08	1,116.67	1,156.25	1,195.83	1,235.42
Estimated Growth by Month 2004 (including growth)	39.58	39.58	39.58	39.58	39.58	39.58	39.58	39.58	39.58	39.58	39.58	39.58
Churn												
Net Volume	839.58	879.17	918.75	958.33	997.92	1037.50	1077.08	1116.67	1156.25	1195.83	1235.42	1275.00

NOTES:

Estimated growth for 2004	475.00
Growth per month	39.58

Volume Analysis for UNE-P Mass Markets Migrations
Jan. 2005 thru April 2007 Forecast (thousands)

	Dec 2004 No longer required to provide UNE-P if no impairment	Start	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7
		Embedded Base Start	Jan-05	Feb-05	Mar-05	Apr-05	May-05	Jun-05	Jul-05
UNE-P Embedded Base Balance		1,275.00							
UNE-P Embedded Base Bal. - unimpaired market areas		816.00	791.52	767.77	744.74	722.40	700.73	679.71	659.31
Churn on Base			24.48	23.75	23.03	22.34	21.67	21.02	20.39
Conversions on Base									
Growth (Net increase in lines)		25.33	17.73	17.48	17.23	16.97	16.72	16.47	16.21
Churn on Growth			0.00	1.27	2.50	3.71	4.89	6.04	7.17
Total Incremental Batch Hot Cut Volumes			42.21	42.49	42.76	43.03	43.28	43.53	43.77

NOTES:

Estimated % of lines in proposed unimpaired market areas	64%
Churn Rate	3.00%

Analysis assumes 100% of embedded base in unimpaired market areas will convert to UNE-P.
Analysis assumes all orders will use batch hot cut process.

Volume Analysis for UNE-P Mass Markets Migrations
Jan. 2005 thru April 2007 Forecast (thousands)

Start	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11
Embedded Base Migration to UNB Loop starts	Aug-05	Sep-05	Oct-05	Nov-05	Dec-05	Jan-06	Feb-06	Mar-06	Apr-06	May-06	Jun-06
659.31	608.14	559.49	513.26	469.34	427.66	388.10	350.58	315.02	281.34	249.45	219.29
	19.78	18.24	16.78	15.40	14.08	12.83	11.64	10.52	9.45	8.44	7.48
	31.40	30.41	29.45	28.51	27.61	26.73	25.87	25.04	24.23	23.44	22.68
	15.96	15.71	15.45	15.20	14.95	14.69	14.44	14.19	13.93	13.68	13.43
	8.26	10.28	12.21	14.06	15.83	17.53	19.16	20.72	22.21	23.64	25.01
	75.40	74.64	73.89	73.17	72.47	71.78	71.12	70.46	69.83	69.20	68.59

Volume Analysis for UNE-P Mass Markets Migrations
Jan. 2005 thru April 2007 Forecast (thousands)

Month 12	Month 13	Month 14	Month 15	Month 16	Month 17	Month 18	Month 19	Month 20	Month 21
Jul-06	**Aug-06**	**Sep-06**	**Oct-06**	**Nov-06**	**Dec-06**	**Jan-07**	**Feb-07**	**Mar-07**	**Apr-07**
190.78	163.86	138.46	114.53	92.01	70.84	51.01	32.47	15.26	0.00
6.58	5.72	4.92	4.15	3.44	2.76	2.13	1.53	0.97	
21.93	21.20	20.48	19.78	19.09	18.40	17.71	17.00	16.24	15.26
13.17	12.92	12.67	12.41	12.16	11.91	11.65	11.40	11.15	10.89
26.31	27.56	28.76	29.90	30.99	32.03	33.03	33.97	34.87	35.72
68.00	67.41	66.83	66.25	65.68	65.10	64.51	63.90	63.23	61.88

NORTH DAKOTA
UNE-P Central Office Volumes Analysis

SUMMARY	
TOTAL EMBEDDED UNE-P LINES[1]	18,927
HIGHEST EMBEDDED UNE-P LINE COUNT (CO)[1]	7,234
HIGHEST INWARD MONTHLY VOLUME UNE-P (CO)[2]	874
TOTAL NUMBER OF COs w/ APPEARANCE OF UNE-P[1]	21

VOLUME IMPACT			TOTAL VOLUME PER DAY HIGHEST VOLUME OFFICE
NEW CUSTOMER ACQUISITIONS - ANTICIPATED INWARD UNE-L VOLUMES BASED ON MONTHLY INWARD UNE-P IN HIGHEST VOLUME OFFICE	874 DIVIDED BY 21 DAYS =	42 PER DAY	42 + 16 = 58 PER DAY
EMBEDDED BASE CONVERSION - TRO 27 MONTH TIMETABLE TO CONVERT EMBEDDED UNE-P[1]	7,234 DIVIDED BY 21 MONTHS DIVIDED BY 21 DAYS =	16 PER DAY	

NOTE: ALL REFERENCES TO "DAY" or "DAYS" EQUATES TO BUSINESS DAY or DAYS (21 PER MONTH).

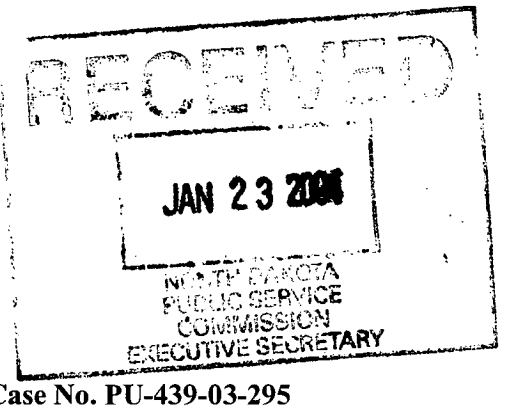
1. EMBEDDED BASE #s ARE AS OF SEPTEMBER 2003.
2. INWARD UNE-P VOLUMES REPRESENT HIGHEST CO PER MONTH; JAN 2003 - SEPT 2003.

NORTH DAKOTA
UNE-P Central Office Volumes Analysis

Docket No. PU-439-03-295
Qwest Corporation
Direct Testimony of Terri K. Million
Exhibit No. TKM-3
January 23, 2004

CENTRAL OFFICE IMPACT					
NUMBER OF EMBEDDED UNE-P LINES	**CO**	**AVG EMBEDDED BASE**	**AVERAGE DAYS TO CONVERT EACH CO (@ 25 per DAY)** (AVG EMBEDDED BASE/25)	**AVERAGE DAYS TO CONVERT EACH CO (@ 100 per DAY)** (AVG EMBEDDED BASE/100)	
7,234	**1**	**7,234**	**289.4**	**72.3**	**BUSIEST OFFICE**
≥ 3,000	**1**	**7,234**	**289.4**	**72.3**	
1,000 - 2,999	**5**	**2,093**	**83.7**	**20.9**	
500 - 999	**0**	**0**	**0.0**	**0.0**	
100 - 499	**3**	**299**	**11.9**	**3.0**	
0 - 99	**12**	**28**	**1.1**	**0.3**	
TOTAL	**21**				

NOTE: ALL REFERENCES TO "DAY" or "DAYS" EQUATES TO BUSINESS DAY or DAYS (21 PER MONTH).
EMBEDDED BASE #s ARE AS OF SEPTEMBER 2003.



STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION

LOCAL COMPETITION **Case No. PU-439-03-295**

INVESTIGATION

DIRECT TESTIMONY OF DENNIS PAPPAS AND LYNN NOTARIANNI

QWEST CORPORATION

JANUARY 23, 2004

141 PU-439-03-295 Pages: 408

Direct Testimony of Dennis Pappas and
Lynn Notarianni
by Qwest Corporation

01/23/2004 CC: Comm Legal PUD (3) ALJ

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Exhibit DP-1	**Final BHC Issues Matrix**
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Exhibit DP-7	**QCCC Warranty Process**
Exhibit DP-8	**2003 EOY Regional PID Results**
Exhibit DP-9	**State Specific PID Results for 2003**
Exhibit DP-10	**Proposed BHC Process Flow**
Exhibit DP-11	**7 Business Day Interval and Timeline**
Exhibit DP-12	**Exhibit "C" from State SGATs**
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Exhibit DP-23	**Qwest Ex-Parte of AT&T ELP Presentation**
Exhibit DP-24	**TRO Timeline**
Exhibit DP-25	**Hitachi Report in NM, NE, IA, ND**
LMVN-1	**Sample Website Status Tool layout**

I. IDENTIFICATION OF WITNESSES

. WHO IS SPONSORING THIS TESTIMONY?

A. This testimony is sponsored by two witnesses, Dennis Pappas and Lynn Notarianni..

Q. WHICH PORTIONS OF THIS TESTIMONY IS EACH WITNESS RESPONSIBLE FOR?

A. Mr. Pappas is responsible for the portions of this testimony addressing the requirements of the *Triennial Review Order* (or "*TRO*"), Qwest's existing processes for migrating loops from Qwest's switches to a CLEC's switch, the overall design of a new batch hot cut process ("BHCP") that Qwest is proposing as an additional provisioning option for CLECs, and the particular operational and network questions that CLECs have raised with respect to this new process. Mr. Pappas will also describe how the BHCP was designed with considerable input and assistance from CLECs (including AT&T, Covad, Eschelon, MCI, and McLeod) and commission staffers from across Qwest's region. Finally, Mr. Pappas will explain how the new BHCP alleviates any concern that Qwest's procedures for and performance in provisioning stand-alone unbundled loops would make it uneconomic for CLECs to serve mass-market customers without unbundled ILEC switching — the *Triennial Review Order*'s definition of "impairment."

Ms. Notarianni is responsible for the portions of this testimony describing Qwest's existing and planned operational support systems ("OSS"), that support the

batch hot cut processes, including the CLEC pre-ordering and ordering systems. Ms. Notarianni will explain the OSS modifications Qwest is proposing as part of the BHCP to enable CLECs to order larger quantities of stand-alone unbundled loops more efficiently and to keep track of the status of those orders and Qwest's progress in cutting the ordered loops over to the CLEC's switches. Ms. Notarianni will also describe the Change Management Process ("CMP") this Commission approved as part of its review of Qwest's section 271 application and explain how these OSS changes will be implemented in conjunction with the CMP.

Q. MR. PAPPAS, PLEASE STATE YOUR NAME, EMPLOYER, AND BUSINESS ADDRESS.

A. My name is Dennis Pappas. I am employed by Qwest Corporation as a Director in the Technical-Regulatory Group of the Local Network Organization. My business address is 700 W. Mineral Avenue, Room MNH19.15, Littleton, Colorado 80120.

Q. MR. PAPPAS, PLEASE DESCRIBE YOUR WORK EXPERIENCE, TECHNICAL TRAINING, AND PRESENT RESPONSIBILITIES.

A. I have worked in the telecommunications industry for 25 years. Between 1996 and 2001, I was directly associated with Interconnection and Wholesale Product Marketing. My first responsibilities in this area were as State Interconnection Manager for Colorado and Wyoming, a position that involved project management of all collocation activity. I later became a team leader for the Unbundled Loop and

Collocation product teams. Subsequently, I became the Director of the Wholesale Product Marketing team and, during that time, led multiple groups in developing new products and processes for provisioning interconnection products and services for competitive local exchange carriers ("CLECs"). Subsequent to that assignment, I was the General Manager for Qwest Wholesale Emerging Diversified Markets and had responsibility for approximately 75 CLEC accounts. In late 2000, I left Qwest to accept a position as Vice President of Services at TESS Communications, which was a facilities-based CLEC in Colorado and Arizona that provided a suite of services, including telecommunications, data, long distance and CATV, to approximately 1,200 end users. In early 2001, I assumed the role of President of TESS with responsibility for the day-to-day operations of the company. I left TESS in that same year and returned to Qwest, where I again worked on the unbundled loop product team and began participating as a witness in a number of section 271 workshops. In December 2001, I accepted my current position as Director in the Technical Regulatory Group, Local Network Organization.

Prior to the years I worked in the area of interconnection, I held multiple titles and positions requiring expertise in network operations, including, for example, Staff Manager and Regional Service Manager in the Local Networks Organization. In the 14 years prior to those assignments, I worked in Network as an Installation and Maintenance Technician (I&M Technician) and an Outside Plant Technician. I have my Bachelor's degree in Business Administration and a Masters in Telecommunications from the University of Denver.

Q. MS. NOTARIANNI, PLEASE STATE YOUR NAME, EMPLOYER AND BUSINESS ADDRESS.

A. My name is Lynn M.V. Notarianni. I am a Director for Qwest Global Wholesale Markets at Qwest Services Corporation, a unit of Qwest. My business address is 930 15th Street, Denver, Colorado 80202.

My 19-year telecommunications career began in 1984 when I was hired by U S WEST Communications, Inc. I have been employed by this company continuously since 1984. During my career, I have gained extensive experience by working in several U S WEST and Qwest organizations, including Information Technologies, Network, Mass Markets, and Advanced Technologies. Within each organization, I held management positions and often had major responsibility for managing persons involved in the development and/or implementation of Operations Support Systems (OSS). Currently, I oversee Qwest's 271 third-party OSS test, deliver departmental testimony on OSS-related matters, and act as a liaison to other Qwest organizations that deal with IT solutions to regulatory issues. I also represent Qwest at state commission- and FCC-sponsored workshops and other forums.

Throughout my career, I have garnered both technical and business knowledge. I began my U S WEST career in 1984, as a manager working with end-to-end automation of U S WEST's provisioning systems in Network Systems Engineering. I was also a database administrator in User Support Computer Center

Operations. In 1986, I oversaw software development for automation of complex switch translations and switch feature development, the latter of which was a joint venture between U S WEST and NEC-Japan.

Continuing as a member of the technical staff in Network Systems Engineering (1987-89), I was responsible for systems architecture, requirements analysis, and design work in the areas of Customer Service Negotiation and Provisioning, which are customer solutions-oriented business areas. I also acted as a "subject matter expert" (SME) for my department to make sure that U S WEST business functions and data needs were represented in the Bellcore Enterprise Architecture. Additionally, I dealt with quality assurance issues pertaining to end-to-end service ordering and provisioning activities.

From the beginning of 1990 through the end of 1991, I continued to perform in a quality assurance role as a core team member of the Service Order Quality team; there, as a systems analyst, I helped develop and implement 14 recommendations to improve the service order provisioning process. During that same time period, I managed all aspects of development of a Network Systems Architecture project, where I was the Steering Committee lead and a lead systems engineer. Again, I acted as a SME for Network at Bellcore's Service Activation Process Study forum.

I ascended to the post of Director in 1992 for Mass Markets and Operations Processes. I managed and provided technical expertise for large projects, including the U S WEST Business Process Vision, Integrated Inventory, and Work Effort

Management. I coordinated all Systems Architecture and Funding Forum activities and established the initial prioritization process.

Following that assignment, I served as Director of Integration Architecture and Transition for two years. That position involved managing resources and participating in the development of an architecture framework to define the relationship of strategies and processes through applications, data, programs, projects, and the IT development life cycle. I served as the IT representative to lead a team of consultants in the development of the strategic Business Integration Plan, outlining key business strategies, policies, market strategies, processes, systems, and operations; essentially, I worked to identify gaps and inconsistencies and then made recommendations for resolution to the Reengineering Executive Team.

Since January 1996, I have managed Qwest's response to OSS-related regulatory issues with respect to the 1996 Act, FCC orders, state commission decisions, and other legal and regulatory matters. Additionally, I led Qwest's effort to support OSS tests conducted by the Regional Oversight Committee (ROC) and the Arizona Corporation Commission. I am responsible for testifying before federal and state regulatory agencies in arbitration cases, rulemakings, and complaint proceedings concerning Qwest's conformance with state and federal telecommunications laws and regulations. In fact, I have testified in 14 state-level arbitration hearings on OSS access, performance measures, cost recovery, and CLEC motions. At the beginning of my tenure in this position, I evaluated the initial OSS impact and the feasibility of technical solutions to IT challenges posed

by the passage of the 1996 Act. Also, I have amassed experience in transacting business with CLECs, as well as experience with the Qwest Wholesale products and interconnection services CLECs sell and utilize. Examples of this experience include: leading multiple OSS negotiations with CLECs, which resulted in draft contractual agreements; impacting interconnection product definition through system and process analysis support for Resale, Unbundled Loops, Poles, Ducts, ROW, and Collocation; and, driving the initial strategy behind the implementation of OSS gateway access for interconnection.

My academic credentials include a Bachelor of Science degree in Business Administration (BSBA) from Creighton University. I have also completed all coursework toward a Master of Science degree in Telecommunications at the University of Colorado.

Q. MS. NOTARIANNI, PLEASE REVIEW YOUR WORK EXPERIENCE AND PRESENT RESPONSIBILITIES.

A. My 18-year telecommunications career began in 1984 when I was hired by U S WEST Communications, Inc. Throughout the course of my career, I have gained extensive experience by working in several U S WEST and Qwest organizations, including Information Technologies, Network, Mass Markets, and Advanced Technologies. Within each organization, I held management positions and often had major responsibility for managing persons involved in the development and/or implementation of Operations Support Systems ("OSS"). I

recently oversaw Qwest's 271 third-party OSS test. Currently I deliver departmental testimony on OSS-related matters and act as a liaison to other Qwest organizations that deal with IT solutions to regulatory issues. I also represent Qwest at state commission and FCC-sponsored workshops and other forums.

I am responsible for testifying before federal and state regulatory agencies in arbitration cases, rulemakings, and complaint proceedings concerning Qwest's conformance with state and federal telecommunications laws and regulations. In such capacity, I have testified in 14 state-level arbitration hearings on OSS access, performance measures, cost recovery, and CLEC motions. At the beginning of my tenure in this position, I evaluated the initial OSS impact and the feasibility of technical solutions to IT challenges posed by the passage of the 1996 Act. I also have extensive experience transacting business with CLECs, including issues relating to Qwest Wholesale products and interconnection services, which CLECs sell and utilize. Examples of this experience include: leading multiple OSS negotiations with CLECs, which resulted in draft contractual agreements; impacting interconnection product definition through system and process analysis support for Resale, Unbundled Loops, Poles, Ducts, ROW, and Collocation; and, driving the initial strategy behind the implementation of OSS gateway access for interconnection.

Q. MS. NOTARIANNI, PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

A. My academic credentials include a Bachelor of Science degree in Business Administration (BSBA) from Creighton University. I have also completed all coursework toward a Master of Science degree in Telecommunications at the University of Colorado.

II. EXECUTIVE SUMMARY AND ORGANIZATION OF TESTIMONY

Q. PLEASE SUMMARIZE THIS TESTIMONY.

A. The Federal Communications Commission ("FCC") directed state commissions to complete two tasks within nine months of the *Triennial Review Order*'s August 21, 2003 effective date. *First*, state commissions must approve an incumbent LEC process for migrating batches of stand-alone unbundled loops from the ILEC's switch to CLECs' switches or explain why such a process is unnecessary. The new process should be capable of migrating larger quantities of CLEC UNE-P lines to stand-alone unbundled loops within acceptable timeframes and at an acceptable level of quality, and should enable CLECs to realize any cost savings and operational efficiencies that may result from pre-wiring and cutting over many loops at a time in the same central office location, instead of one or two at a time. *Second*, state commissions must determine whether the improvements in loop provisioning yielded by this new process would make it economic for CLECs to serve mass-market customers in various markets without access to unbundled ILEC switching. This testimony describes the new region-wide batch hot cut process ("BHCP") that Qwest developed in conjunction with the CLECs in its region, and

describes how that process eliminates any concern that Qwest's unbundled loop provisioning practices might "impair" CLECs from serving the mass market without unbundled ILEC switching.

Earlier in this docket, the parties "agree[d] that a single, uniform batch hot cut process for all states within the Qwest region provides the most efficient and effective operating environment for both Qwest and CLECs," and that it was "appropriate for the industry participants . . . to attempt to reach agreement on a batch hot cut process" to the extent possible.[1] Accordingly, all fourteen state commissions in Qwest's region agreed to participate in a consolidated forum to develop a region-wide batch hot cut process and to build the record for the states' individual *TRO* dockets. There is no doubt that the Forum was worthwhile. The new BHCP proposed here reflects the hard work of Qwest and the participating CLECs over the last two months and is the product of substantial give and take among the parties. Qwest and the CLECs were able to reach agreement on the broad outlines of a new BHCP and most of the operational details, and they were able to close the vast majority of the issues and questions that the CLECs had put on the table for resolution. A smaller number of operational issues went to impasse, along with (not surprisingly) the ultimate *TRO* question whether the process has improved sufficiently to permit the withdrawal of unbundled ILEC switching in certain markets in this state. (A copy of the issues matrix from the Forum showing resolved and impasse issues is attached as Exhibit DP-1. An additional document,

Exhibit DP-2 is a summary of only those issues which went to impasse during the Forum.

The BHCP proposed in this testimony will enable CLECs to order much larger quantities of standalone unbundled loops than they can today, at a lower TELRIC price,[2] and with predictable delivery intervals. CLECs (at their option) will be able to use the BCHP to convert both their existing base of UNE-P lines and batches of newly-acquired customers. The BHCP will be available as an additional option to the basic, coordinated, and project-managed hot cuts that Qwest offers today and that this Commission and the FCC reviewed in connection with Qwest's section 271 Application. CLECs desiring more coordination for the cutover of particular customers, or who wish to migrate loops with particular configurations preventing them from being batched for conversion on a consolidated and expedited basis, will continue to be able to use existing migration options.

The BHCP is premised on the fact that for the vast majority of hot cuts that CLECs request today and would require going forward, the conversion entails the simple reuse of facilities already being used (and thus known to be working), does not require the dispatch of a technician to the field, and requires only minimal coordination between the ILEC and the CLEC *as long as* the CLEC actually delivers working dial tone to the ILEC's frame before the conversion is to take place. The central office ("CO") tasks for these simpler migrations — the pre-

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[1] See Joint Motion of Qwest, AT&T and MCI regarding adoption of a multistate Batch Hot Cut Forum. No CLEC in this state objected to this motion.

[2] In those states where Commissions have set the NRC for the basic installation well below the cost of providing it, the NRC price may not be lower.

wiring of the CLEC's connecting facility assignment ("CFA") to the ILEC's frame, and the actual "lift and lay" of the end user's loop from the frame termination of the ILEC's switch to the CLEC's CFA — can be performed on a consolidated basis. When a sufficient number of these conversions (at least 25) are performed at the same time in the same central office location, the ILEC (and hence the CLEC) can achieve significant time and cost savings by performing these tasks in efficient batches and moving through the central office in a logically-planned sequence.

At the same time, the CLECs at the multi-state forum forthrightly acknowledged that the widespread (in AT&T's word, "epidemic"[3]) failure of *CLECs* to have working dial tone ready on their CFA today requires Qwest to engage in redundant testing and back-and-forth communication with the CLECs that interrupts the process flow and adds additional steps and costs.[4] AT&T, Covad, McLeod, and MCI all agreed that in the context of these large-scale, expedited migrations, it is a "reasonable compromise"[5] to require CLECs to commit to providing working dial tone by the cut-over date, and to remove unready lines from the conversion process.[6] The BHCP proposed in this testimony reflects this

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[3] 1/8/04 Tr. at 144:5 (John Finnegan, AT&T) (describing "alleged epidemic of no dial tone situations"); *id.* at 144:27-145-8 (Dennis Pappas, Qwest) (noting that today CLECs fail to provide working dial tone on the pre-wire date 50 percent of the time, and agreeing with AT&T's characterization of this as an "epidemic").

[4] *See, e.g.*, 1/8/04 Tr. at 146:9-22 (John Finnegan, AT&T) (acknowledging that Qwest must perform extra unnecessary work when "CLECs are systematically failing to have dial tone" ready, and describing this as "a waste of time"); 1/7/04 Tr. at 22:24-23:3 (Michael Zulevic, Covad) ("I understand the frustration with CLECs who procrastinate on doing their translations, and on cut date they are not ready, and that is something that should be dealt with . . . .").

[5] 1/7/04 Tr. at 36:23 (John Finnegan, AT&T).

[6] *See, e.g.*, 1/7/04 Tr. at 36:21-37:5 (John Finnegan, AT&T) ("I think that is a reasonable, compromise, where Qwest does the dial tone check, perhaps the ANI check, two days [in advance] or on DVA. If there's a problem, you notify us. It gives us two days to try and diagnose where the problem

consensus and achieves additional efficiencies by removing redundant testing steps and greatly streamlining the process on the day of cut.

Qwest's proposed region-wide BHCP does the following:

- It enables multiple CLECs at a time to convert significantly larger volumes of UNE-P lines to stand-alone unbundled loops simultaneously, and to do so quickly enough to meet the *Triennial Review Order*'s transition timetable.

- It provides CLECs with a fixed, seven business day provisioning interval for batches of 25 to 100 lines in a single central office, as compared to the SGAT's current individual-case-basis ("ICB") negotiated interval for LSRs containing 25 lines or more. This proposed seven-day interval is much shorter than any other RBOC has offered to date.

- As the testimony of Million demonstrates, in virtually every state, the per-line non-recurring costs of an eligible hot cut is significantly reduced from the basic hot cut rate.

- It takes advantage of the ability to streamline and consolidate conversions involving the reuse of in-service facilities, while preserving all existing (North Dakota Commission-approved) hot cut options for other kinds of conversions for CLECs that prefer a greater degree of coordination.

- It dedicates teams of central office technicians exclusively to performing these batch conversions outside normal business hours, thereby avoiding any interference with any other network provisioning activities.

- It minimizes customer disruption by scheduling lifts and lays during a time when business and residential customers are least likely to be receiving calls, and by giving CLECs the option of receiving *instantaneous* notification of both when the cutover of

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exists and try and take corrective action. If on the day of the cut you find there is still no dial tone, then pull it from the batch, no exceptions."); *id.* at 173:14-174:2 (John Finnegan, AT&T) (endorsing Qwest proposal to perform early dial-tone check but eliminate same-day CFA changes); *id.* at 172:20-23 (Patty Lynott, McLeod) (same; "[T]his process works well . . . and we appreciate that Qwest is checking for dial tone ahead of time."); *id.* at 174:9:19 (Sherry Lichtenberg, MCI) (same; "We are very pleased Qwest has met us halfway on this, and we accept the proposal."); *id.* at 174:24-175:2 (Michael Zulevic, Covad) (same).

a batch is beginning and when the cutover of a given line is complete, signaling the CLEC to port the customer's number.

- It eliminates all need for up-front coordination between Qwest and the CLEC (except for the transition planning that the *Triennial Review Order* requires following a "no impairment" finding) by offering CLECs an electronic tool for scheduling their own cutover days.

- At the CLECs' request, it provides a web-based status tool that CLECs may use to review the results of their dial-tone checks and the progress of their cutovers, thus avoiding much of the need for e-mails and telephone calls.

- It gives CLECs early warning (at the time of prewiring) of potential problems with their facilities and gives them two to three days to fix any problems, thus greatly streamlining work on the day of cut.

- It gives CLECs an ample margin of error so that CLEC mistakes on a single line within the batch will not jeopardize an entire batch.

- As Hitachi Consulting has independently verified, it presents a process that works, and provides CLECs with the necessary assurances that Qwest will continue to provision unbundled analog loops using this new process at an acceptable level of quality.

- Finally, as Hitachi Consulting has also verified, it will be able to handle current and expected volumes of UNE-L orders and conversion of the embedded base of UNE-P lines over the course of the TRO's transition period, even assuming the worst case scenario that all existing UNE-P lines in affected areas would transition to UNE-L using the batch hot cut process.

These improvements make Qwest's already strong loop provisioning process even stronger, and eliminate any possible concern that Qwest's ability to provision stand-alone unbundled loops would prevent an efficient CLEC from being able to serve mass-market customers economically in the absence of unbundled ILEC switching.

The Commission should approve Qwest's proposed batch hot cut process, find that Qwest's process can manage anticipated volumes, and find that Qwest's batch hot cut process eliminates any arguable operational impairment with respect to analog loop provisioning.

Q. HOW IS THIS TESTIMONY ORGANIZED?

A. The testimony is broken into nine sections: Section I provides background on the witnesses. Section II provides an executive summary. Section III discusses the *TRO* requirements for a batch hot cut process. Section IV summarizes Qwest's existing hot cut process and current performance. Section V explains Qwest's current Operations Support Systems ("OSS") and the Change Management Process ("CMP") for implementing OSS changes. Section VI describes the region-wide Batch Hot Cut Forum ("BHCF"). Section VII details Qwest's proposed batch hot cut process and describes the efficiencies achieved by the process. Section VIII discusses each impasse issue remaining after the Forum and recommends solutions. Finally, Section IX addresses the question of impairment and loop provisioning issues outside the BHCP.

III. REQUIREMENTS OF THE *TRIENNIAL REVIEW ORDER*

Q. WHAT DID THE *TRIENNIAL REVIEW ORDER* SAY ABOUT INCUMBENT LECS' EXISTING LOOP MIGRATION PROCESSES GENERALLY?

A. In the *Triennial Review Order*, the FCC determined that "in the large majority of locations" (though not all),[7] incumbent LECs' existing processes for migrating in-service loops one at a time from their own switches to their competitors' could "serve as barriers to competitive entry in the absence of unbundled switching" for mass-market customers.[8] The FCC expressed concern that some ILECs' non-recurring charges were too high, and it questioned whether these current processes would be able "to handle the necessary volume of migrations" if mass-market switching is taken off the unbundling list.[9]

Q. DID THE FCC BELIEVE THAT THIS IMPAIRMENT COULD BE OVERCOME?

A. Yes. The FCC recognized that in many situations, it is possible to pre-wire and cut over several loops in a central office at the same time rather than converting each loop one-by-one, and that this consolidation may give rise to economic and operational efficiencies that can be passed through to the CLEC. The FCC held that a new batch hot cut process ("BHCP") may improve loop provisioning to such an extent as to overcome the *Triennial Review Order*'s finding of "impairment" with respect to mass-market switching: "We conclude that the loop access barriers contained in the record may be mitigated through the creation of a batch cut process

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7 *TRO* ¶ 473.
8 *TRO* ¶ 460.
9 *TRO* ¶ 459.

by spreading loop migration costs over a large number of lines, decreasing per-line cut over costs."[10]

Q. WHAT DID THE *TRIENNIAL REVIEW ORDER* ASK STATE COMMISSIONS TO DO?

A. The *Triennial Review Order* directs state commissions to "approve, within nine months of the effective date of this Order, a batch cut migration process . . . that will address the costs and timeliness of the hot cut process," unless they determine that no such process is necessary in their markets.[11] The FCC specifically asks the states to decide four things with respect to a new batch hot cut process:

(1) A state commission shall first determine the appropriate volume of loops that should be included in the "batch."

(2) A state commission shall adopt specific processes to be employed when performing a batch cut, taking into account the incumbent LEC's particular network design and cut over practices.

(3) A state commission shall evaluate whether the incumbent LEC is capable of migrating multiple lines served using unbundled local circuit switching to switches operated by a carrier other than the incumbent LEC for any requesting telecommunications carrier in a timely manner, and may require that incumbent LECs comply with an average completion interval metric for provision of high volumes of loops.

(4) A state commission shall adopt rates for the batch cut activities it approves in accordance with the Commission's pricing rules for unbundled network elements. These rates shall reflect the

[10] *TRO* ¶ 487.
[11] *TRO* ¶ 488.

> efficiencies associated with batched migration of loops to a requesting telecommunications carrier's switch, either through a reduced per-line rate or through volume discounts as appropriate.[12]

Q. WHAT ELSE DOES THE FCC SAY WITH RESPECT TO LOOP PROVISIONING?

A. While the FCC expects the adoption of a BHCP to reduce the costs and improve the timeliness of provisioning stand-alone unbundled loops, it also recognized that "even after such processes are implemented, competitive carriers may face barriers associated with loop provisioning . . . which may continue to impair a requesting carrier's entry into the mass market."[13] If a state commission finds that the competitive triggers in a given market are not met and must go on to consider operational impairment, the *Triennial Review Order* directs the commission "to consider more granular evidence concerning the incumbent LEC's ability to transfer loops in a timely and reliable manner."[14] We discuss this requirement in greater detail in Section IX, below.

IV. QWEST'S CURRENT HOT CUT PROCESSES AND PERFORMANCE

Q. WHAT IS A HOT CUT?

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12 47 C.F.R. § 51.319(d)(ii)(A)(1)-(4). *See also TRO* ¶ 489.
13 *TRO* ¶ 512.
14 *Id.*

A. When Qwest provisions a stand-alone analog unbundled loop to a CLEC, the loop's termination on Qwest's frame must be disconnected from the frame termination of Qwest's switch and rewired to a new terminating point on the frame that is connected to the CLEC's switch. This rewiring involves two steps that can be performed separately: the wiring of the CLEC's collocation, via the Interconnection Distribution Frame ("ICDF"), to a termination on the Qwest frame, and the replacement of the jumper connecting the customer's loop to Qwest's switch with one that connects to the new CLEC terminating point. When this transfer is performed on a loop that is currently in service, the transfer is known as a hot cut. To help the Commission understand what tasks are involved, we have produced a short video of some actual hot cuts. The video is available at **http://www.qwest.com/wholesale/training/tradeshow/batchhotcutarchive.html**. A CD is also attached for the Commission's convenience as Exhibit DP-3, and a transcript of the CD is attached as Exhibit DP-4.

Q. WHAT UNBUNDLED ANALOG LOOP PROVISIONING OPTIONS DOES QWEST OFFER TODAY?

A. As part of the Section 271 process, Qwest memorialized a number of different provisioning options in section 9.2.2.9 of its Commission approved Statement of Generally Available Terms ("SGAT"). Generally, these options include Basic Installation, Coordinated Installation, and Project Coordinated Installation. The process for each varies according to the degree of scheduling and other coordination

the CLEC desires, as well as by the number of loops involved in the installation. Basic Installation is the most streamlined process that Qwest offers today, and Project Coordinated Installation the most complex. Exhibit DP-5 generally depicts the installation options as they exist today. Importantly, the BHCP being proposed in this testimony would be added on as a new option for CLECs; all of these existing installation options would still be available going forward.

Q. WHAT IS THE QWEST CLEC COORDINATION CENTER ("QCCC")?

A. The QCCC manages the provisioning of unbundled analog loops. The QCCC was formed as part of Qwest's 271 process to improve Qwest's loop provisioning performance. The QCCC is involved in the provision of every unbundled analog loop today irrespective of the provisioning option involved.

Q. WHEN AND WHY WAS THE QCCC COORDINATION CENTER CREATED?

A. The QCCC was created in April 2001 specifically to improve Qwest's performance of *coordinated* unbundled loop installations. Prior to April 2001, Qwest was handling CLEC orders for the coordinated installation across multiple geographic centers. Prior to the QCCC's opening, Qwest had approximately 84,000 unbundled loops in service, but only approximately 88% of the loops requesting a basic installation options were being completed on time, while less than 40% of coordinated installations were performed on time (as that term is defined in PID

OP-13). This does not mean that these loops were not installed on the correct day, but only that Qwest did not contact the CLEC within the 30 minute window established for a coordinated installation. The QCCC was created to improve this performance, and by any objective measure it has succeeded. By September 30, 2003, for example, Qwest had provisioned and installed 564,028 unbundled stand-alone loops, and over 98% were provisioned on time, as discussed below.

Q. WAS THE FUNCTION OF THE QCCC EXPANDED?

A. Originally, the QCCC was staffed by approximately 90 employees and focused exclusively on coordinated installations. Due to the success of the QCCC and its dramatic impact on performance results, the QCCC's role was expanded about nine months later to include oversight of the provision of all unbundled loops.

Q. WHAT PERFORMANCE DATA SHOW THE SUCCESS OF THE QCCC?

A. From its inception, the QCCC has been focused on improving the provisioning performance captured in the following PID measurements:

1) OP-7 – Interval to perform the hot cut; and

2) OP-13 – Percent of coordinated installations completed on time.

Exhibit DP-6 compromises the regional PID results for 2001 for analog loops and shows the improvements in these PID measurements in the 3 months prior and subsequent to the QCCC's creation in April 2001. In summary:

	Jan 2001	Feb 2001	Mar 2001	April 2001 (QCCC Created)	May 2001	June 2001	July 2001
OP-3[15]	92.52%	94.11%	95.56%	95.24%	93.14%	96.52%	98.64%
OP-7	0:08	0:08	0:08	0:07	0:05	0:04	0:04
-9OP-13	71.06%	74.77%	82.19%	87.9%	93.89%	98.07%	99.03%

Q. WHAT STEPS DID THE QCCC TAKE TO IMPROVE THE QUALITY AND TIMELINESS OF LOOP PROVISIONING?

A. The QCCC achieved these improvements by focusing on three aspects of the job. The first was to issue detailed job descriptions in order to attract the most highly trained employees in order to limit ramp up time. Second, internal processes were refined with specific tasks and work steps to ensure a high level of performance on the loops requiring coordination. Third, the QCCC instituted a standing daily status meeting to review each order on an individual basis that was not provisioned on time or any other order related issue that affected or impacted the installation quality of the CLECs' service.

Q. PLEASE GIVE MORE DETAIL ABOUT THE QCCC'S ORIGINAL FUNCTIONS.

[15] The OP-3 data is from Zone 1, more densely populated areas.

A. The QCCC served as the Network Overall Control Office ("OCO") for the provisioning of unbundled loop orders. This included the coordination of installation activities with the CLEC and the Qwest departments such as the CO, Outside Field forces (if needed), the Central Office Resource Allocation Center ("CORAC"), Field Load and Resource Allocation Center ("LRAC"), and Design Services. The orders were loaded to a designated Service Representative Coordinator who was responsible for the end-to-end installation of unbundled loops that were provisioned using the coordinated installation option. Additionally, the Service Representative Coordinator in the QCCC was responsible for coordinating the actual order installation, at a CLEC-designated time, between the Qwest Central Office Technician ("COT") and the CLEC representative.[16] Eventually, the QCCC was also identified as the Maintenance Control Office ("MCO") with responsibilities for maintenance on all the embedded unbundled loops today and also the responsibility for any loops installed within the last 30 days via the 30 day warranty process. Exhibit DP-7 is a copy of the QCCC warranty process. Once again, by allowing this dedicated pool of resources to focus on the maintenance issues associated with an unbundled loop, certain efficiencies are realized and result in a greater customer i.e., CLEC experience.

[16] UBL provisioning options are found at URL: http://www.qwest.com/wholesale/pcat/unloop.html

Q. WHEN DID THE QCCC'S ROLE EXPAND TO INCLUDE BASIC UNBUNDLED LOOP INSTALLATIONS AS WELL AS COORDINATED ONES?

A. By early 2002, the QCCC had been processing all the coordinated unbundled loops across the region, and the loop performance measurements for these cuts had stabilized at around 97.5% of all commitments. Given this success, the QCCC's responsibilities were expanded in February 2002 to include basic loop installation. Staffing levels increased to a total of 102 employees. Basic installation performance in early 2002 was running an average of 90% commitments met. Once this work migrated to the QCCC, the performance improved to an average of 98% commitments met across the region. See Exhibit DP-8. In North Dakota the results are consistent with the region-wide performance. Exhibit DP-9 is the state specific results for analog loops. On a regional level, Qwest's performance has far exceeded the agreed upon benchmark of 90% commitments met in each month since mid-2001 when the QCCC first opened. This success is directly attributable to the dedicated employees in the QCCC and the daily review meetings and analysis on missed commitments and "I-Reports."

Q. WHAT STEPS ARE TAKEN BY THE QCCC TODAY TO ENSURE A HIGH PERFORMANCE LEVEL IS ACHIEVED FOR THE PROVISION OF UNBUNDLED ANALOG LOOPS?

A. The QCCC performs many quality checks throughout the day-to-day operations of the installation process to ensure sustained high performance. These checks include:

- QCCC supervisors perform four quality reviews of random orders per month per employee.
- QCCC management performs internal weekly audits for process compliance. These include audits on 48 hour no-dial tone ("NDT") checks and notification via Provider Test Access ("PTA"), which is an e-mail tool utilized for CLEC notification of NDT on the day pre-wiring is performed.
- Daily reviews and conference calls on every missed commitment and "I-Report" (repair report within 30 days of installation completion). This includes root cause investigation with the field, central office and QCCC and a feedback loop to all internal stakeholders.

If non-compliance as a result of human error is detected in any of these quality checks, the QCCC manages the performance of the responsible employee. This management includes re-training and/or development of a performance plan. The performance plan includes action steps that are based on the number of non-compliance reoccurrences. Continued non-compliance may result in termination of the employee. It is important to note that within the nearly three years the QCCC has existed, only one employee has been terminated for non-compliance. These process steps have led the QCCC to operate an extremely high level of quality as the performance data shows.

Q. PLEASE DESCRIBE THE DAILY REVIEW MEETINGS.

A. The QCCC implemented a high standard performance management process. This includes daily reviews of every missed commitment and I-Report. A readout conference call takes place where the root cause of the miss or I-Report is discussed and, if possible, resolved. This provides an immediate feedback loop for human error performance management and/or process gaps which are, in turn, addressed with either the employee body or the individual employee as a training opportunity.

Q. WHAT IMPACTS DO THESE MEETING HAVE ON PERFORMANCE OF QCCC PERSONNEL?

A. The QCCC philosophy of high performance management standards, disciplined approach to the work task and the focus on compliance to process has directly resulted in a sustainable high level of performance as demonstrated in Qwest's PID results across the region for all types of unbundled loops processed through this Center. As noted earlier in this testimony, Exhibit DP-8 is the December 31, 2003 Regional PID results for analog loops.

Q. WHAT IS THE CURRENT WORK LOAD AND STAFFING LEVEL OF THE QCCC?

A. The daily provisioning volumes completed in the QCCC average at 1000 orders per day. Due to additional efficiencies implemented in the QCCC, staffing levels have actually decreased from a peak staffing level of 102 in February 2002 to an average of 78 today. The primary driver of these efficiencies has been the internal

mechanization of repetitive tasks that the Service Representative Coordinator performs. Despite the decreased staffing, performance results have stayed consistently high.

Q. DOES THE QCCC HAVE ANY EXPERIENCE MANAGING LARGE HOT CUT PROJECTS?

A. Yes. The QCCC has successfully handled large projects by designating dedicated Service Representative Coordinators to the project and negotiating submittal volumes with the CLEC. Peak volumes are handled by moving skilled QCCC Service Representative Coordinators that may temporarily be assigned to another position.

Q. CAN YOU GIVE AN EXAMPLE OF A LARGE-SCALE PROJECT THAT QCCC HAS SUCCESSFULLY HANDLED?

A. Yes. During the past 24 months, Qwest has been working with one CLEC as it has continued to convert its embedded base of UNE-P customers over to its own switching platform. This conversion activity alone added an average of <REDACTED> conversions per day to the QCCC's typical daily volumes, and these extra volumes have been handled successfully. During 2002, this single CLEC submitted <REDACTED> conversion orders with approximately <REDACTED>. This conversion activity continued into 2003 as this CLEC

submitted another <REDACTED> conversion orders, with about <REDACTED>.

Q. HAS THE FCC DETERMINED WHAT LEVEL OF HOT CUT PROVISIONING PERFORMANCE GIVES CLECS A MEANINGFUL OPPORTUNITY TO COMPETE?

A. Yes. To have a section 271 application granted, a BOC must provision network elements at a level that gives CLECs a "meaningful opportunity to compete."[17] In the context of Bell Atlantic's section 271 application for New York, the FCC held that standard was met with respect to hot cuts at the following levels of performance:

> We consider Bell Atlantic's demonstrated on-time hot cut performance at rates at or above 90 percent, in combination with the evidence indicating that fewer than 5 percent of hot cuts resulted in service outages and that fewer than two percent of hot cut lines had reported installation troubles to establish compliance with the competitive checklist.[18]

Q. HOW DOES QWEST'S CURRENT HOT CUT PERFORMANCE COMPARE TO THE FCC'S BENCHMARK?

A. Qwest's unbundled analog loop provisioning consistently exceeds these benchmarks at both the region-wide and individual state levels. The regional results are very representative of the state specific performance levels. Exhibit DP-

9 contains the latest 12 months of loop performance data for North Dakota. Region-wide, Qwest is meeting in excess of 97% of commitments on time (far above the 90% threshold set by the FCC), migrating CLEC end users in an average of 3 minutes, and experiencing trouble on only approximately 0.7% of unbundled loops (far less than the 2% threshold set by the FCC and well below what Qwest end users are experiencing):

PID	Benchmark	September 2003	October 2003	November 2003
OP-3D	90%	97.23&	97.41%	97.23%
OP-5	Parity	97.91%	98.04%	Results one month in arrears
MR-8	Parity	.72%	.65%	.66%

Thus, Qwest's current unbundled analog loop provisioning and hot cut performance is far better than that which the FCC found gives CLECs a meaningful opportunity to compete in the marketplace.

Q. WHAT SHOULD THE COMMISSIONS CONCLUDE REGARDING THE QCCC'S PAST PERFORMANCE?

A. Based on the past performance and commitment by those staffing the QCCC, the ability to handle increased volumes should not be an impairment issue as Qwest seeks a finding of no impairment within certain MSAs. Since its inception in April

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[17] Memorandum Opinion and Order, *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of New York*, CC Docket No. 99-295 ¶44 (Rel. Dec. 22, 1999).

[18] *Id.* at ¶ 309.

2001, the QCCC has continually demonstrated its ability to adapt to changes, take on additional unbundled loop volumes, and maintain a high level of performance, thereby giving CLECs a meaningful opportunity to compete. In addition, operational sessions such as the daily status meeting have allowed the QCCC to build into its process a daily monitoring function directed toward improving the CLEC's experience not only today but into the future. During the BHC Forum, the CLECs requested that the new process be monitored on a regular basis. The monitoring currently performed by the QCCC already provides that function. Since April of 2001, the QCCC has expanded it scope of responsibilities to accommodate basic installations along with a multitude of other loop types while the overall performance on each of these loop types and provisioning options has continued to improve. The efficiencies and experience of the QCCC staff, along with its long record of accomplishments, provide an excellent backdrop for reassuring the CLECs that orders utilizing the BHCP (both embedded and new) should expect the same level of professionalism and performance.

V. QWEST'S EXISTING OPERATIONS SUPPORT SYSTEMS ("OSS") AND THE CHANGE MANAGEMENT PROCESS ("CMP")

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF QWEST'S PRE-ORDER AND ORDERING SYSTEMS.

A. Qwest provides pre-ordering and ordering functionality through various electronic interfaces that enable CLECs to carry out real-time processing and allow CLECs to

integrate pre-ordering and ordering functions, including submitting Local Service Requests ("LSRs"). CLECs can perform the following pre-ordering functions though Qwest's interfaces: Address Validation; Customer Service Records; Service Availability; Reserve and Cancel Telephone Numbers; Facility Availability; Loop Qualification (for qualifying Qwest DSL for Resale and Unbundled Loop); Raw Loop Data; Connecting Facility Assignment; Meet Point Query; Schedule and Cancel Appointments; and Access to Directory Listings. The FCC has found in connection with each of Qwest's section 271 applications that Qwest's interfaces are available in a manner that affords an efficient competitor a meaningful opportunity to compete.[19] Each of Qwest's electronic interfaces is described below.

IMA-EDI: Qwest's IMA-EDI is a real-time, computer-to-computer, electronic interface that allows CLECs access to pre-ordering, ordering and provisioning OSS functions. It enables the electronic submission and processing of pre-ordering inquiries and Local Service Requests ("LSRs"). IMA EDI provides CLECs with uniform access to the same Qwest OSS across Qwest's 14 state region. IMA-EDI provides electronic access directly from CLEC systems to Qwest's interfaces, and thus enables CLECs to integrate their own OSS with the Qwest electronic interface (in addition to integrating IMA-EDI's pre-ordering functions with IMA-EDI's ordering functions).

A CLEC representative using the IMA-EDI interface interacts directly with CLEC-developed software and screens. A CLEC can connect to Qwest's OSS

[19] *See Qwest 271 9-State Order* at ¶ 44; *Qwest 3-State 271 Order* at ¶ 35; *Qwest Minnesota 271*

using IMA-EDI through a direct connection such as a dedicated T-1 line. CLECs develop their own IMA-EDI translation environments to interface with Qwest's IMA-EDI gateway. These environments may be either purchased commercially or developed by the CLEC. In either case, Qwest and the CLEC test the environments to ensure that they comply with Qwest's published IMA-EDI business rules. Generally, CLEC pre-ordering transactions submitted through the IMA-EDI interface rely on the same internal systems that process Qwest Retail transactions.

The same IMA-EDI gateway that is used by CLECs for pre-ordering functions can be used to perform ordering transactions. As with pre-ordering, CLECs submit LSRs directly with their own software through the IMA-EDI interface, which, in turn, relays the LSR to Qwest's OSS for processing. Service orders are created as a result of CLEC LSRs submitted through the IMA-EDI interface. These service orders are processed by the same SOP that processes Qwest Retail transactions.

IMA-GUI: Qwest's IMA-GUI is a real time, human-to-computer, electronic interface that allows CLECs to access Qwest's OSS to perform a variety of pre-ordering, ordering and provisioning functions. The IMA-GUI facilitates electronic submission and processing of pre-ordering inquiries and LSRs. A CLEC can connect to Qwest's OSS using the IMA-GUI in three ways: (1) through a dial-up modem; (2) through a dedicated connection such as a T-1 line; or (3) through the Internet with digital certificate access. In effect, then, the only tools' a CLEC needs

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Order at ¶ 15; *Qwest Arizona 271 Order* at ¶ 13.

to access Qwest's OSS through the IMA-GUI is a personal computer and connectivity.

The IMA-GUI provides CLECs with uniform access to the same Qwest OSS across the 14-state region. Unlike IMA-EDI, the IMA-GUI allows a CLEC to obtain electronic access to various Qwest OSS pre-ordering, ordering and provisioning functionality without having to develop its own software. The use of the IMA-GUI therefore involves little to no development time and low start-up costs. The IMA-GUI is easy to use and, like IMA-EDI, provides integrated access to pre-ordering and ordering functionality. Generally CLEC pre-order transactions submitted through the IMA-GUI interface are processed by the same back-end systems that process Qwest Retail transactions.

The same IMA-GUI gateway that is used by CLECs for pre-ordering functions can be used to perform ordering transactions. CLECs can submit LSRs through Qwest's IMA GUI interface and interact directly with Qwest's OSS. Service orders are created as a result of CLEC LSRs submitted through the IMA-GUI interface. These service orders are processed by the same SOP that processes Qwest Retail transactions.

Q. WERE THESE SYSTEMS TESTED DURING THE 271 PROCEEDINGS?

A. Qwest's OSS interfaces were thoroughly tested during the various state 271 proceedings for functionality, volumes/scalability, and development/documentation across a complete set of product/activity types including, but not limited to, UNE-P,

UNE-Loop ("UNE-L") and UNE-P to UNE-L conversions. State commissions retained a number of independent parties (KPMG, MTG, CGE&Y, and HP) to assist in assessing the commercial readiness of Qwest's OSS. Thirteen state regulatory agencies in Qwest's local region worked together through a multi-agency organization known as the Regional Oversight Committee ("ROC")to endorse a test, and the Arizona Corporation Commission endorsed a similar, but separate, third-party test. These tests, the commissions that sponsored them, and the FCC all concluded that Qwest provides sufficient electronic functions and manual interfaces to allow CLECs access to all of the necessary pre-ordering and ordering OSS functions.[20]

Q. PLEASE DESCRIBE HOW CHANGES TO THESE SYSTEMS ARE MADE.

A. Since 1999, Qwest and CLECs have jointly participated in a forum for managing changes related to Qwest's products, processes, and systems that support the five categories of OSS functionality (pre-ordering, ordering, provisioning, maintenance and repair, and billing).[21] The Change Management Process ("CMP") is used to process and communicate to CLECs any changes to Qwest's OSS interfaces and to products and processes that are within the scope of CMP.[22] The CMP also provides

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[20] *Id.*

[21] This Qwest-CLEC forum was previously known as the "Co-Provider Industry Change Management Process" or "CICMP" and is now known as the Change Management Process or "CMP." At the August 15, 2001, CMP meeting, CLECs voted to change the name of the CICMP to CMP. This declaration discusses the redesigned change management plan (the CMP), not the prior plan (CICMP).

[22] The CMP Redesign core team agreed to define the term 'OSS Interfaces' as "existing or new gateways (including application-to-application interfaces and Graphical User Interfaces), connectivity and system functions that support or affect the pre-order, order, provisioning, maintenance and repair, and

CLECs the opportunity to have input into Qwest-proposed changes and to propose their own. CLECs and Qwest meet collaboratively at least two days per month to consider such change requests ("CRs"), which may include CLEC Originated CRs, Qwest Originated CRs, Industry Guideline CRs, and Regulatory CRs.[23] Minutes from these meetings are posted on Qwest's CMP website[24] and distributed to participating CLECs regularly.[25]

The CLECs and Qwest jointly prioritize, as needed, CLEC Originated CRs, Industry Guideline CRs, and Qwest Originated CRs for OSS Interfaces and test environments. In addition, CLECs have the ability to prioritize certain Regulatory CRs, if Qwest determines that the changes can be implemented in more than one release and still meet the date required for implementation.[26]

Changes to Qwest OSS interfaces, products, or processes must be communicated to CLECs according to agreed-upon timeframes contained in the CMP. Qwest provides to CLECs, on a quarterly basis, its 12-month systems development view (known as the Qwest OSS Release Calendar), which shows, at a high level, the development plans for all OSS interfaces that Qwest offers to CLECs.[27] This information helps CLECs plan for upcoming OSS changes. Qwest

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billing capabilities for local services (local exchange services) provided by CLECs to their end users." *See* CMP Document (n. 1 of every page).

[23] These categories of change requests are defined in the CMP Document, § 4.

[24] Qwest's CMP website can be found at http://www.qwest.com/wholesale/cmp. Minutes of CMP team meetings are available at http://www.qwest.com/wholesale/cmp/teammeetings.html.

[25] Prior to October 2001, these meetings were held one day a month. At the request of CLECs, Qwest began holding CMP meetings two full days a month, with one day devoted to systems issues and one day devoted to products and process issues.

[26] The prioritization process is set forth in the CMP Document, § 10.

[27] The OSS Release Calendar is available at http://www.qwest.com/wholesale/cmp/osscalendar.html.

regularly updates the 12-month view as more information becomes available or conditions change.

Q. HOW WAS THE CMP PROCESS DEVELOPED?

A. In June 2001, Qwest entered into a collaborative effort with the CLEC community to redesign its CMP, which applies in all fourteen states where Qwest is the incumbent local exchange carrier.[28] This effort was undertaken in part in response to issues that arose in the 271 workshops and in the third-party tests.

The core team that met to redesign the CMP was composed of representatives from several CLECs and Qwest.[29] Participation in the redesign process was open to all CLECs, and meetings were open to the CLEC community and interested parties. In addition, members of the Colorado Public Utilities Commission and (more recently) the Idaho Commission staff attended some of the sessions, as did representatives of CGE&Y (the third-party test consultant in Arizona) and KPMG Consulting (the third party test consultant in the 13 ROC states).

The redesign team met, roughly, four days a month between July 2001 and October 2002 in separate, dedicated sessions. The final Qwest CMP Document was issued on October 15, 2002.[30] Additionally, members of the Redesign team

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[28] Information about the CMP redesign process can be found at http://www.qwest.com/wholesale/cmp/redesign.html.

[29] Generally, about six CLECs were active participants at each Redesign session.

[30] Since the CMP redesign process ended, changes were made to the CMP Document, effective January 6, 2003, May 30, 2003, and June 18, 2003. The current version of the CMP Document may be found at http://www.qwest.com/wholesale/cmp/whatiscmp.

presented the final CMP Document on November 22, 2002, in a meeting that was open to all CLECs. Participants agreed that the redesign effort was complete and that future changes would be made pursuant to Section 2.1 of the CMP Document.

Qwest has fully implemented the new processes that resulted from those negotiations. The FCC concluded that Qwest's change management plan satisfied each of the FCC's criteria for such activity: "(1) that information relating to the change management process is clearly organized and readily accessible to competing carriers; (2) that competing carriers [have] substantial input in the design and continued operation of the change management process; (3) that the change management plan defines a procedure for the timely resolution of change management disputes;" and (4) that "the BOC has demonstrated a pattern of compliance with [its change management plan]."[31]

VI. THE REGION-WIDE BATCH HOT CUT FORUM

Q. PLEASE DESCRIBE THE PURPOSE OF THE REGION-WIDE BATCH HOT CUT FORUM.

A. Qwest and the CLECs have always agreed that there can be only one batch hot cut process that applies in all fourteen states in Qwest's region. From Qwest's perspective, all hot cuts across all fourteen states are managed by a single center (the QCCC) and make use of the same set of ordering and provisioning systems. From a CLEC's perspective, it is much harder to comply with different ordering

[31] *Qwest 9-State 271 Order* at ¶¶ 132-136, 145-152, and Appendix K (¶42).

and provisioning procedures in different states, and business planning is difficult when provisioning intervals and the expectations for service delivery vary from state to state. While acknowledging that each state commission must ultimately approve the new batch hot cut process individually, Qwest and the CLECs have agreed from the start on the need to work out the outlines of the new process together and on a region-wide basis.

Accordingly, on October 31, 2003, AT&T, MCI, and Qwest filed a Joint Motion proposing a region-wide business-to-business forum to develop a batch hot cut process.[32] Qwest and the CLECs "agree[d] that a single, uniform batch hot cut process for all states within the Qwest region provides the most efficient and effective operating environment for both Qwest and CLECs." The parties further agreed that "it is essential for State Commissions" — and, in fact, "all of the states" — "to endorse this process." The point of the forum would be to attempt agreement on a process and to narrow the issues to be litigated in the individual state proceedings. The parties agreed that "[a]ll agreements reached by participants during the forum will be documented and will be binding," and that "[i]mpasse issues . . . remaining at the conclusion of the forum process will also be documented and will be litigated before the State Commissions."

No CLEC objected to this joint proposal in any of the fourteen states. All fourteen state commissions formally opted into the proposal, and representatives

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[32] Joint Motion for Adoption of Batch Hot Cut Forum, Case No. PU-439-03-295

of the staffs of most of the state commissions attended at least some of the Forum sessions either in person or by telephone.

Q. WHEN DID THE BHC FORUM MEET?

A. The BHC Forum held full-day face-to-face sessions on December 1-3, 2003 and January 6-8, 2004. In addition, half-day conference calls were held on December 12, and December 19. Qwest, many large and small CLECs (including the CLECs with the largest current and potential future hot cut volumes), and a large number of representatives of commission staffs and state consumer advocates attended the various sessions either in person or by phone. (A list of the attendees of each session of the Forum is posted on the Forum web site at **http://www.qwest.com/wholesale/training/tradeshow/batchhotcutarchive.html** All sessions of the Forum were transcribed by a court reporter, and a comprehensive issues matrix was maintained that documented all the issues that the parties had raised, the positions of the parties, what issues were closed by consensus, and what issues went to impasse for resolution by the state commissions. A copy of the issues matrix is attached as Exhibit DP-1.

Q. HOW WAS THE FORMAL ISSUES LIST FOR THE BHC FORUM PUT TOGETHER?

A. Qwest submitted its original hot cut proposal in most states on November 12, 2003. AT&T, Covad, Eschelon, MCI, and McLeod all submitted written comments in

response and counterproposals one week later. Qwest put together a draft of a matrix identifying the issues that each of these CLECs had raised in their comments and attempting to summarize each CLEC's position. At the first session of the Forum, the CLECs reviewed and modified Qwest's summaries of the issues and their positions and added many further issues and subissues. Some of the smaller CLECs that had not filed written comments (such as USLink) added issues to the list, as did several of the commission staff representatives. The list was kept open throughout the sessions of the forum, and CLECs reformulated their issues and supplemented the list with additional issues and questions throughout.

The parties structured their discussion at the Forum session around this issues list and closed issues only by consensus of the participants, regardless of who raised them. Although Eschelon withdrew from the Forum just prior to the final face-to-face session, Qwest and the remaining CLECs continued to discuss and resolve the issues that Eschelon had put onto the list in the first three sessions.

Q. WAS THE BHC FORUM SUCCESSFUL?

A. Yes. Although the parties started out with numerous areas of disagreement, they were able to reach consensus on the workflow of a new BHCP and resolve a very large number of technical questions. The parties were able to close approximately 30 of the issues and subissues on the formal issues matrix. There was a significant amount of give and take between Qwest and the CLECs, particularly at the last face-to-face sessions. Qwest made very significant modifications to its original

BHCP proposal in response to the CLECs' concerns, and CLECs, as noted above, forthrightly accepted responsibility for improving their performance to allow streamlining of the process on the day of cut.

VII. THE PROPOSED BHCP

A. OVERVIEW

Q. PLEASE PROVIDE A HIGH LEVEL DESCRIPTION OF QWEST'S PROPOSED BHCP.

A. The proposed BHCP is a new, additional installation option that permits a single CLEC to order "batches" of 25 to 100 standalone unbundled analog loops, in the same Central Office, where loop facilities are being reused and no dispatch of a Qwest outside field technician is required. The standard provisioning interval for a batch hot cut is 7 business days. The existing appointment scheduler in Qwest's provisioning OSS will be enhanced to enable CLECs to electronically select their due date. Additionally, Qwest has agreed to build a web-based status tool to provide CLECs with regularly scheduled status reports concerning their BHC orders. The BHCP has been designed not only for the conversion of the embedded base of UNE-P customers, but also for the conversion and migration of newly acquired CLEC customers who have existing analog (voice) service (either Qwest retail or CLEC UNE-P or UNE-L) at present.

CLECs will submit LSRs as they do today with an additional field indicating that the LSR is part of a batch hot cut. By midnight on day 1 of the 7

business day interval, the CLECs will work the translations in their switches and have dial tone present on their designated CFA. The QCCC will produce a spreadsheet for the two Central Office Technician ("COT") team that provides it with a summary of pertinent order information and the locations of the relevant cross connects on Qwest's frames. This information will be sorted and prioritized in a way that minimizes the COTs' travel on and between the InterConnection Distribution Frame ("ICDF") and Main Distribution Frame ("MDF") or COSMIC™ frame during pre-wiring and cutover.

The COTs will pre-wire the CLEC's connection to the Qwest frame on days 2 and/or 3 and test the circuit. The testing will confirm that there are no problems on Qwest's side of the circuit, confirm whether the CLEC has dial tone ("DT") present at the CFA, and (if DT exists) verify that the CLEC's CFA is good. Testing at this stage gives both Qwest and the CLEC an early heads-up of any problems on their respective parts of the circuit with enough time left before the actual cut (two to three days) to fix the problem. If DT is not present on any of the CLEC's lines in the batch at this step, the CLEC would be notified via the new web-based Batch Status Tool ("BST").

On Due Date ("DD"), the Qwest COT will once again ANI both the CLEC DT and the DT of the CLECs UNE-P customer on the COSMIC frame. If a CLEC chooses to "Trap and Trace" this ANI test, the CLEC will have instantaneous notification that the cutover of that line is about to begin. Upon finding the correct ANI and after confirming that the line is not in use, the COT will perform the lift and lay on

each line. A final ANI test will be conducted at the final facility appearance in the CO. Again, if a CLEC exercises its option to "trap and trace" this ANI test, it will have instantaneous notification that the lift and lay of that line is complete and the porting of the customer's telephone number can begin. After the first lift and lay and every 25 thereafter, the COT will update the order status to reflect the order's completion, which will be reflected in the BST as well.

Q. DO YOU HAVE ANY OTHER MATERIALS THAT LAY OUT THE PROPOSED BHCP?

A. Yes. Exhibit DP-10 displays the proposed end-to-end process flow of a batch hot cut and associated work steps. The first two pages show the flow of a BHC and the major activities performed by the CLEC and the various Qwest organizations in a graphically swim lane format. The shaded boxes on the flow chart represent new activities that do not exist in the current Basic hot cut process. Pages 3 through 6 describe each work step or task in greater detail. This is the same flow chart and task list that the parties used in the BHC Forum.

Exhibit DP-11 is a day-by-day timeline of the 7 business day interval for the batch hot cut process that shows the work steps performed by Qwest and the CLEC during each of the seven days. This timeline was also used in the BHC Forum.

Q. WHAT OSS CHANGES IS QWEST PROPOSING AS PART OF THE BHCP?

A. As described in greater detail below, Qwest is proposing to enhance its existing pre-ordering and provisioning interfaces by providing CLECs with a scheduling functionality during the ordering process and status information during the provisioning process.[33] Qwest intends for these OSS enhancements to be available in the final quarter of 2004, barring unforeseen circumstances, such as conflicting regulatory rulings. Qwest intends for all proposed changes to follow the Qwest Wholesale Change Management Process ("CMP").

Q. HAS QWEST ESTIMATED HOW MUCH THESE OSS CHANGES WILL COST?

A. It is difficult for Qwest to give an accurate estimate of the system costs at this time. However, the changes Qwest proposes for the Batch Hot Cut process are large. As such, Qwest anticipates the costs will range from $900,000 to $2,800,000.

Q. HOW WILL QWEST IMPLEMENT THESE OSS CHANGES?

A. The OSS changes will follow the wholesale CMP. Qwest anticipates that these tools will become part of the BHCP ordered by the 14 state commissions within Qwest's local region. When the CLECs and Qwest redesigned the CMP, the participants understood that state commissions might mandate changes to Qwest's

[33] The systems changes proposed in this testimony are high level descriptions. As Qwest proceeds through the development life cycle for these changes, aspects of the proposed functionality may change.

OSS Interfaces, and they created a category in the CMP Document specifically for such changes:[34]

> A Regulatory Change is a change that "is mandated by regulatory or legal entities, such as the Federal Communications Commission (FCC), a state commission/authority, or state and federal courts. Regulatory changes are not voluntary but are requisite to comply with newly passed legislation, regulatory requirements, or court rulings. Either the CLEC or Qwest may initiate the change request."

The CMP document also provides that Regulatory CRs will be implemented, as a general rule, by mechanization unless all the parties agree otherwise.[35] Finally, if the implementation date for a Regulatory CR requires all or part of the change to be included in the upcoming IMA release, the process requires that the change not be subject to ranking and be automatically included in that release.[36]

Q. HAS QWEST INITIATED THE APPROPRIATE CHANGE REQUESTS IN CMP TO BEGIN THIS PROCESS?

A. Yes. Qwest is committed to implementing this process as quickly as practicable. As a result, Qwest has submitted two CRs (SCR012204-01RG and SCR012204-02RG) to CMP. Qwest will send a CMP notification when it posts these CRs to the CMP Web site. That notification will identify that CLEC comments identifying reasons why the objecting party does not agree that the CRs should be classified as a Regulatory Changes are due to the Qwest CMP Manager no later than eight business days prior to the February 19, 2004, monthly CMP meeting. If any CLEC

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[34] CMP Document, § 4.
[35] CMP Document, § 5.1.2.

objects to the classification of the CRs as regulatory, that objection will be discussed at the February 19, 2004, monthly CMP meeting and Qwest and the CLECs will vote to determine where there is unanimous agreement that the CR's are Regulatory changes. If there are no objections, the CRs will move to the top of the list for the upcoming IMA major release. If there is not unanimous agreement, however, any member of the CMP community may utilize the CMP Dispute Resolution process to seek an order to implement the CRs as regulatory changes from any state commission.

Q. IF THE CHANGES ARE INCLUDED IN IMA RELEASE 16.0, WHEN WILL THEY BE IMPLEMENTED?

A. The current release production date for IMA release 16.0 is October 18, 2004.

B. LINES THAT ARE ELIGIBLE FOR BATCH CONVERSION

Q. PLEASE DESCRIBE THE TYPE OF ANALOG LOOP ORDERS THAT CAN BE INCLUDED IN THE BHCP.

A. As previously mentioned, only those conversion orders where facilities can be reused and where no field dispatch is required are eligible for the BHCP, because those are the only orders that can be provisioned on a consolidated basis. (These other types of loops may still be converted by means of Qwest's existing hot cut processes.). Based on the final Qwest BHC proposal, a CLEC can:

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[36] CMP Document, § 10.2.1.

- Convert its own UNE-P or resale voice-only service to an analog or UNE-Loop.
- Migrate another CLEC's customer being served by UNE-P or resold Qwest voice service to an analog UNE-Loop.
- Migrate a Qwest retail voice-only customer to an analog UNE-Loop
- Migrate another CLEC's analog loop, providing the CLECs involved in the transaction coordinate the orders and re-use the existing facilities.

Q. PLEASE DESCRIBE THE TYPE OF ANALOG LOOPS THAT ARE NOT ELIGIBLE FOR THE BHCP?

A. Qwest has made clear in both policy and practice that it can provision any unbundled loop for CLECs using one of the existing provisioning processes. The question here is not whether Qwest can or will provision all forms of analog loops, but rather what kinds of analog loops can be converted on a consolidated basis and thus included in the BHCP. Any loop requiring a field dispatch necessarily requires extra, idiosyncratic steps that make it impossible to consolidate with other loop conversions and include in the BHCP. Generally, this affects two kinds of loops: IDLC and EX Cables. The exclusion of IDLC loops went to impasse at the Forum and will be discussed below. The parties uniformly agreed that EX cables can be excluded from the BHCP.

C. SIZE OF A BATCH

Q. WHAT IS THE MINIMUM AND MAXIMUM SIZE OF A BATCH ELIGIBLE FOR CONVERSION VIA THE BHCP?

A. Qwest has established minimum and maximum order volumes on a central office by central office basis. The original proposed minimum was a batch size of 25 lines per CLEC and a daily central office volume limit of 100 lines total (for all CLECs) per central office. As discussed in greater detail below, the 25 minimum is necessary to achieve efficiencies from consolidating tasks and spending costs across cutovers, and the 100 maximum reflects the work that dedicated two-central office technician team can perform in an eight hour shift.

At the BHC Forum, several CLECs argued that a hundred-line maximum per central office per day would not be sufficient for them to convert their embedded base of UNE-P customers within the timeframes set forth within the *TRO*. This assumption ended up to be incorrect. As the testimony of Ms. Terri Million demonstrates, it would only take approximately 82 business days to transition the office with the greatest number of UNE-P lines in Qwest's 14-state region using maximum daily batches of 100 lines, leaving ample time over the FCC's scheduled 21-month transition timetable to handle conversions of newly acquired customers or growth in the UNE-P embedded base between now and when the transition would begin.[37]

Q. WHAT HAPPENS TO THE BATCH IF A LINE MUST BE DROPPED BECAUSE IT TURNS OUT NOT TO BE ELIGIBLE FOR CONVERSION ON A CONSOLIDATED BASIS?

[37] A switch in Salem, OR has 8,172 UNE-P lines as of November 30, 2003.

A. Some CLECs at the Forum expressed concern that a single invalid line at order submittal could jeopardize the other lines in the batch and result in the entire batch being rejected. To satisfy this concern, Qwest will process a batch so long as it (a) started with 25 lines or more and (b) still contains 20 lines in it once unqualified lines are excluded. This change was sufficient to close the issue to the CLECs' satisfaction at the Forum.

D. SCHEDULING BATCH HOT CUTS

Q. WHAT TIME OF DAY WILL QWEST SCHEDULE BHCS?

A. Requests for conversions pursuant to the BHCP will be conducted Monday through Friday between the hours of 3:00 AM to 11:00 AM, excluding holidays. Due to concerns raised by several CLECs, Qwest has determined that it will use best efforts to complete the lift and lay activity during the first portion of the shift to mitigate service disruptions to the end user and give the CLEC ample opportunity to port the number in the early morning hours – usually before most businesses would open, and when most residential end-users are asleep. Later in the COT's shift, the COT would perform the advance pre-wiring for orders due 2 or 3 days hence.

Q. DOES QWEST HAVE EXAMPLES OF THIS PROCESS WORKING DURING THESE PROPOSED HOURS OF OPERATION?

A. We do. In a recent trial with one CLEC, Qwest processed two separate batches of orders in Idaho and Iowa. During this test, the pre-wires were performed on DVA while the lift and lay activity was conducted beginning at 3:00 AM on the Due Date. In Idaho, I observed a group of 26 orders with the lift and lay task beginning at 3:05 AM and concluding at 3:40 AM. None of these lines were in use at the time of cut. Representatives from Hitachi Consulting will be providing additional detail on each of these and other batches in addition to detailed time measurements on those orders.

Q. CAN THE CLECS REQUEST A SPECIFIC TIME OF DAY FOR A BATCH HOT CUT?

A. No. During the Forum, Qwest demonstrated that it can not efficiently prioritize central office work and organize COTs' movements through the central office if CLECs are able to demand that certain cutovers be performed at specific times. Such scheduling would interrupt the efficient task flow and reintroduce the need for the QCCC to communicate via telephone with CLECs regarding work start and stop times. Importantly, if a CLEC finds that it needs to schedule a hot cut for a particular customer at a specific time, the CLEC will still have the ability to do so by using the existing coordinated hot cut process. As explained above, Qwest provisions over more than 99% of such coordinated cuts on time today.

Q. CAN A CLEC PICK A PARTICULAR DAY FOR A BATCH HOT CUT?

A. Yes, with one caveat: The large-scale conversions of a CLEC's embedded base of UNE-P lines that would follow a state commission's "no impairment" finding would have to be scheduled within the contours of the negotiated 21-month transition plan required by the *Triennial Review Order*. In the event of a "no impairment" finding, the *Triennial Review Order* requires CLECs to work with Qwest to develop a plan for transitioning their embedded base of UNE-P lines in that market to alternative facilities or services.[38] This planning will establish an overall schedule for the migration of the embedded base that spreads these conversions out evenly over the 21 months provided by the FCC for this transition,[39] and designate specific dates for each affected CO to convert, with the understanding that UNE-P is no longer available after the final date for completion of the transition plan for a particular CO. This FCC-required transition planning for the embedded base occurs within the first two months after a state commission finding of "no impairment"[40] and is not part of the process flow for any individual migration order.

Q. HOW WILL THE CLECS SCHEDULE A BHC?

A. Qwest's original proposal required CLECs to coordinate with Qwest before the submission of individual conversion orders to discuss scheduling. While the CLECs at the first forum generally accepted the need (and the *TRO*'s legal

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38 *TRO* ¶531; 47 C.F.R. § 51.319(d)(2)(iv).
39 *TRO* ¶532; 47 C.F.R. § 51.319(d)(2)(iv)(A).
40 *TRO* ¶531; 47 C.F.R. § 51.319(d)(2)(iv).

requirement) for up-front planning for the transition of the embedded base of UNE-P lines, several CLECs expressed concern with having an up-front coordination step for batched migrations of newly acquired customers and the time frames associated with such a meeting. These CLECs expressed a desire for some kind of electronic scheduling tool that would allow them to see when there was room for additional batches in a given central office and reserve those days without having to coordinate with Qwest.

In response to these comments, Qwest agreed to modify the appointment scheduler to enable CLEC to schedule their own batch hot cut days (within the context of the transition plan for the embedded base). The tool will allow a CLEC to search for a specific CO and a specific date. The tool will display the number of batch hot cuts that can be performed on that date at the selected CO. If there are slots available, the CLEC may then reserve a number of cuts in that CO for the designated day. If the CLEC enters 25 or more lines for conversion, the appointment scheduler functionality will return an appointment confirmation number. The CLEC will populate this number in the APPCON (appointment confirmation) field of each LSR for that day.

Adopting the Appointment Scheduler changes enables Qwest to eliminate the coordination step on individual orders for batch conversions of both the embedded base and newly acquired customers. The same tool will be used for the *TRO*'s mandatory transition planning for migration of the embedded base in the event of a finding of "no impairment": the conversion dates agreed to as a part of

CLECs' transition plans will be entered into the electronic tool, and capacity will be reserved accordingly.

Q. WILL CLECS BE ABLE TO USE THE APPOINTMENT SCHEDULER TO SCHEDULE BATCH HOT CUTS IN *ALL* QWEST CENTRAL OFFICES, INCLUDING UNSTAFFED ONES?

A. Yes.

Q. HOW WILL QWEST ACCOMMODATE A CLEC THAT IS GRADUALLY ACCUMULATING ORDERS IN ANTICIPATION OF MEETING THE BATCH MINIMUM?

A. If a CLEC submits fewer than 25 lines to the appointment scheduler, those lines will remain as pending until the CLEC enters a total of 25 lines. However, these pending lines may be "bumped" to the next available day if another CLEC submits LSRs in a batch that exceeds 75 lines for a particular CO.[41] In addition, CLECs will be able to "add" lines to an existing batch as long as the standard installation interval is met, and the batch size does not exceed 100 lines.

[41] For example, if CLEC ABC has 21 pending LSRs for Denver Main on January 29th, and CLEC XYZ submits 76 LSRs for the same CO and the same date, CLEC ABC's LSRs will be "bumped" to the next available date.

Q. WHAT OCCURS IF A CLEC HAS FEWER THAN 25 LINES RESERVED IN APPOINTMENT SCHEDULER WHEN THE INTERVAL FOR THAT DATE IS REACHED?

A. Pending reservations will be held until 7 PM MT seven business days prior to the cut date. If a CLEC has fewer than 25 lines in pending status at 7 PM MT seven business days prior to the cut, the appointment scheduler will automatically "bump" the lines to the next available business day.

Q. DID THE PROPOSED CHANGES TO THE APPOINTMENT SCHEDULER RESOLVE THE CLECS SCHEDULING CONCERNS?

A. Yes. Based on the proposed changes to the IMA EDI/GUI appointment scheduler the CLECs agreed that their concerns were completely resolved on this point.

E. ORDERING BATCH HOT CUTS

Q. WHAT CHANGES DOES QWEST PROPOSE TO ITS ORDERING FUNCTIONALITY?

A. Qwest proposes that during the ordering of a BHC, CLECs complete an accurate LSR via either EDI or IMA GUI in the same manner they do for a Basic Hot Cut request today. Qwest's proposal designates, however, that LSRs requesting BHCs must also contain the CHC field populated with a "B" for batch and include the confirmation number for the batch and frame due date returned from appointment scheduler.

Qwest also proposes additional IMA validations such as determining that the CLEC has appropriately populated LSR fields designating the order as a BHC. These validations will take the form of new edits and/or error messages. Business Process Level ("BPL") edits which will be developed are items to aid the CLEC in making a BHC request. The CHC field must be populated with the correct elements for the request to move forward into the batching of the service order for the CO. Some of the fields which will have the BPL edits established are the REQTYP – request type AB or BB, ACT-V (for conversion as specified) or Z (conversion with no directory listing changes), APTCON (this would be populated with the information from the appointment scheduler), TEST=N or blank (indicating there are no special testing requirements). DSPTH=N or blank (indicating no dispatch), CHC=B (indicating the request is for a BHC), NC-LX- - (this is the only network channel code allowed in the BHCP). Once an LSR passes these validations, a BHC USOC will be assigned to the Qwest service order. The BHC USOC drives the utilization of the new BHC process and the corresponding new lower NRC for each line associated in the BHC. All CLECs agreed that this process was acceptable.

F. PROVISIONING INTERVALS

Q. HAS QWEST PROPOSED A STANDARD INSTALLATION INTERVAL FOR THE BHCP?

A. Yes. Upon conclusion of the *TRO*-required transition planning CLECs will use the scheduling tool, find an available time slot and submit an LSR for individual orders on a CO basis. The CLEC must submit an LSR at least seven business days in advance of the time slot available in the scheduling tool. In past 271 proceedings, CLEC and State Commissions agreed to a seven business day interval where the CLEC submits order volumes between 17-24 lines for the same customer at the same address. These intervals are memorialized in the Service Interval Guide ("SIG"), which is Exhibit C to the state's approved SGAT, and which is attached here as Exhibit DP-12. In fact, if volumes exceed the 24 lines stated in the SIG, the stated interval is negotiated on an ICB. Unlike the current provisioning options, the Qwest proposed BHC seven business day interval allows the CLEC to give their end user a date certain due date without the need to negotiate when volumes are in excess of 24 lines. This interval is significantly shorter than those offered by any other ILEC for comparable UNE-P migration activity. This interval is discussed in greater detail below in connection with impasse issue S-2.

G. PRE-WIRING

Q. WHEN WILL QWEST PERFORM CENTRAL OFFICE PRE-WIRING?

A. Qwest had intended to move the pre-wire and DT/ANI steps to the Due Date for efficiency reasons; however, several CLECs at the forum asked that these steps remain on DVA (day 2 or 3 in a 7 business day interval) in order to allow time for both Qwest and the CLEC to respond to any issues that may be encountered with

their respective networks. Qwest agreed to modify its proposed BHCP to keep these work steps on days 2 or 3 with the understanding that Qwest will have discretion to perform pre-wiring and the DT/ANI tests on either day 2 or day 3 in order to gain the efficiencies from balancing the workload over multiple days.

Upon concluding these testing steps, Qwest will notify the CLEC via the web-based status tool of any No-Dial-Tone ("NDT") or reverse wiring or bad CFA situations. The NDT notification provides the CLECs with ample time prior to the Due Date to resolve issues. Qwest explained at the forum that moving pre-wiring and testing to days 2 and 3 of the proposed process instead of Due Date, as the CLECs had requested, would increase the costs associated with the COT by approximately $4.00. The CLECs requested the pre-wiring anyway.

Q. WHAT ARE THE CLEC'S RESPONSIBILITIES?

A. The CLECs committed at the forum to have switch translations completed by midnight of day 1, and agreed that such a commitment is reasonable.[42] If the CLEC receives a jeopardy via the web-based status tool, then the CLEC will have a minimum of 2 day and a maximum of 3 days to issue a subsequent order to change their CFA, perform their translation work or correct any other CLEC related issue that may be causing the problem. Per the PCAT the standard interval for CFA changes is 3 days, therefore the CLEC's subsequent LSR for CFA changes needs to

[42] *See, e.g.*, 1/17/04 Tr. at 173:1-13, 22-24 (John Finnegan, AT&T) (noting that AT&T's normal business procedure is to establish switch translations prior to submitting the LSR or mechanically within four hours of receipt of the FOC; hence it "would not be a problem" to have switch translations in place by midnight of day one.

be submitted no later than 7 PM on day 4 of the 7 day interval. For all CLEC changes, other than CFA changes, the CLECs do not need to notify Qwest of their corrective actions. Qwest will assume that corrective action will be taken by DD.

It remains the responsibility of the CLEC to ensure that its network (collocation facilities and tie cable pairs between that collocation and its terminations on the ICDF) are working and able to carry dial tone between these points. The verification by the CLECs can occur any time between when the collocation is first established up until the day the conversion orders are due; it is up to the CLEC to make this determination. The CLEC does not have to (and should not) wait until it receives a NDT notice from Qwest to resolve issues on its side of the network. The CLEC would do this by placing testing equipment at its switching location and the same type of equipment on the vertical side of the ICDF.

Upon conclusion of a successful pre-wire, the CLEC's dial tone should be appearing on a jumper that has been run, via the aforementioned frames, to the COSMIC™ or Main Distribution Frame ("MDF") and looped near its final termination point for the lift and lay activity on the order's due date.

Q. DID THE ABOVE PRE-WIRING AND TESTING PROPOSAL RESOLVE THE CLEC'S CONCERNS?

A. Yes. Qwest's willingness to pre-wire and test on day 2 or 3 resulted in the CLECs' willingness to close a number of issues at the forum. In turn, the CLECs' clear commitment to have their translations work completed by midnight of day 1 allows

for a better level of testing, fewer visits by the Qwest COT to retest for CLEC Dial Tone, fewer problems on the Due Date, and elimination of all of the manual inefficient processes parties go through to try and modify an order at the last minute on Due Date.

As noted above, this was one instance where the participants to the forum was able to agree to a process that mutually benefited both Qwest and the CLECs. AT&T called this a "reasonable compromise,"[43] and MCI, McLeod and Covad likewise endorsed this proposal.[44]

H. THE LIFT AND LAY

Q. WHAT ACTIVITIES OCCUR ON THE DUE DATE?

A. On due date, the Qwest COT will test the pre-wired loop, at the COSMIC™ or MDF, for dial tone to ensure that the CLEC has worked their translations and that the CLEC CFA information is correct and working. In addition, Qwest will conduct an ANI test on the Qwest cable and pair (where the existing UNE-P customer resides) to ensure that the correct pair and TN are reflected on the service order. Upon verifying both the CLEC and existing customers' DT, Qwest will monitor the line prior to performing the lift and lay and conduct the work only after finding the line in an idle state. If idle, the lift and lay will remove the end user

[43] 1/7/04 Tr. at 36:23 (John Finnegan, AT&T)

[44] 1/7/04 Tr. at 172:20-23 (Patty Lynott, McLeod) ("[T]his process works well ... and we appreciate that Qwest is checking for dial tone ahead of time."); *id.* at 174:9:19 (Sherry Lichtenberg, MCI) (same; "we

from the Qwest switching platform and connect them to the CLEC's switching platform. Qwest performs a final DT/ANI test at the protector frame once all of the office wiring is complete to verify that the lift and lay was performed correctly and DT is present at the last point before it leaves the CO.

Q. WHAT STEPS WILL QWEST TAKE IF THE LINE IS IN USE AT THE TIME THE LIFT AND LAY IS TO TAKE PLACE?

A. In order to remain efficient in wiring these in accordance with the facility location, the Qwest COT would monitor the line to ensure that the conversation was not of an urgent nature and upon making that determination, perform the lift and lay. Proceeding in this manner will allow Qwest to proceed on with the batch and allow the CLEC to get notification of batch completion without having to wait on a single customer. This possibility, however, is significantly reduced by the time frame for these cuts – 3:00 a.m. to 11:00 a.m. The cuts will occur at the beginning of the shift when most businesses are closed and people are asleep.

Q. ARE THERE STEPS THAT CAN BE TAKEN BY THE CLEC TO LET THAT END USER KNOW THAT WORK WILL BE TAKING PLACE ON THEIR LINE SOMETIME BETWEEN THE HOURS OF 3 AM AND 11 AM?

A. Yes. The CLEC can notify their end user to inform them of the pending order activity and that they may experience a momentary outage during the hours of

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are very pleased Qwest has met us halfway on this, and we accept the proposal."); *id.* at 174:24-175:2

operation that Qwest is proposing to convert the embedded base UNE-P order utilizing the BHCP.

Q. WHAT OCCURS IF THE CLEC'S DIAL TONE IS NOT PRESENT ON DUE DATE?

A. As stated earlier in this testimony, if CLEC dial tone is not present at the time the DT/ANI verification step is performed on Due Date, then the CLEC will be notified and the LSR will be placed in jeopardy status and removed from the batch. It is important to note that if a single LSR contains multiple loops and a single loop does not have dial tone on the Due Date, then all loops in the LSR are placed in a jeopardy status. This is necessary, and the CLECs at the Forum did not object to this point. It is ironic to note that while the CLECs would not commit to any type of payment to Qwest for an order that was delayed on the original due date for any CLEC reason, they continue to favor the waiving of the NRC when Qwest does not execute on the order due date, and payment of automatic PAP penalties if Qwest's performance drops below a certain level.

Q. WHAT ARE THE CLEC'S RESPONSIBILITIES IF AN LSR CANNOT BE COMPLETED ON THE DUE DATE DUE TO NO DIAL TONE?

A. The CLEC will need to issue a subsequent change to that order and resubmit the LSR for a new Due Date. At the CLEC's option, the LSR can be added to another

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(Michael Zulevic, Covad) (same).

batch for that office or a different installation option can be chosen. Additionally, the CLEC needs to verify if the LSR was related to any other LSRs. It is the CLECs responsibility to notify Qwest if there are any related LSRs that need to be cut back.

Q. PLEASE DESCRIBE THE CUT BACK AND ESCALATION PROCESSES.

A. The cut back and escalation processes are the same as those currently used by the CLECs today with any of the other provisioning options or products. Exhibit DP-13 is the cut back process. In essence, this process allows the CLEC to notify Qwest the day of the conversion and request that the CLEC end user be moved back to the Qwest switching platform due to some issue that the CLEC was not able to resolve and was concerned about their end user's ability to receive phone calls or retain DT. Upon receiving this call, the QCCC would notify the CO requesting that the COT move the CLEC end user back to the facilities that they resided on prior to the conversion order being worked. In order to ensure that the cut back can occur without the need to submit a new order, the CLEC must notify Qwest of the need to cut back within two hours of order completion through the Status Tool. If this request is submitted to Qwest after the translations work has been performed and the DT has been "removed", the CLEC would have to issue a service order requesting that the service be reconnected. One of the additional benefits of conducting the BHC work during the early morning hours is that it gives the CLEC ample opportunity to determine if issues exist long before Qwest's translations

removal would complete. The frame due time will continue to be 6:00 PM for all conversion orders. The parties agreed that this process was acceptable.

Q. CAN CLECS REQUEST THE ORDER IN WHICH THEIR LINES WILL BE PROVISIONED?

A. No. In order to realize the efficiencies gained by working at one location on a frame and then moving to the next location on that frame or a different frame, Qwest would need to stay the course and work orders by their associated frame location, not in the order the CLECs define.

I. NOTIFICATIONS TO THE CLEC

Q. HOW WILL THE CLECS KNOW WHEN TO PORT THE SERVICE?

A. The CLECs have two ways to know when the central office work has been completed. First, a CLEC can use existing functionality in its switches to "Trap and Trace" Qwest's ANI tests on the lines in the batch, thereby receiving instantaneous notification that the cutover of a line is about to begin and when the cutover is complete. Second, Qwest has agreed to implement a web-based status tool that will give the CLEC information on order status or status changes and indicate which orders or batches of orders have been completed.

Q. WHAT IS "TRAP AND TRACE" TECHNOLOGY?

A. Trap and Trace technology is a switch based feature. The most common application of this technology is the Last Call Identification feature, "*69". The CLEC can have its switch "Trap and Trace" a line that is a candidate for a conversion. By implementing "Trap and Trace", the CLEC will be able to detect the two ANI tests that the Qwest COT performs immediately before and immediately after the lift and lay. The initial ANI test would be an indication that the hot cut of that line is beginning, and the post-cutover test would signal that the lift and lay of that line had been completed. By monitoring its switch, the CLEC's OSS can effectively receive instantaneous notification when a cut-over is finished and electronically initiate the porting of the telephone number associated with that line, thereby keeping customer outage times to a minimum.

This notification solution was discussed late in the BHC Forum, and the CLECs agreed to continue researching it after the Forum's conclusion and to report back to Qwest prior to the filing of testimony. On January 21, 2004, AT&T representative John Finnegan reported by e-mail that AT&T was still considering trap and trace but "believe[s] it had some potential to work," although AT&T believes it should not be the only notification method available to CLECs.[45] Similarly, a McLeod representative reported by e-mail that McLeod "believes this could be a viable option," although, like AT&T, McLeod believes that additional options should be available as well.[46]

[45] E-mail from John F. Finnegan, AT&T, to Carolyn Hammack, Qwest (Jan. 21, 2004).

Q. ARE THE CLECS REQUIRED TO USE TRAP AND TRACE TO KNOW THE STATUS OF THEIR BHC ORDERS?

A. No. Qwest's original proposal involved notifying the CLECs by e-mail periodically throughout the course of the lift and lay process to let them know what conversions had been completed. A number of CLECs expressed concern with an e-mail-based notification process citing latency in their network and having to designate a single e-mail address that will receive such e-mails. Therefore, as previously mentioned, Qwest is developing a web-based status tool. This tool will provide BHC status to the CLEC throughout the entire BHCP, not just on the Due Date.

Q. PLEASE DESCRIBE THE WEB-BASED STATUS TOOL.

A. At the BHC Forum, the parties agreed that Qwest would create a secure, CLEC-specific, mechanically updated, web-based reporting tool, which Qwest calls the Batch Status Tool ("BST"). The BST will allow each CLEC to review the status of their Batch Hot Cut orders when the orders are processed through the Service Order Processor into the Work Force Administrator ("WFA"). Qwest expects typical orders to appear on the BST approximately 2 days following order submission, and several days before the Due Date. Information provided on the BST will include:

- Due Date
- Customer Identification (ZCID)
- State

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[46] E-mail from Patty C. Lynott, McLeod to Carolyn Hammack, Qwest (Jan. 21, 2004).

- Common Language Location Identifier (CLLI)
- Complete with Related Order (CRO) field
- Circuit Facilities Assignment (CFA) Location
- Circuit Facilities Assignment (CFA) Number
- Job Identifier
- Circuit Layout Order (CLO) number
- Purchase Order Number (PON)
- Order Number
- Telephone Number (TN)
- Order status (Pending, Jeopardy (No Dial Tone, Customer Not Ready, Line in Use, Polarity Reversal), and Completed)
- Completion Date/Time
- Required Response Date/Time for Completed and Jeopardy orders
- QCCC e-mail address for CLEC messages pertaining to Completed and Jeopardy orders.

Q. HOW WILL THE INFORMATION IN THE BST BE FORMATTED?

A. Qwest proposes to provide the information listed above in a format that allows CLECs to sort the data and to download it into a Microsoft Excel file. An example of the BST's proposed output is attached in Exhibit LMVN-1. The CLECs found the BST's ability to permit CLECs to sort and manage the status information as

they deem necessary to be a key element that allowed several previously disputed issues to close.

Q. WILL CLECS STILL RECEIVE THE CURRENT IMA MESSAGES IN ADDITION TO THE INFORMATION ON THE BST?

A. Yes. CLECs will continue to receive the same IMA notifications (Firm Order Confirmations ("FOCs"), Service Order Completions ("SOCs"), etc.) for their BHC orders that they currently receive for their BHC orders today. However, IMA notifications are not sent until the order is completed within Qwest's service order processor. Qwest created the BST to give CLECs status information faster than they can receive it through IMA.

Q. PLEASE DESCRIBE HOW QWEST WILL UPDATE THE BST.

A. WFA is the same system Qwest CO technicians receive their work assignments from and enter their work completion records into immediately following the lift and lay of the first order in the Batch and then again upon completion of the last order in the Batch (at a minimum, the 25th line). Qwest intends to design an application that queries WFA for all Batch Hot Cut status changes every 15 minutes. Once the application queries WFA, the pending, jeopardy and recently completed orders information will immediately post to the BST.

Q. CAN THE BST BE USED BY STATE COMMISSIONS TO ENSURE THAT EMBEDDED BASE MIGRATIONS ARE OCCURRING ON SCHEDULE?

A. Yes. Qwest proposes that the BST may also be designed to provide Commissions with a means of tracking CLEC conversion progress. Qwest believes it is critical that the Commissions monitor this tool to ensure CLEC adherence to the transition plan.

Q. WILL QWEST BASE THE BST ON AN EXISTING OSS INTERFACE?

A. Qwest recognizes the importance of limiting the number of complicated OSS interfaces with the CLECs. As a result, Qwest intends to design the BST as a modification of the existing Customer Electronic Maintenance and Repair ("CEMR") system. Qwest chose CEMR because CLECs currently use the system, and it is efficiently adapted to the purpose of the BST. This will minimize the need for employee training to use the new system. For those CLECs not using CEMR, all that is required is a digital certificate for access.[47]

Q. DID THE BST RESOLVE ALL THE CLECS' CONCERNS REGARDING BHC STATUS NOTIFICATION?

A The CLECs were at odds with each other. MCI reported that it was pleased with the solution, that a web-based tool would provide CLECs with adequate notice, and that it was not too much work for CLECs to retrieve information from a web-based

[47] The Digital Certificates process is defined at the following URL: http//ecom.qwest.com/.

status tool. AT&T, by contrast, took one aspect of the BST to impasse. AT&T argued that a tool that provides automatic status update information at a web site still required the CLEC to perform too much work to retrieve that information; instead, AT&T wanted Qwest to "push" the information to them (via an e-mail, for example) when an order was in jeopardy status, even though the status tool provides the CLEC with 72 hours to rectify a NDT situation. This position ran counter to AT&T's original comments. Qwest's original plan was to send an e-mail, and AT&T (and many other CLECs) objected to e-mail notification and requested a web-based status tool instead. Once Qwest provided the status tool they had requested, AT&T reversed course and again demanded e-mail notification. This will be further discussed with the impasse issues.

J. SUMMARY OF EFFICIENCIES AND IMPROVEMENTS

Q. HOW IS THE BHCP MORE EFFICIENT THAN CURRENT HOT CUT PROCESSES?

A. Qwest has modified its Basic Hot Cut process to create as many efficiencies as possible. First, in the Basic Hot Cut process, the COTs spend time at the beginning of the day planning and categorizing the order of their work. The BHCP uses a computer generated spreadsheet that automatically identifies the most efficient order in which to perform the pre-wiring and lift and lay work at the ICDF and then the COSMIC™ or MDF. By loading the CO work onto a spreadsheet and prioritizing the cross connection work by frame location and terminations, the

COTs are able to efficiently use their time to conduct wiring in a sequential manner working across the frame – which simply means they take fewer steps, and less time. The spreadsheet will provide the COTs will all of the critical information they require to conduct their wiring activity quickly and efficiently. This provides two benefits -- less paper handling and better utilization of time due to limiting steps between frames until work is complete on those orders within the batch. In addition, by working orders in a batch manner, not a single LSR at a time, the COTs are able to work the entire 25-100 line batch and then clear the orders within the system in batches of 25 lines. The current process requires the COTs to complete each LSR individually within the systems.

Second, the BHCP reduces the number of contacts between the QCCC and the Qwest COTs, and between the QCCC and the CLEC. Moreover, while notification to the QCCC may include a phone call, the parties to the BHC Forum agreed that all communications for the BHCP will be done electronically (with most agreeing that notification via the web-based status tool would be adequate), and that phone calls would only occur on an exceptional basis. The proposed status tool also allows the COT to conduct their work more efficiently since they are required to only update the provisioning system, WFA-DI with an order status. COTs are not required to communicate with the QCCC during the course of the order or upon order completion. Once the COT updates WFA-DI, the status tool automatically performs the downstream communications with the CLEC. If the CLEC desires to obtain more prompt notification of order completion, CLECs can program their

switch to utilize "Trap and Trace" capability. Trap and Trace will automatically alert the CLEC when the line is provisioned and the final ANI Dial Tone check is performed. Whether the CLEC uses the Batch Status Tool or "Trap and Trace," the CLEC will have an automated process for communicating with Qwest about order status and completion.

Third, as explained earlier, there are many instances in the current process when the CLEC does not have dial tone on the line on Due Date, let alone on DVA. When this occurs, which is fairly frequent (about 20% of the time), both the QCCC, the COT and the CLEC must perform a number of manual steps to either establish dial tone on the CFA or keep rechecking to see if dial tone is on the line. This requires multiple phone calls, multiple tests by the COT, and last minute work which jeopardizes the Due Date and injects many inefficiencies into the process. The proposed BHCP eliminates this concern altogether. As described above, the CLECs have agreed to place dial tone on their CFA by midnight on Day 1 of the 7 day interval and Qwest will test whether that dial tone exists on Day 2-3 of the process when it performs pre-wire activities. If the CLEC has no dial tone on the line for whatever reason, the Batch Status Tool will make this point plain, and the CLEC will have time to rectify the problem. These newly developed steps in the process give the CLEC ample time – up to 3 days – to correct No Dial Tone, get translations in place or to correct CFA problems prior to the scheduled due date.

Q. PLEASE ELABORATE ON THE BENEFITS ASSOCIATED WITH CLECS' HAVING THEIR TRANSLATIONS DONE BY MIDNIGHT OF DAY 1.

A. The CLECs' voluntary commitment at the forum to perform their switch translations on day one enables Qwest to conduct the DT/ANI testing and run the pre-wire to the COSMIC Frame or MDF on day 2 or 3, and to never touch the order again until Due Date. If the CLEC Dial Tone is correctly provisioned, then the Qwest COT will only update information in WFA-DI once, and not multiple times as they do today as they check and re-check the CLEC's CFA for DT.

Q. ARE THERE ANY OTHER EFFICIENCIES BUILT INTO THE PROCESS?

A. Yes. The size of the batch and the associated dedicated two person teams yield additional efficiencies. Consolidation of work at a given Central Office on a given day will significantly reduce the amount of time it takes to travel between frames both during the pre-wiring phase and the lift and lay phase due to the "batching" of work. The transition plan will need to ensure that visits to Central Offices are conducted in a manner that allows these efficiencies to be realized while eliminating the opportunities for Central Offices to be revisited to complete a minimal set of BHC related tasks. Additionally, while network architecture in Central Offices can very, the one common thread is that the horizontal side (Qwest side) and vertical side (CLEC side) of the frame are physically separated. In most offices, they are on different sides of the frame, while in a few offices they may be on a different location on the same side of the frame. In either instance, however,

the ability to have one technician testing the CLEC dial tone on the vertical side of the frame while the other COT is waiting to connect the other end of the jumper wire to the horizontal side of the frame is the most effective manner in which to make these connections. During a recent batch of conversion orders, the ICDF termination blocks were in different isles back to back from each other. In that circumstance, if the COT were working alone, he/she would have had to perform DT/ANI on the vertical side of the ICDF, terminate the jumper wire and "poke" the wire through the frame to the other side of the ICDF, walk to the end of the frame and down the next isle in order to find the jumper and then connect it to the block on the horizontal side of the ICDF and perform another DT/ANI test. The travel time between these blocks clearly demonstrates why two technicians can work more efficiently.

K. EXPECTED PERFORMANCE

Q. HOW WOULD QWEST MONITOR THE NEW BHC PROCESS?

A. Qwest would continue to monitor the proposed process in the same manner that loop conversion activity is monitored today. There are currently PIDs in place that monitor loop installations and Qwest believes that certain aspects of these existing measurements should/will be applicable to the new process. In addition, personnel from the QCCC will continue to monitor order misses and conduct analysis to determine reason for miss and address through further training or modifications to the existing process.

Q. WHAT OTHER STEPS WILL QWEST TAKE TO ENSURE A QUALITY BHC?

A. Qwest will also take steps to ensure that the dedicated teams of COTs assigned to this effort will receive and acknowledge proper training on the new process prior to the first BHC being performed. This training will also be conducted within those organizations whose processes are impacted by the changes this joint team has made under the new process.

Q. HOW WILL QWEST FORMALLY MEASURE ITS BHC PERFORMANCE?

A. As part of the Section 271 process, Qwest, the CLEC community and the 14-state commissions created a process known as Long Term PID Administration ("LTPA"). The purpose of the LTPA is to create new performance measures or PIDs or to modify existing PIDs as the requirements of the business dictate. Qwest has agreed to expedite the creation of batch hot cut specific PIDs if such PIDs are deemed necessary by the LTPA. If the LTPA decides that creation of the BHCP does not require changes to existing PIDs or creation of new PIDs, there are many existing PIDs that track Qwest's performance in providing unbundled analog loops to CLECs. As such, analog loops provisioned using the BHCP would be included with the many other provisioning options and would be tracked in at least the following PIDS:

- OP-3: Provisioning Commitments Met on Due Date

- OP-5: New Installation Service Quality (troubles reported within 30-days of installation)

- All Maintenance and Repair measures including, but not limited to, the overall trouble rate (MR-8).

Thus, several key components of Qwest's performance will be tracked under the existing PIDs so that the Commission can monitor Qwest's overall performance in provisioning analog loops to CLECs.

Q. HAS QWEST REQUESTED ASSISTANCE IN REVIEWING THE BHC PROCESS?

A. Qwest requested assistance from Hitachi Consulting in an effort to differentiate between the current Hot Cut process and the newly proposed BHCP and then to make fact based assessments as to the efficiency, seamlessness and scalability of the new process. Hitachi delves into this in much greater detail in its report but I will provide a high level summary.

Q. PLEASE DESCRIBE HITACHI'S REVIEW OF THE PROCESS.

A. On three different occasions, Qwest has worked with a CLEC to conduct a test utilizing the initial proposed BHCP. The first test took place in Minneapolis, MN on December 17th and 18th, 2003 and entailed the conversion of two separate batches of order on consecutive days utilizing Qwest's original proposed BHCP. As such, pre-wire and lift and lay were both conducted on Due Date and communication was limited to electronic spreadsheets between the companies. The

second test was discussed earlier in my testimony and took into consideration some of the changes suggested by the CLECs in attendance during the BHC Forum – principally changing the time for pre-wire from Due Date to DVA.

Q. DID HITACHI OBSERVE THE CENTRAL OFFICE ACTIVITIES ASSOCIATED WITH THE EXISTING HOT CUT PROCESS?

A. Yes, on different occasions, Hitachi visited central offices in CO, WA, ID, IA and MN to monitor the tasks associated with each of the swim lanes on the process flow. The information witnessed during these observations served as the basis for the assessments Hitachi was performing to ensure that the newly proposed BHCP can meet the needs of the CLEC community not only in those markets where a finding of no impairment is entered, but also where CLECs desire to use the new process for its newly acquired customers.

Q. DID HITACHI LIMIT THEIR OBSERVATIONS TO THE CENTRAL OFFICE?

A. No. Hitachi also conducted observation in many of Qwest work centers including the QCCC, Design Services Center, Service Delivery, Loop Provisioning Center, ("LPC") and Central Office Resource Allocation Center ("CORAC") with the expectation of observing conversions both under the current Hot Cut process as well as the proposed BHCP.

Q. HAS HITACHI MADE AN ASSESSMENT ON QWEST'S ABILITY TO HANDLE THE BHC VOLUMES?

A. Yes. Based on the current volumes being processed through the QCCC, and Hitachi's observations in the field, Hitachi assessed Qwest's capabilities of being able to handle any anticipated increase in volumes of unbundled loops that may occur as a result of elimination of unbundled switching as a UNE. Hitachi's conclusion was that the proposed changes in the process and the systems would allow Qwest to handle the volumes as presented in the testimony of Ms. Million. Hitachi goes into greater detail on its assessment of Qwest's capabilities in its detailed report.

VIII. IMPASSE ISSUES

A. OVERVIEW

Q. DID THE PARTIES RESOLVE ALL THE ISSUES DURING THE BHC FORUM?

A. No. The parties did manage to resolve the large majority of the nearly 50 issues (many with multiple subparts) raised during the BHC Forum, the parties still went to impasse on 19 main issues. As stated above, during the BHC Forum, the key elements of the BHC process were agreed upon by all participants. The remaining impasse issues tended to be either peripheral issues, issues where the CLECs disagree among themselves, or issues relating to the ultimate legal determinations

of the nine-month docket, which nobody expected to be able to resolve. Basically the impasse issues fall into 9 categories:

1. Whether Qwest must offer CLECs a coordinated installation option that allows the CLEC to select the hour of the day for the cut;

2. Whether certain types of orders (IDLC and line splitting) may be excluded from the BHCP;

3. Whether Qwest's proposed systems changes for the BHCP are adequate and whether additional systems modifications should follow the Change Management Process (CMP) given that the CLEC community disagrees about the necessity of the proposed changes;

4. Whether Qwest must deploy "robotic frames" to manage the batch hot cut process;

5. The minimum and maximum size of a batch;

6. The standard installation interval for a batch;

7. The appropriate non-recurring charge for provisioning analog loops using the agreed upon BHCP;

8. Whether Qwest can meet anticipated volumes at an acceptable level of quality volumes; and

9. Whether Qwest must present test data verifying that its BHC proposal works.

The specification of the impasse issues was agreed to at the Forum, and those issues are identified on Exhibits DP-1 and DP-2. We refer to these issues using the numbers assigned to them at the Forum.

B. IMPASSE ISSUE P-3A (SCHEDULING BATCH HOT CUTS AT ANY TIME OF THE DAY)

Q. PLEASE DESCRIBE IMPASSE ISSUE P-3A.

A. Qwest's BHCP proposes to perform all batch hot cuts between the hours of 3:00 AM and 11:00 AM by a dedicated team of two technicians.[48] Qwest's objective is to create a group of employees whose responsibilities include provisioning analog loops using the BHCP. AT&T and Eschelon argued that they should be able to dictate the time of day when Qwest performs a batch hot cut, and that the BHCP should also allow for "coordination," which involves multiple telephone calls back and forth at the time of the cut over. The FCC defined its contemplated BHCP as "a seamless, low cost . . . process for switching mass market customers from one carrier to another."[49] The FCC required state commissions to factor in the "costs and timeliness" in approving a proposed BHCP.[50] Neither of these AT&T and Eschelon proposals are consistent with the efficient, low cost, timely process contemplated by the FCC and should therefore be rejected.

Q. AT&T AND ESCHELON ARGUED THAT THEY SHOULD BE ABLE TO SPECIFY A WINDOW OF TIME AT ANY HOUR OF THE DAY FOR QWEST TO PERFORM A BHC. WHY IS QWEST PROPOSING A 3 A.M. TO 11 A.M. CONVERSION WINDOW?

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48 The 3 AM to 11AM window corresponds to the time zone of the CO associated with the BHC.
49 *TRO* at ¶487.
50 *TRO* at ¶488.

A. There are many reasons why Qwest proposes to use a dedicated team of COTs to perform batch hot cuts between 3:00 AM and 11:00 AM. All of Qwest's reasons are driven toward making the process as seamless as possible, as efficient as possible, and as inexpensive as possible. Moreover, Qwest will continue to provide a CLECs with a Coordinated Cut installation option, it will just not be as part of the BHCP.

Q. DESCRIBE HOW QWEST'S 3:00 AM TO 11:00 AM WINDOW HELPS TO CREATE A SEAMLESS PROCESS.

A. Throughout the BHC Forum, all parties uniformly agreed that the BHCP should attempt to create efficiencies while simultaneously limiting the amount of time an end user is out of service and without the ability to make or receive calls. The proposed 3 AM to 11AM conversion window addresses both of these concerns. When a hot cut is performed, the customer will be without service during the 20 or so seconds it takes to "lift" the line from the Qwest frame and "lay" it onto the CLEC appearance on the ICDF, and there is an additional lag in the customer's ability to receive calls from outside the customer's central office until the CLEC completes the number porting for the line. It is a simple fact that the early morning hours are the least active times for telephone calls. Thus, Qwest has proposed to perform these hot cuts at the time of day when the end-user customer is the least likely to be affected. Moreover, Qwest has committed to having the COTs perform the "lift and lay" work at the beginning of the 3 AM shift, which should all but

eliminate the chance of the end user noticing the momentary dial tone disruption. For both business and residential end users, the conversion activity will take place when a majority of these customers are asleep or are not open for business. This will also allow the CLEC to react to order closure notices and submit the subscription to have the number ported at a time when their customers are, generally, asleep.

Q. DESCRIBE HOW QWEST'S PROPOSED 3:00AM TO 11:00 AM WINDOW CREATES AN EFFICIENT, INEXPENSIVE PROCESS.

A. As set forth above, Qwest proposes to use a dedicated team of two COTs to perform the batch hot cuts, and for this team of COTs to perform the scheduled lift and lays at the beginning of the shift and then use the remainder of the shift to thereafter complete pre-wiring work for lines scheduled to be cut a few days hence. As explained in detail above when describing Qwest's BHCP, Qwest has created a process that automatically sequences the orders in the batch and the COT's pre-wiring and lift and lay work in order to obtain maximum efficiency and reduce costs. AT&T and Eschelon are requesting the ability to interrupt the sequencing of this work and require the COTs to leave their location at any given time to perform lifts and lays at whatever location the CLECs demand. If this proposal is adopted, the dedicated team will no longer be available to perform the work during a designated shift; the systems will not be able to order the lines to be cut; the systems will be overridden, forcing the cut to be managed by inefficient telephone

calls; and all of the efficiencies the parties worked so hard to create in the BHC Forum will disappear.

Q. DID ANY CLEC IN THE BHC FORUM RECOGNIZE THAT THE TELEPHONE CALLS INHERENT IN MANAGING A COORDINATED CUT ARE INEFFICIENT AND INCONSISTENT WITH A PROCESS USED TO CONVERT LARGE VOLUMES OF MASS MARKET CUSTOMERS?

A. Yes. Coincidentally, AT&T recognized that telephone communications between Qwest and the CLEC must be removed to the extent possible from the BHCP in order to create a process that will work for large volumes of mass market customers.[51]

Q. CAN A CLEC THAT WANTS TO USE A COORDINATED CUT PROCESS STILL HAVE THE ABILITY TO USE THAT PROCESS FOR SELECT CUSTOMERS.

A. Yes. The BHCP is one of many analog loop provisioning options that will be available to the CLECs. CLECs will be able to decide the customers they want to transition using the Batch, Basic, Coordinated, and Project methods. All of these options will remain available. During the BHC Forum, Eschelon emphasized that some of their customers provide alarm service, and as such they would want these

[51] 1/7/04 Tr. 72: 6 (John Finnegan - AT&T) "Right now, AT&T's Hot Cut volumes are very low, very small, and the current process relies on telephone calls. Given the low volumes, that's efficient notification process. If there were much higher volumes, that's probably not going to be a very efficient method..."

customers to be cut at a particular time of day with coordination. Eschelon will still be able to cutover such customers using coordination; it will just not be available as part of the BHCP with its lower prices because coordinated hot cuts cannot be consolidated in a manner that gives rise to the efficiencies that yield the lowest cost.

Q. PLEASE SUMMARIZE QWEST'S POSITION ON IMPASSE ISSUE P-3(A).

A. Qwest's proposed BHC process selects a specific window of time to complete BHCs in order to ensure that they can be performed by a dedicated team of people during a time of day when the customers are least likely to be affected. This proposal creates efficiencies, lowers the price and minimizes the impact to the end-user customer. The AT&T/Echelon proposal eliminates all of these efficiencies. Moreover, if a particular customer requires coordination, the coordinated cut process is still available as an option. The CLEC can decide which customers should use the BHCP and which should use one of the other provisioning options. The Commission should adopt Qwest's proposal and limit the BHCP to the 3:00 AM to 11:00 AM window.

C. IMPASSE ISSUE P-11 (ABILITY TO SPECIFY ORDER IN WHICH LINES CUTOVER)

Q. PLEASE DESCRIBE IMPASSE ISSUE P-11.

A. Impasse issue P-11 is related to P-3(A) in that it also involves a CLEC's insistence on the right to reorder the COT's work. At the BHC Forum, Eschelon sought the

ability to dictate the exact sequence in which each line within a batch would be provisioned. This request is unrealistic and makes it physically impossible to create any efficiencies by batching. For example, a COT may be able to complete several orders in one block on a frame and then move several blocks over to work on others to increase efficiency. A CLEC-ordered cut could require the COT to bounce back and forth from block to block to complete each cutover in the precise sequence the CLEC is demanding. This obviously inefficient scenario is completely inconsistent with the FCC's goal of "spreading the loop migration costs among a large number of lines, decreasing per-line cut over costs."[52] It also necessarily adds time to each length of cut. As discussed above, allowing Qwest to control the sequence of the provisioning process ensures that the batch is managed efficiently, as quickly as possible, and at the least possible cost. Eschelon's request should be rejected as wholly impractical.

D. IMPASSE ISSUES P-5, P-8 AND P-21(C) (INCLUSION OF IDLC AND OTHER CONVERSIONS REQUIRING AN INDIVIDUAL FIELD DISPATCH)

Q. PLEASE DESCRIBE RELATED IMPASSE ISSUES P-5 AND P-8.

A. Qwest has defined the BHCP to apply only to unbundled loops that will reuse existing facilities and not require the dispatch of a technician to the field. As a general rule, this will exclude the 9% of loops provisioned over IDLC from the BHCP. Despite this, on a region-wide basis this will allow approximately 91% of

[52] *TRO* ¶487.

existing UNE-P lines and 91% of Qwest retail lines to be provisioned to UNE-Loop using the BHCP. Qwest will, of course, still provision any unbundled loop requiring a field dispatch including loops using IDLC with existing provisioning options. Although AT&T agreed with Qwest that IDLC loops cannot practicably be "batched" for purposes of the BHCP, MCI, Eschelon and McLeod insisted at the Forum that such loops be included (Issue P-5). Eschelon then went one step further and argued that Qwest should include *all* loops requiring a field dispatch in the BHCP (Issue P-8). The Commission should reject both suggestions as irreconciable with the efficient, low cost, timely process contemplated by the FCC.

Q. SHOULD THE INSTALLATION OF A LOOP REQUIRING THE DISPATCH OF AN OUTSIDE TECHNICIAN BE INCLUDED IN A BHC?

A. No. The BHC is a new installation option that is primarily designed to reduce the cost of analog loop installations by taking advantage of the efficiencies gained by converting or migrating "batches" of existing lines – either UNE-P or other types of conversion orders – and reusing existing facilities to the extent possible. Conversion and installation efficiencies can be gained on two fronts: (1) reduction of coordination activities and (2) streamlining of the wiring at various frames in the Qwest central office. Provisioning loops that require the dispatch of a technician to the field is inconsistent with both efficiency categories. If an outside technician is required the necessary coordination increases and the central office can no longer group the wiring activity in the most efficient manner. Moreover, this will mean

that some loops will require a "truck roll" and others will not. By definition, loops provisioned with an outside field dispatch are provisioned on a line at a time basis, or individually. This is inconsistent with the FCC's definition of batch. Specifically:

> Generally . . . we expect [the BHCP] to result in efficiencies associated with performing tasks once for multiple lines that would otherwise have been performed on a line-by-line basis. For example, pursuant to the processes in place at least in some states, the incumbent LEC currently will pre-wire circuits on the central office frame, verify the presence of dial tone, and communicate with competitive LECs regarding problems encountered on a line-by-line basis. **Under a batch hot cut process, these activities might be undertaken simultaneously *for all lines affected by a given batch order*.**[53]

A field dispatch, by definition, cannot be performed for all loops in a given batch simultaneously. As such, they should not be included in the BHCP.

Q. WHAT OPTIONS DO THE CLECS HAVE IF THE INSTALLATION REQUIRES THE DISPATCH OF AN OUTSIDE TECHNICIAN?

A. If the dispatch of an outside technician is required, the CLEC can utilize one of the six existing installation options made available to them today. These options are described in the Wholesale Product Catalog ("PCAT") and the Commission approved SGAT §9.2.2.9.[54]

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53 *TRO* at ¶489 (emphasis added).

54 Located at URL: http://www.qwest.com/wholesale/pcat/unloop.html

Q. IS THE EXCLUSION OF LOOPS PROVISIONED VIA IDLC TECHNOLOGY DIRECTLY TIED TO THE NEED TO DISPATCH AN OUTSIDE TECHNICIAN?

A. Most definitely. Issue P-5 concerns whether the BHCP should include lines provisioned using Integrated Digital Loop Carrier ("IDLC") facilities. In those instances where the UNE-P end user's facilities are currently provisioned over IDLC or in those cases where a retail or resale end user is asking to be converted to the CLEC switching platform and their service resides on IDLC, Qwest must dispatch a field technician to provision an unbundled loop to the customer. The dispatch is required to either obtain new facilities through a facility rearrangement, to copper or Universal DLC ("UDLC"), or to make rearrangements in the DLC through either hair-pinning, nailing the circuit up, or by building an Integrated Network Access ("INA") system. Each of these alternatives offer an interim process until a more permanent solution can be implemented – such adding a Universal shelf to the existing pair gain system. In those instances where no alternatives are available, Qwest has committed, in section 9.2.2.2.1 of the Commission approved SGAT to make "every feasible effort to unbundle the IDLC in order to provide the Unbundled Loop for CLEC."[55] Qwest delivers on this promise by implementing one of the solutions discussed above. Due to the additional complexities of converting these facilities to an unbundled loop, Qwest

[55] Qwest Wyoming SGAT Sixth Revision, July 8, 2002, pg 124.

has asked that the CLEC utilize one of the existing provisioning options and that the work be done during normal business hours.

Q. PLEASE EXPLAIN WHY THE DISPATCH OF AN OUTSIDE TECHNICIAN IS REQUIRED WHEN CONVERTING A UNE-P THAT CURRENTLY RESIDES ON IDLC?

A. In order to change facilities from IDLC to either copper or UDLC, Qwest would be required to dispatch a technician to conduct the rearrangement within the outside plant facilities and then test the newly assigned facility to ensure continuity. This work would entail the movement of one or more jumpers or cross connections at the Feeder/Distribution Interface ("FDI"). In those cases where an INA di-group is already in place or where the conversion is being hair-pinned or nailed-up, Qwest would still have to dispatch a technician to the field in order to perform the same type of continuity testing and jumper movement. In many instances, the work performed on the IDLC itself is conducted by a different technician that would be doing the installation work.

Q. DID THE FCC ANTICIPATE AND ACKNOWLEDGE THE COMPLEXITY AND DIFFICULTIES ASSOCIATED WITH PROVISIONING UNBUNDLED LOOPS OVER IDLC?

A. Yes. At numerous locations within its *UNE Remand Order,* the FCC recognized that unbundling IDLC is a difficult process. Throughout the 271 proceedings this

issue was discussed in great detail, and Qwest agreed to unbundle when IDLC was present; However, Qwest explained and the CLECs generally agreed that such unbundling is a very manually intensive process that requires loop by loop analysis and handling. Again, SGAT § 9.2.2.2.1 memorializes Qwest's commitment to provisioning UNE-Loops when IDLC is present.

Q. THERE APPEARS TO BE A DEGREE OF INCONSISTENCY IN THE CLEC'S ARGUMENT ON THIS POINT. PLEASE EXPLAIN.

A. It is interesting to note that while several CLECs appeared to recognize that provisioning which required an outside technician should not be included in a BHC, only AT&T agreed that IDLC loops should not be included in the batch. During the December 2, 2003 session of the BHC Forum, Mr. John Finnegan of AT&T stated, " I don't think the CLECs are suggesting that IDLC should be part of the batch. It's a question of identifying the IDLC to exclude it from the batch."[56]

Q. DOES QWEST CURRENTLY UNBUNDLE LOOPS THAT WERE SERVED BY IDLC?

A. Yes. Qwest has been successfully unbundling these types of loops and in accordance with the 271 rules will continue to do so even for those UNE-P conversions currently working over IDLC – they just will not be candidates for the BHCP. Exhibits DP-14 and DP-14.1 are the process flow and associated legend

[56] 12/02/03 Tr. at 409:6

that Qwest follows in order to provision UNE-Loops when IDLC is an issue. Exhibit DP-15 is an actual break down of the percentage of UNE-P lines currently working over IDLC today on a state by state basis. Qwest remains committed to provisioning loops, when IDLC is involved, however, these conversions are complex and should not be included as part of a "batch" process. Instead, CLECs should ask Qwest to unbundle loops over IDLC using one of the existing hot cut processes.

Q. THE CLECS PARTICIPATING IN THE FORUM STATED THAT OTHER ILECS HAD COMMITTED TO INCLUDE IDLC CONVERSIONS IN THEIR BHCP. CAN YOU COMMENT ON YOUR FINDING INTO THIS CLAIM?

A. Verizon does not include loops provisioned over IDLC in the BHCP. While Bell South and SBC have committed to convert UNE-P lines working over IDLC, their "batch" proposals for IDLC indicate that the provisioning will be done during normal business hours. Additionally, the IDLC lines will not be "batched" with non-IDLC loops. So in essence their "batch" IDLC processes are very similar to what Qwest has proposed to the CLECs. Namely, the CLECs must submit the orders to be worked during normal business hours and Qwest will use one of the existing processes to ensure that these UNE-P conversions are handled appropriately.

Q. DOES QWEST PROVIDE COMPETITIVE LECS WITH ACCESS TO INFORMATION ABOUT WHICH LOOPS ARE PROVISIONED USING IDLC?

A. Yes. Qwest has many tools available to the CLEC today which would allow them to ascertain this type of information. The ICONN database[57] provides the percentage of both IDLC and UDLC compared to total line counts on a Central Office by Central Office basis. The Raw Loop Data Tool ("RLDT") gives the CLEC a more granular view of each loop on a segment by segment basis. In fact, the CLECs can run a report on an entire wire center and determine the types of facilities serving each individual end user prior to marketing within the wire center. Exhibit DP-16 is a summary of the loop qualification tools that Qwest has made available to the CLECs today.

The Raw Loop Data Tool (RLDT), however, is the primary tool used by CLECs. Exhibit DP-17 shows the frequency with which CLECs use the RLDT. CLECs access the RLDT through IMA-EDI and the IMA-GUI, which provides CLECs with the necessary loop make-up information to allow them to determine if the loop they seek to convert from UNE-P to UNE-L is provisioned over IDLC. See Exhibit DP-17 for the number of times a CLEC accesses the RLDT. The RLDT provides CLECs with information about loop make-up characteristics, including: address, telephone number or circuit ID, CLLI code, terminal ID, load coils, bridged tap, wire gauge, *pair gain devices (such as IDLC)*, cable and pair make-up, MLT

[57] This information can be located at URL: http://www.qwest.com/cgi-bin/iconn/dlc.cgi

distance, and actual loop length by segment. The data supporting the RLDT is obtained via QServ, which accesses LQDB, the same data source that Qwest uses to qualify Qwest Retail DSL service.

For those CLECs that want to obtain loop information on a batch basis, Qwest provides access to an external website, where they can obtain bulk raw loop data by wire center. This website data, accessed outside of IMA, is referred to as the Wire Center Raw Loop Data Tool. This web-based tool provides the same fields of loop make-up information as that provided by the IMA-EDI and the IMA-GUI RLDT. Once again, the source of this data is the same as for the tool that Qwest uses to qualify its Retail DSL service.

Q. DURING THE BHC FORUM, ESCHELON NOTED THAT INFORMATION IN THE RLDT COULD BE MISSING OR INCORRECT AND QUESTIONED THE IMPACT ON THE BHCP. ECSHELON MADE THIS A SEPARATE IMPASSE ISSUE (21(C) TO EXHIBIT DP-2). PLEASE COMMENT ON THIS ISSUE.

A. The claim made by Eschelon was unsupported by any formal documentation and when asked to provide specific examples, none was provided. This issue was dealt with in great detail in the FCC's 271 decisions. Qwest also makes available a manual process that permits CLECs to obtain loop make-up information if the CLEC believes that the returned loop information may be unclear or incomplete. The FCC acknowledged this as a supplemental method for verifying that a loop can

support advanced loop technologies. [58] Qwest will perform a manual search of its back office records, systems and databases containing loop information to obtain the loop make-up information requested by the CLEC.[59] If loop make-up information is missing for a particular loop segment, Qwest will investigate its outside plant engineering records for the cable and pair from the central office to the SAI and from the SAI to the customer's serving terminal. Qwest has agreed to return the loop make-up information to the CLEC electronically within 48 hours. Qwest also then will update the applicable databases with this loop make-up information. The documentation describing this issue can be found at http://www.qwest.com/wholesale/downloads/lgrid_clecjobaid.pdf. Appendix D of this job aid is the Request for Manual Loop-Up and provides the CLEC with detailed steps to follow if they were to make an inquiry and find either no

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[58] *See Qwest 9-State 271 Order* at ¶ 62 and ¶ 70 ("For these reasons, we cannot find that the RLDT's alleged unreliability denies competitors a meaningful opportunity to compete."); *see also* SGAT § 9.2.2.8.6. Specifically the SGAT language states:

> "[i]f the Loop make-up information for a particular facility is not contained in the Loop qualification tools, if the Loop qualification tools return unclear or incomplete information, or if CLEC identifies any inaccuracy in the information returned from the Loop qualification tools, and provides Qwest with the basis for CLEC's belief that the information is inaccurate, then CLEC may request, and Qwest will perform a manual search of the company's records, back office systems and databases where Loop information resides. Qwest will provide CLEC via email, the Loop information identified during the manual search within forty-eight (48) hours of Qwest's receipt of CLEC's request for manual search. The email will contain the following Loop make-up information: composition of the Loop material; location and type of pair gain devices, the existence of any terminals, such as remote terminals or digital Loop terminals, Bridged Tap, and load coils; Loop length, and wire gauge. In the case of Loops served by digital Loop carrier, the email will provide the availability of spare feeder and distribution facilities that could be used to provision service to the Customer, including any spare facilities not connected to the Switch and Loop make-up for such spare facilities. After completion of the investigation, Qwest will load the information into the LFACS database, which will populate this Loop information into the fields in the Loop qualification tools."

[59] Additional details are provided in Appendix D of Exhibit LN-OSS-26 (Loop Qualification and Raw Loop Data CLEC Job Aid).

information or unclear information. Since July 2003,Qwest has received only 67 CLECs for manual look-up and when comparing that to the total number of RLDT queries it breaks down to a percentage of facilities not available or clear .0009% of the time. *See* Confidential Exhibit DP-18. This does not appear to be an issue at all.

Q. DOES QWEST USE THESE SAME TOOLS FOR INFORMATION WHEN HANDLING ITS RETAIL CUSTOMERS?

A. Yes. Loop qualification information for both Qwest Retail and CLECs comes from the LODB, whose underlying source is the LFACS database. Therefore, CLECs are receiving the same loop qualification information that is available to, and used by, Qwest Retail.

Q. HOW SHOULD THE COMMISSIONS RULE ON ISSUES P-5, P-8 AND P-21(C)?

A. Based on the manual nature of performing work in the outside plant realm when an existing UNE-P end user is provisioned over IDLC facilities, and the fact that loop provisioned in this manner will require the dispatch of an outside plant field technician, the Commission should find that the BHCP is limited to reuse of facilities where there is no need for a field technician dispatch. Loops requiring a field technician dispatch should be provisioned using Qwest's existing loop

provisioning processes. The Commission should reject the CLEC requests as set forth in Issues P-5 and P-8.

E. IMPASSE ISSUE P-6(A) (LINE SPLIT LOOPS)

Q. PLEASE DESCRIBE IMPASSE ISSUE P-6(A).

A. This issue concerns whether or not Qwest should include "line splitting" arrangements in the BHCP. Line splitting is a situation where one CLEC provides voice service to a customer and another CLEC provides data service over the same loop. This is another situation that adds a level of complexity to the provisioning process, which is incompatible with the seamlessness and efficiencies contemplated by the FCC.

Q. SHOULD UNE-P LOOPS THAT ARE CURRENTLY IN A LINE SPLITTING ARRANGEMENT BE INCLUDED IN THE BHCP?

A. Much like the additional work involved with the IDLC loops, the inclusion of Line Splitting arrangements undermines the efficiencies of the BCHP. In this case, the conversion of Line Splitting includes additional coordination, and Central Office wiring for the migration of both the voice and the data services. This work causes added complexities that are inconsistent with the proposed BHCP. Qwest will provision these lines, again using the existing processes created for this exact purpose.

Q. DID THE FCC CONTEMPLATE THAT LINE SPLIT LOOPS WOULD BE INCLUDED WITHIN THE BHCP?

A. No. To the contrary, the FCC contemplated that the BHCP was to be created exclusively for the provision of voice service. A batch hot cut process is intended to be a tool "for switching *mass market* customers from one carrier to another."[60] The FCC specifically defined "mass market customers: as "*analogue voice customers* that purchase only a limited number of POTS lines."[61] Covad, the primary CLEC pushing for the inclusion of line-split loops in the BHCP, knows this full well: it is refusing to answer discovery concerning its data facilities precisely on the ground that only circuit-switched voice services are relevant to the mass-market switching inquiry, not the data services for which line splitting is used.[62] Covad is trying to have it both ways.

Q. IN ORDER TO AVOID ANY CONFUSION AROUND THE DIFFERENT TYPES OF "VOICE/DATA" PRODUCTS, BRIEFLY DESCRIBE LINE SHARING, LINE SPLITTING AND LOOP SPLITTING TYPE LOOPS.

A. **Line Sharing** – this product provides the CLEC with the opportunity to offer end users advanced data services over the existing copper loop that provides the end user's analog voice-grade service. This is done by using the high frequency portion of the loop (the frequency above the voice band) of the copper loop where Qwest is

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60 *TRO* ¶487 (emphasis added).
61 *Id.* ¶ 497 (emphasis added).

the voice service provider to the end user. *Simply put, Qwest provides the voice and the CLEC provides the data.*

Line Splitting – this product provides the CLEC's with the opportunity to offer advanced data service simultaneously with an existing UNE-P by using the frequency range above the voice band on the copper loop. The advanced data service may be provided by a CLEC or DLEC or another data service provider chosen by the CLEC. Only one customer of record will be determined by Qwest in this CLEC/DLEC partnership. Line Splitting can only be requested on existing UNE-P POTS. The end-user must have dial tone originating from a Qwest switch in the CO and the CLEC or DLEC must provide the end-user with all equipment required to separate these distinct services. *In this scenario, the voice is provided from the Qwest switch (CLEC UNE-P) and the data is provided by the CLEC/DLEC.*

Loop Splitting – this product provides the CLEC or DLEC with the opportunity to offer advanced data service simultaneously with an existing Unbundled Local Loop by using the high frequency portion of the loop. The advanced data service may be provided by the CLEC or DLEC or another service provider chosen by the CLEC. As with line splitting, only one customer of record can be identified to Qwest and that is determined by the CLEC or DLEC. The customer of record is billed for the

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[62] *See, elgl,*, Responses of Covad Communications to Staff's 2nd Set of Data Requests, *In the Mater of ILEC Unbundling Obligations as a Result of the Federal Triennial Review Order*, Dkt. No. T-00000A-03-0369, at 3 (citing *TRO* ¶ 497).

Loop Splitting arrangement. *In this scenario, the CLEC and DLEC are responsible for providing both the voice and data service.*

Q. ARE THERE ANY OTHER CONCERNS UNIQUE TO LINE SPLITTING THAT FACTORED INTO QWEST'S DECISION TO EXCLUDE THEM FROM THE BHCP?

A. Yes. The BHCP will convert UNE-P voice services, currently working on an analog unbundled loop. In a Line Splitting scenario, the UNE-P voice plus the CLEC's data service would both transverse the outside plant facilities in order to connect to the CLECs end user. The fundamental difference is that the loop type used in this architecture is not an analog voice grade loop but a non-loaded copper loop. In an analog unbundled loop environment, the CLEC has "control" of the data portion of the facility and may make arrangements with any DLEC to provide the data service. Accordingly, the CLEC would have to coordinate installation activities with the data provide and Qwest would have not record of the data service riding the analog loop. If for some reason, Qwest engineering or outside plant technicians were to rearrange outside plant facilities, the Qwest records would indicate that the technical requirements for the loop were analog or voice service and changes could be made to outside plant that may pose some risk to the data service. However, if the CLEC used the non-loaded loop, Qwest would know that the facility needed to support data services.

Q. HOW MANY LINE SPLITTING ARRANGEMENTS ARE IN SERVICE THROUGHOUT THE REGION?

A. There are currently only 748 line splitting arrangements across 6 of Qwest's 14 states.[63] Confidential Exhibit DP-22 is a break down of the line splitting circuits by state and Central Office location. To date Qwest is not aware of any Loop Splitting arrangements in its territory. Once again, Qwest understands its unbundling responsibilities and agrees to convert Line Splitting arrangements according to the CLEC's request. However, Qwest does not believe that this conversion meets the criteria for a BHC. The work should be conducted during normal business hours to allow any issues associated with the movement of the voice or data to be coordinated between the CLEC and DLEC and give each party time to resolve any issues in a timely manner. The BHC process was intended to apply to voice grade loops only, not loops that currently have some form of data services riding the high frequency portion of the loop.

Q. DOES QWEST CURRENTLY HAVE A PROCESS IN PLACE THAT WOULD ALLOW FOR THE MIGRATION OF THESE LINE SPLITTING ORDERS?

A. Exhibit DP-20 is an excerpt from the PCAT which describes Qwest's process to convert a UNE-P line with line splitting to Loop Splitting.[64] With the current

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[63] The states included in the line splitting count are Arizona, Colorado, Minnesota, Nebraska, Oregon and Washington.

[64] Conversion activity is documented in the PCAT at URL: http://www.qwest.com/wholesale/clecs/migrateconvert.html

volumes, Qwest would have to convert less than two (2) line splitting loops per day across the region during normal business hours and complete the entire embedded base of line splitting loops well within the time frames set forth by the FCC. Even if volumes were to increase by 400% - 500% percent, as some CLECs have projected, Qwest would have to increase the volumes of orders processed on any day to less than 10 orders across the region or about 40 or 50 line splitting conversion per week which is well within QCCC's current capabilities. Moreover, an increase of this magnitude would only increase the line splitting base to less than ½ of one percent of the entire UNE-P base.

Q. YOUR PRIOR RESPONSE SUGGESTS THAT CLECS ONLY SEEK TO USE THE BHCP TO PROVISION EXISTING LINE SPLITTING ARRANGEMENTS, NOT NEW ARRANGEMENTS THAT COME INTO EXISTENCE AFTER DECEMBER 2, 2004. IS THIS CORRECT?

A. Yes. The CLECs have agreed that creation of a new line splitting arrangement is much too complex for the BHCP. Mike Zulivic, representing Covad Communications, commented on this issue during the forum and stated that given the increased number of cross-connects required in a new line splitting arrangement, it would be fair to exclude the new arrangements from the batch

process.[65] Thus, this issue is a relatively narrow one that will only impact line splitting arrangements that exist on or before December 2, 2004.

Q. IS THERE ADDED COMPLEXITY TO PROVISIONING A LINE SPLITTING ARRANGEMENT FROM A TRADITIONAL ANALOG LOOP.

A. Yes. There are several additional jumpers that need to be connected in order to transition a line splitting arrangement to a loop splitting arrangement. These additional jumpers again create added complexities. Moreover, given the small number of line-splitting arrangements in the Qwest region, it is highly unlikely that any batch could involve more than one such arrangement. As stated above, the FCC's contemplated BHCP is for "activities might be undertaken simultaneously *for all lines affected by a given batch order.*"[66] There will be no way to perform this work simultaneously for line splitting arrangements the added work will be for an individual loop which is inconsistent with the FCC's stated purpose of achieving efficiencies.

Q. PLEASE SUMMARIZE YOUR TESTIMONY ON ISSUE P-6, CONCERNING LINE SPLITTING ARRANGEMENTS.

A. The FCC's stated purpose for the BHCP was to transition voice grade service. The CLECs' desire to include line splitting arrangements in the BHCP is inconsistent

[65] 12/2/03 Tr. at 444:6 (exchange between Chuck Steese of Qwest and Mike Zulevic of Covad) Mr. STEESE: So really what we're talking about here is whatever the embedded base is at the time the line splitting goes away as being the total amount of lines that we are concerned about for batch hot cut;; is that fair? MR. ZULEVIC: I think that's fair.

with this objective, as such lines include digital service. Moreover, provisioning a line splitting arrangement requires additional jumper work in the central office thereby eliminating efficiencies. Finally, there are only a very small number of line splitting arrangements in the Qwest region. The CLECs will not be prejudiced by the exclusion of such lines from the BHCP. Instead, CLECs can use Qwest's existing processes for the provision of such lines.

F. IMPASSE ISSUE P-10(D)(4) (LSR REQUIREMENT)

Q. AT THE BHC FORUM, DID THE PARTIES DISCUSS THE SYSTEMS THAT WOULD IMPACT THE BHCP?

A. Yes. There were several issues discussed, with the principle emphasis being on the Batch Status Scheduling Tool discussed above. However, there were a few systems issues related issues that went to impasse. These systems concerned three different subjects: (1) whether CLECs should have to use the time tested LSR process for submitting batch hot cut orders; (2) whether Qwest must have a method, in addition to the Batch Status Tool to notify CLECs of trouble on a line, and when the batch is complete; and (3) whether the Change Management Process is the correct forum to request additional systems changes, especially when it is apparent that CLECs disagree about the need for such systems changes.

Q. PLEASE DESCRIBE IMPASSE ISSUE P-10(D)(4) FROM EXHIBIT.

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[66] *TRO* at ¶489 (emphasis added).

A. Qwest's proposed BHCP requires CLECs to submit LSRs to complete a batch via an electronic interface. This is the exact method that CLECs have used for issuance of orders for analog loops for many years. Most of the CLECs that participated in the BHC Forum agreed with this approach. Eschelon, however, asked that CLECs be able to submit orders for batches using a spreadsheet. The Commission should reject Eschelon's request for an alternative ordering method.

Q. QWEST HAS PROPOSED USING THE CURRENT LSR PROCESS WITH MODIFICATIONS FOR BHC ORDERS. DO ALL THE CLECS USE THE CURRENT LSR PROCESS THROUGH ONE OF THE SYSTEMS?

A. Yes, it is the process for entering orders for basic UNE-Loop and coordinated hot cuts for all CLECs. As discussed previously, CLECs submit an LSR for a BHC order via either EDI or IMA GUI in the same manner they do for basic requests today.

Q. ARE LSR'S USED THROUGHOUT THE INDUSTRY?

A. Yes. LSR's are utilized throughout the telecom industry and are maintained under the Ordering and Billing Forum Guidelines.

Q. ONE GREAT EFFICIENCY OF THE LSR PROCESS IS THE POTENTIAL FOR FLOW-THROUGH. WILL BATCH HOT CUT LSRS BE ELIGIBLE FOR FLOW-THROUGH?

A. Yes. Batch Hot Cut orders are flow through eligible. The LSR's for such orders will flow through in accordance to the existing flow through standards as they do today, again increasing the efficiency of the process.[67] The flow though process will substantially expedite the process, lower the cost and create efficiencies.

Q. WHAT EFFICIENCIES RESULT FROM USING THE LSR PROCESS?

A. One of the goals of a batch hot cut process was to ensure efficiency and reduce costs. The reuse of the existing interfaces into IMA that CLECs already have in place for the current LSR Process results in significant benefits and efficiency. Utilizing existing systems and process will obviously minimize any development and additional training for the CLEC representatives who will deal with BHC orders. This cost efficiency is also combined with the minimal process changes necessary to process the order.

Q. WILL THERE BE ANY CHANGES TO THE CURRENT LSR ORDERING PROCESS FOR A CLEC SUBMITTING BHC ORDERS?

A. There will only be a few minor changes to the LSR ordering process for a batch hot cut. The following table illustrates the specific field and data that will be required on the LSR form to denote a BHC order:

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[67] Exceptions to flow through are listed in the Ordering Overview PCAT at http://www.qwest.com/wholesale/clecs/ordering.html.

LSR FIELD	VALUE FOR BHC ORDER
CHC	B
APPCON	Confirmation Number from Scheduling Tool
DDD	Due Date from the Scheduling Tool
REQRTY	"AA" or "BB"
ACT	"V" or "Z"
DSPTCH	"N" or blank
NC	"LX--"

Q. PLEASE DESCRIBE HOW THE BHC SPECIFIC INFORMATION WILL BE ENTERED.

A. The CHC field utilizes a drop down menu to which Qwest will add the "B" option to indicate a BHC order. CLEC representatives entering information into the LSR form would have a choice of entering a Y, N or B from the drop down menu. For a BHC order, the representative would simply choose "B". Similarly, the CLEC representative entering a BHC order in the APPCON and DDD fields will insert the confirmation number and due date obtained earlier from the scheduler tool. Qwest is developing IMA edits that recognize BHC orders, and require that the appropriate information (as listed in the table above) be entered in the REQRTY, ACT,

DSPTCH and NC fields. This will ensure that the correct information will always be entered into those fields before submission.

Q. WOULD THESE CHANGES REQUIRE THE CLECS TO UNDERTAKE ADDITIONAL TRAINING?

A. These changes are so minor that training should not be necessary. Nonetheless, Qwest will offer standard training, which is provided no less than 21 days before the IMA release production date. Web-based training is available for the life of the IMA release.

Q. ESCHELON HAS REQUESTED (OR STATED THAT IT IS NECESSARY TO HAVE) A NEW INTERFACE JUST FOR BHC LSR'S.[68] IS THAT NECESSARY?

A. No. As I explained earlier, the current ordering systems, IMA GUI and IMA EDI, are both fully functional, have been rigorously tested, and are a proven method presently used by CLECs to submit LSR's today. A separate system for just BHC is duplicative and unnecessary. The systems in use today provide the CLECs with the appropriate tools to enter HBC orders with a minimal amount of distinction between an LSR for the BHC and an LSR submitted as an individual order.

[68] Batch Hot Cut Forum, December 19, 2003, Page 50, lines 13-53.

Q. HAVE ANY CLECS OTHER THAN ESCHELON COMMENTED ON ALTERNATE ORDER SUBMISSION METHODS, LIKE SPREADSHEETS?

A. No. To the contrary, several CLECs indicated they did not want to manually generate spreadsheets. The other CLEC participants in the BHC Forum were focused on use of the LSR process, use of existing interfaces, and achieving flow through.

Q. HOW SHOULD THE COMMISSION RULE ON THIS IMPASSE ISSUE?

A. The Commission should approve the use of the LSR process for submitting BHC orders. The LSR process is known and used by the CLECs today, efficient, and adaptable to BCH orders.

G. IMPASSE ISSUE P-23 (STATUS TOOL AND CLEC NOTIFICATION)

Q. PLEASE DESCRIBE IMPASSE ISSUES P-23.

A. In the BHC Forum, Qwest agreed to create a Status Tool that will inform the CLEC of situations when a line in the batch is deemed to be in trouble (i.e. No Dial Tone or bad CFA) and to notify the CLECs when the batch is complete. In addition, Qwest has encouraged CLECs to utilize the "trap and trace" technology inherent in their switch that can immediately notify the CLEC when each line in a batch has been provisioned. In addition to these methods, AT&T and McLeod have requested EDI or e-mail notification of both troubles and completion of the batch. In stark contrast, MCI believes the current Status Tool coupled with "trap and trace" is

adequate. The Commission should find that Qwest's proposed systems are adequate, and that any additional proposed systems changes should be taken to the Change Management Process (CMP) where the industry can evaluate the wisdom and need for additional system changes.

Q. WHAT WAS QWEST'S ORIGINAL PROPOSAL REGARDING COMMUNICATING BATCH HOT CUT STATUSES TO THE CLECS?

A. In the original BHC Forum which took place December 1-3, 2003, Qwest proposed that CLECs receive Batch Hot Cut status information via e-mail.

Q. WHAT WAS THE CLECS' RESPONSE TO THIS PROPOSAL?

A. Several CLECs proposed that an online tool be used instead of Qwest's suggestion that e-mail be used to communicate status on batch hot cuts.[69] The CLECs, including AT&T, argued that e-mail notification was subject to the vagaries of the Internet and therefore unreliable.

Q. WHAT WAS QWEST'S REVISED PROPOSAL BASED ON THE CLECS' RESPONSE?

[69] See December 1-3, 2003 Batch Hot Cut Forum Transcript. Page 37, Lines 15-17. Ms. Lichtenberg of MCI stated "We propose there be an on-line due date schedule and an on-line tracking system, as opposed to e-mails, et cetera." Page 239, lines 2-4. Ms. Sprague of McLeod USA stated "From a manual perspective, I'm not one for e-mail just because of all the problems we have with e-mail." Page 530, Line 4. Ms. Lichtenberg again stated "We're concerned about the e-mails." Page 534, Lines 1-7.

A. In response to the CLECs' suggestion, Qwest then proposed that a web-based GUI status tool be created which would report Batch Hot Cut statuses. The status tool would report jeopardy, pending, and completion information.[70]

Q. WHAT WAS THE CLECS' RESPONSE TO THIS REVISED PROPOSAL?

A. The CLECs' response was surprising. While MCI fully supported the web-based GUI status tool repeatedly in the January Forum[71], other CLECs contradicted MCI's position and their own statements from the December Forum, essentially stating that other communication tools would be preferred. For example, Covad indicated that some CLECs would prefer to have communication via the web-based status tool AND e-mail.

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[70] January 6-8, 2003 Batch Hot Cut Forum Transcript. January 6, 2003, Page 26, Lines 17-18. Mr. Zulevic of Covad stated "...how much effort to send an email and then the updates to the website?"

[70] See January 6-8, 2003 Batch Hot Cut Forum Transcript. January 6, 2003, Page 21, Lines 17-18. Mr. Finnegan of AT&T stated "My first reaction is that I would prefer the email." January 7, 2003, Page 72, Lines 6-19. Mr. Finnegan of AT&T stated "Right now, AT&T's Hot Cut volumes are very low, very small, and the current process relies on telephone calls. Given the low volumes, that's efficient notification process. If there were much higher volumes, that's probably not going to be a very efficient method, and I'm open to the possibility of this type [GUI-based] of push solution -- or excuse me, pull solution, but at the same time, I don't want to commit that this is the only solution that should be explored, in that there are not, perhaps -- other than e-mail -- acceptable push solutions that might be easier to implement from a programming perspective, might avoid some of the latency issues that e-mail has...".

[71] See January 6-8, 2003 Batch Hot Cut Forum Transcript. January 7, 2003, Page 70, Line 2. Ms. Lichtenberg of MCI stated "...we do support this Web-based system...". Page 74, Line 11. Ms. Lichtenberg of MCI stated "...this tool will help us...". Page 162, Line16-17. Ms. Lichtenberg of MCI stated "...I think it is a tool that makes everybody's life easier."

[22] See January 6-8, 2003 Batch Hot Cut Forum Transcript. January 6, 2003, Page 21, Lines 17-18. Mr. Finnegan of AT&T stated "My first reaction is that I would prefer the e-mail." January 7, 2003, Page 72, Lines 6-19. Mr. Finnegan of AT&T stated "Right now, AT&T's Hot Cut volumes are very low, very small, and the current process relies on telephone calls. Given the low volumes, that's efficient notification process. If there were much higher volumes, that's probably not going to be a very efficient method, and I'm open to the possibility of this type [GUI-based] of push solution -- or excuse me, pull solution, but at the same time, I don't want to commit that this is the only solution that should be explored, in that there are

Q. WHAT TWO PIECES OF INFORMATION DOES THE WEB-BASED GUI STATUS TOOL GIVE THE CLECS?

A. The web-based GUI status tool gives the CLECs information about order jeopardy and order completion.

Q. HOW WILL QWEST HANDLE JEOPARDY REPORTING VIA THE WEB-BASED GUI STATUS TOOL?

A. As part of the Batch Hot Cut process, Qwest will perform the pre-wiring and dial tone test on day two or three of the Batch Hot Cut Timeline. If the dial tone test fails, the Central Office Technician updates WFA with the appropriate jeopardy status. The web-based GUI pulls the jeopardy status from WFA and indicates the line is in a jeopardy section on the GUI. WFA information will be queried every 15 minutes and once the data is populated in a intermediate database, it will be posted immediately to the status GUI. The GUI will also indicate that the CLECs have until close of business on day six to resolve the dial tone issue. Assuming a 7-day interval, the CLECs will then have 3 days to rectify the situation.

Q. HOW WILL THE CLECS ALERT QWEST THAT THE PROBLEM ON A JEOPARDIZED LINE HAS BEEN RESOLVED?

A. CLECs are not required to send an e-mail to the QCCC. The CLECs either simply resolve the problem or submit a supplemental order.

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not, perhaps -- other than e-mail -- acceptable push solutions that might be easier to implement from a

Q. IN THE JANUARY FORUM AT&T ALLEGED THAT THE WEB-BASED GUI STATUS TOOL IS NOT SUFFICIENT FOR COMPLETION REPORTING. HOW WILL QWEST COMMUNICATE COMPLETED BATCH HOT CUT INFORMATION TO THE CLECS?

A. Qwest will communicate completed Batch Hot Cut information to the CLECs via the web-based GUI status tool. When a Central Office Technician (COT) successfully completes the "lift and lay" of the first line in a batch, he/she will indicate in WFA that the line has been cut. Qwest expects to have WFA completion information updated to the web-based GUI status tool every 15 minutes. Once the application queries WFA, the information will immediately post to the BST. The COT will then continue with the "lift and lay" for the remaining 24 lines in the batch. Once the 24 lines in the batch have been cut over successfully or jeopardied, the COT will indicate in WFA that the remaining lines have been completed.

In addition, the CLECs have the opportunity to receive immediate completion conformation via "trap and trace". A complete discussion of "trap and trace" is discussed above. AT&T and McLeod recognize the value of using "trap and trace," Qwest has already built redundancies into the process. Between the Status Tool and trap and trace, redundancies are created. A third method of notifying a CLEC about order completion is simply unnecessary. This is

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programming perspective, might avoid some of the latency issues that e-mail has...".

highlighted by the fact that MCI did not believe anything more is necessary. Given the divergent views of the CLECs, this is an ideal issue to take to Change Management where the industry can obtain an idea of the inherent cost, CLEC demand for the changes, and whether the industry believes it is sufficiently important to prioritize with a new release.

Q. HOW SHOULD THE COMMISSION RULE ON THIS IMPASSE ISSUE?

A. Based upon the discussion above, The Commission should rule in favor of Qwest on Impasse Issue P-23. The majority of the CLECs embraced a GUI status tool for communicating BHC information rather than communication via e-mail. The GUI status tool will communicate jeopardy and completion status information in a timely manner which is more than sufficient for the CLECs to service their customers. CLECs will also be able to use a "trap and trace" solution for order completion. Another method of order notification is simply unnecessary.

H. IMPASSE ISSUE P-24 (NOTIFICATION OF COMPLETION)

Q. PLEASE DESCRIBE IMPASSE ISSUE P-23.

A. This question concerns the frequency with which Qwest will update the information in the Status Tool. Qwest stated that information will update no slower than every 15 minutes, and therefore will never be more than 29 minutes late. MCI asked that the tool update every 10 minutes, so the information will never be more than 19 minutes late. This dispute centers on technical feasibility and the reality of the

length of time it takes systems to update. Qwest will update the system as quickly as possible; however, there may be times when there is nothing that Qwest can do to speed the process along. The Commission should find that Qwest's update process is adequate.

Q. HOW OFTEN WILL THE WEB-BASED GUI STATUS TOOL BE UPDATED WITH BATCH HOT CUT INFORMATION?

A. Qwest will design an application that queries WFA for all Batch Hot Cut information every 15 minutes. Once the application queries WFA, the information will immediately post to the BST.

Q. HOW SHOULD THE COMMISSION RULE ON THIS IMPASSE ISSUE?

A. The Commission should rule that querying WFA every 15 minutes is sufficient for communicating BHC information to the CLECs.

I. IMPASSE ISSUES P-12 AND P-29 (INTEGRATION WITH CMP AND PENDING CR FOR MIGRATION BY TELEPHONE NUMBER

Q. PLEASE DESCRIBE IMPASSE ISSUES P-12 AND P-29 FROM EXHIBIT DP-2

A. Both of these issues concern systems changes proposed by MCI that Qwest does not believe are necessary to support the BHCP. MCI asks that the Commission order these changes as a "regulatory mandate" such that Qwest has no choice but to

implement them. Qwest on the other hand, believes that systems enhancements should go through the Change Management Process (CMP) where the CLEC community has an opportunity to decide the importance of the proposed systems changes. If the Commission orders inclusion of these enhancements, Qwest will have no choice but to implement, and the CLEC community runs the risk that other issues that they believe are more important may drop out of prioritization. The CMP exists for a reason. The Commission should let the process work as it was intended. The Commission should reject MCI Issue Nos. P-12 and P-29.

Q. MCI WANTS A NEW IMA RELEASE OUTSIDE OF CMP DEDICATED TO ONLY THE TRO.[72] [ISSUE P-29] IS THIS NECESSARY OR EFFICIENT?

A. No. The Change Management Process (CMP) was established for the specific purpose of managing system changes, in particular IMA releases. Qwest's Wholesale Change Management Document mandates that "[a] CLEC or Qwest seeking to change an existing OSS Interface, to establish a new OSS Interface, or to retire an existing OSS Interface must submit a Change Request (CR)."[73] Since a new IMA release with the changes required by the *TRO* would require changes to existing code and documentation in an existing OSS interface, CMP is the appropriate forum for addressing those changes and ensuring proper communication to all CLECs is followed. Taking a release of IMA outside the

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72 Batch Hot Cut Forum, January 6, 2004, page 206, line 22 - page 208 line 9

73 Qwest Wholesale Change Management Process Document, which is publicly available at http://www.qwest.com/wholesale/cmp/whatiscmp.html, p. 24 (emphasis added).

CMP negates its use as the monitor and manager of the development that in essence, provides efficiency, consistency, communication and CLEC participation.

Q. HAS MCI PARTICIPATED IN THE CMP?

A. MCI is an active participant in the CMP. In fact, they fully participated in the redesign of the CMP,[74] and currently participates as one of the six (6) CLEC members of the CMP Oversight Committee. In other words, MCI seeks to rescind the very CMP language it agreed to in the past.

Q. IS CMP ABLE TO MANAGE A LARGE SCALE EFFORT SUCH AS THE BHC, ESPECIALLY GIVEN CUTS IN THE IMA RELEASE CAPACITY[75]?

A. Yes. CMP's ability to implement large regulatory CR's was specifically considered in the CMP Redesign effort.[76] The CLECs, including MCI, and Qwest contemplated how to manage a scenario in which a large number of regulatory CR's took up a full IMA release.[77] The language in the CMP document, which MCI accepted, was specifically drafted to account for this very situation. The CMP was designed for and is capable of handling this implementation.

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[74] MCI (T.K.A. WorldCom) played a very significant role in the redesign of the CMP as a member of the Core Team. MCI representatives, usually three or four, were present at every CMP Redesign meeting. In the vast majority of those meetings, an MCI attorney was also present. See, CMP Redesign Core Team Attendance Record-Revised 10-21-02 available at http://www.qwest.com/wholesale/cmp/redesign.html .

[75] In November 2003, Qwest announced to the CLECs at the monthly CMP meeting, that due to the economic conditions present today, the number of releases for IMA would be changed from 3 to 2 for 2004 and that Qwest can only allocate 70,000 hours of IMA capacity in 2004.

[76] CMP Redesign Team Meeting Minutes, Thursday, January 24, 2002.

[77] Id.

Q. DOES THE CMP HAVE A PROCESS FOR DEALING WITH ORDERS FROM STATE COMMISSIONS OR THE FCC?

A. Yes. The CMP has a specific process for regulatory CR's, those mandated by regulatory or legal entities.[78]

Q. WHAT IS A REGULATORY CR?

A. Section 4.1 of the CMP Document defines a regulatory CR as follows:

> A Regulatory Change is mandated by regulatory or legal entities, such as the Federal Communications Commission (FCC), a state commission/authority, or state and federal courts. Regulatory changes are not voluntary but are requisite to comply with newly passed legislation, regulatory requirements, or court rulings. Either the CLEC or Qwest may originate the Change Request.

Q. IF THE COMMISSION ACCEPTS QWEST'S PROPOSAL ON THIS IMPASSE ISSUE, WOULD THE CR'S INVOLVED BECOME REGULATORY CR'S?

A. Qwest believes that change requests submitted to CMP to implement changes to systems as a result of the *TRO*, clearly fall within the CMP definition of regulatory changes listed above. A party submitting a Regulatory CR must also provide sufficient information to justify Regulatory CR treatment. Any CLEC or Qwest may object to the classification of a CR as regulatory and, if such an objection is raised, the CR will not be treated as a regulatory change unless the CLECs and

Qwest unanimously agree to such treatment.[79] In the present situation, the *TRO* issued by the FCC delegates authority to the Commission to approve and order the BHC process; thus, any objection to this being a regulatory CR would be hard to imagine.[80] Qwest must implement Regulatory CR's by the time specified in the regulatory requirement or, if no time is specified, as soon as practicable.[81] Most importantly, Regulatory CR's go "above the line" and are implemented ahead of any other non-regulatory CR's. This means the more regulatory CR's, the less money is available for alternative development that may be important, but is not required by Commission order.

Q. HOW SHOULD THE COMMISSION RULE ON IMPASSE ISSUE P-29?

A. Based upon the discussion above, The Commission should find that a new IMA release outside of CMP will be wasteful, inconsistent with CMP, and not necessary to implement the changes dictated by the *TRO*.

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78 CMP Document, Sections 4.1, 5.1.1 and 5.1.2

79 CMP Document, Section 5.1.1.

80 CMP provides for dispute resolution of this issue to be taken to a state commission for resolution. CMP Document, Section 15.0

81 CMP Document, Section 10.2.1.

Q. AT THE BATCH HOT CUT FORUM, MCI REQUESTED A MODIFICATION TO IMA THAT WOULD ALLOW CLECS TO IDENTIFY AND CONVERT A CUSTOMER FROM UNE-P TO UNE-L BY CUSTOMER TELEPHONE NUMBER ("TN") AND SERVICE ADDRESS NUMBER ("SANO") ONLY.[82] IS THIS FUNCTIONALITY INCLUDED IN QWEST'S BATCH HOT CUT PROPOSAL?

A. No. MCI's change request is a system enhancement that is not essential to an efficient Batch Hot Cut process. Qwest's Batch Hot Cut proposal includes two significant changes to the pre-ordering and provisioning phases of Qwest's OSS interfaces. Qwest views these as critical to an efficient Batch Hot Cut process. The MCI change request is not. For example, in the last year, CLECs have submitted over 150,000 LSRs for conversion of lines to UNE-L without the requested change. In fact, MCI previously viewed this change as so insignificant that they did not include it in a similar earlier CR they submitted for another product.

Q. HAS MCI TAKEN THIS CHANGE TO THE CMP? HAS THIS CR BEEN PROCESSED?

A. MCI recently submitted a CR to CMP seeking the modification to IMA that would allow CLECs to identify and convert a customer from UNE-P to UNE-L by customer telephone number ("TN") and service address number ("SANO") only.

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[82] Batch Hot Cut Forum, January 6, 2004, page 200, lines 19-20

CR (SCR1204003-1) was submitted to CMP by MCI on December 4, 2003. The CR has been accepted and will be included in prioritization for IMA release 16.0.

Q. WHAT IS "PRIORITIZATION"?

A. Prioritization is a ranking process for CR's and is defined in the CMP. Prioritization of major release CR's is determined when Qwest and all CLECs that elect to participate in the ranking assign a numeric value to a given CR. A value is assigned to each CR, with higher numbers representing a highest priority. For example, if there are 10 CR's to rank, Qwest and each CLEC assign a value of 1 to 10 (with 10 indicating the highest priority) to each CR. Qwest applies its resources for a release to the CR's in order of their ranking, until the resources are exhausted. The remaining CR's are then re-prioritized for the next release.

Q. MCI IS CONCERNED THAT THIS CR WILL NOT BE RANKED HIGH ENOUGH TO BE INCLUDED IN IMA RELEASE 16.0. SHOULD THIS CONCERN THE COMMISSION?

A. No. Pursuant to the CMP process, the CLEC community prioritizes those CR's it deems important. When a CR receives a prioritization that is not high enough for inclusion in the upcoming release, obviously the CLEC community deems the existing functionality to be sufficient. Rather than force the changes into the BHC, the Commission should allow the CLEC community to assess the importance of

MCI's CR, and give it an appropriate ranking and prioritization. Qwest has agreed as an accommodation that it will not oppose MCI's CR in the CMP.

Q. HAS QWEST MADE SIMILAR CHANGES TO ITS SYSTEMS IN THE PAST?

A. Yes. In June 2002, MCI submitted a CR (SCR061302-01) requesting that migrations to UNE-P be allowed with TN and SANO as the only required customer identifying fields. In July 2002, the CMP ranked this change for prioritization 19th out of a total 60 candidates for inclusion in IMA release 12.0. The changes were ranked high enough to be included in the development of IMA release 12.0 and successfully implemented. Additionally, Qwest has implemented two other CR's that are similar to this one. SCR101802-02 (Ability to submit Line sharing, Line Splitting and Loop Splitting LSR's with TN only(Omit address)) was implemented in IMA release 13.0 and provided similar functionality to the original CR. SCR022703-24 (Allow post migration transaction order types to be processed by TN and SANO) was opened by MCI after the original CR. It was implemented in IMA release 14.0 in order to increase the scope of the original CR to include subsequent maintenance order transactions to be processed by populating TN and SANO fields only.

Q. SHOULD THE COMMISSION ORDER THIS FUNCTIONALITY AS PART OF THE BATCH HOT CUT PROCESS?

A. No. CMP is the proper forum for implementing this change. As noted above, CMP has implemented a virtually identical change before and is perfectly suited to implement this one. The Commission should allow the CLEC community decide whether order by TN and SANO is of sufficient importance to place the item into the next release. The Commission should not usurp the CMP by mandating system enhancements. For these reasons, the Commission should reject Impasse Issue P-12.

J. IMPASSE ISSUE P-27 (ROBOTIC FRAMES)

Q. PLEASE DESCRIBE IMPASSE ISSUE P-27(C) FROM EXHIBIT DP-2.

A. It is well understood that a hot cut is an inherently manual process that requires a physical "lift" of a line from a Qwest frame and a "lay" of that facility onto a CLEC frame. The FCC has made this point plain: "a hot cut is a largely manual process requiring incumbent LEC technicians to manually disconnect the customer's loop . . . and physically reconnect it to the competitive LEC switch . . ."[83] Even AT&T recognized this point on the first page of its opening comments. Despite this MCI asks Qwest to deploy "robotic frames" throughout its central offices in an effort to decrease the manual steps involved in the process. The Commission should summarily reject this issue as the FCC specifically found that "the record in

[83] TRO at ¶465, n.1409.

[the *TRO*] proceeding does not support a determination that electronic loop provisioning is currently feasible."[84]

Q. WHAT IS A "ROBOTIC FRAME" AND DOES IT WORK?

A. The concept of robotic frames is one that has been argued by many of these same parties in cost proceedings in multiple states. For instance, in South Dakota [85] MCI's witness Mr. Sidney Morrison touted the capabilities of automatic distribution frames manufactured by Oki and ConX without personally reviewing the equipment's performance in a "real world" environment. The facts are, and continue to be, that while the concept is "really cool," as the FCC has recognized robotic frames simply do not work for a number of reasons. While intervening companies have produced documentation (sales literature and white papers) from equipment companies pushing their equipment, the International Engineering Consortium ("IEC"), an independent 3rd party with 60 years experience in the engineering and electronics field issued an article analyzing the concept and made the following observations:

> Section 4 – History of Copper Automation – "To date, despite strong interest in implementing automated distribution frames, there have been technology limitations that have hampered service providers from actually deploying these types of devices. While cross-connecting technologies have existed for some time, none have been able to meet all of the aforementioned automated distribution frame requirements in a cost-effective and scalable manner." The article continues in the same sections and states the following. "Perhaps the biggest "show stopper" for robotics , and all of the other copper

[84] TRO at ¶488, n. 1517.
[85] South Dakota cost proceeding – Docket No. TC01-098, July 28, 2003

automation technologies previously examined for frame applications, has been scalability. As COs vary dramatically in size, automated distribution frames must have the flexibility to grow in size, too. But, functionality cannot be sacrificed in the process. Traditional copper automation technologies typically become blocking at higher port counts or high port utilization. This dramatically limits their performance in medium to large COs." *See* Exhibit DP-418.

Q. SINCE FRAME SIZE AND SCALABILITY APPEARS TO BE ONE OF THE SHORTCOMINGS OF THE ROBOTIC FRAME TODAY, IS THERE AN ENVIRONMENT WHERE THESE FRAMES COULD BE DEPLOYED?

A. There is an application where it would make sense to deploy some type of automated distribution or robotic frame, but I am not aware of any CLEC that has deployed the application as part of their collocation arrangement. Apparently with deployment of "new" network technology, it would offer the CLEC cost savings in labor, increase service delivery and improve accuracy within their cross connection fields. The fact is, a majority of the CLEC today continue to wire from their switch or DLC equipment to an intermediate frame and then to the TIP cables that extend to the vertical side of the ICDF – just like a majority of the ILECs built their Central Office network in the past. If robotic frames are the wave of the future and these companies are riding the same wave, I find it rather odd that very few, if any, are deploying robotic frames in their brand new networks.

Q. HAS QWEST EXPERIMENTED WITH ROBOTIC FRAMES?

A. Qwest conducted laboratory tests on two different types of robotic frames and evaluated each based on a set of requirements. Upon initial testing of the equipment, it was determined that the ADF did not meet Qwest's basic requirements for network equipment. In short, Qwest was not able to provide bandwidths greater than one Megahertz ("MHz") nor was it able to accept power levels in excess of plus or minus 130 volts DC. To put this in perspective, DS1 facilities provide a bandwidth of 1.544 MHz and require power levels of up to (plus or minus) 230 volts DC. The device proposed behaved much like a fuse or circuit breaker in an electrical circuit. When the metallic cross-connect voltage limits are reached, the cross-connect breaks, causing the circuit to go out of service since the cross-connect is no longer in place. In the field test that Qwest has conducted with a different manufacturer's ADF, these "glitches" are an additional expense since not only would there be the cost of the equipment, but a truck roll would also be required in order to place manual cross-connects when this equipment fails.

Q. HAS QWEST ATTEMPTED TO DEPLOY A MECHANICAL CROSS-CONNECT DEVICE WITHIN ITS OUTSIDE PLANTS NETWORK AND IF SO, WHAT WERE THE RESULTS OF THE TEST?

A. Qwest has attempted to utilize a such a device with very disappointing results. Since the initial deployment of the device, Qwest has experienced bent pins due to the "intelligent routing software" because of heat issues and internal modem issues which limit Qwest's ability to communicate with the device remotely and result in

additional dispatches. Each of these field-tested problems may have resulted in a field dispatch so in addition to the cost of the device, Qwest would have incurred the additional cost associated with a truck roll. Eventually, the magnitude of these problems was so extensive that the manufacturer pulled the product off the shelf and discontinued it. Mr. Paul Zipps, a staff engineer in the Qwest Lab was central to the discussions on product selection and has provided me with the detail on this failed test.

Q. THE FCC'S TRO DEFERS THE ISSUE OF ELECTRONIC LOOP PROVISIONING ("ELP") IN PARAGRAPH 491. PLEASE EXPLAIN THIS TECHNOLOGY AND THE NETWORK IMPACTS ACROSS THE INDUSTRY.

A. In AT&T's August 7, 2002 presentation on ELP, it conveniently omitted the impacts on the "typical" ILEC network. This effort continued in early January 2004 as AT&T lobbyists/representatives met with representatives from the Colorado and Utah Legislatures once again pushing the concept of ELP. Exhibit DP-22 is a copy of the document they presented. I want to briefly note a few of the points they omitted during their August presentation. These are only a *few* of the points documented in Qwest Ex Parte Response to the ELP Proposal. *See* Exhibit DP-23.

1) Deploying ELP in a typical ILEC network would require the replacement of nearly 100% of the existing loop plant.

2) Deploying ELP would limit ILEC architecture options and stifle evolution of the network.

3) Deploying ELP would require Qwest to implement a VoATM architecture which currently does not exist in Qwest's network.

4) Deploying ELP would require Qwest to deploy a new ATM infrastructure in every Central Office since the current ATM switch technology does not have the capacity or capability to support ELP.

5) The A-INI interface required to make ELP a reality has not even been fully developed or implemented by industry vendors.

6) The FCC recognized that the cost to Qwest to make such a sweeping change in architecture would be in the billions of dollars.[86]

Exhibit DP-23 concludes with the following statement: "AT&T (by recommending ELP) is trying to solve a hot-cut problem that does not exist and has a hidden agenda to require ILEC's to replace their functioning infrastructure with a next generations network." The facts are that Qwest's current performance on hot cuts for both analog and digital loops does not warrant such a change. PID measurements for the past 12 month indicate that for each of these loop types, Qwest has been meeting installation commitments that gives the CLECs a meaningful opportunity to compete. Qwest fully expects that the newly-proposed BHCP will offer the same types of results with the efficiencies that we have built into the new process.

Q. PLEASE SUMMARIZE YOUR TESTIMONY ON ISSUE P-27(C).

A. MCI's proposal to utilize robotic frames is, at the present time, science fiction that does not work in the real world. The hot cut process has inherently manual steps as the FCC itself has recognized. Moreover, deploying such an architecture would cost Qwest billions of unnecessary dollars, given that Qwest has shown that it can consistently provision analog loops at an extraordinary level of quality using the current process and proposed BHCP. The Commission should reject MCI's request in issue P-27(c).

K. IMPASSE ISSUE S-2 (PROVISIONING INTERVAL)

Q. PLEASE DESCRIBE IMPASSE ISSUE S-2 FROM EXHIBIT DP-2.

A. This issue concerns the standard interval that should apply to the BHCP. Qwest proposes a 7 business day interval, which is substantially shorter than that suggested by any other ILEC. Qwest's interval harmonizes with the process agreed to by the participants to the BHC Forum, and also harmonizes with the intervals agreed to in the 271 process. The CLECs have suggested that Qwest should implement a 5 business day interval.

Q. DOES QWEST'S PROPOSED 7 BUSINESS DAY INTERVAL MESH WITH THE WORK THAT IS PERFORMED ON EACH DAY OF THE PROCESS.

A. It does. As described above, the parties have agreed in large part to the BHCP. During the BHC Forum, there was much give and take; however, one aspect of the

[86] TRO ¶491, n. 1524 - SBC's response to AT&T's ELP proposal estimates the cost to be approximately

process eliminated many issues that had previously been at impasse. Specifically, the CLECs agreed to place dial tone on their CFA on Day 1 so that Qwest could perform the pre-wire and verify that the CLEC had dial tone on DVA (Day 2 or 3). When a bad CFA is discovered, Qwest will identify the problem in its Status Tool on either on Day 2 or 3. This then provides the CLECs with time to dispatch a technician to the Central Office to rectify the CFA problem. As stated above, the *quid pro quo* to performing testing on DVA is that CLECs will not be able to rectify dial tone problems on Due Date. As states above, CFA changes on Due Date create a number of complexities and manual processes that make the process much less efficient and time consuming. Moreover, this process change was intended to create and incentive for the CLEC to have its work performed on time, which is not occurring in the real world today. The 7-day interval is intended to provide CLECs with time to rectify no dial tone, reversed wiring and bad CAF situations. Exhibit DP-11, presented earlier in my testimony, displays the critical dates, and the work that takes place on each of these days in a 7-day interval. While a previous proposal gave the CLEC 1 hour to respond to a NDT condition, the new 7 day interval will have the pre-wiring completed by day 2 or 3 with notification going back to the CLEC if NDT is found. Basically, the 7 day interval provides the CLEC with up to 3 days to cure the problem.[87] By notifying the CLEC and allowing this much time to resolve a translations or CFA issue, the COT should be

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$100 billion dollars based on their Project Pronto estimates and spread across all ILECs.

[87] CLECs have committed to have translations work performed and dial tone on their CFA by midnight of day one in order for Qwest to conduct the DT/ANI testing.

able to successfully work the order on DD and complete the transaction with WFA-DI so that the CLEC can complete the porting activity.

Q. HOW DOES THIS INTERVAL COMPARE TO THE BHC INTERVALS PROPOSED BY OTHER ILECS?

A. In meetings Qwest has conducted with Verizon, SBC and BellSouth, we have confirmed that the interval Qwest is proposing is substantially shorter than the intervals set by the other ILECs.

Q. HOW DOES THIS 7 BUSINESS DAY INTERVAL COMPARE TO THOSE CURRENTLY STATED IN QWEST'S SERVICE INTERVAL GUIDE (SIG)?

A. For order volumes in excess of 25 lines, the stated interval in the SIG is negotiated on an Individual Case Basis ("ICB"). The intervals set forth in the SIG for analog loops were agreed to by the CLEC community as part of the 271 process. Under the proposed BHCP, a standard 7 day interval along with an electronic appointment scheduler allows the CLEC to provide their end user with a "real time" date certain Due Date. The CLECs are not required to have any up front negotiation meetings with Qwest, nor is there any ambiguity regarding the actual interval.

Q. DURING THE FORUM MCLEOD USA EXPRESSED CONCERNS AROUND THE PROPOSED INTERVAL FOR NEW CUSTOMERS. HOW DOES QWEST RESPOND TO THAT CONCERN?

A. As discussed at length during the Forum, new McLeod customers will have the ability to use the BHCP if the minimum batch size is met. If the line count for that end user is less than the minimum batch size, then at its discretion McLeod can group the request with other orders and submit a batch or McLeod can choose any of the remaining 6 provisioning options available to them today. If McLeod has a customer with the minimum batch size at the same end user location, they will have the similar interval that Qwest is offering with the BHC because orders with 25 lines or more carry a negotiated DD (ICB) and are usually out beyond the standard 6 day intervals offered for volumes between 9 and lines.

Moreover, customers who qualify for the BHCP should not be concerned about a 7 business day interval. As stated above, the BHCP is for reuse of existing facilities which, by definition, means the end-user customer is currently being served by someone. Thus, the BHCP is not available for customers who call and need to set up service because they are moving into a new residence. For this reason, the BHCP will not prevent a customer from obtaining service, but will simply dictate when an end user can either change providers or change the method by which their provider is providing the underlying service (UNE-P to UNE-Loop).

Q. DID QWEST POLL THE CLECS FOR THEIR RECOMMENDATIONS FOR A STANDARD INTERVAL?

A. Yes. AT&T requested the standard interval from the SIG for analog loops. As stated above, depending on the number of lines, this interval can be 5 business days,

6 business days, 7 business days, or ICB. MCI requested a 5 business day interval. McLeod requested a 5 business day interval in their comments, and a "4-5" business day interval in the BHC Forum.[88] Covad thought a 6 business day interval was appropriate. As previously stated, 17 to 24 loops carry a 7 business day interval and 25 lines or more are ICB. While the CLECs are required to negotiate the interval, it makes sense that at minimum the interval would be 7 days given, that 24 lines already carry a 7 day interval. This is especially the case when (1) the customer already has service and (2) it gives the CLECs time to perform their end of the work.

Q. WOULD IT BE POSSIBLE FOR THE SIZE OF AN ORDER WITHIN A BATCH TO DETERMINE THE STANDARD INTERVAL?

A. As stated above, at the BHC Forum AT&T stated that the interval for BHCs should follow the SIG agreed upon in the 271 process. To explain this point, I will clarify the question. A Batch can consist of multiple orders or LSRs. Each LSR will contain one or many lines. For illustrative purposes, I will assume a BHC that contains 5 LSRs, the first two with 1 line, the third with 5 lines, the fourth with 8 lines and the fifth with 20 lines. If the standard interval was determined by the LSR, what would the Due Date of this batch be? The first three LSRs would have a 5 business day Due Date, the fourth a 6 business day Due Date, and the last would have a 7 business day Due Date. When this occurs, it is well understood that the

[88] 1/8/04 Tr. at 163:27 & 164:14 (Patty Lynott - McLeod); 1/8/04 Tr. at 165:8 (Mike

longest standard interval applies to the entire group. Furthermore, regardless of its name, a "batch" is a project and the proposed 7 business day interval is shorter than the ICB interval set forth for projects in the SIG.

Q. HOW SHOULD THE COMMISSION FIND ON ISSUE S-2?

A. The Commissions should find that Qwest's proposed 7 business day interval provides the CLECs with a meaningful opportunity to compete, while providing the parties with sufficient time to organize workload including performing changes to CFAs, if necessary.

L. IMPASSE ISSUES V-2 AND V-3 (MINIMUM AND MAXIMUM SIZE OF A BATCH)

Q. HAVE THE CLECS TAKEN ISSUE WITH THE MINIMUM AND MAXIMUM SIZE OF THE BATCH? [ISSUES V-2 AND V-3]

A. Yes. Qwest has proposed that the minimum size of the batch be 25 analog loops and the maximum be 100 analog loops. Qwest makes this proposal for several reasons. First, the minimum number allows Qwest to achieve and pass along efficiencies to the CLECs in the form of reduced cost. Second, there is more than enough volume of UNE-P lines in service to take advantage of this process in converting its embedded base with the batch hot cut process. Third, 100 lines will allow Qwest to complete the process of converting the embedded base of UNE-P

Zulevic - Covad); Tr. 166:82 (John Finnegan - AT&T) and TR. 166:9 (Tim Gates - MCI).

lines during the FCC's 21 month transition period. Fourth, 100 lines is approximately the number of lines that a dedicated team of two can provision with a "lift and lay" in an eight hour shift. Despite this overwhelming evidence and rational, the CLECs request from a batch of "1" line (Issue V-3) to a batch of 200 lines (Issue V-2). The Commission should reject the CLEC's outlying proposals as unwarranted and unnecessary.

Q. WHY HAS QWEST SET A BATCH SIZE OF 100 LINES PER DAY PER CO? [ISSUE V-2]

A. Qwest's BHCP is based on the concept of two dedicated COTs working in tandem to perform the lift and lay activity during the first part of the shift and then focusing their attention on the pre-wiring activity for orders due some time in the future. Both Hitachi Consulting and Ms. Million have verified that it takes approximately 1.5 hours to perform the lift, lay and DT/ANI testing on the due date for each group of 25 lines. Thus, for a batch of 100, the COTs can complete 100 lines in 6.5 hours. I add an extra ½ hour for standard union breaks. This leaves 1½ hours for entering order information into WFA-DI, to cut-back lines as appropriate, and to rectify any identified problems with the conversion. If any time is left, the COTs can perform some pre-wiring activity for a future batch. Thus 100 lines is a full days work for a dedicated team of two. Moreover, Qwest interprets ¶¶487-489 of the *TRO* to mean that one of the only ways costs can be driven down is to migrate a large number of lines. For a team of two COTs, 100 is that large number.

Q. HAS QWEST INVESTIGATED USING MORE THAN ONE TEAM OF TECHNICIANS PER OFFICE?

A. Yes. Qwest did consider this possibility; however, due to space constraints in many of the offices I have toured over the past 7 years, we felt that multiple teams of COTs could get in each other's way on the smaller ICDF frames where the lift and lay are generally performed. I recommend that the Commission view the video demonstrating a hot cut (Exhibit DP-3) which depicts the large number of CLEC terminations that can be established in a very small space. For instance, in an eight foot Central Office environment, it is not unusual for 10 terminal blocks to be placed in single vertical frame each with 100 terminations per block. In other words, it is not unusual in a space only four feet wide for a single CLEC to have 4,000 DS-0 terminations. A single COT running cross connections to their peer on the horizontal side of the ICDF represents the most efficient manner in which to conduct these BHCs.

Q. IF THE COMMISSION IMPLEMENTS A 100 LINE LIMIT, CAN QWEST TRANSITION THE EMBEDDED BASE OF UNE-P LINES WITHIN THE FCC'S MANDATED 21-MONTH TIME FRAME?

A. Yes. As explained in detail in the testimony of Terri Million, the 100 line limit can easily accommodate the transition of every UNE-P line in the state. The

Commission should implement the 100 line limit as the maximum number of lines in a batch.

Q. WHY HAS QWEST RECOMMENDED A MINIMUM BATCH OF 25 LINES? [ISSUE V-3]

A. In an effort to satisfy the requirements for a new BHCP, efficiencies were realized by performing conversion in groups of multiple lines at a time. When converting single line, the COT performs the lift and lay and then has to complete the service order in WFA-DI. Another order is pulled, and the COT repeats the same work steps to complete the wiring on the frame and then complete the order in the system, WFA-DI. By being able to batch orders in groups of 25 lines according to their frame location, the COT is able to focus on the lift and lay activities for all 25 lines. Once these steps are completed, the COT can complete the entire batch in WFA-DI. Then the COT can move on to the next batch of orders and repeat the process. These efficiencies, along with the single spread sheet which prioritizes the sequence of the lines by terminal block location, allow the COTs to perform their work as efficiently as possible by minimizing steps between frames and reducing the number of times a single order is touched. Without such a minimum being set, the process and costs align with the current provisioning options.

What Qwest proposes is exactly the type of efficiencies contemplated by the FCC in the *TRO*:

> Generally . . . we expect [the BHCP] to result in efficiencies associated with performing tasks once for multiple lines that would

> otherwise have been performed on a line-by-line basis. **For example, pursuant to the processes in place at least in some states, the incumbent LEC currently will pre-wire circuits on the central office frame, verify the presence of dial tone, and communicate with competitive LECs regarding problems encountered on a line-by-line basis.** Under a batch hot cut process, these activities might be undertaken ***simultaneously*** for all lines affected by a given batch order.[89]

The batch with a minimum size of 25 lines creates the very efficiencies sought by the FCC.

Q. WHAT DID THE CLECS RECOMMEND AS THE MINIMUM BATCH SIZE?

A. The CLECs took the totally unrealistic position that there should be no minimum requirements, and that a batch should be 1 line or more. The CLECs' position is completely inconsistent with the *TRO* which contemplates performing work on multiple lines "simultaneously." If one were to accept the CLECs definition of a batch, the efficiencies once imagined in the BHCP would disappear, as Qwest would again be faced with provisioning using a serial process. A batch of cookies is more than one, and I the mind of almost anyone, constitutes many cookies! I make this comment only as an example to illustrate the ludicrous nature of the CLECs' position on the minimize size of the batch. Throughout the Forum when the issue of cost was discussed AT&T reminded Qwest that the intent of the *TRO* was to take advantage of the efficiencies gained by performing "batches" of like

[89] TRO at ¶489 (emphasis added).

orders.[90] However, this concept seemed to escape the CLECs during this discussion. As mentioned throughout this testimony, the efficiencies gained from the BHC process are due to grouping orders. If Qwest is required to reduce the minimum size to 1 or 2, then Qwest will be in the same position as it is today, and the BHCP would become a farce.

Q. WHY DID THE CLEC'S RECOMMEND SUCH A RIDICULOUS MINIMUM BATCH SIZE.

A. The CLECs recommended this size in an effort to obtain a 5-day provisioning interval. In the BHC Forum, AT&T consistently argued that the standard interval set forth in Qwest's existing Commission-approved SGAT should control. AT&T presumed this interval was 5 days. In reality, however, it varies by the number of lines. The interval is 5 days for 1-8 lines; 6 days for 9-16 lines; 7 days for 17-24 lines; and ICB for 25 lines or more. It is common knowledge that if two orders are combined together, the longer interval applies. In other words, if an LSR with 20 lines is combined with 5 LSRs each of which has one line, the longest interval, or 7 days applies. The CLECs asked for the ability to have batches of 1, so the CLECs could split each of their LSRs into mini-batches and always obtain a 5-day interval, and always obtain the lower price. The problem, as Terri Million explains in her testimony, however, is that the efficiencies have disappeared and the NRC would

[90] 1/7/04 Tr. at 38:3 (John Finnegan - AT&T) "One of the terms I remember for the FCC TRO was the notion that there maybe some economies of scale in doing many hot cuts at one time rather than doing them one at a time. The economies of scale, to me, represent efficiencies you gain from doing the same activities in larger numbers than doing them in smaller numbers."

then be too low. The CLECs cannot have it both ways. If loops are provisioned individually, the CLEC can use Qwest's existing provisioning options and get a faster interval and a higher cost. If loops are provisioned in a batch, the CLEC can get a slightly longer interval, and a lower cost.

Q. HAS QWEST INVESTIGATED REDUCING THE MINIMUM SIZE OF A BATCH?

A. Yes. Although Qwest maintained its position that a batch requires 25 lines, Qwest made three concessions during the Forum negotiations.

- The functionality of the appointment scheduler was enhanced to enable CLECs to "accumulate" lines to reach the 25 line limit. It is not necessary for the CLEC to submit all 25 lines at the same time.
- If for some reason lines fall out of the batch before the orders are processed by the QCCC, Qwest will continue to process the BHC if 20 lines remain in the batch.
- If on the DD, the CLEC is not ready or unforeseen problem arise and lines can not be completed, Qwest will provision the lines that it can, and place the problem orders into a jeopardy status.

Currently, for both Qwest retail and wholesale, 25 lines constitutes a project. In many ways a "batch" is very similar to a project. Finally, as Ms. Million explains in her testimony, 25 lines provides a large enough group to establish some economies of scale Therefore Qwest maintains its position that at order entry a batch should consist of at least 25 lines.

M. IMPASSE ISSUES SC-1 AND SC-5 (VOLUMES AND STAFFING)

Q. DESCRIBE RELATED ISSUES SC-1 AND SC-5 FROM EXHIBIT DP-2.

A. This issue concerns whether Qwest's proposed BHCP can manage the anticipated volumes of batch hot cuts. Several CLECs argues that Qwest has not put forward sufficient data to show it could meet the anticipated volumes. CLECs make this point without predicting in any way what the volumes would be. Qwest, on the other had, put forward a document in Ms. Million's testimony that explained in great detail the worst case scenario for the batch hot cut process. Qwest then explained that it would have no difficulty meeting the worst case scenario situation.

Q. WHAT IS THE COMMISSIONS OBLIGATION WITH RESPECT TO MAKING A FINDING THAT QWEST'S BHCP CAN MANAGE ANTICIPATED VOLUMES?

A. The FCC rules specifically require the Commission to make a determination about whether Qwest's proposed BHCP can manage the anticipated volumes:

> A state commission shall evaluate whether the incumbent LEC is capable of migrating multiple lines served using unbundled local circuit switching to switches operated by a carrier other than the incumbent LEC for any requesting telecommunications carrier in a timely manner, and may require that incumbent LECs comply with an average completion interval metric for provision of high volumes of loops.[91]

[91] 47 C.F.R. § 51.319(d)(ii)(A)(1)-(4). *See also TRO* ¶ 489.

Q. CAN QWEST HANDLE THE ANTICIPATED VOLUMES FROM BOTH THE EMBEDDED BASE AND NEW CONVERSIONS IF THE MAXIMUM BATCH SIZE IS 100?

A. Yes we could. Exhibit BB-** prepared by Qwest cost witness Ms. Terri Million presents a very conservative approach to the total volumes that Qwest would have to begin converting in those markets after a finding of no impairment is entered. As Ms. Million explains, this document assumes that every UNE-P line converts using the BHCP; that the growth of lines continues on the same path as if UNE-P were available; and that every CLEC decides to convert to UNE-L instead of an alternative approach. The likelihood that all of these assumptions will occur is highly unlikely. In fact, AT&T's witness John Finnegan proposed a more conservative approach for predicting anticipated volume.[92] Making all of these assumptions, and given the FCC's 21 month timeframe to transition the embedded base of UNE-P lines, Qwest expects there would be a maximum of 3600 batch hot cuts per day. As explained by Ms. Million and Ms. Lorraine Barrick, Qwest can easily meet such volume requirements.

[92] 12/3/04 Tr. 631:1 (John Finnegan - AT&T) "So in terms of the anticipated volumes, you've got to look at the embedded base you've got in place, and you've also got to make some assumptions about what the rate of new customer adds is going t be ... What AT&T has been thinking in terms of what kind of volumes you should expect is something akin to the long distance churn rate, that there should be an expectation that customers are going to move local service about as often as they move in their long distance service ... I have been searching for publicly available industry numbers on churn rate. I did see, I think it was a Bank of America estimate of 2.6% per month, that the LD churn rate is ... I've also seen some financial analysts' reports say that for CLECs, the local exchange churn rate is anywhere from 4.5 to 5.2% per month.

Q. HAS QWEST ESTIMATED THE STAFFING REQUIRED TO PROVISION THIS FORECASTED VOLUME?

A. We have. I asked the various Subject Matter Experts ("SME") to take the estimated level of conversion activity back into their organizations for staffing requirements. Each organization took into consideration the volumes, the process flow and the proposed mechanization that result from the *TRO* and other existing Change Management ("CMP") requests. The final variable to determine the required staffing levels was the UNE-P conversion schedule set forth by the FCC. The following is a break down of these requirements by work group.

STAFFING REQUIREMENTS		
ORGANIZATION	HEADCOUNT REQUIRED	
	October 2004	June 2005
QCCC Central Office Technicians	8	7 144 frame attendants

Q. DOES QWEST ANTICIPATE ANY PROBLEMS REACHING THESE STAFFING REQUIREMENTS?

A. No. The structure of the *TRO* enables Qwest to ramp up to handle the increase order volumes. Additionally, the transition plan provides Qwest with sufficient time to convert the services without a huge spike in the staffing and training requirements. Qwest believes that its proposal to perform the BHC conversions between 3 AM and 11 AM minimizes the staffing impacts and gives the CO operations the opportunity to manage the work within the capabilities of their CO forces.

Q. WHY DO THE INSTALLATION HOURS MINIMIZE THE STAFFING IMPACT?

A. The 3 AM to 11 AM hours of operation enable Qwest to have a staff of people dedicated to the BHCP. This will minimize the impact or interface with the existing daily load activities, and the increase in the daily load brought on by the finding of no impairment. This is particularly important in the Central Office due to the space constraints at the frame, and the number of people working in a very limited space in many instances . If batch hot cuts were provisioned during normal business hours, even if a dedicated team was assigned to BHC, they would still be competing for space to complete the wiring.

Q. DID THE FORUM REVISION TO THE BHC PROCESS IMPACT THE STAFFING REQUIREMENTS?

A. Yes. The changes provided/negotiated during the Forum created greater flexibility for Qwest and helped reduce the staffing requirements through additional mechanization within the process in Service Delivery, QCCC and the Central Office. The CLECs agreement to have Dial Tone ready by midnight of Day 1 provides Qwest with the flexibility to pre-wire and test the facility on Day 2 or 3. Therefore, this work can be performed during the BHC hours, time permitting, or it can be worked into the work load during normal business hours. Although this change increased the work required by the Central Office because it now requires two trips to the frame and testing on two separate occasions, what it did provide

was a scenario where there should be virtually no "surprises" on the Due Date. Additionally, this change significantly streamlined the QCCC activities. Due Date problems associated with No Dial Tone or CFAs generate a great deal of manual handling by the QCCC and the Central Office. The proposed change enables the CFA changes to occur in a systematic way over the course of a couple of days. The QCCC estimates that this change reduced the needed headcount by130.

Q. HOW WILL THE QCCC RAMP UP FOR THE INCREASE IN VOLUMES?

A. The QCCC will be able to manage the expected volume increase. The first phase of increased volumes, which will be a result of new Unbundled Loop orders due to UNEP no longer available in unimpaired offices, will begin January, 2005. Based on the expected BHC volumes and proposed BHC process, the QCCC will need to add approximately 8 resources. The process of hiring and training will begin in early October, 2004. The second phase of increased volumes will begin August, 2005 with the beginning of the conversion process for the embedded base of UNE-P to Unbundled Loop. With the proposed BHC process, the QCCC will add an additional 7 people. The process of hiring and training will begin in June, 2005. The QCCC does not anticipate any office space restrictions due to the increase in head count.

Q. WHAT REASSURANCE CAN QWEST PROVIDE TO THE COMMISSIONS THAT QCCC WILL SUCCESSFULLY MANAGE THE LOADS?

A. As previously mentioned, the QCCC's role has expanded on at least two separate occasions. In both instances the additional load was handled with minimal headcount increases and in each case the performance results improved. The quality control is a part of the daily activities of the QCCC and provides a strong foundation for ensuring timely BHC. During the BHC Forum, Don Gray of the Nebraska Commission explained that he had taken a tour of the QCCC and was quite impressed.[93] The QCCC has shown on multiple occasions that it can very quickly staff up for additional responsibility and continue to perform at a very high level of quality.

Q. IT APPEARS THAT THE HEADCOUNT REQUIREMENTS FOR THE SERVICE DELIVERY IS MUCH GREATER THAN THAT OF THE QCCC. WHAT IS THE REASON BEHIND THEIR NEEDS?

A. A. By its very nature, UNE-P Centrex lines will require manual assistance in order for Qwest to validate if there is any pending order activity against any of the Centrex numbers associated with the account. Each of these accounts will have to

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[93] 1/7/04 Tr. 109:2 (Don Gray - Nebraska Commission) "I was fortunate that the week after our last forum I was able to go up to Omaha, and see the QCCC ... And that did a lot to help me feel comfortable that that side of the house was going to be able to respond ... One of the specific things they discussed there was the daily missed call meetings at 4 PM, in which every order that gets missed, for whatever reason, or any order that had a repair in the last 30 days, is analyzed. "What happened?" "Well, we don't know." So to me, as a commission staff, that's a comfort level there."

be reviewed and if a pending order does exist, the Service Delivery organization will have to resolve the issue before the order can be submitted back into the service order flow. During the BHC Forum, Mr. Gray of the Nebraska Commission staff explained that he had taken a tour of the QCCC and was favorably impressed.[94] The QCCC has shown on multiple occasions that it can very quickly staff up for additional responsibility and continue to perform at a very high level of quality.

Q. CAN THE CENTRAL OFFICE MANAGE BATCHES OF 100 LINES?

A. Yes. There is no question, but that COTs can manage a batch of 100 lines in an 8 hour shift. Ms. Million makes this point. Ms. Lorraine Barrick makes this point after performing actual commercial testing. Ms. Barrick explains that Qwest has routinely performed this number of cuts at various times in the past without incident. Ms. Barrick also explained that Qwest often provisions a large number of hot cuts and obtain virtually perfect performance – 100% commitments met and 100% of lines installed without an installation trouble.

[94] 1/8/04 Tr. 109:2 (Don Gray – Nebraska Commission) "I was fortunate that the week after our last forum, I was able to go up to Omaha, and see the QCCC ...And that did a lot to help me feel comfortable that that side of the house was going to be able to respond. . . . One of the specific things they discussed there was the daily missed call meetings at 4 p.m., in which every order that gets missed, for whatever reason, or any order that had a repair in the last 30 days, is analyzed. "What happened?" "Well, we don't know." So to me, as a commission staff, that's a comfort level there."

Q. AT&T ARGUES THAT THE COMMISSION SHOULD ALSO FACTOR IN ALL OF THE OTHER NON- BHC WORK ONGOING IN THE CENTRAL OFFICE. DO YOU AGREE?

A. No, I do not. The purpose of creating a dedicated team of COTs to perform batch hot cuts is to ensure that they do not have conflicting work assignments or responsibilities. Dedicating a team of people, and setting the hours for such operation between 3 AM and 11 AM should eliminate AT&T's concern altogether.

Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?

A. The Commissions should dismiss the CLECs concerns regarding the staffing level required to comply with the *TRO*. First, Qwest has made the commitment to comply with the *TRO* and the associated transitional timeline. Second, Qwest's record of performance over the last several years has shown that Qwest can and will continue to perform at a very high level of quality in provisioning analog loops. Third, Qwest has committed to include BHC performance in with other analog loop orders for performance tracking, which will provide an objective level of performance for all to evaluate. Based on these facts, Qwest has built in incentives to ensure that proper staffing is in place to comply with both the state and Federal rules. The Commission should affirmatively find with respect to issues SC-1 and SC-5 that Qwest's proposed BHCP will allow it to meet the anticipated demand of batch hot cuts at an acceptable level of quality.

N. IMPASSE ISSUE T-1 (PROCESS TESTING)

Q. DESCRIBE IMPASSE ISSUE T-1 FROM EXHIBIT

A. The CLECs uniformly stated that before the Commission can approve Qwest's proposed BHCP, that there must be evidence that the process works in a commercial setting. AT&T argued that Qwest must conduct a 271 like third-party test.[95] MCI asserted that Qwest should submit the BHCP to commercial orders from CLECs.[96] Various state staff members that attended the BHC Forum phrased it differently. They stated that Qwest must have demonstrable proof that its proposed BHCP will work. The Staff members believed that this evidence could be presented through analogous work activities showing that Qwest can ramp up for new volumes and perform well. In the BHC Forum, Qwest affirmatively stated that it did not believe a formal third party test was required, but that it would come forward with affirmative evidence.

Q. WHAT MUST THE STATE COMMISSION FIND WITH RESPECT TO THE BHCP AND HOW MUCH TIME DOES IT HAVE TO COMPLETE THE PROCESS?

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[95] 12/3/p4 Tr. 705:6 (John Finnegan - AT&T) "[O]ur preference is that there be some sort of testing process that uses existing Qwest customers with potential monitoring by either the commissions or some independent third party to prove or disprove the notion that Qwest can keep up with the batch hot cut volumes.

[96] 12/3/04 Tr. 706:9 (Sherry Lichtenberg - MCI) "MCI does not think that a third-party test is required, but MCI does believe that ... the commercial operation with the ability to look at performance and with distinct performance metrics and remedies is the way to go ... our idea of testing is not a third party test ... It's commercial day-to-day activity."

A. The FCC found that state commissions must "approve and implement a batch cut migration process" within 9 months of the effective date of the *TRO*.[97] In other words, the Commission must have approved, and Qwest must have implemented a BHCP by July 2, 2004. Under this timeline, the 271'esque test suggested by AT&T is simply not a realistic alternative. That does not mean, however, that the Commission must take Qwest on faith.

Q. HAS QWEST PRESENTED EVIDENCE THAT ITS BHCP WORKS IN A COMMERCIAL SETTING?

A. Yes. Qwest has presented the results of a third party evaluation performed by Lorraine Barrick and Hitachi Consulting. Their review began in November 2003, and has consisted of many elements including:

- Gaining an understanding of the existing hot cut process;
- Studying Qwest's hot cut performance to date;
- Reviewing the proposed BHC process, as well as public CLEC comments and concerns regarding that process;
- Making recommendations for process improvements;
- Comparing the current hot cut process to the proposed BHC process;
- Developing a testing plan to be used to judge the quality and efficiency of the proposed BHC process; and,
- Testing the BHC process with four batches of approximately 25 lines each.

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[97] *TRO* at ¶423.

After completing this work, Ms. Barrick concludes that Qwest's BHCP works, creates efficiencies for Qwest and the CLECs, and allows Qwest to continue to provision analog loops to CLECs at a very high level of quality. This is the exact type of commercial test that MCI suggested in the BHC Forum. This is the type of "demonstrable evidence" that the state staff members stated they wanted.

Q. DOES QWEST HAVE OTHER EVIDENCE THAT IT CAN PROVISION ANALOG LOOPS USING THE BHCP AT AN ACCEPTABLE LEVEL OF QUALITY?

A. Yes. As described above, ever since the QCCC opened in mid-2001 – over 2 and ½ years ago now – Qwest's audited and reconciled performance measures show that Qwest has been providing CLECs with access to unbundled loops at an extraordinary level of quality. This high level of performance occurs even when Qwest has provisioned well over 1500 analog loops on a given day. Qwest's current performance shows:

1. Over 97% of its installation commitments met (OP-3).
2. Over 97% of the analog loops installed do not experience any trouble within 30-days (OP-5).
3. Less than 1% of the analog loops in service experience any trouble (MR-8).
4. Over 95% of troubles on the loops are cleared within 24 hours (MR-3).
5. The average amount of time it takes Qwest to cure a trouble on an analog loop is less than 6-hours (MR-6).

This performance is nothing short of outstanding, and while it may not be enough standing alone, is indicative of the level of commitment shown by Qwest to provisioning and maintaining analog loops for CLECs in a commercial environment.

Q. PLEASE SUMMARIZE YOUR TESTIMONY ON IMPASSE ISSUE T-1.

A. Qwest has presented historical performance data as well as the review and test of the BHCP by an independent third party. The evidence shows Qwest's BHCP works, and works well. Thus, the Commission has substantial evidence that Qwest's proposed BHCP works, and will allow Qwest to continue to provision analog loops at an acceptable level of quality. The Commission should formally approve Qwest's proposed BHCP.

IX. LOOP PROVISIONING IMPAIRMENT ANALYSIS

Q. DOES THE PROPOSED BHCP MITIGATE ANY CONCERN THAT QWEST'S ABILITY TO PROVISION STANDALONE UNBUNDLED LOOPS WOULD SOMEHOW IMPAIR CLECS FROM SERVING THE MASS MARKET WITHOUT UNBUNDLED SWITCHING?

A. Yes. The FCC stated that the purpose of adopting a BHCP is "to reduce the economic and operational barriers posed by the present hot cut process."[98] The

[98] *Id.*

BHCP that Qwest has proposed meets all of the FCC's standards and will accomplish that task:

- *It reduces provisioning delays.* (*TRO* ¶ 488, 512) The BHCP gives CLECs a predictable seven-day provisioning interval for batches of 25-100 loops, whereas today they must negotiate intervals for projects of this size on an individual case basis. As noted above, the FCC and this Commission have already found in the section 271 process that a seven-day interval for batches just under this size range gives CLECs "a meaningful opportunity to compete." Being able to receive even larger batches of loops within the same time frame provides a significant competitive benefit to CLECs. With respect to individual customer cutovers, the BHCP gives CLECs the ability to receive *instantaneous* notification that cutovers are complete simply by using functionality already existing in their switches, thereby reducing customer outage times to the minimum possible.

- *It is seamless.* (*TRO* ¶ 487) Qwest already provisions stand-alone unbundled loops at an outstanding level of performance, and the BHCP only strengthens that process further. The BHCP streamlines and automates the flow of information within Qwest and the communication of information to CLECs. It rationalizes the central office technicians' work and their movement through the central office, and it avoids the need for them to interrupt their work after each cut to communicate with the QCCC.

- *It reduces costs.* (*TRO* ¶ 487, 512) As the testimony of Terri Million explains in more detail, the BHCP's process improvements significantly reduce the amount of QCCC and technician time required to perform an individual hot cut. The BHCP also realizes the efficiencies gained when performing at least 25 hot cuts in the same location at the same time and consolidating certain tasks for the entire batch. As Ms. Million explains, how these savings flow through to CLEC charges turns on how a state commission has permitted Qwest to recover its costs in the past and what it authorizes for the BHCP. But given that existing hot cut prices *already* permit an efficient CLEC economically to enter the markets where Qwest is seeking a "no impairment" finding (as demonstrated by the CPRO model presented in other Qwest testimony, which uses *current* coordinated cut rates in its calculations), there is no reason to think the prices set for the BHCP will create a problem — especially since all current hot cut options will remain available.

In addition, the BHCP reduces a CLEC's costs beyond the price it pays to Qwest. The BHCP gets rid of the CLEC's current need to negotiate a schedule and interval for each batch of 25 or more lines on an individual case basis, and eliminates *all* up-front coordination with Qwest save for the overall

transition planning required by the *Triennial Review Order* in the event of a "no impairment" finding. The BHCP also eliminates the need for repeated, expensive telephone calls between the CLEC and the QCCC and makes status information available electronically, allowing for further mechanization on the CLEC's side. The expected volume of conversions does require CLECs to be less sloppy about delivering dial tone to Qwest on time than they are today in order to take advantage of the streamlined process; however, the CLECs at the BHC Forum all agreed that it was reasonable to insist on such a commitment, which in any event does not change the amount of work the CLEC has to perform

- *It can handle the expected volumes of hot cuts if unbundled switching is no longer available.* (*TRO* ¶ 489) The incremental daily volume of hot cuts that Qwest would have to perform in the highly unlikely, worst of all worst-case scenarios — assuming a 100 percent conversion to unbundled loops in all markets where Qwest is seeking a "no impairment" finding, no slowing of growth, and all conversions of existing and new customers being run through the BHCP — is simply not that great when spread over the FCC's very long ramp-up and transition period, and the QCCC and central office staffing increases that would be required are readily achievable. Moreover, Qwest can perform this incremental activity with dedicated teams outside of usual business hours, meaning that dedicated teams would not be encumbered with normal central office work. Hitachi Consulting has reviewed Qwest's performance on existing project orders and agrees the proposed BHCP appears workable and scalable.

Q. ARE THERE ANY OTHER BARRIERS ASSOCIATED WITH LOOP PROVISIONING THAT WOULD IMPAIR CLECS' ENTRY INTO THE MASS MARKET EVEN AFTER ADOPTION OF THE BHCP?

A. No. The FCC asked state commissions "to consider more granular evidence concerning the incumbent LEC's ability to transfer loops in a timely and reliable manner" — in particular, "to determine whether incumbent LECs are providing nondiscriminatory access to unbundled loops."[99] This is exactly the same inquiry

[99] *TRO* ¶ 512.

that the state commissions and FCC have already undertaken in connection with Qwest's section 271 applications.[100] The *Triennial Review Order* acknowledges this parallel and specifically permits state commissions to rely on the section 271 records when considering the performance of a BOC: "For incumbent LECs that are BOCs subject to the requirements of section 271 of the Act, states may choose to rely on any performance data reports and penalty plans that might have been developed in the context of a past, pending, or planned application for long-distance authority."[101]

The FCC specifically found in connection with all fourteen of Qwest's section 271 applications that Qwest in fact provided "[n]ondiscriminatory access" to unbundled network elements as required by checklist item 2.[102] More specifically, in connection with checklist item 4, the FCC reviewed Qwest's third-party audited performance data (found "accurate and reliable" by Liberty Consulting) and concluded in all fourteen states that Qwest was meeting all of its legal obligations with respect to its provisioning of unbundled analog mass-market loops.[103] Finally, the FCC concluded that Qwest had an adequate performance plan in all fourteen states backing its performance measures up with stringent penalties

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[100] Item 2 of the section 271 competitive checklist requires a BOC to provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1) of the Act." 47 U.S.C. § 271(c)(2)(B)(ii). Checklist item 4 addresses unbundled loops in particular. *Id.* § 271(c)(2)(B)(iv).

[101] *TRO* ¶ 512.

[102] *See Qwest 9-State 271 Order* ¶ 33; *Qwest 3-State 271 Order* ¶ 33; *Qwest Minnesota 271 Order* ¶ 12; *Qwest Arizona 271 Order* ¶ 12.

[103] *See Qwest 9-State 271 Order* ¶ 348; *Qwest 3-State 271 Order* ¶ 93; *Qwest Minnesota 271 Order* ¶ 53; *Qwest Arizona 271 Order* ¶ 26.

for missed performance.[104] The FCC's findings for North Dakota were in accord with what this Commission found in its own review of the state data.

Q. WHAT SPECIFIC LOOP PROVISIONING PERFORMANCE DATA DOES THE *TRIENNIAL REVIEW ORDER* ASK STATES TO REVIEW?

A. The FCC asked the states to look for "consistently reliable performance in three areas: (1) Timeliness: percentage of missed installation appointments and order completion interval; (2) Quality: outages and percent of provisioning troubles; and (3) Maintenance and Repair: customer trouble report rate, percentage of missed repair appointments, and percentage of repeat troubles."[105]

Q. WHAT DOES QWEST'S PERFORMANCE DATA SHOW WITH RESPECT TO PROVISIONING TIMELINESS?

A. Qwest's historic regional performance in provisioning unbundled analog loops is outstanding. The data shows that each month Qwest provisions in excess of 15,000 analog loops and consistently provisions in excess of 98% of its installation commitments. See OP-3 to Exhibit DP-8. This far exceeds the 90% of commitments that the CLECs agreed would provide them a meaningful opportunity to compete. Moreover, in 11 of the last 12 months, Qwest average installation

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[104] *See Qwest 9-State 271 Order* ¶ 453; *Qwest 3-State 271 Order* ¶ 119; *Qwest Minnesota 271 Order* ¶ 69; *Qwest Arizona 271 Order* ¶ 51.

[105] *TRO* ¶ 512 n. 1574.

interval has been just over 5 days, well below the 6-day benchmark the CLECs agreed would provide them a meaningful opportunity to compete. Id. at OP-4.

Q. WHAT DOES QWEST'S PERFORMANCE DATA SHOW WITH RESPECT TO PROVISIONING QUALITY?

A. Qwest's existing performance measures also track the frequency with which a CLEC experience trouble on an analog loop within 30 days of provisioning. Qwest's regional performance data shows that CLECs routinely experience an installation trouble on less than 2% of newly installed analog loops. Id at OP-5 and OP-5*. This is better than the 95% standard set by the FCC, and substantially better than the retail parity standard agreed to by the CLECs in the Section 271 process.

Q. WHAT DOES QWEST'S PERFORMANCE DATA SHOW WITH RESPECT TO MAINTENANCE AND REPAIR?

A. Qwest's historical performance in maintaining unbundled analog loops is equally impressive. Qwest clears out of service troubles within 24 hours between 95% and 99% of the time. See Exhibit DP-8 at MR-3. Qwest always clears troubles within 48 hours is over 99% of the time. Id. at MR-4. CLECs experience repeat troubles less than 11% of the time, which is substantially better than retail parity. Finally, far fewer than 1% of analog loops experience troubles of any kind. In fact, Qwest tracks 12 aspects of its maintenance and repair performance each month, and for

each of these measures in each of the last 12 months, Qwest has provided service at or better than it provides to equivalent retail customers. The CLECs agreed they could compete at retail parity.

Q. WHAT CONCLUSION SHOULD THE COMMISSION DRAW WITH RESPECT TO THIS DATA?

A. The data demonstrate that Qwest is providing nondiscriminatory access to unbundled analog loops, and that it can transfer these loops in a timely and reliable manner. Qwest's performance in this regard has been consistently strong and reliable. Again, the FCC drew exactly the same conclusions from this performance data in the section 271 process. The CLECs have no operational barrier in obtaining unbundled analog loops from Qwest, and the Commission should so find.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

FINAL BATCH HOT CUT PROCESS FORUM ISSUES MATRIX

PROCESS ISSUES - EFFICIENCY					
ISSUE #	**ISSUE DESCRIPTION**	**QWEST POSITION**	**CLEC POSITIONS**	**HISTORY**	**RESOLUTION/RATIONALE**
P-1 (see also P-10)	Method of Initiation of a Batch Hot Cut request	The Hot Cut process is initiated by the CLEC LSRs - See also, supplemental information in "History" column	a. CLECs should be able to initiate the batch via e-mail notification that would include Central Office, project date and time, number of customer accounts, and lines involved. Qwest would respond via e-mail with the project code and a confirmation of the date which would trigger the CLEC issuing its LSR. (AT&T p. 15) b. Clarify the timing for the pre-order negotiations with CLECs for submitting orders – how is the process kicked off? What is the interval for these negotiations? (MCI-Forum) In what release will the OSS modifications be included? (MCI – Forum)	1/6/2004 – Entering a "B" on the CHC Field on the LSR will identify the orders as being associated with a batch. Entering a "B" in that field will also drive CLECs to the scheduling tool where they will schedule a day for the batch to be cut. CLECs no longer a need to provide a Project ID number. This change will require OSS modifications – likely will be included in Release 16.0 (scheduled for Oct./Nov. 2004)	1/6/2004: CLOSED. Qwest will modify an existing field on the LSR (the CHC field) to indicate a batch that will include reservation number and date – information will be included on FOC. If order is rejected, reservation is not lost if the order is resubmitted within the standard interval, the same reservation number can be used. Subject to OSS change that will be prioritized in the 16.0 Release and to the extent that this OSS change impacts other items in the 16.0 release, it will be addressed in CMP. 1/6/2004 - MCI agrees to CLOSE pending development and testing of the software change to ensure it works. 1/6/2004 - AT&T and McLeod agree to CLOSE. 1/6/2004 - Sub Issue P-1b

#141 (Continued)

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					CLOSED also as to the issue of pre-order negotiations: MCI agrees to close subject to development and testing of the software change and successful negotiation of a transition plan.
P-2	Project Identifier for a Batch Hot Cut	The Project number is required in the LSR and consists of the letters "BHC" and the CLEC's ZCID	Clarification on how the Project number is obtained and if it is required on the LSR. (MCI – p. 12)	1/6/2004 – Based on changes discussed in P-1 above, CLECs will no longer have to provide a Project Number.	1/6/2004 – CLOSED - MCI agrees to close
P-3 See also P-23 & P-24	Can CLECs request batch cuts at any time of day?	The Batch Hot Cut Proposal is designed for Basic Installation option only Those types of sensitive circuits that require that planning need to be run through the standard hot cut process. 12/10/2003: Qwest has committed to notify the CLEC on due-date via e-mail when the batch cut begins. Batches will be completed within a relatively short period of time; therefore a coordinated installation such as is contemplated by this question is not necessary.	CLECs should be able to request batch cuts on any day, at any time of day. (AT&T – p. 19); 1/6/2004 – AT&T continues to want the ability to identify a specific window of time during the day in which Batch Hot Cuts are performed and does not want to be limited to the 3-11 window currently provided by Qwest's process. 1/6/2004 - AT&T will take the Trap and Trace proposal back to its operational people and will get back to Qwest on whether or not it will close the issue of method of notice of	12/12/2003: Request from MCI: When MCI goes into the negotiation process, can it provide a notification e-mail address at that time? QWEST RESPONSE: prior to the time a CLEC submits a batch hot cut *for the first time*, the CLEC will provide a notification e-mail address to Qwest. That e-mail will then be used by Qwest to notify the CLEC that a batch hot cut has begun for all batch hot cuts for that CLEC. CLECs do not have to include the e-mail address on LSRs. How will Qwest make sure it uses the provided e-mail for batches and other e-mail addresses for other types of order activity. QWEST to	1/6/2004 – IMPASSE as to AT&T regarding ability to identify a specific window of time during the day in which Batch Hot Cuts are performed. AT&T does not want to be limited to the 3-11 window currently provided in Qwest's process. 1/7/2004 – IMPASSE as to AT&T issue of whether or not the web-based status tool is th appropriate method of communication between Qwest and the CLECs on order status (See Related Issues P-23 & 24) 1/7/2004 IMPASSE as to

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		1/6/2004 – The Batch Hot Cuts will be done during a 3:00 a.m. to 11:00 a.m. window. 1/6/2004 – MODIFICATION TO ORIGINAL PROPOSAL - Qwest will notify the CLECs when the batch has started via the new web-based status tool. The Trap and Trace option will also identify when the batch begins. 1/6/2004 - Qwest will submit a change request to Change Management as soon as it has fully defined the requirements for the status tool. There are clarification meetings that are held to accommodate CLEC input prior to submitting the CR.	commencement/completion of the batch/ status of batch. 1/6/2004 – McLeod will take the Trap and Trace proposal back to its operational people and will get back to Qwest on whether or not it will close the issue of notice of commencement/completion of the batch/status of batch. CLECs may need to plan certain batch hot cuts for customers with alarm circuits or CPE (Eschelon – p. 13)	respond in writing. 12/17/2003: Qwest written response: The CLEC will provide the email address for their BHC-ZCID project. The QCCC will build a table unique to the Batch process with the BHC-ZCID and designated email. Therefore,, this email address will be dedicated only to these orders. 1/6/2004 – IMPASSE PENDING on e-mail notification issue as to AT&T and McLeod – both companies taking back issue of status tool and Trap and Trace as notification vehicles in lieu of e-mail or other "push" technology.	McLeod on issue of whether or not the web-based status tool and the Trap and Trace capability is the appropriate method of communications between Qwest and the CLEC on order status. (See Related Issues P-23 & 24) IMPASSE as to Eschelon Request - regarding designating a time for customers with CPE or alarm circuits being something less than coordination that could be accommodated by the Batch Hot Cut process. 1/6/2004 – MCI agrees issue regarding e-mail notification can be CLOSED.
P-4	Can the CLECs request a "Batch Hot Cut" with coordination?	The Batch Hot Cut process is for basic installations only. If a CLEC wants to order a coordinated installation, it should use the standard coordinated hot cut process.	The Batch Hot Cut process should include options for both a coordinated hot cut and a frame due time option. (MCI – p. 5).	CLOSED - All existing installation options, in addition to Batch Hot Cut, are available to CLECs Closed as to MCI – Sherry Lichtenberg Closed for AT&T - Rick Wolters	CLOSED - All existing installation options, in addition to Batch Hot Cut, are availabl to CLECs Closed as to MCI – Sherry Lichtenberg Closed for AT&T - Rick

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					Wolters
P-5	Whether the Batch Hot Cut process should include loops provisioned over IDLC.	IDLC loops are handled using the standard hot cut process. Orders that are provided over IDLC are C-Jeop'd back to the CLEC if those orders are included in the Batch. To include these types of orders in a Batch eliminates the efficiencies the Batch process was designed to provide (due to requirement to roll a truck) Qwest will convert 10 UNE-Ps that are provisioned over IDLC loops per day per Remote Terminal within a Qwest Network Manager's area. Qwest will provide CLECs with an electronic spreadsheet of all CLEC customers, by central office, that are served via IDLC. Timing – for those markets where there is a finding of "no impairment," the spreadsheet will be provided to CLECs prior to the time when they must transition their lines.	IDLC should be included in the hot cut process. (AT&T – p. 16-19); (MCI – p. 4); (Eschelon – p. 15); (McLeod at 1) MCI would propose building a look-up table in Qwest OSS and reject those orders when they are submitted and providing information regarding IDLC and RT location. (MCI – Forum) AT&T proposal – AT&T is not proposing that IDLC be a part of the batch – what they are proposing is that when CLECs send over UNE-P's for conversion that Qwest identify whether the service is provided over IDLC, have those orders drop out of the Batch and automatically convert them under the standard hot cut process. If IDLC results in delay of customer migration to UNE-Loop, will Qwest continue to charge UNE-P rates until that customer can be migrated? (Gates – MCI – Forum)	IMPASSE - as to including IDLC loops in the batch - MCI (but MCI will consider Qwest's proposal to provide the IDLC information in advance of requirement to transition) 12/12/2003 – Remains at IMPASSE IMPASSE - as to action to be taken when loops submitted by the CLECs are provisioned over IDLC – should those orders automatically move to standard hot cut or should the order be c-jeop'd back to the CLEC by Qwest CLOSED– 12/10/2003: CLEC would be billed the UNE-P rate until the completion and acceptance of then UNE-Loop service conversion.	12/12/2003 - IMPASSE - as to including IDLC loops in the batch - MCI 12/12/2003 - IMPASSE - as to action to be taken when loop submitted by the CLECs are provisioned over IDLC – automatic move to standard hot cut or c-jeop of the order by Qwest CLOSED– 12/10/2003: as to the MCI question regarding what rates would apply pending migration of the CLEC to UNE-Loop.

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		Response to AT&T proposal – to handle in that manner, requires manual intervention and additional steps that impact efficiencies the Batch Hot Cut was designed to provide.			
P-6a	Whether the Batch Hot Cut process should include line split loops.	Line split loops are not included in the batch process, rather they are handled using the standard provisioning process.	Line splitting should be included in the hot cut process. (AT&T – p. 16-19); (MCI – p. 8-9); (Eschelon – p. 15); (Covad – p. 4);	12/3/2003 - OPEN – Qwest and Covad will meet to create a diagram depicting the various network connections required in a Line Splitting/Loop Splitting arrangement. – Diagrams completed – see BHC Forum Exhibit 4	12/12/2003 IMPASSE as to both P-6a and P-6b– for MCI, Cov Eschelon & AT&T
P-6b	Whether the Batch Hot Cut process should include UNE-P with ancillary DSL.	Requires changing the service from a non-design service to a design service – thereby eliminating some of the efficiencies the Batch process was designed to provide.	Covad agrees that this issue applies for the embedded base only and does not apply for new line splitting/loop splitting orders (Covad – Forum)		
P-7	How does the Batch Hot Cut process address situations where the end-user customer is served via exchange cable?	Batch Process will not include situations where customers are served via exchange cable because it cannot be unbundled – it is a truck side connection. CLECs can, however, use an EEL or they can collocate in the remote office. If CLECs are collocated in the remote, they can participate in the batch process	A batch appropriate process should be provided to address these situations (Eschelon MN- p. 11) Currently, Qwest rejects orders when the customer is served via exchange cable (Eschelon – Forum)	12/3/2003 OPEN - Qwest will provide a technical reference where exchange cable is defined/explained. CLECs will then review that information and provide position at next meeting of the Forum. 12/12/2003 Qwest will provide information at 12/19/2003 meeting of the Forum 12/17/2003 – Qwest Response: EX Cable - EX cable is cable that is identified due to its origination from a remote office switch. This cable	1/6/2004 - AT&T and MCI agree to CLOSE as to the issue of end user customers served via exchange cable not being included in the batch process.

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			Provide URL that contains a listing of the locations for all Qwest remotes sites (Clauson – Eschelon – Forum)	cannot be assigned from the Host office as there is no assignable connection between the host and remote switches. To access EX cables as Unbundled Loops a collocation must be established at the remote location. 12/19/2003 – Further Qwest Response – Qwest will post a diagram of this situation prior to the next Forum. 1/6/2004 – Qwest provided Exhibit 8 – which is a diagram of EX cable. Qwest will clarify in which remote collocation arrangements CLECs can use the batch hot cut process. 12/10/2003: The principle question coming from discussion at the Forum involved exchange cable and was: in a situation involving a host/remote switch relationship where an umbilical connects the host to a remote switching unit in the same Wire Center, can the Batch Hot Cut process be used? The answer depends on whether the premise that houses the remote switch is in a wire center where there is sufficient capacity such that	

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				no field technician dispatch is required. If a field dispatch is required, the Batch Hot Cut process may not be used; if not, it may be used so long as the prerequisites for a batch are satisfied for that wire center. It should be noted that in this instance, it is mandatory that the CLEC be collocated in the premises containing the remote switching unit. Qwest posts information on remote switches on the ICONN database www.qwest.com – Wholesale – Network Databases. It lists all of the host-remote relationships. Network Disclosures are also posted on the website and would include plans for future remote deployments. Information is also available in the Raw Loop Data Tool (RDLT). 12/10/2003 Information on Qwest remote switching sites can be found on the ICONN database – and can be searched by an entire state or by a specific CO within a state. If the 9th character of the CLLI is an "R" it is a remote or you can chose the "host/remote" correlation report at URL:	

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				http:www.qwest.com/cgi-bin/iconn/iconn_centraloffice.pl?function=3	
P-8	Whether the Batch Hot Cut process applies if an outside technician dispatch is required.	The Batch Hot Cut Process is limited to use of existing facilities that do not require an outside technician dispatch. It is Qwest's position that the efficiencies gained in the batch hot cut process would be lost if outside technician dispatch is required.	If the assumption that the batch process will be limited in every case to situations that do not require an outside technician dispatch, this is still an open issue for Eschelon	12/3/2003 OPEN – Eschelon will consider whether they will continue to pursue this position in light of discussion at 12/2/2003 meeting of the Forum. Eschelon will provide feedback at the next meeting of the Forum.	12/12/2003 – IMPASSE for Eschelon as to the issue of including in the batch those orders that require an outside technician dispatch.
P-9	How does the Batch Hot Cut process address CLEC-to-CLEC migrations? CLEC-to-ILEC? CLEC UNE-P to UNE-L (same CLEC) CLEC UNE-P to UNE-L (different LEC)	Qwest will utilize the same overall Batch Hot Cut process in each situation to the extent that conversion volumes are sufficient to qualify as a batch. Batch Hot Cut Process does not apply to situations in which a facilities-based provider has overbuilt Qwest facilities. This situation would be a New order and, therefore, not considered as a candidate for the Batch Hot Cut Process. For conversions from UNE-L to UNE-L (different CLECs) – Qwest would only move the	Qwest needs to explain how it will incorporate CLEC-to-CLEC migrations into a batch project. (AT&T – p. 19) Qwest must define "sufficient volumes" for CLEC-to-CLEC migrations. (MCI – p. 7) CLEC to CLEC migrations must also be included in the Batch Hot Cut process, in addition to Qwest Retail to UNE-L; Resale to UNE-L; Centrex/IFB to UNE-L. (McLeod – p. 1)		1/7/2004 - CLOSED - MCI – agrees to close this issue – Sherry Lichtenberg AT&T – agrees to close this issue – Rick Wolters McLeod – agrees to close this issue – Patty Lynott

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		facility from one CLECs collocation to the other CLECs collocation and this would be included in the batch hot cut process. For CLEC to ILEC conversions (winback) –will not be included in the batch process.			
P-10 (See also P-1)	Order placement methods, flow-through and service order accuracy	CLECs submit their orders for a Batch Hot Cut using the existing LSR process, with the "BHC" plus CLEC ZCID project number, whether that is through the GUI or EDI interface. Qwest response to sub-issues in CLEC Position Column: **1.** CLECs can use either EDI or GUI to submit batch hot cut orders. **2.** CLECs will not be required to manually generate spreadsheets **3.** Batch Hot Cut Orders are flow-through eligible. Batch Hot Cut LSRs will flow-through in accordance with existing flow-through standards.	**1.** CLECs should be able to use either EDI or GUI to submit orders. **2.** CLECs should not be required to manually generate spreadsheets. **3.** Orders should flow through. (MCI-p. 5 & 9); (McLeod at 2) **4.** Efficient submission will likely require development of new ordering capabilities – sending individual LSRs for multiple orders should not be considered a "batch." . (Eschelon p. 12) Clarification by Eschelon - Eschelon would like Qwest to put in place an interface to the GUI and EDI for Batch Hot Cuts that would take the place of LSR-by-LSR entry. Or, in the alternative, give CLECs the capability of sending an electronic spreadsheet directly to the QCCC. (Eschelon –	MCI agrees to close as to the first 3 sub-issues (in CLEC Position column) McLeod agrees to close the first 3 sub-issues pending discussion of scalability issue. 12/3/2003 - On Sub-Issue 4 - Eschelon will take back and determine if it will continue to pursue asking for an alternative to submitting individual LSRs e.g., spreadsheet functionality. 12/12/2003 - Given discussion at last Forum, Qwest position is that taking a mechanized process and taking a step backward to a manual spreadsheet or to re-mechanize in another fashion is not something	12/12/2003 - MCI agrees to close as to the first 3 sub-issues (in CLEC Position column) 12/12/2003 - McLeod agrees to close the first 3 sub-issues pending discussion of scalability issue. 12/12/2003: IMPASSE as to ESCHELON issue (#4) – regarding alternative to submitting individual LSRs e.g., spreadsheet functionality.

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		4. The LSR process is appropriate for use with the Batch Hot Cut process. Because of quality and cost issues, Qwest will not pursue development of an interface.	Forum)	Qwest is willing to make a part of the Batch Hot Cut Process.	
P-11	Order in which lines are cut over	To achieve efficiencies, the process does not permit CLECs to determine the order in which lines are cut over.	CLECs should be able to specify the order in which lines are cut over e.g., customers with multiple CSRs (Eschelon – p. 13 MN p 9)	12/3/2003 - OPEN - Eschelon will take back to determine if they are going to continue to pursue this capability. 12/12/2003 - Eschelon continues to request this capability. Because CLECs must use the related PON process to submit such LSRs, Qwest should develop a spreadsheet for the batch so that related PONs are worked consecutively. Eschelon believes a PON format could be developed to indicate sequence for this purpose. 12/12/2003 - the efficiencies gained in the Batch Hot Cut Process include permitting the central office technician to perform work in the most efficient and effective way possible; specifying the order in which lines are cut over, when those	12/12/2003: IMPASSE as to Eschelon issue regarding CLEC ability to determine the order in which lines are cut over in the batch.

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				lines may be on multiple blocks on the frame, reduces the efficiencies of the process.	
P-12	Impact on Batch Hot Cut Process of migration by telephone number change request	The "migrate by TN" capability covered by CMP CRs SCR061302-01 and SCR022703-18 address only orders where the "to" product is UNE-P.	Batch Hot Cut process should allow CLECs to "migrate by telephone number." (MCI – p. 10) MCI views this as a critical requirement (MCI – Forum)	12/3/2003 - OPEN – pending Qwest take back on technical capability issues associated with making TN migration capability available for batch hot cuts. 12/10/2003 Qwest Response: There is no technical limitation precluding Qwest from modifying the edits in IMA to allow CLECs to enter TN and SANO for UNE-P to UNE-Loop conversions. Systems changes to accomplish this modification are required to go through Change Management. MCI submitted a CMP CR (SCR120403-01) requesting this change on December 4, 2003. There is, however, a technical limitation that would prevent migration by TN from UNE-Loop to UNE-Loop as in that instance, the TN does not reside in Qwest databases. 12/12/2003: Further Qwest response: This CR would be eligible	1/6/2004 – IMPASSE as to MCI issue of not providing CLECs with the capability, in the Batch Hot Cut process, to "migrate b telephone number and SANO

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				for inclusion in IMA Release 16.0 which is tentatively scheduled for August 2004. To have it declared as a ***regulatory*** CR, requesting party must provide the docket number and verbiage from the regulatory order in that docket that mandates the activity. QWEST WILL TAKE BACK the questions of whether or not it considers this a regulatory mandate? If so, would Qwest oppose the change? Is it an option for the CR to be escalated in its implementation to a release sooner than IMA 16.0 via the CMP exception process? 1/6/2004 – As to MCI's question about whether Qwest will support or oppose the "migrate by TN" CR as a regulatory change – Qwest will embrace the spirit of a Commission order that may, at the end of the 9 month proceeding, direct such a change –it cannot support "migrate by TN" as a ***regulatory*** change because in order to be a ***regulatory*** change, the requirement must have a docket number **and** order associated with it. Qwest is not including the "migrate by TN" in its current Batch	

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				Hot Cut proposal because it is not a capability that is specific to batch hot cuts. However, Qwest will not oppose the MCI CR SCR061302-01 and SCR022703-18 (that deal with the TN SANO capability generally) in the CMP .	
P-13a See also P-1, P-2 and P-3	Does Qwest take orders for a Batch Hot Cut on a first come first served basis?	Batch Hot Cut orders will be processed by due date as assigned by Qwest OSS. 1/6/2004 – Due date scheduler will facilitate taking orders on a first come-first served basis.	Qwest must process batch orders on a first in-first out basis and must send both electronic and on-line notification to CLEC within one day of reject or if busy CFAs are found. (MCI p. 12)	12/3/2003 OPEN – Qwest will take back questions around what is involved in the negotiations process and what happens if the CLEC fails to place their orders – do they lose their slot? Will Qwest assess some sort of penalty?	1/6/2004 – MCI, AT&T, Covad & AT&T agree to close 13a.
P-13b	If Qwest will miss a due date, will jeopardy notice issue?	Yes. A jeopardy notice will be sent to CLEC on the day of the cut. If there is a Qwest jeopardy in a batch that takes the batch below 25, the entire batch will not be jeopardized.	Priority levels may be designated so that CLECs are aware of which services are in jeopardy due to the processing of a Batch Hot Cut. (Eschelon – p. 15)	12/3/2003 - OPEN	1/6/2004 – MCI, AT&T, Covad and McLeod agree to CLOSE 13 b.
P-14	How will the spreadsheet in Qwest's proposal be prepared and used? How will it be distributed? How will it be synchronized with CLEC LSRs and	The systems within QCCC will electronically produce a spreadsheet for internal Qwest use. Spreadsheet will also be distributed electronically to CLECs for use as a tool for the cut. The systems within QCCC will synchronize the LSRs with the service orders.	AT&T supports the use of an electronically prepared spreadsheet developed by Qwest's OSS based on information supplied on batch project LSRs. AT&T opposes manually created spreadsheets. (AT&T – p. 9) Eschelon believes that the spreadsheet process will result in LSRs falling out for manual	12/3/2003 OPEN	1/6/2004 – AT&T, McLeod, Covad and MCI agree to CLOSE this issue.

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	Qwest service orders?	1/6/2004 – MODIFICATION TO ORIGINAL PROPOSAL – Spreadsheet is no longer relevant. Qwest will now notify the CLECs when the batch has started via **the new web-based status tool**. The Trap and Trace option will also identify when the batch begins. 1/6/2004 - Qwest will submit a change request to Change Management as soon as it has fully defined the requirements for the status tool. There are clarification meetings that are held to accommodate CLEC input prior to submitting the CR.	handling, and thereby increase the likelihood of hot cut trouble. (Eschelon – p. 16)		
P-15 (See also P-16)	Can a CLEC modify a pending order for electronic provisioning?	Once an order is placed into a batch carrying a committed due date, CLECs may modify the pending order by notifying Qwest via a supplemental order identifying the change.	What happens when a CLEC needs to issue an interim order to make a change on an existing customer's account which is pending in a batch?	1/6/2004 – Qwest follow-up - Two situations (1) if a CLEC's existing UNE-P wants to submit a feature change while the account is pending in a batch hot cut, the CLECs can submit an order requesting such a feature change. (2) In those cases where there is an order pending in a batch hot cut, and the customer requests a provider change, then Qwest will perform the	1/7/2004 – MCI agrees to CLOSE 1/7/2004 – McLeod agrees to CLOSE 1/7/2004 – AT&T agrees to CLOSE 1/7/2004 – Covad agrees to CLOSE.

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				provider change and remove the pending order from the batch order. (See also P-16) 1/7/2004 – MCI question - If there is a change in status to a pending migration during the time the LSR for the migration is in the queue, and another order came in adding line splitting to that service – will the order for line splitting be added or rejected? QWEST RESPONSE: If a disconnect request is pending against a UNE-P account, any requests to modify that account will be rejected.	
P-16 See also P-15	While a customer's line is in the Batch Hot Cut provisioning stream, can the customer switch to another carrier?	1/6/2004 – Related to P-15 See Qwest position in P-15 above.	Clarify what happens in the batch process where the customer has churned over to another carrier during the pendency of the batch order. (AT&T- p. 20) The process should not allow any order activity against a customer's account while it is in the Batch Hot Cut process. (MCI – p. 12)	12/3/2003 OPEN - Qwest will take back the question of having the capability of permitting the subsequent order on a customer's line be able to process rather than having the customer move to the loop and then over to the new provider. 1/6/2004 – See P-15 above.	1/7/2004 – MCI Agrees to CLOSE. 1/7/2004 – McLeod agrees to CLOSE 1/7/2004 – AT&T agrees to CLOSE 1/7/2004 – Covad agrees to CLOSE.
P-17 (See also P-18, P-19 & P-28)	Should the process allow for same day pair changes?	Due to the re-design of the circuit and time constraints to get the design accomplished, same day pair changes will need to follow the standard hot cut	Permitting the CLEC to change the CFA if there is no dial tone on the day of the cut should be allowed. (Eschelon – p. 17)	12/3/2003 OPEN - Qwest will take back – investigate whether the process can be modified to permit CLECs to change the CFA on the day of the cut in the event they	1/7/2004 – Based on Qwest's counter-proposal, AT&T agrees to CLOSE this issue. Still have an issue on whether the web-based status tool is the

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		process.		receive a jeop notice of a no dial tone condition. 1/7/2004 – Qwest position is that it will not permit same day CFA changes for the reasons stated in the Qwest Position column. 1/7/2004 – AT&T believes this issue is at impasse since Qwest is unwilling to do a dial tone check on DVA date coupled with Qwest's position that it will not permit same day CFA changes (which is a solution for CLECs to remedy a no dial tone situation on the day of a cut) 1/7/2004 – McLeod position is that there should be an exception process that Qwest and the CLECs can work through to work the order on the day of the cut in the event of defective CFAs. McLeod will provide an order of magnitude as to when this happens. 1/7/2004 – Qwest will take back and discuss over the morning break to see if there is an alternative solution. 1/7/2004 – **afternoon session** –	appropriate method of notification. (See Issues P-3 & P-24) 1/7/2004 – Based on Qwest's counter-proposal, McLeod agrees to CLOSE this issue. 1/7/2004 – Based on Qwest's counter proposal, McLeod agrees to CLOSE this issue. 1/7/2004 – Based on Qwest's counter proposal, Covad agrees to CLOSE this issue.

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				Qwest response: based on CLEC concerns, Qwest's counter-proposal is that, in a 7-day interval –order submittal on day 0 and FOC also on Day 0 if Order is received before 7:00 p.m. CLECs will have translations work complete by midnight on Day 1 the Record Issue Date (RID), Qwest will perform its pre-wire work on days 2-3, will test for dial tone, and will notify the CLECs, via the web-based status tool of any "no dial tone" situations. If the "no dial tone" situation is as a result of translations, then CLECs have until the end of Day 6 to remedy. If the "no dial tone" situation is as a result of a defective CFA, CLECs have until 7:00 p.m. on Day 4 to supplement their order with the new CFA to permit the order to remain in the batch. On Due Date, Qwest will perform a dial tone & ANI test and, if there is no dial tone at that time, the order will go into a customer not ready jeopardy status and will be removed from the batch. (Counting for interval purposes begins on Day 1.) SEE BHC Forum Exhibit 10 for timeline diagram.	

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				1/7/2004 – MCI - Subject to seeing the process in flow-chart form, MCI supports this new proposal as good process. 1/7/2004 – AT&T position is that this is an improvement from a dial tone check and CFA change perspective. AT&T needs to take back the issue of how the requirement to have translations established by midnight on Day 1 is something that can be accommodated by AT&T's processes. As to these modifications and their impact on the status tool, AT&T doesn't want to deal with different systems and interfaces – prefer to keep things on EDI from a statusing perspective. The web-based status tool requires CLECs to check 100% of the orders, e-mail, conceptually, requires CLECs to query orders only on an exception basis. 1/7/2004 – McLeod finds that the new proposal works well to resolve the Dial Tone and CFA issues.	

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				McLeod still wants to discuss the interval associated with the Batch. 1/7/2004 – AT&T will have the switch translations done within the timeframe provided for in the proposal. AT&T agrees there is sufficient time to remedy no dial tone situation and CFA issues. 1/7/2004 – MCI also finds the new proposal acceptable. 1/7/2004 – Covad finds the new proposal acceptable.	
P-18 (See also P-17, P-19 & P-28)	What is the appropriate time to pre-wire the CLEC CFA?	12/19/2003 – In response to CLEC feedback during the Forum, Qwest has agreed to move the pre-wire of the CLEC CFA to the Design, Verify and Assign date	Pre-wiring must have at least one (1) day lead time from the batch project due date. (AT&T – p. 8)		12/19/2003 – CLOSED Sherry Lichtenberg on behalf of MCI agrees to close. Karen Clauson on behalf of Eschelon agrees to close. Rick Wolters on behalf of AT&T agrees to close.
P-19 (See also P-17, 18, & P-28)	What is the appropriate timing for Qwest to perform a dial tone check?	Qwest proposes that technicians perform test for dial tone on the day of the cut and require CLECs to remedy any "no dial tone" situation within one hour.	Performing this test on the day of the cut leaves insufficient margin for error. One hour is often not sufficient time to resolve a lack of dial tone issue. (AT&T – p. 9) MCI requests dial tone check 2 days prior to cut. (MCI – pp. 10 & 12)	12/19/2003 – IMPASSE as to 48 hour dial tone check 1/7/2004 – Re-opened – CLECs want Dial Tone check done at due date minus 2 and that it would be a reasonable compromise, if that check is performed, to automatically pull the order from the batch if there is no dial tone on the date of the cut	1/7/2004 – Based on Qwest counter-proposal (See Issue P-17), AT&T agrees to CLOSE this issue. 1/7/2004 – Based on Qwest counter-proposal (See Issue P-17), MCI agrees to CLOSE this issue.

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			Eschelon wants the dial tone check 48 hours in advance, and believes the one hour window to remedy issues may be insufficient. (Eschelon – p. 17)	(no 2 hr. window for CLECs to remedy on day of cut) Qwest agreed to take back over the morning break 1/7/2004 – See Qwest counter-proposal at Issue P-17	1/7/2004 – Based on Qwest counter-proposal (See Issue P-17), McLeod agrees to CLOSE this issue. 1/7/2004 – Based on Qwest counter-proposal (See Issue P-17), Covad agrees to CLOSE this issue.
P-20	Requirement for Central Office Technician to call RCMAC to work the disconnect of the UNE-P line	The Central Office Technician does not call the RCMAC today. This is not customer service impacting. As long as the port has been set and the CLEC performs its LNP work, the customer will have the ability to receive calls even if the disconnect work at the RCMAC has not completed.	Proposed Batch Hot Cut process eliminates the central office technician's call to the RCMAC to work the disconnect – results in customer working on two switches for a period of time – and inability to receive calls. (Eschelon MN P. 12)	12/3/2003 OPEN 1/7/2004 – today the CO technician does not call RCMAC to execute the disconnect order. Eschelon's statement that the customer is served by two switches for a period of time is inaccurate. Qwest presets its triggers and when the CLEC executes its subscription to port will occur.	1/7/2004 – MCI agrees to CLOSE. 1/7/2004 – AT&T agrees to CLOSE. 1/7/2004 – McLeod agrees to CLOSE. 1/7/2004 – Covad agrees to CLOSE.
P-21a	If one line is removed from the batch, and that line is part of a multi-line customer, should all lines for that customer be removed from the batch?	Multi-line customers have related orders on a single LSR. If one of the lines has no dial tone and CLEC is unable to resolve the no dial tone issue, all related orders on the LSR for the multi-line customer will be pulled from the batch. CLECs will receive a jeopardy notification and must submit a supplemental LSR to work the	AT&T believes the entire customer should be removed from the batch. (AT&T – p. 10).	12/3/2003 OPEN 1/7/2004 – AT&T would be willing to close if Qwest is willing to document the process that is followed when one order falls out on an LSR and that it is the CLECs responsibility to work back when there are a series of related orders. Qwest accepts and will commit to documenting the process	1/7/2004 – AT&T agrees to CLOSE 21a.

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		orders.			
P-21b	Impact on batch of trouble on one single line within a batch	Qwest has considered the issue based on Comments from CLECs on 12/1/03 and will agree to move the orders through the Batch Hot Cut process so long as there were at least 25 lines in the original batch and at least 20 qualified lines remain in the batch. Note that Qwest is unable to split LSRs.	Qwest must clarify its process when multiple customers are in the batch, and one customer's order must be cancelled. (Eschelon – p. 14) If a single order falls out of the batch process, leaving fewer than 25 lines in the order, can Qwest automatically process the LSR(s) under the "basic" process rather than rejecting or jeoping the entire batch and requiring CLEC to resubmit the order with new due dates? (MCI – Forum) Same question as MCI above – but what if a single order is removed from a batch of 50 orders? (Eschelon – Forum)	CLOSED as to what happens when one order must be cancelled within a batch - Qwest has considered the issue based on Comments from CLECs on 12/1/03 and will agree to move the orders through the Batch Hot Cut process so long as there were at least 25 lines in the original batch and at least 20 qualified lines remain in the batch. Note that Qwest is unable to split LSRs. 12/3/2003 OPEN – Qwest to take back the question of whether the orders that fall out of the batch hot cut process can be automatically processed using the standard hot cut process. 12/17/2003 Qwest response: Automatic processing is not feasible given the efficiency, timeliness and cost parameters of the Batch Hot Cut process. 12/19/2003 – MCI – Tim Gates will take back whether it wants to continue to pursue some sort of automatic processing for orders that fall out of the batch process	12/12/2003 - 21b CLOSED as to what happens when one order must be cancelled within a batch - Qwest has considered the issue based on Comments from CLECs on 12/1/03 and will agree to move the orders thro the Batch Hot Cut process so long as there were at least 25 lines in the original batch and at least 20 qualified lines remain in the batch. AT&T, MCI, Covad, McLeod & Eschelon agree to close. 1/7/2004 – MCI will not pursue automatic processing of order that fall out of the batch process. MCI agrees to CLOSE issue 21b.

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				1/7/2004 – MCI has discussed and will not pursue automatic processing CLOSED	
21c	What happens when there is an error in the Qwest database, then how does Qwest handle the situation and what ability does the CLEC have to get the batch through?		What if CLEC has done the checks into the RLDT or other tools and yet their order becomes jeopardized because IDLC is present, but wasn't noted in the database? (Eschelon – Forum) 12/12/2003: MCI question - How does the Raw Loop Data Tool get updated?	12/10/2003: The jeopardized order would not be processed as a part of the batch. However, Qwest has modified its position to allow for the remainder of qualified lines in the batch to continue to be processed so long as at least 20 lines remain in the batch. While IDLC information is available in the RLDT, in some rare instances, the IDLC may not appear in the RLDT. If the information is missing, the CLEC has the capability of notifying Qwest of the missing information via the RLDT. 12/12/2003 - IMPASSE for Eschelon– as to handling of orders that are jeopardized as a result of inaccurate or incomplete information in the Qwest database.	12/12/2003 – Eschelon IMPASSE on 21c– as to handling of orders that are jeopardized as a result of inaccurate or incomplete information in the Qwest database. 12/12/2003 - CLOSED as to MCI question–The RLDT regularly dips into LFACs and gets updates. If a manual look up is requested by the CLECs, then LFACs, and consequently, RLDT, are updated with information discovered in the manual look-up. Qwest would update the systems automatically; the CLEC does not have to take further action to affect the updates.
P-21d	What cure period applies for Customer Not Ready situations?	12/19/2003 - After the single order that has trouble in the batch is jeopardized, the Jeopardy notices for that order would follow the standard process that exists. The four-	When jeopardy notice is provided for a Customer Not Ready (CNR) - will the four-hour window be imposed? Will the order be cancelled if the CLEC doesn't correct or get another order into the	12/10/2003 as modified in 12/12/2003 Forum: 12/3/2003 OPEN – Qwest will take bake the question of whether the 4-hour window applies.	1/7/2004 – AT&T, MCI, Covad & McLeod agree to CLOSE 21d

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		hour window applies. The below URL provides information on the CNR process. http://www.qwest.com/wholesale/clecs/provisioning.html	batch? (Clauson – Eschelon – Forum)	12/19/2003 – Qwest will take back providing a response the specifically address how a Customer Not Ready situation will be handled. 1/7/2004 – Qwest provided an explanation of the process for addressing a Customer Not Ready Situation. Based on explanation – AT&T, MCI, McLeod and Covad agree to CLOSE 21d	
P-22	Does the process have a step to prevent premature disconnection of a line in a "no dial tone" condition?	Yes – if there is a no dial tone condition, and the line is part of a multi-line customer, all lines on the LSR will be jeop'd and the cut will not occur. If the customer has multiple CSRs,, then it is the responsibility of the CLEC to make sure the LSRs associated with each other are related.	Is there a process that would automatically remove a multi-line customer from the batch in the event there is trouble found on a single line within that customer's multi-line group? (AT&T – p. 10) Provide the CLECs with the citation to PCAT or other documentation on what happens with a single LSR and also what happens when there are related lines on multiple LSRs and a single line for a multi-line customer experiences no dial tone (Lichtenberg – MCI and Finnegan-AT&T – Forum)	AT&T thinks may be able to close this issue if Qwest can provide the citation to the documentation that describes what happens when a single line on a single LSR is found to have no dial tone. Qwest will take back – providing the CLECs with the citation to PCAT or other documentation on what happens with a single LSR and also what happens when there are related lines on multiple LSRs and a single line for a multi-line customer experiences no dial tone Qwest will also take back – whether CLECs using an RPON to relate the orders results in the orders falling	1/7/2004 – AT&T agrees to CLOSE 1/7/2004 – MCI agrees to CLOSE

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				out for manual handling..	
				12/10/2003: The material is not contained in the PCAT. LSRs and RPON relationships are discussed generally in the IMA User's Guide Once the BHC process is finalized Qwest will ensure that the underlying documentation contains a reference to this material along with the detailed documentation on the BHC process itself.	
				12/12/2003 – OPEN - Qwest will take back providing detail on exactly where information can be found for a single LSR situation with multiple lines as well as multiple LSRs with RPONs.	
				12/12/2003 – OPEN – Qwest will take back the question of whether using RPONs to relate orders causes the orders to fall out for manual handling.	
				12/17/2003 – Qwest Response - Yes, the LSR containing a RPON will drop for manual handling within the service order processing group. The RPON field is populated by the CLEC with data that assists them in	

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				internally tracking PON's for whatever reason they deem necessary. The RPON field is often populated when the LSR involves a reuse of facilities, multiple requests for the same location, due date. Only the LSR containing the RPON indicator in a RPON relationship will drop for manual handling. 12/19/2003- Qwest will clarify whether a CLEC will be able to verify on their PSON whether the order is included in the Batch. 1/7/2004 – Qwest provided explanation regarding what CLEC is able to determine based on information on the PSON. Based on that discussion AT&T & MCI agree to close.	
P-23 (See also P-3 and P-24 and S-1)	Timing for notifying CLECs when a batch is completed Method of notice to CLECs	Qwest proposes to notify the CLECs when all lines in the batch have been completed and will do so via an electronic spreadsheet. In addition, Qwest currently sends FOCs and SOCs to CLECs electronically. Further, Qwest changes the status within EDI within one (1) hour of completion of the service	Notification upon completion of the entire should occur prior to completion of the entire batch (AT&T – p. 7) Completion of a cut should trigger an electronic SOC within 10 minutes of the cut. Qwest must send EDI provisioning and completion notifications to	12/3/2003 OPEN – 1/7/2004 – MCI would like Qwest to take back the suggestion of having the Status Tool perform updates more frequently than 30 minutes.	1/7/2004 – IMPASSE as to timing and method of notice to CLEC of batch completion

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		order activities to identify that LSR requests are completed. Qwest will also notify the CLECs when the batch has started via the **new web-based status tool**. The Trap and Trace option will also identify when the batch begins. 1/6/2004 - Qwest will submit a change request to Change Management as soon as it has fully defined the requirements for the status tool. There are clarification meetings that are held to accommodate CLEC input prior to submitting the CR.	close out the LSR. (MCI – p. 13) Batch Hot Cut process should not result in all-day hot cuts (Eschelon – p. 17)		
P-24 (See also P-3 & P-23)	How will CLECs know which orders in the batch were completed?	Qwest proposes to notify the CLECs when all lines in the batch have been completed and will do so via an electronic spreadsheet. In addition, Qwest currently sends FOCs and SOCs to CLECs electronically. Further, Qwest changes the status within EDI within one (1) hour of completion of the service order activities to identify that LSR requests are completed.	The CLEC needs accurate information regarding the exact lines that were cut over. (AT&T – p. 11)	1/6/2004 – Today, this would be IMPASSE for AT&T as to existing proposal that has CLECs pulling information from Qwest as opposed to the information being pushed to the CLEC by Qwest. The issues are (1) notification via the website when there is a no dial tone issue discovered by Qwest and (2) notification via the website of the initiation and completion of the batch.	1/7/2004 – IMPASSE as to the issue of whether a web-based status tool is sufficient to provide information to the CLECs on status or is an e-mail or other type of "push" technology appropriate.

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		1/6/2004 - Qwest will also notify the CLECs when the batch has started via the status tool. The Trap and Trace option will also identify when the batch begins. 1/6/2004 - Qwest will submit a change request to Change Management as soon as it has fully defined the requirements for the status tool. There are clarification meetings that are held to accommodate CLEC input prior to submitting the CR		1/7/2004 – MCI supports the web-based system proposal, particularly if it can use it in conjunction with Trap and Trace. MCI looks forward to working with Qwest on the requirements document associated with the proposed status tool as part of the clarification meetings provided for in CMP. MCI believes the status tool needs to be developed as an "API" so that information can be shared back and forth. 1/7/2004 – AT&T does not want to commit at this time to a "pull" solution as Qwest currently proposes and preclude some sort of "push" technology such as some sort of EDI message or something through the IMA GUI. 1/7/2004 – McLeod would like Qwest to take the issue back of enhancing EDI to provide for capability to notify CLECs when a batch begins in addition to the status information already provided via EDI. 1/7/2004 - Qwest response is that it has already explored enhancing EDI and found that the update intervals	

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				associated with updating status in EDI would likely be longer than those associated with Qwest's web-based status tool proposal. 1/7/2004 – McLeod will continue to evaluate the Trap and Trace option. McLeod position is that the web-based status tool is, in large part, a duplication of information that CLECs obtain today via EDI (with the exception of the jeopardy notices)	
P-25	Impacts of Batch Hot Cut on Databases and directory listings (e.g., LIDB, CNAM etc.)	Order flow will not change from the existing process, consequently, databases will not be impacted	Clarify the impact to LIDB/CNAM databases when customers move from UNE-P to UNE-L (MCI – p. 8) Migration of directory listings "as is" should be allowed. (MCI - Forum). MCI also recommends examining any existing processes to see if additional procedures are required to address what happens in the event Qwest receives a trap and trace request from a PSAP in between the time the order has	12/3/2003 - OPEN - MCI wants written response from Qwest on the timing for the 911 unlock. When does it happen? Qwest will take back to provide written response, but also advised within the Forum that the 911 unlock will be batched and processed to the PSAP at 6:00 p.m. on the day of the cut. It is the same process used today. 12/10/2003: 911 unlock is sent in a batch format to the PSAP for all orders completed as of 6pm on the day of completion. This is the same process as used today.	12/12/2003 – CLOSED based on additional discussion during 12/12/2003 Forum and Qwest's commitment to note 911activities on Batch Hot Cut flow diagram and providing detail concerning those activities in the underlying Task List. MCI believes this issue can be CLOSED. MCI agrees to consider the issue of migration of directory listi "as is" CLOSED. – Sherry Lichtenberg

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			been cut and when the 911 unlock is processed		
P-26 (See also S-1)	Is there an escalation process for Batch Hot Cuts?	Qwest's current escalation process will be used for the Batch Hot Cut process Any issues prior to the day of the cut go through the ISC (Escalation Center). On the day of the cut, Qwest will provide CLEC a spreadsheet on completion of the batch and will provide a timeframe prior to closing out the orders where the CLECs can call the ISC and work through issues associated with orders in the batch. This process will be documented in CLEC-facing documentation as a part of the Batch Hot Cut Process. 1/7/2004 – REVISED -Any issues prior to the day of the cut go through the ISC (Escalation Center). Qwest will provide CLEC status on completion of the batch **via the new web-based status tool** and will provide a timeframe prior to closing out the orders where the CLECs can call the ISC and	An escalation process should be developed for the Batch Hot Cut. including addressing multiple escalation tickets and priority for resolution (Eschelon – p. 14) Eschelon wants to ensure that escalation process will address multiple escalation tickets and that escalation centers are trained in the components and implications of a batch process. (Eschelon – Forum)	12/3/2003 OPEN - Once the batch hot cut process is finalized, training, methods and procedures and documentation concerning the batch hot cut process, how orders will be associated in the batch, etc. will be provided to the centers within Qwest that are involved in the cut process. CLEC documentation concerning the process will also be created and CLEC training made available Qwest will take back the issue of whether CLEC employees can be trained along with Qwest employees 12/19/2003 – Qwest evaluated this request and did not see the benefit of having CLECs participate in Qwest employee training. In this process, the CLEC personnel and the Qwest personnel will have different work functions and consequently there would not likely be synergies or benefits associated with joint training.	1/7/2004 – MCI agrees to CLOSE 1/7/2004 – AT&T agrees to CLOSE 1/7/2004 - Covad agrees to CLOSE 1/7/2004 – McLeod agrees to close.

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		work through issues associated with orders in the batch. This process will be documented in CLEC-facing documentation as a part of the Batch Hot Cut Process.			
P-27a	Level of Mechanization - status tool	See remarks in "History" column regarding commitment to develop web-based status tool	Qwest should develop an electronic system to provide real-time order status information (MCI – p. 5)	12/3/2003 - OPEN – Qwest is investigating this issue. 1/7/2004 – Qwest has committed to develop a status tool. Based on that commitment, MCI is willing to close this issue as it pertains to the status tool	1/7/2004 – CLOSED as to issue of providing a mechanized st tool and scheduling tool MC agrees to close.
P-27b	Level of mechanization – electronic scheduling tool	See remarks in "History" column regarding Qwest's commitment to develop an electronic due date scheduling capability for batch hot cuts.	Establish an on-line real time electronic due date scheduling reservation system that allows CLECs to select hot cut times and dates. (MCI – pp. 9-10)	12/3/2003 OPEN – Qwest is investigating this issue. 1/7/2004 – Qwest has committed to develop an electronic due date scheduling reservation system that will permit CLECs to select hot cut dates. Based on that commitment, MCI is willing to close this issue as it pertains to the scheduling tool.	1/7/2004 -AT&T agrees to close on the mechanization issue raised in the initial CLEC comments.
P-27c	Level of mechanization – automated or robotic	According to the International Engineering Consortium (IEC) on URL:	Automated or robotic frames should be evaluated (MCI – p. 3)	On the issue of automated or robotic frames – see information in Qwest Position column.	12/19/2003 – IMPASSE as to the issue of evaluating automated or robotic frames.

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	frames	http://www.iec.org/online/tutorials/frames/topic04.html There is no viable solution for robotic distribution frames at this time.. "While simple in concept, this type of solution never quite matured into a viable technology for automating distribution frames. That is because pure mechanical, robotic solutions have reliability and maintenance issues due to their moving parts. This limits their effectiveness in larger COs or in environments where significant churn is experienced." "Perhaps the biggest "show stopper" for robotics, and all of the other copper automation technologies previously examined for frame applications, has been scalability."			
P-28 (See also P-17, 18 & 19)	Troubleshooting and acceptance of multiple loops – specifically, sufficiency of one-hour window to resolve trouble and to accept orders	The process provides that CLECs are notified if there is trouble on a line within the Batch. The one-hour notification begins at the time that notice is provided. CLECs can also do work up-front to	How does Batch Hot Cut process address troubleshooting on multiple loops within the current one hour window provided? (Eschelon MN – p. 12)	12/17/2003 – Qwest Response - The CLEC is notified via email of trouble on the line(s), when the email is sent to the CLEC, the hour timeframe starts for the orders contained on the e-mail notification. The CLEC then has 1 hour to	1/7/2004 – CLOSED – based Qwest counter-proposal as discussed at Issue P-17. 1/7/2004 - AT&T agrees to CLOSE.

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		minimize the likelihood of trouble at the time of the cut.	12/19/2003 – Eschelon believes this is related to P-19 and, since Qwest has not yet closed on P-19, Eschelon disagrees that the 1-hour window is appropriate to resolve. (Eschelon – 12/19/2003 Forum) AT&T and MCI believe e-mail notification is inappropriate given that the CLEC only has a 1-hour window to resolve. MCI believes that this issue may be mitigated if there is some sort of on-line statusing tool made available to the CLECs. (AT&T & MCI – Forum)	resolve the trouble(s) and provide information back to the QCCC. If no response, the QCCC follows the standard jeopardy process and the CLEC will need to supplement the LSR(s) with a new due date. 12/19/2003 – OPEN on 1-hour window– pending CLEC discussions to explore what an appropriate period may be. Also OPEN as to issue of method of notification. 1/7/2004 – Qwest counter-proposal as discussed in Issue P-17 eliminates the opportunity to cure on Due Date. AT&T, MCI, McLeod and Covad all agree that the opportunity to cure on due date can be eliminated.	1/7/2004 – MCI agrees to CLOSE 1/7/2004 – McLeod agrees to CLOSE 1/7/2004 – Covad agrees to CLOSE
P-29	Coordination of systems changes as a result of the Forum & State proceedings with CMP	For systems changes, the product of the Forum and the State Proceedings will go to CMP as Regulatory Change Requests. As such, the changes will be incorporated into releases above the line and will not be prioritized.	How will changes agreed to in the Forum be synched up with and incorporated into the CMP? (Lichtenberg – MCI – Forum)	12/10/2003 – OPEN 12/19/2003 - Qwest provided explanation that the CMP process for regulatory changes is for all CLECs and Qwest to vote to see if they agree that the systems changes are indeed a regulatory change. Qwest will agree to abide by the spirit and intent of the regulatory orders issued by state Commissions and the existing CMP processes as they pertain to the Batch Hot Cut process. MCI believes this issue	1/7/2004 – IMPASSE – as to MCI issue regarding the need for any system changes coming out of the batch hot cut proceedings in the states to be classified as regulatory changes. MCI does not agree, in this situation, th the CMP process is the appropriate forum to address systems changes associated with Batch Hot Cut given that the systems changes must be in place in order for the Batch Hot

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				needs to remain OPEN. 1/7/2004 – Qwest proposes that this issue be resolved by stating that changes agreed to in this forum **and** ordered by state commissions will be incorporated into the CMP process as regulatory changes. 1/8/2004 – McLeod concerned about system enhancements for BHC being included in the CMP given the number of Change Requests that are currently pending – McLeod position is that the enhancements associated with BHC should be moved outside CMP as a separate release. 1/8/2004 – Covad recommends Qwest allocate additional resources to address systems issues associated with Triennial Review. 1/8/2004 – It is Qwest's position that the changes that result from the TRO will be handled through the normal CMP process..	Cut process to exist.
P-30	Process flow – steps	Qwest cannot accommodate MCI's request because steps 3-9 are flow-through. Step 3 is the receipt of the LSR. The LSR	On Exhibit 3 (Proposed Batch Hot Cut Provisioning Flow) MCI recommends that Qwest move step 10 (Order	12/10/2003 – OPEN 12/12/2003 – CLOSED - MCI agrees to close this issue.	12/12/2003 – CLOSED - MCI agrees to close this issue

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		would then need to be input into the SOP (Step 5), then designed (Step 9) before verification of the order by QCCC occurs (Step 10).	Verification/Qualification) to occur immediately after current step 3. There is no reason to proceed further if the order does not qualify for the BHC process (Gates – MCI – Forum)		
			SCALABILITY – VOLUMES		
SC-1 (See also SC-5)	Can Qwest's proposed process handle anticipated volumes?	The Batch Hot Cut process is scalable, which will allow Qwest to meet current and future demand. In considering volumes that may have to be handled by the Batch Hot Cut Process, Qwest has considered the embedded base as well as incremental growth similar to what AT&T has suggested. An additional assumption is that in the event there is a finding by state commissions of impairment,, or in markets where Qwest does not seek to challenge the presumption of impairment, then Qwest will continue to provide UNE-P. All of these assumptions will form the basis for the volumes that can be anticipated. Qwest will be prepared in the near future to put forward	Qwest needs to provide more evidence to establish this point. (AT&T – p. 12) Qwest needs to identify the number of batches that it can handle per Central Office, per state and per region. (Eschelon – p. 17) Qwest must clarify the maximum/minimum line volumes per day per CLEC for the Batch Hot Cut (McLeod – p. 1) The daily line count threshold that Qwest can manage for its retail unit must be provided, and parity established. (McLeod – p. 2) Are there limitations on the number of UNE-P to UNE-L lines that can be migrated for a single account? (MCI – Forum) Clarify the relationship of and	12/3/2003 OPEN - For SC-1 in total, Qwest will take-back – providing parties with the assumptions that form the basis for its proposed volume estimates. Qwest will also provide additional information on assumptions for staffing levels for the anticipated volumes. Qwest is not placing limits on the number of UNE-P lines that can be migrated for a single account.	1/7/2004 – IMPASSE as whether Qwest's propos process can handle anticipated volumes

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		numbers based on those assumptions.	impact of batch process on non-batch orders and other services. (Eschelon MN p. 10) AT&T believes should assume worst case scenario for development of the process upper limit. AT&T thinks that adding an incremental growth number using analogous number e.g., customers will move their local service about as much as they move their long distance service approximately 2.6%. Churn for CLECs is approximately 4.6-5.2% Churn rate should also include winback rates for Qwest. AT&T concerned about Qwest's ability to handle volumes. Wants Qwest to share some of its analysis on why it believes it can keep up with the demand AT&T believes its appropriate to look at embedded base of UNE-P and UNE-L customers, add some incremental growth number to account for the churn, include additional staff to handle IDLC, and then explain how the process will handle. (AT&T – Forum) Scalability is an issue for McLeod		

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			and very interested in how Qwest will gear up for the volume. (McLeod – Forum)		
SC-2	What is the impact of performing Batch Hot Cuts for multiple CLECs in same CO.	In a given CO, Qwest will perform batch cuts for up to 100 lines. The 100 lines can be associated with one or more CLECs. This number is over and above the normal workload. 1/7/2004 Qwest will work with multiple CLECs in the same central office if the sum of the CLECs batches does not exceed 100 lines. Today, Qwest has no formal limitations that it places on the number of basic or coordinated hot cuts. Generally, Qwest and the CLECs pre-plan to ensure a smooth transition. Batch Hot Cuts are an additional option over and above standard hot cut volume	a. Will Qwest work with Multiple CLECs in the same central office on the same day if the sum of the CLEC's batches does not exceed 100 lines? (AT&T p. 12) b. Is there a limit on the number of CLECs that can migrate 100 lines in a central office in a day? (AT&T p. 13) How will Qwest deal with multiple CLECs in a single CO? What is the maximum number of Batch Hot Cuts it can do in a single day per CO? (MCI – p. 7, 8) c. How will prioritization be determined so that multiple carriers can submit a Batch Hot Cut while not freezing out non-batched cuts or freezing out particular COs? (Eschelon – p. 14) d. If restrictions are placed on CLECs ability to complete Batch Hot Cuts in any wire center at any time, how will comparable restriction apply to Qwest retail?	12/3/2003 OPEN	1/7/2004 - Sub-issues a, b, and c (as identified in the CLEC position column) are CLOSED for AT&T, MCI, Covad & McLeod Sub-issue d - AT&T agrees to close; MCI agrees to close; Covad agrees to close; McLeod agrees to close. Sub-issue e – McLeod agrees to close this sub-issue, but believes it is still open as to the issue of scalability (See SC1 & SC-5) Covad agrees to CLOSE AT&T agrees to CLOSE MCI agrees to CLOSE

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		Restrictions, if any, will be applied in a non-discriminatory manner.	(Eschelon – p. 14) e. McLeod would like clarification around what the "normal workload" is as well as an understanding of exactly how the new batch hot cut process and the normal workload will be resourced. (McLeod – Forum)		
SC-3	Same CLEC, multiple Collocations in the same CO	So long as conversions are for the same CLEC, CLECs with multiple collocations in the same CO can use the Batch Hot Cut process for such conversions	Will Qwest allow CLECs that had two different collocation arrangements in the same CO to include facilities in each of the arrangements on the same project? (AT&T p. 13) For the same CLEC with multiple RSID/ZCID how will Qwest handle?	12/3/2003 OPEN - Qwest will take back – the question of whether the process will accommodate the same CLEC/operating entity with multiple RSIDs or ZCIDs and multiple ICAs combining their orders into a batch. 12/10/2003: If a CLEC is operating under multiple ZCIDs, that means that they are operating under multiple ICAs and, therefore, their orders must be handled as separate batches. 12/12/2003 – If a CLEC is operating under a single interconnection agreement but has multiple RCIDs or ZCIDs, their orders must be handled as separate batches. CLOSED – AT&T agrees to close. MCI agrees to close.	12/12/2003 - CLOSED – AT&T agrees to close. MCI agrees to close.
SC-4	Staffed vs. Un-	The Batch Hot Cut process will	Are batch projects limited to	CLOSED – AT&T agrees to close this	CLOSED – AT&T agrees to

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	staffed COs	be available in any central office, whether staffed or un-staffed.	central offices with full-time staff? (AT&T p. 13)	issue. – Rick Wolters	close this issue. – Rick Wolters
SC-5 (See also SC-1)	Staffing levels	Resources will be added and/or shifted as the final Batch Hot Cut process requires. Qwest will use its standard recruiting, hiring and training practices to staff the work activities required. In those locations where Qwest has sufficient volumes, there will be dedicated personnel assigned to batch activities. For other locations, the staff will not be dedicated only to batch work, but during batch activity, will be focused on that work.	Describe the number of additional people Qwest must add to meet the increased hot cut demand. (AT&T p. 13) Plans for recruiting, hiring and training personnel (AT&T p. 14) Qwest must identify and dedicate Qwest personnel to the Batch Hot Cut process (Eschelon – p. 15) By dedicated, Eschelon means resources that will be working solely on batches.	12/3/2003 OPEN – See also SC-1	1/7/2004 – IMPASSE as to level of detail required regarding plans for staffing by Qwest to address batch hot cut activity
SC-6	Order accuracy		Qwest should develop a mechanism to create accurate service orders from the batch, and batch hot cut orders should flow-through. (Eschelon – p. 13)	12/3/2003 OPEN 1/8/2004 - Qwest position is that order accuracy is more appropriately dealt with in Long Term PID Administration. 1/8/2004 - AT&T and Covad agree to close this issue and will take up their concerns regarding performance metrics in other sections of the Disputed Issues matrix.	1/7/2004 – MCI agrees to CLOSE this issue. 1/7/2004 –AT&T is willing to close as to SC-6. 1/7/2004 – Covad agree close 1/7/2004 – McLeod agrees to close
			VOLUMES		
V-1	The basis on which	Qwest proposed formulas	Qwest's proposed formulas do not	12/3/2003 - OPEN - See SC-1	1/8/2004 – Parties agree to

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(See SC-1 & SC-5)	Commissions can arrive at a maximum volume of hot cuts to be performed across the Qwest region	provide the basis on which Commissions can arrive at maximum volumes.	account for churn and winback activity. The Number should be broken out on a state-by-state basis. (AT&T – p. 13)	1/8/2004 – McLeod position is that the formula covers the embedded base, but does not account for new growth 1/8/2004 – MCI position is that the formula assumes that the movement will occur over a 21 month period – and does not account for the situation where a CLEC may want to move faster than the 21 month period. Further, it appears that the formula is completely dependent on the successful negotiation of a transition plan. There may also be certain central offices where the CLECs may want to move more quickly that may conflict with the 21 month time period as Qwest has proposed. 1/8/2004 – Covad cannot say that it agrees completely, but is encouraged that Qwest's numbers appear to show that Qwest has sufficient resources to handle the volumes. The assumptions appear reasonable. 1/8/2004 – Qwest can add to its assumptions the "net add" of the current UNE-Loop activity to reflect the growth. With that addition, McLeod would agree that the assumptions are appropriate.	CLOSE this Issue as it is covered in Issues SC-1 and SC-5.

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				MCI would agree that the calculations are correct based on the assumptions. MCI does not believe that the conclusions Qwest is drawing from those numbers is necessarily correct.	
V-2	Per Central Office limit on Batch Hot Cuts	Qwest proposes a limit of 100 lines per Central office	What is the appropriate limit on a per central office basis – should there be a limit? (Eschelon – Forum)	12/3/2003 - OPEN 1/8/2004 – Qwest position is that the most efficient configuration is for 2 technicians performing 100 conversions during an 8-hour shift . 1/8/2004 – AT&T – accepting that premise – is there a reason why you have to limit it to two technicians? Qwest Response: two technicians is optimum given the concentration of wires on the frames where this work is being performed and is the most efficient way. Further, the 100 lines per CO permits Qwest to complete the migration well within the transition period. 1/8/2004 – If, in the transition meetings, MCI or other CLECs want a more rapid transition in certain central offices that met certain characteristics, would Qwest be willing to do more than 100 lines? 1/8/2004 - Qwest is not precluding that sort of discussion, however, the volumes appear to demonstrate that Qwest can	1/8/2004 - MCI would agree to CLOSE this issue based on an agreement th the parties are not foreclosed from mutually agreeing, during the transition planning process for the embedded base, to the possibility of doing more than 100 lines per CO on an exception basis. Further, planning can include new customers may also be included in the batch. 1/8/2004 – McLeod will go to **IMPASSE** at this time on the sizing limitation of the number of batch hot cut lines included in a batch central office. McLeod suggests we take a look at the resources available in a CO and proposes a 200 lines per CO limit.

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				handle the transition in addition to day-to-day activity within the 100 line per CO limit.	1/8/2004- Covad agrees to CLOSE this issue based on an agreement that the parties are not foreclosed from mutually agreeing, during the transition planning process for the embedded base, to the possibility of doing more than 100 lin per CO on an exception basis. Further, planning process may also include consideration of new acquisition customers. 1/8/2004 – AT&T will take this issue to **IMPASSE** and supports McLeod's suggestion that the batch size per Central Office of 200 lines.
V-3	Size of a "batch"	The batch must include at least 25 lines for a specific CLEC in one central office.	CLECs should be allowed to determine a minimum or maximum amount of orders to send per batch, per CO. (MCI – p.7) Qwest should specify the assumptions and exceptions made per batch. (Types of orders, volume limits, etc) (McLeod – p. 1)	12/3/2003 - OPEN	1/8/2004 – IMPASSE as to the issue of minimum batch size 1/8/2004 – McLeod pos is that, particularly for ne customers, there should be no minimum number necessary for CLECs to be able to take advantage of batch hot cuts and a cheaper

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			Clarify definition of batch/number of lines. (Eschelon – Forum) How many current orders would trigger the "batch" process as defined in the proposal. In other words, how often does a single CLEC submit orders for 25 mass market loops in a single wire center on a single day? Single week? What percentage of the offices in the state incur this type of volume? (Peter Healy TDS Metrocom – Forum) 12/19/2003 – MCI response – MCI position is that limit of 100 per CLEC per CO is the ***minimum*** limit.	12/10/2003 - Qwest does not currently track orders in this manner, and has no way of tracking this information since CLECs do not currently "batch" their orders for submission, except where they desire conversion on a project-managed basis. 12/12/2003 –Qwest has UNE-P arrangements in 91% of the central offices in its territory. In a large percentage of those offices there are 25 or more UNE-P arrangements. **Qwest will take back** question of what is that percentage. 12/19/2003 – generic example in a state with 130 offices, 75 have UNE-P in them; of that 75, less than 25% of them have fewer than 25 UNE-P arrangements, 6 offices have 1,000 or more. Qwest will provide more detail at the January forum. Steve Pitterle - from TDS Metrocom has additional questions before agreeing to close. 12/19/2003 –looking for response from Qwest regarding the percentage requested above.	price. 1/8/2004 – AT&T position is that 25 should not be the minimum batch size. AT&T proposes there be no minimum batch size 1/8/2004 – MCI position there should be no minimum batch size per CLEC or generally

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				MCI is not willing to agree to close at this time. MCI is not willing to say that the appropriate maximum number of lines per CO is 100 unless there is some actual, technical explanation as to why there is a limit. MCI will take back the question of what MCI's proposed minimum/maximum numbers are for this purpose. McLeod will take back the question of what McLeod's proposed minimum/maximum numbers are for this purpose. Qwest will take back the request for additional support behind Qwest's 100 batch limit ***and*** the CLEC proposal to require less than a 25 minimum number as it pertains to unstaffed offices	
V-4	"Orders" vs. "Lines" when addressing sizing	The batch process will include up to 100 lines per day in a single central office.	Clarify which will be used when sizing and addressing Batch Hot Cut limitations – lines or orders. (MCI – p. 8)	CLOSED	12/3/2003 - CLOSED
			SEAMLESSNESS		
S-1 (See also P-23 & P-26)	How will Qwest manage customer service impacts and outages during batch hot cut process?	See P-23 - P-26	a. Outages must be managed quickly and efficiently (AT&T – p. 5) Identify steps that will be taken to minimize adverse end user	12/3/2003 - OPEN – See also P-23 and P-26 1/8/2004 – Qwest's new proposed status tool would provide CLECs with status on their orders thereby permitting the CLECs to complete the orders or, should they	Sub-Issue S-1a – CLOSED McLeod, MCI, AT&T & Covad agree to close. Sub-Issue S1b – CLOSED McLeod, MCI, AT&T &

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			impacts. Are there preventative measures contemplated? (Eschelon MN – p. 4 & p. 10) By outage, McLeod is referring to both those instances when customers are unable to receive calls ***and*** those instances when customers have no dial tone. (McLeod – 12/19/2003 Forum) b. Provide a response to AT&T's request for e-mail notification on initiation of a batch. (Finnegan – AT&T – Forum)	need to pull orders from the batch for some reason, the status tool provides a hot-link e-mail address that CLECs can use to send such a request to Qwest. CLECs also have the existing escalation process available to resolve issues as well. 12/3/2003 - OPEN 12/10/2003 - Qwest has considered AT&T's request and agrees that it will now provide CLECs with an email notification on the initiation of the batch. 12/19/2003 – From AT&T's perspective, believe that with response above and discussion during 12/19/2003 Forum AT&T **believes there is agreement in principle.** Parties understand that, similar to the process followed during the 271 workshops, agreements reached during the Forum will ultimately be documented in SGAT and, once it has gone through the CMP, in PCAT	Covad agree to close.

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				language. 1/7/2004 AT&T position is that it is still investigating the Trap and Trace proposal of Qwest and still questions whether a web-based status tool is sufficient to provide information to the CLECs on status or is an e-mail or other type of "push" technology appropriate. Parties will discuss this issue in the context of Issues P-23 & P-24 and so this Issue can be closed.	
S-2	Interval for the batch – from CLEC initiation of a request to due date for the batch	Intervals for the embedded base of UNE-P depends on the Batch Hot Cut process agreed to in the Forum and the transition plans ordered by the Commission. For new Batch Hot Cuts, the interval will be negotiated.	a. Batch Hot Cut intervals cannot be individually negotiated on a project-by-project basis. There must be a standard interval (e.g., 6 days). (AT&T – p. 14) a. CLECs should not be required to "negotiate" the provisioning date for a Batch Hot Cut in advance. Interval should be five (5) business days to minimize the amount of time a customer is held in a limbo state. (MCI – p. 5, 6 & 11) a. Assumption is that the current 5-day interval will be the interval for the new Batch Hot Cut process	**As to Sub-Issue S-2a** (as noted in CLEC position column): 12/3/2003 - OPEN - Qwest will take back – parameters for an interval and also whether or not there is a way to schedule without requiring negotiations 1/8/2004 – Qwest position is that the "meaningful opportunity to compete" standard as decided in the 271 proceedings should be the basis on which intervals are set. For Batch cuts for the embedded base, the volumes involved and the fact that CLECs already have the customer so there is not a customer acquisition issue, the 7-day interval is appropriate and meets the "meaningful opportunity to compete standard."	1/8/2004 – IMPASSE as to the issue S-2a - parameters for the interval - should the intervals for the batch hot cut process be the same as the intervals for the standard provisioning process? 1/8/2004 – CLOSED as to Issue S-2b – based on Qwest commitment to a scheduling tool. AT&T, MCI, McLeod, Covad agree to close. 1/8/2004 – S-2c – IMPASSE – as to the issue

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			(McLeod – pp. 1 &2) a. Eschelon wants definition on what the interval is for the batch hot cut process. For new hot cuts, a standard interval critical. (Eschelon – Forum) b. AT&T wants to "get out of the negotiation business." For transition of the embedded base AT&T suggests scheduling it out every day for weeks at a time. If it is done that way, and Qwest has all the "CLEC balls in the air" and is scheduling the work accordingly, is there still a need for negotiation? (AT&T – Forum) b. Rather than make negotiation the rule, may be easier to have negotiation as the exception for both the embedded base and "new" customers. (AT&T – Forum) c. For CLEC new acquisition customers coming from Qwest to the CLEC, today on average for a residential customer McLeod can convert to McLeod service in 7-8 calendar days, primarily because of the 5 day Qwest interval for the	1/8/2004 – AT&T wants interval for the Batch process to be same as for the one-by-one hot cuts (5 business days). With no minimum batch size, this is consistent. Conditional upon cost. 1/8/2004 – McLeod position is that a 4-5 business day interval is appropriate. CLECs have committed to have their translations complete on Day 1 and McLeod would commit to have any defective CFAs supplemented by Day 3. Interval is conditional upon cost. 1/8/2004 – Covad is not prepared at this time to specify an interval – tentatively 6 days. Interval is conditional upon cost 1/8/2004 – MCI position is that 5 business day interval is appropriate. MCI would also agree to have any defective CFAs supplemented by Day 3. Interval is conditional upon cost **Sub-Issue S-2c** 12/12/2003 Qwest will take back issue of whether there could be a different interval for "new customers" vs. embedded base. 1/8/2004 – Qwest is not willing to have a different interval for "new customers" vs.	of a different batch interval for new customers vs. embedded base customers 1/8/2004 – S-2d – CLOSED 1/8/2004 – S-2e CLOSED

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			UNE-Loop. Concern about whether the batch hot cut process is even a viable option for "new" customers. (McLeod – Forum) d. MCI wants a timeline containing the intervals and what happens when. (MCI – Forum) e. MCI also wants Qwest to consider development of a scheduling tool. (MCI – Forum)	embedded base.	
S-3 (See also Q-2)	Responsibility for issuing LNP Order		Qwest should issue the LNP order when the cut is complete and provide immediate notification to the CLEC when it occurs. (MCI – p. 13)	12/3/2003 OPEN 1/8/2004 – See related issue Q-2. Qwest is not willing to perform LNP porting activity for the CLEC. Qwest is proposing CLECs use the web-based status tool and Trap & Trace capability to identify when hot cut activity is completed so that they can submit their own number port activation to the NPAC.	1/8/2004 – CLOSED – AT&T, MCI, Covad & McLeod agree to close.
			RATES/PRICE		
R -1 (See also R-2)	Rate structure for new batch process and timing for development of the structure	The final Batch Hot Cut process must be defined before Qwest can create an appropriate cost study. The proposed Batch Hot Cut Process does not include costs associated with Coordinated Installation.	Detailed rate information needs to be provided including the cost structure and cost studies used to develop the rate (AT&T – p. 3); (MCI – p. 3). Consideration of rates for coordinated installation. (Eschelon	12/3/2003 OPEN 1/8/2004 – Given the changes made to the process during the Forum – Qwest will need to incorporate the changes into its cost studies for the process as it now stands. Qwest plans on filing a cost study with its testimony based on Qwest's	1/8/2004 – See also R-2 – IMPASSE as to what is appropriate rate structure

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			–p.11) What are the benefits of the new process? How are efficiencies quantified in Qwest's proposed process (AT&T & MCI - Forum)	proposal as it exists today along with a recommended price based on that study.	
R-2 (See also R-1)	What is the appropriate TELRIC-based price for the Batch Hot Cut process?	The NRC for the Batch Hot Cut process should reflect the forward-looking cost Qwest will actually incur to provide Batch Hot Cuts. The proposed process, as currently designed realizes efficiencies gained as a result of performing work in a batch manner.	Qwest needs to make significant reductions in its hot cut NRCs to make UNE-L a viable alternative for serving mass market (AT&T - p. 4) Qwest must specifically quantify all proposed NRCs involved in the Batch Hot Cut process. (McLeod – p. 1)	12/3/2003 OPEN – 1/8/2004 – see discussion in "History Column for Issue R-1 above.	1/8/2004 – See also Issue R-1 – IMPASSE – as to what is the appropriate TELRIC-based rate.
POST-CUT QUALITY					
Q-1 (See S-1)	Is there a process to "throw-back" a customer to its prior service	Qwest will send CLEC an electronic spreadsheet on the due date after the hot cuts have been completed. The spreadsheet will contain a deadline time when Qwest will begin running its completions out of the WFA/C system. If the CLECs identify issues with their lines, CLECs will contact the QCCC before the deadline set. Then the order would stop, it would be cut back to the Qwest switch, translations would not run and Qwest would send a jeopardy notice to the	There should be such a process. (AT&T - p. 20) (Eschelon – p. 14) (McLeod – p. 2) (MCI – p. 11) If there does happen to be a degradation of service associated with going from UNE-P to UNE-L, if there is no longer a UNE-P option, what then? (McLeod – Forum)	12/3/2003 OPEN 1/8/2004 – parties agree this issue is addressed in Issue S-1	1/8/2004 –CLOSED – MCI, AT&T, McLeod & Covad agree to close as this issue is addressed in Issue S-1

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		CLEC. CLEC would then supplement the order and follow the standard hot cut process.	Auto Completions from WFA – is it done in batches or by individual orders? (Clauson – Eschelon – Forum)	12/10/2003: Order automation checks for completions in WFA every 3 minutes and issues a request to the SOP to do completions. 12/12/2003 – CLOSED as to Eschelon's issue regarding WFA auto completions.	
Q-2 (See also S-3)	LNP activity	Qwest sets LNP triggers prior to the due date. CLEC subscription activity triggers the porting.	Qwest must submit the number-port activation order to NPAC within 10 minutes after the Batch Hot Cut is completed, with notice to the CLEC after successful completion of each step. (MCI – p. 12-13)	12/3/2003 OPEN – See also S-3 1/8/2004 – Qwest is not willing to perform LNP porting activity for the CLEC. Qwest is proposing CLECs use the web-based status tool and Trap & Trace capability to identify when hot cut activity is completed so that they can submit their own number port activation to the NPAC.	1/8/2004 – CLOSED. AT&T, MCI, Covad & McLeod agree to close.
PROCESS TESTING/PERFORMANCE MEASURES					
T-1	Should Qwest provide some demonstrable method to show that the Batch Hot Cut process works.	No. There is no such requirement in the TRO. The State Commissions shall establish and implement a batch hot cut process by July, 2004. Development of a test and incorporating a test as AT&T envisions takes an extensive amount of time that the timeframes provided by the FCC	Process must be thoroughly tested to guarantee operational readiness. (AT&T – p. 21) AT&T recommends that there be some sort of testing process that uses existing Qwest customers, subject to monitoring by the State Commissions. (AT&T) The test would have Qwest	12/3/2003 OPEN – OPEN - Qwest will take back – possibility of proposing some demonstrable vehicle/evidence to show that the process works. 12/19/2003 – Closed as to Rick Carter of the Oregon PUC question as to whether there a current work operation that could simulate a Batch Hot Cut that would	1/8/2004 – IMPASSE as to the issue of whether there is a requirement for Qwest to provide demonstrable proof that its proposed Batch Cut process works prior to state commission approval.

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		do not provide.	become a CLEC in its own territory establish a collocation, insert the required equipment, backhaul to a second CO, where it would have the backhaul connected to the second switch. Test would use Qwest's existing retail customers, and would test the 911 process, the LNP process etc. As the test was performed, there could be independent observations by the State Staffs to see how Qwest is performing. (AT&T – Forum) Subject to further discussion, expect that it would provide 100 cuts per day for a series of days. (AT&T – Forum) Qwest would have to send orders to itself via the GUI. (AT&T – Forum) The test does not have to be set up and completed prior to implementation of the process. The State Commissions can approve and implement the process and then perform the test. (AT&T – Forum)	illustrate Qwest's competency in this type of activity e.g., existing hot cut process bulk cuts to DLC etc. Qwest will take back – suggestions made by Don Gray from the Nebraska Commission and Rick Carter from the Oregon Commission regarding alternatives to testing e.g., PROCESS metrics 12/10/2003: Response to Don Gray (Nebraska Commission) suggestion regarding documentation of training and proficiency technicians and others involved in the batch hot cut process: Qwest is committed to training its affected workforce once the BHC process is finalized to ensure that technicians are proficient in the activities required by the process.	

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			AT&T doesn't think the system or process will be the problem – the problem will be that you have a lot of human touch-points that create the opportunity for error. AT&T wants to see volumes of the level that could be expected with the process and some way to show that the process works under those volumes AT&T believes it is appropriate to test the actual process – once the process is developed – it should go through the test. As to the notion that there is something out there today that is a proxy – AT&T doesn't want to pursue that. Not suggesting that the testing has to be a part of any process proposal that the Commissions will approve – it can be done serially after the Commissions have issued their decisions. (AT&T 12/19/2003 Forum) Commercial testing must be an integral part of any approval process. (MCI – pp. 5 & 6) MCI does not believe a third party		

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			test is required. There must be metrics put in place and the commercial operation with the ability to look at performance and with distinct performance metrics and remedies is the way to go. It is commercial day-to-day activity that is monitored and that there are sanctions/penalties for non-performance. (MCI – Forum) MCI concerned that the ancillary processes that surround the batch hot cut process can handle the volumes that a batch process may bring about. Not something within the control of Qwest, however, will be an issue that may directly impact customers. So MCI believes must work through the process, the process must be measurable and then see what happens in the commercial world once the process is implemented. If there are problems that are impacting end-user customers, there must be a way to stop the process until the issues are addressed. (MCI – Forum) Process must be tested prior to implementation. (Eschelon – p.		

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			16) Eschelon is interested in getting more information regarding AT&T's testing proposal using Qwest retail customers. (Eschelon – Forum) Qwest should be required to test any proposed Batch Hot Cut process before a Commission makes a finding on whether CLECs are impaired in switching mass-market customers. Qwest must also ensure that associated vendors (numbering administrator, E911 administrator, etc.) can handle any increased loads. (McLeod – p. 2)		
T-2	Performance measures for new Batch Hot Cut process	Long Term PID Administration is the appropriate forum to develop new performance measures associated with the Batch Hot Cut process. Further, there is not the same 9-month deadline associated with developing performance measures. 12/3/2003 - Qwest would be willing to discuss Process	Performance measures should be developed simultaneously with the process to permit Qwest's performance to be evaluated. (Eschelon – p. 15); MCI – p. 9. Need to have basic metrics and sanctions in place when the process is implemented. Eschelon cautions against delay in development of the metrics. (Eschelon – Forum)	12/3/2003 OPEN - Qwest will take back – providing PROCESS metrics that will be incorporated into the process (Per request of Don Gray) Qwest will take back – identifying those PIDS that apply to the activities associated with the proposed Batch Hot Cut process as well as those that do not apply. (MCI Request) 12/10/2003: Qwest would be willing to work with the Long Term PID	1/8/2004 – McLeod recommends the issue be CLOSED with the understanding that the issue was whether there are measures in place today that can be used, with further measures to be developed in the Long Term PID Administration once the process is finalized.

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		Measures – but these are different than Performance Measures. 12/19/2003 - Specifically as to the MCI request – the PIDs that impact analog loop provisioning and repair processes are publicly available. Which metrics will be impacted by the Batch Hot Cut process as well as those that need to be developed for the Batch Hot Cut Process is more appropriately addressed by those experts in the LTPA Qwest is not willing to provide the PIDs for discussion in this Forum – the appropriate place for discussion and development is the LTPA.	Metrics need to be incorporated into the various state PAPs. PIDs must be developed in parallel with the process development. (AT&T – Forum) Measure of things like how many order rejected for CFA or customer losing service on the day of the cut or how many cuts done per day. Need a description of the metrics or measurements relating to the accuracy and seamlessness of LNP transactions. (MCI – p. 10) MCI requests that Qwest provide the current PIDs that do apply to the Batch Hot Cut Process and any PIDs that you think do not apply to the Batch, but do apply to Basic or Coordinated or other installation methods. 12/19/2003 – Forum - AT&T believes that all existing PIDs, with the exception of OP-4 and OP-13, would apply to the Batch Hot Cut process.	Administration (LTPA) facilitator, state commission staff members and CLECs to facilitate expeditious completion of BHC PID development in LTPA once the Batch Hot Cut Process is complete. 12/19/2003 – OPEN –as to MCI issue regarding identifying those existing PIDs that apply to the Batch Hot Cut process. Based on discussion during the 12/19/2003 Forum, MCI will take back the Action Item to provide a response regarding its position on the appropriate forum for development of Performance Measures during January face-to-face Forum. 1/8/2004 – Qwest has committed to support having development of BHC metrics being made a high priority in the Long Term PID Administration. Further, for those PIDs that are not modified, then Batch Hot Cut activity will be included in those measures e.g., analog loop measures. Finally, process oversight exists today that evaluates any problems that may arise to determine the cause and takes steps necessary to rectify the problem to improve the process. In today's world, with no batch hot cut exclusions, which PIDs would cover batch hot cut activity? If you look at general analog loop provisioning PIDs at the very least, OP-4 and OP-13 would not apply to batch hot cut	AT&T agrees to CLOSE based on the above understanding. MCI agrees to CLOSE based on the above understanding. Covad agrees to CLOSE based on the above understanding.

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				activity. If you look at what the FCC focuses on it is commitments met and new installation service quality. Those PIDs would capture batch hot cut activity.	

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FINAL BATCH HOT CUT PROCESS FORUM ISSUES MATRIX

UNRESOLVED ISSUES ONLY

PROCESS ISSUES - EFFICIENCY					
ISSUE #	**ISSUE DESCRIPTION**	**QWEST POSITION**	**CLEC POSITIONS**	**HISTORY**	**RESOLUTION/RATIONALE**
P-3 See also P-23 & P-24	Can CLECs request batch cuts at any time of day?	The Batch Hot Cut Proposal is designed for Basic Installation option only Those types of sensitive circuits that require that planning need to be run through the standard hot cut process. 12/10/2003: Qwest has committed to notify the CLEC on due-date via e-mail when the batch cut begins. Batches will be completed within a relatively short period of time; therefore a coordinated installation such as is contemplated by this question is not necessary. 1/6/2004 – The Batch Hot Cuts will be done during a 3:00 a.m. to 11:00 a.m. window. 1/6/2004 – MODIFICATION	CLECs should be able to request batch cuts on any day, at any time of day. (AT&T – p. 19); 1/6/2004 – AT&T continues to want the ability to identify a specific window of time during the day in which Batch Hot Cuts are performed and does not want to be limited to the 3-11 window currently provided by Qwest's process. 1/6/2004 - AT&T will take the Trap and Trace proposal back to its operational people and will get back to Qwest on whether or not it will close the issue of method of notice of commencement/completion of the batch/ status of batch. 1/6/2004 – McLeod will take the Trap and Trace proposal back to its operational people and will get	12/12/2003: Request from MCI: When MCI goes into the negotiation process, can it provide a notification e-mail address at that time? QWEST RESPONSE: prior to the time a CLEC submits a batch hot cut *for the first time*, the CLEC will provide a notification e-mail address to Qwest. That e-mail will then be used by Qwest to notify the CLEC that a batch hot cut has begun for all batch hot cuts for that CLEC. CLECs do not have to include the e-mail address on LSRs. How will Qwest make sure it uses the provided e-mail for batches and other e-mail addresses for other types of order activity. QWEST to respond in writing. 12/17/2003: Qwest written response: The CLEC will provide the email address for their BHC-ZCID project. The QCCC will build	1/6/2004 – IMPASSE as to AT&T regarding ability to identify a specific window of time during the day in which Batch Hot Cuts are performed. AT&T does not want to be limited to the 3-11 window currently provided in Qwest's process. 1/7/2004 – IMPASSE as to AT&T issue of whether or not the web-based status tool is the appropriate method of communication between Qwest and the CLECs on order status (See Related Issues P-23 & *?* 1/7/2004 IMPASSE as to McLeod on issue of whether or not the web-based status tool and the Trap and Trace capability is the appropriate method of communications between Qwest and the CLEC on order status.

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		TO ORIGINAL PROPOSAL - Qwest will notify the CLECs when the batch has started via the new web-based status tool. The Trap and Trace option will also identify when the batch begins. 1/6/2004 - Qwest will submit a change request to Change Management as soon as it has fully defined the requirements for the status tool. There are clarification meetings that are held to accommodate CLEC input prior to submitting the CR.	back to Qwest on whether or not it will close the issue of notice of commencement/completion of the batch/status of batch. CLECs may need to plan certain batch hot cuts for customers with alarm circuits or CPE (Eschelon – p. 13)	a table unique to the Batch process with the BHC-ZCID and designated email. Therefore,, this email address will be dedicated only to these orders. 1/6/2004 – IMPASSE PENDING on e-mail notification issue as to AT&T and McLeod – both companies taking back issue of status tool and Trap and Trace as notification vehicles in lieu of e-mail or other "push" technology.	(See Related Issues P-23 & 24) IMPASSE as to Eschelon Request - regarding designating a time for customers with CPE or alarm circuits being something less than coordin. that could be accommodated by the Batch Hot Cut process. 1/6/2004 – MCI agrees issue regarding e-mail notification can be CLOSED.
P-5	Whether the Batch Hot Cut process should include loops provisioned over IDLC.	IDLC loops are handled using the standard hot cut process. Orders that are provided over IDLC are C-Jeop'd back to the CLEC if those orders are included in the Batch. To include these types of orders in a Batch eliminates the efficiencies the Batch process was designed to provide (due to requirement to roll a truck) Qwest will convert 10 UNE-Ps that are provisioned over IDLC	IDLC should be included in the hot cut process. (AT&T – p. 16-19); (MCI – p. 4); (Eschelon – p. 15); (McLeod at 1) MCI would propose building a look-up table in Qwest OSS and reject those orders when they are submitted and providing information regarding IDLC and RT location. (MCI – Forum) AT&T proposal – AT&T is not proposing that IDLC be a part of the batch – what they are proposing is that when CLECs	IMPASSE - as to including IDLC loops in the batch - MCI (but MCI will consider Qwest's proposal to provide the IDLC information in advance of requirement to transition) 12/12/2003 – Remains at IMPASSE IMPASSE - as to action to be taken when loops submitted by the CLECs are provisioned over IDLC – should those orders automatically move to standard hot cut or should the order be c-jeop'd back to the CLEC by Qwest	12/12/2003 - IMPASSE - as to including IDLC loops in the batch - MCI 12/12/2003 - IMPASSE - as to action to be taken when loops submitted by the CLECs are provisioned over IDLC – automatic move to standard hot cut or c-jeop of the order by Qwest CLOSED– 12/10/2003: as to the MCI question regarding what rates would apply pending

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		loops per day per Remote Terminal within a Qwest Network Manager's area. Qwest will provide CLECs with an electronic spreadsheet of all CLEC customers, by central office, that are served via IDLC. Timing – for those markets where there is a finding of "no impairment," the spreadsheet will be provided to CLECs prior to the time when they must transition their lines. Response to AT&T proposal – to handle in that manner, requires manual intervention and additional steps that impact efficiencies the Batch Hot Cut was designed to provide.	send over UNE-P's for conversion that Qwest identify whether the service is provided over IDLC, have those orders drop out of the Batch and automatically convert them under the standard hot cut process. If IDLC results in delay of customer migration to UNE-Loop, will Qwest continue to charge UNE-P rates until that customer can be migrated? (Gates – MCI – Forum)	CLOSED– 12/10/2003: CLEC would be billed the UNE-P rate until the completion and acceptance of then UNE-Loop service conversion.	migration of the CLEC to UNE-Loop.
P-6a P-6b	Whether the Batch Hot Cut process should include line split loops. Whether the Batch Hot Cut process should include UNE-P with ancillary DSL.	Line split loops are not included in the batch process, rather they are handled using the standard provisioning process. Requires changing the service from a non-design service to a design service – thereby eliminating some of the efficiencies the Batch process was designed to provide.	Line splitting should be included in the hot cut process. (AT&T – p. 16-19); (MCI – p. 8-9); (Eschelon – p. 15); (Covad – p. 4); Covad agrees that this issue applies for the embedded base only and does not apply for new line splitting/loop splitting orders (Covad – Forum)	12/3/2003 - OPEN – Qwest and Covad will meet to create a diagram depicting the various network connections required in a Line Splitting/Loop Splitting arrangement. – Diagrams completed – see BHC Forum Exhibit 4	12/12/2003 IMPASSE as to both P-6a and P-6b– for MCI, Covad, Eschelon & AT&T

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P-8	Whether the Batch Hot Cut process applies if an outside technician dispatch is required.	The Batch Hot Cut Process is limited to use of existing facilities that do not require an outside technician dispatch. It is Qwest's position that the efficiencies gained in the batch hot cut process would be lost if outside technician dispatch is required.	If the assumption that the batch process will be limited in every case to situations that do not require an outside technician dispatch, this is still an open issue for Eschelon	12/3/2003 OPEN – Eschelon will consider whether they will continue to pursue this position in light of discussion at 12/2/2003 meeting of the Forum. Eschelon will provide feedback at the next meeting of the Forum.	12/12/2003 – IMPASSE for Eschelon as to the issue of including in the batch those orders that require an outside technician dispatch.
P-10 (See also P-1)	Order placement methods, flow-through and service order accuracy	CLECs submit their orders for a Batch Hot Cut using the existing LSR process, with the "BHC" plus CLEC ZCID project number, whether that is through the GUI or EDI interface. Qwest response to sub-issues in CLEC Position Column: 1. CLECs can use either EDI or GUI to submit batch hot cut orders. 2. CLECs will not be required to manually generate spreadsheets. 3. Batch Hot Cut Orders are flow-through eligible. Batch Hot Cut LSRs will flow-through in accordance with existing flow-through standards.	1. CLECs should be able to use either EDI or GUI to submit orders. 2. CLECs should not be required to manually generate spreadsheets. 3. Orders should flow through. (MCI-p. 5 & 9); (McLeod at 2) 4. Efficient submission will likely require development of new ordering capabilities – sending individual LSRs for multiple orders should not be considered a "batch." . (Eschelon p. 12) Clarification by Eschelon - Eschelon would like Qwest to put in place an interface to the GUI and EDI for Batch Hot Cuts that would take the place of LSR-by-LSR entry. Or, in the alternative, give CLECs the capability of sending an electronic spreadsheet directly to the QCCC. (Eschelon –	MCI agrees to close as to the first 3 sub-issues (in CLEC Position column) McLeod agrees to close the first 3 sub-issues pending discussion of scalability issue. 12/3/2003 - On Sub-Issue 4 - Eschelon will take back and determine if it will continue to pursue asking for an alternative to submitting individual LSRs e.g., spreadsheet functionality. 12/12/2003 - Given discussion at last Forum, Qwest position is that taking a mechanized process and taking a step backward to a manual spreadsheet or to re-mechanize in another fashion is not something	12/12/2003 - MCI agrees to close as to the first 3 sub-issues (in CLEC Position column) 12/12/2003 - McLeod agrees to close the first 3 sub-issues pending discussion of scalability issue. 12/12/2003: IMPASSE as to ESCHELON issue (#4) – regarding alternative to submitting individual LSRs e.g., spreadsheet functionality.

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		4. The LSR process is appropriate for use with the Batch Hot Cut process. Because of quality and cost issues, Qwest will not pursue development of an interface.	Forum)	Qwest is willing to make a part of the Batch Hot Cut Process.	
P-11	Order in which lines are cut over	To achieve efficiencies, the process does not permit CLECs to determine the order in which lines are cut over.	CLECs should be able to specify the order in which lines are cut over e.g., customers with multiple CSRs (Eschelon – p. 13 MN p 9)	12/3/2003 - OPEN - Eschelon will take back to determine if they are going to continue to pursue this capability. 12/12/2003 - Eschelon continues to request this capability. Because CLECs must use the related PON process to submit such LSRs, Qwest should develop a spreadsheet for the batch so that related PONs are worked consecutively. Eschelon believes a PON format could be developed to indicate sequence for this purpose. 12/12/2003 - the efficiencies gained in the Batch Hot Cut Process include permitting the central office technician to perform work in the most efficient and effective way possible; specifying the order in which lines are cut over, when those lines may be on multiple blocks on	12/12/2003: IMPASSE as to Eschelon issue regarding CLEC ability to determine the order in which lines are cut over in the batch.

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				the frame, reduces the efficiencies of the process.	
P-12	Impact on Batch Hot Cut Process of migration by telephone number change request	The "migrate by TN" capability covered by CMP CRs SCR061302-01 and SCR022703-18 address only orders where the "to" product is UNE-P.	Batch Hot Cut process should allow CLECs to "migrate by telephone number." (MCI – p. 10) MCI views this as a critical requirement (MCI – Forum)	12/3/2003 - OPEN – pending Qwest take back on technical capability issues associated with making TN migration capability available for batch hot cuts. 12/10/2003 Qwest Response: There is no technical limitation precluding Qwest from modifying the edits in IMA to allow CLECs to enter TN and SANO for UNE-P to UNE-Loop conversions. Systems changes to accomplish this modification are required to go through Change Management. MCI submitted a CMP CR (SCR120403-01) requesting this change on December 4, 2003. There is, however, a technical limitation that would prevent migration by TN from UNE-Loop to UNE-Loop as in that instance, the TN does not reside in Qwest databases. 12/12/2003: Further Qwest response: This CR would be eligible for inclusion in IMA Release 16.0 which is tentatively scheduled for	1/6/2004 – IMPASSE as to MCI issue of not providing CLECs with the capability, in the Batch Hot Cut process, to "migrate b··· telephone number and SAN(

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				August 2004. To have it declared as a ***regulatory*** CR, requesting party must provide the docket number and verbiage from the regulatory order in that docket that mandates the activity. QWEST WILL TAKE BACK the questions of whether or not it considers this a regulatory mandate? If so, would Qwest oppose the change? Is it an option for the CR to be escalated in its implementation to a release sooner than IMA 16.0 via the CMP exception process? 1/6/2004 – As to MCI's question about whether Qwest will support or oppose the "migrate by TN" CR as a regulatory change – Qwest will embrace the spirit of a Commission order that may, at the end of the 9 month proceeding, direct such a change –it cannot support "migrate by TN" as a ***regulatory*** change because in order to be a ***regulatory*** change, the requirement must have a docket number **and** order associated with it. Qwest is not including the "migrate by TN" in its current Batch Hot Cut proposal because it is not a capability that is specific to batch hot cuts. However, Qwest will not	

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				oppose the MCI CR SCR061302-01 and SCR022703-18 (that deal with the TN SANO capability generally) in the CMP .	
21c	What happens when there is an error in the Qwest database, then how does Qwest handle the situation and what ability does the CLEC have to get the batch through?		What if CLEC has done the checks into the RLDT or other tools and yet their order becomes jeopardized because IDLC is present, but wasn't noted in the database? (Eschelon – Forum) 12/12/2003: MCI question - How does the Raw Loop Data Tool get updated?	12/10/2003: The jeopardized order would not be processed as a part of the batch. However, Qwest has modified its position to allow for the remainder of qualified lines in the batch to continue to be processed so long as at least 20 lines remain in the batch. While IDLC information is available in the RLDT, in some rare instances, the IDLC may not appear in the RLDT. If the information is missing, the CLEC has the capability of notifying Qwest of the missing information via the RLDT. 12/12/2003 - IMPASSE for Eschelon– as to handling of orders that are jeopardized as a result of inaccurate or incomplete information in the Qwest database.	12/12/2003 – Eschelon IMPASSE on 21c– as to handling of orders that are jeopardized as a result of inaccurate or incomplete information in the Qwest database. 12/12/2003 - CLOSED as to MCI question–The RLDT regularly dips into LFACs and gets updates. If a manual look up is requested by the CLECs, then LFACs, and consequently, RLDT, are updated with information discovered in the manual look-up. Qwest would update the systems automatically; the CLEC does not have to take further action to affect the updates.
P-23 (See also P-3 and P-24 and S-1)	Timing for notifying CLECs when a batch is completed Method of notice to CLECs	Qwest proposes to notify the CLECs when all lines in the batch have been completed and will do so via an electronic spreadsheet. In addition, Qwest currently sends FOCs and SOCs to CLECs electronically.	Notification upon completion of the entire should occur prior to completion of the entire batch (AT&T – p. 7) Completion of a cut should trigger an electronic SOC within 10	12/3/2003 OPEN – 1/7/2004 – MCI would like Qwest to take back the suggestion of having the Status Tool perform updates more frequently than 30 minutes.	1/7/2004 – IMPASSE as to timing and method of notice to CLEC of batch completion

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		Further, Qwest changes the status within EDI within one (1) hour of completion of the service order activities to identify that LSR requests are completed. Qwest will also notify the CLECs when the batch has started via the **new web-based status tool**. The Trap and Trace option will also identify when the batch begins. 1/6/2004 - Qwest will submit a change request to Change Management as soon as it has fully defined the requirements for the status tool. There are clarification meetings that are held to accommodate CLEC input prior to submitting the CR.	minutes of the cut. Qwest must send EDI provisioning and completion notifications to close out the LSR. (MCI – p. 13) Batch Hot Cut process should not result in all-day hot cuts (Eschelon – p. 17)		
P-24 (See also P-3 & P-23)	How will CLECs know which orders in the batch were completed?	Qwest proposes to notify the CLECs when all lines in the batch have been completed and will do so via an electronic spreadsheet. In addition, Qwest currently sends FOCs and SOCs to CLECs electronically. Further, Qwest changes the status within EDI within one (1)	The CLEC needs accurate information regarding the exact lines that were cut over. (AT&T – p. 11)	1/6/2004 – Today, this would be IMPASSE for AT&T as to existing proposal that has CLECs pulling information from Qwest as opposed to the information being pushed to the CLEC by Qwest. The issues are (1) notification via the website when there is a no dial tone issue discovered by Qwest and (2) notification via the website of the	1/7/2004 – IMPASSE as to the issue of whether a web-based status tool is sufficient to provide information to the CLECs on status or is an e-mail or other type of "push" technology appropriate.

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		hour of completion of the service order activities to identify that LSR requests are completed. 1/6/2004 - Qwest will also notify the CLECs when the batch has started via the status tool. The Trap and Trace option will also identify when the batch begins. 1/6/2004 - Qwest will submit a change request to Change Management as soon as it has fully defined the requirements for the status tool. There are clarification meetings that are held to accommodate CLEC input prior to submitting the CR		initiation and completion of the batch. 1/7/2004 – MCI supports the web-based system proposal, particularly if it can use it in conjunction with Trap and Trace. MCI looks forward to working with Qwest on the requirements document associated with the proposed status tool as part of the clarification meetings provided for in CMP. MCI believes the status tool needs to be developed as an "API" so that information can be shared back and forth. 1/7/2004 – AT&T does not want to commit at this time to a "pull" solution as Qwest currently proposes and preclude some sort of "push" technology such as some sort of EDI message or something through the IMA GUI. 1/7/2004 – McLeod would like Qwest to take the issue back of enhancing EDI to provide for capability to notify CLECs when a batch begins in addition to the status information already provided via EDI. 1/7/2004 - Qwest response is that it	

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				has already explored enhancing EDI and found that the update intervals associated with updating status in EDI would likely be longer than those associated with Qwest's web-based status tool proposal. 1/7/2004 – McLeod will continue to evaluate the Trap and Trace option. McLeod position is that the web-based status tool is, in large part, a duplication of information that CLECs obtain today via EDI (with the exception of the jeopardy notices)	
P-27c	Level of mechanization – automated or robotic frames	According to the International Engineering Consortium (IEC) on URL: http://www.iec.org/online/tutorials/frames/topic04.html There is no viable solution for robotic distribution frames at this time.. "While simple in concept, this type of solution never quite matured into a viable technology for automating distribution frames. That is because pure mechanical, robotic solutions have reliability and maintenance issues due to their moving parts.	Automated or robotic frames should be evaluated (MCI – p. 3)	On the issue of automated or robotic frames – see information in Qwest Position column.	12/19/2003 – IMPASSE as to the issue of evaluating automated or robotic frames.

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		This limits their effectiveness in larger COs or in environments where significant churn is experienced." "Perhaps the biggest "show stopper" for robotics, and all of the other copper automation technologies previously examined for frame applications, has been scalability."			
P-29	Coordination of systems changes as a result of the Forum & State proceedings with CMP	For systems changes, the product of the Forum and the State Proceedings will go to CMP as Regulatory Change Requests. As such, the changes will be incorporated into releases above the line and will not be prioritized.	How will changes agreed to in the Forum be synched up with and incorporated into the CMP? (Lichtenberg – MCI – Forum)	12/10/2003 – OPEN 12/19/2003 - Qwest provided explanation that the CMP process for regulatory changes is for all CLECs and Qwest to vote to see if they agree that the systems changes are indeed a regulatory change. Qwest will agree to abide by the spirit and intent of the regulatory orders issued by state Commissions and the existing CMP processes as they pertain to the Batch Hot Cut process. MCI believes this issue needs to remain OPEN. 1/7/2004 – Qwest proposes that this issue be resolved by stating that changes agreed to in this forum **and** ordered by state commissions will be incorporated into the CMP process as regulatory changes. 1/8/2004 – McLeod concerned about	1/7/2004 – IMPASSE – as to MCI issue regarding the need for any system changes coming out of the batch hot cut proceedings in the states to be classified as regulatory changes. MCI does not agree, in this situation, that the CMP process is the appropriate forum to address systems changes associated with Batch Hot Cut given that the systems changes must be in place in order for the Batch Hot Cut process to exist.

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				system enhancements for BHC being included in the CMP given the number of Change Requests that are currently pending – McLeod position is that the enhancements associated with BHC should be moved outside CMP as a separate release. 1/8/2004 – Covad recommends Qwest allocate additional resources to address systems issues associated with Triennial Review. 1/8/2004 – It is Qwest's position that the changes that result from the TRO will be handled through the normal CMP process..	
SCALABILITY – VOLUMES					
SC-1 (See also SC-5)	Can Qwest's proposed process handle anticipated volumes?	The Batch Hot Cut process is scalable, which will allow Qwest to meet current and future demand. In considering volumes that may have to be handled by the Batch Hot Cut Process, Qwest has considered the embedded base as well as incremental growth similar to what AT&T has suggested. An additional assumption is that in the event there is a finding by state commissions of impairment,, or	Qwest needs to provide more evidence to establish this point. (AT&T – p. 12) Qwest needs to identify the number of batches that it can handle per Central Office, per state and per region. (Eschelon – p. 17) Qwest must clarify the maximum/minimum line volumes per day per CLEC for the Batch Hot Cut (McLeod – p. 1)	12/3/2003 OPEN - For SC-1 in total, Qwest will take-back – providing parties with the assumptions that form the basis for its proposed volume estimates. Qwest will also provide additional information on assumptions for staffing levels for the anticipated volumes.	1/7/2004 – IMPASSE as to whether Qwest's proposed process can handle anticipated volumes

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		in markets where Qwest does not seek to challenge the presumption of impairment, then Qwest will continue to provide UNE-P. All of these assumptions will form the basis for the volumes that can be anticipated. Qwest will be prepared in the near future to put forward numbers based on those assumptions.	The daily line count threshold that Qwest can manage for its retail unit must be provided, and parity established. (McLeod – p. 2) Are there limitations on the number of UNE-P to UNE-L lines that can be migrated for a single account? (MCI – Forum) Clarify the relationship of and impact of batch process on non-batch orders and other services. (Eschelon MN p. 10) AT&T believes should assume worst case scenario for development of the process upper limit. AT&T thinks that adding an incremental growth number using analogous number e.g., customers will move their local service about as much as they move their long distance service approximately 2.6%. Churn for CLECs is approximately 4.6-5.2% Churn rate should also include winback rates for Qwest. AT&T concerned about Qwest's ability to handle volumes. Wants Qwest to share some of its analysis on why it believes it can keep up with the demand AT&T believes its	Qwest is not placing limits on the number of UNE-P lines that can be migrated for a single account.	

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			appropriate to look at embedded base of UNE-P and UNE-L customers, add some incremental growth number to account for the churn, include additional staff to handle IDLC, and then explain how the process will handle. (AT&T – Forum) Scalability is an issue for McLeod and very interested in how Qwest will gear up for the volume. (McLeod – Forum)		
SC-5 (See also SC-1)	Staffing levels	Resources will be added and/or shifted as the final Batch Hot Cut process requires. Qwest will use its standard recruiting, hiring and training practices to staff the work activities required. In those locations where Qwest has sufficient volumes, there will be dedicated personnel assigned to batch activities. For other locations, the staff will not be dedicated only to batch work, but during batch activity, will be focused on that work.	Describe the number of additional people Qwest must add to meet the increased hot cut demand. (AT&T p. 13) Plans for recruiting, hiring and training personnel (AT&T p. 14) Qwest must identify and dedicate Qwest personnel to the Batch Hot Cut process (Eschelon – p. 15) By dedicated, Eschelon means resources that will be working solely on batches.	12/3/2003 OPEN – See also SC-1	1/7/2004 – IMPASSE as to level of detail required regarding plans for staffing by Qwest to address batch hot cut activity
			VOLUMES		
V-2	Per Central Office limit on Batch Hot Cuts	Qwest proposes a limit of 100 lines per Central office	What is the appropriate limit on a per central office basis – should there be a limit? (Eschelon –	12/3/2003 - OPEN 1/8/2004 – Qwest position is that the most	1/8/2004 - MCI would agree to CLOSE this issue based on an agreement that

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			Forum)	efficient configuration is for 2 technicians performing 100 conversions during an 8-hour shift . 1/8/2004 – AT&T – accepting that premise – is there a reason why you have to limit it to two technicians? Qwest Response: two technicians is optimum given the concentration of wires on the frames where this work is being performed and is the most efficient way. Further, the 100 lines per CO permits Qwest to complete the migration well within the transition period. 1/8/2004 – If, in the transition meetings, MCI or other CLECs want a more rapid transition in certain central offices that met certain characteristics, would Qwest be willing to do more than 100 lines? 1/8/2004 - Qwest is not precluding that sort of discussion, however, the volumes appear to demonstrate that Qwest can handle the transition in addition to day-to-day activity within the 100 line per CO limit.	the parties are not foreclosed from mutually agreeing, during the transition planning process for the embedded base, to the possibility of doing more than 100 lines per CO on an exception basis, Further, planning can include new customers may also be included in the batch. 1/8/2004 – McLeod will go to **IMPASSE** at this time on the sizing limitation of the number of batch hot cut lines included in a batch per central office. McLeod suggests we take a look at the resources available in a CO and proposes a 200 lines per CO limit. 1/8/2004- Covad agrees to CLOSE this issue based an agreement that the parties are not foreclosed from mutually agreeing, during the transition planning process for the embedded base, to the possibility of doing more than 100 lines

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					per CO on an exception basis. Further, planning process may also include consideration of new acquisition customers. 1/8/2004 – AT&T will take this issue to **IMPASSE** [illegible] supports McLeod's suggestion that the batch size per Central Office of 200 lines.
V-3	Size of a "batch"	The batch must include at least 25 lines for a specific CLEC in one central office.	CLECs should be allowed to determine a minimum or maximum amount of orders to send per batch, per CO. (MCI – p.7) Qwest should specify the assumptions and exceptions made per batch. (Types of orders, volume limits, etc) (McLeod – p. 1) Clarify definition of batch/number of lines. (Eschelon – Forum) How many current orders would trigger the "batch" process as defined in the proposal. In other words, how often does a single CLEC submit orders for 25 mass market loops in a single wire center on a single day? Single	12/3/2003 - OPEN 12/10/2003 - Qwest does not currently track orders in this manner, and has no way of tracking this information since CLECs do not currently "batch" their orders for submission, except where they desire conversion on a project-managed basis.	1/8/2004 – IMPASSE as to the issue of minimum batch size 1/8/2004 – McLeod position is that, particularly for new customers, there should be no minimum number necessary for CLECs to be able to take advantage of batch hot cuts and a cheaper price. 1/8/2004 – AT&T positi[illegible] is that 25 should not be the minimum batch size. AT&T proposes there be no minimum batch size 1/8/2004 – MCI position is there should be no minimum

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			week? What percentage of the offices in the state incur this type of volume? (Peter Healy TDS Metrocom – Forum) 12/19/2003 – MCI response – MCI position is that limit of 100 per CLEC per CO is the ***minimum*** limit.	12/12/2003 –Qwest has UNE-P arrangements in 91% of the central offices in its territory. In a large percentage of those offices there are 25 or more UNE-P arrangements. **Qwest will take back** question of what is that percentage. 12/19/2003 – generic example in a state with 130 offices, 75 have UNE-P in them; of that 75, less than 25% of them have fewer than 25 UNE-P arrangements, 6 offices have 1,000 or more. Qwest will provide more detail at the January forum. Steve Pitterle - from TDS Metrocom has additional questions before agreeing to close. 12/19/2003 –looking for response from Qwest regarding the percentage requested above. MCI is not willing to agree to close at this time. MCI is not willing to say that the appropriate maximum number of lines per CO is 100 unless there is some actual, technical explanation as to why there is a limit. MCI will take back the question of what MCI's proposed minimum/maximum numbers are for this purpose.	batch size per CLEC or generally

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				McLeod will take back the question of what McLeod's proposed minimum/maximum numbers are for this purpose. Qwest will take back the request for additional support behind Qwest's 100 batch limit ***and*** the CLEC proposal to require less than a 25 minimum number as it pertains to unstaffed offices	
			SEAMLESSNESS		
S-2	Interval for the batch – from CLEC initiation of a request to due date for the batch	Intervals for the embedded base of UNE-P depends on the Batch Hot Cut process agreed to in the Forum and the transition plans ordered by the Commission. For new Batch Hot Cuts, the interval will be negotiated.	a. Batch Hot Cut intervals cannot be individually negotiated on a project-by-project basis. There must be a standard interval (e.g., 6 days). (AT&T – p. 14) a. CLECs should not be required to "negotiate" the provisioning date for a Batch Hot Cut in advance. Interval should be five (5) business days to minimize the amount of time a customer is held in a limbo state. (MCI – p. 5, 6 & 11) a. Assumption is that the current 5-day interval will be the interval for the new Batch Hot Cut process (McLeod – pp. 1 &2) a. Eschelon wants definition on what the interval is for the batch	**As to Sub-Issue S-2a** (as noted in CLEC position column): 12/3/2003 - OPEN - Qwest will take back – parameters for an interval and also whether or not there is a way to schedule without requiring negotiations 1/8/2004 – Qwest position is that the "meaningful opportunity to compete" standard as decided in the 271 proceedings should be the basis on which intervals are set. For Batch cuts for the embedded base, the volumes involved and the fact that CLECs already have the customer so there is not a customer acquisition issue, the 7-day interval is appropriate and meets the "meaningful opportunity to compete standard." 1/8/2004 – AT&T wants interval for the Batch process to be same as for the one-by-one hot cuts (5 business days). With	1/8/2004 – IMPASSE as to the issue S-2a - parameters for the interval - should the intervals for the batch hot cut process be the same as the intervals for the standard provisioning process? 1/8/2004 – CLOSED as to Issue S-2b – based on Qwest commitment to a scheduling tool. AT&T, MCI, McLeod, Covad agree to close. 1/8/2004 – S-2c – IMPASSE – as to the issue of a different batch interval for new customers vs. embedded base customers

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			hot cut process. For new hot cuts, a standard interval critical. (Eschelon – Forum) b. AT&T wants to "get out of the negotiation business." For transition of the embedded base AT&T suggests scheduling it out every day for weeks at a time. If it is done that way, and Qwest has all the "CLEC balls in the air" and is scheduling the work accordingly, is there still a need for negotiation? (AT&T – Forum) b. Rather than make negotiation the rule, may be easier to have negotiation as the exception for both the embedded base and "new" customers. (AT&T – Forum) c. For CLEC new acquisition customers coming from Qwest to the CLEC, today on average for a residential customer McLeod can convert to McLeod service in 7-8 calendar days, primarily because of the 5 day Qwest interval for the UNE-Loop. Concern about whether the batch hot cut process is even a viable option for "new" customers. (McLeod – Forum)	no minimum batch size, this is consistent. Conditional upon cost. 1/8/2004 – McLeod position is that a 4-5 business day interval is appropriate. CLECs have committed to have their translations complete on Day 1 and McLeod would commit to have any defective CFAs supplemented by Day 3. Interval is conditional upon cost. 1/8/2004 – Covad is not prepared at this time to specify an interval – tentatively 6 days. Interval is conditional upon cost 1/8/2004 – MCI position is that 5 business day interval is appropriate. MCI would also agree to have any defective CFAs supplemented by Day 3. Interval is conditional upon cost **Sub-Issue S-2c** 12/12/2003 Qwest will take back issue of whether there could be a different interval for "new customers" vs. embedded base. 1/8/2004 – Qwest is not willing to have a different interval for "new customers" vs. embedded base.	1/8/2004 – S-2d – CLOSED 1/8/2004 – S-2e CLOSED

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			d. MCI wants a timeline containing the intervals and what happens when. (MCI – Forum) e. MCI also wants Qwest to consider development of a scheduling tool. (MCI – Forum)		
			RATES/PRICE		
R -1 (See also R-2)	Rate structure for new batch process and timing for development of the structure	The final Batch Hot Cut process must be defined before Qwest can create an appropriate cost study. The proposed Batch Hot Cut Process does not include costs associated with Coordinated Installation.	Detailed rate information needs to be provided including the cost structure and cost studies used to develop the rate (AT&T – p. 3); (MCI – p. 3). Consideration of rates for coordinated installation. (Eschelon –p.11) What are the benefits of the new process? How are efficiencies quantified in Qwest's proposed process (AT&T & MCI - Forum)	12/3/2003 OPEN 1/8/2004 – Given the changes made to the process during the Forum – Qwest will need to incorporate the changes into its cost studies for the process as it now stands. Qwest plans on filing a cost study with its testimony based on Qwest's proposal as it exists today along with a recommended price based on that study.	1/8/2004 – See also R-2 – IMPASSE as to what is the appropriate rate structure
R-2 (See also R-1)	What is the appropriate TELRIC-based price for the Batch Hot Cut process?	The NRC for the Batch Hot Cut process should reflect the forward-looking cost Qwest will actually incur to provide Batch Hot Cuts. The proposed process, as currently designed realizes efficiencies gained as a result of performing work in a batch manner.	Qwest needs to make significant reductions in its hot cut NRCs to make UNE-L a viable alternative for serving mass market (AT&T - p. 4) Qwest must specifically quantify all proposed NRCs involved in the Batch Hot Cut process. (McLeod – p. 1)	12/3/2003 OPEN – 1/8/2004 – see discussion in "History Column for Issue R-1 above.	1/8/2004 – See also Issue R-1 – IMPASSE – as to what is the appropriate TELRIC-based rate.

Transcripts for all Batch Hot Cut Forums are located under the "Forum Transcripts and Exhibits" pulldown menu at:
http://www.qwest.com/wholesale/training/tradeshow/batchhotcutarchive.html

**NOTE: Shaded items are closed issues.

POST-CUT QUALITY					
PROCESS TESTING/PERFORMANCE MEASURES					
T-1	Should Qwest provide some demonstrable method to show that the Batch Hot Cut process works.	No. There is no such requirement in the TRO. The State Commissions shall establish and implement a batch hot cut process by July, 2004. Development of a test and incorporating a test as AT&T envisions takes an extensive amount of time that the timeframes provided by the FCC do not provide.	Process must be thoroughly tested to guarantee operational readiness. (AT&T – p. 21) AT&T recommends that there be some sort of testing process that uses existing Qwest customers, subject to monitoring by the State Commissions. (AT&T) The test would have Qwest become a CLEC in its own territory establish a collocation, insert the required equipment, backhaul to a second CO, where it would have the backhaul connected to the second switch. Test would use Qwest's existing retail customers, and would test the 911 process, the LNP process etc. As the test was performed, there could be independent observations by the State Staffs to see how Qwest is performing. (AT&T – Forum) Subject to further discussion, expect that it would provide 100 cuts per day for a series of days. (AT&T – Forum)	12/3/2003 OPEN – OPEN - Qwest will take back – possibility of proposing some demonstrable vehicle/evidence to show that the process works. 12/19/2003 – Closed as to Rick Carter of the Oregon PUC question as to whether there a current work operation that could simulate a Batch Hot Cut that would illustrate Qwest's competency in this type of activity e.g., existing hot cut process bulk cuts to DLC etc. Qwest will take back – suggestions made by Don Gray from the Nebraska Commission and Rick Carter from the Oregon Commission regarding alternatives to testing e.g., PROCESS metrics 12/10/2003: Response to Don Gray (Nebraska Commission) suggestion regarding documentation of training and proficiency technicians and others involved in the batch hot cut process: Qwest is committed to training its affected workforce once the BHC process is finalized to ensure that technicians are	1/8/2004 – IMPASSE as to the issue of whether there is a requirement for Qwest to provide demonstrable proof that its proposed Batch Hot Cut process works prior state commission appro

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			Qwest would have to send orders to itself via the GUI. (AT&T – Forum) The test does not have to be set up and completed prior to implementation of the process. The State Commissions can approve and implement the process and then perform the test. (AT&T – Forum) AT&T doesn't think the system or process will be the problem – the problem will be that you have a lot of human touch-points that create the opportunity for error. AT&T wants to see volumes of the level that could be expected with the process and some way to show that the process works under those volumes AT&T believes it is appropriate to test the actual process – once the process is developed – it should go through the test. As to the notion that there is something out there today that is a proxy – AT&T doesn't want to pursue that. Not suggesting that the testing has to be a part of any process proposal that the Commissions will approve	proficient in the activities required by the process.	

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			– it can be done serially after the Commissions have issued their decisions. (AT&T 12/19/2003 Forum) Commercial testing must be an integral part of any approval process. (MCI – pp. 5 & 6) MCI does not believe a third party test is required. There must be metrics put in place and the commercial operation with the ability to look at performance and with distinct performance metrics and remedies is the way to go. It is commercial day-to-day activity that is monitored and that there are sanctions/penalties for non-performance. (MCI – Forum) MCI concerned that the ancillary processes that surround the batch hot cut process can handle the volumes that a batch process may bring about. Not something within the control of Qwest, however, will be an issue that may directly impact customers. So MCI believes must work through the process, the process must be measurable and then see what		

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**NOTE: Shaded items are closed issues.

			happens in the commercial world once the process is implemented. If there are problems that are impacting end-user customers, there must be a way to stop the process until the issues are addressed. (MCI – Forum) Process must be tested prior to implementation. (Eschelon – p. 16) Eschelon is interested in getting more information regarding AT&T's testing proposal using Qwest retail customers. (Eschelon – Forum) Qwest should be required to test any proposed Batch Hot Cut process before a Commission makes a finding on whether CLECs are impaired in switching mass-market customers. Qwest must also ensure that associated vendors (numbering administrator, E911 administrator, etc.) can handle any increased loads. (McLeod – p. 2)		

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**NOTE: Shaded items are closed issues.

The Hot Cut Process allows telecommunications customers to be converted from one provider to another. The actual hot cut is performed when a customer is not using the circuit and therefore, will not noticeably impact their service. To complete this conversion, it requires that the customer's line be physically switched from the original provider's circuit to the new provider's circuit. The conversion, performed by a technician within the central office, is referred to as a "Hot Cut."

Currently this process is performed one order at a time.

A proposed new process referred to as the Batch Hot Cut Process will allow the work steps for multiple orders to be handled concurrently by two technicians working in tandem.

The following video will demonstrate both the current hot cut process and the proposed Batch Hot Cut Process and will not only follow the various tasks performed while making a hot cut, but will also demonstrate that the batch hot cut process is faster and more efficient than current procedures.

The "Hot Cut" consists of four basic parts: Receiving the Service Order, circuit pre-wiring and testing, the actual Hot Cut and re-testing, and lastly the updating of software and records to reflect the transfer.

The proposed Batch Hot Cut Process will provide additional efficiency by allowing C-LECs to submit multiple loop service orders which Qwest will combine on a single spread sheet for internal use to assist the central office technicians to prioritize by the cross connection location on the InterConnection Distribution Frame and COSMIC or Main Distribution Frame, per C-LEC so that the technicians can perform multiple functionality in each working location more efficiently.

Phone calls traverse a Central Office a facility where subscribers' telephone lines are joined to switching equipment for the connection of local and long distance calls.

Within the Central Office are distribution frames, which are termination points for wiring on one side of the protector frame connecting thousands of wires from the outside world; on the other side are the wires coming from the Central Office switch itself. Both sides are connected with a "jumper" wire that completes the circuit which is the physical connection or path between

two given points through which an electric current may be established, and is required for a customer to receive telephone service.

To change switch service providers, one end of the jumper wire is moved from its current location to a new location, called a "hot cut."

The existing circuit from the central office to the end user will remain the same with a hot cut however the portion of the circuit within the central office connecting the switch to the outside world must be transferred from the Qwest Switch to the C-LEC Switch.

Using information provided to Qwest by the C-LEC, Qwest prepares a service order that includes detailed circuit information, including block location and the telephone number, from which the technicians are able to locate and prepare the circuit for the transfer.

To create the new C-LEC portion of the circuit, technicians begin at the C-LEC's Interconnect Distributing Frame or ICDF, the ICDF is the location in the central office where the C-LEC interconnects into the Qwest Network.

A jumper wire is connected from the connecting block on which the C-LEC's service is terminated to a connecting block that terminates to an existing tie cable that runs between the ICDF and the MDF.

The tie pair cables terminating connector block location on the COSMIC Frame is then wired to a jumper that will terminates on the end user's existing cable pair when the Hot Cut is performed.

When the hot cut is completed the dial tone will then be provided by the C-LEC.

Let's look at a simple overview of how the actual hot cut is performed today.

First the technicians check the CLEC's Connecting Facility Assignment located on their ICDF block and terminal location for dial tone.

If dial tone is not present this is noted and properly reported and wiring continues.

The wiring consists of first running a jumper wire from the block and terminal location on the ICDF is run to an open tie cable pair. In the current process the technician wires only a single circuit at this stage.

After completing work at the ICDF, the technician moves to the COSMIC Frame, where the network is connected to the end user and where the actual hot cut will be performed.

At the COSMIC Frame the technician attaches a jumper wire from the connecting block on which the tie cable from the ICDF is terminate

which runs to the appropriate plant cable termination block going to the outside world.

The jumper wire is then tied in a knot or kinked and left unconnected so that it may be easily identified at the time of the hot cut.

Continuity and Automatic Number Identification known as ANI testing of the Qwest customer line are now performed. Any problems detected are reported. Preparatory work is now complete.

Prior to the actual hot cut being performed, a second ANI test is conducted verifying the telephone number on the circuit and the line is monitored to ensure that the CLEC's end user is not currently utilizing the line. If the line is idle, COT will perform the hot cut or lift and lay process which removes the Qwest service to the customer as shown and replaces the jumper wire with the jumper ran during the pre-wire step as identified earlier in the process. In this step the technician is shown running a jumper from (ICDF) Interconnection Distribution Frame to the Cosmic or Main Distribution Frame or MDF.

The technician then moves to the facility protection Heat Coil blocks which acts like a fuse box, protecting the central office equipment from outside power surges.

The Heat Coil block is where final dial tone and ANI testing of the C-LEC service occurs.

Any problems encountered at the protectors will be isolated to the central office wiring and corrected immediately or properly reported and the technician will complete on their WFADI terminal the customer circuit work requests.

After completing the physical work the technician will update Qwest records to indicate that actual connectivity of the circuit serving the end user is no longer served with Qwest dial tone. (End of Current Process)

Now that we have reviewed the Hot Cut Process, let's take a look at the proposed Batch Hot Cut Process which would allow two technicians to wire

multiple circuits for the entire end user batch at the ICDF rather than performing only one order at a time, significantly increasing efficiency.

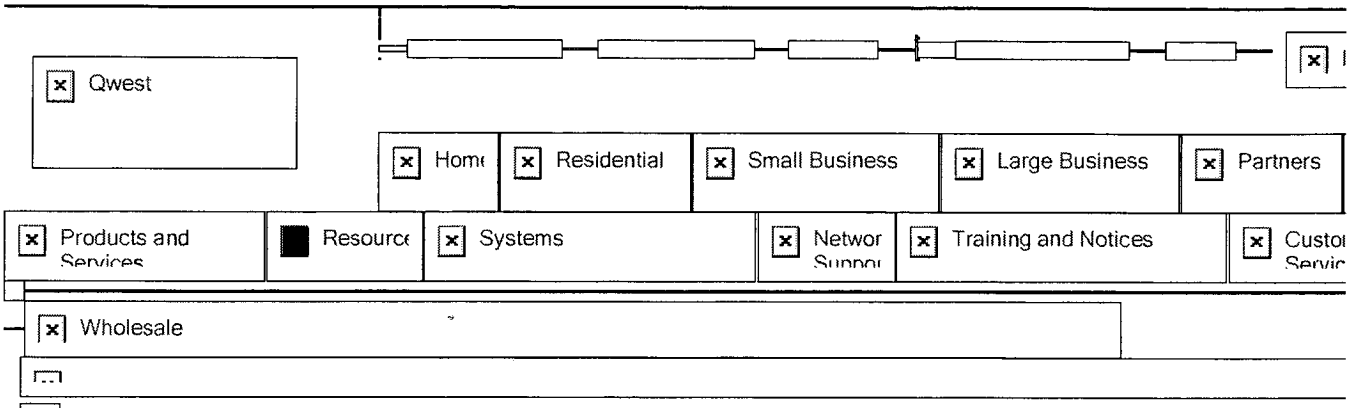
Because current process only allows a technician to wire one circuit at a time, multiple trips must be made by the technicians between the ICDF and the COSMIC Frame. By using a batch hot cut process multiple trips will be eliminated creating a more efficient process.

After completing work at the ICDF, the technicians move to the COSMIC Frame, where the network is connected to the end user and where the actual batch hot cuts are performed.

At the COSMIC Frame the technician attaches a jumper wire from the connecting block on which the tie cable from the ICDF is terminated which runs to the appropriate plant cable termination block going to the outside world where the jumper wire is then tied in a knot or kinked and left unconnected so that it may be easily identified at the time of the batch hot cut. Again with the batch hot cut process this will be performed multiple times.

Continuity and ANI testing of the C-LEC facilities are performed at this time. Any problems detected are reported. At time of cut testing is repeated and the lift and lay operation is performed.

The proposed Batch Hot Cut Process will give end users a transparent and low cost transition between Qwest and C-LEC because of efficiencies gained when the pre-wiring is placed in groups reducing the time spent placing individual orders and performing unneeded steps before the batch migrations are started.



Products & Services —Product Catalog (PCAT)

Product Catalog (PCAT)

☐**Product Description**

☐**Pricing**

☐**Features/Benefits**

☐**Applications**

—☐**Implementation**
- ☐**Pre Ordering**
- ☐**Ordering**
- ☐**Provisioning**
- ☐**Maintenance**
- ☐**Billing**
- ☐**Training**

☐**Contacts**

☐**FAQs**

Unbundled Local Loop - General Information - V39.0

History Log

Product Description

Unbundled Local Loop is a facility or transmission path between the Distribution Frame or equivalent in the Qwest Central Office (CO) and the loop Demarcation Point at the end-user premises. The 'Demarcation Point' is defined as the point where Qwest ownership of facilities ceases and Competitive Local Exchange Carrier (CLEC), end-user, owner or landlord ownership of facilities begins. Unbundled Local Loop network element includes all features, functions, and capabilities of the transmission facilities including dark fiber and all attached electronics, with the exception of Digital Subscriber Line Access Multiplexer (DSLAM), owned by Qwest, between a Qwest CO and the loop Demarcation Point at the end-user premises. Unbundled Local Loop provides a transmission path that is a point-to point configuration. You gain access to an unbundled local loop at the Qwest CO through the establishment of a collocation arrangement. Information for collocation is available in Collocation - General Information. Individual state commissions and Interconnection Agreements determine the structure, pricing and guidelines for Unbundled Local Loop.

Unbundled Local Loop family of products consists of:

- 2-Wire or 4-Wire Analog (Voice Grade) Loop
- 2-Wire or 4-Wire Non-Loaded Loop
- Asymmetric Digital Subscriber Line (ADSL) Compatible Loop
- Digital Service Level 1 (DS1) Capable Loop
- Digital Service Level 3 (DS3) Capable Loop
- Integrated Services Digital Network (ISDN) Basic Rate Interface (BRI) Capable Loop
- Synchronous Optical Network (SONET) Channel Optical Carrier Level n (OCn) Capable Loop
- xDigital Subscriber Line-Integrated Services Digital Network

(xDSL-I) Capable Loop

The following provides general information about the Unbundled Local Loop family of products.

Product Diagram



This diagram is intended to generally represent an Unbundled Local Loop configuration. Variations may occur from location to location.

Availability
Unbundled Local Loop is available where facilities exist throughout Qwest's 14-state local service territory.

Terms and Conditions
Unbundled Local Loop product offerings are provided where existing facilities are available and in compliance with provisions of Commission Orders and State Requirements as stated in this web page. Additional information is located in the Tariffs, Regulations and Policies section of this web page.

Technical Publications

Technical characteristics, including Network Channel/Network Channel Interface (NC/NCI™) codes are described in Technical Publication, Interconnection - Unbundled Loop, 77384.

Collocation information, as it applies to the Unbundled Local Loop product family, is located in Technical Publication, Interconnection and Collocation for transport and Switched Unbundled Network Elements and Finished Services, 77386.

Pricing

Rate Structure

Recurring charges are billed on a month-to-month basis. Nonrecurring charges are billed at the time service is rendered. Term contracts are not available.

Interconnection Tie Pair (ITP) monthly charges are applicable for each unbundled local loop. The ITP rate item represents the cost of the connection between your Demarcation Point within the Qwest CC and the Qwest Demarcation Point within the same office. Additional information is available in your Interconnection Agreement.

When multiple Unbundled Local Loops are ordered from the same Network Interface Device (NID) to the same wire center at the same time, they will be assessed a first and additional nonrecurring charge. Information regarding your rates is available in Exhibit A or the specific rate sheet in your Interconnection Agreement.

A nonrecurring customer transfer charge will apply when converting an existing Private Line to Unbundled Local Loop pricing. If you request a dispatch when converting an existing Private Line to Unbundled Local Loop pricing, the nonrecurring installation rate for that specific Installation Options will be assessed. Contact your Qwest Sales Executive if an amendment to your Interconnection Agreement is necessary to support Private Line to Unbundled Local Loops pricing.

One-month minimum billing, contract termination liability and associated contract charges for the product from the loop converted will apply. These charges will be assessed to the end-user as described in the state specific Tariffs/Catalogs/Price Lists.

Miscellaneous charges assessed may include, but are not limited to, Due Date Changes; Design Changes; Conditioning; Time and Materials; Maintenance of Service, and Premises Work.

Information regarding Geographic Deaveraging is available in Geographic Deaveraging - General Information. For more information on Geographic Deaveraging, refer to Regulatory Commissions and Telecommunications Associations. To determine the impact of your specific transmission level for a specific state, refer to Statement of Generally Acceptable Terms and Conditions (SGAT), Exhibit A.

Rates

A nonrecurring charge applies to the installation of service(s) and in some states a disconnect service(s) charge will apply. Rates for Unbundled Local Loop are available in Exhibit A or the specific rate sheet in your Interconnection Agreement. If there are elements that are not in your Interconnection Agreement, contact your Qwest Sales Executive.

Tariffs, Regulations, and Policies

Qwest technicians do not provide service past the Demarcation Point at the end-user premises on an Unbundled Local Loop.

To convert your existing Private Line to Unbundled Local Loop pricing, the conversion must:

- Be like for like facilities, e.g., DS1 Private Line to Unbundled Local Loop DS1 Capable Loop

- Originate at your Collocation site in the serving CO
- Terminate at the end-user premises

The conversion of your Private Line to Unbundled Local Loop pricing does not require a redesign of the circuit. This conversion will not create a disruption of service to your end-user.

Unbundled Local Loops can be ordered in conjunction with a Multiplexer (MUX). Refer to Loop MUX Combination (LMC) for more information.

Unbundled Local Loop product offerings are provided where existing facilities are available. Exceptions may apply where Commission Orders or state requirements exist. Exceptions may occur with Qwest/U S WEST Merger Stipulations/Agreements in the states of Minnesota and Washington. These agreements are separate from Qwest efforts to regain long distance re-entry. For specifics on those exceptions, refer to Regulatory Commissions and Telecommunications Associations.

When you submit a request for an Unbundled Local Loop the standard assignment process may include both mechanized and manual processes. Requests that can be provisioned over copper facilities use the mechanized assignment process. When facilities cannot be assigned via this process, the default is the Manual Steps Required for Copper Facility Assignment Process. Requests that are provisioned over fiber use the Fiber Facility Assignment Process for DS1 and Above. For additional information on the Facility Assignment Process. If cable capacity is available, Qwest will complete any necessary incremental facility work to provide complete facilities to the end-user premises. This work includes but is not limited to; placement of a drop, addition of a NID at the end-user demarcation point, addition of cards to an existing Subscriber Loop Carrier Systems at the CO and Remote Terminal, addition of CO Tie Pairs, and addition of Field Cross Jumpers. This process will not include the splicing of Unbundled Dark Fiber. Additional information for Unbundled Dark Fiber can be found in Unbundled Dark Fiber (UDF).

If no facilities are available to meet the parameters required for your requested service, Qwest will look for an existing engineering job order that could fill your service request in the future. If an engineering job order is identified, Qwest will provide the Ready For Service (RFS) date. You will have the opportunity to wait for the service to be delivered or cancel your service request..

If the service request involves a 2-Wire or 4-Wire Analog (Voice Grade) Unbundled Local Loop, and the loop is considered primary service the normal assignment process described above will be followed in its entirety. If no facilities are available, and there is No Planned Engineering Job, an engineering job order will be initiated to

ensure delivery of the primary service to the end-user. Qwest will construct facilities for the 2-Wire or 4-Wire Analog (Voice Grade) loop that are in alignment with its Eligible Telecommunications Carrier (ETC) obligations to provide basic local exchange service in the retail markets. For more information on Qwest's ETC obligations refer to Regulatory Commissions and Telecommunications Associations.

Qwest will construct facilities to satisfy the primary 2-Wire or 4-Wire Analog (Voice Grade) lines for the Unbundled Local Loop, in the same manner as Qwest constructs these facilities for its own end-users.

If you submit a service request for a 2-Wire or 4-Wire Analog (Voice Grade) Unbundled Local Loop, and the loop is considered secondary service the normal assignment process described above will be followed in its entirety. If facilities can not be located and there is No Planned Engineering Job, your service request will be held for 30 business days. Availability of facilities is on a first come, first served basis. If spare facilities become available, a Firm Order Confirmation (FOC) is generated and sent to you in response to your original service request. If at the conclusion of the 30 business day hold facilities are still unavailable, your service request will be rejected. Exceptions may occur, as mentioned above. This information is also described in the Provisioning and Installation Overview. If it is determined that facilities are unavailable, contact your Qwest Service Manager for other options. Information for CLEC requested Unbundled Network Elements (UNE) Construction is available in CLEC Requested Unbundled Network Elements (UNE) Construction (CRUNEC).

When you submit an Unbundled Local Loop request for xDSL Services (i.e., 2-Wire or 4-Wire Non-Loaded Loop, ADSL Compatible Loop, ISDN BRI Capable Loop, xDSL-I Capable Loop), for or a DS1 Capable Loop or DS3 Capable Loop, the normal assignment process will be followed in its entirety. If facilities can no be located and there is No Planned Engineering Job, your service request will be held for 30 business days. Availability of facilities is on a first come, first serve basis. If spare facilities become available, a FOC is generated and sent to you in response to your original service request . If at the conclusion of the 30 business day hold facilities are still unavailable, your service request will be rejected. Exceptions may occur, as mentioned above. This information is also described in the Provisioning and Installation Overview. If it is determined that facilities are unavailable, contact your Qwest Service Manager for other options. Information for CLEC requested UNE Construction is available in CLEC Requested UNE Construction (CRUNEC).

Qwest Outside Plant (OSP) and Interoffice (IOF) engineering jobs may be viewed in the ICONN database. For specific details and instructions see the Tariffs, Regulations, and Policies Section of the

Provisioning and Installation Overview.

Upgrades of Interoffice Facilities may allow copper interoffice facilities to be redesignated as available for loop facilities. When copper interoffice facilities become available, these copper loop facilities will be available as spare for you to use as unbundled local loops to your end-user. This spare copper will be indicated as spare facilities in the Raw Loop Data (RLD) Tool.

Qwest normal hours of operations are 8:00 AM to 5:00 PM, Monday through Friday, excluding Qwest Holidays. Installations requested outside of the normal operating hours are considered to be Out of Hours Installations. All Out of Hours installations require a coordinated installation option as defined in the Ordering section. Contact your Qwest Service Manager for information regarding this process. Out of Hours rates are assessed for this service. These rates appear in Exhibit A or the specific rate sheet in your Interconnection Agreement.

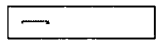
All Unbundled Local Loop intervals, including Extension Technology and Loop Conditioning, are located in the Service Interval Guide (SIG). Additional information regarding Extension Technology is described in ISDN BRI Capable Loop and xDSL-I Capable Loop. Information regarding Loop Conditioning is located in the Ordering section of this web page.

Quick Loop provides a reduced provisioning interval for Unbundled Local Loops. Additional information regarding Quick Loop is described in 2-wire or 4-wire Analog (Voice Grade) Loop and 2-Wire or 4-Wire Non-Loaded Loop.

Information for Local Number Portability (LNP) when associated with Unbundled Local Loops can be found in LNP.

The provisioning intervals for converting from Private Line to Unbundled Local Loop pricing are located in the SIG. The intervals will be consistent with the type of loop you are converting to, e.g., Private Line DS1 to Unbundled Local Loop DS1 Capable Loop Pricing, your provisioning interval would be for DS1 Capable Loop.

Optional Features
Detailed information regarding optional features for each Unbundled Local Loop product is available by selecting the product hyperlink located in the Product Description section of this web page.



Features/Benefits

Features	Benefits

Market Presence	• Allows you to provide Local Exchange service to your end-users
Low Cost	• Allows you to lease facilities from Qwest at wholesale rates

Applications

See Features/Benefits

Implementation

Product Prerequisites
If you are a new CLEC and are ready to do business with Qwest, view the Getting Started as a Facility-Based CLEC. If you are an existing CLEC wishing to amend your Interconnection Agreement or New Customer Questionnaire, additional information is located in the Interconnection Agreement.

Pre Ordering

General pre-ordering activities are described in Pre-Ordering Overview.

Border town characteristics, including a NPA/NXX matrix are described in the Pre-Ordering Overview.

Border town cities are physically located and tariffed in one state witl service provided from a central office located in a different state. The recurring and non-recurring rates for each border town are based on the tariffs of the state where the service is physically located. Taxes are also based on the end user's physical location, not the serving Central Office.

For UBL accounts, the SBN/MAN number, Summary BAN, Geographic Deaveraging Rate Zone, and Exchange Code (Eastern) will be assigned using the END USER State data. The STN (Eastern) and Circuit ID will be assigned using the serving central office State data.

Exceptions occur where a tariff specifically addresses a city by name or by NPA/NXX. In these exception cases, the tariff is the final source of authority for determination of recurring and non-recurring charges as well as late payment charges.

The Interconnect Mediated Access (IMA) Users Guide specifically details the information applicable to pre-ordering functions.

Loop qualification queries should be used prior to submitting a service request. Use of the queries can greatly reduce service request rejects by ensuring the types of facilities requests are available prior to placing a service request. The query will enable you to verify the type of facility and physical characteristics of the facility. Bases on the physical characteristics you can determine if the facility needs to be conditioned, i.e. the removal of load coils or bridge taps, which will assist you in identifying the appropriate service request intervals, as described in the SIG.

Some of these queries are available in IMA and others are web based. The qualification queries provide you with access to physical characteristics of the Qwest Facility from Qwest databases. This is the same underlying data that Qwest utilizes for its retail product offerings.

- The queries are for informational purposes only and do not restrict or imply that your service will or will not work on a given facility. This determination is your responsibility.
- As mentioned, the physical characteristics provided are based on Qwest's plant facility database. If you encounter any inaccuracies in the information, please contact your Qwest Service Manager.

IMA qualification queries are:

- Loop Qualification Query
- Raw Loop Data (RDL) Queries
- Plan Old Telephone Service (POTS) Conversion to Unbundled Loop Query (submenu under Check Facility Availability)
- ISDN Facility Availability Query (submenu under Check Facility Availability)

Wed based qualification queries are:

- Wire Center RLD
- Fiber Data Reports

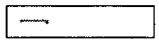
For web based queries, contact your Qwest Service Manager to request an ID, which will be required to obtain the Digital Certificate required for access to the Wire Center RLD and the Fiber Data Reports. You will need to provide the names and telephone of each staff member that will be accessing the query. After your Qwest Service Manager has notified you that the necessary access permissions have been established, and provided you with your ID, you may then initiate the Digital Certification process.

Information about the IMA based loop qualification queries are available in the IMA User's Guide or the Pre-Ordering Overview. The IMA Loop Qualification and Raw Loop Data-CLEC Job Aid is a web-based training course designed to provide valuable information and instructions on how to use and interpret IMA-based loop qualification queries and the raw loop data queries.

The Fiber Loop Qualification Report Users Guide provides you with instructions on how to use this query.

The Loop Qualification Query can be accessed via IMA to pre-qualify for Qwest DSL, Unbundled Local Loop and ADSL. If the end-user's telephone number is a Port-Within telephone number also known as a Location Ported telephone number, you must use the address to perform an ADSL qualification. Information regarding the Loop Qualification query is described in the IMA User's Guide.

When an end-user is served from a Remote Serving Unit (RSU), an "EX" prefix will appear in the end-users cable pair (e.g., F1 ca EXA7). Unbundled Local Loops are available when you are collocated in the same RSU that your end-user is served by. If you are not collocated in the same RSU as an end-user, contact your Qwest Sales Executives for assistance with products that may be available to serve your end-user.



Ordering

General ordering activities are described in the Ordering Overview.

Unbundled Local Loop service requests are submitted using the following LSOG forms:

- Local Service Request (LSR)
- End User (EU)
- Loop Service (LS)
- Loop Service with Number Port (LSNP)
- Directory Listings (DL)

Filed entry requirements are located in the LSOG.

Service requests should be placed using IMA-Graphical User Interface (GUI) or faxed to (888) 796-9089. The IMA User's Guide specifically details information applicable for the ordering functions.

Upon completion of construction or augmentation of your Collocation, Qwest provides you with an Alternate Point of Termination (APOT) form. The APOT form will provide you with the specific Collocation terminations at the ICDF frame or the frame

where the service terminates. This is your Connecting Facilities Arrangement (CFA) information, which you will need when submitting an service request.

Service intervals are available in the SIG. Additional state specific information is available in Exhibit C for the relevant state.

A Design Layout Record (DLR) request is described in the IMA EDI Network Disclosure Document or the IMA User's Guide.

Service requests for multiple Unbundled Local Loops can be submitted on one service request to disconnect, move or change, if the Circuit Identifications terminate at the same end-user address. The requested ACT type must be the same for each loop on the service request. Information is available in the IMA User's Guide and LSOG

If you relate Purchase Order Numbers (PON) and associate them to a Project Identification Code, in the PROJECT field on the LSR, or if the LQTY field on the LSR has 25 or more loops, the service request will be handled as a project by the center responsible for handling your account. The installation guidelines for projects are negotiated on an Individual Case Basis (ICB) based on the request.

Unbundled Local Loop and Unbundled Local Loop with LNP requires a facility between the serving wire center and the end-user. Market Expansion Line (MEL) also known as Remote Call Forwarding (RCF) does not have a facility associated with it, therefore, MEL conversion to an Unbundled Local Loop or Unbundled Local Loop with LNP is unavailable.

Re-use of facilities is a Qwest priority. Facilities are re-used when an existing end-user is migrated to a CLEC, either from Qwest or another CLEC, as long as the request involves like services (e.g., Fixed Rate Residential (1FR)/Fixed Rate Business (1FB) analog to an analog loop (LX--)) and both providers are located in the same Serving Wire Center. This is accomplished through the service request process. The table below identifies the re-use specific LSR requirements. Detailed information is described in the LSOG.

Service Request Field	**Must Be Populated With**
AGAUTH	Y
DATED	CCYYMMDD
REQTYP	AB
ACT	V or Z
	Standard interval applies as identified in the

DDD	SIG
CFA	Enter CFA information

Private Line to Unbundled Local Loop pricing conversion

The table below identifies the existing Private Line to Unbundled Local Loop pricing conversion LSR specific requirements:

Service Request Field	**Must Be Populated With**
REQTYP	AB FOR Loop only or BB for Loop with LNP
ACT	V
LNA	D
Manual Indicator	Y
ECCKT	Circuit Identification of the Private Line
APOT	Enter APOT information
Remarks	Include in the remarks: • Private Line to Unbundled Local Loop pricing conversion • CFA information • No CO work (ie. PRIVATE LINE TO UNBUNDLED LOOP PRICING CONVERSION ON 64/HGGS/159524/MS. NO CO WORK INVOLVED PSU07/22-NL/00025/BNTFUTMA/BNTFUTMAHG7

Unbundled Local Loop service requests are identified by using Common Language Circuit Identification (CLCI™). The CLCI is in Serial Number format and is provided to you on your FOC. Once the Circuit Identification is assigned, all subsequent requests must carry the Circuit Identification in the ECCKT field of the LSR.

The existing Private Line CLCI will be changed to an Unbundled Local Loop CLCI and is provided to you on your FOC. Once the CLCI is assigned, all subsequent design changes will require the Unbundled Loop CLCI, and should be compliant with the design requirements identified in Technical Publication, Interconnection - Unbundled Loop, 77384. Private Line to Unbundled Loop Pricing Conversion CLEC Job Aid is a document designed to provide

guidance in performing service request entries for the Private Line to Unbundled Loop Price Conversion.

Following is a description of the Qwest Circuit Identification Number format:

- Characters 1 and 2 are the state code (Refer to Circuit ID by State Table below.)
- Characters 3 through 6 are the Service Code indicating what product is being ordered (Refer to the Service Code Table below.)
- Characters 7 through 12 are numeric
- Characters 13 and 14 represent; PN equates to Western, MS equates to Central, and NW equates to Eastern

29.LXFU.123456..MS is an example of a Circuit Identification Number in Serial Format.

Circuit ID by State Table

Central MS		Eastern NW		Western PN	
State	State Code	State	State Code	State	State Code
Arizona	19	Iowa	1	Oregon	5
Colorado	29	Minnesota	3	Washington	4
Idaho	39	Nebraska	7		
Montana	49	North Dakota	5		
New Mexico	59	South Dakota	9		
Utah	69				
Wyoming	79				

SERVICE CODE TABLE

Analog type loops, Voice Grade, Non-Loaded ADSL Compatible Loops	LXFU
DS1 Capable Loop	HCFU
DS3 Capable Loop	HFFU
ISDN BRI Capable Loop	UBXU

OC3 Capable Loop	OBFU
OC12 Capable Loop	ODFU
OC48 Capable Loop	OFFU
OC192 Capable Loop	OGFU
xDSL-I Capable Loop	AGFU

*UBXU service code replaces UBCU, UBCU is a grandfathered code for ISDN BRI Capable Loop.

Qwest hours of operation are identified in the Tariffs, Regulations, and Policy Policies section.

Six installation options are available for Unbundled Local Loop. The following is information regarding each of the provisioning installation options:

Installation Option	**Description**	**Ordering Requirements**
Basic Installation	Available for new or existing Unbundled Local Loops. For an existing end-user, the basic installation option is the 'lift and lay' procedure. In this scenario the Qwest Technician 'lifts' the loop from its current termination and 'lays' it on a new termination connecting to the CLEC. For new end-user service, the basic installation option involves Qwest Technicians to complete the circuit wiring and conduct the performance tests to ensure the circuit meets the required parameter. Test results are not provided to the CLEC.	Basic is assumed unless Coordinated Hot Cut (CHC) and Appointment Time (APPTIME) fields are populated.
Basic Installation with Performance Testing *	Available for new or existing Unbundled Local Loops. For an existing end-user, the 'lift' and 'lay' process is performed. In addition performance testing is done to ensure the circuit meets the required parameters limits.	LSR entries include a 'N' or blank in the 'CHC' field and the 'TEST' field contains a 'A' for performance testing.

	Test results are provided to your designated contact verbally during close-out activities of the order on the due date.For new end-user service, this option requires a dispatch to the end-user premises. The Qwest Technician will complete the circuit wiring and conduct performance tests to ensure the circuit meets the required parameter limits. The test results are provided to your designated contact verballyduring close-out activities of the order on the due date.	
Basic Installation with Cooperative Testing *	Available for a new or existing Unbundled Local Loops. For an existing end-user, the 'lift' and 'lay' process described above is performed. Your designated contact is contacted on the due date to perform loop back acceptance test, accept the loop and exchange demarcation information. Test results are provided verbally during close-out activities of the order on the due date. For new end-user service, this option requires a dispatch to the end-users premises. The Qwest Technician will complete the circuit wiring and conduct the performance tests to ensure the circuit meets the required parameter limits. Your designated contact is contacted on the due date to perform loop back acceptance test, accept the loop and exchange demarcation information. The test results are provided verbally during close-out activities of the order on the due date. If Qwest fails to perform	LSR entries include a 'N' or blank in the 'CHC' field and the 'TEST' field contains a 'I' for cooperative testing.

	cooperative testing due to Qwest's fault, Qwest will waive the nonrecurring charge for the installation option. If you still desire cooperative testing, you and Qwest will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a jeopardy notice and a FOC with a new Due Date.	
Coordinated Installation with Cooperative Testing *,**	Available for a new or existing Unbundled Local Loops. The service request submitted must designate a specific 'Appointment Time' for the cooperative testing to occur. For an existing end-user, the 'lift' and 'lay' process is performed, on the due date, at the designated 'Appointment Time', the Qwest Technician will contact your designated contact to ensure that you are ready for the installation, at which time the work is initiated and the required performance test conducted. Additional tests requested by you are also performed at this time. The test results are provided verbally during close-out activities of the order on the due date. If you are not ready within thirty (30) minutes of the scheduled appointment time, you must re-schedule the installation by submitting a supplemental service request for a new Due Date and appointment time. If Qwest is not ready within thirty (30) minutes of the scheduled appointment time, Qwest will waive the nonrecurring charge for the installation option, you and Qwest will attempt to set a	LSR entries include a 'Y' in the 'CHC' field, 'APPTIME' and Desired Frame Due Time (DFDT) fields populated with the same time in military format and 'TEST' field contains a 'B' for cooperative testing.

	new appointment for the same day. If Qwest fails to perform cooperative testing due to Qwest's fault, Qwest will waive the nonrecurring charge for the installation option. If you still desire cooperative testing, you and Qwest will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a jeopardy notice and a FOC with a new Due Date. For new end-user service, this option requires a dispatch to the end-user premises. On the due date, at the designated 'Appointment Time' the Qwest Technician will contact your designated contact to ensure that you are ready for the installation, at which time the installation work is initiated and the required performance test conducted. Additional tests requested are also performed at this time. The test results are provided verbally during close-out activities of the order on the due date. When this option is selected with 25 or more DS0 Unbundled Local Loops, or one or more DS1 Capable Loops or DS3 Capable Loops, the parameters for the Project Coordinated Installation can apply. Additional information is located in the Project Coordinated Installation option below.	
Coordinated Installation without Cooperative Testing **	Available for a new or existing Unbundled Local Loops. The service request submitted must designate a specific 'Appointment Time' to coordinate the conversion activity.	LSR entries include a 'Y' in the 'CHC' field, 'APPTIME' and 'DFDT' fields populated with the same time in

		For an existing end-user, the 'lift' and 'lay' process is performed, on the due date, at the designated 'Appointment Time'; the Qwest Technician will notify you that the conversion activity is beginning. Your designated contact will be notified by the technician once the 'lift' and 'lay process is completed. Performance test results not provided. If you are not ready within thirty (30) minutes of the scheduled appointment time, then you must reschedule the installation by submitting a supplemental service request . If Qwest is not ready within thirty (30) minutes of the scheduled appointment time, Qwest will waive the nonrecurring charge for the installation option. You and Qwest will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a jeopardy notice and a FOC with a new Due Date. For new end-user service, a dispatch may be required to tie-down the new circuit at the end-user premises. You may elect to specify that no dispatch is requested. This will signal the Qwest Technician that they will not need to stay on the premises to perform the Coordinated Installation once the circuit is in place. On the due date, at the designated 'Appointment Time', after the circuit is in place, the Qwest Technician will contact you to ensure that you are ready for the installation. The work will	military format and 'TEST' field contains a 'N' for no cooperative testing required.

	be initiated and the required performance tests conducted. Performance test results are not provided, your designated contact is notified when the installation is complete. When this option is selected with 25 or more DS0 Unbundled Local Loops, or one or more DS1 Capable Loops or DS3 Capable Loops, the parameters for the Project Coordinated Installation can apply. Additional information is located in the Project Coordinated Installation option below.	
Project Coordinated Installation **	Available for a new or existing Unbundled Local Loops. The Project Coordinated Installation permits you to obtain a coordinated installation for Unbundled Local Loops with or without LNP, when you order DS1, DS3 or 25 or more DS0 Unbundled Local Loops. The Project Coordinated Installation Option is available with the Coordinated Installation with Cooperative Testing or the Coordinated Installation without Testing. The service request submitted must designate a specific 'Appointment Time' to coordinate the conversion activity. All requests are processed on a first come, first served basis and are subject to Qwest's ability to meet a reasonable demand. Qwest will schedule the appropriate number of employees based on the scale and scope of the project based on the information you provided.	LSR entries: 'Y' in the 'CHC' field, 'APPTIME' and 'DFDT' fields populated with the same time in military format and 'Y' in the Manual Indicator (IND) field. Remarks section of the LSR must indicate 'Project Coordinated Installation'

	If you requested Project Coordinated Installation with LNP and the LNP Managed Cut conversion is not successful; you and Qwest will jointly isolate and fix the problem in a timeframe agreeable with you and your end-user. If the problem cannot be resolved within an acceptable timeframe, you may request the restoral of Qwest service for the ported customer. Qwest will ensure that any LNP order activity requested in conjunction with a Unbundled Local Loop Project Coordinated Installation will be implemented in a manner that avoids interrupting service to the end-user, ensuring that the end-user's Qwest loop will not be disconnected prior to confirmation from you that the loop has been successfully installed.	

For additional information on installation options please refer to the SGAT.

* Upon order close-out of either new or existing services to an end-user, the Qwest Implementor/Coordinator will first provide verbally and then email the test results to your permanent email address withir two business days. The email notification will only take place if you have provided the permanent e-mail address to your Qwest Service Manager. This option is available with the following provisioning installation options:

- Basic Installation with Performance Testing
- Basic Installation with Cooperative Testing
- Coordinated Installation with Cooperative Testing

** You will be required to attempt an appointment reservation to reserve an appointment, which will populate the APT CON field. Thi requirement applies when the appointment is made via IMA. APT CON must have a value for these products when CHC = Y. Information for Schedule Appointment is described in the IMA User's Guide.

White Page Directory Listings are available for Unbundled Local

Loops and Unbundled Local Loops with Local Number Portability.

Unbundled Local Loops with ACT types of N and V require:

- Listed Telephone Number (LTN) on the DL form to match the Circuit Reference (CKR) entry on the LS form.
- ACT types of C and T require the LTN on the DL form match the CKR entry on the Customer Service Records (CSR).

Unbundled Local Loops with LNP for the ACT type of V requires:

- LTN on the DL form match the CKR entry on the LSNP form.
- ACT type Z does not require a DL form to convert all existing listings.

When Facility Based Directory Listing (FBDL) listings exist in the listing database for an Unbundled Local Loop end-user, the listing should be retained as FBDL, with no DL Form associated with the Unbundled Local Loop request. However, if the FBDL is disconnected and no longer resides on the listing database, the end-user listing can be established on the Unbundled Local Loop account, and will then be available on the CSR. Information is available in the White Pages Directory Listings. Additional information is located in Directory Listings.

Accessing the Directory Listing Inquiry System (DLIS) will enable you to review directory listing information prior to and subsequent to submitting directory listing orders to Qwest for processing.

The Loop Service with Number Portability (LSNP) form is also used if the request involves LNP. Additional information regarding LNP can be found in LNP.

UNE-P to Unbundled Local Loop Conversion

If you want to convert your UNE-P end-users to Unbundled Local Loop in a bulk conversion (REQTYP equal "AB" or "BB" depending upon porting request) the following steps are required:

- Perform pre-order activities for each individual end-user account.
    - Check facility availability by validating the Connecting Facility Assignment (CFA) per the detailed information available in Chapter 1 of the IMA User Guide. Potential reject problems such as busy CFA, validation of end-user address for data mismatch, and facility qualification requirements are identified and explained in the IMA documentation.
    - If you encounter CFA discrepancies, open an escalation

ticket. For information regarding escalations and relevant contact numbers, refer to the Expedites & Escalations Overview.
    - You may create a project tracking number that will be placed on the LSR for the bulk conversion. The same project number will be applied to all LSRs that you wish to track as a project.
    - Contact your Service Manager to define the parameters for the bulk conversion. You should provide the following:
        - Number of lines per Local Serving Office (LSO)
        - Number of LSOs involved in the bulk conversion
        - Number of lines you want to convert each day/night
    - Negotiate with Qwest regarding when you want to convert the lines. Conversions that occur outside of normal business hours can only be supported if resources are available. Normal business hours for conversions (cuts) are based upon product type (e.g., Unbundled Local Loop normal business hours are 8 AM to 5 PM). The type of installation, basic or coordinated, determines the specific cut time.
    - Perform normal ordering procedures for a LSR. If you provided a project number, it will be included on the LSRs.
        - Refer to the following for information regarding ordering:
        - IMA's User's Guide
        - Pre-Ordering Overview
        - Ordering Overview
        - Provisioning and Installation Overview
    - Service interval guidelines are found in the Service Interval Guide (SIG). They are listed by product.
- Participate in pre-due-date readiness activities as appropriate. The following activities will be performed prior to the due date (s) for bulk conversion(s):
    - Lift and lay tests will be performed by the QCCC.
    - Pre-wiring at the central office
    - Loop qualification via standard testing practices
    - Dial tone will be checked at the co-location, however, ANI for the TN cannot be performed. You will need to make certain that the correct translation path is selected to the co-location point prior to conversion.
- Participate in due date conversion activities as appropriate. The following activities will be performed on the due date of the bulk conversion:
    - Pre-cut call to validate that you are prepared for the lift and lay function
    - If you provide a continuous bridge number, status will be provided at the start and completion of each line cut. We will not be on the bridge number continuously (24 hours)

but will be available when needed during the line cut activities. We will also contact the entity identified in the Implementation Contact (IMPCON) field of the LSR.
    - We will perform qualifying tests for each line and request that you check it and provide acceptance or feedback to us. We will continue to work with you until you accept the circuit. Once you accept the circuit as complete, you cannot roll back to UNE-P.
- If you encounter any difficulties immediately after the conversion, contact the escalation group and open a ticket. For information regarding escalation, refer to the Expedites & Escalations Overview

Qwest Port out with UBL Main Number and TER's

After you have obtained the new business and received POA from the end-user, you will need to verify TN(s) are eligible to Port out with TER's then submit LSR's to Qwest using the standard order process for LSNP with the following additions.

The table below identifies the Qwest Port out with UBL Main Number and TER's, reuse facilities LSR specific requirements:

Service Request Field	Must Be Populated With
REQTYP	BB
ACT	V or Z
LNA	V
Ported Number	Must equal the main number of the TER's
Manual Indicator	Y
Remarks	Include in the remarks: • "TN associated to TER's, line items on LSNP page matching TER associction" Example: TER1 - Line 1(typically the main number), TER 2 - Line 16, TER 3 - Line 17, etc.

Valid LSR ACT types are:

- C = Change
- D = Disconnect
- N = New Installation
- M = Inside move
- T = Outside Move
- V = Conversion as specified
- Z = Conversion as specified with no directory listing change is only applicable with Unbundled Local Loop with LNP

Valid REQTYP is AB unless the request involves LNP; then the REQTYP is BB.

Some of the more common information required on Unbundled Local Loop LSR request includes the following information:

- Valid Network Channel (NC) and Network Channel Interface (NCI) codes
- CFA
- Installation Option
- Desired Due Date
- Secondary Location Information
- Contact Information

Some services may require Qwest to condition facilities i.e., Load Coils and Bridged Tap removal, in order to provision the type of service you requested.

You can use the ADSL Loop Qualification Query or the RLD query to determine if conditioning is necessary to provide the service you intend to offer. Qwest will always attempt to assign facilities that do not require conditioning. However, there may be some situations where the only way to fulfill your request requires Qwest to condition the loop. No additional charge is assesed for this conditioning, however Qwest will not condition a loop without you requesting the conditioning. If you request conditioning and the conditioning degrades the voice services on the loop to the point where it is unacceptable to end-users, charges will be assessed to recondition the loop. Qwest will provide removal of load coils and excessive bridged taps on digital capable Unbundled Loops at no charge. Qwest will not require a contract amendment to change the rate for removal of load coils and excessive bridged taps of Unbundled Loops. Qwest reserves the right to revert to the contractual rate for this type of conditioning upon appropriate notice. If any regulatory body issues a ruling related to this change, or upon other applicable event, this change may be subject to the conditions described under Change in Law Provisions of the SGAT (Section 2.2) or the applicable interconnection agreement.)

To simplify the process, you have the option to request conditioning by entering a "Y" in the SCA field of the LSR. If this field carries the "Y", all Load Coils and excessive Bridged Tap will be removed, with the exceptions of stub cable. The pre-approval option provides the following benefit:

- If conditioning is required, the service request will flow through the provisioning process.
- If the pre-approval is not included on your service request and conditioning is required, Qwest will reject your LSR and you will need to submit a new service request.

Following are examples for ordering loop conditioning on a non-loaded loop e.g., 2 Wire or 4 Wire Non-Loaded Loop, ADSL Compatible Loop, ISDN BRI Capable Loop or xDSL-I Capable Loop:

- When your LSR is submitted with a "Y" in the SCA field, Qwest's first attempt will be to assign a facility free of Load Coils and Bridged Tap. If the only available facilities have Load Coils and Bridged Tap, Qwest will dispatch a technician to ensure that the circuit will meet the parameters specified in the service request. If loop conditioning is required, the standard 15 business day loop conditioning interval will apply.
- When your LSR is submitted with a "N" in the SCA field or if the SCA field is blank, you have not authorized the removal of Load Coils or Bridged Tap. Qwest will attempt to assign a facility free of Load Coils and excessive Bridged Tap.
    - If facilities are unavailable free of Load Coils and/or excessive Bridged Tap your service request will be rejected. Qwest will advise you that loop conditioning of the facility is required. You will need to resubmit an LSR with a 'Y' in the SCA field.
    - If such a facility can be found, it will be assigned and the request will be processed. In this situation, the facility assigned can have Bridged Tap on it that does not exceed the limits identified by the NC/NCI code specified in your LSR.
- If Load Coils and/or excessive Bridged Tap are not identified by Qwest as being present on the facility assigned, Qwest should be able to identify Load Coils and/or excessive Bridged Tap during Test and Turn-up. If the test doesn't indicate the presence of Load Coils and /or excessive Bridged Tap, and the loop is subsequently turned over with Load Coils and/or excessive Bridged Tap on it, Qwest will remove the Load Coils and/or excessive Bridged Tap within five business days of order completion. This process will not require you to submit a supplemental service request in the below scenarios:
    - You originally entered a "Y" in the SCA field of the LSR, Qwest will remove any Load Coils and/or excessive Bridged Tap.
    - You originally entered a "N" in the SCA field of the LSR or left the SCA field blank, Qwest will only remove the Load Coils and/or excessive Bridged Tap that impedes the service or is not indicated in the Qwest records. Bridged Tap that doesn't interfere with the services specified in the NC/NCI code combination will not be removed.

For additional information on jeopardy notifications refer to the Provisioning and Installation Overview.

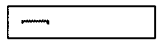
The pre-approval inclusion will not have any negative impacts on

your order. Qwest will still attempt to locate facilities that do not require loop conditioning.

Qwest will remove Load Coils and/or excessive Bridged Tap for 2-Wire and 4-Wire Non-Loaded Loops, ADSL Compatible Loops, ISDN BRI Capable Loops and xDSL-I Capable Loops. The interval required to perform loop conditioning is 15 business days. The standard intervals and critical dates are available in the SIG.

The due date interval for Unbundled Local Loops depends on the type of loop that is being installed. If the requested installation interval specified is less than the standard interval, your request will be processed with the intervals found in the SIG. If you requested an installation interval that is greater than or equal to the standard interval, the requested installation interval will be assigned. The standard intervals and critical dates are available in the SIG.

Product specific Unbundled Local Loop ordering information is available by clicking on the appropriate product hyperlink located in the Product Description section.



Provisioning and Installation

NC/NCI codes for provisioning are available in the the Technical Publication, Interconnection - Unbundled Loop, 77384.

General provisioning and installation activities are described in the Provisioning and Installation Overview.

FOC intervals are found in the SIG.

If no facilities are available to meet the parameters required for your requested service, Qwest will look for an existing engineering job order that could fill your service request in the future. If an engineering job order is identified, Qwest will provide the Ready For Service (RFS) date. You will have the opportunity to wait for the service to be delivered or cancel your service request.

A jeopardy on a service order request results if a condition exists that threatens timely completion of the request. Jeopardy notifications are described in the Provisioning and Installation Overview.

For order status information for Unbundled Local Loops above DS0 signal levels, refer to the Design Service Order Status (DSOS). This tool requires a digital certificate. For additional information about DSOS, access the Qwest Design Service Order Status Job Aid.

Specific Performance Testing is conducted to ensure that a circuit

meets the required parameters and objectives of the requested loop type. Performance tests are conducted based on the Unbundled Local Loop product being converted or installed. Product information is available on each product by selecting the product hyperlinks included in the Product Description section. Performance information is located in the Technical, Interconnection - Unbundled Loop, 77384.

For Unbundled Local Loop , the migration activities will not exceed forty five (45) minutes. For more information on migrations and conversion, see the Migrations and Conversions Procedural PCAT.

Qwest is responsible for notifying you of any activity associated with your account. This includes transfers of your end-users to other Local Exchange Carriers and order completion on requests you have submitted. Loss and Completion Reports are generated based on loss and gain account activity. Information regarding completion notification, including Loss and Completion Reports, is described in the Provisioning and Installation Overview.

Spectrum Management is the administration of outside loop plant to assure spectral compatibility for services and technologies that use pairs in the same cable. In general, spectrum compatibility refers to the ability of loop technology to operate and reside in the same or adjacent binder groups without causing an unacceptable degradation of service from the end-user's perspective.

Spectrum Management process applies to digital loops, (e.g., xDSL Loops).

- 2-Wire or 4-Wire Non-Loaded Loop
- ADSL Compatible Loop
- DS1 Capable Loop
- ISDN BRI Capable Loop
- xDSL-I Capable Loop

The NC/NCI codes submitted on your LSR describe the type of technology, fitting within a Power Spectral Density (PSD) mask. These codes will provide Qwest with the technical parameters at which the newly deployed or changed technology will operate. Detailed information is available on each product by selecting the product hyperlinks included in the Product Description section. The NC/NCI codes are specified in the Technical Publication, Interconnection - Unbundled Loop, 77384.

- Qwest will treat NC/NCI code information provided by you as proprietary information. This proprietary information will be used for Spectrum Management administration purposes only. The PSD mask on all loops, within a binder group, will be disclosed only if trouble or interference occurs on the end-

user's xDSL-I loop.

- If trouble or interference, found by either you or Qwest, is degrading the performance of other advanced services or traditional voice band services, the carrier experiencing the interference will notify the causing carrier. When notified of the problem, the causing carrier, given reasonable opportunity to correct the problem, shall promptly take action to bring its facilities/technology into compliance with industry standards.
- If a carrier's end-user experiences interference problems, Qwest will provide binder group information to you within 48 hours, after receiving a trouble resolution request. In the trouble isolation process, you will need to test the pairs in the binder group and identify the spectrum class causing the problem. Once isolated, Qwest will then provide you with names of the carriers and the spectrum classes in the affected binder group.
- If you are unable to isolate trouble to a specific pair within the binder group, Qwest, upon receipt of a trouble resolution request, will perform a main frame pair by pair analysis and provide results within five business days. Contact your Qwest Service Manager regarding your request.
- Qwest will not have the authority to unilaterally resolve any dispute over spectral interference among carriers.
- Qwest shall not disconnect carrier services to resolve a spectral interference dispute, except when voluntarily undertaken by the interfering carrier or Qwest is ordered to do so by a state commission or other authorized dispute resolution body.
- The Federal Communications Commission (FCC) has designated that within the Qwest network there are "known disturbers," such as T1 Transport, and Qwest will spectrum manage "disturber" technology as required by FCC rules.



Maintenance and Repair

General maintenance and repair activities are described in the Maintenance and Repair Overview.

You retain the right to request reconciliation of trouble reports in order to minimize repeat reports. You can initiate the reconciliation process through your Qwest Service Manager.

Trouble isolation and testing is a joint process. You are responsible for testing and providing trouble isolation results prior to submitting a trouble report to Qwest. As part of this trouble isolation, testing from the far end of the loop (NID) is your responsibility (this includes assurance that the end-user Customer Provided Equipment (CPE) and inside wiring is free of trouble). If you elect not to perform trouble isolation testing, Qwest will offer you the option of performing CO based testing on your behalf. If you request the testing, Qwest will perform the optional testing for you and include the test results in the

trouble report. The test results will be provided to you either verbally or electronically. You will be billed for the optional testing.

If you do not provide test results when attempting to submit a trouble report and elect not to have Qwest perform the optional testing on your behalf, Qwest will not have enough information to open a valid ticket and therefore will not open a ticket. You will need to obtain testing information prior to Qwest accepting and issuing a valid trouble report.

The following examples of trouble reporting and charge assessment could result:

- You have performed trouble testing and provided the test results to Qwest. Qwest will assess the test results that you provided and dispatch a technician to conduct the repair work. If the trouble is found to be in the Qwest network, Qwest will repair and close the ticket with you, no charges will apply for the work activity. If the trouble was found to be in your network, Qwest will notify you and, if authorized by you, dispatch and repair. A Maintenance of Service charge will be assessed.
- You have not performed trouble testing on the end-user's circuit. Qwest will offer you the option of having Qwest conduct the testing on your behalf at a charge. If you choose to have Qwest conduct the testing, Qwest will conduct the test anc assess the results. Qwest will contact you with results stating that the trouble is in your network or in the Qwest network. If the trouble is found to be in your network and you authorize a dispatch, a charge will apply for both the optional testing and for any Maintenance of Service charges resulting from Qwest trouble resolution activity. However, if the circuit is on Pair Gain you should advise Qwest that the circuit is on Pain Gain and Qwest will not assess optional testing charges. If the trouble is found to be in the Qwest network, Qwest will dispatch a technician to conduct the repair work and close the ticket with you. No Maintenance of Service charges will apply for repair of the trouble on Qwest's side of the network, however a charge will be assessed for the optional testing.
- You have not performed trouble testing on the end-user's circuit. Qwest will offer to test the circuit for you. If you decline this option, Qwest will not have enough testing information to warrant the issuance of a valid repair ticket. You will need to perform trouble testing on your end-user's circuit and call Qwest with the testing information.

When reporting a trouble report, you will need to provide test results, analysis of the testing and trouble isolation performed. The information must reasonably demonstrate that the trouble is not in your network.

At a minimum the information contained in a trouble report must define:

- Information reflecting the results of testing and isolation
- Test results
- Analysis of your fact-finding (Is the trouble isolated to the Qwest network?).
- If the circuit is on Pair Gain

Examples of acceptable test results:

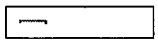
- You report: "Line is testing hard short tip-ring."
- Circuit is on Pair Gain.
- You report: "End-user has no dial tone, tested at CLEC and Qwest Point of Interface (POI), have 15v of foreign battery on Qwest side."
- You report: "Open out, no voltage, tip to ground = 0."

Examples of unacceptable test results:

- You report: "No dial tone."
- You report: "Not Working."

Charges could also apply if, at your request, Qwest performs the optional additional testing which results in a dispatch of a Qwest technician and isolates the trouble within your network. In this instance the applicable charge will be assessed.

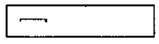
Your representative, who authorized Qwest to perform the optional testing, will be documented and upon billing inquiry, the representative's name and telephone number will be provided to you by Qwest.



Billing

Customer Records and Information Systems (CRIS) billing is described in Billing Information - Customer Records and Information Systems (CRIS).

Qwest is responsible for notifying you of any activity associated with your account. This includes transfers of your end-users to other Local Exchange Carriers and order completion on service requests you have submitted. Loss and Completion Reports are generated based on loss and gain account activity. Information regarding completion notification, including Loss and Completion Reports, is described in the Provisioning and Installation Overview.



Training

Qwest 101 "Doing Business With Qwest"

- This introductory, instructor led, training course is designed to teach the CLEC and Reseller how to do business with Qwest. It will provide a general overview of products and services, Qwest billing and support systems, processes submitting service requests, reports, and web resource access information. Click here to learn more about this course and to register.

Unbundled Loop

- This instructor-led process and systems training course is designed to introduce and teach the Unbundled Loop (UBL) products, instructing CLEC's on how to request service for Unbundled Loops. This course will provide and overview of the current UBL products, and address the Pre-Order, Order, Post-Order, Provisioning, Billing and CMER Maintenance and Repair. Click here to learn more about this course and to register.

Unbundled Network Element - Switching

- This is a self-directed, web-based training course that provides you with an overview of the Unbundled Network Element - Switching product and its features. Click here to learn more about this course and register.

Unbundled Loop Elements (ULE)

- This is a self-directed, web-based training course that provides you with an overview of the Unbundled Loop Elements (ULE) product and its features. Click here to learn more about this course and register.

Unbundled Dedicated Interoffice Transport (UDIT)

- This is a self-directed, web-based training course that provides you with an overview of the Unbundled Dedicated Interoffice Transport (UDIT) product and its features. Click here to learn more about this course and for registration information.

IMA Classic

- This introductory instructor-led training course provides the participant with an overview of Qwest's Interconnection Mediated Access (IMA) Graphical User Interface (GUI) to order wholesale products. This class provides a comprehensive look at IMA via software demonstrations used to familiarize

you with the IMA GUI system. Click here to learn more about this course and register.

IMA "Hands On"

- This introductory instructor-led training course teaches you how to use Qwest's IMA Graphical User Interface (GUI) to order wholesale products. You will experience interactive software demonstrations and participate in hands-on practice sessions to familiarize your self with the IMA GUI system. Please click here to learn more about this course and to register

Introduction to Service Requests & Billing for CLEC's

- This mutimedia self-directed process and systems training course is designed to provide you with information to identify the required Access Service Request (ASR) and Local Service Request (LSR) forms, and how to complete the forms to request various services from Qwest. The training is based upon case study scenarios and provided three modes of learning:
  - Tutorial
  - Practice
  - On Line Support

Click here to learn more about this course and to register.

Facility-Based CLECs and Reseller/Unbundled Network CLECs Directory Listing User Document

- The Qwest Facility-Based Competitive Local Exchange Carriers (CLECs) and Reseller/Unbundled Network CLECs Directory Listings User Document describes Qwest processes and business rules for working with you to establish and maintain directory listing information throughout Qwest's 14-state local service territory. You provide end-user directory listing information to Qwest to ensure that the end-user listings in Qwest's listing database are current and accurate. This makes your listings available to Qwest's Directory Assistance (DA) and for publication in published directories based on contractual agreements. Maintaining a comprehensive listing database, regardless of each end-user's Local Service Provider, ensures that end-users have access to complete DA Information and the option to appear in a published White Page Directory. Please click here to learn more about this course and to register

Interconnect Mediated Access (IMA) Directory Listing Training

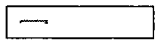
- This course introduces the participant to the IMA functionality as well as the processes that need to be followed to establish,

change and/or delete directory listing information. The participant will review the resources available to assist with Directory Listing questions and processes. A significant amount of time will be spent reviewing Qwest listing business rules and how to complete an Ordering and Billing Forum (OBF) Directory Form via IMA. Please click here to learn more about this course and to register.

Private Line to Unbundled Loop Pricing Conversion - CLEC Job Aid

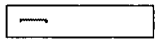
- The purpose of this job aid is to provide guidance in performing LSR Order Form entries for the Private Line to Unbundled Loop Price Conversion. Click here to learn more about this course and to register.

View additional Qwest courses by clicking on Course Catalog.



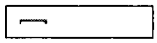
Contacts

Qwest contact information is located in the Wholesale Customer Contacts



Frequently Asked Questions (FAQs)

This section is currently being compiled based on your feedback.

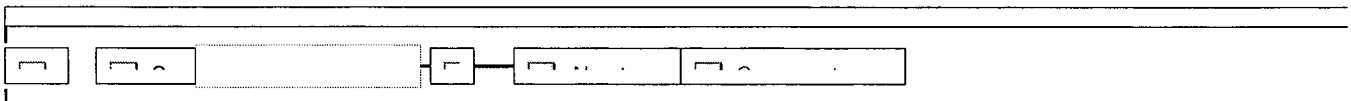


Last Update: December 15, 2003

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Qwest®

Performance Results

Regional

January 2001 - December 2001

January 16, 2002

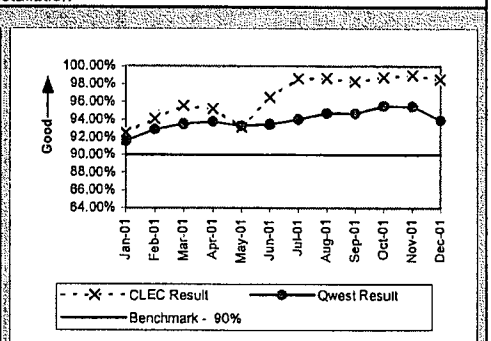
Qwest Performance Results (ROC 271 PID 4.0)

Regional

Checklist #4 - Unbundled Loop - Analog Installation

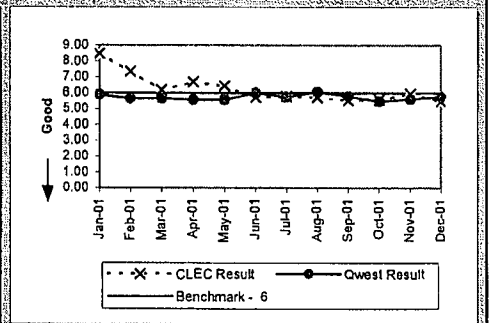
Installation Commitments Met (Percent) (OP-3)– Interval Zone One

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	6912	7471	92.52%	89216	97449	91.55%	-2.89	-2.76
Feb-01	8005	8506	94.11%	80219	86365	92.88%	-4.2	-3.55
Mar-01	10347	10828	95.56%	89858	98101	93.50%	-8.22	-6
Apr-01	9852	10344	95.24%	84054	89618	93.79%	-5.8	-4.52
May-01	11643	12500	93.14%	92701	99361	93.30%	0.65	-0.61
Jun-01	10889	11262	96.52%	93122	99611	93.49%	-12.36	-8.52
Jul-01	11361	11538	98.64%	98330	104580	94.02%	-19.85	-13.07
Aug-01	13867	14051	98.69%	113056	119356	94.72%	-19.9	-13.1
Sep-01	14336	14566	98.29%	92713	97902	94.70%	-18.04	-11.96
Oct-01	20093	20345	98.76%	99361	104010	95.53%	-20.4	-13.4
Nov-01	17503	17674	99.03%	87558	91681	95.50%	-20.73	-13.8
Dec-01	18890	19168	98.55%	75309	80176	93.93%	-24.06	-15.63



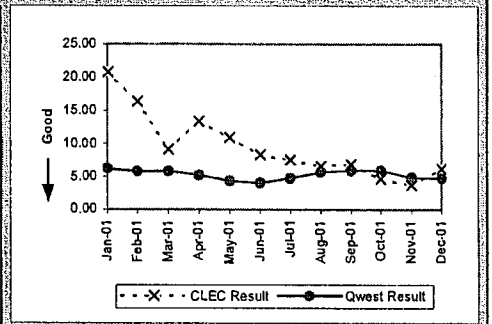
Installation Interval (Average Days) (OP-4)– Interval Zone One

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	24024	2835	8.47	574939	97435	5.90	13.65	7.3
Feb-01	24843	3383	7.34	487550	86353	5.85	10.96	5.66
Mar-01	29111	4707	6.18	542765	96078	5.65	4.17	1.53
Apr-01	26695	3988	6.69	498499	89612	5.56	6.12	3.93
May-01	35040	5447	6.43	554039	99342	5.58	6	3.68
Jun-01	31844	5569	5.72	597834	99800	6.00	-2.74	-2.68
Jul-01	29733	5138	5.79	604849	105247	5.75	0.37	-0.78
Aug-01	35221	6160	5.72	729291	120419	6.06	-3.03	-2.64
Sep-01	38506	6961	5.53	570261	98731	5.78	-2.39	-2.45
Oct-01	49609	8917	5.56	573862	104764	5.48	1.14	-0.31
Nov-01	43823	7358	5.96	519386	92368	5.62	4.11	1.5
Dec-01	52722	9613	5.48	464873	80690	5.76	-3.85	-3.34



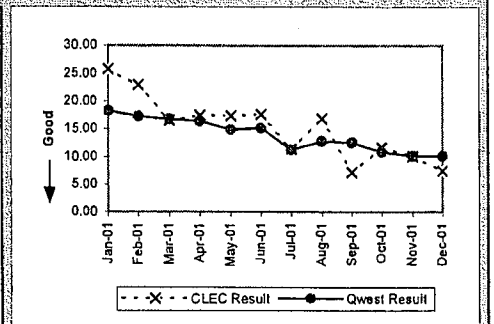
Delayed Days for Non-Facility Reasons (Average Days) (OP-6A)– Interval Zone One

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	6517	409	20.82	15025	2403	8.25	13.87	7.43
Feb-01	6514	400	16.28	9519	1647	5.78	13.41	7.15
Mar-01	3295	361	9.13	10443	1791	5.83	3.52	1.14
Apr-01	5377	402	13.38	9625	1844	5.22	8.88	4.4
May-01	7986	735	10.87	10842	2483	4.37	12.33	6.49
Jun-01	2610	313	8.34	10645	2589	4.11	6.87	4.39
Jul-01	2338	310	7.54	13600	2847	4.78	3.14	0.91
Aug-01	2848	431	6.61	18120	2823	5.71	0.73	-0.56
Sep-01	3713	541	6.86	13542	2288	5.92	1.09	-0.34
Oct-01	2988	643	4.65	14719	2492	5.91	-1.73	-2.05
Nov-01	1735	483	3.75	13002	2661	4.89	-1.74	-2.06
Dec-01	3604	577	6.25	11624	2426	4.79	2.6	0.58



Delayed Days for Facility Reasons (Average Days) (OP-6B)– Interval Zone One

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	3856	150	25.71	106535	5830	16.27	3.46	1.12
Feb-01	2307	101	22.84	77834	4499	17.30	2.24	0.36
Mar-01	1986	120	16.55	74662	4452	16.77	-0.1	-1.06
Apr-01	1572	90	17.47	81070	3720	16.42	1.7	0.03
May-01	2131	122	17.47	62325	4177	14.92	1.31	-0.21
Jun-01	1410	80	17.62	59214	3900	15.18	2.03	0.24
Jul-01	1206	108	11.38	43591	3857	11.30	0.03	-0.98
Aug-01	1384	82	16.88	50333	3936	12.79	2.1	0.27
Sep-01	300	42	7.14	41851	3316	12.61	-1.29	-1.78
Oct-01	1019	87	11.71	30441	2798	10.88	1.98	0.2
Nov-01	453	45	10.07	21783	2152	10.12	-0.02	-1.01
Dec-01	745	100	7.45	28210	2781	10.14	-1.99	-2.21

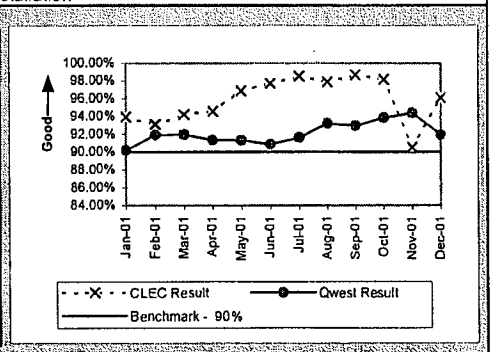


Qwest Performance Results (ROC 271 PID 4.0) Regional

Checklist #4 - Unbundled Loop - Analog Installation

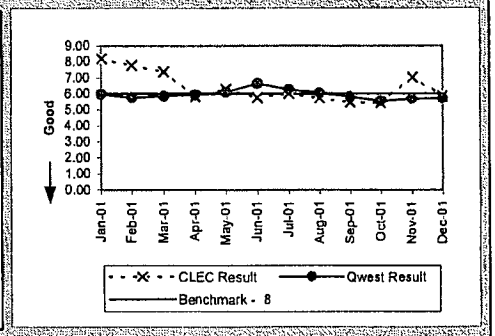
Installation Commitments Met (Percent) (OP-3)– Interval Zone Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	1170	1248	93.90%	23980	26590	90.18%	-4.31	-3.62
Feb-01	1324	1422	93.11%	21281	23155	91.91%	-1.81	-1.98
Mar-01	1623	1723	94.20%	23762	25845	91.94%	-3.33	-3.02
Apr-01	1744	1844	94.58%	23192	25392	91.34%	-4.78	-3.9
May-01	2889	2960	98.93%	26488	29006	91.32%	-10.32	-7.27
Jun-01	3612	3697	97.70%	26111	28736	90.87%	-13.58	-9.26
Jul-01	3200	3248	98.52%	27605	30140	91.59%	-13.53	-9.22
Aug-01	2404	2456	97.88%	32823	35214	93.21%	-8.9	-6.41
Sep-01	2331	2363	98.65%	27052	29106	92.94%	-10.41	-7.33
Oct-01	5457	5561	98.13%	30570	32585	93.82%	-12.34	-8.5
Nov-01	3952	4367	90.50%	27034	28650	94.36%	10.31	5.27
Dec-01	3263	3397	96.06%	22588	24574	91.92%	-8.29	-6.04



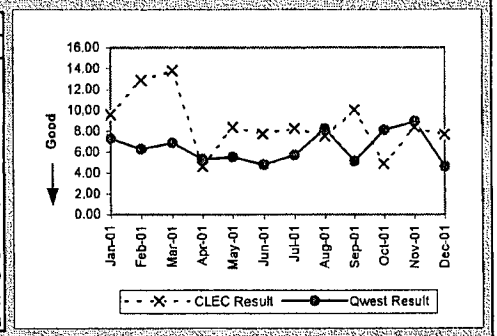
Installation Interval (Average Days) (OP-4)– Interval Zone Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	3442	421	8.18	158760	26590	5.97	3.22	0.96
Feb-01	2782	357	7.79	133075	23154	5.75	3.2	0.95
Mar-01	3112	421	7.39	151811	25844	5.87	2.18	0.32
Apr-01	2712	466	5.82	150737	25392	5.94	-0.2	-1.12
May-01	7085	1129	6.28	176146	29006	6.07	0.59	-0.64
Jun-01	7880	1371	5.75	190579	28736	6.63	-1.99	-2.21
Jul-01	7841	1303	6.02	190099	30405	6.25	-0.59	-1.36
Aug-01	6281	1095	5.74	215067	35624	6.04	-0.93	-1.57
Sep-01	4845	867	5.48	170585	29403	5.80	-1.11	-1.68
Oct-01	10311	1903	5.42	182642	32820	5.56	-0.56	-1.34
Nov-01	12437	1768	7.03	163912	28833	5.68	4.96	2.01
Dec-01	9154	1561	5.86	141248	24728	5.71	0.46	-0.71



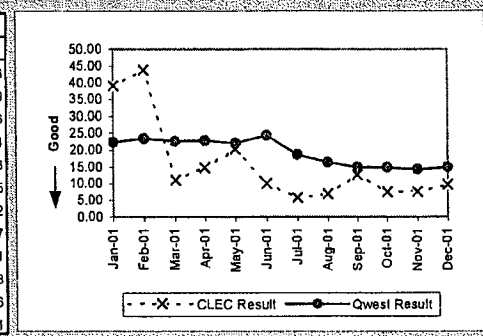
Delayed Days for Non-Facility Reasons (Average Days) (OP-6A)– Interval Zone Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	489	51	9.59	4855	665	7.30	1.08	-0.34
Feb-01	1044	81	12.89	2726	435	6.27	1.07	-0.35
Mar-01	1158	84	13.79	3175	460	6.90	1.09	-0.33
Apr-01	410	89	4.61	3045	575	5.30	-0.33	-1.2
May-01	621	74	8.39	3789	683	5.55	1.33	-0.19
Jun-01	575	74	7.77	3584	747	4.80	1.43	-0.13
Jul-01	1050	127	8.27	5091	895	5.69	1.2	-0.27
Aug-01	655	87	7.53	7241	878	8.25	-0.18	-1.11
Sep-01	569	57	9.98	3707	722	5.13	1.43	-0.13
Oct-01	709	146	4.86	8818	817	8.10	-0.97	-1.59
Nov-01	3405	406	8.39	8402	717	8.93	-0.19	-1.12
Dec-01	1697	221	7.88	3613	825	4.62	2.51	0.53



Delayed Days for Facility Reasons (Average Days) (OP-6B)– Interval Zone Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	976	25	39.04	43521	1945	22.38	2.07	0.26
Feb-01	746	17	43.88	33762	1439	23.46	2.29	0.39
Mar-01	178	16	11.12	36822	1623	22.69	-0.98	-1.6
Apr-01	164	11	14.91	37092	1825	22.83	-0.72	-1.44
May-01	346	17	20.35	40417	1835	22.03	-0.22	-1.13
Jun-01	110	11	10.00	45879	1878	24.43	-0.9	-1.55
Jul-01	180	31	5.81	33366	1782	18.72	-1.52	-1.92
Aug-01	243	35	6.94	27081	1650	16.41	-1.93	-2.17
Sep-01	190	15	12.67	22193	1481	14.99	-0.34	-1.21
Oct-01	326	43	7.58	20438	1374	14.87	-1.32	-1.8
Nov-01	523	68	7.69	15413	1082	14.24	-2.08	-2.26
Dec-01	291	30	9.70	18851	1262	14.94	-0.67	-1.41

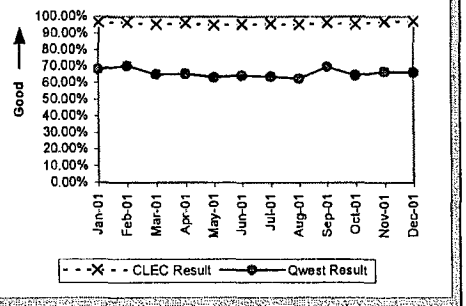


Qwest Performance Results (ROC 271 PID 4.0) Regional

Checklist #4 - Unbundled Loop - Analog Installation

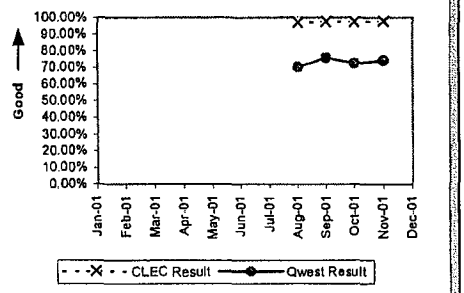
New Service Installation Quality (Percent) (OP-5)– Interval Zone One and Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	10776	11133	96.79%	89513	131403	68.12%	-62.33	-38.9
Feb-01	10182	10549	96.52%	89656	127521	70.31%	-58.63	-35.43
Mar-01	11892	12469	95.37%	82224	126318	65.09%	-67.67	-42.14
Apr-01	13106	13634	96.13%	84504	129375	65.32%	-71.89	-44.71
May-01	14483	15247	94.88%	84096	133023	63.22%	-76.74	-47.85
Jun-01	15927	16768	94.98%	90660	140744	64.41%	-78.16	-48.52
Jul-01	15168	15862	95.61%	88115	138354	63.69%	-79.19	-49.14
Aug-01	15287	16072	95.12%	91148	145858	62.49%	-81.08	-50.29
Sep-01	16540	17184	96.36%	99004	142102	69.67%	-71.86	-44.69
Oct-01	20960	21936	95.55%	85678	132881	64.48%	-89.09	-55.18
Nov-01	23739	24471	97.01%	86456	129407	66.81%	-92	-58.93
Dec-01	22130	22776	97.16%	75153	113325	66.32%	-89.88	-55.64



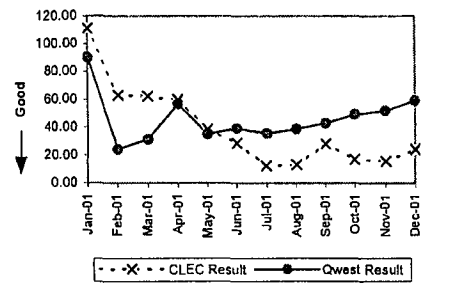
New Service Installation Quality (Percent) (OP-5*)– Interval Zone One and Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01								
Feb-01								
Mar-01								
Apr-01								
May-01								
Jun-01								
Jul-01								
Aug-01	15618	16072	97.18%	102490	145856	70.27%	-70.83	-44.06
Sep-01	18776	17184	97.75%	107804	142102	75.86%	-63.3	-39.48
Oct-01	21411	21936	97.61%	96218	132881	72.41%	-77.35	-48.03
Nov-01	24008	24471	98.11%	96046	129407	74.22%	-78.34	-48.63
Dec-01								



Interval for Pending Orders Delayed Past Due Date (Average Days) (OP-15A)

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	68241	613	111.32	493753	5484	90.36	8.36	4.08
Feb-01	37337	592	63.07	147841	6096	24.25	38.36	22.32
Mar-01	45844	737	62.20	226835	7212	31.45	27.91	15.97
Apr-01	34176	571	59.85	543587	9601	56.62	1.36	-0.17
May-01	19097	495	38.58	254762	7200	35.38	1.75	0.08
Jun-01	13333	469	28.43	292047	7447	39.22	-4.88	-3.95
Jul-01	2540	208	12.33	280445	7277	35.79	-7.22	-5.39
Aug-01	3867	297	13.02	353774	9060	39.05	-8.98	-6.48
Sep-01	7460	265	28.15	372982	8889	42.93	-4.45	-3.7
Oct-01	4259	248	17.17	396274	8045	49.26	-8.45	-6.14
Nov-01	5172	328	15.87	482862	8928	51.84	-10.2	-7.2
Dec-01	6220	256	24.30	498149	8416	59.19	-8.07	-5.91



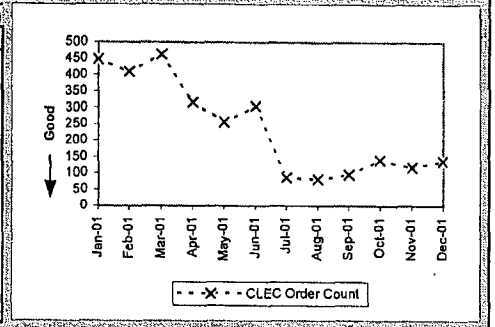
Qwest Performance Results (ROC 271 PID 4.0)

Regional

Checklist #4 - Unbundled Loop - Analog Installation

Count of Pending Orders Delayed for Facilities Reasons Unbundled Loop Analog (OP-15B)

Date	CLEC Order Count
Jan-01	447
Feb-01	410
Mar-01	462
Apr-01	317
May-01	256
Jun-01	305
Jul-01	86
Aug-01	82
Sep-01	96
Oct-01	140
Nov-01	118
Dec-01	137



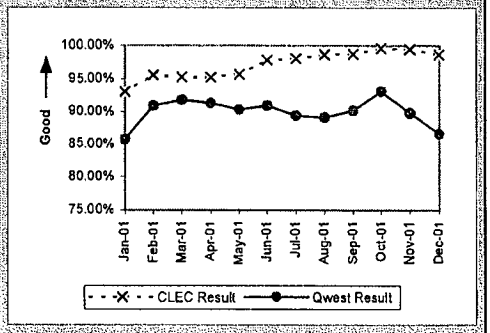
Qwest Performance Results (ROC 271 PID 4.0)

Regional

Checklist #4 - Unbundled Loop - Analog Repair

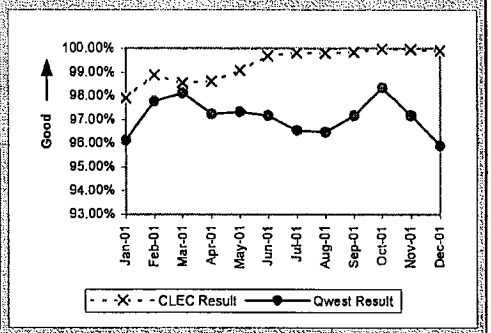
Out of Service Cleared within 24 hours (Percent) (MR-3)-- Interval Zone One

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	1203	1293	93.04%	116691	136043	85.78%	-7.44	-5.52
Feb-01	1219	1276	95.53%	101660	111914	90.84%	-5.78	-4.51
Mar-01	1589	1668	95.26%	117608	128187	91.75%	-5.19	-4.15
Apr-01	1717	1803	95.23%	129725	142123	91.28%	-5.91	-4.59
May-01	2079	2172	95.72%	137088	151802	90.31%	-8.46	-6.15
Jun-01	2193	2242	97.81%	138684	152551	90.91%	-11.29	-7.86
Jul-01	2101	2142	98.09%	135739	151870	89.38%	-12.99	-8.9
Aug-01	2574	2606	98.70%	135635	152181	89.13%	-15.57	-10.46
Sep-01	1929	1953	98.77%	104886	116310	90.18%	-12.65	-8.69
Oct-01	2575	2584	99.65%	109046	117149	93.08%	-13.02	-8.91
Nov-01	2208	2219	99.50%	95817	106724	89.78%	-14.97	-10.1
Dec-01	2137	2164	98.75%	86719	100162	88.58%	-16.44	-10.99



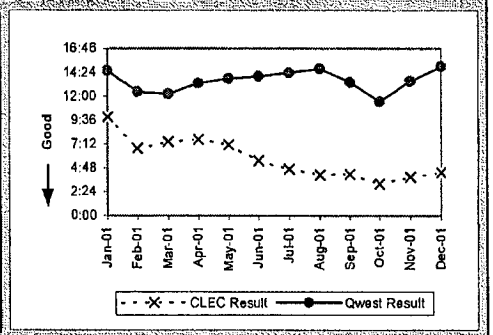
All Troubles Cleared within 46 hours (Percent) (MR-4)-- Interval Zone One

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	1266	1293	97.91%	192050	199763	96.14%	-3.3	-3.01
Feb-01	1262	1276	98.90%	162481	166189	97.78%	-2.71	-2.65
Mar-01	1644	1668	98.56%	187223	190805	98.12%	-1.31	-1.6
Apr-01	1778	1803	98.61%	196922	202514	97.24%	-3.55	-3.16
May-01	2152	2172	99.08%	209722	215450	97.34%	-5.01	-4.05
Jun-01	2238	2245	99.69%	209159	215236	97.18%	-7.15	-5.35
Jul-01	2167	2171	99.82%	208863	216124	96.55%	-8.3	-6.05
Aug-01	2622	2627	99.81%	213852	221671	96.47%	-9.22	-6.6
Sep-01	1979	1982	99.85%	165739	170549	97.18%	-7.14	-5.34
Oct-01	2611	2611	100.00%	171388	174256	98.35%	-6.56	-4.99
Nov-01	2256	2257	99.96%	156584	161124	97.18%	-7.91	-5.81
Dec-01	2190	2192	99.91%	144846	151027	95.91%	-9.39	-6.71



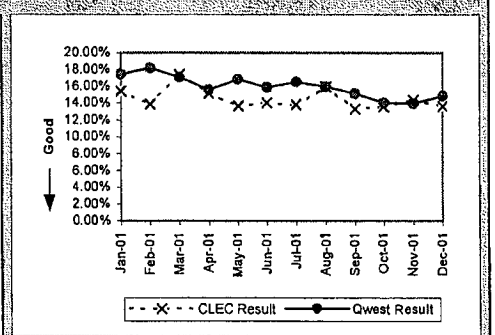
Mean Time to Restore (Hours:Minutes) (MR-6)-- Interval Zone One

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	12798:40	1293	9:54	2919127:12	199763	14:37	-8.66	-6.27
Feb-01	8642:57	1276	6:46	2071680:09	166189	12:28	-12.5	-8.6
Mar-01	12396:02	1668	7:26	2340797:05	190805	12:16	-10.38	-7.31
Apr-01	13903:17	1803	7:43	2703218:20	202514	13:21	-9.19	-6.59
May-01	15529:35	2172	7:09	2973677:25	215450	13:48	-18.89	-12.48
Jun-01	12388:51	2245	5:31	3025405:27	215236	14:03	-10.79	-7.56
Jul-01	10218:32	2171	4:42	3112419:03	216124	14:24	-19.63	-12.93
Aug-01	10809:17	2627	4:07	3278120:05	221671	14:47	-25.67	-16.61
Sep-01	6323:43	1982	4:12	2267071:26	170549	13:25	-26.3	-16.99
Oct-01	8449:56	2611	3:14	1999011:09	174256	11:28	-29.78	-19.09
Nov-01	8870:10	2257	3:56	2180063:07	161124	13:32	-26.81	-17.3
Dec-01	9581:36	2192	4:22	2267333:03	151027	15:01	-11.35	-7.9



Repair Repeat Report Rate (Percent) (MR-7)-- Interval Zone One

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	199	1293	15.39%	35898	205640	17.46%	-1.95	-2.19
Feb-01	177	1276	13.87%	31076	171070	18.17%	-3.96	-3.41
Mar-01	290	1668	17.39%	33460	196011	17.07%	0.34	-0.79
Apr-01	273	1803	15.14%	32373	207627	15.58%	-0.51	-1.31
May-01	295	2172	13.58%	37240	221326	16.83%	-4.02	-3.44
Jun-01	315	2245	14.03%	35042	221353	15.83%	-2.32	-2.41
Jul-01	298	2171	13.73%	36711	222495	16.50%	-3.46	-3.11
Aug-01	418	2627	15.91%	36475	229071	15.92%	-0.02	-1.01
Sep-01	264	1982	13.32%	26528	175627	15.10%	-2.21	-2.34
Oct-01	354	2611	13.56%	25170	179250	14.04%	-0.71	-1.43
Nov-01	324	2257	14.36%	23104	185577	13.95%	0.55	-0.87
Dec-01	298	2192	13.59%	23182	155876	14.86%	-1.65	-2



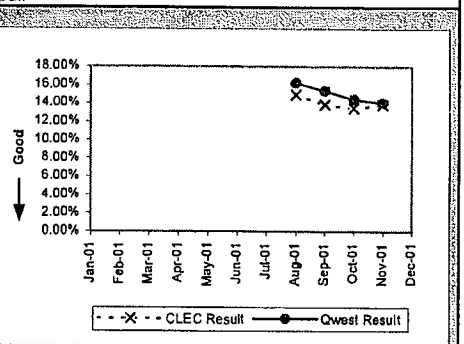
Qwest Performance Results (ROC 271 PID 4.0)

Regional

Checklist #4 - Unbundled Loop - Analog Repair

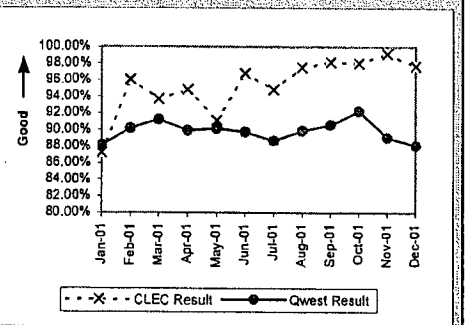
Repair Repeat Report Rate (Percent) (MR-7*)-- Interval Zone One

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01								
Feb-01								
Mar-01								
Apr-01								
May-01								
Jun-01								
Jul-01								
Aug-01	238	1592	14.95%	29847	183934	16.23%	-1.38	-1.84
Sep-01	170	1228	13.84%	21575	140596	15.35%	-1.45	-1.86
Oct-01	203	1504	13.50%	19973	138641	14.41%	-1	-1.61
Nov-01	196	1418	13.82%	18200	129569	14.05%	-0.24	-1.15
Dec-01								



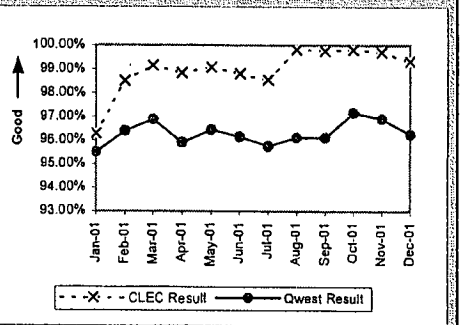
Out of Service Cleared within 24 hours (Percent) (MR-3)-- Interval Zone Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	164	188	87.23%	26613	32467	88.13%	0.4	-0.76
Feb-01	194	202	96.04%	27098	30053	90.17%	-2.79	-2.7
Mar-01	223	238	93.70%	32764	35909	91.24%	-1.34	-1.61
Apr-01	330	348	94.83%	35066	39016	89.88%	-3.05	-2.85
May-01	399	438	91.10%	38351	42543	90.15%	-0.68	-1.4
Jun-01	462	498	96.79%	41628	46613	89.73%	-5.16	-4.14
Jul-01	460	485	94.85%	42277	47687	88.66%	-4.28	-3.6
Aug-01	547	561	97.50%	42401	47185	89.86%	-5.98	-4.62
Sep-01	428	436	96.17%	31903	35212	90.60%	-5.36	-4.27
Oct-01	550	561	98.04%	31165	33787	92.24%	-5.09	-4.1
Nov-01	359	362	99.17%	27836	31250	89.08%	-6.12	-4.72
Dec-01	301	306	97.73%	24252	27525	88.11%	-5.19	-4.15



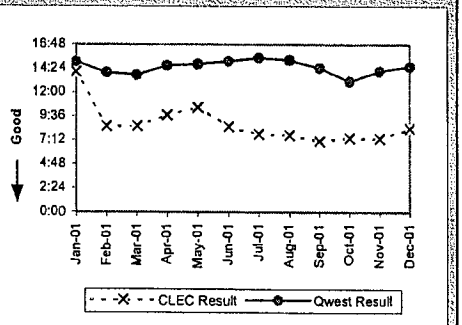
All Troubles Cleared within 48 hours (Percent) (MR-4)-- Interval Zone Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	181	186	96.28%	47020	49241	95.49%	-0.52	-1.32
Feb-01	199	202	98.51%	43137	44750	96.40%	-1.61	-1.98
Mar-01	236	236	99.16%	52506	54201	96.87%	-2.02	-2.23
Apr-01	344	348	98.85%	53738	58029	95.91%	-2.76	-2.68
May-01	434	436	99.09%	58665	60647	96.45%	-2.97	-2.81
Jun-01	492	498	98.80%	62994	65518	96.15%	-3.06	-2.86
Jul-01	478	485	98.56%	64980	67661	95.75%	-3.05	-2.85
Aug-01	560	561	99.82%	65687	68342	96.12%	-4.52	-3.75
Sep-01	435	436	99.77%	49628	51634	96.12%	-3.93	-3.39
Oct-01	562	563	99.82%	49887	51344	97.16%	-3.78	-3.3
Nov-01	363	364	99.73%	46443	47923	96.91%	-3.09	-2.88
Dec-01	306	308	99.35%	40759	42341	96.26%	-2.85	-2.73



Mean Time to Restore (Hours:Minutes) (MR-6)-- Interval Zone Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	2640:41	188	14:03	741827:51	49241	15:04	-0.74	-1.45
Feb-01	1734:53	202	8:35	625318:02	44750	13:58	-4.14	-3.52
Mar-01	2045:17	238	8:36	743868:29	54201	13:43	-4.37	-3.66
Apr-01	3373:28	348	9:42	823074:56	58029	14:41	-5.28	-4.21
May-01	4596:39	438	10:30	902046:21	60847	14:49	-4.31	-3.62
Jun-01	4245:49	498	6:32	986818:46	65516	15:06	-7.99	-5.86
Jul-01	3795:03	485	7:49	1049570:35	67851	15:28	-8.13	-5.94
Aug-01	4342:02	561	7:44	1039538:55	68342	15:13	-9.23	-6.61
Sep-01	3102:44	436	7:07	745153:49	51634	14:26	-8.49	-6.16
Oct-01	4163:14	563	7:24	672861:55	51344	13:06	-7.64	-5.64
Nov-01	2680:30	364	7:22	677080:28	47923	14:08	-8.34	-6.07
Dec-01	2583:59	306	6:23	617815:54	42341	14:35	-4.32	-3.63

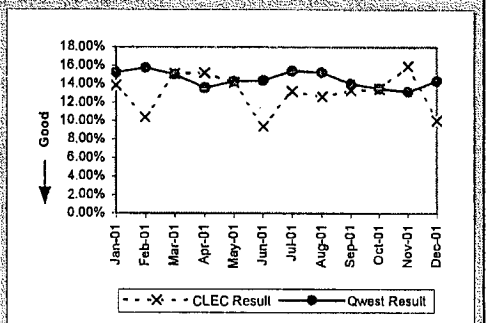


Qwest Performance Results (ROC 271 PID 4.0) Regional

Checklist #4 - Unbundled Loop - Analog Repair

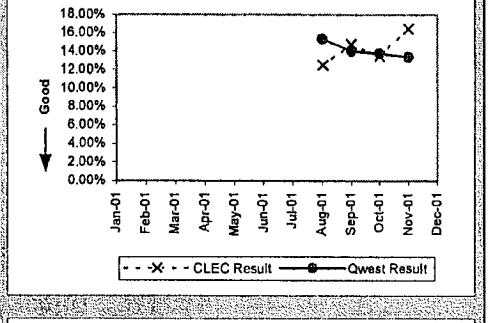
Repair Repeat Report Rate (Percent) (MR-7)– Interval Zone Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	26	188	13.83%	7632	50076	15.24%	-0.54	-1.33
Feb-01	21	202	10.40%	7174	45498	15.77%	-2.09	-2.27
Mar-01	36	238	15.13%	8277	55074	15.03%	0.06	-0.96
Apr-01	53	348	15.23%	7720	56896	13.57%	0.9	-0.45
May-01	62	438	14.16%	8825	61799	14.28%	-0.07	-1.05
Jun-01	47	498	9.44%	9595	66822	14.40%	-3.14	-2.91
Jul-01	64	485	13.20%	10681	69153	15.42%	-1.35	-1.82
Aug-01	71	561	12.66%	10885	70009	15.26%	-1.71	-2.04
Sep-01	58	436	13.30%	7386	52593	14.04%	-0.44	-1.27
Oct-01	78	563	13.50%	7063	52245	13.52%	-0.01	-1.01
Nov-01	58	364	15.93%	6422	48716	13.18%	1.52	-0.08
Dec-01	31	308	10.06%	6204	43194	14.36%	-2.14	-2.3



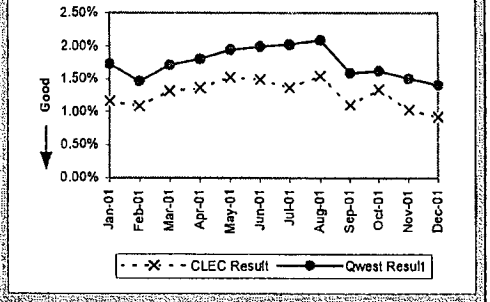
Repair Repeat Report Rate (Percent) (MR-7*)– Interval Zone Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01								
Feb-01								
Mar-01								
Apr-01								
May-01								
Jun-01								
Jul-01								
Aug-01	52	418	12.50%	8645	56292	15.36%	-1.61	-1.98
Sep-01	45	305	14.75%	5909	42031	14.08%	0.36	-0.78
Oct-01	53	392	13.52%	5891	41209	13.61%	-0.17	-1.1
Nov-01	44	287	18.48%	5031	37528	13.41%	1.44	-0.12
Dec-01								



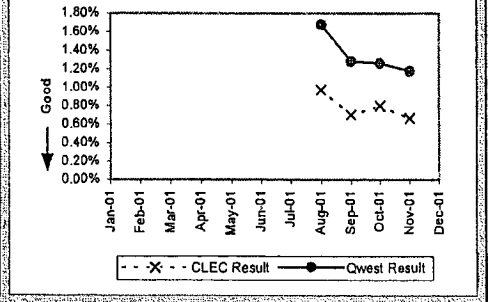
Trouble Rate (Percent) (MR-8)– Interval Zone One and Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	1481	127472	1.16%	255718	14789275	1.73%	-15.47	-10.41
Feb-01	1478	135859	1.09%	216568	14753135	1.47%	-11.59	-8.05
Mar-01	1906	144343	1.32%	251065	14671026	1.71%	-11.4	-7.93
Apr-01	2151	157206	1.37%	264723	14624779	1.81%	-13.07	-8.95
May-01	2610	170698	1.53%	263125	14555504	1.95%	-12.38	-8.52
Jun-01	2743	183254	1.50%	287975	14452285	1.99%	-15.09	-10.17
Jul-01	2656	193778	1.37%	291648	14395514	2.03%	-20.34	-13.37
Aug-01	3188	206178	1.55%	299080	14314198	2.09%	-17.12	-11.41
Sep-01	2418	218124	1.11%	228220	14285037	1.60%	-16.06	-11.99
Oct-01	3174	236898	1.34%	231495	14244813	1.63%	-10.89	-7.62
Nov-01	2621	253032	1.04%	214295	14182796	1.51%	-19.42	-12.81
Dec-01	2500	270535	0.92%	199070	14128888	1.41%	-21.2	-13.89



Trouble Rate (Percent) (MR-8*)– Interval Zone One and Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01								
Feb-01								
Mar-01								
Apr-01								
May-01								
Jun-01								
Jul-01								
Aug-01	2008	206176	0.97%	240226	14314198	1.66%	-24.72	-16.03
Sep-01	1533	218124	0.70%	182627	14285037	1.28%	-23.75	-15.44
Oct-01	1896	236898	0.80%	179850	14244813	1.26%	-19.98	-13.15
Nov-01	1685	253032	0.67%	167097	14182796	1.18%	-23.67	-15.39
Dec-01								

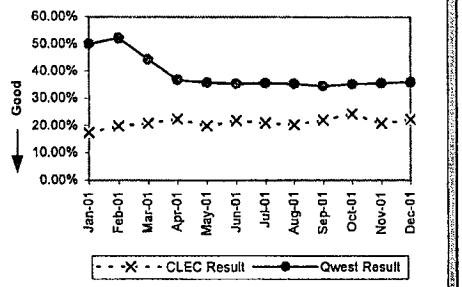


Qwest Performance Results (ROC 271 PID 4.0) Regional

Checklist #4 - Unbundled Loop - Analog Repair

Customer and Non-Qwest Related Trouble Reports (Percent) (MR-10)– Interval Zone One and Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Jan-01	311	1792	17.35%	255083	510799	49.94%	-27.54	-17.74
Feb-01	365	1843	19.80%	235967	452535	52.14%	-27.74	-17.86
Mar-01	501	2407	20.81%	200084	451169	44.35%	-23.18	-15.09
Apr-01	619	2770	22.35%	154098	418821	36.79%	-15.71	-10.55
May-01	648	3258	19.89%	157785	440910	35.79%	-18.86	-12.47
Jun-01	769	3512	21.90%	157324	445299	35.33%	-16.59	-11.09
Jul-01	703	3359	20.93%	160820	452468	35.54%	-17.63	-11.72
Aug-01	812	4000	20.30%	163134	462214	35.29%	-19.76	-13.01
Sep-01	686	3104	22.10%	120985	349205	34.65%	-14.62	-9.69
Oct-01	1014	4188	24.21%	126039	357534	35.25%	-14.87	-10.04
Nov-01	687	3308	20.77%	118295	332590	35.57%	-17.69	-11.76
Dec-01	714	3214	22.22%	111624	310694	35.93%	-16.12	-10.8



QCCC Warranty Process

Definition

The customer of record will have 30 calendar days to call the implementor in the four Designed Services Centers when they experience problems with their circuit. The QCCC warranty process will expand from 48 hours to 30 calendar days and will include all products and installation options.

Goals

Our goal is to reduce the future number of 'I' reports that each center receives monthly and to also improve the service that we provide the customer of record.

An 'I' report is recorded when a new service is turned up and the customer of record reports a trouble ticket on the service within 30 calendar days.

In the QCCC the warranty work will be routed to the appropriate maintenance group.

Hours of Operation

Hours of operation in the four Designed Services Center and the QCCC will be Monday through Friday from 8am to 5pm

The QCC will be open 24 X 7 beginning June 10th.

Each Provisioning Department will have a 30-calendar days warranty on all installs.

Each DSC Provisioning CCT/ SR will provide to the customer of record their name and direct call back number The QCCC will provide the Warranty number, which will be answered in the new maintenance group. Staffed 24X 7

Information to be Given

Information to be given to Customer of Record on Completion

The following information will need to be given to the customer of record upon completion of the order:

Step	Action
1	Circuit I.D.
2	Type of service installed
3	Date of install
4	Location of DMARC
5	DMARC extension (if applicable)
6	Name and number of Center C/I to call if trouble happens when they install their equipment or if any other trouble happens within the next 30-calendar days.
7	DSC personnel will have to give hours of operation for provisioning C/I availability

Handling The Call

The following steps must be followed when the customer of record calls in with a trouble report

Step	Action
1	When **QCCC maintenance C/I** receives a call back on a recent install. The tester will verify with the customer of record the problem that they are reporting.
2	A trouble ticket must be created, AT, (Assist Test) in the RPTCAT field. See Report Categories Job Aid at: http://emedia.uswc.uswest.com/ned/Network_Services/designsrv/jobaids/01026/.CE_0-3443957/
3	Technician shall determine the nature of the call. If Dmarc info is requested by the customer of record, pass the information to them and close the ticket with INFO If a trouble ticket is already open on this circuit give the ticket number to the customer of record, access the ticket and give the most current status information.
4	If the customer of record is reporting that service is either down or they can't get service up then the following actions will be taken by **QCCC maintenance C/I** : Access the circuit reported Perform tests that ensure that the service is still ok. If tests indicate that a network problem exist and can be resolved without a dispatch, then **QCCC maintenance C/I** needs to resolve the issue. The **C/I** will need to retest the service and close the AT ticket with the appropriate analysis and disposition codes. A CR ticket will then need to be created. See Analysis Code/Trouble Code Cross Reference Job Aid at: http://emedia.uswc.uswest.com/ned/Network_Services/designsrv/jobaids/01019/.CE_0-3443913/
5	If a network problem exist and a dispatch is needed to resolve the problem then a **QCCC maintenance C/I** will need to close the AT ticket, and create new ticket with CR (Customer Report) in the RPTCAT field. Detailed notes of what transpired during the AT ticket are required. **The QCCC C/I would follow through on entire transaction.**
6	**QCCC maintenance C/I** will provide all test results performed. They will also note where the dispatch is needed to resolve network issue
7	If the **QCCC maintenance C/I** has a TOK on the circuit and the customer of record is requesting a dispatch to retest to the DMARC, the **QCCC maintenance C/I** will inform the customer of record that billing charges may apply. Again the AT ticket must be closed and CR ticket opened.
8	(**This refers to future group only**) On service that was turned up for billing, C02 Process from Customer Not Ready Process, and no cooperative testing has been performed. The **maintenance C/I** will follow the process and do conformance testing. Per the process on starting of billing an AT ticket is to be opened and tracked.
9	Disconnects in error should be handled in the following manner: **QCCC maintenance C/I** received call from customer of record **QCCC maintenance C/I** will call the SNR and request an order to reinstall service. Expedite process outlines criteria to determine if reconnect would qualify as expedite.

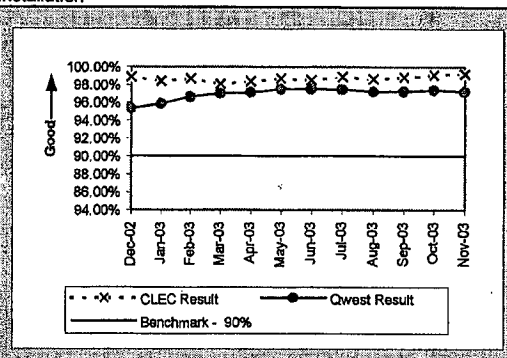
Qwest Perf Results Checklist (14-State 271PID 5.0)

Regional

Checklist #4 - Unbundled Loop - Analog Installation

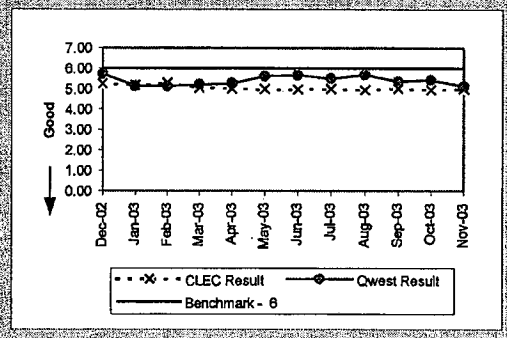
Installation Commitments Met (Percent) (OP-3D) (Benchmark)– Interval Zone One

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	19030	19243	98.89%	61712	64742	95.32%	-20.6	-13.53
Jan-03	12748	12952	98.43%	64236	67030	95.83%	-13.52	-9.22
Feb-03	15362	15567	98.68%	57575	59596	96.61%	-12.73	-8.74
Mar-03	12609	12853	98.10%	60811	62693	97.00%	-6.66	-5.06
Apr-03	11310	11495	98.39%	62311	64169	97.10%	-7.57	-5.6
May-03	10516	10652	98.72%	62959	64570	97.51%	-7.47	-5.54
Jun-03	12106	12292	98.50%	65578	67271	97.48%	-6.94	-5.04
Jul-03	14072	14225	98.92%	68079	69862	97.45%	-10.18	-7.19
Aug-03	12090	12258	98.63%	69307	71312	97.19%	-8.92	-6.42
Sep-03	13174	13328	98.84%	65760	67636	97.23%	-10.4	-7.32
Oct-03	12738	12852	99.11%	66507	68276	97.41%	-11.17	-7.79
Nov-03	10260	10337	99.26%	57931	59580	97.23%	-11.57	-8.04



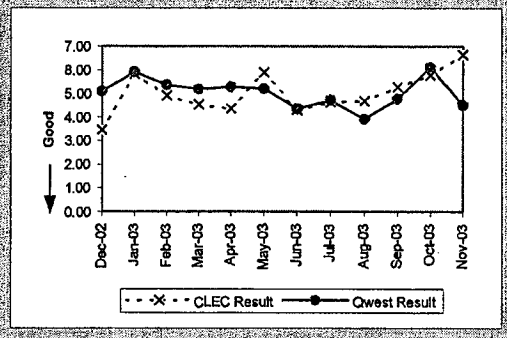
Installation Interval (Average Days) (OP-4D) (Benchmark)– Interval Zone One

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	42561	8130	5.24	373372	65151	5.73	-8.96	-5.23
Jan-03	35027	6778	5.17	346550	67501	5.13	0.51	-0.69
Feb-03	39403	7442	5.29	307266	59913	5.13	2.6	0.58
Mar-03	31218	6203	5.03	326386	62936	5.19	-2.23	-2.36
Apr-03	31318	6268	5.00	336003	64386	5.25	-3.53	-3.15
May-03	30178	6087	4.96	363534	64813	5.61	-8.46	-6.14
Jun-03	30507	6133	4.97	381944	67469	5.66	-9.35	-6.68
Jul-03	33738	6761	4.99	385706	70124	5.50	-7.06	-5.29
Aug-03	29887	6044	4.94	406215	71562	5.66	-9.73	-6.91
Sep-03	33319	6644	5.01	363995	67878	5.36	-5.22	-4.17
Oct-03	30128	6091	4.95	371818	68534	5.43	-2.97	-2.81
Nov-03	23011	4616	4.99	305957	59774	5.12	-1.59	-1.96



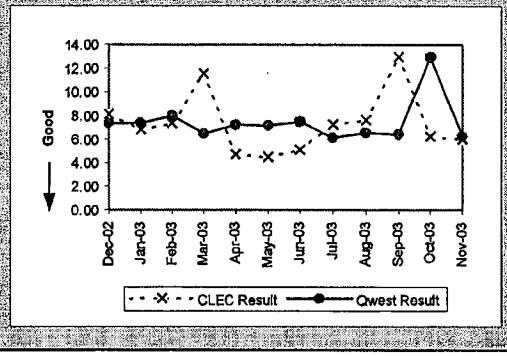
Delayed Days for Non-Facility Reasons (Average Days) (OP-6A-4) (Parity)– Interval Zone One

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	941	186	3.45	8706	1715	5.08	-1.52	-1.92
Jan-03	978	168	5.82	10105	1710	5.91	-0.1	-1.06
Feb-03	686	140	4.90	7412	1382	5.36	-0.54	-1.33
Mar-03	911	201	4.53	6792	1315	5.17	-0.82	-1.5
Apr-03	506	116	4.36	6924	1312	5.28	-0.78	-1.47
May-03	667	113	5.90	6054	1165	5.20	0.62	-0.62
Jun-03	546	127	4.30	5057	1194	4.34	-0.06	-1.04
Jul-03	579	125	4.63	6033	1277	4.72	-0.09	-1.05
Aug-03	571	122	4.68	5542	1418	3.91	1.08	-0.34
Sep-03	870	127	5.28	5974	1258	4.76	0.52	-0.69
Oct-03	509	88	5.78	7193	1176	6.12	-0.09	-1.06
Nov-03	412	82	8.65	5077	1129	4.50	1.01	-0.39



Delayed Days for Facility Reasons (Average Days) (OP-6B-4) (Parity)– Interval Zone One

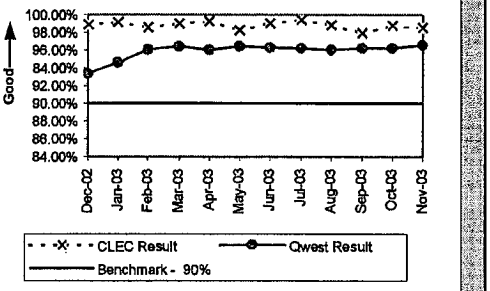
Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	292	36	8.11	11704	1597	7.33	0.57	-0.65
Jan-03	265	39	6.79	10418	1417	7.35	-0.37	-1.22
Feb-03	353	46	7.35	6781	851	7.97	-0.31	-1.19
Mar-03	577	50	11.54	4684	725	6.46	2.46	0.49
Apr-03	315	67	4.70	4959	690	7.19	-1.57	-1.96
May-03	78	17	4.47	4197	587	7.15	-0.9	-1.55
Jun-03	269	53	5.08	4916	858	7.47	-1.16	-1.71
Jul-03	211	29	7.28	4067	666	6.11	0.89	-0.46
Aug-03	373	49	7.61	4831	739	6.54	0.84	-0.49
Sep-03	383	28	12.96	4787	748	8.40	2.75	0.87
Oct-03	143	23	6.22	9703	750	12.94	-0.33	-1.2
Nov-03	84	14	6.00	3971	638	6.22	-0.06	-1.04



Checklist #4 - Unbundled Loop - Analog Installation

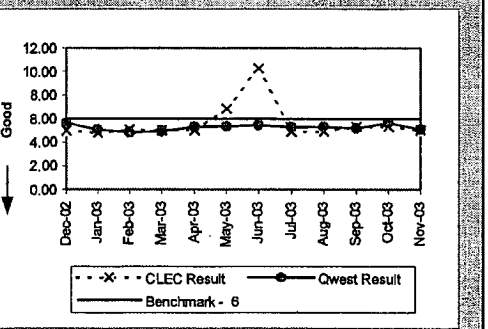
Installation Commitments Met (Percent) (OP-3E) (Benchmark)– Interval Zone Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	7068	7145	98.92%	18783	20115	93.38%	-16.19	-10.84
Jan-03	4139	4174	99.16%	19791	20918	84.62%	-11.87	-8.22
Feb-03	4560	4625	98.59%	17501	18213	96.09%	-7.85	-5.77
Mar-03	3951	3990	99.02%	18255	18931	96.43%	-8.02	-5.88
Apr-03	4772	4805	99.31%	18748	20564	96.03%	-10.49	-7.38
May-03	4054	4126	98.26%	21481	22277	96.43%	-5.81	-4.53
Jun-03	5016	5066	99.01%	21706	22550	96.26%	-9.34	-6.88
Jul-03	8476	9528	99.45%	21685	22749	96.20%	-13.94	-9.48
Aug-03	8246	8343	98.84%	22058	22964	96.05%	-11.18	-7.8
Sep-03	9481	9680	97.94%	21738	22587	96.24%	-7.37	-5.48
Oct-03	8252	8350	98.83%	21906	22762	96.24%	-10.83	-7.48
Nov-03	4843	4912	98.60%	18840	19502	96.61%	-6.88	-5.18



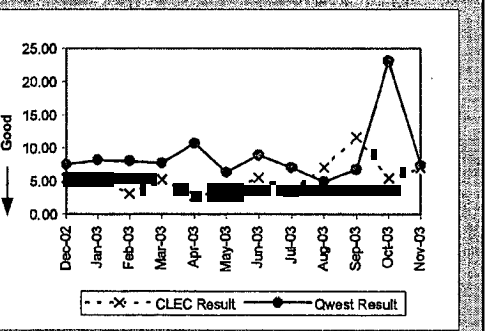
Installation Interval (Average Days) (OP-4E) (Benchmark)– Interval Zone Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	12097	2434	4.97	114129	20297	5.62	-3.21	-2.95
Jan-03	9498	1980	4.80	106203	21078	5.04	-1.27	-1.77
Feb-03	8816	1743	5.06	88443	18323	4.83	1.57	-0.04
Mar-03	8956	1790	5.00	93800	19043	4.93	0.49	-0.7
Apr-03	10702	2145	4.99	109293	20667	5.29	-1.27	-1.77
May-03	15346	2250	6.62	118431	22364	5.34	10.88	5.61
Jun-03	30614	2985	10.26	123220	22683	5.44	19.2	10.67
Jul-03	14806	3017	4.91	120506	22838	5.28	-2.16	-2.32
Aug-03	13414	2724	4.92	122222	23051	5.30	-2.96	-2.8
Sep-03	21833	4104	5.32	117720	22691	5.19	1.27	-0.23
Oct-03	16754	3151	5.32	128483	22882	5.62	-0.87	-1.53
Nov-03	8582	1710	5.02	99909	19583	5.10	-0.25	-1.15



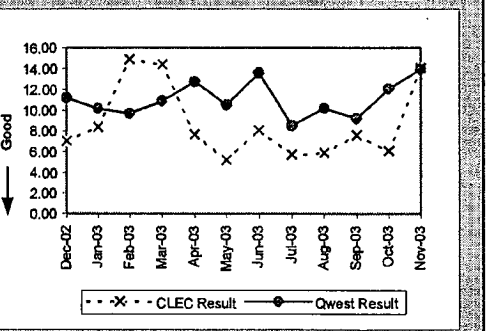
Delayed Days for Non-Facility Reasons (Average Days) (OP-6A-5) (Parity)– Interval Zone Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	254	47	5.40	4845	843	7.53	-0.43	-1.26
Jan-03	81	15	5.40	4754	581	8.18	-0.3	-1.18
Feb-03	125	40	3.12	3215	398	8.08	-1.38	-1.84
Mar-03	132	25	5.28	3150	407	7.74	-0.74	-1.45
Apr-03	36	13	2.77	5139	480	10.71	-0.54	-1.33
May-03	113	30	3.77	2787	441	6.32	-1.15	-1.7
Jun-03	139	25	5.56	4468	498	8.97	-0.44	-1.27
Jul-03	122	34	3.59	3281	466	7.04	-0.4	-1.25
Aug-03	500	70	7.14	2711	550	4.93	1.06	-0.36
Sep-03	1827	157	11.64	3299	488	6.76	2.46	0.49
Oct-03	368	67	5.49	11131	481	23.14	-1.25	-1.76
Nov-03	99	14	7.07	2625	353	7.44	-0.04	-1.03



Delayed Days for Facility Reasons (Average Days) (OP-6B-5) (Parity)– Interval Zone Two

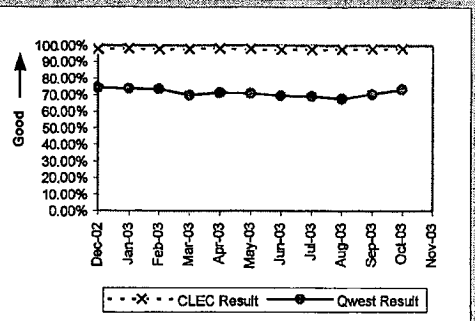
Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	225	32	7.03	9203	824	11.17	-1.01	-1.61
Jan-03	168	20	8.40	6629	852	10.17	-0.5	-1.3
Feb-03	372	25	14.88	3779	391	9.66	1.72	0.04
Mar-03	230	16	14.38	3759	346	10.86	0.83	-0.49
Apr-03	153	20	7.65	5153	405	12.72	-0.84	-1.51
May-03	203	39	5.21	4330	412	10.51	-1.97	-2.2
Jun-03	202	25	8.08	5633	415	13.57	-0.35	-1.21
Jul-03	102	18	5.67	3893	458	8.50	-0.97	-1.59
Aug-03	159	27	5.89	4236	418	10.19	-1.06	-1.66
Sep-03	334	44	7.59	3803	414	9.19	-0.59	-1.36
Oct-03	194	32	6.06	5351	444	12.05	-0.64	-1.39
Nov-03	774	55	14.07	4919	353	13.93	1.06	-0.36



Checklist #4 - Unbundled Loop - Analog Installation

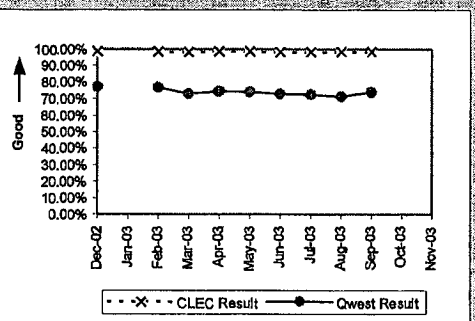
New Service Installation Quality (Percent) (OP-5) (Parity)– Interval Zone One and Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	24219	24735	97.91%	65015	87399	74.39%	-74.83	-46.5
Jan-03	21380	21772	98.20%	64120	87014	73.69%	-73.46	-45.66
Feb-03	18248	18671	97.73%	61440	83409	73.66%	-67.51	-42.04
Mar-03	18172	18558	97.93%	55941	80114	69.83%	-75.15	-46.69
Apr-03	16304	16604	98.19%	59563	83521	71.32%	-69.94	-43.52
May-03	15236	15544	98.02%	61110	86117	70.96%	-68.4	-42.58
Jun-03	15675	16078	97.49%	61586	88667	69.46%	-71.01	-44.17
Jul-03	20051	20569	97.48%	63245	91581	69.07%	-79.66	-49.43
Aug-03	21697	22191	97.77%	63342	93791	67.54%	-88.51	-53.59
Sep-03	21366	21821	97.91%	65229	92595	70.45%	-80	-49.64
Oct-03	21889	22123	98.04%	66755	90988	73.37%	-74.46	-46.27
Nov-03								



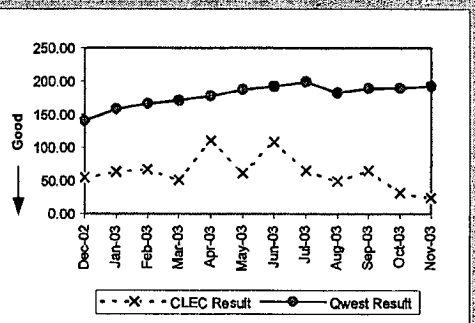
New Service Installation Quality (Percent) (OP-5*) (Parity)– Interval Zone One and Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	24394	24735	98.62%	67482	87399	77.21%	-70.87	-44.09
Jan-03								
Feb-03	18359	18671	98.33%	63980	83409	76.71%	-63.18	-39.41
Mar-03	16238	18558	98.29%	58579	80114	73.12%	-69.68	-43.36
Apr-03	16366	16604	98.57%	62139	83521	74.40%	-65.17	-40.62
May-03	15319	15544	98.55%	63882	86117	74.18%	-63.95	-39.88
Jun-03	15789	16078	98.20%	64684	88667	72.95%	-68.32	-41.32
Jul-03	20212	20569	98.26%	66444	91581	72.57%	-74.64	-46.36
Aug-03	21838	22191	98.41%	66934	93791	71.37%	-80.14	-49.72
Sep-03	21475	21821	98.41%	68385	92595	73.86%	-74.25	-46.14
Oct-03								
Nov-03								



Interval for Pending Orders Delayed Past Due Date (Average Days) (OP-15A) (Diagnostic)

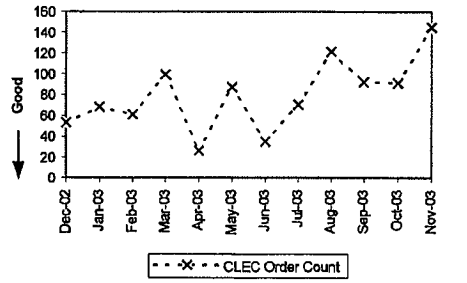
Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	6159	113	54.50	587258	4197	139.92	-6.23	-4.79
Jan-03	6968	110	63.35	587297	3708	158.39	-6.44	-4.62
Feb-03	7318	109	67.14	518721	3123	166.10	-8.36	-4.87
Mar-03	8073	158	51.09	506842	2965	170.94	-6.72	-6.3
Apr-03	8618	80	110.22	509528	2864	177.91	-3.35	-3.04
May-03	9967	163	81.15	524446	2794	187.70	-8.49	-6.16
Jun-03	8908	82	108.63	541197	2816	192.19	-3.85	-3.34
Jul-03	10114	155	65.25	548510	2759	198.81	-7.92	-5.82
Aug-03	12710	259	49.07	447089	2448	182.63	-9.97	-7.08
Sep-03	12275	189	64.95	450113	2378	189.28	-7.67	-5.66
Oct-03	4200	135	31.11	361814	1905	189.93	-8.29	-6.04
Nov-03	5564	232	23.98	356778	1850	192.85	-10.96	-7.66



Checklist #4 - Unbundled Loop - Analog Installation

Count of Pending Orders Delayed for Facilities Reasons Unbundled Loop Analog (OP-15B) (Diagnostic)

Date	CLEC Order Count
Dec-02	53
Jan-03	68
Feb-03	61
Mar-03	99
Apr-03	26
May-03	87
Jun-03	35
Jul-03	70
Aug-03	121
Sep-03	92
Oct-03	91
Nov-03	145



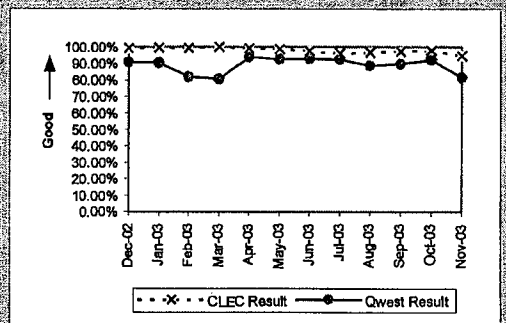
Qwest Perf Results Checklist (14-State 271PID 5.0)

Regional

Checklist #4 - Unbundled Loop - Analog Repair

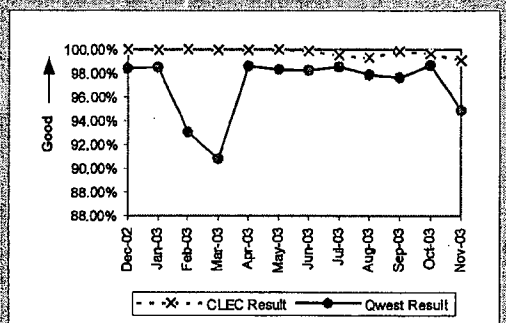
Out of Service Cleared within 24 hours (Percent) (MR-3D) (Parity)-- Interval Zone One

Date	CLEC Num	CLEC Dend	CLEC Resu	Std Dev	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	1663	1676	99.22%	8.77%	73039	80471	90.76%	-11.84	-8.2
Jan-03	1594	1600	99.63%	6.11%	73015	80756	90.41%	-12.39	-8.53
Feb-03	1697	1705	99.53%	6.83%	69686	85153	81.84%	-18.76	-12.41
Mar-03	1979	1984	99.75%	5.01%	80279	99617	80.59%	-21.37	-13.99
Apr-03	1819	1832	99.29%	8.39%	82062	87303	94.00%	-9.44	-6.74
May-03	1764	1787	98.71%	11.27%	65899	92775	92.59%	-9.79	-6.95
Jun-03	1896	1941	97.68%	15.05%	89279	96185	92.82%	-8.21	-5.99
Jul-03	2439	2532	96.33%	18.81%	98807	106787	92.54%	-7.16	-5.35
Aug-03	2096	2166	96.77%	17.68%	96836	109243	88.64%	-11.8	-8.18
Sep-03	1948	1996	97.80%	15.32%	90756	100892	89.95%	-11.25	-7.64
Oct-03	1848	1883	98.04%	13.88%	81650	88352	92.41%	-9.12	-6.54
Nov-03	1791	1887	94.91%	21.97%	72443	88901	81.49%	-14.86	-10.03



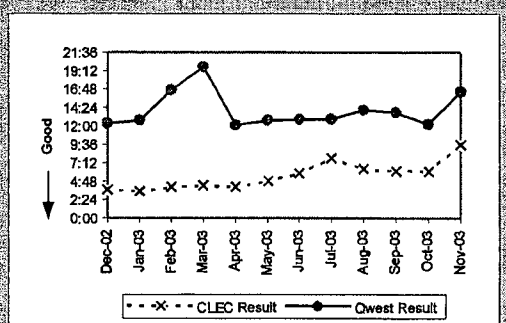
All Troubles Cleared within 48 hours (Percent) (MR-4D) (Parity)-- Interval Zone One

Date	CLEC Num	CLEC Dend	CLEC Resu	Std Dev	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	1955	1955	100.00%	0.00%	107554	109292	98.41%	-5.57	-4.39
Jan-03	2003	2007	99.95%	2.23%	108761	110435	98.48%	-5.33	-4.24
Feb-03	2128	2128	100.00%	0.00%	104833	112634	93.07%	-12.47	-8.58
Mar-03	2451	2452	99.96%	2.02%	119749	131869	90.81%	-15.54	-10.45
Apr-03	2328	2330	99.91%	2.93%	117610	119289	98.59%	-5.36	-4.26
May-03	2248	2248	100.00%	0.00%	122868	124965	98.32%	-6.14	-4.73
Jun-03	2463	2486	99.88%	3.49%	126472	128737	98.24%	-6.13	-4.73
Jul-03	3225	3240	99.54%	6.79%	139051	141132	98.53%	-4.72	-3.87
Aug-03	2837	2856	99.33%	8.13%	139752	142788	97.88%	-5.36	-4.26
Sep-03	2595	2599	99.85%	3.92%	130126	133258	97.65%	-7.32	-5.45
Oct-03	2355	2363	99.68%	5.81%	118486	120052	98.70%	-4.1	-3.49
Nov-03	2437	2459	99.11%	9.42%	111725	117708	94.92%	-8.36	-6.69



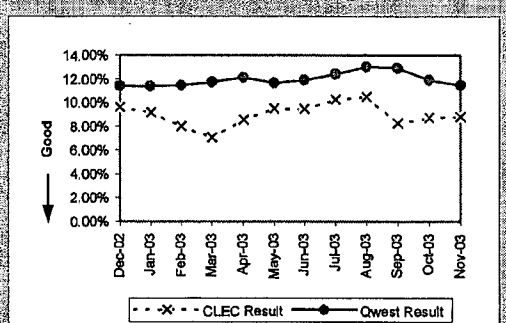
Mean Time to Restore (Hours:Minutes) (MR-6D) (Parity)-- Interval Zone One

Date	CLEC Num	CLEC Dend	CLEC Resu	Std Dev	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	7168:16	1955	3:40	4:25	1351842:53	109292	12:22	-28.97	-18.61
Jan-03	7011:48	2007	3:30	4:14	1407370:31	110435	12:45	-26.36	-17.03
Feb-03	8640:15	2128	4:04	4:30	1882795:17	112634	16:43	-30.17	-19.34
Mar-03	10481:17	2452	4:16	4:36	2601356:23	131689	19:44	-28.07	-18.03
Apr-03	9463:32	2330	4:04	4:56	1449161:29	119289	12:09	-28.37	-18.25
May-03	10824:23	2248	4:49	5:33	1595548:03	124965	12:48	-28.54	-18.35
Jun-03	14475:25	2486	5:52	6:34	1655693:46	128737	12:52	-25.13	-16.28
Jul-03	25351:24	3240	7:49	8:57	1823908:17	141132	12:55	-20.22	-13.29
Aug-03	18417:07	2856	8:27	8:06	2012103:35	142788	14:06	-28.87	-18.55
Sep-03	15983:23	2599	6:09	6:50	1832234:57	133258	13:45	-25.81	-16.89
Oct-03	14492:54	2363	8:08	7:21	1473499:51	120052	12:16	-22.43	-14.64
Nov-03	23521:50	2459	9:34	10:28	1939351:15	117708	16:29	-19.15	-12.64



Repair Repeat Report Rate (Percent) (MR-7D) (Parity)-- Interval Zone One

Date	CLEC Num	CLEC Dend	CLEC Resu	Std Dev	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	188	1955	9.62%	29.48%	12803	112288	11.40%	-2.46	-2.5
Jan-03	184	2007	9.17%	28.88%	12905	113464	11.37%	-3.09	-2.88
Feb-03	170	2128	7.99%	27.11%	13243	115604	11.46%	-4.98	-4.03
Mar-03	173	2452	7.06%	25.61%	15849	135378	11.71%	-7.1	-5.32
Apr-03	199	2330	8.54%	27.95%	14818	122284	12.12%	-5.24	-4.19
May-03	213	2248	9.46%	29.29%	14893	128016	11.63%	-3.16	-2.92
Jun-03	233	2486	9.45%	29.25%	15666	131868	11.88%	-3.7	-3.25
Jul-03	332	3240	10.25%	30.33%	17930	144515	12.41%	-3.69	-3.24
Aug-03	299	2856	10.47%	30.62%	18991	146118	13.00%	-3.98	-3.42
Sep-03	214	2599	8.23%	27.49%	17620	136514	12.91%	-7.04	-5.28
Oct-03	206	2363	8.72%	28.21%	14807	122850	11.89%	-4.72	-3.87
Nov-03	218	2459	8.78%	28.31%	13834	120540	11.48%	-4.15	-3.52



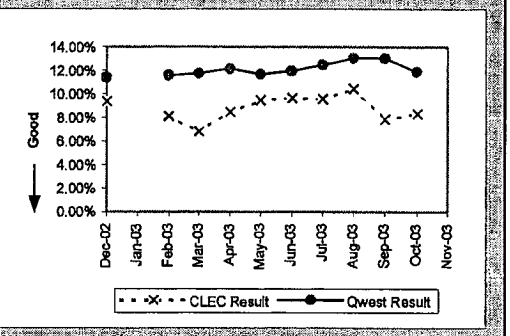
Qwest Perf Results Checklist (14-State 271PID 5.0)

Regional

Checklist #4 - Unbundled Loop - Analog Repair

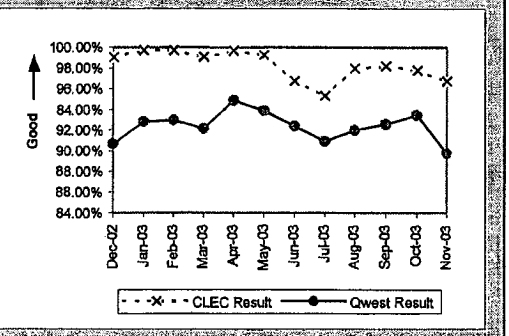
Repair Repeat Report Rate (Percent) (MR-7D*) (Parity)– Interval Zone One

Date	CLEC Num	CLEC Deno	CLEC Resu	Std Dev	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	138	1468	9.40%	29.18%	10813	84774	11.41%	-2.4	-2.46
Jan-03									
Feb-03	136	1675	8.12%	27.31%	11264	97231	11.58%	-4.39	-3.67
Mar-03	140	2050	6.83%	25.22%	13686	116355	11.76%	-6.87	-5.18
Apr-03	163	1921	8.49%	27.87%	12792	105351	12.14%	-4.86	-3.96
May-03	172	1812	9.49%	29.31%	12937	110651	11.69%	-2.89	-2.76
Jun-03	160	1859	9.88%	29.57%	13557	113402	11.95%	-3	-2.82
Jul-03	225	2348	9.58%	29.44%	15487	124136	12.48%	-4.2	-3.56
Aug-03	229	2193	10.44%	30.58%	16339	125152	13.06%	-3.6	-3.19
Sep-03	159	2020	7.87%	26.93%	15255	118944	13.04%	-6.84	-5.16
Oct-03	154	1840	8.37%	27.89%	12433	104534	11.89%	-4.63	-3.61
Nov-03									



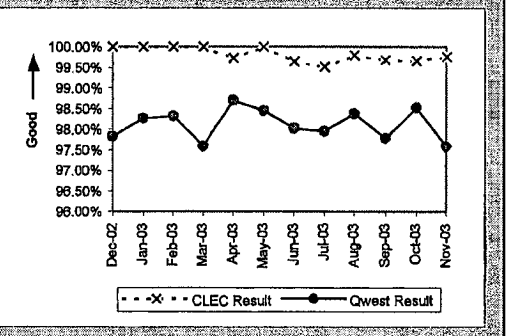
Out of Service Cleared within 24 hours (Percent) (MR-3E) (Parity)– Interval Zone Two

Date	CLEC Num	CLEC Deno	CLEC Resu	Std Dev	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	426	430	99.07%	9.60%	21246	23438	90.66%	-5.84	-4.61
Jan-03	364	365	99.73%	5.23%	20890	22502	92.84%	-5.06	-4.08
Feb-03	347	348	99.71%	5.35%	19914	21424	92.95%	-4.89	-3.97
Mar-03	418	422	99.05%	9.69%	24396	26477	92.14%	-5.23	-4.18
Apr-03	566	568	99.65%	5.92%	25365	26757	94.87%	-5.11	-4.1
May-03	661	666	99.25%	8.63%	29564	31497	93.86%	-5.73	-4.48
Jun-03	683	706	96.74%	17.75%	32380	35043	92.40%	-4.31	-3.62
Jul-03	1001	1050	95.33%	21.09%	35995	39589	90.92%	-4.91	-3.99
Aug-03	779	795	97.99%	14.04%	34458	37468	91.97%	-6.18	-4.76
Sep-03	752	768	98.17%	13.40%	30067	32485	92.56%	-5.85	-4.56
Oct-03	708	722	97.78%	14.72%	26030	27852	93.46%	-4.64	-3.82
Nov-03	660	703	96.73%	17.79%	22669	25256	89.75%	-6.02	-4.66



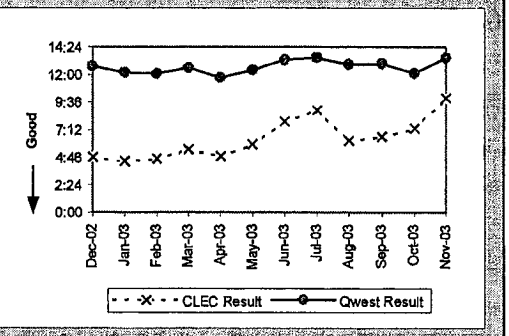
All Troubles Cleared within 46 hours (Percent) (MR-4E) (Parity)– Interval Zone Two

Date	CLEC Num	CLEC Deno	CLEC Resu	Std Dev	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	512	512	100.00%	0.00%	32377	33098	97.82%	-3.35	-3.04
Jan-03	493	493	100.00%	0.00%	31179	31730	98.26%	-2.93	-2.78
Feb-03	448	448	100.00%	0.00%	29051	29548	98.32%	-2.75	-2.67
Mar-03	575	575	100.00%	0.00%	34833	35693	97.59%	-3.74	-3.27
Apr-03	714	716	99.72%	5.28%	36534	37015	98.70%	-2.39	-2.45
May-03	775	775	100.00%	0.00%	41507	42180	98.45%	-3.48	-3.1
Jun-03	848	851	99.65%	5.93%	45870	46592	98.02%	-3.38	-3.05
Jul-03	1234	1240	99.52%	6.84%	51015	52083	97.95%	-3.85	-3.34
Aug-03	963	965	99.79%	4.55%	48114	48910	98.37%	-3.45	-3.1
Sep-03	939	842	99.68%	5.63%	42572	43538	97.78%	-3.92	-3.38
Oct-03	877	880	99.66%	5.83%	37952	38521	98.52%	-2.76	-2.68
Nov-03	861	863	99.77%	4.81%	34008	34851	97.58%	-4.13	-3.51



Mean Time to Restore (Hours:Minutes) (MR-6E) (Parity)– Interval Zone Two

Date	CLEC Num	CLEC Deno	CLEC Resu	Std Dev	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	2500:08	512	4:53	6:02	421541:32	33098	12:44	-12.56	-8.64
Jan-03	2198:43	493	4:28	5:18	386260:27	31730	12:10	-13.53	-9.23
Feb-03	2093:05	448	4:40	5:27	356584:06	29548	12:04	-12.25	-8.45
Mar-03	3152:10	575	5:29	5:48	449308:05	35693	12:35	-11.91	-8.24
Apr-03	3519:21	716	4:55	6:10	434507:31	37015	11:44	-15.16	-10.22
May-03	4547:59	775	5:52	5:59	523144:08	42160	12:25	-14.32	-9.71
Jun-03	6750:23	851	7:56	7:41	618253:45	46592	13:18	-10.93	-7.64
Jul-03	11059:14	1240	8:55	8:50	700765:56	52083	13:27	-11.79	-8.17
Aug-03	6044:42	965	6:16	7:05	629328:31	48910	12:52	-14.9	-10.08
Sep-03	6229:43	842	6:37	8:18	563815:03	43538	12:57	-13.41	-9.15
Oct-03	6435:30	880	7:19	9:00	466384:16	38521	12:06	-9.98	-7.07
Nov-03	8598:04	863	9:58	9:22	469170:56	34851	13:28	-7.24	-5.4



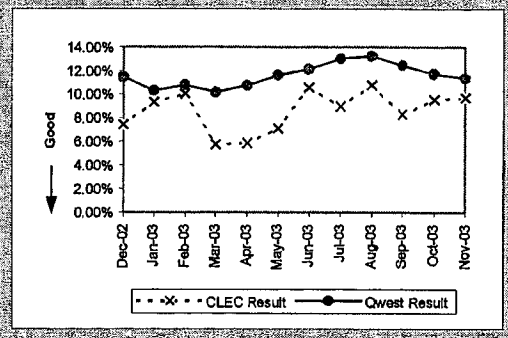
Qwest Perf Results Checklist (14-State 271PID 5.0)

Regional

Checklist #4 - Unbundled Loop - Analog Repair

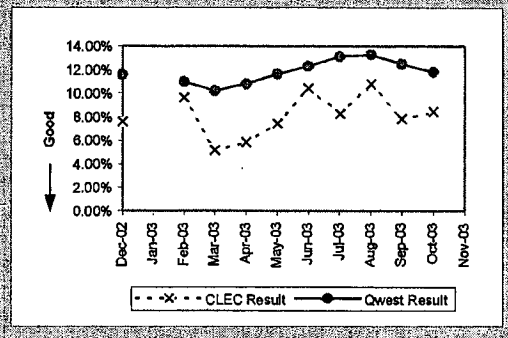
Repair Repeat Report Rate (Percent) (MR-7E) (Parity)– Interval Zone Two

Date	CLEC Num	CLEC Dend	CLEC Resu	Std Dev	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	38	512	7.42%	26.21%	3857	33640	11.47%	-2.85	-2.73
Jan-03	46	493	9.33%	29.09%	3326	32313	10.29%	-0.7	-1.42
Feb-03	45	448	10.04%	30.06%	3237	30081	10.76%	-0.49	-1.3
Mar-03	33	575	5.74%	23.26%	3868	36294	10.16%	-3.46	-3.11
Apr-03	42	716	5.87%	23.50%	4040	37582	10.75%	-4.18	-3.54
May-03	55	775	7.10%	25.68%	4978	42820	11.63%	-3.9	-3.37
Jun-03	90	851	10.58%	30.75%	5739	47252	12.15%	-1.39	-1.84
Jul-03	111	1240	8.95%	28.55%	6877	52758	13.04%	-4.22	-3.57
Aug-03	104	965	10.78%	31.01%	6578	49619	13.26%	-2.25	-2.37
Sep-03	78	942	8.28%	27.56%	5509	44215	12.46%	-3.84	-3.34
Oct-03	84	880	9.55%	29.38%	4581	39089	11.72%	-1.98	-2.21
Nov-03	84	863	9.73%	29.84%	4027	35427	11.37%	-1.49	-1.91



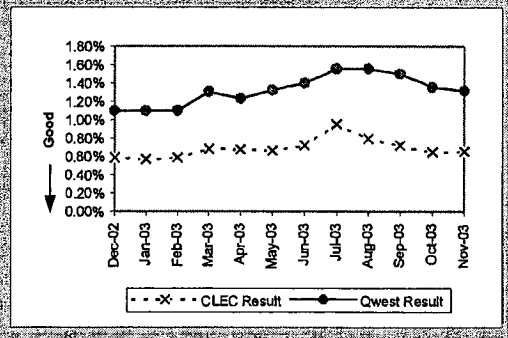
Repair Repeat Report Rate (Percent) (MR-7E*) (Parity)– Interval Zone Two

Date	CLEC Num	CLEC Dend	CLEC Resu	Std Dev	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	31	409	7.58%	26.47%	3258	28229	11.54%	-2.49	-2.51
Jan-03									
Feb-03	38	396	9.60%	29.45%	2734	24949	10.96%	-0.86	-1.52
Mar-03	26	508	5.14%	22.08%	3167	31067	10.19%	-3.73	-3.27
Apr-03	37	634	5.84%	23.44%	3482	32316	10.77%	-3.97	-3.41
May-03	50	675	7.41%	26.19%	4307	37095	11.61%	-3.38	-3.05
Jun-03	71	683	10.40%	30.52%	5028	40894	12.29%	-1.5	-1.91
Jul-03	78	944	8.26%	27.53%	5996	45763	13.10%	-4.36	-3.65
Aug-03	85	790	10.76%	30.99%	5624	42359	13.28%	-2.07	-2.28
Sep-03	62	793	7.82%	26.85%	4681	37550	12.47%	-3.92	-3.38
Oct-03	60	710	8.45%	27.81%	3902	33113	11.78%	-2.73	-2.68
Nov-03									



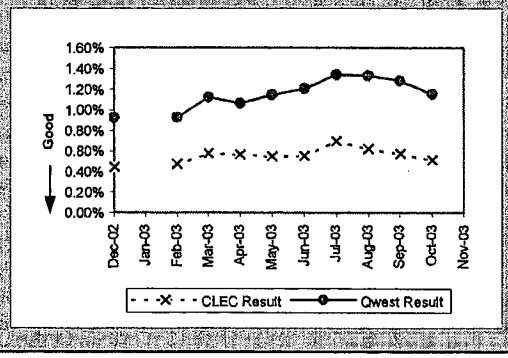
Trouble Rate (Percent) (MR-8) (Parity)– Interval Zone One and Two

Date	CLEC Num	CLEC Dend	CLEC Resu	Std Dev	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	2467	420364	0.59%	7.84%	145928	13323973	1.10%	-31.18	-18.96
Jan-03	2500	437430	0.57%	7.54%	145777	13271254	1.10%	-32.9	-21
Feb-03	2576	437430	0.59%	7.65%	145665	13212897	1.10%	-32.01	-20.46
Mar-03	3027	444495	0.68%	8.22%	171672	13147643	1.31%	-36.09	-22.94
Apr-03	3048	450881	0.68%	8.19%	159866	12970442	1.23%	-33.3	-21.24
May-03	3023	453577	0.67%	8.14%	170836	12883681	1.33%	-38.16	-24.2
Jun-03	3317	459295	0.72%	8.47%	179138	12785908	1.40%	-38.46	-24.38
Jul-03	4480	471045	0.95%	9.71%	197273	12683430	1.56%	-32.91	-21.01
Aug-03	3821	480738	0.79%	8.88%	195737	12597467	1.55%	-41.76	-26.39
Sep-03	3541	491842	0.72%	8.45%	180729	12037387	1.50%	-44.19	-27.68
Oct-03	3243	500450	0.65%	8.02%	161939	11956249	1.35%	-42.36	-26.75
Nov-03	3322	505887	0.66%	8.08%	155967	11868610	1.31%	-40.21	-25.45



Trouble Rate (Percent) (MR-8*) (Parity)– Interval Zone One and Two

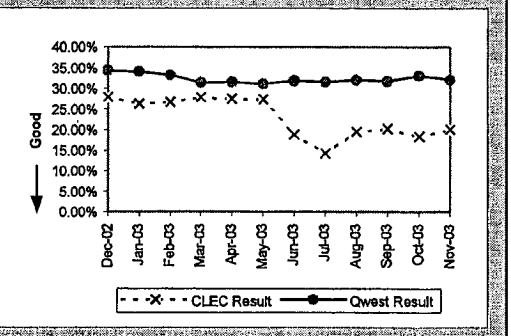
Date	CLEC Num	CLEC Dend	CLEC Resu	Std Dev	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	1877	420364	0.45%	6.67%	123003	13323973	0.92%	-31.92	-20.34
Jan-03									
Feb-03	2071	437427	0.47%	6.68%	122180	13212897	0.92%	-30.68	-19.65
Mar-03	2556	444492	0.58%	7.56%	147422	13147843	1.12%	-34.02	-21.68
Apr-03	2555	450881	0.57%	7.51%	137667	12970442	1.06%	-31.84	-20.36
May-03	2487	453577	0.55%	7.38%	147746	12883881	1.15%	-37.21	-23.62
Jun-03	2542	459295	0.55%	7.42%	154296	12785908	1.21%	-39.84	-25.22
Jul-03	3292	471045	0.70%	8.33%	169899	12683430	1.34%	-37.56	-23.83
Aug-03	2983	480738	0.62%	7.85%	167511	12597467	1.33%	-42.13	-26.62
Sep-03	2813	491942	0.57%	7.54%	154494	12037397	1.28%	-43.46	-27.42
Oct-03	2550	500450	0.51%	7.12%	137647	11956249	1.15%	-41.69	-26.35
Nov-03									



Checklist #4 - Unbundled Loop - Analog Repair

Customer and Non-Qwest Related Trouble Reports (Percent) (MR-10) (Diagnostic)– Interval Zone One and Two

Date	CLEC Num	CLEC Denc	CLEC Resu	Std Dev	Qwest Num	Qwest Denc	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	952	3419	27.84%	44.82%	76159	222085	34.29%	-7.88	-5.79
Jan-03	894	3394	26.34%	44.05%	75128	220905	34.01%	-9.36	-6.89
Feb-03	937	3513	26.67%	44.22%	72450	218135	33.21%	-8.17	-5.96
Mar-03	1164	4191	27.77%	44.79%	78309	249981	31.33%	-4.92	-3.89
Apr-03	1152	4198	27.44%	44.62%	73598	233464	31.52%	-5.64	-4.43
May-03	1134	4157	27.28%	44.54%	76938	247774	31.05%	-5.21	-4.17
Jun-03	771	4088	18.86%	39.12%	83647	262785	31.83%	-17.67	-11.74
Jul-03	746	5226	14.27%	34.98%	91001	288274	31.57%	-28.66	-17.21
Aug-03	924	4745	19.47%	39.60%	91992	287729	31.97%	-18.31	-12.13
Sep-03	899	4440	20.25%	40.18%	83808	264637	31.71%	-16.27	-10.89
Oct-03	730	3973	18.37%	38.73%	80040	241979	33.08%	-19.54	-12.88
Nov-03	834	4156	20.07%	40.05%	73594	229561	32.06%	-16.42	-10.98



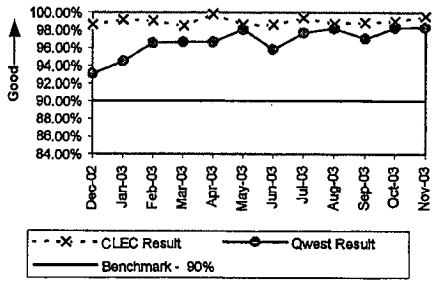
Qwest Perf Results Checklist (14-State 271PID 5.0)

North Dakota

Checklist #4 - Unbundled Loop - Analog Installation

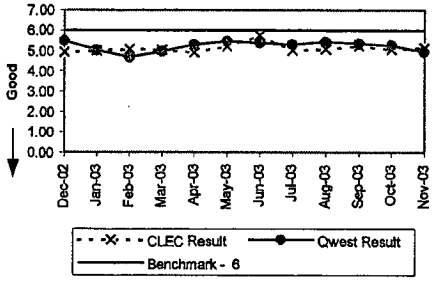
Installation Commitments Mat (Percent) (OP-3E) (Benchmark)-- Interval Zone Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	749	759	98.68%	593	637	93.09%	-4.1	-3.49
Jan-03	879	886	99.21%	634	671	94.49%	-4.04	-3.46
Feb-03	1017	1026	99.12%	562	582	96.56%	-2.71	-2.65
Mar-03	838	851	98.47%	609	630	96.67%	-1.91	-2.16
Apr-03	588	589	99.83%	728	753	96.68%	-3.2	-2.94
May-03	577	585	98.63%	820	836	98.09%	-0.74	-1.45
Jun-03	503	510	98.63%	868	906	95.81%	-2.54	-2.55
Jul-03	1688	1696	99.41%	808	827	97.70%	-2.69	-2.63
Aug-03	1096	1110	98.74%	1027	1046	98.18%	-0.96	-1.59
Sep-03	958	969	98.86%	894	921	97.07%	-2.31	-2.41
Oct-03	931	940	99.04%	863	878	98.29%	-1.23	-1.75
Nov-03	1550	1556	99.61%	756	769	98.31%	-2.3	-2.4



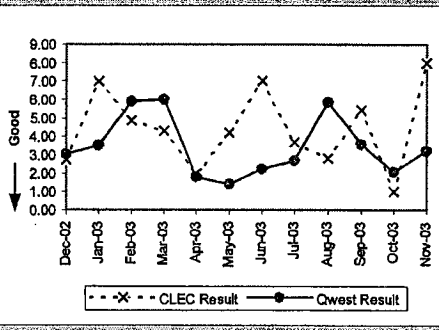
Installation Interval (Average Days) (OP-4E) (Benchmark)-- Interval Zone Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	1146	233	4.92	3514	641	5.46	-1.18	-1.71
Jan-03	1506	302	4.99	3393	678	5.02	-0.08	-1.05
Feb-03	1461	288	5.07	2747	588	4.67	0.98	-0.4
Mar-03	1272	253	5.03	3122	630	4.96	0.16	-0.89
Apr-03	1591	325	4.90	3982	753	5.29	-0.9	-1.55
May-03	1855	356	5.21	4567	837	5.46	-0.74	-1.45
Jun-03	1715	299	5.74	4899	911	5.38	1.01	-0.38
Jul-03	2362	471	5.01	4392	829	5.30	-0.78	-1.48
Aug-03	1438	284	5.06	5693	1049	5.43	-0.9	-1.55
Sep-03	2669	511	5.22	4934	922	5.35	-0.39	-1.24
Oct-03	2437	481	5.07	4609	878	5.25	-0.56	-1.34
Nov-03	2280	444	5.14	3804	770	4.94	0.68	-0.58



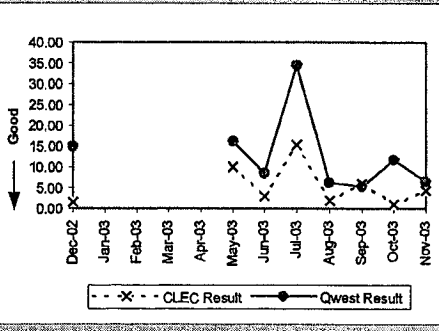
Delayed Days for Non-Facility Reasons (Average Days) (OP-6A-5) (Parity)-- Interval Zone Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	22	8	2.75	79	26	3.04	-0.26	-1.16
Jan-03	49	7	7.00	67	19	3.53	1.44	-0.12
Feb-03	44	9	4.89	71	12	5.92	-0.58	-1.38
Mar-03	56	13	4.31	42	7	6.00	-0.72	-1.44
Apr-03	2	1	2.00	38	21	1.81	0.42	-0.74
May-03	21	5	4.20	14	10	1.40	2.03	0.24
Jun-03	35	5	7.00	76	34	2.24	3.72	1.26
Jul-03	26	7	3.71	43	16	2.69	0.53	-0.88
Aug-03	31	11	2.82	94	16	5.88	-0.91	-1.55
Sep-03	49	9	5.44	79	22	3.59	1.17	-0.29
Oct-03	7	7	1.00	25	12	2.08	-1.96	-2.19
Nov-03	24	3	8.00	29	9	3.22	2.03	0.24



Delayed Days for Facility Reasons (Average Days) (OP-6B-5) (Parity)-- Interval Zone Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	3	2	1.50	283	19	14.89	-1.4	-1.85
Jan-03								
Feb-03								
Mar-03								
Apr-03								
May-03	20	2	10.00	81	5	16.20	-0.39	-1.23
Jun-03	6	2	3.00	34	4	8.50	-0.68	-1.41
Jul-03	46	3	15.33	138	4	34.50	-0.42	-1.26
Aug-03	6	3	2.00	25	4	6.25	-0.98	-1.6
Sep-03	12	2	6.00	32	6	5.33	0.34	-0.79
Oct-03	2	2	1.00	35	3	11.67	-0.7	-1.42
Nov-03	13	3	4.33	26	4	6.50	-0.46	-1.28



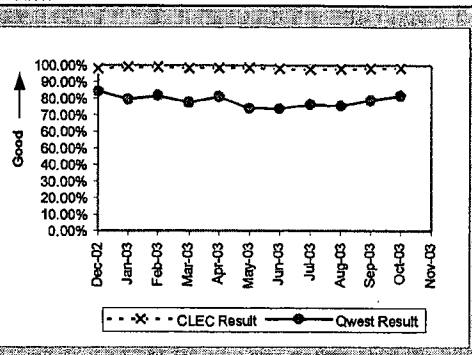
Qwest Perf Results Checklist (14-State 271PID 5.0)

North Dakota

Checklist #4 - Unbundled Loop - Analog Installation

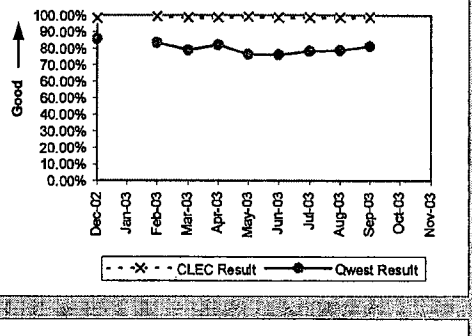
New Service Installation Quality (Percent) (OP-5) (Parity)– Interval Zone One and Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	605	617	98.06%	582	691	84.23%	-6.85	-5.16
Jan-03	815	823	99.03%	524	659	79.51%	-9.25	-6.62
Feb-03	948	956	99.16%	516	632	81.65%	-8.83	-6.37
Mar-03	924	939	98.40%	472	609	77.50%	-9.62	-6.85
Apr-03	711	721	98.61%	561	692	81.07%	-8.42	-6.12
May-03	579	587	98.64%	588	795	73.96%	-10.33	-7.28
Jun-03	537	548	97.99%	645	874	73.80%	-10.1	-7.14
Jul-03	1076	1104	97.46%	664	870	76.32%	-10.97	-7.67
Aug-03	1374	1403	97.93%	710	939	75.61%	-12.33	-8.49
Sep-03	1022	1040	98.27%	778	986	78.90%	-10.68	-7.49
Oct-03	940	955	98.43%	734	900	81.56%	-9.36	-6.69
Nov-03								



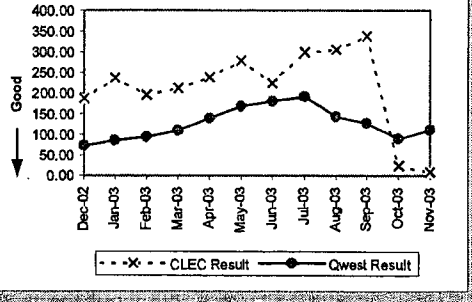
New Service Installation Quality (Percent) (OP-5*) (Parity)– Interval Zone One and Two

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	606	617	98.22%	592	691	85.67%	-6.46	-4.93
Jan-03								
Feb-03	950	956	99.37%	527	632	83.39%	-8.38	-6.09
Mar-03	925	939	98.51%	480	609	78.82%	-9.26	-6.63
Apr-03	711	721	98.61%	568	692	82.08%	-8.1	-5.92
May-03	582	587	99.15%	606	795	76.23%	-9.89	-7.02
Jun-03	540	548	98.54%	665	874	76.09%	-9.66	-6.87
Jul-03	1089	1104	98.64%	681	870	78.28%	-10.89	-7.62
Aug-03	1384	1403	98.65%	739	939	78.70%	-11.55	-8.02
Sep-03	1028	1040	98.85%	801	986	81.24%	-10.15	-7.17
Oct-03								
Nov-03								



Interval for Pending Orders Delayed Past Due Date (Average Days) (OP-15A) (Diagnostic)

Date	CLEC Num	CLEC Denom	CLEC Result	Qwest Num	Qwest Denom	Qwest Result	Mod Z Scr	Parity Score
Dec-02	4119	22	187.23	2395	33	72.58	3.72	1.26
Jan-03	4497	19	236.68	2130	25	85.20	3.72	1.26
Feb-03	4897	25	195.88	2161	23	93.96	2.58	0.57
Mar-03	5301	25	212.04	2514	23	109.30	3.09	0.88
Apr-03	5721	24	238.38	2780	20	139.00	2.85	0.61
May-03	6134	22	278.82	3027	18	168.17	2.51	0.53
Jun-03	5378	24	224.08	3057	17	179.82	1.02	-0.38
Jul-03	5685	19	299.21	3063	16	191.44	1.93	0.17
Aug-03	8108	20	305.40	3001	21	142.90	2.65	0.61
Sep-03	6430	19	338.42	3302	26	127.00	3.72	1.26
Oct-03	142	6	23.67	1612	18	89.56	-1.08	-1.64
Nov-03	423	48	8.81	1876	17	110.35	-2.44	-2.49

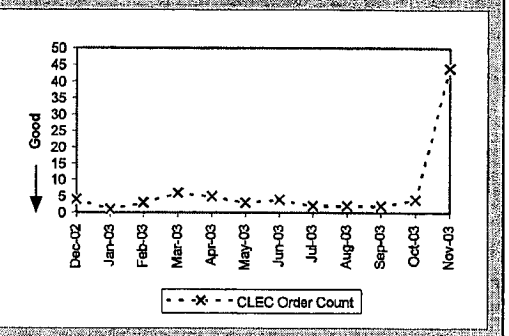


Qwest Perf Results Checklist (14-State 271PID 5.0)

North Dakota

Checklist #4 - Unbundled Loop - Analog Installation

Count of Pending Orders Delayed for Facilities Reasons Unbundled Loop Analog (OP-15B) (Diagnostic)	
Date	CLEC Order Count
Dec-02	4
Jan-03	1
Feb-03	3
Mar-03	6
Apr-03	5
May-03	3
Jun-03	4
Jul-03	2
Aug-03	2
Sep-03	2
Oct-03	4
Nov-03	44



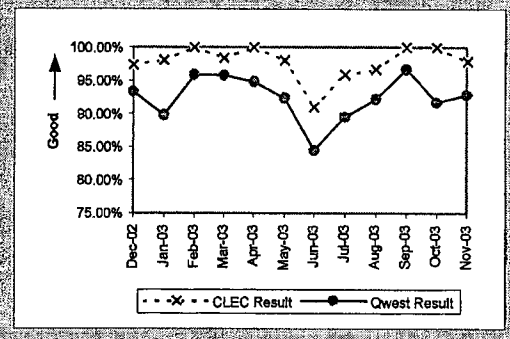
Qwest Perf Results Checklist (14-State 271PID 5.0)

North Dakota

Checklist #4 - Unbundled Loop - Analog Repair

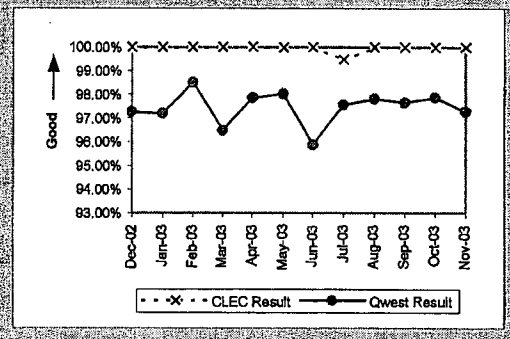
Out of Service Cleared within 24 hours (Percent) (MR-3E) (Parity)-- Interval Zone Two

Date	CLEC Num	CLEC Denc	CLEC Resu	Std Dev	Qwest Num	Qwest Denc	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	38	39	97.44%	15.81%	633	678	93.36%	-0.99	-1.6
Jan-03	51	52	98.08%	13.73%	617	687	89.81%	-1.9	-2.16
Feb-03	41	41	100.00%	0.00%	725	756	95.90%	-1.29	-1.78
Mar-03	61	62	98.39%	12.60%	797	832	95.79%	-0.98	-1.6
Apr-03	102	102	100.00%	0.00%	990	1044	94.83%	-2.25	-2.37
May-03	101	103	98.08%	13.80%	1405	1521	92.37%	-2.1	-2.28
Jun-03	81	89	91.01%	28.60%	1491	1766	84.43%	-1.67	-2.02
Jul-03	140	146	95.89%	19.85%	1455	1626	89.48%	-2.42	-2.47
Aug-03	116	120	96.67%	17.95%	1228	1332	92.19%	-1.75	-2.06
Sep-03	113	113	100.00%	0.00%	1134	1173	96.66%	-1.98	-2.14
Oct-03	101	101	100.00%	0.00%	1075	1172	91.72%	-2.9	-2.76
Nov-03	94	96	97.92%	14.28%	665	716	92.88%	-1.8	-2.1



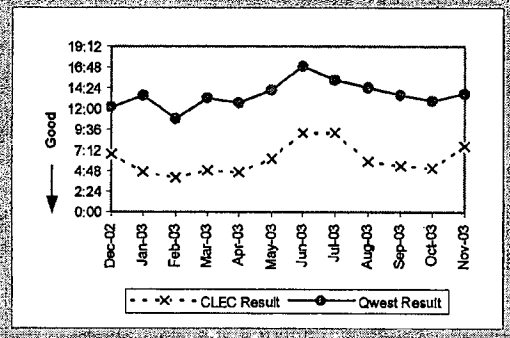
All Troubles Cleared within 48 hours (Percent) (MR-4E) (Parity)-- Interval Zone Two

Date	CLEC Num	CLEC Denc	CLEC Resu	Std Dev	Qwest Num	Qwest Denc	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	49	49	100.00%	0.00%	922	948	97.26%	-1.15	-1.7
Jan-03	63	63	100.00%	0.00%	972	1000	97.20%	-1.31	-1.79
Feb-03	44	44	100.00%	0.00%	992	1007	98.51%	-0.8	-1.49
Mar-03	75	75	100.00%	0.00%	1121	1162	96.47%	-1.61	-1.96
Apr-03	115	115	100.00%	0.00%	1416	1447	97.86%	-1.53	-1.93
May-03	122	122	100.00%	0.00%	1982	2022	98.02%	-1.52	-1.93
Jun-03	124	124	100.00%	0.00%	2185	2279	95.88%	-2.25	-2.37
Jul-03	193	194	99.48%	7.16%	2119	2172	97.56%	-1.66	-2.01
Aug-03	151	151	100.00%	0.00%	1749	1788	97.62%	-1.76	-2.07
Sep-03	148	148	100.00%	0.00%	1578	1616	97.65%	-1.81	-2.1
Oct-03	132	132	100.00%	0.00%	1606	1641	97.87%	-1.63	-1.99
Nov-03	115	115	100.00%	0.00%	997	1025	97.27%	-1.7	-2.04



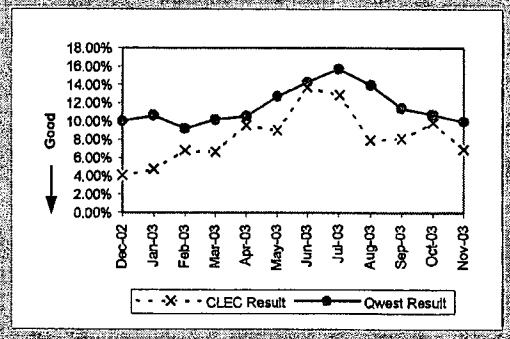
Mean Time to Restora (Hours:Minutes) (MR-6E) (Parity)-- Interval Zone Two

Date	CLEC Num	CLEC Denc	CLEC Resu	Std Dev	Qwest Num	Qwest Denc	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	330:29	49	6:45	7:52	11537:45	948	12:10	-2.47	-2.6
Jan-03	296:18	63	4:42	5:38	13523:12	1000	13:31	-5.06	-4.08
Feb-03	177:34	44	4:02	4:19	10892:53	1007	10:49	-3.83	-3.33
Mar-03	364:40	75	4:52	6:09	15343:36	1162	13:12	-4.85	-3.83
Apr-03	532:46	115	4:38	4:42	18307:21	1447	12:39	-6.85	-5.17
May-03	762:20	122	6:15	6:10	28605:15	2022	14:09	-6.57	-4.98
Jun-03	1139:57	124	9:12	9:01	38544:39	2279	16:55	-5.53	-4.36
Jul-03	1783:42	194	9:12	8:55	33321:54	2172	15:20	-6.38	-4.88
Aug-03	896:50	151	5:56	7:44	25800:54	1788	14:26	-7.29	-5.43
Sep-03	798:24	148	5:24	5:40	21983:33	1616	13:36	-6.7	-5.07
Oct-03	673:41	132	5:06	5:43	21202:27	1641	12:55	-7.11	-5.32
Nov-03	881:35	115	7:40	8:39	14057:35	1025	13:43	-4.7	-3.86



Repair Repeat Report Rate (Percent) (MR-7E) (Parity)-- Interval Zone Two

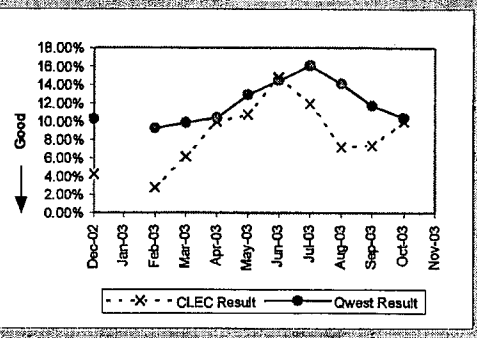
Date	CLEC Num	CLEC Denc	CLEC Resu	Std Dev	Qwest Num	Qwest Denc	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	2	49	4.08%	19.79%	97	968	10.02%	-1.35	-1.82
Jan-03	3	63	4.76%	21.30%	108	1016	10.63%	-1.47	-1.89
Feb-03	3	44	6.82%	25.21%	95	1032	9.21%	-0.54	-1.33
Mar-03	5	75	6.67%	24.94%	121	1189	10.18%	-0.96	-1.59
Apr-03	11	115	9.57%	29.41%	155	1466	10.57%	-0.34	-1.21
May-03	11	122	9.02%	28.64%	281	2054	12.71%	-1.19	-1.72
Jun-03	17	124	13.71%	34.39%	329	2308	14.25%	-0.17	-1.1
Jul-03	25	194	12.89%	33.51%	346	2204	15.70%	-1.03	-1.63
Aug-03	12	151	7.95%	27.05%	254	1821	13.95%	-2.05	-2.24
Sep-03	12	148	8.11%	27.30%	188	1644	11.44%	-1.22	-1.74
Oct-03	13	132	9.85%	29.80%	178	1660	10.72%	-0.31	-1.19
Nov-03	8	115	6.96%	25.44%	103	1032	9.98%	-1.03	-1.62



Checklist #4 - Unbundled Loop - Analog Repair

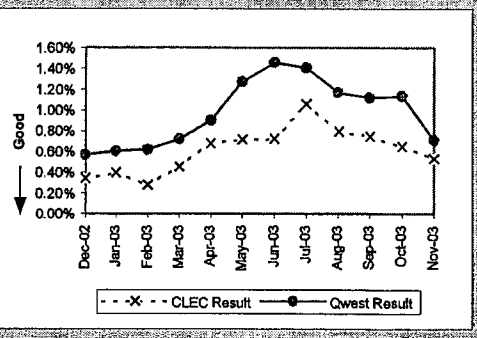
Repair Repeat Report Rate (Percent) (MR-7E*) (Parity)– Interval Zone Two

Date	CLEC Num	CLEC Denc	CLEC Resu	Std Dev	Qwest Num	Qwest Denc	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	2	47	4.26%	20.18%	83	804	10.32%	-1.33	-1.81
Jan-03									
Feb-03	1	36	2.78%	16.43%	80	884	9.26%	-1.31	-1.8
Mar-03	4	65	6.15%	24.03%	103	1046	9.85%	-0.97	-1.59
Apr-03	10	100	10.00%	30.00%	138	1326	10.41%	-0.13	-1.08
May-03	11	102	10.78%	31.02%	240	1857	12.92%	-0.63	-1.38
Jun-03	15	101	14.85%	35.56%	304	2100	14.48%	0.13	-0.92
Jul-03	18	151	11.92%	32.40%	314	1952	16.09%	-1.34	-1.82
Aug-03	9	125	7.20%	25.85%	222	1571	14.13%	-2.14	-2.3
Sep-03	9	122	7.38%	26.14%	170	1450	11.72%	-1.43	-1.87
Oct-03	11	110	10.00%	30.00%	150	1441	10.41%	-0.14	-1.08
Nov-03									



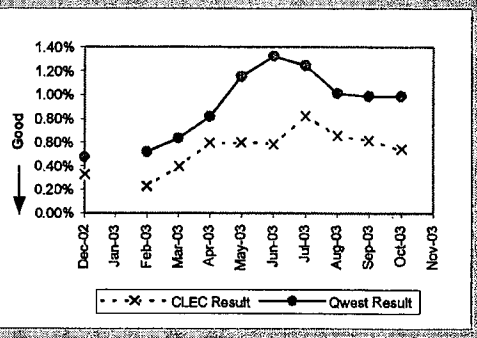
Trouble Rate (Percent) (MR-6) (Parity)– Interval Zone One and Two

Date	CLEC Num	CLEC Denc	CLEC Resu	Std Dev	Qwest Num	Qwest Denc	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	49	14292	0.34%	5.85%	968	169692	0.57%	-3.47	-3.11
Jan-03	83	15825	0.40%	6.30%	1016	168454	0.60%	-3.18	-2.94
Feb-03	44	15825	0.28%	5.27%	1032	168877	0.62%	-5.22	-4.17
Mar-03	75	16489	0.45%	6.73%	1189	165293	0.72%	-3.83	-3.33
Apr-03	115	16782	0.69%	8.25%	1466	163102	0.90%	-2.79	-2.7
May-03	122	16980	0.72%	8.45%	2054	161144	1.27%	-6.14	-4.74
Jun-03	124	17134	0.72%	8.48%	2308	158705	1.45%	-7.59	-5.61
Jul-03	194	18394	1.05%	10.22%	2204	156974	1.40%	-3.81	-3.32
Aug-03	151	18978	0.80%	8.68%	1821	155631	1.17%	-4.53	-3.75
Sep-03	148	19832	0.75%	8.61%	1644	147208	1.12%	-4.68	-3.83
Oct-03	132	20321	0.65%	8.03%	1660	146143	1.14%	-6.13	-4.73
Nov-03	115	21510	0.53%	7.29%	1032	145414	0.71%	-2.85	-2.74



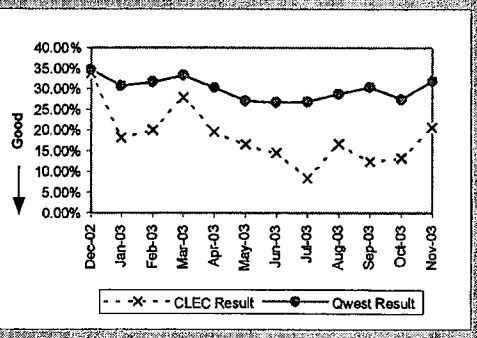
Trouble Rate (Percent) (MR-8*) (Parity)– Interval Zone One and Two

Date	CLEC Num	CLEC Denc	CLEC Resu	Std Dev	Qwest Num	Qwest Denc	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	47	14292	0.33%	5.73%	804	169692	0.47%	-2.42	-2.47
Jan-03									
Feb-03	36	15825	0.23%	4.76%	884	166877	0.52%	-4.86	-3.96
Mar-03	65	16489	0.39%	6.27%	1046	165293	0.63%	-3.68	-3.24
Apr-03	100	16782	0.60%	7.70%	1326	163102	0.81%	-2.98	-2.81
May-03	102	16980	0.60%	7.73%	1857	161144	1.15%	-6.41	-4.89
Jun-03	101	17134	0.59%	7.66%	2100	158705	1.32%	-7.99	-5.85
Jul-03	151	18394	0.82%	9.02%	1952	156974	1.24%	-4.89	-3.97
Aug-03	125	18978	0.66%	8.09%	1571	155631	1.01%	-4.66	-3.77
Sep-03	122	19832	0.62%	7.82%	1450	147208	0.99%	-4.95	-4.01
Oct-03	110	20321	0.54%	7.34%	1441	146143	0.99%	-6.01	-4.85
Nov-03									



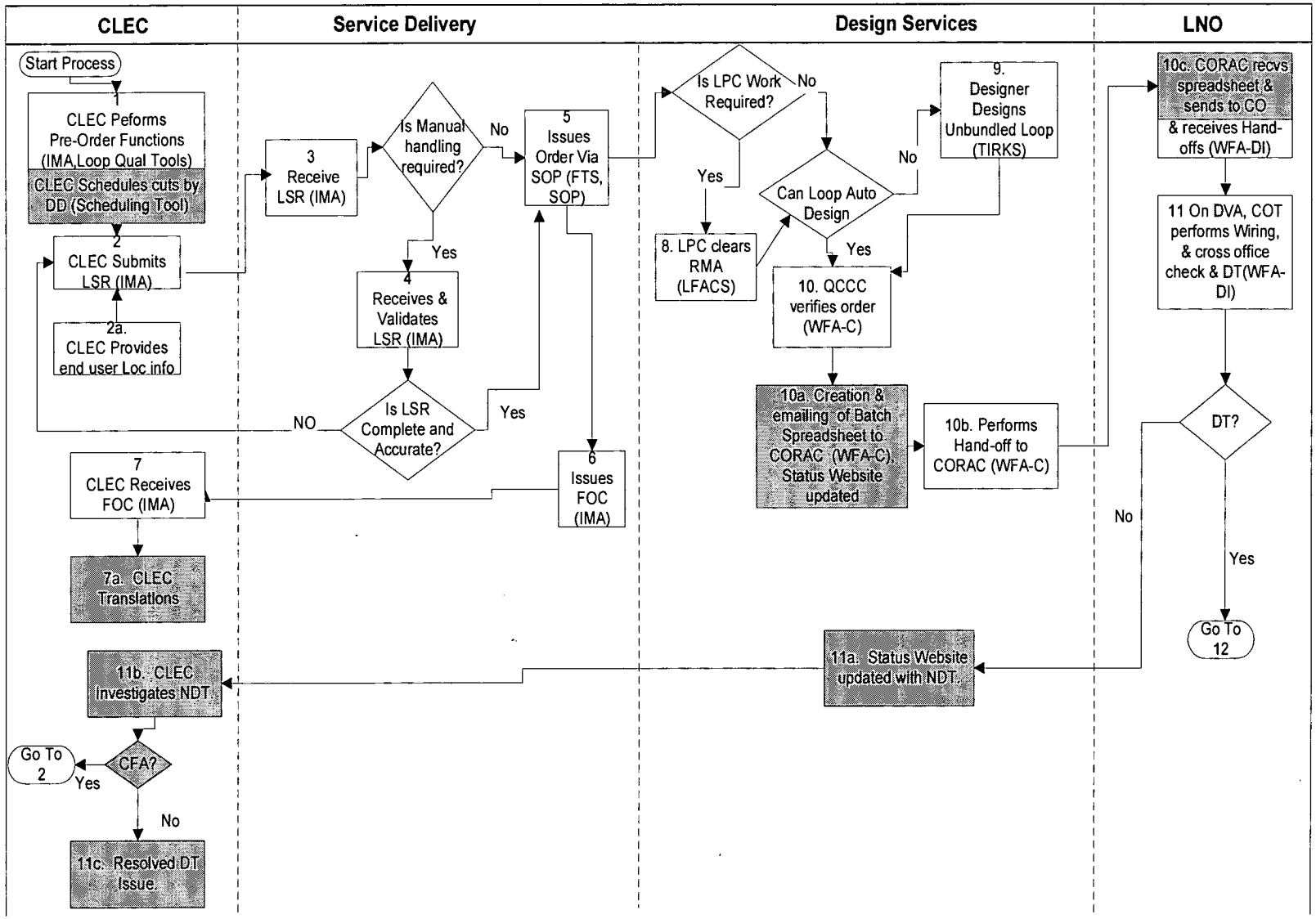
Customer and Non-Qwest Related Trouble Reports (Percent) (MR-10) (Diagnostic)– Interval Zone One and Two

Date	CLEC Num	CLEC Denc	CLEC Resu	Std Dev	Qwest Num	Qwest Denc	Qwest Resu	Mod Z Scr	Parity Score
Dec-02	25	74	33.78%	47.30%	512	1480	34.59%	-0.14	-1.09
Jan-03	14	77	18.18%	38.57%	451	1487	30.74%	-2.33	-2.42
Feb-03	11	55	20.00%	40.00%	477	1508	31.81%	-1.82	-2.11
Mar-03	29	104	27.88%	44.84%	593	1782	33.28%	-1.13	-1.69
Apr-03	28	143	19.58%	39.68%	636	2102	30.26%	-2.69	-2.83
May-03	24	146	16.44%	37.06%	783	2817	27.09%	-2.82	-2.72
Jun-03	21	145	14.48%	35.19%	838	3146	26.64%	-3.24	-2.97
Jul-03	18	212	8.49%	27.87%	809	3013	26.85%	-5.83	-4.54
Aug-03	30	181	16.57%	37.19%	733	2554	28.70%	-3.46	-3.12
Sep-03	21	169	12.43%	32.99%	718	2362	30.40%	-4.91	-3.98
Oct-03	20	152	13.16%	33.80%	627	2287	27.42%	-3.82	-3.32
Nov-03	30	145	20.69%	40.51%	483	1515	31.68%	-2.76	-2.68



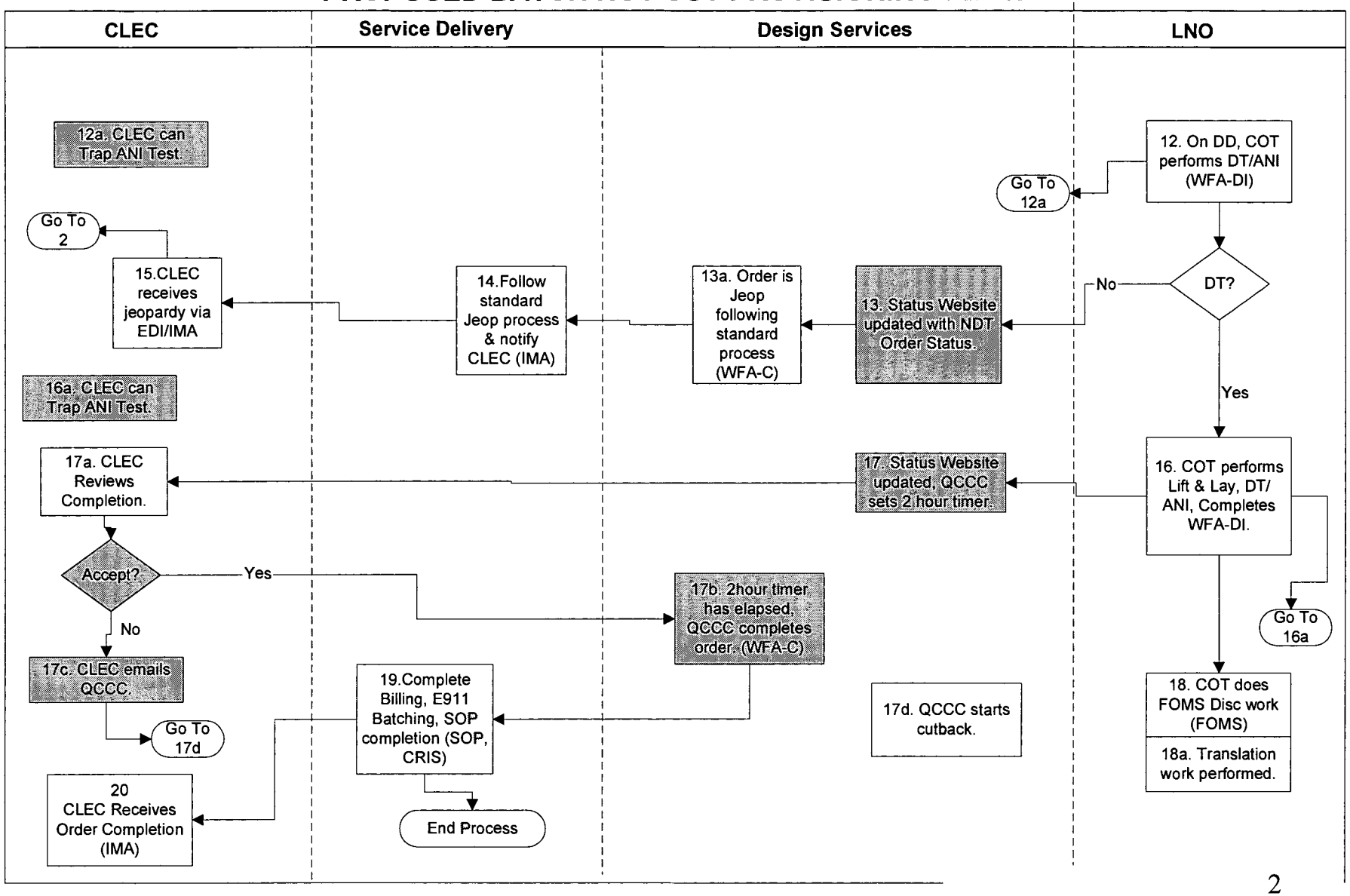
Proposed

PROPOSED BATCH HOT CUT PROVISIONING FLOW



Proposed

PROPOSED BATCH HOT CUT PROVISIONING FLOW



Proposed Batch Hot Cut Process Task List

Note: Transition Planning is expected to take place between Qwest and the CLECs prior to implementation of the Batch Hot Cut Process. Following a Commission ruling of non-impairment in those markets where Qwest brings a case and succeeds, Qwest along with the CLECs will establish a schedule to transition the embedded base in accordance with the TRO requirements and agreements from the State Commissions. The transition schedule will establish a central office time line to convert the embedded base within 21 month transition schedule put forth by the FCC in the TRO.

Proposed Batch Hot Cut Process Task List

1. Batch Hot Cut requires automation efficiencies through IMA. CLEC performs pre-order loop functions, such as check for IDLC, Line Splitting, address validation. CLEC uses the electronic scheduling tool to designate the DD of the cut. Scheduling tool is accessed via IMA.
2. CLEC submits LSR to Qwest for an analog Unbundled Loop. The only acceptable activity codes for BHC are "V"(conversion as specified with relationship to listing activities) and "Z" (conversion as specified, no directory listing changes). In the "CHC" field on the LSR a "B" identifies a request for BHC. Additionally, the appointment confirmation number (from the scheduling tool) must be included on the LSR.

2a. CLEC provides accurate end user service address information to Qwest via LSR.

3. Qwest electronically receives LSR from CLEC.
4. If LSR does not flow through, Qwest manually validates LSR for completeness and accuracy.
5. If LSR is flow through the Qwest service orders are electronically created by the Qwest SOP. A separate service order will be created for each line on the LSR. If a disconnect order is required, then all lines will be combined on one disconnect order. If LSR does not flow through, the SDC issues the service order into the SOP upon completion of Step 4. If the LSR is not accurate and complete the SDC issues a reject or jeopardy notice to the CLEC via IMA.
6. Qwest issues the FOC via IMA to the CLEC.
7. CLEC receives FOC.

7a. CLEC does translations on day 1 (see Exhibit 10 for Batch Hot Cut Timeline).

8. If necessary, the LPC must clear the RMA and manually assist with the facility assignments.
9. Circuit design is created based on the service request. A Word Document is generated and is electronically sent to the QCCC, central office (CO) and LNO. This document contains information necessary to wire the circuit.

Proposed Batch Hot Cut Process Task List

10. QCCC verifies the order for completeness and accuracy.
10a. QCCC will create and email the Batch Hot Cut spreadsheet to the CORAC. The Status Website is updated with the orders.
10b. QCCC performs hand-offs to the CORAC for due date activities.
10c. CORAC receives work DD hand-offs and the spreadsheet via email. CORAC electronically sends spreadsheet to the Central Office. CORAC loads appropriate LNO personnel.
11. On DVA, COT performs pre-wiring and cross office continuity and DT test.
11a. The Status Website is updated with the NDT status.
11b. CLEC investigates the NDT status. If the NDT is due to a CFA issue, CLEC supplements the LSR with new CFA information (Go to Step 2).
11c. CLEC resolves NDT by performing translations activity or applicable activity. CLEC does need to notify Qwest of resolution action taken.
12. On DD, the COT performs DT/ANI at the CFA. If DT, Go to Step 16. If NDT, the COT will notify the QCCC.
12a. CLEC has the option to trap the ANI test to get immediate notification that the 'lift and lay' is beginning.
13. Status Website is updated with the NDT notification to the CLEC to advise of NDT.
13a. The Order is put in a jeopardy status and follows the standard jeopardy process and is removed from the Batch.

Proposed Batch Hot Cut Process Task List

14. Service Delivery follows standard jeopardy process and issues a jeopardy notice back to CLEC.
15. CLEC receives and reviews jeopardy notice, go to Step 2 to reissue the LSR with new DD.
16. COT performs 'lift and lay', DT/ANI and completes WFA-DI.

16a. At the CLEC's option, CLEC can trap the ANI test to get immediate notification that the 'lift and lay' is complete and the CLEC can port the number.

17. QCCC receives notification from the COT that Batch has begun. Status Website is updated. Upon COT completion of the Batch, Status Website is updated with a 2 hour time frame stated for the CLEC to accept the order.

17a. CLEC reviews the order for completeness.

17b. A non-response from the CLEC is an acceptance of the order. After the 2 hour time frame has elasped, QCCC completes the order in WFA-C.

17c. CLEC detects an issue on the order and emails the QCCC with the information.

17d. At CLEC's request, QCCC starts the cutback process.

18. COT does FOMS disconnect work.

18a. LNP and switched translation work is performed.

19. The service order is completed in the SOP and distributed to other downstream systems such as billing, E911.
20. CLEC receives the order completion status via IMA, and Loss/Completions report data via the avenue provided in the information from the CLEC questionnaire.

Batch Hot Cut Timeline (7 Business Day Due Date) Exhibit 10

	Day 0 Monday	**Day 1** Tuesday	**Day 2 - 3** Wednesday	**Day 4** Thursday	**Day 5 -6** Friday / Monday	**Day 7** Tuesday
CLEC	CLEC LSR - by 7PM	CLEC Switch Translations by midnight		CLEC fixes DT		Trap & Trace, Porting Done
				Issues CFA supp by 7PM MST		
Qwest	Service Order Issued Assignments Done IMA FOC issued	Design Issued	CO Pre-wiring DT & ANI done DT Troubles reported in Status Tool to CLEC	CFA changes received, processed & FOC issued if supp sent by 7PM		CO Lift & Lay, DT & ANI Order status reported in Status Tool Orders with NDT removed from Batch and CNR jeop issued IMA reports produced

EXHIBIT C
SERVICE INTERVAL TABLES

1.0 Unbundled Loops, Line Sharing and Line Splitting Service Interval Table:

(a) Established Service Intervals 2/4 Wire Analog (Voice Grade):

a)	1-8 lines	Five (5) business days
b)	9-16 lines	Six (6) business days
c)	17-24 lines	Seven (7) business days
d)	25 or more	ICB

(b) Established Service Intervals for 2/4 Wire Non-Loaded Loops, and ADSL Compatible Loops that do not require conditioning:

a)	1-8 lines	Five (5) business days
b)	9-16 lines	Six (6) business days
c)	17-24 lines	Seven (7) business days
d)	25 or more	ICB

(c) Established Service Intervals for xDSL-I/ BRI ISDN Capable Loops that do not require conditioning:

a)	1-8 lines	Five (5) business days
b)	9-16 lines	Six (6) business days
c)	17-24 lines	Seven (7) business days
d)	25 or more	ICB

(d) Established Service Intervals for existing DS-1 Capable Loops, DS1 Capable Feeder Loop:

a)	1 – 24 lines	Nine (9) business days
b)	25 or More	ICB

(e) Established Service Intervals for existing DS3 Capable Loops:

a)	1-3 lines	Seven (7) business days
b)	4 or more	ICB

(f) Established Service Intervals for Line Sharing and Line Splitting that do not require conditioning:

a)	1-24 lines	Three (3) business days
d)	25 or More	Three (3) business days

(g) Conditioned Loops for 2/4 Wire Non-Loaded Loops, ADSL Compatible, Basic Rate ISDN Capable, xDSL-I Capable Loops, Line Sharing and Line Splitting:

a)	1-8 lines	Fifteen (15) business days
b)	9 or more	ICB

(h) Established Repair Intervals for Basic 2-wire Analog Loops, Line Sharing, Line Splitting, and Shared Distribution Loop:

Twenty-four (24) hours OSS
Forty-eight (48) hours AS

(i) Established Repair Intervals for 4-wire Analog Loops, 2/4 Wire Non-Loaded Loops, Basic Rate ISDN Capable Loops, and ADSL Compatible Loops, xDSL-I Capable Loops, DS1 Capable Loops, DS3 Capable Loops, and Ocn Capable Loops:

Four (4) hours

(j) Quick Loop

a)	1 to 24 Lines	Three (3) business days
b)	25 or more Lines	ICB

Quick Loop with Number Portability

a)	1 to 8 Lines	Three (3) business days
b)	9 to 24 Lines	Four (4) business days
c)	25 or more Lines	ICB

(k) OCn Loop

1 or more Lines	ICB

(l) Shared Distribution Loop

1 or more Lines	Five (5) business days

(M) Established Service Intervals for 2/4 wire Distribution and Non-loaded Distribution Loop

1 or more Lines	Two (2) business days or Appointment Scheduler

2.0 Unbundled Dedicated Interoffice Transport (UDIT) Service Interval Table:

Product	Services Ordered	Installation Commitments	Repair Commitments
UDIT, EUDIT, UCCRE			
DS0	1 to 8	Zone 1: Five (5) business days Zone 2: Six (6) business days	Four (4) hrs. Zone 1 Four (4) hrs. Zone 2
	9 to 16	Zone 1: Six (6) business days Zone 2: Seven (7) business days	Four (4) hrs. Zone 1 Four (4) hrs. Zone 2
	17 to 24	Zone 1: Seven (7) business days Zone 2: Eight (8) business days	Four (4) hrs. Zone 1 Four (4) hrs. Zone 2
	25 or more	ICB	ICB
DS1	1 to 8	Zone 1: Five (5) business days Zone 2: Eight (8) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	9 to 16	Zone 1: Six (6) business days Zone 2: Nine (9) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	17 to 24	Zone 1: Seven (7) business days Zone 2: Ten (10) business days	Four (4) hrs Zone1 Four (4) hrs Zone 2
	25 or more	ICB	Four (4) hrs
DS3	1 to 3 Circuits	Zone 1: Seven (7) business days Zone 2: Nine (9) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	4 or more Circuits	ICB	Four (4) hrs
OC3 and Higher	1 or more Circuits	ICB	Four (4) hrs

3.0 Unbundled Local Switching Service Interval Table:

Product	Services Ordered	Installation Commitments	Repair Commitments
Unbundled Switching			
Unbundled Switching – Line Side Analog With Line Class Code (LCC) already supported in requested switch.	1 to 8	Zone 1: Five (5) business days Zone 2: Six (6) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	9 to 16	Zone 1: Six (6) business days Zone 2: Seven (7) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	17 to 24	Zone 1: Seven (7) business days Zone 2: Eight (8) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	25 or more	ICB	Twenty-four (24) hrs.
Unbundled Switching – Line Side Analog – Existing – Vertical Feature(s) (Features change without inward line activity and not impacting the design of the circuit.)	1 to 19	Two (2) business days	Twenty-four (24) hrs. OOS Forty-eight (48) hrs. AS
	20 to 39	Four (4) business days	Twenty-four (24) hrs. OOS Forty-eight (48) hrs. AS
	40 or more	ICB	Twenty-four (24) hrs. OOS Forty-eight (48) hrs. AS
Unbundled Switching – New Line Class Code (LCC) ordered through customized routing		ICB	Twenty-four (24) hrs.
Unbundled Switching – BRI-ISDN Line-side Port. With a Q WEST standard configuration and Line Class Code (LCC) already supported in the requested switch	1 to 4 Lines	Zone 1: Seven (7) business days Zone 2: ICB	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	5 or more	ICB	Twenty-four (24) hrs.

Unbundled Switching – BRI-ISDN Line-side Port. With non-standard configuration and Line Class Code (LCC) already supported in the requested switch	1 to 4 Lines	Zone 1: Seventeen (17) business days (includes 10 days for complex translations.) Zone 2: ICB	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	5 or more	ICB	Twenty-four (24) hrs.
Unbundled Switching – DS1 Trunk Port	1 to 8 Ports	Zone 1: Five (5) business days Zone 2: Six (6) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	9 to 16 Ports	Zone 1: Six (6) business days Zone 2: Seven (7) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	17 to 24 Ports	Zone 1: Seven (7) business days Zone 2: Eight (8) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	25 or more Ports	ICB	Twenty-four (24) hrs.
Unbundled Switching – Message Trunk Groups • Translation questionnaire required • Routing to trunks is ordered separately as Customized Routing • DS1 trunk port & UDIT in place.	Zone 1: 1 to 24	Seven (7) business days	Twenty-four (24) hrs.
	25 to 48	Eight (8) business days	Twenty-four (24) hrs.
	49 to 72	Ten (10) business days	Twenty-four (24) hrs.
	73 to 96	Twelve (12) business days	Twenty-four (24) hrs.
	97 to 120	Fourteen (14) business days	Twenty-four (24) hrs.
	121 to 144	Fifteen (15) business days	Twenty-four (24) hrs.
	145 to 168	Sixteen (16) business days	Twenty-four (24) hrs.
	169 to 240	Eighteen (18) business days	Twenty-four (24) hrs.
	241 or more	ICB	Twenty-four (24) hrs.
	Zone 2: 1 to 24	Eighteen (18) business days	Twenty-four (24) hrs.

	25 to 72	Nineteen (19) business days	Twenty-four (24) hrs.
	73 to 120	Twenty (20) business days	Twenty-four (24) hrs.
	121 or more	ICB	Twenty-four (24) hrs.
Unbundled Switching – Two Way and DID Equivalent Group (add/change/increase) DS1 trunk port in place	1 to 8 Trunks	Zone 1: Five (5) business days Zone 2: Six (6) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	9 to 16 Trunks	Zone 1: Six (6) business days Zone 2: Seven (7) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs Zone 2
	17 to 24 Trunks	Zone 1: Seven (7) business days Zone 2: Eight (8) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	25 or more Trunks	ICB	Twenty-four (24) hrs.
Unbundled Switching – PRI-ISDN Capable Trunk-Side DS1 Trunk port in place	1 to 8	Zone 1: Five (5) business days Zone 2: Six (6) business days	4 hrs. Zone 1 4 hrs. Zone 2
	9 to 16	Zone 1: Six (6) business days Zone 2: Seven (7) business days	4 hrs. Zone 1 4 hrs. Zone 2
	17 to 24	Zone 1: Seven (7) business days Zone 2: Eight (8) business days	Four (4) hrs. Zone 1 Four (4) hrs. Zone 2
	25 or more	ICB	Four (4) hrs.

Unbundled Packet Switching	• Design changes – 8 Business days • Non-design changes – 5 Business days • Service changes – 5 Business days	New service request – 10 Business days	Twenty-four (24) hrs

4.0 Unbundled Dark Fiber Interval Table:

Installation Guidelines apply where facilities/network capacity is in place, on Qwest-owned, in region facilities. Where non-Qwest locations are involved, intervals are handled on an Individual Case Basis – (ICB).

Product	Activity/ Features	Services Ordered	FOC Guidelines	Installation Guidelines	Repair Guidelines
Dark Fiber					
Initial Records Inquiry (IRI) (simple & complex)			N/A	Ten (10) business days	N/A
Field Verification And Quote Preparation (FVQP)			N/A	Twenty (20) business days	N/A
Provisioning (non-FVQP requests)			N/A	Twenty (20) business days	

5.0 Unbundled Network Elements Platform (UNE-P) Service Interval Table:

For UNE-P POTS, Saturday due dates are available under the following circumstances:

The Saturday Desired Due Date (DDD) must be at least the standard interval.

For dispatched orders, a Saturday appointment must be available and reserved in Appointment Scheduler.

For UNE-P POTS non-dispatched orders, Saturday is counted as part of the standard installation interval, even if a Saturday due date is not desired. For example: when the standard interval is 2 (two) business days, an LSR submitted on a Friday morning may have a due date as early as the following Monday.

Product	Services Ordered	Installation Commitments	Repair Commitments
UNE-P POTS New Installs, Address Changes, or Change Requests adding new lines. **Facility Check indicates "AVAILABLE (SDT)" and DISPATCH "NO"**		Three (3) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
Addition, removal, or change of CO Features, PIC/LPIC change, number changes without inward line activity, or hunting changes without inward line activity		Three (3) Business Days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P POTS Suspend/Restore	Customers with service placed on "vacation"	Next Business Day (includes Saturday)	Twenty-four (24) hrs OOS 48 hrs AS
Deny/Restore	Treatment for Non-payment issues	Same Business Day if request received before noon MT, otherwise next business day (includes Saturday)	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P POTS New Installs, Address Changes, Changes with inward line activity **Facility Check indicates "AVAILABLE DISP. REQ" and DISPATCH "YES"**		Next available due date as indicated by Appointment Scheduler **Note:** Appointment Scheduler minimum default interval is 3 (Three) Business Days.	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P POTS Directory Listings **Changes –** • **Simple (Non-complex) Listings** - Simple Straight Line and/or		Same business day	

Product	Services Ordered	Installation Commitments	Repair Commitments
Straight-Line Under (SLU) Listings ▪			
Conversion as Specified Retail, Resale, or UNE-P POTS to UNE-P POTS		Depends on changes requested. For instance, addition of another line would follow New Installs guidelines.	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
Conversions to UNE-P POTS- UNE-P POTS to UNE-P POTS - Conversion as Is	1 to 39 Lines	Same Business Day if received before noon MT, or Next Business Day if received later than noon MT.	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Line Splitting – UNE-P POTS to UNE-P POTS with Line Splitting - Conversion As Specified		3 business days	24 hrs OOS Forty-eight (48) hrs AS
UNE-P Line Splitting – POTS Residence or POTS Business with Line Sharing to UNE-P POTS with Line Splitting - Conversion as Specified		3 BUSINESS DAYS	
UNE-P PBX **New Install,** **Conversion As Specified,** **Changes** (ex. PIC/LPIC or feature changes, etc.), and **Suspend/Restore**	1 to 8 Trunks	Zone 1: Five (5) Business Days Zone 2: Six (6) business days	Four (4) hrs
	9 to 16 Trunks	Zone 1; Six (6) business days Zone 2: Seven (7) business days	Four (4) hrs
	17 to 24 Trunks	Zone 1: Seven (7) business days ZONE 2: EIGHT (8) BUSINESS DAYS	Four (4) hrs
	25 or more Trunks	ICB	Four (4) hrs
		business days	
		business days	
		business days	
UNE-P DSS T1 Facility Installation	1 to 3 Facilities	Nine (9) business days	Four (4) hrs
	4 to 6 Facilities	Twelve (12) business days	Four (4) hrs
	7 to 9 Facilities	Thirteen (13) business days	Four (4) hrs
	10 to 12 Facilities	Seventeen (17) business days	Four (4) hrs

Product	Services Ordered	Installation Commitments	Repair Commitments
UNE-P DSS Trunk Installation when ordered with new T1 Facility (Note: The number of facilities ordered drives the due dates for both facilities and trunks.	1 to 3 Facilities	Twelve (12) business days	Four (4) hrs
	4 to 6 Facilities	Sixteen (16) business days	Four (4) hrs
	7 to 9 Facilities	Twenty (20) business days	Four (4) hrs
	10 to 12 Facilities	Twenty four (24) business days	Four (4) hrs
Conversions to UNE-P DSS- As Is		Five (5) business Days	Four (4) hrs
Conversion As Specified		See intervals for type of change requested	Four (4) hrs
UNE-P DSS- Add/Change Trunks on existing facilities	1 to 8 Trunks	Five (5) business Days	Four (4) hrs
	9 to 16 Trunks	Six (6) business days	Four (4) hrs
	17 to 24 Trunks	Seven (7) business days	Four (4) hrs
	Each Additional 8 Trunks	One (1) business Day for each	Four (4) hrs
UNE-P ISDN BRI New Installs, Address Changes, Change to add Loop (N2Q)	1 to 10 Loops	Thirteen (13) business days	Twenty-four (24) hrs
	11 or more Loops	ICB	Twenty-four (24) hrs
UNE-P ISDN BRI Add or Change Feature(s), Add Primary Directory Number (PDN) to established Loop (N2Q), Add Call Appearance	1 to 10 Loops	Three (3) business days	Twenty-four (24) hrs
	11 or more Loops	ICB	Twenty-four (24) hrs
Conversion to UNE-P ISDN BRI- Conversion As Is	1 to 10 Loops	Three (3) business days	Twenty-four (24) hrs
	11 or more Loops	ICB	Twenty-four (24) hrs
Conversion to UNE-P ISDN BRI- Conversion As Specified	1 to 10 Loops	Three (3) business days if a Loop is not involved (or) Thirteen (13) business days if a Loop is added or changed	Twenty-four (24) hrs
	11 or more Loops	ICB	Twenty-four (24) hrs
UNE-P ISDN PRI 'New'-	1 to 3	Nine (9) business days	Four (4) hrs

Product	Services Ordered	Installation Commitments	Repair Commitments
New Facility and Associated Trunks (With this activity, the number of facilities ordered drives the due dates for both facilities and trunks. See table below.)	4 to 6 7 to 9 10 to 12 Over 12	Twelve (12) business days Thirteen (13) business Seventeen (17) business Add 4 business days for each additional 3 facilities (13-16=21 days, 17-20=25 days, etc.)	Four (4) hrs
UNE-P ISDN PRI 'New'- Trunks	1 to 3 Trunks	Twelve (12) business days	Four (4) hrs
	4 to 6 Trunks	Sixteen (16) business days	Four (4) hrs
	7 to 9 Trunks	Twenty (20) business days	Four (4) hrs
	10 to 12 Trunks	Twenty-four (24) business days	Four (4) hrs
	13 or more Trunks	Facility due date plus 5 days	Four (4) hrs

Product	Services Ordered	Installation Commitments	Repair Commitments
Conversion to UNE-P ISDN PRI- As Specified		See intervals for type of change requested	Four (4) hrs
As Is		Five (5) business days	Four (4) hrs
UNE-P ISDN PRI- Add/Change Trunks on Existing Facility	1 to 8	Five (5) business days business days	Four (4) hrs
	9 to 16	Six (6) business days	Four (4) hrs
	17 to 24	Seven (7) business days	Four (4) hrs
	Over 25	ICB	Four (4) hrs
UNE-P Centrex 21 - Non Designed- Conversions as Specified		Five (5) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex 21 - Non Designed- New Installations, **Address Changes, and Change Requests adding new lines**	[Facility check indicates "Available Dispatch Required" and Dispatch "Yes".]	Next available due date as indicated by Appointment Scheduler **Note:** Appointment Scheduler minimum default interval is 3 (Three) business days.	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **Common Block Configuration Required** - Establish Common Block	1 to 21 Lines - No Optional Features	Twenty (20) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
	1 to 21 Lines - w/ Optional Features (i.e., ARS, DFIs, SMDR, UCD, etc.)	ICB	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
	22 or more Lines with or without Optional Features	ICB	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only]	1 to 10 Lines	Twenty (20) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS

Product	Services Ordered	Installation Commitments	Repair Commitments
Common Block Configuration Required - Feature Additions requiring Common Block activity per Common Block	11 or more Lines	ICB	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **Common Block Configuration Required** - Line Class Codes (LCCs)/ CAT/NCOS/DPAT additions/changes requiring Common Block work.	Per Common Block (must be existing Line Class Codes(LCCs)/ CAT/NCOS/DPAT)	Five (5) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
	If new LCC/CAT/NCOS or DPAT	Twenty (20) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **Common Block Configuration Required** - Centrex Management System (CMS)	New Common Blocks & Cust ID's (lines installed at the same time the Common Block is installed)	Twenty (20) business days (after the initial Common Block & associated lines are installed)	N/A
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **C ommonBlock Configuration Required** - Designed Services subsequent to initial Common Block installation	Tie Lines/DFI/FX	Thirteen (13) business days (may be longer due to facility due date requirements)	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only]	Additional/New Station Lines to be added to CMS	Five (5) business days after line is installed	N/A
No Common Block Configuration Required - Centrex Management System (CMS) Network Access Registers (NARs)	Additions	Five (5) business days	N/A
	Change from Non Blocked to Blocked Service	ICB	N/A

Product	Services Ordered	Installation Commitments	Repair Commitments
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **No Common Block Configuration Required** - Station Lines (subsequent to the establishment of the Common Block) Includes: Conversions New Lines Moves **NOTE**: On conversions, numbers are "chipped" into the Common Block at the time of installation.	1 to 10 Lines per location	Five (5) business days or Next available due date thereafter as indicated by Appointment Scheduler.	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
	11 to 20 Lines per location	Ten (10) business days or Next available due date thereafter as indicated by Appointment Scheduler.	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
	21 or more Lines per location	ICB	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **No Common Block Configuration Required** Line Feature changes/additions/ Removals	1 to 19 Lines	Three (3) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
	20 or more Lines	ICB	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **No Common Block Configuration Required** Designed Services subsequent to initial Common Block installation	Tie Lines/DFI/FX	Thirteen (13) business days (may be longer due to facility due date requirements)	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **No Common Block Configuration Required** Automatic Route Selection (ARS)	Subsequent to Common Block Installation	Twenty (20) business days (may be longer if the activation of ARS is tied to a Private Line facility installation)	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
	Changes to Patterns: 1 to 25 changes 26 to 50 changes 51 or more changes	business days: Five (5) days Ten (10) days Twenty (20) days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS

Product	Services Ordered	Installation Commitments	Repair Commitments
	Adding new Patterns	Twenty (20) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **No Common Block Configuration Required** Uniform Call Distribution (UCD)	Per Request	Thirteen (13) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **No Common Block Configuration Required** Additional Numbers subsequent to initial Common Block installation **NOTE:** Additional numbers are "chipped" into the Common Block at the time of request.	Blocks (No limit on amount of numbers.)	Five (5) business days	N/A

6.0 Enhanced Extended Loop Service Interval Table (EEL):

Product	Services Ordered	Installation Commitments	Repair Commitments
Enhanced Extended Loop (EEL)- DS0 or Voice Grade Equivalent	1 to 8	Zone 1: Five (5) business days Zone 2: Six (6) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	9 to 16	Zone 1: Six (6) business days Zone 2: Seven (7) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	17 to 24	Zone 1: Seven (7) business days Zone 2: Eight (8) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	25 or more	ICB	Four (4) hrs
Enhanced Extended Loop (EEL) – DS1	1 to 8	Zone 1: Five (5) business days Zone 2: Eight (8) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	9 to 16	Zone 1: Six (6) business days Zone 2: Nine (9) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	17 to 24	Zone 1: Seven (7) business days Zone 2: Ten (10) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	25 or more	ICB	Four (4) hrs
Enhanced Extended Loop (EEL) – DS3	1 to 3 Circuits	Zone 1: Seven (7) business days Zone 2: Nine (9) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	4 or more Circuits	ICB	Four (4) hrs
Enhanced Extended Loop Conversions (EEL-C) – Private Line (PLTS) - Conversion as is		ICB	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS

* Installation Guidelines apply where facilities/network capacity is in place. Where facilities/network capacity are not in place, intervals are handled on an Individual Case Basis (ICB).

EXHIBIT C
SERVICE INTERVAL TABLES

1.0 Unbundled Loops, Line Sharing and Line Splitting Service Interval Table:

(a) Established Service Intervals 2/4 Wire Analog (Voice Grade):

a)	1-8 lines	Five (5) business days
b)	9-16 lines	Six (6) business days
c)	17-24 lines	Seven (7) business days
d)	25 or more	ICB

(b) Established Service Intervals for 2/4 Wire Non-Loaded Loops, and ADSL Compatible Loops that do not require conditioning:

a)	1-8 lines	Five (5) business days
b)	9-16 lines	Six (6) business days
c)	17-24 lines	Seven (7) business days
d)	25 or more	ICB

(c) Established Service Intervals for xDSL-I/ BRI ISDN Capable Loops that do not require conditioning:

a)	1-8 lines	Five (5) business days
b)	9-16 lines	Six (6) business days
c)	17-24 lines	Seven (7) business days
d)	25 or more	ICB

(d) Established Service Intervals for existing DS-1 Capable Loops, DS1 Capable Feeder Loop:

a)	1 – 24 lines	Nine (9) business days
b)	25 or More	ICB

(e) Established Service Intervals for existing DS3 Capable Loops:

a)	1-3 lines	Seven (7) business days
b)	4 or more	ICB

(f) Established Service Intervals for Line Sharing and Line Splitting that do not require conditioning:

a)	1-24 lines	Three (3) business days
d)	25 or More	Three (3) business days

(g) Conditioned Loops for 2/4 Wire Non-Loaded Loops, ADSL Compatible, Basic Rate ISDN Capable, xDSL-I Capable Loops, Line Sharing and Line Splitting:

a)	1-8 lines	Fifteen (15) business days
b)	9 or more	ICB

(h) Established Repair Intervals for Basic 2-wire Analog Loops, Line Sharing, Line Splitting, and Shared Distribution Loop:

Twenty-four (24) hours OSS
Forty-eight (48) hours AS

(i) Established Repair Intervals for 4-wire Analog Loops, 2/4 Wire Non-Loaded Loops, Basic Rate ISDN Capable Loops, and ADSL Compatible Loops, xDSL-I Capable Loops, DS1 Capable Loops, DS3 Capable Loops, and Ocn Capable Loops:

Four (4) hours

(j) Quick Loop

a)	1 to 24 Lines	Three (3) business days
b)	25 or more Lines	ICB

Quick Loop with Number Portability

a)	1 to 8 Lines	Three (3) business days
b)	9 to 24 Lines	Four (4) business days
c)	25 or more Lines	ICB

(k) OCn Loop

1 or more Lines	ICB

(l) Shared Distribution Loop

1 or more Lines	Five (5) business days

(M) Established Service Intervals for 2/4 wire Distribution and Non-loaded Distribution Loop

1 or more Lines	Two (2) business days or Appointment Scheduler

2.0 Unbundled Dedicated Interoffice Transport (UDIT) Service Interval Table:

Product	Services Ordered	Installation Commitments	Repair Commitments
UDIT, EUDIT, UCCRE			
DS0	1 to 8	Zone 1: Five (5) business days Zone 2: Six (6) business days	Four (4) hrs. Zone 1 Four (4) hrs. Zone 2
	9 to 16	Zone 1: Six (6) business days Zone 2: Seven (7) business days	Four (4) hrs. Zone 1 Four (4) hrs. Zone 2
	17 to 24	Zone 1: Seven (7) business days Zone 2: Eight (8) business days	Four (4) hrs. Zone 1 Four (4) hrs. Zone 2
	25 or more	ICB	ICB
DS1	1 to 8	Zone 1: Five (5) business days Zone 2: Eight (8) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	9 to 16	Zone 1: Six (6) business days Zone 2: Nine (9) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	17 to 24	Zone 1: Seven (7) business days Zone 2: Ten (10) business days	Four (4) hrs Zone1 Four (4) hrs Zone 2
	25 or more	ICB	Four (4) hrs
DS3	1 to 3 Circuits	Zone 1: Seven (7) business days Zone 2: Nine (9) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	4 or more Circuits	ICB	Four (4) hrs
OC3 and Higher	1 or more Circuits	ICB	Four (4) hrs

3.0 Unbundled Local Switching Service Interval Table:

Product	Services Ordered	Installation Commitments	Repair Commitments
Unbundled Switching			
Unbundled Switching – Line Side Analog With Line Class Code (LCC) already supported in requested switch.	1 to 8	Zone 1: Five (5) business days Zone 2: Six (6) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	9 to 16	Zone 1: Six (6) business days Zone 2: Seven (7) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	17 to 24	Zone 1: Seven (7) business days Zone 2: Eight (8) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	25 or more	ICB	Twenty-four (24) hrs.
Unbundled Switching – Line Side Analog – Existing – Vertical Feature(s) (Features change without inward line activity and not impacting the design of the circuit.)	1 to 19	Two (2) business days	Twenty-four (24) hrs. OOS Forty-eight (48) hrs. AS
	20 to 39	Four (4) business days	Twenty-four (24) hrs. OOS Forty-eight (48) hrs. AS
	40 or more	ICB	Twenty-four (24) hrs. OOS Forty-eight (48) hrs. AS
Unbundled Switching – New Line Class Code (LCC) ordered through customized routing		ICB	Twenty-four (24) hrs.
Unbundled Switching – BRI-ISDN Line-side Port. With a Q WEST standard configuration and Line Class Code (LCC) already supported in the requested switch	1 to 4 Lines	Zone 1: Seven (7) business days Zone 2: ICB	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	5 or more	ICB	Twenty-four (24) hrs.

Unbundled Switching – BRI-ISDN Line-side Port. With non-standard configuration and Line Class Code (LCC) already supported in the requested switch	1 to 4 Lines	Zone 1: Seventeen (17) business days (includes 10 days for complex translations.) Zone 2: ICB	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	5 or more	ICB	Twenty-four (24) hrs.
Unbundled Switching – DS1 Trunk Port	1 to 8 Ports	Zone 1: Five (5) business days Zone 2: Six (6) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	9 to 16 Ports	Zone 1: Six (6) business days Zone 2: Seven (7) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	17 to 24 Ports	Zone 1: Seven (7) business days Zone 2: Eight (8) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	25 or more Ports	ICB	Twenty-four (24) hrs.
Unbundled Switching – Message Trunk Groups • Translation questionnaire required • Routing to trunks is ordered separately as Customized Routing • DS1 trunk port & UDIT in place.	Zone 1: 1 to 24	Seven (7) business days	Twenty-four (24) hrs.
	25 to 48	Eight (8) business days	Twenty-four (24) hrs.
	49 to 72	Ten (10) business days	Twenty-four (24) hrs.
	73 to 96	Twelve (12) business days	Twenty-four (24) hrs.
	97 to 120	Fourteen (14) business days	Twenty-four (24) hrs.
	121 to 144	Fifteen (15) business days	Twenty-four (24) hrs.
	145 to 168	Sixteen (16) business days	Twenty-four (24) hrs.
	169 to 240	Eighteen (18) business days	Twenty-four (24) hrs.
	241 or more	ICB	Twenty-four (24) hrs.
	Zone 2: 1 to 24	Eighteen (18) business days	Twenty-four (24) hrs.

	25 to 72	Nineteen (19) business days	Twenty-four (24) hrs.
	73 to 120	Twenty (20) business days	Twenty-four (24) hrs.
	121 or more	ICB	Twenty-four (24) hrs.
Unbundled Switching – Two Way and DID Equivalent Group (add/change/increase) DS1 trunk port in place	1 to 8 Trunks	Zone 1: Five (5) business days Zone 2: Six (6) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	9 to 16 Trunks	Zone 1: Six (6) business days Zone 2: Seven (7) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs Zone 2
	17 to 24 Trunks	Zone 1: Seven (7) business days Zone 2: Eight (8) business days	Twenty-four (24) hrs. Zone 1 Twenty-four (24) hrs. Zone 2
	25 or more Trunks	ICB	Twenty-four (24) hrs.
Unbundled Switching – PRI-ISDN Capable Trunk-Side DS1 Trunk port in place	1 to 8	Zone 1: Five (5) business days Zone 2: Six (6) business days	4 hrs. Zone 1 4 hrs. Zone 2
	9 to 16	Zone 1: Six (6) business days Zone 2: Seven (7) business days	4 hrs. Zone 1 4 hrs. Zone 2
	17 to 24	Zone 1: Seven (7) business days Zone 2: Eight (8) business days	Four (4) hrs. Zone 1 Four (4) hrs. Zone 2
	25 or more	ICB	Four (4) hrs.

Unbundled Packet Switching	• Design changes – 8 Business days • Non-design changes – 5 Business days • Service changes – 5 Business days	New service request – 10 Business days	Twenty-four (24) hrs

4.0 Unbundled Dark Fiber Interval Table:

Installation Guidelines apply where facilities/network capacity is in place, on Qwest-owned, in region facilities. Where non-Qwest locations are involved, intervals are handled on an Individual Case Basis – (ICB).

Product	Activity/ Features	Services Ordered	FOC Guidelines	Installation Guidelines	Repair Guidelines
Dark Fiber					
Initial Records Inquiry (IRI) (simple & complex)			N/A	Ten (10) business days	N/A
Field Verification And Quote Preparation (FVQP)			N/A	Twenty (20) business days	N/A
Provisioning (non-FVQP requests)			N/A	Twenty (20) business days	

5.0 Unbundled Network Elements Platform (UNE-P) Service Interval Table:

For UNE-P POTS, Saturday due dates are available under the following circumstances:

The Saturday Desired Due Date (DDD) must be at least the standard interval.

For dispatched orders, a Saturday appointment must be available and reserved in Appointment Scheduler.

For UNE-P POTS non-dispatched orders, Saturday is counted as part of the standard installation interval, even if a Saturday due date is not desired. For example: when the standard interval is 2 (two) business days, an LSR submitted on a Friday morning may have a due date as early as the following Monday.

Product	Services Ordered	Installation Commitments	Repair Commitments
UNE-P POTS New Installs, Address Changes, or Change Requests adding new lines. **Facility Check indicates "AVAILABLE (SDT)" and DISPATCH "NO"**		Three (3) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
Addition, removal, or change of CO Features, PIC/LPIC change, number changes without inward line activity, or hunting changes without inward line activity		Three (3) Business Days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P POTS Suspend/Restore	Customers with service placed on "vacation"	Next Business Day (includes Saturday)	Twenty-four (24) hrs OOS 48 hrs AS
Deny/Restore	Treatment for Non-payment issues	Same Business Day if request received before noon MT, otherwise next business day (includes Saturday)	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P POTS New Installs, Address Changes, Changes with inward line activity **Facility Check indicates "AVAILABLE DISP. REQ" and DISPATCH "YES"**		Next available due date as indicated by Appointment Scheduler **Note:** Appointment Scheduler minimum default interval is 3 (Three) Business Days.	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P POTS Directory Listings **Changes –** • **Simple (Non-complex) Listings** - Simple Straight Line and/or		Same business day	

Product	Services Ordered	Installation Commitments	Repair Commitments
Straight-Line Under (SLU) Listings ▪			
Conversion as Specified Retail, Resale, or UNE-P POTS to UNE-P POTS		Depends on changes requested. For instance, addition of another line would follow New Installs guidelines.	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
Conversions to UNE-P POTS- UNE-P POTS to UNE-P POTS - Conversion as Is	1 to 39 Lines	Same Business Day if received before noon MT, or Next Business Day if received later than noon MT.	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Line Splitting – UNE-P POTS to UNE-P POTS with Line Splitting - Conversion As Specified		3 business days	24 hrs OOS Forty-eight (48) hrs AS
UNE-P Line Splitting – POTS Residence or POTS Business with Line Sharing to UNE-P POTS with Line Splitting - Conversion as Specified		3 BUSINESS DAYS	
UNE-P PBX **New Install,** **Conversion As Specified,** **Changes** (ex. PIC/LPIC or feature changes, etc.), and **Suspend/Restore**	1 to 8 Trunks	Zone 1: Five (5) Business Days Zone 2: Six (6) business days	Four (4) hrs
	9 to 16 Trunks	Zone 1; Six (6) business days Zone 2: Seven (7) business days	Four (4) hrs
	17 to 24 Trunks	Zone 1: Seven (7) business days ZONE 2: EIGHT (8) BUSINESS DAYS	Four (4) hrs
	25 or more Trunks	ICB	Four (4) hrs
		business days	
		business days	
		business days	
UNE-P DSS T1 Facility Installation	1 to 3 Facilities	Nine (9) business days	Four (4) hrs
	4 to 6 Facilities	Twelve (12) business days	Four (4) hrs
	7 to 9 Facilities	Thirteen (13) business days	Four (4) hrs
	10 to 12 Facilities	Seventeen (17) business days	Four (4) hrs

Product	Services Ordered	Installation Commitments	Repair Commitments
UNE-P DSS Trunk Installation when ordered with new T1 Facility (Note: The number of facilities ordered drives the due dates for both facilities and trunks.	1 to 3 Facilities	Twelve (12) business days	Four (4) hrs
	4 to 6 Facilities	Sixteen (16) business days	Four (4) hrs
	7 to 9 Facilities	Twenty (20) business days	Four (4) hrs
	10 to 12 Facilities	Twenty four (24) business days	Four (4) hrs
Conversions to UNE-P DSS- As Is		Five (5) business Days	Four (4) hrs
Conversion As Specified		See intervals for type of change requested	Four (4) hrs
UNE-P DSS- Add/Change Trunks on existing facilities	1 to 8 Trunks	Five (5) business Days	Four (4) hrs
	9 to 16 Trunks	Six (6) business days	Four (4) hrs
	17 to 24 Trunks	Seven (7) business days	Four (4) hrs
	Each Additional 8 Trunks	One (1) business Day for each	Four (4) hrs
UNE-P ISDN BRI New Installs, Address Changes, Change to add Loop (N2Q)	1 to 10 Loops	Thirteen (13) business days	Twenty-four (24) hrs
	11 or more Loops	ICB	Twenty-four (24) hrs
UNE-P ISDN BRI Add or Change Feature(s), Add Primary Directory Number (PDN) to established Loop (N2Q), Add Call Appearance	1 to 10 Loops	Three (3) business days	Twenty-four (24) hrs
	11 or more Loops	ICB	Twenty-four (24) hrs
Conversion to UNE-P ISDN BRI- Conversion As Is	1 to 10 Loops	Three (3) business days	Twenty-four (24) hrs
	11 or more Loops	ICB	Twenty-four (24) hrs
Conversion to UNE-P ISDN BRI- Conversion As Specified	1 to 10 Loops	Three (3) business days if a Loop is not involved (or) Thirteen (13) business days if a Loop is added or changed	Twenty-four (24) hrs
	11 or more Loops	ICB	Twenty-four (24) hrs
UNE-P ISDN PRI 'New'-	1 to 3	Nine (9) business days	Four (4) hrs

Product	Services Ordered	Installation Commitments	Repair Commitments
New Facility and Associated Trunks (With this activity, the number of facilities ordered drives the due dates for both facilities and trunks. See table below.)	4 to 6 7 to 9 10 to 12 Over 12	Twelve (12) business days Thirteen (13) business Seventeen (17) business Add 4 business days for each additional 3 facilities (13-16=21 days, 17-20=25 days, etc.)	Four (4) hrs
UNE-P ISDN PRI 'New'- Trunks	1 to 3 Trunks	Twelve (12) business days	Four (4) hrs
	4 to 6 Trunks	Sixteen (16) business days	Four (4) hrs
	7 to 9 Trunks	Twenty (20) business days	Four (4) hrs
	10 to 12 Trunks	Twenty-four (24) business days	Four (4) hrs
	13 or more Trunks	Facility due date plus 5 days	Four (4) hrs

Product	Services Ordered	Installation Commitments	Repair Commitments
Conversion to UNE-P ISDN PRI- As Specified		See intervals for type of change requested	Four (4) hrs
As Is		Five (5) business days	Four (4) hrs
UNE-P ISDN PRI- Add/Change Trunks on Existing Facility	1 to 8	Five (5) business days business days	Four (4) hrs
	9 to 16	Six (6) business days	Four (4) hrs
	17 to 24	Seven (7) business days	Four (4) hrs
	Over 25	ICB	Four (4) hrs
UNE-P Centrex 21 - Non Designed- Conversions as Specified		Five (5) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex 21 - Non Designed- New Installations, **Address Changes, and Change Requests adding new lines**	[Facility check indicates "Available Dispatch Required" and Dispatch "Yes".]	Next available due date as indicated by Appointment Scheduler **Note:** Appointment Scheduler minimum default interval is 3 (Three) business days.	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **Common Block Configuration Required** - Establish Common Block	1 to 21 Lines - No Optional Features	Twenty (20) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
	1 to 21 Lines - w/ Optional Features (i.e., ARS, DFIs, SMDR, UCD, etc.)	ICB	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
	22 or more Lines with or without Optional Features	ICB	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only]	1 to 10 Lines	Twenty (20) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS

Product	Services Ordered	Installation Commitments	Repair Commitments
Common Block Configuration Required - Feature Additions requiring Common Block activity per Common Block	11 or more Lines	ICB	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **Common Block Configuration Required** - Line Class Codes (LCCs)/ CAT/NCOS/DPAT additions/changes requiring Common Block work.	Per Common Block (must be existing Line Class Codes(LCCs)/ CAT/NCOS/DPAT)	Five (5) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
	If new LCC/CAT/NCOS or DPAT	Twenty (20) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **Common Block Configuration Required** - Centrex Management System (CMS)	New Common Blocks & Cust ID's (lines installed at the same time the Common Block is installed)	Twenty (20) business days (after the initial Common Block & associated lines are installed)	N/A
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **Common Block Configuration Required** - Designed Services subsequent to initial Common Block installation	Tie Lines/DFI/FX	Thirteen (13) business days (may be longer due to facility due date requirements)	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only]	Additional/New Station Lines to be added to CMS	Five (5) business days after line is installed	N/A
No Common Block Configuration Required - Centrex Management System (CMS) Network Access Registers (NARs)	Additions	Five (5) business days	N/A
	Change from Non Blocked to Blocked Service	ICB	N/A

Product	Services Ordered	Installation Commitments	Repair Commitments
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **No Common Block Configuration Required** - Station Lines (subsequent to the establishment of the Common Block) Includes: Conversions New Lines Moves **NOTE**: On conversions, numbers are "chipped" into the Common Block at the time of installation.	1 to 10 Lines per location	Five (5) business days or Next available due date thereafter as indicated by Appointment Scheduler.	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
	11 to 20 Lines per location	Ten (10) business days or Next available due date thereafter as indicated by Appointment Scheduler.	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
	21 or more Lines per location	ICB	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **No Common Block Configuration Required** Line Feature changes/additions/ Removals	1 to 19 Lines	Three (3) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
	20 or more Lines	ICB	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **No Common Block Configuration Required** Designed Services subsequent to initial Common Block installation	Tie Lines/DFI/FX	Thirteen (13) business days (may be longer due to facility due date requirements)	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **No Common Block Configuration Required** Automatic Route Selection (ARS)	Subsequent to Common Block Installation	Twenty (20) business days (may be longer if the activation of ARS is tied to a Private Line facility installation)	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
	Changes to Patterns: 1 to 25 changes 26 to 50 changes 51 or more changes	business days: Five (5) days Ten (10) days Twenty (20) days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS

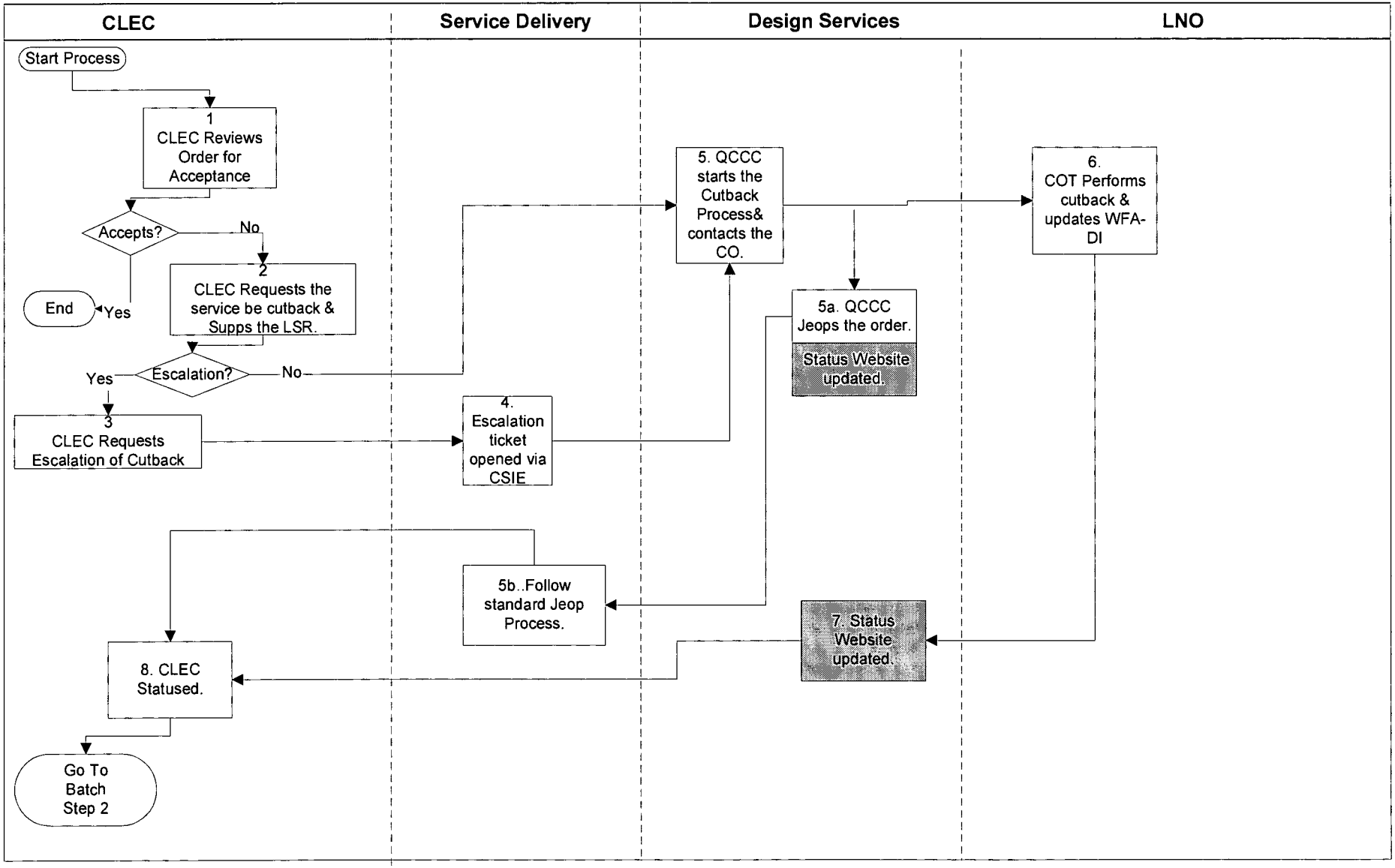
Product	Services Ordered	Installation Commitments	Repair Commitments
	Adding new Patterns	Twenty (20) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **No Common Block Configuration Required** Uniform Call Distribution (UCD)	Per Request	Thirteen (13) business days	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS
UNE-P Centrex Plus / UNE-P Centron [Centron is MN only] **No Common Block Configuration Required** Additional Numbers subsequent to initial Common Block installation **NOTE:** Additional numbers are "chipped" into the Common Block at the time of request.	Blocks (No limit on amount of numbers.)	Five (5) business days	N/A

6.0 Enhanced Extended Loop Service Interval Table (EEL):

Product	Services Ordered	Installation Commitments	Repair Commitments
Enhanced Extended Loop (EEL)- DS0 or Voice Grade Equivalent	1 to 8	Zone 1: Five (5) business days Zone 2: Six (6) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	9 to 16	Zone 1: Six (6) business days Zone 2: Seven (7) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	17 to 24	Zone 1: Seven (7) business days Zone 2: Eight (8) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	25 or more	ICB	Four (4) hrs
Enhanced Extended Loop (EEL) – DS1	1 to 8	Zone 1: Five (5) business days Zone 2: Eight (8) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	9 to 16	Zone 1: Six (6) business days Zone 2: Nine (9) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	17 to 24	Zone 1: Seven (7) business days Zone 2: Ten (10) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	25 or more	ICB	Four (4) hrs
Enhanced Extended Loop (EEL) – DS3	1 to 3 Circuits	Zone 1: Seven (7) business days Zone 2: Nine (9) business days	Four (4) hrs Zone 1 Four (4) hrs Zone 2
	4 or more Circuits	ICB	Four (4) hrs
Enhanced Extended Loop Conversions (EEL-C) – Private Line (PLTS) - Conversion as is		ICB	Twenty-four (24) hrs OOS Forty-eight (48) hrs AS

* Installation Guidelines apply where facilities/network capacity is in place. Where facilities/network capacity are not in place, intervals are handled on an Individual Case Basis (ICB).

DUE DATE CUTBACK FLOW

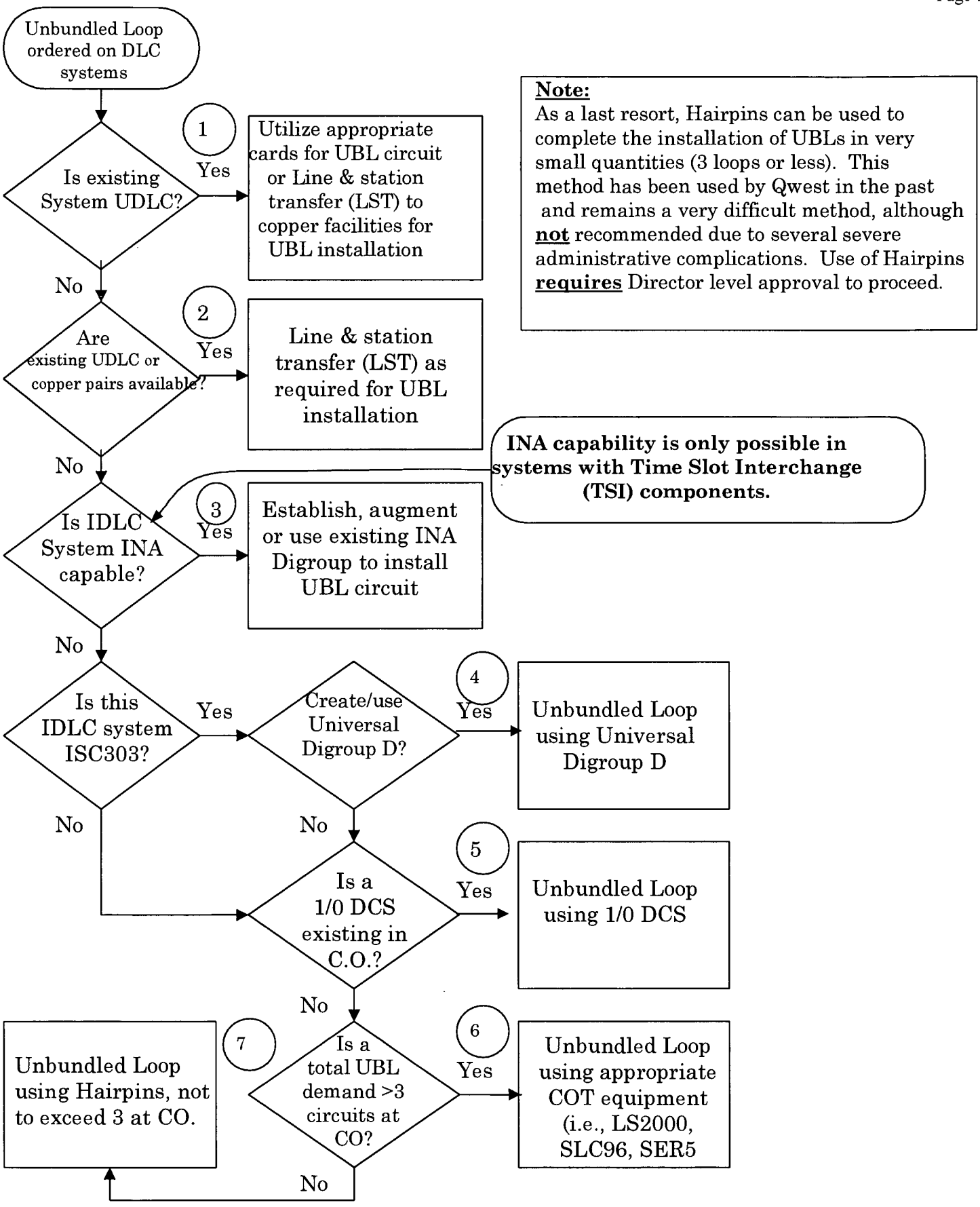


Cutback Process Task List

1. CLEC reviews the Statue Website and the Trap and Trace signal to note completion. CLEC performs any additional testing to determine the loop acceptance. If accepted NO response is required. If CLEC is NOT accepting the order, CLEC action is required.
2. CLEC detects an issue on the order. CLEC requests cutback of service to the original provider by sending an email to Qwest. CLEC can call Qwest CSIE group to open an escalation ticket. These actions must take place prior to the 2-hour acceptance timeframe has elapsed. CLEC supplements original LSR for appropriate action.
3. The CLEC may opt to have the cutback escalated via the CSIE group.
4. Qwest CSIE receives call to open an escalation ticket to stop the completion of a service order or LSR LSR currently contained in the BHC. CSIE forwards the ticket to the QCCC to cutback the end user to the original provider.
5. QCCC will perform CO hand-off and page the CO to notify that the order needs to be cutback.

5a. QCCC follows the standard Jeopardy process. The Status Website is updated.

6. COT performs cutback of service to original provider equipment and updates WFA-DI.
7. The Status Website is updated.
8. CLEC is statused that the cutback is complete and order is now in Jeopardy status.


Unbundled Loop ordered on DLC systems
Is existing System UDLC?
1
Yes
Utilize appropriate cards for UBL circuit or Line & station transfer (LST) to copper facilities for UBL installation
No
Are existing UDLC or copper pairs available?
2
Yes
Line & station transfer (LST) as required for UBL installation
No
Is IDLC System INA capable?
3
Yes
Establish, augment or use existing INA Digroup to install UBL circuit
INA capability is only possible in systems with Time Slot Interchange (TSI) components.
No
Is this IDLC system ISC303?
Yes
Create/use Universal Digroup D?
4
Yes
Unbundled Loop using Universal Digroup D
No
No
Is a 1/0 DCS existing in C.O.?
5
Yes
Unbundled Loop using 1/0 DCS
No
Is a total UBL demand >3 circuits at CO?
6
Yes
Unbundled Loop using appropriate COT equipment (i.e., LS2000, SLC96, SER5
7
Unbundled Loop using Hairpins, not to exceed 3 at CO.
No
Note:
As a last resort, Hairpins can be used to complete the installation of UBLs in very small quantities (3 loops or less). This method has been used by Qwest in the past and remains a very difficult method, although not recommended due to several severe administrative complications. Use of Hairpins requires Director level approval to proceed.
Note:
Manufacture Discontinued (MD) COT equipment should be obtained from Reuse stock

Legend for IDLC Flow

Solution provisioning intervals:

1) UBL circuit cards – 5 days
LST – 5 days
2) LST – 5 days

3) INA Digroup (D4 Channel Bank, dedicated DS1) – 5 days if span capacity

4) Order COT – 90 days – 120 days

5) 1/0 DCS (Adtran BR110) - 90 days – 120 days

6) LS 2000, SLC 96, Series 5 - 90 days – 120 days

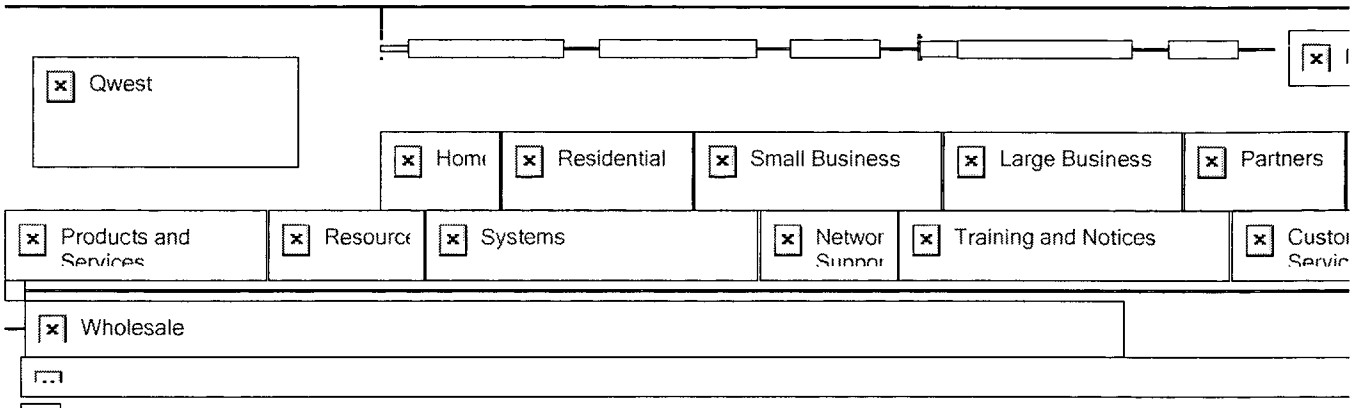
7) Hairpin – 15 days after approval

Summary of all 14 states in the region

	UNE-P Line Cts by State	UNE-P working over IDLC	UNE-P working over Next Level	State wide percentage of UNE-P on IDLC
AZ	111759	24751	5032	26.65%
CO	112941	10342	2862	11.69%
IA	69803	1242	19	1.81%
ID	20729	1701	1	8.21%
MN	134943	9552	371	7.35%
MT	7478	1093	0	14.62%
ND	22890	1741	0	7.61%
NE	30084	1587	37	5.40%
NM	17160	3479	91	20.80%
OR	91577	6033	0	6.59%
SD	19108	901	0	4.72%
UT	44209	5027	0	11.37%
WA	99868	7950	0	7.96%
WY	30597	1436	0	4.69%
Region Wi	813146	76835	8413	10.48%
As of 09/30/03				

Summary with only 10 states where we file

	UNE-P Line Cts by State	UNE-P working over IDLC	UNE-P working over Next Level	State wide percentage of UNE-P on IDLC
AZ	111759	24751	5032	26.65%
CO	112941	10342	2862	11.69%
IA	69803	1242	19	1.81%
MN	134943	9552	371	7.35%
ND	22890	1741	0	7.61%
NE	30084	1587	37	5.40%
NM	17160	3479	91	20.80%
OR	91577	6033	0	6.59%
UT	44209	5027	0	11.37%
WA	99868	7950	0	7.96%
Region Wi	735234	71704	8412	10.90%
As of 09/30/03				



Training & Notices — Customer Training

Training

- Course Catalog
- Course Schedule & Registration
- Course Feedback

Loop Qualification and Raw Loop Data - CLEC Job Aid

Job Aid Description/Purpose

This job aid is designed to provide the CLEC guidance in the appropriate use of IMA Loop Qualification Tools, the IMA Raw Loop Data Tool, and the Wire Center Raw Loop Data Tool for Loop Qualifications. This job aid may also be used as a guide for the qualification of DSL. The tools described in this job aid support the pre-order functions for 2/4 wire non-loaded loops, Asymmetrical Digital Subscriber Loop (ADSL) compatible loops, Integrated Switched Digital Network (ISDN) Basic Rate Interface (BRI) capable loops, xDSL-I capable loops, Line Sharing, Line Splitting, Loop Splitting, and Shared Distribution Loops.

Note: This job aid does not contain information for HICAP Service requests or Design Service requests (see the IMA User's Guide).

Objectives

While using this job aid you should be able to:

- Describe the terms of Facility Availability, Loop Qualification and Raw Loop Data
- Describe the likes and differences of Loop Qualifications and Raw Loop Data queries
- Navigate the IMA Loop Qualification tools, and Raw Loop Data tools
- Obtain Raw Loop Data from the Wire Center and IMA Raw Loop Data Tools

Prerequisites

- Qwest 101 "Doing Business with Qwest"
- Basic Telephony course and/or equivalent industry experience
- Working knowledge of Qwest IMA EDI/GUI ordering system
- A CLEC end-user must have telecommunication engineering knowledge to interpret the significance of raw loop data

Audience
The target audience for this job aid is primarily CLECs and External Customers.

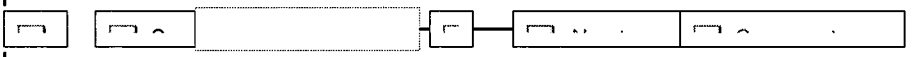
How to Obtain
It is not necessary to register to obtain and use this job aid. The training course catalog is available to External Customers and CLECs on the Qwest Wholesale Markets Customer Training Web site.

To obtain this job aid, scroll through the Course Catalog until you find the listing "Loop Qualification and Raw Loop Data-CLEC Job Aid". Click the link "Click Here to Download".

For product specific information view the Wholesale Markets Web site.

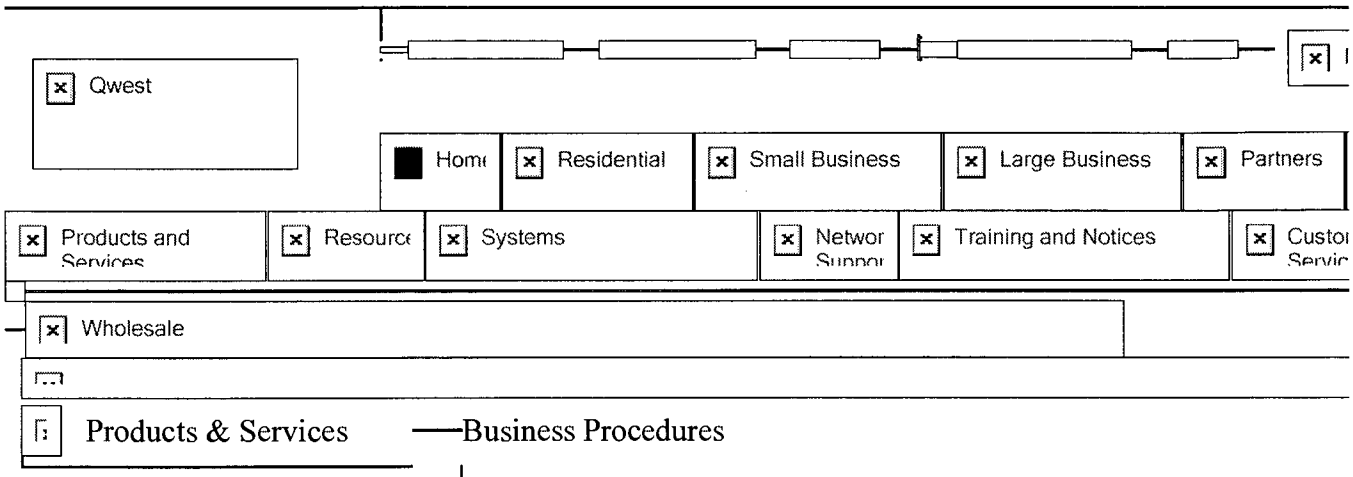
If you have any questions regarding the use ot this job aid, please call your Service Manager. If you have questions on the content please contact Michelle Thacker of Wholesale Markets at 303-382-5725, or email your comments using to the following email address, mthacke@qwest.com.

This Course Last Updated: May 30, 2003
This Page Last Updated: October 31, 2003



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Month	GUI Success	GUI Failure	EDI Success	EDI Failure	Total
January	7163	2146	0	0	9309
February	6331	2244	0	0	8575
March	5461	2079	1	0	7541
April	6488	2566	3	2	9059
May	7078	2448	0	0	9526
June	6182	2588	0	0	8770
July	8706	3231	0	0	11937
August	7917	3295	0	0	11212
September	8935	3489	0	0	12424
October	10505	4173	0	0	14678
November	7321	3400	0	0	10721
December	8054	3534	1	0	11589
	90141	**35193**	**5**	**2**	**125341**



Products & Services —Business Procedures

Business Procedures

☐Getting Started

-Facility Based CLECs

-Resellers

☐Account Team

☐Billing - Additional Output

☐Billing - Billing Percentage Worksheet

☐Billing - Billing & Receivable Tracking (BART)

☐Billing - Customer Records and Information System (CRIS)

☐Billing - Daily Usage File (DUF)

☐Billing - Integrated Access Billing System (IABS)

☐Billing - Taxes and Tax Exemption

☐Bona Fide Request (BFR) & Special Request (SR) Processes

Migrations and Conversions Overview - V13.0

History Log

Description

This overview provides you with a summary of end-user migrations and conversions. Migrations and conversions are terms used interchangeably by Qwest when an end-user moves from one Local Service Provider (LSP) to another. The term LSP describes the company that provides local services to the end-user. You or Qwest may be an end-user's LSP in a migration/conversion scenario.

One or more of the following conditions exists/occurs in a migration:

- The end-user's telephone number is being ported. Refer to Local Number Portability (LNP) for additional information regarding porting.
- The current service delivery method is Qwest Retail, Resale, Unbundled Network Elements (UNEs), Unbundled Network Elements Platform (UNE-P) or Unbundled Network Elements Combination (UNE-C).
- The end-user is converting to a different/new LSP

In today's competitive environment, end-users may choose to migrate from:

- Qwest to a Competitive Local Exchange Carrier (CLEC)
- CLEC to CLEC
- CLEC to Qwest

Within each of these scenarios, responsibility for delivering, servicing and billing the end-user's local service(s) changes from the current Old LSP (OLSP) to the New LSP (NLSP).

Even though Qwest uses the terms migration and conversion

☐Calling Card/LIDB

☐Common Language

☐Customer Contacts

☐Directory Ordering

☐Early Order Opportunity

☐Electronic Access

☐Expedites and Escalations Overview

☐Features - Unbundled

☐Forecasting

☐Formal Complaint Process

☐Interconnection Agreements & Amendments

-Negotiations Template

-Opt-In Provisions

-SGATs

☐Local Service Freeze

☐Local Service Ordering Guidelines (LSOG)

☐Long Distance Carrier Selection

☐Maintenance & Repair Overview

☐Manual Interfaces

☐Migrations and Conversions

☐Negotiations Process

interchangeably to describe a move between LSPs, you must specify a Local Service Request (LSR) Activity (ACT) Type that references conversion activity to request migration/conversion. The exception is Unbundled to Bundled, this type of migration requires a LSR ACT Type of "N".

Full or Partial Migration

When a LSR is submitted for migration with an ACT Type of "V" or "Z", it should also include an indicator (Migration Indicator (MI)) specifying whether the migration activity is for "Full Migration" or "Partial Migration". Full Migration occurs when all services/lines contained on the Customer Service Record (CSR) and billed to the OLSP under a primary telephone number or account telephone number are migrating to the NLSP and no services/lines remain on the OLSP account under that account telephone number.

Partial Migration occurs when a portion of the end-user's services/lines billed to the OLSP under a single account telephone number are being migrated and one or more services/lines remain with the OLSP under that account telephone number.

Migration Process Flows

The following process flows illustrate some potential migration scenarios by service delivery method. Qwest is the Network Service Provider (NSP) and Directory Service Provider (DSP) in each of these scenarios.

Bundled to Bundled

This group of scenarios includes:

- Qwest Retail to Resale or UNE-C
- Resale to Resale
- Resale to UNE-P
- UNE-P to Resale
- UNE-C-to-UNE-C

In bundled to bundled migrations, the end-user's services/lines move from the OLSP to a NLSP. The NSP remains unchanged throughout the migration, the reuse of the loop facility is involved and the end-user retains their telephone number (if applicable).

Description

☐Negotiations Template Agreement

☐Ordering Overview

☐Pre Ordering Overview

☐Proof Of Authorization/Letter Of Agency (LOA)

☐Provisioning & Installation Overview

☐Questionnaire - Amendment

☐Questionnaire - New Customer

☐Regulatory Commissions

☐Service Intervals

☐Single Location Routing Number

☐Tariff Locations

☐Technical Publications

☐Telecommunications Associations

☐Unauthorized Service Provider Change

☐USOC/FID Finder

The NLSP and OLSP provide service to the end-user by leasing bundled services from a NSP. The NSP is also the DSP.

Responsibilities:

NLSP

- Negotiate service request with end-user (including Directory Listing)
- Obtain CSR and local service configuration from OLSP
- Perform necessary pre-order functions with NSP (e.g., address validation)
- Submit LSR to NSP/DSP

OLSP

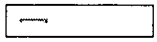
- Provide CSR and local service configuration to NLSP

NSP

- Support requests from NLSP for pre-order functions
- Receive/process LSR and issue service orders
- Send Firm Order Confirmation (FOC) to NLSP
- Send Completion Report to NLSP
- Send Loss Report and Completion Report to OLSP
- Send completed service order information to DSP

DSP

- Publish Directory Listing



Bundled to Unbundled

This group of scenarios includes:

- Qwest Retail, Resale, or UNE-P to Unbundled Local Loop (with or without LNP)



Description
Involves reusing the loop facility and retaining the end-user's telephone number via LNP, if applicable. The OLSP services the end-user via bundled services. The NLSP will service the end-user via its own switch and an Unbundled Local Loop. Requires a hot cut where the loop must be disconnected from the OLSP's bundled service and re-connected to the NLSP's facility.

Responsibilities

NLSP

- Negotiate service request with end-user (including Directory Listing)
- Obtain CSR and local service configuration from OLSP
- Perform necessary pre-order functions with NSP (e.g., address validation)
- Submit LSR to NSP/DSP

OLSP

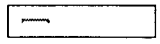
- Provide CSR and local service configuration to NLSP

NSP

- Support requests from NLSP for pre-order functions
- Receive/process LSR and issue service orders
- Send FOC to NLSP
- Send Completion Report to NLSP
- Send Loss Report and Completion Report to OLSP
- Send completed service order information to DSP

DSP

- Publish Directory Listing



Unbundled to Bundled

This group of scenarios includes:

- Unbundled Local Loop to Resale or UNE-P (with or without LNP)
- Unbundled Local Loop to Qwest Retail (with LNP)



Description
Involves reusing the loop facilities and the end-user retains their telephone number via LNP if applicable. The OLSP services the end-user via its own switch and leases an unbundled loop facility from an NSP. The NLSP will service the end-user via bundled services (Qwest Retail, Resale or UNE-P) leased from a NSP.

Responsibilities

NLSP

- Negotiate service request with end-user (including Directory Listing)
- Obtain CSR and local service configuration from OLSP (when appropriate)
- Perform necessary pre-order functions with NSP (e.g., address validation)
- Submit LSR to NSP

OLSP

- Provide CSR and local service configuration to NLSP

NSP

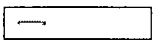
- Support requests from NLSP for pre-order functions
- Receive/process LSR and issue service orders
- Send LNP (LSR) to Old NSP (ONSP) if appliable
- Send FOC to NLSP
- Send Completion Report to NLSP
- Send Loss Report and Completion Report to OLSP
- Send completed service order informaton to DSP

ONSP

- Send LNP FOC to NSP

DSP

- Publish Directory Listing



Unbundled to Unbundled

This type of migration includes Unbundled Local Loop to Unbundled Local Loop.



Description
Unbundled Local Loop to Unbundled Local Loop migration refers to the change of responsibility or coordination of loop reuse for unbundled local loops from the OLSP to a NLSP.

Responsibilities:

NLSP

- Negotiate service request with end-user (including Directory Listing, if appropiate)
- Obtain CSR and local service configuration from OLSP
- Perform necessary pre-order functions with NSP (e.g., address validation)
- Submit LSR to NSP/DSP

OLSP

- Provide CSR and local service configuration to NLSP

NSP

- Support requests from NLSP for pre-order functions
- Receive/process LSR and issue service orders
- Send FOC to NLSP
- Send Completion Report to NLSP
- Send Loss Report and Completion Report to OLSP
- Send completed service order information to DSP

DSP

- Publish Directory Listing

Definitions associated with migrations

Bundled Services

Bundled local services include Qwest Retail services, Resale services, and UNE-C services. The migration of Bundled Services may, in some circumstances, include Local Number Portability (LNP).

DSP

The DSP is responsible for the implementation of the LSP's requirement to provide directory assistance/directory listing(s) for the end-user.

LSP

Provides local service(s) to the end-user.

NSP

Provides the dial tone, switched features and/or loop(s). In some cases the following more specific designations may be used:

- NSP-Switch - Carries the dial tone and switched

features
- NSP-Loop - Provides the local loop to the end-user premises or other mutually agreed upon point

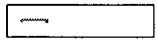
Unbundled Services

Unbundled Services include Unbundled Local Loops and Unbundled Switching.

UNE-C

UNE-C offerings are combinations of UNEs. The UNE-C family of products consists of:

- Enhanced Extended Loop - EEL
- Loop/MUX Combination - LMC
- UNE-P



Availability

Migrations/Conversions can occur throughout Qwest's 14-state local service territory.

Terms and Conditions

Credit Status

Qwest allows end-users to migrate their service from one LSP to another, regardless of their credit status with the current LSP. This policy means that Qwest does not prevent an end-user with an unpaid bill or credit problem with one provider (including Qwest) from migrating their service to another provider. The old provider is responsible for collecting any balance due them.

Loop Reclamation

When possible, Qwest will reclaim an Unbundled Local Loop associated with migration activity:

- Migration to Qwest Retail, Resale, or UNE-P:
  - Q· Qwest will reclaim the Unbundled Local Loop associated with a telephone number being Ported-In to Qwest, for like services. Qwest will send the LSR, EU and NP forms for straight number portability and will use the following REQ TYP entries depending upon whether Qwest is reclaiming an Unbundled Local Loop.
    - REQ TYP "CB" = Qwest is not relaiming an Unbundled Local Loop

        - REQ TYP "BB" = Qwest is reclaiming an Unbundled Local Loop
    - Qwest will advise the OLSP in the LSR remarks field whether or not the Unbundled Local Loop(s) is being reclaimed. If the Unbundled Local Loop(s) is being reclaimed, Qwest will also include the Exchange Company Circuit ID (ECCKT) in the LSR remarks field or in the "ECCKT" field on the NP form preceding the associated "PORTED NBR" field.
    - Loss reports and Completion reports will identify the loop disconnect date for billing termination.
- Qwest will not reclaim an Unbundled Local Loop associated with a telephone number being Ported-In to Qwest, if the end-user is changing address and Qwest is not aware of the loop at the old address or if the loop circuit ID cannot be identified. Qwest will identify this situation by entering the following remark on the LSR, "End-user moving to new loc, not reclaiming loop".

Loop Reuse

Loop reuse occurs when the end-user changes to a NLSP and all of the following apply:

- The loop is moving from the OLSP's collocation facility to the NLSP's collocation facility within the same serving wire center
- The end-user termination remains the same.
- The UNE-Loop ordered on the migration by the NSLP is a "like service" as described below:

  A "like services" condition exists when the following elements of the requested loop are identical to the existing loop:
    - Network Channel (NC) Code
    - First two positions of the Network Channel Interface (NCI) code
    - Secondary NCI code (if applicable)
- The OLSP and NLSP will be notified of the loop activity on Loss reports and Completion reports.

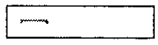
Implementation

Pre-Ordering

Pre-Ordering refers to the set of activities performed by you prior to placing a service request with Qwest. Performing Pre-Ordering activities allows you to validate details prior to submitting service requests and avoid unnecessary errors and/or delays of your request.

General pre-ordering activities are described in the Pre-Ordering Overview.

Requirements for pre-ordering are described in LSOG Pre-Order.



Ordering

Migration/conversion activity service requests are submitted using th following LSOG forms:

- LSR
- End User (EU) (except for Resale Private Line Transport (PLT - Non-Switched)
- Product specific forms

The LSOG forms submitted by the NLSP for migration activity should reflect the end state of the service and include all details required for provisioning. Field entry requirements are described in the LSOG.

The account telephone number and Street Address Number (SANO) information may be all that is required to match migration or conversion activity to a CSR. Refer to the Ordering Overview. to determine if this abbreviated ordering option is available in the version of Interconnect Mediated Access (IMA) Electronic Data Interchange (EDI) used to submit your request.

The end-user must have provided you with a Letter of Authorization (LOA) requesting that you serve as their LSP.

Service requests should be placed using IMA EDI, IMA Graphical User Interface (GUI) or faxed to (888) 796-9089.

General ordering activities are identified in the Ordering Overview.

Migration ACT Types

The following ACT Types and Manual Indicator values should be used when submitting a LSR for migration activity:

Migration Activity	ACT Type "V" Conversion As Specified	ACT Type "W" Conversion As Is	ACT Type "Z" Conversion As Specified/No Directory Listing Changes	ACT Type "N" New Installation	Manu Indic Value
Bundled to Bundled	X	X	X		N

Bundled to Unbundled	X		X		N
Unbundled to Bundled				X	Y
Unbundled to Unbundled	X				Y

Related Purchase Order Number (RPON) Relating Multiple Migration Service Requests

When multiple migration service requests (not constituting a project) must be worked together, the requests must be related upon submission. The related requests must contain Related Purchase Order Number (RPON) and/or page sequencing information (PG_of_). If the related requests involve multiple requisition types (REQTYP's), they may need to be submitted in a specific sequence o with a manual handling indicator. For example, an account with 5 POTS lines is migrating. One of the lines will be migrating as Resale POTS (REQTYP – EB). The other 4 lines will be migrating as LNP (REQTYP – CB). The LNP request should be submitted first, followed by the Resale POTS request. This sequencing allows for appropriate service order and account creation associated with your requests. Neither should require a manual handling indicator unless specifically stated in the LNP or Resale PCAT.

Very few requests involving multiple requisition types require specific sequencing. If sequencing or a manual handling indicator is required, this information is documented in the product specific PCAT.

Courtesy Disconnects

A Courtesy Disconnect is a request by a CLEC to disconnect an account that does not belong to them, as part of a migration scenario. Typically, the CLEC has already provisioned new service for the end-user and is now requesting a disconnect for the end-user's old service with another provider.

The account may be Retail, Resale, or UNE-P. The LSP for the service to be disconnected may be another CLEC or Qwest. Qwest will accept Courtesy Disconnects for the following telephone number based products:

- Plain Old Telephone Service (POTS)
- Centrex
- Integrated Services Digital Network (ISDN)

Qwest will also accept Courtesy Disconnects on a T1 (Digital Signal

level 1 (DS1)) for Digital Switched Services (DSS), Primary Rate Service (PRS), Uniform Access Solution (UAS) Service, and integrated T1 products when a Related Purchase Order Number (RPON) is submitted to disconnect all associated trunks and Direct Inward Dialing (DID) station numbers. However, these are the only private line products for which Qwest will accept a Courtesy Disconnect.

To request a Courtesy Disconnect, specific areas of the LSR form must be completed as follows:

- ACT must be D or C.
- If ACT is C, the assumption is that a Courtesy Disconnect is being requested for one or more lines on the account, but not all. Therefore, one or more lines on the account must appear on the Resale Services (RS) form or CRS form with Line Activity (LNA) = "D".
- Agency Authorization (AGAUTH) must be "Y"
- MANUAL IND must be "Y"
- REMARKS must include the words "Courtesy Disconnect."

Courtesy Disconnect LSRs that do not meet these criteria will be rejected.

Loop Reclamation

Migration to NLSP with Number Portability (Retail, Resale or UNE-P):

- Qwest will send the LSR, EU and NP forms for straight numbe portability and will use the following REQ TYP entries depending upon whether Qwest is reclaiming an Unbundled Local Loop.
  - REQ TYP "CB" = Qwest is not reclaiming an Unbundlec Local Loop
  - REQ TYP "BB" = Qwest is reclaiming an Unbundled Local Loop
- Qwest will advise the OSLP in the LSR remarks field whether or not the Unbundled Local Loop(s) is being reclaimed. If the Unbundled Local Loop(s) is being reclaimed, Qwest will also include the Exchange Company Circuit ID (ECCKT) in the LSR remarks field or in the "ECCKT" field on the NP form preceding the associated "PORTED NBR" field.
- A disconnect service order(s) will be issued for the Unbundled Local Loop(s) and billing will cease on the Due Date.
- No action is required by the OLSP**.

**If Unbundled Local Loops exist and are associated with the telephone number being Ported-In to Qwest (as the NSP) and the LSF form sent to the OLSP does not indicate that Qwest is reclaiming the

loops, it will be the responsibility of the OLSP to perform one of the following actions:

- Submit a LSR to Qwest for each end-user address where one or more Unbundled Local Loops are to be disconnected. Qwest will issue Disconnect Order(s) for the Unbundled Local Loop (s) and billing will stop on the Due Date.

or

- Send a FOC (in response to the LSR submitted by Qwest, above) to Qwest that provides the Unbundled Local Loop Circuit ID associated with each telephone number being Ported-In. Qwest will issue Disconnect Order(s) for the Unbundled Local Loop(s) and billing will stop on the Due Date.

Migration to Qwest without Number Portability (Resale or UNE-P)

- The NLSP has requested reuse of facilities from an existing Unbundled Local Loop.
- Qwest will issue a disconnect order for the Unbundled Local Loop(s) and billing will cease on the Due Date.
- No action is required by the OLSP.

Use of Universal Service Order Codes (USOCs) and Field Identifiers (FIDs) are described in the USOCs and FIDs Overview. Use of the USOC/FID Finder will assist you in identifying USOC and FID requirements.

Service interval guidelines are found in the Service Interval Guide (SIG).

Migration and Move

Migration and move (change of address) activity may be requested on the same LSR under the following conditions:

- The product at the new address must be Resale POTS, Resale Centrex 21, Resale Basic Rate Interface (BRI) ISDN, UNE-P POTS, UNE-P Centrex 21 or UNE-P BRI ISDN.
- The ACT field must equal "V".
- The LNA field must equal "V" or "N".
- The End User Moving Indicator (EUMI) field on the EU form must equal "Y".
- The end user's new address must be entered in the location address fields on the EU form.
- Applies to full migrations only
- End-user must keep the same telephone number(s)
- The new address must be served by the same wire center as the

old address. (For Migrate and Move process involving number portability, refer to the Port Within PCAT
- A Directory Listing (DL) form must be submitted.

When you submit migration and move requests, you may also perform the following activities:

- Feature changes on existing lines
- Add new lines
- Change products within each local service product type (e.g., Resale POTS to UNE-P POTS). The LSR Requisition Type (REQTYP) should represent the product at the new address.

Transfer of Responsibility

Transfer of Responsibility refers to the transfer of a Collocation site or the transfer of occupancy of either aerial or underground facilities to an assuming CLEC from a vacating CLEC. For additional information regarding Transfer of Responsibility refer to the Collocation - General Information Product Catalog (PCAT). For additional information regarding Transfer of Responsibility of occupancy of either aerial or underground facilities refer to the Access to Poles, Ducts and Rights of Way PCAT.

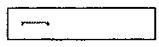
A Design Layout Record (DLR) provides you with a description of the facilities and services ordered. It is provided at your request and is intended to assist in designing the overall service. You can choose to view and/or retrieve the DLR information on-line through IMA or have it delivered electronically. A DLR request is described in the IMA EDI Network Disclosure Document or the IMA User's Guide.

For information regarding consolidation, deconsolidation, or rearrangement of CSR data with migration activity, refer to the Ordering Overview.

Data Migrations

When the voice and data portions of a loop have been split, it is possible to migrate only the data portion from Data Local Exchange Carrier (DLEC) to DLEC. It is also possible to migrate between products that offer splitting of voice and data services (e.g., requesting migration activity from Line Sharing to Line Splitting). For more information regarding various Line Splitting and Loop Splitting scenarios, click on one of the following:

- Line Splitting Scenarios
- Loop Splitting Scenarios



Provisioning

Firm Order Confirmation (FOC) intervals are available in the Service Interval Guide (SIG).

General provisioning and installation activities are described in the Provisioning and Installation Overview.

If no facilities are available, the LSR will be rejected for a No Facilities reason. Reject notification information is described in the Ordering Overview.

A jeopardy occurs on a service request, if a condition exists that threatens timely completion. Jeopardy notification information is described in the Provisioning and Installation Overview.

Loss reports and Completion reports are generated based on loss and gain account activity. Loss and Completion Reports are described in Billing Information - Additional Outputs - SMDR, Completion Report, Loss Report.

Billing

Customer Records and Information System (CRIS) billing is described in Billing Information Customer Records and Information System (CRIS).

Training

Qwest 101 "Doing Business With Qwest"

- This introductory instructor-led training course is designed to teach the CLEC and Reseller how to do business with Qwest. It will provide a general overview of products and services, Qwest billing and support systems, processes for submitting service requests, reports, and web resource access information. Click here to learn more about this course and to register.

View additional Qwest courses by clicking on Course Catalog.

Contacts

Qwest Contact information is located in Qwest Wholesale Customer Contacts.

Frequently Asked Questions (FAQs)

Q. In a CLEC to CLEC migration scenario, who is responsible for providing the CSR?

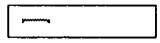
A. The OLSP is responsible for providing the CSR to the NLSP.

Q. Who communicates with the OLSP regarding LOA in a CLEC to CLEC migration?

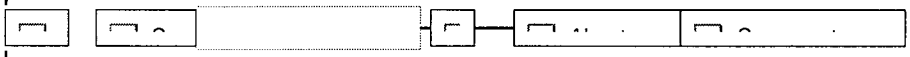
A. The NLSP needs to communicate with the OLSP regarding LOA in a CLEC to CLEC migration.

Q. Is the Migration and Conversion Overview PCAT the only source for migration information?

A. The Migration and Conversion Overview PCAT contains general migration information. Because the different migration scenarios are numerous and vary by product, the individual product PCATs should be consulted for specific information.

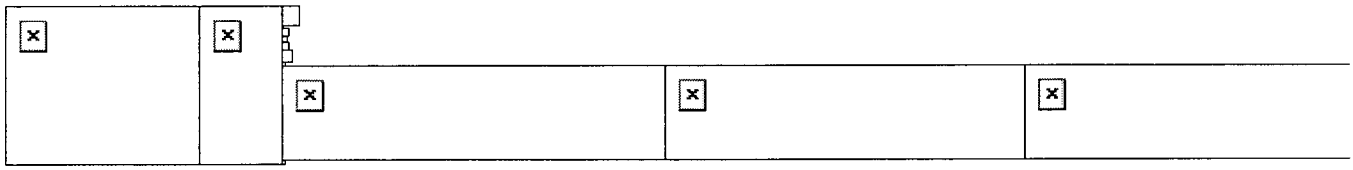


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4. The History of Copper Automation

To date, despite strong interest in implementing automated distribution frames, there have been technology limitations that have hampered service providers from actually deploying these types of devices. While cross-connecting technologies have existed for some time, none have been able to meet all of the aforementioned automated distribution frame requirements in a cost-effective and scalable manner.

Historically, service providers first looked at electromechanical solutions that leverage metallic relays as a means of automating distribution frames. This type of solution is known to be extremely reliable for cross-connecting, having been used for many years in conventional telecommunications equipment, such as voice switches. However, it is difficult to build large non-blocking switches with conventional relays, as they would require an enormous amount of space and cost due to the size of individual relays and the amount that would be required to create automated distribution frames of significant size. A CO serving tens of thousands of subscribers, for example, would require millions of relays to establish any-to-any connectivity. As this would take up a significant amount of equipment space and require a vast amount of capital expenditure, this type of solution never got put into practice in an automated distribution frame application.

Service providers then turned their attention toward robotic solutions. In this type of solution, robotic technology is used to physically remove and insert pins when making a cross-connect. While simple in concept, this type of solution never quite matured into a viable technology for automating distribution frames. That is because pure mechanical, robotic solutions have reliability and maintenance issues due to their moving parts. This limits their effectiveness in larger COs or in environments where significant churn is experienced.

Perhaps the biggest "show stopper" for robotics, and all of the other copper automation technologies previously examined for frame applications, has been scalability. As COs vary dramatically in size, automated distribution frames must have the flexibility to grow in size, too. But, functionality cannot be sacrificed in the process. Traditional copper automation technologies typically become blocking at higher port counts or high port utilization. This dramatically limits their performance in medium to large COs. Those that can provide any-to-any connectivity in large deployments typically require tremendous amounts of hardware to do so. Rather than experiencing a linear growth rate, whereby the ratio of frame

· Product Profiles
· Communications Technologies Program

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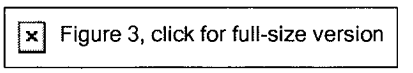
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ports to subscribers remains constant regardless of the size of deployment, these solutions have a tendency to grow exponentially. This means that for any-to-any non-blocking connectivity to be maintained, the ratio of frame ports to subscribers must grow at a geometric rate. Such growth requires enormous capital expenditures and dramatically increases the complexity of a network infrastructure.

Figure 3. An automated distribution frame solution that can grow linearly to keep pace with subscriber growth rates is more cost-effective and easier to deploy than one that grows exponentially.
(Click on image for full-size version.)



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To - Mark Dodds
From - Kate Fairchild

Wendy
FYI - let's talk about this.
Mark S.

THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

a) IT IS THE POLICY OF THE STATE OF COLORADO TO PROMOTE A COMPETITIVE TELECOMMUNICATIONS MARKETPLACE WHILE PROTECTING AND MAINTAINING A WIDE AVAILABILITY OF HIGH-QUALITY TELECOMMUNICATIONS SERVICES;
b) INCREASED COMPETITION IN THIS MARKET PLACE WILL BENEFIT CONSUMERS AND BUSINESSES IN COLORADO;
c) RETAIL TELECOMMUNICATIONS CONSUMERS IN THIS STATE SHOULD HAVE THE CHOICE BETWEEN AND AMONG PROVIDERS OF LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES AND WHETHER A CONSUMER CAN CHANGE PROVIDERS OF BASIC LOCAL TELECOMMUNICATIONS SERVICE EASILY AND AT COMPARABLE COST IS A SIGNIFICANT FACTOR IN THAT CHOICE;
d) CONSUMERS SHOULD HAVE THE SAME EASE, TIMELINESS, AND COST OF SWITCHING A LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE THAT OCCURS WHEN THOSE CUSTOMERS DECIDE TO CHANGE THEIR PROVIDER OF LONG DISTANCE TELECOMMUNICATIONS SERVICES.

CHOICE OF LOCAL EXCHANGE PROVIDER

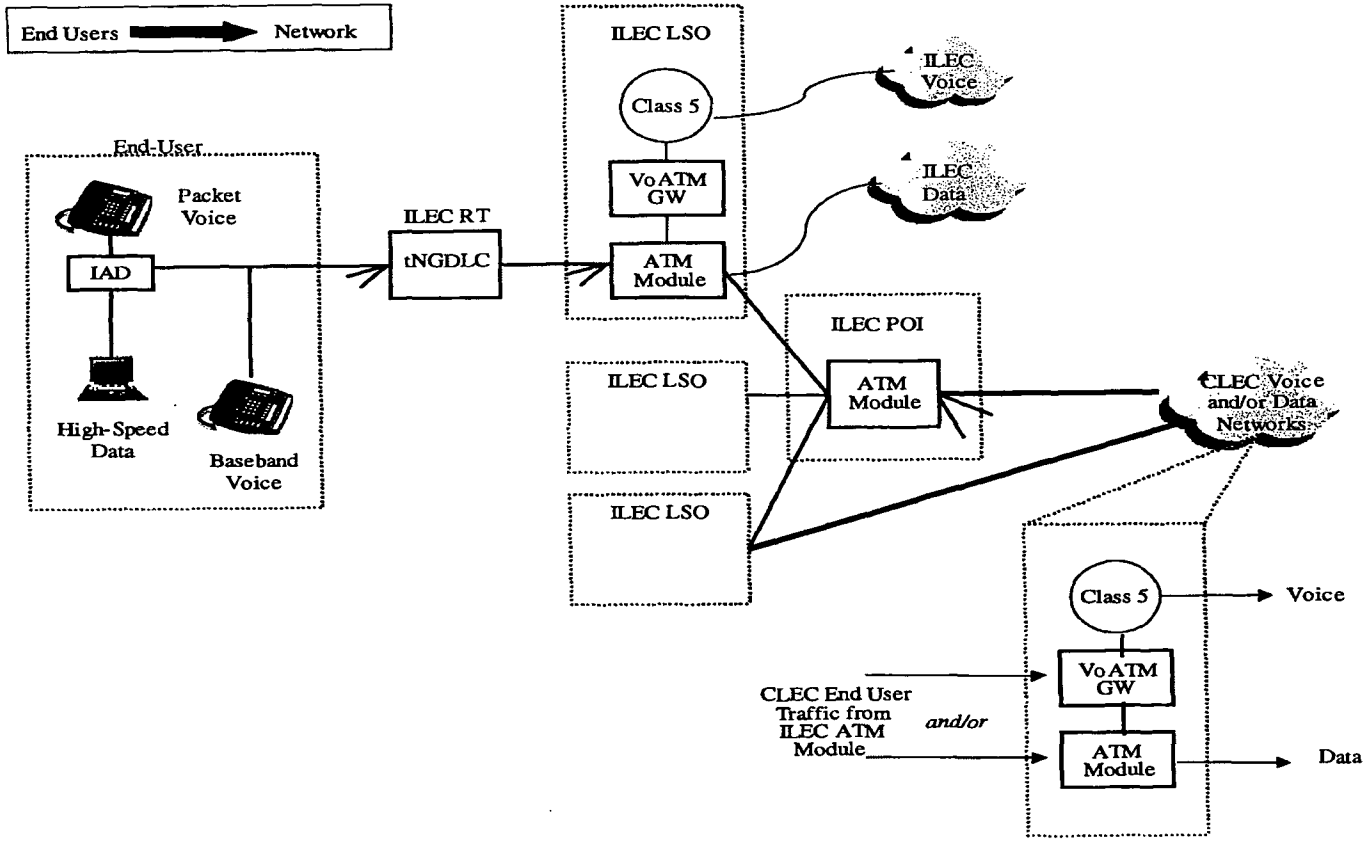
1. CUSTOMERS SHALL BE ABLE TO CHANGE PROVIDERS OF BASIC LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE FROM THEIR INCUMBENT LOCAL EXCHANGE CARRIER TO A COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS PROVIDER WITH THE SAME EASE, TIMELINESS AND COST AS WHEN CUSTOMERS CHANGE PROVIDERS OF LONG DISTANCE SERVICES.

2. AS TO ITS PRICING AND PROVISION OF WHOLESALE LOCAL EXCHANGE SERVICE, NO LOCAL EXCHANGE PROVIDER SHALL MAKE OR GRANT ANY PREFERENCE OR ADVANTAGE TO ANY OTHER PROVIDER OF TELECOMMUNICATIONS SERVICE OVER THAT PROVIDER'S COMPETITORS OR CREATE ANY ADVANTAGE ON ITS OWN BEHALF IN ITS PRICING OR PROVISION OF SUCH WHOLESALE SERVICE THAT IT DOES NOT OFFER TO OTHER PROVIDERS.

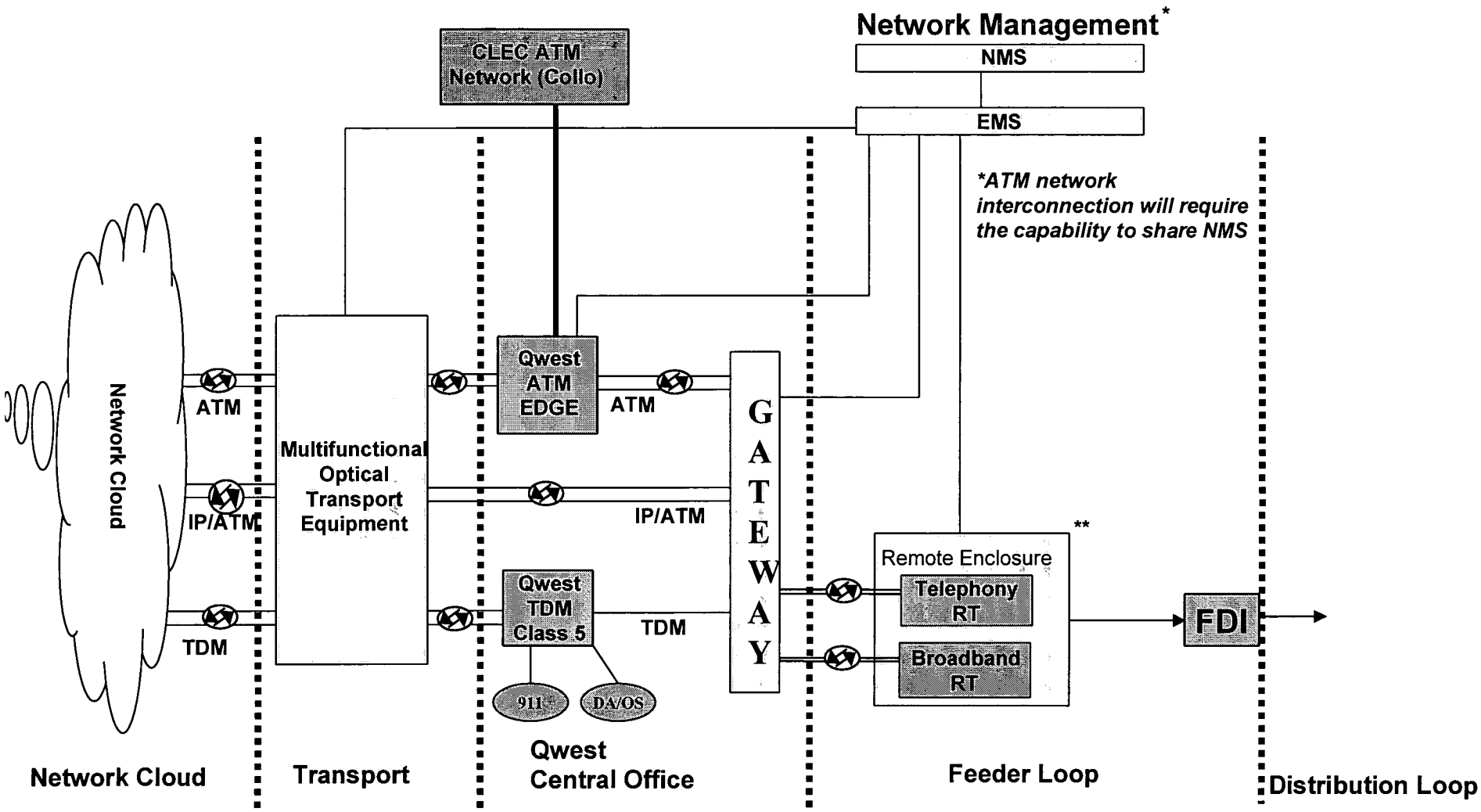
3. THE COMMISSION SHALL PROMULGATE RULES TO IMPLEMENT THIS SECTION. IN THE IMPLEMENTATION OF THIS ACT, THE COMMISSION SHALL IDENTIFY ALL TECHNICALLY FEASIBLE METHODS FOR CUSTOMERS TO CHANGE PROVIDERS OF BASIC LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE AND PROMULGATE RULES FOR THOSE METHODS. IN ADDITION, AS NEW METHODS BECOME TECHNICALLY FEASIBLE, THE COMMISSION SHALL UPDATE THE RULES TO ADD THOSE NEW METHODS. THE COMMISSION'S GOAL SHALL BE TO INCLUDE RULES TO FACILITATE FULLY ELECTRONIC METHODS FOR FACILITIES BASED COMPETITION.

Electronic Loop Provisioning

GENERAL ELP NETWORK ARCHITECTURE



The Full NGDLC Architecture



***NGDLC deployment would require physical separation of shelf and fiber transport for appropriate affiliate separation.*

NOTE: Gateway is a functional description only for equipment that includes multi-protocol conversion

Summary of AT&T's Proposed ELP Architecture

- **AT&T's Proposed ELP Architecture Does Not:**
  - Identify the demand for a near 100% loop plant replacement
  - Consider requirements necessary to facilitate multi-provider interconnection
  - Account for Common Channel Signaling vendor interoperability
  - Address the provisioning of 911/E911 and PSAP services
  - Address the provisioning of DA/OS services
  - Address a method of Quality of Service (QoS) verification

Summary of AT&T's Proposed ELP Architecture (continued)

- AT&T's Proposed ELP Architecture also:
  - Limits LEC architecture
  - Stifles evolution
  - Requires replacement of functioning infrastructure
  - Proposes that ELP is analogous to the FGD (Equal Access) implementation, which minimizes the ELP technology change out

ELP Technical Limitations

- **Electronic Loop Provisioning (ELP)**
  - **ELP requires Voice over Asynchronous Transfer Mode (VoATM) packet architecture that does not currently exist in Qwest's network**
    - In order to provide ELP functionality and increase capacity, Qwest would have to extensively augment its existing network
      - Qwest's existing ATM switch technology does not have the capacity or capability to support ELP
      - Qwest would be required to deploy a new ATM infrastructure in every central office

ELP Technical Limitations (continued)

- **Electronic Loop Provisioning (ELP) (continued)**
  - **ELP requires an ATM packet protocol that is fundamentally different from Qwest's circuit based Time Division Multiplexing (TDM) network**
    - Qwest's existing voice DLC platform is circuit based TDM, while ELP is packet based
    - Qwest would be required to replace all existing circuit based TDM DLC equipment with an optical based ATM infrastructure that is ELP capable

ELP Technical Limitations (continued)

□ ATM to ATM Interconnection

- **An ELP architecture would require an ATM Inter-Networking Interface (A-INI) protocol; this type of protocol does not exist in Qwest's network today**
  - A-INI is an ATM protocol that allows multiple ATM networks to interconnect
  - The existing Qwest User to Network Interface (UNI) does not provide for ELP functionality
- **A-INI is required to provide a firewall between networks**
  - Qwest's UNI interface does not provide the necessary firewall to interconnect multiple interconnecting ATM networks

ELP Technical Limitations (continued)

- **ATM to ATM interconnection (continued)**
  - **A-INI has not been fully developed or implemented by industry vendors**
    - Vendors of telecom equipment would be required to develop and implement A-INI
  - **ELP requires A-INI VoATM interconnection for the exchange of local traffic**
    - Minutes-of-use billing has only been developed for TDM networks
    - ELP would require vendors to develop the ability to bill ATM interconnection minutes of use

ELP Technical Limitations (continued)

□ Gateway Architecture

- **Telecom vendors would be required to develop gateways for multi-provider access**
  - Qwest's existing circuit based TDM technology allows interconnection for multiple carriers
  - Qwest has not deployed multi-protocol gateways that support ELP

ELP Technical Limitations (continued)

- **Element Management Systems (EMS) and Network Management Systems (NMS)**
  - **EMS and NMS have not been fully tested or deployed for multi-carrier access and interoperable environments**
    - Partitionable EMS would enable CLEC access to features, functions and capabilities
      - Vendors of telecom equipment and software would have to develop a proven partitionable EMS
    - Non-partitioned EMS systems adversely impact all users
      - Over provisioning of ATM network capacity will reduce interconnected carriers capability to provide service
      - Interconnecting carriers' alarm reporting could potentially flood a multi-provider ATM network

ELP Technical Limitations (continued)

- Element Management Systems (EMS) and Network Management Systems (NMS) (continued)
  - ELP would require VoATM Quality of Service (QoS) standards
  - QoS standards have been established for the circuit based TDM network, but not for VoATM

ELP Technical Limitations (continued)

- **Common Channel Signaling**
  - **ELP requires Bearer Independent Call Control (BICC) Protocol to establish virtual voice paths through the ATM network**
    - BICC Protocol has not been proven to be vendor interoperable in Qwest's network
    - Lab testing would have to prove vendor interoperability
    - Lab testing of vendor interoperability has not been completed

ELP Technical Limitations (continued)

- **911/E911 and Public Safety Answering Point (PSAP)**
  - **Qwest associated emergency services network is circuit based TDM, not packet based**
    - Currently PSAPs have not deployed packet based 911/E911 networks
- **Directory Assistance/Operator Service (DA/OS)**
  - **DA/OS networks are circuit based TDM, not packet based**
    - If ELP supports DA/OS, all DA/OS networks would need to be packet capable
      - Currently, OS/DA providers have not deployed packet based DA/OS networks

Impact Summary

- AT&T is searching the ILEC ATM network for additional network features beyond the FCC's requirements, expecting to create services based on network features that ILEC's have not deployed or do not use

Impact Summary (continued)

- **The FCC has ruled that Unbundled Packet Switching (UPS) is the only ATM packet switching UNE that passes the Act's necessary and impair test where:**
  1. **Qwest has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier (IDLC) or universal digital loop carrier systems or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section,**
  2. **There are no spare copper loops available capable of supporting the xDSL services the requesting carrier seeks to offer,**
  3. **Qwest has placed a DSLAM for its own use in a remote Qwest premises, but has not permitted CLEC to collocate its own DSLAM at the same remote Qwest premises,**
  4. **Qwest has deployed packet switching capability for its own use.**

Impact Summary (continued)

- ELP would require Qwest to provide unfettered access to UPS even where the FCC's four conditions have not been met
- AT&T's proposal for ELP and unconditional access to Qwest's network would permit AT&T to reassign its financial risk to Qwest
- AT&T's proposal creates an opportunity for CLECs to directly access NGDLC through virtual connections, which provides slamming opportunities that would impact customer choice

Impact Summary (continued)

- In order for Qwest to provide ELP, as proposed by AT&T, Qwest would be required to make significant changes to its existing network; this type of sweeping technology change would require billions of new capital investment

- AT&T's arguments about GR-303 are largely irrelevant to the cost of deploying ELP
  - Only about 18% of Qwest's Central Offices are currently equipped with GR-303 capability
  - Only about 2% of Qwest's access lines are served by GR-303 DLC

Impact Summary (continued)

- ELP would require Qwest to place new A-INI capable ATM switches in every central office in its region
  - Currently, Qwest has 146 ATMs deployed in 12% of its central offices
  - Qwest's existing ATM technology does not have the capacity to support a robust ELP functionality
- Qwest's currently deployed ATM interfaces do not support ELP
  - All existing ATM interfaces would require A-INI, rather than the UNI interface that Qwest currently has in place
  - Additional hardware would be required to upgrade Qwest's existing ATM network to be A-INI capable

Impact Summary (continued)

- The FGD transition did not demand the degree of global infrastructure replacement, and was based on exiting, prevalent capabilities
  - The FGD (Equal Access), MFJ driven transition, adjusted the in-place architecture; it was essentially software based
  - It did not demand technology replacement
  - In fact, it was not nearly as equipment focused as the ELP thought
  - Some new signaling enhancements were needed for exiting switches for FGD (Equal Access), not global infrastructure replacement

FGD (Equal Access) vs ELP
High Level Comparison

☐ FGD

- **Existing Switching architecture left in place**
  - OSS change was required
- **Billing System architecture left in place**
  - Enhancements required
- **Software development lengthened process completion (biggest obstacle)**

☐ ELP

- **All new ATM infrastructure in every central office**
- **Replace all existing circuit based TDM DLC equipment**
- **With an optical based ATM infrastructure**
- **That is ELP capable**
- **An ELP architecture would require an A-INI protocol; this type of protocol does not exist in Qwest's network today**

Conclusion

- **AT&T (by recommending ELP) is trying to solve a hot-cut problem that does not exist and has a hidden agenda to require ILEC's to replace their functioning infrastructure with a next generation network**
  - **Qwest's current hot-cut performance is meeting or exceeding current performance standards**
    - In particular, in each month since July of 2001, Qwest has performed at least 98% of its analog loop hot-cuts on time and at least 96% of its digital loop hot-cuts on time

Conclusion (continued)

☐ Qwest's current hot-cut performance (continued)

- Furthermore, as demonstrated in the *UNE Fact Report*, hot-cuts are now routinely completed on-time without significant disruptions more than 98% of the time. [1]
- Because they cannot credibly dispute the overwhelming evidence of the ready availability of switching from sources other than ILECs, AT&T falls back to the argument that "hot cuts" pose operational impediments sufficient to satisfy the impair standard. But AT&T ignores the evidence that hot cut performance has improved considerably in the more than two years since the *UNE Remand Order* to a level foreclosing any argument that hot cuts pose an operational or other barrier to competition through use of UNE loops.

1 UNE Fact Report at II - 16 to II - 17, App. H.

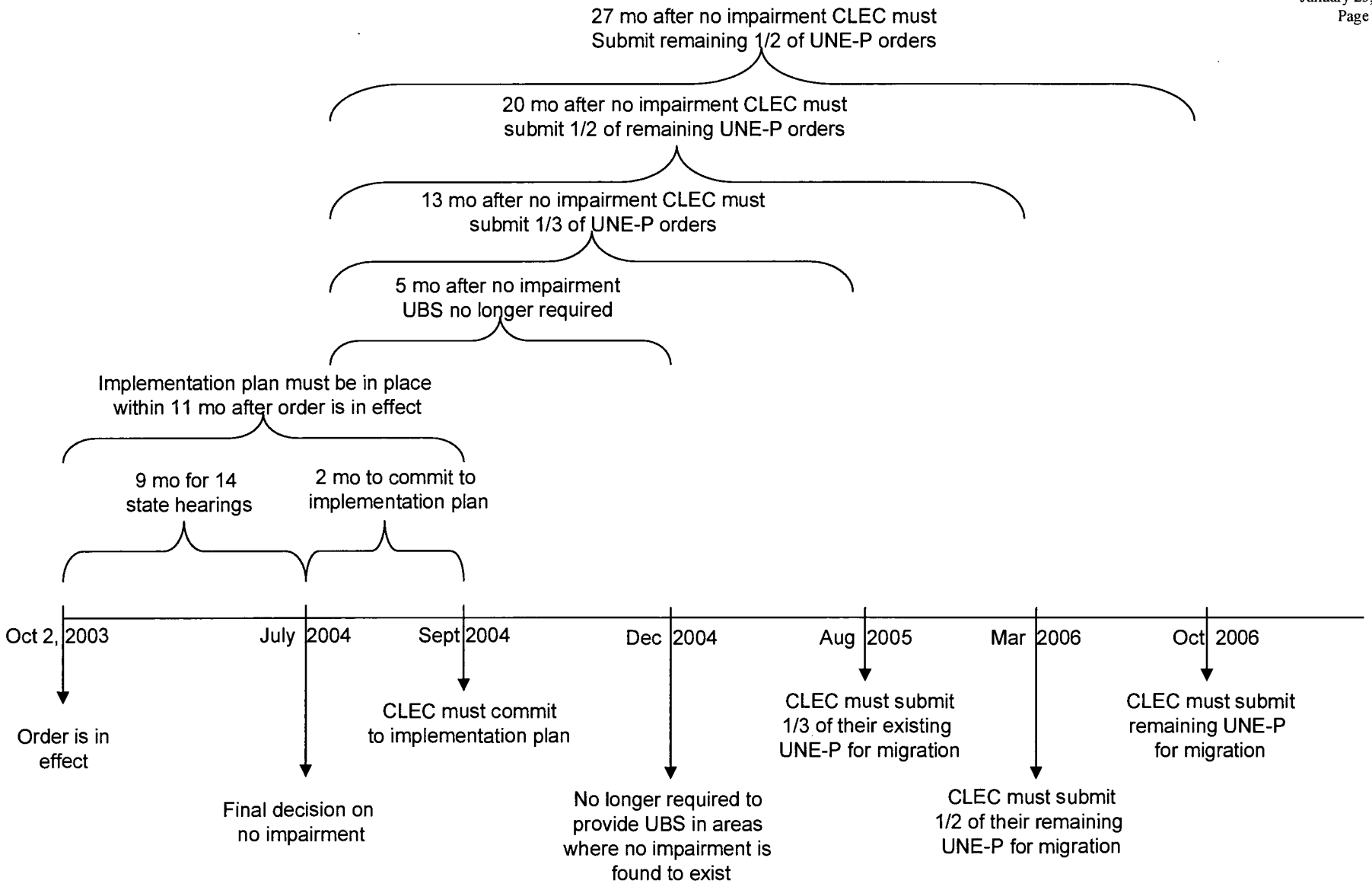
Final Thoughts

- It seems hard to imagine that the FCC or any state commission could take the ELP proposal seriously when one of their charters is to keep dial tone costs to customers as reasonable as possible. If it is as cost-effective as AT&T promotes, any army of CLECs would be rushing in to place NGDLCs at the FDI and cut the ILEC out of a major segment of the business, leveraging off unbundled subloops
- If this thrust were successful, an architecture du joir is mandated to the service provider
- Is this something that AT&T is offering on their own ATM network?

Acronyms

- **A-INI:** ATM INTERNETWORK INTERFACE
- **ATM:** ASYNCHRONOUS TRANSFER MODE
- **BICC:** BEARER INDEPENDENT CALL CONTROL
- **CLEC:** COMPETITIVE LOCAL EXCHANGE CARRIER
- **CO:** CENTRAL OFFICE
- **DA:** DIRECTORY ASSISTANCE
- **DSLAM :** DIGITAL SUBSCRIBER LINE ACCESS MULTIPLEXER
- **ELP:** ELECTRONIC LOOP PROVISIONING
- **EMS:** ELEMENT MANAGEMENT SYSTEM
- **FCC:** FEDERAL COMMUNICATIONS COMMISSION
- **FDI:** FEEDER/DISTRIBUTION INTERFACE
- **FGD:** FEATURE GROUP D
- **IDLC:** INTEGRATED DIGITAL LOOP CARRIER
- **ILEC:** INCUMBENT LOCAL EXCHANGE CARRIER
- **IP:** INTERNET PROTOCOL
- **NE:** NETWORK ELEMENT
- **NGDLC:** NEXT GENERATION DIGITAL LOOP CARRIER
- **NMS:** NETWORK MANAGEMENT SYSTEM
- **OS:** OPERATOR SERVICES
- **PSAP:** PUBLIC SAFETY ANSWERING POINT
- **QoS:** QUALITY OF SERVICE
- **RT:** REMOTE TERMINAL
- **TDM:** TIME DIVISION MULTIPLEXING
- **UNI:** USER NETWORK INTERFACE
- **UPS:** UNBUNDLED PACKET SWITCHING

9 Month Time Line



Docket No. PU-439-03-295
Qwest Corporation
Direct Testimony of Dennis Pappas
Exhibit No. DP-25
January 23, 2004

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order	*Docket No. UT-033044*

DIRECT TESTIMONY OF

LORRAINE BARRICK

ON BEHALF OF
QWEST CORPORATION

JANUARY 23, 2004

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BATCH HOT CUT PROCESS CONCLUSIONS 3

INTRODUCTION

Q. PLEASE STATE YOUR NAME AND ADDRESS.

A. My name is Lorraine Barrick. My address is 1144 Federal Avenue East, Seattle, WA 98102.

Q. WHAT IS YOUR CURRENT BUSINESS OCCUPATION?

A. I am the Sole Proprietor of Lorraine Barrick LLC and a certified public accountant. I provide clients with business and financial consulting services.

Q. WHAT IS YOUR BACKGROUND?

A. My work experience includes nearly 18 years of auditing and consulting work, 15 years of which were at the public accounting and consulting firm of Arthur Andersen, LLP. When I left Arthur Andersen in May of 2000, I was a partner in the Consulting Division of the Seattle office. I have extensive experience assisting companies in the telecommunications industry. See Exhibit 1 of my attached Report for a copy of my resume.

PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I was retained by Qwest Corporation (Qwest) through Hitachi Consulting to review and test its processes and procedures pertaining to the Batch Hot Cut (BHC) process. I was assisted in my work by a team of telecommunications and process consultants from Hitachi Consulting.

DESCRIPTION OF WORK

Q. WHAT WAS THE SCOPE OF YOUR ENGAGEMENT WITH QWEST COMMUNICATIONS?

A. We were engaged in a consulting capacity to review the proposed BHC process, observe commercial tests of the process, and make recommendations for process improvement. The scope of our BHC engagement with Qwest included the following:

- Gaining an understanding of the existing hot cut process;
- Studying Qwest's hot cut performance to date;
- Reviewing the proposed BHC process, as well as public CLEC comments and concerns regarding that process;
- Comparing the current hot cut process to the proposed BHC process;
- Developing a testing plan to be used to judge the quality and efficiency of the proposed BHC process;
- Making recommendations for process improvements; and,
- Observing commercial tests of the BHC process.

The "Scope of Work" section in my attached Report contains a description of the Qwest facilities that we observed during the engagement. In addition, Exhibit 4 of my attached Report contains a list of the people we met with or interviewed over the course of our engagement with Qwest.

Q. WERE PROCESS IMPROVEMENT RECOMMENDATIONS MADE BY HITACHI CONSULTING?

A. Yes, we made several process improvement recommendations over the course of our engagement. All of the material process improvement recommendations made by Hitachi Consulting have been addressed to my satisfaction. Section 6 of

my Report sets forth examples of those recommendations. In addition, Exhibit 5 of the Report contains a detailed diagram of the proposed BHC process.

BATCH HOT CUT PROCESS CONCLUSIONS

Q. HAS QWEST DEMONSTRATED THE ABILITY TO PROCESS LARGE COMMERCIAL VOLUMES OF HOT CUTS?

A. Qwest has demonstrated, based on historical data for the existing hot cut process, that it can handle large volumes of UNE-P to UNE-Loop conversion requests. Qwest has demonstrated on many occasions the ability to process more than 1,000 hot cut requests in a day. Qwest has also demonstrated the capability to consistently perform between 25 and 100 hot cuts per day per central office and to exceed these amounts when required, with new installation trouble rates (troubles within 30-days of installation) of less than 1%. See Section 8 of the attached Report for a detailed analysis of the historical hot cut volumes performed by Qwest.

Q. IS THE BHC PROCESS MORE EFFICIENT THAN THE EXISTING HOT CUT PROCESS?

A. The BHC process was created to make the hot cut process described above more scalable and efficient for larger volumes of hot cuts. The process groups multiple service orders for hot cuts into "batches". A CLEC will be required to submit a minimum of 25 lines and a maximum of 100 lines to create a batch. Significant efficiencies over the existing hot cut process are created through front-end edit checks, process automation, and streamlining of manual processes. We have measured the benefit of several of these differences. The results indicate that the

process is substantially more efficient than the current process and the differences we measured save many hours per day at the projected volumes. See Section 11 of the attached Report for the detailed results from our process efficiency comparisons.

Q. DISCUSS THE RESULTS FROM THE COMMERCIAL TESTS OF THE BHC PROCESS

A. We have tested this BHC process with live data, and the process works. Our testing to date has included four batches of approximately 25 telephone numbers per batch. In all cases, Qwest met 100% of its installation commitments, and no troubles were Reported for the Preliminary Live Trial within the first 30 days. As stated, Qwest met 100% of its installation commitments, which exceeds the FCC's 90% on-time hot cut performance standard set forth in its Bell Atlantic Section 271 decision. In fact, Qwest has demonstrated an ability to consistently meet and exceed this benchmark. See Section 11 for a detailed explanation of test results from the preliminary live trial and the second round live trial of the BHC process.

Q. WILL THE BATCH HOT CUT PROCESS SUPPORT THE ANTICIPATED VOLUMES?

A. In my opinion, the BHC process as proposed represents significant improvements in efficiency with acceptable levels of quality when compared to the existing hot cut process. Nothing has come to my attention to suggest that this process will not scale to the forecasted volumes.

Q. WHAT IS YOUR SUPPORT FOR THESE FINDINGS?

A. My support for these findings is based upon analysis of the volumes of hot cuts Qwest has successfully handled in the past using the existing hot cut process, the significant efficiencies gained through the BHC process (and measurement of some of the time savings associated with them), my understanding the volumes of hot cuts that will be required during the 21 month migration period, and the results of the live trials we conducted, all of which are documented in the attached Report.

Q. DO YOU HAVE ANYTHING TO ADD?

A. All of the details supporting my conclusions are detailed in the attached Report.

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order	*Docket No. UT-033044*

Report of Lorraine Barrick

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Exhibit 13b	Service Order Details of Second Round Live Trial
Exhibit 14	Confidential Testing Information

1. Executive Summary

I am a certified public accountant. I have been engaged in business and financial consulting since 1988. I have extensive experience in assisting companies in the telecommunications industry.

I was retained by Qwest Corporation (Qwest) through Hitachi Consulting to review and test its processes and procedures pertaining to the Batch Hot Cut (BHC) processes defined below. I was assisted in my work by a team of telecommunications and process consultants from Hitachi Consulting. This report summarizes the work performed by me, or under my supervision, and my opinions resulting from this work.

Our work included the following:

- Gaining an understanding of the existing hot cut process;
- Studying Qwest's hot cut performance to date;
- Reviewing the proposed BHC process, as well as public CLEC comments and concerns regarding that process;
- Making recommendations for process improvements;
- Comparing the current hot cut process to the proposed BHC process;
- Developing a testing plan to be used to judge the quality and efficiency of the proposed BHC process; and,
- Testing the BHC process.

Qwest has demonstrated, based on historical data for the existing hot cut process, that it can handle large volumes of UNE-P to UNE-Loop conversion requests. Qwest has demonstrated, on many occasions, the ability to process more than 1,000 hot cut requests in a day. Qwest has also demonstrated the capability to consistently perform between 25 and

100 hot cuts per day per central office (CO) and to exceed these amounts when required, with 30-day trouble rates of less than 1%.

Qwest has serviced the above volumes using the existing hot cut process. Currently, Qwest processes hot cuts individually on a first in, first out basis. The proposed BHC process will implement significant improvements that will enable increased efficiencies, seamless service and enhanced scalability as compared to the existing hot cut process.

The BHC process was created to make the hot cut process described above more scalable and efficient for larger volumes of hot cuts. The process groups multiple service orders for hot cuts into "batches." A CLEC will be required to submit a minimum of 25 lines and a maximum of 100 lines to create a batch. Significant efficiencies over the hot cut process are created through front-end edit checks, process automation and streamlining of manual processes. We have measured the benefit of several of these differences. The results indicate that the process is substantially faster than the current process and the differences we measured save many hours per day at the projected volumes.

We also tested Qwest's proposed BHC process with live trials using CLEC customers. Our testing to date has included four batches of approximately 25 telephone numbers per batch. In all cases, Qwest met 100% of its installation commitments, and no troubles were reported for the preliminary live trial within the first 30 days. (The second two batches were cut within a week of issuance of this report and, therefore, 30-day trouble report data is not available for the second two batches.) As stated, Qwest met 100% of its installation commitments, which exceeds the FCC's 90% on-time hot cut performance standard set forth in its Bell Atlantic Section 271 decision. In fact, Qwest has demonstrated an ability to consistently meet and exceed this benchmark.

Extrapolation of the Due Date activities of the COs for each of the live trials indicates that a team of two technicians should be able to complete them in the course of an eight-hour shift. Any remaining time in the shift, plus other shifts, could be used to conduct pre-wire activity for other batches.

To scale to the Qwest forecasted volumes, additional resources will be required. Each of the key departments have plans to scale as required. We have discussed these plans with department management and nothing has come to our attention to suggest that they are unreasonable.

In my opinion, based on the above, the BHC process as proposed represents significant improvements in efficiency with acceptable levels of quality when compared to the existing hot cut process. Nothing has come to my attention to suggest that this process will not scale to the forecasted volumes.

2. Introduction

I am a certified public accountant. I have been engaged in business and financial consulting since 1988. Prior to that, I was an auditor for three years. My work experience includes nearly 15 years at the public accounting and consulting firm of Arthur Andersen, LLP. When I left Arthur Andersen in May of 2000, I was a partner in the Consulting Division of the Seattle office. I have extensive experience in assisting companies in the telecommunications industry. My resume is attached as Exhibit 1.

I was retained by Qwest through Hitachi Consulting to review and test its processes and procedures pertaining to the BHC processes defined below. I was assisted in my work by a team of telecommunications and process consultants from Hitachi Consulting. This report

summarizes the work performed by me, or under my supervision, and my opinions resulting from this work.

This report assumes the reader's familiarity with the hot cut process and related subject matter. A glossary of terms and acronyms used in this report is provided in Exhibit 2.

During the course of our test work, we obtained information from electronic databases and other Qwest systems that was captured in the course of Qwest operations. The scope of this engagement was not to conduct an audit of any of this information under the Generally Accepted Auditing Standards of the American Institute of Certified Public Accountants. We relied on this information as discussed below.

Certain information and assumptions were provided to us by Qwest. Any such information upon which we relied is documented in the relevant report section.

I reserve the right to change my opinion due to any new information that becomes available to me.

This report was prepared for the above-referenced matter and should not be used or referred to for any other purpose.

3. Background

The Federal Communications Commission (FCC), in its September 26, 2003, Triennial Review Order (TRO), required any Incumbent Local Exchange Carrier (ILEC) seeking to rebut the FCC's national presumption that Competitive Local Exchange Carriers (CLECs) are impaired without access to unbundled switching in mass markets to establish a "batch hot cut

process" for CLECs. Pursuant to that Order, Qwest petitioned many of the state commissions within its 14-state region to open such a docket.

The FCC found that a "seamless, low-cost batch hot cut process for migrating mass market customers from one carrier to another is necessary, at a minimum, for carriers to compete effectively in the mass market."[1]

In conjunction with Qwest's petition to rebut the presumption of impairment, Qwest engaged Hitachi Consulting to review and test its BHC process, to provide recommendations for process improvement, and to determine whether, in my opinion, Qwest will be able to perform the required number of hot cuts per CO per day necessary to both serve future demand and migrate CLECs' embedded base of Unbundled Network Element Platform (UNE-P) clients to Unbundled Network Element Loop (UNE-Loop), at an acceptable quality level.

4. The Scope of Work

Our work included the following:

- Gaining an understanding of the existing hot cut process;
- Studying Qwest's hot cut performance to date;
- Reviewing the proposed BHC process, as well as public CLEC comments and concerns regarding that process;
- Making recommendations for process improvements;
- Comparing the current hot cut process to the proposed BHC process;
- Developing a testing plan to be used to judge the quality and efficiency of the proposed BHC process; and,
- Testing the BHC process.

[1] TRO paragraph 487.

During the course of our work, we visited 10 COs, the Qwest CLEC Coordination Center (QCCC), two Loop Provisioning Centers (LPCs), Design Services and two of the three Service Delivery Centers. We observed both the existing hot cut process and the proposed BHC process. We discussed the process and resource requirements with personnel at various locations. The sites we visited are included in Exhibit 3. The people we interviewed are identified in Exhibit 4.

5. Overview of the Current Hot Cut Process

Currently, Qwest processes hot cuts individually on a first in, first out basis. The hot cut process consists of three basic activities: (a) order creation and acceptance, (b) planning and pre-wire (Designed, Verified and Assigned Date or DVA) and (c) cut over (Due Date). These activities are performed discretely for each requested hot cut. Local Service Requests (LSRs) are issued by the CLEC to initiate the hot cut for a particular line. Qwest's Service Delivery Centers convert these LSRs into service orders to be provisioned in the network. The LSRs are submitted in two ways; through the Interconnect Mediated Access (IMA) system (submitted through GUI or EDI), or through facsimile. The majority of LSRs are received in IMA and are processed through the automated systems in the Service Delivery Centers.

The service orders are processed and reviewed by two additional departments' automated systems to ensure the line can be cut over as requested by the CLEC. The LPC verifies the loop to the customer premises and Design Services checks the quality of the loop and designs the circuit. These steps are typically completed within one day of the LSR submittal.

Once a service order is created and accepted, Qwest prepares for the hot cut in the days prior to the Due Date. The QCCC is responsible for scheduling, provisioning and assembling work orders to execute the hot cuts for the inside plant on Due Date. The Central Office

Technician (COT) "pre-wires" the hot cut by installing cross-connects and jumpers between the Interconnect Distribution Frame (ICDF) and the Main Distribution Frame (MDF) inside the CO. This wiring will remain in place, but unused, until the hot cut Due Date. These steps occur between days two and three of the process.

On Due Date, the COT performs the hot cut to transfer service from Qwest's switch to the CLEC's switching equipment. The COT first performs a dial tone and Automatic Number Identification (ANI) test on the loop terminating on the CLEC switch and the Qwest switch. If all tests are successful, the COT performs the "lift and lay" to transfer service to the CLEC switch facility. The COT subsequently performs the same dial tone and ANI tests at the protector frame to ensure the hot cut was successful. Once cut over activity is complete on the CO floor, the COT notifies the QCCC that the cut is completed and closes the work order in Qwest's work management system. The QCCC contacts the CLEC with notification of the completed cut. The CLEC is required to reject the hot cut within two hours of completion of the hot cut. If no cuts are rejected, the COT removes the hot cut jumpers from the MDF to the Qwest switch.

6. Overview of the Batch Hot Cut Process

As Planned

Qwest's BHC design process has been an iterative one. On December 1, 2003, Qwest proposed a BHC process to the CLECs. This process was revised and refined based on the following:

- Qwest's internal study of the proposed process;
- CLEC input: two multi-day forums were held by Qwest to elicit CLEC comments on the proposed process; and,
- Hitachi Consulting input.

The BHC was created to make the hot cut process described above more scalable and efficient for larger volumes of hot cuts. The process is based on grouping multiple service orders for hot cuts into "batches." A CLEC will be required to submit a minimum of 25 lines and a maximum of 100 lines to create a batch. (These batches will be assembled by the QCCC after LSR submission and acceptance.) The COTs will pre-wire lines and perform dial-tone and ANI tests three or four days before Due Date, using a 7-day standard interval. If there is no dial-tone or the incorrect ANI is detected, the CLEC will have until Due Date to correct any CLEC-side issues. On Due Date, COTs will work to cut up to 100 lines between 3:00 am and 11:00 am local time. The CLEC can monitor the status of the project through an online order status tool, or trap and trace capability. The CLEC is required to reject the hot cut within two hours after the BHC is complete. If no cuts are rejected, the COT will remove the hot cut jumpers from the MDF to the Qwest switch. The BHC process is documented in Exhibit 5. As with the hot cut process, the CLEC will have the opportunity to accept or reject any of the hot cuts.

Hitachi Consulting made several process improvement recommendations over the course of our engagement. All of the material process improvement recommendations made by Hitachi Consulting have been addressed to our satisfaction. One example of the recommendations that have been incorporated in the proposed BHC process is requiring CLECs to submit BHC LSRs via the IMA system with the option to fax the order in the event of system outages.

Key Process Differences

In order to gain efficiencies and allow for greater volume, the BHC process will differ from the hot cut process in various ways. The most significant differences are discussed below and are identified in Exhibit 5.

Order Creation and Acceptance

- Significant interactive edits will be built into the IMA system to identify the LSRs tagged for the BHC process and to ensure the reduction of input errors, which then require additional manual handling by both Qwest and the CLEC.
- Qwest will require that all LSRs submitted for the BHC process must be sent through IMA (GUI or EDI) and faxes will only be allowed when the above systems are unavailable. BHC LSRs will not have the option to be marked for "Manual Handling" by the CLEC thereby, enabling them to flow-through to the Service Order Processor (SOP) electronically.

Planning and Pre-wire (DVA)

- An automated sort engine filters out the BHC service orders and assembles batches based on CLEC and CO.
- Multiple work documents, sorted by the location of the jumpers on each frame, are automatically created for the COTs. The documents are organized to maximize efficient wiring procedures in the CO.
- Creation of an automated sort engine to input the wiring information into the spreadsheets used by the COTs.

Cut Over

- An online order status notification tool will be created. The CLEC will have the ability to monitor the tool for updates as its own processes dictate.
- The CLEC will not be given time to correct an incorrect dial tone or ANI test problem on Due Date. If there is an issue with CLEC dial tone or ANI on Due Date, the line will be assigned a Jeopardy status using the online order status tool and the line will be removed from the batch.
- QCCC updates in WFA-C as well as CO updates in FOMS/TIRKS are no longer manual processes. These processes have been automated.

- CLECs will also have the option to enable trap and trace functionality in their switches. When Qwest initiates the ANI test, the CLEC will be notified via trap and trace of the test, signifying the BHC has begun.

As Tested

Some of the planned process improvements will require significant time and resources from Qwest to develop. Therefore, they could not be completed in time for our testing. Principal process improvements not available at the time of our testing include:

- Interactive edits added to the IMA;
- Creation of an online order status notification tool;
- Use of trap and trace capabilities inherent in the CLEC's switch; and,
- Automated updates to various Qwest's systems.

A complete list of the components of the process, not yet available as of the date of our testing, is included in Exhibit 6.

The process improvements not available for testing will serve to expedite the process and create additional efficiencies. Therefore, actual performance should be better than that experienced in our testing.

7. Assumptions Regarding Batch Hot Cut Process

According to Qwest management, the following services are eligible for the BHC process:

- UNE-P to UNE-Loop;
- Retail to UNE-Loop;
- UNE-Loop to UNE-Loop (CLEC to CLEC);
- UNE-P to UNE-Loop (CLEC to CLEC);

- Resale to UNE-Loop; and,
- Centrex to UNE-Loop.

The following services are excluded, although the traditional hot cut process will be available for these services:

- IDLC;
- Line Splitting;
- Line Sharing;
- Lines with Conditioning;
- Remote Serving Offices (EX cables);
- Extended Electronic Loops;
- Requests with Coordination; and,
- CLEC to ILEC.

We have also been informed that the maximum number of BHCs per day, in any given CO, will be 100 lines (plus all regular hot cuts).

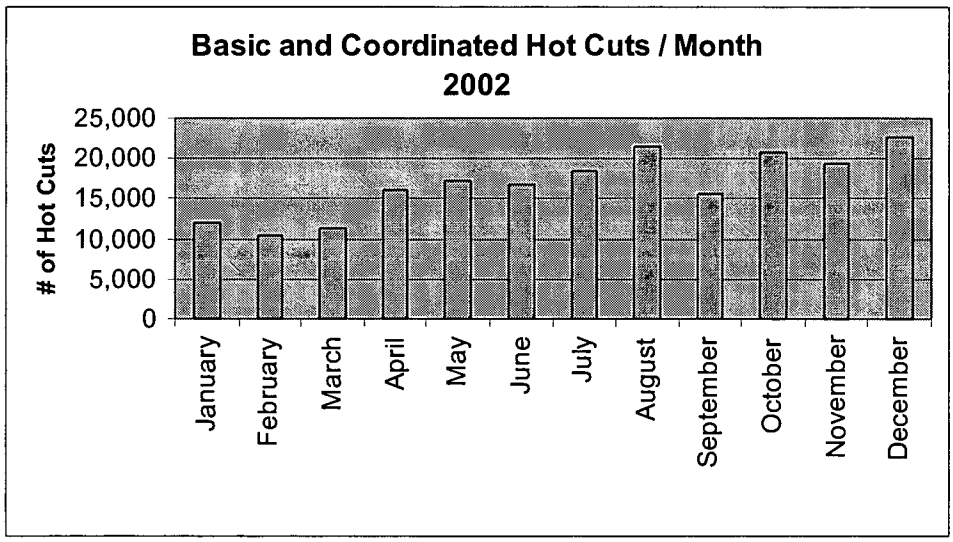
In addition, we received information from Qwest concerning embedded base, growth and historical and future volumes. This information is discussed in the section of this report titled "Qwest Historical Hot Cut Volumes and Volume Forecast." We have relied on these assumptions and structured our testing accordingly.

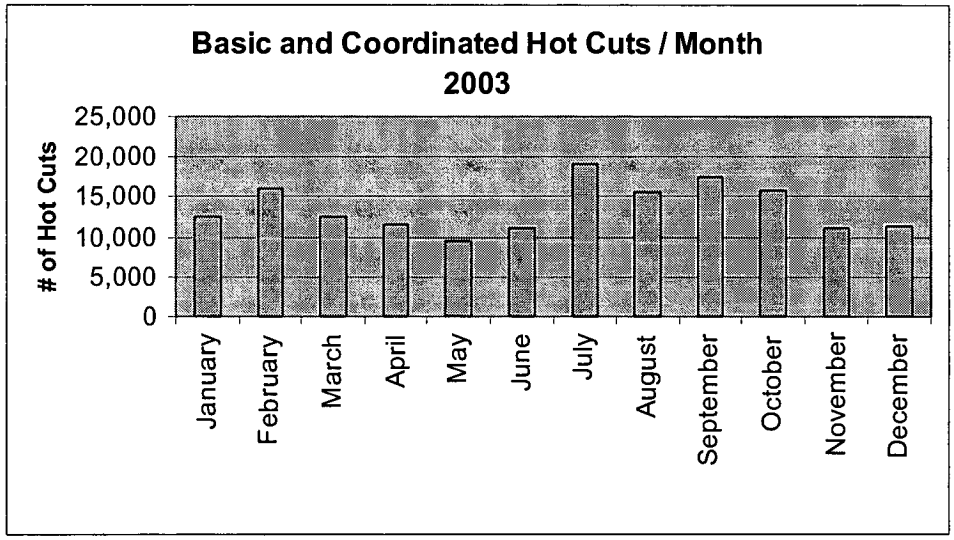
8. Qwest Historical Hot Cut Volumes and Volume Forecast

Daily volumes of Basic and Coordinated 'Reuse' (i.e., reusing the loop facility) hot cuts performed by Qwest COs for each CLEC during 2002 and 2003 were collected from Qwest's Service Order Processing systems.

This data indicates that Qwest performed approximately 202,000 and 163,000 hot cuts during 2002 and 2003, respectively. Illustration 1 represents the total number of hot cuts performed each month by Qwest. Exhibit 7 provides total monthly volume of hot cuts performed by state.

Illustration 1 – Total Number of Hot Cuts Performed per Month





Source: Qwest's Service Order Processing Systems

Total Daily Volume

The following observations are made regarding total daily volumes of Basic and Coordinated 'Reuse' hot cuts performed by Qwest for all CLECs, across all COs.

2002

- Qwest performed between 700 and 900 hot cuts on 85 different business days.
- Qwest performed between 901 and 1,100 hot cuts on 56 different business days.
- Qwest performed between 1,101 and 1,300 hot cuts on 20 different business days.
- Qwest performed more than 1,300 hot cuts on five different business days.
- The maximum number of hot cuts performed by Qwest in a single day was 1,631.

2003

- Qwest performed between 700 and 900 hot cuts on 59 different business days.
- Qwest performed between 901 and 1,100 hot cuts on 23 different business days.
- Qwest performed between 1,101 and 1,300 hot cuts on three different business days.
- The maximum number of hot cuts performed by Qwest in a single day was 1,216.

Illustration 2 – Total Daily Volume of Hot Cuts

Daily Hot Cut Volumes	2002	2003
700-900	85	59
901-1100	56	23
1101-1300	20	3
>1300	5	0
Maximum Single Day Volume	**1,631**	**1,216**

Source: Qwest's Service Order Processing Systems

Daily Volume by Central Office

Daily volumes of Basic and Coordinated 'Reuse' hot cuts performed by Qwest were disaggregated to analyze hot cut volume at each CO. The following observations were made.

2002

In 2002, 73 COs across 11 different states demonstrated the ability to perform 50 or more hot cuts in a day. Exhibit 8 provides a list of COs that demonstrated the aforementioned capability and the number of times they achieved hot cut volume of 50 or more in a day. The following are examples of COs that performed high volumes of hot cuts on a consistent basis. Exhibit 9 provides daily volume of hot cuts performed by these and other COs.

- CDFLIACO (Iowa) performed between 22 and 122 hot cuts per day over 17 days (a total of 723 hot cuts) in April and between 20 and 134 hot cuts per day over 14 days (a total of 1,045 hot cuts) in August.
- CLTNIACO (Iowa) performed between 33 and 119 hot cuts per day over six days (a total of 477 hot cuts) in April and between 37 and 94 hot cuts per day over six days (a total of 373 hot cuts) in April and May.
- DESMIANW (Iowa) performed between 21 and 81 hot cuts per day over 14 days (a total of 744 hot cuts) in January and between 16 and 65 hot cuts per day over nine days (a total of 387 hot cuts) in January and February.

- DUBQIATC (Iowa) performed between 19 and 83 hot cuts per day over nine days (a total of 428 hot cuts) in April and May and between 20 and 86 hot cuts per day over 59 days (a total of 2,978 hot cuts) in September, October and November.
- WTRLIADT (Iowa) performed between 19 and 89 hot cuts per day over 18 days (a total of 881 hot cuts) in September and October between 30 and 122 hot cuts per day over 39 days (a total of 2,779 hot cuts) in October and November.
- FARGNDBC (North Dakota) performed between 20 and 71 hot cuts per day over 13 days (a total of 458 hot cuts) in January and between 27 and 75 hot cuts per day over 14 days (a total of 633 hot cuts) in August and September.
- SXFLSDCO (South Dakota) performed between 29 and 124 hot cuts per day over 21 days (a total of 1,209 hot cuts) in August and between 30 and 80 hot cuts per day over 16 days (a total of 930 hot cuts) in December.

The five largest daily volumes of hot cuts performed by individual COs were 205, 257, 291, 335 and 347, respectively. Further research indicates that there were 12 trouble reports experienced within 30 calendar days following installations of the aforementioned 1,435 hot cuts. This represents a trouble rate of 0.84%. Paragraph 309 of FCC's decision In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York, -CC Docket #99-295 (Rel. Dec. 22, 1999), sets the performance benchmark at five percent or lower for such new installation service outages. The aforementioned trouble rate of 0.84% met the benchmark set forth mentioned in the section of the report titled "Testing Benchmarks."

2003

In 2003, 66 COs across 11 different states demonstrated the ability to perform 50 or more hot cuts in a day. Exhibit 8 provides a list of COs that demonstrated the aforementioned capability and the number of times they achieved hot cut volumes of 50 or more in a day.

The following are examples of COs that performed high volumes of hot cuts on a consistent basis. Exhibit 9 provides daily volume of hot cuts performed by these and other COs.

- FTCLCOMA (Colorado) performed between 33 and 63 hot cuts per day over seven days (a total of 309 hot cuts) in August and between 28 and 56 hot cuts per day over 14 days (a total of 569 hot cuts) in September.
- ANKNIACO (Iowa) performed between 27 and 86 hot cuts per day over 25 days (a total of 1,456 hot cuts) in August and September.
- DUBQIATC (Iowa) performed between 20 and 65 hot cuts per day over 24 days (a total of 1,129 hot cuts) in July and August and between 25 and 65 hot cuts per day over 17 days (a total of 816 hot cuts) in August.
- MRTWIASO (Iowa) performed between 20 and 46 hot cuts per day over 13 days (a total of 404 hot cuts) in September and between 28 and 88 hot cuts per day over 27 days (a total of 1,421 hot cuts) in September and October.
- WFRGNDBC (North Dakota) performed between 34 and 60 hot cuts per day over 21 days (a total of 948 hot cuts) in October and November and between 23 and 72 hot cuts per day over eight days (a total of 398 hot cuts) in December.

The four largest daily volumes of hot cuts performed by individual COs were 100, 111, 123 and 135, respectively. Further research indicates that there were four trouble reports experienced within 30 calendar days following the aforementioned installations (a total of 469 hot cuts). This represents a trouble rate of 0.85%. The aforementioned trouble rate of 0.85% met the benchmark set forth mentioned in the section of the report titled "Testing Benchmarks."

Illustration 3 is a tabular representation of consistent, high-volume monthly hot cuts performed at aforementioned COs.

Illustration 3: Selected Hot Cut Volumes

2002

State	CO	Consecutive days	Number of hot cuts	Average hot cuts/day
Colorado	BLDRCOMA	14	32 - 119	68
Iowa	CDFLIACO	17	22 - 122	43
Iowa	CDFLIACO	14	20 - 134	75
Iowa	CLTNIACO	6	33 - 119	80
Iowa	CLTNIACO	6	37 - 94	62
Iowa	DESMIANW	14	21 - 81	53
Iowa	DESMIANW	9	16 - 65	43
Iowa	DUBQIATC	9	19 - 83	48
Iowa	DUBQIATC	59	20 - 86	50
Iowa	IWCYIATC	12	17 - 347	107
Iowa	SXCYIADT	7	67 - 183	112
Iowa	SXCYIADT	9	27 - 53	41
Iowa	SXCYIADT	11	28 - 69	46
Iowa	WTRLIADT	8	19 - 61	44
Iowa	WTRLIADT	18	19 - 89	49
Iowa	WTRLIADT	39	30 -122	71
Minnesota	MPLSMNTF	11	25 - 64	46
North Dakota	FARGNDBC	13	20 -71	35
North Dakota	FARGNDBC	14	27 - 75	45
South Dakota	SXFLSDCO	21	29 - 124	58
South Dakota	SXFLSDCO	13	21 - 69	48
South Dakota	SXFLSDCO	16	30 - 80	58

2003

State	CO	Consecutive days	Number of hot cuts	Average hot cuts/day
Colorado	DNVRCOCW	9	25 - 53	43
Colorado	FTCLCOMA	7	33 - 63	44
Colorado	FTCLCOMA	14	28 - 56	41
Iowa	LVLDCOMA	7	43 - 53	49
Iowa	ANKNIACO	25	27 - 86	58
Iowa	AMESIATC	21	27 - 97	64
Iowa	BURLIATC	18	22 - 83	60
Iowa	DUBQIATC	24	20 - 65	47
Iowa	DUBQIATC	17	25 - 65	48
Iowa	MRTWIASO	13	20 – 46	31
Iowa	MRTWIASO	27	28 - 88	53
Minnesota	MPLSMNPI	9	23 - 67	43
Minnesota	NSPLMNPR	9	29 - 76	49
Minnesota	WBLKMNWB	15	36 - 71	50
North Dakota	FARGNDBC	10	30 - 75	46
North Dakota	WFRGNDBC	21	34 - 60	45
North Dakota	WFRGNDBC	8	23 - 72	50

Source: Qwest's Service Order Processing Systems

Multi-CLEC Hot Cut Volume

Although high-volume days are often triggered by a large volume of requests from one CLEC, Qwest has handled significant hot cut volumes for multiple CLECs on the same day. For example, the following observations were made after analyzing the five largest daily volumes of hot cuts performed by Qwest:

2002

- On November 27, 2002 Qwest performed 1,631 hot cuts for 18 CLECs.
- On July 31, 2002 Qwest performed 1,503 hot cuts for 16 CLECs.
- On June 28, 2002 Qwest performed 1,435 hot cuts for 15 CLECs.
- On August 30, 2002 Qwest performed 1,389 hot cuts for 19 CLECs.
- On December 16, 2002 Qwest performed 1,331 hot cuts for 18 CLECs.

2003

- On July 31, 2003 Qwest performed 1,216 hot cuts for 18 CLECs.
- On September 17, 2003 Qwest performed 1,198 hot cuts for 20 CLECs.
- On February 10, 2003 Qwest performed 1,172 hot cuts for 19 CLECs.
- On September 15, 2003 Qwest performed 1,050 hot cuts for 24 CLECs.
- On September 11, 2003 Qwest performed 1,049 hot cuts for 24 CLECs.

Volume Forecast of UNE-Loop

Qwest has estimated the embedded base of UNE-P lines as of December 31, 2004, at 1,275,000 lines. Qwest assumes that 64% of the total embedded lines are in the proposed unimpaired market areas, resulting in an estimate of 816,000 UNE-P lines in unimpaired market areas as of December 31, 2004. Between January 1, 2005, and July 31, 2005, the number of UNE-P lines in the proposed unimpaired market areas is further reduced by

assuming churn of three percent per month, resulting in approximately 659,000 lines that will require conversion.[2]

Qwest's migration analysis includes:

- The estimated embedded base requiring conversion;
- New UNE-Loops resulting from a freeze on UNE-P in unimpaired markets;
- Churn on the embedded base requiring conversions; and,
- Churn on the UNE-Loop.

This analysis forecasts a daily volume of conversions of that reaches a peak approximately 3,600 in August 2005. Qwest assumes all UNE-P lines in unimpaired areas will convert to UNE-Loop. Hence, the forecast made by Qwest of the daily conversion volumes appears to be conservative.

To conduct a migration analysis at the CO level, Qwest chose the CO with the largest embedded base of UNE-P in Minnesota (6,595 lines). Using 60% growth, Qwest estimates the embedded base will be 10,552 lines. Qwest has estimated that to convert the embedded base of UNE-P in this largest CO in the state of Minnesota while handling the new UNE-Loop volume created by the absence of the UNE-P option, the CO would have to perform 64 hot cuts per business day over the next 21 months. This is significantly less than the 100 BHCs Qwest has committed to undertake per CO per day. It is also significantly less than Qwest has successfully performed in the past using the current hot cut process.[3]

This analysis indicates that all of the individual COs can be converted within the 21 months provided in the FCC Triennial Review Order.

[2] Source: According to the written testimony of Robert Brigham dated January 23, 2004.
[3] Source: According to the written testimony of Robert Brigham dated January 23, 2004, filed in the state of Minnesota.

Summary of Historical and Forecast Volume Analysis

Qwest has demonstrated, based on historical data for the existing hot cut process, that it can handle large volumes of UNE-P to UNE-Loop conversion requests. Qwest has further demonstrated on many occasions the ability to process more than 1,000 hot cut requests per day. Qwest has also demonstrated the capability to consistently perform between 25 and 100 hot cuts per day per CO and to exceed these amounts when required with 30-day trouble rates of less than 1%.

Qwest has serviced the above volumes using the existing hot cut process. The proposed BHC process will implement significant improvements that will enable increased efficiencies and scalability over the existing process.

Qwest has provided forecasts of the volume of hot cuts required in the largest COs over the 21 month migration period. This forecast, including growth of the embedded base and including new UNE-Loop replacing new UNE-P, would be 64 cuts per business day in the largest CO in Minnesota. This is significantly less than the 100 BHCs Qwest has committed to, and is no more than Qwest performs today using the current hot cut process.

9. Testing Procedures Performed

Our testing of Qwest's BHC process consisted of three parts:

- A preliminary live trial of the BHC process;
- A second round live trial of the BHC process; and,
- A comparison of the current hot cut process to the BHC process.

Preliminary Live Trial of the BHC Process

We tested Qwest's proposed BHC process with a live trial using CLEC customers. This was accomplished through an agreement with a CLEC to perform commercial trials of the BHC process. The purpose of the initial trial was to ensure that the process worked and to develop process improvement recommendations based on the results.

The BHC preliminary live trial consisted of two production batches of 25 hot cuts each in one Cod (CO #1)[4]. This trial was conducted on two consecutive days in December 2003. The submission of LSRs occurred on December 10th and 11th and the hot cuts took place on the December 17th and 18th. The LSRs were submitted on two consecutive days as two separate batches containing 25 lines each. The composition of these batches is included in Exhibits 12 and 13a. Results of the preliminary live trial are discussed in the section of this report titled "Testing Results."

Second Round Live Trial of the BHC Process

After the CLEC forum in January 2004, the CLEC permitted us to perform additional live testing. Two additional batches of 25 cuts were submitted on the same day to two separate COs.[5] The composition of these batches is included in Exhibits 12 and 13b. LSRs were submitted on January 12, 2004, DVA was on January 15, 2004 and Due Date was on January 19, 2004.

During the period between the preliminary live trial and the second round live trial, changes were made to the BHC process. Significant examples of these changes include:

- In December 2003, the process did not offer the ability for Qwest to notify CLECs of issues before Due Date because the pre-wire was done on Due Date. Thus, in the December 2003 trial, the CLEC had only one hour on Due Date to resolve issues

[4] The locations of these COs are disclosed in the highly confidential Exhibit 14.
[5] IBID.

before the order was removed from the BHC. In January 2004, pre-wire occurred on DVA and the "lift and lay" occurred on Due Date. The COTs checked CLEC dial tone and ANI on DVA which would have allowed the CLEC to fix issues before Due Date if there were any.

- In January 2004, if the CLEC dial tone or ANI test was not accurate on Due Date, the order would have been pulled from the BHC.[6] This process step did not occur in the December trial.
- In January 2004, the line continuity testing was removed from the automated sort engine at the QCCC. The removal of the test allowed for faster throughput at the QCCC.

The results of the second round live trial are included within the section titled "Testing Results" of this report.

Comparison of Hot Cut Process to the BHC Process

In addition, we compared key process steps between the hot cut process and the BHC process. This approach required the identification and comparison of the most significant differences between the two processes. Thus, observations were required of time components to measure efficiencies.

Between January 13 and 15, 2003, we observed the existing hot cut process at three Colorado COs on three consecutive days. These observations created a baseline for the time required to complete the CO steps for the hot cut process. This benchmark was used to compare the current hot cut process with the BHC process. In both processes (hot cut and BHC), the pre-wire and Due Date steps occur on separate days.[7]

[6] In this case, there were no issues.

[7] Due to the fact that both pre-wire and Due Dates steps were observed on the same day at the CO, the service orders that were observed for the steps were different.

We captured the same time metrics that were captured during the BHC trials. These metrics were compared against the BHC trial results. The comparisons were used to evaluate efficiencies created by the new process. Results of these comparisons are included in the section of the report titled "Testing Results."

The most significant process changes we were able to monitor were:

- Implementation of the online order status tool as a replacement for the current QCCC communication process[8]; and,
- Updates to the CO workflow.

Test Documentation

We developed test documentation templates to capture process and system timing. During each phase of testing, we obtained system logs and data extracts from the Qwest systems used to execute the BHC transactions. In addition, our consultants were on-site at various Qwest facilities to capture the time required to perform specific work activities. Summaries of these test logs are shown in Exhibits 10 and 11.

10. Testing Benchmarks

The FCC's decision In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York, -CC Docket #99-295 (Rel. Dec. 22, 1999), sets forth a series of performance benchmarks with which to evaluate an ILEC's ability to unbundle network elements. Paragraph 309 of FCC's New York 271 decision broadly categorizes the benchmarks and the minimum expected performance as:

- On-time hot cut performance rate at or above 90%;

[8] This step was not involved in January because CLEC dial tone was available for all lines.

- Hot cuts resulting in service outages within the first 30 days at rates at or below 5%; and,
- Trouble rate at or below 2% per month for the total installed base.

It is our understanding that Qwest has developed the following PIDs to measure and report the aforementioned benchmarks:

- Installation Commitments Met (OP-3): evaluates the extent to which Qwest installs services for customers by the scheduled due date;
- New Service Installation Quality (OP-5): evaluates the quality of ordering and service within the first 30 days of installation; and,
- Trouble Report (MR-8): evaluates the trouble rate per month as a percentage of the total installed base of the service or element.

11. Testing Results

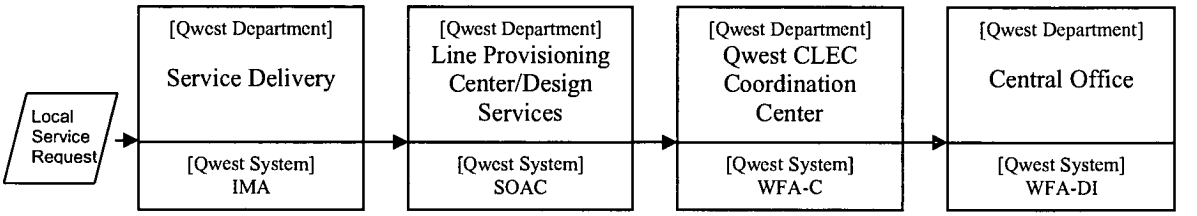
Preliminary Live Trial of the BHC Process

The preliminary live trial of the BHC process was conducted in CO #1. The BHC process began on Wednesday, December 10, 2003, with the submission of 17 LSRs that contained 25 lines for the BHC. The LSRs submitted on that day represented 24 migrations from UNE-P to UNE-Loop and one migration from Qwest Resale to UNE-Loop. The following day, Thursday, December 11, 2003, an additional 18 LSRs were submitted that also contained a batch of 25 hot cuts. The 18 LSRs submitted on that day represented 25 migrations from UNE-P to UNE-Loop. Our consultants were on-site at Qwest facilities to observe the orders processed through the various Qwest departments and systems.[9] The following diagram

[9] Consultants observed the orders process through Service Delivery and the QCCC. Consultants were not on site at the LPC or Design Services.

represents a high-level depiction of the physical flow for the BHC orders through Qwest departments and systems. Detailed process flows are in Exhibit 5.

Illustration 4: High Level Physical Flow of BHC Orders



Service Delivery Observations

The Qwest Service Delivery Centers' primary responsibility is to process the LSRs received by Qwest. The Service Delivery Centers will typically process all LSRs in the same day that the request for service is received by Qwest. The LSRs for the preliminary live trial of the BHC process were received by the IMA application. The IMA application provides a graphical user interface (GUI) for the CLECs to enter BHC LSRs. The IMA application provides functionality for the Qwest Service Delivery Center to validate the accuracy of LSRs. For example, a basic address check is run to check certain types of address errors before the LSR is submitted.

We observed the BHC LSRs processed by Service Delivery on Wednesday, December 10, 2003. Each Telephone Number (TN) that qualified for automatic flow-through had a Firm Order Commitment (FOC) issued within one minute. On that day, the average LSR processing time through the Service Delivery Center was approximately three minutes.

We observed that one LSR fell out for manual handling because there were other orders on the account in pending status. Based on the functionality of the IMA application, all LSRs that are received with pending orders on the account will be automatically routed for manual handling in Service Delivery. This LSR represented a migration from Resale to UNE-Loop.

Based on discussions with Qwest personnel, resale LSRs will frequently have other orders pending on the account and will require manual handling.[10]

We also observed the BHC LSRs processed by Service Delivery on Thursday, December 11, 2003. Each TN that qualified for automatic flow-through had a FOC issued within one minute. On that day, the average LSR processing time through the Service Delivery Center was approximately two minutes. We observed that one LSR fell out for manual handling due to a central number (CNUM) error database exception. This exception was created by a database issue which resulted in an error on the service order. When this error occurs, the addresses and numbers are revalidated and updated if required to correct the database. The entire batch of 18 LSRs was processed through Service Delivery within 38 minutes of receipt by Qwest.

For the preliminary live trial, Service Delivery assigned a dedicated Service Delivery Coordinator (SDC) to monitor the LSRs as they passed through the system. These LSRs were not pulled in chronological order from the queue due to a request from the CLEC to understand the nature of the fallout for manual handling.

Line Provisioning Center and Design Services

The Line Provisioning Center (LPC) is responsible for managing the process of evaluating the loop characteristics to determine compatibility with the requested service. UNE-Loops are automatically evaluated for compatibility through the Loop Facility Assignment and Control System (LFACS) application. In the event any service orders have fallen out for RMA (Request for Manual Assistance) in the provisioning systems, the LPC will resolve or facilitate the resolution of the RMA to meet the service order Due Date.

[10] Service Delivery manually processed the Resale LSR within 53 minutes. We observed that the entire batch of 17 LSRs was processed through Service Delivery within 53 minutes of receipt by Qwest.

The Design Services organization is responsible for creating the circuit design. The circuit design for UNE-Loops is automatically created in the TIRKS application.

We observed both the LPC and Design Services operations to become familiar with the components of the BHC process. In addition, we contacted representatives from these departments on an as needed basis to clarify results from the BHC Trial.

QCCC Observations

The QCCC is responsible for validating the accuracy of the BHC service orders, assigning the service orders to the appropriate Qwest CO facility, managing the BHC process and providing communication with CLECs regarding order status. Qwest has proposed the development of an online order status application that will provide online communication with CLECs regarding the status of requested BHCs. The online order status tool was not available during our preliminary live trial of the BHC process.

The QCCC receives BHC service orders in the WFA-C application. The BHC orders received in WFA-C are processed daily. Thus, the BHC preliminary live trial LSRs that were received on Wednesday, December 10, 2003, by Service Delivery were processed at the QCCC on Thursday, December 11, 2003.

We observed the BHC service orders processed by the QCCC on Thursday, December 11, 2003. All the orders went through the automated flow-through process; however, we observed two service orders that required manual follow up by the QCCC. The orders required follow up for the following reasons: one for a Universal Digital Channel Unit (UDC) issue that required a dispatch out and the second for a facilities error that was resolved manually by the LPC before the QCCC could reach the LPC for follow up.[11] The elapsed time for all BHC service orders processed on December 11, 2003, was 51 minutes.

[11] Both of these issues were resolved prior to the Due Date.

We also observed the BHC service orders processed by the QCCC on Friday, December 12, 2003. All of the service orders went through the automated flow-through process, however, we observed five service orders that required manual follow up by the QCCC. The orders that required manual handling consisted of one order that had a line short in the loop and required a dispatch out from the CO to resolve. The other four service orders that required manual handling were resolved by LPC Consultants. One of the service orders was resolved before the QCCC could reach the LPC for follow up. Refer to Exhibit 10 for results of preliminary live trial. The elapsed time for all BHC service orders processed on December 12, 2003, was 38 minutes.

CO Observations

The Qwest CO facilities are responsible for operating and maintaining the core telephony assets (e.g. main distribution frame, interconnection distribution frame, etc.) that are involved in the BHC process. Under the BHC process, the CO receives a spreadsheet from the QCCC that contains a list of the work orders included in the BHC.

We observed the BHC procedures performed at CO #1 on Wednesday, December 17, 2003, and Thursday, December 18, 2003. The BHCs performed on these two days represented the LSRs received on Wednesday, December 10 and Thursday, December 11, 2003, respectively. We observed 25 BHCs performed on December 17 and 23 BHCs performed on December 18, 2003. Two orders with Due Dates on December 18, 2003, had their Due Dates delayed and were later cancelled by the CLEC for the following reasons: In the first case, the CLEC input an incorrect Service Provider Identification Code (SPID) on the LSR. The SPID on the order was for a different CLEC and if cut over, the number would have incorrectly ported to another CLEC. The second cancellation was due to an issue with an off-premises extension.

During these two days we observed the following procedures performed in the Qwest CO:

- Review of the spreadsheet with orders and wiring information;
- Dial tone test;
- Installation of interconnection distribution frame jumpers;
- Installation of main distribution frame jumpers;
- Qwest and CLEC ANI checks;
- Physical lift and lay of the copper pair;
- Protector Distribution Frame (PDF) dial tone check; and,
- Updates to WFA-DI.

During our observations of the BHC trial, we recorded the following average elapsed time to complete each CO procedure:

Illustration 5: Average Elapsed Time for Each DVA Procedures

CO Procedure	Average Time Per TN (December 17, 2003)	Average Time Per TN (December 18, 2003)
Review spreadsheet	16 seconds (Note 1)	16 seconds (Note 1)
Dial Tone Test	22 seconds	24 seconds
Installation of IC distribution frame jumpers	2 minutes 46 seconds	3 minute 2 seconds
Installation of main distribution jumpers	1 minute 17 seconds	1 minute 53 seconds
Total Average Time for DVA Procedures	**4 minutes 41 seconds**	**5 minutes 35 seconds**

Note 1: These figures represent the average times recorded in the second round live trial.

Illustration 6: Average Elapsed Time for Each Due Date Procedures

CO Procedure	Average Time Per TN (December 17, 2003)	Average Time Per TN (December 18, 2003)
Review spreadsheet	N/A (Note 2)	N/A (Note 2)
Qwest and CLEC ANI tests & Lift and Lay	1 minute 17 seconds	1 minute 36 seconds
PDF dial tone checks	17 seconds	29 seconds
Update WFA	43 seconds (Note 1)	43 seconds (Note 1)
Total Average Time for CO Procedures	**2 minutes 17 seconds**	**2 minutes 48 seconds**

Note 1: These figures represent the average times recorded in the second round live trial.

Note 2: Review of the spreadsheet was only performed once because the steps for DVA and Due Date were performed on the same day.

The preliminary live trial piloted the proposed BHC process that was discussed during the CLEC Forum on December 3-5, 2003. In this trial the pre-wire and hot cut tasks were both performed on the Due Date. During the second round live trial on January 12 thru 19, 2004, Qwest modified the process based on feedback received from the CLEC forum. The revised BHC process dated January 9, 2004, performs the pre-wire activities on DVA and hot cut procedures on Due Date. Therefore, for comparison with additional trials, we have separated the elapsed work time for the pre-wire and hot cut procedures in the following table:

Illustration 7: Elapsed Time for Preliminary Live Trial

Date	Volume of TNs Included in Batch	Elapsed Work Time for Pre-Wire Procedures	Elapsed Work Time for Due Date Procedures	Time Required for CO BHC Procedures	Total Elapsed Time for CO BHC Procedures; Question and Answer with COT
December 17, 2003	25	1 hour 57 minutes	57 minutes	2 hours 54 minutes	6 hours 37 minutes (Note 1)
December 18, 2003	23	2 hours 20 minutes	1 hour 9 minutes	3 hours 29 minutes	4 hours 25 minutes

Note 1: Time includes rework associated with a process error that occurred in the CO BHC procedures on Due Date.

Summary of Preliminary Live Trial

During both days of the preliminary live trial, Qwest met 100% of its commitments on time.

There were no trouble reports for these TNs during the 30 days following the BHC.

Second Round Live Trial of the BHC Process

The second round live trial of the BHC process was conducted in CO #2 and CO #3. The BHC process began on Monday, January 12, 2004, with the submission of 26 LSRs that contained 52 BHCs. The LSRs submitted on that day represented 26 migrations from UNE-P to UNE-Loop submitted in nine LSRs and 26 Centrex migrations submitted in 17 LSRs. In addition to monitoring the process through system-captured times, our consultants were on-site at the CO facilities to observe the orders processed.

Service Delivery Observations

The BHC LSRs were processed by Service Delivery on Monday, January 12, 2004. Each TN that qualified for automatic flow-through in Service Delivery had a FOC issued within one minute. The only LSRs that fell out for manual handling were the Centrex orders, which were anticipated. LSRs received with Centrex orders may fall out to manual handling in Service Delivery due to the fact that there may be a pending order on the account.

The average manual processing time for Centrex LSRs through Service Delivery was 46 minutes. Orders that fell out for manual handling and were handled by the SDC also had a FOC issued within one minute of the completion. The average LSR processing time for both manual handling and automatic flow-through in the Service Delivery Center was 39 minutes. Based on discussion with Qwest personnel, Centrex comprises approximately 20% of the total embedded base of UNE-P.

QCCC Observations

The BHC service orders were processed in the QCCC on Monday, January 12, 2004. All the orders went through the automated flow-through process and none required manual follow up by the QCCC. Two orders that had been rejected were processed on January 13th.

CO Observations

We observed the BHC procedures performed at CO #2 and CO #3 for both the DVA Date, Thursday, January 15, 2004, and Due Date, Monday, January 19, 2004. The BHCs performed on these two days represented the LSRs received on Monday, January 12, 2004. We observed 26 BHCs performed in each location.

On the DVA Date, Thursday, January 15, 2004, we observed the following procedures performed in both COs:

- Review of the spreadsheet with orders and wiring information.
- ANI and dial tone test.
- Installation of interconnection distribution frame jumpers.
- Installation of main distribution frame jumpers.

On the Due Date, Monday, January 19, 2004, we observed the following procedures performed in both COs:

- Review of the spreadsheet with orders and wiring information.
- Qwest and CLEC dial tone and ANI tests.
- Physical lift and lay of the copper pair.
- Updates to WFA-DI.

During our observations of the second round live trial we recorded the following average elapsed time to complete each CO procedure:

Illustration 8: Average Elapsed Time Per DVA Procedure

CO Procedure	Average Time Per TN (CO #3)	Average Time Per TN (CO #2)
Review spreadsheet	16 seconds	16 seconds
Dial Tone Test	(Performed along with MDF jumpers)	44 seconds
Installation of ICDF jumpers	1 minute 44 seconds	1 minute 39 seconds
Installation of main distribution jumpers	1 minute 9 seconds	1 minute 48 seconds
Total Average Time for DVA Procedures	**3 minutes 9 seconds**	**4 minutes 27 seconds**

Illustration 9: Average Time Per Due Date Procedure

CO Procedure	Average Time Per TN (CO #3)	Average Time Per TN (CO #2)
Review spreadsheet	16 seconds	16 seconds
Qwest and CLEC ANI tests & Lift and Lay	1 minute 21 seconds	1 minute 30 seconds
PDF dial tone checks	Note 1	Note 1
Update WFA	28 seconds	58 seconds
Total Average Time for Due Date Procedures	**2 minutes 5 seconds**	**2 minute 44 seconds**

Note 1: Neither CO had a separate PDF from the MDF so the PDF checks could not be performed.

We compiled the following elapsed work times in the CO for the second round live trial of the BHC process. The following elapsed times include the total work time to perform the pre-wire (DVA) and Due Date (Due Date) procedures.

Illustration 10: Elapsed Times for the Second Round Live Trial

Date/ Location	Volume of TNs Included in Batch	Elapsed Work Time for Pre-Wire Procedures	Elapsed Work Time for Due Date Procedures	Total Elapsed Work Time for CO BHC Procedures	Total Elapsed Time for CO BHC Procedures; Question and Answer with COT
January 19, 2004 (CO #3)	26	1 hour 22 minutes	54 minutes	2 hours 16 minutes	2 hours 48 minutes
January 19, 2004 (CO #2)	26	1 hour 56 minutes	1 hour 11 minutes	3 hours 7 minutes	3 hours 14 minutes

The second round live trial piloted components of the revised BHC process that was discussed during the CLEC Forum on January 6 thru 8, 2004. The pre-wire activities were performed on DVA and hot cut procedures on Due Date.

Summary of Second Round Live Trial

During the second round live trial, Qwest met 100% of its commitments on time. In addition, there were no trouble reports for these TNs as of the writing of this report following the BHC, although the 30 days were not up.

The findings for the second round live trial represented an improvement preliminary live trial.

Differences in times for the COs can be attributed to several factors including:

- The physical size and layout of the COs and the installed equipment. For example, larger COs require more travel time (walking) between larger frames. Moreover, in CO #1 and CO #2, the vertical and horizontal side of the ICDF were facing opposite directions. In CO #3, they were both facing the same direction and therefore easier to wire.
- Unique COTs at each site.

Comparison of Hot Cut Process to the BHC Process

In comparing the BHC process to the hot cut process, we focused on two areas, as previously mentioned in this report, in the section titled "Testing Procedures Performed". These are:

- BHC communication between Qwest and CLECs
- Updates to the CO workflow

BHC Communication between Qwest and CLECs

As part of the BHC process, three changes are being made which will have a major effect on the communication process between Qwest and the CLEC.

- TNs are grouped by CO by CLEC and not by LSR. This results in having a larger number of TNs per batch.
- Only basic Reuse orders are allowed, thereby, information shared between the parties is less extensive than the amount of data communicated through coordinated and new orders.
- Orders that have NDT or an incorrect ANI on Due Date are immediately removed from the BHC. No resolution process is required.

Each of these changes would reduce the amount of coordination required between the CLEC and the QCCC. However in addition, Qwest is developing an online order status tool to communicate order status directly from the CO to the CLEC. The QCCC, in this process, will monitor the communications tool from the Qwest side and resolve any issues that arise. All current standard communications between the CO and the CLEC through the QCCC will be eliminated. All correspondence regarding NDT and incorrect ANI on Due Date will also be eliminated.

For comparison to the use of the online order status tool, observations of Plain Old Telephone Service (POTS) Provisioners at the QCCC were performed over the week of November 17, 2003, and January 15, 2004. During both visits, observations included monitoring the Provisioners, listening to their phone calls and understanding the nature and duration of the calls. The observations demonstrated that the Provisioner is currently involved in multiple types of orders including basic Reuse, coordinated Reuse and new orders. Each call series is based on an individual LSR (multiple TNs can exist per order). However, the average number of TNs associated with each LSR, based on the average number of TNs per LSR from January 2002 to December 2003, is 1.80. Servicing orders

individually results in Provisioner workload that averages 30 TNs per Provisioner per day. This is, in part, due to the many telephone calls that the Provisioners perform using the existing hot cut process.

To better understand the impact on the BHC process, actual workflow steps that would be removed by the online tool were recorded during the January 15, 2003 visit. The results of these observations are shown below.

Illustration 11: CLEC Notification Time Measurement

QCCC Service Representative Phone Call	Average Time Per Call
Call from COT to QCCC about cuts being completed	30 seconds
Call to CLEC from QCCC about cuts being completed	56 seconds
Call from CLEC to QCCC about acceptance of cuts	30 seconds
Completing the paper OSSCN form	60 seconds
Total impact per order	**2 minutes 56 seconds**

For each call type above, there were seven orders used to calculate the averages shown. While not a representative sample, our observations yielded very similar call times across all orders, and the largest variation in any of the calls was 20 seconds.

Calls conveying NDT and incorrect ANI were also observed as shown below:

Illustration 12: CLEC Communication Time Measurement

QCCC Provisioner Phone Call	Average Time Per Call
Call from CO to QCCC notifying them of problem	2 minutes
Call from QCCC to CLEC notifying them of problem	2 minutes
Call from CLEC to QCCC telling them problem was fixed	10 seconds
Call from QCCC to CO telling them problem was fixed	10 seconds
Total time per order	**4 minutes 20 seconds**

The average times above are representative of two observed instances. Each instance had a variance in each call of a few seconds. No data is available to demonstrate the frequency of NDT and incorrect ANIs. Qwest believes that approximately 20% of all orders have at least one line failing the DT/ANI test.

Consequently, assuming the projected volume of 3,600 lines per day, an average of 1.80 lines per LSR, the BHC process changes and the online communication tool would save approximately 5,867 minutes per day (two minutes 56 seconds per order x 3,600 TNs/1.80 TNs per call series). The time savings on the estimated 20% of orders that have NDT or incorrect ANI is 1,733 minutes (20% of 3,600 TNs/1.80 TNs per call series x 4 minutes 20 seconds). The combined amount of time saved per day is 7,600 minutes, or approximately 127 staff-hours per day over the current process.

The process efficiencies estimated above for the BHC process do not account for all of the potential savings. Our analysis included efficiencies gained from automating the QCCC communication time for orders that complete without issue and for NDT and ANI issues encountered on Due Date. To the extent that there are other types of issues that require communication, there may be additional communication efficiencies resulting from the BHC process.

CO Workflow

We compared the CO workflow between the current hot cut process and the BHC process during visits to COs throughout our study. We measured the time required under the existing process on January 13, 2004, in the Dry Creek CO in Denver, January 14, 2004, at the CO in Arvada and January 15, 2004, at the Colorado Springs Main CO. During each of these visits, we observed COTs performing the steps of the hot cut process and recorded times associated with the process. The observations consisted of three DVA orders and 35 Due Date orders.

During the DVA steps for the current hot cut process, the COT performs the pre-wire for one order at a time. The COT would wire the ICDF jumper, then immediately move to the MDF to install that jumper for each line needing to be wired on that day. For the BHC process, the COT(s) wire all of the ICDF jumpers before moving to the MDF frame. Time savings associated with the travel time from the ICDF to the MDF is variable based on the unique CO layout. The average was 90 seconds for the COs we visited.

The impact to the CO, using the assumption that there are 100 lines per CO per day, of saving 90 seconds per line time difference aggregates to 37.5 (90 * 25/ 60) minutes per CO or a maximum of 150 (90*100/60) minutes saved per day per CO per batch. The COT travel time is the primary efficiency of the BHC process when compared with the existing hot cut process.

Overall Trial Testing Considerations

The trials were conducted with a high level of scrutiny from Qwest, Hitachi Consulting and the participating CLEC. The high level of scrutiny and the number of people standing around the frames is likely to have affected COT productivity in some circumstances, increasing the overall activity times. For example, the COTs may have been hindered in some cases due to maneuvering around so many observers and answering questions while performing the cuts. We excluded some of the discussion time from the testing results but were unable to remove all disruption completely.

We have tested the largest volumes available to us during the course of our work. While this does not represent a test of the maximum volume per CO or for the whole organization, results to date suggest a high degree of success, particularly in the second round live trial and suggest that, assuming the BHC process is used, the COs can easily perform Due Date activities for the forecasted volumes. I also note that, based on the aforementioned volume

forecast, the largest CO in Minnesota would only have to perform 64 BHCs per business day during the 21 month conversion period.

12. Staffing the BHC Process

The BHC process will require incremental headcount in Service Delivery, QCCC and CO organizations. During our review of the BHC process, we met with representatives from each of these organizations to discuss Qwest's plans for staffing the BHC process. Based on our discussions and review of preliminary staffing plans, we see no reason to anticipate obstacles in finding the resources required to perform the BHC process.

Service Delivery Staffing

We spoke with Russ Urevig, Senior Process Analyst, about the ability of Qwest's Service Delivery Center to scale its resources based on the forecasted volumes when the BHC process is implemented. Mr. Urevig forecasted growth of the department based on the volume estimates developed by Robert Brigham, Staff Director of Public Policy. Mr. Urevig's calculations were based on three areas of need:

- Manual Handling;
- CFA Changes; and,
- Call Handling.

Based on Mr. Urevig's estimates, the Service Delivery Centers have existing facility capacity, including computers, for two-thirds of the forecasted volume of headcount growth that would be required. The other one-third can easily be outsourced to the third party contractor currently working with Qwest.

QCCC Staffing

We discussed the ability of the QCCC to scale from current volumes to the forecasted daily volumes documented in the section of this report titled "Qwest Historical Hot Cut Volumes and Volume Forecast" with Mary Pat Cheshier, Director of the QCCC. Ms. Cheshier noted that under the proposed BHC process, nearly all of the QCCC functions have been automated. For the existing process a substantial portion of the QCCC Service Representatives' time is spent communicating order status to the CLECs. This process will be automated with the implementation of the online order status tool. The QCCC will be required only to monitor the tool for CLEC updates related to CLEC jeopardy issues and update the CO as needed. Therefore, additional human resource requirements for the BHC process will be minimal.

The QCCC will be more significantly impacted by the growth in new UNE-Loop, as it is anticipated that much of this will not be done in batch. This will require significant additional headcount, which Ms. Cheshier anticipates she will begin hiring in October 2004. The QCCC has space in its existing facility to house this headcount. No problem is anticipated in hiring the additional headcount. Ms. Cheshier notes that when she opened the QCCC two and one half years ago, she hired and trained approximately 90 people. Most of these people were internal transfers already familiar to varying degrees with Qwest's processes and systems.

CO Staffing

We discussed the ability of the Qwest COs to scale from current volumes to the forecasted daily figures documented in the section of this report titled "Qwest Historical Hot Cut Volumes and Volume Forecast," with Jim Barganski, Manager, Program and Project Management. Mr. Barganski indicated that Qwest intends to staff the BHC process with dedicated COTs. Mr. Barganski also mentioned that the BHC process does not require any special skills and that every COT within Qwest is qualified to perform a BHC. Nonetheless, Mr. Barganski and

Qwest have committed to training its COTs on the new process, once it is approved by each affected state commission.

Qwest has estimated that approximately 100 additional COTs will be required to perform the BHC process. Mr. Barganski indicated that the staffing for new COTs is typically accomplished through a combination of internal transfers, hiring of new employees and contract supplemental staffing. Qwest has performed special projects in past that have required incremental headcount. During those projects Qwest did not experience difficulty staffing additional COTs.

We also met with Gale Todd, Director of Occupational Staffing, at Qwest. Gale mentioned that Qwest currently employs approximately 2,000 COTs. In addition, she mentioned that Qwest does not experience difficulty recruiting and hiring for the COT position.

13. Conclusion

Qwest has demonstrated the ability to process large volumes of hot cuts using its existing process:

- Qwest has performed more than 1,000 hot cuts on 28 days in the last two years. The maximum number of hot cuts per day during this period was 1,631;
- Qwest has demonstrated the ability to perform more than 50 hot cuts per day in 73 COs during 2002 and 66 COs in 11 states during 2003. Qwest has repeatedly performed in excess of 100 hot cuts in a CO in a day, with trouble rates of less than 1%; and,
- Qwest has demonstrated the ability to consistently cut large volumes of lines in a CO on a series of consecutive days.

Based on Qwest's volume forecasts, Qwest would be required to cut over a maximum of approximately 3,600 lines per day during the 21 month migration period. The largest CO in Minnesota, for example, would have to perform 64 BHCs each business day during the 21 month period.

Qwest has designed a new BHC process. This process introduces significant efficiencies over the hot cut process through front-end edit checks, process automation and streamlining of manual processes. We have measured the benefit of several of these differences. The results indicate that the process is substantially faster than the current process and the differences we measured save many hours per day at the projected volumes.

We have tested this process with live data and the process works.[12] Our testing to date has included four batches of approximately 25 TNs per batch. In all cases, all commitments were met and no troubles were reported for the first round of testing within the first 30 days.[13] Qwest met 100% of its commitments and, based upon the benchmarks set by the FCC of an on-time hot cut performance at 90%, Qwest demonstrated an ability to meet and exceed this benchmark.

Extrapolation of the Due Date activities of the COs for each of the live trials indicates that a team of two COTs should be able to complete them in the course of an eight-hour shift. Any remainding time in the shift, plus other shifts, could be used to conduct pre-wire activity for other batches.

The process improvements not available for testing will only serve to expedite the process and create additional efficiencies. Therefore, actual performance should be better than that experienced in our testing.

[12] We note however, that some portions of the process, such as the online order status tool, are not yet available to test.
[13] The second round was cut only four days prior to issuance of this report. At this date, we cannot comment on trouble status.

To scale to the Qwest forecasted volumes, additional resources will be required. Each of the key departments have plans to scale as required. We have discussed these plans with department management and nothing has come to our attention to suggest that they are unreasonable.

In my opinion, based on the above, the BHC process as proposed represents significant improvements in efficiency with similar levels of quality compared to the existing hot cut process. Nothing has come to my attention to suggest that this process will not scale to the forecasted volumes.

Respectfully Submitted,



Lorraine Barrick

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order	*Docket No. UT-033044*

Exhibit 1: Resume of Lorraine Barrick

January 23, 2004

Exhibit 1: Resume of Lorraine Barrick

Lorraine Barrick, CPA, CFE, ASA

Accreditations
Certified Public Accountant
Certified Fraud Examiner
Accredited Senior Appraiser, Business Valuation

Professional Qualifications
Member, American Institute of Certified Public Accountants

Member, Washington Society of Certified Public Accountants

Member, Certified Fraud Examiner's Association

Member, National Association of Forensic Economists

Senior Appraiser, American Society of Appraisers

Education
Bachelor of Science degree with distinction in accounting, with minor in computer science, Colorado State University

I have been in consulting for 18 years, the last 15 of which I have focused on business, financial and economic consulting. I have extensive experience in both domestic and international disputes. My work has included quantitative analysis, auditing (including process testing and compliance), asset tracing, fraud investigations, post-acquisition disputes, lost profits analysis, and business valuations.

I began my career as an auditor. My audit clients included public and private companies, as well as non-profit organizations, both in the U.S. and abroad. This work included developing statistically valid samples for testing, as well as reviews of business processes, procedures and internal controls, and development of recommendations, thereon, for management.

After resigning as a partner from Arthur Andersen in May of 2000, I was employed in the management of a public technology company. As Vice President of Operations for the technology development division, I was responsible for the initial development of all processes and procedures for our customer service teams (including electronic ordering systems, service response times, and quality assurance procedures and metrics), client relationship management, and finance. In October of 2001, I established my own consulting practice.

My consulting work includes forensic accounting and financial investigation, complex transaction and process mapping, modeling, business and intangible asset valuation, economic analysis, and financial advisory services. I have worked with clients in many industries, including telecommunications and technology, airline, banking and finance, real estate, retail, manufacturing, engineering, professional services and utilities.

I have worked with telecommunications clients in wireline, wireless, paging and equipment manufacturing businesses, in the U.S. and abroad. My work has included class action work, claims administration, business and intangible valuation and process improvement analysis.

I have experience in working in litigation, arbitration, utility and other regulatory tribunal settings, and have worked with private companies and individuals, as well as regulatory authorities such as the Federal Bureau of Investigation, the Securities and Futures Commission, Commercial Crime Bureau, and Department of Justice in Hong Kong.

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order	*Docket No. UT-033044*

Exhibit 2: Glossary of Terms Used

January 23, 2004

Exhibit 2: Glossary of Terms Used

Acronym	Word	Definition
ANI	Automatic Number Identification	ANI provides for the transmission through the network of the telephone number associated with a pair of wires.
BOSS	Billing and Order Support System	BOSS is the system that manages the Customer Service Record (CSR). CSRs contain account status, billing, listing and services and equipment information. This system serves Qwest's central and eastern regions.
BPL	Business Process Layer	The business process layer provides system edits for the IMA (order entry) system. Today, the BPL contains a series of edits to increase automated flow-through. An additional series of edits will be proposed to make the BPL more efficient and effective in the future.
CO	Central Office	A building or space where transmission facilities or circuits are connected or switched.
CORAC	Central Office Resource Allocation Center	The CORAC's primary function is to assign or "load" orders to the COTs.
	Centrex/Centrex 21	Centrex is a business telephone service offered by a local telephone company from a local CO. Centrex is basically normal single line telphone service with added features like intercom, call forwarding, call transfer, etc. It has more features than those typically offered for residential service.
ZCID	CLEC Identification	The ZCID identifies the CLEC via a three character, alpha-numeric entry.
CJEOP	CLEC Jeopardy Code	An alphanumeric code assigned to a service order used to indicate the type of trouble the order is experiencing and the responsible party for resolution.
CFA	Connecting Facility Assignment	Identifies the dedicated transport facility on which the service will ride; the cable name (DS0, DS1); cable and pair the loop will use to connect the ICDF/SPOT frame that is collocated with Qwest; slot number; and, A to Z CLLI codes.
CARS	Customer Account Retrieval System	CARS is the system that manages the Customer Service Record (CSR). CSRs contain account status, billing, listing and services and equipment information. This system serves Qwest's western

Exhibit 2: Glossary of Terms Used

Acronym	Word	Definition
		region.
CNUM	Customer Number Database	Telcordia's Media Vantage/Media Core corporate number database system responsible for the selection and administration of numbers associated with a customer's service. CNUM provides a single corporate database for the selection, assignment and administration of TNs and their associated data. TNs and their attributes will be extracted from SWITCH and loaded into CNUM.
CSR	Customer Service Record	From BOSS/CARS (the Qwest CSR systems).The CSR is the record of all services that a customer currently has, it includes administrative information such as service addresses, billing USOCs and features.
DS	Design Services	Qwest organization responsible for designing the circuit.
DVA	Designed, Verified and Assigned Date	The date on which implementation groups are to report that all documents and materials have been received and are complete.
DD	Due Date	The specific date on which the requested service is to be available to the CLEC or the CLEC's end-user.
FOC	Firm Order Confirmation	The notice Qwest provides to the CLEC to confirm that the CLEC LSR has been received and has been successfully processed. The FOC confirms the schedule of dates committed to by Qwest for the provisioning of the service requested.
FOMS	Frame Operations Management System	FOMS is a Telcordia product. The major functions of this system are to inventory and assign line equipment and provide information about frame wiring. FOMS supports flow-through service provisioning and is part of this mechanized process. The OE-LOIS data is provided by FOMS.
IMA	Interconnect Mediated Access	IMA is a Qwest system that allows CLECs to request Resale and Interconnect Products from Qwest. IMA provides several types of functionality to CLECs and Service Centers. IMA has a GUI for entry of LSRs, as well as an EDI interface. It allows the CLECs to perform pre-order, order and post-order functions.

Exhibit 2: Glossary of Terms Used

Acronym	Word	Definition
LNP	Local Number Portability	Local Number Portability (LNP) allows consumers to change service providers while retaining their phone numbers. NeuStar provides LNP services to the telecommunications industry. North American Portability Management, LLC and Canadian LNP Consortium currently contract with NeuStar to provide this service.
LSR	Local Service Request	The industry standard forms and supporting documentation used for ordering local services.
LFACS	Loop Facility Assignment and Control System	The system performing automated loop assignment.
LPC	Loop Provisioning Center	Qwest has six of these to look at the requested service change, to determine whether the existing loop is adequate or whether a change to the physical loop is required.
MDF	Main Distribution Frame	Used to connect Qwest cable pairs and line and trunk equipment terminals on a Qwest switching system.
PID	Performance Indicator Definition	Performance Indicator Definitions were developed during Qwest's 271 approval process that provides Qwest's performance indicators for various systems and functions (e.g. pre-order/order, provisioning, billing, etc.) for both retail and wholesale customers.
POTS	Plain Old Telephone Service	The basic service supplying standard, single line telephones, telephone lines and access to the public switched network. Does not include added features such as call waiting and call forwarding. All POTS lines work on loop start signalling.
PON	Purchase Order Number	Field on LSR.
QCCC	Qwest CLEC Coordination Center	Dedicated to the support of CLECs in procuring Qwest services.
RID	Record Order Issue Date; Record Issue Date	The date the design is completed and TIRKS is updated.
RMA	Request for Manual Assistance	Generated when orders fall out of LFACS and SWITCH/FOMS.
SDC	Service Delivery Coordinator	Team member in the Service Delivery Organization tasked with handling the manual portions of the creation of the service order and FOC, when needed.
SOAC	Service Order Analysis and Control System	The OSS used to coordinate order management and provisioning processes.

Exhibit 2: Glossary of Terms Used

Acronym	Word	Definition
SOP	Service Order Processor	There are three service order processors (one for each region). They are called RSOLAR, SOLAR, and SOPAD. SOLAR (Service Order Logistics and Reference), SOPAD (Service Order Processor and Distribution) , and RSOLAR (Regional SOLAR). Within each region, the corresponding SOP for that region directs/processes service orders for all product types. SOPAD is the SOP in the central region. SOLAR is the SOP in QWEST's eastern region; RSOLAR is the SOP in the western region.
SUP	Supplemented	Term used to describe the action of or the actual supplement to LSR. The "Supp" would be generated by the orignator of the LSR being "supplemented."
SWITCH	SWITCH	The SWITCH System is a network management system providing configuration management for the new digital access domain, while also retaining full-function support for older analog facilities and equipment. The SWITCH System administers and automatically assigns: • Switches and associated central office equipment. • Digital loop electronics, including network elements with either static or dynamic time slot interchange interfaces to the switch. The SWITCH System supports flow-through service activation for POTS, ISDN, Centrex and hunting and special services. In addition, it provides inventory management and telephone number administration capabilities and supports the provisioning process.
	Switch	A (telephone) switch is a device (network element) that establishes a connection (circuit route) between two-end users. The connection between the end-users is referred to as a "circuit switched connection" and consumes the same resources whether or not data (conversation) is being transmitted and is the dedicated path between the end-users. A switch can also connect to other switches.
TAG	Telephone and Address GUI	TAG is the link to ALOC (Address Location) and CNUM. ALOC and CNUM are replacing PREMIS.
TRO	Triennial Review Order	Put out by the FCC.

Exhibit 2: Glossary of Terms Used

Acronym	Word	Definition
TIRKS	Trunk Integrated Record Keeping System	The TIRKS System is an integrated, computerized system supporting the total network provisioning process for special services circuits, message trunks and carrier circuits. It also provides inventory management for both facilities and equipment.
UDC	Universal Digital Channel Unit	The UDC terminates two pair STP cable to form a hierarchic connection that requires no jack or plug.
UNE	Unbundled Network Elements	Physical and functional elements of the network (e.g., NID, local loop, and switch ports.)
WFA	Work Force Administration	"Family" of Telcordia system that include WFA/Control, WFA/Dispatch Inside, WFA/Dispatch Outside. The Work Force Administration (WFA) System product line manages and automates most of the work assignments required to install and repair Client Company facilities, trunks, special service circuits, and business/residential lines.
WFA/C	Work Force Administration/Control	The work assignment and control administration part of the WFA product line used by the QCCC.
WFA/DI	Work Force Administration/Dispatch In	The force administration part that manages central office craft personnel used by the COTs.
WFA/DO	Work Force Administration/Dispatch Out	The force administration component that manages outside technicians used by the Outside Plant technician.
WFA/C OSSLOG	Work Log	Screen within WFA/C. The display-only Work Log (OSSLOG) screen shows a detailed account of activities on an order or trouble report. OSSLOG also displays log entries for remote trouble reports. Remote trouble reports are entered in remote service assurance systems and associated with Unbundled Network Element (UNE) circuit IDs. This screen shows activities in date/time sequence with the most recent activity at the top. Entries are made to the Work Log via the Work Activity Screen (OSSEA) and automatically by the system for certain predefined functions, such as receipt of the WORD document and completion of an event.
WORD	Work Order Record Detail/Document	A "document" created by TIRKS and accessible via WFA that contains the details of a circuit from end-to- end.

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order	*Docket No. UT-033044*

Exhibit 3: Locations Visited

January 23, 2004

Exhibit 3: Locations Visited

City, State	Address	Office Function
Arvada, CO	7520 Grant Place	CO
Boise, ID	1630 N. Maple Grove Rd.	CO
Burlington, IA	421 N. 4th St.	CO
Colorado Springs, CO	308 E. Pikes Peak Ave.	CO
Denver, CO	1005 17th St.	LPC
Des Moines, IA	900 Keosauqua Way	Design Services
Duluth, MN	322 W. First St.	Service Delivery
Englewood, CO	6490 S. Quebec St.	CO
Fremont, NE	510 N. D St.	CO
Minneapolis, MN	200 S. 5th St.	CO
Omaha, NE	118 S. 19th St.	QCCC
Phoenix, AZ	20 E. Thomas Rd.	Service Delivery
Seattle, WA	1600 7th Ave.	LPC
Seattle, WA	1122 3rd Ave.	CO
Seattle, WA	14605 8th Ave. S.	CO
Bellevue, WA	14808 S.E. 16th St.	CO

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In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order	*Docket No. UT-033044*

Exhibit 4: Interviewee List

January 23, 2004

Exhibit 4: Interviewee List

Name	Title	Location
Alan Braegger	Manager, Process Management	Salt Lake City, UT
Barbara Boles	Manager, Network Ops	Des Moines, IA
Barry Orrel	Director, Legal Issues	Sioux Falls, SD
Bob Brigham	Staff Director, Public Policy	Denver, CO
Catherine Lethcho	Central Office Technician	Seattle, WA
Cathy Augustson	Lead Process Analyst	Anoka, MN
Cathy Hansen	Sr Policy Rep	Denver, CO
Char Mahs	Manager, Process Management	Minneapolis, MN
Charles L. Ward	Regional President	Denver, CO
Cherie Axelrod	Staff Director, Compliance	Denver, CO
Christy Rodriguez	Sr Project Analyst	Littleton, CO
Cindi Dahlstedt	Manager, Process Management	Minneapolis, MN
Cindi Houston	Manager, Prog/Project Mgmt	Denver, CO
Cindy Uyeno	Manager, Network Ops	Seattle, WA
Connie Garduno	Supervisor, Service Delivery	Phoenix, AZ
Darlene Kober	Supervisor, Service Delivery	Phoenix, AZ
Dawn Tombisammy	Lead DBA Production Engineer	Anoka, MN
Deb Guest	Staff Advocate	Littleton, CO
Debra Smith	Product Manager	Des Moines, IA
Deni Toye	Supervisor, Network Ops	Des Moines, IA
Dennis Pappas	Director, Technical Regulatory Group-Local Network Ops	Littleton, CO
Denny Graham	Staff Advocate	Littleton, CO
Derek Breeling	Service Representative	Omaha, NE
Don Bergman	Lead Process Analyst	Seattle, WA
Douglas Gollehon	Staff Cost Accountant	Omaha, NE
Evelyn Montez	Staff Advocate	Littleton, CO
Frank Lopez	Manager, Service Delivery	Phoenix, AZ
Gary Stacy	Lead Process Analyst	Tempe, AZ
Jake Kirkpatrick	Service Representative	Omaha, NE
Jeff Hubbard	Sr Staff Witnessing Rep	Littleton, CO
Jerry Jenson	Lead Process Analyst	Fargo, ND
Jerry Thompson	Director, Legal Issues	Denver, CO
Jill Anderson	Sr Process Analyst	Tucson, AZ
Jill Eilertson	Supervisor, Service Delivery	Phoenix, AZ
Jim Barganski	Manager, Prog/Project Mgmt	Tempe, AZ
John Hayat	Staff Advocate	Littleton, CO
KC Bock	Sr Fin/Business Analyst	Denver, CO
Kathie Simpson	Manager, Network Ops	Omaha, NE
Kathryn Ocken	Sr Process Analyst	Des Moines, IA
Kathy Mills	Service Delivery Coordinator	Duluth, MN
Kathy Platts	Sr Process Analyst	Des Moines, IA
Kim Olson	Supervisor, Network Ops	Provo, UT
Kristin Provost	Staff Advocate	Denver, CO
Lee Chambers	Supervisor, Network Ops	Cedar Rapids, IA

Exhibit 4: Interviewee List

Name	Title	Location
Linda Johnson	Service Delivery Coordinator	Phoenix, AZ
Lori Langston	Sr Process Analyst	Denver, CO
Marcia Chavez	Project Analyst	Denver, CO
Mary Madill	Manager, Service Delivery	Duluth, MN
Mary Pat Cheshier	Director, Network Ops	Omaha, NE
Matt White	Staff Advocate	Denver, CO
MJ Mitoma	Lead Technical Support Spec	Seattle, WA
Nagesh Kothuri	SW Engineer	Denver, CO
Nancy Tangeman	Staff Advocate	Des Monies, IA
Patti Bencker	Sr Process Analyst	Owasso, OK
Robert Egger	Supervisor, Network Ops	Bettendorf, IA
Rosanne Suomala	Supervisor, Service Delivery	Duluth, MN
Russ Urevig	Sr Process Analyst	Duluth, MN
Shashank Taman	Lead SW Development Engineer	Denver, CO
Sherri Zoss	Supervisor, Network Ops	Des Moines, IA
Steve Davis	SVP-Government Affairs	Denver, CO
Steve Hilleary	Lead Process Analyst	Puyallup, WA
Susan Bell	Supervisor, Network Ops	Seattle, WA
Terry Dodd	Lead Technical Support Engineer	Bellevue, WA
Thip Prapasirikul	Lead Process Analyst	Seattle, WA
Tim Murphy	Software Development Manager	Denver, CO
Trina Sevening	Supervisor, Network Ops	Omaha, NE
Vince Kennedy	Manager, Network Ops	Denver, CO
Wayne Spohn Jr	Director, Process Management	Denver, CO

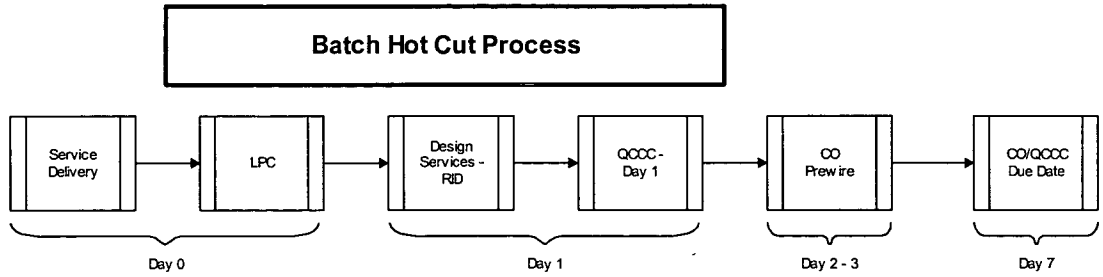
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order	*Docket No. UT-033044*

Exhibit 5: Proposed Batch Hot Cut Process

January 23, 2004

Exhibit 5: Proposed Batch Hot Cut Process



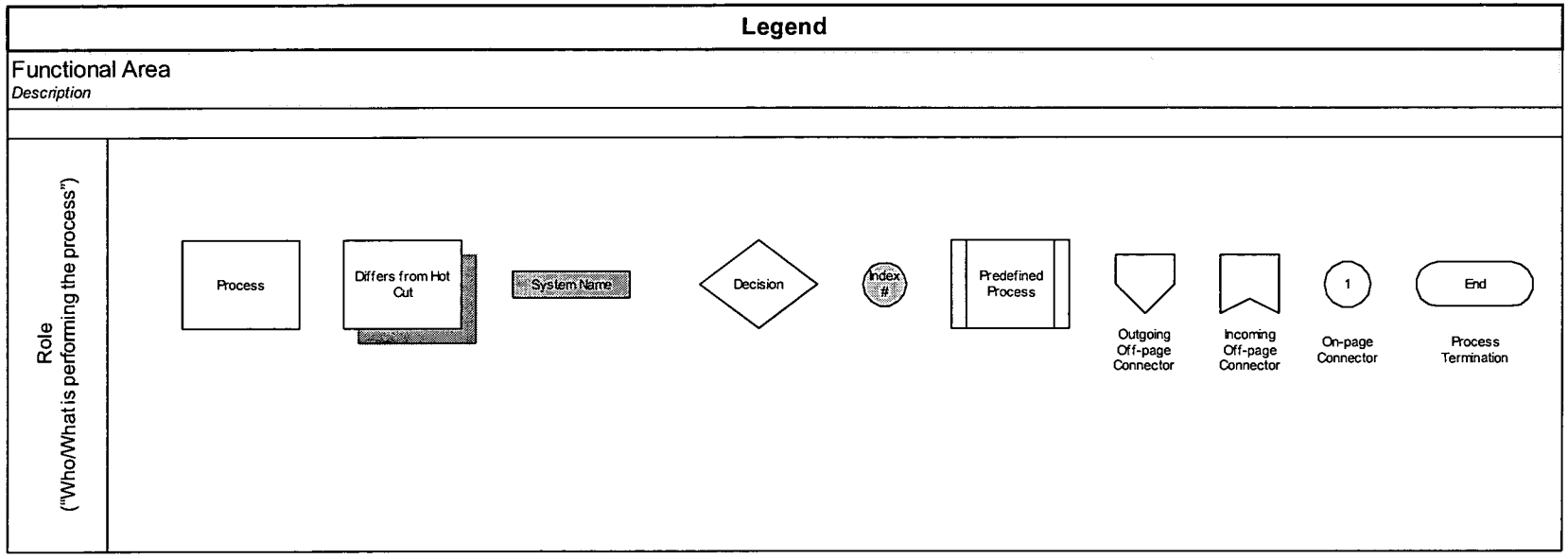


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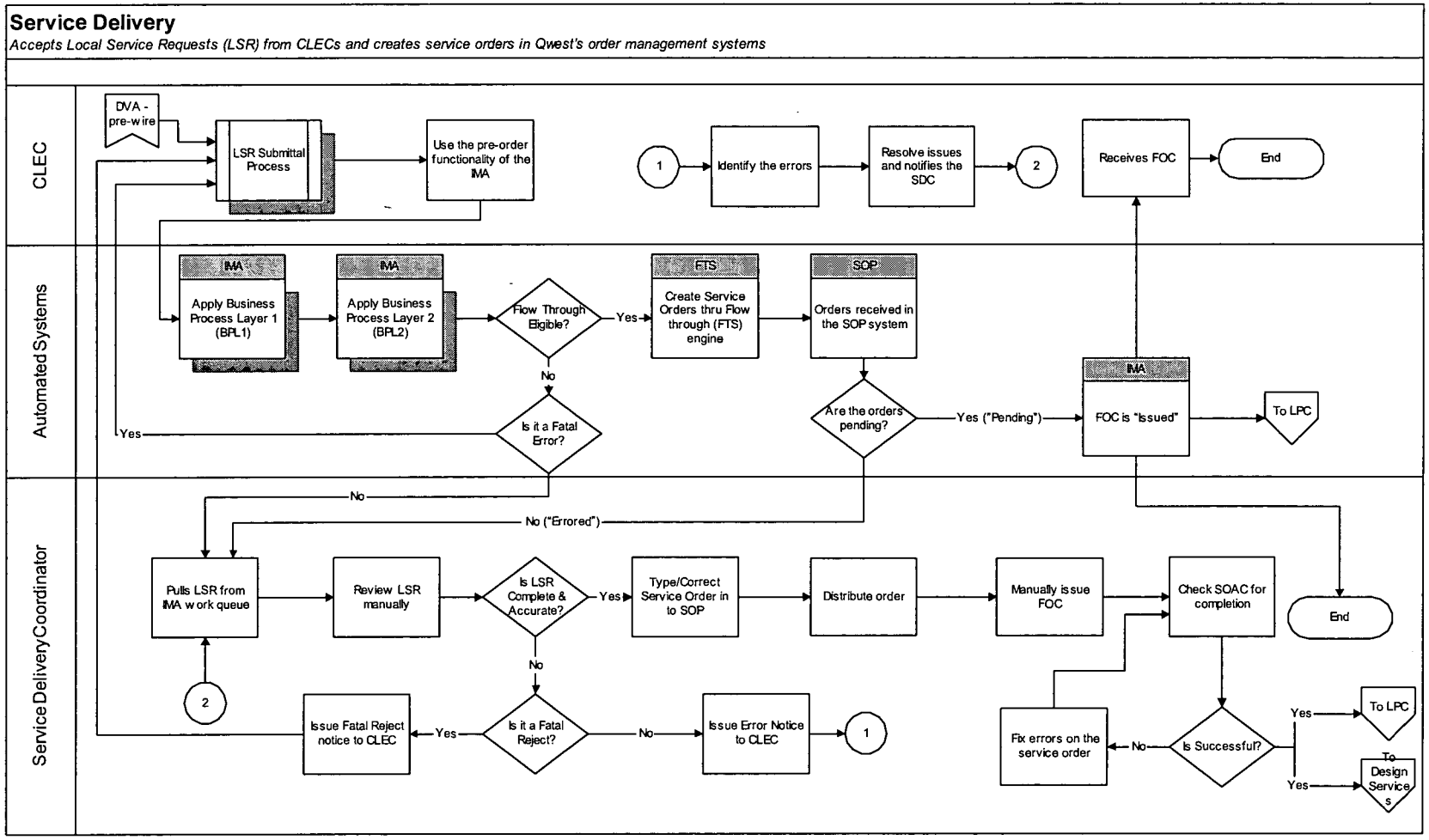


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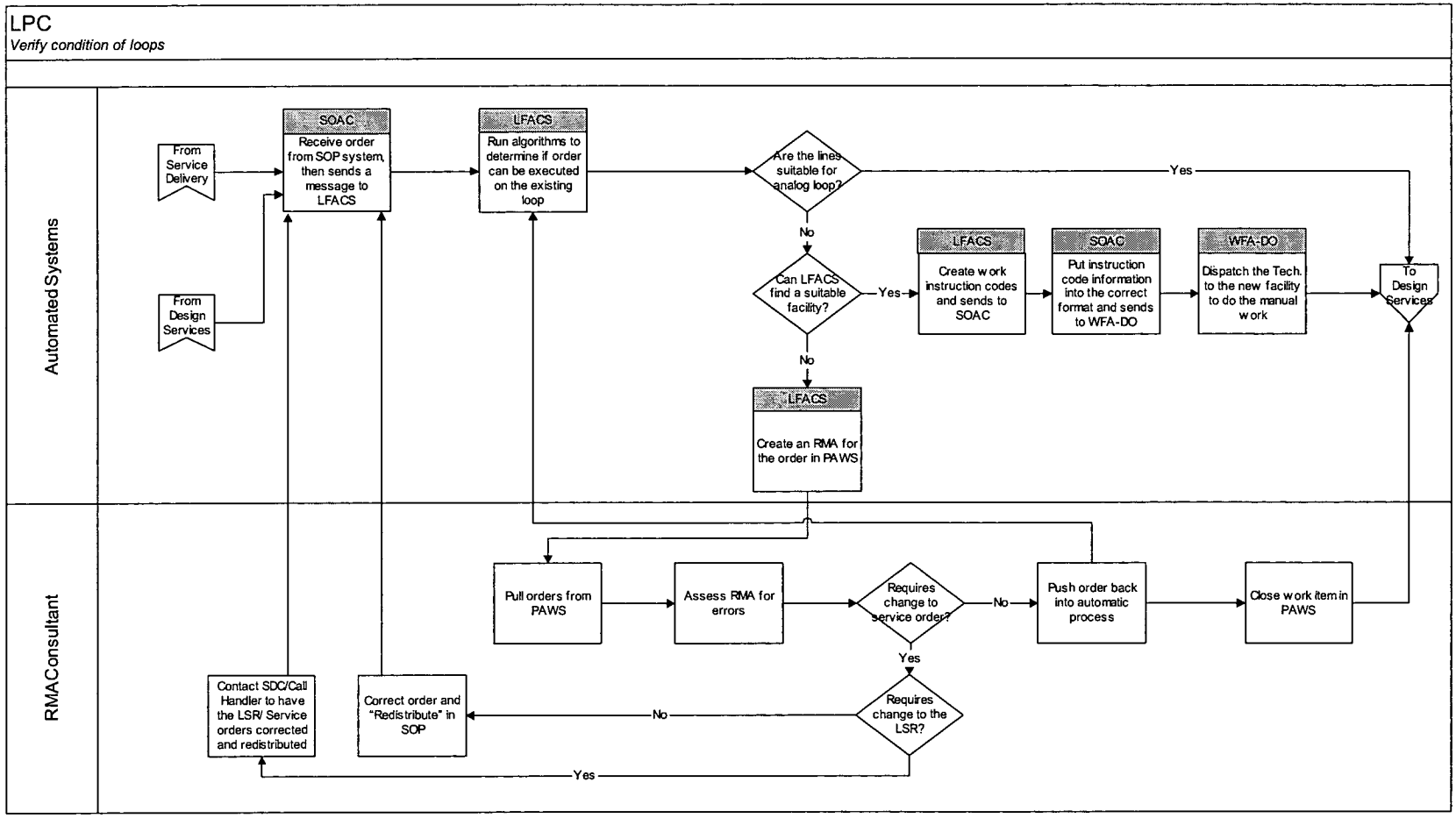


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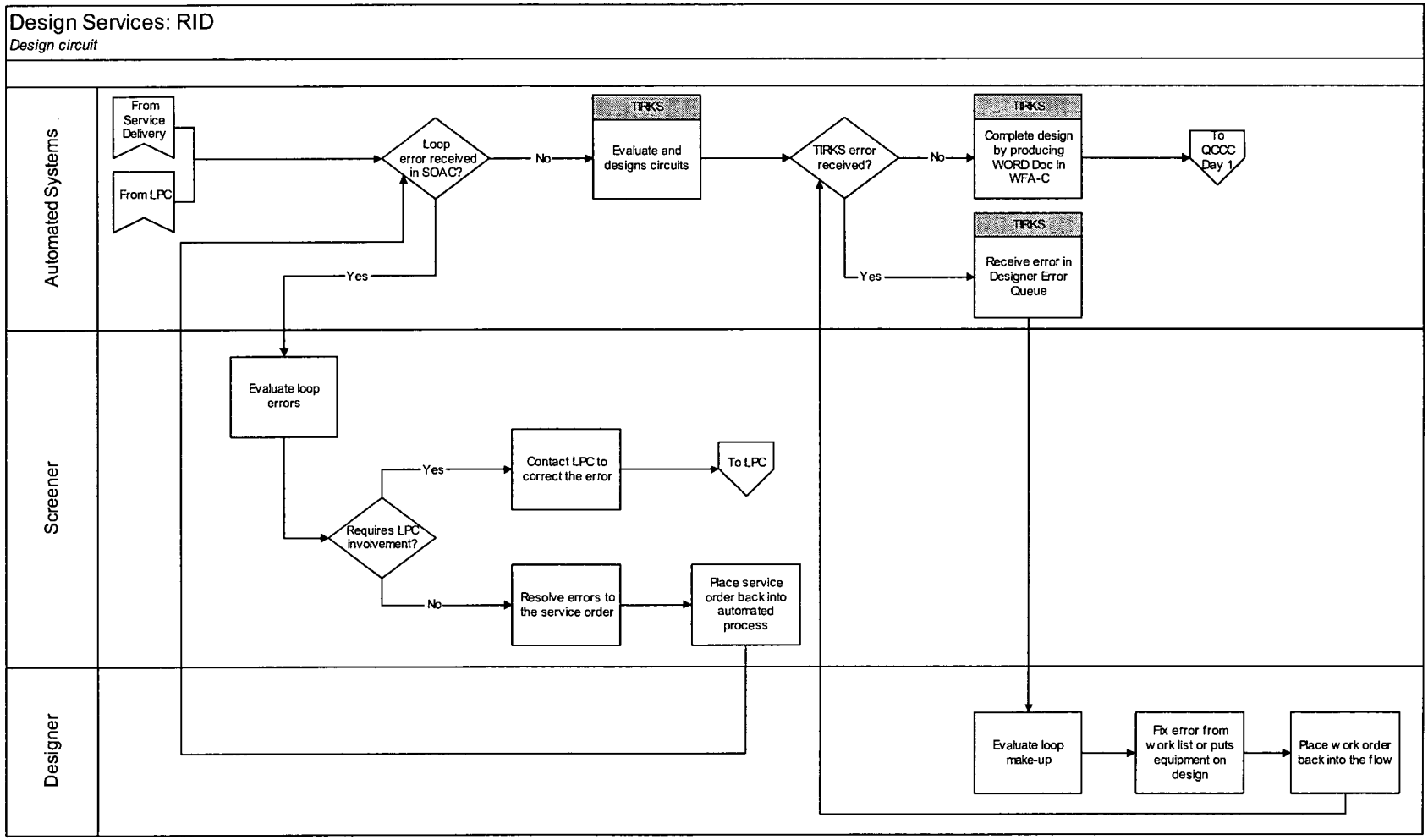


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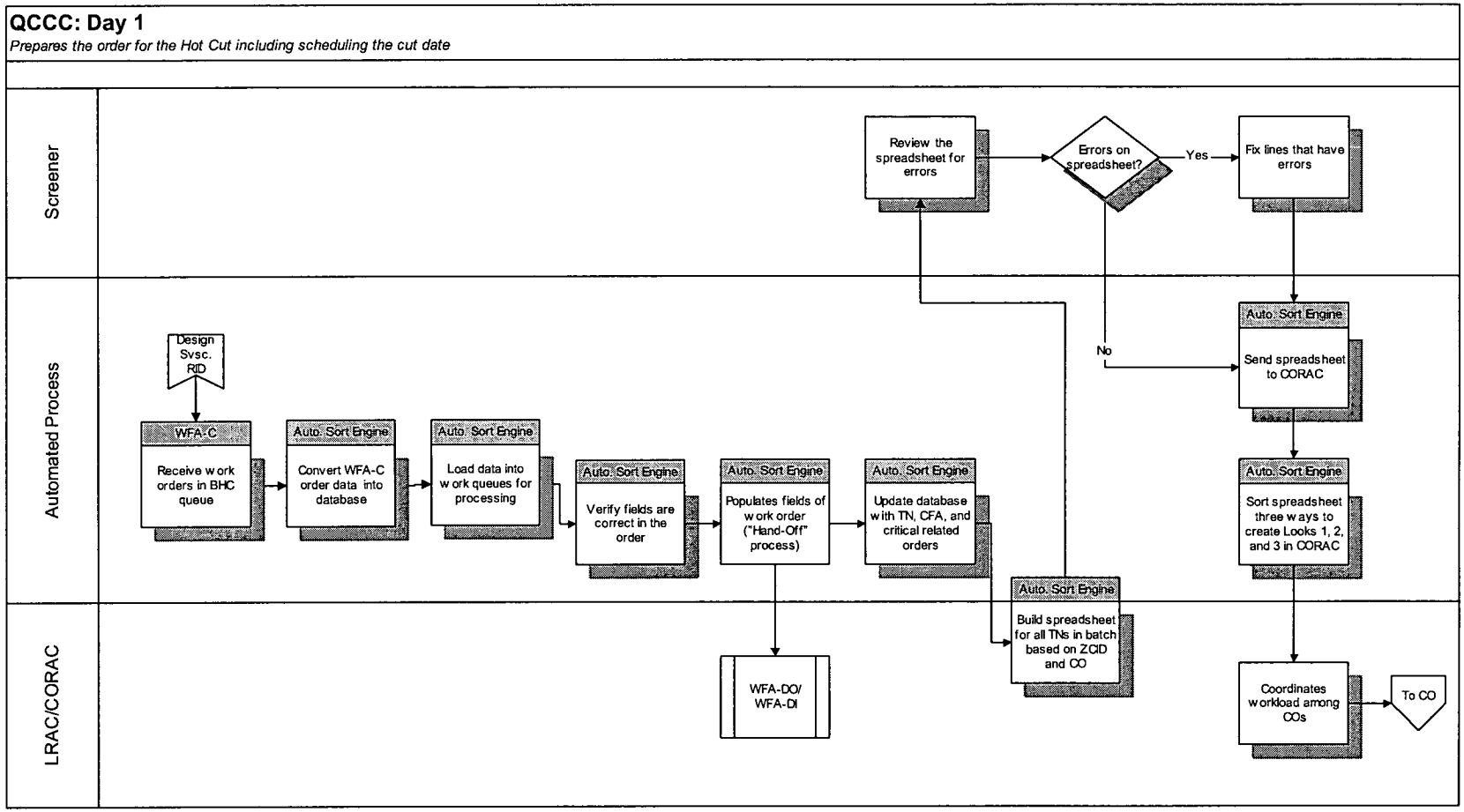


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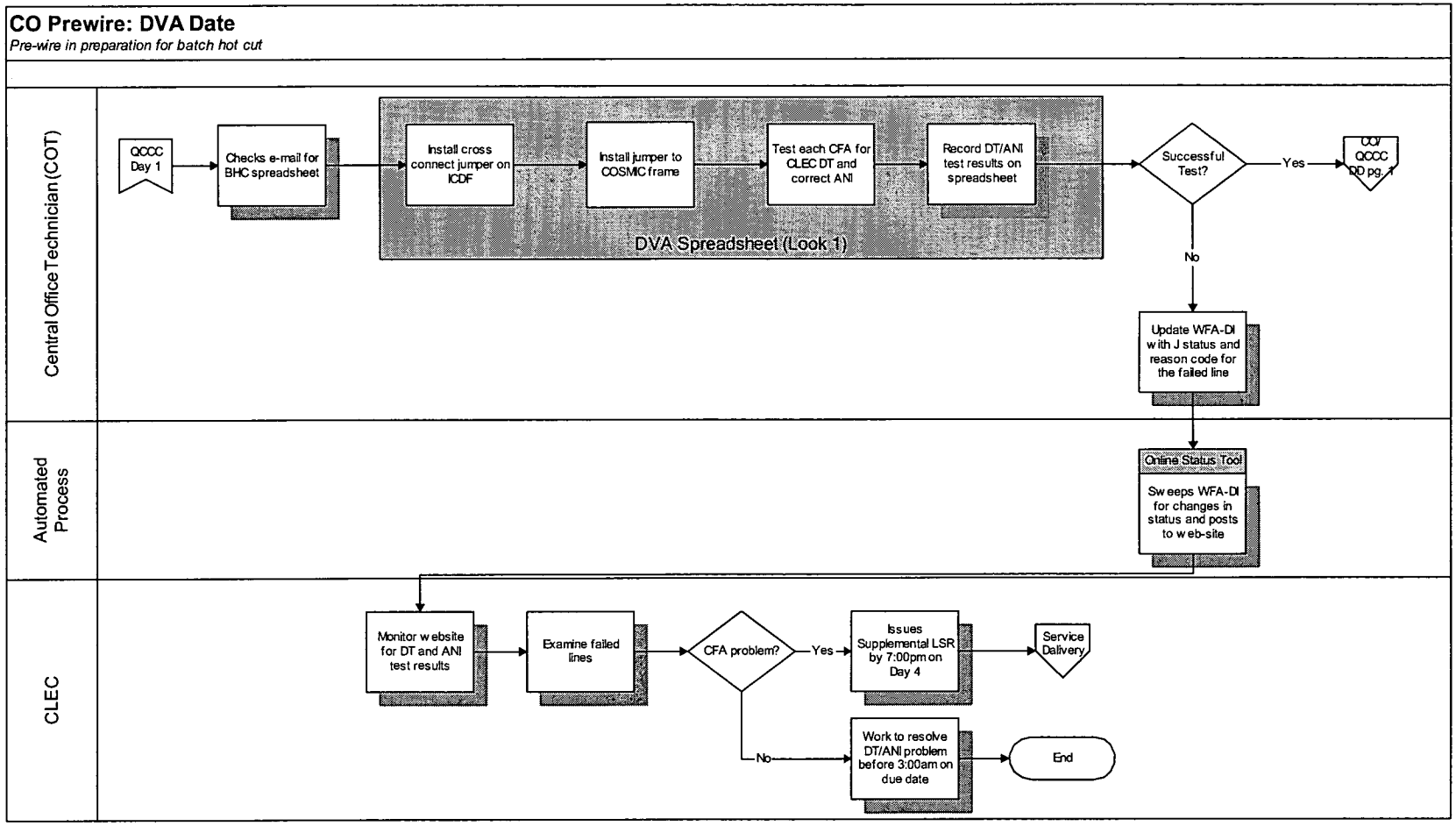


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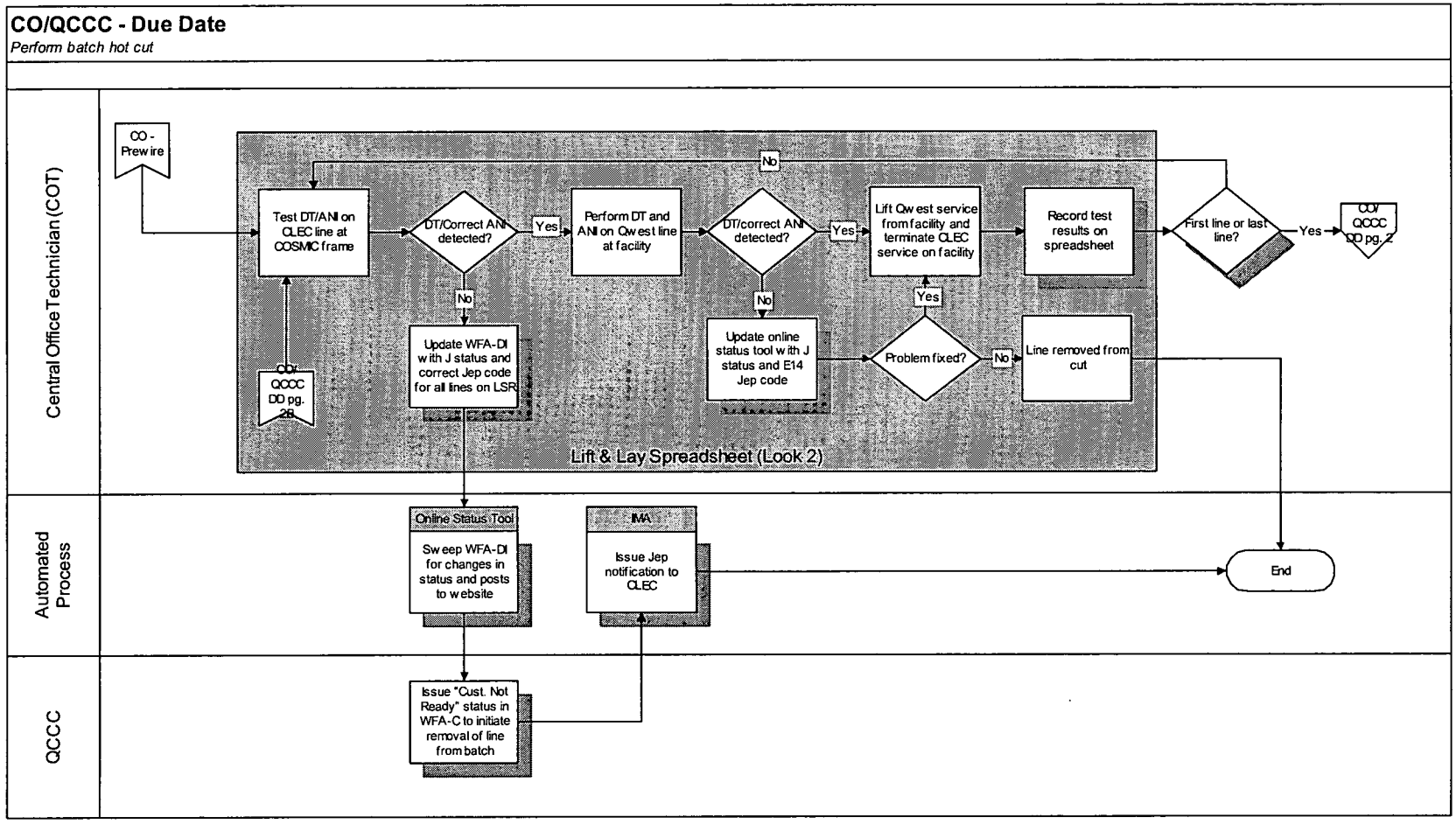
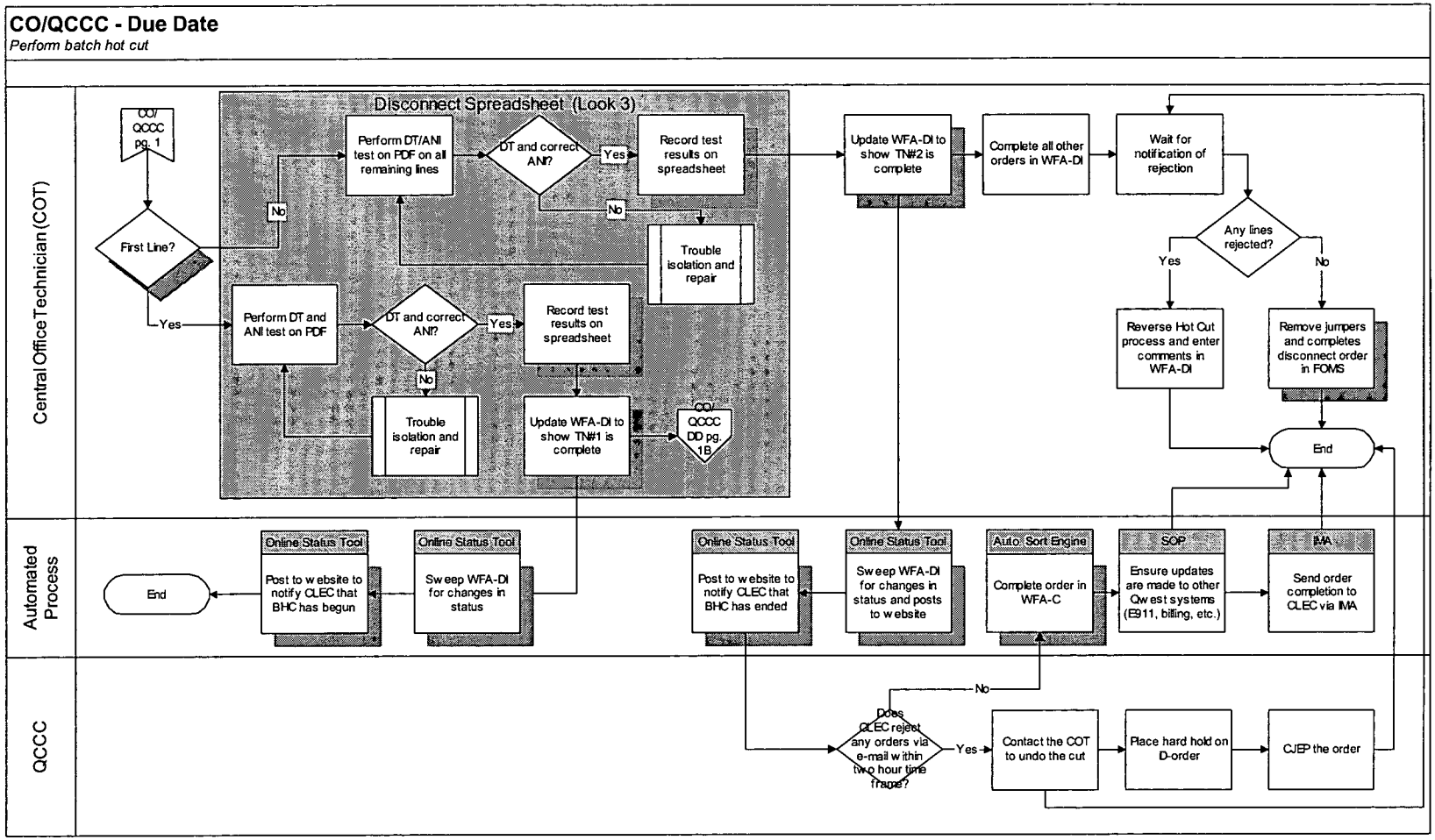


Exhibit 5: Proposed Batch Hot Cut Process



BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order	*Docket No. UT-033044*

Exhibit 6: Process Improvements Not Available At Our Time of Testing

January 23, 2004

Exhibit 6: Process Improvements Not Available at Our Time of Testing

Process Area	Proposed Process Initiatives Not Tested or Observed	As Tested	Impact
Order Creation and Acceptance	Systems edits in the Business Process Layer will manage the workload across COs. These edits will ensure the CLEC has used the "Appointment Scheduler" when submitting the LSR. The "Appointment Scheduler" verifies that each CO is not overloaded on a particular day.	These edits were not in place during the preliminary live trial. The preliminary live trial was prearranged with a CLEC and Qwest. COs were selected specifically for the live testing. Scheduling conflicts were not a risk.	This did not impact the test results.
Order Creation and Acceptance	Enhanced edits in the Qwest systems will reduce errors that cause LSRs to fall out of the automated process to manual handling. For example, for the BHC, the Dispatch field will have to be blank or "no" for the LSR to be able to be submitted for the BHC process.	These edits were not added at the time of the trials.	The edits that will be integrated are not related to the reasons that the LSRs during the trials fell out of the automated process. Therefore, this did not impact the test results.
Planning and Prewire	The Automated Sort Engine will supply the "wiring location" on the work order the COTs use to perform the BHC.	The "wiring location" was looked up manually for each TN by a member of the process team.	The time to perform this activity manually was not included in the calculated elapsed time because this step will be eliminated. Therefore, this did not impact the test results.
Planning and Prewire	The Automated Sort Engine will automatically create 3 views of the work to be performed in a BHC. These views will enable the COTs to perform the work steps in a more efficient sequence.	The 3 views were created manually by a member of the process team.	The time to perform this activity manually was not included in the calculated elapsed time. Therefore, this did not impact the test results.

Exhibit 6: Process Improvements Not Available at Our Time of Testing

Process Area	Proposed Process Initiatives Not Tested or Observed	As Tested	Impact
Planning and Prewire; Cut over	An online status tool will provide the CLEC with visibility to their orders (start/completion of batch, Jep Status, etc.). The tool will sweep WFA for changes in order status. The website will be updated automatically. The CLECs will have the responsibility of monitoring the website for the status of their orders on Due Dates that they have orders.	The online status tool was not available during the preliminary live trial. Qwest communicated to the CLECs using a work around solution to monitor changes in WFA status. E-mails were automatically generated and sent to the CLEC to communicate status.	This BHC process improvement will significantly reduce the manual time in the QCCC because the phone calls to the CLEC to alert of the hot cut will be removed.
Cut Over	The CLECs will use the Trap/Trace functionality on their switch to identify when Qwest is performing ANI tests. On Due Date, Qwest will perform this test at the beginning of the BHC process. The CLEC will then have visibility that the BHC has started. The CLEC will also know the BHC is completed when it sees that the ANI tests have stopped.	The COT "completed" one TN in WFA – DI after the first line in the batch was cut. Qwest automatically generated an e-mail to the CLEC based on this status change. The e-mail stated the batch had started. After the last hot cut of the batch was completed, the COT "completed" a second TN in WFA – DI. Again, Qwest automatically generated an e-mail notifying the CLEC that the batch was complete.	The time for this activity was included in the elapsed time. A change to the Trap/Trace method will reduce the time required to perform the BHC because the COT will not have to stop working and update WFA – DI. Additionally, the CLECs would benefit from this proposal because they would have real-time visibility into the progress of the cut. The CLECs would be able to begin porting customer numbers more rapidly.

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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Exhibit 7: Monthly Volume of Hot Cuts Historically (2002 and 2003) Performed by State

January 23, 2004

Exhibit 7: Monthly Volume of Hot Cuts Historically (2002 and 2003) Performed by State

2002												
State	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Arizona	894	1,105	939	1,192	1,288	1,114	698	885	1,037	973	770	1,369
Colorado	2,115	1,778	2,016	2,828	3,456	3,471	3,310	3,844	1,846	2,834	4,502	6,492
Iowa	1,433	630	885	2,648	1,749	1,519	5,109	4,951	3,150	4,662	3,800	2,551
Idaho	275	256	207	368	284	239	572	278	136	176	66	166
Minnesota	1,811	1,600	1,912	2,277	2,999	4,584	3,078	3,397	3,117	5,240	5,451	3,731
Montana	1	25	21	44	35	22	4	18	10	8	17	17
North Dakota	662	615	750	417	635	325	284	1,033	549	592	297	612
Nebraska	329	174	224	182	264	523	555	631	408	386	145	820
New Mexico	31	60	101	110	281	239	355	166	261	220	226	379
Oregon	1,485	1,596	1,721	1,819	1,090	1,022	1,492	1,559	1,145	1,027	1,087	1,414
South Dakota	69	91	528	366	524	72	50	1,221	727	379	491	1,365
Utah	1,117	993	848	1,112	2,563	1,490	1,485	1,592	1,956	2,725	1,308	1,576
Washington	1,873	1,476	1,277	2,788	2,077	2,092	1,482	1,874	1,289	1,457	1,148	2,111
Total	12,095	10,399	11,429	16,151	17,245	16,712	18,474	21,449	15,631	20,679	19,308	22,603
2003												
State	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Arizona	1,026	2,114	1,001	691	802	1,037	868	551	711	720	1,075	526
Colorado	3,049	3,154	1,608	1,347	1,193	1,972	4,131	3,212	3,495	2,346	1,198	1,239
Iowa	838	1,228	1,499	1,476	802	1,310	4,466	4,532	5,700	4,594	1,901	1,697
Idaho	138	151	211	100	100	41	101	150	145	81	90	458
Minnesota	1,911	3,811	2,865	2,379	1,795	2,321	2,608	2,259	2,676	3,040	2,135	3,439
Montana	35	21	22	4	7	9	8	15	6	14	1	4
North Dakota	685	920	810	434	317	287	1,612	871	786	762	1,405	886
Nebraska	221	674	330	387	196	278	256	189	184	154	86	90
New Mexico	259	292	118	139	118	351	670	416	438	580	448	87
Oregon	1,114	815	964	1,258	1,458	1,218	1,069	978	835	980	692	1,117
South Dakota	361	151	210	98	81	34	130	28	39	114	59	35
Utah	1,537	1,723	1,750	1,952	1,639	1,126	1,848	1,081	1,373	1,374	1,066	764
Washington	1,319	964	1,223	1,209	961	1,210	1,324	1,171	1,128	1,037	886	928
Total	12,493	16,018	12,611	11,474	9,469	11,194	19,091	15,453	17,516	15,796	11,042	11,270

Source: Qwest's Service Order Processing Systems

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order	*Docket No. UT-033044*

Exhibit 8: Central Offices Historically (2002 and 2003) Performing 50 or More Hot Cuts Per Day

January 23, 2004

Exhibit 8: Central Offices Historically (2002 and 2003) Performing 50 or More Hot Cuts Per Day

2002

Number	State	Central Office	Occurrence of 50 or more hot cuts per day
1	Iowa	WTRLIADT	50
2	South Dakota	SXFLSDCO	46
3	Iowa	DUBQIATC	34
4	Iowa	SXCYIADT	23
5	Colorado	BLDRCOMA	18
6	Iowa	CDFLIACO	18
7	North Dakota	FARGNDBC	16
8	Iowa	CLTNIACO	13
9	Iowa	IWCYIATC	12
10	Iowa	DESMIANW	11
11	Minnesota	MPLSMNTF	10
12	Colorado	FTCLCOMA	9
13	Colorado	PUBLCOMA	9
14	Minnesota	MPWDMNMA	8
15	Colorado	FTCLCOHM	7
16	Iowa	CNBLIAWA	7
17	Iowa	DVNPIAEA	7
18	Minnesota	EKRVMNER	7
19	Minnesota	STPLMNBE	6
20	Iowa	DESMIADT	5
21	Minnesota	ANOKMNAN	5
22	Minnesota	BLANMNBL	5
23	Utah	MRRYUTMA	5
24	Colorado	CLSPCOEA	4
25	Colorado	CLSPCOMA	4
26	Colorado	LVLDCOMA	4
27	Minnesota	BRCTMNBC	4
28	Minnesota	EAGNMNLB	4
29	Minnesota	EDPRMNGP	4
30	Colorado	AURRCOMA	3
31	Colorado	LNMTCOMA	3
32	Colorado	LTTNCOMA	3
33	Iowa	SXCYIAMS	3
34	Minnesota	RCFDMN66	3
35	Minnesota	STPLMNEM	3
36	Minnesota	STPLMNHB	3
37	Minnesota	STPLMNMK	3
38	Utah	MDVAUTMA	3
39	Utah	OGDNUTMA	3
40	Washington	STTLWA06	3
41	Colorado	ARVDCOMA	2
42	Colorado	BRFDCOMA	2
43	Colorado	PUBLCOSU	2
44	Minnesota	PLMOMNFE	2
45	Utah	OREMUTMA	2
46	Utah	SLKCUTMA	2
47	Utah	SLKCUTSO	2
48	Washington	STTLWACH	2
49	Arizona	MESAAZMA	1
50	Arizona	PHNXAZMA	1
51	Colorado	CLSPCOPV	1
52	Colorado	DNVRCOSO	1
53	Colorado	DNVRCOWS	1
54	Colorado	ENWDCOMA	1
55	Colorado	NGLNCOMA	1

2003

Number	State	Central Office	Occurrence of 50 or more hot cuts per day
1	Iowa	DUBQIATC	24
2	Iowa	AMESIATC	19
3	Iowa	BURLIATC	19
4	Iowa	ANKNIACO	16
5	Iowa	MRTWIASO	12
6	Iowa	DESMIAEA	11
7	North Dakota	FARGNDBC	11
8	North Dakota	WFRGNDBC	11
9	Colorado	LVLDCOMA	9
10	Minnesota	WBLKMNWB	9
11	Colorado	FTCLCOMA	8
12	Iowa	CLTNIACO	7
13	Iowa	DESMIAWS	7
14	Minnesota	NSPLMNPR	7
15	Minnesota	MPLSMNPI	6
16	Utah	LOGNUTMA	6
17	Colorado	DNVRCOCW	5
18	Minnesota	ROCHMNRO	5
19	Minnesota	FRLKMNFL	4
20	North Dakota	GDFRNDBC	4
21	Utah	MDVAUTMA	4
22	Arizona	MESAAZMA	3
23	Colorado	LNMTCOMA	3
24	Colorado	PUBLCOMA	3
25	Iowa	DESMIASO	3
26	Iowa	WVRLIACO	3
27	Idaho	BOISIDWE	3
28	Utah	BNTFUTMA	3
29	Utah	CLFDUTMA	3
30	Utah	DRPRUTMA	3
31	Utah	KRNSUTMA	3
32	Utah	KYVLUTMA	3
33	Utah	MRRYUTMA	3
34	Utah	OREMUTMA	3
35	Utah	PROVUTMA	3
36	Utah	SLKCUTSO	3
37	Iowa	DVNPIANW	2
38	Iowa	OTTMIATC	2
39	Minnesota	ANOKMNAN	2
40	Minnesota	CTGVMNCG	2
41	New Mexico	ALBQNMEA	2
42	Utah	AMFKUTMA	2
43	Arizona	MESAAZGI	1
44	Arizona	PHNXAZNE	1
45	Colorado	BLDRCOMA	1
46	Colorado	DNVRCOCL	1
47	Colorado	DNVRCODC	1
48	Colorado	FTCLCOHM	1
49	Iowa	IWCYIATC	1
50	Iowa	SXCYIADT	1
51	Iowa	SXCYIAMS	1
52	Iowa	WTRLIADT	1
53	Minnesota	BLTNMNNO	1
54	Minnesota	HPKNMNHO	1
55	Minnesota	MPLSMNBB	1

Exhibit 8: Central Offices Historically (2002 and 2003) Performing 50 or More Hot Cuts Per Day

2002

Number	State	Central Office	Occurrence of 50 or more hot cuts per day
56	Colorado	TEMACOMA	1
57	Iowa	DVNPIADT	1
58	Idaho	BOISIDMA	1
59	Minnesota	AUSTMNAB	1
60	Minnesota	BLTNMNSO	1
61	Minnesota	HPKNMNHO	1
62	North Dakota	GDFRNDBC	1
63	New Mexico	ALBQNMSM	1
64	Oregon	PTLDOR13	1
65	Oregon	PTLDOR69	1
66	Utah	BGCYUTMA	1
67	Utah	BNTFUTMA	1
68	Utah	HLDYUTMA	1
69	Utah	PROVUTMA	1
70	Utah	SPFKUTMA	1
71	Washington	AUBNWA01	1
72	Washington	BLLVWAGL	1
73	Washington	OLYMWA02	1

2003

Number	State	Central Office	Occurrence of 50 or more hot cuts per day
56	Minnesota	SHKPMNSH	1
57	Minnesota	STWRMNST	1
58	Oregon	RSBGOR57	1
59	Oregon	SALMOR58	1
60	South Dakota	SXFLSDCO	1
61	Utah	CTWDUTMA	1
62	Utah	OGDNUTMA	1
63	Utah	SLKCUTMA	1
64	Utah	SPVLUTMA	1
65	Washington	KENTWAOB	1
66	Washington	SPKNWAKY	1

Source: Qwest's Service Order Processing Systems

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order	*Docket No. UT-033044*

Exhibit 9: Daily Volumes of Hot Cuts Performed in 2002 and 2003 for Selected Central Offices

January 23, 2004

Exhibit 9: Daily Volumes of Hot Cuts Performed in 2002 and 2003 for Selected Central Offices

2002

Number of hot cuts per day	BLDRCOMA	CDFLIACO	CLTNIACO	DESMIANW	DUBQIATC	IWCYIATC	SXCYIADT	WTRLIADT	MPLSMNTF	FARGNDBC	SXFLSDCO
January 2, 2002				24							
January 3, 2002				42	3	2				3	
January 4, 2002	1	1			2					16	
January 7, 2002				81	3	8		6		5	
January 8, 2002				45			1			1	
January 9, 2002				53		1				6	
January 10, 2002			2	54						4	1
January 11, 2002				26						24	8
January 14, 2002	8			68				2		52	3
January 15, 2002	2			65	7		4			27	4
January 16, 2002	3			39		4	4			71	
January 17, 2002	5			21				2		31	6
January 18, 2002	3		3	75			2			37	
January 21, 2002			28	71	2		2	11		33	6
January 22, 2002			20	79						53	23
January 23, 2002	3		6	33						28	
January 24, 2002			1	34						29	
January 25, 2002			4	9						28	2
January 28, 2002	4		7	46			7	3		20	
January 29, 2002			2	16			1			25	12
January 30, 2002			2	35						14	3
January 31, 2002			6	51	2					32	
February 1, 2002	8		2	35						10	
February 4, 2002	1			60			4			23	
February 5, 2002	9			42						26	9
February 6, 2002				65			4	1		10	7
February 7, 2002	3			37	4	3	6			30	1
February 8, 2002	1			7	1					30	1
February 11, 2002	1			7	6	1				16	4
February 12, 2002	1			3							18
February 13, 2002				16				1		21	
February 14, 2002			1	11						41	2
February 15, 2002				12						23	6
February 18, 2002				29						18	
February 19, 2002							11			64	13
February 20, 2002				6			1			10	5

Exhibit 9: Daily Volumes of Hot Cuts Performed in 2002 and 2003 for Selected Central Offices

Number of hot cuts per day	BLDRCOMA	CDFLIACO	CLTNIACO	DESMIANW	DUBQIATC	IWCYIATC	SXCYIADT	WTRLIADT	MPLSMNTF	FARGNDBC	SXFLSDCO
February 21, 2002	3									39	4
February 22, 2002			2	1						42	1
February 25, 2002	1									42	4
February 26, 2002	1					2		1		28	
February 27, 2002										23	1
February 28, 2002	2			14						59	2
March 1, 2002	1									35	14
March 4, 2002	1			2	3	1				10	3
March 5, 2002	4				1		10			19	8
March 6, 2002	2									19	
March 7, 2002	6		9			4	3	1		15	2
March 8, 2002	3			1		3				22	
March 11, 2002			2		1	7	1			21	27
March 12, 2002					1					13	18
March 13, 2002	1			11		9	5	1		21	2
March 14, 2002			3			5	3	3		15	2
March 15, 2002	1		2		2	3	2			20	
March 18, 2002			6	1		4	1	2		59	3
March 19, 2002	2		7	1	1	15	8			34	36
March 20, 2002	1		4		3	6		3		30	75
March 21, 2002			3		3	3	2	6		16	93
March 22, 2002		1	1			2	2			7	104
March 25, 2002			1	6		1	2	1		14	55
March 26, 2002				4	1	4	9			37	15
March 27, 2002		1	2	3		2	2	1		17	11
March 28, 2002	3	19		3	2	6	6			12	24
March 29, 2002	10	35	1	5		2	1	2		57	26
April 1, 2002		**25**	1		1	1	12	1		17	4
April 2, 2002		**58**					3			17	1
April 3, 2002	10	**23**	1	1	2	1	5			16	6
April 4, 2002		**31**	3	1		5	7	1		12	1
April 5, 2002	4	**32**		4	1	3	5			15	2
April 8, 2002	2	**37**	3	12	2	7	12			19	6
April 9, 2002		**24**		3		3	10	1		9	4
April 10, 2002		**49**			1	2		7		16	8
April 11, 2002		**28**	3	7	3	2	3	1		8	6
April 12, 2002	3	**32**	1		2	1	2	4		26	12
April 15, 2002	3	**99**			1		6	20		9	17

Exhibit 9: Daily Volumes of Hot Cuts Performed in 2002 and 2003 for Selected Central Offices

Number of hot cuts per day	BLDRCOMA	CDFLJACO	CLTNJACO	DESMJANW	DUBQIATC	IWCYIATC	SXCYIADT	WTRLIADT	MPLSMNTF	FARGNDBC	SXFLSDCO
April 16, 2002	1	**122**		2	1	4	10	15		3	30
April 17, 2002		**52**	**33**	2		4	12	15		13	10
April 18, 2002	4	**22**	**52**	1	6	2	12	3		20	39
April 19, 2002	1	**22**	**99**			5	13	4		23	33
April 22, 2002		**36**	**114**	6	2	4	11	8		7	26
April 23, 2002	5	**31**	**60**	4	**83**	4	16	3		9	47
April 24, 2002		19	**119**	1	**83**	8	11	13		3	21
April 25, 2002	1	11	6	5	**19**	3	1	7		4	15
April 26, 2002	1	3	**72**		**52**	2	1	4		2	25
April 29, 2002		1	**94**	4	**33**	2		6		17	13
April 30, 2002	4	3	**61**		**53**	3	7	1		3	12
May 1, 2002			**53**	1	**37**	3	3	3		3	18
May 2, 2002	2		**56**		**40**	1	2	1		5	18
May 3, 2002		2	**37**	3	**28**	2	2			15	10
May 6, 2002		2	17		11			2		4	**4**
May 7, 2002		1	8		17	1		2		1	14
May 8, 2002		1	19	3	5	1		2		14	83
May 9, 2002		1	16		9	2	1	1		5	49
May 10, 2002			8	1	18	1	1	3		2	15
May 13, 2002			15		43	1	7	1		5	12
May 14, 2002		2	27	2	4	4	1	1		17	8
May 15, 2002		19	6	7	8	3	4			21	15
May 16, 2002		20	5		5	4	13	19		14	5
May 17, 2002		24	1		5	1	1	18		21	6
May 20, 2002	2	23		2	7			41		65	4
May 21, 2002	4	26		2		3		18		41	30
May 22, 2002	1	25	12					3		36	38
May 23, 2002		21	9	3	5	1	1	3		6	41
May 24, 2002				13	2	5	3	12		10	31
May 28, 2002		4	3	2	3		1	1		1	39
May 29, 2002	4				1					9	57
May 30, 2002				3	3		4			4	2
May 31, 2002		2	18	1	4					17	6
June 3, 2002	2			17	1	3				2	5
June 4, 2002					1	2				4	
June 5, 2002	4			1	1		1			7	2
June 6, 2002	1	1	1	2	3		2	2		1	
June 7, 2002		1		1	1	2		1		10	23

Exhibit 9: Daily Volumes of Hot Cuts Performed in 2002 and 2003 for Selected Central Offices

Number of hot cuts per day	BLDRCOMA	CDFLIACO	CLTNIACO	DESMIANW	DUBQIATC	IWCYIATC	SXCYIADT	WTRLIADT	MPLSMNTF	FARGNDBC	SXFLSDCO
June 10, 2002						1	1	1		14	4
June 11, 2002		2		3	3		3	2		10	3
June 12, 2002	4	1						11		10	
June 13, 2002				10			16	40		10	1
June 14, 2002		1		33	1	1		37		3	1
June 17, 2002	4	2	9	9	1	2		27		17	9
June 18, 2002	3		1	21		1		38		21	
June 19, 2002				2		1		23		6	2
June 20, 2002	4	10	1	2	3			27		11	
June 21, 2002	2	3	4		1	7	3	31		8	1
June 24, 2002	22		17	2		8	6	31		13	3
June 25, 2002	1	1		1	11	6	13	30		5	1
June 26, 2002	4		2	1	30	4	4	18		5	
June 27, 2002	2	1	1	3	60	4	2	9		3	1
June 28, 2002	2	1	2	10	31	3	7	1		1	
July 1, 2002	6				15	5	6				3
July 2, 2002				1	27	1	1			2	7
July 3, 2002	1			1	43	2	1			1	1
July 5, 2002	1		2	29				1		2	
July 8, 2002		1		20	34	2	2			5	6
July 9, 2002	2			23	11	3	2			8	9
July 10, 2002	9			2	16	**45**				12	
July 11, 2002						**153**				12	2
July 12, 2002						**257**	2	1		4	
July 15, 2002			1	2	1	**347**	3			21	5
July 16, 2002	1	2		4	1	**128**		2		13	
July 17, 2002			2	12		**36**	2	1		31	
July 18, 2002	1	2	19	1	3	**47**				8	
July 19, 2002		2	101	7	2	**17**	1	16		25	
July 22, 2002		2	96	16	1	**40**	2	60		7	
July 23, 2002		1	79	**4**	**44**	**80**	5	13		21	1
July 24, 2002	1	1	20	4	3	**71**	15	9		9	
July 25, 2002	7		13	2		**62**	**67**				
July 26, 2002			1	9	2	10	**114**	4		14	1
July 29, 2002				2	19	24	**92**	4		8	1
July 30, 2002	3	1				9	**74**	12		10	2
July 31, 2002				2	1	10	**183**	1		1	1
August 1, 2002				4	4	1	**96**			3	2

Exhibit 9: Daily Volumes of Hot Cuts Performed in 2002 and 2003 for Selected Central Offices

Number of hot cuts per day	BLDRCOMA	CDFLIACO	CLTNIACO	DESMIANW	DUBQIATC	IWCYIATC	SXCYIADT	WTRLIADT	MPLSMNTF	FARGNDBC	SXFLSDCO
August 2, 2002	5			1		4	160			18	87
August 5, 2002		65		1		98	22	4		3	108
August 6, 2002	4	134				77	6			10	124
August 7, 2002	4	75		4		36				52	74
August 8, 2002		79	1			22	1			37	59
August 9, 2002	1	39		24		10	60			88	50
August 12, 2002	1	93	1	1		4				81	53
August 13, 2002		75		4	2	18	11			45	29
August 14, 2002	1	84		2	1	41	2			34	41
August 15, 2002		77	12			8	17	24		13	29
August 16, 2002	6	77	2	3	2	46		58	2	59	54
August 19, 2002	1	83				43	1	45		35	46
August 20, 2002	2	59		2	3	40	1	60		44	33
August 21, 2002	6	20			4	52	5	53		29	53
August 22, 2002		85		1	6	22		33		40	42
August 23, 2002		10	1	2	14	44		19		75	65
August 26, 2002	4	22		1	6	41		61		39	42
August 27, 2002	1	40			5	26	1	18		36	61
August 28, 2002	3	39		5	5	45	1	13	1	49	51
August 29, 2002		49	1	24	8	25	40	8		47	53
August 30, 2002	1	63				21	3	38		71	55
September 3, 2002	5	23			1	2		6		27	2
September 4, 2002		23			2	11	69	38		27	37
September 5, 2002	5	12		7	2		47	2		55	59
September 6, 2002	4	3		1	47		62	35		19	49
September 9, 2002	5			2	52		41	37		3	30
September 10, 2002	3	2		1	53	2	42	42		19	58
September 11, 2002	3	1	1	1	42	5	18	45		4	38
September 12, 2002	4	1			44	9	3	63			51
September 13, 2002	7	5	1		44	3	2	30	1	8	47
September 16, 2002			1		35			50		12	69
September 17, 2002		1	1	2	49	5	1	67		6	61
September 18, 2002	2	4			52	3	6	89			57
September 19, 2002	15	1		1	28	4	6	32			21
September 20, 2002				1	48	16		19		1	44
September 23, 2002	5		2	1	64	5		61		10	17
September 24, 2002					59	1		65		3	36
September 25, 2002	1				55	2	43	75	1	9	2

Exhibit 9: Daily Volumes of Hot Cuts Performed in 2002 and 2003 for Selected Central Offices

Number of hot cuts per day	BLDRCOMA	CDFLIACO	CLTNIACO	DESMIANW	DUBQIATC	IWCYIATC	SXCYIADT	WTRLIADT	MPLSMNTF	FARGNDBC	SXFLSDCO
September 26, 2002		1	1	2	71		34	39		2	11
September 27, 2002					50		45	65	1	1	3
September 30, 2002		14			60	3	60	30		9	30
October 1, 2002					64	1	50	37		6	19
October 2, 2002		1			44	4	55	5		2	34
October 3, 2002	2				56	2	52	16		4	37
October 4, 2002		58		11	46	6	3	32	3	21	49
October 7, 2002					63	1	21	36		8	41
October 8, 2002					37		9	30		1	31
October 9, 2002	9		1		46	5	1	35	1	8	31
October 10, 2002		1			73	1	12	50	2	18	37
October 11, 2002	1			2	86	1		59	1	4	2
October 14, 2002	8				68	1	6	65	1	52	8
October 15, 2002		23		2	63	39	50	54		8	4
October 16, 2002	1			1	57	38	52	64		17	
October 17, 2002	4		2		36	25	27	91		23	4
October 18, 2002	17			1	50	2	53	54	1	1	3
October 21, 2002			1		51	15	38	76	16	8	4
October 22, 2002		1	1		55	35	38	76	12	2	18
October 23, 2002	4			1	49	18	32	77	58	16	2
October 24, 2002		5			45	44	43	37	56	18	15
October 25, 2002		10			49	23	34	43	58	2	1
October 28, 2002					49	41	18	61	9		4
October 29, 2002				18	75	16	2	55	43	10	2
October 30, 2002		12	1	4	69	19		70	58	2	5
October 31, 2002				6	69	22	5	63	25	3	5
November 1, 2002	1	6	8	8	47		8	41	53	8	4
November 4, 2002	1	17	5	1	69	25	3	83	64		4
November 5, 2002	2		4	2	58	30	10	71	52	9	5
November 6, 2002			3		67	22		53	53	4	6
November 7, 2002		1	2	4	59	31		82	38	18	7
November 8, 2002	3	14		2	20	21		102	40	2	
November 11, 2002		1	4		32	3	7	96	32	6	27
November 12, 2002		1		4	34	2	8	83	51	4	12
November 13, 2002	2	6	2	1	32	37	3	81	6	4	12
November 14, 2002	3				32	3		112		2	10
November 15, 2002		4	1	1	44	9	3	82	2	9	1
November 18, 2002	4	1	1	6	33	23	2	97		1	12

Exhibit 9: Daily Volumes of Hot Cuts Performed in 2002 and 2003 for Selected Central Offices

Number of hot cuts per day	BLDRCOMA	CDFLIACO	CLTNIACO	DESMIANW	DUBQIATC	IWCYIATC	SXCYIADT	WTRLIADT	MPLSMNTF	FARGNDBC	SXFLSDCO
November 19, 2002	5	3		10	**38**	18	6	**73**	1	7	1
November 20, 2002		18		21	**32**	11	3	**81**	2	11	40
November 21, 2002		5		13	**51**	52	9	**105**		19	76
November 22, 2002				1	**44**	21		**100**		6	51
November 25, 2002	51			9	**41**	26	2	**84**		7	64
November 26, 2002	54	7		7	**42**	22	1	**122**	32	11	71
November 27, 2002	63	1	13	13	**50**	15	24	**103**	62	35	76
November 29, 2002										6	
December 2, 2002	85			1	21	7	32	95	5	16	105
December 3, 2002	68	1		3	14	13	4	106		7	107
December 4, 2002	84	2	3	7		18		71	2	15	105
December 5, 2002	87	11		1		14	20	24	2	43	66
December 6, 2002	29	1		4		17	2	59	12	1	46
December 7, 2002							**1**				
December 9, 2002	**70**			1	1	4	21	21		21	**70**
December 10, 2002	**113**	10		5	2	3	22	6		35	**71**
December 11, 2002	**72**	13				18	24	40		10	**68**
December 12, 2002	**67**			16		12	10	6	13	30	**80**
December 13, 2002	**63**	15		38		16	**28**	20		29	**53**
December 16, 2002	**119**	6		7	8	4	**30**			10	**49**
December 17, 2002	**37**	2		8		**8**	**52**	16		25	**41**
December 18, 2002	**45**		2	3		8	**35**	17		5	**59**
December 19, 2002	71			23		16	**38**	28		4	**72**
December 20, 2002	**68**	14		2		53	**69**	14		4	**61**
December 23, 2002	71	1			2	36	**59**	1		7	**59**
December 24, 2002	**32**			14		10	**52**	4		2	**41**
December 26, 2002	**72**				1	10	**50**	1		11	**60**
December 27, 2002	**57**	4		21		17	**44**	63		7	**42**
December 30, 2002	14			1		24	**52**	4		29	**74**
December 31, 2002	16	12		13	1		8	1		3	**30**

Source: Qwest's Service Order Processing Systems
Bold Face represents hot cut performed on Saturday/Sunday
Red Bold Face represents high volume of hot cuts performed consistently

Exhibit 9: Daily Volumes of Hot Cuts Performed in 2002 and 2003 for Selected Central Offices

2003

Number of hot cuts per day	DNVRCOCW	FTCLCOMA	LVLDCOMA	ANKNIACO	AMESIATC	BURLIATC	DUBQIATC	MRTWIASO	MPLSMNPI	NSPLMNPR	WBLKMNWB	FARGNDBC	WFRGNDBC
January 2, 2003												3	1
January 3, 2003											3	7	
January 6, 2003	3											1	3
January 7, 2003			1							1			1
January 8, 2003			4									1	6
January 9, 2003	1	1								1		5	
January 10, 2003		12										1	2
January 13, 2003		6	2									8	2
January 14, 2003		3										4	
January 15, 2003											1	10	13
January 16, 2003	25											2	
January 17, 2003	53											7	4
January 20, 2003	51											3	1
January 21, 2003	51		2				1					4	5
January 22, 2003	51	5										4	
January 23, 2003	32											6	5
January 24, 2003	43						1			2		4	5
January 27, 2003	42		2							1	3	7	1
January 28, 2003	36						1					6	15
January 29, 2003										50	47	3	14
January 30, 2003	7									50	57	11	
January 31, 2003	4		1				2			24	48	1	
February 3, 2003										15	59	3	13
February 4, 2003			5							76	52	5	1
February 5, 2003	9									29	46	4	
February 6, 2003	12		1							50	58	19	4
February 7, 2003	3	1	1				11			50	71	4	1
February 10, 2003	31		21				29			49	41	34	19
February 11, 2003	36	15	3				1			45	36	47	1
February 12, 2003	39	1								58	51	35	12
February 13, 2003	62		12				1			35	53	36	4
February 14, 2003	41									48	48	31	
February 17, 2003	31									1	36	23	12
February 18, 2003		2								7	42	5	34
February 19, 2003			2				2			7	4	3	29
February 20, 2003	8	1								2	1	12	32

Exhibit 9: Daily Volumes of Hot Cuts Performed in 2002 and 2003 for Selected Central Offices

Number of hot cuts per day	DNVRCOCW	FTCLCOMA	LVLDCOMA	ANKNIACO	AMESIATC	BURLIATC	DUBQIATC	MRTWIASO	MPLSMNPI	NSPLMNPR	WBLKMNWB	FARGNDBC	WFRGNDBC
February 21, 2003	20		3							6	1	6	29
February 24, 2003	1		2									7	27
February 25, 2003	7		1							3	1	5	26
February 26, 2003							1			1		39	1
February 27, 2003										15		35	
February 28, 2003	1									2	3	33	
March 3, 2003		1	1							6		45	
March 4, 2003							1					27	2
March 5, 2003	5											32	6
March 6, 2003			2				4					39	4
March 7, 2003												34	1
March 10, 2003							1			2		27	10
March 11, 2003												32	10
March 12, 2003	2									6		37	7
March 13, 2003		2										34	13
March 14, 2003			1				1					25	1
March 17, 2003	15											18	
March 18, 2003	4											11	
March 19, 2003												17	1
March 20, 2003	17											10	1
March 21, 2003	21						1					6	8
March 24, 2003	11											8	
March 25, 2003	5						1					15	11
March 26, 2003	12											10	2
March 27, 2003	14						29					24	1
March 28, 2003							9			38		6	
March 31, 2003	5									19	29	23	14
April 1, 2003							1				11	12	3
April 2, 2003	1	2										3	6
April 3, 2003	4										17	7	8
April 4, 2003												2	2
April 7, 2003							1					2	13
April 8, 2003	3		13				25			25		7	11
April 9, 2003												8	2
April 10, 2003		1					5			1	8	7	
April 11, 2003		1	2				1				1	4	1
April 14, 2003	2									1		6	

Exhibit 9: Daily Volumes of Hot Cuts Performed in 2002 and 2003 for Selected Central Offices

Number of hot cuts per day	DNVRCOCW	FTCLCOMA	LVLDCOMA	ANKNIACO	AMESIATC	BURLIATC	DUBQIATC	MRTWIASO	MPLSMNPI	NSPLMNPR	WBLKMNWB	FARGNDBC	WFRGNDBC
April 15, 2003	4						2					1	
April 16, 2003		3					1					7	6
April 17, 2003		17	2				1				2	8	2
April 18, 2003		3	9							6	1	4	1
April 21, 2003	2	4					1					7	1
April 22, 2003		7	20				7					7	1
April 23, 2003	9						17					3	1
April 24, 2003		9					10				3	7	2
April 25, 2003							6			1		10	1
April 28, 2003			5							3		10	4
April 29, 2003							12					13	
April 30, 2003		1	1				3				8	9	
May 1, 2003	3						1					7	
May 2, 2003							2					2	1
May 5, 2003							2					3	1
May 6, 2003										6		10	
May 7, 2003	7	7					3					11	
May 8, 2003	1	9	5				1					13	3
May 9, 2003							1					11	
May 12, 2003		3					1					11	3
May 13, 2003							1					5	15
May 14, 2003		1					1			6		6	
May 15, 2003	2												1
May 16, 2003		1	1									21	
May 19, 2003			1									30	6
May 20, 2003		1										18	
May 21, 2003	1												1
May 22, 2003										1		12	
May 23, 2003	2		1										
May 27, 2003												1	
May 28, 2003		14	3				1					2	1
May 29, 2003		1					1			5	2	3	
May 30, 2003		1										1	16
June 2, 2003		1										3	5
June 3, 2003			4									2	
June 4, 2003	2						1			3		16	
June 5, 2003												3	1

Exhibit 9: Daily Volumes of Hot Cuts Performed in 2002 and 2003 for Selected Central Offices

Number of hot cuts per day	DNVRCOCW	FTCLCOMA	LVLDCOMA	ANKNIACO	AMESIATC	BURLIATC	DUBQIATC	MRTWIASO	MPLSMNPI	NSPLMNPR	WBLKMNWB	FARGNDBC	WFRGNDBC
June 6, 2003	2		1									12	
June 9, 2003			24									21	3
June 10, 2003	2	5	8									1	2
June 11, 2003	1	7	29									8	1
June 12, 2003	1	17	2									22	3
June 13, 2003	2		11				1					4	3
June 16, 2003	2	22	4				1			8		9	
June 17, 2003		24					1					6	28
June 18, 2003		22	8				35			2		21	
June 19, 2003		16	1				12			1		5	2
June 20, 2003		4	2				3						
June 23, 2003		1										7	
June 24, 2003		11					1					1	2
June 25, 2003		20	2							2		1	1
June 26, 2003		7											
June 27, 2003		52	1				8			2		7	
June 30, 2003		4	3				9					15	4
July 1, 2003		1					2			10		10	2
July 2, 2003		3	8				23					36	1
July 3, 2003		15					41					5	
July 7, 2003		49	1				51					23	2
July 8, 2003		5	14				34					75	6
July 9, 2003		19	29				58					30	3
July 10, 2003		46	48				20					30	3
July 11, 2003		45	51				49					42	5
July 14, 2003		44	44				47					46	
July 15, 2003		39	9				46					55	3
July 16, 2003		28	18				42					49	8
July 17, 2003		10	1	1			48			4	7	59	14
July 18, 2003							54					36	
July 21, 2003		18					47			2		36	
July 22, 2003		28	5				65			5	3	6	
July 23, 2003		23	53				49			1	8	43	
July 24, 2003		51	43				48					47	
July 25, 2003		64	51	10			58				4	54	
July 28, 2003		44	46				51					35	
July 29, 2003		38	50				49					67	

Exhibit 9: Daily Volumes of Hot Cuts Performed in 2002 and 2003 for Selected Central Offices

Number of hot cuts per day	DNVRCOCW	FTCLCOMA	LVLDCOMA	ANKNIACO	AMESIATC	BURLIATC	DUBQIATC	MRTWIASO	MPLSMNPI	NSPLMNPR	WBLKMNWB	FARGNDBC	WFRGNDBC
July 30, 2003		32	46	35			61					15	
July 31, 2003		51	52	33			54					30	6
August 1, 2003		19	9	4			40					45	7
August 4, 2003		19	2	47			48					28	
August 5, 2003		48	21	30			46				2	30	30
August 6, 2003		33	66	17		2	19					24	
August 7, 2003		47	50				25					34	7
August 8, 2003		33	64				51				1	4	4
August 11, 2003		63	17		2		33					14	4
August 12, 2003		35	37				48					66	17
August 13, 2003		50	42	18			51			12		63	19
August 14, 2003		12	23				50			30		43	32
August 15, 2003		4	3	1		19	50			24		10	4
August 18, 2003			2			19	47	2				17	
August 19, 2003		4	2		6	11	55			6		10	1
August 20, 2003		37	19	3	31	31	47			12		56	1
August 21, 2003		35	27	5	30	13	25					64	12
August 22, 2003		37	52		29	26	50			20		7	
August 25, 2003		24	34	4	31	18	61			1		20	
August 26, 2003		15	31	11	31	22	44			12		20	24
August 27, 2003		23	32	2	29	22	62	18		4	4	19	4
August 28, 2003		22	32	32	30	22	65	26		1	1	17	16
August 29, 2003	1	36	28	42	38	33	52	31		50		5	
September 2, 2003		40	9	27	29	13		30		4		1	2
September 3, 2003		30	30	27	33	32	4	33		5		7	
September 4, 2003		20	30	31	30	18	18	16		7	1	49	12
September 5, 2003		48	35	31	18	23	1	25				9	1
September 8, 2003		32	23	38	27	20	8	31		7		8	1
September 9, 2003		28	36	55	97	37	5	23				8	18
September 10, 2003	1	29	27	86	63	24	1	40		13		37	8
September 11, 2003		29	29	65	75	43	2	20		10		53	17
September 12, 2003		48	27	64	72	42	2	27				20	10
September 15, 2003		53	30	61	67	34	3	30		17		9	37
September 16, 2003		34	8	73	58	42	1	30		1	32	55	41
September 17, 2003		41	27	85	89	46	11	34			44	49	16
September 18, 2003		47	31	77	69	40	6	27		10		40	
September 19, 2003		56	32	75	63	14	1	32		12	19	18	6

Exhibit 9: Daily Volumes of Hot Cuts Performed in 2002 and 2003 for Selected Central Offices

Number of hot cuts per day	DNVRCOCW	FTCLCOMA	LVLDCOMA	ANKNIACO	AMESIATC	BURLIATC	DUBQIATC	MRTWIASO	MPLSMNPI	NSPLMNPR	WBLKMNWB	FARGNDBC	WFRGNDBC
September 22, 2003	3	48	18	73	76	8	14	46				28	1
September 23, 2003		37	28	70	63			39				12	
September 24, 2003		39	27	67	66	3	1	12			2	6	9
September 25, 2003		15	5	49	67		1	35				5	12
September 26, 2003	1	12	4	72	85			61		1		4	1
September 29, 2003		42	17	77	71		1	37		2	11	7	6
September 30, 2003		45	47	60	63			28		5	62	2	7
October 1, 2003	1	45	16	82	55			40			5	7	
October 2, 2003		14	12	37	55		1	31		1	6	11	3
October 3, 2003		49	16	17	29	1	2	40		4	63	25	
October 6, 2003		43	9	1	35			36			5	11	8
October 7, 2003		18	17		14			31			5	23	8
October 8, 2003	1	7	8	20	19	1	1	61			3	22	11
October 9, 2003		2	16	2	23			88			15	6	10
October 10, 2003		13	7	10	55	1		80				8	3
October 13, 2003		23	21		7			78		8	17	11	
October 14, 2003		29	14				1	50		8		20	8
October 15, 2003		45		3	1		30	76		11		44	4
October 16, 2003		44			5		52	76			16	41	16
October 17, 2003		40			5		49	82		4		33	2
October 20, 2003		47	6	3			53	80			9	18	18
October 21, 2003		47			6		49	66			28	15	4
October 22, 2003		37	6				29	49			22	48	1
October 23, 2003		33	2		1		31	44		34	9	7	1
October 24, 2003	5	6	5		14		28	37		8	12	4	1
October 27, 2003		31	1	1			28	42		11	12	11	
October 28, 2003	12	10	1	8		12	31	42		5	2	2	
October 29, 2003		7	6	3	2	1	19	34		1	12	16	34
October 30, 2003	1	3	2		1		46	55		7		10	40
October 31, 2003	1	7	2		1		50	42			20		42
November 3, 2003			3		1	1	54	24			2	6	39
November 4, 2003		2				13	50			4		2	59
November 5, 2003		14	1				44			3	3	11	38
November 6, 2003		14	4				7	3		1		21	38
November 7, 2003		3			5		1			2	2	18	49
November 10, 2003		5						6		4		19	45
November 11, 2003		7	1					8		17	1	7	53

Exhibit 9: Daily Volumes of Hot Cuts Performed in 2002 and 2003 for Selected Central Offices

Number of hot cuts per day	DNVRCOCW	FTCLCOMA	LVLDCOMA	ANKNIACO	AMESIATC	BURLIATC	DUBQIATC	MRTWIASO	MPLSMNPI	NSPLMNPR	WBLKMNWB	FARGNDBC	WFRGNDBC
November 12, 2003		12					36	18				15	**49**
November 13, 2003				11			61					31	**60**
November 14, 2003		1						1		5		5	**35**
November 17, 2003		4				1	18	39				11	**58**
November 18, 2003		10		7			1	19	6		6	12	**40**
November 19, 2003		4	1		1	2	2	13			4	**4**	**50**
November 20, 2003			1	2			32	4				3	**51**
November 21, 2003		10			3	70				4	1	20	**37**
November 24, 2003		6			2	76	1	2		2	2		**42**
November 25, 2003		6	4			67	3	5	1		2	12	**46**
November 26, 2003			1	1	4	75	3	12			1	**7**	**43**
November 28, 2003											8	2	8
December 1, 2003		**3**				**83**		4	**54**		2	7	**64**
December 2, 2003		18		2	4	**83**	19	2	**64**			17	**57**
December 3, 2003		2	3	2		**67**	6	2	**31**			11	**72**
December 4, 2003				1	1	**70**	1	5	**67**		1	40	**32**
December 5, 2003						**24**	12		**34**			9	**58**
December 8, 2003		1	2			**57**	1	1	**30**	2		2	**23**
December 9, 2003			1	1		**66**		7	**23**		1	2	**57**
December 10, 2003		**4**				**69**		1	**54**	2	1	8	**35**
December 11, 2003						**71**			**30**			**4**	15
December 12, 2003		9				**73**		3	9			11	5
December 15, 2003			1		1	**59**	12					16	1
December 16, 2003						**59**	27	1	1			1	2
December 17, 2003						**79**							
December 18, 2003						**22**	3	1	1			4	1
December 19, 2003		2		4		**59**		1	50			12	
December 22, 2003		1				**57**		3				19	2
December 23, 2003		6				**48**	1	2	40			6	8
December 24, 2003						**38**	2		2				10
December 26, 2003						5		1	33		1		
December 29, 2003		3				42	26	2	35			26	8
December 30, 2003		1			9	66		1	51			8	7
December 31, 2003									49		1	11	

Source: Qwest's Service Order Processing Systems
Bold Face represents hot cut performed on Saturday/Sunday
Red Bold Face represents high volume of hot cuts performed consistently

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order	*Docket No. UT-033044*

Exhibit 10: Testing Summary: Preliminary Live Trial

January 23, 2004

Exhibit 10: Testing Summary: Preliminary Live Trial

	Service Delivery	QCCC			Central Office						
Activity	**LSRs Received**	**Rec'd at WFA**	**Query & automated sort engine**	**Spreadsheet forwarded to CLEC & CO**	**Start Time at the CO**	**Elapsed Time for DT Checks**	**Elapsed Time to Install ICDF jumpers**	**Elapsed Time to Install MDF jumpers**	**Qwest & CLEC ANI Checks & Perform Lift & Lay**	**PDF DT Checks**	**WFA Updated that BHC is Complete (end time)**
	December 10, 2003	*December 11, 2003*			*December 17, 2003*						
Trial 1	2:25- 2:41 PM	3:30 – 4:37 PM	51 minutes	11:24 AM	7:50 AM	9 minutes	69 minutes	32 minutes	32 minutes	7 minutes	2:27PM
	December 11, 2003	*December 12, 2003*			*December 18, 2003*						
Trial 2	12:13 – 12:15 PM	12:18 PM – 4:55 AM	38 minutes	9:50 AM	7:45 AM	10 minutes	76 minutes	47 minutes	40 minutes	11 minutes	12:10 PM

Preliminary Live Trial 1	***Preliminary Live Trial 2***
• Central Office - Time required to complete all process steps: **2 hrs 54 min (Note 3)** - Elapsed time: **6 hrs 37 min (Note 6)** • Automatic Flow Through: - Service Delivery: 24/25 (Note 1) - LPC: 25/25 (Note 2) - Design Services: 25/25 - QCCC: 23/25 (Note 2) • Commitments Met: 25/25	• Central Office - Time required to complete all process steps: **3 hrs 29 min (Note 3)** - Elapsed time: **4 hrs 25 min (Note 6)** • Automatic Flow Through - Service Delivery: 24/25 (Note 4) - LPC: 25/25 (Note 5) - Design Services: 25/25 - QCCC: 20/25 (Note 5) • Commitments Met: 23/23

Exhibit 10: Testing Summary: Preliminary Live Trial

• Products – 24 UNE-P to UNE-Loop and 1 Resale to UNE-LOOP	• Products – 25 UNE-P to UNE-Loop

Reference	Details
Note 1	**Pending Order Activity:** An LSR fell out of the automated flow-through process due to order activity on the account. Order activity on an account causes the LSR to be routed to the "Submitted" queue of the IMA system where an SDC will pick up the LSR for manual handling. The pending order is reviewed to ensure that it is not associated with the same lines.
Note 2	**QCCC Auto-flow through:** QCCC noticed that Qwest was using a Universal Digital Channel Unit (UDC) which allows multiple customers on one line. Refer to Glossary for a definition of UDC. The problem with this arrangement is that it can not be shared between a CLEC and an ILEC. This resulted in a dispatch out and the issue was resolved before Due Date. Additionally, there was a facilities exception whereby a new facilities assignment was made by the system. This issue was caught and resolved by the LRAC.
Note 3	**Time required to complete process steps:** The time represented here reflects the elapsed time to complete all work steps in the CO. The time to close out the first order in WFA is included in the "lift and lay" measurement. Times for the review of the spreadsheet at the commencement of the work in the CO (7 minutes) and the updating of WFA (18 minutes) at the completion of the BHC were taken from the second round live trial as they were not recorded in the preliminary trial and can be viewed in detail in the section of the report titled "Test Results".
Note 4	**CNUM Exception:** This issue was caused by a CNUM database error. Please refer to our glossary for a definition of CNUM database. Currently, TNs and their attributes are extracted from SWITCH and loaded into CNUM. Because of this conversion there are some database issues which resulted in a CNUM error on our service orders. The addresses and numbers are re-validated and updated when a CNUM error occurs. These errors can typically be corrected automatically. If not, then a group that oversees the CNUM database works to correct the error.
Note 5	**QCCC Auto Flow Through:** Facilities Exceptions: There were four exceptions. Three exceptions were caught by the QCCC who in turn notified the LPC to resolve the issues. The fourth exception was resolved by the LRAC before the QCCC could notify the LPC. Line Short: One line experienced a line short. A line short is an electrical fault that renders the line inoperable (another type of fault is an open circuit). A dispatch out was triggered by the QCCC which generated a trouble ticket. The issue was resolved by the due date.

Exhibit 10: Testing Summary: Preliminary Live Trial

Note 6	**CO Elapsed Times:** The following factors contributed to the elapsed time: • A significant delay of approximately two hours caused by the incorrect sorting of the spreadsheet used on due date for trial 1. This had no impact on customer service as the issue was identified before performing the "lift and lay". The total impact on elapsed time was approximately 2 hours. The potential human error has been eliminated from the process by making the sort an automated process. • The presence of many observers may have caused disruption to the test process in some cases. • COTS were not properly trained on all the changes in tasks and procedures resulting from BHC, requiring COTs to repeatedly seek instructions from their supervisors. • Routine breaks taken by the COTs are included in the elapsed time.

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order	*Docket No. UT-033044*

Exhibit 11: Testing Summary: Second Round Live Testing

January 23, 2004

Exhibit 11: Testing Summary: Second Round Live Testing

Activity	Service Delivery	QCCC		Central Office							
				DVA					Due Date		
	LSRs Received	Rec'd at WFA	Spreadsheet forwarded to CLEC & CO	DVA Start Time	Elapsed Time to Install ICDF jumpers	Elapsed Time to Install MDF jumpers	Elapsed Time for DT Checks	DVA Stop Time	Due Date Start Time	Qwest & CLEC ANI Checks & Perform Lift & Lay (Note 1)	Due Date Stop Time (Included WFA updates)
	Monday, Jan 12th			*Thursday, Jan. 15th*					*Monday, Jan. 19th*		
CO #3	9:08 AM - 1:44 PM	9:21 – 9:33 AM	1/12 7:32 PM	Thursday Jan. 15th 8:11 AM	45 minutes	30 minutes	(completed in conjunction with MDF jumpers)	9:42 AM	4:00 AM	35 Minutes	5:17 AM (Note 2)
	Monday, Jan 12th			*Thursday, Jan. 15th*					*Monday, Jan. 19th*		
CO #2	9:03 AM – 2:54 PM	10:41 AM – 5:05 PM (2) 9:47AM on 1/13	1/12 7:32 PM 1/13 4:42 PM	Thursday Jan. 15th 9:30 AM	43 minutes	47 minutes	19 minutes	11:33 AM	3:09 AM	39 minutes	4:20 AM

Overall Observations	*CO #3*	*CO #2*
• Service Delivery ▪ 17 LSR's (Centrex) fell out for manual handling ▪ Average resolution time was **46 min** ▪ Range of resolution time was **8 min to 2 hrs 1 min** • Automatic Flow-Through: - Service Delivery: 26/52 (Centrex were the exceptions) - LPC: 52/52 - Design Services: 52/52 - QCCC: 52/52 • Commitments Met: 52/52 • Products ▪ 26 UNE – P to UNE – Loop ▪ 26 Centrex	• Central Office: (Note 1) - Time required to complete DVA process steps: **1 hr 22 min** - Elapsed time (DVA): **1 hr 31 min** - Time required to complete Due Date process steps: **54 min** - Elapsed time (Due Date): **1 hr 17 min** • Commitments Met: 26/26 • Products – 26 UNE-P to UNE-Loop • CLEC Notification (Note 3): - BHC Start: **5:17 AM** - BHC Stop: **7:15 AM**	• Central Office: (Note 1) - Time required to complete DVA process steps: **1 hr 56 min** - Elapsed time (DVA): **2 hr 3 min** - Time required to complete Due Date process steps: **1 hr 11 min** - Elapsed time (Due Date): **1 hr 11 min** • Commitments Met: 26/26 • Products – 26 Centrex • CLEC Notification: - BHC Start: **3:41 AM** - BHC Stop: **4:15 AM**

Exhibit 11: Testing Summary: Second Round Live Testing

Reference	Details
Note 1	**PDF DT Checks were not performed:** The PDF could not be tested at CO #3 because they have a "COSMIC 2" frame. At CO #2 the PDF could not be tested due to having a conventional frame. These two types of frames have the PDF integrated with the MDF and, thus, there is no access to singular PDF test.
Note 2	**Notification of Start of migrations delayed:** The CORAC had not loaded the orders into WFA-C the night before, so the COTs could not input the information into the system and, thus, updated the OSSLOGs only. Because the tickets had not been loaded, the CLEC was not notified about the start of the test. The issue was addressed at 4:55am and the tickets were loaded into WFA-C. The COTs were able to then begin updating WFA-C at 5:00am and finished updating all information at 5:17am.
Note 3	**CLEC Notification:** The WFA – DI steps had not been loaded into the Central Office, which meant that the COT's had to wait until the problem was resolved before they could update the orders. This resulted in a delay in the CLEC notification of the BHC start. Since the system looks for changes in 30 minute time period and because all the updates were made in less than 30 minutes, the ending e-mail was not sent out at the correct time. The ending e-mail time shown is when the actual e-mail was sent manually after this problem was realized in the QCCC.
	Time Intervals: Due to time constraints, we were unable to test a seven day interval. We tested a five day interval which allowed us to do the separate DVA and Due Date steps.

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order	*Docket No. UT-033044*

Exhibit 12: LSR Detail From the Two Live Trial

January 23, 2004

Exhibit 12: LSR Detail From the Two Live Trials

Trial	CO	LSR Number	Date LSR Received	Date of FOC	DVA Date	Due Date	Comments
Trial 1	CO #1	8657271	12/10/2003	12/10/2003	N/A	12/17/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8956820	12/10/2003	12/10/2003	N/A	12/17/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8956855	12/10/2003	12/10/2003	N/A	12/17/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8956875	12/10/2003	12/10/2003	N/A	12/17/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8956893	12/10/2003	12/10/2003	N/A	12/17/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8956943	12/10/2003	12/10/2003	N/A	12/17/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8956964	12/10/2003	12/10/2003	N/A	12/17/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8956984	12/10/2003	12/10/2003	N/A	12/17/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8957009	12/10/2003	12/10/2003	N/A	12/17/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8957022	12/10/2003	12/10/2003	N/A	12/17/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8957183	12/10/2003	12/10/2003	N/A	12/17/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8957220	12/10/2003	12/10/2003	N/A	12/17/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8957248	12/10/2003	12/10/2003	N/A	12/17/2004	DVA steps were performed on Due Date for the preliminary live trial.

Exhibit 12: LSR Detail From the Two Live Trials

Trial	CO	LSR Number	Date LSR Received	Date of FOC	DVA Date	Due Date	Comments
Trial 1	CO #1	8957274	12/10/2003	12/10/2003	N/A	12/17/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8957279	12/10/2003	12/10/2003	N/A	12/17/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8957291	12/10/2003	12/10/2003	N/A	12/17/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8957316	12/10/2003	12/10/2003	N/A	12/17/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8966373	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8966382	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8966385	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8966387	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8966390	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8966394	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8966397	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8966410	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8966415	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8966416	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.

Exhibit 12: LSR Detail From the Two Live Trials

Trial	CO	LSR Number	Date LSR Received	Date of FOC	DVA Date	Due Date	Comments
Trial 1	CO #1	8966417	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8966427	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8966436	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8966439	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8966459	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8966460	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8967254	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 1	CO #1	8967732	12/11/2003	12/11/2003	N/A	12/18/2004	DVA steps were performed on Due Date for the preliminary live trial.
Trial 2	CO #2	9237737	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #2	9237752	1/12/2004	N/A	N/A	N/A	Fatal reject in Service Delivery due to an address mismatch. CLEC sent in a new LSR that was processed with the batch.
Trial 2	CO #2	9237779	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #2	9237782	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #2	9237784	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #2	9237785	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #2	9237809	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #2	9237814	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #2	9237818	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #2	9237822	1/12/2004	1/12/2004	1/15/2004	1/19/2004	

Exhibit 12: LSR Detail From the Two Live Trials

Trial	CO	LSR Number	Date LSR Received	Date of FOC	DVA Date	Due Date	Comments
Trial 2	CO #2	9237836	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #2	9237840	1/12/2004	N/A	N/A	N/A	LSR was placed in Jep status because it was a duplicate of another LSR. CLEC replaced the duplicated LSR with a new LSR.
Trial 2	CO #2	9237846	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #3	9237849	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #2	9237853	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #3	9237858	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #3	9237859	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #3	9237865	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #3	9237866	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #3	9237869	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #3	9238209	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #3	9238218	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #3	9238239	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #2	9238856	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #2	9238874	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #2	9239509	1/12/2004	N/A	N/A	N/A	CLEC sent in a SUP, related to LSR #9237752 but the new LSR was missing the Project ID # so the CLEC resubmitted the LSR as #9244841.
Trial 2	CO #2	9244841	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #2	9245705	1/12/2004	N/A	N/A	N/A	Fatal reject on the LSR due to a duplicate request. CLEC sent in new LSR to replace.
Trial 2	CO #2	9246083	1/12/2004	1/12/2004	1/15/2004	1/19/2004	
Trial 2	CO #2	9252655	1/12/2004	1/12/2004	1/15/2004	1/19/2004	

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order	*Docket No. UT-033044*

Exhibit 13a: Service Order Details of the Preliminary Live Trial

January 23, 2004

Exhibit 13a: Service Order Details of the Preliminary Live Trial

Number	Service Order Number	Type Of Line	Automated Flow-Through SOP?	Automated Flow-Through LPC?	Automated Flow-Through Design Services?	Automated Flow-Through QCCC?	Commitment Met?	30 Day Trouble Report	Notes
1	N94409919	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
2	N94409920	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
3	N94872060	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
4	N94872061	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
5	N94872038	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
6	N94409926	UNE-L	Yes	No	Yes	Yes	Yes	No	LPC - Loop Make Up error - system resolved.
7	N94409922	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
8	N94409928	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
9	N94409929	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
10	N94409930	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
11	N94409931	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
12	N94409933	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
13	N94409935	UNE-L	Yes	No	Yes	Yes	Yes	No	LPC - Loop Make Up error - system resolved.
14	N94409936	UNE-L	Yes	No	Yes	Yes	Yes	No	LPC - Loop Make Up error - system resolved.
15	N94872071	UNE-L	Yes	No	Yes	Yes	Yes	No	LPC - Cnum rma cannot be deactivated not working analog service.
16	N94872042	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
17	N94872044	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
18	N94409947	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
19	N94409948	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
20	N94409951	UNE-L	Yes	Yes	Yes	Yes	Yes	No	

Exhibit 13a: Service Order Details of the Preliminary Live Trial

Number	Service Order Number	Type Of Line	Automated Flow-Through SOP?	Automated Flow-Through LPC?	Automated Flow-Through Design Services?	Automated Flow-Through QCCC?	Commitment Met?	30 Day Trouble Report	Notes
21	N94409954	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
22	N94409991	Resale to UNE- L	No	Yes	Yes	Yes	Yes	No	No automatic flow-through because LSR was for Resale.
23	N94872063	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
24	N94872065	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
25	N94872066	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
26	N94872613	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
27	N94872535	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
28	N94872536	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
29	N94410416	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
30	N94410417	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
31	N94410418	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
32	N94872541	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
33	N94872542.	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
34	N94872544	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
35	N94872673	UNE-L	No	Yes	Yes	Yes	Yes	No	No automatic flow-through due to CNUM database error.
36	N94410424	UNE-L	Yes	Yes	Yes	Yes	N/A	N/A	Cancelled due to CLEC request.
37	N94410422	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
38	N94410426	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
39	N94410427	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
40	N94872546	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
41	N94410402	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
42	N94410405	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
43	N94410407	UNE-L	Yes	Yes	Yes	Yes	Yes	No	

Exhibit 13a: Service Order Details of the Preliminary Live Trial

Number	Service Order Number	Type Of Line	Automated Flow-Through SOP?	Automated Flow-Through LPC?	Automated Flow-Through Design Services?	Automated Flow-Through QCCC?	Commitment Met?	30 Day Trouble Report	Notes
44	N94410406	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
45	N94410409	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
46	N94872532	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
47	N94410411	UNE-L	Yes	Yes	Yes	Yes	N/A	N/A	Cancelled due to CLEC request.
48	N94410413	UNE-L	Yes	No	Yes	Yes	Yes	No	LPC - Loop Make Up error - system resolved.
49	N94872538	UNE-L	Yes	Yes	Yes	Yes	Yes	No	
50	N94872539	UNE-L	Yes	Yes	Yes	Yes	Yes	No	

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order	*Docket No. UT-033044*

Exhibit 13b: Service Order Details of the Second Round Live Trial

January 23, 2004

Exhibit 13b: Service Order Details of the Second Round Live Trial

Number	Service Order Number	Type Of Line	Automated Flow-Through SOP?	Automated Flow-Through LPC?	Automated Flow-Through Design Services?	Automated Flow-Through QCCC?	Commitment Met?	30 Day Trouble Report	Notes
1	N74158610	Centrex	No	Yes	Yes	Yes	Yes	N/A	
2	N74158611	Centrex	No	Yes	Yes	Yes	Yes	N/A	
3	N74158649	Centrex	No	Yes	Yes	Yes	Yes	N/A	
4		Centrex	No	Yes	Yes	Yes	Yes	N/A	Fatal reject in Service Delivery due to an address mismatch
5	N70120185	Centrex	No	Yes	Yes	Yes	Yes	N/A	CLEC sent in a SUP, related to LSR #9237752 but the new LSR was missing the Project ID # so the CLEC resubmitted the LSR as #9244841.
6	N70120185	Centrex	No	Yes	Yes	Yes	Yes	N/A	Submitted with a SUP related to LSR #9239509.
7	N74158616	Centrex	No	Yes	Yes	Yes	Yes	N/A	
8	N74158617	Centrex	No	Yes	Yes	Yes	Yes	N/A	
9	N74657804	Centrex	No	Yes	Yes	Yes	Yes	N/A	
10	N74657805	Centrex	No	Yes	Yes	Yes	Yes	N/A	
11	N74657806	Centrex	No	Yes	Yes	Yes	Yes	N/A	
12	N74657807	Centrex	No	Yes	Yes	Yes	Yes	N/A	
13	N74657808	Centrex	No	Yes	Yes	Yes	Yes	N/A	
14	N70120127	Centrex	No	Yes	Yes	Yes	Yes	N/A	
15	N74158625	Centrex	No	Yes	Yes	Yes	Yes	N/A	
16	N74657812	Centrex	No	Yes	Yes	Yes	Yes	N/A	
17	N74657823	Centrex	No	Yes	Yes	Yes	Yes	N/A	
18	N74158638	Centrex	No	Yes	Yes	Yes	Yes	N/A	
19	N74158651	Centrex	No	Yes	Yes	Yes	Yes	N/A	

Exhibit 13b: Service Order Details of the Second Round Live Trial

Number	Service Order Number	Type Of Line	Automated Flow-Through SOP?	Automated Flow-Through LPC?	Automated Flow-Through Design Services?	Automated Flow-Through QCCC?	Commitment Met?	30 Day Trouble Report	Notes
20	N74158622	Centrex	No	Yes	Yes	Yes	Yes	N/A	
21	N74158620	Centrex	No	Yes	Yes	Yes	Yes	N/A	
22	N74158629	Centrex	No	Yes	Yes	Yes	Yes	N/A	LSR was placed in Jep status because it was a duplicate of another LSR.
23	N74158630	Centrex	No	Yes	Yes	Yes	Yes	N/A	LSR was placed in Jep status because it was a duplicate of another LSR.
24	N74158631	Centrex	No	Yes	Yes	Yes	Yes	N/A	LSR was placed in Jep status because it was a duplicate of another LSR.
25	N70120362	Centrex	No	Yes	Yes	Yes	Yes	N/A	
26				Yes	Yes	Yes	Yes	N/A	Supplemental LSR; replaced #9237840.
27	N70120363	Centrex	No	Yes	Yes	Yes	Yes	N/A	
28				Yes	Yes	Yes	Yes	N/A	Supplemental LSR; replaced #9237840.
29	N70120364	Centrex	No	Yes	Yes	Yes	Yes	N/A	
30				Yes	Yes	Yes	Yes	N/A	Supplemental LSR; replaced #9237840.
31	N74657810	Centrex	No	Yes	Yes	Yes	Yes	N/A	
32	N74158641	Centrex	No	Yes	Yes	Yes	Yes	N/A	
33		Centrex	No	Yes	Yes	Yes	Yes	N/A	LSR was placed in Jep status because it was a duplicate of another LSR.

Exhibit 13b: Service Order Details of the Second Round Live Trial

Number	Service Order Number	Type Of Line	Automated Flow-Through SOP?	Automated Flow-Through LPC?	Automated Flow-Through Design Services?	Automated Flow-Through QCCC?	Commitment Met?	30 Day Trouble Report	Notes
34	N70130116	Centrex	No	Yes	Yes	Yes	Yes	N/A	Supplemental LSR; replaced #9245705.
35	N70130117	Centrex	No	Yes	Yes	Yes	Yes	N/A	Supplemental LSR; replaced #9245705.
36	N46026014	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
37	N46026015	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
38	N46026016	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
39	N46107890	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
40	N46107891	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
41	N46107892	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
42	N46107896	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
43	N46026018	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
44	N46026019	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
45	N46107900	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
46	N46107902	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
47	N46107903	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
48	N46107904	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
49	N46108012	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
50	N46108013	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
51	N46108014	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
52	N46108015	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
53	N46108016	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
54	N46108017	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
55	N46108002	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
56	N46108003	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	

Exhibit 13b: Service Order Details of the Second Round Live Trial

Number	Service Order Number	Type Of Line	Automated Flow-Through SOP?	Automated Flow-Through LPC?	Automated Flow-Through Design Services?	Automated Flow-Through QCCC?	Commitment Met?	30 Day Trouble Report	Notes
57	N46108004	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
58	N46108005	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
59	N46107997	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
60	N46107998	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	
61	N46107999	UNE-P	Yes	Yes	Yes	Yes	Yes	N/A	

Status for Batch Hot Cut Orders for: X01

JEOP'D ORDERS

JeopStatus	DueDate	State	CLLI	CRO	CFALOC	CFANUM	JOBID	CLO	PON	OrderNumber	TN	Jeop'dTime	ReqRespBy
No dial tone	12/18/2004	CO	CPLSMNPQ	D94872543	PDT0Q	00030	346EM0003	MNS988820001	1455569600	W94872544	6168273904	12/18/2003 17:05	12/18/2003 19:05
Line in use	12/18/2004	CO	CPLSMNPQ	D94410401	PDT0Q	00061	346EM0027	MNS988802001	1455474100	W94872544	6168273904	12/18/2003 17:05	12/18/2003 19:05
Wrong TN	12/18/2004	CO	CPLSMNPQ	D94410403	PDT0Q	00157	346EM0020	MNS988804001	1455480100	W94872544	6168273904	12/18/2003 17:05	12/18/2003 19:05

PENDING ORDERS

DueDate	State	CLLI	CRO	CFALOC	CFANUM	JOBID	CLO	PON	OrderNumber	TN
12/18/2004	CO	CPLSMNPQ	C94872540	PDT0Q	00125	346EM0009	MNS988818001	1455564900	W94872544	6168273904
12/18/2004	CO	CPLSMNPQ	D94872537	PDT0Q	00189	346EM0005	MNS988813001	1455568100	W94872544	6168273904
12/18/2004	CO	CPLSMNPQ	D94872537	PDT0Q	00221	346EM0008	MNS988814001	1455568100	W94872544	6168273904
12/18/2004	CO	CPLSMNPQ	D94872612	PDT0Q	00253	346EM0023	MNS988680001	1455444600	W94872544	6168273904

COMPLETED ORDERS

DueDate	State	CLLI	CRO	CFALOC	CFANUM	JOBID	CLO	PON	OrderNumber	TN	CompTime	ReqRespBy
12/18/2004	CO	CPLSMNPQ	C94872534	PDT0Q	00381	346EM0012	MNS988811001	1455546500	W94872544	6168273904	12/18/2003 15:00	12/18/2003 17:00
12/18/2004	CO	CPLSMNPQ	C94872534	PDT0Q	00285	346EM0013	MNS988812001	1455546500	W94872544	6168273904	12/18/2003 15:00	12/18/2003 17:00
12/18/2004	CO	CPLSMNPQ	D94410415	PDT0Q	00349	346EM0004	MNS988815001	1455562000	W94872544	6168273904	12/18/2003 15:00	12/18/2003 17:00
12/18/2004	CO	CPLSMNPQ	D94410415	PDT0Q	301	346EM0007	MNS988817001	1455562000	W94872544	6168273904	12/18/2003 15:00	12/18/2003 17:00

PEARCE & DURICK

WILLIAM R. PEARCE 1910-1978
WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE •
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE •
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

OF COUNSEL
HARRY J. PEARCE

January 22, 2004

RECEIVED
JAN 23 2004
PUBLIC SERVICE COMMISSION
SECRETARY

Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

RE: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Commissioners:

Enclosed for filing is the original verification page of MIDCONTINENT COMMUNICATION'S RESPONSES TO PRELIMINARY DISCOVERY REQUESTS - QWEST ROC STATE TRO PROCEEDINGS. Please substitute the enclosed signature page for the copy filed with the original document.

Thank you for your attention to this matter.

Sincerely,

PEARCE & DURICK

Patrick W. Durick

PATRICK W. DURICK

PWD/jf
Enclosure.

140 PU-439-03-295 Pages: 1
Cover letter re original verification page
by Midcontinent Communications by Patrick W Durick,
01/23/2004 CC: Comm Legal PUD (3) ALJ .

• ALSO LICENSED IN MINNESOTA • ALSO LICEN

Dated this 15th day of January, 2004.

RECEIVED
JAN 23 2004

MIDCONTINENT COMMUNICATIONS

W. Tom Simmons
Vice President, Public Policy

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF Minnehaha)

W. Tom Simmons, Vice President of Public Policy, Midcontinent Communications, being first duly sworn, upon oath, deposes and says that he has read the foregoing document, knows the contents thereof and that the same is true to the best of his knowledge.

Nancy A. Vogel
Notary Public

My commission expires:
1/24/2004

139 FU-439-03-295 Pages: 1
Original verification page of
Midcontinent's Responses to Pre
by Midcontinent Communications
01/23/2004 CC: Comm Legal PUD (3) ALJ

integra
TELECOM

RECEIVED
JAN 23 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

January 22, 2004

VIA FASIMILE

Executive Secretary
Public Service Commission of North Dakota
600 East Boulevard Avenue, Dept. 408
Bismarck, North Dakota 58505-0480

Re: Case No. PU-439-03-295
Local Competition Investigation

Responses to Preliminary Discovery Requests

Dear Executive Secretary:

Thank you for contacting me on this issue.

On January 15, 2004, Integra Telecom of North Dakota, Inc. submitted a Public Version and a Non-Public Version of Responses to the Staff's Data Requests. In its cover letter, Integra intended to apply Trade Secret protection for certain information submitted in a separate marked envelope. If Integra's application for Trade Secret protection of the information enclosed in the sealed envelope was not sufficient as an application for such protection, Integra Telecom of North Dakota, Inc. respectfully withdraws the Trade Secret filing and requests that the Commission immediately return or destroy such information.

Integra will submit another application for Trade Secret protection.

Please advise if the Commission requires a more formal application.

Sincerely,

Karen J. Johnsen
Corporate Regulatory Attorney

KJJ

138 PU-439-03-295 Pages: 1

Fax re Trade Secret protection

by Integra Telecom of North Dakota, Inc.

01/22/2004 CC: Comm Legal PUD (5) ALJ

19545 NW Von Neumann Drive, Suite 200, Beaverton, OR 97006
Main Line: 503-748-1000 Fax 503-748-1212

JAN.22'2004 16:17 5037481212 INTEGRA TELECOM #1441 P.002/002

ZUGER KIRMIS & SMITH

COUNSELORS AND ATTORNEYS AT LAW

Lyle W. Kirmis
Lance D. Schreiner, P.C.
James S. Hill, P.C.
Patrick J. Ward
Rebecca S. Thiem, P.C.
Daniel S. Kuntz, P.C.
Jerry W. Evenson, P.C.
Lawrence A. Dopson
Lawrence E. King, P.C.
Tracy Vigness Kolb, P.C.
Shawnda R. Reid
Constance N. Hofland
Paul R. Sanderson
Aaron K. Webb

316 North Fifth Street
Provident Building
P.O. Box 1695
Bismarck, ND 58502-1695
(701) 223-2711
fax (701) 223-7387
www.zkslaw.com
email: zkslaw@zkslaw.com

Of Counsel
John A. Zuger

Thomas O. Smith
1944-2001

RECEIVED
JAN 22 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

January 22, 2004

Mr. Jon Mielke
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of Qwest Response to Second Letter Request of Independent Local Exchange Companies.

Also enclosed is an extra copy of this letter. Please date stamp the extra copy and return it to us for our file.

Please contact me if you have any questions regarding this filing.

Sincerely,

Daniel S. Kuntz

Enclosures

c: Scott Macintosh
Tim Goodwin
Parties of Record

137 PU-439-03-295 Page 1

Cover letter re Response to 2nd Letter Request of ILEC
by Qwest Corporation by Dan Kuntz, Attorney

01/22/2004 CC: Comm Legal PUD (3) ALJ

RECEIVED
JAN 22 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	Case No. PU-439-03-295

QWEST RESPONSE TO SECOND LETTER REQUEST OF INDEPENDENT LOCAL EXCHANGE COMPANIES

By letter dated January 19, 2004, the Rural Telephone Group ("RTCG") requested the Public Service Commission to limit discovery requests from MCI and Qwest so only rural ILECs providing "Qualified Services," consistent with the Commission's Order of January 14, 2004 regarding discovery served by the Commission, would be required to respond to MCI and Qwest's discovery requests.

Qwest objects to the RTCG request to the extent a rural ILEC is affiliated with a CLEC that provides "Qualified Services" in a Qwest exchange. The RTCG members, which are parties to this proceeding and subject to discovery, should be required to answer Qwest's discovery requests to the extent they are providing Qualified Services by themselves or through affiliate CLECs. The definitions in Qwest's discovery specifically state that information is requested not only for the responding party but also its affiliates.

Alternatively, if the Commission grants Qwest's pending motion for the Commission to issue Information Requests to nonparty CLECs, then Qwest does not object to the RTCG request that only ILECs providing Qualified Services respond to the Qwest discovery.

Dated this 22 day of January, 2004.

Respectfully submitted,

Daniel S. Kuntz (ID #03490)
ZUGER KIRMIS & SMITH
P.O. Box 1695
Bismarck, ND 58502-1695
(701)223-2711

Thomas Dethlefs
Tim Goodwin
QWEST SERVICES CORPORATION
1801 California Street, Suite 4900
Denver, CO 80202
303-672-5823

ATTORNEYS FOR QWEST CORPORATION

P:\DKUNTZ\11337 Triennial Review\pleadings\response to 2d letter request.doc

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	))	Case No. PU-439-03-295

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA	)
	: ss.
COUNTY OF BURLEIGH	)

The undersigned, being duly sworn, deposes and says that: I am a United States citizen, over 18 years of age, and on January 22, 2004, I served a copy of the attached:

Qwest Response to Second Letter Request of Independent Local Exchange Companies

by placing a true copy in a postage paid envelope or envelopes addressed to each person named below, at the address stated below, which is the last known address of the addressee, and by depositing said envelope in the United States mail at Bismarck, North Dakota.

Mary B. Tribby
AT&T Law Dept
1875 Lawrence St., Suite 1575
Denver, CO 80202

Marilyn Foss
Attorney at Law
P.O Box 2216
Bismarck, ND 58502-2216

Gary B. Witt
AT&T Law Dept.
1875 Lawrence St., Suite 1575
Denver, CO 80202

Susan Travis
WorldCom Inc.
707 17th Street, Suite 4200
Denver, CO 80202

Walter F. Eggers III
Holland & Hart LLP
2515 Warren Avenue, Suite 450
Cheyenne, WY 82001-3162

Steven E. Noack
500 2nd Ave. N., Ste. 514
Fargo, ND 58108-2783

Deborah H. Harwood
Integra Telecom
19545 NW Von Neumann Dr. Suite 200
Beaverton, OR 97006-6902

Don Negaard
Pringle & Herigstad
P.O. Box 1000
Minot, ND 58702-1000

Dan Lipschultz
Moss & Barnett
4800 Wells Fargo Center
90 South 7th Street
Minneapolis, MN 55402-4129

Patrick Durick
Attorney at Law
P.O. Box 400
Bismarck, ND 58502-0400

Dick Thronson
Manager
Missouri Valley Communications
P.O. Box 600
Scobey, MT 59623-0600

Thomas F. Kelsch
Attorney at Law
P.O. Box 1266
Mandan, ND 58554-1266

Robert M. Pomeroy, Jr.
Holland & Hart
8390 E. Crescent Parkway, Ste. 400
Green Village, CO 80111

Karol A. Cossette

Subscribed and sworn to before me, today, January 22, 2004.

NOTARY PUBLIC
State of North Dakota
My commission expires: 1/24/08

Kathi Osteen

KATHI OSTEEN
Notary Public
State of North Dakota
My Commission Expires Jan. 24, 2008

MARILYN FOSS
- Attorney at Law -
Post Office Box 2216
Bismarck, ND 58502-2216

Phone: 701-355-4538
Fax: 701-355-4539

Email: foss@btinet.net
Cell: 701-471-3045

RECEIVED
JAN 21 2004
SOUTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

January 20, 2004

Public Service Commission
600 East Boulevard Avenue, Dept 408
Bismarck, ND 58505-0480

RE: Public Service Commission Local Competition Investigation
PU Case No. 439-03-295

This is to address the January 19, 2004, letter request by the Rural Telephone Company Group to require responses to the MCI discovery request of December 31, 2004, only from those RTCs which are providing "Qualified Services." Please be advised that MCI does not object to the requested limitation.

Sincerely Yours,

Marilyn Foss

Marilyn Foss

c: Don Negaard
Client (via Email)

135 PU-439-03-295 Pages: 1

No objection to discovery responses from only RTCs providing Qualified Service by MCI Telecommunications Corporation by Marilyn Fo

01/21/2004 CC: Comm Legal PUD (3) ALJ

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.

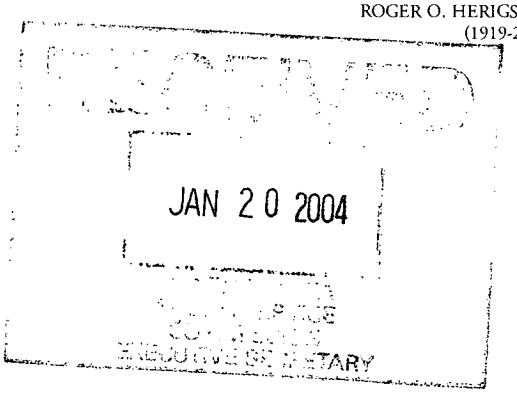
DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
MARK R. HAYS
BRENT M. OLSON
DENISE C. HAYS
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG

BREMER BANK BUILDING
20 SW 1ST STREET
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

ROGER O. HERIGSTAD
(1919-2003)



January 19, 2004

Jon Mielke, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION
CASE NO. PU-439-03-295

On behalf of the Rural Telephone Company Group, we ask the Public Service Commission to limit the discovery questions from MCI dated December 31, 2003, and from Qwest dated January 13, 2004, copies of which are attached hereto, so that the only rural ILECs that are required to answer these questions are the rural ILECs providing "Qualified Services," to be consistent with the Commission's Order of January 14, 2004.

Don Negaard

jt

Enclosures

134 PU-439-03-295 Pages: 1

Letter re discovery questions from MCI & Qwest
by Rural Telephone Company Group

01/20/2004 CC: Comm Legal PUD (3) ALJ

ZUGER KIRMIS & SMITH

COUNSELORS AND ATTORNEYS AT LAW

Lyle W. Kirmis
Lance D. Schreiner, P.C.
James S. Hill, P.C.
Patrick J. Ward
Rebecca S. Thiem, P.C.
Daniel S. Kuntz, P.C.
Jerry W. Evenson, P.C.
Lawrence A. Dopson
Lawrence E. King, P.C.
Tracy Vigness Kolb, P.C.
Shawnda R. Reid
Constance N. Hofland
Paul R. Sanderson
Aaron K. Webb

316 North Fifth Street
Provident Building
P.O. Box 1695
Bismarck, ND 58502-1695
(701) 223-2711
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www.zkslaw.com
email: zkslaw@zkslaw.com

Of Counsel
John A. Zuger

Thomas O. Smith
1944-2001

JAN 20 2004
PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

January 16, 2004

Mr. Jon Mielke
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

Re: Local Competition Investigation -- Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of an Affidavit of Mailing in the above-referenced case. Thank you for your assistance in this matter.

Sincerely,

Karol A. Cossette, PLS
Secretary to Daniel S. Kuntz

Enclosures

133 PU-439-03-295 Pages: 1
Cover letter re Affidavit of Mailin
by Qwest Corporation
01/20/2004 CC: Comm Legal PUD (3) ALJ

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

JAN 20 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

Public Service Commission)
Local Competition Investigation)

Case No. PU-439-03-295

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA)
: ss.
COUNTY OF BURLEIGH)

The undersigned, being duly sworn, deposes and says that: I am a United States citizen, over 18 years of age, and on January 15, 2004, I served a copy of the attached:

Qwest Corporation's Responses to Commission's Preliminary Discovery Requests; An Application Requesting Trade Secret Protection

by placing a true copy in a postage paid envelope or envelopes addressed to each person named below, at the address stated below, which is the last known address of the addressee, and by depositing said envelope in the United States mail at Bismarck, North Dakota.

Mary B. Tribby
AT&T Law Dept
1875 Lawrence St., Suite 1575
Denver, CO 80202

Marilyn Foss
Attorney at Law
P.O Box 2216
Bismarck, ND 58502-2216

Gary B. Witt
AT&T Law Dept.
1875 Lawrence St., Suite 1575
Denver, CO 80202

Susan Travis
WorldCom Inc.
707 17th Street, Suite 4200
Denver, CO 80202

Walter F. Eggers III
Holland & Hart LLP
2515 Warren Avenue, Suite 450
Cheyenne, WY 82001-3162

Steven E. Noack
500 2nd Ave. N., Ste. 514
Fargo, ND 58108-2783

Deborah H. Harwood
Integra Telecom
19545 NW Von Neumann Dr. Suite 200
Beaverton, OR 97006-6902

Don Negaard
Pringle & Herigstad
P.O. Box 1000
Minot, ND 58702-1000

Dan Lipschultz
Moss & Barnett
4800 Wells Fargo Center
90 South 7th Street
Minneapolis, MN 55402-4129

Patrick Durick
Attorney at Law
P.O. Box 400
Bismarck, ND 58502-0400

Dick Thronson
Manager
Missouri Valley Communications
P.O. Box 600
Scobey, MT 59623-0600

Thomas F. Kelsch
Attorney at Law
P.O. Box 1266
Mandan, ND 58554-1266

Robert M. Pomeroy, Jr.
Holland & Hart
8390 E. Crescent Parkway, Ste. 400
Green Village, CO 80111

Karol A. Cossette

Subscribed and sworn to before me, today, January 15, 2004.

NOTARY PUBLIC
State of North Dakota
My commission expires: 1/24/08

Kathi Osteen

KATHI OSTEEN
Notary Public
State of North Dakota
My Commission Expires Jan. 24, 2008

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sandra L. Scott deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **20th day of January, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **13** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order

The envelopes were addressed as follows:

Robert M Pomeroy Jr
Holland & Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village CO 80111
Cert. No. 7001 1940 0005 3425 0456

Dan Kuntz Atty for Qwest
P O Box 1695
Bismarck ND 58502-1695

Cert. No. 7001 1940 0005 3425 0463

Tim Goodwin
Qwest Corporation
1801 California St Ste 4900
Denver CO 80202
Cert. No. 7001 1940 0005 3425 0470

Marilyn Foss Atty for MCI
P O Box 2216
Bismarck ND 58502-2216

Cert. No. 7001 1940 0005 3425 0487

Mr Thomas F Kelsch
Kelsch Kelsch Ruff & Kranda
P O Box 1266
Mandan ND 58554-7266
Cert. No. 7001 1940 0005 3425 0494

Steven E Noack Atty for IdeaOne
500 2nd Ave N Ste 514
Fargo ND 58108-2783

Cert. No. 7001 1940 0005 3425 0500

Deborah H Harwood
Integra Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton OR 97006-6902

Cert. No. 7001 1940 0005 3425 0517

Dan Lipschultz Atty for McLeod, U S Link
Moss & Barnett
4800 Wells Fargo Ctr
90 S 7th St
Minneapolis MN 55402-4129
Cert. No. 7001 1940 0005 3425 0524

131 PU-439-03-295 Pages: 3
Affidavit of Service for ALJ's Order
by Public Service Commission
01/20/2004 CC: Comm Legal PUD (3) ALJ

Dick Thronson Manager
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59623-0600
Cert. No. 7001 1940 0005 3425 0531

Patrick Durick Atty for Midcontent Comm
P O Box 400
Bismarck ND 58502-0400

Cert. No. 7001 1940 0005 3425 0548

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. 7001 1940 0005 3425 0555

Walter F Eggers III Atty for AT&T
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne WY 82001-3162
Cert. No. 7002 2410 0003 4912 5147

Gary B Witt
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202
Cert. No. 7002 2410 0003 4912 5154

Sandra L. Scott further deposes and says that on the **20th day of January, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **12** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of:

Order

Scott Macintosh
Qwest Corporation
P O Box 5508
Bismarck ND 58506-5508

Michael C Strand
P O Box 5237
Helena MT 59604-5237

Mary Lohnes
Midcontinent Communications
5001 W 41st St
Sioux Falls SD 57106

Steven D Lysne
SRT Communications Inc.
P O Box 2027
Minot ND 58702-2027

Jim Howard
John Staurulakis Inc
Eagandale Corporate Ctr Ste 310
1380 Corporate Ctr Curve
Eagan MN 5512

Susan Travis
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202

Thomas F Dixon
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202

Michel L Singer Nelson
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202

Lesley J Lehr
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202

William A Haas
McLeodUSA
Tech Park
6400 C St SW
Cedar Rapids IA 51404

Peter Healy
TDS Metrocom Inc
525 Junction Rd Ste 6000
Madison WI 53717

Bob Johnson
IdeaOne Telecom
3239 39th St SW
Fargo ND 58104

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **20th day of January, 2004**.

Notary Public

SEAL

RECEIVED
JAN 16 2004

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

ORDER
January 16, 2004

On January 15, 2004, the "Parties" (Qwest, MCI, and Covad) filed a Joint Motion for Extension of Batch Hot Cut Direct Testimony Filing Date ("Joint Motion"), jointly requesting an extension of the filing date for the Batch Hot Cut Process direct testimony from Tuesday, January 20, 2004, to Friday, January 23, 2004. The Parties represent that after consultation no other participants in the Batch Hot Cut Forum have expressed any objections to the requested extension and modification, and further represent that these changes will not create any delays in the resolution of this docket. The Parties request this extension only to delay the filing of opening testimony until January 23, 2004, to allow for more time for review of recently available materials and for adequate preparation of opening testimony.

Being aware of no objections, considering the limited nature and timing of the request, and accepting the representations made, there appear to be no reasons not to grant the motion.

Accordingly, the Public Service Commission orders that the Joint Motion is GRANTED. The filing date for the Batch Hot Cut Process direct testimony is extended to Friday, January 23, 2004.

Dated at Bismarck, North Dakota, this 16th day of January, 2004

State of North Dakota
Public Service Commission

By: _____

Allen C. Hoberg
Administrative Law Judge
Procedural Hearing Officer
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501-1882
Telephone No. (701) 328-3260

130 PU-439-03-295 Pages: 2
Order granting Joint Motion for Extension of Batch Hot Cut Direct Testimony by Office of Administrative Hearings by Allen Hoberg
01/16/2004 CC: Comm Legal PUD (3) ALJ

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the **ORDER** was faxed, via facsimile, and mailed, inside mail, on the 16 day of January, 2004, to:

Public Service Commission
Attn.: Sandi
600 E. Boulevard Avenue - Dept. 408
Bismarck, ND 58505
(701) 328-2410

and that a true and correct copy of the above document was mailed, regular mail, on the 16 day of January, 2004, to:

Mr. Daniel S. Kuntz
Zuger Kirmis & Smith
P.O. Box 1695
Bismarck, ND 58502

Mr. Thomas F. Dixon
WorldCom Inc
707 17th Street- #4200
Denver, CO 80202

Ms. Karen Shoresman Frame
Senior Counsel
Covad Communications Company
7901 Lowry Boulevard
Denver, CO 80230

and that a true and correct copy of the above document was mailed, inside mail, at the State Capitol, on the 16 day of January, 2004, to:

Mr. William W. Binek
Hearing Administrator
Public Service Commission
600 E. Boulevard Avenue - Dept. 408
Bismarck, ND 58505

OFFICE OF ADMINISTRATIVE HEARINGS
Allen C. Hoberg, Administrative Law Judge

Lisa J. Carney

Janet Keller
Docket Manager
303-298-6502

1875 Lawrence St.
Room 14-42
Denver, CO 80202

January 15, 2004

RECEIVED
JAN 16 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

Via Overnight Delivery

Jon Mielke, Executive Director
North Dakota Public Service Commission
State Capitol Building
600 East Boulevard
Bismarck, ND 58505

Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of AT&T's Application Requesting Trade Secret Protection. Also enclosed are AT&T's responses to the Commission's Preliminary Discovery Requests. The confidential and highly confidential portions are being filed in a sealed envelope pursuant to NDAC 69-02-09-02.

Sincerely,

Janet Keller

Janet Keller

Enclosures

129 PU-439-03-295 Pages: 2

Cover letter re Discovery Response & App. for Trade Secret Protection by AT&T Communications

01/16/2004 CC: Comm Legal PUD (3) ALJ

Recycled Paper

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	)))	Case No. PU-439-03-295

AFFIDAVIT OF SERVICE

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The undersigned, being duly sworn, deposes and says that I am over the age of 18 years and, on the 15th day of January, 2004, I served AT&T's Application for Trade Secret Protection and the public portion of AT&T's responses to the Commission's Preliminary Discovery Requests to the service list by e-mail.

Janet Keller

Janet Keller

Subscribed and sworn to before me
this 15th day of January, 2004.

Adam W Walczak

Notary Public

My Commission expires: 1/22/06

NOTARY PUBLIC
ADAM W. WALCZAK
STATE OF COLORADO

My Commission Expires 1/22/06

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

RECEIVED
JAN 16 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
ADMINISTRATIVE SECRETARY

Public Service Commission
Local Competition Investigation

Case No. PU-439-03-295

AN APPLICATION REQUESTING TRADE SECRET PROTECTION

AT&T Communications of the Midwest, Inc. ("AT&T"), pursuant to Chapter 69-02-09 of the North Dakota Administrative Code, requests the North Dakota Public Service Commission issue a protective order limiting the disclosure of trade secret information included in AT&T's responses to the Commission's Discovery Requests in this proceeding.

Copies of the discovery responses containing the trade secret information have been appropriately marked and sealed.

1. General description of the nature of the information sought to be protected.

1. AT&T's confidential response to discovery request A-1 and the attachment to discovery responses A-1, A-4 and A-6 entitled AT&T ND Confidential Switches, which provide switch data for AT&T's switches serving North Dakota customers.

2. AT&T's confidential response to discovery request B-7 regarding whether or not the local switching capacity of AT&T's switches can be expanded through modular software and hardware additions.

3. The attachment to discovery responses A-2 and A-3 entitled AT&T ND Highly Confidential ADL Customer Lines.

2. Explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.

The information for which AT&T seeks trade secret protection is confidential and proprietary information regarding AT&T's services, customers and facilities. Competitors that have access to this information could use it to disadvantage AT&T, its customers, and competition in North Dakota.

3. Explanation of why the information is not readily ascertainable by proper means by other persons.

This information is not available to persons outside the company and is generally known only to employees who have a need to know or who are involved in the collection of the information. AT&T security guidelines and procedures protect the information from disclosure to unauthorized persons inside or outside of the company.

4. General description of the persons or entities that would obtain economic value from disclosure or use of the information.

Competitors of AT&T that provide similar services would obtain economic value from disclosure or use of the information.

5. Specific description of known competitors and competitors' goods and services that are pertinent to the information.

Competitors of AT&T in North Dakota include Qwest, MCI WorldCom, McLeod Telemanagement, Inc., Sprint Corporation, Integra Telecom of North Dakota, Inc., Midcontinent Communications, and other providers of telecommunications services in North Dakota.

6. Description of the efforts used to maintain the secrecy of the information.

See No. 3 above.

Respectfully submitted this 15th day of January, 2004.

AT&T COMMUNICATIONS
OF THE MIDWEST, INC.

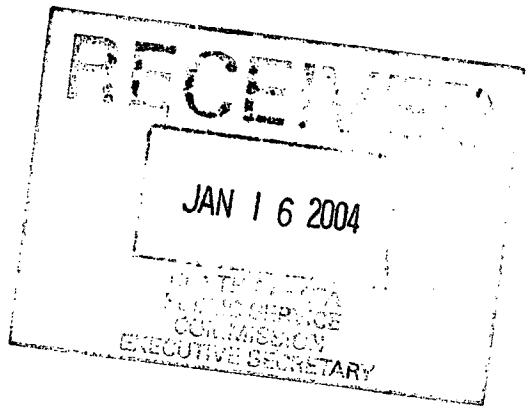


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Thorvald Nelson
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Greenwood Village, CO 80111
(303) 290-1622

integra
TELECOM



January 15, 2004

VIA OVERNIGHT DELIVERY

Executive Secretary
Public Service Commission of North Dakota
600 East Boulevard Avenue, Dept. 408
Bismarck, North Dakota 58505-0480

Re: Case No. PU-439-03-295
Local Competition Investigation

Responses to Preliminary Discovery Requests

Dear Executive Secretary:

Please find enclosed for filing an original and seven copies of the Public Version of the Responses to Preliminary Discovery Requests for Integra Telecom of North Dakota, Inc.

In addition, Integra Telecom of North Dakota, Inc. is claiming Trade Secret Protection for some of the responses under NDAC Ch. 69-02-09, as set forth in the Response. In general, Integra claims that all requests related to revenue, customer services, customer location, service type and level identification, customer churn, switch and other investment costs is trade secret. We have detailed the specific Requests in our Responses.

Integra receives great economic benefit from this information in that it defines our company's development and growth. If known by any of our competitors, including Qwest, this information could be used for their own development, sales and marketing purposes and to the detriment of Integra.

This information is not publicly known. Integra is a privately-held company. This information is held strictly confidential by Integra and is not shared with third parties. This information is only shared as required by law or under strict confidentiality agreements solely for purposes of specific transactions. In addition, Integra does not give some of this information in the form or in the totality to any one party, as appearing in these responses.

Please find enclosed for filing one copy of the Non-Public Version of the

19545 NW Von Neumann Drive, Suite 200, Beaverton, OR 97006
Main Line: 503-748-1000 Fax 503-748-1212

127 PU-439-03-295 Pages 2
Ltr requesting Trade Secret Protection for Response to Preliminary Disc Response by Integra Telecom of North Dakota, Inc.
01/16/2004 CC: Comm Legal PUD (3) ALJ

Responses to Preliminary Discovery Requests for Integra Telecom of North Dakota, Inc.

If you require any other information or have any further questions, please call me at 503-748-2048.

Sincerely,

Karen J. Johnson
Corporate Regulatory Attorney

KJJ

Enclosures

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
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FAX (701) 857-1361
E-mail: pringle@srt.com

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CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
MARK R. HAYS
BRENT M. OLSON
DENISE C. HAYS
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
JAN 16 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

January 15, 2004

Jon Mielke, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION
CASE NO. PU-439-03-295

We are in receipt of the Commission's Order in this matter ordering that the rural ILECs are not required to respond to the Preliminary Discovery Requests unless they are providing Qualified Services.

Our inquiry of these rural ILECs indicates they are not providing Qualified Services as defined in the Commission's Order of January 14, 2004. Obviously, if we learn of information that causes us to believe that Qualifying Services are being offered, we will supplement the responses as required by the Rules of Civil Procedure.

We are in the process of reviewing a Proprietary Agreement that was distributed by Qwest yesterday. In the meantime, we wish to preserve objections for trade secret information disclosure in the event we should later need to supplement this response.

Don Negaard

jt

126 PU-439-03-295 Pages: 2

Letter re ILEC's providing Qualified Services
by Rural Telephone Company Group by Don Negaard.

01/16/2004 CC: Comm Legal PUD (3) ALJ

cc: Jerome Tishmack, Manager - BEK Communications Cooperative
Paul Schuetzler, Manager - Consolidated Telcom
Keith Larson, Manager - Dakota Central Telecommunications Cooperative and Dakota Central Telecom I, Inc.
Mark Scallon, Manager - Dickey Rural Telephone Cooperative and Dickey Rural Communications, Inc.
Ray G. Brown, Manager - Griggs County Telephone Company and Moore and Liberty Telephone Company
Keith Andersen, Manager - Inter-Community Telephone Company, LLC and Inter-Community Telephone Company II, LLC
Mark Wilhelmi, Manager - Midstate Telephone Company and Midstate Communications, Inc.
Dave Dircks, Manager - North Dakota Telephone Company
Dwight Schmitt, Manager - Northwest Communications Cooperative
David L. Dunning, Manager - Polar Communications Mutual Aid Corporation and Polar Telecommunications, Inc.
Jeffrey J. Olson, Manager - Red River Telephone Association and Red River Telecom, Inc.
Royce Aslakson, Manager - Reservation Telephone Cooperative
Steve Lysne, Manager - SRT Communications, Inc.
Kenneth Carlson, Manager - United Telephone Mutual Aid Corporation and Turtle Mountain Communications, Inc.
Albert R. Grosz, Manager - West River Telecommunications Cooperative
David Crothers, NDATC
Dave Cosson, Kraskin, Cosson & Lesse
Jim Howard, John Staurulakis, Inc.

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.

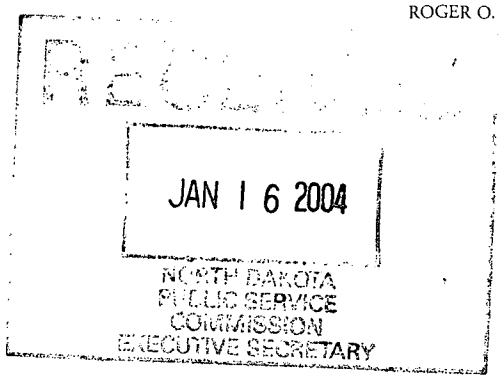
DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
MARK R. HAYS
BRENT M. OLSON
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FAX (701) 857-1361
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OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

ROGER O. HERIGSTAD
(1919-2003)



January 15, 2004

Jon Mielke, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION
CASE NO. PU-439-03-295

Enclosed for filing in the above matter are responses to the Preliminary Discovery Requests on behalf of Polar Telcom, Inc., and Daktel Communications, L.L.C., two CLECs with Qualifying Services in Qwest service areas. We have also included our Affidavit of Service by Mail.

Please note that we erroneously included Dakota Central Telecom I as the entity in this matter and we hereby move the Commission to substitute Daktel Communications, L.L.C., for Dakota Central Telecom I in this matter since Daktel is the real party in interest.

We are reviewing the Qwest proposal for handling confidential information and will supplement our responses as soon as this issue is resolved.

Don Negaard

jt

Enclosures

125 PU-439-03-295 Pages: 4

Cover letter re Response to Preliminary Discovery Requests by Rural Telephone Company Group by Don Negaard.

01/16/2004 CC: Comm Legal PUD (3) ALJ .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	)))	Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF WARD)

Jo Thompson, being first duly sworn, deposes and says:

She is a citizen of the United States of America, of legal age and not a party to nor interested in the above-entitled action; on the 15th day of January, 2004, this affiant deposited in the mailing department of the United States Post Office at Minot, North Dakota, sealed envelopes with postage thereon duly prepaid, containing a true and correct copy of the following:

RESPONSE OF DAKTEL COMMUNICATIONS, L.L.C.
TO PRELIMINARY DISCOVERY REQUESTS

RESPONSE OF POLAR TELECOM, INC.
TO PRELIMINARY DISCOVERY REQUESTS

Said envelopes were addressed to the following at their known addresses as follows:

Robert M. Pomeroy Jr.
Holland & Hart, LLP
8390 East Crescent Parkway, Suite 400
Greenwood Village, CO 80111

Dan Kuntz
Attorney for Qwest
P.O. Box 1695
Bismarck, ND 58502-1695

Tim Goodwin
Qwest Corporation
1801 California Street, Suite 4900
Denver, CO 80202

Marilyn Foss
Attorney for MCI
P.O. Box 2216
Bismarck, ND 58502-2216

Thomas F. Kelsch
Kelsch, Kelsch, Ruff & Kranda
P.O. Box 1266
Mandan, ND 58554-7266

Deborah H. Harwood
Integra Telecom
19545 NW Von Neumann Drive,
Suite 200
Beaverton, OR 97006-6902

Dick Thronson, Manager
Missouri Valley Communications, Inc.
P.O. Box 600
Scobey, MT 59623-0600

Walter F. Eggers III
Attorney for AT&T
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Scott Macintosh
Qwest Corporation
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Mary Lohnes
Midcontinent Communications
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Sioux Falls, SD 57106

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WorldCom, Inc.
707 17th Street, Suite 4200
Denver, CO 80202

Lesley J. Lehr
WorldCom, Inc.
707 17th Street, Suite 4200
Denver, CO 80202

Steven E. Noack
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Dan Lipschultz
Attorney for McLeod, U S Link
Moss & Barnett
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90 South 7th Street
Minneapolis, MN 55402-4129

Patrick Durick
Attorney for Midcontinent Comm.
P.O. Box 400
Bismarck, ND 58502-0400

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AT&T Law Department
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Denver, CO 80202

Michael C. Strand
P.O. Box 5237
Helena, MT 59604-5237

Susan Travis
WorldCom, Inc.
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Denver, CO 80202

Michel L. Singer Nelson
WorldCom, Inc.
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Denver, CO 80202

William A. Haas
McLeod USA
Tech Park
6400 C Street SW
Cedar Rapids, IA 51404

Peter Healy
TDS Metrocom, Inc.
525 Junction Road, Suite 6000
Madison, WI 53717

Bob Johnson
IdeaOne Telecom
3239 39th Street SW
Fargo, ND 58104

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Denver, CO 80202

Letty S. D. Friesen
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Richard S. Wolters
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Steven H. Weigler
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Greenwood, CO 80111

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Greenwood, CO 80111

Jim Howard
John Staurulakis, Inc.
Eagandale Corporate Center, Suite 310
1380 Corporate Center Curve
Eagan, MN 55121

Steven D. Lysne
SRT Communications, Inc.
P.O. Box 2027
Minot, ND 58702-2027

Jo Thompson

Subscribed and sworn to before me this 15th day of January, 2004.

Vicki L. Johnson

Vicki Johnson, Notary Public
For the State of North Dakota
My commission expires: 01/09/09

VICKI L. JOHNSON
Notary Public, State of North Dakota
My Commission Expires Jan. 9, 2009

PEARCE & DURICK

WILLIAM R. PEARCE 1910-197B
WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE •
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE •
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD

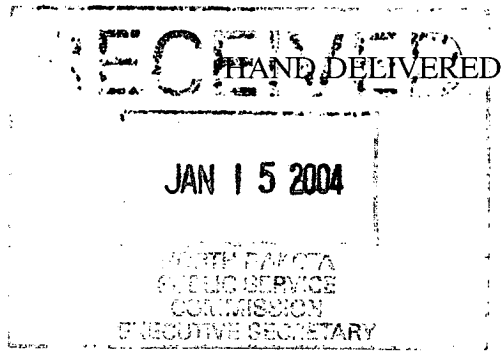
ATTORNEYS AT LAW
314 EAST THAYER AVENUE
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BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2B90
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

OF COUNSEL
HARRY J. PEARCE

January 15, 2004

HAND DELIVERED



Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

RE: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Commissioners:

Enclosed for filing is an original and seven copies of Midcontinent Communication's APPLICATION FOR TRADE SECRET PROTECTION and Certificate of Service. The trade secret material is enclosed in a separate, sealed envelope marked "Trade Secret -Private.".

Also enclosed is MIDCONTINENT COMMUNICATION'S RESPONSES TO PRELIMINARY DISCOVERY REQUESTS - QWEST ROC STATE TRO PROCEEDINGS and the Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf
Enclosures.
cc w/enc: Ms. Mary Lohnes
All Counsel of Record

124 PU-439-03-295 Pages: 1

Cover letter re Discovery Response &
App. for Trade Secret Protection
by Midcontinent Communications by Patrick W Durick.

01/15/2004 CC: Comm Legal PUD (3) ALJ

• ALSO LICENSED IN MINNESOTA • ALSO LICENSE

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

RECEIVED
JAN 15 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION

Qwest Corporation
Local Competition
Investigation

Case No. PU-439-03-295

APPLICATION FOR TRADE SECRET PROTECTION

Pursuant to 69-02-09-01, North Dakota Administrative Code, Midcontinent Communications ("Midcontinent") hereby makes application for trade secret protection for its responses to Requests C.1 and C.2 of Questions to both CLECS and ILEC - Switching and Response 6 to Requests for Information Regarding the Development of an Efficient Loop Migration Process of Midcontinent Communications Response to Preliminary Discovery Requests QWEST ROC State TRO Proceedings October 31, 2003. In support of this application, Midcontinent states as follows:

1. The information sought to be protected is information contained in Midcontinent Communications Response to Preliminary Discovery Requests QWEST ROC State TRO Proceedings October 31, 2003.

2. The information sought to be protected derives independent economic value from not being generally known to other persons because it is proprietary information concerning Midcontinent's customers and costs of providing services to Midcontinent's customers.

3. The information sought to be protected is not readily ascertainable by proper means by other persons because it is not public or published data. The information is confidential proprietary information of Midcontinent.

4. Entities that would obtain economic value from disclosure of the information sought to be protected include the CLECS and ILECS who are parties to this proceeding.

5. The confidentiality of the information sought to be protected is maintained by limiting access to the data to employees of Midcontinent who have need for the information in their duties.

Dated this 15 day of January, 2004.

PEARCE & DURICK

PATRICK W. DURICK ND #03141
P. O. Box 400
314 E. Thayer Avenue
Bismarck, ND 58502-0400
(701) 223-2890

Attorney for Midcontinent Communications

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Qwest Corporation
Local Competition
Investigation

Case No. PU-439-03-295

CERTIFICATE OF SERVICE BY MAIL

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Sara Carr hereby certifies that on January *15*, 2004, she served a copy of the attached APPLICATION FOR TRADE SECRET PROTECTION by placing a true and correct copy thereof in an envelope and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota. addressed to the following:

Marilyn Foss
P. O. Box 2216
Bismarck, ND 58502-2216

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AT&T Law Department
1875 Lawrence Street, Suite 1675
Denver, CO 80202

Gary B. Witt
AT&T Law Department
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Denver, CO 80202

Walter F. Eggers III
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Cheyenne, WY 82001-3162

Tim Goodwin
Qwest Corporation
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Denver, CO 80202

Daniel S. Kuntz
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State Regulatory Manager
WorldCom, Inc.
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Dan Lipschultz

Moss & Barnett
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90 South Seventh Street
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Debra Harwood
Integra Telecom
19545 NW VonNeumann Dr., Suite 200
Beverton, OR 97006-6902

Richard Thronsen
Missouri Valley Communications
P. O. Box 600
Scobey, MT 59623-0600

Sara Carr

Subscribed and sworn to before me this *15* day of January, 2004.

Notary Public

My commission expires:

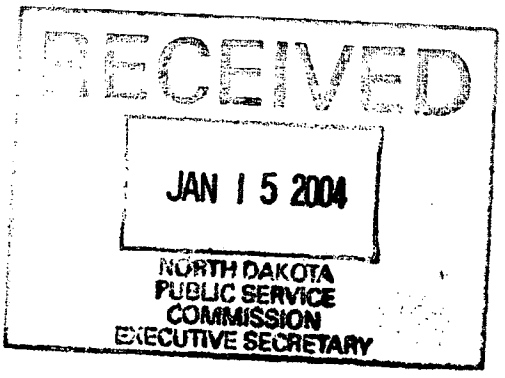
JEANNE A. FEIST
Notary Public State of North Dakota
My Commission Expires MARCH 7, 2007

MARILYN FOSS
- Attorney at Law -
Post Office Box 2216
Bismarck, ND 58502-2216

Phone: 701-355-4538
Fax: 701-355-4539

Email: foss@btinet.net
Cell: 701-471-3045

January 15, 2004



Jon H. Mielke, Executive Director
North Dakota Public Service Commission
State Capitol Building
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

RE: Case No. PU-439-03-295
Public Service Commission
Local Competition Investigation

Dear Mr. Mielke:

Enclosed for filing are the following:

1. The original of MCI's Responses to the Public Service Commission's Preliminary Discovery Requests excluding the spreadsheet schedule for which MCI is applying for trade secret protection.

2. An original and seven copies of MCI's Application for Trade Secret Protection, together with one sealed copy of the spreadsheet for which protection is sought.

3. Certificate of Service for both documents.

Please advise me if you have any questions about this.

Thank you.

Sincerely Yours,

Marilyn Foss

Marilyn Foss
Counsel for MCI

c: Client

122 PU-439-03-295 Pages: 2

Cover letter re Discovery Response &
App. for Trade Secret Protection
by MCI Telecommunications Corporation by Marilyn Fo

01/15/2004 CC: Comm Legal PUD (3) ALJ

CERTIFICATE OF SERVICE

Marilyn Foss hereby certifies that on the 15th day of January, 2003, a copy of MCI's Responses to the Public Service Commission's Preliminary Discovery Requests, redacted to exclude the schedule for which a protective order is being sought, and a copy of MCI's Application for Trade Secret Protection was served on the parties via U.S. Mail or Email as follows:

Via Email

Qwest
Tim Goodwin
tim.goodwin@qwest.com

Daniel Kuntz
dkuntz@zkslaw.com

ATT Communications of the Midwest, Inc.
Gary Witt
gwitt@att.com

Walter Eggers
weggers@hollandhart.com

Janet Keller
janetkeller@att.com

MidContinent Communications
Patrick Durick
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Mary Lohnes
Mary_lohnes@mmi.net

Rural Telephone Group
Don Negaard
donn@srt.com

McLeod USA
US Link
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Marilyn Foss

Marilyn Foss, Attorney for MCI, ND ID No. 03474

RECEIVED
JAN 15 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission)
Local Competition Investigation) **Case No. PU-439-03-295**

MCI APPLICATION FOR TRADE SECRET PROTECTION

MCI WorldCom Communications Inc. and MCImetro Access Transmission Services LLC (collectively "MCI") by and through its undersigned counsel applies to the Public Service Commission ("PSC") for an Order granting trade secret protection to certain highly confidential information which is responsive to PSC preliminary discovery requests nos. C1. (average total monthly revenues per line), B6 (relating to numbers of residential lines), B9 (relating to churn rates for residential customers), B10 (regarding residential acquisition costs), B11 and B12 (regarding churn rates), B13 (regarding residential customers that subscribe to each rate plan), and B14(regarding per-minute usage plans) and set forth on the spreadsheet which is included in the attached envelope marked" **TRADE SECRET- PRIVATE".**

This motion for protective order is made in accordance with the provisions of N.D.C.C. 47-25.1-01 et seq., N.D.C.C. 44-04-18.4, Rule 507, N.D. R. Evid. and, N.D.A.C. Ch. 69-02-09, Trade Secret Procedures.

1. General Description of Information for which Protection is Sought.

The information for which MCI seeks protection responds to PSC discovery requests in the captioned proceeding. As described above, it discloses the number of residential lines which MCI has in North Dakota, its monthly revenues for those lines, the

costs to acquire those lines and customers, subscribers to each rate plan, its usage plans and churn rates for MCI's North Dakota residential customers.

2. Independent Economic Value.

Information for which trade secret protection is sought has independent economic value to MCI's competitors in North Dakota and elsewhere because it discloses the level of penetration which MCI has had into the North Dakota market, valuable information about the terms and conditions of plans which it offers to attract and retain North Dakota residential customers, the costs it has incurred in order to attract customers in North Dakota, and the success it has achieved in retaining customers once they have switched to MCI residential service. These are primary factors which are considered by telecommunications companies when they consider entering, remaining, or exiting a market and can be used to accurately estimate the current and future profitability of MCI's operations in North Dakota and by extension, the best methods by which to compete with MCI for North Dakota residential customers. This information can be used as part of the process of determining and evaluating MCI's business plans and strategies and the revenue and expense associated with different lines of businesses. The information has independent economic value in a competitive market place and MCI would suffer irreparable and unfair economic or competitive damage if the information is available to competitors or the general public and for their use. Unprotected access to the information would give MCI's competitors an advantage in the event MCI's competitors sought to provide equivalent services to similar customers because it would allow competitors to adjust their rate plan pricing in certain locations in the market. This would be a competitive advantage that would not exist, but for public access or disclosure.

Therefore, the number, type and location of customers by rate plans as well as their churn rates are highly confidential, trade secret, proprietary, commercial and financial information for MCI.

3. Lack of Public Access.

Information of the nature set forth on the spreadsheet which is in the envelope marked "Trade Secret- Private" is not public and is highly guarded by MCI from disclosure to any person who is not an authorized employee of the company or working directly on its behalf. The information is not disclosed by MCI in public filings and is not readily ascertainable by proper means. The information is available within the company only in secure databases which are accessible only to a limited number of authorized employees. Those employees are not given access to the information without first having undertaken an express obligation to maintain its confidentiality and to restrict its use for MCI purposes exclusively.

4. Persons To Whom The Information Has Independent Economic Value.

Because it is not now known or accessible outside MCI, the information would be of independent economic value to Qwest, CLECs which are now providing service in North Dakota (irrespective of their status as interveners in this proceeding), non-CLEC providers of telecommunications services in North Dakota and any person who is considering entering the North Dakota residential telecommunications service market. Such information allows MCI to make decisions regarding efficient deployment of its network in a competitive environment. MCI's competitors would obtain substantial economic value if such information was available to them.

5. Specific Description Of Competitors and Competitive Services.

Known competitors to which the information would have independent economic value include each party/intervenor to this captioned proceeding and every other company which is currently providing residential telecommunications services in North Dakota or considering the provision of such services in North Dakota, irrespective of their intervention in this proceeding. Protection of this information plays a vital role in MCI's continued growth and in its ability to compete.

6. Efforts Used To Maintain Secrecy of this Information.

MCI maintains internal security and barriers to prevent access to this information by unauthorized persons, including MCI employees who have not received clearance to access it. In proceedings such as these, MCI has disclosed the information only when compelled to do so by legal process, under a protection order, and, additionally, only to persons who have executed a non-disclosure agreement on terms acceptable to MCI.

Respectfully Submitted,

Marilyn Foss, N.D. ID No. 03474
P.O. Box 2216
Bismarck, N.D. 58502-2216
Tel: 701-355-4538
Fax: 701-355-4539

Greg Merz
Grey, Plant, Moody
500 IDS Center
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Attorneys for MCI

ZUGER KIRMIS & SMITH

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Of Counsel
John A. Zuger

Thomas O. Smith
1944-2001

RECEIVED
JAN 15 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

January 15, 2004

Mr. Jon Mielke
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

Re: Local Competition Investigation -- Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of Qwest Corporation's Responses to Commission's Preliminary Discovery Requests. Also enclosed for filing are the original and seven copies of An Application Requesting Trade Secret Protection and the corresponding confidential information contained in a sealed enveloped marked "Trade Secret—Private."

Thank you for your assistance in this matter.

Sincerely,

Karol A. Cossette, PLS

Karol A. Cossette, PLS
Secretary to Daniel S. Kuntz

Enclosures

c: Service List

P:\DKUNTZ\11337 Triennial Review\letters\l-mielke7.doc

120 PU-439-03-295 Pages: 1

Cover letter re Discovery Response &
App. for Trade Secret Protection
by Qwest Corporation

01/15/2004 CC: Comm Legal PUD (3) ALJ .

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JAN 15 2004

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	))	Case No. PU-439-03-295

AN APPLICATION REQUESTING TRADE SECRET PROTECTION

Qwest Corporation ("Qwest") requests the North Dakota Public Service Commission, pursuant to Chapter 69-02-09 of the North Dakota Administrative Code, to issue a protective order limiting the disclosure of trade secret information provided by Qwest in response to Discovery Requests served by the North Dakota Public Service Commission in this investigative proceeding.

The trade secret information has been appropriately marked and is submitted in a sealed envelope with this filing.

1. General Description of the Nature of the Information Sought to be Protected.

The information sought to be protected is:

A. Confidential Attachment A to Qwest's response to Switching Request A-14 (Qwest 14) provides summary information about Qwest's residential and business customers, and the revenues gained by serving those customers.

B. Confidential Attachment A to Qwest's response to Switching Request A-15 (Qwest 15) describes costs of switches purchased by Qwest from 1999 to the present and initial line counts for those switches.

C. Confidential Attachment A to Qwest's response to Switching Request A-17 (Qwest 17) describes each Qwest switch in North Dakota and its capabilities.

D. Confidential Attachment A to Qwest's response to Loop Migration Request A-14 (Qwest 31) describes the number of Qwest technicians trained and capable of transferring a line from an ILEC switch to the CLEC facility as a part of the hot cut process.

E. Confidential Attachment A to Qwest's response to Loop Migration Request A-18 (Qwest 35) describes the staffing arrangements for North Dakota wire centers, and the dispatching central office locations from which roving technicians would be sent.

2. An Explanation of Why the Information Derives Independent Economic Value, Actual or Potential, From Not Being Generally Known to Other Persons.

Confidential Attachment A to Qwest's response to Switching Request A-14 (Qwest 14) provides summary information about Qwest's residential and business customers including revenues gained by serving those customers. This information is confidential and proprietary to Qwest and is not publicly disclosed. In a competitive telecommunications marketplace, this type of information is highly sensitive and its public disclosure would place Qwest at a competitive disadvantage. If disclosed, publicly, the information would disadvantage Qwest as the information reflects specifics regarding Qwest's revenue information it is not required to disclose in public reports, and information about customers and customer revenues that is confidential to both Qwest and its customers.

Confidential Attachment A to Qwest's response to Switching Request A-15 (Qwest 15) describes the costs of switches purchased by Qwest from 1999 to the present and initial line counts for those switches. This information is confidential and proprietary to Qwest and is not publicly disclosed. In a competitive telecommunications marketplace, this type of information is highly sensitive and its public disclosure would place Qwest at a competitive disadvantage. If disclosed publicly, this information would disadvantage Qwest as the information is an important part of Qwest's cost and network structure and provides information about the location and services available to its North Dakota customers.

Confidential Attachment A to Qwest's response to Switching Request A-17 (Qwest 17) describes Qwest's switches in North Dakota and their capabilities. This information is confidential and proprietary to Qwest and is not publicly disclosed. In a competitive telecommunications marketplace, this type of information is highly sensitive and its public disclosure would place Qwest at a competitive disadvantage. If disclosed publicly, this information would disadvantage Qwest as the information is an important part of Qwest's cost and network structure, and provides information about the location and services available to its North Dakota customers.

Confidential Attachment A to Qwest's response to Loop Migration Request A-14 (Qwest 31) provides information regarding Qwest's technicians and their training. This information is confidential and proprietary to Qwest and is not publicly disclosed. In a competitive telecommunications marketplace, this type of information is highly sensitive and its public disclosure would place Qwest at a competitive disadvantage. If disclosed publicly, this information would disadvantage Qwest as it provides a view into Qwest's management, staffing, and cost structures.

Confidential Attachment A to Qwest's response to Loop Migration Request A-18 (Qwest 35) describes the staffing arrangements for North Dakota wire centers and dispatching central office locations. This information is confidential and proprietary to Qwest and is not publicly disclosed. In a competitive telecommunications marketplace, this type of information is highly sensitive and its public disclosure would place Qwest at a competitive disadvantage. If disclosed publicly, this information would disadvantage Qwest as it provides a view into Qwest's management, staffing and costs structures.

3. An Explanation of Why the Information is Not Readily Available by Proper Means to Other Parties.

The information at issue is proprietary to Qwest and is available only to those employees and representatives of Qwest who have a need to know the information to perform their duties and responsibilities. Qwest does not disclose this information outside the company except pursuant to the terms of strict agreements or orders to maintain the confidentiality of the information.

4. The General Description of the Persons or Entities that Would Obtain Economic Value from Disclosure or Use of the Information.

Competitors or potential competitors of Qwest would obtain economic value from disclosure or use of the information.

5. Specific Description of Known Competitors or Competitor's Goods and Services that are Pertinent to the Information.

Competitors and potential competitors of Qwest in North Dakota include AT&T, McLeod Telemanagement, Inc., MCI WorldCom, Consolidated Communications Network, Sprint Corporation, IdeaOne Telecom Group and any other provider of telecommunications services in North Dakota or any of the other states in which Qwest operates.

6. Description of the Efforts Used to Maintain the Secrecy of the Information.

See No. 3 above.

Dated this 15th day of January, 2004.

Respectfully submitted,

By: _____

Daniel S. Kuntz (ID #03490)
Zuger Kirmis & Smith
P.O. Box 1695
Bismarck, ND 58502-1695
(701)223-2711

Thomas Dethlefs
Tim Goodwin
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ATTORNEYS FOR QWEST CORPORATION

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Of Counsel
John A. Zuger

Thomas O. Smith
1944-2001

RECEIVED
JAN 15 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

January 15, 2004

Mr. Jon Mielke
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

Re: Local Competition Investigation -- Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of an Affidavit of Mailing in the above-referenced case. Thank you for your assistance in this matter.

Sincerely,

Karol A. Cossette, PLS

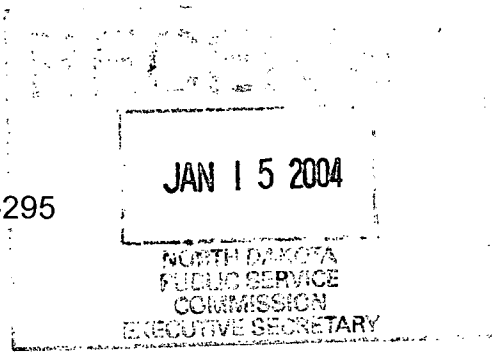
Karol A. Cossette, PLS
Secretary to Daniel S. Kuntz

Enclosures

11C PU-439-03-295 Pages: 1
Cover letter re Affidavit of Mailing
by Qwest Corporation
01/15/2004 CC: Comm Legal PUD (3) ALJ

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION



Public Service Commission)
Local Competition Investigation)

Case No. PU-439-03-295

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA)
: ss.
COUNTY OF BURLEIGH)

The undersigned, being duly sworn, deposes and says that: I am a United States citizen, over 18 years of age, and on January 15, 2004, I served a copy of the attached:

Joint Motion for Extension of Batch Hot Cut Direct Testimony Filing Date; Notice of Filing Batch Hot Cut Forum Final Issues Matrix; Motion to Issue Information Request

by placing a true copy in a postage paid envelope or envelopes addressed to each person named below, at the address stated below, which is the last known address of the addressee, and by depositing said envelope in the United States mail at Bismarck, North Dakota.

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Mandan, ND 58554-1266

Robert M. Pomeroy, Jr.
Holland & Hart
8390 E. Crescent Parkway, Ste. 400
Green Village, CO 80111

Karol A. Cossette

Subscribed and sworn to before me, today, January 15, 2004.

NOTARY PUBLIC
State of North Dakota
My commission expires: 1/24/08

KATHI OSTEEN
Notary Public
State of North Dakota
My Commission Expires Jan. 24, 2008

Kathi Osteen

ZUGER KIRMIS & SMITH

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Of Counsel
John A. Zuger

Thomas O. Smith
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RECEIVED
JAN 15 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

January 15, 2004

Mr. Jon Mielke
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

Re: Local Competition Investigation -- Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of a motion by Qwest Corporation requesting the Commission to direct Information and Document Requests to the North Dakota Competitive Local Exchange Carriers that have not intervened in this proceeding.

Please contact me if you have any questions regarding this filing.

Sincerely,

Daniel S. Kuntz

Enclosures

c: Service List

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110 PU-439-03-295 Pages: 1

Letter re Motion to Issue Information Request
by Qwest Corporation by Dan Kuntz, Attorney

01/15/2004 CC: Comm Legal PUD (3) ALJ

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NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission **Local Competition Investigation**	**Case No. PU-439-03-295**

MOTION TO ISSUE INFORMATION REQUEST

Qwest Corporation ("Qwest") pursuant to the workshop held in this proceeding on November 24, 2003, moves the Commission to issue the Information and Document Requests submitted as Attachment 1 hereto to all Competitive Local Exchange Carriers ("CLECs") certified or registered to provide local exchange telecommunications service in North Dakota and which have not intervened as parties in this proceeding. The Information and Document Requests are necessary to obtain needed information from these nonparty CLECs so the Commission may properly consider and determine the issues in this proceeding. The Information and Document Requests are drafted to impose only a minimal burden on those nonparty CLECs that do not own, control, maintain or lease switching capacity for the provision of CLEC telecommunications services in North Dakota.

Dated this 15th day of January, 2004.

Respectfully submitted,

Daniel S. Kuntz (ID #03490)
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Thomas Dethlefs
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ATTORNEYS FOR QWEST CORPORATION

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission **Local Competition Investigation**	**Case No. PU-439-03-295**

INFORMATION AND DOCUMENT REQUESTS TO NORTH DAKOTA CLECS FOR TRIENNIAL REVIEW PROCEEDINGS

The North Dakota Public Service Commission requests that you respond under oath to the following information and document requests within thirty (30) days hereof and requests that the requested documents be filed at the offices of the North Dakota Public Service Commission, thirty (30) days after this request. Your answers and responses must include all information available to you, and also available to your agents, attorneys, or others who have information available to you upon your inquiry to them.

INSTRUCTIONS

Please answer each request separately and in the order that it is asked. Following each answer, please identify the person or persons responsible for the answer and indicate what person or witness provided responsive information or documents.

In response to requests seeking the production of documents, please produce copies all responsive documents as they are kept in the usual course of business and organize and label them to correspond to the categories in this request. If the requested documents are kept in an electronic format, you should produce the requested document in such format. If any part of a document is responsive to any request, the whole document is to be produced. If there has been any alteration,

modification or addition to a document (whether in paper form or electronic), including any marginal notes, handwritten notes, underlining, date stamps, received stamps, attachments, distribution lists, drafts, revisions or redlines, each such alteration, modification or addition is to be considered as a separate document and it must be produced.

Please produce the requested information at the most granular level you possess. If a request seeks information at a level more granular than you possess, state that you do not possess information at that level and produce the information requested at the most granular level that you possess. The North Dakota Public Service Commission is not asking for the creation of new data, but is seeking all available data for the specific categories and sub-categories described. If you are unable to respond fully and completely to a document request, explain the reasons why you are unable to do so.

The requests are directed to all documents and information in your possession, custody or control. A document is deemed to be in your possession, custody or control if you have possession of the document, have the right to secure such document or communication from another person having possession thereof, or the document or communication is reasonably available to you including those documents or communications in the custody or control of your company's present employees, attorneys, agents, or other persons acting on your behalf and your affiliates. In response to requests for production of documents, you shall produce the documents, including all appendices, exhibits, schedules, and attachments, that are most relevant to the request.

If you are unable to produce a document or information based on a claim that the document is not in your possession, custody or control, state the whereabouts of such document or information when it was last in your possession, custody or control, and provide a detailed description of the reason the document is no longer in your possession, custody or control, and the manner in which it was removed from your possession, custody or control.

These information requests are continuing in nature, and should there be a change in circumstances within the next nine (9) months which would modify or change an answer you have supplied, then in such case, you should change or modify such answer and submit such changed answer as a supplement to the original answer. Further, should a subsequent version(s) of a document be created or exist after the date of this information request, such version(s) must be produced. Where prior versions or drafts of documents exist, please produce all such documents in your possession, custody or control.

If you claim a privilege, or otherwise decline to produce or provide any document or information responsive to one or more information requests, then in addition to, and not in lieu of, any procedure that you must follow under law to preserve your objection(s) and/or privilege(s), the person asserting the privilege shall:

a. identify in the objection to the request for information, or sub-part thereof, detailed reasons for your claim of privilege or other basis for protecting the document or information from disclosure; and the nature of the privilege that is being claimed; and

b. provide the following information in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:

(i) for documents: (1) the type of document; (2) subject matter of the document; (3) the date of the document; (4) the number of pages in the document; (5) the location or custodian of the document; (6) such other information as is sufficient to identify the document for a subpoena *duces tecum*, including, where available, the names(s), address(es) and telephone number of the author(s) of the document and all recipient(s), and, where not apparent, the relationship of the author and addressee to each other;

(ii) for oral communications: (1) the name(s), address(es) and phone number(s) of the person making the communication and the name(s), address(es) and phone number(s) of the persons present while the communication was made; (2) the relationship of the person(s) present to the person(s) making the communication; (3) the date and place of each communication; (4) the general subject matter of the communication.

Confidential documents should be filed with a trade secret application in this proceeding to prevent disclosure under North Dakota open records laws.

DEFINITIONS

1. The terms "and" and "or" as used herein shall be construed as both conjunctive and disjunctive.

2. The term "any" shall be construed to include "all," and "all" shall be construed to include "any."

3. The acronym "CLEC" refers to competitive local exchange carriers.

4. The acronym "CLLI" refers to common language location identifier, a multi-character code generally composed of numerals and letters that provides a unique identifier for circuit switches used by incumbent local exchange carriers ("ILECs") and CLECs.

5. The term "customer location" refers to a building or set of connected, contiguous, or adjacent buildings in a common area, used by residential, commercial, and/or governmental customers that share a primary street address or group of street addresses. It includes multi-unit residential, commercial, and/or governmental premises.

6. The term "digital" refers to electrical or optical signals representing sound or data which are transmitted in a binary, discontinuous, non-linear format.

7. The term "DLC" refers to Digital Loop Carrier and includes UDLC, IDLC, and NGLDC.

8. The term "DS-0" refers to a loop or circuit operating at Digital Signal Level Zero, and capable of transmitting information at 64 kilobits per second.

9. The term "DS-0/voice grade" includes all loops or circuits normally used for the provision of a service to transmit human voice alone. In particular, it includes analog circuits and digital circuits capable of transmitting at levels greater than 2400 baud, up to and including 64 kilobits per second.

10. The term "DS-1" refers to Digital Signal Level 1, which has a transport speed of 1.544Mbps, and can be either unchannelized or channelized into 24 voice grade channels.

11. The term "hot cut" refers to an individual coordinated simultaneous transfer of a DS-0/voice grade loop with live customers' service transferred.

12. The term "LATA" means "Local Access and Transport Area" as that term is defined in the *Modification of Final Judgment, United States v. Western Elec.*

Co., 552F. Supp. 131 (D.D.C. 1982), *aff'd sub nom., Maryland v. United States,* 460 U.S. 1001 (1983).

13. The past tense includes the present tense and vice-versa.

14. The singular form of a word shall be interpreted to include the plural, and the plural form of a word shall be interpreted to include the singular whenever appropriate.

15. The term "wire center" is synonymous with the term "central office," and refers to the single physical building that houses one or more Class 5/end office switch(es) and in which end user customer's loops are cross connected to the Class 5/end office switch(es).

INFORMATION AND DOCUMENT REQUESTS

1. Do you own, control, or maintain a switch, or lease dial tone or trunking functionality/capacity in a switch from a party other than Qwest, used by you to provide local exchange telecommunications services as a competitive local exchange carrier ("CLEC") to customers in North Dakota? If your answer is "yes," please answer the remaining Information and Document Requests. If your answer is "no," simply return these Information and Document Requests with your answer; you do not need to answer the remaining Requests.

2. Please identify all switches owned or controlled by you that are being used to provide service to customers in North Dakota served by facilities at or above the DS-1 level. For each switch that you identify, please identify the type (e.g., 5ESS and 4ESS) and describe the "footprint" of the switch, meaning the geographic area that the switch is capable of reaching. Separately, please provide the same information for customers served by DS-0 loop facilities.

3. For each switch that you identify in response to Request No. 2, please provide the capacity of the switch, with "capacity" defined as: (1) the number of lines installed; (2) the number of lines currently in use; (3) the number of trunks installed; and (4) the number of trunks currently in use. In addition, for each switch that you identify, please provide the generic (feature package) loaded in the switch.

4. Please state whether the information in the LERG is current and accurate for the switches that you own, operate, control, or maintain, or from which you lease dial tone or trunking functionality/capacity, to serve customers in North Dakota. If any of the information is not accurate, please identify the inaccurate information and provide corrected information, including any additions, deletions or changes. As part of your review of the information in the LERG, please state whether the CLLI code is accurate for each switch that you own, operate, control, or maintain, or from which you lease dial tone or trunking functionality/capacity. In addition, please state whether the LERG definition of the function of each switch (i.e., tandem, end office, etc.) is accurate.

5. Please report (in Excel spreadsheet format) the number of DS0 level business lines in North Dakota served by unbundled loops for which you provide switching dial tone functionality. In responding to this request, please separate loop facilities by the categories set forth in the following table:

Sample Response Form							
State	Wire Center	Residential			Business		
		# DS0-1 lines served via your facilities	# DS0 lines served via Qwest leased facilities	# DS0 lines served via facilities leased from third party	# DS0 lines served via your facilities	# DS0 lines served via Qwest leased facilities	# DS0 lines served via facilities leased from third party

6. For each LATA and wire center in which you provide local telecommunications services in North Dakota, please identify the number of in-service lines that are:

i. UNE-P Business;

ii. UNE-P Residence;

iii. UNE-L Business;

iv. UNE-L Residence;

v. Business lines provided using the your own loop facilities and another party's dial tone (switching);

vi. Business lines provided using your own loop facilities and own dial tone;

vii. Business lines using a third party's loop facilities and your own dial tone;

viii. Residential lines provided using your own loop facilities and another party's dial tone;

ix. Residential lines provided using your own loop facilities and own dial tone;

x. Residential lines using a third party's loop facilities and your own dial tone;

xi. For any residential and business lines served in any manner not listed above, in what manner are those lines served?

7. For each Qwest wire center in North Dakota in which you provide retail switched local exchange service, please report the number of switched DS-0 level lines in service per customer location that you serve. Please provide this information in the following format:

WIRE CENTER

	Customer Location	
Quantity of DSO Lines	Residence	Business
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

For example, if you currently serve 100 single line residential customers and 200 2 line business customers in the wire center, show "100" in the residential column on the Quantity line of "1", and "200" in the business column on the Quantity line of "2."

8. Please provide the average total revenue per line that you received from your residential customers within North Dakota in 2001 and 2002. The average revenue per

line should include revenues associated with the basic retail price charged to residential customers, vertical features, universal service payments, interstate access charges, intrastate access charges, subscriber line charges, toll, long distance, local number portability, and line revenues derived from any other sources. Please provide both the total average revenue per line and a breakdown of the amount of revenue for each category of revenue that comprises the total. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

9. Please provide the average total revenue per line that you received from your business customers within North Dakota in 2001 and 2002. The average revenue per line should include revenues associated with the basic retail price charged to business customers, vertical features, universal service payments, interstate access charges, intrastate access charges, subscriber line charges, toll, long distance, local number portability, and line revenues derived from any other sources. Please provide both the total average revenue per line and a breakdown of the amount of revenue for each category of revenue that comprises the total. If revenues differ depending on the type of business customer (small vs. large), please provide the total revenues and the breakdown of revenues by type of business customer. Please provide the information by POTS, DS0, DS1, DS3, OC-3, OC-12, OC-48, and any other relevant categories. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

10. Please explain how you define your business customer segments and provide any documents that reflect this definition or the criteria you use to segment or classify

business customers into distinct customer groups. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

11. Please provide the average total cost per line that you incurred in 2001 and 2002 for lines used to serve residential customers within North Dakota. These costs should include costs associated with switching; loops; collocation; transport; hot cuts; operational support systems ("OSS"); signaling; customer acquisitions; backhauling traffic to your switches; maintenance, operations, and other administrative activities; and capital costs. If available, please provide a breakdown of this information for the following categories: (1) service provided by UNE-P, (2) service provided by UNE-L, and (3) service provided using your own facilities. In addition, please provide any available breakdowns of each cost component that is part of the average total cost per line, identifying the type and amount of each cost. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

12. Please provide the average total cost per line that you incurred in 2001 and 2002 for lines used to serve business customers within North Dakota. These costs should include costs associated with switching; loops; collocation; transport; hot cuts; OSS; signaling; customer acquisitions; backhauling traffic to your switches; maintenance, operations, and other administrative activities; and capital costs. In addition to a total average cost, please provide separate averages for service provided through UNE-P, UNE-L, and with your own facilities. Please provide a breakdown of each cost component that is part of the average total cost per line, identifying the type and amount of each cost. If costs differ depending on the type of business customer (small vs.

large), please provide the total cost and the breakdown of costs by type of business customer. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

13. Please identify the monthly churn rate you experienced for local exchange customers in each month in which it has provided local exchange service in the North Dakota market. In answering this request, you should calculate the churn rate based upon the number of lines lost each year divided by the average number of lines in service that year. In calculating churn, do not include customers who move but stay with the company. Please produce all documents that refer or relate to the information you provide in response to this request.

14. In connection with your churn rates in North Dakota for the most recent 24 months that are available for local exchange customers, of the total customers that have left you, please identify the percentage that have left within one month of signing up for service, within two months of signing up for service, within three months of signing up for service, and within six months of signing up for service. Please produce all documents that refer or relate to the information you provide in response to this request.

15. Please identify each rate plan that you offer to local exchange customers in North Dakota. In addition, please identify the percentage of your total local exchange customers in North Dakota that subscribe to each plan that you identify. Please produce all documents that reflect, refer or relate to the information you provide in response to this request.

16. For rate plans identified in Response No. 15 that include a per minute of use component, please provide the average long-distance per minute usage in North Dakota of your local exchange customers who subscribe to such plans for the most recent 24 months available. Please produce all documents that reflect, refer, or relate to the information you provide in response to this request.

ZUGER KIRMIS & SMITH

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RECEIVED
JAN 15 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

January 15, 2004

Mr. Jon Mielke
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

Re: Local Competition Investigation -- Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of a Joint Motion for Extension of the filing date for Batch Hot Cut direct testimony. By this motion, Qwest and the other moving companies request an extension of the filing date for the Hot Batch Cut process direct testimony from Tuesday, January 20, 2004 to Friday, January 23, 2004.

Also enclosed are the original and seven copies of the Notice of Filing of the Batch Hot Cut Forum Final Issues Matrix submitted by Qwest.

Please contact me if you have any questions regarding these filings.

Sincerely,

Daniel S. Kuntz

Enclosures

c: Service List

114 PU-439-03-295 Pages 1
Cover letter re filings
by Qwest Corporation
01/15/2004 CC, Comm Legal PUD (3) ALJ

RECEIVED
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NORTH DAKOTA
PUBLIC SERVICE
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission **Local Competition Investigation**	**Case No. PU-439-03-295**

NOTICE OF FILING BATCH HOT CUT FORUM FINAL ISSUES MATRIX

In the Joint Motion for Adoption of a Batch Hot Cut Forum filed with this Commission on October 31, 2003, Qwest assumed the administrative role of documenting, at the conclusion of the Batch Hot Cut Forum (Forum) held by the parties, those issues the parties were able to close as well as those issues that remain at impasse concerning Qwest's proposed Batch Hot Cut proposal. Sessions of the Forum were held December 1-3, 2003, December 12, 2003, December 19, 2003 and January 6-8, 2004. Attached for the Commission's information is a copy of the Final Batch Hot Cut Issues Matrix which reflects the issues discussed during the Forum and notes whether those issues were closed or remain at impasse. The impasse issues will form the basis on which the parties will file their testimony concerning the Batch Hot Cut process.

Respectfully submitted this 15th day of January, 2004.

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ATTORNEYS FOR QWEST CORPORATION

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	Case No. PU-439-03-295

JOINT MOTION FOR EXTENSION OF BATCH HOT CUT DIRECT TESTIMONY FILING DATE

Qwest Corporation ("Qwest"), WorldCom, Inc., on behalf of its regulated subsidiaries ("MCI"), and DIECA Communications, Inc., D/B/A Covad Communications Company ("Covad"), (the "Parties) jointly request an extension of the filing date for the Batch Hot Cut Process direct testimony from Tuesday, January 20, 2004 to Friday, January 23, 2004.

The Parties request this extension to delay opening testimony until January 23, 2004, in order to allow the Parties an additional three calendar days to prepare opening testimony, and to ensure that the Parties have had sufficient time to review all the materials on the Forum website (http://www.qwest.com/wholesale/training/tradeshow/batchhotcutarchive.html). For example, as stated in the joint motion to initiate the Batch Hot Cut Forum ("Forum") the last face-to-face meetings were held from January 6-8, 2004. Complete transcripts for those meetings have not yet been completed and likely will not be posted on the Forum website before January 15, 2004. Because the last meetings were three days, it is expected that there will be about 500-600 pages of transcripts for the last face-to-face meeting based upon the number of pages in the first three day face-to-face meeting held in December 2003. Forum participants expect to cite to those transcripts in the opening round of testimony.

The Parties have consulted with the other participants in the Forum including AT&T, McLeod, Eschelon, and US Link by an e-mail sent to all persons on the Forum e-mail list and

can represent to this Commission that no Forum participant has expressed any objections to the requested extension and modification and that these changes will not create any delays in the resolution of this docket.

In the interest of making this filing on an expedited basis, the undersigned is authorized to state that MCI and Covad concur in this request and is further authorized to sign and file this pleading on behalf of MCI and Covad.

Respectfully submitted this 15th day of January, 2004.

QWEST CORPORATION

Daniel S. Kuntz (ID #03490)
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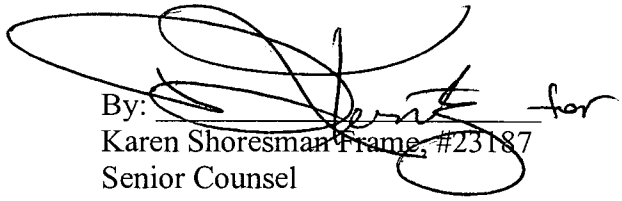
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111 PU-439-03-295 Pages: 51
Final Batch Hot Cut Process Forum
Issues Matrix
by Qwest Corporation
01/15/2004 CC: Comm Legal PUC (3) ALJ

Forums Held December 1-3, 2003
December 12, 2003
December 19, 2003
January 6-9, 2004

FINAL BATCH HOT CUT PROCESS FORUM ISSUES MATRIX

PROCESS ISSUES - EFFICIENCY					
ISSUE #	**ISSUE DESCRIPTION**	**QWEST POSITION**	**CLEC POSITIONS**	**HISTORY**	**RESOLUTION/RATIONALE**
P-1 (see also P-10)	Method of Initiation of a Batch Hot Cut request	The Hot Cut process is initiated by the CLEC LSRs - See also, supplemental information in "History" column	a. CLECs should be able to initiate the batch via e-mail notification that would include Central Office, project date and time, number of customer accounts, and lines involved. Qwest would respond via e-mail with the project code and a confirmation of the date which would trigger the CLEC issuing its LSR. (AT&T p. 15) b. Clarify the timing for the pre-order negotiations with CLECs for submitting orders – how is the process kicked off? What is the interval for these negotiations? (MCI-Forum) In what release will the OSS modifications be included? (MCI – Forum)	1/6/2004 – Entering a "B" on the CHC Field on the LSR will identify the orders as being associated with a batch. Entering a "B" in that field will also drive CLECs to the scheduling tool where they will schedule a day for the batch to be cut. CLECs no longer a need to provide a Project ID number. This change will require OSS modifications – likely will be included in Release 16.0 (scheduled for Oct./Nov 2004)	1/6/2004: CLOSED. Qwest will modify an existing field on the LSR (the CHC field) to indicate a batch that will include reservation number and date – information will be included on FOC. If order is rejected, reservation is not lost if the order is resubmitted within the standard interval, the same reservation number can be used. Subject to OSS change that will be prioritized in the 16.0 Release and to the extent that this OSS change impacts other items in the 16.0 release, it will be addressed in CMP. 1/6/2004 - MCI agrees to CLOSE pending development and testing of the software change to ensure it works. 1/6/2004 - AT&T and McLeod agree to CLOSE. 1/6/2004 - Sub Issue P-1b CLOSED also as to the issue of pre-order negotiations. MCI

Transcripts for all Batch Hot Cut Forums are located under the "Forum Transcripts and Exhibits" pulldown menu at:
http://www.qwest.com/wholesale/training/tradeshow/batchhotcutarchive.html

**NOTE: Shaded items are closed issues.

					agrees to close subject to development and testing of the software change and successful negotiation of a transition plan.
P-2	Project Identifier for a Batch Hot Cut	The Project number is required in the LSR and consists of the letters "BHC" and the CLEC's ZCID	Clarification on how the Project number is obtained and if it is required on the LSR. (MCI – p. 12)	1/6/2004 – Based on changes discussed in P-1 above, CLECs will no longer have to provide a Project Number.	1/6/2004 – CLOSED - MCI agrees to close
P-3 See also P-23 & P-24	Can CLECs request batch cuts at any time of day?	The Batch Hot Cut Proposal is designed for Basic Installation option only Those types of sensitive circuits that require that planning need to be run through the standard hot cut process. 12/10/2003: Qwest has committed to notify the CLEC on due-date via e-mail when the batch cut begins. Batches will be completed within a relatively short period of time; therefore a coordinated installation such as is contemplated by this question is not necessary. 1/6/2004 – The Batch Hot Cuts will be done during a 3:00 a.m. to 11:00 a.m. window.	CLECs should be able to request batch cuts on any day, at any time of day. (AT&T – p. 19); 1/6/2004 – AT&T continues to want the ability to identify a specific window of time during the day in which Batch Hot Cuts are performed and does not want to be limited to the 3-11 window currently provided by Qwest's process. 1/6/2004 - AT&T will take the Trap and Trace proposal back to its operational people and will get back to Qwest on whether or not it will close the issue of method of notice of commencement/completion of the batch/ status of batch. 1/6/2004 – McLeod will take the	12/12/2003: Request from MCI: When MCI goes into the negotiation process, can it provide a notification e-mail address at that time? QWEST RESPONSE: prior to the time a CLEC submits a batch hot cut *for the first time*, the CLEC will provide a notification e-mail address to Qwest. That e-mail will then be used by Qwest to notify the CLEC that a batch hot cut has begun for all batch hot cuts for that CLEC. CLECs do not have to include the e-mail address on LSRs. How will Qwest make sure it uses the provided e-mail for batches and other e-mail addresses for other types of order activity. QWEST to respond in writing. 12/17/2003: Qwest written response: The CLEC will provide	1/6/2004 – IMPASSE as to AT&T regarding ability to identify a specific window of time during the day in which Batch Hot Cuts are performed. AT&T does not want to be limited to the 3-11 window currently provided in Qwest's process. 1/7/2004 – IMPASSE as to AT&T issue of whether or not the web-based status tool is the appropriate method of communication between Qwest and the CLECs on order status (See Related Issues P-23 & 24) 1/7/2004 IMPASSE as to McLeod on issue of whether or not the web-based status tool and the Trap and Trace capability is the appropriate method of

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		1/6/2004 – MODIFICATION TO ORIGINAL PROPOSAL - Qwest will notify the CLECs when the batch has started via the new web-based status tool. The Trap and Trace option will also identify when the batch begins. 1/6/2004 - Qwest will submit a change request to Change Management as soon as it has fully defined the requirements for the status tool. There are clarification meetings that are held to accommodate CLEC input prior to submitting the CR.	Trap and Trace proposal back to its operational people and will get back to Qwest on whether or not it will close the issue of notice of commencement/completion of the batch/status of batch. CLECs may need to plan certain batch hot cuts for customers with alarm circuits or CPE (Eschelon – p. 13)	the email address for their BHC-ZCID project. The QCCC will build a table unique to the Batch process with the BHC-ZCID and designated email. Therefore,, this email address will be dedicated only to these orders. 1/6/2004 – IMPASSE PENDING on e-mail notification issue as to AT&T and McLeod – both companies taking back issue of status tool and Trap and Trace as notification vehicles in lieu of e-mail or other "push" technology.	communications between Qwest and the CLEC on order status. (See Related Issues P-23 & 24) IMPASSE as to Eschelon Request - regarding designating a time for customers with CPE or alarm circuits being something less than coordination that could be accommodated by the Batch Hot Cut process. 1/6/2004 – MCI agrees issue regarding e-mail notification can be CLOSED.
P-4	Can the CLECs request a "Batch Hot Cut" with coordination?	The Batch Hot Cut process is for basic installations only. If a CLEC wants to order a coordinated installation, it should use the standard coordinated hot cut process.	The Batch Hot Cut process should include options for both a coordinated hot cut and a frame due time option. (MCI – p. 5).	CLOSED - All existing installation options, in addition to Batch Hot Cut, are available to CLECs Closed as to MCI – Sherry Lichtenberg Closed for AT&T - Rick Wolters	CLOSED - All existing installation options, in addition to Batch Hot Cut, are available to CLECs Closed as to MCI – Sherry Lichtenberg Closed for AT&T - Rick Wolters
P-5	Whether the Batch Hot Cut process should include loops provisioned over IDLC.	IDLC loops are handled using the standard hot cut process. Orders that are provided over	IDLC should be included in the hot cut process. (AT&T – p. 16-19); (MCI – p. 4); (Eschelon – p. 15); (McLeod at 1)	IMPASSE - as to including IDLC loops in the batch - MCI (but MCI will consider Qwest's proposal to provide the IDLC information in advance of requirement to transition)	12/12/2003 - IMPASSE - as to including IDLC loops in the batch - MCI

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**NOTE: Shaded items are closed issues.

		IDLC are C-Jeop'd back to the CLEC if those orders are included in the Batch. To include these types of orders in a Batch eliminates the efficiencies the Batch process was designed to provide (due to requirement to roll a truck) Qwest will convert 10 UNE-Ps that are provisioned over IDLC loops per day per Remote Terminal within a Qwest Network Manager's area. Qwest will provide CLECs with an electronic spreadsheet of all CLEC customers, by central office, that are served via IDLC. Timing – for those markets where there is a finding of "no impairment," the spreadsheet will be provided to CLECs prior to the time when they must transition their lines. Response to AT&T proposal – to handle in that manner, requires manual intervention and additional steps that impact efficiencies the Batch Hot Cut was designed to provide.	MCI would propose building a look-up table in Qwest OSS and reject those orders when they are submitted and providing information regarding IDLC and RT location. (MCI – Forum) AT&T proposal – AT&T is not proposing that IDLC be a part of the batch – what they are proposing is that when CLECs send over UNE-P's for conversion that Qwest identify whether the service is provided over IDLC, have those orders drop out of the Batch and automatically convert them under the standard hot cut process. If IDLC results in delay of customer migration to UNE-Loop, will Qwest continue to charge UNE-P rates until that customer can be migrated? (Gates – MCI – Forum)	12/12/2003 – Remains at IMPASSE IMPASSE - as to action to be taken when loops submitted by the CLECs are provisioned over IDLC – should those orders automatically move to standard hot cut or should the order be c-jeop'd back to the CLEC by Qwest CLOSED– 12/10/2003: CLEC would be billed the UNE-P rate until the completion and acceptance of then UNE-Loop service conversion.	12/12/2003 - IMPASSE - as to action to be taken when loops submitted by the CLECs are provisioned over IDLC – automatic move to standard hot cut or c-jeop of the order by Qwest CLOSED– 12/10/2003: as to the MCI question regarding what rates would apply pending migration of the CLEC to UNE-Loop.
P-6a	Whether the Batch Hot Cut process	Line split loops are not included in the batch process, rather they	Line splitting should be included in the hot cut process. (AT&T – p.	12/3/2003 - OPEN – Qwest and Covad will meet to create a diagram	12/12/2003 IMPASSE as to both P-6a and P-6b– for MCI, Covad,

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http://www.qwest.com/wholesale/training/tradeshow/batchhotcutarchive.html

**NOTE: Shaded items are closed issues.

	should include line split loops.	are handled using the standard provisioning process.	16-19); (MCI – p. 8-9); (Eschelon – p. 15); (Covad – p. 4);	depicting the various network connections required in a Line Splitting/Loop Splitting arrangement. – Diagrams completed – see BHC Forum Exhibit 4	Eschelon & AT&T
P-6b	Whether the Batch Hot Cut process should include UNE-P with ancillary DSL.	Requires changing the service from a non-design service to a design service – thereby eliminating some of the efficiencies the Batch process was designed to provide.	Covad agrees that this issue applies for the embedded base only and does not apply for new line splitting/loop splitting orders (Covad – Forum)		
P-7	How does the Batch Hot Cut process address situations where the end-user customer is served via exchange cable?	Batch Process will not include situations where customers are served via exchange cable because it cannot be unbundled – it is a truck side connection. CLECs can, however, use an EEL or they can collocate in the remote office. If CLECs are collocated in the remote, they can participate in the batch process	A batch appropriate process should be provided to address these situations (Eschelon MN- p. 11) Currently, Qwest rejects orders when the customer is served via exchange cable (Eschelon – Forum)	12/3/2003 OPEN - Qwest will provide a technical reference where exchange cable is defined/explained. CLECs will then review that information and provide position at next meeting of the Forum. 12/12/2003 Qwest will provide information at 12/19/2003 meeting of the Forum 12/17/2003 – Qwest Response: EX Cable - EX cable is cable that is identified due to its origination from a remote office switch. This cable cannot be assigned from the Host office as there is no assignable connection between the host and remote switches. To access EX cables as Unbundled Loops a collocation must be established at the remote location. 12/19/2003 – Further Qwest Response – Qwest will post a	1/6/2004 - AT&T and MCI agree to CLOSE as to the issue of end user customers served via exchange cable not being included in the batch process.

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				diagram of this situation prior to the next Forum.	
			Provide URL that contains a listing of the locations for all Qwest remotes sites (Clauson – Eschelon – Forum)	1/6/2004 – Qwest provided Exhibit 8 – which is a diagram of EX cable. Qwest will clarify in which remote collocation arrangements CLECs can use the batch hot cut process. 12/10/2003: The principle question coming from discussion at the Forum involved exchange cable and was: in a situation involving a host/remote switch relationship where an umbilical connects the host to a remote switching unit in the same Wire Center, can the Batch Hot Cut process be used? The answer depends on whether the premise that houses the remote switch is in a wire center where there is sufficient capacity such that no field technician dispatch is required. If a field dispatch is required, the Batch Hot Cut process may not be used; if not, it may be used so long as the prerequisites for a batch are satisfied for that wire center. It should be noted that in this instance, it is mandatory that the CLEC be collocated in the premises containing the remote switching unit.	

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				Qwest posts information on remote switches on the ICONN database www.qwest.com – Wholesale – Network Databases. It lists all of the host-remote relationships. Network Disclosures are also posted on the website and would include plans for future remote deployments. Information is also available in the Raw Loop Data Tool (RDLT). 12/10/2003 Information on Qwest remote switching sites can be found on the ICONN database – and can be searched by an entire state or by a specific CO within a state. If the 9th character of the CLLI is an "R" it is a remote or you can chose the "host/remote" correlation report at URL: http:www.qwest.com/cgi-bin/iconn/iconn_centraloffice.pl?function=3	
P-8	Whether the Batch Hot Cut process applies if an outside technician dispatch is required.	The Batch Hot Cut Process is limited to use of existing facilities that do not require an outside technician dispatch. It is Qwest's position that the efficiencies gained in the batch hot cut process would be lost if outside technician dispatch is required.	If the assumption that the batch process will be limited in every case to situations that do not require an outside technician dispatch, this is still an open issue for Eschelon	12/3/2003 OPEN – Eschelon will consider whether they will continue to pursue this position in light of discussion at 12/2/2003 meeting of the Forum. Eschelon will provide feedback at the next meeting of the Forum.	12/12/2003 – IMPASSE for Eschelon as to the issue of including in the batch those orders that require an outside technician dispatch.

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P-9	How does the Batch Hot Cut process address CLEC-to-CLEC migrations? CLEC-to-ILEC? CLEC UNE-P to UNE-L (same CLEC) CLEC UNE-P to UNE-L (different LEC)	Qwest will utilize the same overall Batch Hot Cut process in each situation to the extent that conversion volumes are sufficient to qualify as a batch. Batch Hot Cut Process does not apply to situations in which a facilities-based provider has overbuilt Qwest facilities. This situation would be a New order and, therefore, not considered as a candidate for the Batch Hot Cut Process. For conversions from UNE-L to UNE-L (different CLECs) – Qwest would only move the facility from one CLECs collocation to the other CLECs collocation and this would be included in the batch hot cut process. For CLEC to ILEC conversions (winback) –will not be included in the batch process.	Qwest needs to explain how it will incorporate CLEC-to-CLEC migrations into a batch project. (AT&T – p. 19) Qwest must define "sufficient volumes" for CLEC-to-CLEC migrations. (MCI – p. 7) CLEC to CLEC migrations must also be included in the Batch Hot Cut process, in addition to Qwest Retail to UNE-L; Resale to UNE-L; Centrex/1FB to UNE-L. (McLeod – p. 1)		1/7/2004 - CLOSED - MCI – agrees to close this issue – Sherry Lichtenberg AT&T – agrees to close this issue – Rick Wolters McLeod – agrees to close this issue – Patty Lynott
P-10 (See also P-1)	Order placement methods, flow-through and service order accuracy	CLECs submit their orders for a Batch Hot Cut using the existing LSR process, with the "BHC" plus CLEC ZCID project number, whether that is through the GUI or EDI interface.	**1**, CLECs should be able to use either EDI or GUI to submit orders. **2**, CLECs should not be required to manually generate spreadsheets. **3**, Orders should flow through. (MCI-p. 5 & 9); (McLeod at 2)	MCI agrees to close as to the first 3 sub-issues (in CLEC Position column) McLeod agrees to close the first 3 sub-issues pending discussion of scalability issue.	12/12/2003 - MCI agrees to close as to the first 3 sub-issues (in CLEC Position column) 12/12/2003 - McLeod agrees to close the first 3 sub-issues pending discussion of scalability

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**NOTE: Shaded items are closed issues.

		Qwest response to sub-issues in CLEC Position Column: 1. CLECs can use either EDI or GUI to submit batch hot cut orders. 2. CLECs will not be required to manually generate spreadsheets 3. Batch Hot Cut Orders are flow-through eligible. Batch Hot Cut LSRs will flow-through in accordance with existing flow-through standards. 4. The LSR process is appropriate for use with the Batch Hot Cut process. Because of quality and cost issues, Qwest will not pursue development of an interface.	4. Efficient submission will likely require development of new ordering capabilities – sending individual LSRs for multiple orders should not be considered a "batch." . (Eschelon p. 12) Clarification by Eschelon - Eschelon would like Qwest to put in place an interface to the GUI and EDI for Batch Hot Cuts that would take the place of LSR-by-LSR entry. Or, in the alternative, give CLECs the capability of sending an electronic spreadsheet directly to the QCCC. (Eschelon – Forum)	12/3/2003 - On Sub-Issue 4 - Eschelon will take back and determine if it will continue to pursue asking for an alternative to submitting individual LSRs e.g., spreadsheet functionality. 12/12/2003 - Given discussion at last Forum, Qwest position is that taking a mechanized process and taking a step backward to a manual spreadsheet or to re-mechanize in another fashion is not something Qwest is willing to make a part of the Batch Hot Cut Process.	issue. 12/12/2003: IMPASSE as to ESCHELON issue (#4) – regarding alternative to submitting individual LSRs e.g., spreadsheet functionality.
P-11	Order in which lines are cut over	To achieve efficiencies, the process does not permit CLECs to determine the order in which lines are cut over.	CLECs should be able to specify the order in which lines are cut over e.g., customers with multiple CSRs (Eschelon – p. 13 MN p 9)	12/3/2003 - OPEN - Eschelon will take back to determine if they are going to continue to pursue this capability. 12/12/2003 - Eschelon continues to request this capability. Because CLECs must use the related PON process to submit such LSRs, Qwest	12/12/2003: IMPASSE as to Eschelon issue regarding CLEC ability to determine the order in which lines are cut over in the batch.

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				should develop a spreadsheet for the batch so that related PONs are worked consecutively. Eschelon believes a PON format could be developed to indicate sequence for this purpose. 12/12/2003 - the efficiencies gained in the Batch Hot Cut Process include permitting the central office technician to perform work in the most efficient and effective way possible; specifying the order in which lines are cut over, when those lines may be on multiple blocks on the frame, reduces the efficiencies of the process.	
P-12	Impact on Batch Hot Cut Process of migration by telephone number change request	The "migrate by TN" capability covered by CMP CRs SCR061302-01 and SCR022703-18 address only orders where the "to" product is UNE-P.	Batch Hot Cut process should allow CLECs to "migrate by telephone number." (MCI – p. 10) MCI views this as a critical requirement (MCI – Forum)	12/3/2003 - OPEN – pending Qwest take back on technical capability issues associated with making TN migration capability available for batch hot cuts. 12/10/2003 Qwest Response: There is no technical limitation precluding Qwest from modifying the edits in IMA to allow CLECs to enter TN and SANO for UNE-P to UNE-Loop conversions. Systems changes to accomplish this modification are required to go through Change Management. MCI submitted a CMP CR (SCR120403-01)	1/6/2004 – IMPASSE as to MCI issue of not providing CLECs with the capability, in the Batch Hot Cut process, to "migrate by telephone number and SANO"

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				requesting this change on December 4, 2003. There is, however, a technical limitation that would prevent migration by TN from UNE-Loop to UNE-Loop as in that instance, the TN does not reside in Qwest databases. 12/12/2003: Further Qwest response: This CR would be eligible for inclusion in IMA Release 16.0 which is tentatively scheduled for August 2004. To have it declared as a ***regulatory*** CR, requesting party must provide the docket number and verbiage from the regulatory order in that docket that mandates the activity. QWEST WILL TAKE BACK the questions of whether or not it considers this a regulatory mandate? If so, would Qwest oppose the change? Is it an option for the CR to be escalated in its implementation to a release sooner than IMA 16.0 via the CMP exception process? 1/6/2004 – As to MCI's question about whether Qwest will support or oppose the "migrate by TN" CR as a regulatory change – Qwest will	

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				embrace the spirit of a Commission order that may, at the end of the 9 month proceeding, direct such a change –it cannot support "migrate by TN" as a ***regulatory*** change because in order to be a ***regulatory*** change, the requirement must have a docket number **and** order associated with it. Qwest is not including the "migrate by TN" in its current Batch Hot Cut proposal because it is not a capability that is specific to batch hot cuts. However, Qwest will not oppose the MCI CR SCR061302-01 and SCR022703-18 (that deal with the TN SANO capability generally) in the CMP .	
P-13a See also P-1, P-2 and P-3	Does Qwest take orders for a Batch Hot Cut on a first come first served basis?	Batch Hot Cut orders will be processed by due date as assigned by Qwest OSS. 1/6/2004 – Due date scheduler will facilitate taking orders on a first come-first served basis.	Qwest must process batch orders on a first in-first out basis and must send both electronic and on-line notification to CLEC within one day of reject or if busy CFAs are found. (MCI p. 12)	12/3/2003 OPEN – Qwest will take back questions around what is involved in the negotiations process and what happens if the CLEC fails to place their orders – do they lose their slot? Will Qwest assess some sort of penalty?	1/6/2004 – MCI, AT&T, Covad & AT&T agree to close 13a.
P-13b	If Qwest will miss a due date, will jeopardy notice issue?	Yes. A jeopardy notice will be sent to CLEC on the day of the cut. If there is a Qwest jeopardy in a batch that takes the batch below 25, the entire batch will not be jeopardized.	Priority levels may be designated so that CLECs are aware of which services are in jeopardy due to the processing of a Batch Hot Cut. (Eschelon – p. 15)	12/3/2003 - OPEN	1/6/2004 – MCI, AT&T, Covad and McLeod agree to CLOSE 13 b.
P-14	How will the spreadsheet in Qwest's proposal be	The systems within QCCC will electronically produce a spreadsheet for internal Qwest	AT&T supports the use of an electronically prepared spreadsheet developed by Qwest's OSS based	12/3/2003 OPEN	1/6/2004 – AT&T, McLeod, Covad and MCI agree to CLOSE this issue.

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	prepared and used? How will it be distributed? How will it be synchronized with CLEC LSRs and Qwest service orders?	use. Spreadsheet will also be distributed electronically to CLECs for use as a tool for the cut. The systems within QCCC will synchronize the LSRs with the service orders. 1/6/2004 – MODIFICATION TO ORIGINAL PROPOSAL – Spreadsheet is no longer relevant. Qwest will now notify the CLECs when the batch has started via **the new web-based status tool**. The Trap and Trace option will also identify when the batch begins. 1/6/2004 - Qwest will submit a change request to Change Management as soon as it has fully defined the requirements for the status tool. There are clarification meetings that are held to accommodate CLEC input prior to submitting the CR.	on information supplied on batch project LSRs. AT&T opposes manually created spreadsheets. (AT&T – p. 9) Eschelon believes that the spreadsheet process will result in LSRs falling out for manual handling, and thereby increase the likelihood of hot cut trouble. (Eschelon – p. 16)		
P-15 (See also P-16)	Can a CLEC modify a pending order for electronic provisioning?	Once an order is placed into a batch carrying a committed due date, CLECs may modify the pending order by notifying Qwest via a supplemental order identifying the change.	What happens when a CLEC needs to issue an interim order to make a change on an existing customer's account which is pending in a batch?	1/6/2004 – Qwest follow-up - Two situations (1) if a CLEC's existing UNE-P wants to submit a feature change while the account is pending in a batch hot cut, the CLECs can submit an order requesting such a	1/7/2004 – MCI agrees to CLOSE 1/7/2004 – McLeod agrees to CLOSE

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				feature change. (2) In those cases where there is an order pending in a batch hot cut, and the customer requests a provider change, then Qwest will perform the provider change and remove the pending order from the batch order. (See also P-16) 1/7/2004 – MCI question - If there is a change in status to a pending migration during the time the LSR for the migration is in the queue, and another order came in adding line splitting to that service – will the order for line splitting be added or rejected? QWEST RESPONSE: If a disconnect request is pending against a UNE-P account, any requests to modify that account will be rejected.	1/7/2004 – AT&T agrees to CLOSE 1/7/2004 – Covad agrees to CLOSE.
P-16 See also P-15	While a customer's line is in the Batch Hot Cut provisioning stream, can the customer switch to another carrier?	1/6/2004 – Related to P-15 See Qwest position in P-15 above.	Clarify what happens in the batch process where the customer has churned over to another carrier during the pendency of the batch order. (AT&T- p. 20) The process should not allow any order activity against a customer's account while it is in the Batch Hot Cut process. (MCI – p. 12)	12/3/2003 OPEN - Qwest will take back the question of having the capability of permitting the subsequent order on a customer's line be able to process rather than having the customer move to the loop and then over to the new provider. 1/6/2004 – See P-15 above.	1/7/2004 – MCI Agrees to CLOSE. 1/7/2004 – McLeod agrees to CLOSE 1/7/2004 – AT&T agrees to CLOSE 1/7/2004 – Covad agrees to CLOSE.
P-17	Should the process	Due to the re-design of the	Permitting the CLEC to change the	12/3/2003 OPEN - Qwest will take	1/7/2004 – Based on Qwest's

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(See also P-18, P-19 & P-28)	allow for same day pair changes?	circuit and time constraints to get the design accomplished, same day pair changes will need to follow the standard hot cut process.	CFA if there is no dial tone on the day of the cut should be allowed. (Eschelon – p. 17)	back – investigate whether the process can be modified to permit CLECs to change the CFA on the day of the cut in the event they receive a jeop notice of a no dial tone condition. 1/7/2004 – Qwest position is that it will not permit same day CFA changes for the reasons stated in the Qwest Position column. 1/7/2004 – AT&T believes this issue is at impasse since Qwest is unwilling to do a dial tone check on DVA date coupled with Qwest's position that it will not permit same day CFA changes (which is a solution for CLECs to remedy a no dial tone situation on the day of a cut) 1/7/2004 – McLeod position is that there should be an exception process that Qwest and the CLECs can work through to work the order on the day of the cut in the event of defective CFAs. McLeod will provide an order of magnitude as to when this happens. 1/7/2004 – Qwest will take back and discuss over the morning break to see if there is an alternative solution.	counter-proposal, AT&T agrees to CLOSE this issue. Still have an issue on whether the web-based status tool is the appropriate method of notification. (See Issues P-3 & P-24) 1/7/2004 – Based on Qwest's counter-proposal, McLeod agrees to CLOSE this issue. 1/7/2004 – Based on Qwest's counter proposal, McLeod agrees to CLOSE this issue. 1/7/2004 – Based on Qwest's counter proposal, Covad agrees to CLOSE this issue.

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				1/7/2004 – **afternoon session** – Qwest response: based on CLEC concerns, Qwest's counter-proposal is that, in a 7-day interval –order submittal on day 0 and FOC also on Day 0 if Order is received before 7:00 p.m. CLECs will have translations work complete by midnight on Day 1 the Record Issue Date (RID), Qwest will perform its pre-wire work on days 2-3, will test for dial tone, and will notify the CLECs, via the web-based status tool of any "no dial tone" situations. If the "no dial tone" situation is as a result of translations, then CLECs have until the end of Day 6 to remedy. If the "no dial tone" situation is as a result of a defective CFA, CLECs have until 7:00 p.m. on Day 4 to supplement their order with the new CFA to permit the order to remain in the batch. On Due Date, Qwest will perform a dial tone & ANI test and, if there is no dial tone at that time, the order will go into a customer not ready jeopardy status and will be removed from the batch. (Counting for interval purposes begins on Day 1.) SEE BHC Forum Exhibit 10 for timeline diagram.	

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				1/7/2004 – MCI - Subject to seeing the process in flow-chart form, MCI supports this new proposal as good process. 1/7/2004 – AT&T position is that this is an improvement from a dial tone check and CFA change perspective. AT&T needs to take back the issue of how the requirement to have translations established by midnight on Day 1 is something that can be accommodated by AT&T's processes. As to these modifications and their impact on the status tool, AT&T doesn't want to deal with different systems and interfaces – prefer to keep things on EDI from a statusing perspective. The web-based status tool requires CLECs to check 100% of the orders, e-mail, conceptually, requires CLECs to query orders only on an exception basis. 1/7/2004 – McLeod finds that the new proposal works well to resolve the Dial Tone and CFA issues. McLeod still wants to discuss the interval associated with the Batch.	

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				1/7/2004 – AT&T will have the switch translations done within the timeframe provided for in the proposal. AT&T agrees there is sufficient time to remedy no dial tone situation and CFA issues. 1/7/2004 – MCI also finds the new proposal acceptable. 1/7/2004 – Covad finds the new proposal acceptable.	
P-18 (See also P-17, P-19 & P-28)	What is the appropriate time to pre-wire the CLEC CFA?	12/19/2003 – In response to CLEC feedback during the Forum, Qwest has agreed to move the pre-wire of the CLEC CFA to the Design, Verify and Assign date	Pre-wiring must have at least one (1) day lead time from the batch project due date. (AT&T – p. 8)		12/19/2003 – CLOSED Sherry Lichtenberg on behalf of MCI agrees to close. Karen Clauson on behalf of Eschelon agrees to close. Rick Wolters on behalf of AT&T agrees to close.
P-19 (See also P-17, 18, & P-28)	What is the appropriate timing for Qwest to perform a dial tone check?	Qwest proposes that technicians perform test for dial tone on the day of the cut and require CLECs to remedy any "no dial tone" situation within one hour.	Performing this test on the day of the cut leaves insufficient margin for error. One hour is often not sufficient time to resolve a lack of dial tone issue. (AT&T – p. 9) MCI requests dial tone check 2 days prior to cut. (MCI – pp. 10 & 12) Eschelon wants the dial tone check 48 hours in advance, and believes the one hour window to remedy issues may be insufficient.	12/19/2003 – IMPASSE as to 48 hour dial tone check 1/7/2004 – Re-opened – CLECs want Dial Tone check done at due date minus 2 and that it would be a reasonable compromise, if that check is performed, to automatically pull the order from the batch if there is no dial tone on the date of the cut (no 2 hr. window for CLECs to remedy on day of cut) Qwest agreed to take back over the morning break	1/7/2004 – Based on Qwest counter-proposal (See Issue P-17), AT&T agrees to CLOSE this issue. 1/7/2004 – Based on Qwest counter-proposal (See Issue P-17), MCI agrees to CLOSE this issue. 1/7/2004 – Based on Qwest counter-proposal (See Issue P-17), McLeod agrees to CLOSE this issue.

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			(Eschelon – p. 17)	1/7/2004 – See Qwest counter-proposal at Issue P-17	1/7/2004 – Based on Qwest counter-proposal (See Issue P-17), Covad agrees to CLOSE this issue.
P-20	Requirement for Central Office Technician to call RCMAC to work the disconnect of the UNE-P line	The Central Office Technician does not call the RCMAC today. This is not customer service impacting. As long as the port has been set and the CLEC performs its LNP work, the customer will have the ability to receive calls even if the disconnect work at the RCMAC has not completed.	Proposed Batch Hot Cut process eliminates the central office technician's call to the RCMAC to work the disconnect – results in customer working on two switches for a period of time – and inability to receive calls. (Eschelon MN P. 12)	12/3/2003 OPEN 1/7/2004 – today the CO technician does not call RCMAC to execute the disconnect order. Eschelon's statement that the customer is served by two switches for a period of time is inaccurate. Qwest presets its triggers and when the CLEC executes its subscription to port will occur.	1/7/2004 – MCI agrees to CLOSE. 1/7/2004 – AT&T agrees to CLOSE. 1/7/2004 – McLeod agrees to CLOSE. 1/7/2004 – Covad agrees to CLOSE.
P-21a	If one line is removed from the batch, and that line is part of a multi-line customer, should all lines for that customer be removed from the batch?	Multi-line customers have related orders on a single LSR. If one of the lines has no dial tone and CLEC is unable to resolve the no dial tone issue, all related orders on the LSR for the multi-line customer will be pulled from the batch. CLECs will receive a jeopardy notification and must submit a supplemental LSR to work the orders.	AT&T believes the entire customer should be removed from the batch. (AT&T – p. 10).	12/3/2003 OPEN 1/7/2004 – AT&T would be willing to close if Qwest is willing to document the process that is followed when one order falls out on an LSR and that it is the CLECs responsibility to work back when there are a series of related orders. Qwest accepts and will commit to documenting the process	1/7/2004 – AT&T agrees to CLOSE 21a.
P-21b	Impact on batch of trouble on one single line within a batch	Qwest has considered the issue based on Comments from CLECs on 12/1/03 and will agree to move the orders through the Batch Hot Cut process so	Qwest must clarify its process when multiple customers are in the batch, and one customer's order must be cancelled. (Eschelon – p. 14)	CLOSED as to what happens when one order must be cancelled within a batch - Qwest has considered the issue based on Comments from CLECs on 12/1/03 and will agree to	12/12/2003 - 21b CLOSED as to what happens when one order must be cancelled within a batch - Qwest has considered the issue based on Comments from

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		long as there were at least 25 lines in the original batch and at least 20 qualified lines remain in the batch. Note that Qwest is unable to split LSRs.	If a single order falls out of the batch process, leaving fewer than 25 lines in the order, can Qwest automatically process the LSR(s) under the "basic" process rather than rejecting or jeoping the entire batch and requiring CLEC to resubmit the order with new due dates? (MCI – Forum) Same question as MCI above – but what if a single order is removed from a batch of 50 orders? (Eschelon – Forum)	move the orders through the Batch Hot Cut process so long as there were at least 25 lines in the original batch and at least 20 qualified lines remain in the batch. Note that Qwest is unable to split LSRs. 12/3/2003 OPEN – Qwest to take back the question of whether the orders that fall out of the batch hot cut process can be automatically processed using the standard hot cut process. 12/17/2003 Qwest response: Automatic processing is not feasible given the efficiency, timeliness and cost parameters of the Batch Hot Cut process. 12/19/2003 – MCI – Tim Gates will take back whether it wants to continue to pursue some sort of automatic processing for orders that fall out of the batch process 1/7/2004 – MCI has discussed and will not pursue automatic processing CLOSED	CLECs on 12/1/03 and will agree to move the orders through the Batch Hot Cut process so long as there were at least 25 lines in the original batch and at least 20 qualified lines remain in the batch. AT&T, MCI, Covad, McLeod & Eschelon agree to close. 1/7/2004 – MCI will not pursue automatic processing of order that fall out of the batch process. MCI agrees to CLOSE issue 21b.
21c	What happens when there is an error in the Qwest database, then how does Qwest		What if CLEC has done the checks into the RLDT or other tools and yet their order becomes jeopardized because IDLC is	12/10/2003: The jeopardized order would not be processed as a part of the batch. However, Qwest has modified its position to allow for the	12/12/2003 – Eschelon IMPASSE on 21c– as to handling of orders that are jeopardized as a result of

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	handle the situation and what ability does the CLEC have to get the batch through?		present, but wasn't noted in the database? (Eschelon – Forum) 12/12/2003: MCI question - How does the Raw Loop Data Tool get updated?	remainder of qualified lines in the batch to continue to be processed so long as at least 20 lines remain in the batch. While IDLC information is available in the RLDT, in some rare instances, the IDLC may not appear in the RLDT. If the information is missing, the CLEC has the capability of notifying Qwest of the missing information via the RLDT. 12/12/2003 - IMPASSE for Eschelon– as to handling of orders that are jeopardized as a result of inaccurate or incomplete information in the Qwest database.	inaccurate or incomplete information in the Qwest database. 12/12/2003 - CLOSED as to MCI question–The RLDT regularly dips into LFACs and gets updates. If a manual look up is requested by the CLECs, then LFACs, and consequently, RLDT, are updated with information discovered in the manual look-up. Qwest would update the systems automatically; the CLEC does not have to take further action to affect the updates.
P-21d	What cure period applies for Customer Not Ready situations?	12/19/2003 - After the single order that has trouble in the batch is jeopardized, the Jeopardy notices for that order would follow the standard process that exists. The four-hour window applies. The below URL provides information on the CNR process. http://www.qwest.com/wholesale/clecs/provisioning.html	When jeopardy notice is provided for a Customer Not Ready (CNR) - will the four-hour window be imposed? Will the order be cancelled if the CLEC doesn't correct or get another order into the batch? (Clauson – Eschelon – Forum)	12/10/2003 as modified in 12/12/2003 Forum: 12/3/2003 OPEN – Qwest will take bake the question of whether the 4-hour window applies. 12/19/2003 – Qwest will take back providing a response the specifically address how a Customer Not Ready situation will be handled. 1/7/2004 – Qwest provided an explanation of the process for addressing a Customer Not Ready Situation.	1/7/2004 – AT&T, MCI, Covad & McLeod agree to CLOSE 21d

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				Based on explanation – AT&T, MCI, McLeod and Covad agree to CLOSE 21d	
P-22	Does the process have a step to prevent premature disconnection of a line in a "no dial tone" condition?	Yes – if there is a no dial tone condition, and the line is part of a multi-line customer, all lines on the LSR will be jeop'd and the cut will not occur. If the customer has multiple CSRs,, then it is the responsibility of the CLEC to make sure the LSRs associated with each other are related.	Is there a process that would automatically remove a multi-line customer from the batch in the event there is trouble found on a single line within that customer's multi-line group? (AT&T – p. 10) Provide the CLECs with the citation to PCAT or other documentation on what happens with a single LSR and also what happens when there are related lines on multiple LSRs and a single line for a multi-line customer experiences no dial tone (Lichtenberg – MCI and Finnegan-AT&T – Forum)	AT&T thinks may be able to close this issue if Qwest can provide the citation to the documentation that describes what happens when a single line on a single LSR is found to have no dial tone. Qwest will take back – providing the CLECs with the citation to PCAT or other documentation on what happens with a single LSR and also what happens when there are related lines on multiple LSRs and a single line for a multi-line customer experiences no dial tone Qwest will also take back – whether CLECs using an RPON to relate the orders results in the orders falling out for manual handling.. 12/10/2003: The material is not contained in the PCAT. LSRs and RPON relationships are discussed generally in the IMA User's Guide Once the BHC process is finalized Qwest will ensure that the underlying documentation contains a reference to this material along with the detailed documentation on the BHC process itself.	1/7/2004 – AT&T agrees to CLOSE 1/7/2004 – MCI agrees to CLOSE

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				12/12/2003 – OPEN - Qwest will take back providing detail on exactly where information can be found for a single LSR situation with multiple lines as well as multiple LSRs with RPONs. 12/12/2003 – OPEN – Qwest will take back the question of whether using RPONs to relate orders causes the orders to fall out for manual handling. 12/17/2003 – Qwest Response - Yes, the LSR containing a RPON will drop for manual handling within the service order processing group. The RPON field is populated by the CLEC with data that assists them in internally tracking PON's for whatever reason they deem necessary. The RPON field is often populated when the LSR involves a reuse of facilities, multiple requests for the same location, due date. Only the LSR containing the RPON indicator in a RPON relationship will drop for manual handling. 12/19/2003- Qwest will clarify whether a CLEC will be able to verify on their PSON whether the order is included in the Batch.	

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				1/7/2004 – Qwest provided explanation regarding what CLEC is able to determine based on information on the PSON. Based on that discussion AT&T & MCI agree to close.	
P-23 (See also P-3 and P-24 and S-1)	Timing for notifying CLECs when a batch is completed Method of notice to CLECs	Qwest proposes to notify the CLECs when all lines in the batch have been completed and will do so via an electronic spreadsheet. In addition, Qwest currently sends FOCs and SOCs to CLECs electronically. Further, Qwest changes the status within EDI within one (1) hour of completion of the service order activities to identify that LSR requests are completed. Qwest will also notify the CLECs when the batch has started via the **new web-based status tool**. The Trap and Trace option will also identify when the batch begins. 1/6/2004 - Qwest will submit a change request to Change Management as soon as it has fully defined the requirements for the status tool. There are clarification meetings that are	Notification upon completion of the entire should occur prior to completion of the entire batch (AT&T – p. 7) Completion of a cut should trigger an electronic SOC within 10 minutes of the cut. Qwest must send EDI provisioning and completion notifications to close out the LSR. (MCI – p. 13) Batch Hot Cut process should not result in all-day hot cuts (Eschelon – p. 17)	12/3/2003 OPEN – 1/7/2004 – MCI would like Qwest to take back the suggestion of having the Status Tool perform updates more frequently than 30 minutes.	1/7/2004 – IMPASSE as to timing and method of notice to CLEC of batch completion

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		held to accommodate CLEC input prior to submitting the CR.			
P-24 (See also P-3 & P-23)	How will CLECs know which orders in the batch were completed?	Qwest proposes to notify the CLECs when all lines in the batch have been completed and will do so via an electronic spreadsheet. In addition, Qwest currently sends FOCs and SOCs to CLECs electronically. Further, Qwest changes the status within EDI within one (1) hour of completion of the service order activities to identify that LSR requests are completed. 1/6/2004 - Qwest will also notify the CLECs when the batch has started via the status tool. The Trap and Trace option will also identify when the batch begins. 1/6/2004 - Qwest will submit a change request to Change Management as soon as it has fully defined the requirements for the status tool. There are clarification meetings that are held to accommodate CLEC input prior to submitting the CR	The CLEC needs accurate information regarding the exact lines that were cut over. (AT&T – p. 11)	1/6/2004 – Today, this would be IMPASSE for AT&T as to existing proposal that has CLECs pulling information from Qwest as opposed to the information being pushed to the CLEC by Qwest. The issues are (1) notification via the website when there is a no dial tone issue discovered by Qwest and (2) notification via the website of the initiation and completion of the batch. 1/7/2004 – MCI supports the web-based system proposal, particularly if it can use it in conjunction with Trap and Trace. MCI looks forward to working with Qwest on the requirements document associated with the proposed status tool as part of the clarification meetings provided for in CMP. MCI believes the status tool needs to be developed as an "API" so that information can be shared back and forth. 1/7/2004 – AT&T does not want to commit at this time to a "pull" solution as Qwest currently proposes and preclude some sort of "push" technology such as some sort	1/7/2004 – IMPASSE as to the issue of whether a web-based status tool is sufficient to provide information to the CLECs on status or is an e-mail or other type of "push" technology appropriate.

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				of EDI message or something through the IMA GUI. 1/7/2004 – McLeod would like Qwest to take the issue back of enhancing EDI to provide for capability to notify CLECs when a batch begins in addition to the status information already provided via EDI. 1/7/2004 - Qwest response is that it has already explored enhancing EDI and found that the update intervals associated with updating status in EDI would likely be longer than those associated with Qwest's web-based status tool proposal. 1/7/2004 – McLeod will continue to evaluate the Trap and Trace option. McLeod position is that the web-based status tool is, in large part, a duplication of information that CLECs obtain today via EDI (with the exception of the jeopardy notices)	
P-25	Impacts of Batch Hot Cut on Databases and directory listings (e.g., LIDB, CNAM etc.)	Order flow will not change from the existing process, consequently, databases will not be impacted	Clarify the impact to LIDB/CNAM databases when customers move from UNE-P to UNE-L (MCI – p. 8)	12/3/2003 - OPEN - MCI wants written response from Qwest on the timing for the 911 unlock. When does it happen? Qwest will take back to provide written response, but also advised within the Forum that the 911 unlock will be batched and	12/12/2003 – CLOSED based on additional discussion during 12/12/2003 Forum and Qwest's commitment to note 911activities on Batch Hot Cut flow diagram and providing detail concerning those activities

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			Migration of directory listings "as is" should be allowed. (MCI - Forum) MCI also recommends examining any existing processes to see if additional procedures are required to address what happens in the event Qwest receives a trap and trace request from a PSAP in between the time the order has been cut and when the 911 unlock is processed	processed to the PSAP at 6:00 p.m. on the day of the cut. It is the same process used today. 12/10/2003: 911 unlock is sent in a batch format to the PSAP for all orders completed as of 6pm on the day of completion. This is the same process as used today.	in the underlying Task List, MCI believes this issue can be CLOSED. MCI agrees to consider the issue of migration of directory listings "as is" CLOSED. – Sherry Lichtenberg
P-26 (See also S-1)	Is there an escalation process for Batch Hot Cuts?	Qwest's current escalation process will be used for the Batch Hot Cut process Any issues prior to the day of the cut go through the ISC (Escalation Center). On the day of the cut, Qwest will provide CLEC a spreadsheet on completion of the batch and will provide a timeframe prior to closing out the orders where the CLECs can call the ISC and work through issues associated with orders in the batch. This process will be documented in CLEC-facing documentation as a part of the Batch Hot Cut Process.	An escalation process should be developed for the Batch Hot Cut. including addressing multiple escalation tickets and priority for resolution (Eschelon – p. 14) Eschelon wants to ensure that escalation process will address multiple escalation tickets and that escalation centers are trained in the components and implications of a batch process. (Eschelon – Forum)	12/3/2003 OPEN - Once the batch hot cut process is finalized, training, methods and procedures and documentation concerning the batch hot cut process, how orders will be associated in the batch, etc. will be provided to the centers within Qwest that are involved in the cut process. CLEC documentation concerning the process will also be created and CLEC training made available Qwest will take back the issue of whether CLEC employees can be trained along with Qwest employees 12/19/2003 – Qwest evaluated this request and did not see the benefit of having CLECs participate in Qwest employee training. In this process,	1/7/2004 – MCI agrees to CLOSE 1/7/2004 – AT&T agrees to CLOSE 1/7/2004 - Covad agrees to CLOSE 1/7/2004 – McLeod agrees to close.

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		1/7/2004 – REVISED -Any issues prior to the day of the cut go through the ISC (Escalation Center). Qwest will provide CLEC status on completion of the batch **via the new web-based status tool** and will provide a timeframe prior to closing out the orders where the CLECs can call the ISC and work through issues associated with orders in the batch. This process will be documented in CLEC-facing documentation as a part of the Batch Hot Cut Process.		the CLEC personnel and the Qwest personnel will have different work functions and consequently there would not likely be synergies or benefits associated with joint training.	
P-27a	Level of Mechanization - status tool	See remarks in "History" column regarding commitment to develop web-based status tool	Qwest should develop an electronic system to provide real-time order status information (MCI – p. 5)	12/3/2003 - OPEN – Qwest is investigating this issue. 1/7/2004 – Qwest has committed to develop a status tool. Based on that commitment, MCI is willing to close this issue as it pertains to the status tool	1/7/2004 – CLOSED as to issue of providing a mechanized status tool and scheduling tool MCI agrees to close.
P-27b	Level of mechanization – electronic scheduling tool	See remarks in "History" column regarding Qwest's commitment to develop an electronic due date scheduling	Establish an on-line real time electronic due date scheduling reservation system that allows CLECs to select hot cut times and	12/3/2003 OPEN – Qwest is investigating this issue. 1/7/2004 – Qwest has committed to develop an electronic due date	1/7/2004 -AT&T agrees to close on the mechanization issue raised in the initial CLEC comments.

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		capability for batch hot cuts.	dates. (MCI – pp. 9-10)	scheduling reservation system that will permit CLECs to select hot cut dates. Based on that commitment, MCI is willing to close this issue as it pertains to the scheduling tool.	
P-27c	Level of mechanization – automated or robotic frames	According to the International Engineering Consortium (IEC) on URL: http://www.iec.org/online/tutorials/frames/topic04.html There is no viable solution for robotic distribution frames at this time.. "While simple in concept, this type of solution never quite matured into a viable technology for automating distribution frames. That is because pure mechanical, robotic solutions have reliability and maintenance issues due to their moving parts. This limits their effectiveness in larger COs or in environments where significant churn is experienced." "Perhaps the biggest "show stopper" for robotics, and all of the other copper automation technologies previously examined for frame applications, has been scalability."	Automated or robotic frames should be evaluated (MCI – p. 3)	On the issue of automated or robotic frames – see information in Qwest Position column.	12/19/2003 – IMPASSE as to the issue of evaluating automated or robotic frames.
P-28	Troubleshooting and	The process provides that	How does Batch Hot Cut process	12/17/2003 – Qwest Response - The	1/7/2004 – CLOSED – based on

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(See also P-17, 18 & 19)	acceptance of multiple loops – specifically, sufficiency of one-hour window to resolve trouble and to accept orders	CLECs are notified if there is trouble on a line within the Batch. The one-hour notification begins at the time that notice is provided. CLECs can also do work up-front to minimize the likelihood of trouble at the time of the cut.	address troubleshooting on multiple loops within the current one hour window provided? (Eschelon MN – p. 12) 12/19/2003 – Eschelon believes this is related to P-19 and, since Qwest has not yet closed on P-19, Eschelon disagrees that the 1-hour window is appropriate to resolve. (Eschelon – 12/19/2003 Forum) AT&T and MCI believe e-mail notification is inappropriate given that the CLEC only has a 1-hour window to resolve. MCI believes that this issue may be mitigated if there is some sort of on-line statusing tool made available to the CLECs. (AT&T & MCI – Forum)	CLEC is notified via email of trouble on the line(s), when the email is sent to the CLEC, the hour timeframe starts for the orders contained on the e-mail notification. The CLEC then has 1 hour to resolve the trouble(s) and provide information back to the QCCC. If no response, the QCCC follows the standard jeopardy process and the CLEC will need to supplement the LSR(s) with a new due date. 12/19/2003 – OPEN on 1-hour window– pending CLEC discussions to explore what an appropriate period may be. Also OPEN as to issue of method of notification. 1/7/2004 – Qwest counter-proposal as discussed in Issue P-17 eliminates the opportunity to cure on Due Date. AT&T, MCI, McLeod and Covad all agree that the opportunity to cure on due date can be eliminated.	Qwest counter-proposal as discussed at Issue P-17. 1/7/2004 - AT&T agrees to CLOSE. 1/7/2004 – MCI agrees to CLOSE 1/7/2004 – McLeod agrees to CLOSE 1/7/2004 – Covad agrees to CLOSE
P-29	Coordination of systems changes as a result of the Forum & State proceedings with CMP	For systems changes, the product of the Forum and the State Proceedings will go to CMP as Regulatory Change Requests. As such, the changes will be incorporated into releases above the line and will not be prioritized.	How will changes agreed to in the Forum be synched up with and incorporated into the CMP? (Lichtenberg – MCI – Forum)	12/10/2003 – OPEN 12/19/2003 - Qwest provided explanation that the CMP process for regulatory changes is for all CLECs and Qwest to vote to see if they agree that the systems changes are indeed a regulatory change. Qwest will agree to abide by the spirit and intent of the regulatory	1/7/2004 – IMPASSE – as to MCI issue regarding the need for any system changes coming out of the batch hot cut proceedings in the states to be classified as regulatory changes. MCI does not agree, in this situation, that the CMP process is the appropriate forum to address

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				orders issued by state Commissions and the existing CMP processes as they pertain to the Batch Hot Cut process. MCI believes this issue needs to remain OPEN. 1/7/2004 – Qwest proposes that this issue be resolved by stating that changes agreed to in this forum **and** ordered by state commissions will be incorporated into the CMP process as regulatory changes. 1/8/2004 – McLeod concerned about system enhancements for BHC being included in the CMP given the number of Change Requests that are currently pending – McLeod position is that the enhancements associated with BHC should be moved outside CMP as a separate release. 1/8/2004 – Covad recommends Qwest allocate additional resources to address systems issues associated with Triennial Review. 1/8/2004 – It is Qwest's position that the changes that result from the TRO will be handled through the normal CMP process..	systems changes associated with Batch Hot Cut given that the systems changes must be in place in order for the Batch Hot Cut process to exist.
P-30	Process flow – steps	Qwest cannot accommodate MCI's request because steps 3-9	On Exhibit 3 (Proposed Batch Hot Cut Provisioning Flow) MCI	12/10/2003 – OPEN 12/12/2003 – CLOSED - MCI	12/12/2003 – CLOSED - MCI agrees to close this issue

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		are flow-through. Step 3 is the receipt of the LSR. The LSR would then need to be input into the SOP (Step 5), then designed (Step 9) before verification of the order by QCCC occurs (Step 10).	recommends that Qwest move step 10 (Order Verification/Qualification) to occur immediately after current step 3. There is no reason to proceed further if the order does not qualify for the BHC process (Gates – MCI – Forum)	agrees to close this issue.	
			SCALABILITY – VOLUMES		
SC-1 (See also SC-5)	Can Qwest's proposed process handle anticipated volumes?	The Batch Hot Cut process is scalable, which will allow Qwest to meet current and future demand. In considering volumes that may have to be handled by the Batch Hot Cut Process, Qwest has considered the embedded base as well as incremental growth similar to what AT&T has suggested. An additional assumption is that in the event there is a finding by state commissions of impairment,, or in markets where Qwest does not seek to challenge the presumption of impairment, then Qwest will continue to provide UNE-P. All of these assumptions will form the basis for the volumes that can be anticipated. Qwest will be prepared in the near future to put forward	Qwest needs to provide more evidence to establish this point. (AT&T – p. 12) Qwest needs to identify the number of batches that it can handle per Central Office, per state and per region. (Eschelon – p. 17) Qwest must clarify the maximum/minimum line volumes per day per CLEC for the Batch Hot Cut (McLeod – p. 1) The daily line count threshold that Qwest can manage for its retail unit must be provided, and parity established. (McLeod – p. 2) Are there limitations on the number of UNE-P to UNE-L lines that can be migrated for a single account? (MCI – Forum) Clarify the relationship of and	12/3/2003 OPEN - For SC-1 in total, Qwest will take-back – providing parties with the assumptions that form the basis for its proposed volume estimates. Qwest will also provide additional information on assumptions for staffing levels for the anticipated volumes. Qwest is not placing limits on the number of UNE-P lines that can be migrated for a single account.	1/7/2004 – IMPASSE as to whether Qwest's proposed process can handle anticipated volumes

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		numbers based on those assumptions.	impact of batch process on non-batch orders and other services. (Eschelon MN p. 10) AT&T believes should assume worst case scenario for development of the process upper limit. AT&T thinks that adding an incremental growth number using analogous number e.g., customers will move their local service about as much as they move their long distance service approximately 2.6%. Churn for CLECs is approximately 4.6-5.2% Churn rate should also include winback rates for Qwest. AT&T concerned about Qwest's ability to handle volumes. Wants Qwest to share some of its analysis on why it believes it can keep up with the demand AT&T believes its appropriate to look at embedded base of UNE-P and UNE-L customers, add some incremental growth number to account for the churn, include additional staff to handle IDLC, and then explain how the process will handle. (AT&T – Forum) Scalability is an issue for McLeod and very interested in how Qwest will gear up for the volume.		

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			(McLeod – Forum)		
SC-2	What is the impact of performing Batch Hot Cuts for multiple CLECs in same CO.	In a given CO, Qwest will perform batch cuts for up to 100 lines. The 100 lines can be associated with one or more CLECs. This number is over and above the normal workload. 1/7/2004 Qwest will work with multiple CLECs in the same central office if the sum of the CLECs batches does not exceed 100 lines. Today, Qwest has no formal limitations that it places on the number of basic or coordinated hot cuts. Generally, Qwest and the CLECs pre-plan to ensure a smooth transition. Batch Hot Cuts are an additional option over and above standard hot cut volume	a. Will Qwest work with Multiple CLECs in the same central office on the same day if the sum of the CLEC's batches does not exceed 100 lines? (AT&T p. 12) b. Is there a limit on the number of CLECs that can migrate 100 lines in a central office in a day? (AT&T p. 13) How will Qwest deal with multiple CLECs in a single CO? What is the maximum number of Batch Hot Cuts it can do in a single day per CO? (MCI – p. 7, 8) c. How will prioritization be determined so that multiple carriers can submit a Batch Hot Cut while not freezing out non-batched cuts or freezing out particular COs? (Eschelon – p. 14) d. If restrictions are placed on CLECs ability to complete Batch Hot Cuts in any wire center at any time, how will comparable restriction apply to Qwest retail? (Eschelon – p. 14) e. McLeod would like clarification around what the "normal	12/3/2003 OPEN	1/7/2004 - Sub-issues a, b, and c (as identified in the CLEC position column) are CLOSED for AT&T, MCI, Covad & McLeod Sub-issue d - AT&T agrees to close; MCI agrees to close; Covad agrees to close; McLeod agrees to close. Sub-issue e – McLeod agrees to close this sub-issue, but believes it is still open as to the issue of scalability (See SC1 & SC-5) Covad agrees to CLOSE AT&T agrees to CLOSE MCI agrees to CLOSE

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		Restrictions, if any, will be applied in a non-discriminatory manner.	workload" is as well as an understanding of exactly how the new batch hot cut process and the normal workload will be resourced. (McLeod – Forum)		
SC-3	Same CLEC, multiple Collocations in the same CO	So long as conversions are for the same CLEC, CLECs with multiple collocations in the same CO can use the Batch Hot Cut process for such conversions	Will Qwest allow CLECs that had two different collocation arrangements in the same CO to include facilities in each of the arrangements on the same project? (AT&T p. 13) For the same CLEC with multiple RSID/ZCID how will Qwest handle?	12/3/2003 OPEN - Qwest will take back – the question of whether the process will accommodate the same CLEC/operating entity with multiple RSIDs or ZCIDs and multiple ICAs combining their orders into a batch. 12/10/2003: If a CLEC is operating under multiple ZCIDs, that means that they are operating under multiple ICAs and, therefore, their orders must be handled as separate batches. 12/12/2003 – If a CLEC is operating under a single interconnection agreement but has multiple RCIDs or ZCIDs, their orders must be handled as separate batches. CLOSED – AT&T agrees to close. MCI agrees to close.	12/12/2003 - CLOSED – AT&T agrees to close. MCI agrees to close.
SC-4	Staffed vs. Un-staffed COs	The Batch Hot Cut process will be available in any central office, whether staffed or un-staffed.	Are batch projects limited to central offices with full-time staff? (AT&T p. 13)	CLOSED – AT&T agrees to close this issue. – Rick Wolters	CLOSED – AT&T agrees to close this issue. – Rick Wolters
SC-5 (See also SC-1)	Staffing levels	Resources will be added and/or shifted as the final Batch Hot Cut process requires. Qwest will	Describe the number of additional people Qwest must add to meet the increased hot cut demand. (AT&T	12/3/2003 OPEN – See also SC-1	1/7/2004 – IMPASSE as to level of detail required regarding plans for staffing

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		use its standard recruiting, hiring and training practices to staff the work activities required. In those locations where Qwest has sufficient volumes, there will be dedicated personnel assigned to batch activities. For other locations, the staff will not be dedicated only to batch work, but during batch activity, will be focused on that work.	p. 13) Plans for recruiting, hiring and training personnel (AT&T p. 14) Qwest must identify and dedicate Qwest personnel to the Batch Hot Cut process (Eschelon – p. 15) By dedicated, Eschelon means resources that will be working solely on batches.		by Qwest to address batch hot cut activity
SC-6	Order accuracy		Qwest should develop a mechanism to create accurate service orders from the batch, and batch hot cut orders should flow-through. (Eschelon – p. 13)	12/3/2003 OPEN 1/8/2004 - Qwest position is that order accuracy is more appropriately dealt with in Long Term PID Administration. 1/8/2004 - AT&T and Covad agree to close this issue and will take up their concerns regarding performance metrics in other sections of the Disputed Issues matrix.	1/7/2004 – MCI agrees to CLOSE this issue. 1/7/2004 –AT&T is willing to close as to SC-6. 1/7/2004 – Covad agrees to close 1/7/2004 – McLeod agrees to close
			VOLUMES		
V-1 (See SC-1 & SC-5)	The basis on which Commissions can arrive at a maximum volume of hot cuts to be performed across the Qwest region	Qwest proposed formulas provide the basis on which Commissions can arrive at maximum volumes.	Qwest's proposed formulas do not account for churn and winback activity. The Number should be broken out on a state-by-state basis. (AT&T – p. 13)	12/3/2003 - OPEN - See SC-1 1/8/2004 – McLeod position is that the formula covers the embedded base, but does not account for new growth 1/8/2004 – MCI position is that the formula assumes that the movement will occur over a 21 month period – and does	1/8/2004 – Parties agree to CLOSE this Issue as it is covered in Issues SC-1 and SC-5.

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				not account for the situation where a CLEC may want to move faster than the 21 month period. Further, it appears that the formula is completely dependent on the successful negotiation of a transition plan. There may also be certain central offices where the CLECs may want to move more quickly that may conflict with the 21 month time period as Qwest has proposed. 1/8/2004 – Covad cannot say that it agrees completely, but is encouraged that Qwest's numbers appear to show that Qwest has sufficient resources to handle the volumes. The assumptions appear reasonable. 1/8/2004 – Qwest can add to its assumptions the "net add" of the current UNE-Loop activity to reflect the growth. With that addition, McLeod would agree that the assumptions are appropriate. MCI would agree that the calculations are correct based on the assumptions. MCI does not believe that the conclusions Qwest is drawing from those numbers is necessarily correct.	
V-2	Per Central Office limit on Batch Hot Cuts	Qwest proposes a limit of 100 lines per Central office	What is the appropriate limit on a per central office basis – should there be a limit? (Eschelon – Forum)	12/3/2003 - OPEN 1/8/2004 – Qwest position is that the most efficient configuration is for 2 technicians performing 100 conversions during an 8-	1/8/2004 - MCI would agree to CLOSE this issue based on an agreement that the parties are not foreclosed from mutually

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				hour shift . 1/8/2004 – AT&T – accepting that premise – is there a reason why you have to limit it to two technicians? Qwest Response: two technicians is optimum given the concentration of wires on the frames where this work is being performed and is the most efficient way. Further, the 100 lines per CO permits Qwest to complete the migration well within the transition period. 1/8/2004 – If, in the transition meetings, MCI or other CLECs want a more rapid transition in certain central offices that met certain characteristics, would Qwest be willing to do more than 100 lines? 1/8/2004 - Qwest is not precluding that sort of discussion, however, the volumes appear to demonstrate that Qwest can handle the transition in addition to day-to-day activity within the 100 line per CO limit.	agreeing, during the transition planning process for the embedded base, to the possibility of doing more than 100 lines per CO on an exception basis, Further, planning can include new customers may also be included in the batch. 1/8/2004 – McLeod will go to **IMPASSE** at this time on the sizing limitation of the number of batch hot cut lines included in a batch per central office. McLeod suggests we take a look at the resources available in a CO and proposes a 200 lines per CO limit. 1/8/2004- Covad agrees to CLOSE this issue based on an agreement that the parties are not foreclosed from mutually agreeing, during the transition planning process for the embedded base, to the possibility of doing more than 100 lines per CO on an exception basis. Further, planning process may also include

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					consideration of new acquisition customers. 1/8/2004 – AT&T will take this issue to **IMPASSE** and supports McLeod's suggestion that the batch size per Central Office of 200 lines.
V-3	Size of a "batch"	The batch must include at least 25 lines for a specific CLEC in one central office.	CLECs should be allowed to determine a minimum or maximum amount of orders to send per batch, per CO. (MCI – p.7) Qwest should specify the assumptions and exceptions made per batch. (Types of orders, volume limits, etc) (McLeod – p. 1) Clarify definition of batch/number of lines. (Eschelon – Forum) How many current orders would trigger the "batch" process as defined in the proposal. In other words, how often does a single CLEC submit orders for 25 mass market loops in a single wire center on a single day? Single week? What percentage of the offices in the state incur this type of volume? (Peter Healy TDS Metrocom – Forum)	12/3/2003 - OPEN 12/10/2003 - Qwest does not currently track orders in this manner, and has no way of tracking this information since CLECs do not currently "batch" their orders for submission, except where they desire conversion on a project-managed basis. 12/12/2003 –Qwest has UNE-P arrangements in 91% of the central offices in its territory. In a large	1/8/2004 – IMPASSE as to the issue of minimum batch size 1/8/2004 – McLeod position is that, particularly for new customers, there should be no minimum number necessary for CLECs to be able to take advantage of batch hot cuts and a cheaper price. 1/8/2004 – AT&T position is that 25 should not be the minimum batch size. AT&T proposes there be no minimum batch size 1/8/2004 – MCI position is there should be no minimum batch size per CLEC or generally

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			12/19/2003 – MCI response – MCI position is that limit of 100 per CLEC per CO is the ***minimum*** limit.	percentage of those offices there are 25 or more UNE-P arrangements. **Qwest will take back** question of what is that percentage. 12/19/2003 – generic example in a state with 130 offices, 75 have UNE-P in them; of that 75, less than 25% of them have fewer than 25 UNE-P arrangements, 6 offices have 1,000 or more. Qwest will provide more detail at the January forum. Steve Pitterle - from TDS Metrocom has additional questions before agreeing to close. 12/19/2003 –looking for response from Qwest regarding the percentage requested above. MCI is not willing to agree to close at this time. MCI is not willing to say that the appropriate maximum number of lines per CO is 100 unless there is some actual, technical explanation as to why there is a limit. MCI will take back the question of what MCI's proposed minimum/maximum numbers are for this purpose. McLeod will take back the question of what McLeod's proposed minimum/maximum numbers are for this purpose.	

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				Qwest will take back the request for additional support behind Qwest's 100 batch limit ***and*** the CLEC proposal to require less than a 25 minimum number as it pertains to unstaffed offices	
V-4	"Orders" vs. "Lines" when addressing sizing	The batch process will include up to 100 lines per day in a single central office.	Clarify which will be used when sizing and addressing Batch Hot Cut limitations – lines or orders. (MCI – p. 8)	CLOSED	12/3/2003 - CLOSED
			SEAMLESSNESS		
S-1 (See also P-23 & P-26)	How will Qwest manage customer service impacts and outages during batch hot cut process?	See P-23 - P-26	a. Outages must be managed quickly and efficiently (AT&T – p. 5) Identify steps that will be taken to minimize adverse end user impacts. Are there preventative measures contemplated? (Eschelon MN – p. 4 & p. 10) By outage, McLeod is referring to both those instances when customers are unable to receive calls ***and*** those instances when customers have no dial tone. (McLeod – 12/19/2003 Forum) b. Provide a response to AT&T's request for e-mail notification on initiation of a batch. (Finnegan – AT&T – Forum)	12/3/2003 - OPEN – See also P-23 and P-26 1/8/2004 – Qwest's new proposed status tool would provide CLECs with status on their orders thereby permitting the CLECs to complete the orders or, should they need to pull orders from the batch for some reason, the status tool provides a hot-link e-mail address that CLECs can use to send such a request to Qwest. CLECs also have the existing escalation process available to resolve issues as well. 12/3/2003 - OPEN 12/10/2003 - Qwest has considered	Sub-Issue S-1a – CLOSED McLeod, MCI, AT&T & Covad agree to close. Sub-Issue S1b – CLOSED McLeod, MCI, AT&T & Covad agree to close.

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				AT&T's request and agrees that it will now provide CLECs with an email notification on the initiation of the batch. 12/19/2003 – From AT&T's perspective, believe that with response above and discussion during 12/19/2003 Forum AT&T **believes there is agreement in principle.** Parties understand that, similar to the process followed during the 271 workshops, agreements reached during the Forum will ultimately be documented in SGAT and, once it has gone through the CMP, in PCAT language. 1/7/2004 AT&T position is that it is still investigating the Trap and Trace proposal of Qwest and still questions whether a web-based status tool is sufficient to provide information to the CLECs on status or is an e-mail or other type of "push" technology appropriate. Parties will discuss this issue in the context of Issues P-23 & P-24 and so this Issue can be closed.	
S-2	Interval for the batch – from CLEC initiation of a request to due date for the batch	Intervals for the embedded base of UNE-P depends on the Batch Hot Cut process agreed to in the Forum and the transition plans ordered by the Commission. For new Batch Hot Cuts, the interval	a. Batch Hot Cut intervals cannot be individually negotiated on a project-by-project basis. There must be a standard interval (e.g., 6 days). (AT&T – p. 14)	**As to Sub-Issue S-2a** (as noted in CLEC position column): 12/3/2003 - OPEN - Qwest will take back – parameters for an interval and also whether or not there is a way to schedule without requiring negotiations	1/8/2004 – IMPASSE as to the issue S-2a - parameters for the interval - should the intervals for the batch hot cut process be the same as the intervals for the

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		will be negotiated.	a. CLECs should not be required to "negotiate" the provisioning date for a Batch Hot Cut in advance. Interval should be five (5) business days to minimize the amount of time a customer is held in a limbo state. (MCI – p. 5, 6 & 11) a. Assumption is that the current 5-day interval will be the interval for the new Batch Hot Cut process (McLeod – pp. 1 &2) a. Eschelon wants definition on what the interval is for the batch hot cut process. For new hot cuts, a standard interval critical. (Eschelon – Forum) b. AT&T wants to "get out of the negotiation business." For transition of the embedded base AT&T suggests scheduling it out every day for weeks at a time. If it is done that way, and Qwest has all the "CLEC balls in the air" and is scheduling the work accordingly, is there still a need for negotiation? (AT&T – Forum) b. Rather than make negotiation the rule, may be easier to have negotiation as the exception for	1/8/2004 – Qwest position is that the "meaningful opportunity to compete" standard as decided in the 271 proceedings should be the basis on which intervals are set. For Batch cuts for the embedded base, the volumes involved and the fact that CLECs already have the customer so there is not a customer acquisition issue, the 7-day interval is appropriate and meets the "meaningful opportunity to compete standard." 1/8/2004 – AT&T wants interval for the Batch process to be same as for the one-by-one hot cuts (5 business days). With no minimum batch size, this is consistent. Conditional upon cost. 1/8/2004 – McLeod position is that a 4-5 business day interval is appropriate. CLECs have committed to have their translations complete on Day 1 and McLeod would commit to have any defective CFAs supplemented by Day 3. Interval is conditional upon cost. 1/8/2004 – Covad is not prepared at this time to specify an interval – tentatively 6 days. Interval is conditional upon cost 1/8/2004 – MCI position is that 5 business day interval is appropriate. MCI would also agree to have any defective	standard provisioning process? 1/8/2004 – CLOSED as to Issue S-2b – based on Qwest commitment to a scheduling tool. AT&T, MCI, McLeod, Covad agree to close. 1/8/2004 – S-2c – IMPASSE – as to the issue of a different batch interval for new customers vs. embedded base customers 1/8/2004 – S-2d – CLOSED 1/8/2004 – S-2e CLOSED

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			both the embedded base and "new" customers. (AT&T – Forum) c. For CLEC new acquisition customers coming from Qwest to the CLEC, today on average for a residential customer McLeod can convert to McLeod service in 7-8 calendar days, primarily because of the 5 day Qwest interval for the UNE-Loop. Concern about whether the batch hot cut process is even a viable option for "new" customers. (McLeod – Forum) d. MCI wants a timeline containing the intervals and what happens when. (MCI – Forum) e. MCI also wants Qwest to consider development of a scheduling tool. (MCI – Forum)	CFAs supplemented by Day 3. Interval is conditional upon cost **Sub-Issue S-2c** 12/12/2003 Qwest will take back issue of whether there could be a different interval for "new customers" vs. embedded base. 1/8/2004 – Qwest is not willing to have a different interval for "new customers" vs. embedded base.	
S-3 (See also Q-2)	Responsibility for issuing LNP Order		Qwest should issue the LNP order when the cut is complete and provide immediate notification to the CLEC when it occurs. (MCI – p. 13)	12/3/2003 OPEN 1/8/2004 – See related issue Q-2. Qwest is not willing to perform LNP porting activity for the CLEC. Qwest is proposing CLECs use the web-based status tool and Trap & Trace capability to identify when hot cut activity is completed so that they can submit their own number port activation to the NPAC.	1/8/2004 – CLOSED – AT&T, MCI, Covad & McLeod agree to close.
RATES/PRICE					

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R -1 (See also R-2)	Rate structure for new batch process and timing for development of the structure	The final Batch Hot Cut process must be defined before Qwest can create an appropriate cost study. The proposed Batch Hot Cut Process does not include costs associated with Coordinated Installation.	Detailed rate information needs to be provided including the cost structure and cost studies used to develop the rate (AT&T – p. 3); (MCI – p. 3). Consideration of rates for coordinated installation. (Eschelon –p.11) What are the benefits of the new process? How are efficiencies quantified in Qwest's proposed process (AT&T & MCI - Forum)	12/3/2003 OPEN 1/8/2004 – Given the changes made to the process during the Forum – Qwest will need to incorporate the changes into its cost studies for the process as it now stands. Qwest plans on filing a cost study with its testimony based on Qwest's proposal as it exists today along with a recommended price based on that study.	1/8/2004 – See also R-2 – IMPASSE as to what is the appropriate rate structure
R-2 (See also R-1)	What is the appropriate TELRIC-based price for the Batch Hot Cut process?	The NRC for the Batch Hot Cut process should reflect the forward-looking cost Qwest will actually incur to provide Batch Hot Cuts. The proposed process, as currently designed realizes efficiencies gained as a result of performing work in a batch manner.	Qwest needs to make significant reductions in its hot cut NRCs to make UNE-L a viable alternative for serving mass market (AT&T - p. 4) Qwest must specifically quantify all proposed NRCs involved in the Batch Hot Cut process. (McLeod – p. 1)	12/3/2003 OPEN – 1/8/2004 – see discussion in "History Column for Issue R-1 above.	1/8/2004 – See also Issue R-1 – IMPASSE – as to what is the appropriate TELRIC-based rate.
POST-CUT QUALITY					
Q-1 (See S-1)	Is there a process to "throw-back" a customer to its prior service	Qwest will send CLEC an electronic spreadsheet on the due date after the hot cuts have been completed. The spreadsheet will contain a deadline time when Qwest will begin running its completions out of the WFA/C system. If the CLECs identify issues with their lines, CLECs	There should be such a process. (AT&T - p. 20) (Eschelon – p. 14) (McLeod – p. 2) (MCI – p. 11)	12/3/2003 OPEN 1/8/2004 – parties agree this issue is addressed in Issue S-1	1/8/2004 –CLOSED – MCI, AT&T, McLeod & Covad agree to close as this issue is addressed in Issue S-1

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		will contact the QCCC before the deadline set. Then the order would stop, it would be cut back to the Qwest switch, translations would not run and Qwest would send a jeopardy notice to the CLEC. CLEC would then supplement the order and follow the standard hot cut process.	If there does happen to be a degradation of service associated with going from UNE-P to UNE-L, if there is no longer a UNE-P option, what then? (McLeod – Forum) Auto Completions from WFA – is it done in batches or by individual orders? (Clauson – Eschelon – Forum)	12/10/2003: Order automation checks for completions in WFA every 3 minutes and issues a request to the SOP to do completions. 12/12/2003 – CLOSED as to Eschelon's issue regarding WFA auto completions.	
Q-2 (See also S-3)	LNP activity	Qwest sets LNP triggers prior to the due date. CLEC subscription activity triggers the porting.	Qwest must submit the number-port activation order to NPAC within 10 minutes after the Batch Hot Cut is completed, with notice to the CLEC after successful completion of each step. (MCI – p. 12-13)	12/3/2003 OPEN – See also S-3 1/8/2004 – Qwest is not willing to perform LNP porting activity for the CLEC. Qwest is proposing CLECs use the web-based status tool and Trap & Trace capability to identify when hot cut activity is completed so that they can submit their own number port activation to the NPAC.	1/8/2004 – CLOSED. AT&T, MCI, Covad & McLeod agree to close.
PROCESS TESTING/PERFORMANCE MEASURES					
T-1	Should Qwest provide some demonstrable method to show that the Batch Hot Cut process works.	No. There is no such requirement in the TRO. The State Commissions shall establish and implement a batch hot cut process by July, 2004. Development of a test and	Process must be thoroughly tested to guarantee operational readiness. (AT&T – p. 21) AT&T recommends that there be some sort of testing process that uses existing Qwest customers,	12/3/2003 OPEN – OPEN - Qwest will take back – possibility of proposing some demonstrable vehicle/evidence to show that the process works.	1/8/2004 – IMPASSE as to the issue of whether there is a requirement for Qwest to provide demonstrable proof that its proposed Batch Hot Cut process works prior to state commission approval.

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		incorporating a test as AT&T envisions takes an extensive amount of time that the timeframes provided by the FCC do not provide.	subject to monitoring by the State Commissions. (AT&T) The test would have Qwest become a CLEC in its own territory establish a collocation, insert the required equipment, backhaul to a second CO, where it would have the backhaul connected to the second switch. Test would use Qwest's existing retail customers, and would test the 911 process, the LNP process etc. As the test was performed, there could be independent observations by the State Staffs to see how Qwest is performing. (AT&T – Forum) Subject to further discussion, expect that it would provide 100 cuts per day for a series of days. (AT&T – Forum) Qwest would have to send orders to itself via the GUI. (AT&T – Forum) The test does not have to be set up and completed prior to implementation of the process. The State Commissions can approve and implement the process and then perform the test. (AT&T	12/19/2003 – Closed as to Rick Carter of the Oregon PUC question as to whether there a current work operation that could simulate a Batch Hot Cut that would illustrate Qwest's competency in this type of activity e.g., existing hot cut process bulk cuts to DLC etc. Qwest will take back – suggestions made by Don Gray from the Nebraska Commission and Rick Carter from the Oregon Commission regarding alternatives to testing e.g., PROCESS metrics 12/10/2003: Response to Don Gray (Nebraska Commission) suggestion regarding documentation of training and proficiency technicians and others involved in the batch hot cut process: Qwest is committed to training its affected workforce once the BHC process is finalized to ensure that technicians are proficient in the activities required by the process.	

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			– Forum) AT&T doesn't think the system or process will be the problem – the problem will be that you have a lot of human touch-points that create the opportunity for error. AT&T wants to see volumes of the level that could be expected with the process and some way to show that the process works under those volumes AT&T believes it is appropriate to test the actual process – once the process is developed – it should go through the test. As to the notion that there is something out there today that is a proxy – AT&T doesn't want to pursue that. Not suggesting that the testing has to be a part of any process proposal that the Commissions will approve – it can be done serially after the Commissions have issued their decisions. (AT&T 12/19/2003 Forum) Commercial testing must be an integral part of any approval process. (MCI – pp. 5 & 6) MCI does not believe a third party		

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			test is required. There must be metrics put in place and the commercial operation with the ability to look at performance and with distinct performance metrics and remedies is the way to go. It is commercial day-to-day activity that is monitored and that there are sanctions/penalties for non-performance. (MCI – Forum) MCI concerned that the ancillary processes that surround the batch hot cut process can handle the volumes that a batch process may bring about. Not something within the control of Qwest, however, will be an issue that may directly impact customers. So MCI believes must work through the process, the process must be measurable and then see what happens in the commercial world once the process is implemented. If there are problems that are impacting end-user customers, there must be a way to stop the process until the issues are addressed. (MCI – Forum) Process must be tested prior to implementation. (Eschelon – p. 16)		

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			Eschelon is interested in getting more information regarding AT&T's testing proposal using Qwest retail customers. (Eschelon – Forum) Qwest should be required to test any proposed Batch Hot Cut process before a Commission makes a finding on whether CLECs are impaired in switching mass-market customers. Qwest must also ensure that associated vendors (numbering administrator, E911 administrator, etc.) can handle any increased loads. (McLeod – p. 2)		
T-2	Performance measures for new Batch Hot Cut process	Long Term PID Administration is the appropriate forum to develop new performance measures associated with the Batch Hot Cut process. Further, there is not the same 9-month deadline associated with developing performance measures. 12/3/2003 - Qwest would be willing to discuss Process Measures – but these are different than Performance Measures. 12/19/2003 - Specifically as to	Performance measures should be developed simultaneously with the process to permit Qwest's performance to be evaluated. (Eschelon – p. 15); MCI – p. 9. Need to have basic metrics and sanctions in place when the process is implemented. Eschelon cautions against delay in development of the metrics. (Eschelon – Forum) Metrics need to be incorporated into the various state PAPs. PIDs must be developed in parallel with the process development. (AT&T	12/3/2003 OPEN - Qwest will take back – providing PROCESS metrics that will be incorporated into the process (Per request of Don Gray) Qwest will take back – identifying those PIDS that apply to the activities associated with the proposed Batch Hot Cut process as well as those that do not apply. (MCI Request) 12/10/2003: Qwest would be willing to work with the Long Term PID Administration (LTPA) facilitator, state commission staff members and CLECs to facilitate expeditious completion of BHC PID development in LTPA once the	1/8/2004 – McLeod recommends the issue be CLOSED with the understanding that the issue was whether there are measures in place today that can be used, with further measures to be developed in the Long Term PID Administration once the process is finalized. AT&T agrees to CLOSE based on the above understanding.

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		the MCI request – the PIDs that impact analog loop provisioning and repair processes are publicly available. Which metrics will be impacted by the Batch Hot Cut process as well as those that need to be developed for the Batch Hot Cut Process is more appropriately addressed by those experts in the LTPA Qwest is not willing to provide the PIDs for discussion in this Forum – the appropriate place for discussion and development is the LTPA.	– Forum) Measure of things like how many order rejected for CFA or customer losing service on the day of the cut or how many cuts done per day. Need a description of the metrics or measurements relating to the accuracy and seamlessness of LNP transactions. (MCI – p. 10) MCI requests that Qwest provide the current PIDs that do apply to the Batch Hot Cut Process and any PIDs that you think do not apply to the Batch, but do apply to Basic or Coordinated or other installation methods. 12/19/2003 – Forum - AT&T believes that all existing PIDs, with the exception of OP-4 and OP-13, would apply to the Batch Hot Cut process.	Batch Hot Cut Process is complete. 12/19/2003 – OPEN –as to MCI issue regarding identifying those existing PIDs that apply to the Batch Hot Cut process. Based on discussion during the 12/19/2003 Forum, MCI will take back the Action Item to provide a response regarding its position on the appropriate forum for development of Performance Measures during January face-to-face Forum. 1/8/2004 – Qwest has committed to support having development of BHC metrics being made a high priority in the Long Term PID Administration. Further, for those PIDs that are not modified, then Batch Hot Cut activity will be included in those measures e.g., analog loop measures. Finally, process oversight exists today that evaluates any problems that may arise to determine the cause and takes steps necessary to rectify the problem to improve the process. In today's world, with no batch hot cut exclusions, which PIDs would cover batch hot cut activity? If you look at general analog loop provisioning PIDs at the very least, OP-4 and OP-13 would not apply to batch hot cut activity. If you look at what the FCC focuses on it is commitments met and new installation service quality. Those PIDs would capture batch hot cut activity.	MCI agrees to CLOSE based on the above understanding. Covad agrees to CLOSE based on the above understanding.

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http://www.qwest.com/wholesale/training/tradeshow/batchhotcutarchive.html

**NOTE: Shaded items are closed issues.

Public Service Commission
State of North Dakota

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January 14, 2004

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000

Dear Mr. Negaard:

On January 14, 2004, the Commission granted Consolidated Communications Networks, Inc.'s request to withdraw its intervention in Case No. PU-439-03-295, Public Service Commission Local Competition Investigation.

A copy of the motion is enclosed.

Sincerely,

Sharon Helbling
Public Utilities Division

Sdh

110 PU-439-03-295 Pages: 1

Letter re approval of Consolidated Comm. request to withdraw its intervention by Public Service Commission

01/15/2004 CC: Comm Legal PUD (3) ALJ

APPROVED
DATE: 1-14-04
KMF

MOTION

January 14, 2004

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission grant Consolidated Communications Networks, Inc.'s request to withdraw its intervention in the Public Service Commission's local competition investigation, Case No. PU-439-03-295.

PJF/sdh

109 PU-439-03-295 Pages: 1

Motion granting Consolidated's request to withdraw intervention by Public Service Commission

01/14/2004 CC: Comm Legal PUD (3) ALJ

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **15th day of January, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **13** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order

The envelopes were addressed as follows:

Robert M Pomeroy Jr
Holland & Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village CO 80111
Cert. No. 7003 1680 0004 9646 3740

Tim Goodwin
Qwest Corporation
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Denver CO 80202
Cert. No. 7003 1680 0004 9646 3764

Mr Thomas F Kelsch
Kelsch Kelsch Ruff & Kranda
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Pringle & Herigstad
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Gary B Witt
AT&T Law Dept
1875 Lawrence St Ste 1575
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Sharon Helbling further deposes and says that on the **15th day of January, 2004**; she deposited in the United States Mail, Bismarck, North Dakota, **12** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of:

Order

Scott Macintosh
Qwest Corporation
P O Box 5508
Bismarck ND 58506-5508

Michael C Strand
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Helena MT 59604-5237

Mary Lohnes
Midcontinent Communications
5001 W 41st St
Sioux Falls SD 57106

Steven D Lysne
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P O Box 2027
Minot ND 58702-2027

Jim Howard
John Staurulakis Inc
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1380 Corporate Ctr Curve
Eagan MN 5512

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Peter Healy
TDS Metrocom Inc
525 Junction Rd Ste 6000
Madison WI 53717

Bob Johnson
IdeaOne Telecom
3239 39th St SW
Fargo ND 58104

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **15th day of January, 2004**.

Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY ORDINARY AND ELECTRONIC MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **15th day of January, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, each containing a photocopy of:

Order

The envelopes were addressed as follows:

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Sharon Helbling

Subscribed and sworn to before me
this **15th day of January, 2004**.

Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

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MOTION

January 14, 2004

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission adopt the Order in the Public Service Commission's Local Competition Investigation, Case No. PU-439-03-295.

PJF

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Motion

by Public Service Commission

01/14/2004 CC: Comm Legal PUD (3) ALJ

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

ORDER

January 14, 2004

On December 3, 2003, the Commission sent Preliminary Discovery Requests to the intervenors in this proceeding requiring responses within 30 days. On December 31, 2003, the Commission extended the response time to January 15, 2004.

On December 24, 2003, the intervening rural ILECs filed a letter requesting that the discovery requests posed to rural ILECs be withdrawn. The rural ILECs state that the questions posed have no application to these rural ILECs since they do not operate in Qwest territory.

On January 7, 2004, Qwest filed a response objecting to the letter request filed by the rural ILECs. Qwest states that although these ILECs may not provide telephone services in local exchanges served by Qwest, some of the ILECs are affiliated with CLECs that provide telephone services in Qwest exchanges. Qwest states that ILEC facilities may be used by these or other CLECs to provide competitive telecommunications services in Qwest exchanges. In addition, Qwest states that some of the ILECs may be providing telecommunications services other than local exchange telephone services within local exchanges served by Qwest.

In the Triennial Review Order (TRO), the FCC found "that in order to gain access to UNEs, carriers must provide qualifying services using the UNE to which they seek access."[1] We agree that the Preliminary Discovery Requests do not apply to rural ILECs that provide no "qualifying services" within the local exchanges served by Qwest. "Qualifying service" is defined in 47 C.F.R. § 51.5 as follows:

> Qualifying service. A qualifying service is a telecommunications service that competes with a telecommunications service that has been traditionally the exclusive or primary domain of incumbent LECs, including, but not limited to, local exchange service, such as plain old telephone

[1] *In the Matter of Review of Section 251 unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *In the matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking, ¶ 135 (rel. Aug. 21, 2003).

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Order
by Public Service Commission

service, and access services, such as digital subscriber line services and high-capacity circuits.

At the Commission's TRO Workshop on November 12, 2003, the parties discussed developing and submitting, jointly or individually, an abbreviated discovery request for CLECs that have not intervened in this proceeding. The Commission has not received any abbreviated discovery request proposals for Commission distribution to non-intervening CLECs.

Order

The Commission orders:

1. To the extent any rural ILEC provides any qualifying service within any of Qwest's exchanges, that rural ILEC is required to answer the Preliminary Discovery Requests to the extent applicable to that rural ILEC.

2. Any rural ILEC not providing any "qualifying service" within any Qwest exchange is not required to answer the Preliminary Discovery Requests.

PUBLIC SERVICE COMMISSION

Susan E. Wefald **Commissioner**	**Tony Clark** **President**	**Kevin Cramer** **Commissioner**

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January 7, 2004

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Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of an Affidavit of Mailing in the above-referenced case. Thank you for your assistance.

Sincerely,

Karol A. Cossette, PLS

Karol A. Cossette, PLS
Secretary to Daniel S. Kuntz

Enclosures

105 PU-439-03-295 Pages: 1
Cover letter re Affidavit of Service
by Qwest Corporation
01/07/2004 CC: Comm Legal PUD (3) ALJ

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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Case No. PU-439-03-295

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: ss.
COUNTY OF BURLEIGH)

The undersigned, being duly sworn, deposes and says that: I am a United States citizen, over 18 years of age, and on January 7, 2004, I served a copy of the attached:

Qwest's Response to Letter Request of Independent Local Exchange Companies

by placing a true copy in a postage paid envelope or envelopes addressed to each person named below, at the address stated below, which is the last known address of the addressee, and by depositing said envelope in the United States mail at Bismarck, North Dakota.

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Robert M. Pomeroy, Jr.
Holland & Hart
8390 E. Crescent Parkway, Ste. 400
Green Village, CO 80111

Karol A. Cossette

Subscribed and sworn to before me, today, January 7, 2004.

NOTARY PUBLIC
State of North Dakota
My commission expires: 1/24/08

KATHI OSTEEN
Notary Public
State of North Dakota
My Commission Expires Jan. 24, 2008

Kathi Osteen

ZUGER KIRMIS & SMITH

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Jerry W. Evenson, P.C.
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Of Counsel
John A. Zuger

Thomas O. Smith
1944-2001

RECEIVED
JAN - 7 2004
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

January 7, 2004

Mr. Jon Mielke
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of Qwest's Response to Letter Request of Independent Local Exchange Companies.

Also enclosed is an extra copy of this letter. Please date stamp the extra copy and return it to us for our file.

Please contact me if you have any questions regarding this filing.

Sincerely,

Karla A. Corette
for Daniel S. Kuntz

Enclosures

c: Scott Macintosh
Tim Goodwin
Parties of Record

100 PU-439-03-295 Pages: 1
Cover letter re Response
by Qwest Corporation by Dan Kuntz, Attorney
01/07/2003 CC: Comm Legal PUD (3) ALJ

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ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	Case No. PU-439-03-295

QWEST RESPONSE TO LETTER REQUEST OF INDEPENDENT LOCAL EXCHANGE COMPANIES

By letter dated December 23, 2003, an unidentified group of Independent Local Exchange Companies ("ILECs") asked that recent discovery requests posed by the North Dakota Public Service Commission in this proceeding to "rural" ILECs be withdrawn. The letter states that the ILECs maintain the rural exemption provided under the Telecommunications Act of 1996 (47 U.S.C. § 251(f)(1) and that the questions posed by the Commission's discovery "have no application to these ILECs since they do not operate in Qwest territory."

Qwest Corporation objects to the ILECs request that the discovery posed to them be withdrawn. While these ILECs may not provide telephone services in local exchanges served by Qwest, some of the ILECs are affiliated with CLECs that provide telephone services in Qwest exchanges. ILEC facilities may be used by these or other CLECs to provide competitive telecommunications services in Qwest exchanges. In addition, some of the ILECs may be providing telecommunications services other than local exchange telephone services within local exchanges served by Qwest. Therefore, Qwest believes the questions posed by the Commission are relevant to these ILECs.

102 PU-439-03-295 Pages: 2

Response to Letter Request of
Independent Local Exchange Companies
by Qwest Corporation by Dan Kuntz, Attorney

01/07/2004 CC: Comm Legal PUD (3) ALJ

Accordingly, to the extent applicable, the discovery requests should be answered by the ILECs.

The ILECs' request for withdrawal of the discovery questions should be denied and the ILECs directed to file respond to the questions in accordance with the Commission's procedural order.

Dated this 7th day of January, 2004.

Respectfully submitted,

Daniel S. Kuntz (ID #03490)
ZUGER KIRMIS & SMITH
P.O. Box 1695
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(701)223-2711

Thomas Dethlefs
Tim Goodwin
QWEST SERVICES CORPORATION
1801 California Street, Suite 4900
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303-672-5823

ATTORNEYS FOR QWEST CORPORATION

P:\DKUNTZ\11337 Triennial Review\response to letter request for withdrawal.doc

APPROVED

DATE: 12-31-03 KME

MOTION

December 31, 2003

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission extend by ten days, to January 15, 2004, the time for responding to the first set of discovery questions in Case No. PU-439-03-295, Public Service Commission, Local Competition

Investigation.

101 PU-439-03-295 Pages: 1

Motion extending ten days to respond to discovery
by Public Service Commission

12/31/2003 CC: Comm Legal PUD (3) ALJ

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.

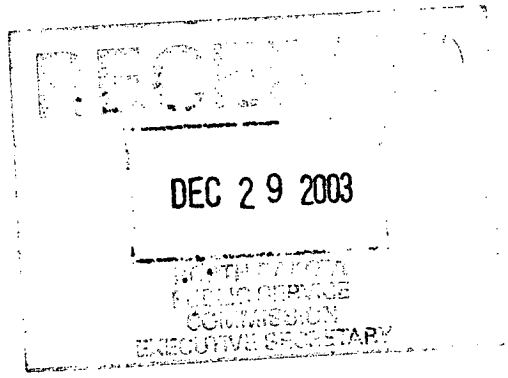
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MARK F. PURDY
JAN M. SEBBY

ROGER O. HERIGSTAD
(1919-2003)



December 24, 2003

Jon Mielke, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION
CASE NO. PU-439-03-295

Enclosed for filing in the above matter are an original and seven copies of RTCG's Affidavit of Service by Mail of our letter dated December 23, 2003.

Jo Thompson
Secretary to Don Negaard

Enclosures

100 **PU-439-03-295** Pages: 8

Affidavit of Service for letter dated 12/23/03
by Rural Telephone Company Group

12/29/2003 CC: Comm Legal PUD (3) ALJ

RECEIVED
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NORTH DAKOTA
PUBLIC SERVICE
COMMISSION

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	)))	Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF WARD)

Jo Thompson, being first duly sworn, deposes and says:

She is a citizen of the United States of America, of legal age and not a party to nor interested in the above-entitled action; on the 24th day of December, 2003, this affiant deposited in the mailing department of the United States Post Office at Minot, North Dakota, sealed envelopes with postage thereon duly prepaid, containing a true and correct copy of the following:

LETTER REQUEST FOR RECOGNITION OF RURAL EXEMPTION
ON BEHALF OF RURAL ILECS

Said envelopes were addressed to the following at their known addresses as follows:

Robert M. Pomeroy Jr.
Holland & Hart, LLP
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Greenwood Village, CO 80111

Dan Kuntz
Attorney for Qwest
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Steven D. Lysne
SRT Communications, Inc.
P.O. Box 2027
Minot, ND 58702-2027

Jo Thompson

Subscribed and sworn to before me this 24th day of December, 2003.

Judith A Tossett
Notary Public
For the State of North Dakota
My commission expires:

JUDITH A. TOSSETT, Notary Public
Ward County, North Dakota
My Commission Expires: 1-8-2004

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ROGER O. HERIGSTAD
(1919-2003)

December 23, 2003

Jon Mielke, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION
CASE NO. PU-439-03-295

We wish to file this request for recognition of rural exemption on behalf of the rural ILECs who petitioned to intervene in this matter. We request the recent questions posed to rural ILECs be withdrawn. We respect and appreciate the role of the North Dakota Public Service Commission (Commission) in facilitating the implementation of the Triennial Review Order.[1]

We respectfully request that the Commission consider the position of these companies. These companies intervened in this matter to monitor the activities in this matter. The focus of this proceeding is a granular analysis of the ability of competitors to compete in Qwest service territories in the state of North Dakota. (See ordering paragraph 527 at page 337.* Text enclosed.) The questions posed have no application to these ILECs since they do not operate in Qwest territory.

None of the rural carriers have received any requests for unbundled network elements in the state of North Dakota. All of these companies retain the rural exemptions outlined in the 1996 Telecommunications Act (47 U.S.C. § 251(f)(1). Given these circumstances, it

[1] In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket 96-98, In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking (rel. Aug. 21, 2003).

is an exercise with no outcome and a moot point to undertake any granular factual review relative to provision of unbundled network elements in rural areas. It is an undue burden for these companies to gather and submit this information at this time since the submission of the information has no relationship or relevance to the granular review (90-day or 9-month review) by the Commission.

There may be a proper time and a proper place for a granular analysis of a rural company's ability to provide unbundled network elements to a requesting carrier. (One such method suggested in paragraph 418 of the TRO at page 260 is a review conducted after a petition is filed.* Text enclosed.) This can be performed in conjunction with the analysis of the particular rural carrier's rural exemption under § 251(f)(1). Due to the diversity of these rural carriers and their unique circumstances in any particular situation, that analysis can best be conducted on an a case-by-case basis. This analysis should be deferred until the appropriate time to do so.

With all due respect to the efforts of the Regional Oversight Committee that developed a list of questions that could be used by state commissions, the rural ILECs submit that a list of questions developed for use in Colorado, Minnesota, or Arizona have no application or relevancy to North Dakota's rural setting. As such, the rural ILECs request the Commission withdraw these questions or recognize that the questions are not applicable to rural ILECs.

Thank you for your consideration of this request.

Don Negaard

jt

Enclosure

ragraph shall be completed within six months of the filing of a petition or other pleading submitted in accordance with the prescribed state procedures.[1611]

(f) State Commission Failure to Act

527. For the mass market, state commissions will conduct their initial reviews, applying the triggers and factors discussed above,[1612] within nine months of the effective date of this Order. The incumbent LEC must continue providing unbundled circuit switching in all locations until a state commission completes its proceedings. To the extent that a state commission fails to complete the granular inquiry,[1613] any aggrieved party may file a petition with this Commission demonstrating a state's failure to act pursuant to the procedures we outline today.[1614] Moreover, should a state commission fail to approve a batch cut migration process or provide a detailed explanation why such a process is not necessary within nine months of this Order's effective date, any aggrieved party will be permitted to initiate a proceeding with this Commission.[1615] The incumbent LEC must continue providing unbundled local circuit switching, subject to the four-line carve-out described above,[1616] while such a petition is pending with this Commission.

7. Transition of the Embedded Customer Base

528. We recognize the need to establish a transition plan to migrate the embedded unbundled local circuit switching customer base to an alternative service arrangement when unbundled local circuit switching is no longer made available. We find that we have the authority to establish such a plan because whether competing carriers can deploy facilities in a timely fashion is a key consideration in determining whether there is impairment. In instances when existing network elements may potentially be eliminated pending a fact-intensive investigation, we find that section 251(d)(2) gives us authority to promulgate reasonable transition rules to protect the public interest by preserving the status quo pending the outcome of the investigation and by giving competitive carriers a realistic opportunity to deploy their own

---

[1611] *See supra* note 1291.

[1612] This includes the state commissions' approval of a batch cut migration process or, in the alternative, the provision of a detailed explanation why such a process is not necessary within nine months of this Order's effective date.

[1613] By "complete," we mean that a state commission, upon receiving sufficient evidence, has an affirmative obligation to review the relevant evidence associated with any market submitted by an interested party, and to apply the trigger and any other analysis specified in this Part to such evidence.

[1614] As discussed above, if a state fails to act, we set forth procedures for the Commission to step into the role of the state. *See supra* Part V.E.2. (discussing the role of the states).

[1615] *See id.*

[1616] *See supra* para. 525.

418. After completion of their initial reviews, we expect state commissions to conduct further granular reviews, pursuant to the procedures the state commissions adopt, to identify additional routes that satisfy the triggers. Such proceedings shall be completed within six months of the filing of a petition or other pleading submitted in accordance with the prescribed state commission procedures.[1291]

D. Local Circuit Switching

1. Summary

419. Pursuant to the approach set forth in the *Triennial Review NPRM*,[1292] the Commission adopts in this Order a more granular analysis for access to unbundled incumbent LEC local circuit switching. Specifically, based on the evidence in the record, we make the following determinations:

- *Local Circuit Switches Serving DS1 Capacity and Higher Enterprise Customers*. Based on evidence of competing carriers' widespread switch deployment to provide DS1 and above capacity service, we find on a national level that requesting carriers are not impaired without access to unbundled local circuit switching when serving DS1 enterprise customers. The states may rebut this finding by petitioning this Commission based on a granular review of specifically enumerated operational and economic criteria regarding facilities-based entry in specific markets.

- *Local Circuit Switches Serving Mass Market Customers.* We find on a national level that requesting carriers are impaired without access to unbundled local circuit switching when serving mass market customers. This finding is subject to a more granular review by the states pursuant to specifically enumerated triggers and other operational and economic criteria regarding facilities-based entry in specific geographic markets.[1293]

[1291] Subsequent to the initial review, states have the flexibility to adopt reasonable and timely procedures for the periodic collection and evaluation of evidence indicating the satisfaction of the transport triggers on additional routes to remove unbundling obligations. For example, a state may decide to include self-reporting information regarding alternative transport deployment in an annual or semi-annual report, either as an independent obligation or as part of the competitive carriers' periodic filing obligations. Alternatively, a state may decide to accept evidence of alternative deployment through petitions filed during prescribed filing windows or through rulemaking proceedings. Regardless of the procedures adopted, however, states that conduct further reviews must complete their evaluation of the evidence and reach a determination within six months of the filing of a petition or other pleading filed pursuant to the state procedures.

[1292] *Triennial Review NPRM*, 16 FCC Rcd at 22806, para. 55.

[1293] *USTA*, 290 F.3d at 422. By establishing an overarching national framework while at the same time developing precisely the type of granularity test called for by the D.C. Circuit in *USTA*, our switching approach allows for the Commission to take advantage of, and build on, the wealth of knowledge and expertise within a national regime for local telephone competition consistent with the federal-state partnership envisioned by the Congress in the Act.

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.

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RECEIVED
DEC 29 2003
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

December 26, 2003

Jon Mielke, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
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PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION
CASE NO. PU-439-03-295

This letter is to advise you that Consolidated Communications Networks, Inc., hereby withdraws as an intervener from the TRO proceeding, Case No. PU-439-03-295. Please note this for your records.

Enclosed is an Affidavit of Service by Mail evidencing the mailing of this letter to the other parties involved in this matter.

Thank you.

Don Negaard

jt

Enclosure

99 PU-439-03-295 Pages: 4
Request to withdraw as an intervener
by Consolidated Communications Networks, Inc.
12/29/2003 CC: Comm Legal PUD (3) ALJ

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	)))	Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF WARD)

Jo Thompson, being first duly sworn, deposes and says:

She is a citizen of the United States of America, of legal age and not a party to nor interested in the above-entitled action; on the 26th day of December, 2003, this affiant deposited in the mailing department of the United States Post Office at Minot, North Dakota, sealed envelopes with postage thereon duly prepaid, containing a true and correct copy of the following:

LETTER OF WITHDRAWAL ON BEHALF OF
CONSOLIDATED COMMUNICATIONS NETWORK, INC.

Said envelopes were addressed to the following at their known addresses as follows:

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Jo Thompson

Subscribed and sworn to before me this 26th day of December, 2003.

Don A. Negaard, Notary Public
For the State of North Dakota
My commission expires: 09/04/09

DON NEGAARD
Notary Public
State of North Dakota
My Commission Expires Sept. 4, 2009

RECEIVED
DEC 22 2003
PUBLIC SERVICE COMMISSION

Affidavit of Publication

Marian Petersen, being duly sworn, state as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.

2. The newspapers listed on the exhibits published the advertisement of:
Public Service Commission. Procedural Order, 1 time(s)
as required by law or ordinance.

3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

Signed: Marian Petersen

State of ND

County of Burleigh

Subscribed and sworn to before me this 19th day of December 20 03

Kelli Richey

KELLI RICHEY
Notary Public
State of North Dakota
My Commission Expires Oct. 13, 2006

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Affidavit of Publication
by North Dakota Advertising Service, Inc
12/22/2003 CC: Comm Legal PUD (3) ALJ

NDNA

rth Dakota Newspaper Associa n
1435 Interstate Loop
Bismarck, ND 58503-0567
Ph (701) 223-6397 • Fax (701) 223-8185

DEC 22 2003

INVOICE

Order **18475-03123PP0** Invoice # **29496** December 19, 2003

Advertiser: **Public Service Commission**

P.O.#:

Attn: JONH. MIELKE
PUBLIC SERVICE COMMISSION
600 E. BOULEVARD AVE.
STATE CAPITOL
BISMARCK, ND 58505

Voice: 701-328-4076

Amount Due	**$89.25**
Amount Paid	

Please detach and return this portion with your payment

Public Service Commission Invoice # 18475-03123PP0-29496

Ad Size	*Rate Type*	*Rate*	*Total*	*Discount*	*(%)*	*Caption*	*Page*	*Run Date*
			DAILY					
Bismarck Tribune (Bismarck ND)								
0.00	SPR2	0.64	0.00	0.00		PSC Procedural Order		12/09/03
Devils Lake Daily Journal (Devils Lake ND)								
72.00	SPR2	0.63	45.36	0.00		PSC Procedural Order		12/08/03
Dickinson Press (Dickinson ND)								
77.00	SPR2	0.57	43.89	0.00		PSC Procedural Order		12/10/03
Fargo, The Forum (Fargo ND)								
0.00	SPR2	0.71	0.00	0.00		PSC Procedural Order		12/15/03
Grand Forks Herald (Grand Forks ND)								
0.00	SPR2	0.69	0.00	0.00		PSC Procedural Order		12/09/03
Jamestown Sun (Jamestown ND)								
0.00	SPR2	0.54	0.00	0.00		PSC Procedural Order		12/13/03
Minot Daily News (Minot ND)								
0.00	SPR2	0.54	0.00	0.00		PSC Procedural Order		12/10/03
Valley City Times-Record (Valley City ND)								
0.00	SPR2	0.61	0.00	0.00		PSC Procedural Order		12/08/03
Wahpeton Daily News (Wahpeton ND)								
0.00	SPR2	0.51	0.00	0.00		PSC Procedural Order		12/10/03
Williston Herald (Williston ND)								
0.00	SPR2	0.61	0.00	0.00		PSC Procedural Order		12/11/03

Gross Advertising	89.25	Total Misc	0.00	Amount Paid	0.00
Agency Discount		Tax	0.00	Adjustments	0.00
Other Discount	0.00	Total Billed	89.25	Payment Date	
Service Charge	0.00	Unbilled	0.00	Balance Due	89.25

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Affidavit of Publication

by North Dakota Advertising Service. Inc.

12/20/2003 CC: Comm Legal PUD (3) ALJ .

Case No: PU-439-03-295

Notice of Procedural Order

Published in:

12/9 – Bismarck

12/8 – Devils Lake

12/10 – Dickinson

12/15 – Fargo

12/9 – Grand Forks

12/13 – Jamestown

12/10 – Minot

12/8 – Valley City

12/10 – Wahpeton

12/11 – Williston

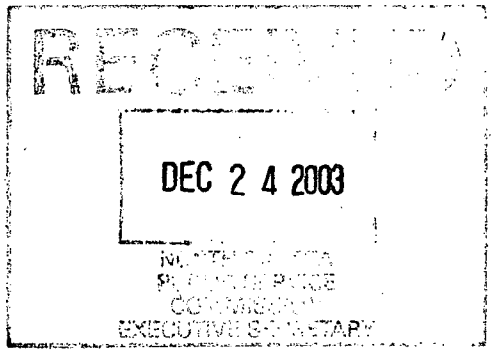
LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
BREMER BANK BUILDING
20 SW 1ST STREET
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

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CAROL K. LARSON
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REED A. SODERSTROM
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HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

ROGER O. HERIGSTAD
(1919-2003)



December 23, 2003

Jon Mielke, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION
CASE NO. PU-439-03-295

We wish to file this request for recognition of rural exemption on behalf of the rural ILECs who petitioned to intervene in this matter. We request the recent questions posed to rural ILECs be withdrawn. We respect and appreciate the role of the North Dakota Public Service Commission (Commission) in facilitating the implementation of the Triennial Review Order.[1]

We respectfully request that the Commission consider the position of these companies. These companies intervened in this matter to monitor the activities in this matter. The focus of this proceeding is a granular analysis of the ability of competitors to compete in Qwest service territories in the state of North Dakota. (See ordering paragraph 527 at page 337.* Text enclosed.) The questions posed have no application to these ILECs since they do not operate in Qwest territory.

None of the rural carriers have received any requests for unbundled network elements in the state of North Dakota. All of these companies retain the rural exemptions outlined in the 1996 Telecommunications Act (47 U.S.C. § 251(f)(1). Given these circumstances, it

[1] In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket 96-98, In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking (rel. Aug. 21, 2003).

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Request for recognition of rural exemption
by Rural Telephone Company Group by Don Negaard,

12/24/2003 CC: Comm Legal PUD (2) Al

is an exercise with no outcome and a moot point to undertake any granular factual review relative to provision of unbundled network elements in rural areas. It is an undue burden for these companies to gather and submit this information at this time since the submission of the information has no relationship or relevance to the granular review (90-day or 9-month review) by the Commission.

There may be a proper time and a proper place for a granular analysis of a rural company's ability to provide unbundled network elements to a requesting carrier. (One such method suggested in paragraph 418 of the TRO at page 260 is a review conducted after a petition is filed.* Text enclosed.) This can be performed in conjunction with the analysis of the particular rural carrier's rural exemption under § 251(f)(1). Due to the diversity of these rural carriers and their unique circumstances in any particular situation, that analysis can best be conducted on an a case-by-case basis. This analysis should be deferred until the appropriate time to do so.

With all due respect to the efforts of the Regional Oversight Committee that developed a list of questions that could be used by state commissions, the rural ILECs submit that a list of questions developed for use in Colorado, Minnesota, or Arizona have no application or relevancy to North Dakota's rural setting. As such, the rural ILECs request the Commission withdraw these questions or recognize that the questions are not applicable to rural ILECs.

Thank you for your consideration of this request.

Don Negaard

jt

Enclosure

paragraph shall be completed within six months of the filing of a petition or other pleading submitted in accordance with the prescribed state procedures.[1611]

(f) State Commission Failure to Act

527. For the mass market, state commissions will conduct their initial reviews, applying the triggers and factors discussed above,[1612] within nine months of the effective date of this Order. The incumbent LEC must continue providing unbundled circuit switching in all locations until a state commission completes its proceedings. To the extent that a state commission fails to complete the granular inquiry,[1613] any aggrieved party may file a petition with this Commission demonstrating a state's failure to act pursuant to the procedures we outline today.[1614] Moreover, should a state commission fail to approve a batch cut migration process or provide a detailed explanation why such a process is not necessary within nine months of this Order's effective date, any aggrieved party will be permitted to initiate a proceeding with this Commission.[1615] The incumbent LEC must continue providing unbundled local circuit switching, subject to the four-line carve-out described above,[1616] while such a petition is pending with this Commission.

7. Transition of the Embedded Customer Base

528. We recognize the need to establish a transition plan to migrate the embedded unbundled local circuit switching customer base to an alternative service arrangement when unbundled local circuit switching is no longer made available. We find that we have the authority to establish such a plan because whether competing carriers can deploy facilities in a timely fashion is a key consideration in determining whether there is impairment. In instances when existing network elements may potentially be eliminated pending a fact-intensive investigation, we find that section 251(d)(2) gives us authority to promulgate reasonable transition rules to protect the public interest by preserving the status quo pending the outcome of the investigation and by giving competitive carriers a realistic opportunity to deploy their own

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[1611] *See supra* note 1291.

[1612] This includes the state commissions' approval of a batch cut migration process or, in the alternative, the provision of a detailed explanation why such a process is not necessary within nine months of this Order's effective date.

[1613] By "complete," we mean that a state commission, upon receiving sufficient evidence, has an affirmative obligation to review the relevant evidence associated with any market submitted by an interested party, and to apply the trigger and any other analysis specified in this Part to such evidence.

[1614] As discussed above, if a state fails to act, we set forth procedures for the Commission to step into the role of the state. *See supra* Part V.E.2. (discussing the role of the states).

[1615] *See id.*

[1616] *See supra* para. 525.

418. After completion of their initial reviews, we expect state commissions to conduct further granular reviews, pursuant to the procedures the state commissions adopt, to identify additional routes that satisfy the triggers. Such proceedings shall be completed within six months of the filing of a petition or other pleading submitted in accordance with the prescribed state commission procedures.[1291]

D. Local Circuit Switching

1. Summary

419. Pursuant to the approach set forth in the *Triennial Review NPRM*,[1292] the Commission adopts in this Order a more granular analysis for access to unbundled incumbent LEC local circuit switching. Specifically, based on the evidence in the record, we make the following determinations:

- *Local Circuit Switches Serving DS1 Capacity and Higher Enterprise Customers*. Based on evidence of competing carriers' widespread switch deployment to provide DS1 and above capacity service, we find on a national level that requesting carriers are not impaired without access to unbundled local circuit switching when serving DS1 enterprise customers. The states may rebut this finding by petitioning this Commission based on a granular review of specifically enumerated operational and economic criteria regarding facilities-based entry in specific markets.

- *Local Circuit Switches Serving Mass Market Customers*. We find on a national level that requesting carriers are impaired without access to unbundled local circuit switching when serving mass market customers. This finding is subject to a more granular review by the states pursuant to specifically enumerated triggers and other operational and economic criteria regarding facilities-based entry in specific geographic markets.[1293]

[1291] Subsequent to the initial review, states have the flexibility to adopt reasonable and timely procedures for the periodic collection and evaluation of evidence indicating the satisfaction of the transport triggers on additional routes to remove unbundling obligations. For example, a state may decide to include self-reporting information regarding alternative transport deployment in an annual or semi-annual report, either as an independent obligation or as part of the competitive carriers' periodic filing obligations. Alternatively, a state may decide to accept evidence of alternative deployment through petitions filed during prescribed filing windows or through rulemaking proceedings. Regardless of the procedures adopted, however, states that conduct further reviews must complete their evaluation of the evidence and reach a determination within six months of the filing of a petition or other pleading filed pursuant to the state procedures.

[1292] *Triennial Review NPRM*, 16 FCC Rcd at 22806, para. 55.

[1293] *USTA*, 290 F.3d at 422. By establishing an overarching national framework while at the same time developing precisely the type of granularity test called for by the D.C. Circuit in *USTA*, our switching approach allows for the Commission to take advantage of, and build on, the wealth of knowledge and expertise within a national regime for local telephone competition consistent with the federal-state partnership envisioned by the Congress in the Act.

APPROVED
DATE: 12-18-03
KME

MOTION

December 18, 2003

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move that Greg Merz, a Minnesota attorney, be given permission to practice before the Commission on behalf of MCI in Case No. PU-439-03-295.

WWB/sdh

96 PU-439-03-295 Pages: 1

Motion permitting Greg Merz to practice before the Commission by Public Service Commission

12/18/2003 CC: Comm Legal PUD (3) ALJ

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **4th day of December, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, **13** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Procedural Order
Preliminary Discovery Requests (to intervenors only)

The envelopes were addressed as follows:

Robert M Pomeroy Jr
Holland & Hart LLP
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Greenwood Village CO 80111
Cert. No. 7003 1680 0004 9646 3313

Dan Kuntz Atty for Qwest
P O Box 1695
Bismarck ND 58502-1695

Cert. No. 7003 1680 0004 9646 3320

Tim Goodwin
Qwest Corporation
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Denver CO 80202
Cert. No. 7003 1680 0004 9646 3337

Marilyn Foss Atty for MCI
P O Box 2216
Bismarck ND 58502-2216

Cert. No. 7003 1680 0004 9646 3344

Mr Thomas F Kelsch
Kelsch Kelsch Ruff & Kranda
P O Box 1266
Mandan ND 58554-7266
Cert. No. 7003 1680 0004 9646 3351

Steven E Noack Atty for IdeaOne
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Fargo ND 58108-2783

Cert. No. 7003 1680 0004 9646 3368

Deborah H Harwood
Integra Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton OR 97006-6902

Cert. No. 7003 1680 0004 9646 3375

Dan Lipschultz Atty for McLeod, U S Link
Moss & Barnett
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95 PU-439-03-295 Pages: 16
Affidavits of Service
by Public Service Commission
12/04/2003 CC: Comm Legal PUD (3) ALJ

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Missouri Valley Communications Inc
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Patrick Durick Atty for Midcontent Comm
P O Box 400
Bismarck ND 58502-0400

Cert. No. 7003 1680 0004 9646 3405

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. 7003 1680 0004 9646 3412

Walter F Eggers III Atty for AT&T
Holland & Hart LLP
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Cheyenne WY 82001-3162
Cert. No. 7003 1680 0004 9646 3429

Gary B Witt
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202
Cert. No. 7003 1680 0004 9646 3436

Sharon Helbling further deposes and says that on the **4th day of December, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, **12** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of:

Procedural Order

Scott Macintosh
Qwest Corporation
P O Box 5508
Bismarck ND 58506-5508

Michael C Strand
P O Box 5237
Helena MT 59604-5237

Mary Lohnes
Midcontinent Communications
5001 W 41st St
Sioux Falls SD 57106

Steven D Lysne
SRT Communications Inc.
P O Box 2027
Minot ND 58702-2027

Jim Howard
John Staurulakis Inc
Eagandale Corporate Ctr Ste 310
1380 Corporate Ctr Curve
Eagan MN 5512

Susan Travis
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202

Thomas F Dixon
WorldCom Inc
707 17th St Ste 4200
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Michel L Singer Nelson
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202

Lesley J Lehr
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202

William A Haas
McLeodUSA
Tech Park
6400 C St SW
Cedar Rapids IA 51404

Peter Healy
TDS Metrocom Inc
525 Junction Rd Ste 6000
Madison WI 53717

Bob Johnson
IdeaOne Telecom
3239 39th St SW
Fargo ND 58104

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **4th day of December, 2003**.

Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY ORDINARY AND ELECTRONIC MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **4th day of December, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, each containing a photocopy of:

Procedural Order

The envelopes were addressed as follows:

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Sharon Helbling

Subscribed and sworn to before me
this **4th day of December, 2003**.

Sandra L. Scott
Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

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Tampa FL 33602-5925

Helbling, Sharon D.

From: Helbling, Sharon D.
Sent: Wednesday, December 03, 2003 2:31 PM
To: ndna (E-mail)
Subject: Attached Procedural Order

Colleen Park
North Dakota Newspaper Association

Colleen:

Please have the attached Procedural Order published as a legal publication in the next issue of the ten North Dakota daily newspapers and run it as a "News Item Only" article as well.

Please send the bill to the Public Service Commission, along with a tear sheet for billing purposes.

If you have any questions, let me know.

Thank you.

Sharon Helbling
Public Utilities Division

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/E-mailed Procedural Order to NDNA requesting publication by Public Service Commission

12/03/2003 CC: Comm Legal PUD (3) ALJ

APPROVED
DATE: 12-3-03
KMF

MOTION

December 3, 2003

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission adopt the Procedural Order in the Public Service Commission's Local Competition Investigation, Case No. PU-439-03-295.

PJF

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Motion approving Procedural Order

by Public Service Commission

12/03/2003 CC: Comm Legal PUD (3) ALJ

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

PROCEDURAL ORDER

December 3, 2003

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order (TRO) and adopted new rules concerning incumbent local exchange carrier (ILEC) obligations to unbundle certain elements of their networks and make those unbundled network elements (UNEs) available to competitive local exchange carriers (CLECs). The FCC made nationwide findings of impairment or non-impairment for switching and certain high capacity loops and dedicated transport network elements, but has given the opportunity for state commissions to engage in additional fact finding and make alternative impairment findings based on a more granular impairment analysis of the markets in each respective state. The rules became effective on October 2, 2003.

For a significant group of issues, the FCC requires state commissions to complete their analyses and reviews within nine months from the effective date of the *TRO*. These issues concern high capacity loops, dedicated transport, batch hot cut process, DS0 crossover point, and mass market switching.

On November 7, 2003, the Commission issued a Notice of Multi-State Batch Hot Cut Forum and Procedural Order. By the Notice, the Commission endorsed a multi-state forum with participation by ILECs, CLECs, as well as state commission personnel and other interested parties that will attempt to reach agreement on a batch hot cut process for use by all states within the Qwest Corporation region. The Procedural Order adopted in that Notice is included in this Procedural Order.

The Commission originally set October 24, 2003 as an intervention deadline in this case, and several petitions to intervene have been received. However, in an effort to facilitate the sharing of sufficient information among all potentially interested parties, so that each potentially interested party can make an informed decision about the impact of the case and the appropriate level of participation, the Commission held a workshop on November 24, 2003. At the workshop, Qwest indicated that it would be seeking a non-impairment finding for switching network elements.

The Commission now adopts the following schedule and procedural requirements:

ACTIVITY	DUE DATE
Commission Notice to all CLECs within respective states regarding batch hot cut forum	November 7, 2003

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Procedural Order
by Public Service Commission
12/03/2003 CC: Comm Legal PUD (3) ALJ

Qwest submits its batch hot cut proposal which will include a detailed description of the process, including, but not limited to, capacity, Pre-order, Ordering and Provisioning, the proposed cost for the batch hot cut activities, and the intervals.	November 12, 2003
CLECs submit comments/counter proposals to Qwest's batch hot cut proposal	November 18, 2003
Initial Batch Hot Cut Forum – Denver, Colorado	December 1-3, 2003
Preliminary Discovery Questions regarding switching network element impairment/non-impairment distributed by the Public Service Commission	December 3, 2003
Weekly conference calls on batch hot cut proposal, if useful. Face-to-face meetings as necessary (in Seattle, Washington & Phoenix, Arizona)	December 4, 2003 - January 15, 2004
Deadline for requests to intervention	December 22, 2003
Simultaneous filing to the Commission of direct testimony on impasse issues regarding the batch hot cut process and filing of a Stipulation among parties on areas of agreement/consensus items.	January 20, 2004
Simultaneous filing to the Commission of rebuttal testimony regarding the batch hot cut process	February 17, 2004
Simultaneous filing to the Commission of direct testimony regarding switching network element impairment/non-impairment	March 8, 2004
Simultaneous filing to the Commission of rebuttal testimony regarding switching network element impairment/non-impairment	April 19, 2004
Commission hearing	May 10-14, 2004
Commission hearing continued	May 24-28, 2004
Commission Decision	Required by July 1, 2004

PUBLIC SERVICE COMMISSION

Susan E. Wefald
Commissioner

Tony Clark
President

Kevin Cramer
Commissioner

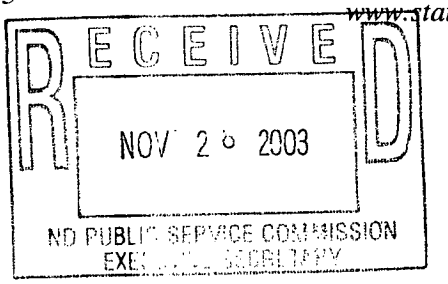
OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C. Hoberg
DIRECTOR

701-328-3260
Fax 701-328-3254
oah@state.nd.us
www.state.nd.us/oah

November 26, 2003



Mr. William W. Binek
Hearing Administrator
Public Service Commission - Dept. 408
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Binek:

Thank you for your November 25, 2003, request of the designation of an administrative law judge from the Office of Administrative Hearings to conduct a hearing in the matter of Qwest Corporation (PU-439-03-295). I hereby designate myself as administrative law judge to conduct the hearing in regard to this matter. Because the administrative law judge will not be making recommended findings of fact and conclusions of law, or issuing a recommended order, the person or persons who will actually be making the final administrative decision in regard to this matter (i.e., agency head, deputy, board, commission) must actually be in attendance at the hearing.

Please send all additional relevant documents in regard to this matter (correspondence, and other pleadings and documents) to the designated administrative law judge in care of the Office of Administrative Hearings, 1707 North 9th Street, Bismarck, North Dakota 58501-1882. I understand the hearing has been scheduled for May 10 - 14, 2004 and May 24 - 28, 2004 in the Commission's Hearing Room, 12th Floor, State Capitol, 600 East Boulevard, Bismarck, North Dakota.

Sincerely,

Allen C. Hoberg
Director

ACH:ps

c: Daniel S. Kuntz

91 **PU-439-03-295** Pages: 1
Allen Hoberg designated ALJ for hearings
by Office of Administrative Hearings
11/28/2003 CC: Comm Legal PUD (3) ALJ

Reply to:

[X] 1707 North 9th Street, Bismarck, North Dakota 58501 · Phone (701) 328-3260 · Fax (701) 328-3254
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Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Jon H. Mielke

November 25, 2003

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Phone 701-328-2400

Mr. Allen C. Hoberg
Office of Administrative Hearings
1707 North 9th Street, Lower Level
Bismarck, ND 58501

Re: Case No. PU-439-03-295
Public Service Commission
Local Competition
Investigation

Dear Mr. Hoberg:

Enclosed is a request for an administrative law judge in the above case. The Commission has scheduled hearings for May 10 – 14, 2004 and May 24 – 28, 2004, in the Commission's Hearing Room, 12th Floor, State Capitol, Bismarck. The administrative law judge will serve as a procedural law judge, a court reporter may be present, and the hearing will be tape recorded. A copy of the case is enclosed.

Please provide the Commission with a copy of any filings issued by your office in this matter.

If you have any questions, please contact me. Thank you.

Sincerely,

William W. Binek
Hearing Administrator

/sls
Enclosure

c: Parties of Record

90 PU-439-03-295

Pages: 1

Letter to ALJ

by Public Service Commission

11/25/2003

CC: Comm Legal PUD (3)

REQUEST FOR ADMINISTRATIVE LAW JUDGE--APPEAL, APPLICATION, OR PETITION

NORTH DAKOTA OFFICE OF ADMINISTRATIVE HEARINGS

SFN 17819 (Rev. 03-2001)

Name of Agency, Board, or Commission
Public Service Commission

The above named agency, board, or commission requests designation of an administrative law judge from the Office of Administrative Hearings for the Public Service Commission Local Competition Investigation; Case No. PU-439-03-295

(e.g., application of [name], appeal of [name], petition of [name]). Authority for the administrative action is found in Title 49 (North Dakota Century Code and/or North Dakota Administrative Code).

Please attach related documents and correspondence.

The administrative action is more fully described as follows:
Formal Hearings will be held May 10 - 14, 2004 & May 24 - 28, 2004, (time to be determined) in the Commission Hearing Room, 12th Floor, State Capitol, Bismarck, ND.

It requests designation of an administrative law judge (please check one):

- ☐ **To conduct the hearing and issue recommended findings of fact, conclusions of law, and order.**
- ☑ **To serve as a procedural administrative law judge only (no recommended decision). The agency head will be present at the hearing as required by NDCC 54-57-04(6).**
- ☐ **To conduct the hearing, issue findings of fact, conclusions of law, and a final order.**

PLEASE MAKE A REQUEST FOR AN ADMINISTRATIVE LAW JUDGE AT LEAST ONE MONTH BEFORE THE HEARING.

Please list parties, including the agency if it is a Party, and Representation [attorney (or other)] if known, or Agency Contact: (Attach separate list if necessary.)

AGENCY Public Service Commission	Address 600 E. Blvd. Ave., Dept. 408, Bismarck, ND 58505	Telephone Number 328-2400
Representation William W. Binek	Address Same as Above	Telephone Number 328-4088
PARTY See Attached	Address	Telephone Number
Representation	Address	Telephone Number
PARTY	Address	Telephone Number
Representation	Address	Telephone Number

Additional Comments
The hearings will be tape recorded and a court reporter present.

(For agencies required to use OAH, notice of hearing will be issued by the administrative law judge, unless a procedural administrative law judge is requested. Other requesting agencies and agencies requesting a procedural administrative law judge should first contact OAH about scheduling a hearing. If notice has already been issued, attach a copy of the notice.)

Typed or Printed Name and Title of Requesting Person William W. Binek, Hearing Administrator	Date November 25, 2003
Signature of Requesting Person X	Telephone Number 328-4088

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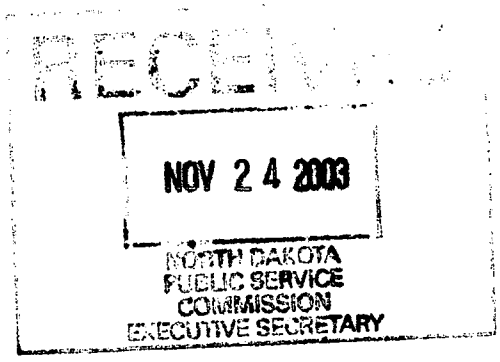
INTERVENOR LIST
Case No PU-439-03-295

INTERVENOR	REPRESENTATIVE	TELEPHONE #	E-MAIL	LAW FIRM
AT&T Communications of the Midwest, Inc.	Mary Tribby	303-298-6508		
	Walter Eggers III			Holland & Hart LLP
	Gary Witt			
	Letty Friesen			
	Richard Wolters			
	Steven Weigler			
	Rebecca DeCook			
				Kelsch Kelsch Ruff & Kranda
	Thomas F. Kelsch			
	Robert Pomeroy Jr.			Holland & Hart LLP
	Thomas O'Donnell			Holland & Hart LLP
	James Tarpey			Holland & Hart LLP
	Thorvald Nelson			Holland & Hart LLP
Qwest Corporation	Dan Kuntz	701-223-2711		Zuger Kirmis & Smith
	Tim Goodwin			
McLeodUSA Telecommunications Services, Inc.	Dan Lipschultz	612-347-0306	LipschultzD@moss-barnett.com	Moss & Barnett
U.S. Link, Inc.	Dan Lipschultz	612-347-0306	LipschultzD@moss-barnett.com	Moss & Barnett
WorldCom, Inc	Susan Travis	303-390-6845		
	Marilyn Foss	701-355-4538	foss@btinet.net	
	Tom Dixon			
	Michelle Singer-Nelson			
	Lehr			
IdeaOne Telecom Group, LLC	Steven Noack	701-235-2506	snoack@gunhuslaw.com	
Integra Telecom	Deborah Harwood	503-748-1000		
Missouri Valley Communications Inc.	Dick Thronson	406-783-5125		
	Michael Strand	406-443-1940		
Rural Telephone Company Group	Don Negaard	701-852-0381	pringle@SRT.com	Pringle & Herigstad PC
Midcontinent Communications	Patrick Durick	701-223-2890	law.office@pearce-durick.com	Pearce & Durick
	Mary Lohnes	605-357-5459		

MARILYN FOSS
- Attorney at Law -
Post Office Box 2216
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Phone: 701-355-4538
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Cell: 701-471-3045



November 24, 2003

Jon Mielke, Executive Secretary
Public Service Commission
600 East Boulevard Ave Dept 408
Bismarck, ND 58505-0480

RE; Case No. PU 439-03-295

Dear Mr. Mielke:

Enclosed for filing is the original and seven copies of a motion for the admission of Greg Merz, a Minnesota attorney, as co-counsel for MCI in this proceeding. Please advise me of the Commission's determination of this motion. Thank you.

Sincerely Yours,

Marilyn Foss

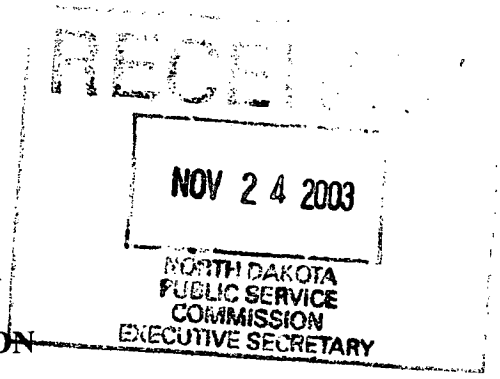
Marilyn Foss

Via Email: Greg Merz
Susan Travis

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Cover letter ro Motion for Admission to Practice
by MCI Telecommunications Corporation by Marilyn Fc

11/24/2003 CC: Comm Legal PUD (3)



STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

MOTION FOR ADMISSION TO PRACTICE

Marilyn Foss, on behalf of WorldCom, Inc. ("MCI"), moves the Public Service Commission to approve the admission of Greg Merz as co-counsel for MCI in Case No. PU-439-03-295. Mr. Merz's address and other contact information is as follows:

Before December 5, 2003

Greg Merz
Grey, Plant Moody
3400 City Center
33 South 6th Street
Minneapolis, MN 55412
Tel: 612-343-2891
Fax: 612-333-0066

After December 5, 2003

Greg Merz
Grey, Plant, Moody
500 IDS Center
80 South 8th Street
Minneapolis, MN 55412
Tel: 612-632-3257
Fax: 612-632-4257

Dated: November 24, 2003

Respectfully Submitted,

Marilyn Foss, ND ID No. 03474
Counsel for MCI
PO Box 2216
Bismarck, ND 58502-2216
Tel: 701-355-4538
Fax: 701-355-4539

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Motion for Admission to Practice for Greg Merz ac co-counsel
by MCI Telecommunications Corporation by Marilyn Fc

11/24/2003 CC: Comm Legal PUD (3)

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **21st day of November, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, **11** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order Granting Intervention

The envelopes were addressed as follows:

Mary B Tribby
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202
Cert. No. 7003 1680 0004 9464 2996

Tim Goodwin
Qwest Corporation
1801 California St Ste 4900
Denver CO 80202
Cert. No. 7003 1680 0004 9646 3016

Mr Thomas F Kelsch
Kelsch Kelsch Ruff & Kranda
P O Box 1266
Mandan ND 58554-7266
Cert. No. 7003 1680 0004 9646 3030

Deborah H Harwood
Integra Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton OR 97006-6902

Cert. No. 7003 1680 0004 9646 3054

Dan Kuntz Atty for Qwest
P O Box 1695
Bismarck ND 58502-1695

Cert. No. 7003 1680 0004 9646 3009

Marilyn Foss Atty for MCI
P O Box 2216
Bismarck ND 58502-2216

Cert. No. 7003 1680 0004 9646 3023

Steven E Noack Atty for IdeaOne
500 2nd Ave N Ste 514
Fargo ND 58108-2783

Cert. No. 7003 1680 0004 9646 3047

Dan Lipschultz Atty for McLeod, U S Link
Moss & Barnett
4800 Wells Fargo Ctr
90 S 7th St
Minneapolis MN 55402-4129
Cert. No. 7003 1680 0004 9646 3061

Dick Thronson Manager
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59623-0600
Cert. No. 7003 1680 0004 9646 3078

Patrick Durick Atty for Midcontent Comm
P O Box 400
Bismarck ND 58502-0400

Cert. No. 7003 1680 0004 9646 3085

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. 7003 1680 0004 9646 3092

Sharon Helbling further deposes and says that on the **21st day of November, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, **22** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Scott Macintosh
Qwest Corporation
P O Box 5508
Bismarck ND 58506-5508

Michael C Strand
P O Box 5237
Helena MT 59604-5237

Mary Lohnes
Midcontinent Communications
5001 W 41st St
Sioux Falls SD 57106

Steven D Lysne
SRT Communications Inc.
P O Box 2027
Minot ND 58702-2027

Letty S D Friesen
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202

Richard S Wolters
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202

Steven H Weigler
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202

Rebecca B DeCook
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202

Thorvald A Nelson
Holland & Hart LLP
8390 E Crescent Pkwy – Ste 400
Greenwood CO 80111

Robert M Pomeroy Jr
Holland & Hart LLP
8390 E Crescent Parkway – Ste 400
Greenwood Village CO 80111

Thomas R O'Donnell
Holland & Hart LLP
555 17th St – Ste 3200
Denver CO 80202-3979

James K Tarpey
Holland & Hart LLP
8390 E Crescent Pkwy – Ste 400
Greenwood CO 80111

Jim Howard
John Staurulakis Inc
Eagandale Corporate Ctr Ste 310
1380 Corporate Ctr Curve
Eagan MN 5512

Walter F Eggers III Atty for AT&T
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne WY 82001-3162

Gary B Witt
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202

Susan Travis
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202

Thomas F Dixon
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202

Michel L Singer Nelson
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202

Lesley J Lehr
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202

William A Haas
McLeodUSA
Tech Park
6400 C St SW
Cedar Rapids IA 51404

Peter Healy
TDS Metrocom Inc
525 Junction Rd Ste 6000
Madison WI 53717

Bob Johnson
IdeaOne Telecom
3239 39th St SW
Fargo ND 58104

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **21st day of November, 2003**.

Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

MOTION

APPROVED
DATE: 11-20-03
KMF

November 20, 2003

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission adopt the Order Granting Intervention to the Rural Telephone Company Group in the Public Service Commission's Local Competition Investigation, Case No. PU-439-03-295.

PJF

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Motion

by Public Service Commission

11/20/2003 CC: Comm Legal PUD (3)

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

ORDER GRANTING INTERVENTION

November 20, 2003

On October 24, 2003, Pringle & Herigstad, P.C. filed a Petition to Intervene in this proceeding on behalf of the Rural Telephone Company Group (RTCG). On November 13, 2003 Pringle & Herigstad, P.C. filed an amendment to its Petition. The RTCG is comprised of BEK Communications Cooperative, Consolidated Communications Networks, Inc., Consolidated Telcom, Dakota Central Telecommunications Cooperative, Dakota Central Telcom I, Inc., Dickey Rural Telephone Cooperative, Dickey Rural Communications, Inc., Dickey Rural Access, Inc., Griggs County Telephone Co, Inter-Community Telephone Company, L.L.C., Midstate Telephone Company, Midstate Communications Inc., Moore and Liberty Telephone Company, North Dakota Telephone Company, Northwest Communications Cooperative, Polar Communications Mutual Aid Corporation, Polar Telecommunications, Inc., Polar Telcom, Inc., Red River Rural Telephone Association, Red River Telecom, Inc., Reservation Telephone Cooperative, SRT Communications, Inc., Turtle Mountain Communications, Inc., United Telephone Mutual Aid Corporation, and West River Telecommunications Cooperative. The companies of the RTCG are licensed local exchange carriers or competitive local exchange carriers in North Dakota.

The petition stated that the RTCG has substantial financial and legal interests in the issues regarding the availability or unavailability of certain unbundled network elements. The Commission finds the RTCG does have an interest in these matters and its participation will not unduly broaden the issues or delay the proceedings.

Order

The Commission orders:

1. The petition of the Rural Telephone Company Group, to intervene in this proceeding is granted.

2. Admission as an intervenor shall not be construed as recognition by the Commission that an intervenor might be aggrieved by an order of the Commission in this case.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

Affidavit of Publication

Colleen Park, being duly sworn, state as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.

2. The newspapers listed on the exhibits published the advertisement of:

   PSC; Multistate Batch, 1 time(s)
   as required by law or ordinance.

3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

Signed: Colleen Park

State of ND

County of Burleigh

Subscribed and sworn to before me this 18th day of November 2003.

Kelli Richey

KELLI RICHEY
Notary Public
State of North Dakota
My Commission Expires Oct. 13, 2006

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Affidavit of Publication

by North Dakota Advertising Service, Inc.

11/20/2003 CC: Comm Legal PUD (3)

North Dakota Newspaper Association
1435 Interstate Loop
Bismarck, ND 58503-0567
Ph (701) 223-6397 • Fax (701) 223-8185

NOV 20 2003
NOV 20 2003
NORTH DAKOTA PUBLIC SERVICE COMMISSION EXECUTIVE SECRETARY

INVOICE

Order **18317-03113PP2** Invoice# **27655**

November 19, 2003

Attn: JONH. MIELKE
PUBLIC SERVICE COMMISSION
600 E. BOULEVARD AVE.
STATE CAPITOL
BISMARCK, ND 58505
Voice: 701-328-4076

Advertiser: **Public Service Commission**

P.O.#: **PU-439-03-295**

Amount Due **$1,980.00**

Amount Paid

Please detach and return this portion with your payment

Public Service Commission Invoice # 18317-03113PP2-27655 PO# PU-439-03-295

Ad Size	*Rate Type*	*Rate*	*Total*	*Discount*	*(%)*	*Caption*	*Page*	*Run Date*
Bismarck Tribune (Bismarck ND)								
30.00	SPR1	9.00	270.00	0.00		Multi-State Batch Hot		11/13/03
Devils Lake Daily Journal (Devils Lake ND)								
30.00	SPR1	5.00	150.00	0.00		Multi-State Batch Hot		11/13/03
Dickinson Press (Dickinson ND)								
30.00	SPR1	5.00	150.00	0.00		Multi-State Batch Hot		11/13/03
Fargo, The Forum (Fargo ND)								
30.00	SPR1	9.00	270.00	0.00		Multi-State Batch Hot		11/17/03
Grand Forks Herald (Grand Forks ND)								
30.00	SPR1	9.00	270.00	0.00		Multi-State Batch Hot		11/13/03
Jamestown Sun (Jamestown ND)								
30.00	SPR1	5.00	150.00	0.00		Multi-State Batch Hot		11/13/03
Minot Daily News (Minot ND)								
30.00	SPR1	9.00	270.00	0.00		Multi-State Batch Hot		11/13/03
Valley City Times-Record (Valley City ND)								
30.00	SPR1	5.00	150.00	0.00		Multi-State Batch Hot		11/13/03
Wahpeton Daily News (Wahpeton ND)								
30.00	SPR1	5.00	150.00	0.00		Multi-State Batch Hot		11/13/03
Williston Herald (Williston ND)								
30.00	SPR1	5.00	150.00	0.00		Multi-State Batch Hot		11/13/03

Gross Advertising	1,980.00	Total Misc	0.00	Amount Paid	0.00
Agency Discount		Tax	0.00	Adjustments	0.00
Other Discount	0.00	Total Billed	1,980.00	Payment Date	
Service Charge	0.00	Unbilled	0.00	Balance Due	1,980.00

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Affidavit of Publication

by North Dakota Advertising Service, Inc.

11/20/2003 CC: Comm Legal PUD (3)

Case No: PU-439-03-295

Notice of Multi-state batch hot cut forum and procedural order

Published in:

11/13 – Bismarck

11/13 – Devils Lake

11/13 – Dickinson

11/17 – Fargo

11/13 – Grand Forks

11/13 – Jamestown

11/13 – Minot

11/13 – Valley City

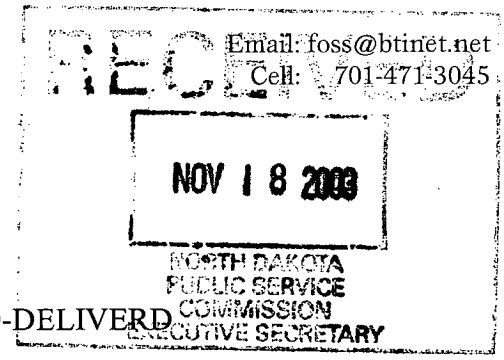
11/13 – Wahpeton

11/13 – Williston

MARILYN FOSS
- Attorney at Law -
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Bismarck, ND 58502-2216

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November 18, 2003

John Mielke, Executive Secretary
PUBLIC SERVICE COMMISSION
600 East Boulevard Avenue Dept 480
Bismarck, ND 58505-0480

HAND-DELIVERD

Re: Public Service Commission Local Competition Investigation
Case No. PU 439-03-295

Mr. Mielke:

Enclosed in the captioned matter is MCI'S RESPONSE TO QWEST'S PROPOSAL FOR REGION-WIDE BATCH LOOP CONVERSION PROCESS, together with a Certificate of Service for same. Please file this document. Thank you.

Sincerely Yours,

Marilyn Foss

Marilyn Foss

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Cover letter re: MCI Response

MCI Communications Corporation by Marilyn Fo

11/18/2003 CC: Comm Legal PUD (3)

DIVIDER

STATE OF NORTH DAKOTA

□INFORMATION TECHNOLOGY DEPARTMENT

SFN 2053 (4-2002)

PU-439-03-295
Public Service Commission
Local Competition
Investigation 03
Filed 6/2/2003 **Closed 2/9/2006**

Cont.

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NOV 18 2003
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-295

MCI'S RESPONSE TO QWEST'S PROPOSAL FOR REGION-WIDE BATCH LOOP CONVERSION PROCESS

WorldCom, Inc., on behalf of its regulated subsidiaries, ("MCI") submits this response to Qwest Corporation's ("Qwest") proposal for a region-wide batch hot cut ("BHC") process. These are preliminary comments based upon MCI's review of Qwest's proposal in less than a week. Qwest's proposal is being circulated within MCI to its relevant business units and its information technology personnel for review and comment. Accordingly, MCI requests and reserves the right to provide additional and more complete comments as the 14-state collaborative forum progresses.

INTRODUCTION

Qwest has made a number of legal arguments concerning what it believes it is obligated to provide for a batch hot cut process. MCI does not intend to address those legal arguments in depth in this preliminary filing. Rather, MCI will state from a business perspective what it needs for a batch hot cut process.

Although Qwest states that its current process to convert lines from one competitive local exchange carrier's ("CLEC") circuit switch to another in a "batch process", is adequate, it nevertheless has proposed modifications which, in MCI's opinion, are not sufficiently defined

and create risks that the end user customers may have a greater likelihood of losing service for longer periods of time. In other words, Qwest's proposed changes tend to reduce the quality of services proposed, for example, by eliminating certain testing, by eliminating the sending of test results, by contacting CLECs by e-mail to notify of the completion of a hot cut, and by doing pre-wiring on the day of the cut instead of in advance of the cut. This elimination of services associated with conversion of lines poses greater risks to end users that their lines will be out of service longer, that the cut will not take place when scheduled, or that other service failures will increase.

Nevertheless, MCI remains hopeful that procedures and practices eventually emanating from the Qwest's BHC process will help to facilitate the orderly and seamless migration of a portion of its current, or embedded, UNE-P-based mass market customers to services provided over unbundled loop ("UNE-L") facilities purchased from Qwest and switching facilities owned and/or controlled by MCI itself in areas where it is economically viable to do so. It is MCI's expectation that any processes designed to facilitate such a migration will be efficient, economical and, most importantly, non-customer impacting. MCI does not believe, however, that the mere *identification* – as distinguished from the designing, testing, implementing and on-going performance in a commercial environment – of a BHC process is sufficient to address questions of actual impairment.

MCI encourages Qwest, the Commission and its Staff, and all other Parties involved in this collaborative forum to recognize that the establishment or modification of a BHC process must be considered along with all other affected systems, procedures and practices in order to verify that each such system, procedure and practice will effectively perform its designed

functions simultaneously under commercial loads. Also, a BHC process must address other areas of impairment relating to other types of hot cuts - such as CLEC-to-CLEC migrations, CLEC-to-ILEC migrations which will occur after the embedded base of a given has been transitioned to UNE-L in a given geographic market or the migration of customers who have CLEC data services from UNE-P line splitting to UNE-L line splitting.

MCI also encourages Qwest, the Commission and its Staff, and all other Parties involved in this collaborative forum to remain focused on the long-term objectives involved with the establishment of an efficient BHC process and to consider not only the short-term, manual modifications, but the longer term possibilities including, for example, the wider implementation of GR303 capable Integrated Digital Loop Carrier ("IDLC") systems which would allow for the unbundling of IDLC based loops without migration to "other facilities," which often times contributes to additional manual processing, delays and errors. The use of automated or robotic frames should also be contemplated as a longer-term solution, particularly in unmanned central offices ("COs") similar to those in which such technologies have already been tested, proven and are currently operational.

Finally, consideration must be given to a competitively neutral cost recovery mechanism for all costs. Qwest has failed to provide any total element long run incremental cost ("TELRIC") studies or proposed any new rates for its proposed BHC process. This is critical since the pricing must reflect Qwest's efficiencies gained from the BHC process. For instance, the BHC process will significantly reduce coordination costs and such reductions should be reflected in the economic costs.

SUMMARY OF MCI'S BHC PROCESS CRITERIA

The Federal Communications Commission's ("FCC") BHC process must be implemented by Qwest for purposes of provisioning unbundled loops. [see FCC rule §51.319(d)(2)(ii)]. Any BHC process implemented by MCI, including the internal systems/processes needed to complement the Qwest process, will be directly affected by Qwest's BHC process ultimately adopted by the Commission. It is not possible to identify all relevant CLEC operational issues in a vacuum, because the systems of both Qwest and the CLECs must be considered together. That is, systems and processes must be in place in the functional areas of pre-ordering, ordering, provisioning, and maintenance and repair in order to identify all operational issues.

There are, however, certain criteria that MCI believes must be captured by Qwest's BHC process to be consistent with the FCC's *Triennial Review Order* ("TRO"). Those include at least the following:

a. The process must be largely mechanized if it is to comply with the FCC's requirements of seamlessness, scalability and low cost. MCI believes that the mechanized process currently available for UNE-P migrations stands as a workable benchmark against which any seamless, scalable and low cost BHC process should be measured.

b. The process must be largely free of exclusions, i.e., a CLEC must be allowed to use the process to move any loop from another carrier's circuit switch to its own circuit switch. This should include any line splitting scenarios, any equipment types such as IDLC and should not be restricted by class or size of an end user customer.

The BHC process should not only accommodate these loops from a physical provisioning standpoint, but should also include them in any performance metrics as well. The FCC places no

restrictions on the BHC process relative to different types of loops and MCI believes such restrictions would dramatically reduce the benefit and effectiveness of the BHC process as envisioned by the FCC.

c. The process should maximize the ability for both Qwest and CLECs to rely upon existing electronic bonded systems, such as electronic data interchange ("EDI"). While opportunities exist for enhancements in this area, such as the passing of status information relative to BHC pre-wiring, wiring, LNP in real-time, and system-to-system interface, graphical user interfaces ("GUI") interfaces should be used only as a last resort but nevertheless be available to obtain information. CLECs should be allowed to submit orders which identify a given hot cut batch, using EDI or other established ordering mechanisms that generally flow through their existing systems for individual or multiple lines. Qwest should not be allowed to require some type of manual ordering scenario or require the CLEC to provide spreadsheets, or "cut sheets" even if such sheets are required for ordering loops today. Indeed, there should never be a need to call Qwest provisioning centers or to exchange faxes or other time consuming and error prone exchanges of information.

d. The BHC process should provide both a coordinated hot cut ("CHC") and frame due time ("FDT") option. Both options should include a due date scheduling function that can be accessed electronically by CLECs.

e. Performance measures, remedies and commercial testing must be an integral part of any approval process. Again, the existing UNE-P migration process and related performance criteria should be used as a starting point for these exercises. Provisioning intervals should be

established in advance. A CLEC should not be required to "negotiate" the provisioning date for each BHC in advance.

The appropriate average completion intervals for BHC processes should be similar, if not identical, to the existing UNE-P migration process and the applicable completion intervals that exist therewith. Consistent with MCI's primary concern relative to the applicable customer experience, it is absolutely imperative that the customer be completely oblivious to whether he/she is being served via UNE-P or UNE-L, or when that change in provisioning technology might have taken place. Part of that transparency is the ability to serve customers on a relatively short timeframe, consistent with the timeframe available using UNE-P today. Completion intervals for the BHC process that exceed existing UNE-P migration intervals will not provide adequate transparency for the customer and will negatively impact a CLEC's ability to effectively compete.

f. After having established proper metrics, the Commission should establish a testing schedule for at least the long-term process to ensure that all systems work as advertised under testing and commercial conditions.

g. After Qwest has successfully completed BHC process testing, a TELRIC-compliant rate that reflects the efficiencies resulting from the "batch" processes must be established. MCI would expect a rate structure that would reflect costs for the initial hot cut and additional hot cuts. The pricing might also vary by 2-wire and 4-wire circuits. There is currently no detail in Qwest's filing that would help MCI understand the pricing structure or underlying costs.

SPECIFIC COMMENTS

Qwest's filing begins by suggesting that the TRO's comments about problems with the incumbent local exchange carriers' current hot cut processes does not apply to Qwest, because its Arizona 271 application was reviewed, presumably by the FCC, with the TRO findings in mind. Nothing supports this assertion in the TRO. The TRO speaks to mass markets hot cuts at high volumes so that customers may be transitioned from UNE-P to UNE-L. Nowhere does the TRO state that Qwest has a process that meets its new criteria of a seamless, scalable, low-cost process. The FCC has had Qwest's current process under 271 review for some time, and if the FCC considered Qwest's process to be adequate, it likely would have said so and provided guidance to other ILECs and CLECs.

Qwest states that its process applies when a CLEC has "requisite number of lines" and defines that as 25 lines. MCI may want a lower number based on unique customer requirements or other circumstances. CLECs should be allowed to determine a minimum or maximum amount of orders to send per batch, per CO. This change allows CLECs the opportunity to continuously examine their UNE-P customer base and/or targeted sales volume by CO location and make informed decisions about which COs to convert with a BHC and which would be best served by individual orders.

In addition, Qwest must define "sufficient volumes" for CLEC-to-CLEC migrations and must provide another seamless process to move these customers. If MCI has to transition its customer base, it appears that Qwest is stating that MCI cannot use the BHC if MCI does not have enough lines/customers/orders for a Qwest-defined batch. This needs to be clarified.

MCI's initial transition of UNE-P customers will be UNE-L with LNP 100% of the time. Qwest must clarify how many orders it is able perform per CO, per CLEC in a single day for both CHC and FDT hot cuts. In its proposal (Exhibit 7), it sets a cap at 100 "orders" per day, per CO. While Qwest states that it will do batches of at least 25 "lines", its proposal does not address multiple CLECs and the largest number of BHCs it can do in a single day per CO. Qwest discusses completing orders with line splitting during "normal business hours" but doesn't define those hours or indicate whether batch cuts will be completed at times other than normal business hours. These timing issues are critical since Qwest's process envisions "phoning the CLEC" to resolve issues. Qwest's proposal includes only POTS lines; however, as noted above MCI also requires that IDLC lines and line splitting/line sharing loops be included. It is MCI's understanding that other incumbent local exchange carriers will include IDLC in their BHC processes. Finally, Qwest uses "lines" and "orders" in addressing sizing and BHC limitations. The correct nomenclature needs to be clarified.

The BHC (CHC and FDT) process and relevant systems and related processes must apply to multiple scenarios including, but not limited to, CLEC UNE-P to UNE-L (same CLEC), CLEC UNE-P to ILEC-retail, CLEC UNE-P to CLEC UNE-L (different CLEC), CLEC UNE-L to CLEC UNE-L (different CLEC), just to name a few. All of the functional areas are implicated in one or more ways—and more importantly, in different ways—by the various possible serving scenarios. By way of example, beyond the processes associated with the physical cutover of Qwest's loop to the CLEC's collocation are numerous critical database issues, including Line Information Database ("LIDB"), Customer Name ("CNAM"), 9-1-1 Automatic Location Identification ("ALI), and directory listings and NPAC-Number Portability Administration

Center impacts. Each of these databases contains customer-impacting data, and there is a critical need to develop coordinated, seamless, and scalable processes and systems addressing all of the possible serving scenarios to avoid putting at risk a variety of customer features and functionalities

When MCI transitions its customers from UNE-P to UNE-L in a specific CO, MCI will likely transition all lines in a given CO. MCI will also require migrating a line splitting line from "one carrier's circuit switch to another" when MCI moves an in-place line splitting customer. The fact that CLECs continue to have an interest in the provision of DSL-based services—including, for example, via line-splitting—adds yet another level of difficulty to the complexities already noted. Loop splitting thus remains a critical area that must be reviewed and tested prior to any finding that the BHC process has been adequately addressed.

Qwest must provide a detailed summary of its "new business rules" associated with the process and a time frame for implementation. The final business rules cannot be developed, however, until the process is fully defined, in place and tested. Qwest must also provide information on the current OSS used for this process and whether the orders "flow through" and whether and under what circumstances orders will fall out to manual processing. The process must be applicable for both EDI and GUI. Qwest's BHC Provisioning Flow (Exhibit 6) is not nearly detailed enough. Finally, the BHC process must be implemented and tested to prove it is effective and working as defined. Testing must also ensure that the BHC process works as defined under commercial loads. There must be new metrics for the new process.

MCI does not want to have meetings to negotiate due dates. Spreadsheets or cut sheets sent to the CLEC by Qwest are inadequate and cause delay. Qwest must develop an automated

due date scheduler or some other method of time selection that will allow CLECs to know when the process can start and be completed. Negotiations and contacts with project managers must not be required and only serve to increase the time required for the transitions. Qwest should develop an electronically bonded and on-line system for communicating with CLECs similar to the Verizon Wholesale Provisioning Tracking System ("WPTS") system.[1] This will eliminate work steps and miscommunications and enhance efficiencies. MCI does not believe that a good process requires that problems will be communicated by phone calls. This takes time and is a manual process prone to errors. An on-line, real-time electronic system should be used.

Delaying a dial tone check and the final jeopardy until the day of the cut is dangerous for consumers. MCI also disagrees with Qwest's proposal that CLECs be informed of cut completion via an e-mail. This is a wholly manual process that will lead to additional problems. The completion of the cutover should trigger an electronic service order completion ("SOC") notice within 10 minutes of the cut in order to prevent undue delay for the LNP process calls for an extended period of time that consequently delays when customers will be able to receive calls.

The Qwest BHC process takes a step backwards from the "migrate by telephone number ("TN") procedures that MCI previously requested and were recently implemented by Qwest as a result of MCI's change request submitted through Qwest's change management process. CLECs should not have to send service addresses or customer code for any of these orders. Moreover, Directory listings must be "migrated as is". Qwest must specify all ordering requirements. Qwest must also provide the highest number of number portability transactions (ILEC to CLEC,

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[1] By referencing the Verizon system does not mean that MCI considers that system in its presently identified status to be ideal or acceptable to MCI; however, it is one form of an electronically bonded and on-line system for communicating with CLECs.

CLEC to ILEC, and CLEC to CLEC) done on one day over the past year. Additionally, Qwest must provide a description of any metrics or measurements relating to the accuracy and seamlessness of LNP transactions, both pertaining to conduct of NeuStar and also relating to conduct of carriers in general. Additionally, Qwest's proposal eliminates the dial tone check two days prior to the cut date ("DD-2") and moves the dial tone check to the day of cut. This will not give the CLEC time to fix any problems and will cause customer dissatisfaction.

Some general observations are appropriate. Qwest never really discusses number porting and how quickly after the BHC is completed, the TN is released. Qwest does not address whether it will notify a CLEC only after the entire batch is completed or after a certain number of orders within the batch are completed in order to allow the CLEC to continue updating its systems. In Exhibit 6, Qwest refers standard "Record Retention Process", but does not describe that process or what it entails. In Exhibit 7, under "CLEC Impacting" in the 1st bullet there is a reference order entry and prioritization of BHC by Qwest. What is Qwest prioritizing? Under "Qwest Requirements" in the 2nd bullet, MCI does not need a spreadsheet from Qwest after the FOC, the FOC should be sufficient. Finally, Qwest has not proposed a "throwback"' timeframe, during which period such as three hours, after a cut has taken place, the CLEC can request the customer be returned to UNE-P to address any subsequent problems that might arise and maintain a customers telephone service.

RECOMMENDATIONS AND CONCLUSIONS

1. Allow CLECs to determine a minimum or maximum amount of orders to send per batch per CO. This change allows CLECs the opportunity to continuously examine UNE-P

customer base and/or targeted sales volume by CO location and make informed decisions about which CO's to convert with a BHC and which would be best served by individual orders.

2. Allow CLECs to designate orders as part of a batch via a unique identifier on individual LSR. CLECs should control which orders will be subject to BHC process and will minimize changes to CLECs' order processing stream for order creation, work flow management, error resolution and reporting.

3. The data on LSR should be similar to what is required for UNE-P Migration-TN, minimal address fields, CFA, etc. This will minimize changes to LSR data population and reduces chance for rejects because requiring less information means less editing by Qwest.

4. LSRs will specify a due date five (5) business days in the future. This interval minimizes the amount of time a customer is held in a "limbo" state of no changes.

5. Qwest must process batch orders when received (first in first out). Qwest must send both electronic and on-line notification to CLEC within 1 day of reject or if Busy carrier facility assignments ("CFAs") are found. CLECs can expect a specific cutover window and better manage the customer's experience. This also allows CLECs time to correct any CFA issues.

6. Qwest must refrain from any order activity against a customer's account while the batch order is pending, except to cancel an individual batch order, or if a disconnect of dial tone or migrate away order has a more current date than the conversion order (after which changes could be made). Qwest should send electronic and on-line notification to CLEC if this should, nevertheless, occur. This still leaves the customer in a "no change" situation. However, selecting a due date and shortening the due date interval positions CLECs to better manage their

customers' expectations of when a change can be made to their account. Allowing disconnect or migration away orders to override conversion orders will minimize delays the customer could experience trying to migrate to other carriers after converting to UNE-L.

7. Qwest must send both electronic and on-line notification to CLECs 2 days prior to cut date if there is no dial tone. "No Dial Tone" issues must be identified prior to the BHC in order to allow CLECs time to correct prior to the cut date.

8. Qwest must send both electronic and on-line notifications as soon as BHC has taken place. Ultimately notification should be real-time, but in any case no longer than 10 minutes after cut completion. This also allows CLECs to develop better back-office processes for those customers with time-sensitive needs, such a small business customers.

9. Qwest must submit the number-port activation order to NPAC w/in 10 minutes after the BHC was completed on the due date. This offers potentially the quickest turnaround for NPAC notification. Qwest would trigger its NPAC Release order within a specified interval, such as 5 minutes, after cut completion, then initiate the winning CLEC's Port-In order to NPAC within a specified interval, such as 5 minutes. CLECs would also need notification after successful completion of each step.

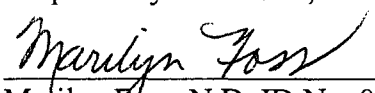
10. Qwest must send EDI provisioning and completion notifications to close out LSR. This is consistent with UNE-P workflow process. This would a CLECs to continue to acquiring customers using UNE-P and convert after acquisition. This would also give CLECs the option to continue acquiring customers and allow for churn.

11. Qwest must ensure the following are included in the batch hot cut process: 1.) CLEC-to-CLEC UNE-L migrations, 2.) Lines provisioned with DSL, and 3.) Lines provisioned

by IDLC. This will remove the cumbersome "pre-qualification" selection for batch candidates and minimize fallout.

Dated: November 18, 2003

Respectfully Submitted,



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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION
* * * * *

Public Service Commission
Local Competition
Investigation

CASE NO. PU-439-03-295

CERTIFICATE OF SERVICE BY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Marilyn Foss certifies that she has served a copy of the attached MCI's Response to Qwest's Proposal for Region-Wide Batch Loop Conversion Process by enclosing a copy of it in envelopes, U.S. First Class, postage prepaid addressed to the persons listed on the attached two page service list and depositing the envelopes in the U.S. Mail at Bismarck, North Dakota:

Dated: November 18, 2003

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80 PU-439-03-295 Pages: 3
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November 17, 2003



Mr. Jon Mielke, Executive Director
North Dakota Public Service Commission
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Bismarck, ND 58505

Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of AT&T's Comments and Counter Proposals on Qwest's Proposal for Region-Wide Batch Loop Conversion Process.

Sincerely,

Janet Keller

Janet Keller

Enclosures

cc: Service List

79 PU-439-03-295 Pages 4

Cover letter re Comments and Affidavit of Service by AT&T Communications

11/18/2003 CC: Comm Legal PUD (3)

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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	)))	Case No. PU-439-03-295

AFFIDAVIT OF SERVICE

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The undersigned, being duly sworn, deposes and says that I am over the age of 18 years and, on the 17th day of November, 2003, I served AT&T's Comments and Counter Proposals on Qwest's Proposal for Region-Wide Batch Loop Conversion Process by U.S. Mail to the attached service list.

Janet Keller

Subscribed and sworn to before me
this 17th day of November, 2003.

Adam W Walczak
Notary Public

My Commission expires: 1/22/06

NOTARY PUBLIC
ADAM W. WALCZAK
STATE OF COLORADO

My Commission Expires 1/22/06

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Case No. PU-439-03-295

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AT&T'S COMMENTS AND COUNTER PROPOSALS ON QWEST'S REGION-WIDE BATCH LOOP CONVERSION PROCESS

AT&T Communications of the Midwest, Inc. ("AT&T") submits the following comments and counter proposals to Qwest's batch hot cut proposal.

I. INTRODUCTION

Fundamentally, every time a hot cut is performed, an incumbent local exchange carrier ("ILEC") technician must physically disconnect the customer's loop from the current carrier's switch and reconnect it to the new provider's network. Those same manual, loop-by-loop activities must be performed whether they are done for one customer or for a batch of customers. Qwest's proposal does nothing to change those fundamental facts. Instead, Qwest's proposal reinforces why the FCC found the hot cut process was a source of operational impairment and why the Federal Communications Commission ("FCC"): concluded that ILECs must offer competitive local exchange carriers ("CLECs") access to mass market switching.

That is not to say that AT&T is uninterested in having Qwest improve its current hot cut process. Any proposal that seeks to improve the efficiency, capacity, quality and cost of the current individual hot cut process is a welcome step in the right direction. However, based on AT&T's review, Qwest's proposal is but a very small step in what may prove to be a long journey to get agreement on a batch hot cut process that the

Commissions and the CLECs can support and meets the FCC's requirements. AT&T believes Qwest's proposal falls far short of curing the operational and economic impairments that exist with the current hot cut process.

AT&T finds Qwest's proposal to be either short on essential details or outright deficient in a number of critical areas such as cost, quality of service to the end user, scalability and functionality. As an initial matter, there are certain key principles that must be followed during the batch hot cut collaborative. The first key principle is that any process changes must consider the impact on Qwest, the CLEC(s)[1] and the CLEC's customer. For example, a process change that reduces Qwest's cost by $1.00 but increases a CLEC's cost by $2.00 is a change that should not be made. Qwest should not be the only party considered in the batch hot cut process design. A second key principle is that any process changes must consider the effect on all of the critical hot cut characteristics. For example, a change that reduces a cost but also increases the frequency of customer outages should not be made. Changes should not be viewed in isolation but should be viewed as part of the overall process. Unfortunately, many of Qwest's proposed changes fail to consider all of the affected parties or suboptimize one element at the expense of another. The following describes AT&T's primary concerns with each of these key areas. As AT&T better understands Qwest's proposal, it reserves the right to raise other concerns.

[1] Multiple CLECs will be involved for the migration of an unbundled loop from one CLEC's switch to another.

II. AT&T's CONCERNS

A. Cost of a Hot Cut

On page 3 of its proposal Qwest admits that it has not yet completed its detailed cost studies; however, they state "it appears that in **virtually every instance** these efficiencies will reduce Qwest's cost of performing a batch hot cut." Emphasis added. Qwest goes on to state on page 15 that "the batch conversion process that Qwest proposes above will yield significant additional efficiencies and in **most** states the CLEC community can expect to experience a significantly reduced rate." Emphasis added. The Commissions and the CLECs cannot rely on vague statements such as these to get a sense of whether Qwest's batch hot cut rates will even begin to address the economic impairment concerns expressed by the FCC in the Triennial Review Order ("TRO"). Before the Commission considers this proposal Qwest should be required to specifically state what its batch hot cut cost structure will be and provide the cost studies it conducted to support its proposed rates.

With respect to its current loop hot cut non-recurring costs, Qwest congratulates itself on page 15 of its proposal by stating, "As an initial matter, Qwest notes it is starting from a better position than many other incumbent LECs in this regard. The FCC found in the *Triennial Review Order* that currently hot cuts are '*often* priced at rates that prohibit facilities based competition for the mass market,' citing ILEC non-recurring charges exceeding $100 and as high as $185. But Qwest's hot cut charges across its region are not nearly this high. In virtually every state Qwest's current non-recurring charges for a basic hot cut range between $29.10 and $65.00." Footnotes omitted. What Qwest has failed to point out is that its coordinated installation with Cooperative Testing loop

installation option is as high as $171.87 per loop for the first installation. That rate would place Qwest at the upper end of the range discussed by the FCC. Even assuming a Qwest hot cut rate of $60[2] there remains much room for improvement to remedy the economic impairment experienced by the CLECs when trying to serve the mass market with unbundled loops. In contrast to the much less than $1.00 non-recurring charge the CLECs pay Qwest to migrate a customer to UNE-P, Qwest needs to make significant reductions in its hot cut non-recurring rates to make UNE-L a viable alternative for serving the mass market from a non-recurring charge perspective.[3]

B. Quality of Service

Using the current hot cut process, which requires a physical disconnection of the customer's line from its existing local service provider's switch and reconnecting it to the new service provider's switch, a service outage is unavoidable. When each of the steps of the process is done correctly this service outage can be measured in seconds. However, because of the manual nature of the process and all of the human touch points involved, there is a tremendous opportunity for human error and a resulting service outage. When performing an individual hot cut from retail to UNE-L these outages are a concern for the CLEC because it is the customer's first experience with the CLEC and the CLEC does not want it to be a negative experience. However, when this does happen, at least the CLEC can explain to its new customer that something went awry during the migration process. On UNE-P (or resale) to UNE-L conversions, where the

[2] The approved rate for a coordinated installation without cooperative testing is $59.81 in ten of the Qwest states.

[3] Of course there are other economic impairment issues that the CLECs will face when trying to serve the mass market with UNE-L such as the collocation and backhaul costs. These comments are only related to the economic impairment issues associated with the hot cut non-recurring charges.

batch hot cut process will most likely be used 100% of the time (see functionality section below), these service outages become even more of a concern for the CLEC. In these cases the customer already has his/her service with the CLEC and may have been doing business with that CLEC for an extended period of time. When a hot cut is performed on these customer's lines and an outage occurs, the customer can only think that the CLEC has a maintenance issue. Because the customer impacted by the outage did not request to have his/her service modified, any outage is viewed as poor performance on the part of the CLEC, even though it most likely would have been caused by Qwest. As far as this customer is concerned Qwest is not even in the picture. Therefore, it is of critical importance that hot cut migrations of existing CLEC UNE-P customers be as seamless and go as flawlessly as possible. It should also be noted that Qwest is not above taking advantage of quality problems experienced by CLEC customers that it may have created. Qwest has recently been running radio and television advertisements where it describes how a competitor "dropped the ball" with a customer and how Qwest saved the day.

Qwest's current batch hot cut proposal leaves much to be desired in the area of service assurance and quality. Fundamentally, Qwest's proposal sacrifices service assurance and quality for a reduction of a few process steps. There are many pitfalls Qwest's proposed process that put the CLEC's customers in jeopardy of an extended service outage. Some of the service quality concerns that AT&T has with Qwest's proposal include the following:

1. Batch Hot Cuts Limited to Basic Installation Only

One of the requirements of Qwest's proposed batch hot cut process is "basic installation only on batch conversions."[4] Qwest further underscores the unavailability of coordinated conversions when it states, "Coordinated and/or basic installation is still offered for business as usual activities – for example – requests not identified as part of the conversion or a part of a project managed hot cut."[5] Qwest's proposal to limit batch hot cuts to basic installation only significantly and negatively impacts the CLEC customer in two areas. The first area is that performance testing is not done with basic installation for existing customers. Qwest's SGAT states:

> 9.2.2.9.1.1 For an existing End User, the Basic Installation option is a "lift and lay" procedure. The Central Office Technician (COT) "lifts" the Loop from its current termination and "lays" it on a new termination connecting to CLEC. *There is no associated circuit testing performed.*[6]

Qwest identified the following testing activities as part of performance testing:

2-Wire and 4-Wire Analog Loops

- No Opens, Grounds, Shorts, or Foreign Volts
- Insertion Loss = 0 to -8.5 dB at 1004 Hz
- Automatic Number Identification (ANI) when dial-tone is present[7]

While Qwest does propose to check for dial tone and ANI, its proposal does not include the other types of performance testing. Qwest's proposal of only basic installation for batch hot cuts is nothing more than reducing the amount and level of testing that it typically does for hot cuts. Qwest's proposal to reduce testing will potentially result in negative impacts on CLEC customers.

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[4] Qwest BHCP – Exhibit 7, p. 1.
[5] *Id.*
[6] Colorado SGAT, March 4, 2003 (emphasis added).
[7] Colorado SGAT, March 4, 2003, § 9.2.2.9.6.

The second major problem with the basic installation only option is that it extends the period of time a customer cannot receive incoming calls. With a coordinated installation option, Qwest contacts the CLEC after the "lift and lay" procedure is completed. Once the CLEC is notified, the CLEC can complete the number portability activities. In contrast, with Qwest's new proposal, the CLEC will be notified only when every line in the batch has been completed.

Page 12 of Qwest's proposal states; "Upon completion of the orders identified on the batch spreadsheet, Qwest will notify the CLEC via email that it has completed the conversion. It remains the responsibility of the CLEC to ensure that each line is triggered for number porting upon completion of the order." This is totally unacceptable from a quality of customer service standpoint. From the moment that Qwest migrates the customer's line on the MDF to the time that the CLEC issues the trigger to port the customer's number, the customer cannot receive phone calls. Considering that Qwest has indicated that a batch project can be as many as 100 lines and Qwest has its technicians performing all of the work (e.g. pre-wiring, dial tone checks, telephone number verifications, and actual "lift and lay" cutover) to migrate these lines on the day of the cut it could literally take hours between the time the first lines are cut over to the CLEC and the CLEC is informed via email of the completion of the cutover. Leaving a customer without the ability to receive calls for this length of time is totally unacceptable. Qwest must revisit its position regarding the timing of the CLEC notification to make this proposal acceptable in this area.

Qwest's proposal of basic installation only clearly sacrifices the CLEC's customer's experience for some yet unquantified benefit.

2. Pre-wiring of the circuit

For individual hot cut orders, Qwest currently performs the Main Distribution frame ("MDF") pre-wiring of the CLEC's Connecting Facility Assignment ("CFA") to the loop two days prior to the cutover. This lead time gives the Qwest frame technician ample time to ensure all of the wiring work has been performed correctly, and is connected to the proper CFA assignment for CLEC's collocated equipment and to the proper cable and pair assignment for the customer's line. However, when this pre-wiring is performed on the day of the cutover, as proposed by Qwest's batch process, there is no margin for error on the part of the Qwest or the CLEC. Considering Qwest's frame technicians work on activities other than batch hot cuts, including individual hot cut orders, new line installs for both retail and wholesale customers, disconnect orders and trouble shooting of maintenance and repair trouble tickets, many times these technicians may be stressed to the limit to complete all of their work for that day. This is especially true in cases where the batch job approaches the Qwest proposed 100 line limit. AT&T feels that to help ensure continuity of customer service, this pre-wiring function must continue to have at least a one day lead time from the batch project due date. Qwest's proposal to eliminate the pre-wiring step sacrifices service quality and the customer's experience solely for Qwest's own efficiency.

3. Qwest's proposed spreadsheet

Qwest is short on details regarding how this spreadsheet is to be prepared and how it is going to be used. AT&T supports the use of an electronically prepared spreadsheet developed by Qwest's OSS's based on the information supplied on the

batch project LSRs. However, if it is Qwest's intention to develop these spreadsheets manually, this adds yet another human touch point to a process that is already very manual. Human errors on this spreadsheet will create confusion and possibly delay the project. They can also result in hot cuts being missed or service outages. Qwest must be required to provide additional details on how this spreadsheet is to be created, how it will be distributed to the stakeholders, what each stakeholder will use the spreadsheet for, how the spreadsheet will be synchronized with the CLEC's LSRs and Qwest's service orders and how errors found on the spreadsheet will be corrected. In addition, creation of a spreadsheet appears on Qwest's proposed process as a new step. It is likely that the spreadsheet creation step is going to put upward pressure on Qwest's already uneconomic hot cut costs.

4. Dial tone checks

Qwest's current hot cut process requires the central office frame technician to check for dial tone and verify the line for the proper telephone number two days prior to the scheduled cutover date. Whereas, Qwest's batch hot cut proposal has its technicians performing these verifications on the day of the cutover just prior to performing the conversion. If a problem is discovered with the CLEC dial tone, Qwest's proposal gives the CLEC one hour to remedy the problem. If the problem cannot be resolved, the affected line is removed from the project.

As was the case for the pre-wiring (item #2 above), AT&T is concerned that performing this quality check on the day of the cut leaves no margin for error for either Qwest or the CLEC. In cases where the no dial tone problem must be resolved by the CLEC, often times one hour is not going to be sufficient, especially in

instances where the CLEC must dispatch a technician to its collocated equipment. When the CLEC cannot quickly resolve these problems, the customer's line must be removed from the batch project. When this happens for multi-line customers, the CLEC must be assured that all lines for that customer are also removed from the project to insure continuity of features such as hunting arrangements. Considering the Qwest frame technicians will be working from either the individual internal service orders that are created for each line that is included in the project or from the proposed spreadsheet, it is not clear how the frame technician will be able to relate the orders to make the determination that the line with no dial tone is associated with a multi-line customer. It is also unclear how the technician will be able to determine the other lines that need to be removed from the project even though they are not experiencing the same no dial tone issues. Additionally, Qwest's proposal is silent on what occurs if the technician discovers a no dial tone condition or an incorrect telephone number on the customer's cable and pair on the line side of the frame.[8] This would be a problem that Qwest would need to correct. AT&T can only assume that these lines will also be removed from the project. If so, the same issue involving multi-line customers is of a concern. AT&T believes that without further details on how the dial tone checks will be performed and how the CLECs can be assured that the right lines are being removed from the project the proposal as written is too risky.

In addition, a Qwest decision to remove one or more lines from the project must be accompanied by a step to assure that Qwest does not disconnect the customer's service under the assumption that the cut would have been completed. In very short

[8] These problems can occur as a result of inaccurate cable and pair inventory records.

order, Qwest technicians must be able to communicate to Qwest's back office systems that an order has been removed from a project and to ensure that no associated disconnect orders are inadvertently completed.

5. CLEC notification

In addition to the previously mentioned problems with the timeliness of the notification, AT&T has a concern with regard to the quality of Qwest's notification process. Qwest's statement indicates that this notification will be based "upon completion of the orders identified on the batch spreadsheet" yet; as discussed in item 4 above, some line may have to be removed from the project even in cases where they did not have a no dial tone problem. Qwest has not indicated how the CLEC will know exactly which of the orders identified on the spreadsheet were cut over and which were not. Unless the CLEC has absolutely accurate information regarding the exact identification of the lines that were cut, the CLEC may port numbers that it should not be porting, thereby adversely impacting customer service.

C. Scalability

As an initial matter, Qwest claims that it provisions "1,000 hot cuts per day on average."[9] The most recent results that Qwest published for the OP-7 Coordinated "hot cut" interval – Unbundled loops – Analog measurement belie that claim. In September of 2003, Qwest completed 9,488 hot cuts in the entire 14-state region. Assuming a twenty day work month, Qwest averaged about 475 hot cuts a day in September of 2003 – nearly half of Qwest's claimed rate. Over the last year, Qwest's OP-7 results show that Qwest averaged about 400 analog loop hot cuts a day in its entire 14-state region. This

[9] Qwest Proposal, p. 7.

represents an average of 28 per workday per state. Qwest's current average daily volume of hot cuts in a state would barely make what Qwest identifies as a minimum batch for its proposed batch hot cut process. Either Qwest's claim of 1,000 hot cuts per day is erroneous, or Qwest is excluding significant volumes of hot cuts from the OP-7 results. Qwest needs to explain the incongruity between its claim of 1,000 hot cuts per day and its OP-7 results for analog loops.

The only specifics that can be found in Qwest's proposal regarding the scalability of the process is that an individual CLEC must have at least 25 and no more than 100 lines in a given CO to qualify for a batch project.[10] Qwest also, on page 14 of its proposal, makes the premature assumption of a finding of non-impairment and therefore lays out the timetable with vague and inaccurate formulas for determining how many hot cuts will be required to convert the embedded base of UNE-P customers. AT&T believes that the Commission should not take Qwest's assumption of a non-impairment finding seriously. Notwithstanding Qwest indulging itself with a little wishful thinking, Qwest needs to provide specific information in the following areas with respect to its ability to handle significantly larger numbers of hot cuts.

1. Limitations imposed on the process

Other than the stated limit of one project consisting of no more than 100 lines per day per CLEC, what other limits does Qwest impose on its process? Some examples of questions that Qwest needs to address are:

- Will Qwest work with multiple CLECs in the same central office on the same day if the sum of the CLECs' batch projects does not exceed 100 lines (e.g. four different CLECs where each CLEC had a bulk project of 25 lines)?

[10] One can assume that CLEC's who have more than 100 lines may break them up into individual batches of less than 100, however, that is not specified in the Qwest proposal.

- Does Qwest impose any limits on the number of CLECs that can migrate 100 lines in a central office in a day?
- Will Qwest allow a CLEC that had two different collocation arrangements in the same CO to include facilities in each of the arrangements on the same project?[11]
- Are there any limitations on the number of simultaneous batch projects Qwest is capable of working within a given geographic area?
- Are these projects limited to central offices that Qwest has staffed on a full time basis or can a project be performed in any central office?

2. Potential Hot Cut Volumes

Qwest's formulas for estimating the potential hot cut volumes it will be faced with in a mass market environment do not provide any specifics with respect to the number of actual hot cuts Qwest estimates it will have to perform during the 27 month transition period. Instead Qwest states, "To calculate the expected monthly volumes in each state, the state commissions should apply the following formulas based on the volumes of UNE-P lines and UNE-L lines in each individual state." Rather than ask the state commissions to estimate the hot cut volumes based on a formula that is neither clear nor accurate (e.g., the formula does not account for the significant hot cut activity that will be required by customer churn and Qwest win-backs), Qwest should come forward on a state by state basis with its estimate of how many hot cuts will be required each month. Qwest must also provide the details on how it came up with this estimate.

3. Additional Qwest Personnel

Assuming that Qwest's work centers, field technicians and central office frame technicians are currently working at optimal capacity, Qwest needs to disclose how many additional people it will need to add to its staff to meet the hot cut demand

[11] CLECs will sometimes have multiple collocation arrangements in the same central office as a result of an acquisition of another CLEC.

estimated in item #2 above. Qwest also needs to specify how it arrived at this estimate and how it plans on recruiting, hiring and training these people to ensure that they are qualified to perform the work that will be required of them without impacting customer service. Additionally, Qwest needs to reveal how the hiring of these additional people will impact the CLEC's hot cut costs.

D. Functionality of the proposed process

The Qwest proposal is extremely short on many of the details needed to determine whether its proposed batch hot cut process will be functional. Additionally, in other areas where Qwest did provide specific information it is clear that there is much room for improvement to make the process of value. Following are some of the specific areas of concern for AT&T with respect to the functionality of the process.

1. Project Intervals

Qwest must clearly state what its interval is between the time the CLEC initiates a request for a batch hot cut project and the due date for the project. In a robust market with many CLECs requesting batch projects these intervals cannot be individually negotiated on a project-by-project basis. Qwest must publish its standard interval for these jobs and be measured on its performance in meeting these intervals. This is particularly critical if a CLEC wants to use this process for a migration from Qwest retail to UNE-L, a migration that Qwest states is supported by its bulk process. Unless the CLEC can give its prospective customer a date certain of when the migration will occur this process can never be used for the migration of retail customers to a CLEC.[12]

[12] It is critical to note that even with standard intervals, unless the interval is reasonable (e.g. 6 business days or less), this process will be virtually useless for migrating retail customers to UNE-L.

Additionally, the introduction of a standard interval for requesting a batch hot cut project will eliminate the time/resource consuming step of conducting the initial batch hot cut project coordination meeting required by the Qwest proposal. With a standard interval a CLEC can initiate a project via a simplified email notification to Qwest of its intent to engage in a batch project. This email would supply Qwest with the details it will need, such as the central office location, the desired project date and time and the number of customer accounts and lines involved with the project. Qwest can respond to this email with the project code and a confirmation of the date which would trigger the CLEC to issue its LSRs. While Qwest's proposal is not entirely clear, it appears that unique Qwest-supplied project codes would be required on the individual LSRs that a CLEC submits as part of the batch. Qwest needs to clarify whether unique project codes are required on an LSR; and, if so, how those project codes are obtained.

2. The process must be voluntary

Qwest's proposal indicates on page 11 that at the initiation of a project request "a CLEC will perform pre-order functions including an initial batch coordination meeting with Qwest." The initiation of a batch project must be at the option of the CLEC and cannot be dictated by Qwest. There are many factors that would prevent a CLEC from wanting to perform a batch hot cut job in a specific central office, even in cases where the CLEC may have the requisite quantity of lines to qualify for a batch project. These factors include, but are not limited to, not having a collocation arrangement in the central office, not having sufficient spare capacity on the collocated equipment that the CLEC has in the central office and a temporary

congestion problem that the CLEC may be experiencing on its network. There should be no mistake that the batch hot cut process that the parties will be creating is voluntary on the part of the CLEC. A CLEC may conclude that Qwest has not reduced the economic or operational impairments of hot cuts sufficiently to justify converting a UNE-P customer to UNE-L. The true measure of the worth of Qwest's batch hot cut process will be seen when CLECs voluntarily choose to exercise that process.

3. Limits on loop types

Qwest's proposal limits the loop types that qualify for a batch project to analog POTS loops and further underscores the operational impairment involved with hot cuts. On page 9 of its proposal Qwest states, "A batch conversion process is possible for these analog DS0 loops, which constitute the vast majority of Qwest's outside plant. But it is not feasible to gain these efficiencies when the underlying facility uses integrated digital loop carrier systems ('IDLC')." AT&T agrees that when the Qwest network is viewed as a whole, the analog DS0 loops do constitute the majority of the loops. However, the batch job is not performed on a network-wide basis; it is performed at a central office level.

When viewed at a central office level, the IDLC restriction becomes a bit more problematic. Qwest has many large central offices with over 30,000 lines that have 30% or more IDLC lines. This is particularly true in states such as Arizona, Washington and Colorado that have experienced a high degree of growth over the past 10 years. In these states, as well as in some of the other states, there are many central offices that would have a large proportion of the loops that terminate in the

office precluded from the batch hot cut process under the current Qwest proposal. In fact there are a number of offices that have more than 50% of their lines on IDLC facilities.[13]

To make this process functional in a mass market environment, Qwest needs to revisit its removal of IDLC lines from the process. In addition, Qwest needs to disclose to the commission and the CLECs what its capacity is for migrating these lines in the high density offices to non-IDLC facilities as required for a hot cut. In wire centers with a high number of hot cuts, Qwest may be limited in the amount of spare copper/UDLC facilities it can use to overcome the IDLC problem. Qwest needs to explain how it will ensure the necessary inventory of spare non-IDLC facilities.

In addition to the restriction of IDLC loops, Qwest's proposal restricts the migration of line splitting loops. Qwest's rational for this is two-fold. First, Qwest states, "The FCC expressly defined its batch-cut requirements in terms of developing a process to migrate loops "from one carrier's local circuit switch to another carrier's *local circuit switch.*" The FCC's definition of a 'batch cut process' thus does not include conversions including loop-splitting arrangements that also connect an unbundled loop to a third carrier's *packet* switch." Footnote omitted; emphasis added. Qwest goes on to state, "conversions from UNE-P directly to loop-splitting arrangements cannot be consolidated into a batch because each loop must be individually checked to ensure it is capable of carrying DSL signals and, if not,

[13] Per Qwest's ICONN database. See www.qwest.com/iconn.

conditioned."[14] It seems that on both of these points Qwest seems to have misstated the facts.

To the first point, when cutting over a loop to a CLEC using a line splitting arrangement, the voice frequency portion of the loop does not go to the CLEC's packet switch. After the loop is connected to the CLEC's splitter, the voice frequency is connected to the CLEC's circuit switch. Therefore, the line is being connected "from one carrier's local circuit switch to another carrier's local circuit switch" just as the FCC had envisioned. Secondly, it is highly unlikely that a customer who is receiving standalone POTS service via UNE-P is going to need to be migrated to a DSL capable loop as described by Qwest. However, it is very likely that a customer who is currently on a line splitting arrangement today where the voice service is provided via UNE-P will need to be converted to line splitting when the CLEC is using Qwest's loop and connecting the voice frequency to a CLEC's switch. In these cases there is no need to determine whether the loop requires conditioning for the DSL service because the customer is already receiving DSL service on a loop that is already meeting the requirements for a DSL service. Qwest's rational for restricting line splitting loops from the batch process is without merit. AT&T believes that Qwest should remove this restriction from its proposed process.

4. CLEC-to-CLEC migrations

Qwest's proposal indicates that its batch process will support CLEC-to-CLEC of migrations. However, Qwest is silent on how it plans to include these migrations into the ordering flow for a batch hot cut. Given the current lack of industry procedures

[14] See Qwest's proposal on pages 9 and 10.

on CLEC-to-CLEC migrations, AT&T believes that Qwest needs to provide specific details on how it plans to incorporate these types of migrations into a batch project.

5. Project cutover times

Qwest's proposal on page 13 states; "The CLEC must make resources readily available to clear all loops identified on the batch spreadsheet in a timely manner between the hours of 3:00PM CST and 11:00PM CST." For any of us who have sat around waiting for the telephone installer or repair person who is supposed to show up between the hours of 8 AM and 5 PM, we know how inefficient a use of time this is for the person kept waiting. In addition to providing the CLEC more timely notice on the status of the project as described in the "Quality of Service" section of this document, Qwest needs to be more specific as to what time the project is going to start and what time it anticipates it will end to allow the CLEC to properly plan the workload for its staff members. Additionally, there are going to be times when, because of the nature of the customers being cutover, a CLEC may not wish to have the migrations performed between the hours of 3:00PM and 11:00 PM. In these cases the Batch process should be flexible enough to allow the CLEC to request a batch hot cut project at any time of the day and on any day of the week.

6. Pending orders

The Qwest process has the CLEC issuing LSRs for the lines involved in the project. However, as stated in #1 above, without knowing what the interval is for these LSRs,they may be waiting a considerable amount of time in Qwest's systems as pending orders before the due date of the batch project. Considering that these orders will most likely be exclusively for existing CLEC customers, it is not clear what

happens to that order should the CLEC needs to issue an interim order to make a change on the existing customer's account (e.g. a feature change to a UNE-P customer). Additionally, Qwest needs to clarify what the process is for ensuring that the customer's line does not get migrated as part of the batch process in cases where the customer churned over to another carrier in the time between when the batch order was issued and the due date of the batch project.

7. Service outages

Qwest needs to make clear what the process is for the CLEC to quickly resolve service outages discovered after the CLEC receives the project completion notification. Specifically, will there be a process in place for a "throw-back" of the affected customer's line to its original state to quickly restore the customer's service, or will the CLEC have to go through the normal trouble reporting process? AT&T believes that Qwest needs to have a process in place that will allow Qwest and the CLEC to work cooperatively to restore the customer's service in an expedited time frame.

8. Testing the process

Qwest's proposal is also silent on how it proposes to test its batch hot cut proposal to make sure it is operational. Because the industry has absolutely no experience with operating in a mass market environment using a manual hot cut process, any process being proposed must be thoroughly tested to guarantee its operational readiness. Because of the incentive that Qwest has to make such a test appear that its proposed process is flawless, AT&T believes that this testing should be closely monitored by the Commissions and an independent third-party tester. Additionally, AT&T believes

that this test should not impact any CLEC customer's service and, therefore, should be conducted by having Qwest using its proposed process to migrate a significant number of its own retail customers from a direct connection of the customer's line from the existing Qwest switch over to another Qwest switch connected via collocated equipment located in the original central office. Testing should include independent third-party monitoring of the conversion activities and monthly monitoring of performance results for the converted customers.

III. CONCLUSION

AT&T is encouraged by the fact that Qwest has taken the initial step to propose a batch hot cut process. However, as indicated by these comments, AT&T has many serious concerns about the cost, customer impact, scalability and functionality of the process that was outlined by Qwest in its batch hot cut proposal. Additionally, AT&T is also concerned about the necessary details that were *not* addressed by Qwest.

AT&T looks forward to working collaboratively with Qwest and the other industry participants to work through the Qwest proposal to resolve these initial issues identified by AT&T and issues that are raised by other participants. This collaborative should also determine what other improvements need to be made to improve upon the Qwest proposal and make the batch hot cut process one that is beneficial to Qwest, the CLECs and, most importantly, to the end-user consumer.

Respectfully submitted on November 18, 2003.

AT&T COMMUNICATIONS
OF THE MIDWEST, INC.

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Mary B Grabby
Q2st Law Dept
1875 Lawrence St Ste 1575
Denver Co 80202

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery
NOV 24 2003

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2996

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Deborah Harwood
Integra Telecom
19545 Von Neumann Dr
Ste 200
Beaverton OR 97006-6902

A. Signature
X M Fields ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery
12-04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3375

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Patrick Durick
PO Box 400
Bismarck ND 58502-0400

A. Signature
X [signature] ☑ Agent ☐ Addressee

B. Received by (Printed Name) KRIS JENNINGS | C. Date of Delivery 12-08-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3405

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PU-439-03-995

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
Print your name and address on the reverse so that we can return the card to you.
Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

Gary B Witt
1st Law Dept
75 Lawrence St Ste 1575
Denver Co 80202

A. Signature
X K J Ergenson ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery JAN 20 2004

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

Article Number (Transfer from service label) 7003 1680 0004 9646 3863

Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PL-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

24 NOV 2003

1. Article Addressed to:
Dan Kunitz
PO Box 1695
Bismarck ND 58502-1695

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [Printed Name] C. Date of Delivery 11-24-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3009

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PL-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Thomas J Kelsch
PO Box 1266
Mandan ND 58554-7266

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Verne Ehrlich C. Date of Delivery 11/24/03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3030

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PL-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Patrick Durick
PO Box 400
Bismarck ND 58502-0400

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) KRIS JENNINGS C. Date of Delivery 11-24-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3085

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PL-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Steven K Noack
500 2nd Ave N Ste 514
Fargo ND 58108-2783

A. Signature
X O. Nesthock ☒ Agent ☐ Addressee

B. Received by (Printed Name) Donna Nesthock
C. Date of Delivery 11-24-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3047

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PL-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Don Negaard
Pringle & Herigstad
PO Box 1000
Minot ND 58702-1000

A. Signature
X Ursula Keller ☒ Agent ☐ Addressee

B. Received by (Printed Name) Ursula Keller
C. Date of Delivery 05 DEC 2003

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3412

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PL-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Thomas J Kulsch
PO Box 1264
Mandan ND 58554-7266

A. Signature
X L Reiner ☐ Agent ☐ Addressee

B. Received by (Printed Name) L Reiner
C. Date of Delivery 12-5-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3351

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X Marilyn Foss ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 12-5-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

1. Article Addressed to:
Marilyn Foss
PO Box 2214
Bismarck ND 58502-2216

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3344

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X Helen M. Barden ☒ Agent ☐ Addressee

B. Received by (Printed Name) Helen M. Barden | C. Date of Delivery 12-8-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

1. Article Addressed to:
Steven E Noack
500 2nd Ave N Ste 514
Fargo ND 58108-2783

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3368

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X [signature] ☒ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] | C. Date of Delivery 12/8/03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

1. Article Addressed to:
Jim Goodwin
Qwest Corporation
1801 California St Ste 4900
Denver Co 80202

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3337

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Walter J Eggers III
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne Wy 82001-3162

A. Signature
X [signature]

B. Received by (Printed Name) C.

D. Is delivery address different from item 1?
If YES, enter delivery address below:

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3429

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Gary B Witt
GIG Law Dept
1875 Lawrence St Ste 1575
Denver Co 80202

A. Signature
X [signature] ☐ Agent ☑ Addressee

B. Received by (Printed Name) C. Date of Delivery DEC 08 2003

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3436

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Robert M Pomeroy Jr
Holland & Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village Co 80111

A. Signature
X [signature] ☐ Agent ☑ Addressee

B. Received by (Printed Name) R Knueven C. Date of Delivery 12-8

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3313

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Patrick Durech
PO Box 400
Bismarck ND 58502-0400

A. Signature
X [signature] ☒ Agent ☐ Addressee

B. Received by (Printed Name) KRIS JENNINGS
C. Date of Delivery 1/20/04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3832

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Steven E Noack
500 2nd Ave N Ste 514
Fargo ND ~~58108-2783~~ 58102

A. Signature
X Nancy Bake ☐ Agent ☐ Addressee

B. Received by (Printed Name) Nancy Bake
C. Date of Delivery 1-20-04

D. Is delivery address different from item 1? ☒ Yes
if YES, enter delivery address below: ☐ No
218 NP Ave
FARGO ND 58102

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3795

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Thomas J Kalsch
PO Box 1266
Mandan ND 58554-7266

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Valene Ehrlich
C. Date of Delivery 1/16/04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3788

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] C. Date of Delivery 1/16/04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:
Dan Kuntz
PO Box 1695
Bismarck ND 58502-1695

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3757

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X Marilyn Foss ☐ Agent ☐ Addressee

B. Received by (Printed Name) Marilyn Foss C. Date of Delivery 1-16-04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:
Marilyn Foss
PO Box 2216
Bismarck ND 58502-2216

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3771

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] C. Date of Delivery 1/21/04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:
Dan Kuntz Atty for Qwest
P O Box 1695
Bismarck ND 58502-1695

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7001 1940 0005 3425 0463

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

ON DELIVERY

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X Renee Fries ☐ Agent ☐ Addressee

B. Received by (Printed Name) Renee Fries C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:

Patrick Durick Atty for Midcontinent Comm
P O Box 400
Bismarck ND 58502-0400

BISMARCK ND 58501 JAN 21 2004 USPS

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7001 1940 0005 3425 0548

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

SENDER: COMPLETE THIS SECTION **COMPLETE THIS SECTION ON DELI**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X Ursula Veller ☐ Agent ☐ Addressee

B. Received by (Printed Name) [redacted] C. Date of D 2 1 2004

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:

Jon Nelsen
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7001 1940 0005 3425 0555

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X Marilyn Foss ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:

Marilyn Foss Atty for MCI
P O Box 2216
Bismarck ND 58502-2216

BISMARCK ND 58501 JAN 21 2004 USPS

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7001 1940 0005 3425 0487

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Jr Thomas J Kelch
Kelsch Kelsch Ruff & Kranda
P O Box 1205
Meridian ID 83642-1205

A. Signature
X Valerie Ehrlich ☐ Agent ☐ Addressee

B. Received by (Printed Name) Valerie Ehrlich | C. Date of Delivery 1/21/04

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7001 1940 0005 3425 0494

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

SEN

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dick Thronson
Missouri Valley Communications
PO Box 600
Kelley MT 59623-0600

A. Signature
X Valerie Landeros ☐ Agent ☐ Addressee

B. Received by (Printed Name) Valerie Landeros | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3825

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

N

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Deborah D Harwood
Integra Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton OR 97006-6902

A. Signature
X Mike Fields ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 1/20

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 3801

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

ZUGER KIRMIS & SMITH

COUNSELORS AND ATTORNEYS AT LAW

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Of Counsel
John A. Zuger

Thomas O. Smith
1944-2001

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NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

November 14, 2003

Mr. Jon Mielke
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of Qwest's Response to Letter Seeking Comments.

Please contact me if you have any questions regarding this filing.

Sincerely,

Daniel S. Kuntz

Enclosures

c: Scott Macintosh
Tim Goodwin
Marilyn Foss
Susan Travis
Mary Tribby

77 **PU-439-03-295** Pages: 2

Cover letter re Response

by Qwest Corporation by Dan Kuntz, Attorney

11/14/2003 CC: Comm Legal PUD (3)

Gary Witt
Walter F. Eggers III
Steven E. Noack
Don Negaard
Dan Lipschultz
Deborah H. Harwood
Patrick Durick
Dick Thronson
Thomas F. Kelsch

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EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission **Local Competition Investigation**	**Case No. PU-439-03-295**

RESPONSE TO LETTER SEEKING COMMENTS

Qwest Corporation ("Qwest") responds to the Commission's letter of November 4, 2003, attached hereto as Attachment 1, seeking comments and identification of issues ("Letter Request"), as follows:

Unbundled High Capacity Loops

Qwest does not intend to submit evidence in this proceeding to rebut the FCC's national finding of impairment relating to high capacity loops. Qwest may present such evidence in a future proceeding, however.

Unbundled Dedicated Transport

Qwest does not intend to submit evidence in this proceeding to rebut the FCC's national finding of impairment relating to unbundled dedicated transport. Qwest may present such evidence in a future proceeding, however.

76 PU-439-03-295 Pages: 12
Response to Letter Seeking Comments
by Qwest Corporation by Dan Kuntz
11/14/2003 CC: Comm Legal PUD (3)

Unbundled Local Switching

1. *Whether Qwest intends to submit evidence in this proceeding to rebut in geographic areas and specific markets the FCC's national finding of impairment for mass market switching. (Item 1)*

Qwest intends to submit evidence to challenge the FCC's findings at the national level regarding mass market switching, in geographic areas and specific markets within North Dakota as Qwest's investigation and discovery responses from competitive local exchange carriers ("CLECs") reveals.

2. *Identifying the geographic areas and specific mass markets in which it intends to seek non-impairment determinations for local switching. (Items 2, 4 – 9)*

Qwest intends to challenge the FCC's findings of impairment in every North Dakota wire center where meaningful competition at the mass market level exists, or could reasonably exist, without CLEC access to Qwest's switching on an unbundled, TELRIC basis. It is a practical impossibility for Qwest – at this time – to define the "markets" or geographical areas with a higher level of specificity. Qwest has commenced, but has not completed, its analysis of the data available to it. More importantly, however, Qwest has not yet had an opportunity to review competitive local exchange carriers' ("CLECs'") responses to Commission discovery or engage in its own discovery. Qwest believes this discovery will disclose the granular facts that will allow Qwest to complete its analysis of the data and thereby allow it to more specifically define the relevant geographical markets in this case, as well as the breakpoint between mass-market and enterprise level switching.

Much of the information necessary to inform the Commission's findings regarding mass market switching is in the exclusive control of other providers (including CLECs, CAPs, IXCs, cable providers, wholesale providers, wireless providers, and VoIP

providers) and is not available to Qwest. Until Qwest can gain access to that information, Qwest must rely on an incomplete subset of (1) data that is in its possession and (2) data that is publicly available. Qwest can make certain inferences from this data, but needs access to data held by other providers in order to fully assess the "markets" for which impairment does not exist according to FCC standards.

At the same time, Qwest is mindful of the desire of the Commission and other parties to learn the precise scope of the nine-month case. Qwest has every intention of moving forward vigorously with the analysis of its own information and to obtain, through appropriate discovery, the information necessary to allow it to more precisely identify the specific markets in which unbundling relief is appropriate. This approach is preferable and more efficient. By waiting until discovery responses are provided, Qwest, the Intervenors, and the Commission avoid the confusion and inefficiencies that will inevitably result as discovery responses indicate that some identified markets should be defined differently, some markets should be deleted from consideration, or some markets should be added to Qwest's challenge.

The FCC-prescribed approach for switching is premised on the state commission's definition of a geographic market. Market definition is critical for both analytical paths defined by the FCC TRO to analyze switching impairment. The first path ("Track 1") focuses on whether either of two triggers (Self-Provisioning and Competitive Wholesale Facilities Deployment) has been met. The second path ("Track

2") comes into play if neither trigger has been met—it focuses on whether, even if the triggers are not met, a particular market is "suitable for 'multiple, competitive supply.'"[1]

The FCC explained the analytical process the Commission should follow in defining a market. The state commission must use the same market definition for both tracks.[2] While the Commission has discretion to "determine the contours of each market," the FCC discouraged state commissions from defining a market "as encompassing the entire state."[3] Likewise, the FCC cautioned that state commissions should not "define the market so narrowly that a competitor serving the market alone would not be able to take advantage of the scale and scope economies from serving a wider market."[4] Instead, the state commissions should define markets on a granular level, taking into account several discrete factors largely within the control of competitive providers:

1. The locations of customers actually being served by competitors.
2. The variation in factors that affect the ability of competitors to serve each group of customers.
3. The ability of competitors to target and serve specific markets economically and efficiently with currently available technologies.[5]

---

1 *Id.* ¶ 506. Under Track 2, the state commission is required to analyze evidence relating to actual competitive deployment, operational barriers, and economic issues (including a business case analysis of an efficient entrant). *Id.* ¶¶ 506-20.

2 *Id.* ¶ 495.

3 *Id.*

4 *Id.*

5 *Id. See also* ¶ 496 (state commission may consider "how UNE loop rates vary across the state, how retail rates vary geographically, how the number of high-revenue customers varies geographically, and how the cost [and] how the cost of serving customers varies according to the size of the wire center and the location of the wire center.")

Each factor focuses on what competitors are actually doing or what they have the ability to do within certain geographic areas. Many of these facts must be ascertained by discovering facts from other providers.

Based on the information that is available to it, Qwest is aware of three switches located in Fargo and one switch located in Grand Forks that are serving customers in North Dakota. However, It is critical to know whether there are additional switches, whether particular switches are serving mass market customers (and where the customers are located), whether the switches can be used to serve mass market customers if they are not currently serving them, the geographical scope of each switch, and a host of other issues related to evidence of actual deployment.[6] Even if the level of actual deployment is insufficient to meet the Track 1 switching triggers, actual deployment remains a relevant factor in a Track 2 analysis, where the state commissions must weigh evidence of actual deployment, operational factors, and a business case modeling process to determine if an efficient CLEC could economically serve mass-market customers.[7]

3. *Identifying a recommended cross over point – in terms of number of lines – at which multi-line DS0 customers will be treated as mass market customers instead of enterprise customers for purposes of local switching impairment determinations.*

The TRO calls for the Commission to make two market determinations. The first, as discussed above concerns the geographic market. The second concerns the product market – that is, how to differentiate between the mass market and the

---

6 *Id.* ¶¶ 495, 498-501, 504-05, 508-10.

7 Qwest is developing a business case model to be used in this case. However, before all inputs to the model can be finalized, it is important that Qwest have an opportunity to review CLEC responses to Commission and Qwest discovery regarding actual practices of CLECs.

enterprise market. The TRO recognizes that at a certain point a customer purchasing multiple DS0 loops becomes an enterprise customer. From the telecommunications provider's perspective, the question is when it makes sense to serve a customer using DS1 and greater facilities rather than multiple DS0 facilities.

Qwest has certain information available to it that suggests when competitive providers make the jump from multiple DS0 loops to DS1 loops. However, the information is not conclusive. In order to make a recommendation as to the appropriate crossover point, Qwest requires information from competitive providers as to when in serving customers they switch from DS0 loops to DS1 loops. Qwest believes that it will obtain this information through discovery.

Batch Hot Cut Process

1. *Whether Qwest intends to submit evidence in this proceeding to show that, in geographic areas and specific markets, a batch process is unnecessary.*

   On November 12, Qwest filed a description of its proposed batch hot cut process. A multi-state forum will take place to address whether refinements should be made to this process. The batch hot cut process that is ultimately adopted in North Dakota will be available throughout Qwest's service territory in North Dakota. However, the Commission may conclude that a batch hot cut process is not necessary in certain areas in North Dakota. The FCC addressed this possibility in paragraph 490 of the TRO:

> If a state should conclude that the absence of a batch cut migration process is not causing impairment for a particular market, however, that conclusion will render the creation of such a process unnecessary. For example, in a small, rural wire center, where there is not a significant volume of customer migrations, the absence of a batch cut process may not cause impairment.

2. *Identifying the geographic areas and specific mass markets in which it intends to assert that a batch process is unnecessary.*

See response to Batch Hot Cut Process ¶ 1, above.

Dated: Friday, November 14, 2003.

Respectfully submitted,

Daniel S. Kuntz (ID #03490)
ZUGER KIRMIS & SMITH
P.O. Box 1695
Bismarck, ND 58502-1695
(701)223-2711

Thomas Dethlefs
Tim Goodwin
QWEST SERVICES CORPORATION
1801 California Street, Suite 4900
Denver, CO 80202
303-672-5823

ATTORNEYS FOR QWEST CORPORATION

Public Service Commission
State of North Dakota

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Susan E. Wefald
Kevin Cramer

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TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

November 4, 2003

Dan S. Kuntz
Zuger Kirmis & Smith
PO Box 1695
Bismarck ND 58502-1695

RE: Case No. PU-439-03-295: Local Competition Investigation

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order (TRO) and adopted new rules concerning incumbent local exchange carrier (ILEC) obligations to unbundle certain elements of their networks. The rules became effective on October 2, 2003.

For a significant group of issues, the FCC requires state commissions to complete their analyses and reviews within nine months from the effective date of the TRO. See TRO at ¶¶ 339 (high capacity loops), 417 (dedicated transport), 423, 460 and 488 (batch hot cut process), 497 (DS0 crossover point), and 527 (mass market switching), and notes 1376 (DS0 crossover point) and 1612 (batch hot cut process), see also 47 C.F.R. §§51.319(a)(7)(i) (high capacity loops), (d)(5)(i) (mass market switching), and (e)(4)(i) (dedicated transport).

Due to the breadth of potential issues identified in the TRO for state commission determination, the variety of interested parties, and the limited time available for analysis, we hope to expeditiously identify the issues. Consequently we ask that Qwest file a response to this letter by **by November 14, 2003** identifying the following:

For Unbundled High Capacity Loops

- Whether Qwest intends to submit evidence in this proceeding to rebut at specific customer locations the FCC's national finding of impairment without access to DS1, DS3, or dark fiber loops;
- identifying the specific customer locations for each of DS1, DS3, or dark fiber loops for which it intends to seek non-impairment determinations for high capacity loops;
- identifying the specific customer locations for each of DS1, DS3, or dark fiber loops for which it intends to seek non-impairment determinations for high capacity loops based on satisfaction of the self-provisioning trigger established by the FCC;

Attachment 1

- identifying the specific customer locations for each of DS1, DS3, or dark fiber loops for which it intends to seek non-impairment determinations for high capacity loops based on satisfaction of the competitive wholesale facilities trigger established by the FCC;

For Unbundled Dedicated Transport

- Whether Qwest intends to submit evidence in this proceeding to rebut along specific routes the FCC's national finding of impairment without access to DS1, DS3, or dark fiber dedicated transport;
- identifying the specific routes along which it intends to seek non-impairment determinations for dedicated transport;
- identifying the specific routes for each of DS1, DS3, or dark fiber loops along which it intends to seek non-impairment determinations for high capacity loops based on satisfaction of the self-provisioning trigger established by the FCC;
- identifying the specific routes for each of DS1, DS3, or dark fiber loops for which it intends to seek non-impairment determinations for high capacity loops based on satisfaction of the competitive wholesale facilities trigger established by the FCC;

For Unbundled Local Switching

- Whether Qwest intends to submit evidence in this proceeding to rebut in geographic areas and specific markets the FCC's national finding of impairment for mass market switching;
- identifying the geographic areas and specific mass markets in which it intends to seek non-impairment determinations for local switching;
- identifying a recommended cross over point – in terms of number of lines – at which multi-line DS0 customers will be treated as mass market customers instead of enterprise customers for purposes of local switching impairment determinations;
- identifying the geographic areas and specific mass markets in which it intends to seek non-impairment determinations for local switching based on satisfaction of the self-provisioning trigger established by the FCC;
- identifying the geographic areas and specific mass markets in which it intends to seek non-impairment determinations for local switching based on satisfaction of the competitive wholesale facilities/potential deployment trigger established by the FCC;
- identifying the geographic areas and specific mass markets in which it intends to seek non-impairment determinations for local switching based on satisfaction of the competitive wholesale facilities/actual deployment trigger established by the FCC;
- identifying the geographic areas and specific mass markets in which it intends to seek non-impairment determinations for local switching based on application of the operational criteria identified by the FCC;

- identifying the geographic areas and specific mass markets in which it intends to seek non-impairment determinations for local switching based on application of the economic criteria identified by the FCC;
- identifying the geographic areas and specific mass markets in which it intends to assert that any impairment caused by the absence of access to local circuit switching would be cured by "rolling access" to unbundled local circuit switching;

For Batch Hot Cut Process

- Whether Qwest intends to submit evidence in this proceeding to show that, in geographic areas and specific markets, a batch process is unnecessary;
- identifying the geographic areas and specific mass markets in which it intends to assert that a batch process is unnecessary.

Your responses to this letter will be discussed at a workshop scheduled for November 24, 2003 and will form the basis of further procedural scheduling to be determined at the end of that workshop.

Thank you in advance for your prompt attention to this request. If you have any questions, feel free to contact the staff.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

c. Scott Macintosh
c. Tim Goodwin

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	))	Case No. PU-439-03-295

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA	)
	: ss.
COUNTY OF BURLEIGH	)

The undersigned, being duly sworn, deposes and says that: I am a United States citizen, over 18 years of age, and on November 14, 2003, I served a copy of the attached:

Response to Letter Seeking Comments

by placing a true copy in a postage paid envelope or envelopes addressed to each person named below, at the address stated below, which is the last known address of the addressee, and by depositing said envelope in the United States mail at Bismarck, North Dakota.

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Thomas F. Kelsch
Attorney at Law
P.O. Box 1266
Mandan, ND 58554-1266

Karol A. Cossette

Subscribed and sworn to before me, today, November 14, 2003.

NOTARY PUBLIC
State of North Dakota
My commission expires: 9-5-04

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NORTH DAKOTA
EXECUTIVE SECRETARY

Affidavit of Publication

Colleen Park, being duly sworn, state as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.

2. The newspapers listed on the exhibits published the advertisement of:
   PSC, Qwest Investigation, 1 time(s)
   as required by law or ordinance.

3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

Signed: Colleen Park

State of ND

County of Burleigh

Subscribed and sworn to before me this 12th day of November 2003.

Kelli Richey

KELLI RICHEY
Notary Public
State of North Dakota
My Commission Expires Oct. 13, 2006

North Dakota Newspaper Association
1435 Interstate Loop
Bismarck, ND 58503-0567
Ph (701) 223-6397 • Fax (701) 223-8185

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SECRETARY

INVOICE

Order **18279-03112PP0** Invoice # **27528**

November 13, 2003

Advertiser: **Public Service Commission**

P.O.#:

Attn: JONH. MIELKE
PUBLIC SERVICE COMMISSION
600 E. BOULEVARD AVE.
STATE CAPITOL
BISMARCK, ND 58505

Voice: 701-328-4076

Amount Due **$492.30**

Amount Paid

Please detach and return this portion with your payment

Public Service Commission Invoice # 18279-03112PP0-27528

Ad Size	*Rate Type*	*Rate*	*Total*	*Discount*	*(%)*	*Caption*	*Page*	*Run Date*
			DAILY					
Bismarck Tribune (Bismarck ND)								
77.00	SPR2	0.64	49.28	0.00		Qwest Investigation		11/05/03
Devils Lake Daily Journal (Devils Lake ND)								
80.00	SPR2	0.63	50.40	0.00		Qwest Investigation		11/03/03
Dickinson Press (Dickinson ND)								
84.00	SPR2	0.57	47.88	0.00		Qwest Investigation		11/01/03
Fargo, The Forum (Fargo ND)								
71.00	SPR2	0.71	50.41	0.00		Qwest Investigation		11/10/03
Grand Forks Herald (Grand Forks ND)								
73.00	SPR2	0.69	50.37	0.00		Qwest Investigation		11/01/03
Jamestown Sun (Jamestown ND)								
89.00	SPR2	0.54	48.06	0.00		Qwest Investigation		11/01/03
Minot Daily News (Minot ND)								
91.00	SPR2	0.54	49.14	0.00		Qwest Investigation		11/02/03
Valley City Times-Record (Valley City ND)								
81.00	SPR2	0.61	49.41	0.00		Qwest Investigation		11/03/03
Wahpeton Daily News (Wahpeton ND)								
94.00	SPR2	0.51	47.94	0.00		Qwest Investigation		11/02/03
Williston Herald (Williston ND)								
81.00	SPR2	0.61	49.41	0.00		Qwest Investigation		11/02/03

Gross Advertising	492.30	Total Misc	0.00	Amount Paid	0.00
Agency Discount		Tax	0.00	Adjustments	0.00
Other Discount	0.00	Total Billed	492.30	Payment Date	
Service Charge	0.00	Unbilled	0.00	Balance Due	492.30

75 **PU-439-03-295** Pages: 1

Affidavit of Publication

by North Dakota Advertising Service, Inc.

11/14/2003 CC: Comm Legal PUD (3)

Case No: PU-439-03-295

Notice of Workshop

Published in:

11/1 – Bismarck

11/5 – Bismarck

11/3 – Devils Lake

11/1 – Dickinson

11/10 – Fargo

11/1 – Grand Forks

11/1 – Jamestown

11/2 – Minot

11/3 – Valley City

11/2 – Wahpeton

11/2 – Williston

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(1919-2003)

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NOV 13 2003
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

November 13, 2003

VIA UPS NEXT DAY AIR

Jon Mielke, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION
CASE NO. PU-439-03-295

Enclosed for filing in regard to the above matter are an original and seven copies of Amended RTCG's Petition to Intervene.

Jo Thompson
Secretary to Don Negaard

Enclosures

PU-439-03-295 Pages: 1
Cover letter - Amended Petition to Intervene
by Reservation Telephone Company Group by Don Negaard.
11/13/2003 C.C. Comm Legal PUD (3)

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COMMISSION
SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AMENDED RTCG'S PETITION TO INTERVENE

The Rural Telephone Company Group (RTCG), all of whom are listed in paragraph 1 below, hereby petitions the North Dakota Public Service Commission (NDPSC) for leave to intervene in the above-entitled proceeding, pursuant to section 69-02-02-05 of the NDPSC's Rules of Practice and Procedure. In support of its petition, the RTCG states as follows:

1. The RTCG is comprised of BEK Communications Cooperative, Consolidated Telcom, Consolidated Communications Networks, Inc., Dakota Central Telecommunications Cooperative, Dakota Central Telecom I, Dickey Rural Telephone Cooperative, Dickey Rural Communications, Inc., Dickey Rural Access, Inc., Griggs County Telephone Company, Inter-Community Telephone Company, LLC, Midstate Telephone Company, Midstate Communications, Inc., Moore & Liberty Telephone Company, North Dakota Telephone Company, Northwest Communications Cooperative, Polar Communications Mutual Aid Corporation, d/b/a Polar Communications, Polar Telecommunications, Inc., Polar Telcom, Inc., Red River Rural Telephone Association, Red River Telecom, Inc., Reservation Telephone Cooperative, SRT Communications, Inc., Turtle Mountain Communications, Inc., United Telephone Mutual Aid Corporation, and

73 PU-439-03-295 Pages: 3
Amended RTCG's Petition to Intervene
by Rural Telephone Company Group
11/13/2003 CC: Comm Legal PUD (3)

West River Telecommunications Cooperative, all of which petitioners are licensed local exchange carriers and competitive local exchange carriers in the state of North Dakota.

2. The above-named petitioners desire to intervene until it can be determined what issues will be developed by the NDPSC in response to the FCC's Triennial Review proceedings and to include any other RTCG affiliate or similarly situated rural ILEC if and when such rural ILEC should desire to also join this group.

3. The RTCG may have a substantial interest in this proceeding's outcome, including financial and legal interests in the determination by the NDPSC of the issues identified in this proceeding in regard to the availability or unavailability of certain unbundled network elements.

4. The RTCG may contribute their views on the issues in this proceeding, and no other party to this proceeding can adequately protect the interests of the RTCG.

5. The RTCG's participation in this proceeding will not unduly broaden the issues or otherwise delay this proceeding.

6. The names, addresses, and telephone numbers of the persons to whom communications should be directed are as follows:

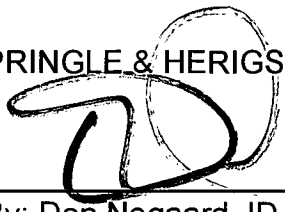
Don Negaard
Pringle & Hergistad, P.C.
Second Floor, Bremer Bank Building
20 1st Street SW
P.O. Box 1000
Minot, ND 58702-1000
(701) 852-0381

Jim Howard
John Staurulakis, Inc.
Eagandale Corporate Center, Suite 310
1380 Corporate Center Curve
Eagan, MN 55121
(612) 452-2660

WHEREFORE, the RTCG respectfully requests that the NDPSC grant RTCG's Petition to Intervene in this proceeding.

Dated this 13th day of November, 2003.

PRINGLE & HERIGSTAD, P.C.



By: Don Negaard, ID #03598
Attorneys for Rural Telephone Company Group
Second Floor, Bremer Bank Building
20 1st Street SW
P.O. Box 1000
Minot, ND 58702-1000
(701) 852-0381

Helbling, Sharon D.

From: Colleen Park [ColleenP@ndna.com]

Sent: Friday, November 07, 2003 4:32 PM

To: 'Helbling, Sharon D.'

Subject: RE: Attached Notice of Multi-State Batch Hot Cut Forum and Proced ural Order, case No. PU-439-03-295

received and the last run date will be 11/17 in Fargo. It will have to be a display (bordered) ad because of the "table" within the text.
The rates are set up to be comparable -- so the cost should be equivalent to a line ad -- but will look a lot better than a line ad.
Thanks!!
Colleen

People demand freedom of speech as a compensation for the freedom of thought which they seldom use.
Kierkegard

Colleen Park, Advertising Service Coordinator
ND Newspaper Association
1435 Interstate Loop
Bismarck, ND 58503
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-----Original Message-----
From: Helbling, Sharon D. [mailto:sdh@psc.state.nd.us]
Sent: Friday, November 07, 2003 3:16 PM
To: Colleen Park
Subject: Attached Notice of Multi-State Batch Hot Cut Forum and Procedural Order, case No. PU-439-03-295

Colleen Park
North Dakota Newspaper Association

Colleen,

Please have the attached Notice of Multi-State Batch Hot Cut Forum and Procedural Order published as a legal publication in the next issue of the ten North Dakota daily newspapers, and run it as a "News Item Only" article.

Send the bill to the Public Service Commission along with a tear sheet for billing purposes.

If you have any questions, please let me know.

Thank you.

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E-mail response re publication of Notice of Multi-State Batch Hot Cut by North Dakota Advertising Service, Inc.

11/07/2003 CC: Comm Legal PUD (3)

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	Case No. PU-439-03-295

QWEST BATCH HOT CUT PROPOSAL

Pursuant to the Commission's order of November 7, 2003, Qwest Corporation ("Qwest") respectfully submits this proposal for a region-wide batch loop conversion process. Qwest proposes a single, centrally coordinated ordering and conversion process that would be used in all fourteen of its states whenever a CLEC has the requisite number of qualified lines to convert from Qwest's circuit switch (both Qwest retail and CLEC UNE-P lines) to the CLEC's circuit switch. The same process could also be used to convert lines from one CLEC's circuit switch to another's to the extent that sufficient volumes existed to justify use of the batch process.

Qwest's proposal builds on, and makes improvements to, a process for provisioning unbundled loops that already operates at a demonstrably high level of performance. As discussed below, Qwest's current process does not suffer from many of the cost and operational problems that the *Triennial Review Order*[1] identified; Qwest does not have problems with excessive provisioning delays or service outages;[2] and,

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1 Report and Order, *Review of the Section 251 Unbundling Obligation of Incumbent Local Exchange Carriers*, CC Dkt. No. 01-338, FCC 03-36 (rel. Aug. 21, 2003) ("*Triennial Review Order*" or "*TRO*").

2 Compare *TRO* ¶ 466 with *infra* at section I(B) (discussion of Qwest provisioning and outage data).

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Qwest Batch Hot Cut Proposal
by Qwest Corporation
11/12/2003 CC: Comm Legal PUD (3)

Qwest does not levy huge non-recurring charges to perform a hot cut.[3] Moreover, unlike some other incumbent LECs,[4] Qwest actually does have substantial experience migrating large batches of CLEC lines — including thousands in 2003 for one CLEC alone — from UNE-P to stand-alone unbundled loops on a project-managed basis. These batch conversions *are* reflected in Qwest's current performance data, and establish that Qwest has continued to provide these loops to the CLEC at an extraordinarily high level of quality.

Even with this strong performance, in the two and a half months since the *Triennial Review Order*'s release, Qwest has worked hard to improve this process even further. Qwest has re-examined every step of its current loop-conversion process to find the efficiencies that become available when a CLEC works with Qwest to convert twenty-five lines or more in a single batch. Qwest has also used its experience performing large-scale project-managed conversions to identify the steps that can be streamlined or eliminated when the carriers are migrating batches of in-service loops. Qwest's work has paid off: The batch conversion process that Qwest proposes reduces substantially the work times associated with some of the steps within the process, the number of times Qwest has to contact the CLEC, and the process of clearing the order once the work has been completed. While Qwest has not yet completed its detailed cost studies, it appears that in virtually every instance these efficiencies will reduce Qwest's cost of performing a batch hot cut.

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[3] Compare *TRO* ¶ 470 with *infra* at section II(D) (discussion of Qwest's current NRCs).

[4] *See* TRO ¶ 474 & n.1466 (finding that Verizon's procedures for performing project-managed migrations "not sufficiently developed" and noting Verizon's failure to provide any performance data reflecting these project-managed cuts).

Qwest first provides a brief background summarizing the FCC's instructions to the state commissions concerning adoption of a new batch conversion process, as well as the loop-conversion process that Qwest is currently using. Qwest then presents its proposal for a new batch process.

I. BACKGROUND

A. The Triennial Review Order and the FCC's Implementing Rules.

In the *Triennial Review Order*, the FCC determined that "in the large majority of locations" (though not all),[5] the incumbent LECs' existing processes for migrating in-service loops one at a time from their own switches to their competitors' would "serve as barriers to competitive entry in the absence of unbundled switching" for mass-market customers.[6] The FCC found that the incumbents' current one-at-a-time conversions, as a general matter, imposed non-trivial one-time costs and service disruption risks on CLECs, and it questioned whether these processes would be able "to handle the necessary volume of migrations" if mass-market switching is taken off the unbundling list.[7] The FCC did note that some incumbents had begun to perform larger numbers of loop migrations on a project-managed basis, and that "[t]he record evidence strongly suggests" that managing and performing cut-overs on a batch basis in this manner could yield significant improvements. But based on the specific record before it, the FCC concluded that these project-managed processes were not yet "sufficiently

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5 *TRO* ¶ 473.

6 *TRO* ¶ 460.

7 *TRO* ¶ 459.

developed or widespread enough to adequately address the impairment created by the loop cut over process."[8]

The FCC acknowledged that the evidence before it was "not sufficiently detailed" to permit it to evaluate whether these general observations held true for any carrier's particular hot cut process in any individual market,[9] and that states might well find in some markets that "existing hot cut practices would be adequate even in the absence of unbundled local circuit switching."[10] But for all other markets, the FCC directed the states to "approve, within nine months of the effective date of this Order, a batch cut migration process . . . that will address the costs and timeliness of the hot cut process."[11] The FCC's formal rules implementing the *Triennial Review Order* define a "batch cut process" as "a process by which the incumbent LEC simultaneously migrates two or more loops from one carrier's local circuit switch to another carrier's local circuit switch, giving rise to operational and economic efficiencies not available when migrating loops . . . on a line-by-line basis."[12] The FCC held that the efficiencies that become available when migrating loops in batches rather than singly would mitigate the economic and operational burdens on which the FCC's presumptive national finding of impairment for mass-market switching was based: "We conclude that the loop access barriers contained in the record may be mitigated through the creation of a batch cut

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8 *TRO* ¶ 474.

9 *TRO* ¶ 473.

10 *TRO* ¶ 490.

11 *TRO* ¶ 488.

12 47 C.F.R. § 51.319(d)(2)(ii).

process by spreading loop migration costs over a large number of lines, decreasing per-line cut over costs."[13]

The FCC rules implementing the *Order* direct state commissions to make four determinations with respect to the new batch conversion process (beyond determining whether any new process is required in a given market at all[14]):

(1) A state commission shall first determine the appropriate volume of loops that should be included in the "batch."

(2) A state commission shall adopt specific processes to be employed when performing a batch cut, taking into account the incumbent LEC's particular network design and cut over practices.

(3) A state commission shall evaluate whether the incumbent LEC is capable of migrating multiple lines served using unbundled local circuit switching to switches operated by a carrier other than the incumbent LEC for any requesting telecommunications carrier in a timely manner, and may require that incumbent LECs comply with an average completion interval metric for provision of high volumes of loops.

(4) A state commission shall adopt rates for the batch cut activities it approves in accordance with the Commission's pricing rules for unbundled network elements. These rates shall reflect the efficiencies associated with batched migration of loops to a

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13 *TRO* ¶ 487.

14 47 C.F.R. § 51.319(d)(2)(B) provides, "If a state commission concludes that the absence of a batch cut migration process is not impairing requesting telecommunications carriers' ability to serve end users using DS0 loops in the mass market without access to local circuit switching on an unbundled basis, that conclusion will render the creation of such a process unnecessary." The rule specifies the findings that a state must make if it chooses not to require adoption of a new batch process. *See also* *TRO* ¶ 490.

requesting telecommunications carrier's switch, either through a reduced per-line rate or through volume discounts as appropriate.[15]

The paragraphs of the *Order* giving state commissions specific instructions for the nine-month cases contain these same directives.[16]

B. Qwest's Current Hot Cut Process.

As just noted, in considering any new batch conversion process, a state commission must "tak[e] into account the incumbent LEC's particular network design and cut over practices."[17] Qwest has already spent considerable time and effort to develop a seamless process for provisioning large quantities of unbundled loops for CLECs at an extremely high level of quality, and to develop TELRIC-compliant rates for that process. The state commissions and the FCC examined Qwest's existing hot cut process at length in the section 271 proceedings and found it adequate. Rather than redescribing the entire process in this document, Qwest attaches the affidavit of William M. Campbell, filed before the FCC in the recent Arizona section 271 docket, which outlines Qwest's current hot cut process. ***See* Exhibit 1.** To highlight:

- Qwest uses, and must continue to use, the same hot cut process in all fourteen of its states.
- Qwest has a dedicated center in Omaha, Nebraska – the QCCC – that oversees the provision of each and every hot cut throughout the Qwest region.

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15 47 C.F.R. § 51.319(d)(ii)(A)(1)-(4).

16 *See TRO* ¶ 489.

17 47 C.F.R. § 51.319(d)(ii)(A)(2).

- Qwest has a detailed procedure that defines the hot cut process. ***See* Exhibit 2.**
- Qwest has trained its technicians on the hot cut process.
- Qwest has provisioned unbundled loops for CLECs using this process at an extremely high level of quality. Qwest's audited and reconciled performance data shows that it is routinely provisioning over 98% of its hot cut commitments across the region on time. ***See* Exhibit 3.** This percentage varies in individual states, but in general remains within the 95-98% performance level. ***See* Exhibit 4.** Moreover, only a small fraction of migrated loops experience any trouble in the 30 days following cut-over. Regionally, for example 97.5%-99.99% of loops do not experience installation troubles. ***See* Exhibits 3-4.**

Qwest uses its current process to provision approximately 1,000 hot cuts per day on average, and has processed up to 1,350 hot cuts in a single day. Importantly, these numbers reflect CLECs' actual order levels, not the maximum number of hot cuts Qwest could perform in a single day.

Qwest has experience working with CLECs to transition very large batches of UNE-P lines to stand-alone unbundled loops simultaneously. Qwest has already worked with one CLEC to migrate thousands of UNE-P lines to the CLEC's own switching using its current form of "batch processing." These numbers continue to mount. Unlike some other LECs whom the FCC specifically considered in the *Triennial*

Review Order,[18] Qwest includes the results of this large-scale batch conversion process in its performance data. Thus, the extremely good performance results noted above reflect Qwest's ability to perform hot cuts for its CLEC customers in larger quantities. *See* **Exhibits 3-4.** The batch conversion process that Qwest proposes in this forum reflects Qwest's actual experience with these types of large-scale cuts and the lessons it has learned regarding what does and does not work.

II. QWEST'S BATCH LOOP CONVERSION PROPOSAL

Qwest presents its proposal for a new batch hot-cut process in terms of the four determinations the FCC instructed state commissions to make.

A. The Minimum "Batch" That Qualifies for the Batch Conversion Process (47 C.F.R. § 51.319(d)(ii)(A)(1)).

As noted above, the very point of adopting a *batch* hot cut process is to capture the operational and economic efficiencies that come from migrating many in-service loops simultaneously rather than singly. The FCC directed the states to consider batch conversions specifically because it "expect[ed] these processes to result in efficiencies associated with performing tasks once for multiple lines that would otherwise have been performed on a line-by-line basis,"[19] and it is the ability to "spread loop migration costs over a large number of lines, decreasing per-line cut over costs" that enables "the loop

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[18] The FCC noted that Verizon's project-managed large-batch hot cuts were not offered at set rates, were not subject to any performance intervals, and, as a result, were not tracked by Verizon's performance metrics. *See TRO* ¶ 474 & n.1466.

[19] *TRO* ¶ 489.

access barriers contained in the record [to] be mitigated."[20] But these per-loop costs drop only if the CLEC converting a high enough quantity of loops to give rise to economies and justify the slightly greater up-front coordination that batch conversions require. The CLEC must also be seeking to convert loops of a kind that actually permit conversion tasks to be consolidated; otherwise, there are no efficiencies to pass through.

For these reasons, the first task the FCC assigned the states was to determine what minimum "batch" of loops a CLEC must be converting in order to qualify for "batch" conversion. *See* 47 C.F.R. § 51.319(d)(ii)(A)(1); *TRO* ¶ 489. (This is a separate question from the maximum volumes of loops the batch conversion process must be prepared to handle, which is discussed in part C below). Qwest's preliminary determination is that the necessary economies and efficiencies may be realized when a CLEC is converting twenty-five (25) voice grade lines at a single time in a single central office. The reason why CLECs need at least twenty-five (25) lines *individually* is that some of the significant efficiencies — for example the ability to reduce the number of separate calls between Qwest and the CLEC, and the ability to perform multiple pre-wirings in the same physical locations on the frame — come from performing multiple conversions *for the same CLEC*, not just from doing multiple conversions *per se*.[21]

In addition, batched loops must all be capable of conversion on a consolidated basis. The FCC adopted its batch conversion requirement to assist CLECs in serving the "mass market," which the FCC defined as "consumers of analog 'plain old telephone

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20 *TRO* ¶ 487.

21 *Cf. TRO* ¶ 489 (FCC expects efficiencies to come from consolidating pre-wiring and reducing number of communications between ILEC and CLEC).

service' or 'POTS' that purchase only a limited number of POTS lines and can only economically be served via analog DS0 loops."[22] A batch conversion process is possible for these analog DS0 loops, which constitute the vast majority of Qwest's outside plant. But it is not feasible to gain these efficiencies when the underlying facility uses integrated digital loop carrier systems ("IDLC"). The *Triennial Review Order* itself recognizes[23] that IDLC is not unbundled via the same, uniform cut-over process as other loop plant: Each IDLC loop must be examined individually to determine which of the several unbundling methods used for such loops (such as finding a metallic pair alternative, hair-pinning, reconnecting the loop to a universal DLC system at the remote terminal, or installing a new central-office terminal) is available or appropriate for that loop. Qwest emphasizes that it will continue to unbundle IDLC lines a very high level of quality; however, such loops (which form the small percentage of Qwest's plant in any event) must be migrated individually using the existing hot cut process.[24] *See* ***Exhibit 5.***

Likewise, the FCC expressly defined its batch-cut requirements in terms of developing a process to migrate loops "from one carrier's local circuit switch to another carrier's *local circuit switch.*"[25] The FCC's definition of a "batch cut process" thus does not include conversions including loop-splitting arrangements that also connect an unbundled loop to a third carrier's *packet* switch. As the Arizona Corporation

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22 *TRO* ¶ 459.

23 *See TRO* ¶ 297 (noting that unbundling IDLC loops "may require incumbent LECs to implement policies, practices, and procedures different from those used" to unbundle other kinds of loops); *id.* n.855 (describing a number of different ways that IDLC loops might be unbundled).

24 *See TRO* ¶¶ 251-252

25 47 C.F.R. § 51.319(d)(ii) (defining "batch cut process") (emphasis added). *See also* 47 C.F.R. § 51.319(d)(ii)(A) (directing state commissions to establish process "for use in migrating lines served by one carrier's local circuit switch to lines served by another carrier's *local circuit switch*) (emphasis added).

Commission has properly recognized,[26] the FCC directed carriers to pursue line-splitting implementation, not as part of the nine-month switching cases or the development of a batch conversion process, but rather as part of the pre-existing change management process.[27] The FCC's decision *not* to include loop splits as part of the batch conversion process makes sense: conversions from UNE-P directly to loop-splitting arrangements cannot be consolidated into a batch because each loop must be individually checked to ensure it is capable of carrying DSL signals and, if not, conditioned. Just as contemplated by the *Triennial Review Order*, the voice CLEC in a potential line-splitting arrangement will be able to use Qwest's *current* processes to migrate individual lines to stand-alone unbundled loops connected to that CLEC's circuit switch.[28]

B. The Process Employed (47 C.F.R. § 51.319(d)(2)(ii)(A)(2)).

The FCC's second instruction to the states is to "adopt specific processes to be employed when performing a batch cut, taking into account the incumbent LEC's particular network design and cut over practices."[29] Compared to the loop conversion process that Qwest uses today, the new batch hot cut process eliminates many of the repetitive dial tone testing steps, much of the telephonic contact between the two

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[26] *See* Arizona Corporation Commission, Procedural Order, *ILEC Unbundling Obligations As a Result of the Federal Triennial Review Order*, Dkt. No. T-00000A-03-0369 (Nov. 6, 2003) at 5-6 ("[T]he FCC's Triennial Review Order did not require line splitting to be addressed in the nine-month docket and . . . no party could point to another state commission that is addressing line splitting in its triennial review proceedings."); *id.* at 7 ("IT IS FURTHER ORDERED that line splitting will not be addressed in this docket.").

[27] *See TRO* ¶ 252 ("[W]e encourage incumbent LECs and competitors to use existing state commission collaboratives and change management processes to address OSS modifications that are necessary to support line splitting.").

[28] *TRO* ¶¶ 251-252.

[29] 47 C.F.R. § 51.319(d)(2)(ii)(A)(2). *See also TRO* ¶ 489.

companies, and the need for duplicative entries into Qwest systems in order to update records. The new process also has new business rules associated with it on both Qwest's and the CLEC's part. Each is intended to make the work steps within the new process more efficient and workable for both parties.

1. Process flow.

Exhibit 6 is a process diagram describing the recommended tasks for the new batch hot cut process. As illustrated in this diagram, a CLEC will perform pre-order functions including an initial batch coordination meeting with Qwest. CLEC must submit to Qwest a Local Service Request ("LSR") with a Purchase Order Number ("PON") and a three-letter unique identifier *e.g.*, ("BHC") to designate it as a batch hot cut candidate in order to begin the batch conversion. Once a complete and accurate LSR is received, a service order will be generated resulting in a firm order confirmation ('FOC") back to the CLEC. Once the service order is issued, a Qwest project manager, residing in the QCCC, will begin compiling the batch orders on a Central Office ("CO") by CO basis.

Approximately two days prior to due date for the batch, a spreadsheet containing all loops in the batch will be forwarded to both the CLEC and the central office where the work will take place. This batch spreadsheet will contain order related information such as the CLEC Purchase Order Number ("PON") with a three-letter unique identifier ("BHC") describing it as a batch hot cut candidate; the Qwest order number; a Qwest project ID number; and CLEC contact information.

On the due date, the Central Office Technician ("COT") will perform both the pre-wiring and lift and lay activity associated with the conversion order. Prior to performing the lift and lay, however, the COT will perform a dial tone test on both the Qwest switch

port and the CLECs facility to verify the existence of dial tone on each facility, and that each facility has the correct number working on it. These tasks will occur before any conversion is conducted. If the COT does not have dial tone on the CLEC's facility on the due date, the QCCC will contact the CLEC via a phone call asking the CLEC to resolve the issue. If CLEC dial tone is present, the COT will monitor the line to ensure an idle state prior to disconnecting the Qwest circuit switch and then reconnecting it to the CLEC's switch. Upon completion of the orders identified on the batch spreadsheet, Qwest will notify the CLEC via email that it has completed the conversions. It remains the responsibility of the CLEC to ensure that each line is triggered for number porting upon completion of the order.

2. Batch Hot Cut Requirements.

Exhibit 7 contains a list of the draft requirements that both Qwest and the CLECs must follow in order to make the conversion process as seamless and efficient as possible. A summary of the most significant of these requirements is as follows:

a. General requirements

The batch hot cut process is applicable to basic installations that will re-use existing facilities; this will avoid the need to dispatch a Qwest technician to the field to change outside plant facilities. Other installation options will remain available during normal business hours to provision other types of unbundled loops. For example, UNE-P loops working on Integrated Digital Loop Carrier systems, or line splitting arrangements will be converted during normal business hours using existing processes because a field dispatch may be required to complete the conversion.

b. Qwest-specific requirements

Qwest will produce and distribute via e-mail a batch spreadsheet for the CLEC documenting all order activity within a given central office, and use this batch spreadsheet to communicate with the CLEC on order status and completion. Unlike the QCCC's current process, to maximize efficiency Qwest will conduct pre-wire work on the due date, not two days earlier, to minimize the number of instances technicians must work on each order.

c. CLEC-specific requirements

The CLEC must provide both email and live contact information on the LSR when it is submitted. The CLEC must provide accurate end-user service address information. The CLEC dial tone must be on their designated CFA termination prior to the due date. The CLEC must make resources readily available to clear all loops identified on the batch spreadsheet in a timely manner between the hours of 3:00PM CST and 11:00PM CST. This will ensure that the CLEC and Qwest can promptly resolve any issues the COT may encounter (*i.e.*, bad CFA or no dial tone).

C. The Capacity and Timeliness of the Batch Process (47 C.F.R. § 51.319(d)(2)(ii)(A)(3)).

The FCC's third instruction to state commissions is to "evaluate whether the incumbent LEC is capable of migrating multiple lines served using unbundled local circuit switching to switches operated by a carrier other than the incumbent LEC for any requesting telecommunications carrier in a timely manner . . . ."[30] This requires state commissions to make predictive judgments regarding the volumes of conversions the

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30 47 C.F.R. § 51.319(d)(2)(ii)(A)(3). *See also TRO* ¶ 489.

batch cut process must be able to handle and whether Qwest can continue to provision loops at an acceptable level of quality at those volumes.

The expected volume of conversions turns on five factors: (1) current volumes of stand-alone unbundled loop provisioning, (2) current volumes of new UNE-P orders, (3) the size of the embedded UNE-P base, (4) the fraction of that base and new UNE-P orders that will convert to stand-alone unbundled loops, and (5) the *Triennial Review Order*'s schedule for transitioning the embedded UNE-P base to other arrangements. Qwest addresses each factor in turn. The volumes of UNE-P and UNE-L lines CLECs submit monthly are well established in Qwest's performance data. The only unknown is the percentage of UNE-P lines (new and existing) that will convert once switching is no longer available as a UNE.

The FCC set a transition schedule for moving the embedded base of UNE-P lines to unbundled loops. CLECs must submit 1/3 of their embedded UNE-P lines for conversion 13 months after the state commission decision; 1/3 of their UNE-P lines 20 months after the state commission decision; and the last 1/3 of their UNE-P lines 27 months after the state commission decision.[31] Assuming a July 2, 2004 decision from the state commission, that means 1/3 of the embedded base will convert between August 2005 and February 2006; 1/3 of the embedded base will convert between March 2006 and September 2006, and the remainder will convert before April 2007.[32] The

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31 47 C.F.R. §51.319(d)(4)(A).

32 *TRO* ¶ 532.

FCC also stated that state commission decisions eliminating unbundled switching as a UNE will become effective on December 2, 2004.[33]

Thus, to calculate the expected monthly volumes in each state, the state commissions should apply the following formulas based on the volumes of UNE-P lines and UNE-L lines in each individual state:

- December 2004 – July 2005: [Inward unbundled loop volume (growth) eligible for the batch hot cut process * percent of UNE-P lines in markets where Qwest is challenging the impairment finding]
- August 2005 – April 2007: [Inward unbundled loop volume (growth) eligible for the batch hot cut process * percent of UNE-P lines in markets where Qwest is challenging the impairment finding] + [Embedded UNE-P base amortized over 21 months * percent of UNE-P lines in markets where Qwest is challenging the impairment finding]

These formulas will provide the expected volumes of unbundled loops that Qwest's must be prepared to provision in each state on a monthly basis.

D. Batch Cut Rates (47 C.F.R. § 51.319(d)(2)(ii)(A)(4)).

The FCC's last directive to each state commission is to "adopt rates for the batch cut activities it approves in accordance with the Commission's pricing rules for unbundled network elements," which should "reflect the efficiencies associated with

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[33] 47 C.F.R. §51.319(d)(4).

batched migration . . . ." [34] The final rate will obviously depend on the precise procedure adopted in this forum.

As an initial matter, Qwest notes it is starting from a better position than many other incumbent LECs in this regard. The FCC found in the *Triennial Review Order* that currently hot cuts are "*often* priced at rates that prohibit facilities based competition for the mass market,"[35] citing ILEC non-recurring charges exceeding $100 and as high as $185.[36] But Qwest's hot cut charges across its region are not nearly this high. In virtually every state Qwest's current non-recurring charges for a basic hot cut range between $29.10 and $65.00.[37]

The batch conversion process that Qwest proposes above will yield significant additional efficiencies and in most states the CLEC community can expect to experience a significantly reduced rate.

III. CONCLUSION

Qwest hereby presents a viable batch hot cut proposal that will allow CLECs to convert large volumes of DS0 lines to unbundled analog loops, while still ensuring that CLEC end-user customers have minimal service interruption, and minimal installation service problems. In most states, the process will also significantly reduce the non-recurring rate associated with provisioning an individual unbundled loop. Qwest has

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[34] 47 C.F.R. § 51.319(d)(2)(ii)(A)(4). *See also TRO* ¶ 489.

[35] *TRO* ¶ 465 (emphasis added).

[36] *TRO* ¶ 470.

[37] In two states, Idaho and Minnesota, the nonrecurring rates associated with hot cuts are substantially below this range. In these states, these costs are well below the cost of providing the service even with the new batch hot cut process. As such, it does not set forth these rates as an example.

already demonstrated that the CLEC community can use its existing hot cut process to reach mass-market customers at a high level of quality. This simplified process should do nothing but improve an already strong process. Qwest asks the North Dakota Commission to approve its proposed process.

Dated: Wednesday, November 12, 2003.

Respectfully submitted,

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ATTORNEYS FOR QWEST CORPORATION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Qwest Communications International Inc.	)	**WC Docket No. _____**
	)	
	)	
Consolidated Application for Authority to Provide In-Region, InterLATA Services in Arizona	)	

DECLARATION OF WILLIAM M. CAMPBELL

Checklist Item 4 of Section 271(c)(2)(B): Unbundled Loops

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Qwest Communications International Inc.	)	**WC Docket No. _____**
	)	
Consolidated Application for Authority to Provide In-Region, InterLATA Services in Arizona	)	

DECLARATION OF WILLIAM M. CAMPBELL

Checklist Item 4 of Section 271(c)(2)(B): Unbundled Loops

Pursuant to 47 C.F.R. § 1.16, William M. Campbell declares as follows:

1. My name is William M. Campbell. My business address is 1801 California Street, Denver, Colorado. I am Director, Product Marketing – Interconnection Services, at Qwest Corporation ("Qwest"). 1/ I am the Product Director responsible for Checklist Item 4 – Unbundled Loops. In that position, I have directed the Qwest Unbundled Loop Product Team developing products and processes for the Qwest Unbundled Loop products and have the responsibility to represent Qwest in formal Section 271 proceedings. As part of Qwest's work to ensure its compliance with Section 271, I have participated extensively in the state

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1/ A description of my professional experience and education is attached as Exhibit WMC-LOOP-1 to this Declaration.

proceedings in Arizona, Colorado, Nebraska, Oregon, Washington, and the Multi-state 271 workshops involving Idaho, Iowa, Montana, New Mexico, North Dakota, Utah, and Wyoming. This includes directing testimony in South Dakota and Minnesota.

I. EXECUTIVE SUMMARY

2. Qwest satisfies the requirements of Section 271(c)(2)(B)(iv) of the Telecommunications Act of 1996 ("1996 Act" or "Act") and Federal Communications Commission ("Commission" or "FCC") rules that relate to the provision of unbundled loops. Consistent with the Act and Commission precedent, [2/] Qwest has a concrete and specific legal obligation to provide competitors with nondiscriminatory access to unbundled loops under both its

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2/ *See New York 271 Order*, 15 FCC Rcd at 3962-63 (¶ 20) ("[T]he Commission must consult with the relevant state commission to verify that the BOC has one or more state approved interconnection agreements with a facilities-based competitor, or a statement of generally available terms and conditions ("SGAT"), and that either the agreement(s) or general statement satisfy the 'competitive checklist.'"); *see also Texas 271 Order*, 15 FCC Rcd at 18360-61 (¶ 11) (illustrating use of an SGAT, rather than individually negotiated interconnection agreements, to test compliance with the checklist requirements). Once an SGAT has gone into effect pursuant to Section 252(f)(3)(B), every CLEC is entitled to adopt any of the services or terms of the agreement pursuant to Section 252(i). The Commission has held that the "pick and choose" rule of Section 252(i) applies to SGATs. *See* 14 FCC Rcd at 20984-85 (¶ 167).

Statement of Generally Available Terms and Conditions ("SGAT") [3/] and state-approved interconnection agreements. [4/]

3. Qwest's unbundled loop offerings comply with Commission requirements. [5/] Qwest makes available to CLECs all required types of unbundled loops, including analog/voice grade loops, digital subscriber line ("xDSL") loops, and high-capacity loops. Qwest performs hot cuts for CLECs and, where technically feasible, provides CLECs with access to unbundled loops provisioned over integrated digital loop carrier ("IDLC") technology. Qwest performs loop conditioning where necessary to allow CLECs to provide digital services. Qwest also provides CLECs with nondiscriminatory access to pre-order loop makeup

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3/ Qwest's Arizona SGAT is located at Attachment 5, Appendix B of this Application.

4/ Appendix L contains state-approved interconnection agreements that Qwest has entered into with CLECs in Arizona as of August 1, 2003. The Arizona SGAT has been converted to a state-approved interconnection agreement ("SGAT-Based Interconnection Agreement") as the result of New Edge Networks' opt-in to the June 28, 2002, Arizona SGAT. Qwest relies on this agreement and the other interconnection agreements filed with the Arizona Commission, in addition to its SGAT, to establish checklist compliance. Unless otherwise noted, references to SGAT language and section numbers also are intended to refer to SGAT-Based Interconnection Agreements.

5/ Qwest recognizes that in its Triennial UNE Review proceeding, the Commission modified its requirements with respect to unbundled loops. In the wake of the Commission's decision, Qwest will continue to ensure that its unbundled loop policies and practices are consistent with applicable federal law.

information. [6/] Finally, Qwest makes available to CLECs unbundled access to dark fiber loops, to subloops, and to the high-frequency portion of the loop. [7/]

4. As of May 31, 2003, Qwest had in service 37,719 unbundled loops in Arizona. (These figures represent stand-alone loops only, not those provided as part of a UNE combination.) Specifically, Qwest had in service 30,253 unbundled voice-grade analog loops, 5,578 xDSL-capable loops, and 1,888 high-capacity loops. The volume of unbundled loops in service demonstrates that Qwest is provisioning loops to CLECs in Arizona in a nondiscriminatory fashion. [8/]

II. QWEST HAS COMPLIED WITH THE COMMISSION'S UNBUNDLED LOOP REQUIREMENTS

5. Section 271(c)(2)(B)(iv) of the 1996 Act requires Bell Operating Companies ("BOCs") wishing to offer in-region interLATA service to provide "local loop transmission from the central office to the customer's premises, unbundled

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6/ Qwest's loop qualification tools, policies, and practices are discussed in the Declaration of Lynn M V Notarianni and Loretta A. Huff on Operations Support Systems ("OSS").

7/ These products are discussed in separate Declarations of Karen A. Stewart on, respectively, Dark Fiber, Network Interface Devices and Subloops, and Line Sharing and Line Splitting.

8/ Exhibit WMC-LOOP-2 shows the growth in the number of loops in service in Arizona. Qwest's commercial performance for unbundled loops is described in the Commercial Performance Declaration of Dean Buhler.

from local switching or other services." 9/ In the *UNE Remand Order*, the Commission defined the local loop as:

> [A] transmission facility between a distribution frame (or its equivalent) in the incumbent LEC central office and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC. The local loop network element includes . . . dark fiber, attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), and line conditioning. 10/

6. Qwest complies with the unbundled loop requirements of the 1996 Act and the Commission's rules and orders. Qwest has a concrete and specific legal obligation to provide CLECs with access to unbundled loops under its SGAT and state-approved interconnection agreements. Moreover, Qwest provides unbundled loops to CLECs in a nondiscriminatory manner.

7. The loop provisions in Qwest's SGAT have evolved not only on a state-by-state basis, but across Qwest's region through workshops and hearings that were part of collaborative processes, conducted on an open basis with active participation by CLECs. Throughout these processes, Qwest attempted to reach consensus with CLECs on SGAT language. When that was not possible, the

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9/ 47 U.S.C. § 271(c)(2)(b)(IV).

10/ *UNE Remand Order*, 15 FCC Rcd at 3772-78 (¶¶ 166-79); *see also* 47 C.F.R. § 51.319(a)(1).

"impasse" issue went to the state regulatory authority for resolution. As a result, Qwest's SGAT reflects a great deal of CLEC input.

8. In addition to the SGAT, Qwest further defines the specifications, interfaces, and parameters associated with unbundled loops in Technical Reference Publication Nos. 77384 (unbundled loops), 77375 (DS1), 77324 (DS3), and 77346 (OCn), all of which are available on Qwest's web site. [11/] Qwest's Wholesale Product Catalog ("PCAT"), also available on Qwest's web site, provides CLECs with additional product information. [12/]

A. Qwest Offers All Required Categories of Unbundled Loops and Related Services

9. Qwest offers CLECs the complete range of unbundled loops. Specifically, Qwest offers (1) 2-wire and 4-wire voice-grade/analog loops; (2) four types of loops that generally can be grouped together in the category of "xDSL capable" loops; and (3) four types of high-capacity loops. [13/]

1. Voice-Grade/Analog Loops

10. *Basic 2-Wire/4-Wire Analog Loop.* The basic 2-wire/4-wire analog loop is available as a 2-wire or 4-wire voice grade, point-to-point configuration suitable for local exchange type services. This service is a

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11/ Technical publications can be found at http://www.qwest.com/wholesale/notices/techPub.html.

12/ The PCAT can be found at http://www.qwest.com/wholesale/pcat/index.html.

13/ *See* SGAT §§ 9.2.2.2-9.2.2.3, 9.2.6.1.

transmission path that provides a connection from the Qwest serving central office distribution frame or equivalent to the demarcation point at the end user's location. The actual loop facilities may utilize various technologies or combinations of technologies. [14/]

2. xDSL-Capable Loops

11. Qwest offers four types of loops that can be classified as "xDSL capable" loops: (1) 2-wire and 4-wire "non-loaded" loops, (2) asymmetrical digital subscriber line ("ADSL") compatible loops, (3) Basic Rate ISDN ("BRI") capable loops, and (4) xDSL-I capable loops.

12. *2-Wire/4-Wire Non-Loaded Loop.* The 2-wire/4-wire non-loaded loop is a metallic facility that provides a transmission path from the Qwest serving central office distribution frame, or equivalent, to the end user's demarcation point. It is a metallic, wire cable pair with no load coils, and, depending on the Network Channel ("NC") and Network Channel Interface ("NCI") codes specified by the CLEC, with, potentially, some limited lengths of bridged tap. Qwest will condition loops at the CLEC's request. The loop conditioning process is described in detail below.

13. *ADSL Compatible Loop.* The ADSL compatible loop is an unbundled 2-wire non-loaded metallic facility that establishes a transmission path between a Qwest serving central office distribution frame and the demarcation

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[14/] SGAT § 9.2.2.2.

point located at the end user's designated premises. This loop will meet the ADSL performance requirements specified in Qwest's Technical Publication No. 77384. If necessary, Qwest will condition the loop at the CLEC's request to meet ADSL technical parameters.

14. *Basic Rate ISDN ("BRI") Capable Loop.* The Basic Rate ISDN capable loop is a Qwest facility with a 2-wire interface that provides a transmission path from the Qwest serving central office distribution frame, or equivalent, to an end user's demarcation point. This loop transports bi-directional, 2-wire signals with a nominal transmission rate of 160 KBPS, meets the performance requirements specified in Qwest's Technical Publication No. 77384, and permits access to 144 KBPS channelized payload bandwidth for transport of services.

15. *xDSL-I Capable Loop.* The xDSL-I capable loop is a 2-wire facility that provides a transmission path from the Qwest serving central office distribution frame, or equivalent, to an end user demarcation point. This loop transports bi-directional, 2-wire signals with a standard transmission rate of 160 KBPS, meets the performance requirements specified in standard technical publications, and permits access to a nominal 144 KBPS unchannelized payload bandwidth for transport of services.

16. Qwest uses the terms "capable" and "compatible" to make it clear that while Qwest provides the loops themselves, CLECs provide the service over those loops. Specifically, "capable" means that Qwest assures that the loop

provisioned complies with industry technical standards. [15]/ The term "compatible" means that Qwest assures that the loop complies with the ordered NC/NCI codes, but makes no assumptions as to the capabilities of the CLEC's central office equipment or customer premises equipment ("CPE"). [16]/ Qwest does not restrict the CLEC's use of the loop except as expressly permitted or required by existing rules. [17]/

17. *Extension Technology*. Qwest provides extension technology, if needed, for Basic Rate ISDN ("BRI") capable loops and xDSL-I capable loops. [18]/ Extension technology takes into account, for example, additional regenerator placement, central office powering, and mid-span repeaters, if required, as well as BRITE cards in order to provision the Basic Rate ISDN capable or xDSL-I capable loop. Extension technology may be required to bring the circuit to the technical specifications necessary to accommodate the requested service. Qwest will add extension technology if the circuit design requires it or if requested by a CLEC to meet its specific needs. If the circuit design requires extension technology to meet

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[15]/ SGAT § 9.2.2.1.1. For example, ANSI Standards T1.601 and T1.102 specify the ISDN and DS1 interfaces. There are test sets that indicate whether the loop is performing to the established standards. Qwest will build the capable loop using whatever equipment it takes, such as subscriber loop carrier or range extenders, to ensure that the loop meets the standards.

[16]/ SGAT § 9.2.2.1.2.

[17]/ SGAT § 9.1.5.

[18]/ SGAT § 9.2.2.5.

the technical standards, then Qwest will add it at no charge. [19]/ However, if a CLEC requests the addition of extension technology even though the loop conforms to the technical standards, then the inclusion of extension technology will result in a monthly recurring charge to the CLEC.

3. High-Capacity Loops

18. Qwest offers four types of high-capacity loops under the SGAT: (1) DS1-capable loops, (2) DS3-capable loops, (3) OCn loops, and (4) dark fiber loops. [20]/

19. *DS1-Capable Loops.* The DS1-capable loop is a transmission path between the Qwest serving central office distribution frame, or equivalent, and the demarcation point at the end user location. The DS1-capable loop transports bi-directional DS1 signals with a nominal transmission rate of 1.544 Mbps and meets the design requirements specified in standard industry technical publications. [21]/

20. *DS3-Capable Loops.* The DS3-capable loop is a transmission path between a Qwest serving central office distribution frame, or equivalent, and a demarcation point at an end user location. The DS3-capable loop transports bi-

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[19]/ *Id.*

[20]/ SGAT § 9.2.1.

[21]/ SGAT § 9.2.2.6.1.

directional DS3 signals with a nominal transmission rate of 44.736 Mbps that meets the design requirements specified in standard industry technical publications. [22]/

21. For DS1- or DS3-capable loops, Qwest will provide the necessary electronics at both ends, including any intermediate repeaters. In addition, the CLEC will have access to these terminations for testing purposes. [23]/ Additionally, Qwest permits CLECs to add multiplexing to both DS1 and DS3-capable loops. [24]/

22. *OCn Capable Loops.* Qwest also stands ready to provide access to higher capacity loops, including OC3, OC12, OC48, and OC192 loops, where facilities are available. [25]/

23. *Dark Fiber Loops.* Qwest's dark fiber offerings are in section 9.7 of the SGAT and are discussed in the Dark Fiber Declaration of Karen A. Stewart.

B. Qwest Complies With the Commission's Spectrum Management Rules

24. Spectrum management is the administration of loop plant to facilitate spectrum compatibility for services and technologies that use pairs in the same cable. Spectrum compatibility, in general, refers to the ability of loop

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[22]/ SGAT § 9.2.2.6.2.

[23]/ SGAT § 9.2.2.6.

[24]/ SGAT § 9.2.2.10.

[25]/ SGAT § 9.2.2.3.1.

technology to operate and reside in the same or an adjacent binder group without causing an unacceptable degradation of service from the end user's perspective. [26]/

25. In the Arizona proceedings, Qwest's spectrum management policies generated an impasse issue. Qwest modified its Arizona SGAT to reflect the outcome of this issue in the ACC's final order on loops. [27]/ Qwest's spectrum policies therefore comply with the ACC's final order on loops. Qwest is also in compliance with current federal requirements for spectrum management. As the Commission continues to develop its spectrum management policies, Qwest will revise its spectrum policies as necessary to remain consistent with them.

C. Qwest Policies and Procedures with Respect to Unbundled Loops Demonstrate Qwest's Compliance with Checklist Item 4

26. The following sections describe the steps through which a CLEC obtains unbundled loops from Qwest, including ordering, provisioning, and maintenance and repair. Qwest has well-developed processes in place for provisioning, maintaining, and repairing unbundled loops for CLECs.

1. Ordering Process

27. *The Local Service Request Form.* CLECs order unbundled loops by completing a local service request ("LSR") and submitting it over one of Qwest's

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26/ *Line Sharing Order*, 14 FCC Rcd at 20988-89 (¶178).

27/ *ACC Loops Final Order*, ¶¶ 73-86.

electronic or manual interfaces. [28/] For each unbundled loop ordered, CLECs must specify the loop type (including the NC/NCI codes), provide the Connecting Facility Assignment (which identifies where the loop should be wired in the central office), specify the desired installation option, and note the desired due date.

28. *Desired Due Dates and Standard Installation Intervals.* CLECs may calculate a due date based on the minimum number of days provided in the SGAT as Qwest's standard installation interval for the specified loop type. A CLEC may also specify a later date (*i.e.*, allow a longer installation interval than the standard interval). The following chart is a summary of Qwest's loop installation intervals in Arizona [29/]:

[28/] SGAT §§ 9.2.4.1, 9.2.4.4.

[29/] Qwest's loop installation intervals are consistent with the ACC's final order. *ACC Loops Final Order*, ¶¶ 27-34.

Loop Type		1-8 loops	9-16 loops	17-24 loops	25+ loops
Analog/Voice Grade Loops	Standard Analog Loops	5 days	6 days	7 days	ICB
	Quick Loop Analog-Conversion [30/]	3 days	3 days	3 days	ICB
xDSL-Capable Loops	No Conditioning Required	5 days	6 days	7 days	ICB
	Conditioning Required	15 days	ICB	ICB	ICB
High-Capacity Loops	DS1-Capable	5 days	7 days	9 days	ICB
	DS3-Capable	7 days (1-3 loops)	ICB (4-16 loops)	ICB	ICB
	Fiber/OCn/Other High-Capacity	ICB	ICB	ICB	ICB

29. During the state proceedings, Qwest made a number of CLEC-friendly modifications to the loop installation intervals. For instance, Qwest reduced the interval for xDSL-I loops from 10 days to align with the intervals of 5, 6, and 7 days for xDSL- and ISDN-capable loops. Qwest also created a shorter installation interval for analog loop conversions, called Quick Loop. Quick Loop offers a three-day installation interval for conversion of existing service to a 2-wire analog loop ordered with the basic installation option. [31/] Since October 22, 2001,

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[30/] Qwest provides a 3-day installation option, called Quick Loop, for conversion of in-place analog loops that do not require coordinated installation or cooperative testing. Quick Loop is not available for loops served over IDLC technology. As discussed herein, Quick Loop is also offered for loops with number portability. The installation intervals for Quick Loop with LNP are 3 days for 1 to 24 loops and ICB for 25 or more loops.

[31/] All Quick Loop performance results are reflected in the analog loop performance indicators.

this option has also been available for analog loops with number portability. Few CLECs have utilized the Quick Loop option to date. CLECs do not need a contract amendment to utilize these shortened intervals.

30. *Process for Requesting Loop Conditioning.* Loop conditioning (or line conditioning) is the term used to describe the process of removing load coils and excess bridged tap from existing copper loops that would negatively affect the transmission of a digital signal. In many cases, the data portion of the loop is diminished if there are load coils or certain amounts of bridged tap on the loop. To allow CLECs full use of the loop's capability, Qwest provides CLECs with loop conditioning for xDSL-capable services upon request, consistent with Commission rules. [32/] The ability to condition loops is not, however, unlimited. The conditioning requirement is subject to a technical feasibility standard the Commission has delineated. [33/]

31. Although the Commission does not require that Qwest condition loops proactively, in 2000 Qwest voluntarily established a bulk de-loading project to remove load coils from copper loops that are under 18,000 feet in length in selected wire centers and routes in which CLECs and Qwest were providing DSL services.

32/ *See* 47 C.F.R. § 51.319(a)(3)(i) & (h)(5) (ILECs must "remov[e] from the loop . . . any device that may diminish the capability of the loop to deliver high-speed switched wireline telecommunications capability, including xDSL service"); *see also* SGAT §§ 9.2.2.4 and 9.2.4.9.

33/ *Local Competition First Report and Order*, 11 FCC Rcd at 15691-92 (¶ 381).

The CLECs assisted Qwest in prioritizing the project schedule for this work. The de-loading project reduced the occurrence of short copper loops that needed to be conditioned on a one-by-one basis. Qwest provided the CLECs with a web-based tool that identified the wire centers and routes included in the project as well as an expected completion date. Once Qwest de-loaded a route and updated the databases, the route was posted on the web as a completed route. Two hundred ninety-eight wire centers were included in this project regionwide. [34/]

32. The bulk de-loading project was completed in March 2001 at no cost to the CLECs. As the individual jobs were completed, the conditioned pair status was updated in the loop qualification databases, increasing the available inventory of digital-capable loops. This inventory is available, as with all loops, on a first-come, first-served basis.

33. Qwest's loop qualification tools provide CLECs with information to determine whether loop conditioning will be required. [35/] When submitting an unbundled loop order, CLECs may indicate that they approve loop conditioning, where needed, by entering a "Y" (for yes) in the space provided for "special

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[34/] Qwest initiated a second bulk de-loading program in 2002. Thus Qwest continues to take voluntary steps to minimize the need for line-at-a-time conditioning.

[35/] These tools are described in the pre-order section of the OSS Declaration of Lynn M V Notarianni and Loretta A. Huff.

construction authorization" on the LSR form. [36/] This entry on the LSR provides Qwest with approval to complete any required conditioning. If the LSR form contains the indicator for loop conditioning but conditioning is not required, then the due date can be consistent with the installation interval based on loop type and the number of non-conditioned loops ordered, as described above. [37/]

34. If the CLEC fails to indicate on the LSR form that loop conditioning is approved, but Qwest determines that conditioning is required, then Qwest will inform the CLEC of the need for conditioning. The CLEC then has a four-hour window to provide positive authorization via a supplement to the LSR. If the CLEC does not respond within four hours, Qwest cancels the order.

35. *Firm Order Confirmation.* Qwest will provide the CLECs with confirmation of the receipt of their LSR and indicate the due date for the service installation via a Firm Order Confirmation ("FOC"). One of Qwest's performance measures, PO-5, monitors the timeliness with which Qwest returns FOCs to CLECs in response to LSRs. PO-5 requires Qwest to provide the CLEC with a FOC for unbundled analog loops within 24 hours of receiving a valid and complete LSR. For

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[36/] SGAT § 9.2.2.4.

[37/] SGAT § 9.2.4.9.1.

xDSL- and DS1-capable loops, the PIDs require Qwest to return the FOC within 72 hours. [38/]

2. Provisioning Process

36. *Facility Assignment.* Although Qwest recommends that CLECs pre-qualify loops prior to placing an order, pre-qualification is not mandatory. Once a valid service order has been received by Qwest, all retail and wholesale orders follow the same facility assignment process. [39/] The mechanized assignment process searches for compatible facilities and will assign the first compatible facilities that can support the requested loop type. If compatible facilities are not available for DS0-level facilities, Qwest uses a standard 11-step facility assignment process to try to identify compatible facilities. This process includes, but is not limited to, looking for a line and station transfer ("LST") or recovering defective pairs. The 11-step facility assignment process is presented in Exhibit WMC-LOOP-6.

37. *Provisioning Process.* When Qwest provisions an unbundled loop, a central office technician must be dispatched to run jumpers connecting the unbundled loop to the CLEC's connecting facility assignment ("CFA") as specified on the LSR by the CLEC. Additionally, a field technician may need to be

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[38/] As a result of a trial conducted during the Colorado workshops, Qwest and CLECs agreed to support revising the FOC interval in the PO-5 PID for xDSL and DS1 loops from 24 to 72 hours. The ROC TAG approved that modification, and Qwest notified CLECs of the change through the Change Management Process. Qwest's performance under PO-5 is discussed in the Commercial Performance Declaration of Dean Buhler.

dispatched to perform cross connect work at the feeder distribution interface ("FDI"), pedestal, or network interface device ("NID"). Exhibits WMC-LOOP-7 and WMC-LOOP-8 delineate the tasks Qwest personnel perform to install an unbundled loop.

38. *Installation of Loops Provisioned with IDLC Technology.* The Commission requires Qwest to unbundle loops that are provisioned over integrated digital loop carrier ("IDLC") technology. However, the Commission acknowledged in the *UNE Remand Order* that unbundling loops provisioned over IDLC is difficult and may even be impossible in some circumstances. [40/] Qwest is committed to providing CLECs access to unbundled loops, even when IDLC technology is deployed, whenever technically feasible. [41/] Qwest has continuously provided loops on this type of facility since early 1999, long before Qwest offered an IDSL solution to Qwest's retail end users in April 2000. Throughout 2000 and 2001, Qwest worked through the difficulties inherent with the provisioning of loops for DSL generally, and loops provisioned with IDLC specifically. IDLC technology was the subject of discussion in state 271 workshops, and numerous CLEC meetings focused on identifying provisioning alternatives. Qwest worked cooperatively with CLECs to clear loop orders that were held due to IDLC provisioning issues by identifying

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39/ SGAT § 9.1.2.1.1.

40/ *UNE Remand Order*, 15 FCC Rcd at 3788-89 (¶ 204, n.390).

41/ SGAT § 9.2.2.2.1.

viable engineering solutions. Further, Qwest established a specialized team within the Qwest CLEC Coordination Center (which is described in paragraph 48 of this Declaration) to focus specifically on supporting CLEC unbundled loop orders over IDLC. Qwest developed and utilizes an engineering decision tree, depicted in Exhibit WMC-LOOP-5, to determine the best method to provision unbundled analog, ISDN, and xDSL-I loops served by IDLC.

39. To assist the CLEC considering future market opportunities, Qwest provides access to its ICONN database. [42/] The ICONN database, available on Qwest's external website, provides information at a wire center level. Information includes number of total lines available, lines in service, and lines served by universal or integrated DLC.

40. Qwest also makes available wire center makeup information in the Wire Center Raw Loop Data Flat File. [43/] This flat file is comma delimited and downloadable to an Excel type spreadsheet that allows the CLEC to manipulate and analyze the data. CLECs may also use Qwest's electronic interfaces, IMA-GUI and IMA-EDI, to obtain individual loop makeup information. [44/]

42/ The ICONN database is located at http://www.qwest.com/iconn.

43/ CLECs must obtain a digital certificate in order to use this tool. Qwest's OSS web site, http://www.qwest.com/wholesale/systems, includes instructions for obtaining a digital certificate and for using the Wire Center Raw Loop Data Flat File.

44/ These tools are described in the OSS Declaration of Lynn M V Notarianni and Loretta A. Huff.

41. *Process for Conditioning Loops.* Qwest provides for loop conditioning to ensure that CLECs can obtain a copper loop without load coils and excessive bridged tap. Conditioning requires an engineering job to be issued and a construction technician is dispatched to the field to cut away from the load coil cable stub and re-splice the loop together. For efficiency, CLECs may request both line conditioning and installation on the same LSR.

42. Two loop conditioning issues reached impasse in the Arizona Section 271 proceedings. The first involved a question of whether Qwest must reimburse a CLEC for conditioning costs if the CLEC loses the customer within a certain period of time, as the CLECs presumed that such a loss would be due to Qwest's actions. The ACC ordered a change to SGAT section 9.2.2.4.1, providing for a credit of conditioning charges if Qwest does not meet a due date for line conditioning or does not perform conditioning in accordance with the standards applicable under the SGAT. [45/]

43. The second loop conditioning issue involved a question of whether Qwest may charge CLECs for conditioning lines of less than 18,000 feet in length. The ACC affirmed that the *UNE Remand Order* permitted such charges and required no change to the SGAT language on this issue. [46/]

45/ *ACC Loops Final Order*, ¶¶ 70-72.

46/ *Id.*, ¶¶ 66-67.

44. *Installation Options.* Qwest's SGAT offers CLECs five installation options, all of which are available for both the conversion of existing customer lines to unbundled loops and the installation of new unbundled loops. [47]/ These options are: (1) basic installation; (2) basic installation with performance testing; (3) basic installation with cooperative testing; (4) coordinated installation; and (5) coordinated installation with cooperative testing. In addition, Qwest offers an enhancement to the standard installation options called project coordinated installation, which is available for high-volume orders and other special orders. [48]/ Regardless of the installation option chosen, Qwest notifies the CLEC when the installation work is complete. Qwest also coordinates the activities associated with installation of unbundled loops and number portability, as depicted in Exhibit WMC-LOOP-4. Qwest's installation options are described in further detail below.

45. *Basic Installation Options.* CLECs may select from among three options for basic (*i.e.*, non-coordinated) installation. First, the Qwest central office technician and field technician execute basic performance tests and perform the installation. [49]/ If a CLEC selects basic installation with performance testing, Qwest technicians conduct performance tests and provide the results to the CLEC

47/ SGAT §§ 9.2.2.9.1 - 9.2.2.9.5.

48/ SGAT § 9.2.2.9.7.

49/ SGAT § 9.2.2.9.1.2.

after the tests are concluded. [50/] Qwest has implemented a process to e-mail the test results to CLECs within two business days so that CLECs have a written record of the tests Qwest performs. [51/] For the basic installation with cooperative testing option, after the Qwest technicians conduct their performance tests, they contact the CLEC with the results, and the CLEC performs its own loop back acceptance test. The CLEC then accepts the loop, and the parties exchange demarcation information. [52/] If Qwest fails to perform cooperative testing due to Qwest's fault, Qwest will waive the non-recurring charge for the installation option. [53/]

46. *Coordinated Installation Options.* Coordinated installation and testing are often needed by the CLEC in order to have a seamless installation for the end-user customer. The coordinated installation options allow the CLEC to designate a specific appointment time on the date when Qwest will begin the installation of an unbundled loop. The CLEC may request installation outside the standard business hours of 8:00 a.m. to 5:00 p.m. on business days, but additional charges apply. CLECs most often request a coordinated installation to coordinate work between Qwest and the CLEC when the service is associated with an existing

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50/ SGAT §§ 9.2.2.9.2.1-9.2.2.9.1.3.

51/ SGAT § 9.2.2.9.3.2.

52/ SGAT § 9.2.2.9.5.1.

53/ SGAT § 9.2.2.9.5.3.

working line, although coordinated installation is also available for new customer lines. [54]/ Coordinated installation enables the CLEC and its customer to plan ahead for minimal service interruption.

47. Qwest has established a control center, the Qwest CLEC Coordination Center ("QCCC"), to coordinate all loop installations. Qwest created the QCCC to improve the level of service on hot cuts. After observing the best practices of other ILECs and customizing for Qwest use, Qwest invited the CLEC community to review and suggest modifications to the QCCC's business processes. [55]/ The QCCC continues to improve performance through focused operational analysis, continued CLEC feedback, and proposed Change Request ("CR") activity. [56]/ Approximately 100 Qwest employees work at the center, all having completed unique and focused training. After the establishment of the

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[54]/ Exhibit WMC-LOOP-7 is the process flow for coordinated installation of new loops, which includes a description of the tasks performed for these types of installations. Exhibit WMC-LOOP-8 is the process flow for the coordinated installation of an existing customer, commonly called a "hot cut." Page two of the Exhibit defines the tasks, and page three is a sample of the data collected by Qwest implementers to track the coordinated installation.

[55]/ Qwest invited the CLEC community to a forum dedicated to reviewing the new hot cut procedures in the QCCC. The May 2001 session was a constructive two-way dialogue modifying and clarifying the resulting processes for the QCCC operation.

[56]/ CR# 5548229 is an example of a CLEC-submitted CR. This CR, accepted and implemented by Qwest, allows CLECs to verbally change Connecting Facility Assignment ("CFA") on an order to resolve CLECs' CFA assignment issues without renegotiating a new due date. CR# 5548229 can be found on Qwest's web site, at http://www.qwest.com/cmp/changerequest.html.

QCCC in March 2001, Qwest's performance for providing coordinated installations improved significantly, as Exhibit WMC-LOOP-10 shows. In April 2002, the QCCC assumed all control responsibility for installing unbundled loops.

48. On the order due date at the appointment time specified by the CLEC, a QCCC coordinator coordinates activities between the CLEC and Qwest. A call is placed to the CLEC to determine if the CLEC is ready for the service to be transferred. If the CLEC is ready, Qwest central office and field work is performed. If the CLEC indicates that it is not ready, Qwest will wait up to 30 minutes from the appointment time. If the CLEC is still not ready, then a new appointment (date and time) is scheduled. If Qwest misses the appointment time by 30 minutes or fails to perform cooperative testing, due to Qwest's fault, Qwest will waive the non-recurring installation charge. If Qwest fails to perform testing, Qwest will reschedule the test at no charge to the CLEC if the CLEC still wishes to perform cooperative testing. [57/]

49. The first coordinated installation option is coordinated installation without cooperative testing. On the due date, at the CLEC-designated appointment time, the QCCC coordinator contacts the CLEC to ensure that they are ready for the installation. The Qwest technicians complete the installation and

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57/ SGAT §§ 9.2.2.9.3, 9.2.2.9.4.

work with the Qwest implementor/tester to complete the required performance tests. The CLEC is verbally advised that the installation is complete. [58]/

50. The second option is coordinated installation with cooperative testing. This option permits the CLEC to request an appointment time as well as joint testing with Qwest. When a CLEC requests a coordinated installation with cooperative testing, Qwest will perform testing with the CLEC to ensure connectivity between a CLEC's collocated equipment and its network demarcation point. [59]/ Cooperative testing is performed after the Qwest installation and testing. The cooperative test is requested by the CLEC, and Qwest will assist in these tests at the CLEC direction. As with basic installation with cooperative testing, Qwest provides CLECs with an option to receive the Qwest test results via e-mail.

51. Qwest also offers project coordinated installation. This highly synchronized form of coordinated installation permits the CLEC to obtain a coordinated installation for unbundled loops with or without number portability where the CLEC orders unbundled DS1-capable loops, DS3-capable loops, or 25 or more DS0 unbundled loops. Because of the increased collaboration between Qwest and the CLEC with a project coordinated installation, Qwest and the CLEC must negotiate the date and time for the installation in advance. Project coordinated

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58/ SGAT §§ 9.2.2.9.4.1-9.2.2.9.4.2.

59/ SGAT § 9.2.2.9.3.

installation was negotiated during the state workshop processes and can be added to any CLEC interconnection agreement in Arizona. [60/]

52. To perform a coordinated installation, both companies must be ready at the same time on the scheduled due date. The activities that occur on the due date are critical to the success of an "on time" installation. In order for a coordinated installation to be considered on time, Qwest must perform the following due date activities: contact the CLEC prior to starting the installation; complete the Qwest physical work within a specified time period; and call the CLEC when the job is completed.

53. When coordinated installations involve existing customers, they are often referred to as "hot cuts." A hot cut involves a "lift and lay" procedure in the central office: a Qwest technician removes the customer's line from a Qwest switch and attaches it to a CLEC switch. At the QCCC, Qwest employs "hot cut coordinators" who review hot cut orders for accuracy and are responsible for events on the hot cut due date, including final verification of the order, calls to the central office and the CLEC, the lift and lay, dial-tone verification, and notification of completion. Qwest's commercial performance with respect to hot cuts has been excellent and is discussed in the Commercial Performance Declaration of Dean Buhler.

60/ SGAT § 9.2.2.9.7.

54. *Installation of Loops If No Compatible Facilities Exist.* Qwest's policies with respect to the construction of UNEs in Arizona are fully consistent with the ACC's final order on unbundled loops. [61/] If a CLEC orders an unbundled loop and compatible facilities are available, Qwest will perform incremental facility work (*i.e.*, conditioning, placing a drop, adding a network interface device, adding a card to existing equipment in the central office or remote locations, adding central office tie pairs, or adding field jumper cross-connects) if necessary to complete the order. If the CLEC requests an unbundled loop and compatible facilities are not available, the following process takes place: [62/]

- If an engineering job is pending that satisfies the request, Qwest will accept the LSR and inform the CLEC of the ready-for-service date.
- If the LSR is requesting a loop to provide an end user with primary voice grade service that would fall under Qwest's Provider of Last Resort ("POLR") or Eligible Telecommunications Carrier ("ETC") obligation, Qwest will accept the order and build the new facility.
- If the request is for the unbundling of a loop supported by IDLC technology, Qwest will accept the LSR and process it according to the process described above for IDLC loops.
- If the LSR does not fall into one of the above categories, Qwest holds the order for 30 business days and continues to attempt to assign compatible facilities. [63/] If a facility becomes available during the 30 business day period, the order will be released and installed for the retail or wholesale order. The availability of

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61/ *ACC Loops Final Order*, ¶¶ 56-62.

62/ SGAT §§ 9.1.2.1.3, 9.1.2.1.3.1, 9.1.2.1.3.2.

63/ SGAT § 9.2.2.16.

> facilities is on a first-come, first-served basis. The CLEC must approve the activity prior to installation of the CLEC order. If after 30 business days compatible facilities still are not available, Qwest will reject the order and inform the CLEC that no compatible facilities exist. [64/] At any time, the CLEC has the option to request the facilities according to the construction process outlined in the SGAT. [65/]

55. In a petition for enforcement filed in WC Docket No. 02-314, CLECs recently raised concerns about Qwest's construction policies as they apply to DS1 loops. [66/] CLECs have raised the same concerns in Arizona and other states in Qwest's territory. In response, Qwest has agreed to provision DS1 loops to CLECs where existing DS0 facilities can be used to construct new DS1 facilities. This policy will remain in effect until rates for the construction of DS1 loops from existing DS0 facilities can be developed. Any remaining CLEC concerns relating to DS1 loops will be addressed in separate proceedings at the Commission and in the states.

3. Maintenance and Repair Process

56. Consistent with Commission requirements, [67/] Qwest maintains unbundled loops utilizing a defined maintenance and repair flow. [68/] A CLEC can

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64/ After 30 business days the CLEC may submit a second order, and Qwest will continue to attempt to assign compatible facilities for another 30-day period.

65/ SGAT § 9.19. In addition, Qwest provides notification of major facility builds through the ICONN database. SGAT § 9.1.2.4.

66/ *Petition for Enforcement Pursuant to Section 271(d)(6) of the Act*, WC Docket No. 02-314 (filed July 29, 2003).

67/ *See, e.g., Second Louisiana 271 Order*, 13 FCC Rcd at 20692 (¶ 145).

report repair problems by issuing repair tickets or by calling Qwest's repair center. Qwest creates a trouble ticket, which is processed using the same systems that are used to process trouble tickets for Qwest retail services. The trouble ticket is passed to the appropriate groups to analyze, test, and repair any Qwest problems that are identified. The repair technician closes the ticket when the CLEC is notified that the trouble is resolved. Qwest will also advise the CLEC if no trouble is found or if the problem is not in the Qwest network.

57. Exhibit WMC-LOOP-9 is a flow chart that delineates the tasks Qwest personnel perform to maintain unbundled loops. This Exhibit also includes a matrix that describes each of the work tasks identified in the flow chart.

58. Qwest charges CLECs for trouble isolation only if the trouble is isolated to the CLEC side of the Loop Demarcation Point or as otherwise provided for in the CLEC's contract. [69]/

59. *Commercial Volumes.* As of May 31, 2003, Qwest had in service 37,719 unbundled loops for 14 CLECs in Arizona. (These figures represent stand-alone loops only, not those provided as part of a UNE combination.) Specifically, Qwest had in service 30,253 unbundled voice-grade analog loops, 5,578 xDSL-capable loops, and 1,888 high-capacity loops. Qwest's performance in provisioning

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[68]/ SGAT § 9.2.5.

[69]/ SGAT §§ 9.2.5.1-9.2.5.3.

and repairing these loops has been outstanding and is described in the Commercial Performance Declaration of Dean Buhler.

III. THE ARIZONA COMMISSION HAS THOROUGHLY REVIEWED QWEST'S UNBUNDLED LOOP OFFERINGS

60. The ACC has thoroughly reviewed Qwest's provisioning of unbundled loops in an open and collaborative process. The first unbundled loop workshop was held on March 5, 2001. In addition to Qwest, parties participating in the workshops included AT&T, MCI WorldCom, Sprint, Electric Lightwave, Inc., e.spire, Eschelon Telecom, and Allegiance Telecom. Parties filed testimony and comments between July 2000 and March 2001. An additional workshop was held on May 14, 2001. Through the workshop process, all but eleven disputed unbundled loop issues were resolved, with the appropriate changes made to the Arizona SGAT.

61. On February 20, 2002, ACC Staff filed a Final Report on Qwest's Compliance with Unbundled Loops. After another round of comments by the parties and a recommendation by an administrative law judge, the ACC issued its final order on unbundled loops on May 17, 2002. [70/]

62. Most of the significant impasse issues relating to unbundled loops are described in this Declaration. However, two issues relating to loop qualification are discussed in the pre-ordering section of the OSS Declaration of Lynn M.V. Notarianni and Loretta A. Huff. Although other impasse issues arose in

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70/ *ACC Emerging Services Final Order.*

the workshop processes relating to unbundled loops, they are not significant for purposes of examining Qwest's Section 271 compliance, and Qwest is in full compliance with the ACC's resolutions of each of them. [71/]

IV. SUMMARY AND CONCLUSION

63. Qwest satisfies the unbundled loop requirements of Section 271(c)(2)(B)(iv). Qwest provides unbundled loops in a nondiscriminatory manner to CLECs in Arizona. This Commission should therefore find that Qwest has satisfied Checklist Item 4.

64. This concludes my Declaration.

71/ These issues are: 1) allegations of cooperative testing failures, on which the ACC approved Qwest's position; 2) allegations of anticompetitive behavior by Qwest employees, for which the ACC required a change to the SGAT that Qwest promptly made; 3) reciprocity of trouble isolation charges, which the ACC determined had been closed already, and 4) redesignation of interoffice facilities as loop facilities, on which the ACC approved Qwest's policies but required a clarification of those policies in the SGAT. *ACC Loops Final Order*, ¶¶ 87-104, 111-17.

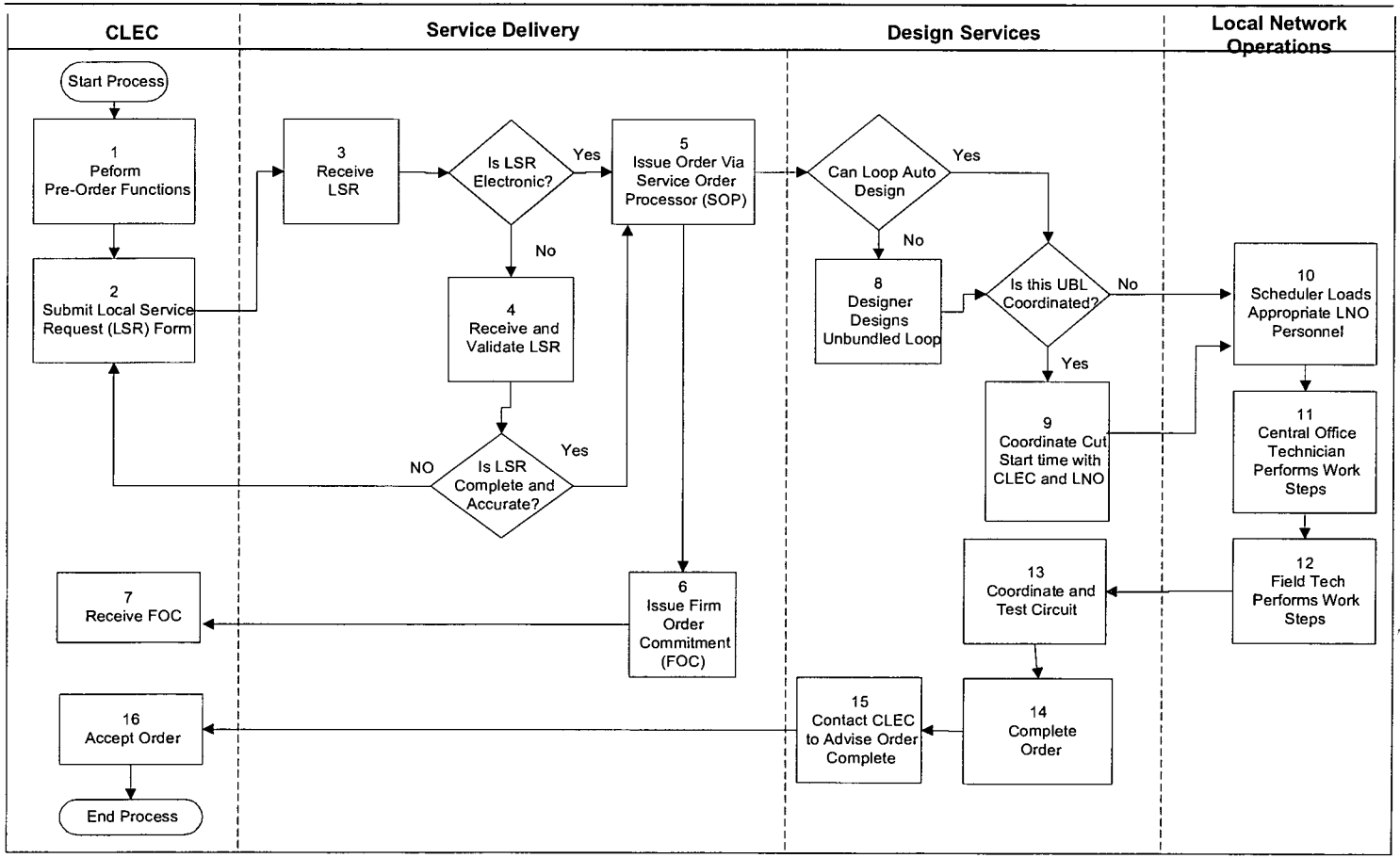
VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct. Executed on 08/22, 2003.

William M. Campbell

BHCP – EXHIBIT 2

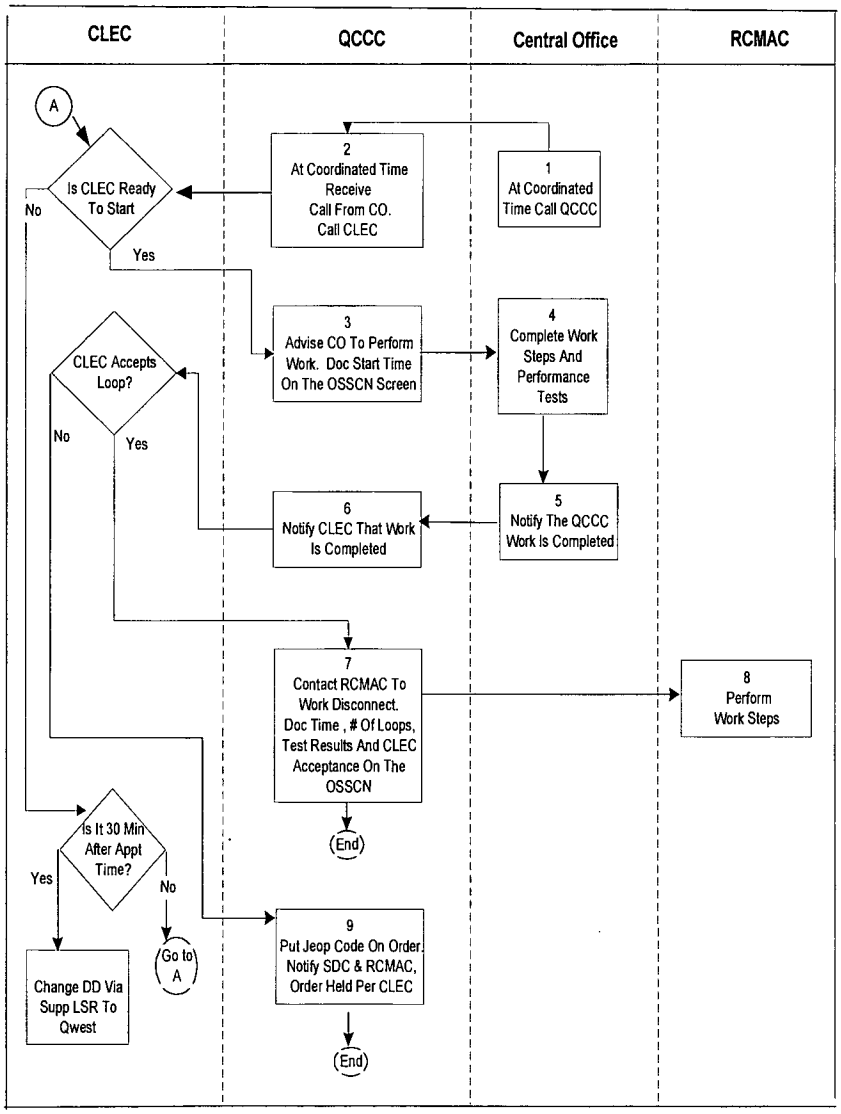
UNBUNDLED LOOP PROVISIONING FLOW



Unbundled Local Loop Provisioning Task List

Assoc. Task #	Process
	2-Wire & 4-Wire Voice Grade Analog
1	CLEC performs pre-order loop functions. The results will assist the CLEC in determining the best loop to purchase that will meet their specific needs.
2	Local Service Request (LSR) form submitted to Qwest by means of IMA, EDI or faxing
3 and 4	If faxed, Service Delivery Coordinator (SDC) reviews LSR and associated forms for completeness. Verification includes checking: CLEC certification, Letter of Authorization (LOA), Summary Bill Number, CLEC Termination Point, Network Channel (NC) and Network Channel Interface (NCI) codes, CLEC Due date interval and facilities. If sent via IMA or EDI, the LSR is converted to 1 or more service orders and sent to the service order processor (SOP).
5	The SDC issues the Service Order into the Qwest Service Order Processor (SOP). Then the service order is sent to the appropriate work groups including the Design Services Center.
6	The SDC issues the Firm Order Commitment (FOC) and sends it to the CLEC. IMA or EDI will send the FOC to the CLEC when the LSR is processed electronically.
7	CLEC receives FOC
8	On the Record Order Issue Date (RID), the circuit design is created based on the service order request. The design document or Word Document provides the central office and field technicians with the information necessary to wire the circuit.
9	For coordinated cuts the QCCC coordinates the cuts with the CLEC and the Qwest technicians. This step does not take place for non-coordinated cuts.
10	Provisioning work request received in Local Network Operations.
11	On the Design Verified and Assigned (DVA) the central office technician wires the circuit according to the Word Document specifications.
12	On the Plant Test Date (PTD) the field work at end user's premise performed if required. A test from the NID to the wire center is performed in conjunction with the central office technician.
13	For coordinated cuts the field technician calls the design center at the pre-scheduled Appointment Time from the CLEC customer's location. Then the design center calls the Central office and the CLEC. The design service center confirms that the CLEC is ready. The CLEC has the option of staying on line or dropping off. The required tests are performed and the test results are recorded. If the CLEC has purchased cooperative testing, then the test results are forwarded to the CLEC.
14	The design center completes the order.
15	CLEC notified via phone call to accept service.
16	CLEC accepts the circuit.

Coordinated "Hot Cut"
(reuse of facilities)



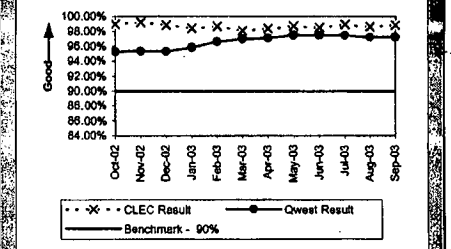
Coordinated Hot Cut Reuse Process Task List

Task #	Activity
1	At the requested appointment time the Qwest central office technician (COT) contacts the Qwest CLEC Coordination Center (QCCC) to indicate readiness to start the cut.
2	The QCCC contacts the CLEC to determine readiness.
3	QCCC advises the COT to start the cut and document the start time of the cut.
4	The COT performs the central office wiring and appropriate tests. The COT documents the start time of the "lift" and the end of the "lay" process
5	The COT notifies the QCCC that the work is complete and provides the QCCC with: the "lift" and "lay" time and the test results.
6	The QCCC documents the stop time of the cut and phones the CLEC that the work is complete providing test results. If the CLEC has purchased Cooperative or Performance Testing, the test results are also forwarded to the CLEC via email within two business days of order completion. .
7	Once CLEC accepts the loop, QCCC contacts RCMAC and documents the cut information manually on the form and electronically on the OSS-CN screen in WFA
8	RCMAC completes any necessary work.
9	CLEC does not accept the loop, the QCCC enters a jeopardy code on the order and notifies the Service Delivery Coordinator (SDC) and the RCMAC that the order will not be completed due to customer reasons.

Qwest Perf Results - PID (14-State 271 PID 5.0) Regional

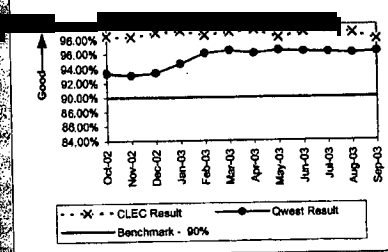
OP-3D - Installation Commitments Met (Percent) - Interval Zone One

	Unbundled Loop Analog (Benchmark)								
Date	CLEC Num	CLEC Denc	CLEC Resu	CLEC Std D	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02	19511	19715	98.97%	10.12%	77444	81285	95.27%	-21.91	-14.32
Nov-02	16868	17002	99.21%	8.84%	64349	67492	95.34%	-21.4	-14.01
Dec-02	19030	19243	98.89%	10.46%	61712	64742	95.32%	-20.6	-13.53
Jan-03	12748	12952	98.43%	12.45%	64238	67030	95.83%	-13.52	-9.22
Feb-03	15382	15567	98.68%	11.40%	57575	59596	96.61%	-12.73	-8.74
Mar-03	12609	12853	98.10%	13.65%	60611	62693	97.00%	-8.68	-5.06
Apr-03	11310	11495	98.39%	12.58%	62311	64189	97.10%	-7.57	-5.6
May-03	10516	10652	98.72%	11.23%	62969	64570	97.51%	-7.47	-5.54
Jun-03	12108	12292	98.50%	12.14%	65576	67271	97.48%	-6.64	-6.04
Jul-03	14072	14226	98.92%	10.32%	68079	69862	97.45%	-10.18	-7.19
Aug-03	12080	12258	98.63%	11.63%	69307	71312	97.19%	-8.92	-6.42
Sep-03	13174	13328	98.84%	10.69%	65760	67636	97.23%	-10.4	-7.32



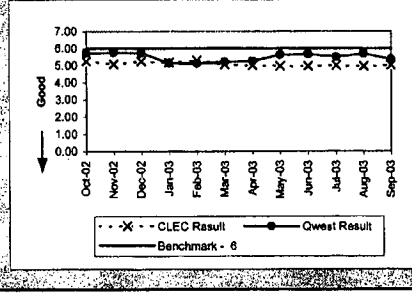
OP-3E - Installation Commitments Met (Percent) - Interval Zone Two

Oct-02	6273	6370	98.48%	12.25%	24686	26462	93.29%	-14.86	-10.03
Nov-02	5919	6016	98.35%	12.72%	19719	21195	93.04%	-14.31	-9.7
Dec-02	7068	7145	98.92%	10.33%	18783	20115	93.38%	-18.19	-10.84
Jan-03	4139	4174	99.16%	9.12%	19791	20918	94.62%	-11.87	-6.22
Feb-03	4560	4625	98.59%	11.77%	17501	18213	96.09%	-7.85	-5.77
Mar-03	3951	3990	99.02%	9.84%	16255	16931	96.43%	-6.02	-5.88
Apr-03	4772	4805	99.31%	6.26%	19748	20564	96.03%	-10.49	-7.38
May-03	4054	4126	98.26%	13.09%	21481	22277	96.43%	-5.81	-4.53
Jun-03	5018	5068	99.01%	9.89%	21706	22550	96.26%	-9.34	-6.88
Jul-03	9478	9528	99.45%	7.37%	21885	22749	96.20%	-13.94	-9.48
Aug-03	8246	8343	98.84%	10.72%	22058	22964	96.05%	-11.16	-7.6
Sep-03	9461	9680	97.94%	14.19%	21738	22587	96.24%	-7.37	-5.46



OP-4D - Installation Interval (Average Days) - Interval Zone One

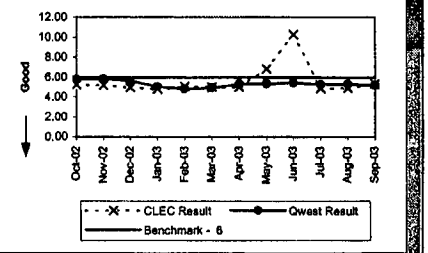
	Unbundled Loop Analog (Benchmark)								
Date	CLEC Num	CLEC Denc	CLEC Resu	CLEC Std D	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02	46088	9154	5.25	1.72	467554	61744	6.72	-6.46	-4.92
Nov-02	34579	6809	5.08	1.16	391009	57914	5.76	-6.94	-6.43
Dec-02	42561	8130	5.24	1.16	373372	65151	5.73	-6.96	-5.23
Jan-03	35027	6778	5.17	1.52	346560	67501	5.13	0.51	-0.69
Feb-03	39403	7442	5.29	1.59	307266	59913	5.13	2.8	0.58
Mar-03	31218	6203	5.03	1.84	326386	62936	5.19	-2.23	-2.36
Apr-03	31316	6266	5.00	2.24	339003	64386	5.25	-3.53	-3.15
May-03	30176	6087	4.96	1.79	363534	64813	5.61	-6.46	-6.14
Jun-03	30507	6133	4.97	1.47	381944	67489	5.66	-9.35	-6.86
Jul-03	33738	6761	4.99	1.48	385706	70124	5.50	-7.06	-5.29
Aug-03	29867	6044	4.94	1.40	406215	71562	5.68	-9.73	-6.91
Sep-03	33319	6644	5.01	1.80	363985	67678	5.38	-5.22	-4.17



OP-4E - Installation Interval (Average Days) - Interval Zone Two

Unbundled Loop Analog (Benchmark)

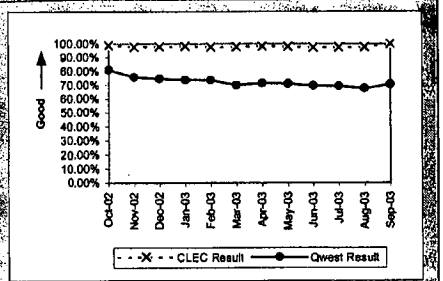
Date	CLEC Num	CLEC Denc	CLEC Resu	Standard D	Qwest Num	Qwest Denc	Qwest Resu	Mod Z Scr	Parity Score
Oct-02	12957	2472	5.24	1.90	154668	26862	5.80	-2.87	-2.75
Nov-02	10306	1967	5.19	2.02	124437	21428	5.81	-3.35	-3.04
Dec-02	12097	2434	4.97	1.37	114129	20297	5.62	-3.21	-2.95
Jan-03	9498	1980	4.80	1.33	106203	21076	5.04	-1.27	-1.77
Feb-03	8816	1743	5.06	1.36	88443	18323	4.83	1.57	-0.04
Mar-03	8956	1790	5.00	2.03	93900	19043	4.93	0.49	-0.7
Apr-03	10702	2145	4.99	1.25	109293	20687	5.29	-1.27	-1.77
May-03	15346	2250	6.82	4.18	119431	22364	5.34	10.88	5.81
Jun-03	30614	2985	10.26	6.65	123220	22883	5.44	19.2	10.67
Jul-03	14606	3017	4.91	1.12	120506	22838	5.28	-2.18	-2.32
Aug-03	13414	2724	4.92	1.44	122222	23051	5.30	-2.96	-2.8
Sep-03	21833	4104	5.32	2.31	117720	22691	5.19	1.27	-0.23



OP-5 - New Service Installation Quality (Percent)

Unbundled Loop Analog (Parity)

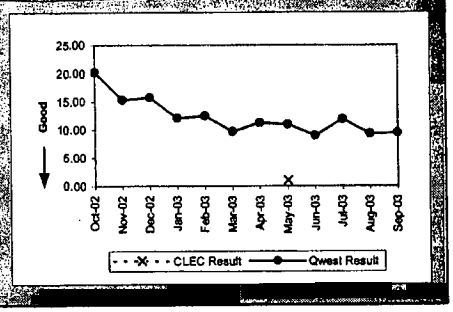
Date	Numerator	Denominato	CLEC Resu	Standard D	Qwest Num	Qwest denc	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02	23076	23305	99.02%	9.86%	84270	104095	80.95%	-63.48	-39.59
Nov-02	24020	24594	97.67%	15.10%	74790	98881	75.64%	-72.02	-44.79
Dec-02	24219	24735	97.91%	14.26%	65015	87399	74.39%	-74.83	-46.6
Jan-03	21380	21772	98.20%	13.30%	64120	87014	73.69%	-73.46	-45.66
Feb-03	18248	18671	97.73%	14.88%	61440	83409	73.88%	-67.51	-42.04
Mar-03	18172	18556	97.93%	14.24%	55941	80114	69.83%	-75.15	-46.69
Apr-03	18304	18604	98.19%	13.32%	59663	83521	71.32%	-69.94	-43.52
May-03	15236	15544	98.02%	13.94%	61110	86117	70.98%	-68.4	-42.58
Jun-03	15678	16076	97.49%	15.83%	61586	88667	69.46%	-71.01	-44.17
Jul-03	20051	20569	97.48%	15.87%	63245	91561	69.07%	-79.66	-49.43
Aug-03	21697	22191	97.77%	14.75%	53342	93791	67.54%	-88.51	-53.59
Sep-03	21818	21821	99.99%	1.17%	55230	92595	70.45%	-86.03	-53.3



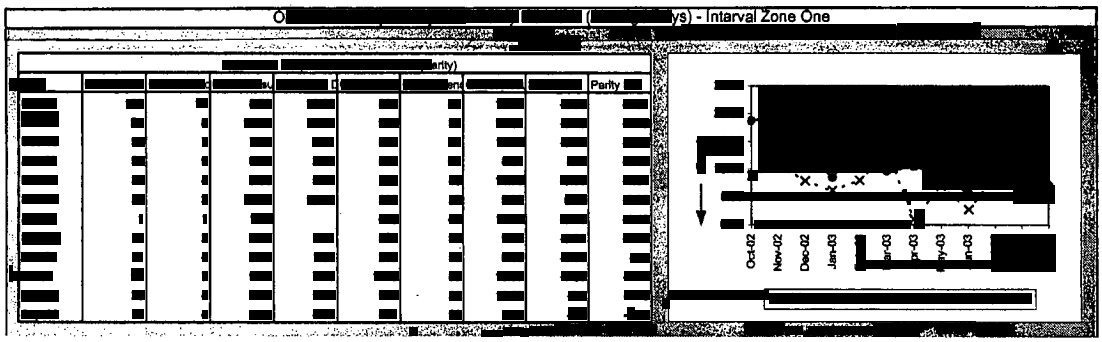
OP-6A-4 - Delayed Days for N[redacted]R[redacted]ne

Unbundled Loop - 4 Wire Non-Loaded (Parity)

Date	CLEC Num	CLEC Denc	CLEC Resu	CLEC Std D	Qwest Num	Qwest Denc	[redacted]		
Oct-02					5432	268	20.27		
Nov-02					2332	152	15.34		
Dec-02					2317	147	15.76		
Jan-03					1808	133	12.08		
Feb-03					1896	136	12.49		
Mar-03					1416	146	9.70		
Apr-03					1586	139	11.27		
May-03	2	2	1.00	0.00	1291	118	10.94	-1.14	-1.89
Jun-03					1179	131	9.00		
Jul-03					1951	164	11.90		
Aug-03					1417	152	9.32		
Sep-03					1453	154	9.44		



Qwest Perf Results - PID (14-State 271 PID 5.0) Regional

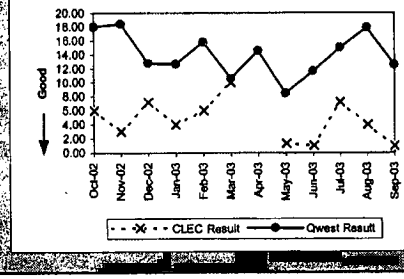


Qwest Perf Results - PID (14-State 271 PID 5.0) Regional

OP-6B-5 - Delayed Days for Facility Reasons (Average Days) - Interval Zone Two

Unbundled Loop - 2 Wire Non-Loaded (Parity)

Date	CLEC Num	CLEC Den	CLEC Resu	CLEC Std D	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02	18	3	6.00	4.36	720	40	18.00	-0.92	-1.56
Nov-02	8	2	3.00	2.83	498	27	18.44	-0.9	-1.55
Dec-02	43	6	7.17	5.81	664	52	12.77	-0.76	-1.48
Jan-03	12	3	4.00	3.00	621	49	12.67	-0.9	-1.55
Feb-03	24	4	6.00	2.94	759	45	15.81	-0.95	-1.56
Mar-03	10	1	10.00		308	29	10.62	-0.05	-1.03
Apr-03					729	50	14.58		
May-03	4	3	1.33	0.58	346	41	8.44	-0.69	-1.5
Jun-03	1	1	1.00		464	40	11.60	-0.79	-1.48
Jul-03	36	5	7.20	4.09	632	42	15.05	-0.93	-1.57
Aug-03	15	4	4.00	2.16	608	34	17.88	-1.27	-1.77
Sep-03	2	2	1.00	0.00	413	33	12.52	-1.15	-1.7

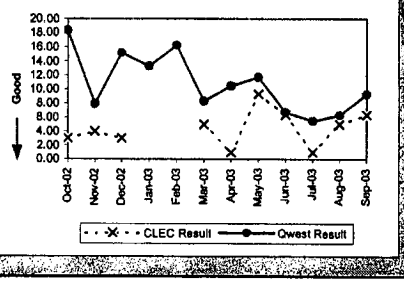


Qwest Perf Results - PID (14-State 271 PID 5.0) Regional

OP-6A-5 - Delayed Days for Non-Facility Reasons (Average Days) - Interval Zone Two

Unbundled Loop - 2 Wire Non-Loaded (Parity)

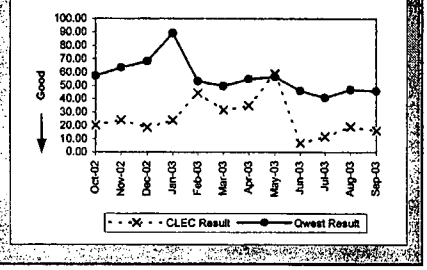
Oct-02	6	2	3.00	0.00	257	14	15.36	-0.78	-1.48
Nov-02	4	1	4.00		103	13	7.92	-0.5	-1.31
Dec-02	3	1	3.00		182	12	15.17	-1.25	-1.78
Jan-03					213	16	13.31		
Feb-03					341	21	16.24		
Mar-03	10	2	5.00	2.83	108	13	8.31	-0.36	-1.22
Apr-03	1	1	1.00		189	18	10.50	-0.56	-1.34
May-03	28	3	9.33	7.64	152	13	11.86	-0.53	-1.32
Jun-03	19	3	6.33	1.53	134	20	6.70	-0.05	-1.03
Jul-03	1	1	1.00		109	20	5.45	-0.89	-1.54
Aug-03	5	1	5.00		101	16	6.31	-0.19	-1.1
Sep-03	19	3	6.33	6.39	156	17	9.29	-0.32	-1.19



OP-15A - Interval for Pending Orders Delayed Past Due Date

Unbundled Loop - DS1 Capable (Diagnostic)

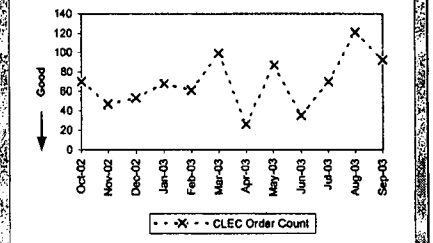
Date	CLEC Num	CLEC Denc	CLEC Resu	Standard D	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02	1130	56	20.18	38.87	66278	1158	57.23	-2.69	-2.64
Nov-02	877	28	24.18	53.01	66817	1054	63.39	-1.88	-2.14
Dec-02	867	47	18.45	46.67	71064	1041	68.27	-2.99	-2.82
Jan-03	1189	49	23.86	48.87	58944	839	69.11	-3.45	-3.1
Feb-03	752	17	44.24	84.00	34206	642	53.28	-0.36	-1.22
Mar-03	724	23	31.48	79.24	34374	692	48.87	-0.84	-1.51
Apr-03	803	23	34.91	85.38	37131	878	54.77	-0.87	-1.53
May-03	766	13	58.92	117.44	39450	700	58.36	0.28	-0.83
Jun-03	241	36	6.69	8.81	33519	728	48.04	-2.38	-2.44
Jul-03	585	50	11.70	11.75	33838	826	40.97	-2.32	-2.41
Aug-03	649	34	19.09	25.88	32812	898	47.01	-1.88	-2.02
Sep-03	372	23	16.17	24.49	33322	725	45.96	-1.5	-1.91



OP-15B - Count of Pending Orders Delayed for Facilities Reasons

Unbundled Loop Analog (Diagnostic)

Date	CLEC Order Count
Oct-02	70
Nov-02	47
Dec-02	53
Jan-03	68
Feb-03	61
Mar-03	99
Apr-03	26
May-03	87
Jun-03	35
Jul-03	70
Aug-03	121
Sep-03	92

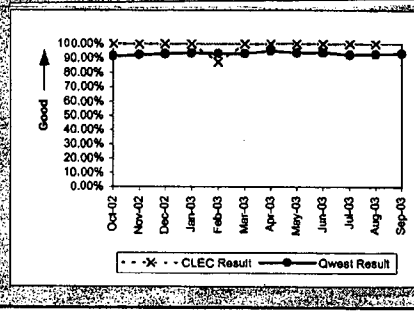


[redacted]

MR-3D - Out of Service Cleared within 24 Hours (Percent) - Interval Zone One

Unbundled Loop - ADSL Qualified (Parity)

Date	CLEC Num	CLEC Denc	CLEC Resu	CLEC Std D	Qwest Num	[redacted]	Mod Z Scr	[redacted]
Oct-02	11	11	100.00%	0.00%	1886	2061	91.51%	-1.01	-1.61
Nov-02	11	11	100.00%	0.00%	1743	1888	92.32%	-0.95	-1.56
Dec-02	12	12	100.00%	0.00%	1672	1888	93.13%	-0.94	-1.57
Jan-03	4	4	100.00%	0.00%	1750	1869	93.63%	-0.52	-1.32
Feb-03	7	8	87.50%	33.07%	1628	1744	93.35%	0.64	-0.81
Mar-03	3	3	100.00%	0.00%	1448	1553	93.24%	-0.47	-1.26
Apr-03	4	4	100.00%	0.00%	1639	1721	95.24%	-0.45	-1.27
May-03	8	8	100.00%	0.00%	1426	1519	93.88%	-0.72	-1.44
Jun-03	8	8	100.00%	0.00%	1449	1543	93.91%	-0.72	-1.44
Jul-03	7	7	100.00%	0.00%	1375	1489	92.34%	-0.78	-1.46
Aug-03	8	8	100.00%	0.00%	1107	1192	92.87%	-0.66	-1.41
Sep-03					1234	1321	93.41%		

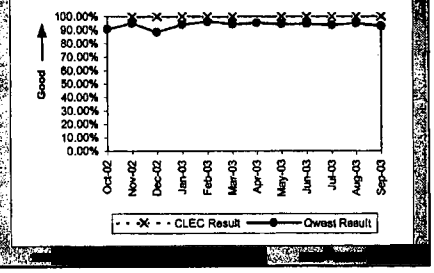


BHCP – Exhibit 3 - Regional

MR-3E - Out of Service Cleared within 24 Hours (Percent) - Interval Zone Two

Unbundled Loop - ADSL Qualified (Parity)

								Mod Z Scr	
Oct-02					301	332	90.66%		
Nov-02	1	1	100.00%	0.00%	253	266	95.11%	-0.23	-1.14
Dec-02	1	1	100.00%	0.00%	222	251	88.45%	-0.36	-1.22
Jan-03	2	2	100.00%	0.00%	299	318	94.03%	-0.36	-1.22
Feb-03	1	1	100.00%	0.00%	264	274	96.35%	-0.19	-1.12
Mar-03	1	1	100.00%	0.00%	277	293	94.54%	-0.24	-1.16
Apr-03					278	292	95.21%		
May-03	6	6	100.00%	0.00%	203	215	94.42%	-0.59	-1.36
Jun-03	3	3	100.00%	0.00%	263	276	94.90%	-0.41	-1.25
Jul-03	4	4	100.00%	0.00%	238	254	93.70%	-0.51	-1.31
Aug-03	2	2	100.00%	0.00%	174	183	95.08%	-0.32	-1.19
Sep-03	1	1	100.00%	0.00%	180	194	92.78%	-0.28	-1.17

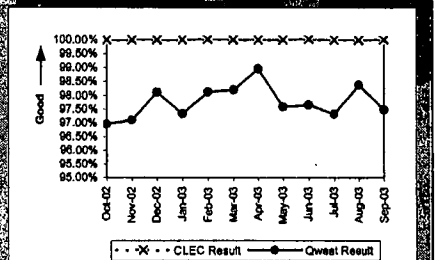


Qwest Perf Results - PID (14-State 271 PID 5.0) Regional

MR-4D - All Troubles Cleared within 48 Hours (Percent) - Interval Zone

Unbundled Loop - ADSL Qualified (Parity)

Date	CLEC Num	CLEC Denc	CLEC Resu	CLEC Std D	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02	11	11	100.00%	0.00%	2003	2068	96.95%	-0.59	-1.38
Nov-02	11	11	100.00%	0.00%	1843	1899	97.10%	-0.57	-1.35
Dec-02	12	12	100.00%	0.00%	1661	1693	96.11%	-0.48	-1.29
Jan-03	5	5	100.00%	0.00%	1826	1876	97.33%	-0.37	-1.22
Feb-03	9	9	100.00%	0.00%	1721	1764	98.12%	-0.41	-1.25
Mar-03	4	4	100.00%	0.00%	1530	1558	98.20%	-0.27	-1.16
Apr-03	7	7	100.00%	0.00%	1707	1725	98.96%	-0.27	-1.16
May-03	8	9	100.00%	0.00%	1492	1529	97.58%	-0.44	-1.27
Jun-03	9	8	100.00%	0.00%	8815	9027	97.65%	-0.44	-1.27
Jul-03	9	9	100.00%	0.00%	10429	10716	97.32%	-0.5	-1.3
Aug-03	7	7	100.00%	0.00%	9326	9482	98.36%	-0.34	-1.21
Sep-03	1	1	100.00%	0.00%	9685	9935	97.48%	-0.16	-1.1

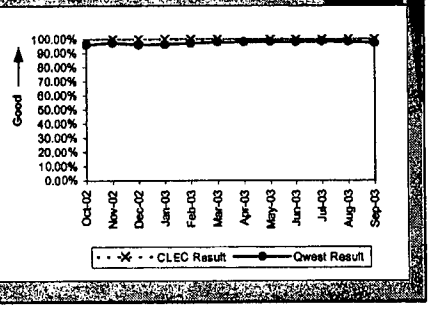


Qwest Perf Results - PID (14-State 271 PID 5.0) Regional

MR-4E - All Troubles Cleared within 48 Hours (Percent) - Interval Zone Two

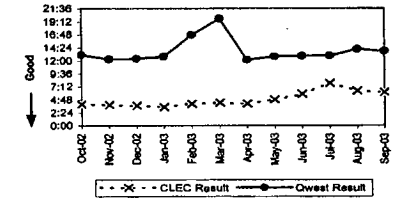
Unbundled Loop - ADSL Qualified (Parity)

Date	CLEC Num	CLEC Denc	CLEC Resu	CLEC Std D	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02					321	334	96.11%		
Nov-02	1	1	100.00%	0.00%	260	267	97.35%	-0.16	-1.1
Dec-02	1	1	100.00%	0.00%	242	252	96.03%	-0.2	-1.12
Jan-03	3	3	100.00%	0.00%	307	319	96.24%	-0.34	-1.21
Feb-03	2	2	100.00%	0.00%	10167	10493	97.09%	-0.26	-1.15
Mar-03	1	1	100.00%	0.00%	10805	11040	97.87%	-0.15	-1.09
Apr-03					10714	10936	97.97%		
May-03	6	6	100.00%	0.00%	10867	11062	98.24%	-0.33	-1.2
Jun-03	4	4	100.00%	0.00%	2989	3050	98.00%	-0.29	-1.17
Jul-03	4	4	100.00%	0.00%	3365	3419	98.42%	-0.25	-1.15
Aug-03	3	3	100.00%	0.00%	3577	3641	98.24%	-0.23	-1.14
Sep-03	1	1	100.00%	0.00%	3471	3573	97.15%	-0.17	-1.1



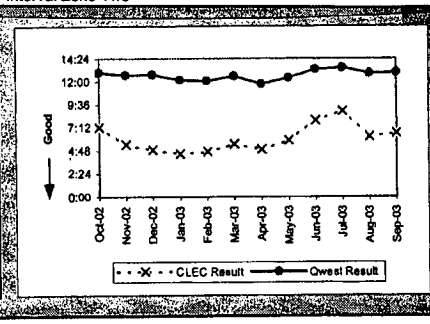
MR-6D - Mean Time to Restore (Hours:Minutes) - Interval Zone One

Unbundled Loop Analog (Parity)									
Date	CLEC Num	CLEC Denc	CLEC Resu	CLEC Std D	Qwest Num				
Oct-02	10581:09	2657	3:59	5:07	1792589:47	136976	13:05	-32.28	-20.63
Nov-02	8471:09	2196	3:51	6:25	1359308:45	110720	12:17	-25	-15.2
Dec-02	7188:16	1855	3:40	4:25	1351842:53	109292	12:22	-26.97	-18.61
Jan-03	7011:48	2007	3:30	4:14	1407370:31	110435	12:45	-26.36	-17.03
Feb-03	8640:15	2128	4:04	4:30	1682795:17	112634	16:43	-30.17	-19.34
Mar-03	10461:17	2452	4:16	4:36	2601356:23	131869	19:44	-26.07	-16.06
Apr-03	9463:32	2330	4:04	4:56	1449161:26	119289	12:09	-28.37	-18.25
May-03	10824:23	2248	4:49	5:33	1595546:03	124965	12:46	-28.54	-18.35
Jun-03	14475:25	2466	5:52	8:34	1855693:46	128737	12:52	-25.13	-18.28
Jul-03	25351:24	3240	7:49	8:57	1623906:17	141132	12:55	-20.22	-13.29
Aug-03	18417:07	2856	6:27	8:06	2012103:36	142786	14:06	-28.87	-16.55
Sep-03	15963:23	2599	6:09	8:50	1832234:57	133258	13:45	-25.81	-16.89



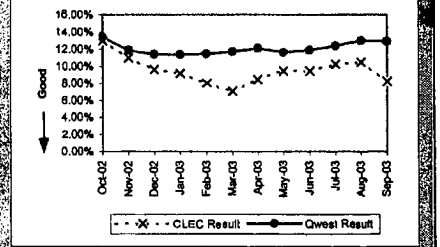
MR-6E - Mean Time to Restore (Hours:Minutes) - Interval Zone Two

Unbundled Loop Analog (Parity)									
Date	CLEC Num	CLEC Denc	CLEC Resu	CLEC Std D	Qwest Num	Qwest Denc	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02	5209:13	722	7:13	7:27	577682:22	44548	12:58	-11.13	-7.76
Nov-02	2780:23	509	5:26	7:23	443537:02	34823	12:42	-11.81	-8.18
Dec-02	2500:08	512	4:53	8:02	421641:32	33098	12:44	-12.56	-8.64
Jan-03	2198:43	493	4:28	5:18	386260:27	31730	12:10	-13.53	-9.23
Feb-03	2093:05	448	4:40	5:27	356584:08	29548	12:04	-12.25	-8.45
Mar-03	3152:10	575	5:29	5:48	449308:05	35693	12:35	-11.91	-8.24
Apr-03	3519:21	716	4:55	6:10	434507:31	37015	11:44	-15.18	-10.22
May-03	4547:59	775	5:52	5:59	523144:08	42160	12:25	-14.32	-9.71
Jun-03	6750:23	851	7:56	7:41	518253:45	46592	13:16	-10.93	-7.84
Jul-03	11058:14	1240	8:55	6:50	700765:56	52083	13:27	-11.79	-8.17
Aug-03	6044:42	985	6:18	7:05	629326:31	48910	12:52	-14.9	-10.06
Sep-03	8229:43	942	6:37	8:18	563815:03	43538	12:57	-13.41	-9.15



MR-7D - Repair Repeat Report Rate (Percent) - Interval Zone One

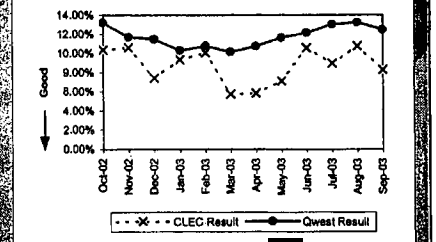
Unbundled Loop Analog (Parity)									
Date	CLEC Num	CLEC Denc	CLEC Resu	CLEC Std D	Qwest Num	Qwest Denc	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02	345	2657	12.98%	33.61%	18844	140716	13.39%	-0.61	-1.37
Nov-02	241	2196	10.97%	31.28%	13496	113520	11.89%	-1.31	-1.8
Dec-02	188	1955	9.62%	29.48%	12803	112286	11.40%	-2.46	-2.5
Jan-03	184	2007	9.17%	28.88%	12905	113464	11.37%	-3.09	-2.88
Feb-03	170	2128	7.89%	27.11%	13243	115604	11.46%	-4.98	-4.03
Mar-03	173	2452	7.05%	25.61%	15849	135376	11.71%	-7.1	-5.32
Apr-03	199	2330	8.54%	27.95%	14818	122284	12.12%	-5.24	-4.19
May-03	213	2248	9.48%	29.29%	14893	128018	11.63%	-3.18	-2.82
Jun-03	233	2466	9.45%	29.25%	15868	131886	11.88%	-3.7	-3.25
Jul-03	332	3240	10.25%	30.33%	17930	144515	12.41%	-3.89	-3.24
Aug-03	299	2856	10.47%	30.62%	18991	148118	13.00%	-3.98	-3.42
Sep-03	214	2599	8.23%	27.49%	17620	136514	12.91%	-7.04	-5.28



MR-7E - Repair Repeat Report Rate (Percent) - Interval Zone Two

Unbundled Loop Analog (Parity)

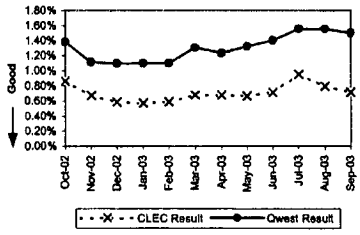
Date	CLEC Num	CLEC Den	CLEC Resu	CLEC Std D	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02	75	722	10.39%	30.51%	5992	45257	13.22%	-2.23	-2.35
Nov-02	54	509	10.61%	30.80%	4149	35488	11.69%	-0.75	-1.48
Dec-02	38	512	7.42%	26.21%	3857	33640	11.47%	-2.85	-2.73
Jan-03	45	493	9.33%	29.09%	3326	32313	10.29%	-0.7	-1.42
Feb-03	45	448	10.04%	30.06%	3237	30081	10.76%	-0.49	-1.3
Mar-03	33	575	5.74%	23.26%	3686	36294	10.16%	-3.48	-3.11
Apr-03	42	718	5.87%	23.50%	4040	37582	10.75%	-4.19	-3.54
May-03	55	778	7.10%	25.68%	4978	42920	11.63%	-3.9	-3.37
Jun-03	90	851	10.58%	30.75%	5739	47252	12.15%	-1.39	-1.84
Jul-03	111	1240	8.95%	28.55%	6877	52788	13.04%	-4.22	-3.57
Aug-03	104	965	10.78%	31.01%	6578	49619	13.26%	-2.25	-2.37
Sep-03	78	942	8.28%	27.56%	5509	44215	12.46%	-3.84	-3.34



MR-8 - Trouble Rate (Percent)

Unbundled Loop Analog (Parity)

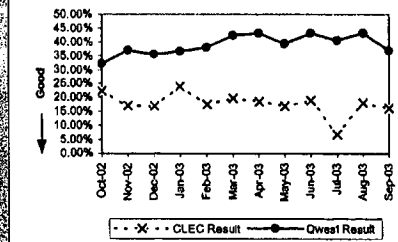
Date	Numerator	Denominato	CLEC Resu	Standard D	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02	3379	391284	0.86%	9.25%	185973	13443684	1.38%	-27.44	-17.68
Nov-02	2705	403457	0.67%	8.18%	149009	13383513	1.11%	-26.42	-17.06
Dec-02	2487	420394	0.59%	7.64%	145928	13323973	1.10%	-31.18	-19.96
Jan-03	2500	437430	0.57%	7.54%	145777	13271254	1.10%	-32.9	-21
Feb-03	2578	437430	0.59%	7.65%	145685	13212897	1.10%	-32.01	-20.46
Mar-03	3027	444495	0.66%	8.22%	171872	13147843	1.31%	-38.09	-22.94
Apr-03	3046	450691	0.68%	8.19%	159886	12970442	1.23%	-33.3	-21.24
May-03	3023	453577	0.67%	8.14%	170836	12883681	1.33%	-38.18	-24.2
Jun-03	3317	459295	0.72%	8.47%	178138	12785906	1.40%	-38.45	-24.38
Jul-03	4490	471045	0.95%	9.71%	197273	12683430	1.56%	-32.91	-21.01
Aug-03	3821	480738	0.79%	8.86%	195737	12597487	1.55%	-41.78	-26.39
Sep-03	3541	491942	0.72%	8.45%	180729	12037397	1.50%	-44.19	-27.88



MR-10 - Customer-Related Trouble Reports (Percent)

Unbundled Loop - 2 Wire Non-Loaded (Diagnostic)

Date	CLEC Num	CLEC Den	CLEC Resu	CLEC Std D	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02	60	270	22.22%	41.57%	791	2363	32.20%	-3.33	-3.02
Nov-02	37	217	17.05%	37.81%	749	2029	36.93%	-5.77	-4.51
Dec-02	30	178	16.85%	37.43%	621	1749	35.53%	-4.96	-4.01
Jan-03	61	256	23.83%	42.60%	785	2087	38.66%	-4.02	-3.44
Feb-03	32	183	17.49%	37.99%	739	1943	38.03%	-5.47	-4.33
Mar-03	41	209	19.62%	39.71%	943	2227	42.34%	-6.36	-4.87
Apr-03	43	232	18.53%	38.68%	921	2132	43.20%	-7.2	-5.38
May-03	42	250	16.80%	37.39%	782	1986	39.38%	-6.89	-5.19
Jun-03	58	309	18.77%	39.06%	977	2032	43.16%	-8.06	-6.9
Jul-03	20	297	6.73%	25.06%	815	2009	40.57%	-11.08	-7.74
Aug-03	54	302	17.88%	38.32%	1035	2390	43.31%	-8.4	-8.11
Sep-03	41	256	16.02%	36.86%	666	1805	36.90%	-6.48	-4.94



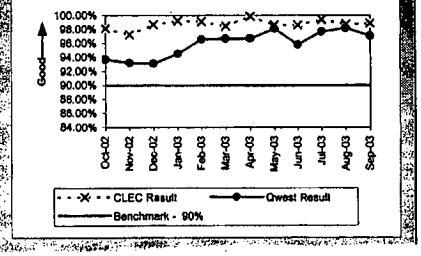
Qwest Perf Results - PID (14-State 271 PID 5.0)

North Dakota

OP-3E - Installation Commitments Met (Percent) - Interval Zone Two

Unbundled Loop Analog (Benchmark)

Date	CLEC Num	CLEC Den	CLEC Resu	CLEC Std D	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02	778	793	98.11%	13.82%	863	921	93.70%	-3.74	-3.28
Nov-02	481	474	97.26%	16.33%	687	737	93.22%	-2.73	-2.66
Dec-02	749	759	86.68%	11.40%	593	637	93.09%	-4.1	-3.49
Jan-03	879	888	99.21%	8.65%	834	871	94.49%	-4.04	-3.48
Feb-03	1017	1026	99.12%	9.32%	562	582	96.56%	-2.71	-2.65
Mar-03	836	851	98.47%	12.26%	809	830	96.87%	-1.91	-2.18
Apr-03	588	589	99.83%	4.12%	728	753	96.68%	-3.2	-2.94
May-03	577	665	98.63%	11.81%	820	836	98.09%	-0.74	-1.45
Jun-03	503	510	98.63%	11.63%	868	906	95.81%	-2.54	-2.55
Jul-03	1686	1696	99.41%	7.66%	808	827	97.70%	-2.69	-2.63
Aug-03	1096	1110	98.74%	11.18%	1027	1048	98.18%	-0.96	-1.59
Sep-03	958	969	98.86%	10.59%	894	921	97.07%	-2.31	-2.41



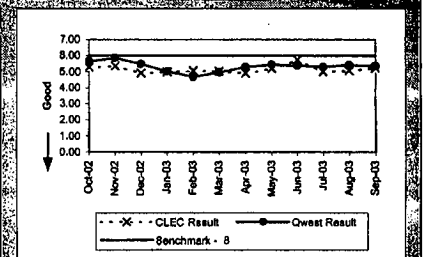
Qwest Perf Results - PID (14-State 271 PID 5.0)

North Dakota

OP-4E - Installation Interval (Average Days) - Interval Zone Two

Unbundled Loop Analog (Benchmark)

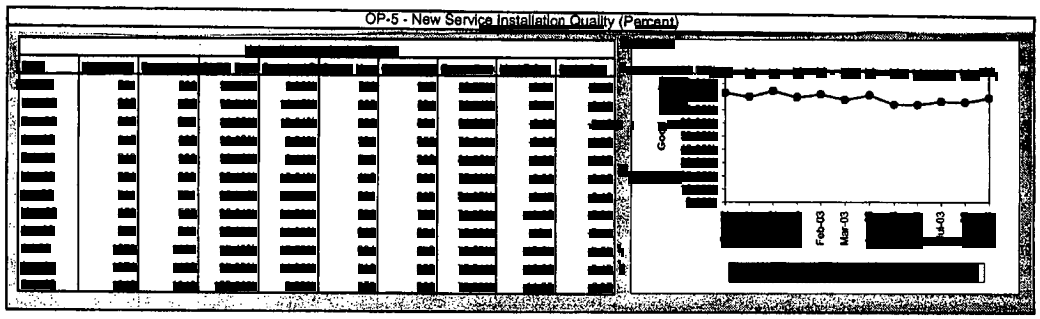
Date	CLEC Num	CLEC Den	CLEC Resu	Standard D	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Score
Oct-02	2100	397	5.29	1.99	5242	927	5.85	-0.92	-1.56
Nov-02	1512	282	5.38	3.87	4342	741	5.86	-0.88	-1.53
Dec-02	1146	233	4.92	1.82	3514	641	5.48	-1.18	-1.71
Jan-03	1506	302	4.99	2.24	3393	678	5.02	-0.08	-1.06
Feb-03	1461	288	5.07	1.28	2747	588	4.87	0.98	-0.4
Mar-03	1272	253	5.03	0.87	3122	630	4.96	0.18	-0.89
Apr-03	1581	325	4.90	1.66	3982	753	5.29	-0.9	-1.55
May-03	1855	356	5.21	1.20	4567	837	5.48	-0.74	-1.45
Jun-03	1715	298	5.74	5.74	4899	911	5.38	1.01	-0.38
Jul-03	2362	471	5.01	0.95	4392	829	5.30	-0.78	-1.48
Aug-03	1438	294	5.06	0.87	5893	1049	5.43	-0.9	-1.55
Sep-03	2869	511	5.22	0.75	4934	922	5.35	-0.39	-1.24



Qwest Perf Results - PID (14-State 271 PID 5.0)

North Dakota

OP-5 - New Service Installation Quality (Percent)

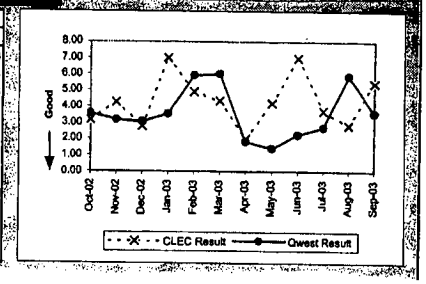


Qwest Perf Results - PID (14-State 271 PID 5.0) North Dakota

OP-6A-5 - Delayed Days for Non-Facility Reasons (Average Days) - Interval Zone Two

Unbundled Loop Analog (Parity)

Date	CLEC Num	CLEC Denc	CLEC Resu	CLEC Std D	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02	41	13	3.15	2.23	65	24	3.54	-0.38	-1.23
Nov-02	51	12	4.25	1.36	60	19	3.16	1.08	-0.34
Dec-02	22	8	2.75	1.28	79	26	3.04	-0.29	-1.16
Jan-03	49	7	7.00	11.08	67	19	3.53	1.44	-0.12
Feb-03	44	9	4.89	4.40	71	12	5.92	-0.56	-1.36
Mar-03	56	13	4.31	1.49	42	7	6.00	-0.72	-1.44
Apr-03	2	1	2.00		38	21	1.81	0.42	-0.74
May-03	21	6	4.20	3.42	14	10	1.40	2.03	0.24
Jun-03	35	5	7.00	2.74	76	34	2.24	3.72	1.26
Jul-03	28	7	3.71	2.29	43	18	2.59	0.53	-0.68
Aug-03	31	11	2.82	1.66	94	16	5.88	-0.91	-1.55
Sep-03	49	9	5.44	1.13	79	22	3.59	1.17	-0.29

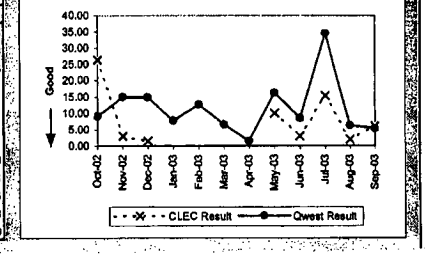


Qwest Perf Results - PID (14-State 271 PID 5.0) North Dakota

OP-6B-5 - Delayed Days for Facility Reasons (Average Days) - Interval Zone Two

Unbundled Loop Analog (Parity)

Date	CLEC Num	CLEC Denc	CLEC Resu	CLEC Std D	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02	105	4	26.25	21.76	317	35	9.06	1.26	-0.23
Nov-02	3	1	3.00		464	31	14.97	-0.47	-1.28
Dec-02	3	2	1.50	0.71	293	19	14.89	-1.4	-1.85
Jan-03					131	17	7.71		
Feb-03					127	10	12.70		
Mar-03					91	14	6.50		
Apr-03					8	4	1.50		
May-03	20	2	10.00	0.00	61	5	18.20	-0.39	-1.23
Jun-03	6	2	3.00	2.83	34	4	8.50	-0.68	-1.41
Jul-03	46	3	15.33	17.90	138	4	34.50	-0.42	-1.26
Aug-03	6	3	2.00	0.00	25	4	6.25	-0.96	-1.8
Sep-03	12	2	6.00	4.24	32	6	5.33	0.34	-0.79

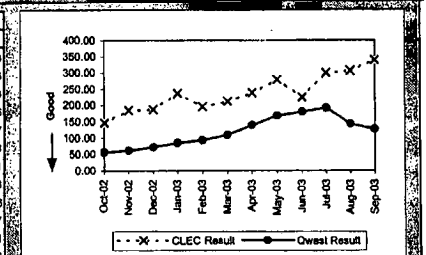


Qwest Perf Results - PID (14-State 271 PID 5.0) North Dakota

OP-15A - Interval for Pending Orders Delayed Past Due Date

Unbundled Loop Analog (Diagnostic)

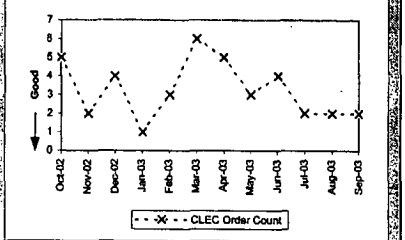
Date	CLEC Num	CLEC Denc	CLEC Resu	Standard D	Qwest Num	Qwest Den	Qwest Resu	Mod 2 Scr	Parity Scr
Oct-02	3379	23	146.91	78.86	2594	48	56.39	3.72	1.26
Nov-02	3661	20	184.05	87.49	2150	35	61.43	3.72	1.26
Dec-02	4119	22	187.23	88.31	2395	33	72.56	3.72	1.26
Jan-03	4497	19	236.68	53.38	2130	25	85.20	3.72	1.26
Feb-03	4597	25	195.88	119.72	2181	23	93.96	2.58	0.57
Mar-03	5301	25	212.04	127.96	2514	23	109.30	3.09	0.88
Apr-03	5721	24	238.38	130.90	2760	20	139.00	2.85	0.81
May-03	6134	22	278.82	116.84	3027	18	168.17	2.51	0.53
Jun-03	5378	24	224.08	158.75	3057	17	179.82	1.02	-0.36
Jul-03	5685	18	299.21	134.12	3063	16	191.44	1.93	0.17
Aug-03	6108	20	305.40	146.88	3001	21	142.90	2.85	0.81
Sep-03	6430	19	338.42	140.82	3302	26	127.00	3.72	1.26



Qwest Perf Results - PID (14-State 271 PID 5.0) North Dakota

OP-15B - Count of Pending Orders Delayed for Facilities Reasons

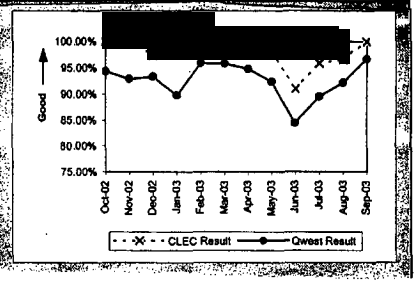
Unbundled Loop Analog (Diagnostic)	
Date	CLEC Order Count
Oct-02	5
Nov-02	2
Dec-02	4
Jan-03	1
Feb-03	3
Mar-03	6
Apr-03	5
May-03	3
Jun-03	4
Jul-03	2
Aug-03	2
Sep-03	2



Qwest Perf Results - PID (14-State 271 PID 5.0) North Dakota

MR-3E - Out of Service Cleared within 24 Hours (Percent) - Interval Zone Two

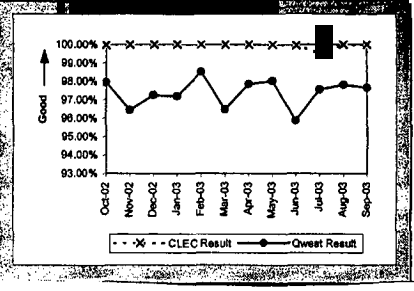
Unbundled Loop Analog (Parity)									
Date	CLEC Num	CLEC Denc	CLEC Resu	CLEC Std D	Qwest Num	Qwest Den	Qwest Rest	Mod Z Scr	Parity Scr
Oct-02	91	91	100.00%	0.00%	1268	1344	94.35%	-2.26	-2.37
Nov-02	40	40	100.00%	0.00%	748	805	92.92%	-1.7	-2.04
Dec-02	36	39	97.44%	15.81%	633	678	93.36%	-0.99	-1.6
Jan-03	51	52	98.08%	13.73%	617	687	89.81%	-1.9	-2.16
Feb-03	41	41	100.00%	0.00%	725	756	95.90%	-1.29	-1.78
Mar-03	81	82	98.39%	12.60%	797	832	95.79%	-0.98	-1.8
Apr-03	102	102	100.00%	0.00%	990	1044	94.83%	-2.25	-2.37
May-03	101	103	98.06%	13.80%	1405	1521	92.37%	-2.1	-2.28
Jun-03	81	89	91.01%	28.60%	1491	1768	84.43%	-1.87	-2.02
Jul-03	140	146	95.89%	19.85%	1455	1626	89.48%	-2.42	-2.47
Aug-03	118	120	98.67%	17.95%	1228	1332	92.19%	-1.75	-2.06
Sep-03	113	113	100.00%	0.00%	1134	1173	96.68%	-1.88	-2.14



Qwest Perf Results - PID (14-State 271 PID 5.0) North Dakota

MR-4E - All Troubles Cleared within 48 Hours (Percent) - Interval Zone Two

Unbundled Loop Analog (Parity)									
Date	CLEC Num	CLEC Denc	CLEC Resu	CLEC Std D	Qwest Num	Qwest Den	Qwest Rest	Mod Z Scr	Parity Scr
Oct-02	100	100	100.00%	0.00%	1807	1845	97.94%	-1.41	-1.66
Nov-02	50	50	100.00%	0.00%	1086	1126	96.44%	-1.33	-1.81
Dec-02	49	49	100.00%	0.00%	922	948	97.26%	-1.15	-1.7
Jan-03	63	63	100.00%	0.00%	972	1000	97.20%	-1.31	-1.79
Feb-03	44	44	100.00%	0.00%	992	1007	98.51%	-0.8	-1.49
Mar-03	75	75	100.00%	0.00%	1121	1162	96.47%	-1.81	-1.96
Apr-03	115	115	100.00%	0.00%	1416	1447	97.86%	-1.53	-1.93
May-03	122	122	100.00%	0.00%	1982	2022	98.02%	-1.52	-1.93
Jun-03	124	124	100.00%	0.00%	2185	2279	95.88%	-2.25	-2.37
Jul-03	193	194	99.48%	7.18%	2119	2172	97.58%	-1.88	-2.01
Aug-03	151	151	100.00%	0.00%	1749	1788	97.82%	-1.78	-2.07
Sep-03	148	148	100.00%	0.00%	1578	1618	97.65%	-1.81	-2.1



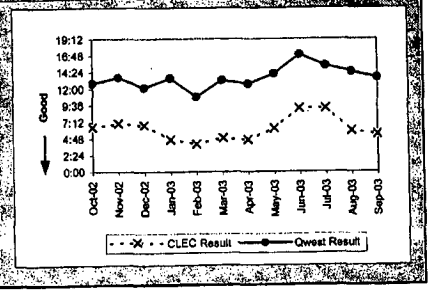
Qwest Perf Results - PID (14-State 271 PID 5.0)

North Dakota

MR-6E - Mean Time to Restore (Hours:Minutes) - Interval Zone Two

Unbundled Loop Analog (Parity)

Date	CLEC Num	CLEC Denc	CLEC Resu	CLEC Std D	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02	646:42	100	6:26	6:59	23824:27	1845	12:48	-4.39	-3.67
Nov-02	350:41	50	7:01	7:02	15311:40	1125	13:37	-3.14	-2.91
Dec-02	330:29	49	6:45	7:52	11537:45	948	12:10	-2.47	-2.5
Jan-03	298:18	83	4:42	5:38	13523:12	1000	13:31	-5.06	-4.08
Feb-03	177:34	44	4:02	4:19	10892:53	1007	10:49	-3.83	-3.33
Mar-03	364:40	75	4:52	6:09	15343:36	1182	13:12	-4.65	-3.83
Apr-03	532:48	115	4:38	4:42	18307:21	1447	12:39	-6.85	-5.17
May-03	762:20	122	6:16	6:10	28605:15	2022	14:09	-6.57	-4.99
Jun-03	1139:57	124	9:12	9:01	38544:39	2279	16:55	-6.53	-4.36
Jul-03	1783:42	194	9:12	8:55	33321:54	2172	15:20	-8.36	-4.68
Aug-03	896:50	151	5:56	7:44	25800:54	1786	14:26	-7.29	-5.43
Sep-03	798:24	146	5:24	5:40	21983:33	1816	13:36	-6.7	-5.07



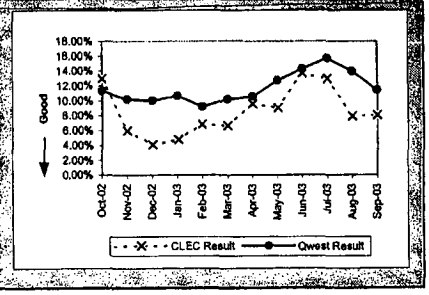
Qwest Perf Results - PID (14-State 271 PID 5.0)

North Dakota

MR-7E - Repair Repeat Report Rate (Percent) - Interval Zone Two

Unbundled Loop Analog (Parity)

Date	CLEC Num	CLEC Denc	CLEC Resu	CLEC Std D	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02	13	100	13.00%	33.63%	212	1873	11.32%	0.54	-0.67
Nov-02	3	50	6.00%	23.75%	117	1150	10.17%	-0.96	-1.58
Dec-02	2	49	4.08%	19.79%	97	966	10.02%	-1.35	-1.82
Jan-03	3	83	4.78%	21.30%	108	1016	10.83%	-1.47	-1.69
Feb-03	3	44	6.82%	28.21%	95	1032	9.21%	-0.54	-1.33
Mar-03	5	75	6.67%	24.94%	121	1189	10.18%	-0.98	-1.59
Apr-03	11	115	9.57%	29.41%	155	1486	10.57%	-0.34	-1.21
May-03	11	122	9.02%	26.64%	281	2054	12.71%	-1.19	-1.72
Jun-03	17	124	13.71%	34.39%	329	2308	14.25%	-0.17	-1.1
Jul-03	25	194	12.89%	33.51%	348	2204	15.70%	-1.03	-1.83
Aug-03	12	151	7.95%	27.05%	254	1821	13.95%	-2.05	-2.24
Sep-03	12	146	8.11%	27.30%	186	1644	11.44%	-1.22	-1.74



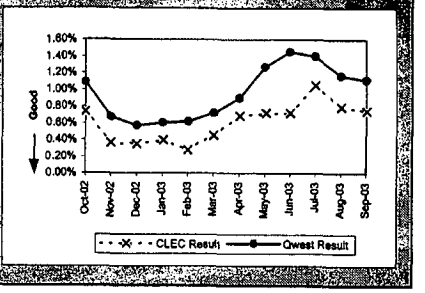
Qwest Perf Results - PID (14-State 271 PID 5.0)

North Dakota

MR-8 - Trouble Rate (Percent)

Unbundled Loop Analog (Parity)

Date	Numerator	Denominato	CLEC Resu	Standard D	Qwest Num	Qwest Den	Qwest Resu	Mod Z Scr	Parity Scr
Oct-02	100	13536	0.74%	8.56%	1673	171730	1.09%	-3.8	-3.31
Nov-02	50	13802	0.36%	6.01%	1150	170557	0.67%	-4.31	-3.82
Dec-02	49	14292	0.34%	5.85%	968	189692	0.57%	-3.47	-3.11
Jan-03	83	15625	0.40%	6.30%	1016	168454	0.60%	-3.18	-2.94
Feb-03	44	15825	0.28%	5.27%	1032	166877	0.62%	-5.22	-4.17
Mar-03	76	16489	0.46%	6.73%	1169	165293	0.72%	-3.83	-3.33
Apr-03	115	16782	0.69%	8.25%	1466	163102	0.90%	-2.79	-2.7
May-03	122	16980	0.72%	8.45%	2054	161144	1.27%	-6.14	-4.74
Jun-03	124	17134	0.72%	8.48%	2308	158705	1.45%	-7.59	-5.81
Jul-03	194	18394	1.05%	10.22%	2204	156974	1.40%	-3.81	-3.32
Aug-03	151	18976	0.80%	8.88%	1821	155631	1.17%	-4.53	-3.75
Sep-03	146	19832	0.76%	9.81%	1644	147208	1.12%	-4.66	-3.83



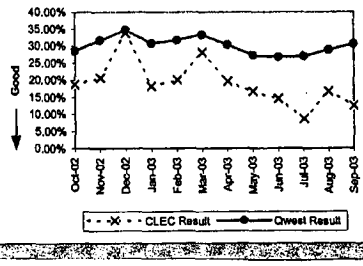
Qwest Perf Results - PID (14-State 271 PID 5.0)

North Dakota

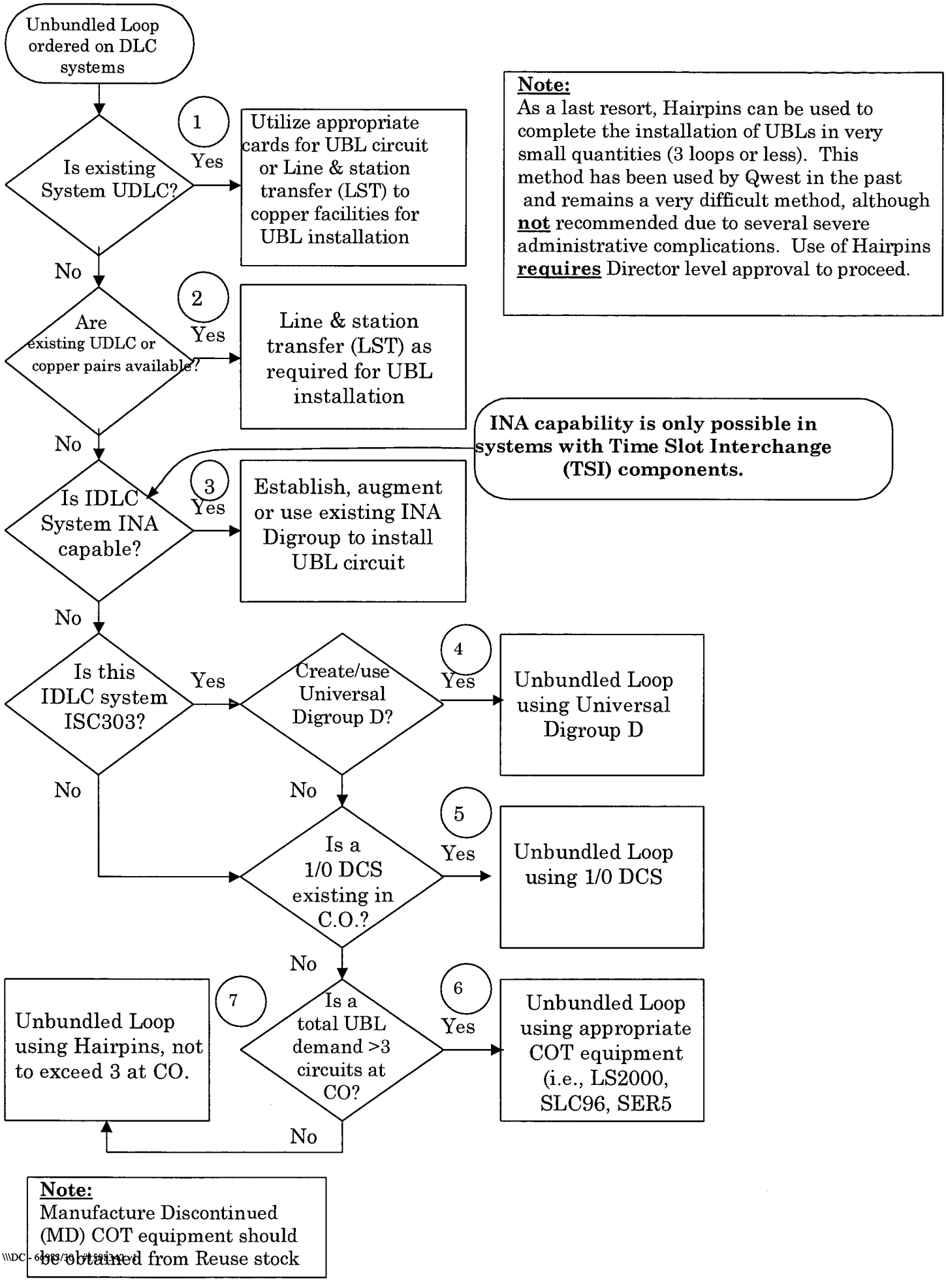
MR-10 - Customer-Related Trouble Reports (Percent)

Unbundled Loop Analog (Diagnostic)

Date	CLEC Num	CLEC Den	CLEC Resu	CLEC Std D	Qwest Num	Qwest Den	Qwest Res	Mod Z Scr	Parity Scr
Oct-02	23	123	18.70%	38.99%	748	2621	28.54%	-2.36	-2.44
Nov-02	13	63	20.63%	40.47%	530	1880	31.55%	-1.83	-2.11
Dec-02	25	74	33.79%	47.30%	512	1480	34.59%	-0.14	-1.09
Jan-03	14	77	18.18%	38.57%	451	1467	30.74%	-2.33	-2.42
Feb-03	11	55	20.00%	40.00%	477	1509	31.61%	-1.82	-2.11
Mar-03	29	104	27.88%	44.84%	593	1782	33.28%	-1.13	-1.89
Apr-03	28	143	19.58%	39.68%	636	2102	30.26%	-2.89	-2.83
May-03	24	146	16.44%	37.06%	783	2817	27.09%	-2.82	-2.72
Jun-03	21	145	14.48%	35.19%	838	3148	26.64%	-3.24	-2.97
Jul-03	18	212	8.49%	27.87%	809	3013	26.85%	-5.83	-4.54
Aug-03	30	161	18.57%	37.18%	733	2554	28.70%	-3.48	-3.12
Sep-03	21	169	12.43%	32.99%	718	2362	30.40%	-4.91	-3.99



BHCP – EXHIBIT 5


Unbundled Loop ordered on DLC systems
Is existing System UDLC?
1
Yes
Utilize appropriate cards for UBL circuit or Line & station transfer (LST) to copper facilities for UBL installation
No
Are existing UDLC or copper pairs available?
2
Yes
Line & station transfer (LST) as required for UBL installation
No
Is IDLC System INA capable?
3
Yes
Establish, augment or use existing INA Digroup to install UBL circuit
INA capability is only possible in systems with Time Slot Interchange (TSI) components.
No
Is this IDLC system ISC303?
Yes
Create/use Universal Digroup D?
4
Yes
Unbundled Loop using Universal Digroup D
No
No
Is a 1/0 DCS existing in C.O.?
5
Yes
Unbundled Loop using 1/0 DCS
No
Is a total UBL demand >3 circuits at CO?
6
Yes
Unbundled Loop using appropriate COT equipment (i.e., LS2000, SLC96, SER5
No
7
Unbundled Loop using Hairpins, not to exceed 3 at CO.
Note:
As a last resort, Hairpins can be used to complete the installation of UBLs in very small quantities (3 loops or less). This method has been used by Qwest in the past and remains a very difficult method, although not recommended due to several severe administrative complications. Use of Hairpins requires Director level approval to proceed.
Note:
Manufacture Discontinued (MD) COT equipment should be obtained from Reuse stock

Legend for IDLC Flow

Solution provisioning intervals:

1) UBL circuit cards – 5 days
LST – 5 days
2) LST – 5 days

3) INA Digroup (D4 Channel Bank, dedicated DS1) – 5 days if span capacity

4) Order COT – 90 days – 120 days

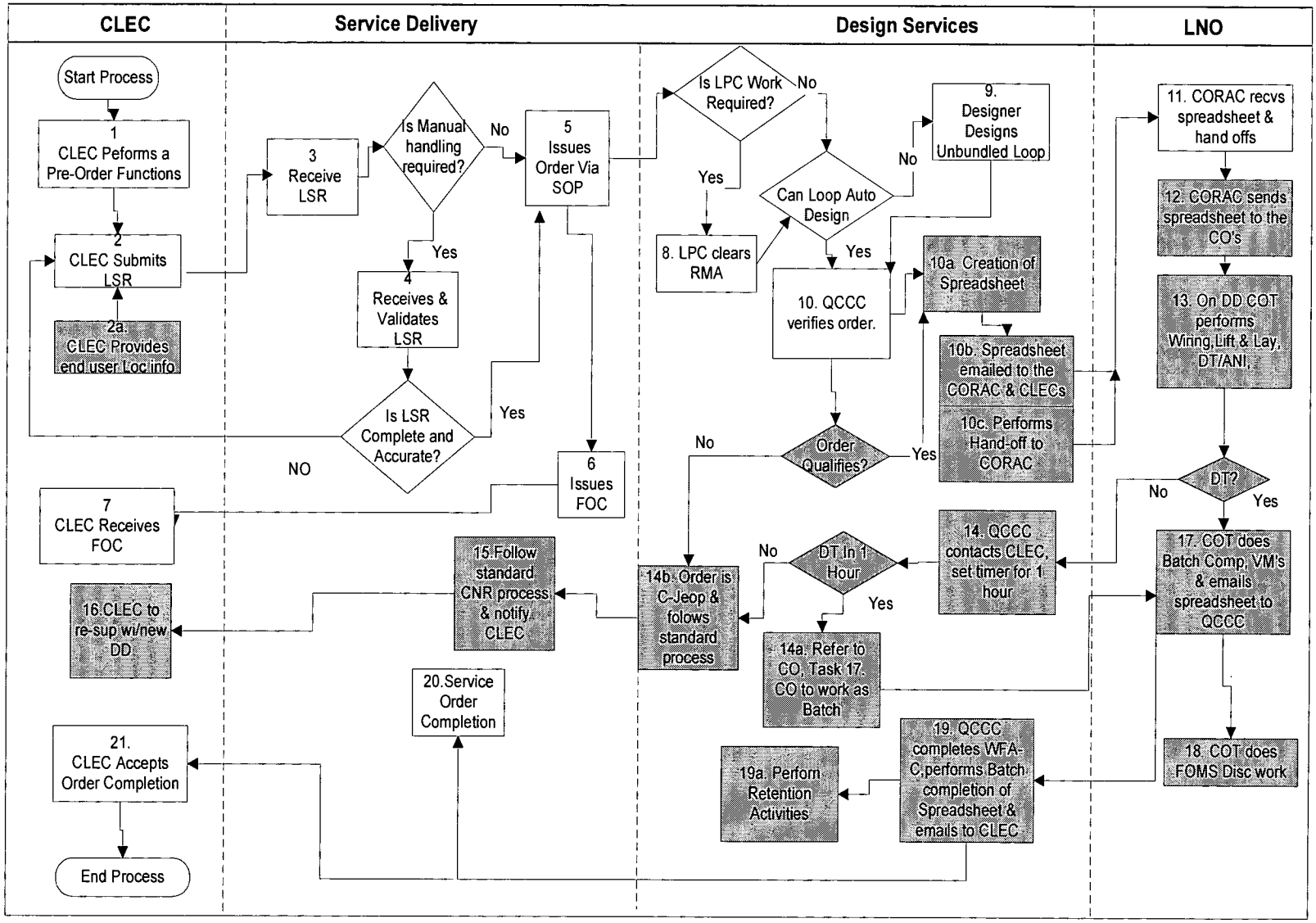
5) 1/0 DCS (Adtran BR110) - 90 days – 120 days

6) LS 2000, SLC 96, Series 5 - 90 days – 120 days

7) Hairpin – 15 days after approval

Proposed

PROPOSED BATCH HOT CUT PROVISIONING FLOW



Proposed Batch Hot Cut Process Task List

1. CLEC performs per-order loop functions.
2. CLEC submits Local Service Request (LSR) to Qwest.

2a. CLEC provides accurate end user service address information to Qwest via LSR.

3. Qwest receives LSR from CLEC.
4. If LSR does not flow through, Qwest validates LSR for completeness and accuracy.
5. If LSR is flow through the service order is automatically created in the Service Order Processor (SOP). If LSR is not flow through, the Service Delivery Consultant (SDC) issues the service order into the SOP upon completion of Task 4..
6. Qwest issues the Firm Order Confirmation (FOC) to the CLEC.
7. CLEC receives FOC.
8. If necessary, the Loop Provisioning Center (LPC) must clear RMA.
9. Circuit design is created based on the service request. A Word Document is generated and sent to the central office (CO) and field technicians with the information necessary to wire the circuit.
10. QCCC verifies the order for completeness and accuracy. If order does not qualify for the Batch Hot Cut Process, QCCC will follow the standard Customer Not ready (CNR) process (Go to Step 14b).

10a. QCCC project manager will create the Batch Hot Cut spreadsheet. Spreadsheet will include: PON#, order #, TN, DT validation, order completion validation.

10b. QCCC project manager will email Batch Hot Cut spreadsheet to the CORAC and CLECs.

10c. QCCC performs hand-offs to the CORAC for due date activities.

Proposed Batch Hot Cut Process Task List

11. CORAC receives work requests for the handoffs and the spreadsheet. CORAC loads appropriate LNO personnel.
12. CORAC sends spreadsheet to the Central Office.
13. On DD, the COT performs wiring, 'lift and lay', DT/ANI. If NDT, the COT will notify the QCCC.
14. QCCC contacts the CLEC to advise of NDT, QCCC sets a 1 hour timer for CLEC callback to confirm DT now available.

14a. CLEC now has DT, QCCC refers the order back to the CO for Batch - go to Step 17.

14b. If there is no callback from CLEC or still NDT, QCCC follows the standard process the order(s) is C-Jeop'd.

15. Service Delivery follows standard Customer Not Ready (CNR) process and performs jeopardy notice back to CLEC.
16. CLEC reissues the LSR.
17. COT does Batch completion, voice mails the QCCC, and emails the Batch spreadsheet to QCCC.
18. COT does FOMS disconnect work.
19. The QCCC completes the order in WFA-C, performs completion of spreadsheet and emails to CLEC, billing information flows to the SOP.

19a. QCCC follows the standard Record Retention Process.

20. The service order is completed and distributed to other downstream systems such as billing.
21. CLEC accepts order completion.

Batch Hot Cut Process (BHCP) Requirements - Draft

General:

- IDLC, OSP facilities with an EX designation and Line Splitting circuits will not be candidates for the Batch conversions.
- Batch conversions will utilize existing UNE-P, CLEC or Retail facilities.
- Basic Installation only on batch conversions
- Coordinated and/or basic installation is still offered for business as usual activities – for example – requests not identified as part of the conversion or a part of a project managed hot cut.

Qwest Impacting:

- Qwest will continue to perform a line verification test and issue a trouble ticket if trouble is found to exist on the circuit prior to the conversion to UNE-Loop.
- 100 orders (total) per Central Office per day is the limit. (100 is the maximum per office while 25 per central office is the minimum)
- RCMAC – Translations completed on Due Date ("DD")
- UNE-P with line splitting (511 in AZ, CO, MN, OR, WA) will not be included in the batch conversion – Qwest will provide a list of those TNs (CLEC specific) where line splitting has been deployed by the CLEC and these orders will be scheduled during normal business hours.
- Once an LSR is submitted to Qwest, Qwest will produce a spreadsheet that contains the following information: CLEC PON with 3 letter identifier (e.g., "BHC"), Qwest order number, TN, Qwest project ID #, valid CLEC CBR information

CLEC Impacting:

- CLEC will interface with a Qwest representative(s) to negotiate order entry and the prioritization of the Batch Hot Cut activity.
- CLEC will be responsible for submitting LSR to Qwest - LSR must contain contact information including CLEC contact number and email address.
- PON number assigned will end in "BHC" to identify that the order is a part of the Batch Hot Cut Process.
- CLEC industry standard dial tone needs to be at the ICDF prior to DD.
- If industry standard Dial Tone ("DT") is not present when a technician is ready to perform the lift and lay, the order will be referred to the CLEC via a phone call for the CLEC to resolve. The CLEC will have one hour to provide industry standard DT. If not resolved by the end of conversion shift or tour, the order, and all lines associated with that specific order, will be jeoped back to the CLEC and will have to be resubmitted following the normal process flow.
- Batch clearing/closing of orders is via the Qwest provided spreadsheet and will be sent to the CLEC provided email address.
- CLEC must complete activation of their subscription for number porting upon notification of order completion.
- If CLEC experiences trouble on the newly converted UNE-Loop within the first 30 days, the CLEC should contact the QCCC for resolution through the warranty group.

Proposed changes to the current hot cut process:

- **CLEC requirements:**
  - CLEC must provide/copy accurate end user service address ..
  - If industry standard dial tone is not available on DD, CLEC will have one hour to resolve the issue or the order will be dropped from the BHCP.

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11/12/03

- **Qwest Requirements**
  - Qwest will pre-wire the CLEC jumper on due date not on DVA date (DD-2).
  - Qwest would submit a spreadsheet to the CLEC of the conversions by CO, by end user, etc. within 24 hours of receipt of the FOC.
  - Qwest will not perform the 48 hour pre-due date industry standard DT test in the CLEC's switch terminations.
  - Qwest will only notify the CLEC of a no industry standard DT condition on the due date. CLEC will be notified of the No DT condition on the DD (notification is by phone call) and update in TIRKS OSSLOG once the order is jeop'ed to new date.
  - DT/ANI test on CLEC switch termination and existing UNE-P terminations will take place on the DD with COT updating TIRKS records upon order completion.
  - No email distribution of test results.
  - COT will no longer call to RCMAC to work the disconnect of the UNE-P.
  - The Central Office process will change to do the FOMs disconnect work the day after the DD.
  - Central Office will only call the QCCC if translations are not completed.
  - QCCC performs batch close out of CLEC orders using the Qwest generated spreadsheet via email. Close out is completed and is sent to CLEC designated email address.
  - LNP activation is verified by both Qwest and CLEC..
  - A failure of one order within the batch does not constitute the failure of the entire batch cut.

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11/12/03

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **7th day of November, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, **ten** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Notice of Multi-State Batch Hot Cut Forum and Procedural Order

The envelopes were addressed as follows:

Mary B Tribby
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202
Cert. No. 7003 1680 0004 9464 2781

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Bismarck ND 58502-1695
Cert. No. 7003 1680 0004 9646 2798

Tim Goodwin
Qwest Corporation
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Denver CO 80202
Cert. No. 7003 1680 0004 9646 2804

Marilyn Foss Atty for MCI
P O Box 2216
Bismarck ND 58502-2216
Cert. No. 7003 1680 0004 9646 2811

Mr Thomas F Kelsch
Kelsch Kelsch Ruff & Kranda
P O Box 1266
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Cert. No. 7003 1680 0004 9646 2828

Steven E Noack Atty for IdeaOne
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Fargo ND 58108-2783
Cert. No. 7003 1680 0004 9646 2835

Deborah H Harwood
Integra Telecom
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Beaverton OR 97006-6902

Cert. No. 7003 1680 0004 9646 2842

Dan Lipschultz Atty for McLeod, U S Link
Moss & Barnett
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90 S 7th St
Minneapolis MN 55402-4129
Cert. No. 7003 1680 0004 9646 2859

Dick Thronson Manager
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59623-0600
Cert. No. 7003 1680 0004 9646 2866

Patrick Durick Atty for Midcontent Comm
P O Box 400
Bismarck ND 58502-0400

Cert. No. 7003 1680 0004 9646 2873

Sharon Helbling further deposes and says that on the **7th day of November, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, **22** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Scott Macintosh
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Bismarck ND 58506-5508

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Helena MT 59604-5237

Mary Lohnes
Midcontinent Communications
5001 W 41st St
Sioux Falls SD 57106

Steven D Lysne
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Thomas F Dixon
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Peter Healy
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525 Junction Rd Ste 6000
Madison WI 53717

Bob Johnson
IdeaOne Telecom
3239 39th St SW
Fargo ND 58104

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **7th day of November, 2003**.

Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY ORDINARY AND ELECTRONIC MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **7th day of November, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, each containing a photocopy of:

Notice of Multi-State Batch Hot Cut Forum and Procedural Order

The envelopes were addressed as follows:

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **7th day of November, 2003**.

Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

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Ann Faught
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Farmington Hills MI 48334

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Murray Barr
Competitive Strategies Group Inc
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Oak Park IL 60302-2106

Computer Integrated Communications Inc
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Potomac MD 20854-4071

Consolidated Communications Networks Inc
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Dickinson ND 58601

Consolidated Telcom
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Dickinson ND 58601-1077

Contact Communications
937 W Main St
Riverton WY 82501

Covista Inc
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Northbrook IL 60062

Granite Telecommunications LLC
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Lucille Nilson
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Duluth GA 30096

Houlton Enterprises Inc
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Council Bluffs IA 51501

HTC Services Inc
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Michel Murray
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MCImetro Access Transmission Services
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Operator Communications Inc
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Z-Tel Communications Inc
601 S Harbour Island Blvd Ste 220
Tampa FL 33602-5925

Helbling, Sharon D.

From: Helbling, Sharon D.

Sent: Friday, November 07, 2003 3:16 PM

To: ndna (E-mail)

Subject: Attached Notice of Multi-State Batch Hot Cut Forum and Procedural Order, case No. PU-439-03-295

Colleen Park
North Dakota Newspaper Association

Colleen,

Please have the attached Notice of Multi-State Batch Hot Cut Forum and Procedural Order published as a legal publication in the next issue of the ten North Dakota daily newspapers, and run it as a "News Item Only" article.

Send the bill to the Public Service Commission along with a tear sheet for billing purposes.

If you have any questions, please let me know.

Thank you.

Sharon Helbling
Public Utilities Division

69 PU-439-03-295 Pages: 1

Notice e-mailed to NDNA requesting publication
by Public Service Commission

11/7/2003 11/07/2003 CC: Comm Legal PUD (3)

APPROVED
DATE: 11-7-03

MOTION

November 7, 2003

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission adopt the Notice of Multi-State Batch Hot Cut Forum and Procedural Order in the Public Service Commission's Local Competition Investigation, Case No. PU-439-03-295.

PJF

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

NOTICE OF MULTI-STATE BATCH HOT CUT FORUM AND PROCEDURAL ORDER

November 7, 2003

On November 3, 2003, the Commission received a joint motion from AT&T of the Mountain States, Inc., Qwest Corporation, and WorldCom, Inc. (Movants) for a process and framework for addressing the batch hot cut requirements of the Federal Communications Commission's Triennial Review Order.

The Movants agree that a single, uniform batch hot cut process for all states within the Qwest Corporation region would provide the most efficient and effective operating environment for both Qwest and competitive local exchange companies (CLECs). The Movants also agree that it would be appropriate for incumbent local exchange companies (ILECs) and CLECs to attempt to reach agreement on a batch hot cut process and propose a multi-state forum with participation by ILECs, CLECs, as well as state commission personnel and other interested parties. The Movants included a proposed procedural schedule in the filing.

On November 6, 2003 the Commission held a conference call, with the Movants, intervenors and those with pending petitions to intervene, for the purpose of informing all interested parties about the motion.

Please Take Notice that the Commission endorses the proposed multi-state batch hot cut forum, adopts the schedule and procedural requirements set forth below, will participate in the multi-state forum concerning the batch hot cut process, and strongly encourages interested parties to actively participate in the batch hot cut multi-state forum. For more information concerning the proposal and procedural schedule and other information concerning this investigation, contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Jon Mielke, Executive Secretary.

ORDER

The joint motion of AT&T of the Mountain States, Inc., Qwest Corporation, and WorldCom, Inc. is GRANTED and the following schedule and procedural requirements is adopted:

ACTIVITY	DUE DATE
Commission Notice to all CLECs within respective states regarding batch hot cut forum	November 7, 2003
Qwest submits its batch hot cut proposal which will include a detailed description of the process, including, but not limited to, capacity, Pre-order, Ordering and Provisioning, the proposed cost for the batch hot cut activities, and the intervals.	November 12, 2003
CLECs submit comments/counter proposals to Qwest's batch hot cut proposal	November 18, 2003
Initial Forum – Denver, Colorado	December 1-3, 2003
Weekly conference calls on batch hot cut proposal, if useful. Face-to-face meetings as necessary (in Seattle, Washington & Phoenix, Arizona)	December 4, 2003 - January 15, 2004
Simultaneous filing to the Commission of direct testimony on impasse issues regarding the batch hot cut process and filing of a Stipulation among parties on areas of agreement/consensus items.	January 20, 2004
Simultaneous filing to the Commission of rebuttal testimony	February 17, 2004
Commission Hearings & Commission Decision	Per each state's procedural order in the 9-month dockets

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

RECEIVED
NOV - 6 2003
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
SECRETARY

Jeffcoat-Sacco, Illona
From: Patrick W. Durick [pwd@pearce-durick.com]
Sent: Thursday, November 06, 2003 3:49 PM
To: ijs@psc.state.nd.us
Cc: Mary Lohnes (E-mail)
Subject: Local Competition Investigation - PU-439-03-295

Illona:

MIdcontinent Communications agrees with the proposal of AT&T, MCI and Quest discussed at today's teleconference.

Patrick W. Durick
P.O. Box 400
314 East Thayer Avenue
Bismarck, ND 58502-0400
(701) 333-0102
pwd@pearce-durick.com

66 PU-439-03-295 Pages: 1

Agrees with proposal of AT&T, MCI & Qwest discussed at 11/06/03 by Midcontinent Communications

11/06/2003 CC: Comm Legal PUD (3)

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **6th day of November, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, **13** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order Granting Intervention

The envelopes were addressed as follows:

Mary B Tribby
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202
Cert. No. 7002 2410 0003 4913 4422

Walter F Eggers III Atty for AT&T
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne WY 82001-3162
Cert. No. 7003 1680 0004 9646 2514

Gary B Witt
AT&T Law Dept
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Denver CO 80202
Cert. No. 7003 1680 0004 9646 2521

Dan Kuntz Atty for Qwest
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Bismarck ND 58502-1695
Cert. No. 7003 1680 0004 9646 2538

Tim Goodwin
Qwest Corporation
1801 California St Ste 4900
Denver CO 80202
Cert. No. 7003 1680 0004 9646 2545

Marilyn Foss Atty for MCI
P O Box 2216
Bismarck ND 58502-2216
Cert. No. 7003 1680 0004 9646 2552

65 PU-439-03-295 Pages: 3
Affidavits of Service
by Public Service Commission
11/06/2003 CC: Comm Legal PUD (3)

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WorldCom Inc
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Denver CO 80202
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Steven E Noack Atty for IdeaOne
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Cert. No. 7003 1680 0004 9646 2576

Deborah H Harwood
Integra Telecom
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Beaverton OR 97006-6902

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Dan Lipschultz Atty for McLeod, U S Link
Moss & Barnett
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90 S 7th St
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Scobey MT 59623-0600
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Mr Thomas F Kelsch
Kelsch Kelsch Ruff & Kranda
P O Box 1266
Mandan ND 58554-7266
Cert. No. 7003 1680 0004 9646 2774

Sharon Helbling further deposes and says that on the **6th day of November, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, **13** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

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Bismarck ND 58506-5508

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Helena MT 59604-5237

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Midcontinent Communications
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Steven H Weigler
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Robert M. Pomeroy Jr
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Greenwood CO 80111

Jim Howard
John Staurulakis Inc
Eagandale Corporate Center Ste 310
1380 Corporate Center Curve
Eagan MN 55121

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **6th day of November, 2003**.

Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

MOTION

APPROVED
DATE: 11-5-03
KMF

November 5, 2003

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission adopt the Order Granting Intervention to Qwest Corporation, IdeaOne Telecom Group, LLC, Midcontinent Communcations, Missouri Valley Communications, Inc., McLeodUSA Telecommunications Services, Inc., U.S. Link, Inc. and Integra Telecom of North Dakota, Inc. in the Public Service Commission's Local Competition Investigation, Case No. PU-439-03-295.

PJF

64 PU-439-03-295 Pages: 1
Motion approving intervention
by Public Service Commission
11/05/2003 CC: Comm Legal PUD (3)

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

ORDER GRANTING INTERVENTION

November 5, 2003

On October 17, 2003, Qwest Corporation (Qwest) filed a Petition to Intervene in this proceeding. The petition stated that Qwest is an incumbent local exchange carrier providing network elements on an unbundled basis to other requesting telecommunications carriers and therefore has a substantial interest in this proceeding. The Commission finds Qwest does have an interest in these matters and its participation will not unduly broaden the issues or delay the proceedings.

On October 21, 2003, IdeaOne Telecom Group, LLC (IdeaOne) filed a Petition to Intervene in this proceeding. The petition stated that IdeaOne is a competitive local exchange carrier that relies in part on unbundled access to Qwest's network and therefore has a substantial interest in this proceeding. The Commission finds IdeaOne does have an interest in these matters and its participation will not unduly broaden the issues or delay the proceedings.

On October 23, 2003, Midcontinent Communications (Midcontinent) filed a Petition to Intervene in this proceeding. The petition stated that Midcontinent has a legal interest which may be substantially affected by this proceeding. The Commission finds Midcontinent does have an interest in these matters and its participation will not unduly broaden the issues or delay the proceedings.

On October 24, 2003, Missouri Valley Communications, Inc. (MVCI) filed a Petition to Intervene in this proceeding. The petition stated that MVCI, as an incumbent local exchange company serving the Williston exchange has a number of direct and substantial interests, including a precedent that may be established with respect to access by competing carriers to incumbent carriers' network elements. The Commission finds MVCI does have an interest in these matters and its participation will not unduly broaden the issues or delay the proceedings.

On October 24, 2003, Moss & Barnett filed a Petition to Intervene in this proceeding on behalf of McLeodUSA Telecommunications Services, Inc. (McLeod) and U.S. Link, Inc. (US Link). The petition stated that McLeod and US Link are competitive local exchange carriers that rely in part on unbundled access to Qwest's network to furnish services and therefore have a substantial legal and financial interest in this proceeding. The Commission finds McLeod and US Link do have an interest in these matters and its participation will not unduly broaden the issues or delay the proceedings.

On October 27, 2003, Integra Telecom of North Dakota, Inc. (Integra) filed a Petition to Intervene in this proceeding. The petition was dated 10-24-03 and stated that Integra is a competitive local exchange carrier and has legal interests that may be substantially affected by this proceeding. Integra also states that it relies, in part, on access to Qwest's ILEC network to

furnish its services. The Commission finds Integra does have an interest in these matters and its participation will not unduly broaden the issues or delay the proceedings. The Commission further finds that Integra's filing one day out of time will have no adverse impact on the proceeding or any party.

Order

The Commission orders:

The petitions of Qwest Corporation, IdeaOne Telecom Group, LLC, Midcontinent Communcations, Missouri Valley Communications, Inc., McLeodUSA Telecommunications Services, Inc., U.S. Link, Inc. and Integra Telecom of North Dakota, Inc. to intervene in this proceeding are granted.

6. Admission as an intervenor shall not be construed as recognition by the Commission that an intervenor might be aggrieved by an order of the Commission in this case.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY FIRST CLASS MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sandra L. Scott deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **5th day of November, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, **twenty-six** envelopes with first class postage, fully prepaid, securely sealed and each containing a photocopy of:

> **November 5, 2003 Commission Motion Permitting Named Non-Resident Attorneys To Practice Before the Commission.**

The envelopes were addressed as follows:

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Greenwood Village CO 80111

James K Tarpey
Holland & Hart LLP
8390 E Crescent Parkway – Ste. 400
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Dan Lipschultz
Moss & Barnett
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90 S 7th St
Minneapolis MN 55402-4129

Marilyn Foss
Attorney at Law
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Bismarck ND 58502-2216

Steven E Noack
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P O Box 2783
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Dick Thronson
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Don Negaard
Pringle & Herigstad PC
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Patrick W Durick
Pearce & Durick
P O Box 400
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Mary Lohnes
Regulatory Affairs Manager
Midcontinent Communications
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Sioux Falls SD 57106

Steven D Lysne
SRT Communications Inc.
P O Box 2027
Minot ND 58702-2027

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **5th day of November, 2003**.

Notary Public

SEAL

SUSAN K. RICHTER
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 15, 2004

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Jon H. Mielke

600 E Boulevard Ave. Dept. 408
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web: www.psc.state.nd.us
e-mail: ndpsc@psc.state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

November 5, 2003

Mr. Thomas F. Kelsch
Kelsch, Kelsch, Ruff & Kranda
Attorneys at Law
P. O. Box 1266
Mandan, ND 58554-7266

Re: Case No. PU-439-03-295
Public Service Commission
Local Competition
Investigation

Dear Mr. Kelsch:

Enclosed is a copy of the Commission's Motion approving the request of the following non-resident attorneys from AT&T and Holland & Hart LLP to practice before the Commission on behalf of AT&T Communications of the Midwest, Inc.

AT&T	Holland & Hart LLP
Gary B. Witt	Robert M. Pomeroy Jr.
Mary B. Tribby	Thomas R. O'Donnell
Letty S. D. Friesen	James K. Tarpey
Richard S. Wolters	Thorvald A. Nelson
Steven H. Weigler	Walter F. Eggers, III
Rebecca B. DeCook	

If you have any questions, please contact me.

Thank you.

Sincerely,

William W. Binek
Chief Counsel

WWB/sls

C: Parties of Record

61 PU-439-03-295 Pages: 1

Letter to parties re approval of non-resident attorneys to practice by Public Service Commission

11/05/2003 CC: Comm Legal PUD (3)

APPROVED

DATE: 11-5-03

KME

MOTION

November 5, 2003

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the following named non-resident attorneys from AT&T and Holland & Hart LLP be given permission to practice before the Commission on behalf of AT&T Communications of the Midwest Inc., in Case No. PU-439-03-295:

AT&T
Gary B. Witt
Mary B. Tribby
Letty S. D. Friesen
Richard S. Wolters
Steven H. Weigler
Rebecca B. DeCook

Holland & Hart LLP
Robert M. Pomeroy Jr.
Thomas R. O'Donnell
James K. Tarpey
Thorvald A. Nelson
Walter F. Eggers, III

WWB/sls

60 PU-439-03-295 Pages: 1

Motion permitting named non-resident attorneys to practice before the by Public Service Commission

11/05/2003 CC: Comm Legal PUD (3)

Public Service Commission
State of North Dakota

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NOV - 4 2003
NORTH DAKOTA PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

COMMISSIONERS

Tony Clark, President
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web: www.psc.state.nd.us
e-mail: ndpsc@psc.state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

November 4, 2003

Dan S. Kuntz
Zuger Kirmis & Smith
PO Box 1695
Bismarck ND 58502-1695

RE: Case No. PU-439-03-295: Local Competition Investigation

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order (TRO) and adopted new rules concerning incumbent local exchange carrier (ILEC) obligations to unbundle certain elements of their networks. The rules became effective on October 2, 2003.

For a significant group of issues, the FCC requires state commissions to complete their analyses and reviews within nine months from the effective date of the TRO. See TRO at ¶¶ 339 (high capacity loops), 417 (dedicated transport), 423, 460 and 488 (batch hot cut process), 497 (DS0 crossover point), and 527 (mass market switching), and notes 1376 (DS0 crossover point) and 1612 (batch hot cut process), see also 47 C.F.R. §§51.319(a)(7)(i) (high capacity loops), (d)(5)(i) (mass market switching), and (e)(4)(i) (dedicated transport).

Due to the breadth of potential issues identified in the TRO for state commission determination, the variety of interested parties, and the limited time available for analysis, we hope to expeditiously identify the issues. Consequently we ask that Qwest file a response to this letter by **by November 14, 2003** identifying the following:

For Unbundled High Capacity Loops

- Whether Qwest intends to submit evidence in this proceeding to rebut at specific customer locations the FCC's national finding of impairment without access to DS1, DS3, or dark fiber loops;
- identifying the specific customer locations for each of DS1, DS3, or dark fiber loops for which it intends to seek non-impairment determinations for high capacity loops;
- identifying the specific customer locations for each of DS1, DS3, or dark fiber loops for which it intends to seek non-impairment determinations for high capacity loops based on satisfaction of the self-provisioning trigger established by the FCC;

59 PU-439-03-295 Pages: 3
Letter to Qwest requesting information
by Public Service Commission
11/04/2003 CC: Comm Legal PUD (3)

- identifying the specific customer locations for each of DS1, DS3, or dark fiber loops for which it intends to seek non-impairment determinations for high capacity loops based on satisfaction of the competitive wholesale facilities trigger established by the FCC;

For Unbundled Dedicated Transport

- Whether Qwest intends to submit evidence in this proceeding to rebut along specific routes the FCC's national finding of impairment without access to DS1, DS3, or dark fiber dedicated transport;
- identifying the specific routes along which it intends to seek non-impairment determinations for dedicated transport;
- identifying the specific routes for each of DS1, DS3, or dark fiber loops along which it intends to seek non-impairment determinations for high capacity loops based on satisfaction of the self-provisioning trigger established by the FCC;
- identifying the specific routes for each of DS1, DS3, or dark fiber loops for which it intends to seek non-impairment determinations for high capacity loops based on satisfaction of the competitive wholesale facilities trigger established by the FCC;

For Unbundled Local Switching

- Whether Qwest intends to submit evidence in this proceeding to rebut in geographic areas and specific markets the FCC's national finding of impairment for mass market switching;
- identifying the geographic areas and specific mass markets in which it intends to seek non-impairment determinations for local switching;
- identifying a recommended cross over point – in terms of number of lines – at which multi-line DS0 customers will be treated as mass market customers instead of enterprise customers for purposes of local switching impairment determinations;
- identifying the geographic areas and specific mass markets in which it intends to seek non-impairment determinations for local switching based on satisfaction of the self-provisioning trigger established by the FCC;
- identifying the geographic areas and specific mass markets in which it intends to seek non-impairment determinations for local switching based on satisfaction of the competitive wholesale facilities/potential deployment trigger established by the FCC;
- identifying the geographic areas and specific mass markets in which it intends to seek non-impairment determinations for local switching based on satisfaction of the competitive wholesale facilities/actual deployment trigger established by the FCC;
- identifying the geographic areas and specific mass markets in which it intends to seek non-impairment determinations for local switching based on application of the operational criteria identified by the FCC;

- identifying the geographic areas and specific mass markets in which it intends to seek non-impairment determinations for local switching based on application of the economic criteria identified by the FCC;
- identifying the geographic areas and specific mass markets in which it intends to assert that any impairment caused by the absence of access to local circuit switching would be cured by "rolling access" to unbundled local circuit switching;

For Batch Hot Cut Process

- Whether Qwest intends to submit evidence in this proceeding to show that, in geographic areas and specific markets, a batch process is unnecessary;
- identifying the geographic areas and specific mass markets in which it intends to assert that a batch process is unnecessary.

Your responses to this letter will be discussed at a workshop scheduled for November 24, 2003 and will form the basis of further procedural scheduling to be determined at the end of that workshop.

Thank you in advance for your prompt attention to this request. If you have any questions, feel free to contact the staff.

PUBLIC SERVICE COMMISSION

Susan E. Wefald **Commissioner**	**Tony Clark** **President**	**Kevin Cramer** **Commissioner**

c. Scott Macintosh
c. Tim Goodwin

ZUGER KIRMIS & SMITH

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NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

October 31, 2003

Mr. Jon Mielke
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of an Affidavit of Mailing in the above-referenced case. Thank you for your assistance.

Sincerely,

Karol A. Cossette, PLS

Karol A. Cossette, PLS
Secretary to Daniel S. Kuntz

Enclosures

58 PU-439-03-295 Pages: 1
Cover letter re Affidavit
by Qwest/ AT&T/ WorldCom, Inc./ MCI
11/03/2003 CC: Comm Legal PUD (3)

STATE OF NORTH DAKOTA

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EXECUTIVE SECRETARY

Public Service Commission)
Local Competition Investigation)

Case No. PU-439-03-295

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA)
: ss.
COUNTY OF BURLEIGH)

The undersigned, being duly sworn, deposes and says that: I am a United States citizen, over 18 years of age, and on October 31, 2003, I served a copy of the attached:

Joint Motion for Adoption of Batch Hot Cut Forum

by placing a true copy in a postage paid envelope or envelopes addressed to each person named below, at the address stated below, which is the last known address of the addressee, and by depositing said envelope in the United States mail at Bismarck, North Dakota.

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AT&T Law Dept
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Denver, CO 80202

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Attorney at Law
P.O Box 2216
Bismarck, ND 58502-2216

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Denver, CO 80202

Susan Travis
WorldCom Inc.
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Denver, CO 80202

Walter F. Eggers III
Holland & Hart LLP
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Steven E. Noack
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Minot, ND 58702-1000

Dan Lipschultz
Moss & Barnett
4800 Wells Fargo Center
90 South 7th Street
Minneapolis, MN 55402-4129

Karol A. Cossette

Subscribed and sworn to before me, today, October 31, 2003.

NOTARY PUBLIC
State of North Dakota
My commission expires: 1/24/08

Kathi Osteen

KATHI OSTEEN
Notary Public
State of North Dakota
My Commission Expires Jan. 24, 2008

ZUGER KIRMIS & SMITH

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Patrick J. Ward
Rebecca S. Thiem, P.C.
Daniel S. Kuntz, P.C.
Jerry W. Evenson, P.C.
Lawrence A. Dopson
Lawrence E. King, P.C.
Tracy Vigness Kolb, P.C.
Shawnda R. Reid
Constance N. Hofland
Paul R. Sanderson
Aaron K. Webb

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email: zkslaw@zkslaw.com

Of Counsel
John A. Zuger

Thomas O. Smith
1944-2001

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OCT 31 2003
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PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

October 31, 2003

Mr. Jon Mielke
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of a Joint Motion for Adoption of Batch Hot Cut Forum.

Please contact me if you have any questions regarding this filing.

Sincerely,

Daniel S. Kuntz

Enclosures

c: Scott Macintosh
Tim Goodwin
Marilyn Foss
Susan Travis
Mary Tribby

56 PU-439-03-295 Pages: 2
Cover letter re Joint Motion
by Qwest/ AT&T/ WorldCom, Inc./ MCI
10/31/2003 CC: Comm Legal PUD (3)

Gary Witt
Walter F. Eggers III
Steven E. Noack
Don Negaard
Dan Lipschultz
Deborah H. Harwood

RECEIVED
OCT 31 2003
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
THE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission	)	**Case No. PU-439-03-295**
Local Competition Investigation	)	

JOINT MOTION FOR ADOPTION OF BATCH HOT CUT FORUM

Qwest Corporation ("Qwest"), AT&T of the Mountain States, Inc. ("AT&T"), and WorldCom, Inc., on behalf of its regulated subsidiaries ("MCI") (the "Parties") jointly propose the following process and framework for addressing the batch hot cut requirements of the FCC's Triennial Review Order ("Order"):

Overview:

The Parties agree that a single, uniform batch hot cut process for all states within the Qwest region provides the most efficient and effective operating environment for both Qwest and CLECs. The Parties also agree that it is appropriate for the industry participants (ILECs and CLECs) to the extent possible, to attempt to reach agreement on a batch hot cut process prior to submitting a process to Commissions for review and approval. Toward that end, the Parties propose a multi-state forum with participation by both industry (ILECs and CLECs) as well as State Commission personnel and other interested persons. The Parties further agree it is essential for State Commissions to endorse this process. To the extent all of the states do not agree to endorse the process, the Parties reserve the right to withdraw this proposal and proceed on a state-by-state basis.

Industry participation

The Parties agree that the forum should be structured and conducted in a manner that encourages participation by as many CLECs as possible. The Parties propose to hold the first face-to-face meeting in Denver, Colorado with the option for participants to participate via a conference bridge in the event they are unable to travel to Denver. Should the forum participants determine that additional face-to-face meetings are required, the Parties propose that subsequent meetings be held in Seattle, Washington, and Phoenix, Arizona, to minimize the travel burdens that may be experienced by any one CLEC. Participation by conference bridge will also be available for any subsequent meetings.

All discussions conducted in the forum will be transcribed by a licensed court reporter and be made a part of the record in any state's 9-month proceeding. Qwest will assume the administrative role of creating the agenda for, and documenting the results of, each meeting. All agreements reached by participants during the forum will be documented and will be binding upon the parties that entered into such agreements. Impasse issues concerning the batch hot cut process remaining at the conclusion of the forum process will also be documented and will be litigated before the State Commissions for resolution during the 9-month proceedings in each of the states. CLECs and other participants will have an opportunity to comment on, and/or revise, written materials indicating agreement, disagreement or other with the content of Qwest's documentation of the issues.

All proposals and materials to be discussed at the forum will be provided to participants electronically two (2) business days in advance of any face-to-face meetings or conference calls. In addition, the proposals, transcripts of prior meetings, and any other

applicable materials will be posted on the Qwest website at: www.qwest.com/wholesale/guides/index.html.

Timelines

Given the rigorous timelines set forth by the FCC in its Order for the state proceedings regarding a batch hot cut process, the Parties propose the following schedule for the forum and the subsequent incorporation of the results of the forum into the 9-month proceedings in each state:

ACTIVITY	DUE DATE
Commission Notice to all CLECs within respective states regarding batch hot cut forum	November 5, 2003
Qwest submits its batch hot cut proposal which will include a detailed description of the process, including, but not limited to, capacity, Pre-order, Ordering and Provisioning, the proposed cost for the batch hot cut activities, and the intervals.	November 11, 2003
CLECs submit comments/counter proposals to Qwest's batch hot cut proposal	November 18, 2003
Initial Forum – Denver, Colorado	December 1-3, 2003
Weekly conference calls on batch hot cut proposal, if useful. Face-to-face meetings as necessary (in Seattle, Washington & Phoenix, Arizona)	December 4, 2003 - January 15, 2004
Simultaneous filing of direct testimony on impasse issues regarding the batch hot cut process and filing of a Stipulation among parties on areas of agreement/consensus items.	January 20, 2004
Simultaneous filing of rebuttal testimony	February 15, 2004
Hearings & Commission Decision	Per each state's procedural order in the 9-month dockets

Notice

The Parties propose each State Commission issue a Notice to all CLECs within its respective state advising that it endorses the multi-state forum, adopts the schedule and procedural requirements described above, and strongly encourages interested parties to actively participate in the multi-state forum. The parties further request that such notice be issued by November 5, 2003, to all CLECs and other interested parties.

In the interest of making this filing on an expedited basis, the undersigned is authorized to state that AT&T and MCI concur in this proposal and is further authorized to sign and file this pleading on behalf of AT&T and MCI.

Dated this 31st day of October, 2003.

Respectfully submitted,

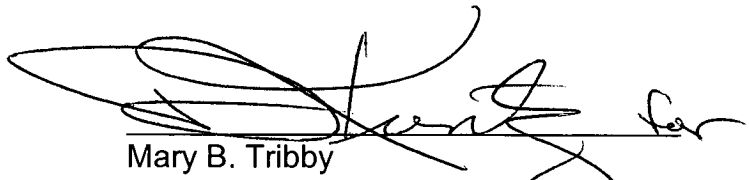
Daniel S. Kuntz (ID #03490)
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Tim Goodwin
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ATTORNEYS FOR WORLDCOM, INC.



Mary B. Tribby
AT&T Law Department
1875 Lawrence Street, Suite 1503
Denver, Colorado 80202
(303) 298-6508

ATTORNEY FOR AT&T COMMUNICATIONS OF THE MIDWEST, INC.

P:\DKUNTZ\11337 Triennial Review\pleadings\motion for approval of batch hot cut process.doc

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **29th day of October, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, **11** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Notice of Workshop

The envelopes were addressed as follows:

Mary B Tribby
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202
Cert. No. 7002 2410 0003 4913 4170

Walter F Eggers III
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne WY 82001-3162
Cert. No. 7002 2410 0003 4913 4187

Gary B Witt
AT&T Law Dept
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Denver CO 80202
Cert. No. 7002 2410 0003 4913 4194

Dan Kuntz
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Cert. No. 7002 2410 0003 4913 4200

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Deborah H Harwood
Integra Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton OR 97006-6902
Cert. No. 7002 2410 0003 4913 4279

Sharon Helbling further deposes and says that on the **29th day of October, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Scott Macintosh
Qwest Corporation
P O Box 5508
Bismarck ND 58506-5508

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Sharon Helbling

Subscribed and sworn to before me
this **29th day of October, 2003**.

Sandra L. Scott
Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY ORDINARY AND ELECTRONIC MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **29th day of October, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, each containing a photocopy of:

Notice of Workshop

The envelopes were addressed as follows:

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **29th day of October, 2003**.

Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

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Helbling, Sharon D.

From: Helbling, Sharon D.
Sent: Tuesday, October 28, 2003 2:18 PM
To: ndna (E-mail)
Subject: Attached Notice of Workshop

Colleen Park
North Dakota Newspaper Association

Colleen:

Please have the attached Notice of Workshop published as a legal publication in the next issue of the ten North Dakota daily newspapers, and run it as a "News Item" only article as well.

Please send the bill to the Public Service Commission, along with a tear sheet for billing purposes.

If you have any questions, please call me at 328-4076.

Thank you.

Sharon Helbling
Public Utilities Division

53 PU-439-03-295 Pages: 1

Notice e-mailed to NDNA requesting publication
by Public Service Commission

10/28/2003 10/28/2003 CC: Comm Legal PUD (3)

MOTION

November 5, 2003

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission issue a Notice of Workshop in the Public Service Commission's Local Competition Investigation, Case No. PU-439-03-295.

PJF

52 PU-439-03-295 Pages: 1
Motion
by Public Service Commission
10/28/2003 CC: Comm Legal PUD (3)

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Qwest Corporation
Local Competition
Investigation

Case No. PU-439-03-295

NOTICE OF WORKSHOP

October 28, 2003

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order (TRO) and adopted new rules concerning incumbent local exchange carrier (ILEC) obligations to unbundle certain elements of their networks and make those unbundled network elements (UNEs) available to competitive local exchange carriers (CLECs). The FCC made nationwide findings of impairment or non-impairment for switching and certain high capacity loops and dedicated transport network elements, but has given the opportunity for state commissions to engage in additional fact finding and make alternative impairment findings based on a more granular impairment analysis of the markets in each respective state. The rules became effective on October 2, 2003.

With respect to local switching for enterprise customers (generally defined as customers served by DS1 capacity and above loops), the FCC permits state commissions to rebut the FCC finding of no impairment within 90 days from the effective date of the *TRO*. The Commission has already determined that, with respect to the 90-day opportunity, that any carrier that believes impairment exists in geographic areas in North Dakota may rebut the no-impairment finding with the FCC.

For a significant group of issues, the FCC requires state commissions to complete their analyses and reviews within nine months from the effective date of the *TRO*. These issues concern high capacity loops, dedicated transport, batch hot cut process, DS0 crossover point, and mass market switching.

The Commission originally set October 24, 2003 as an intervention deadline in this case, and several petitions to intervene have been received. However, in an effort to facilitate the sharing of sufficient information among all potentially interested parties, so that each potentially interested party can make an informed decision about the impact of the case and the appropriate level of participation, the Commission has scheduled a workshop beginning **November 24, 2003 at 1:30 p.m. CST** in the Commission hearing room, State Capitol, 12th Floor, Bismarck, North Dakota 58505. After the workshop the Commission will consider whether to allow an additional period for the filing of intervention petitions. A potentially interested party need not be an intervenor to attend the workshop.

51 PU-439-03-295 Pages: 2
Notice of Workshop
by Public Service Commission
10/28/2003 CC: Comm Legal PUD (3)

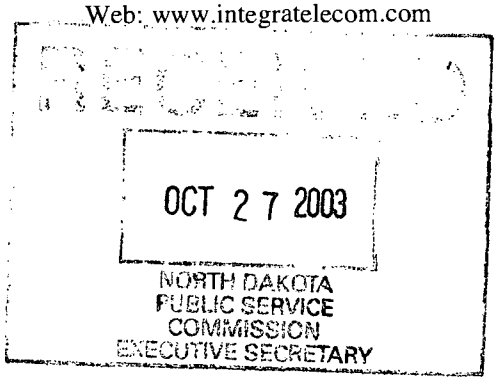
For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400 or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify, Jon H. Mielke, Executive Secretary, at least 24 hours prior.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

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October 24, 2003

VIA FEDERAL EXPRESS

Jon Mielke
Executive Secretary
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing with your office are the original and seven copies of the Petition for Intervention submitted on behalf of Integra Telecom of North Dakota, Inc. in the above-referenced case.

Sincerely,

Deborah J. Harwood
General Counsel/Vice President

Enclosures

50 **PU-439-03-295** Pages: 1

Cover letter re Petition for Intervention

by Integra Telecom of North Dakota, Inc.

10/27/2003 CC: Comm Legal PUD (3)

RECEIVED
OCT 27 2003
NORTH DAKOTA
PUBLIC SERVICE
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
BEFORE THE PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition Investigation

Case No. PU-439-03-295

PETITION FOR INTERVENTION

Integra Telecom of North Dakota, Inc. ("Integra") hereby petition to intervene in the proceeding opened by the North Dakota Public Service Commission ("Commission") in Case No. PU-439-03-295. This proceeding will investigate the Federal Communications Commission's 9-month provision for initial reviews regarding the impairment to requesting carriers without access to elements of the incumbent local exchange carriers' ("ILECs") local exchange network, other than local circuit switching for DS1 and above capacity services.

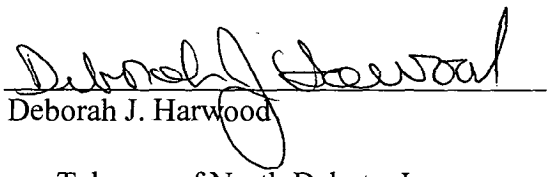
Integra is a competitive local exchange carriers and have legal interests under Title 49, North Dakota Century Code, and the Federal Telecommunications Act of 1996, 47 U.S.C. § 151, et seq., which may be substantially affected by a decision made by the Commission in this proceeding. In addition, Integra believes that it may have information and/or evidence that would contribute to this proceeding.

Integra provides competitive local telecommunications services to customers in North Dakota. Although Integra uses its own facilities to provide local telephone service, we also rely, in part, on access to Qwest's ILEC network to furnish our services. Therefore, the outcome of any investigation into access to network elements will have a material impact on the ability of Integra to provide competitive local exchange services to North Dakota customers.

Integra, therefore, respectfully requests that we be allowed to intervene in this matter.

Dated: October 24, 2003

Respectfully submitted,

By 
Deborah J. Harwood

Integra Telecom of North Dakota, Inc.
19545 NW Von Neumann Drive, Suite 200
Beaverton, OR 97006
Telephone: 503.748.1955

Attorney on Behalf of Integra Telecom of North Dakota, Inc.

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

In Re: Public Service Commission
Local Competition Investigation

Case No. PU-439-03-295

Deborah J. Harwood, being first duly sworn on oath, deposes and states that on the 24rd day of October, 2003, copies of the Petition for Intervention in the above referenced matter were delivered by US Mail, to the following:

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Deborah J. Harwood

SWORN TO BEFORE ME this
24rd day of October, 2003

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MY COMMISSION EXPIRES SEPTEMBER 14, 2005

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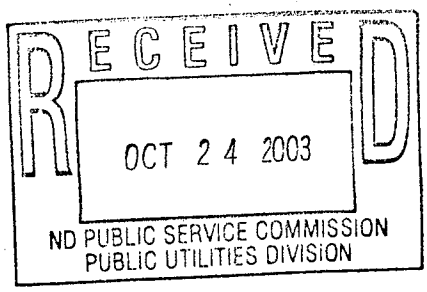
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THOMAS A. JUDD
DEANNE M. GRECO
CASS S. WEIL
GLEN E. SCHUMANN
JANNA R. SEVERANCE
M. CECILIA RAY
NANCY M. KISKIS
BARRY LAZARUS
RONALD A. EISENBERG
PAUL B. ZISLA
BRIAN T. GROGAN
J. MICHAEL COLLOTON
ERIC J. OLSEN
JOSEPH G. MATERNOWSKI
WILLIAM A. CUMMING
JAYMES D. LITTLEJOHN
MICHAEL R. NIXT
JAMES F. BALDWIN
DAVID S. JOHNSON
PHILIP J. YOUNG
ARTHUR W. DICKINSON
BEN M. HENSCHEL
MARK B. PETERSON
DAN LIPSCHULTZ
MARCY R. FROST
JOHN K. ROSSMAN
MATHEW M. MEYER
GREGORY J. WILEY
TIMOTHY L. GUSTIN
YURI B. BERNDT
JERRIE M. HAYES
KELLI A. ENDERS
ELIZABETH H. KIERNAT
MELISSA A. BAER
JAMES J. VEDDER
MICHAEL S. PONCIN
JANA AUNE DEACH
CINDY J. ACKERMAN
ANTHONY A. DORLAND
LORIE A. KLEIN
TERESE A. WEST
ANDREA R. SCOTT
JEFFREY L. BODENSTEINER

OF COUNSEL
ARTHUR J. GLASSMAN

DAN LIPSCHULTZ
612.347.0306
LipschultzD@moss-barnett.com



October 23, 2003

VIA FEDERAL EXPRESS

Jon Mielke
Executive Secretary
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing with your office are the original and seven copies of the Petition for Intervention submitted on behalf of McLeodUSA Telecommunications, Inc. and US Link, Inc. in the above-referenced case.

Sincerely,

MOSS & BARNETT
A Professional Association

Dan Lipschultz

DL/jjh
Enclosures
cc: Peter Healy
William Haas
All Parties of Record
628020/1

48 **PU-439-03-295** Pages: 1

Cover letter re Petition for Intervention

by McLeodUSA & US Link, Inc.

10/24/2003 CC: Comm Legal PUD (3)

RECEIVED
OCT 24 2003
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
BEFORE THE PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition Investigation

Case No. PU-439-03-295

PETITION FOR INTERVENTION

McLeodUSA Telecommunications, Inc. ("McLeodUSA") and US Link, Inc. ("US Link") hereby petition to intervene in the proceeding opened by the North Dakota Public Service Commission ("Commission") in Case No. PU-439-03-295. This proceeding will investigate the Federal Communications Commission's 9-month provision for initial reviews regarding the impairment to requesting carriers without access to elements of the incumbent local exchange carriers' ("ILECs") local exchange network, other than local circuit switching for DS1 and above capacity services.

McLeodUSA and US Link are each competitive local exchange carriers and have legal interests under Title 49, North Dakota Century Code, and the Federal Telecommunications Act of 1996, 47 U.S.C. § 151, et seq., which may be substantially affected by a decision made by the Commission in this proceeding. In addition, McLeodUSA and US Link believe they may have information and/or evidence that would contribute to this proceeding.

McLeodUSA and US Link each provide competitive local telecommunications services to customers in North Dakota. Although McLeodUSA and US Link each use their own facilities to provide local telephone service, they also rely, in part, on access to Qwest's ILEC network to furnish their services. Therefore, the outcome of any investigation into access to network elements will have a material impact on the ability of McLeodUSA and US Link to provide competitive local exchange services to North Dakota customers.

McLeodUSA and US Link, therefore, respectfully request that they be allowed to intervene in this matter.

Dated: October 23, 2003

Respectfully submitted,

By _____
Dan Lipschultz

MOSS & BARNETT
A Professional Association
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129
Telephone: 612.347.0306

Attorneys on Behalf of McLeodUSA Telecommunications, Inc. and US Link, Inc.

AFFIDAVIT OF SERVICE

RECEIVED
OCT 24 2003
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

In Re: Public Service Commission
Local Competition Investigation

Case No. PU-439-03-295

Jean J. Hunsinger, being first duly sworn on oath, deposes and states that on the 23rd day of October, 2003, copies of the Petition for Intervention in the above referenced matter were delivered by Federal Express, to the following:

Jon Mielke
Executive Secretary
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

Mary B. Tribby
AT&T Law Department
1875 Lawrence Street, Suite 1575
Denver, CO 80202

Walter Eggers III
Holland & Hart, LLP
2515 Warren Avenue, Suite 450
Cheyenne, WY 82001

Gary Witt
AT&T Law Department
1875 Lawrence Street, Suite 1575
Denver, CO 80202

Dan Kuntz
P O Box 1695
Bismarck, ND 58502

Tim Goodwin
Qwest Corporation
1801 California Street, Suite 4900
Denver, CO 80202

Marilyn Foss
P O Box 2216
Bismarck, ND 58502

Susan Travis
WorldCom, Inc.
707 – 17th Street, Suite 4200
Denver, CO 80202

Steven E. Noack
500 – 2nd Avenue N, Suite 514
Fargo, ND 58108

Scott Macintosh
Qwest Corporation
P O Box 5508
Bismrack, ND 58506

William A. Haas, Esq.
McLeodUSA, Inc.
Tech Park
6400 C Street SW
Cedar Rapids, IA 52404

Peter Healy
Manager CLEC External Relations
TDS Metrocom, Inc.
525 Junction Road, Suite 6000
Madison, WI 53717

Bob Johnson
Idea One Telecom
3239 39th Street SW
Fargo, ND 58104

Jean J. Hunsinger

SWORN TO BEFORE ME this
23rd day of October, 2003

NOTARY PUBLIC

CYNTHIA KAY ANDERSON
Notary Public
Minnesota
My Commission Expires Jan. 31, 2005

RECEIVED
OCT 24 2003
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Qwest Corporation
Local Competition
Investigation

Case No. PU-439-03-295

PETITION TO INTERVENE

October 23, 2003

Missouri Valley Communications, Inc. (MVCI) hereby petitions for intervention in the above-captioned matter pursuant to the *Notice of Intervention Deadline* issued by the North Dakota Public Service Commission (NDPSC) on September 24, 2003.

MVCI is an incumbent local exchange company serving the Williston exchange. MVCI has a number of direct and substantial interests in this proceeding. Among them are precedents that may be established with respect to access by competing carriers to incumbent carriers' network elements.

Correspondence to MVCI can be sent to Missouri Valley Communications, Inc., Dick Thronson, Manager, PO Box 600, Scobey, MT 59623-0600. Mr. Thronson's phone and fax numbers are (406) 783-5125 and (406) 783-5283 respectively. Please also add Michael C. Strand to the service list in this docket. Mr. Strand's address is PO Box 5237, Helena, MT 59604-5237. His phone and fax numbers are (406) 443-1940 and (406) 443-2880 respectively.

RESPECTFULLY SUBMITTED this 23rd day of October, 2003.

46 PU-439-03-295 Pages: 1
Petition to Intervene
by Missouri Valley Communications, Inc.
10/24/2003 CC: Comm Legal PUD (3)

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
MARK R. HAYS
BRENT M. OLSON
DENISE C. HAYS
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG

BREMER BANK BUILDING
20 SW 1ST STREET
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
OCT 23 2003
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

October 23, 2003

VIA FAX TRANSMISSION & OVERNIGHT MAIL

Jon Mielke, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION
CASE NO. PU-439-03-295

Enclosed for filing in regard to the above matter are an original and seven copies of RTCG's Petition to Intervene.

Don Negaard

jt

Enclosures

45 PU-439-03-295 Pages: 1
Cover Letter for Petition to Intervene
by Pringle & Herigstad by Don Negaard
10/23/2003 CC: Comm Legal PUD (3)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

RTCG'S PETITION TO INTERVENE

The Rural Telephone Company Group (RTCG), all of whom are listed in paragraph 1 below, hereby petitions the North Dakota Public Service Commission (NDPSC) for leave to intervene in the above-entitled proceeding, pursuant to section 69-02-02-05 of the NDPSC's Rules of Practice and Procedure. In support of its petition, the RTCG states as follows:

1. The RTCG is comprised of BEK Communications Cooperative, BEK Communications I, Inc., Consolidated Communications Network, Consolidated Telcom, Inc., Consolidated Telephone Cooperative, Dakota Central Telecommunications Cooperative, Dakota Central Telecom I, Inc., Dickey Rural Telephone Cooperative, Dickey Rural Communications, Inc., Dickey Rural Access, Inc., Griggs County Telephone Company, Inter-Community Telephone Company, LLC, Inter-Community Telephone Company II, LLC, Midstate Telephone Company, Midstate Communications, Inc., Moore & Liberty Telephone Company, North Dakota Telephone Company, Northwest Communications Cooperative, Polar Communications Mutual Aid Corporation, Polar Telecommunications, Inc., Red River Telephone Association, Red River Telecom, Inc., Reservation Telephone Cooperative, SRT Communications, Inc., Turtle Mountain Communications, Inc., United Telephone Mutual Aid Corporation, West River

Telecommunications Cooperative, and West River Communications, Inc., all of which petitioners are licensed local exchange carriers in the state of North Dakota.

2. The above-named petitioners desire to intervene until it can be determined what issues will be developed by the NDPSC in response to the FCC's Triennial Review proceedings and to include any other RTCG affiliate or similarly situated rural ILEC if and when such rural ILEC should desire to also join this group.

3. The RTCG may have a substantial interest in this proceeding's outcome, including financial and legal interests in the determination by the NDPSC of the issues identified in this proceeding in regard to the availability or unavailability of certain unbundled network elements.

4. The RTCG may contribute their views on the issues in this proceeding, and no other party to this proceeding can adequately protect the interests of the RTCG.

5. The RTCG's participation in this proceeding will not unduly broaden the issues or otherwise delay this proceeding.

6. The names, addresses, and telephone numbers of the persons to whom communications should be directed are as follows:

Don Negaard
Pringle & Hergistad, P.C.
Second Floor, Bremer Bank Building
20 1st Street SW
P.O. Box 1000
Minot, ND 58702-1000
(701) 852-0381

Jim Howard
John Staurulakis, Inc.
Eagandale Corporate Center, Suite 310
1380 Corporate Center Curve
Eagan, MN 55121
(612) 452-2660

WHEREFORE, the RTCG respectfully requests that the NDPSC grant RTCG's Petition to Intervene in this proceeding.

Dated this 23rd day of October, 2003.

PRINGLE & HERIGSTAD, P.C.

By: Don Negaard, ID #03598
Attorneys for Rural Telephone Company Group
Second Floor, Bremer Bank Building
20 1st Street SW
P.O. Box 1000
Minot, ND 58702-1000
(701) 852-0381

PEARCE & DURICK

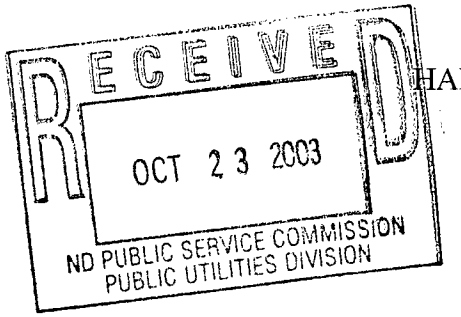
WILLIAM R. PEARCE 1910-1978
WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE •
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE •
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

OF COUNSEL
HARRY J. PEARCE

October 23, 2003



HAND DELIVERED

Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

RE: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Commissioners:

Enclosed for filing in an original and seven copies of Petition to Intervene by Midcontinent Communications. Also enclosed is a Certificate of Mail reflecting service on the parties to this action.

Thank you for your attention to this matter.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf
Enclosures.
cc w/enc: Ms. Mary Lohnes

42 PU-439-03-295 Pages: 1
Cover Letter for Petition to Intervene
by Pearce & Durick by Patrick W. Durick
10/23/2003 CC: Comm Legal PUD (3)

• ALSO LICENSED IN MINNESOTA • ALSO LICENSED IN SC

RECEIVED
OCT 23 2003
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Qwest Corporation
Local Competition
Investigation

Case No. PU-439-03-295

PETITION TO INTERVENE

On June 18, 2003, the North Dakota Public Service Commission ("PSC") issued its notice of investigation, to request information, and to request that interested parties file a request to intervene in a proceeding to address issues related to the Federal Communication Commission's (FCC) Triennial Review Order. Midcontinent Communications hereby files their Petition to Intervene with the PSC.

1. Midcontinent Communications ("Midcontinent") is a telecommunications carrier authorized to provide various telecommunications services in North Dakota.

2. The Commission has issued a Notice of Investigation, Request for Intervention and Request for Information requesting that interested parties file a petition to Intervene and Midcontinent requests that it be granted general intervention in this docket for all purposes permitted by law and the Commission's Rules.

3. Midcontinent has a legal interest which may be substantially affected by these proceedings and Midcontinent's intervention would not broaden the issues or delay the proceeding.

4. The names, mailing addresses and telephone numbers of the persons to whom communications should be addressed are:

Patrick W. Durick
PEARCE & DURICK
314 E. Thayer Avenue, Suite 300
P. O. Box 400
Bismarck, ND 58503-0400
(701) 223-2890

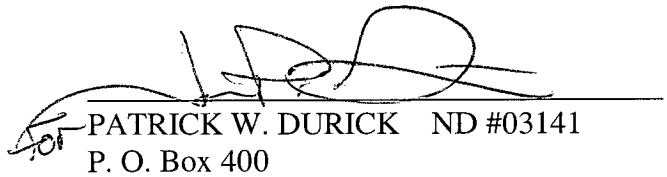
Mary Lohnes
Regulatory Affairs Manager
Midcontinent Communications
5001 West 41 Street
Sioux Falls, SD 57106
(605) 357-5459

WHEREFORE, Midcontinent respectfully requests that the Commission grant its Petition to Intervene in this proceeding.

41 PU-439-03-295 Pages: 4
Petition to Intervene
by Midcontinent Communications
10/23/2003 CC: Comm Legal PUD (3)

Dated this *23* day of October, 2003

PEARCE & DURICK



PATRICK W. DURICK ND #03141
P. O. Box 400
314 E. Thayer Avenue
Bismarck, ND 58502-0400
(701) 223-2890

Attorney for Midcontinent Communications

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Qwest Corporation
Local Competition
Investigation

Case No. PU-439-03-295

CERTIFICATE OF SERVICE BY MAIL

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Sara Carr hereby certifies that on October *23*, 2003, she served a copy of the attached Petition to Intervene by Midcontinent Communications by placing a true and correct copy thereof in an envelope, and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota. addressed to the following:

Marilyn Foss
P. O. Box 2216
Bismarck, ND 58502-2216

Mary B. Tribby
AT&T Law Department
1875 Lawrence Street, Suite 1675
Denver, CO 80202

Gary B. Witt
AT&T Law Department
1875 Lawrence Street, Suite 1675
Denver, CO 80202

Tim Goodwin
Qwest Corporation
1801 California Street, Suite 4900
Denver, CO 80202

Walter F. Eggers, III
Holland & Hart, LLP
2515 Warren Avenue, Suite 450
Cheyenne, WY 82001-3162

Daniel S. Kuntz
P. O. Box 1695
Bismarck, ND 58502-1695

Susan Travis
State Regulatory Manager
WorldCom, Inc.
707 17 Street, Suite 4200
Denver, CO 80202

Sara Carr

Subscribed and sworn to before me this *23* day of October, 2003.

Jeanne A Feist
Notary Public

My commission expires:

JEANNE A. FEIST
Notary Public State of North Dakota
My Commission Expires MARCH 7, 2007



GUNHUS, GRINNELL, KLINGER, SWENSON & GUY, LTD.
ATTORNEYS AT LAW

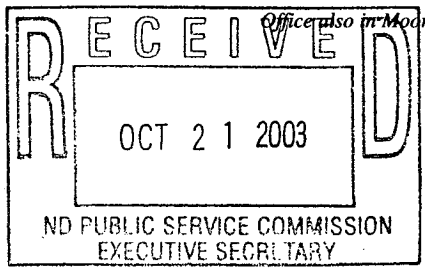
500 2nd Ave. N., Suite 514
P.O. Box 2783
Fargo, ND 58108-2783

Telephone: 701-235-2506
Facsimile: 701-235-9862
Internet: www.gunhuslaw.com
Office also in Moorhead, MN

Gunder Gunhus
(1928–1997)

Paul E. Grinnell
Edward F. Klinger
Robert H. Swenson
William L. Guy III
Craig R. Campbell
Bernard E. Reynolds
Gregory P. Hammes
Steven E. Noack
Susan E. Johnson-Drenth
Robert G. Manly
Corey R. Elmer

Office Administrator
Craig D. Olson



October 20, 2003

Mr. Jon Mielke
Executive Secretary
North Dakota Public Service Commission
State Capitol Building
600 East Boulevard
Bismarck ND 58505-0480

Re: Qwest Corporation Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing with your office please find an original and seven copies of a Petition for Intervention on behalf of IdeaOne Telecom Group, LLC.

Yours very truly,

Steven E. Noack

SEN\kb
Enclosures

40 PU-439-03-295 Pages: 1

Cover Letter for Petition to Intervene

by Gunhus Law Firm

10/21/2003 CC: Comm Legal PUD (3)

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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OCT 21 2003
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

Qwest Corporation
Local Competition
Investigation

Case No. PU-439-03-295

PETITION FOR INTERVENTION

IdeaOne Telecom Group, LLC ("IdeaOne") hereby petitions to intervene in the proceeding opened by the North Dakota Public Service Commission in Case No. PU-439-03-295 on June 18, 2003.

IdeaOne is a competitive local exchange carrier that provides local telecommunications services to customers in North Dakota. IdeaOne relies in part on unbundled access to Qwest Corporation's network. Therefore, IdeaOne has a substantial interest as to whether its operations will be impaired if it is denied access to certain Qwest network elements within its geographic service territory. IdeaOne has legal interests under N.D.C.C. Chapter 49-21 and the Federal Telecommunication's Act of 1996, 47 U.S.C. §151, et seq., which may be substantially affected by the decision made by the Commission in this proceeding.

IdeaOne, therefore, respectfully requests that it be allowed to intervene in this matter.

Dated this 20th day of October, 2003.

GUNHUS, GRINNELL, KLINGER,
SWENSON & GUY, LTD.

By _____
Steven E. Noack

Steven E. Noack
Attorneys for IdeaOne Telecom Group, LLC
500 Second Avenue North, Suite 514
P.O. Box 2783
Fargo, ND 58108-2783
701-235-2506
snoack@gunhuslaw.com

39 PU-439-03-295 Pages: 1
Petition for Intervention
by IdeaOne Telecom Group LLC
10/21/2003 CC: Comm Legal PUD (3)

Kelsch Kelsch Ruff & Kranda

C.F. Kelsch
1890-1987

Attorneys at Law
Mandan, North Dakota

William C. Kelsch
Retired

THOMAS F. KELSCH
ARLEN M. RUFF, P.C.
THOMAS D. KELSCH, P.C.
TODD D. KRANDA, P.C.*
WILLIAM J. DELMORE
CYNTHIA WAGNER GOULET
ANNETTE BENDISH

*Also Licensed in Minnesota

MERITAS LAW FIRMS WORLDWIDE

103 Collins Avenue
P.O. Box 1266
Mandan, ND 58554-7266
Phone (701) 663-9818
1-888-663-9818
Fax (701) 663-9810
Website www.kelschlaw.com

RECEIVED
OCT 17 2003
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

October 16, 2003

JON MIELKE, SECRETARY
NORTH DAKOTA PUBLIC SERVICE COMMISSION
600 E BOULEVARD AVE - DEPT 408
BISMARCK ND 58505-0480

Re: Case No. PU439-03-295 (Local Competition Investigation)
Our File No. 10754

Dear Mr. Mielke:

I understand that a formal Pro Hac Vice Admission to Practice before the Commission is not necessary for a non-resident attorney and pursuant to 69-02-01-06(2) N.D.A.C., permission to practice can be obtained through a written request.

I therefore request the following named non-resident attorneys from AT&T and Holland & Hart LLP be given permission to practice before the Commission on behalf of AT&T Communications of the Midwest Inc. in Case No. PU-439-03-295 (Local Competition Investigation):

AT&T
1. Gary B. Witt, 1875 Lawrence St - Ste 1590, Denver CO 80202-1847
2. Mary B. Tribby
3. Letty S.D. Friesen
4. Richard S. Wolters
5. Steven H. Weigler
6. Rebecca B. DeCook

Holland & Hart LLP
1. Robert M. Pomeroy Jr., 8390 E Crescent Parkway - Ste 400, Greenwood Village, CO 80111
2. Thomas R. O'Donnell, 555 Seventeenth St - Ste. 3200, Denver CO 80202-3979
3. James K. Tarpey, 8390 E Crescent Parkway - Ste 400, Greenwood Village, CO 80111
4. Thorvald A. Nelson, 8390 E Crescent Parkway - Ste 400, Greenwood Village, CO 80111
5. Walter F. Eggers, III, 2515 Warren Ave - Ste. 450, Cheyenne WY 82001

Very Truly Yours,

Thomas F. Kelsch

TFK:ls

Kelsch, Kelsch, Ruff & Kranda

38 PU-439-03-295 Pages: 1

Request for non-resident attorneys to practice before the Commission by AT&T Communications of the Midwest, Inc./Qwest (

10/17/2003 CC: Comm Legal PUD (3)

ZUGER KIRMIS & SMITH

COUNSELORS AND ATTORNEYS AT LAW

Lyle W. Kirmis
Lance D. Schreiner, P.C.
James S. Hill, P.C.
Patrick J. Ward
Rebecca S. Thiem, P.C.
Daniel S. Kuntz, P.C.
Jerry W. Evenson, P.C.
Lawrence A. Dopson
Lawrence E. King, P.C.
Tracy Vigness Kolb, P.C.
Shawnda R. Reid
Constance N. Hofland
Paul R. Sanderson
Aaron K. Webb

316 North Fifth Street
Provident Building
P.O. Box 1695
Bismarck, ND 58502-1695
(701) 223-2711
fax (701) 223-7387
www.zkslaw.com
email: zkslaw@zkslaw.com

Of Counsel
John A. Zuger

Thomas O. Smith
1944-2001

RECEIVED
OCT 17 2003
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

October 16, 2003

Mr. Jon Mielke
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed are the original and seven copies of a Petition for Intervention of Qwest Corporation. Please contact me if you have any questions regarding this filing.

Sincerely,

Daniel S. Kuntz

Enclosures

c: Scott Macintosh
Tim Goodwin
Marilyn Foss
Susan Travis
Mary Tribby
Gary Witt
Walter F. Eggers III

37 **PU-439-03-295** Pages: 1

Cover letter re Petition for Intervention

by Qwest Corporation by Dan Kuntz, Attorney

10/17/2003 CC, Comm Legal PUD (3)

RECEIVED
OCT 17 2003
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission)
Local Competition Investigation)

Case No. PU-439-03-295

PETITION FOR INTERVENTION OF QUEST CORPORATION

Qwest Corporation ("Qwest") petitions the North Dakota Public Service Commission ("Commission") for leave to intervene in this proceeding pursuant to § 28-32-28 of the North Dakota Century Code and § 69-02-02-05 of the North Dakota Administrative Code. In support of its petition, Qwest states:

1. Qwest is a corporation authorized to provide telecommunications services in North Dakota. Qwest provides local exchange service in areas for which it holds Certificates of Public Convenience and Necessity from the Commission. Qwest is an incumbent local exchange carrier and provides nondiscriminatory access to its network elements on an unbundled basis to other requesting telecommunications carriers pursuant to § 251(c)(3) of the Telecommunications Act of 1934 as amended in 1996. (47 U.S.C. § 251(c)(3)).

2. Qwest has a substantial interest in this proceeding which will consider and determine whether competitive local exchange carriers are impaired competitively without access to certain Qwest network elements in certain geographic areas or to specific end users.

3. Qwest will participate in this proceeding as its interests may appear. No other party in this case will adequately protect Qwest's interests.

4. Qwest's intervention will not impair the orderly and prompt conduct of this proceeding. Participation by Qwest will not unduly broaden the issues or otherwise delay this proceeding.

The names, mailing addresses and telephone numbers of the persons to whom communications on behalf of Qwest should be directed are:

36 PU-439-03-295 Pages: 2
Petition for Intervention
by Qwest Corporation by Dan Kuntz, Attorney
10/17/2003 CC: Comm Legal PUD (3)

Daniel Kuntz
Zuger Kirmis & Smith
P.O. Box 1695
Bismarck, ND 58502-1695

Scott Macintosh
Qwest
P.O. Box 5508
Bismarck, ND 58506-5508

Tim Goodwin, Senior Attorney
Law & Policy
Qwest Corporation
1801 California Street, Suite 4900
Denver, CO 80202

Therefore, Qwest respectfully requests the Commission to grant its petition to intervene in this proceeding.

Dated this 15th day of October, 2003.

Respectfully submitted,

Tim Goodwin
1801 California Street, Suite 4900
Denver, CO 80202
303-672-5823

By: _____
Daniel S. Kuntz (ID #03490)
Zuger Kirmis & Smith
P.O. Box 1695
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(701)223-2711

Attorneys for Qwest Corporation

P:\DKUNTZ\11337 Triennial Review\pleadings\petition to intervene.doc

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	))	Case No. PU-439-03-295

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA	)
	: ss.
COUNTY OF BURLEIGH	)

The undersigned, being duly sworn, deposes and says that: I am a United States citizen, over 18 years of age, and on October 16, 2003, I served a copy of the attached:

Petition for Intervention of Qwest Corporation

by placing a true copy in a postage paid envelope or envelopes addressed to each person named below, at the address stated below, which is the last known address of the addressee, and by depositing said envelope in the United States mail at Bismarck, North Dakota.

Mary B. Tribby
AT&T Law Dept
1875 Lawrence St., Suite 1575
Denver, CO 80202

Marilyn Foss
Attorney at Law
P.O Box 2216
Bismarck, ND 58502-2216

Gary B. Witt
AT&T Law Dept.
1875 Lawrence St., Suite 1575
Denver, CO 80202

Susan Travis
WorldCom Inc.
707 17th Street, Suite 4200
Denver, CO 80202

Walter F. Eggers III
Holland & Hart LLP
2515 Warren Avenue, Suite 450
Cheyenne, WY 82001-3162

Karol A. Cossette

Subscribed and sworn to before me, today, October 16, 2003.

NOTARY PUBLIC
State of North Dakota
My commission expires: 1/24/08

Kathi Osteen

KATHI OSTEEN
Notary Public
State of North Dakota
My Commission Expires Jan. 24, 2008

RECEIVED
OCT 14 2003
NORTH DAKOTA PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

Affidavit of Publication

Colleen Park, being duly sworn, state as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.

2. The newspapers listed on the exhibits published the advertisement of:
   Qwest Local Competition, 1 time(s)
   as required by law or ordinance.

3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

Signed: Colleen Park

State of ND

County of Burleigh

Subscribed and sworn to before me this 13th day of October 20 03.

Kelli Richey

KELLI RICHEY
Notary Public
State of North Dakota
My Commission Expires Oct. 13, 2006

34 PU-439-03-295 Pages: 1

Affidavit of Publication

by North Dakota Advertising Service, Inc.

10/14/2003 CC: Comm Legal PUD (3)

NDNA

North Dakota Newspaper Association
1435 Interstate Loop
Bismarck, ND 58503-0567
Ph (701) 223-6397 • Fax (701) 223-8185

RECEIVED
OCT 14 2003
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

INVOICE

Order **18114-03101PP1** Invoice # **25364**

October 13, 2003

Attn: JONH. MIELKE
PUBLIC SERVICE COMMISSION
600 E. BOULEVARD AVE.
STATE CAPITOL
BISMARCK, ND 58505
Voice: 701-328-4076

Advertiser: **Public Service Commission**

P.O.#: **PU 439 03 295**

Amount Due **$396.83**

Amount Paid

Please detach and return this portion with your payment

Public Service Commission Invoice # 18114-03101PP1-25364 PO# PU 439 03 295

Ad Size	*Rate Type*	*Rate*	*Total*	*Discount*	*(%)*	*Caption*	*Page*	*Run Date*
Bismarck Tribune (Bismarck ND)								
62.00	SPR2	0.64	39.68	0.00		Qwest Local Comp		09/29/03
Devils Lake Daily Journal (Devils Lake ND)								
64.00	SPR2	0.63	40.32	0.00		Qwest Local Comp		10/01/03
Dickinson Press (Dickinson ND)								
68.00	SPR2	0.57	38.76	0.00		Qwest Local Comp		10/01/03
Fargo, The Forum (Fargo ND)								
56.00	SPR2	0.71	39.76	0.00		Qwest Local Comp		10/06/03
Grand Forks Herald (Grand Forks ND)								
57.00	SPR2	0.69	39.33	0.00		Qwest Local Comp		09/30/03
Jamestown Sun (Jamestown ND)								
70.00	SPR2	0.54	37.80	0.00		Qwest Local Comp		09/29/03
Minot Daily News (Minot ND)								
84.00	SPR2	0.54	45.36	0.00		Qwest Local Comp		09/28/03
Valley City Times-Record (Valley City ND)								
65.00	SPR2	0.61	39.65	0.00		Qwest Local Comp		09/29/03
Wahpeton Daily News (Wahpeton ND)								
74.00	SPR2	0.51	37.74	0.00		Qwest Local Comp		09/30/03
Williston Herald (Williston ND)								
63.00	SPR2	0.61	38.43	0.00		Qwest Local Comp		09/29/03

Gross Advertising	396.83	Total Misc	0.00	Amount Paid	0.00
Agency Discount		Tax	0.00	Adjustments	0.00
Other Discount	0.00	Total Billed	396.83	Payment Date	
Service Charge	0.00	Unbilled	0.00	Balance Due	396.83

34 **PU-439-03-295** Pages: 1

Affidavit of Publication

by North Dakota Advertising Service, Inc.

10/14/2003 CC: Comm Legal PUD (3)

Case No: PU-439-03-295

Notice of Intervention deadline

Published in:

9/29 – Bismarck

10/1 – Devils Lake

10/1 – Dickinson

10/6 – Fargo

9/30 – Grand Forks

9/29 – Jamestown

9/29 – Minot

9/29 – Valley City

9/30 – Wahpeton

9/29 – Williston

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **26th day of September, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, **seven** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order Granting Intervention
Notice of Intervention Deadline
Letter to Telephone Companies

The envelopes were addressed as follows:

Mary B Tribby
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202
Cert. No. 7002 2410 0003 4913 3173

Walter F Eggers III
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne WY 82001-3162
Cert. No. 7002 2410 0003 4913 3180

Gary B Witt
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202
Cert. No. 7002 2410 0003 4913 3197

Dan Kuntz
P O Box 1695
Bismarck ND 58502-1695

Cert. No. 7002 2410 0003 4913 3203

Tim Goodwin
Qwest Corporation
1801 California St Ste 4900
Denver CO 80202
Cert. No. 7002 24110 0003 4913 3210

Marilyn Foss
P O Box 2216
Bismarck ND 58502-2216
Cert. No. 7002 24110 0003 4913 3227

Susan Travis
WorldCom Inc
707 17th St Ste 4200
Denver CO 80202
Cert. No. 7002 24110 0003 4913 3234

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **26th day of September, 2003**.

Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY ORDINARY AND ELECTRONIC MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **26th day of September, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, each containing a photocopy of:

Notice of Intervention Deadline
Letter to Telephone Companies

The envelopes were addressed as follows:

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Sharon Helbling

Subscribed and sworn to before me
this **26th day of September, 2003**.

Sandra L Scott
Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

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Murray Barr
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Computer Integrated Communications Inc
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Potomac MD 20854-4071

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Consolidated Telcom
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Contact Communications
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Riverton WY 82501

Covista Inc
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D D D Calling Inc
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Regulatory Dept
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5 Bragdon Ln Ste 200
Kennebunk ME 04043

Evercom Systems Inc
8201 Tristar Dr
Irving TX 75063-2824

Dave Waters
Fairpoint Communications Solutions
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Charlotte NC 28202-2695

Lawrence Freedman
Fleischman & Walsh
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Washington DC 20036

Ronald Rodemerk
Frontier Comm International
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Rochester NY 14646-0500

Global Tel*Link Corporation
2609 Cameron St
Mobile AL 36607-3104

Lucille Nilson
Griggs County Telephone Co
Cooperstown ND 58425

Group Long Distance Inc
9500 Toledo Way
Irvine CA 92618-1806

HJN Telecom Inc
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Duluth GA 30096

Houlton Enterprises Inc
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Council Bluffs IA 51501

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Washington DC 20037

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New York NY 10022-5803

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13 E 4th Ave
Ada MN 56510

HTC Services Inc
P O Box 55
Halstad MN 56548

Robert K Johnson
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Huntsville AL 35802-1382

James Valley Coop Telephone Co
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Groton SD 57445

KMAV AM/FM RADIO
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Mayville ND 58257-0216

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Michel Murray
MCI WorldCom Inc
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Mid-Rivers Telephone Coop Inc
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Carmine Russo
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Dave Dircks
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Steven Lysne
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Jeff Walker
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Novato CA 94945-5000

Qwest Interprise America Inc
1801 California St 49th Fl
Denver CO 80202

Kimberly Nielson
RTC-1
Legal & External Affairs
7277 164th Ave NE
Redmond WA 98052

ServiSense.com Inc
115 Shawmut Rd
Canton MA 02021-1438

Andrew Jones
Sprint
6391 Sprint Pkwy
Overland Park KS 66251-6100

Randy Burckhard
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

Jack Medaris
Telco Partners Inc
P O Box 807
Conshohocken PA 19428-0807

Al Bosch
Tele-Beep Company
PO Box 7072
Bismarck ND 58502-7072

Tele-Tech Inc
2900 W 11th St
Sioux Falls SD 57104-3660

T-Netix Inc
P O Box 701028
Dallas TX 75370-1028

Kenneth Carlson
Turtle Mountain Communications
PO Box 729
Langdon ND 58249-0729

Sam Billingsley
United States Advanced Network Inc
3080 Northwoods Cir
Norcross GA 30071-1562

Christina Tygielski
Universal Access Inc
Sears Tower 233 S Wacker Dr Ste 600
Chicago IL 60606-6307

Val-Ed Joint Venture LLP
150 2nd St SW
Perham MN 56573

Randy Houdek
Venture Communications Inc
PO Box 157
Highmore SD 57345-0157

Molli Harper
Verizon Wireless
6350 E Crescent Pkwy Ste 200
Greenwood Village CO 80111

Darrell Henderson
West River Cooperative Telephone Company
PO Box 39
Bison SD 57620-0039

Telera Communications Inc
910 E Hamilton Ave Ste 200
Campbell CA 95008

Jonathan Marashlian
The Helein Law Group P C
8180 Greensboro Dr Ste 700
McLean VA 22102

Touch America Inc
40 E Bdwy
Butte MT 59701

United Communications HUB Inc
10390 Commerce Ctr Dr Ste 250
Rancho CA 91730-5860

Kenneth Carlson
United Telephone Mut Aid Corp
Langdon ND 58249

Dennis Houston
Universal Network Services of ND
1572 North Batavia St Ste 1A
Orange CA 92867

VarTec Telecom Inc
1600 Viceroy Dr
Dallas TX 75235

David Armey
Verizon Communications
600 E Hidden Ridge HQE02i33
Irving TX 75038

West River Coop Telephone Co
P O Box 39
Bison SD 57620-0039

Doris Cooper
West River Long Distance Co
PO Box 467
Hazen ND 58545-0467

Mick Grosz
West River Telecomm Coop
PO Box 467
Hazen ND 58545-0467

Western CLEC Corporation
3650 131st Ave SE #400
Bellevue WA 98006

WTC Competitive Services Inc
P O Box 129
Wolverton MN 56594

Z-Tel Communications Inc
601 S Harbour Island Blvd Ste 220
Tampa FL 33602-5925

Helbling, Sharon D.

From: Helbling, Sharon D.
Sent: Wednesday, September 24, 2003 12:47 PM
To: ndna (E-mail)
Subject: Notice of Intervention Deadline-Case No. PU-439-03-295; Notice of Opportunity to File Written Comments-Case Nos. PU-2915-03-490 et al

Colleen Park
North Dakota Newspaper Association

Colleen,

Please have the attached Notice of Intervention Deadline and Notice of Opportunity to File Written Comments published as legal publications in the next issue of the ten North Dakota daily newspapers, and run them as "News Item Only" articles as well.

Please send the bill to the Public Service Commission, along with a tear sheet for billing purposes.

If you have any questions, please call me at 701-328-4076.

Thank you.

Sharon Helbling
Public Utilities Division

32 **PU-439-03-295** Pages: 1

Notice e-mailed to NDNA requesting publication
by Public Service Commission

9/24/2003 09/24/2003 CC: Comm Legal PUD (3)

APPROVED
DATE: 9-24-03

MOTION

September 24, 2003

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission adopt the Order Granting Intervention to WorldCom, Inc. in the Public Service Commission's Local Competition Investigation, Case No. PU-439-03-295.

PJF

31 **PU-439-03-295** Pages: 1

Motion

by Public Service Commission

09/24/2003 CC: Comm Legal PUD (3)

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

ORDER GRANTING INTERVENTION

September 24, 2003

On September 10, 2003, WorldCom, Inc. (MCI) filed a Petition to Intervene in this proceeding. The petition stated that MCI and its customers will be directly affected by the Commission's disposition of unbundled local switching for the "mass market". The Commission finds MCI does have an interest in these matters and its participation will not unduly broaden the issues or delay the proceedings.

Order

The Commission orders:

1. WorldCom, Inc.'s petition to intervene in this proceeding is granted.

2. Admission as an intervenor shall not be construed as recognition by the Commission that an intervenor might be aggrieved by an order of the Commission in this case.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

APPROVED
DATE: 9-24-03

MOTION

September 24, 2003

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission issue a Notice of Intervention Deadline in the Public Service Commission's Local Competition Investigation, Case No. PU-439-03-295.

PJF

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Qwest Corporation
Local Competition
Investigation

Case No. PU-439-03-295

NOTICE OF INTERVENTION DEADLINE

September 24, 2003

On June 18, 2003 the North Dakota Public Service Commission (NDPSC) issued a notice in this proceeding to inform interested parties of an investigation, to request information, and to request that interested parties file requests to intervene in a proceeding to address issues related to the Federal Communications Commission's (FCC) Triennial Review Order.

The FCC Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (Triennial Review Order), determined on a national basis whether competitive providers of local exchange telecommunications services are impaired in the market without access to certain elements of the incumbent local exchange carriers local exchange network. The FCC has given the opportunity for states to do a more granular analysis of the markets in each respective state and determine whether competing carriers are impaired competitively without access to those network elements in certain geographic areas or to specific end users.

The Commission has already determined that, with respect to the 90-day opportunity to rebut the FCC rule concerning access to local circuit switching for DS1 and above capacity services, any carrier that believes impairment exists in certain geographic areas in North Dakota may rebut the no-impairment finding with the FCC. This notice concerns the FCC 9-month provision for initial reviews regarding impairment to requesting carriers without access to other network elements.

A public hearing on this matter will be announced at a later date. Anyone wishing to become a party to this proceeding must file a **Petition to Intervene by October 24, 2003.**

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400 or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify, Jon H. Mielke, Executive Secretary, at least 24 hours prior.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

28 **PU-439-03-295** Pages: 1

Notice of Intervention Deadline

by Public Service Commission

09/24/2003 CC: Comm Legal PUD (3)

APPROVED
DATE: 9-24-03

MOTION

September 24, 2003

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission send a letter notifying North Dakota telecommunications companies of procedure in the 90-day triennial review process in the Public Service Commission's Local Competition Investigation, Case No. PU-439-03-295.

PJF

27 **PU-439-03-295** Pages: 1

Motion

by Public Service Commission

09/24/2003 CC: Comm Legal PUD (3)

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Jon H. Mielke

600 E Boulevard Ave. Dept. 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@psc.state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

September 24, 2003

To: North Dakota Telephone Companies

FR: North Dakota Public Service Commission

RE: Case No. PU-439-03-295 Local Competition Investigation – 90-day Enterprise Customer Switching Issues

On June 18, 2003 the North Dakota Public Service Commission (NDPSC) issued a notice in this proceeding to inform interested parties of an investigation, to request information, and to request that interested parties file requests to intervene in a proceeding to address issues related to the Federal Communications Commission's (FCC) Triennial Review Order.

The FCC Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (Triennial Review Order), determined on a national basis whether competitive providers of local exchange telecommunications services are impaired in the market without access to certain elements of the incumbent local exchange carriers local exchange network. The FCC has given the opportunity for states to do a more granular analysis of the markets in each respective state and determine whether competing carriers are impaired competitively without access to those network elements in certain geographic areas or to specific end users.

The FCC found that telecommunications carriers requesting interconnection are not impaired in the market without access to local circuit switching to serve end users using DS1 capacity and above loops. The FCC provided that states may rebut this finding within 90 days of the effective date of the Triennial Review Order. The FCC order also provided that, if the state commission fails to exercise its authority, any party may petition the FCC to step into the role of the state commission and the FCC may assume responsibility for the proceeding.

At our September 11, 2003 meeting, the NDPSC discussed the Triennial Review Order, and specifically, the 90-day proceeding. The NDPSC has received no indication of impairment to carriers serving enterprise customers without access to DS1 and above local switching. In addition, we believe the 90-day proceeding issues would be best addressed before the FCC. Therefore, as a matter of procedure, please note that any

carrier believing impairment exists in certain geographic areas of North Dakota relative to the standards set forth by the FCC concerning the 90-day local switching element for enterprise customers should rebut the no impairment rule with the FCC. This determination is made without prejudice to other issues left to state analysis under the Triennial Review Order.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **12th day of September, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, **five** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order Granting Intervention
Order Granting Trade Secret Protection

The envelopes were addressed as follows:

Mary B Tribby
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202
Cert. No. 7002 2410 0003 4913 2763

Walter F Eggers III
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne WY 82001-3162
Cert. No. 7002 2410 0003 4913 2770

Gary B Witt
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202
Cert. No. 7002 2410 0003 4913 2787

Dan Kuntz
P O Box 1695
Bismarck ND 58502-1695
Cert. No. 7002 2410 0003 4913 3098

Tim Goodwin
Qwest Corporation
1801 California St Ste 4900
Denver CO 80202
Cert. No. 7002 24110 0003 4913 3104

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **12th day of September, 2003**.

Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

APPROVED
DATE: 9-11-03
KME

MOTION

September 11, 2003

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission adopt the Order Granting Intervention to AT&T Communications of the Midwest, Inc. in the Public Service Commission's Local Competition Investigation, Case No. PU-439-03-295.

PJF

24 **PU-439-03-295** Pages: 1

Motion

by Public Service Commission

09/11/2003 CC: Comm Legal PUD (3)

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

ORDER GRANTING INTERVENTION

September 11, 2003

On July 24, 2003, AT&T Communications of the Midwest, Inc. (AT&T) filed a Petition to Intervene in this proceeding. The petition stated that AT&T has a substantial interest in this proceeding, including financial and legal interests in the determination by the Commission of the issues identified regarding the availability or unavailability of certain unbundled network elements. The Commission finds AT&T does have an interest in these matters and its participation will not unduly broaden the issues or delay the proceedings.

Order

The Commission orders:

1. AT&T Communications of the Midwest, Inc.'s petition to intervene in this proceeding is granted.

2. Admission as an intervenor shall not be construed as recognition by the Commission that an intervenor might be aggrieved by an order of the Commission in this case.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

23 PU-439-03-295 Pages: 1
Order Granting Intervention
by Public Service Commission
09/11/2003 CC: Comm Legal PUD (3)

APPROVED
DATE: 9-11-03
KMF

MOTION

September 11, 2003

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission adopt the Order Granting Trade Secret Protection to Qwest Corporation in the Public Service Commission's Local Competition Investigation, Case No. PU-439-03-295.

PJF

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Qwest Corporation
Local Competition
Investigation

Case No. PU-439-03-295

ORDER GRANTING TRADE SECRET PROTECTION

September 11, 2003

On July 23, 2003, Qwest Corporation (Qwest) filed a request for a protective order limiting the disclosure of trade secret information provided by Qwest in response to information requests by the Commission staff in this investigative proceeding. Qwest provides the general description of the nature of the information sought to be protected, as follows:

General Description of the Nature of the Information Sought to be Protected:

A. Confidential Attachment A to Qwest's response to the Public Service Commission's request for information. Confidential Attachment A is information regarding Qwest's switches in North Dakota including the location of each switch, the type of switch, and the change in minutes of use for each switch from March 2002 to March 2003.

Qwest states that all the information it seeks to protect is confidential and proprietary to Qwest and third parties and is available only to those employees and representatives of Qwest who have a need to know the information to perform their duties and responsibilities, and that it does not disclose this information outside the company except pursuant to the terms of strict agreements or orders to maintain the confidentiality of the information. Qwest states that in a competitive telecommunications marketplace, public disclosure of this type of information would place Qwest at a competitive disadvantage.

Qwest states that competitors or potential competitors of Qwest would obtain economic value from disclosure or use of the information. Competitors and potential competitors of Qwest in North Dakota include AT&T, McLeod Telemanagement, Inc., MCI WorldCom, Consolidated Communications Network, Sprint Corporation, and any other provider of telecommunications services in North Dakota and any of the other states in which Qwest operates.

N.D.C.C. Section 47-25.1-01(4) defines "trade secret" as:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by other persons who can obtain economic value from its disclosure or use; and

b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Commission staff (Staff) filed a response to Qwest's request for trade secret protection. Staff believes that Qwest's application satisfies the requirements of N.D.C.C. Chapter 47-25.1 which allows the Commission to grant trade secret protection in this proceeding, and that the information Qwest seeks to protect qualifies as "trade secret" as that term is defined in N.D.C.C. § 47-25.1-04. The Commission's process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.

Order

The Commission Orders:

1. Qwest Corporation's application for trade secret protection is GRANTED.

2. This Order does not constitute precedent for subsequent trade secret decisions by the Commission.

PUBLIC SERVICE COMMISSION

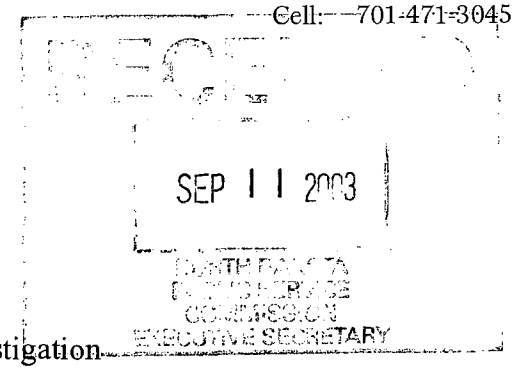
Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

MARILYN FOSS
- Attorney at Law -
Post Office Box 2216
Bismarck, ND 58502-2216

Phone: 701-355-4538
Fax: 701-355-4539

Email: foss@btinet.net
Cell: 701-471-3045

September 10, 2003



PUBLIC SERVICE COMMISSION
State Capitol
600 Boulevard Avenue
Bismarck, ND 58505-0480

RE: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Enclosed for filing in the referenced case is the original certificate of service for the Petition for Intervention By WorldCom, Inc. ("MCI"). This shows service of the petition on the parties to the proceeding as of this date.

Sincerely Yours,

Marilyn Foss

Marilyn Foss

20 **PU-439-03-295** Pages: 3

Certificate of Service for Petition for Intervention
by MCI Telecommunications Corporation by Marilyn Fc

09/11/2003 CC: Comm Legal PUD (3)

RECEIVED
SEP 11 2003
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION
* * * * *

Public Service Commission
Local Competition
Investigation

CASE NO. PU-439-03-295

CERTIFICATE OF SERVICE BY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Marilyn Foss certifies that she has served a copy of the attached Petition for Intervention By WorldCom, Inc ("MCI") by enclosing it in envelopes, U.S. First Class, postage prepaid addressed to the following persons and depositing the envelopes in the U.S. Mail at Bismarck, North Dakota:

Mary B Tribby
AT&T Law Department
1875 Lawrence St., Ste. 1675
Denver, CO 80202

Gary B. Witt
AT&T Law Department
1875 Lawrence St., Ste. 1675
Denver, CO 80202

Tim Goodwin
Qwest Corporation
1801 California St., Ste. 4900
Denver, CO 80202

Walter F. Eggers III
Holland & Hart LLP
2515 Warren Ave, Ste. 450
Cheyenne, WY 82001-3162

Dan Kuntz
PO Box 1695
Bismarck, ND 58502-1695

Dated: September 10, 2003

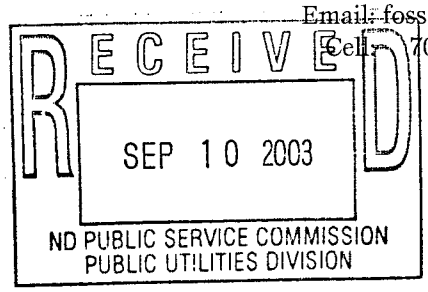
Marilyn Foss

Marilyn Foss, Attorney for WorldCom, Inc.
N.D. ID. No 03474
P.O. Box 2216
Bismarck, ND 58502-2216
Telephone: 701-355-4538
Fax: 701-355-4539

MARILYN FOSS
- Attorney at Law -
Post Office Box 2216
Bismarck, ND 58502-2216

Phone: 701-355-4538
Fax: 701-355-4539

Email: foss@btinet.net
Cell: 701-471-3045



September 10, 2003

Public Service Commission
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0480

HAND DELIVERED

RE: Public Service Commission Local Competition Investigation,
Case No. PU-439-03-295

Enclosed for filing in the captioned matter is the original and seven copies of the Petition To Intervene By WorldCom, Inc. ("MCI"). Please provide me with a list of parties to this proceeding so that I may also serve them with a copy of the petition as required by the commission rules for intervention.

Please note that the petition requests service of pleadings and other documents on Susan Travis, State Regulatory Manager, WorldCom, Inc., 707 17th Street, Suite 4200, Denver, CO 80202, rather than upon me.

Also, please advise me if you require anything further regarding this petition. Thank you.

Sincerely Yours,

Marilyn Foss

Marilyn Foss

19 **PU-439-03-295** Pages: 1

Cover letter re Petition to Intervene

by MCI Telecommunications Corporation by Marilyn Fc

09/10/2003 CC: Comm Legal PUD (3)

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION
* * * * *

Public Service Commission
Local Competition
Investigation

CASE NO. PU-439-03-295

PETITION TO INTERVENE BY WORLDCOM, INC. ("MCI")

On June 18, 2003, the North Dakota Public Service Commission ("PSC") issued its notice of investigation, to request information, and to request that interested parties file request to intervene in a proceeding to address issues related to the Federal Communications Commission's (FCC) Triennial Review Order. WorldCom, Inc. ("MCI") on behalf of its regulated subsidiaries, particularly MCImetro Access Transmission Services LLC, a competitive local exchange carrier providing local exchange service in North Dakota, hereby files with the Commission this Petition to Intervene. In support thereof, MCI states as follows:

1. MCI is a telecommunications carrier authorized to provide various telecommunications services in North Dakota including facilities-based and resale local exchange services.
2. MCI requests that it be granted general intervention in this docket for all purposes permitted by law and the Commission's Rules.
3. MCI and its customers will be directly affected by the Commission's disposition of unbundled local switching for the "mass market". MCI presently uses Unbundled Network Elements-Platform ("UNE-P") obtained from Qwest Corporation to provide its local exchange services to its customers in North Dakota. Unbundled local switching is a component of UNE-P. Should the price of UNE-P or its components increase or no longer be available as a result of this investigation, MCI may be required to withdraw service or modify its rates for its local exchange products thereby affecting its customers and any increase in its prices may impact its ability to offer competitive products in North Dakota.
4. If granted intervention in this docket, copies of all studies, pleadings and other documents filed in this docket should be sent to Susan Travis, State Regulatory

Manager, WorldCom, Inc. , 707 17th Street, Suite 4200, Denver, CO 80202 (Telephone: 303-390-6845, Fax: 303-390-6333).

MCI requests that the Commission grant its intervention in this case with full rights of participation as a party.

Respectfully submitted this 10th day of September, 2003.

Marilyn Foss, Attorney for Petitioner
N.D. ID. No 03474
P.O. Box 2216
Bismarck, ND 58502-2216
Telephone: 701-355-4538
Fax: 701-355-4539

Public Service Commission
State of North Dakota

RECEIVED
SEP - 3 2003
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Jon H. Mielke

600 E Boulevard Ave. Dept. 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@psc.state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

September 3, 2003

Mr. Jon H. Mielke
Public Service Commission
600 E Boulevard Ave. Dept. 408
Bismarck, ND 58505-0480

RE: **Public Service Commission**
Local Competition
Investigation
Case No. PU-439-03-295

Dear Jon:

Enclosed for filing in the above referenced case are the original and seven copies of the **Staff Response to the Application of Qwest Corporation Requesting Trade Secret Protection for Information Contained in Responses to Information Requests.**

Thank you.

Sincerely,

William W. Binek
Chief Counsel

WWB/sls
Enclosure

C: Parties of Record

RECEIVED
SEP - 3 2003
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

STAFF RESPONSE TO THE APPLICATION OF QWEST CORPORATION REQUESTING TRADE SECRET PROTECTION FOR INFORMATION CONTAINED IN RESPONSES TO INFORMATION REQUESTS

On July 23, 2003, Qwest Corporation (Qwest) filed a request for a protective order limiting the disclosure of trade secret information provided by Qwest in response to information requests by the Commission staff in this investigative proceeding. Qwest provides the general description of the nature of the information sought to be protected, as follows:

General Description of the Nature of the Information Sought to be Protected.

A. Confidential Attachment A to Qwest's response to the Public Service Commission's request for information. Confidential Attachment A is information regarding Qwest's switches in North Dakota including the location of each switch, the type of switch, and the change in minutes of use for each switch from March 2002 to March 2003.

Qwest states that Confidential Attachment A contains information regarding the location, nature and usage levels of Qwest's telecommunications switch equipment in North Dakota. This information is confidential and proprietary to Qwest and is not publicly disseminated. Qwest states that in a competitive telecommunications marketplace, this type of information of highly sensitive and its public disclosure would place Qwest at a competitive disadvantage.

Qwest states that the information it seeks to protect is proprietary to Qwest and is available only to those employees and representatives of Qwest who have a need to know the information to perform their duties and responsibilities, and that it does not disclose this information outside the company except pursuant to the terms of strict agreements or orders to maintain the confidentiality of the information.

Qwest states that competitors or potential competitors of Qwest would obtain economic value from disclosure or use of the information. Competitors and potential competitors of Qwest in North Dakota include AT&T, McLeod Telemanagement, Inc., MCI WorldCom, Consolidated Communications Network, Sprint Corporation, and any other provider of telecommunications services in North Dakota and any of the other states in which Qwest operates.

Staff believes that Qwest's application satisfies the requirements of N.D.C.C. Chapter 47-25.1 which allows the Commission to grant trade secret protection in this proceeding, and that the information Qwest seeks to protect qualifies as "trade secret" as that term is defined in N.D.C.C. § 47-25.1-04. The Commission's process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.

For reasons set forth above, staff recommends that the Commission grant Qwest's Application Requesting Trade Secret Protection in this case.

Dated September 3, 2003.



William W. Binek
Chief Counsel

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY FIRST CLASS MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sandra L. Scott deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **3rd day** of **September, 2003,** she deposited in the United States Mail, Bismarck, North Dakota, **five** envelopes with regular postage, securely sealed and each containing a photocopy of:

STAFF RESPONSE TO THE APPLICATION OF QWEST CORPORATION REQUESTING TRADE SECRET PROTECTION FOR INFORMATION CONTAINED IN RESPONSES TO INFORMATION REQUESTS

To:

Tim Goodwin
Qwest Corporation
1801 California Street - Suite 4900
Denver CO 80202

Daniel S Kuntz
Zuger Kirmis & Smith
P O Box 1695
Bismarck ND 58502-1695

Mary B Tribby
Gary B. Witt
AT&T Law Department
1875 Lawrence Street
Denver CO 80202

Walter F Eggers III
Holland & Hart LLP
2515 Warren Avenue Suite 450
Cheyenne WY 82001-3162

Steven D Lysne
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

Address shown is the respective addressee's last reasonably ascertainable address.

Subscribed and sworn to before me
this **3rd day of September, 2003**.

Notary Public

SEAL

CHARLENE A. MAGS[illegible]
Notary Public, State of NOR[illegible]AKOTA
My Commission Expires Ja[illegible], 2004

Headquarters:
3615 North Broadway
PO Box 2027
Minot, ND 58702-2027
701-858-1200

Business Center:
24 - 2nd Ave. SE
PO Box 2027
Minot, ND 58702-2027
701-858-1200

SRT Connections:
1400 20th Ave. SW
Suite 3
PO Box 2027
Minot, ND 58702-2027
701-852-1100

RECEIVED
JUL 30 2003
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

July 23, 2003

North Dakota Public Service Commission
Jon Mielke, Executive Secretary
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

RE: NOTICE OF INVESTIGATION, REQUEST FOR INTERVENTION, AND REQUEST FOR INFORMATION
CASE NO: PU-439-03-295

Dear Mr. Mielke:

Enclosed is the information requested by the Commission from the local exchange carriers in the above-captioned matter. The information is presented in the order listed in the section titled "Examples of the information requested by the Commission include."

Our responses represent our understanding of the information requested, although no specific format of presentation was indicated in the Notice.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Steven D. Lysne
CEO/General Manager
SRT Communications, Inc.

See file No 1
for docket No 16
"Triennial Review"

15 **PU-439-03-295** Pages: 5

Information requested by Commission

by SRT Communications, Inc.

07/30/2003 CC: Comm Legal PUD (3)

PSC Data Request - Case No. PU-439-03-295

Date: 7/3/2003
Prepared by: Jack Ploof, Technical Planning
SRT Communications (701-838-9732)

Bullet 1 All voice switches, remotes, carrier systems and DSL equipment is owned by SRT

Bullet 2 The location of each switch and the telephone exchange(s) served by the switch are indicated in columns marked "A". Dial tone and broadband platforms are shown per site with previous 12 months of activity - see Notes 3 & 4 below.

Bullet 3 The level of traffic supported by each switch relative to the maximum capacity of the switch expressed as a percentage. See column "B" and Note 4.

Bullet 4 The percentage of change in that value for each switch over the most recent 12-month period was interpreted to mean % of port growth or loss in total over the past 12 months.
Percentages below in Column "D" reflect gain or loss of "ports in use" from 7/31/2002 to 6/30/2003.

Bullet 5 Only local switching is provided at this time.

Bullet 6 Any other information relevant to the issues in this proceeding - none.

	(A)	(A)	(A)														(B)	(D)
Site Ref. #	Site Name	Location	Exchange Code(s)	Equipment Type (Note 2)	7/31/2002	8/31/2002	9/30/2002	10/31/2002	11/30/2002	12/31/2002	1/31/2003	2/28/2003	3/31/2003	4/30/2003	5/31/2003	6/30/2003	% In Use vs. Equipped On 6/15/03	% Change
																	Note 4	Note 5
1	Host DT	Minot	Note 1	Host Switch	18142	18016	17385	17048	16468	16238	16015	16005	15843	15001	14630	13990	69%	-30% Note 3
	Host DSL	Minot		DSLAMs	737	774	791	792	790	815	864	892	935	912	912	934	72%	27%
2	Dakota DT	Minot	Note 1	Remote	712	718	718	721	718	712	707	701	705	706	715	703	44%	0%
	Dakota DSL	Minot		DSLAMs	22	25	26	28	31	31	31	36	40	42	45	46	64%	109%
3	SORM DT	Minot	Note 1	Remote/Carrier	3095	3114	3104	3101	3093	3085	3077	3053	3040	3056	3065	3040	83%	-2%
	SORM DSL	Minot		DSLAMs	102	118	128	135	143	148	155	162	178	190	197	200	53%	96%
4	SE16 DT	Minot	Note 1	Remote/Carrier	1272	1269	1263	1261	1481	1475	1479	1474	1486	1480	1650	1647	45%	30%
	SE16 DSL	Minot		DSLAMs	49	54	56	60	71	78	81	86	89	94	108	114	98%	132%
5	G.Acres DT	Minot	Note 1	Carrier	399	396	395	391	385	386	376	381	379	382	378	377	23%	-5%
	G.Acres DSL	Minot		DSLAMs	25	26	27	28	29	32	32	33	33	34	34	35	75%	40%
6	Oak Park DT	Minot	Note 1	Remote/Carrier	3090	3073	3054	3042	3023	3003	3045	3039	3037	3039	3027	2983	60%	-3%
	O.Park DSL	Minot		DSLAMs	163	173	188	196	206	227	243	261	282	296	302	311	82%	91%
7	SW16 Av DT	Minot	Note 1	Remote/Carrier	1332	1341	1340	1633	1920	2047	2212	2212	2301	2664	2688	2682	85%	101% Note 3
	SW16 DSL	Minot		DSLAMs	55	60	62	81	113	141	154	165	175	214	222	232	87%	422%
8	NHUB DT	Minot	Note 1	Remote/Carrier	819	823	821	816	819	820	807	755	755	755	747	750	64%	-8%
	NHUB DSL	Minot		DSLAMs	42	44	43	44	46	48	49	50	54	54	55	54	75%	29%
9	SE Rural DT	Minot	Note 1 &	Carrier	534	530	533	533	538	532	526	521	518	603	604	605	59%	14%
	SE Rural DSL	Minot	624	DSLAMs	45	48	54	55	57	63	64	66	72	77	79	87	91%	93%
10	Soccer DT	Minot	Note 1	Carrier	636	633	1220	1223	1213	1204	1202	1203	1190	1549	1657	1652	62%	260%
	Soccer DSL	Minot		DSLAMs	34	38	68	72	76	79	84	87	94	142	157	167	70%	491%
11	Speedway DT	Minot	Note 1	Carrier	241	240	236	233	232	230	228	226	225	220	224	224	47%	-7%
	Speedway DSL	Minot		DSLAMs	14	15	16	17	17	20	24	25	27	28	32	34	71%	143%
12	Ruthville DT	Ruthville	Note 1	Remote	167	170	166	165	166	165	171	173	166	166	169	166	69%	0%
	Ruthville DSL	Ruthville		DSLAMs	0	0	7	9	10	12	14	15	16	18	18	19	79%	100%

Site #	Description	Location	Exchange Code(s)	Equipment Type (Note 2)	7/31/2002	8/31/2002	9/30/2002	10/31/2002	11/30/2002	12/31/2002	1/31/2003	2/28/2003	3/31/2003	4/30/2003	5/31/2003	6/30/2003	% In Use vs. Equipped On 6/15/03	% Change
13	E. Burdick DT	Minot	Note 1	Remote/Carrier	837	825	830	824	814	819	814	803	793	793	781	771	61%	-8%
	E.Burdick DSL	Minot		DSLAMs	40	43	45	47	49	51	58	60	65	69	69	69	74%	73%
14	Burlington DT	Burlington	Note 1 &	Remote/Carrier	791	782	784	779	768	765	765	762	759	766	764	767	69%	-3%
	Burlington DSL	Burlington	725	DSLAMs	45	50	54	57	61	69	68	75	83	89	94	105	87%	133%
15	Surrey DT	Surrey	Note 1 &	Carrier	598	594	596	601	599	595	592	592	589	587	588	585	87%	-2%
	Surrey DSL	Surrey	728	DSLAMs	21	25	29	34	38	43	44	47	51	53	56	57	78%	171%
16	T & C Mall DT	Minot	Note 1	Remote	313	309	308	308	311	308	306	298	298	295	327	331	81%	5%
	T & C Mall DSL	Minot		From Host	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0%	NA
17	Fairgrounds DT	Minot	Note 1	Remote/Carrier	2	2	2	7	7	6	6	9	9	11	11	576	21%	2880%
	F'grounds DSL	Minot		DSLAMs	7	10	18	32	45	49	53	60	69	75	75	78	83%	1142%
18	Trinity Hosp DT	Minot	857	Carrier	108	108	108	108	108	108	108	108	108	108	108	108	90%	0%
	Trinity Hosp DSL	Minot		From Host	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0%	NA
19	Mohall DT	Mohall	756	Remote	827	817	813	813	805	769	767	767	766	764	768	769	70%	-7%
	Mohall DSL	Mohall		DSLAMs	57	60	64	67	71	74	75	76	79	81	84	86	85%	51%
20	Westhope DT	Westhope	245	Carrier	492	490	489	484	484	479	476	476	476	480	481	484	69%	-2%
	Westhope DSL	Westhope		DSLAMs	32	32	32	32	33	35	36	38	42	47	48	50	67%	56%
21	Towner DT	Towner	537	Remote	705	707	712	710	701	701	696	694	687	690	698	697	75%	-1%
	Towner DSL	Towner		DSLAMs	20	20	21	23	25	28	30	31	31	32	34	36	69%	80%
22	MAFB DT	Minot AFB	723, 727 &	Remote/Carrier	2725	2710	2651	2613	2626	2696	2690	2672	2623	2607	2601	2525	61%	-7%
	MAFB DSL	Minot AFB	362,725,728	DSLAMs	230	244	263	268	274	281	290	311	325	334	345	356	94%	55%
23	Lansford DT	Lansford	784	Remote	318	317	315	310	309	311	309	303	302	307	312	310	73%	-3%
	Lansford DSL	Lansford		DSLAMs	17	18	18	19	21	22	23	26	29	29	31	33	69%	94%
24	Granville DT	Granville	728,624	Remote	364	363	361	359	360	359	359	360	363	365	366	366	84%	-1%
	Granville DSL	Granville		DSLAMs	7	7	7	9	10	11	11	12	14	16	17	18	75%	157%
25	Glenburn DT	Glenburn	362	Carrier	374	373	374	376	372	374	371	365	362	368	369	371	80%	-1%
	Glenburn DSL	Glenburn		DSLAMs	28	30	31	31	31	35	36	38	42	44	44	44	61%	57%
26	Berthold DT	Berthold	453	Remote	467	471	445	442	439	441	444	444	444	443	445	445	75%	-5%
	Berthold DSL	Berthold		DSLAMs	20	22	25	26	26	25	27	28	30	30	33	33	44%	65%
27	Sherwood DT	Sherwood		Remote	296	299	302	298	294	289	287	286	290	294	297	295	68%	0%
	Sherwood DSL	Sherwood		DSLAMs	16	19	21	23	24	26	26	27	28	29	30	28	40%	75%
28	Lk.Met.W. DT	Lk.Metigoshe	263	Carrier	603	595	487	378	357	348	341	343	347	362	514	584	70%	-3%
	Lk.Met.W. DSL	Lk.Metigoshe		DSLAMs	14	14	14	16	19	20	20	23	24	30	34	38	98%	171%
29	Lk. Met. E. DT	Lk.Metigoshe	263	Carrier	602	574	538	482	474	408	407	407	409	417	479	512	56%	-15%
	Lk. Met. E. DSL	Lk.Metigoshe		DSLAMs	2	2	2	2	2	2	2	2	3	3	3	3	4%	50%
30	Deering DT	Deering	728	Carrier	233	231	230	225	226	228	228	227	225	227	227	227	73%	-3%
	Deering DSL	Deering		DSLAMs	10	11	12	12	11	11	12	13	14	15	15	15	21%	50%

Site #	Description	Location	Exchange Code(s)	Equipment Type (Note 2)	7/31/2002	8/31/2002	9/30/2002	10/31/2002	11/30/2002	12/31/2002	1/31/2003	2/28/2003	3/31/2003	4/30/2003	5/31/2003	6/30/2003	% In Use vs. Equipped On 6/15/03	% Change
31	Logan DT	Logan	624,722	Remote	218	216	210	212	213	210	211	211	209	211	211	208	77%	-5%
	Logan DSL	Logan		DSLAMs	6	6	7	9	11	12	13	16	18	19	23	25	52%	317%
32	Sawyer DT	Sawyer	624	Remote	462	462	456	461	404	402	401	400	399	398	400	402	77%	-13%
	Sawyer DSL	Sawyer		DSLAMs	9	9	10	11	12	13	13	15	16	17	19	21	29%	133%
33	Martin DT	Martin	693	Remote	162	163	158	157	154	153	154	152	155	156	160	161	68%	-1%
	Martin DSL	Martin		DSLAM-2003	0	0	0	0	0	0	0	0	0	0	0	0	0%	NA
34	Carpio DT	Carpio	468	Remote	283	280	279	276	276	275	271	271	272	277	282	282	74%	0%
	Carpio DSL	Carpio		DSLAMs	4	5	6	6	6	6	7	9	9	9	10	10	26%	150%
35	Des Lacs DT	Des Lacs	725	Remote	277	273	267	272	267	266	266	266	266	266	267	270	66%	-3%
	Des Lacs DSL	Des Lacs		DSLAMs	4	6	8	9	10	14	15	16	16	16	17	19	40%	375%
36	Butte DT	Butte	626	Remote	417	410	381	331	316	313	306	309	311	331	385	394	67%	-6%
	Butte DSL	Butte		DSLAMs	0	0	0	1	3	3	3	5	7	8	8	8	33%	100%
37	Maxbass DT	Maxbass	268,784	Remote	184	183	183	181	175	174	172	173	174	177	178	179	71%	-2%
	Maxbass DSL	Maxbass		DSLAM-2003							0	0	0	0	0	0	0%	NA
38	Karlsruhe DT	Karlsruhe	525	Remote	208	207	209	205	202	202	202	204	204	204	205	205	67%	-2%
	Karlsruhe DSL	Karlsruhe		DSLAMs	0	0	0	0	0	0	0	0	0	0	0	1	4%	100%
39	Newburg DT	Newburg	272	Carrier	233	232	234	233	232	230	231	231	231	233	231	231	72%	-1%
	Newburg DSL	Newburg		DSLAM-2003	0	0	0	0	0	0	0	0	0	0	0	0	0%	NA
40	Upham DT	Upham	768	Carrier	271	269	267	265	261	257	256	253	254	260	265	266	69%	-2%
	Upham DSL	Upham		DSLAMs	0	0	0	0	0	0	0	0	0	0	0	1	4%	100%
41	Antler DT	Antler	267	Carrier	117	118	117	114	108	108	109	108	108	109	113	113	61%	-3%
	Antler DSL	Antler		DSLAM-2003	0	0	0	0	0	0	0	0	0	0	0	0	0%	NA
42	Donnybrook DT	Donnybrook	482	Remote	132	133	129	130	126	128	127	126	128	129	134	133	69%	1%
	Donybrok DSL	Donnybrook		DSLAMs							0	0	0	0	0	3	13%	100%
43	Tolley DT	Tolley	386	Remote	159	158	155	132	124	125	125	124	125	135	148	153	63%	-4%
	Tolley DSL	Tolley		DSLAM-2003							0	0	0	0	0	0	0%	NA
44	Landa DT	Landa	295	Carrier	96	96	96	96	96	93	91	91	91	93	93	93	55%	-3%
	Landa DSL	Landa		DSLAM-2003							0	0	0	0	0	0	0%	NA
45	S.Prairie DT	S. Prairie	722	Remote	392	394	390	392	391	388	392	394	391	385	388	388	85%	-1%
	S.Prairie MMDS	S. Prairie		MMDS	0	0	0	0	0	0	9	13	15	19	20	23	8%	100%
46	Country Club DT	Minot	Note 1	Carrier	92	87	88	89	85	84	84	83	83	81	79	108	75%	17%
	C. Club DSL	Minot		No DSLAM	0	0	0	0	0	0	0	0	0	0	0	0	0%	NA
47	Sawyer AFC DT	Sawyer	624	Carrier	0	0	0	0	51	50	50	50	50	52	52	51	71%	100%
	Sawyer AFC DSL	Sawyer		No DSLAM	0	0	0	0	0	0	0	0	0	0	0	0	0%	NA
48	Berthold AFC	Berthold	453	Carrier							25	25	25	25	25	25	69%	100%
	Brthhld AFC DSL	Berthold		No DSLAM	0	0	0	0	0	0	0	0	0	0	0	0	0%	NA

Site #	Description	Location	Exchange Code(s)	Equipment Type (Note 2)	7/31/2002	8/31/2002	9/30/2002	10/31/2002	11/30/2002	12/31/2002	1/31/2003	2/28/2003	3/31/2003	4/30/2003	5/31/2003	6/30/2003	% In Use vs. Equipped On 6/15/03	% Change
49	Des Lacs ANX	Des Lacs	725	Carrier	37	37	37	37	37	37	37	37	37	37	37	37	77%	0%
	D.Lacs ANX DSL	Des Lacs		No DSLAM	0	0	0	0	0	0	0	0	0	0	0	0	0%	NA
50	Day School DT	L. Metigoshe	263	Carrier	64	64	62	64	64	63	62	51	50	50	51	46	36%	-28%
	Day School DSL	L. Metigoshe		No DSLAM	0	0	0	0	0	0	0	0	0	0	0	0	0%	NA
51	Long Lake DT	L. Metigoshe	263	Carrier	24	23	25	25	24	25	24	24	24	24	24	24	50%	0%
	Long Lake DSL	L. Metigoshe		No DSLAM	0	0	0	0	0	0	0	0	0	0	0	0	0%	NA
52	Felan Farm DT	Mohall	756	Carrier	0	0	0	0	0	0	0	0	38	38	38	38	90%	100%
	Felan Farm DSL	Mohall		No DSLAM	0	0	0	0	0	0	0	0	0	0	0	0	0%	NA
53	Rice Lake DT	S. Prairie	722	Carrier	113	113	80	60	57	51	50	51	52	59	89	103	66%	-9%
	Rice Lake DSL	S. Prairie		No DSLAM	0	0	0	0	0	0	0	0	0	0	0	0	0%	NA
54	Peace Garden DT	L. Metigoshe	263	Carrier	0	0	0	0	0	71	70	69	69	68	69	87	58%	100%
	PeaceGarden DSL	L. Metigoshe		No DSLAM	0	0	0	0	0	0	0	0	0	0	0	0	0%	NA

Note 1: All local Minot exchange codes: : 837, 838, 839, 852, 857, 858, 420

Note 2: Some sites have multiple network elements to provide voice service - remote & carrier for example. Some sites have multiple DSLAMs also.

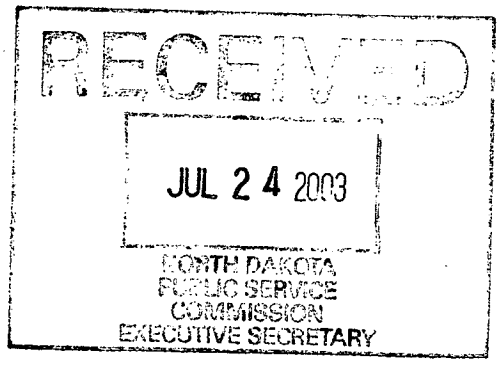
Note 3: Access line and broadband port counts changes for the most recent 12 month period are skewwed in some cases by our program of developing carrier serving areas closer to the customer to enable higher bandwidth services.

Note 4: "the level of traffic supported by each switch relative to the maximum capacity of the switch expressed as a percentage" was interpreted to mean "ports in service versus equipped ports" - % reflects that interpretation

Note 5: "the percentage change in that value for each switch over the most recent 12-month period;" is interpreted to mean percentage change of ports in use from July 31, 2002 until June 30, 2003. The entire year is shown for reference and does reflect seasonal activity.

Janet Browne
Docket Manager
303-298-6502

1875 Lawrence St.
Room 14-42
Denver, CO 80202



July 22, 2003

Mr. Jon Mielke, Executive Director
North Dakota Public Service Commission
State Capitol Building
600 East Boulevard
Bismarck, ND 58505

Re: Public Service Commission Local Competition Investigation
Case No. PU-439-03-295

Dear Mr. Mielke:

Enclosed for filing are the original and seven copies of AT&T's Petition to Intervene and AT&T's Comments in this matter.

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

Sincerely,

Janet Browne

Janet Browne

Enclosures

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Cover letter re filings

by AT&T Communications

07/24/2003 CC: Comm Legal PUD (3)

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JUL 24 2003
NORTH DAKOTA PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AT&T'S PETITION TO INTERVENE

AT&T Communications of the Midwest, Inc. ("AT&T") hereby petitions the North Dakota Public Service Commission ("Commission") for leave to intervene in the above-captioned proceeding, pursuant to section 69-02-02-05 of the Commission's Rules of Practice and Procedure. As support, AT&T states:

1. AT&T is a corporation licensed to do business in the State of North Dakota. AT&T provides local exchange, intraexchange and interexchange telecommunications services in North Dakota.

2. On June 18, 2003, the Commission issued a Notice of Investigation, Request for Intervention, and Request for Information, asking parties desiring to intervene in this proceeding to file a Petition to Intervene as early as possible, and to file certain factual information necessary to address the impairment issues stemming from the anticipated FCC Triennial Review Order. AT&T is filing the information requested by the Commission simultaneously with this Petition.

3. AT&T has a substantial interest in the outcome of this proceeding, including financial and legal interests in the determination by the Commission of the issues identified in this proceeding regarding the availability or unavailability of certain unbundled network elements.

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AT&T's Petition to Intervene
by AT&T Communications
07/24/2003 CC: Comm Legal PUD (3)

4. AT&T will contribute its views on the issues in this proceeding. No other party to this case can adequately protect the interests of AT&T.

5. Participation by AT&T in this proceeding will not unduly broaden the issues or otherwise delay the proceeding.

6. At this point, AT&T anticipates participating only in the 9 month proceeding, and not in the 90 day proceeding. This could change, however, depending upon the scope of issues to be determined in the 90 day proceeding.

7. The names, mailing addresses and telephone numbers of the persons to whom communications should be addressed are:

Mary B. Tribby Gary B. Witt AT&T Law Department 1875 Lawrence Street Suite 1575 Denver, CO 80202 303-298-6163	Walter F. Eggers, III. Holland & Hart, LLP 2515 Warren Avenue, Suite 450 Cheyenne, WY 82001-3162 307-778-4200

WHEREFORE, AT&T respectfully requests that the Commission grant its Petition To Intervene in this proceeding.

Dated this 22nd day of July, 2003.

Mary B. Tribby
Gary B. Witt
AT&T Law Department
1875 Lawrence Street, Room 1575
Denver, CO 80202
(303) 298-6163

Walter F. Eggers, III.
Holland & Hart, LLP
2515 Warren Avenue, Suite 450
Cheyenne, WY 82001-3162
(307) 778-4200

Attorneys for
AT&T Communications
of the Midwest, Inc.

RECEIVED
JUL 24 2003
NORTH DAKOTA PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AT&T'S COMMENTS

AT&T Communications of the Midwest, Inc. submits the following information in response to the Commission's June 18, 2003 Notice of Investigation, Request for Intervention, and Request for Information.

Request:

For each switch and DSLAM for which your entity is responsible within ND, please report,

1. Whether the switch is owned by your entity, leased from another entity or otherwise controlled by your entity.

Response:

AT&T does not own or lease any switch or DSLAM in the state of North Dakota to provide local service.

2. Location of each switch and the telephone exchanges(s) served by such

Response:

See response to Request No. 1.

3. Level of traffic supported by each switch relative to the maximum capacity of the switch expressed as a percentage

Response:

See response to Request No. 1.

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AT&T's Comments
by AT&T Communications
07/24/2003 CC: Comm Legal PUD (3)

4. Percentage change in that value for each switch over the most recent 12 months

Response:

See response to Request No. 1.

5. Whether that switch is providing local switching for mass market services, tandem switching for mass market services, local switching for DS1 and above services, or tandem switching for DS1 and above services.

Response:

See response to Request No. 1.

Respectfully submitted on July 22, 2003.

AT&T COMMUNICATIONS
OF THE MIDWEST, INC.

By: Mary B. Tribby

Mary B. Tribby
Gary B. Witt
AT&T Law Department
1875 Lawrence Street, Room 1575
Denver, CO 80202
(303) 298-6163

Walter F. Eggers, III.
Holland & Hart, LLP
2515 Warren Avenue, Suite 450
Cheyenne, WY 82001-3162
(307) 778-4200

Public Service Commission
Receipt of Payment

Receipt# 5506

Received: 7/24/2003 Check# 2287092 for $862.93

Subject: Utility Valuation

Docket # PU-439-03-295

Qwest
5325 Zuni St Room 728
Denver CO 80221

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Receipt# 5,506 $862.93

by Qwest

07/24/2003

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NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission)
Local Competition Investigation)

Case No. PU-439-03-295

AN APPLICATION REQUESTING TRADE SECRET PROTECTION

Qwest Corporation ("Qwest") requests the North Dakota Public Service Commission, pursuant to Chapter 69-02-09 of the North Dakota Administrative Code, to issue a protective order limiting the disclosure of trade secret information provided by Qwest in response to information requests by the North Dakota Public Service Commission in this investigative proceeding.

The trade secret information has been appropriately marked and is submitted in a sealed envelope with this filing.

1. General Description of the Nature of the Information Sought to be Protected.

The information sought to be protected is:

A. Confidential Attachment A to Qwest's response to the Public Service Commission's request for information. Confidential Attachment A is information regarding Qwest switches in North Dakota including the location of each switch, the type of each switch, and the change in minutes for use for each switch from March 2002 to March 2003.

2. An Explanation of Why the Information Derives Independent Economic Value, Actual or Potential, From Not Being Generally Known to Other Persons.

Confidential Attachment A contains information regarding the location, nature and usage levels of Qwest's telecommunications switch equipment in North Dakota. This information is confidential and proprietary to Qwest and is not publicly disseminated. In a competitive telecommunications marketplace, this type of information is highly sensitive and its public disclosure would place Qwest at a competitive disadvantage.

3. An Explanation of Why the Information is Not Readily Available by Proper Means to Other Parties.

The information at issue is proprietary to Qwest and is available only to those employees and representatives of Qwest who have a need to know the information to perform their duties and responsibilities. Qwest does not disclose this information outside the company except pursuant to the terms of strict agreements or orders to maintain the confidentiality of the information.

4. The General Description of the Persons or Entities that Would Obtain Economic Value from Disclosure or Use of the Information.

Competitors or potential competitors of Qwest would obtain economic value from disclosure or use of the information.

5. Specific Description of Known Competitors or Competitor's Goods and Services that are Pertinent to the Information.

Competitors and potential competitors of Qwest in North Dakota include AT&T, McLeod Telemanagement, Inc., MCI WorldCom, Consolidated Communications Network, Sprint Corporation, and any other provider of telecommunications services in North Dakota

or any of the other states in which Qwest operates.

6. Description of the Efforts Used to Maintain the Secrecy of the Information.

See No. 3 above.

Dated this 23rd day of July, 2003.

Respectfully submitted,

By: _____

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NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission **Local Competition Investigation**	**Case No. PU-439-03-295**

RESPONSE OF QWEST CORPORATION

Qwest Corporation ("Qwest") hereby submits this response to the Notice of Investigation, Request for Intervention, and Request for Information ("Notice of Investigation") of the North Dakota Public Service Commission ("Commission") issued on June 18, 2003. In the Notice, the Commission initiated an investigation to address issues related to the Federal Communications Commission's ("FCC") Triennial Review Order ("Order"). The Commission requested information on several issues that it may need to address as the result of the Order.

GENERAL COMMENTS

Qwest will respond hereafter to the specific questions raised by the Commission in its Notice of Investigation. Before doing so, however, Qwest has some general comments that place the responses in the appropriate context. As a preliminary matter, and as the Commission recognizes in the Notice of Investigation, it is impossible for parties to make a definitive response to the questions raised by the Commission because the FCC has not issued the Triennial Review Order itself. All that interested parties have available to them at this point are the two-page Press Release and four-page Attachment issued by the FCC on February 20, 2003, which describe general conclusions, some of which may change, and that will ultimately be addressed in an order that is likely to be several hundred pages in length. As a result, Qwest's responses to

the questions raised by the Commission represent its best effort to interpret the limited information available and are subject to change based on the actual Triennial Review Order.

When issued, the Triennial Review Order will likely be subject to legal challenges by a variety of parties, including perhaps Qwest. Some of those challenges may go to issues relating to the jurisdiction of the FCC to delegate certain issues to state commissions. In providing its responses and in suggesting possible procedures for state proceedings that result from the Order, Qwest is not waiving its right to appeal any issue in the Order, including issues related to the state proceedings required by the Order.

RESPONSES TO SPECIFIC REQUESTS

Following are Qwest's responses to the Commission's requests for information by the Commission in its Notice of Investigation.

For each switch and DSLAM (Digital Subscriber Line Access Multiplexer) for which your entity is responsible within North Dakota, please report:

A. Whether the switch is owned by your entity, leased from another entity, or otherwise controlled by your entity;

B. The location of each switch and the telephone exchange(s) served by the switch;

C. The level of traffic supported by each switch relative to the maximum capacity of the switch expressed as a percentage;

D. The percentage change in that value for each switch over the most recent 12-month period;

E. Whether that switch is providing local switching for mass market services, tandem switching for mass market services; local switching for DS1 and above services, or tandem switching for DS1 and above services;

F. Any other information relevant to the issues in this proceeding.

Qwest Response to A, B, and E: Confidential Attachment "A" contains the requested information for Qwest switches. The following URL contains the list of switches having

DSLAMs: http//www.uswest.com/disclosures/netdisclosure459/nd_data.html. At this time, Qwest has not deployed any remote DSLAMs in North Dakota. The telephone exchanges can be found in Section 5.1.1 in the North Dakota Exchange and Network Services Price Schedule located at the following URL: http://tariffs.uswest.com:8000/iiop/WAImap?objectid=0-2840.

Qwest Response to C and D: Qwest does not track the level of traffic supported by a switch relative to the maximum capacity of the switch. Switch capacities are measured by component, i.e., Line Unit, Line Concentration Module, etc. Each component is looked at individually and evaluated as such. However, Qwest does track the percentage change of minutes of use for each switch, and this information is contained in Confidential Attachment "A".

Qwest Response to F: Given the limited information available at this time regarding the Triennial Review Order, it is premature to address the substantive requirements of the Order. Qwest reserves its right to do so after the actual Order has been issued and Qwest has had an opportunity to analyze it. In the meantime, Qwest comments below on two important procedural issues. First, Qwest identifies additional factual information that the Commission should obtain from all telecommunications providers in North Dakota--regardless of whether a particular provider has chosen to participate in this proceeding. Second, Qwest recommends that the Commission establish certain proceedings to enable the Commission to fulfill its responsibilities outlined in the Press Release and Attachment.

Additional Data Requests. It is Qwest's understanding that the FCC intends that state commissions become the finder of fact on certain issues (e.g., specific factual findings relating to the impairment issue on switching for mass market customers). On other issues, the FCC apparently intends that state commissions address factual issues that may be presented by

telecommunications carriers ("carriers") to rebut a "presumptive finding of no impairment" (e.g., impairment relating to switching on high capacity lines). On other issues, it does not appear that the state commissions will have any role in the impairment analysis (e.g., situations where the FCC makes a conclusive finding of no impairment, such as line sharing and OCn loops).

In the first two instances, specific factual information relating to the industry is critical to the Commission's ability to make the necessary factual findings. For the most part, this information is in the possession of current participants in the telecommunications industry in North Dakota, and it may be very difficult to obtain from other sources. Thus, it is critical that the Commission and other parties receive complete information from industry participants, whether or not they choose to participate in North Dakota regulatory proceedings.

While the information sought by the Commission in the Notice of Investigation is a step in the right direction, it is only a first step. In order for the Commission to obtain the specific factual information necessary to make the findings required by the order, Qwest strongly recommends, in advance of the order (but subject to modification based upon the actual language of the order), that the Commission issue data requests to all telecommunications providers in North Dakota regardless of whether a telecommunications provider has chosen to participate in the proceedings. It is essential that this information be provided by all carriers in North Dakota because they are in possession of most of the data necessary to determine if CLECs would be impaired without access to specific UNEs.

Pursuant to the Commission's investigatory powers, responses to these data requests should be mandatory and should require carriers to provide the factual information necessary to address the impairment issue, the alternatives to unbundled ILEC facilities, and other relevant

factors to be considered by the Commission when making its decisions regarding the various issues that the Commission may need to examine as a result of the Order. To ensure that it promptly receives the information it needs, the Commission should explicitly state in any order or orders that the responses to the questions are due in a timely fashion (such as 10-20 days), that responses must be full and complete, and that a failure to provide timely, full and complete answers will subject a telecommunications provider to sanctions, ranging from a prohibition from filing testimony and otherwise participating in the proceedings to an injunction preventing noncomplying carriers from conducting any business or offering any services covered by their certificates until they comply with the Commission's data requests.

Attachment "B" is a proposed initial set of information requests that Qwest recommends the Commission propound to all telecommunications providers in North Dakota as soon as possible. These proposed data requests are grouped by major category that may be at issue in the state Triennial Review proceedings and are designed to provide the Commission with the type of information necessary for it to conduct the state-specific analysis that it appears the FCC's order will require regarding impairment. The various sub-categories of revenue, switching, unbundled loop, transport, etc., are designed to provide the Commission with the factual data regarding the level of competitively available facilities in North Dakota and to provide a major portion of the factual information necessary for the Commission to fully explore the factual issues raised by the impairment test or to address other issues the order will require state commissions to investigate.

These data requests encompass some of the specific information identified in the Notice of Investigation, as well as other important information, that is necessary to address issues of

"impairment." In the end, the impairment test ultimately adopted by the FCC and/or by the courts (e.g., the *USTA v. FCC* decision) should define the relevant factual inquiry.

In addition to the issues identified by the Commission, it is clear that the Commission should address (through testimony and discovery) the issue of intermodal competition in North Dakota. The courts have made clear that regulators must consider intermodal competition in determining whether unbundling should be mandated under the Act. In *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 388 (1999), the U.S. Supreme Court ruled that the Commission "cannot, consistent with the stature, blind itself to the availability of elements outside the incumbent's network." Consistent with that statement, the D.C. Circuit, in *United States Telecom Ass'n. v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), concluded that where intermodal competition exists, there is "no reason to think [that requiring unbundling] would bring on a significant enhancement of competition." *Id.* at 429. Indeed, one of the reasons the D.C. Circuit overturned the FCC's line sharing order was because the FCC "completely failed to consider the relevance of competition in broadband services coming from cable (and to a lesser extent satellite). The Commission's own findings (in a series of reports under Sec. 706 of the 1996 Act) repeatedly confirm both the robust competition, and the dominance of cable, in the broadband market." *Id.* In light of these statements, it is incumbent on the Commission to consider all forms of competition in evaluating whether switching (and other UNEs) must be unbundled and provided as a UNE.

State Proceedings. The Press Release and Attachment appear to separate UNEs into three categories that are relevant to state commissions: (1) where the FCC makes a definitive and conclusive determination of no impairment (e.g., line sharing); (2) where the FCC makes a presumption of no impairment and provides 90 days to rebut the presumption (e.g., switching associated with high capacity loops); and (3) where the FCC delegates the factual determination

of impairment (subject to specific criteria) to state commissions and provides a time period of nine (9) months to rebut the presumption (e.g., switching for mass market customers). There is also a fourth category where the FCC makes a definitive finding of impairment (e.g., copper loops), but it does not appear that there will be a need for any state commission proceeding regarding these UNEs. Following are the proceedings that Qwest recommends to deal with the first three categories:

A preliminary proceeding (such as the Notice of Investigation in this case) for the purpose of beginning the process of obtaining the factual information from telecommunications providers through data requests as described above. The data obtained in this proceeding should then be available for use in the 90-day and 9-month proceedings (and perhaps other dockets as well) as described hereafter. As an alternative, the Commission could create separate dockets for the 90-day proceeding and nine-month proceeding and issue the data requests in those dockets. In either alternative approach, the key is to assure that in-depth data requests are directed to all industry participants in North Dakota, that they be compelled to provide full and complete answers, and that they be issued expeditiously.

Category 1 - FCC definitive determination of no impairment: The Press Release and Attachment identify several UNEs as to which the FCC intends to find no impairment (e.g., line sharing, OCn loops, OCn level transport, packet switching (including routers and DSLAMs)). State commissions will need to consider and approve SGAT language implementing these decisions. Qwest does not believe testimony or discovery will be necessary for these elements. The Commission should bind all North Dakota carriers by the Commission's SGAT approval decision on these additional issues. Qwest recommends that the Commission's notice of this hearing make clear that its decision will be binding on all carriers in North Dakota. Further, to

fully implement the FCC order, the Commission should adopt an expedited procedure to incorporate the results of the Commission's decision into existing interconnection agreements.

Category 2 - FCC makes a presumption of no impairment: The Press Release and Attachment say: "states will have 90 days to rebut the national finding" of no impairment for circuit switching provided to business customers served by high-capacity loops. It is Qwest's position that the 90-day proceeding should proceed only if a carrier comes forward to attempt to rebut the national presumption. There will be no need for the Commission to take any affirmative steps regarding an impairment analysis for this category absent a carrier challenge to the presumption.

Qwest suggests adoption of the following procedural outline and principles that would govern the 90-day proceeding should a carrier come forward to attempt to rebut the national presumption:

(1) On the effective date of the FCC's written order, Qwest shall file its revised SGAT incorporating the changes resulting from the FCC's presumptive finding of no impairment.

(2) Within 21 days following Qwest's SGAT filing, any individual carrier seeking to rebut the presumption that requesting carriers are not impaired without access to circuit switching for business customers served by DS1 and above facilities shall file its initial testimony, containing the specific factual basis for the claim. Carriers petitioning to rebut the presumption shall bear the burden of production and the burden of proof on the impairment issue.

(3) Parties desiring to respond to the initial testimony shall file 45 days after the SGAT filing.

(4) Rebuttal to the responsive testimony shall be filed 60 days after the filing of the SGAT.

(5) Focused discovery should be conducted through the 70th day after the SGAT filing, with a relatively short turn around time (e.g., 7-10 days).

(6) Hearings should be held between days 70 and 80 after the SGAT filing.

(7) The Commission should render its decision on or before the 90th day after the SGAT filing.

(8) If no carrier files to rebut the presumption or to otherwise challenge the revised SGAT, the Commission should enter an order approving Qwest's revised SGAT and providing for an expedited process for incorporating new language into existing interconnection agreements.

(9) Under section 252(f) of the Federal Act, SGAT filings must be approved, rejected, or allowed to become effective within 60 days of filing unless an extension is agreed upon. Given the fact that the FCC has outlined a 90-day proceeding, Qwest is willing, pursuant to section 252(f)(3)(A), to extend the period for review of this SGAT filing in order to make the SGAT consideration and the 90-day proceeding coincide with each other.

(10) The 90-day proceeding will determine the extent of Qwest's legal obligation to provide the UNEs that will be the subject of that proceeding. Thus, any carrier that purchases UNEs from Qwest in North Dakota must be bound by the Commission's decision in that case. The Commission should thus make it clear that its decision will be binding on all carriers in North Dakota. Further, as noted above, in order to implement the FCC order fully, the Commission should adopt an expedited procedure to incorporate the results of the Commission's decision into existing interconnection agreements.

Category 3 - FCC delegates impairment decision to state commission: This is the 9-month proceeding described in the Press Release and Attachment. At minimum, this proceeding would include (1) a determination of whether requesting would be impaired without access to unbundled switching for mass market customers, and (2) the approval of Qwest's batch hot cut process. It is not clear at this point if the FCC intends other issues to be included in this proceeding. Steps similar to those outlined above for Category 2 (adjusted accordingly for the expanded period of time during which this analysis takes place) should be adopted. As is the case with the 90-day proceeding, the 9-month proceeding will determine the extent of Qwest's legal obligation to provide the UNEs that will be the subject of this proceeding. The Commission should make it clear that its decision will be binding on all carriers in North Dakota. Further, to implement the FCC order fully, the Commission should adopt an expedited procedure to incorporate the results of the Commission's decision into existing interconnection agreements.

Given the difference in the issues between the two cases, Qwest does not believe that the 90-day proceeding and the 9-month proceeding should be procedurally linked.

Respectfully submitted this 23rd day of July 2003.

Qwest Corporation

By: _____

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Triennial Review
Discovery Questions

Following is a preliminary list of potential data requests[1] each state Commission could serve upon competitive telecommunications service providers to obtain competitive data, known only to the providers, that is key to developing the record regarding unbundling and impairment. The proposed data requests are grouped by major category that may be at issue in the state Triennial Review proceedings. As used in these requests, "Retail customer" means the entity to which retail services are provided in the state. This entity may have either a single location or multiple locations within the state. If the entity has multiple locations, count that entity as one customer.

REVENUES PER LINE

1. Please provide the average total revenue per line (e.g., line rental, vertical service, access, subscriber line charge, local number portability, etc.) that your entity receives from its residential customers within state XYZ. Please provide this information disaggregated as follows:
   - Total revenue per residential line.
   - Long distance revenues per residential line, separately identifying intraLATA and interLATA revenues.
   - Access revenues per residential line received from Toll carriers.

Sample form for response to Revenues Per Line Question #1 (**Residential**)				
			Long Distance revenue/line	
State	Total revenue/line	Access revenue/line from Toll carriers	IntraLATA	InterLATA

[1] It is critical that each data request be worded as clearly and unambiguously as possible to preclude delays caused by misinterpretations and requests for clarification. It is also important that the number of questions be limited to only those that are essential to obtaining data that is known only by the CLEC.

2. Please provide the average total revenue per line (e.g., line rental, vertical service, access, subscriber line charge, local number portability, etc.) that your entity receives from its business customers within state XYZ. Please provide this information disaggregated as follows:
   - Total revenue per business line.
   - Long distance revenues per business line, separately identifying intraLATA and interLATA revenues.
   - Access revenues per business line received from Toll carriers.

Sample form for response to Revenues Per Line Question #2 (**Business**)				
			Long Distance revenue/line	
State	Total revenue/line	Access revenue/line from Toll carriers	IntraLATA	InterLATA

3. Please provide the average total revenue per line (e.g., line rental, vertical service, access, subscriber line charge, local number portability, etc.) that your entity receives from its entire customer base (residence and business combined) within state XYZ. Please provide this information disaggregated as follows:
   - Total revenue per line (residence and business combined).
   - Long distance revenues per line (residence and business combined), separately identifying intraLATA and interLATA revenues.
   - Access revenues per line (residence and business combined) received from Toll carriers.

Sample form for response to Revenues Per Line Question #3 (**aggregate**)				
			Long Distance revenue/line	
State	Total revenue/line	Access revenue/line from Toll carriers	IntraLATA	InterLATA

4. Please provide the total special access and private line revenue that your entity receives from its business customers within state XYZ. Please provide this information disaggregated as follows:

- Total Special Access and Private Line revenue.
- Special Access revenues for dedicated circuits delivered to IXC points of presence (POPs).
- Private Line revenues for dedicated circuits from one end user location to another end user location that are IntraLATA.

- Private Line revenues for dedicated circuits from one end user location to another end user location that are InterLATA.

Sample form for response to Special Access &Private Line Revenues Question #4 (**Business**)				
			Private Line	
State	Total Special Access and Private Line Revenue	Special Access revenue for circuits delivered to IXC POP	IntraLATA	InterLATA

LOCAL SWITCHING

1. Please access website http://www.TRAinfo.com showing publicly available specifications from the LERG Routing Guide of all central office switches currently in place in state XYZ. Please confirm whether the information in the LERG is current and accurate for the switches for which your entity is responsible in state XYZ, and if not, please report any additions, deletions or changes. Also, please verify that the CLLI code is accurate for each switch for which your entity is responsible and that the LERG definition of the function of each switch (i.e., tandem, end office, etc.) is accurate.
2. For each switch for which your entity is responsible within state XYZ, please report (in Excel spreadsheet format) whether that switch is currently providing switching for local voice grade services, tandem switching[2] for voice calls, or both. Also, please provide traffic volume for local traffic and tandem traffic, expressed in minutes of use, for each switch for which your entity is responsible for full year 2002. If that data is not available, please provide this information for the most recent 12-month period for which this data is available.

Sample form for response to Local Switching Question #2						
State	LATA #	Switch CLLI Code	Street address	City	Type of traffic (L,T,B)*	2002 Voice Traffic (MOU)

* L = local, T = Tandem, B = Both

3. For each switch for which your entity is responsible within state XYZ, please report (in Excel spreadsheet format) if each switch is providing voice grade services in a LATA other than the LATA within which the switch is located.

[2] Tandem switching is defined as switching of telephone traffic between two subtending end offices.

- If yes, please identify the switch (by CLLI) and the LATA(s) served by each switch.
- If yes, please report the volume of such traffic (expressed in minutes of use) for the most recent 12-month period.
- Also, if yes, please report the manner by which such traffic is transported to the switch (i.e., transport purchased from a provider other than Qwest, transport purchased from Qwest, EELs or transport via facilities owned by your entity).
- If you are serving voice grade customers in this state via a switch located in another state, please identify the state in which the switch is located and the means by which you transport traffic from this state to that switch.

Sample form for response to Local Switching Question #3				
Switch CLLI Code	State in which serving switch is located	Non-home LATA* number in which voice traffic originates/terminates	Non-home LATA voice traffic volume in 2002 (MOU)	Means of traffic transport from non-home LATA (owned facilities, facilities leased from non-Qwest entity, EELs, facilities leased from Qwest)

*Non-home LATA means any LATA other than the LATA within which the switch is located.

4. For each switch for which your entity is responsible within state XYZ, please report (in Excel spreadsheet format) the level of traffic supported by that switch relative to maximum capacity of the switch expressed as a percentage (i.e., number of CCS at average busy hour divided by maximum CCS capacity of the switch).
   - Also report the percentage change in that value over the most recent 12-month period.
   - For each such switch, please report whether the local switching capacity of the switch can be expanded via modular hardware additions.

Sample form for response to Local Switching Question #4					
Switch CLLI Code	(A) Average Busy Hour CCS (March 2003)	(B) Maximum Switch Busy Hour Capacity	(C) % Average Busy Hour CCS of Maximum Switch Busy Hour Capacity (Column A/B)	% Change in Column C value from 3/2002 to 3/2003	Switch expandable beyond current capacity via modular hardware? (y/n)

5. Please report (in Excel spreadsheet format), by switch, the number of in-service telephone numbers ported from Qwest wire centers, listing each wire center, as well as the total number of all in-service telephone numbers active in each switch as of

March 2003. (NOTE: if information regarding Qwest wire center from which numbers were ported is not available to you, simply provide the data for each switch as identified by its CLLI code).

Sample form for response to Local Switching Question #5				
		(A)	(B)	(C)
Switch CLLI Code	Qwest Wire Center	Total in-service telephone numbers ported from Qwest as of March 2003	Total of all in-service telephone numbers as of March 2003	Percentage ported numbers in service to all in-service numbers (A/B)

6. For each switch providing switching for local voice services within state XYZ, please report (in Excel spreadsheet format) whether that switching is supporting retail local exchange services provided directly by your entity to end users, versus switching that is provided on a wholesale basis to a local exchange provider other than your entity. In each instance, if the response is yes, please report the percentage of "in service" switching ports relative to total switching ports in the switch.

Sample form for response to Local Switching Question #6				
Switch CLLI Code	Switch serving retail local exchange customers? (y/n)	(if yes) % of switching ports in service	Switch serving 3rd party local service providers? (y/n)	(if yes) % of switching ports in service

7. Please identify each entity, other than Qwest, from which you are obtaining interoffice tandem switching in state XYZ.
8. For each switch providing switching for local voice calls within state XYZ, please report (in Excel spreadsheet format) the number of local exchange access lines[3] currently served by that switch.
   - Also, please report the number of customers, by wire center (or by switch CLLI code if data unavailable at the wire center level), currently served by that switch as well as the total number of customers within the geographic area served by that switch that can be considered within your addressable market (the addressable market should be considered to be all customers that can potentially be served by facilities owned by your entity or facilities leased by you from a provider other than Qwest, or by leasing UNE loops (or EELs) from Qwest). **NOTE: this question should also be served on Independents to capture these entities' activities in Qwest territory.**

Sample form for response to Local Switching Question #8						
Switch CLLI code	Residential Voice Grade Equivalent Lines in service as of 3/03	Residential customers in service as of 3/03	Total residential customers in addressable market	Business Voice Grade Equivalent Lines in service as of 3/03	Business customers in service as of 3/03	Total business customers in addressable market

[3] Access lines should be counted in precisely the same manner in which the FCC directs carriers to report access lines through the Form 477 reporting process. Specifically, the FCC directs carriers to:

> Count as one voice-grade equivalent line: traditional analog POTS lines, Centrex-CO extensions and Centrex-CU trunks. Count lines based on how they are charged to the customer rather than how they are physically provisioned...Report 8 voice-grade equivalent lines if a customer buys 8 trunks that happen to be provisioned over a DS1 circuit. If a customer buys a DS1 circuit that is provided as a channelized service, report 24 voice-grade lines, even if there is some indication that the customer is only using 8 of the derived lines.

9. If you offer intrastate switched access service to other carriers, please report your current switched access prices in state XYZ.
10. If you offer intrastate-switched access service in state XYZ, for each month since December 2001, please report (in Excel spreadsheet format) total revenue received for intrastate-switched access service.
11. If you offer intrastate long distance service to end users in state XYZ, please report total intrastate long distance minutes of use and revenue for full years 2001 and 2002.

Sample form for response to Local Switching Question #11				
State	2001 intrastate long distance minutes of use	2001 intrastate long distance revenue	2002 intrastate long distance minutes of use	2002 intrastate long distance revenue

UNBUNDLED LOOP

1. Please report (in Excel spreadsheet format) the number of DS0 level (voice grade) residential and business lines in state XYZ served by Loops or lines that you provide switching functionality for those switch entities identified under switching. Separate by facilities leased from Qwest and those connected, lines derived from your facilities and lines leased from an entity other than Qwest.

Sample form for response to Unbundled Loop Question #1						
State	Residential			Business		
	# DS0 lines served via your facilities	# DS0 lines served via Qwest leased facilities	# DS0 lines served via leased from third party	# DS0 lines served via your facilities	# DS0 lines served via Qwest leased facilities	# DS0 lines served via leased from third party

2. Please report (in Excel spreadsheet format) the number of DS1 level business lines in state XYZ served by Unbundled Loops that you provide switching functionality for those switch entities identified under switching. Separate by facilities leased from Qwest and those connected, lines derived from your facilities and lines leased from an entity other than Qwest.

Sample form for response to Unbundled Loop Question #2			
State	Business		
	# DS1 lines served via your facilities	# DS1 lines served via Qwest leased facilities	# DS1 lines served via leased from third party

TRANSPORT

1. Please report (in Excel spreadsheet format) the number of transport terminations for transport facilities between two Qwest central office switches in state XYZ served via network facilities owned by your entity, or leased from an entity other than Qwest, and also break down this total by wire center in which those terminations are located (NOTE: if data unavailable by wire center, please report the data by city).

Sample form for response to Transport Question #1			
State	Wire Center	# of terminations served via facilities owned by your entity	# of terminations served via facilities obtained from a non-Qwest entity

2. Please report (in Excel spreadsheet format) the number of transport terminations for transport facilities between a Qwest switch and a CLEC switch in state XYZ served via network facilities owned by your entity, or leased from an entity other than Qwest, and also break down this total by wire center in which those terminations are located (NOTE: if data unavailable by wire center, please report the data by city).

Sample form for response to Transport Question #2			
State	Wire Center	# of terminations served via facilities owned by your entity	# of terminations served via facilities obtained from a non-Qwest entity

3. For state XYZ, please provide a current mapping of all existing standard copper, COAX, fiber facilities (including points of access to these facilities) and microwave routes in state XYZ owned by your entity. This mapping should contain a view at the state level showing major facility routes owned by your entity, and metropolitan area mapping showing specific facility routes within any and all metropolitan areas in which your network facilities are now located.
   - Please report available capacity of all standard copper, COAX, fiber facilities and microwave routes installed and owned by your entity in state XYZ.
4. Please report details (purchaser of capacity, specific routes involved, type of transport, number of circuits purchased) regarding any capacity on your network facilities currently being leased, resold or otherwise provided to a telecommunications provider other than your entity.
5. If you currently obtain interoffice transport within state XYZ from a company other than Qwest, please report which entity you currently obtain this service from, and also report the routes involved as well as number/type of transport facilities being purchased. Please report separately the quantity of DS0, DS1, DS3 optical carrier level (OC) and dark fiber connections you currently are purchasing, leasing or otherwise are being provided from non-Qwest entities.

Sample form for response to Transport Question #5				
State	Entity from which transport is obtained	Originating and terminating points of each transport facility leased	Type of transport leased (DS0,DS1,DS3, OC,dark fiber))	Quantity of transport connections leased, by type (as of 3/03)

SIGNALING

1. If you currently obtain network signaling from a company other than Qwest, please report each entity from which you currently obtain signaling.
   - If your answer is affirmative, please report when you initially began purchasing signaling from the non-Qwest entity.
2. If you currently provide your own signaling network, please report the manner in which you interconnect that network with Qwest's signaling network (i.e., A-Link, B-Link, etc.).
3. If you currently provide your own signaling network, do you offer use of your signaling network to other companies as a service or product? If so, what are your rates with respect to this service (in either the state or FCC tariff, whichever is applicable to your offering)?
4. If you offer use of your signaling network to other companies, for each month since December 2001 in state XYZ, please report total revenue received for this service.

SERVICE AT DS1 AND ABOVE

1. If you currently provide services operating at DS-1and above (i.e., Digital Switched Service, Primary Rate Interface, etc) that terminate directly at end users' premises, please provide the city name, wire center and street address associated with each such termination.
   - Also, please report the service being provided at each such address (e.g., local switched service, high-speed data, video, etc).
   - For those services operating at DS-1 level or above, identify what category of facilities over which they are being provided (e.g., fiber, COAX, copper, radio, wireless, fixed wireless).
   - For those services operating at DS-1 level or above provided over network facilities obtained from another entity, please provide the name of the entity from which you obtain the facility and identify the type of facility used in providing the DS-1-level service to the end user.

Sample form for response to "DS1 and above" Question #1

State	City	Wire Center	Street Address termination at end user premises	Type of service provided (local switched, data, video)	Category of facility over which service is provided (e.g., fiber, COAX, copper, radio, wireless, fixed wireless)	Name of third party entity from which DS-1 level or above transport is obtained	Type of DS-1 level or above transport facility obtained from third party (e.g., fiber, COAX, copper, radio, wireless, fixed wireless)

LINE SHARING

1. Please report the number of broadband customers (residential and business separately) you currently serve in state XYZ as of March 2003. (Note: this question should be served on cable, satellite and DSL broadband providers and CLECs). Also, please report these numbers for December 31, 2001 (or the earliest date upon which you began serving retail customers in state XYZ).
2. Please report (in Excel spreadsheet format) the number of residential and business customers served via DSLAMs to whom you currently provide data services via network facilities owned by you or via facilities purchased by you from non-Qwest entities. These totals should be broken down by city for each city in which you are now providing data-related and/or Internet services.

Sample response form for Line Sharing Question #2					
		# of Residential customers purchasing data/internet services (3/03)		# of Business customers purchasing data/internet services (3/03)	
State	City	Served via facilities owned by your entity	Served via facilities leased from another entity	Served via facilities owned by your entity	Served via facilities leased from another entity

3. Please list each non-Qwest entity in state XYZ from which you are now technically able to obtain network facilities that can be used to provide data-related and/or Internet services to retail end users.
4. Please report (in Excel spreadsheet format) the number and location of DSLAMs owned, leased or otherwise controlled by you that provide service to customers in state XYZ.

Sample response form for Line Sharing Question #4			
State	City	Street address location of DSLAM	Collocated in Qwest central office? (y/n)

5. Report (in Excel spreadsheet format) the number of customers served by DSLAMS are owned, leased or otherwise controlled by you in each of the two scenarios:
   - DSLAMs located in Qwest central offices in XYZ state.
   - DSLAMs located remotely in Qwest remote terminals or "collocation hotels" by Qwest wire center in XYZ state.

Sample response form for Line Sharing Question #5				
State	City	Street address of DSLAM in Qwest central office	# of residential customers served from DSLAM (3/03)	# of business customers served from DSLAM (3/03)
		Street address of DSLAM located in Qwest remote terminal or "collocation hotel."	# of residential customers served from DSLAM (3/03)	# of business customers served from DSLAM (3/03)

6. Please report the average (Mean and Mode) time in days between the loss of a customer served by a DSLAM owned, leased or otherwise controlled by you and the subsequent activation of another customer using that same DSLAM.
7. Please report (in Excel spreadsheet format) past forecasts of customers for 2002 served via line sharing per DSLAM in state XYZ. Also report actual customers served via line sharing per DSLAM for the same forecast period.

Sample response form for Line Sharing Question #7			
State	DSLAM location (street address)	Forecast of customers served by DSLAM (as of 12/02)	Actual number of customers served by DSLAM (as of 12/02)

8. Please report, for each Qwest central office and remote terminal where you have DSLAMs collocated, the total number of line sharing terminations associated with those DSLAMs. Also report the total available number of line sharing terminations associated with those DSLAMs that are currently in service.

Sample response form for Line Sharing Question #8				
State	City	DSLAM location (street address)	# of line sharing terminations in service (3/03)	Total # of available line sharing terminations for DSLAM

DATABASES

1. If you currently obtain directory assistance database functions from a company other than Qwest, please report each entity from which you currently obtain these functions.
2. If you currently obtain CNAM functions from a company other than Qwest, please report each entity from which you currently obtain these functions.
3. If you self-provision Local Number Portability, "8XX" or LIDB databases, please report which type of database you self-provision and the geographic location at which the database is housed. If you do not self-provision any of these databases, please affirmatively state that fact.

APPROVED

DATE: 7-16-03

KMF

MOTION

July 16, 2003

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission bill Qwest Corporation for costs incurred to date in Case No. PU-439-03-295, Public Service Commission, Local Competition, Investigation.

Public Service Commission
State of North Dakota

COMMISSIONERS

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Leo M. Reinbold
Susan E. Wefald

Executive Secretary
Jon H. Mielke

600 E Boulevard Ave. Dept. 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: sab@psc.state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

July 16, 2003

Scott Macintosh
Qwest Corporation
PO Box 5508
Bismarck ND 58502-5508

RE: Case No. PU-439-03-295
Public Service Commission
Local Competition
Investigation

Enclosed is a copy of the statement approved at the July 16, 2003 Public Service Commission meeting for the expenses incurred to date in Case No. PU-439-03-295.

Under N.D.C.C. 49-21-01.7, these expenses are billed through the Valuation Fund and must be paid for by the telecommunications company involved.

Please make your check payable to the *Public Service Commission.*

Sincerely,

Gloria Geiger
Admin Staff Officer
701-328-2401

Enc.

Billing Statement

July 16, 2003

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

Bill To:

Qwest Corporation $862.93

Expenses Incurred to Date:

Advertising Costs	$862.93

Send Payment and a Copy of this Statement To:

Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480

Federal Tax ID 45-0309764

RECEIVED
JUL - 2 2003
NORTH DAKOTA PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

Affidavit of Publication

Colleen Park, being duly sworn, state as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.

2. The newspapers listed on the exhibits published the advertisement of:
PSC, Trienniel Review, 1 time(s)
as required by law or ordinance.

3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

Signed: Colleen Park

State of ND

County of Burleigh

Subscribed and sworn to before me this 1st day of July 20 03.

Kelli Richey

KELLI RICHEY
Notary Public
State of North Dakota
My Commission Expires Oct. 13, 2006

6 PU-439-03-295 Pages: 1

Affidavit of Publication

by North Dakota Advertising Service, Inc.

07/02/2003 CC: Comm Legal PUD (3)

North Dakota Newspaper Association
1435 Interstate Loop
Bismarck, ND 58503-0567
Ph (701) 223-6397 • Fax (701) 223-8185

INVOICE

JUL - 2
EXECUTIVE SECRETARY

Order **17793-03064PP1** Invoice # **19860** July 1, 2003

Attn: JONH. MIELKE
PUBLIC SERVICE COMMISSION
600 E. BOULEVARD AVE.
STATE CAPITOL
BISMARCK, ND 58505
Voice: 701-328-4076

Advertiser: **Public Service Commission**
P.O.#:
Amount Due **$862.93**
Amount Paid

Please detach and return this portion with your payment

Public Service Commission Invoice # 17793-03064PP1-19860

Ad Size	*Rate Type*	*Rate*	*Total*	*Discount*	*(%)*	*Caption*	*Page*	*Run Date*
			DAILY					
Bismarck Tribune (Bismarck ND)								
135.00	SPR2	0.64	86.40	0.00		PSC Triennial Review		06/24/03
Devils Lake Daily Journal (Devils Lake ND)								
139.00	SPR2	0.63	87.57	0.00		PSC Triennial Review		06/24/03
Dickinson Press (Dickinson ND)								
149.00	SPR2	0.57	84.93	0.00		PSC Triennial Review		06/24/03
Fargo, The Forum (Fargo ND)								
126.00	SPR2	0.71	89.46	0.00		PSC Triennial Review		06/30/03
Grand Forks Herald (Grand Forks ND)								
129.00	SPR2	0.69	89.01	0.00		PSC Triennial Review		06/24/03
Jamestown Sun (Jamestown ND)								
154.00	SPR2	0.54	83.16	0.00		PSC Triennial Review		06/24/03
Minot Daily News (Minot ND)								
161.00	SPR2	0.54	86.94	0.00		PSC Triennial Review		06/24/03
Valley City Times-Record (Valley City ND)								
141.00	SPR3	0.61	86.01	0.00		PSC Triennial Review		06/24/03
Wahpeton Daily News (Wahpeton ND)								
166.00	SPR3	0.51	84.66	0.00		PSC Triennial Review		06/24/03
Williston Herald (Williston ND)								
139.00	SPR2	0.61	84.79	0.00		PSC Triennial Review		06/24/03

Gross Advertising	862.93	Total Misc	0.00	Amount Paid	0.00
Agency Discount		Tax	0.00	Adjustments	0.00
Other Discount	0.00	Total Billed	862.93	Payment Date	
Service Charge	0.00	Unbilled	0.00	Balance Due	862.93

Case No: PU-439-03-295

Notice of Investigation, request for intervention, and request for information

Published in:

6/24 – Bismarck

6/24 – Devils Lake

6/24 – Dickinson

6/30 – Fargo

6/24 – Grand Forks

6/24 – Jamestown

6/24 – Minot

6/24 – Valley City

6/24 – Wahpeton

6/24 – Williston

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

AFFIDAVIT OF SERVICE BY ORDINARY AND ELECTRONIC MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **19th day of June, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, each containing a photocopy of:

> **Notice of Investigation, Notice of Intervention, and Notice of Request for Information**

The envelopes were addressed as follows:

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Sharon Helbling

Subscribed and sworn to before me
this **19th day of June, 2003**.

Sandra L. Scott
Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

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Consolidated Telcom
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Continental FS Communications
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Deming NM 88030

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Evercom Systems Inc
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Chere Heintzmann
Extend America Inc
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Dave Waters
Fairpoint Communications Solutions
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Flatel Inc
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Fleischman & Walsh
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Ronald Rodemerk
Frontier Comm International
180 S Clinton Ave
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Global Tel*Link Corporation
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Mobile AL 36607-3104

Lucille Nilson
Griggs County Telephone Co
Cooperstown ND 58425

Group Long Distance Inc
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Irvine CA 92618-1806

Guaranteed Phone Service
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Council Bluffs IA 51501-3605

HJN Telecom Inc
3235 Satellite Blvd Bldg 400 Ste 300
Duluth GA 30096

Houlton Enterprises Inc
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Englewood CO 80112

Robert K Johnson
IdeaOne Telecom Group LLC
3239 39th St SW
Fargo ND 58104

Ken Hanks
International Telcom Ltd
417 2nd Ave W
Seattle WA 98119

Intrado Communications Inc
1601 Dry Creek Dr
Longmont CO 80503-6493

David A. Huberman
Intrado Communications Inc
1601 Dry Creek Dr
Longmont CO 80503-6493

Nanette Edwards
ITC DELTACOM INC
4092 Memorial Pkwy SW
Huntsville AL 35802-1382

Larry Barnes
IXC/SSC-Regulatory Affairs
1122 S Capital of TX Hwy
Austin TX 78746-6426

James Valley Coop Telephone Co
P O Box 69
Ellendale ND 58436-0069

Joseph B McNeal
P O Box 15509
Boise ID 83715

Katherine E Ford
U S WEST
1801 California St Ste 5100
Denver CO 80202

KMAV AM/FM RADIO
PO Box 216
Mayville ND 58257-0216

KMC Telecom V Inc
1545 Rt 206
Bedminster NJ 07921

Myer Shark
Knollwood Place Apts #221
3630 Phillips Pkwy
St Louis Park MN 55426

Thomas K Crowe
Law Offices of Thomas K Crowe PC
2300 M St NW Ste 800
Washington DC 20037

Level 3 Communications LLC
3555 Farnam St
Omaha NE 68131

Local Telcom Holdings LLC
485 Madison Ave 15th Fl
New York NY 10022-5803

Jan Lowe
Long Dist Consolidated Billing Co
145 S Livernois Rd #199
Rochester MI 48307-1837

Steven Katka
Loretel Systems Inc
13 E 4th Ave
Ada MN 56510

Max-Tel Communications Inc
P O Box 280
Alvord TX 76225

Marilyn Foss
MCI WorldCom Inc
707 17th St Ste 3600
Denver CO 80202

Michel Murray
MCI WorldCom Inc
707 17th St Ste 3600
Denver CO 80202

MCImetro Access Transmission Services
707 17th ST Ste 3600
Denver CO 80202

McKenzie Consolidated Telecom LLC
P O Box 1140
Watford City ND 58854-1140

Midcontinent Communications
410 South Phillips Ave
Sioux Falls SD 57104

Mid-Rivers Telephone Coop Inc
P O Box 280
Circle MT 59215

Gordon Wilhelmi
Midstate Communications Inc
PO Box 400
Stanley ND 58784-0400

Mark Wilhelmi
Midstate Telephone Co
PO Box 400
Stanley ND 58784-0400

Philip Schenkenberg
Midwest Wireless Corp LLC
2200 1st Nat'l Bk Bldg
332 Minnesota St
St Paul MN 55101

Minnesota Independent Equal Access Corp
c/o Onvoy Inc
300 S Hwy 169
Minneapolis MN 55426

Richard Oakley
Minnesota PCS LP
13810 24th Ave N
Plymouth MN 55441

Mike Sprang
MITS
PO Box 5237
Helena MT 59604-5237

Mobile Communications Corporation
1800 W Park Dr
Westborough MA 01581-3912

Jim Arbury
National Multi Housing Council
1850 M St NW Ste 540
Washington DC 20036

Dave Crothers
NDATC
Box 1144
Mandan ND 58554-1144

Richard Thronson
Nemont Telephone Cooperative Inc
Scobey MT 59263

New Edge Network Inc
3000 Columbia House Blvd Ste 106
Vancouver WA 98661

Nextel West Corp
2001 Edmund Halley Dr
Reston VA 20191-3436

Dave Dircks
North Dakota Long Distance Inc
P O Box 180
Devils Lake ND 58301-0180

Warren Hight
North Dakota Network Co
P O Box 2027
Minot ND 58702-2027

Dave Dircks
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

Glenn Stockton
NOS Communications Inc
4380 Boulder Hwy
Las Vegas NV 89121

NOW Communications Inc
711 S Tejon St Ste 201
Colorado Springs CO 80903

Mary Buley
Onvoy Inc
300 South Highway 169
Minneapolis MN 55426

Brad Van Leur
OrbitCom Inc
1701 N Louise Ave
Sioux Falls SD 57107

Jeff Walker
Preferred Carrier Services Inc
14681 Midway Rd Ste 105
Dallas TX 75001

Primus Telecommunications Inc
1700 Old Meadow Rd 3rd Fl
McLean VA 22102

QuantumShift Communications Inc
88 Rowland Way Ste 200
Novato CA 94945-5000

Qwest Interprise America Inc
1801 California St 49th Fl
Denver CO 80202

Kimberly Nielson
RTC-1
Legal & External Affairs
7277 164th Ave NE
Redmond WA 98052

Sandra Adams
NewPath Holdings Inc
4364 114th St
Des Moines IA 50322

ServiSense.com Inc
180 Wells Ave Ste 450
Newton MA 02459-3302

NPCR Inc
4500 Carillon Point
Kirkland WA 98033

Holly Sasscer
Operator Communications Inc
3530 Forest Ln Ste 200
Dallas TX 75234-7910

Pilgrim Telephone Inc
1013 Centre Rd
Wilmington DE 19805

Premiere Network Services Inc
1510 N Hampton Rd Ste 120
DeSoto TX 75115

Scott Lee
Protel Advantage Inc
1308 Medora Rd
St. Paul MN 55118-1734

Heather Troxell
Qwest Communications Corporation
4250 Fairfax Dr
Arlington VA 22203

Dean Polkow
RCC Network Inc
PO Box 2000
Alexandria MN 56308-2000

Dean Polkow
Rural Cellular Corporation
P O Box 2000
Alexandria MN 56308

ServiSense.com Inc
115 Shawmut Rd
Canton MA 02021-1438

Lisa Dabkowski
SNET America Inc
310 Orange St
North Haven CT 06510-1719

Andrew Jones
Sprint
6391 Sprint Pkwy
Overland Park KS 66251-6100

Sprint Spectrum L P
6160 Sprint Pkwy 4th Fl KSOPHIO414
Overland Park KS 66251

SRT Communications Inc
P O Box 789
Minot ND 58702-0789

Randy Burckhard
SRT Communications Inc
P O Box 789
Minot ND 58702-0789

Harris Saele
T P C Inc
PO Box 180
Devils Lake ND 58301-0180

Jack Medaris
Telco Partners Inc
P O Box 807
Conshohocken PA 19428-0807

Al Bosch
Tele-Beep Company
PO Box 7072
Bismarck ND 58502-7072

Telera Communications Inc
910 E Hamilton Ave Ste 200
Campbell CA 95008

Telespectrum Communications Inc
219 NP Ave
Fargo ND 58102-4833

Tele-Tech Inc
2900 W 11th St
Sioux Falls SD 57104-3660

Jonathan Marashlian
The Helein Law Group P C
8180 Greensboro Dr Ste 700
McLean VA 22102

T-Netix Inc
P O Box 701028
Dallas TX 75370-1028

Touch America Inc
40 E Bdwy
Butte MT 59701

Kenneth Carlson
Turtle Mountain Communications
PO Box 729
Langdon ND 58249-0729

Dan Willis
TW Wireless LLC
1860 Lincoln St 14th Fl
Denver CO 80295

United Communications HUB Inc
10390 Commerce Ctr Dr Ste 250
Rancho CA 91730-5860

Sam Billingsley
United States Advanced Network Inc
3080 Northwoods Cir
Norcross GA 30071-1562

Kenneth Carlson
United Telephone Mut Aid Corp
Langdon ND 58249

Christina Tygielski
Universal Access Inc
Sears Tower 233 S Wacker Dr Ste 600
Chicago IL 60606-6307

Dennis Houston
Universal Network Services of ND
1572 North Batavia St Ste 1A
Orange CA 92867

US West NewVector Group Inc
3350 161st Ave SE
Bellevue WA 98009-9697

USA Digital Inc
100 W Lucerne Circle Ste 600
Orlando FL 32801

Val-Ed Joint Venture LLP
150 2nd St SW
Perham MN 56573

VarTec Telecom Inc
1600 Viceroy Dr
Dallas TX 75235

Randy Houdek
Venture Communications Inc
PO Box 157
Highmore SD 57345-0157

David Armey
Verizon Communications
600 E Hidden Ridge HQE02i33
Irving TX 75038

Molli Harper
Verizon Wireless
6350 E Crescent Pkwy Ste 200
Greenwood Village CO 80111

Joseph B McNeal
WaveSent LLC
P O Box 15509
Boise ID 83715

West River Coop Telephone Co
P O Box 39
Bison SD 57620-0039

Darrell Henderson
West River Cooperative Telephone Company
PO Box 39
Bison SD 57620-0039

Doris Cooper
West River Long Distance Co
PO Box 467
Hazen ND 58545-0467

Mick Grosz
West River Telecomm Coop
PO Box 467
Hazen ND 58545-0467

Western CLEC Corporation
3650 131st Ave SE #400
Bellevue WA 98006

WTC Competitive Services Inc
P O Box 129
Wolverton MN 56594

Gene DeJordy
WWC Holding Co Inc
3650 131st Ave SE
Bellevueq WA 98006

Z-Tel Communications Inc
601 S Harbour Island Blvd Ste 220
Tampa FL 33602-5925

Helbling, Sharon D.

From: Helbling, Sharon D.
Sent: Wednesday, June 18, 2003 3:43 PM
To: ndna (E-mail)
Subject: Three Notices-PU-439-03-295; PU-439-03-309 and PU-2342-01-296

Colleen Park
North Dakota Newspaper Association

Colleen:

Please have the three attached Notices published as legal publications in the next issue of the ten North Dakota daily newspapers, and run them as "News Item Only" articles as well.

Send the bill to the Public Service Commission, along with a tear sheet for billing purposes.

If you have any questions, please call me at 701-328-4076.

Thank you.

Sharon Helbling
Public Utilities Division

4 **PU-439-03-295** Pages: 1

Notice e-mailed to NDNA requesting publication
by Public Service Commission

06/18/2003 CC: Comm Legal PUD (3)

APPROVED
DATE: 6-18-03
KMF

MOTION

June 18, 2003

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

I move the Commission issue a Notice Of Investigation, Request For Intervention, and Request For Information in the Public Service Commission's Local Competition Investigation, Case No. PU-439-03-295.

PJF

3 **PU-439-03-295** Pages: 1

Motion

by Public Service Commission

06/18/2003 CC: Comm Legal PUD (3)

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

NOTICE OF INVESTIGATION, REQUEST FOR INTERVENTION, AND REQUEST FOR INFORMATION

June 18, 2003

The Commission issues this document to inform interested parties of an investigation, to request information, and to request that interested parties file requests to intervene in a proceeding to address issues related to the Federal Communications Commission's (FCC) Triennial Review Order.

Under section 251(c)(3) of the Telecommunications Act of 1934 as amended in 1996 (Act), incumbent local exchange carriers have the duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis.

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

In its *UNE Remand Order*,[1] the FCC held with regard to non-proprietary network elements that:

> [T]he failure to provide access to a network element would "impair" the ability of a requesting carrier to provide the services it seeks to offer if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a requesting carrier's ability to provide the services it seeks to offer.[2]

On February 20, 2003, the FCC adopted rules in Docket No. CC 01-338 concerning incumbent local exchange carrier's (ILEC's) obligations to make elements of their networks available on an unbundled basis to new entrants. This proceeding is referred to as the FCC's first Triennial Review. The actual Triennial Review Order (Order) has not been issued. All that interested parties have available at this point is a two-page FCC Press Release with a four-page Attachment (Attachment) that describes general conclusions, some of which may change.

[1] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3766, (*UNE Remand Order*)

[2] *Id.* at 3725, para. 51 (emphasis added).

According to the Attachment, states will have 90 days from the effective date of the Order to rebut the FCC presumption that competitive local exchange carriers' (CLEC's) ability to compete in North Dakota is not impaired if ILECs are no longer required to provide local circuit switching as an unbundled element for business customers served by DS1 and above high-capacity loops.

We encourage any party desiring to intervene in the proceeding to file a Petition to Intervene as early as possible. However, the Commission will provide another opportunity to intervene at a later date. Also, in order to obtain the factual information necessary to make findings in the timeline provided by the FCC's Triennial Review Order, the Commission is requesting that local exchange carriers file factual information necessary to address the impairment issue(s). Written comments must be filed by **July 23, 2003**. We understand that the responses will represent the parties' best efforts to interpret the limited information available from the FCC and those responses could be subject to change based on the language of the actual Triennial Review Order.

Examples of the information requested by the Commission include:
For each switch and DSLAM (Digital Subscriber Line Access Multiplexers) for which your entity is responsible within North Dakota, please report:

- Whether the switch is owned by your entity, leased from another entity, or otherwise controlled by your entity;
- the location of each switch and the telephone exchange(s) served by the switch;
- the level of traffic supported by each switch relative to the maximum capacity of the switch expressed as a percentage;
- the percentage change in that value for each switch over the most recent 12-month period;
- whether that switch is providing local switching for mass market services, tandem switching for mass market services, local switching for DS1 and above services, or tandem switching for DS1 and above services;
- any other information relevant to the issues in this proceeding.

For more information concerning this investigation, contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Jon Mielke, Executive Secretary.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Leo M. Reinbold**
Commissioner	**President**	**Commissioner**

PL-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Jim Goodwin
Qwest Corporation
1801 California St Ste 4900
Denver Co 80202

A. Signature

X [redacted]

B. Received by (Printed Name) [redacted] Date 11-6

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7003 1680 0004 9646 2804

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-154

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Jim Goodwin
Qwest Corporation
1801 California St Ste 4900
Denver Co 80202

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] C. Date of Delivery 10-31

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 4217

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Steven L Noack
500 2nd Ave N Ste 514
Fargo ND 58108-2783

A. Signature
X D. Hestbeck ☑ Agent ☐ Addressee

B. Received by (Printed Name) Donna Hestbeck C. Date of Delivery 10-31-03

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☑ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 4248

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Susan Travis
WorldCom Inc
707 17th St Ste 4200
Denver Co 80202

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] C. Date of Delivery 10-31-3

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 4231

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Mary B Trudy
OLL Law Dept
1875 Lawrence St Ste 1575
Denver Co 80202

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery
OCT 31 2003

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 4170

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Marilyn Foss
PO Box 2216
Bismarck ND 58502-2216

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) MARILYN FOSS | C. Date of Delivery 10-21-03

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 4224

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Gary B Witt
OLL Law Dept
1875 Lawrence St Ste 1575
Denver Co 80202

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery
OCT 31 2003

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 4194

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PM

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dan Kuntz
PO Box 1695
Bismarck ND 58502-1695

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery
10-30-03

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 4200

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Don Reggard
Pringle & Herigstad
PO Box 1000
Minot ND 58702-1000

A. Signature
X Amala Keller ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery
Amala Keller

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No
30 OCT 2003

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 4255

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-09

PU-439-03-295

PM

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dan Kuntz
PO Box 1695
Bismarck ND 58502-1695

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery
9/15/03

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 3098

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-098

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X [signature] ☐ Agent ☒ Addressee

B. Received by (Printed Name) [illegible] C. Date of Delivery 9/15/3

D. Is delivery address different from item 1? ☒ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:
Jim Gotham
Qwest
1801 California St Ste 4900
Denver Co 80202

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 3104

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) K M FERGUSON C. Date of Delivery 9/15

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:
Mary B Tibby
Asst Law Dept
1875 Lawrence St Ste 1575
Denver Co 80202

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 2763

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) K FERGUSON C. Date of Delivery 9/15

D. Is delivery address different from item 1? ☒ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:
Gary B Witt
Asst Law Dept
1875 Lawrence St Ste 1575
Denver Co 80202

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 2787

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Walter F Eggers III
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne Wy 82001-3162

A. Signature
X Cathy J Baker ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 2770

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-098

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Marilyn Foss
PO Box 2216
Bismarck ND 58502-2216

A. Signature
X Marilyn Foss ☐ Agent ☒ Addressee

B. Received by (Printed Name) C. Date of Delivery 9-29-03

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 3227

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dan Kunty
PO Box 1695
Bismarck ND 58502-1695

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 9/29/03

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 3203

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) S. Gonzales
C. Date of Delivery 9-29-3

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

1. Article Addressed to:
Susan Travis
WorldCom Inc
707 17th St Ste 4200
Denver Co 80202

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 3234

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X [signature] ☐ Agent ☑ Addressee

B. Received by (Printed Name) Monica Williams
C. Date of Delivery SEP 29 2003

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:
Mary B. Tribby
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver Co 80202

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 3173

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] 9-29
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:
Jim Gordon
Qwest Corporation
1801 California St Ste 4900
Denver Co 80202

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 3210

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-2439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Gary B Witt
AIG Law Dept
1875 Lawrence St Ste 1575
Denver Co 80202

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Monica D'Ilio C. Date of Delivery SEP 29 2003

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 3197

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-2439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Walter F Eggers III
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne Wy 82001-3162

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 9-29

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 3180

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PY-2439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dan Ripschultz
Moss & Barnett
4800 Wells Fargo Ctr
90 S 7th St
Minneapolis Mn 55402-4129

A. Signature
X [signature] ☑ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 11/3/03

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☑ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 4262

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X Sharon Bell ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:
Walter J Eggers III
Holland & Hart LLP
2515 Warren Ave Ste 450
Cheyenne Wy 82001-3162

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 4187

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-098

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X Mike Fields ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 10 31 0

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

1. Article Addressed to:
Deborah L Harwood
Integra Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton Or 97006-6902

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 4279

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-098

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

07 NOV 2003

A. Signature
X [illegible] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 11-7-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

1. Article Addressed to:
Dan Kuntz
PO Box 1695
Bismarck ND 58502-1695

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2538

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Thomas J Kelsch
PO Box 1264
Mandan ND 58554-7266

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Valene Ehrlich C. Date of Delivery 11/7/03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2774

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Patrick Durick
PO Box 400
Bismarck ND 58502-0400

A. Signature
X [signature] ☐ Agent ☑ Addressee

B. Received by (Printed Name) KRIS JENNINGS C. Date of Delivery 11-7-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2767

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dan Ripschultz
Moss & Barnett
4800 Wells Fargo Ctr
90 S 7th St
Minneapolis MN 55402-4129

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 11-8-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2590

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Steven L Noack
500 2nd Ave N Ste 514
Fargo ND 58108-2783

A. Signature
X Helen M. Barden ☒ Agent ☐ Addressee

B. Received by (Printed Name) Helen M. Barden
C. Date of Delivery 11-10-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2576

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-154

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Steven L Noack
500 2nd Ave N Ste 514
Fargo ND 58108-2783

A. Signature
X Helen M. Barden ☐ Agent ☐ Addressee

B. Received by (Printed Name) Helen M. Barden
C. Date of Delivery 11-10-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2835

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-154

PY-439 MARCH 30 2003 -295

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dan Kunz
PO Box 1695
Bismarck ND 58502-1695

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [signature]
C. Date of Delivery 11-10-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☒ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2798

102595-02-M-15

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Thomas J Kelsch
PO Box 1266
Mandan ND 58554-1266

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery
11-10-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2828

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Patrick Durick
PO Box 400
Bismarck ND 58502-0400

A. Signature
X Renee Friesz ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery
Renee Friesz

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

BISMARCK ND 58501 NOV 12 2003 USPS

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2873

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Marilyn Foss
PO Box 2216
Bismarck ND 58502-2216

A. Signature
X Marilyn Foss ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

BISMARCK ND 58501 NOV 12 2003 USPS

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2552

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Marilyn Foss
PO Box 2216
Bismarck ND 58502-2216

A. Signature
X Marilyn Foss ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery
BISMARCK ND NOV 12 2003 USPS 58501

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2811

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Susan Travis
WorldCom Inc
707 17th St Ste 4200
Denver Co 80202

A. Signature
X S Gingles ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery
S Gingles 11-10-3

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2569

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PY-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Deborah L Harwood
Intega Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton Or 97006-6902

A. Signature
X M Fields ☐ Agent ☑ Addressee

B. Received by (Printed Name) C. Date of Delivery
11 10

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2842

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Walter F Eggers III
Dilland + Hall LLP
2515 Warren Ave Ste 450
Cheyenne Wy 82001-3162

A. Signature
x Jeri Moreno ☐ Agent ☐ Addressee

B. Received by (Printed Name) Jeri Moreno C. Date of Delivery 11-10-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2514

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-154

PU-439-03-295

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Gary B Witt
QLA Law Dept
1875 Lawrence St Ste 1575
Denver CO 80202

COMPLETE THIS SECTION ON DELIVERY

A. Signature
x Monica Williams ☐ Agent ☐ Addressee

B. Received by (Printed Name) Monica Williams C. Date of Delivery NOV 10 2003

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2521

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-154

PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Mary B Lutty
AT&T Law Dept
1875 Lawrence St Ste 1575
Denver Co 80202

A. Signature
x Monica Williams ☐ Agent ☐ Addressee

B. Received by (Printed Name) Monica Williams C. Date of Delivery NOV 10 20

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4913 4422

PS Form 3811, August 2001 Domestic Return Receipt 102595-00-M-154

PL-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Jim Godwin
Qwest Corporation
1801 California St Ste 4900
Denver Co 80202

A. Signature
x [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) MICHELLE DEC 11-10 C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2545

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PL-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
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1. Article Addressed to:
Mary B Lindsay
Q West Law Dept
1875 Lawrence St Ste 1575
Denver Co 80202

A. Signature
x [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery NOV 10 2003

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2781

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

PL-439-03-295

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dan Lipschultz
Moss & Barnett
4800 Wells Fargo Ctr
90 S 7th St
Minneapolis Mn 55402-4129

A. Signature
x [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 11-10-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2859

PS Form 3811, August 2001 Domestic Return Receipt

PU-439-03-295

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dick Thronson Mgr
Missouri Valley Comm
PO Box 600
Scobey Mt 59263-0600

A. Signature
X Valerie Landers ☐ Agent ☐ Addressee

B. Received by (Printed Name) Valerie Landers
C. Date of Delivery 11-10-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2750

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

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- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Deborah Harwood
Integra Telecom
19545 NW Von Neumann Dr Ste 200
Beaverton Or 97006-6902

A. Signature
X M Fields ☐ Agent ☐ Addressee

B. Received by (Printed Name)
C. Date of Delivery 11 10

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2583

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PU-439-03-295

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dick Thronson Mgr
Missouri Valley Comm
PO Box 600
Scobey Mt 59263-0600

A. Signature
X Valerie Landers ☐ Agent ☐ Addressee

B. Received by (Printed Name) Valerie Landers
C. Date of Delivery 11-12-03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 1680 0004 9646 2866

TRIENNIAL REVIEW



16 **PU-439-03-295** Pages: 579

Triennial Review

by Federal Communications Commission (FCC)

08/21/2003 CC: Comm Legal PUD (3)

TRIENNIAL REVIEW

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Pages 1-287

Paragraphs 1-461

TRIENNIAL REVIEW

Vol. 2

Pages 288-485 (end)

Paragraphs 462-840 (end)

Appendix A

Appendix B: Rules

Commissioner Statements

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147

REPORT AND ORDER AND ORDER ON REMAND AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: February 20, 2003 **Released:** August 21, 2003

Comment Date: 30 days after Federal Register publication of this Notice
Comment Reply Date: 60 days after Federal Register publication of this Notice

By the Commission: Chairman Powell and Commissioner Abernathy approving in part, dissenting in part and issuing separate statements; Commissioners Copps and Adelstein approving in part, concurring in part, dissenting in part and issuing separate statements; Commissioner Martin issuing a separate statement.

Para.

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APPENDIX A: LIST OF COMMENTERS
APPENDIX B: FINAL RULES

I. INTRODUCTION

1. Seven years ago, Congress enacted the Telecommunications Act of 1996 (1996 Act) for the benefit of the American consumer.[1] This watershed legislation was partially designed to remove the decades-old system of legal monopoly in the local exchange and open that market to competition. The 1996 Act did so by establishing broad interconnection, resale and network access requirements, designed to facilitate multiple modes of entry into the market by intermodal and intramodal service providers. The 1996 Act also sought to reduce the need for regulation in the presence of competition and provide for universal service mechanisms in order to foster the deployment of advanced telecommunications capabilities to all Americans.

2. This Commission and our colleagues in state commissions around the country have devoted enormous amounts of time and resources to implement the Act's market-opening requirements, and the industry has devoted equally large amounts of time and resources to take advantage of the new business opportunities made available by the 1996 Act. Few, if any, other

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56. The 1996 Act amended the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* We refer to these Acts collectively as the "Communications Act" or the "Act."

requirements of the 1996 Act have attracted so much regulatory attention, industry effort, or litigation, however, as the requirement under section 251(c)(3) that incumbent local exchange carriers (incumbent LECs) make elements of their networks available on an unbundled basis to new entrants at cost-based rates. Every aspect and application of this extraordinary vehicle for opening local exchange markets has been the focus of extensive debate and litigation. Indeed, this Commission has been told twice, once by the Supreme Court and once by the D.C. Circuit, that it had failed to implement unbundling in a reasonable manner because it did not adopt appropriate principles for limiting its application.

3. Direction from the courts, our own experience, and the experience of the telecommunications industry over the last seven years have caused us to reevaluate the Commission's approach to these obligations in light of the Act's goals of opening local exchange markets to competition, fostering the deployment of advanced services, and reducing regulation. Although we recognize that Congress intended to create a competitive landscape through resale, interconnection and facilities-based provision, and a combination of these modes of entry, in practice, we have come to recognize more clearly the difficulties and limitations inherent in competition based on the shared use of infrastructure through network unbundling. While unbundling can serve to bring competition to markets faster than it might otherwise develop, we are very aware that excessive network unbundling requirements tend to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology. The effect of unbundling on investment incentives is particularly critical in the area of broadband deployment, since incumbent LECs are unlikely to make the enormous investment required if their competitors can share in the benefits of these facilities without participating in the risk inherent in such large scale capital investment. At the same time, continued unbundling for the network elements provided over current facilities appears to be necessary in many areas under section 251 of the Act, especially with respect to mass market customers.

4. This Order takes a balanced approach to these issues. We eliminate most unbundling requirements for broadband, making it easier for companies to invest in new equipment and deploy the high-speed services that consumers desire. We have also made new decisions concerning the unbundling of other network elements that result in substantial changes to existing requirements, including a more granular analysis of unbundling requirements by the states when appropriate.

5. This Order thus achieves three primary goals. First, this Order continues the Commission's implementation and enforcement of the Act's market-opening requirements by applying the experience we have gained implementing the Act. Second, it applies unbundling as Congress intended: with a recognition of the market barriers faced by new entrants as well as the societal costs of unbundling. In doing so, this Order resolves numerous questions about unbundling left open by years of litigation and industry conflicts, and opens a new chapter in the history of the Act's unbundling requirements. Third, this Order establishes a regulatory foundation that seeks to ensure that investment in telecommunications infrastructure will

generate substantial, long-term benefits for all consumers.[2] The framework set forth in this Order recognizes that this competition is taking place on an intermodal basis – between wireline providers and providers of services on other platforms such as cable and wireless – and on an intramodal basis among wireline providers with different business and operational plans.

6. The path to the rules and policies we set forth in this Order has been neither straight nor easy. Legal challenges, a depressed telecommunications sector, and technical and operational obstacles have been features of the competitive landscape to a far greater extent than could have been reasonably predicted in 1996. On the other hand, the increasing presence of cable and wireless-based telephony services as well as the advent of broadband services and other new telecommunications and information services has already worked changes in the industry to a far greater extent than could have been reasonably predicted in 1996. In the past, we have stated that "the 1996 Act set the stage for a new competitive paradigm in which carriers in previously segregated markets are able to compete in a dynamic and integrated telecommunications market that promises lower prices and more innovative services to consumers."[3] We believe that the rules and policies we adopt today allow us to continue to strive for that goal and are carefully tailored to reflect today's environment, striking an appropriate balance between increasing infrastructure investment and innovation, and fostering sustainable competition from both intermodal and intramodal service providers in the local telecommunications markets. Accordingly, we believe that the certainty that we bring today will help stabilize the telecommunications industry, yield renewed investment in telecommunications networks, and increase sustainable competition in all telecommunications markets for the benefit of American consumers.

II. EXECUTIVE SUMMARY

7. The executive summary is as follows:

- **Principles of Unbundling.** The standards for unbundling are based on principles drawn from the Supreme Court and D.C. Circuit opinions concerning the impairment standard; guidance provided by the language, structure, purposes and history of the 1996 Act; and lessons from the economic and legal literature on topics potentially related to the ambiguous impair standard.

---

[2] The 1996 Act was announced as "[a]n Act [t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Preamble, Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (Preamble to the 1996 Act).

[3] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3699, para. 2 (1999) (*UNE Remand Order*), *reversed and remanded in part sub. nom. United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (*USTA*), *cert. denied sub nom. WorldCom, Inc. v. United States Telecom Ass'n*, 123 S.Ct 1571 (2003 Mem.) (*cert. denied* after adoption of this Order, but before release).

- **Network Element.** The Order reaffirms our previous interpretation of the statutory definition of the term "network element," set forth in section 153(29) of the Act, as requiring incumbent LECs to make available to requesting carriers network elements that are capable of being used in the provision of a telecommunications service. We specifically decline to limit the definition of a "network element" to facilities and equipment actually used in the provision of a telecommunications service.

- **Impair Standard.** A requesting carrier is impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic. Thus, we interpret the "impair" standard as less demanding than the "necessary" standard. At the same time, we interpret the "impair" standard as requiring us to make specific, affirmative findings that elements should or should not be unbundled.

  - Types of Barriers to Entry. The Order describes the barriers that we consider relevant to the impairment analysis and examines whether unbundling can address the impairment caused by these barriers. In our application of the impairment standard to individual elements, we ask whether the sum of these barriers is likely to make entry uneconomic, taking into account any countervailing advantages that a requesting carrier may have. We specifically find that we should consider the following barriers to entry in determining whether impairment exists. We will examine the disparities caused by all the factors discussed here to determine whether, as a whole, they are likely to make entry into a market uneconomic.

    - Scale Economies. Scale economies, particularly when combined with sunk costs and first-mover advantages, can pose a powerful barrier to entry. The greater the extent and size of the scale economies throughout the range of potential demand, the higher the barrier they pose. Scale economies that pertain just to the beginning stages of entry, however, might not be an appropriate factor in an unbundling analysis.

    - Sunk Costs. Sunk costs, particularly when combined with scale economies, can pose a formidable barrier to entry. Sunk costs increase a new entrant's cost of failure. Potential new entrants may also fear that an incumbent LEC that has incurred substantial sunk costs will drop prices to protect its investment in the face of new entry. In addition, sunk costs can give significant first-mover advantages to the incumbent LEC, which has incurred these costs over many years and has already had the opportunity to recoup many of these costs through its rates.

    - First-Mover Advantages. First-mover advantages often create an absolute cost disadvantage for new entrants, which if large enough, can be a barrier to entry. First-mover advantages can also contribute to the effects of economies of scale and high sunk costs.

- Absolute Cost Advantages. Absolute cost advantages, if of sufficient size, can deter entry or make it impossible for entrants to provide service in an economic fashion.

- Barriers Within the Control of the Incumbent LEC. We also consider barriers to entry that are solely or primarily within the control of the incumbent LEC since eliminating them or mitigating their effects is within the control of the incumbent LEC.

- Evidence of Impairment. Actual marketplace evidence is the most persuasive and useful evidence. In particular, we are interested in evidence concerning whether new entrants are providing retail services in the relevant market using non-incumbent LEC facilities. We also give weight to the deployment of intermodal technologies. In addition, we will give consideration to cost studies and modeling. We reaffirm our prior conclusion in the *UNE Remand Order* to afford little weight in determining whether impairment exists to evidence that requesting carriers are using incumbent LEC tariffed services to provide competing retail services.

- Granularity of Impairment Analysis. We perform a granular analysis of impairment by taking into account considerations related to customer classes, geography, and services. In discussing specific network elements, we also consider the types and capacity of the facilities involved.

- Implicit Support Flows. We explain how our impairment standard addresses the existence of implicit support flows in a manner that is responsive to the concerns raised by the D.C. Circuit's *USTA* decision. At the same time, we conclude that the statute is best interpreted as giving the Commission broad discretion concerning consideration of implicit support flows in the impairment analysis.

- **The "Necessary" Standard.** We retain the interpretation of the "necessary" standard set forth in the *UNE Remand Order.*

- **"At a Minimum."** Although we have not required the unbundling of any network elements in this Order in the absence of impairment, we find that this provision permits us to consider, when appropriate, "other" factors closely tied to the purposes of the statute in reaching an unbundling determination. In this Order, however, we use this authority sparingly to inform our consideration of unbundling when some level of impairment may exist, but unbundling appears likely to undermine important goals of the 1996 Act such as the deployment of advanced telecommunications capabilities.

- **Role of the States.** The record before us and the D.C. Circuit's emphasis in *USTA* on granularity in making unbundling determinations both lead us to conclude that asking the states to take on some fact finding responsibilities would be the most reasonable way to implement the statutory goals for certain network elements. We find that giving the state this role is most appropriate where, in our judgment, the record before us does not contain sufficiently granular information and the states are better positioned than we are to gather and assess the necessary information.

Unbundling Requirements for Individual Network Elements

- **Mass Market Loops.** Incumbent LECs must offer unbundled access to stand-alone copper loops and subloops for the provision of narrowband and broadband services. Subject to a grandfather provision and a transition period, incumbent LECs do not have to provide unbundled access to the high frequency portion of their loops. Incumbent LECs must offer unbundled access to the Time Division Multiplexing (TDM) features, functions, and capabilities of their hybrid copper/fiber loops. Similarly, only in fiber loop overbuild situations where the incumbent LEC elects to retire existing copper loops must the incumbent LEC offer unbundled access to those fiber loops for narrowband service only. Incumbent LECs do not have to offer unbundled access to newly deployed or "greenfield" fiber loops or to the packet-switching features, functions, and capabilities of their hybrid loops.

- **Enterprise Market Loops.** Incumbent LECs are no longer required to unbundle OCn loops. Incumbent LECs must offer unbundled access to dark fiber loops, DS3 loops (limited to 2 loops per requesting carrier per customer location) and DS1 loops except at specified customer locations where states have found no impairment pursuant to Commission-delegated authority to conduct a more granular review based on Commission-defined triggers measuring the availability or feasibility of alternatives to incumbent LEC unbundled loops at such customer location.

- **Subloops.** Incumbent LECs must offer unbundled access to subloops necessary to access wiring at or near a multiunit customer premises, including the Inside Wire Subloop, *i.e.*, all incumbent LEC loop plant between the minimum point of entry (MPOE) at a multiunit premises and the point of demarcation, regardless of the capacity level or type of loop the requesting carrier will provision to its customer. Unbundled access must be provided at any technically feasible accessible terminal at or near the multiunit premises, including but not limited to, a pole or pedestal, a network interface device (NID), the MPOE, the single point of interconnection (SPOI) or a feeder distribution interface. A requesting carrier accessing a subloop on the incumbent LEC's network side of the NID obtains the NID functionality as part of that subloop. Upon notification by a requesting carrier that interconnection is required through SPOI, an incumbent LEC is required to provide a SPOI at multiunit premises where the incumbent LEC owns, controls or leases the wiring at such premises.

- **Network Interface Devices (NID).** Incumbent LECs must offer unbundled access to the NID on a stand alone basis to requesting carriers. The NID is defined as any means of interconnecting the incumbent LEC's loop distribution plant to wiring at a customer premises location. An incumbent LEC shall permit a requesting carrier to connect its loop facilities through the incumbent LEC's NID.

- **Dedicated Transport.** We redefine the dedicated transport network element as those transmission facilities that connect incumbent LEC switches or wire centers. The Commission conducted its impairment analysis of dedicated transport by capacity level. Specifically, we find that requesting carriers are not impaired without access to

unbundled OCn level transport. Further, we find that requesting carriers are impaired without access to dark fiber, DS3, and DS1 transport, each independently subject to a granular route-specific review by the states to identify available wholesale facilities. Dark fiber and DS3 transport also each subject to a granular route-specific review by the states to identify where transport facilities can be deployed.

- **Switching for Enterprise Market (defined as DS1 and above).** We find, on a national basis, that competitive LECs are not impaired without unbundled local circuit switching when serving the enterprise market. We recognize that a more geographically specific record may reveal such impairment in particular markets and thus allow states to rebut this national finding based on certain operational and economic criteria.

- **Switching for Mass Market (defined as DS0).** We find, on a national basis, that competing carriers are impaired without unbundled local circuit switching when serving the mass market due to operational and economic barriers associated with the incumbent LEC hot cut process. We require state commissions to approve an incumbent LEC batch hot cut process, or make a detailed finding that such a process is not necessary. We recognize that a more geographically specific record may identify particular markets where there is no impairment and thus ask states to apply Commission-defined triggers measuring existing switch deployment serving this market and, if necessary, consider operational and economic barriers to switch deployment to serve this market. If states conclude that there is impairment in a particular market, they must consider whether the impairment can be cured by requiring unbundled switching on a rolling basis, rather than making unbundled switching available for an indefinite period of time.

- **Shared Transport.** We find that carriers are impaired without shared transport only to the extent that carriers are impaired without access to unbundled switching.

- **Packet Switching.** Incumbent LECs are not required to unbundle packet switching, including routers and Digital Subscriber Line Access Multiplexers (DSLAMs), as a stand-alone network element. The Order eliminates the current limited requirement for unbundling of packet switching.

- **Signaling Networks.** Incumbent LECs are only required to offer unbundled access to their signaling network when a carrier is purchasing unbundled switching. The signaling network element, when available, includes, but is not limited to, signaling links and signaling transfer points (STPs).

- **Call-Related Databases.** When a requesting carrier purchases unbundled access to the incumbent LEC's switching, the incumbent LEC must also offer unbundled access to their call-related databases and, if the incumbent LEC does not provide customized routing, to operator service and directory assistance (OS/DA) services. When a carrier utilizes its own switches, with the exception of 911 and E911 databases, incumbent LECs are not required to offer unbundled access to call-related databases, including,

but not limited to, the Line Information database (LIDB), Toll Free Calling database, Number Portability database, Calling Name (CNAM) database, Operator Services/Directory Assistance databases, and the Advanced Intelligent Network (AIN) database.

- **OSS Functions.** Incumbent LECs must offer unbundled access to their operations support systems (OSS) for qualifying services. OSS consists of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. The OSS element also includes access to all loop qualification information contained in any of the incumbent LEC's databases or other records.

Unbundling Requirements for Individual Network Elements

- **Combinations of Network Elements.** Competitive LECs may order new combinations of unbundled network elements (UNEs), including the loop-transport combination (enhanced extended link, or EEL), to the extent that the requested network elements are unbundled. A competitive LEC may convert special access services to a UNE or UNE combination. All requests for newly-provisioned EELs and for conversions of special access circuits to EELs are subject to the service eligibility criteria. Competitive LECs are permitted to commingle UNEs and UNE combinations with other wholesale services, such as tariffed interstate special access services. Incumbent LECs are not required to provide "ratcheting," which is a pricing mechanism that involves billing a single circuit at multiple rates and would result in providing discounted UNEs.

- **Service Eligibility.** We conclude that where a requesting carrier satisfies the following three categories of criteria, it is a bona fide provider of qualifying services and thus is entitled to order high-capacity EELs. First, we find that each requesting carrier must have a state certification of authority to provide local voice service. Second, to demonstrate that it actually provides a local voice service to the customer over every DS1 circuit, we find that the requesting carrier must have at least one local number assigned to each circuit and must provide 911 or E911 capability to each circuit. Third, we find that requesting carriers must certify to meeting the following additional circuit-specific architectural safeguards to qualify for the high-capacity circuit:

    - each circuit must terminate into a collocation governed by section 251(c)(6) at an incumbent LEC central office within the same LATA as the customer premises;

    - each circuit must be served by an interconnection trunk in the same LATA as the customer premises served by the EEL for the meaningful exchange of local traffic;

    - for every 24 DS1 EELs or the equivalent, the requesting carrier must maintain at least one active DS1 local service interconnection trunk; and

- each circuit must be served by a Class 5 switch or other switch capable of providing local voice traffic.

- **Certification and Auditing.** A requesting carrier must certify in writing that it satisfies the qualifying service eligibility criteria for each high-capacity EEL circuit. As part of their limited right to audit compliance with these criteria, incumbent LECs may obtain and pay for an independent auditor to audit, on an annual basis, compliance with them.

- **Modification of Existing Network.** Incumbent LECs are required to make routine network modifications to UNEs used by requesting carriers where the requested facility has already been constructed. These routine modifications include deploying multiplexers to existing loop facilities and undertaking the other activities that incumbent LECs make for their own retail customers. We also require incumbent LECs to condition loops for the provision of digital subscriber line (xDSL) services. We do not require incumbent LECs to trench new cable or otherwise to construct transmission facilities so that requesting carriers can access them as UNEs at cost-based rates, but we clarify that the incumbent LEC's unbundling obligation includes all transmission facilities deployed in its network.

Remaining Issues

- **Section 271 Issues.** The requirements of section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling, under checklist items 4-6 and 10, regardless of any unbundling analysis under section 251. Where a checklist item is no longer subject to section 251 unbundling, section 252(d)(1) does not operate as the pricing standard. Rather, the pricing of such items is governed by the "just and reasonable" standard established under sections 201 and 202.

- **Clarification of TELRIC Rules.** The order clarifies two key components of its TELRIC pricing rules to ensure that UNE prices send appropriate economic signals to incumbent LECs and competitive LECs. First, the order clarifies that the risk-adjusted cost of capital used in calculating UNE prices should reflect the risks associated with a competitive market. The order also reiterates the Commission's finding from the *Local Competition Order* that the cost of capital may be different for different UNEs. Second, the Order declines to mandate the use of any particular set of asset lives for depreciation, but clarifies that the use of an accelerated depreciation mechanism may present a more accurate method of calculating economic depreciation. In addition to these clarifications, the Order notes that the Commission plans to open a proceeding to consider issues related to its TELRIC pricing rules.

- **Fresh Look.** The Commission will retain the determination made in the *UNE Remand Order* that it will not permit competitive LECs to avoid any liability under contractual early termination clauses in the event that it converts a special access circuit to a UNE. Although "fresh look" has occurred in the past, this rare exercise of Commission discretion is not appropriate here because it would be unfair to both incumbent LECs

and other competitors, disruptive to the market place, and ultimately inconsistent with the public interest.

- **Transition Period.** The Commission will not intervene in the contract modification process to establish a specific transition period for each of the rules established in this Order. Instead, as contemplated in the Act, individual carriers will have the opportunity to negotiate specific terms and conditions necessary to translate our rules into the commercial environment, and to resolve disputes over any new contract language arising from differing interpretations of our rules. Except where noted, the Commission will not establish specific transition periods for each of the rules established in this Order but will, instead, rely on the timing of the contract modification process. As contemplated in the Act, individual carriers will have the opportunity to negotiate specific terms and conditions necessary to translate the rules into the commercial environment, and to resolve disputes over any new contract language arising from differing interpretations of our rules.

- **Periodic Review of National Unbundling Rules.** The Commission will evaluate these rules consistent with the biennial review mechanism established in section 11 of the Act. These reviews, however, will not be performed *de novo* but according to the standards of the biennial review process.

- **Duty To Negotiate in Good Faith.** We amend our duty-to-negotiate rule, section 51.301(c)(8)(ii), to make the rule conform to the text of the *Local Competition Order*.

- **Further Notice of Proposed Rulemaking.** We open a further notice of proposed rulemaking to seek comment on whether we should modify the Commission's interpretation of section 252(i). The Commission's so-called pick-and-choose rule permits requesting carriers to opt into individual portions of interconnection agreements without accepting all the terms and conditions of such agreements. We tentatively conclude that a modified approach would better serve the goals embodied in section 252(i), and sections 251-252 generally, by promoting more meaningful commercial negotiations between incumbent LECs and competitive LECs. Specifically, we tentatively conclude that if an incumbent LEC obtains state approval of a statement of generally available terms and conditions (SGAT) pursuant to section 252(f), the incumbent LEC and competitive LECs could negotiate customized agreements that third parties could opt into entirely or not at all. Finally, unless and until an SGAT is approved in a particular state, the existing pick-and-choose rule would remain in effect in that state.

III. BACKGROUND AND LEGAL HISTORY

8. This Order represents, in large part, a fresh examination of the issues presented in implementing the unbundling requirements of section 251 of the Act. Our consideration of these issues, however, takes place within the context of prior Commission orders and judicial decisions examining those orders. An understanding of the Commission's prior efforts to

address these issues as well as the relevant court guidance is critical to ensuring a successful consideration of these issues in this Order.

9. *Statutory Requirements.* The Communications Act requires that incumbent LECs provide UNEs to other telecommunications carriers.[4] In particular, section 251(c)(3) of the Act states that incumbent LECs have a duty to

> provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.[5]

This section requires that incumbent LECs provide such network elements "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."[6] The Act defines the term "network element" as "a facility or equipment used in the provision of a telecommunications service," specifying that "[s]uch 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 provisions of a telecommunications service."[7]

10. The Act also establishes a general federal standard for use in determining the UNEs that must be made available by the incumbent LECs pursuant to section 251. Section 251(d)(2) provides that

> [i]n determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at a minimum, whether – (A) access to such network elements as are proprietary in nature is necessary; and (B) the failure to

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[4] Section 153(44) of the Act defines a telecommunications carrier as "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226)." 47 U.S.C. § 153(44). Section 153(44) also states that "[a] telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage." *Id.*

[5] 47 U.S.C. § 251(c)(3).

[6] *Id.* Section 153(46) defines telecommunications service as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used." *Id.* § 153(46).

[7] *Id.* § 153(29).

> provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.[8]

The 1996 Act also preserves a state role in addressing unbundling issues. First, section 252 authorizes states to review and to arbitrate interconnection agreements for compliance with the requirements of sections 251 and 252 and this Commission's implementing rules.[9] Second, section 251(d)(3) also preserves states' independent state law authority to address unbundling issues to the extent that the exercise of that authority poses no conflict with federal law. That section provides that

> [i]n prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that – (A) establishes access and interconnection obligations of local exchange carriers; (B) is consistent with the requirements of this section; and (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.[10]

11. In addition, the statute establishes standards to govern the pricing of UNEs in sections 251 and 252. For UNEs, section 251(c)(3) provides that elements shall be made available "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[11] Section 252 provides that:

> [d]eterminations by a State Commission of the . . . just and reasonable rate for network elements for purposes of subsection [251](c)(3) . . . – (A) shall be – (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the . . . network element . . . , and (ii) nondiscriminatory, and (B) may include a reasonable profit.[12]

The statute also establishes a resale entry vehicle separate from the availability of UNEs. Section 251(c)(4) provides that incumbent LECs have "[t]he duty . . . to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not

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[8] *Id.* § 251(d)(2).

[9] *See generally id.* § 252.

[10] *Id.* § 251(d)(3). The states may exercise this state law authority in the course of reviewing interconnection agreements under section 252. *See id.* § 252(e)(3).

[11] *Id.* § 251(c)(3).

[12] *Id.* § 252(d)(1).

telecommunications carriers."[13] Because section 251(c)(4) applies only to retail telecommunications services that the incumbent LEC provides to subscribers, some incumbent LEC services, such as wholesale-only services and information services, are not available at a resale discount to competing carriers. Indeed, as the Commission has discussed in section 271 orders, some incumbent LECs' retail "high-speed Internet access service[s]" have not been affirmatively determined to fall within section 251(c)(4).[14]

12. *Local Competition Order.* The Commission first addressed the unbundling obligations of incumbent LECs in the *Local Competition Order*, which, among other things, adopted rules designed to implement the requirements of the section 251.[15] The Commission interpreted the statutory "necessary" and "impair" standards governing the incumbent LECs' unbundling obligations very broadly. The Commission stated that for purposes of determining whether access to a proprietary network element was "necessary" under section 251(d)(2), the term "[n]ecessary means . . . that an element is a prerequisite for competition."[16] The Commission also found that "[t]he term 'impair' means 'to make or cause to become worse; diminish in value.'"[17] The Commission added that the "impairment" standard requires "the Commission . . . to consider whether the failure of an incumbent to provide access to a network element would decrease the quality, or increase the financial or administrative cost of the service

[13] *Id.* § 251(c)(4).

[14] *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri*, CC Docket No. 01-194, Memorandum Opinion and Order, 16 FCC Rcd 20719, 20758-61, paras. 79-84 (2001); *see also Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Authorization To Provide In-Region, InterLATA Services in Florida and Tennessee*, WC Docket No. 02-307, Memorandum Opinion and Order, 17 FCC Rcd 25828, 25922, para. 178 (2002) (*BellSouth FL/TN 271 Order*); *Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc., for Authorization To Provide In-Region, InterLATA Services in California*, WC Docket No. 02-306, Memorandum Opinion and Order, 17 FCC Rcd 25650, 25714, para. 113 (2002); *Joint Application by BellSouth Corp., BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order, 17 FCC Rcd 9018, 9174-76, paras. 274-77 (2002) (*BellSouth Georgia/Louisiana Order*).

[15] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 15616-775 (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded, AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (*Iowa Utils. Bd.*), *on remand, Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *reversed in part sub nom. Verizon Communications Inc. v. FCC*, 535 U.S. 467 (2002) (*Verizon*), Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460 (1997), further recons. pending.

[16] *Local Competition Order*, 11 FCC Rcd at 15641, para. 282.

[17] *Id.* at 15643, para. 285.

a requesting carrier seeks to offer, compared with providing that service over other unbundled elements in the incumbent LEC's network."[18]

13. The Commission also adopted a minimum set of UNEs, requiring that incumbent LECs provide unbundled access to local loops,[19] network interface devices,[20] local and tandem switching capability,[21] interoffice transmission facilities,[22] signaling and call-related databases,[23] operations support systems functions,[24] and operator services and directory assistance facilities.[25] The Commission noted that the state commissions were free to prescribe additional elements.[26] The Commission also found that the incumbent LECs were obligated to combine UNEs upon request.[27]

14. In addition, the Commission established the Total Element Long Run Incremental Cost (TELRIC) methodology, a forward-looking, long-run, incremental cost methodology, for the states to use in setting actual rates for UNEs.[28] The Commission found that "the price of a

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[18] *Id.*

[19] In the *Local Competition Order*, the Commission defined the local loop network element "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." *Id.* at 15691, para. 380.

[20] The Commission defined the network interface device network element as a "cross-connect device used to connect loop facilities to inside wiring." *Id.* at 15697, para. 392 n.852.

[21] The Commission defined the local switching network element to include "line-side and trunk-side facilities plus the features, functions and capabilities of the switch." *Id.* at 15706, para. 412.

[22] The Commission stated that the interoffice transmission facilities network element included "unbundled access to shared transmission facilities between end offices and the tandem switch" as well as "unbundled access to dedicated transmission facilities between LEC central offices or between such offices and those of competing carriers." *Id.* at 15718, para. 440.

[23] The Commission stated that "purchase of unbundled elements of the SS7 [signaling] network gives the competitive provider the right to use those elements for signaling between its switches (including unbundled switching elements), between its switches and the incumbent LEC's switches, and between its switches and those third party networks with which the incumbent LEC's SS7 network is interconnected." *Id.* at 15740, para. 483. The Commission required that incumbent LECs make access to their call-related databases available on an unbundled basis for the purpose of switch query and database response through the SS7 network. The Commission stated that "[c]all-related databases are those SS7 databases used for billing and collection or used in the transmission, routing or other provision of a telecommunications service." *Id.* at 15741, para. 484 n.1126.

[24] The Commission required that the incumbent LECs make unbundled access to their operations support systems available for pre-ordering, ordering, provisioning, maintenance and repair, and billing. *Id.* at 15766-67, para. 523.

[25] *Id.* at 15771, para. 534.

[26] *Id.* at 15625-26, para. 244.

[27] *Id.*

[28] *Id.* at 15812-72, paras. 618-740.

network element should include the forward-looking costs that can be attributed directly to the provision of services using that element, which includes a reasonable return on investment (*i.e.*, "profit"), plus a reasonable share of the forward-looking joint and common costs."[29] The Commission determined that TELRIC-based rates for UNEs should not include embedded or historical costs, opportunity costs or universal service subsidies.[30]

15. *Iowa Utilities Board v. FCC.* On review in 1997, the Eighth Circuit vacated many of the rules adopted in the *Local Competition Order* as beyond the Commission's jurisdiction, which it viewed as limited to interstate matters.[31] The court also vacated section 51.315(b) of the Commission's rules, which barred incumbent LECs from separating UNEs before providing them to competitors, on the ground that "unbundled" means "not combined."[32] In addition, the court vacated sections 51.315(c)-(f), which required incumbent LECs to combine elements on behalf of competitive LECs on request, on the ground that section 251(c)(3) does not require incumbent LECs to combine elements on behalf of competitive LECs, but only requires incumbent LECs to provide elements in a manner that permits the competitive LEC to do the actual combining.[33] As to "superior network" issues, the court held that section 251(c)(3) requires "unbundled access only to an incumbent LEC's existing network – not to a yet unbuilt superior one."[34] Specifically, the Eighth Circuit explained that incumbent LECs can be required to modify their facilities "to the extent necessary to accommodate interconnection or access to network elements," but cannot be required "to *alter substantially* their networks in order to provide *superior* quality interconnection and unbundled access."[35] Finally, the court upheld the Commission's interpretation of the "necessary" and "impair" standards.[36]

16. *AT&T v. Iowa Utilities Board.* In 1998, the U.S. Supreme Court reversed the Eighth Circuit's jurisdictional holdings, concluding that the Commission has jurisdiction to implement the local competition provisions of the 1996 Act. The Court, however, vacated the Commission's interpretation of the "necessary" and "impair" standards in section 251(d)(2).[37] In particular, the Court also faulted the Commission for its failure to consider the availability of alternative sources of network elements.[38] The Court also concluded that "the Commission's

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[29] *Id.* at 15844-56, paras. 673-703.

[30] *Id.* at 15844, para. 673; 15857-69, paras. 704-32.

[31] *Iowa Utils. Bd. v. FCC*, 120 F.3d 753.

[32] *Id.* at 813.

[33] *Id.*

[34] *Id.*

[35] *Id.* at 813 n.33 (emphasis added).

[36] *Id.* at 810-12.

[37] *Iowa Utils. Bd.*, 525 U.S. 366.

[38] *Id.*

assumption that *any* increase in cost (or decrease in quality) imposed by denial of a network element renders access to that element 'necessary,' and causes the failure to provide that element to 'impair' the entrant's ability to furnish its desired services is simply not in accord with the ordinary and fair meaning of those terms."[39] The Court stated "that the Act requires the FCC to apply *some* limiting standard, rationally related to the goals of the Act, which it has simply failed to do."[40]

17. In conclusion, the Court stated that "if Congress had wanted to give blanket access to incumbents' networks on a basis as unrestricted as the scheme the Commission has come up with, it would not have included § 251(d)(2) in the statute at all."[41] Instead, "[i]t would simply have said . . . that whatever requested element can be provided must be provided."[42] At the same time, the Court declined to find that section 251(d)(2) incorporates "something akin to the 'essential facilities' doctrine" as argued by the incumbent LECs.[43] The Court found that it need not decide whether the statute requires application of that standard as a matter of law, adding "it may be that some other standard would provide an equivalent or better criterion for the limitation upon network-element availability that the statute has in mind."[44]

18. The Court upheld section 51.315(b) of the Commission's rules, which bars an incumbent LEC from separating network elements that are already combined in the incumbent's network before providing them to a competitor if the competitor asks for them in a combined form. The Commission had explained that the rule prevents incumbent LECs from disconnecting previously connected elements merely to impose additional reconnect charges on requesting carriers. The Court stated that section 251(c)(3) is "ambiguous on whether leased network elements may or must be separated, and the rule the Commission has prescribed is entirely rational, finding its basis in § 251(c)(3)'s nondiscrimination requirement."[45]

19. *The Commission's UNE Remand Order.* In 1999, in response to the Supreme Court's decision, the Commission re-examined its treatment of the "necessary" and "impair" standards, as well as the list of UNEs that incumbent LECs must provide.[46] In the *UNE Remand Order*, the Commission adopted narrower requirements for determining the UNEs that

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[39] *Id.* at 389-90.

[40] *Id.* at 388.

[41] *Id.* at 390.

[42] *Id.*

[43] *Id.* at 388.

[44] *Id.*

[45] *Id.* at 395.

[46] *UNE Remand Order*, 15 FCC Rcd 3696.

incumbent LECs must provide pursuant to the "necessary" and "impair" standards, and modified its list of required UNEs, expanding it in certain respects and narrowing it in others.

20. The Commission found that a proprietary network element is "necessary" under section 251(d)(2)(A) "if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third party supplier, lack of access to that element would, as a practical, economic, and operational matter, *preclude* a requesting carrier from providing the services it seeks to offer."[47]

21. The Commission also adopted a new definition of what constitutes "impairment" for purposes of section 251(d)(2)(B). The Commission stated that

> [t]he incumbent LECs' failure to provide access to a non-proprietary network element 'impairs' a requesting carrier . . . if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element *materially diminishes* a requesting carrier's ability to provide the services it seeks to offer.[48]

The Commission added that "[i]n order to evaluate whether there are alternatives actually available to the requesting carrier as a practical, economic and operational matter, we look at the totality of the circumstances associated with using an alternative."[49] The Commission thus held that the "'impair' analysis considers the cost, timeliness, quality, ubiquity, and operational issues associated with the use of an alternative."[50]

22. The Commission also stated that it was "interpret[ing] the obligations imposed in section 251(d)(2) within the larger statutory framework of the 1996 Act," consistent with that section's directive to consider "at a minimum" the "necessary" and "impair" standards.[51] Accordingly, the Commission stated that "in addition to the factors set forth above, we may consider the following factors:"[52] (1) the rapid introduction of competition in all markets -- "whether the availability of an unbundled network element is likely to encourage requesting carriers to enter the local market in order to serve the greatest number of consumers as rapidly as

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[47] *Id.* at 3704 (emphasis in original); *see also id.* at 3720-23, paras. 41-47.

[48] *Id.* at 3704-05 (emphasis in original); *see also id.* at 3723-50, paras. 48-116.

[49] *Id.* at 3705; *see also id.* at 3730, para. 62.

[50] *Id.* at 3705; *see also id.* at 3730-45, paras. 62-100.

[51] *Id.* at 3705; *see also id.* at 3745-46, paras. 101-02.

[52] *Id.* at 3705; *see also id.* at 3746-47, paras. 103-06.

possible[;]"[53] (2) promotion of facilities-based competition, investment and innovation – "the extent to which the unbundling obligations we adopt will encourage the development of facilities-based competition by competitive LECs, and innovation and investment by both incumbent LECs and competitive LECs, especially for the provision of advanced services[;]"[54] (3) reduced regulation – "the extent to which we can encourage investment and innovation by reducing regulatory obligations to provide access to network elements, as alternatives to the incumbent LECs' network elements become available in the future[;]"[55] (4) certainty in the market – "how the unbundling obligations . . . can provide the uniformity and predictability that new entrants and fledgling competitors need to develop national and regional business plans[, as well as] . . . whether the rules . . . provide financial markets with reasonable certainty so that carriers can attract the capital they need to execute their business plans to serve the greatest number of consumers[;]"[56] and (5) administrative practicality – "whether the unbundling obligations . . . are administratively practical to apply."[57]

23. Based on this analysis, the Commission concluded that the following network elements must be unbundled: (1) loops – "including high-capacity lines, xDSL-capable loops, dark fiber, and inside wire owned by the incumbent LEC[;]"[58] (2) subloops – "unbundled access to subloops, or portions of the loop, at any accessible point[;]"[59] (3) NID – "includ[ing] all features, functions and capabilities of the facilities used to connect the loop to premises wiring, regardless of the specific mechanical design[;]"[60] (4) circuit switching – "except for local circuit switching used to serve end users with four or more lines in access density zone 1 in the top 50 Metropolitan Statistical Areas (MSAs), provided that the incumbent LEC provides non-discriminatory, cost-based access to the enhanced extended link throughout zone 1[;]"[61] (5) packet switching – "only in limited circumstances in which the incumbent has placed digital loop carrier systems in the feeder section of the loop or has its Digital Subscriber Line Access Multiplexer (DSLAM) in a remote terminal[;]"[62] (6) interoffice transmission facilities – "unbundled access to dedicated interoffice transmission facilities, or transport, including dark

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[53] *Id.* at 3705; *see also id.* at 3747-48, paras. 107-09.

[54] *Id.* at 3705; *see also id.* at 3748-49, paras. 110-12.

[55] *Id.* at 3705; *see also id.* at 3749, para. 113.

[56] *Id.* at 3705; *see also id.* at 3749-50, paras. 114-15.

[57] *Id.* at 3705; *see also id.* at 3750, para. 116.

[58] *Id.* at 3706; *see also id.* at 3778-87, paras. 181-201.

[59] *Id.* at 3706; *see also id.* at 3788-800, paras. 202-29.

[60] *Id.* at 3706; *see also id.* at 3800-04, paras. 230-40.

[61] *Id.* at 3707; *see also id.* at 3804-32, paras. 241-99. An enhanced extended link is "a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport." *Id.* at 3707.

[62] *Id.* at 3707; *see also id.* at 3832-40, paras. 300-17.

fiber[;]"[63] (7) shared transport – unbundled access to shared transport where unbundled local circuit switching is provided;[64] (8) signaling and call-related databases – including, but not limited to "unbundled access to signaling links and signaling transfer points (STPs) in conjunction with unbundled switching, and on a stand-alone basis[,]" as well as unbundled access to call-related databases;[65] and (9) OSS – "consist[ing] of pre-ordering, ordering, provisioning, maintenance and repair, billing functions supported by an incumbent LEC's databases and information[,]" including "access to all loop qualification information contained in any of the incumbent LEC's databases or other records, including information on whether a particular loop is capable of providing advanced services."[66] The Commission stated that in light of the rapid changes in technology and competition, it would reexamine the national list of UNEs in three years, thereby establishing the Triennial Review process reflected in this Order.

24. *Availability of Enhanced Extended Links.* The Commission subsequently modified its *UNE Remand Order* as it related to the use of UNEs to provide exchange access services originating and terminating long distance services.[67] Specifically, the Commission ruled that on an interim basis, pending further Commission action, "interexchange carriers (IXCs) may not convert special access services to combinations of unbundled loops and transport network elements, whether or not the IXCs self-provide entrance facilities (or obtain them from third parties)."[68] The Commission provided that this restriction would not apply "if an IXC uses combinations of unbundled network elements to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer."[69] The Commission stated that this temporary restriction on the use of EELs was consistent with its finding in the

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[63] *Id.* at 3707; *see also id.* at 3840-61, paras. 318-68. The Commission defined dedicated interoffice transmission facilities as "incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by the incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers." *Id.* at 3707.

[64] *Id.* at 3707. The Commission defined shared transport as "transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches in the incumbent LEC's network." *Id.*

[65] *Id.* at 3707-08. The Commission stated that the call-related databases that must be unbundled "include[d], but [were] not limited to, the Line Information database (LIDB), Toll Free Calling database, Number Portability database, Calling Name (CNAM) database, Operator Services/Directory Assistance databases, Advanced Intelligent Network (AIN) databases, and the AIN platform and architecture." *Id.*

[66] *Id.* at 3708. The Commission specifically found that certain other network elements did not need to be unbundled. The elements that need not be unbundled included: (1) operator services and directory assistance (OS/DA) – except in limited circumstances; (2) shared transport – where the incumbent LEC is not required to offer unbundled local circuit switching; and (3) packet switching – except in limited circumstances. *Id.*

[67] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order, 15 FCC Rcd 1760 (1999) (*Supplemental Order*).

[68] *Id.* at 1760, para. 2.

[69] *Id.*

Local Competition Order that the Commission "may, where necessary, establish a temporary transitional mechanism to help complete all of the steps toward the pro-competitive goals of the 1996 Act, including the full implementation of a competitively-neutral system to fund universal service and a completed transition to cost-based access charges."[70]

25. The Commission later clarified and extended this temporary restriction on the use of EELs to provide exchange access service.[71] In particular, the Commission "define[d] more precisely the 'significant amount of local exchange service' that a requesting carrier must provide in order to obtain loop-transport combinations."[72] The Commission specified three different sets of circumstances that would serve as safe harbors for demonstrating that a requesting carrier was providing a significant amount of local exchange service to a particular customer. The Commission stated that "section 251(d)(2) does not compel [the Commission], once [it] determines[s] that any network element meets the 'impair' standard for one market, to grant competitors automatic access to that same network element solely or primarily for use in a different market."[73] The Commission also clarified that "incumbent LECs must allow requesting carriers to self-certify that they are providing a significant amount of local exchange service over combinations of unbundled network elements."[74] In addition, the Commission noted that there was widespread agreement among all interested parties concerning appropriate auditing procedures.[75]

26. *Line Sharing Order*. In the *Line Sharing Order*, the Commission directed incumbent LECs to provide the high-frequency portion of the local loop (HFPL) to requesting telecommunications carriers as a UNE.[76] In reaching this conclusion, the Commission found that "[a]n incumbent LEC's failure to provide such access impairs the ability of a competitive LEC to

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[70] *Id.* at 1763, para. 7.

[71] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, 15 FCC Rcd 9587 (2000), *aff'd sub nom. CompTel v. FCC*, 309 F.3d 3 (D.C. Cir. 2002) (*CompTel*) (*Supplemental Order Clarification*).

[72] *Id.* at 9598, para. 21.

[73] *Id.* at 9595, para. 15.

[74] *Id.* at 9602, para. 29.

[75] *Id.* at 9603-04, para. 31. The Commission also adopted a restriction on the commingling of local exchange and access traffic as an additional means of preventing widespread conversion of special access circuits to UNEs. *Id.* at 9602, para. 28.

[76] *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

offer certain forms of xDSL-based services."[77] The Commission stated "[t]he record shows that lack of access would materially raise the cost for competitive LECS to provide advanced services to residential and small business users, delay broad facilities-based market entry and materially limit the scope and quality of competitor service offerings."[78] In order to prevent the degradation of analog voice service, the Commission required that incumbent LECs make the high frequency portion of the loop available only to carriers seeking to provide xDSL-based service that meets certain criteria. The Commission also concluded that "[i]ncumbents are not required to provide unbundled access to the high frequency portion of the loop if they are not currently providing analog voice service to the customer." The Commission also required that incumbent LECs "condition loops to enable requesting carriers to provide acceptable forms of xDSL-based services over the high frequency portion of the loop unless such conditioning would significantly degrade the incumbent's analog voice service."[79]

27. *Iowa Utilities Board v. FCC (Remand Decision).* In 2000, on remand after the Supreme Court's opinion in *AT&T v. Iowa Utilities Board*, the Eighth Circuit reviewed several more aspects of the *Local Competition Order*.[80] The court vacated on the merits the Commission's rule setting out the TELRIC pricing methodology because the methodology calls for incumbent LECs to be compensated for the use of their network at charges that reflect what an incumbent's costs would be if it were providing the most efficient technology in the most efficient configuration available using its existing wire center locations. The court reasoned that costs based on this "hypothetical" network did not reflect the "cost . . . of providing the interconnection or network element" as required by section 252(d)(1)(A)(i).[81] The court did, however, agree with the Commission that it was reasonable to interpret "cost" to mean forward-looking cost, rather than historical cost,[82] and that the cost of the element should not include any costs of universal service subsidies.[83] The court also reaffirmed its earlier decision to vacate the Commission's new combinations rules, sections 51.315(c)-(f).[84]

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[77] *Id.* at 20916. Digital subscriber line technology, commonly referred to as xDSL, permits high speed connections between subscribers and packet switched networks over ordinary copper telephone loops. *Id.* at 20915, para. 3.

[78] *Id.* at 20916, para. 5.

[79] *Id.* at 20917.

[80] *Iowa Utils. Bd. v. FCC*, 219 F.3d 744.

[81] *Id.* at 750.

[82] *Id.* at 751.

[83] *Id.* at 753. The court also vacated the Commission's resale pricing rule on the ground that section 252(d)(3) requires wholesale rates to reflect those retail costs that the incumbent LEC actually avoids by providing the service at wholesale rather than at retail, not those costs that merely could be avoided. *Id.* at 755.

[84] *Id.* at 759.

28. *Triennial Review NPRM.* In December 2001, about two years after releasing the *UNE Remand Order*, the Commission adopted and released the *Notice* that began the instant proceeding, the *Triennial Review NPRM*.[85] The *Notice* posed questions regarding almost all aspects of the unbundling regime, including the "necessary" and "impair" standards, the "at a minimum" language of section 251(d)(2), whether and how the Commission's previously identified UNEs should be unbundled, and whether the Commission should conduct a more granular impairment analysis.[86] The Commission asked particular questions about crafting unbundling rules that foster facilities investment by both incumbent LECs and new entrants, in particular investment in facilities needed to provide broadband services.[87]

29. *Verizon v. FCC.* In 2002, after the Commission released the *Triennial Review NPRM*, the Supreme Court upheld the TELRIC standard established by the Commission in the *Local Competition Order* and applied by state commissions to set the actual rates for UNEs.[88] In so doing, the Court overturned the decision by the Eighth Circuit concerning the lawfulness of the TELRIC pricing standard. The Court specifically rejected the argument that rates for UNEs must be based on the historic cost incurred by the incumbent LEC in furnishing the specific UNE to be provided as opposed to its value or price in a competitive open market. The Court also affirmed the Commission's decision to base TELRIC costs on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration in light of the existing location of the incumbent's wire centers. In addition, the Court rejected the claim that TELRIC is an unreasonable rate making methodology for UNEs because it does not produce facilities-based competition. The Court stated that it "had no idea whether a different forward-looking pricing scheme would have generated even greater competitive investment than the $55 billion that the entrants claim."[89] The Court, however, emphasized that "it suffices to say that a regulatory scheme that can boast such substantial competitive capital spending over a 4-year period is not easily described as an unreasonable way to promote competitive investment in facilities."[90]

30. Moreover, the Court eliminated remaining uncertainty regarding the Commission's new combinations requirement by explicitly upholding the Commission's rules requiring that incumbent LECs combine UNEs in certain circumstances even if they are not combined in the incumbent's network. The Court stated these rules "reflect a reasonable reading

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[85] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Notice of Proposed Rulemaking, 16 FCC Rcd 22781 (2001) (*Triennial Review NPRM*).

[86] *Id.* at 22790, para. 18, 22791, para. 21, 22803-13, paras. 47-70, 22797-802, para. 34-44.

[87] *Id.* at 22793-96, paras. 24-30.

[88] *Verizon*, 535 U.S. 467.

[89] *Verizon*, 535 U.S. at 517.

[90] *Id.*

of the statute, meant to remove practical barriers to competitive entry into local-exchange markets while avoiding serious interference with incumbent network operations."[91]

31. *United States Telecom Association v. FCC.* Eleven days after the Supreme Court's decision in *Verizon,* the D.C. Circuit vacated and remanded for further consideration the portions of the Commission's *UNE Remand Order* that adopted an interpretation of the "impair" standard and established a list of mandatory UNEs, and vacated and remanded as well the Commission's order requiring that the high-frequency portion of the loop be made available as a UNE.[92] Specifically, it appears that the court reversed rule 51.317(b) (the "impair" standard) and rule 51.319 (specific unbundling requirements).[93] As explained below, other rules related to these topics, such as the rules relating to spectrum management and the rule defining the "necessary" standard, remain in effect.[94]

32. While recognizing "the extraordinary complexity of the Commission's task[,]"[95] the court found the Commission's analysis wanting in a number of respects. At the outset, the court criticized what it characterized as the decision in the *UNE Remand Order* "to adopt a uniform national rule, mandating [an] element's unbundling in every geographic market and customer class, without regard to the state of competitive impairment in any particular market."[96] The court concluded that, under this approach, "UNEs will be available to CLECs in many markets where there is no reasonable basis for thinking that competition is suffering from any impairment of a sort that might have [been] the object of Congress's concern."[97] The court stated that "[o]ne reason for such market-specific variations in competitive impairment is the cross-subsidization often ordered by state regulatory commissions, . . [which] usually brings about undercharges for some subscribers (usually rural and/or residential) and overcharges for the others (usually urban and/or business)."[98] In particular, the court stated that "[t]he Commission never explicitly addresses by what criteria want of unbundling can be said to impair competition in such markets [where customers are charged below cost] where, given the ILEC's regulatory

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[91] *Id.* at 535.

[92] *USTA*, 290 F.3d 415.

[93] On September 4, 2002, the court stayed the effectiveness of its opinion until January 2, 2003. *See USTA v. FCC*, No. 00-1012, Order (D.C. Cir. Sept. 4, 2002). Then, on December 23, 2002, the court granted the consent motion of the Commission and the Bell Operating Companies to extend the stay through February 20, 2003. *See USTA v. FCC*, Nos. 00-1012, 00-1015, Order (D.C. Cir. Dec. 23, 2002).

[94] *See infra* Parts V.C., the Necessary Standard, and VI.A.4.a.(v), Specific Unbundling Requirements for Mass Market Loops.

[95] *USTA*, 290 F.3d at 421.

[96] *Id.* at 422.

[97] *Id.*

[98] *Id.*

hobbling, any competition will be wholly artificial."[99] The court added, "[b]ut it is in the other segments of the markets, where presumably ILECs must charge above cost (at least above average costs allocated in conventional regulatory fashion) in order to offset their losses in the subsidized markets, that the gap in the Commission's reasoning is greatest."[100] In particular, the court stated that "the Commission nowhere appears to have considered the advantage CLECs enjoy in being free of any duty to provide underpriced service to rural and/or residential customers and thus of any need to make up the difference elsewhere."[101] The court also concluded that the Commission had failed to adequately explain how a uniform national rule would help to achieve the goals of the Act, including the rapid introduction of competition, promotion of facilities-based competition, investment and innovation, certainty in the market place, administrative practicality and reduced regulation.[102]

33. The court further found that the *UNE Remand Order* improperly "reflect[s] an open-ended notion of what kinds of cost disparity are relevant" for purposes of identifying impairment.[103] In particular, the court stated that "[t]o rely on cost disparities that are universal as between new entrants and incumbents in *any* industry is to invoke a concept too broad, even in support of an *initial* mandate, to be reasonably linked to the purpose of the Act's unbundling provisions."[104] Instead, the court indicated that the Commission must engage in a balancing process, reflecting both the benefits and drawbacks of unbundling, noting that, in his separate opinion in *AT&T v. Iowa Utilities Board*, "Justice Breyer concluded that fulfillment of the Act's purposes . . . called for 'balance' between . . . competing concerns."[105] The court of appeals stated that although it did not "intend to suggest that the Act requires use of [the essential facilities] doctrine's criteria[,]"[106] "[a] cost disparity approach that links 'impairment' to universal characteristics, rather than ones linked in (in some degree) to natural monopoly, can hardly be said to strike such a balance."[107] The court emphasized that "cost comparisons of the sort made by the Commission, largely devoid of any interest in whether the cost characteristics of an 'element' render it at all unsuitable for competitive supply, seem unlikely either to achieve

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[99] *Id.*

[100] *Id.*

[101] *Id.* at 423.

[102] *Id.*

[103] *Id.* at 426.

[104] *Id.* at 427 (emphasis in original).

[105] *Id.* In this regard, the court stated that "[e]ach unbundling of an element imposes costs of its own, spreading the disincentive to invest in innovation and creating complex issues of managing shared resources[,]" while recognizing that "a broad mandate [for unbundling] can facilitate competition by eliminating the need for separate construction of facilities where such construction would be wasteful." *Id.*

[106] *Id.*

[107] *Id.*

the balance called for explicitly by Justice Breyer or implicitly by the Court as a whole."[108] The court also vacated the Commission's *Line Sharing Order*, finding that the Commission had failed to give adequate consideration to existing facilities-based competition in the provision of broadband services, especially by cable systems.[109]

34. *Competitive Telecommunications Association v. FCC.* In 2002, a few months after the D.C. Circuit's decision in *USTA*, the D.C. Circuit upheld the Commission's interim restrictions on the availability of enhanced extended links for use in the provision of exchange access service.[110] The court held that the Commission has authority to restrict the availability of UNEs to particular services for which there has been a showing that denial of the requested element would impair the competitor's ability to provide the service.[111] The court also found that the Commission had provided a reasonable justification for its restrictions on the use of enhanced extended links for the provision of exchange access service. Moreover, the court went on to state that "it is far from obvious to us that the FCC has the power, without an impairment finding as to non-local services, to require that ILECs provide EELs for such services on an unbundled basis[,]" although it did not rule on this issue since it was not raised by the parties.[112] The court also rejected CompTel's argument that the Commission's safe harbor provisions were arbitrary and capricious.[113]

IV. EVOLUTION OF THE MARKET FOR LOCAL TELECOMMUNICATIONS SERVICES

35. To provide context for this Order's unbundling decisions, we describe some of the major developments in the local telecommunications market, with special emphasis on the introduction of competition through the 1996 Act. This Part provides a brief factual overview of telecommunications markets that sets the stage for the unbundling decisions set forth below.

A. Effects of the Act on Telecommunications and Industry Trends

36. The 1996 Act marked the greatest single change in local telephone regulation since the original Communications Act of 1934. Although a few states had initiated significant market opening programs, the 1996 Act opened the monopoly local exchange market on a nationwide basis and also established procedures for the Bell Operating Companies (BOCs) to

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[108] *Id.*

[109] *Id.* at 428-29.

[110] *CompTel*, 309 F.3d at 8.

[111] *See id.* at 12-14.

[112] *Id.* at 14.

[113] *See id.* at 17-18.

enter the interLATA long distance market.[114] Specifically, the 1996 Act expanded existing collocation and interconnection requirements[115] and imposed network access requirements to allow full local service competition through three types of entry: resale, leasing of UNEs and investment in and ownership of full facilities.[116] Various competitive LECs pursued these strategies either singly or in combination. Total service resale requires the least initial capital investment, but is limited to reselling the incumbent LEC products with little opportunity to vary the products other than through improved customer service and bundling additional products with resold local service. Full ownership of facilities, on the other hand, allows the competitive LEC to totally engineer its own network, giving maximum control and flexibility but requiring the most capital investment. Leasing some parts of the network as UNEs, such as unbundled loops, can be accomplished at a lower initial capital investment than full facilities ownership and provides greater flexibility to develop services than does resale, but it may result in less network flexibility to add new services than does full facilities ownership.

37. The competitive LEC industry grew rapidly beginning in 1997. This initial expansion was followed by consolidation beginning in 2001. Direct competitive local service was being offered to mass market and enterprise customers. To a smaller degree, some competitive LECs began to provide selected transport services to other competitive LECs on a wholesale basis. One telecommunications trade association has estimated that in 2000 there were about 300 facilities-based competitive LECs, but that by early 2002 that number had contracted to about 70.[117]

38. The competitive LEC industry experienced major difficulty in 2001 and 2002 due to a slowing general economy and major reduction in access to capital. Some trade associations estimate that competitive LEC capital spending of $21.7 billion in 2000 was down to an estimated $10.7 billion for 2002.[118] Although there has been a significant reduction in the number of competitive LECs, the capital assets for those exiting carriers in some cases returned

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[114] *Local Competition Order*, 11 FCC Rcd at 14174, para. 4; 47 U.S.C. § 271. Nineteen states had some local competition rules in place by the time of the 1996 Act. Seven of these states had firms offering competitive switched access service: California, Illinois, Maryland, Massachusetts, Michigan, New York, and Washington.

[115] *See, e.g., Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, First Report and Order, 7 FCC Rcd 7369 (1992) (*Special Access Order*), *vacated in part and remanded, Bell Atlantic*, 24 F.3d 1441 (D.C. Cir. 1994); *First Reconsideration*, 8 FCC Rcd 127 (1993), *vacated in part and remanded, Bell Atlantic Tel. Cos. v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994); *Second Reconsideration*, 8 FCC Rcd 7341 (1993); *Second Report and Order*, 8 FCC Rcd 7374 (1993) (*Switched Transport Order*), *vacated in part and remanded, Bell Atlantic Telephone Cos., v. FCC*, 24 F.3d 1441; *Remand Order*, 9 FCC Rcd 5154 (1994) (*Virtual Collocation Order*), *remanded for consideration of 1996 Act, Pacific Bell v. FCC*, 81 F.3d 1147 (1996).

[116] 47 U.S.C. § 251. Congress recognized that it might be inefficient or impossible for competitive LECs to duplicate the entire incumbent LEC telecommunications network to enter a market and established several modes of possible market entry, including resale and UNEs, as well as full facilities deployment.

[117] ALTS, THE STATE OF LOCAL COMPETITION 2002, Annual Report 5 (Apr. 2002) (ALTS 2002 Report).

[118] *Id.* at 11.

to productive use by other entities. Accordingly, much of this investment has not been lost, but rather shifted to new companies and put back into service.[119]

39. Although precise figures about competitive LEC services are difficult to obtain, parties in this proceeding have provided some estimates.[120] At the end of 2001, competitive LECs had almost 25,000 collocation arrangements with the BOCs, up from less than 5,000 in 1998.[121] Minutes of traffic exchanged had grown from less than 100 billion to almost 500 billion minutes from 1998 through 2001.[122] In the same time period, competitive LEC access lines grew from an estimated 8-9 million to 23-32 million lines.[123] Estimates provided by analysts, BOCs, and trade groups indicate that competitive LEC revenues from local service have risen from $3.5 billion in 1998 to $9.5 billion in 2001.[124] By 2001, competitive LECs had deployed about 1,300 local circuit switches, with potential coverage of over 86 percent of BOC access lines.[125]

40. Incumbent LECs have also entered the competitive LEC market. Some have expanded their existing network into adjacent, usually BOC, territory. Others have established separate competitive entities and operate further afield.[126] In addition to existing telecommunications companies expanding into local service, new companies have been created to address new opportunities.[127] Cable companies have also deployed networks to serve business

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[119] *See* ALTS, PROGRESS REPORT ON THE CLEC INDUSTRY (Oct. 17, 2002), <http://www.alts.org/Filings/101702CLECProgressReport.pdf>, for ALTS' detailed analysis of current and projected health of the competitive LEC industry.

[120] The data supplied do not generally distinguish between mass market and enterprise services, but they provide some clues about the state of competition in the mass market.

[121] SBC Comments, Attach. A at I-4.

[122] *Id.* at I-4.

[123] *Id.* at I-5. In mid-2002, competitive LECs reported they provided slightly more than 21 million total access lines, including resale, UNEs and full facilities; competitive LEC-owned facilities comprised about 6.2 million lines. Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2002* (Dec. 2002) at Table 3 (*Local Telephone Competition December 2002 Report*).

[124] SBC Comments, Attach. A, UNE Fact Report 2002 at I-13 (BOC UNE Fact Report 2002); ALTS 2002 Report at 9.

[125] BOC UNE Fact Report 2002 at II-1. The record indicates that in 2001, competitive LECs owned 339,501 route miles of fiber. ALTS 2002 Report at 17.

[126] There are at least 45 competitive LECs with incumbent LEC affiliations. Numbering Resource Utilization/Forecast (NRUF) FCC Form 502, as of December 31, 2001, staff calculation.

[127] For example, Sempra in San Diego and Dominion Telecom in Hartford-New Haven were laying fiber. Utility companies such as Avista, Montana Power, Pacific Enterprises of Southern California, UtiliCorp of Kansas/Missouri and PEPCO entered the telecommunications business. Citizens Utilities, for one, has more than two million access lines in the United States. *See* Telecommunications Industry Association, *2002 Telecommunications Market Review and Forecast*, at 37 (2002) (TIA 2002 Market Review).

customers.[128] These are generally not the historic hybrid-fiber-coaxial cable networks providing service to residential customers but newly deployed facilities specifically designed to serve enterprise customers.

41. Competitive LECs' purchase of total service resale has declined from a peak of almost 5.4 million lines in 2000 to below 3.5 million lines by mid-2002.[129] Over the same time period, total access lines served by UNE-Loops (UNE-L) and UNE-P combinations have grown from about 1.5 million to about 11.5 million.[130] UNE-L grew from 1 million to 4 million lines. UNE-P lines grew from less than half a million to almost 7.5 million.[131] These UNE-L and UNE-P represent approximately 6.9 percent of BOC access lines.[132] Competitive LECs provide service to about 16-20 percent of all access lines in the BOC territories: 26-33 percent of business access and about 9 percent of residential access lines.[133] Considering all modes of entry, competitive LEC lines probably exceed 10 percent of BOC lines in most states. The BOCs at present serve 87 percent of all incumbent LEC access lines while the "independent" incumbent LECs serve the balance.[134]

42. Fiber transport facilities have also increased in recent years. The BOCs estimate that since 1998, competitive LEC-owned fiber has increased from 100,000 to 184,000 route miles. In addition, wholesale suppliers of fiber continue to invest in facilities that are being used by all carriers.[135] Much of this interoffice transport is long-haul intercity, rather than local. For

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[128] In June 2002 cable carriers responded that they provide fewer than 16,000 coaxial cable connections to medium and large businesses; small business and residential services are not separately reported. Industry Analysis and Technology Division, Wireline Competition Bureau, *High Speed Services for Internet Access: Status as of June 30, 2002* (Dec. 2002) calculation using Table 3 and Table 5 (*High Speed Services December 2002 Report*).

[129] *Local Telephone Competition December 2002 Report* at Table 2, Table 4.

[130] The UNE-P consists of a leased combination of the loop, local switching and shared transport UNEs.

[131] *Local Telephone Competition December 2002 Report* at Table 4. PACE estimates that UNE-P grew to over ten million lines by the end of 2002. Letter from Genevieve Morelli, Counsel for PACE, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 1 (filed Jan. 14, 2003) (PACE Jan. 14, 2003 UNE-P Fact Report).

[132] *Local Telephone Competition December 2002 Report* at Table 4. In mid-2002, about 65% of UNE lines included switching. While competitive LEC end-user lines increased by about 30% from December 2000 to June 2002, UNEs and especially UNE-P have become a higher percentage of competitive LEC lines from 2000 to mid-2002. Considering the PACE estimate of ten million UNE-P lines at the end of 2002, competitive LECs would have 8.2% of BOC lines in UNE-L and UNE-P. PACE Jan. 14, 2003 *Ex Parte* Letter, UNE-P Fact Report Attach. at 1.

[133] BOC UNE Fact Report 2002 at I-7. This figure includes competitive LEC services provided through resale, UNE-P, UNE-L and fully-owned facilities.

[134] Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service* (May 2002) at Table 8.3 (*Trends in Telephone Service May 2002 Report*).

[135] BOC UNE Fact Report 2002 at III-8 to III-14. The route miles deployed and planned are difficult to estimate. ALTS estimates competitive LEC fiber miles at almost 340,000 miles in 2001. ALTS 2002 Report at 17.

any given city, a competitive LEC may or may not have non-incumbent LEC interoffice transport sufficient to link the various wire centers necessary to offer local service.[136]

B. Markets for Telecommunications Services

43. Some competitive LECs have pursued the medium and large business enterprise markets while others have pursued mass market strategies. As discussed below in detail, the economic characteristics of these markets vary significantly.[137] In this Part, we summarize general observations about the overall development of competition for these customer classes.

1. The Enterprise Market

44. Within the enterprise market for telecommunications services, new entrants began competing with the incumbent LECs in the mid-1980s. Beginning in New York in the mid-1980s, competitive fiber suppliers (competitive access providers or CAPs) began providing competitive exchange access service to larger business customers.[138] The CAPs, in general, provided a specialized service to their customers – connecting incumbent LECs' local wire centers to interexchange carriers' points of presence (POPs) and large enterprise customers directly to interexchange carrier POPs.[139] The CAPs enjoyed some success in this market as they were able to underprice the incumbent LECs' comparable (but regulated) special access services.[140] By 1993, the ten largest CAPs had revenues of $209.6 million from providing

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[136] Allegiance Comments at 28. Allegiance provisions about 70% of its DS3 interoffice transport through the incumbent LEC. *Id.* ALTS states that competitive fiber is only available in about 15% of all BOC wire centers. ALTS *et al.* Comments at 63. Covad and Mpower state they have competitive fiber alternatives in about one-half of the incumbent LECs central offices where they collocate. Covad Comments at 67-68; Mpower Reply at 13-16; Letter from Ross A. Buntrock, Counsel for Mpower, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 7 (filed Oct. 11, 2002) (Mpower Oct. 11, 2002 *Ex Parte* Letter). Broadview has experienced competitive transport availability in only about 20% of cases. Letter from Rebecca H. Sommi, Vice President, Operations Support, Broadview, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 14 (filed Aug. 2, 2002) (Broadview Aug. 2, 2002 *Ex Parte* Letter); *see also* Letter from Joan Marsh, Director, Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 7-10 (filed Oct. 8, 2002) (AT&T Oct. 8, 2002 *Ex Parte* Letter).

[137] *See infra* Part V.B.2.

[138] By the late 1980s, companies like Teleport Communications Group in New York; Institutional Communications Company in Washington, D.C.; Chicago Fiber Optic/MFS in Chicago, Baltimore and Philadelphia; Kansas City Fiber Net in Kansas City; and other CAPs had begun to develop networks in traditional BOC territories. RICHARD G. TOMLINSON, TELE-REVOLUTION – TELEPHONE COMPETITION AT THE SPEED OF LIGHT 87-88 (2000).

[139] AT&T, MCI and Sprint are the largest interexchange carriers. Industry Analysis and Technology Division, Wireline Competition Bureau, *Statistics of Communications Common Carriers* (Sept. 2002) at Table 1.4 (*Statistics of Communications Common Carriers December 2001 Report*). These interexchange carriers accounted for 83% of reported 1996 long distance carrier revenues. CAPs connected large business customers directly to the interexchange carrier's POP, bypassing the incumbent LEC's switch and thereby avoiding access charges.

[140] In 1999, the Commission established a framework by which incumbent LECs could obtain pricing flexibility in the provisioning of special access services. *See Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 98-157, (continued....)

competitive access either through fiber or microwave technologies, out of a total of $91 billion in telecommunications revenue nationally.[141] CAPs began to install more infrastructure and expand services where approved by state regulatory authority. By 1995, the CAPs' total revenues had exceeded $1 billion with about one-half from dedicated access and private line service and the balance from local switched service, switched access and data service.[142] Approximately 57 CAPs were providing competitive access services in 1996 and were well positioned when Congress passed the 1996 Act.[143] Interexchange carriers and CAPs quickly entered the newly opened local markets as competitive LECs,[144] and large interexchange carriers began to acquire CAPs to facilitate local market entry.[145]

45. Since 1996, new entrants have captured some of the enterprise market. Competitive LECs report about 51 percent of their customer access lines serve medium and large business customers.[146] Unlike the incumbent LEC legacy network that was built out from central offices in a radiating pattern, competitive LECs collocated in few incumbent LEC central offices and built fiber ring-lateral-spur configurations to connect large business customers.[147] Competitive LECs self-provision facilities, lease facilities from other competitive facilities providers or purchase high-capacity (DS1 and above) loops either as UNEs or special access services from the incumbent LECs. Competitive LECs' high-capacity loops, however provisioned, are difficult to count. BOCs estimate that competitive LECs' share of special

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CCB/CPD File No. 98-63, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14224-25, paras. 2-3 (1999) (*Pricing Flexibility Order*).

[141] TOMLINSON, *supra* note 138, at 241-42.

[142] *Id.* at 241-65.

[143] TIA 2002 Market Review at 37.

[144] Carriers have not generally used satellite technologies to serve the enterprise market. While there was some fixed wireless entry in the enterprise market, it has been limited. *See, e.g.*, AT&T Comments, Attach. F, Declaration of Robert D. Willig (AT&T Willig Decl.) at paras. 200-01.

[145] MCI had acquired extensive rights-of-way and fiber cable in over 100 cities from Western Union in 1990, creating the competitive LEC MCIMetro in 1994. WorldCom acquired MFS, the largest competitive LEC, in 1996, Brooks Fiber in 1997 and MCIMetro, the fourth largest competitive LEC, in 1998. WorldCom had also acquired UUNET Technologies (which was providing Internet access to 350 corporate local area networks (LANs)) in August 1996. AT&T acquired the second largest ex-CAP, Teleport Communications Group, in early 1998. Accordingly, for a period of time after the enactment of the 1996 Act, WorldCom and AT&T were the two largest competitive LECs, accounting for about one-half of all competitive LEC revenues for 1998. TOMLINSON, *supra* note 138, at 346-54.

[146] *Local Telephone Competition December 2002 Report* at Table 2.

[147] MARTIN F. MCDERMOTT III, CLEC – AN INSIDER'S LOOK AT THE RISE AND FALL OF LOCAL EXCHANGE COMPETITION 64 (2002).

access revenues is at least 28 percent.[148] The enterprise market has been expanding, and the BOCs also expanded their services in this market. BOCs report about 22 percent of their customer access lines serve medium and large business customers.[149] Further, BOCs state that they provided 19.5 million special access lines in 1996, growing to 78.6 million lines in 2001.[150] BOC provisioning of fiber and high-capacity loops to end-user customers' premises significantly increased in recent years. Total BOC reported DS1s terminating at customer premises increased over four fold from fewer than 300,000 in 1996, to over 600,000 by 1999 and almost 1.3 million in 2001.[151] BOC reported fiber terminated to customers' premises more than doubled between 1996 and 2001, from just under 1 million to over 2 million lines.[152]

46. To meet the business demands of enterprise customers, competitive carriers must meet more stringent design and operational standards with higher capacity and more reliability. Specifically, enterprise customers demand several different kinds of packet switching services provided by these competitive carriers including frame relay, and its predecessor X.25, which allow local area networks to be connected across a public network. Frame relay is especially valuable in connecting employees in several different, distant locations and more than 35,000 enterprises customers utilize frame relay with more than one million ports.[153] The frame relay market for services has grown from about $1.3 billion in 1996 to $7.6 billion in 2001 and use of frame relay is growing at a faster rate than use of dedicated leased lines because it is more economical and flexible.[154] Another technology, asynchronous transfer mode (ATM), however, is the most widely used carrier backbone technology and can guarantee different quality of service levels to meet different customer needs.[155] Frame relay's rapid growth slowed somewhat in recent years, partially as ATM became more widely deployed. In 2001, ATM technology had

[148] BOC UNE Fact Report 2002, App. L, at L-1, L-2. It is difficult to obtain data on the competitive LECs' market share. It appears, however, that the special access market is growing and the BOCs themselves are providing more special access services. *Id.*

[149] *Local Telephone Competition December 2002 Report* at Table 2.

[150] *Statistics of Communications Common Carriers September 2002 Report* at Table 2.6; Industry Analysis Division, Common Carrier Bureau, *Statistics of Communications Common Carriers* (Dec. 1997) at Table 2.10 (*Statistics of Communications Common Carriers December 1997 Report*).

[151] ARMIS Report 43-07 (Transmission Facilities, DS1s Terminated at Customer Premises, 1996 to 2001).

[152] *Id.* (Transmission Facilities, Fiber Terminated at Customer Premises, 1996 to 2001).

[153] TIA 2002 Market Review at 136.

[154] *Id.* at 138-39, Table III-11.2.

[155] *Id.* at 140.

a total bandwidth of over 12,000 DS0s while frame relay had fewer than 11,000 DS0 equivalents.[156]

47. A relatively new, but growing voice service used by enterprise customers is telephony provided over Internet protocol, also known as IP telephony.[157] Some analysts have estimated that close to half of U.S. businesses have implemented private business exchanges (PBXs) capable of providing IP telephony and place calls among corporate locations over an IP network: the IP PBX market is projected to be $3.9 billion (20 percent of the PBX market) by 2005, and 25 percent of call center contacts currently use IP technology.[158]

48. Some competitive LECs market integrated voice and data services to enterprise customers.[159] The business plan of these competitive LECs involves leasing high-capacity loops as UNEs and then using them efficiently to provide a bundled offering including voice, data and Internet access.[160]

49. In serving enterprise customers, the BOCs must operate under the Act's restrictions on BOCs originating long distance service from their regions until they have gained section 271 approval.[161] Many approvals have been granted, allowing the BOCs to expand their

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[156] *Id.* at 143. In 2001, there were about 26,000 ATM ports compared to 1.2 million frame relay ports. The high cost and technical complexity relative to other technologies make ATM potentially vulnerable to new technologies that might be provided at a lower cost. *Id.* at 140-43.

[157] We do not intend to define the regulatory classification of "IP telephony" here, but merely to discuss its use and growth in very broad terms.

[158] *See, e.g.*, CommWeb.com, *VoIP/IP Telephony Statistics* (Oct. 15, 2002), <http://www.commweb.com/article/COM20021015S0002> (visited Dec. 16, 2002).

[159] Companies such as ITC^Deltacom, NewSouth and Cbeyond have focused on providing integrated services to the business market. ALTS *et al.* Comments at 16; *see also* NewSouth Comments at 7-38; NuVox Comments at 5-8; ITC^Deltacom Petition for Waiver of Supplemental Order Clarification, CC Docket No. 96-98 at 1-2 (filed Aug. 16, 2001) (ITC^Deltacom Aug. 16, 2001 Petition).

[160] ALTS *et al.* Comments at 33. ITC^Deltacom, for example, offers a bundled package consisting of facilities-based long distance, local service, data and Internet access services and customer premises equipment. ITC^Deltacom Aug. 16, 2001 Petition at 1-2. NewSouth markets to small businesses, typically leasing a single DS1 as a UNE to support a mix of voice and data services. NewSouth Comments at 5. Over 90% of NewSouth customers are being served by DS1s upgraded from previous analog services. *Id.* NewSouth has deployed digital circuit and packet switches and leased intercity lit fiber from third parties to connect its switches and collocated equipment in incumbent LEC central offices. *Id.* at 9. NewSouth states that its facilities allow it to offer customers better prices and more and varied services. *Id.* at 9-10.

[161] 47 U.S.C. § 271. As an incentive to BOCs opening their local markets, Congress enacted section 271, which allows the Commission to grant BOCs entry into the interLATA market after the BOC has demonstrated that it has implemented the necessary conditions to open its market. The first section 271 authority was granted to Verizon in New York in December 1999. *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953 (1999) (*Bell Atlantic New York 271 Order*).

enterprise offerings. Currently, the BOCs have authority to provide in-region long distance service in 43 states, representing 82.6 percent of the BOC access lines and 82.2 percent of the United States population.[162] BellSouth was the first BOC to complete all section 271 authorizations for its service territory.[163]

2. The Mass Market

50. The mass market for telecommunications services before 1996 was served more by monopoly providers than was the enterprise market.[164] Since 1996, various competitive LECs have used one or more of the three entry strategies set forth in the 1996 Act to provide competitive local service to many residential customers in the United States. By mid-2002, over 93 percent of the United States population lived in a zip code served by at least one competitive LEC providing some kind of service.[165] It appears that competitive LECs are more often found in urban than rural areas.[166] Over 51 percent of competitive LEC lines serve the residential/small business market while over 78 percent of BOC lines serve this group.[167]

51. The mass market has also seen competition increase in the provision of broadband services, largely fueled by the popularity of the Internet.[168] The residential market for Internet access has supported additional line growth for dial-up service. In 1988, only 2.7 percent of households had two or more telephone lines. That percentage steadily increased to 9.1 percent in

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[162] Population numbers include Alaska, Hawaii and all of Connecticut. BOCs do not operate in Alaska and Hawaii. Some states have a low percentage of BOC access lines or, as is the case in SBC's territory in Connecticut, are not subject to section 271.

[163] *BellSouth FL/TN 271 Order*, 17 FCC Rcd 25828.

[164] The exception to this statement was the provision of commercial mobile radio service (CMRS), a service which had 44 million residential and business telephony subscribers in 1996. *Trends in Telephone Service May 2002 Report* at Table 12.2. However, the number of subscribers has risen to almost 129 million by mid-2002. *Local Telephone Competition December 2002 Report* at Table 11. Commercial mobile service is any mobile service, as defined in section 3 of the Act, as amended, provided for profit and making interconnection services available to the public. *See* 47 U.S.C. § 332(d)(1). Commercial Mobile Services became known by the Commission as the Commercial Mobile Radio Service, or CMRS. *See* 47 C.F.R. § 20.9. Mobile Telephony is a "CMRS."

[165] *Local Telephone Competition December 2002 Report* at Table 13. Competitive LECs' access lines total about 17 million, or 9% of total U.S. access lines. *Id.* (calculation using Table 3 and Table 4). By mid-2002, over 11 million BOC lines had been leased as UNE-L or UNE-P to competitive LECs. *Id.* at Table 4.

[166] Thirty-three percent of all zip codes, serving about 7% of the population, have no competitive LEC presence. *Id.* at Table 12; *see also* James Zolnierek, James Eisner & Ellen Burton, *An Empirical Examination of Entry Patterns in Local Telephone Markets*, 19 J. REG. ECON. 143-59 (2001) (quantifying increased competitive LEC presence in areas with a high percentage of urban households).

[167] *Local Telephone Competition December 2002 Report* at Table 2.

[168] *See* FCC Technical Advisory Council, Optical Working Group, *Broadband Access Platforms for the Mass Market – An Assessment* (Dec. 4, 2002), <http://www.fcc.gov/oet/tac/Broadband_Access_Supporting_Materials_12_4_02.ppt>.

1992, 16.8 percent in 1996, 19.7 percent in 1998, and 26.5 percent in 2000.[169] Internet access has spurred growing xDSL subscription. As of mid 2002, there were about 5.1 million xDSL lines in service. Incumbent LECs were the major providers of xDSL service with 95.6 percent of xDSL lines, while competitive LECs accounted for 4.4 percent.[170] Eighty-two percent of the incumbent LECs' xDSL lines and 39 percent of the competitive LECs' xDSL lines are residential. The BOCs served about 4.5 million xDSL customers in mid 2002. Due to technical network limitations and other reasons, less than 50 percent of BOC customers are able to subscribe to xDSL. One state commission expects this percentage to rise to about 75 percent by 2005.[171]

52. The mass market has also experienced increased narrowband and broadband competition from intermodal competitors. Cable operators have expanded into both voice telephony and cable modem service, which have, to a limited extent, competed with services of traditional wireline providers.[172] The cable companies have remained focused on mass market, largely residential service consistent with their historic residential network footprints, and bundling telephone service with cable modem services.[173] More broadly, cable companies are offering cable modem service capability to 71 percent of United States households with a current take rate of about 11 percent.[174] In 2002, cable companies provided cable modem service to approximately 9.2 million subscribers.[175] Some cable companies have begun offering local voice service.[176] In mid-2002, cable telephony represented over 2.5 million access lines in 27 states, a

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[169] *Trends in Telephone Service May 2002 Report* at Table 8.4. It appears that the proportion of households with additional lines declined to 24.6% for 2001. Preliminary staff estimate for 2001.

[170] *High Speed Services December 2002 Report* at Table 5

[171] Letter from Lila A. Jaber, Chairman, Florida Public Service Commission, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-98, 98-146, 98-147, 01-337, 02-33, Attach. at 12-15 (filed Nov. 6, 2002) (Florida Commission Nov. 6, 2002 *Ex Parte* Letter).

[172] The largest such residential service cable companies are Adelphia Business Solutions/Hyperion, Cablevision Lightpath, Comcast Business Communications, Cox Fibernet/Cox Business Services and Time Warner Telecom. National Cable & Telecommunications Association, *Cable Telephony: Offering Consumers Competitive Choice*, at 8-9 (July 2001) (NCTA 2001 Report), <http://www.ncta.com/pdf_files/Telephony_ReportComplete.pdf>.

[173] However, there is some recent cable expansion into the enterprise market. Letter from Edward Shakin, Vice President and Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, 02-33, 01-337 at 1-4 (filed Jan. 15, 2003) (Verizon Jan. 15, 2003 *Ex Parte* Letter).

[174] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Third Report, 17 FCC Rcd 2844, 2871-72, paras. 65-66 (2002) (*Third Section 706 Report 2002*); *High Speed Services December 2002 Report* at Table 1. Some analysts expect cable modem subscriptions to increase to 28-30 million by 2006 with a 40% penetration rate. *Third Section 706 Report 2002*, 17 FCC Rcd at 2872, para. 66.

[175] *High Speed Services December 2002 Report* at Table 5.

[176] Cox and AT&T are the largest voice-over-cable providers. NCTA 2001 Report at 1-4.

39 percent growth over the previous year.[177] Industry sources state that over 10 million households have access to cable telephony.[178] Cable companies' voice service competes with the primary landline voice service and second line while cable modem service competes with second line dial-up service and xDSL service.

53. Wireless telephone subscriber growth for the mass market has been remarkable. From fewer than 100,000 subscribers in 1984, there were over 5 million subscribers by 1990, over 44 million in 1996, and almost 129 million by mid-2002.[179] Over 90 percent of the United States population lives in counties served by three or more wireless operators; about two in five Americans now have a mobile phone.[180] Prices for wireless service have steadily declined in recent years. In 1990 average wireless bills were over $80 a month while the average monthly bill in mid-2001 was about $46.[181] Sixty-one percent of households had at least one wireless telephone in mid-2001.[182] Notably, 3 to 5 percent of wireless customers use their wireless phone as their only phone.[183] Some carriers attribute, at least in part, the recent drop in wireline switched access lines[184] to this replacement of wireline phones by wireless phones. This replacement may particularly affect second-line growth.[185]

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[177] *Local Telephone Competition December 2002 Report* at Table 5 and staff calculation.

[178] BOC UNE Fact Report 2002 at II-11.

[179] *Local Telephone Competition December 2002 Report* at Table 11. The wireless survey data present total cellular, broadband personal communications service (PCS), and specialized mobile radio (SMR) subscribers and does not distinguish between mass market and enterprise customers.

[180] BOC UNE Fact Report 2002 at I-4.

[181] *Trends in Telephone Service May 2002 Report* at Table 12.3.

[182] *Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993*, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Seventh Report, 17 FCC Rcd 12985, 13016 (2002) (*Seventh Wireless Report 2002*).

[183] *Id.* at 13017.

[184] Since 2000, we have seen for the first time a decrease in the number of retail access lines served by the incumbent LECs: from 2000 to 2002, their share of access lines declined by about nine million, or about 4.7%. *Local Telephone Competition December 2002 Report* at Table 4. Some of the decline can be attributed to a decline in additional lines in households. Recent growth in additional residential lines in a household, from 16.8% in 1996 to 26.5% in 2000, appears to have decreased to less than 25% in 2001. *Trends in Telephone Service May 2002 Report*, Table 8.4 and preliminary staff estimate for 2001. Despite the recent drop in the number of BOC retail switched access lines, the retail and wholesale lines combined provided by BOCs have increased each year since 1996. BOC business service offerings have expanded in recent years with more special access (measured as DS0 equivalents). Considering all switched and non-switched access lines, the BOCs' total access line count has increased in recent years, at 188.3 million in 1999, 228.5 million in 2000 and 235.3 million in 2001. *See Statistics of Communications Common Carriers September 2002 Report* at Table 2.6; Industry Analysis Division, Common Carrier Bureau, *Statistics of Communications Common Carriers* (Sept. 2001) at Table 2.6 (*Statistics of Communications Common Carriers September 2001 Report*); Industry Analysis Division, Common Carrier Bureau, (continued....)

54. High-speed satellite data service is also available in most areas of the United States. Satellite broadband exists and is most attractive where xDSL or cable modem service is not available.[186] But satellite services generally are not price competitive with wireline services in the mass market except in specialized situations.[187] As two-way Internet connectivity is deployed and if prices decline over time, satellite service may become a more viable alternative to terrestrial high-speed services like xDSL. In 2001, there were only 212,610 reported high speed service subscribers of satellite and fixed wireless combined.[188]

V. PRINCIPLES OF UNBUNDLING

55. In this Part, we set forth our new standards and guiding principles for determining when a network element should be unbundled. We adopt below an approach to unbundling that is faithful to the statute, responsive to the Supreme Court and the D.C. Circuit, economically rational, and that embraces the states' involvement in the unbundling process.

56. In subpart A, we interpret the definition of "network element" contained in section 153(29) of the Act as it relates to our unbundling inquiry. Specifically, we conclude that a "network element" refers to an element of the incumbent LEC's network that is capable of being used to provide a telecommunications service. In subpart B, we set forth our new interpretation of "impair." We analyze principles from the Supreme Court and D.C. Circuit opinions on "impair"; what guidance we derive from the language, structure, purposes, and history of the 1996 Act; and what lessons we can take from economic and legal literature on topics that bear some resemblance to the ambiguous "impair" standard in an effort to make our

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Statistics of Communications Common Carriers (Aug. 2000) at Table 2.6 (*Statistics of Communications Common Carriers August 2000 Report*).

[185] *Seventh Wireless Report* 2002, 17 FCC Rcd at 13016-17. The penetration rate is calculated by dividing total wireless subscribers by total population. Such replacement may also be occurring for long distance. *Id.* at 13018. Other forms of wireless availability have improved in recent years, becoming a possible method to access the Internet for some customers. Mobile data services had between 2 and 2.5 million subscribers in 2000 and between eight and ten million subscribers in 2001. *Id.* at 13038-39.

Local Multipoint Distribution System (LMDS) is another fixed wireless broadband transmission technology. Most effective where customers are closely grouped, this line-of-sight transmission technology has not been significantly deployed. About $220 million LMDS investment occurred in 2001, as compared to $61 million the year before. *See* TIA 2002 Market Review at 195. As the wireless technology continues to improve, wireless may become a more practical and attractive alternative to wireline for data services.

[186] *Third Section 706 Report 2002*, 17 FCC Rcd at 2877, para. 78. Until recently, only one-way Internet connectivity was available, with a dial-up upstream connection accompanied by a high-speed satellite-based downstream path. *Id.* at 2880, para. 85.

[187] Some analysts estimate that the 20-30 million United States homes where cable modem or xDSL is not available are the most likely current potential customers for satellite services. *Id.* at 2877, para. 78.

[188] Industry Analysis and Technology Division, Wireline Competition Bureau, *High Speed Services for Internet Access: Status as of December 31, 2001* (July 2002) at Table 1, Table 2 (*High Speed Services July 2002 Report*).

interpretation as economically rational as possible. From these sources, we derive an interpretation of "impair" that asks whether lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic. We will apply this interpretation of "impair" to individual elements in a more granular manner than the Commission has in the past, taking into account different customer classes, geographic considerations, and service considerations. We also explain the relationship between unbundling obligations and implicit support flows.

57. In subpart C, we reaffirm our existing interpretation of the "necessary" standard. In subpart D, we reaffirm our interpretation of the "at a minimum" language of section 251(d)(2), although we emphasize that we apply this language with restraint throughout the Order, and we find no instances on this record where unbundling is warranted in the absence of impairment. In subpart E, we explain the critical role of the states in the unbundling process; specifically, we explain how we will delegate to the states the authority to perform a more granular analysis to determine where unbundling is appropriate, and the extent to which states may establish unbundling requirements pursuant to state law that are consistent with federal requirements.

A. Definition of "Network Element"

58. We reaffirm our previous interpretation of the definition of "network element," set forth in section 153(29) of the Act, as requiring incumbent LECs to make available to requesting carriers network elements that are capable of being used in the provision of a telecommunications service.[189] Section 153(29) defines "network element" as "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 . . . ."[190] As an initial matter, we disagree with those commenters that continue to argue that "network elements" can only be physical facilities or pieces of equipment and therefore cannot include mere features, functions, and capabilities of a physical facility or equipment, such as a portion of the available bandwidth of a loop.[191] Several courts, including the Supreme Court, have previously considered and rejected this argument. Indeed, the Supreme Court stated that "[g]iven the breadth of [Congress's network element] definition, it is impossible to credit the incumbents' argument that a 'network element' must be part of the physical facilities and equipment used to provide local telephone service."[192]

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[189] *UNE Remand Order*, 15 FCC Rcd at 3845, para. 329.

[190] 47 U.S.C. § 153(29).

[191] *See, e.g.*, Verizon Comments at 82-83.

[192] *Iowa Utils. Bd.*, 525 U.S. at 387; *see also USTA*, 290 F.3d at 430 (upholding the Commission's decision that the high frequency portion of the loop is a capability of the loop, and stating that "the Commission's view is convincing.").

59. In addition, the definition of a network element is ambiguous as to whether the facility or equipment (and the accompanying features, functions and capabilities) must be *actually used by the incumbent LEC* in the provision of a telecommunications service or must be *capable of being used* by a requesting carrier in the provision of a telecommunications service regardless of whether the incumbent LEC is actually using the network element to provide a telecommunications service.[193] We find that, taken together, the relevant statutory provisions and the purposes of the 1996 Act support requiring incumbent LECs to provide access to network elements to the extent that those elements are capable of being used by the requesting carrier in the provision of a telecommunications service. We note that, by using the terms "features, functions, and capabilities," the definition itself uses broad and expansive terminology in defining its scope. For example, the term "capability" is defined in Webster's New College Dictionary as "potential ability."[194] Limiting a requesting carrier's ability to obtain access only to facilities or equipment (and associated features, functions and capabilities) actually used in the provision of a telecommunications service would require a reading in tension with this definition.

60. With regard to the purposes of the Act, as mentioned above, section 251(d)(2) requires the Commission to consider whether the failure to provide access to a particular network element would impair the ability of a requesting telecommunications carrier "to provide the services that *it* seeks to offer."[195] To interpret the definition of "network element" so narrowly as to mean only facilities and equipment actually used by the incumbent LEC in the provision of a telecommunications service also would be at odds with the statutory language in section 251(d)(2) and the pro-competitive goals of the 1996 Act.[196] Such a finding would deny competitive LECs any certainty about the availability of a network element in a given market unless and until a determination was made about whether the incumbent LEC is actually using that network element in its provision of a telecommunications service in that market. Providing requesting carriers with access only to those facilities and equipment actually used by the incumbent LEC would also lead to such unreasonable results as preventing a spare loop that is capable of providing second-line service from being considered a "network element" if the customer were not purchasing service over that line from the incumbent LEC.[197] Finally, an

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[193] We look to the use by the requesting carrier as discussed below. *See infra* Part V.B.2.c (discussing our adopted service-specific approach).

[194] *See* WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 226 (1994) (defining "capability" as "the quality or state of being capable; potential ability; the capacity to be used, treated, or developed for a particular purpose.").

[195] 47 U.S.C. § 251(d)(2)(B) (emphasis added).

[196] *See, e.g.*, Letter from David Lawson, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 12-13 (filed Dec. 23, 2002) (arguing that the manner in which an incumbent LEC chooses to use its facilities is irrelevant to competitive LECs' rights under section 251(c)(3)) (AT&T Dec. 23, 2002 Broadband *Ex Parte* Letter).

[197] *See* Letter from Praveen Goyal, Senior Counsel for Government & Regulatory Affairs, Covad, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 02-33 at 3 (filed Jan. 10, 2003) (Covad Jan. 10, 2003 *Ex Parte* Letter).

alternative reading of the statute would allow incumbent LECs to prevent competitors from making new and innovative uses of network elements simply because the incumbent LEC has not yet offered a given service to consumers. Such a result would stifle a competitor's ability to innovate and could hinder deployment of advanced telecommunications services.[198]

B. The Impairment Analysis

1. The "Impair" Standard

61. In this Part, we first describe the principles that the courts have instructed us to use in interpreting the "impair" standard. We explain what guidance we can derive from the language, structure, purposes, and history of the 1996 Act itself. We examine several legal doctrines and economic theories in related or analogous areas to see what guidance they may provide as we interpret the ambiguous "impair" standard. Finally, we explain our new interpretation of the "impair" standard, which draws on all these sources.

a. Court Decisions

62. Since 1996, the Commission has twice interpreted the "impair" standard, and twice the courts have remanded its interpretation as lacking the rigor intended by Congress. In its first attempt to interpret and apply the unbundling provisions of the 1996 Act, the Commission found, in section 251(c)(3), a "duty to provide all network elements for which it is technically feasible to provide access on an unbundled basis."[199] The Commission then found in section 251(d)(2) the "authority to refrain from requiring incumbent LECs to provide all network elements for which it is technically feasible to provide access on an unbundled basis."[200] In applying that "authority to refrain," the Commission interpreted "impair" to mean "'to make or cause to become worse; diminish in value,'"[201] meaning there is impairment if "the quality of service the entrant can offer, absent access to the required element, declines and/or the cost of providing the service rises."[202] In determining whether the cost would rise or the quality would decline, the Commission determined to examine whether using a different element within the incumbent LEC's network would alleviate the impairment.[203] The resulting list of UNEs was

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[198] Section 706, reproduced in the notes under section 157 of the Act, directs the Commission to encourage the deployment of advanced telecommunications capability to all Americans on a reasonable and timely basis. 47 U.S.C. § 157 nt. Additionally, as noted in the Joint Managers' Statement, the goals of the 1996 Act were to provide for a pro-competitive, deregulatory national framework "designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition . . . ." Joint Managers' Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 113 (1996) (Joint Conference Report).

[199] *Local Competition Order*, 11 FCC Rcd at 15640, para. 278.

[200] *Id.* at 15641, para. 279.

[201] *Id.* at 15643, para. 285 (quoting RANDOM HOUSE COLLEGE DICTIONARY 665 (rev. ed. 1984)).

[202] *Id.*

extremely broad, encompassing everything from the NID to operator services and directory assistance.

63. The Supreme Court reviewed this interpretation in *Iowa Utilities Board* and concluded that the Commission's interpretation failed to comport with the Act, which "requires the FCC to apply *some* limiting standard, rationally related to the goals of the Act."[204] In particular, the Court faulted the agency for "assum[ing] that *any* increase in cost (or decrease in quality) imposed by denial of a network element . . . causes the failure to provide that element to 'impair' the entrant's ability to furnish its desired services,"[205] and for "blind[ing] itself to the availability of elements outside the incumbent's network."[206] Specifically with regard to costs, the Court noted that if competition were perfect and all market participants were providing service at marginal cost, "the Commission's total equating of increased cost (or decreased quality) with 'necessity' and 'impairment' might be reasonable," but such had not been shown to be the case.[207] The Court also rejected the notion that section 251(c)(3) imposes a general unbundling obligation, which the Commission has the authority to temper by making individual determinations of a lack of necessity or impairment under section 251(d)(2). Rather, the Act requires the Commission to justify unbundling elements, by applying the standards of section 251(d)(2).[208]

64. Justice Breyer concurred with the majority's handling of the "impair" standard, and added several specific concepts to elaborate on the Court's statement that the Commission must find "*some* limiting standard" in its interpretation of "impair."[209] Overall, Justice Breyer stated his belief that the Act calls for "balance" between unbundling's benefits to competition and its social and administrative costs.[210] On the one hand, Justice Breyer acknowledged that unbundling benefits competition by "seek[ing] to facilitate the introduction of competition where practical, *i.e.*, without inordinate waste."[211] On the other hand, Justice Breyer expressed his view that unbundling "can have significant administrative and social costs inconsistent with the Act's purposes."[212] Specifically, unbundling has administrative costs because two competitors are

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[203] *Id.*

[204] *Iowa Utils. Bd.*, 525 U.S. at 388 (emphasis in original).

[205] *Id.* at 389-90 (emphasis in original).

[206] *Id.* at 389.

[207] *Id.* at 390.

[208] *See id.* at 391-92.

[209] *See id.* at 427-31 (Breyer, J., concurring with regard to unbundling rules).

[210] *Id.* at 429-30 (Breyer, J., concurring).

[211] *Id.* at 428.

[212] *Id.*

sharing the same facility. Someone must manage that sharing, and that management costs something. Also, unbundling has social costs, Justice Breyer explained, in the diminished incentives of the facility owner to "keep up or improve the property," as it must share the benefits of those investments with its competitors.[213] Justice Breyer also expressed his view that the Act imposes limits on unbundling that are related to antitrust's essential facilities doctrine.[214]

65. In response to the Supreme Court's remand, the Commission interpreted the "impair" standard anew in the *UNE Remand Order*, attempting to take the Court's criticisms into account. The Commission concluded that:

> the failure to provide access to a network element would "impair" the ability of a requesting carrier to provide the services it seeks to offer if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a requesting carrier's ability to provide the services it seeks to offer.[215]

In determining whether alternatives are in fact available, the Commission stated it would consider the factors of cost, timeliness, quality, ubiquity, and impact on network operations.[216] The resulting list of UNEs was narrower than the Commission's first list to the extent the Commission excluded some circuit switches, operator services, and directory assistance. The Commission did, however, extend unbundling requirements to dark fiber, subloops, and packet switches in some circumstances.

66. As explained above, shortly before the D.C. Circuit addressed the Commission's revised unbundling standards in *USTA*,[217] the Supreme Court issued its decision in *Verizon*[218] upholding the TELRIC pricing standard and the Commission's combinations rules. The *Verizon* Court placed special emphasis on the deference owed to the Commission's interpretation of the Act, noting that section 252(d)(1), which authorized the Commission to set "just and reasonable" UNE rates "based on the cost . . . of providing the . . . network element," left the Commission "ample discretion" in establishing a rate-setting methodology.[219] The Court's task was therefore

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[213] *Id.* at 428-29.

[214] *Id.* at 428.

[215] *UNE Remand Order*, 15 FCC Rcd at 3725, para. 51.

[216] *Id.* at 3731, para. 65; *see also supra* Part III.

[217] *USTA*, 290 F.3d at 415.

[218] *Verizon*, 535 U.S. at 467.

[219] *Id.* at 500; *see also id.* at 523 ("In short, the incumbents have failed to carry their burden of showing unreasonableness to defeat the deference due the Commission.").

not to determine whether TELRIC was the *ideal* pricing mechanism, but rather to evaluate whether the TELRIC methodology reflected a *reasonable* interpretation of the Act, given the leeway accorded the Commission.[220]

67. While *Verizon* addressed the section 252(d)(1) pricing standard rather than the section 251(d)(2) "impair" standard, the decision touched on issues related to our analysis here. However, consistent with the deference described above, the Court refrained from issuing particular policy mandates, confining its inquiry to the reasonableness of the Commission's chosen approach. For example, while the majority accepted as "plausibl[e]"[221] the Commission's arguments that TELRIC pricing would not stifle investment in new facilities, it did not purport to resolve the parties' disagreement on this score, and did not preclude later modification of the TELRIC rules or other aspects of the unbundling regime. Instead, the Court recognized that it was "in no position to assess the precise economic significance" of the parties' opposing arguments regarding incentives,[222] and that it "ha[d] no idea whether a different forward-looking pricing scheme would have generated even greater competitive investment than the $55 billion that the entrants claim."[223] Thus, it merely acknowledged that the Commission had been forced to decide whether it was "better to risk keeping more potential entrants out, or to induce them to compete in less capital-intensive facilities with lessened incentives to build their own bottleneck facilities,"[224] and found that in such circumstances, "[i]t was not obviously unreasonable for the FCC to prefer the latter."[225]

68. Days later in the *USTA* decision, the D.C. Circuit squarely addressed the *UNE Remand Order*'s interpretation of "impair" and found substantial faults with it.[226] First, the court

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[220] *See, e.g., id.* at 523 ("TELRIC appears to be a reasonable policy for now, and that is all that counts.")

[221] *Id.* at 504.

[222] *Id.* at 507.

[223] *Id.* at 517.

[224] *Id.* at 510.

[225] *Id.* Thus, we disagree with commenters that suggest that *Verizon* mandates a particular result in this Order. While we acknowledge the Court's statement that the 1996 Act was meant "to reorganize markets by rendering regulated utilities' monopolies vulnerable to interlopers" and that its ratesetting mechanism is "designed to give aspiring competitors every possible incentive to enter local retail telephone markets," *id.* at 489, we adhere, as we must, to the Court's specific statement with regard to "necessary" and "impair" that the Commission must find "*some* limiting standard, rationally related to the goals of the Act." *Iowa Utils. Bd.* 525 U.S. at 388 (emphasis in original). *But see, e.g.*, Talk America Reply at 2-4; NuVox Reply at 3-4.

[226] *See generally USTA*, 290 F.3d at 415 (cert. denied after adoption of this Order but before release). Because the D.C. Circuit found substantial fault with the *UNE Remand Order* and because the *Triennial Review NPRM* asked sweeping questions about retooling the Commission's unbundling policies, we dismiss as moot the portion of the CompTel Nov. 26, 2001 Joint Conference Petition in which CompTel seeks a narrow review of the *UNE Remand Order* that would preclude parties from using this Triennial Review as a reconsideration proceeding. *See* Competitive Telecommunications Association Petition, CC Docket No. 96-98 (filed Nov. 26, 2001) (CompTel Nov. 26, 2001 Joint Conference Petition).

echoed the call Justice Breyer made in *Iowa Utilities Board* for "balance," stating that the Act contemplates some trade-offs between the pro-competition benefits of unbundling and the detriments of unbundling such as the disincentives to investment and the costs of managing shared facilities.[227] With regard to the Commission's treatment of cost disparities, the D.C. Circuit found that the Commission erred by considering as relevant "cost disparities that are universal as between new entrants and incumbents in *any* industry."[228] The D.C. Circuit also cautioned the Commission to consider the competitive landscape when making an unbundling determination, and not to exclude the participation of relevant intermodal competitors as a relevant factor in the analysis.[229] Finally, the D.C. Circuit noted that the essential facilities doctrine might "offer useful concepts for agency guidance" in interpreting the unbundling provisions of the 1996 Act, even if the Act does not require its use.[230]

b. Guidance from the Act and Its History

69. In this Part, we explain what we derive from the language, structure, purposes, and history of the "impair" standard and the 1996 Act as we attempt to interpret it in a manner that is faithful to its language, comports with Congress's intent, responds fully to the courts, and is economically rational. The "impair" language itself is ambiguous, and as one Justice has explained, this ambiguity reflects "congressional uncertainty about the extent to which compelled use of an incumbent's facilities will prove necessary to avoid waste."[231] Thus, it is up to the Commission to resolve the ambiguity of the "impair" standard.

70. We note that other language in the 1996 Act provides some clues as to Congress's intent. First, we look to the Preamble of the 1996 Act, which calls it "[a]n Act [t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."[232] We believe that this language gives the best snapshot of Congress's overall intent in enacting the 1996 Act. We reaffirm the conclusion in the UNE Remand Order that facilities-based competition serves the Act's overall goals.[233]

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[227] *USTA*, 290 F.3d at 425, 427.

[228] *Id.* at 427 (emphasis in *USTA*).

[229] *Id.* at 429-30.

[230] *Id.* at 428 & n.4 (*cert. denied* after adoption of this Order, but before release).

[231] *Iowa Utils. Bd.*, 525 U.S. at 428 (Breyer, J., concurring). Justice Breyer asks whether wireless or cable technologies might provide the local telephone competition for which Congress was striving, without the need for extensive unbundling of incumbent LECs' facilities. *Id.*

[232] *See* Preamble to the 1996 Act.

[233] *UNE Remand Order*, 15 FCC Rcd at 3704, para. 14; *see also, e.g.*, BellSouth Comments at 7; Progress & Freedom Foundation Comments at 5, 7-8; Progress & Freedom Foundation Reply at 3-4 (recognizing that markets can support a limited number of facilities-based competitors). Facilities-based competition better serves the goal of (continued....)

71. Specifically as to "impair," we note an important distinction that the Act makes, which provides us guidance on how to interpret this term. Section 251(d)(2) of the Act contains two different standards, "necessary" and "impair."[234] The "necessary" standard, which applies to proprietary elements, instructs the Commission to consider whether "access to such network elements as are proprietary in nature is *necessary*."[235] By contrast, the "impair" standard, which applies to non-proprietary elements, instructs the Commission to consider whether "the failure to provide access to such network elements would *impair* the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."[236] In past orders, the Commission has interpreted the "necessary" standard as a more rigorous standard than the "impair" standard, and this construct has not been disturbed by the courts. We believe it is reasonable to continue to interpret the "impair" standard as less demanding than the "necessary" standard.[237] We believe this approach reflects Congress's intentions in creating two distinct standards for two classes of elements.

72. As we formulate our interpretation of "impair" that is less demanding than "necessary," however, we remain cognizant that Congress did not create a general duty to unbundle, tempered by the "impair" standard of section 251(d)(2). As the courts have explained, if Congress had wanted to create a general unbundling duty, it would not have included the "impair" standard in the Act at all.[238] Thus, we must interpret the "impair" standard as

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deregulation because it permits new entrants to rely less on incumbent LECs' facilities and on regulated terms for access and price. And it serves the goal of innovation because new facilities are more likely to have additional capabilities to provide new services to consumers and competitors' deployment of new facilities is likely to encourage incumbents to invest in their own networks. *See, e.g.*, Qwest Comments at 3; SBC Comments at 25-26; BellSouth Comments, Declaration of Howard A. Shelanski at paras. 7-9, 14-16 (BOC Shelanski Decl.) (also attached to SBC Comments and Verizon Comments); Qwest Farrell Reply Decl. at paras. 5-6. *But see, e.g.*, WorldCom Reply at 51. Facilities-based competition also increases the likelihood that new entrants will find and implement more efficient technologies, thus benefiting consumers. *See* BOC Shelanski Decl. at paras. 7-9. We thus disagree that duplication of facilities is necessarily "wasteful." We expect consumer benefits to follow from new entrants' investment in facilities, and where duplication is uneconomic, those facilities often will be unbundled pursuant to our analysis. *See, e.g.*, Verizon Reply at 24-27. Finally, facilities-based competition creates network redundancy, which increases reliability and enhances national security. *See* CompTel Comments at 78-79; SBC Comments at 26; USTA Comments at 5. Thus, we disagree with commenters that argue that the Act contains a "statutory mandate of equal treatment for all three options," although we are aware that Congress created an unbundling vehicle because complete duplication of the incumbent LECs' networks is not feasible. CompTel Comments at 9-12. *See generally, e.g.*, ASCENT Comments at 20-22; Utah Commission Reply at 2.

[234] 47 U.S.C. § 251(d)(2)(A), (B).

[235] *Id.* § 251(d)(2)(A) (emphasis added).

[236] *Id.* § 251(d)(2)(B) (emphasis added).

[237] *See, e.g.*, AT&T Reply at 35.

[238] *See Iowa Utils. Bd.*, 525 U.S. at 390 ("[I]f Congress had wanted to give blanket access to incumbents' networks on a basis as unrestricted as the scheme the Commission has come up with, it would not have included § 251(d)(2) in the statute at all.").

Congress's direction for us to make specific, affirmative findings that elements should or should not be unbundled.

c. Guidance from Analogous Legal Doctrines and Economic Literature

73. In this Part, we cull concepts from many years of scholarly work and debate in legal and economic fields that resemble our "impair" standard in some way. Some of these legal doctrines and economic theories, such as essential facilities and natural monopoly, were described in the *USTA* decision and Justice Breyer's concurring opinion in *Iowa Utilities Board* as providing guidance on the appropriate standard to adopt. Other doctrines and theories, such as the Horizontal Merger Guidelines (HMG) used in antitrust and the economic theories developed in the barriers to entry literature, were proffered by commenters as providing models for such a standard. While we discuss later why we do not adopt any single one of these doctrines or theories in toto as our standard, we find that the lessons learned from these legal doctrines and economic theories help us develop an impairment standard, and will also help us in our attempt to apply this standard in our analysis of specific network elements.

74. *Several Standards Are Possible For Defining Impairment.* While the Act provides no definition of "impair," there are a number of possible definitions available from the legal and economic literatures for determining when impairment exists. One approach is to use the economic concept of barriers to entry to examine whether competitors are prevented from entering a particular market.[239] They include definitions by Joe Bain (any factor preventing entry when incumbents are earning above average profits)[240] and George Stigler (any factor that creates a cost faced by new entrants but not by the incumbent).[241] The essential facilities doctrine

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[239] The Commission previously discussed barriers to entry in its section 257 report. *See generally Section 257 Proceeding To Identify and Eliminate Market Entry Barriers for Small Businesses*, GN Docket No. 96-113, Report, 12 FCC Rcd 16802 (1997) (*Section 257 Report*).

[240] Bain defined a barrier to entry as "the extent to which, in the long run, established firms can elevate their selling prices above minimal average costs of production and distribution . . . without inducing potential entrants to enter the industry." JOE S. BAIN, INDUSTRIAL ORGANIZATION 252 (2d ed. 1968); *see also* W. KIP VISCUSI, JOHN M. VERNON, & JOSEPH E. HARRINGTON, JR., ECONOMICS OF REGULATION AND ANTITRUST 156 (3d ed. 2000). Bain argued that barriers to entry typically fall into the categories of absolute cost advantages, scale economies, and product differentiation. *See* JOE BAIN, BARRIERS TO NEW COMPETITION 12-16 (reprint 1993).

[241] George Stigler defined a barrier to entry as "a cost of producing . . . which must be borne by a firm which seeks to enter an industry but is not borne by firms already in the industry." GEORGE STIGLER, THE ORGANIZATION OF INDUSTRY 67 (1968). His definition of barriers to entry is narrower than Bain's definition, excluding any factor that had to be met by incumbent and entrant alike. One interpretation is that the advantages gained by an incumbent due to entering the market first could be viewed as an appropriate reward to those who took the risk of making the first investment. *See* Jonathan B. Baker, *Responding to Developments in Economics and the Courts: Entry in the Merger Guidelines* at 4-5 (2002), <http://www.usdoj.gov/atr/hmerger/11252.pdf>. For example, the presence of scale economies alone would not be a barrier to entry under his definition, even if they were large enough to permit only one firm to occupy the market, because entrants would face the same cost structure as the incumbents, and could achieve the same average costs as the incumbents if they were able to attract the same number of customers. Likewise, he argued that capital requirements and advertising costs are not barriers to entry, if both incumbents and (continued....)

provides another construct for identifying when entry is hindered, focusing on whether a particular facility is needed for an entrant to serve the market.[242] In addition, the HMG attempt to determine whether entry will be "timely, likely, and sufficient" to deter incumbents from exercising market power.[243] As explained below, no one of these standards comports with the "impair" concept entirely. Indeed, these standards were developed for other purposes, and have been written about and discussed since long before the 1996 Act.

75. *Many Factors Can Act as Barriers to Entry.* Depending on the circumstances, barriers to entry can come from a variety of factors such as sunk costs,[244] scale economies,[245]

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entrants have the same obligation. *See* STIGLER, *supra*, at 67-70. More recently, Christian von Weizsacker proposed to restrict Stigler's definition to limitations to entry that create economic inefficiency. Thus, he would define a barrier to entry that may warrant regulatory intervention as costs borne by entrants and not by incumbents that distort the operation of the market in a socially undesirable way. *See* C.C. von Weizsacker, *A Welfare Analysis of Barriers to Entry*, 11 BELL J. ECON. 400 (1980). Stigler's more limited definition of barriers to entry, and his use of price theory to analyze whether various factors are likely to impede entry, fit in with the "Chicago School's" emphasis on the use of economic theory to determine whether firm behavior causes harm to consumers, its belief that there should be a more permissive merger policy, and its skepticism of the need for vigorous antitrust action to prohibit many commonplace practices such as tie-ins and resale price maintenance. *See* Baker, *supra*, at 5-6; Richard A. Posner, *The Chicago School of Antitrust Analysis*, 127 U. PA. L. REV. 925-34 (1979).

[242] Under the essential facilities doctrine, a firm controlling a facility deemed essential is required to share that facility with competitors at a reasonable price. *See* 3A PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION, para. 771 (2001); Mats A. Bergman, *The Role of the Essential Facilities Doctrine*, 46 ANTITRUST BULL., Summer 2001, at 403. Although the Supreme Court has never explicitly adopted the essential facilities doctrine, it has determined that refusal to provide access to an essential facility to competitors can be an antitrust violation. *See* AREEDA & HOVENKAMP, *supra*, paras. 772-73; Phillip Areeda, *Essential Facilities: An Epithet in Need of Limiting Principles*, 58 ANTITRUST L.J. 841 (1989). To prove antitrust liability under the essential facilities doctrine, four conditions have been identified by circuit courts: (1) The facility is controlled by a monopolist; (2) Competing firms lack a reasonable ability to reproduce the facility; (3) Competing firms have been denied access to the facility; and (4) It is feasible to provide access to the facility. *See MCI Communications Co. v. American Tel. & Tel. Co.*, 708 F.2d 1081, 1132-33 (7th Cir. 1983); *see also* Bergman, *supra*, at 407-08; Robert Pitofsky, *The Essential Facilities Doctrine Under United States Antitrust Law*, 708 PLI/PAT 775, 781-82 (2002).

[243] The HMG were developed to embody economic theory in a set of guidelines for determining whether mergers would cause harm. As one of the steps of analysis, "the Agency assesses whether entry would be timely, likely, and sufficient either to deter or to counteract the competitive effects of concern." Horizontal Merger Guidelines, issued by U.S. Department of Justice and Federal Trade Commission, Apr. 2, 1992, revised Apr. 8, 1997 (HMG) § 0.2. Section 3 of the HMG, which examines the conditions under which committed entry (entry requiring significant sunk costs) will occur, is the most relevant to our analysis. HMG § 3.

Whether the Bainian or Stiglerian definition of barriers to entry should be used in the antitrust context has not been decided. Some authorities have adopted Bain's definition. *See* Baker, *supra* note 241, at 6 n.25. The Federal Trade Commission had decided that only Stiglerian barriers prevented entry that would eventually drive prices down to competitive levels. However, it also decided that a second type of barrier, an "impediment to entry," existed, which could delay entry into the market for a significant period of time. It thus effectively adopted a Bainian definition. *See* Baker, *supra* note 241, at 6-7.

[244] Sunk costs are those costs that are unrecoverable upon exit from the market. *See* DENNIS W. CARLTON & JEFFREY M. PERLOFF, MODERN INDUSTRIAL ORGANIZATION 28 (3d ed. 2000). Scholars point out that when there (continued....)

scope economies,[246] absolute cost advantages,[247] capital requirements,[248] first-mover advantages,[249] strategic behavior by the incumbent,[250] product differentiation,[251] long-term
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are large fixed and sunk costs, fewer firms are able to profitably coexist in the industry. *See* Babu Nahata & Dennis Olson, *On the Definition of Barriers to Entry*, S. ECON. J. 236-39 (July 1989); JOHN SUTTON, SUNK COSTS AND MARKET STRUCTURE: PRICE COMPETITION, ADVERTISING, AND THE EVOLUTION OF CONCENTRATION (1991). Significant sunk costs by the incumbent can increase an entrant's concern that an incumbent will lower prices in the face of vigorous competition. In addition, large sunk costs can give a significant first-mover advantage to the incumbent. Other firms that are contemplating entry will realize that large-scale facilities-based entry on their part will create excess capacity and force prices down to marginal cost, leading to large losses. These firms are therefore unlikely to enter. *See Section 257 Report*, 12 FCC Rcd at 18614 n.48; *Merger of MCI Communications Corp. and British Telecommunications PLC*, GN Docket No. 96-245, Memorandum Opinion and Order, 12 FCC Rcd 15351, 15413, para. 162 (1997); *see also* JEAN TIROLE, THE THEORY OF INDUSTRIAL ORGANIZATION 314-21 (1988); CARLTON & PERLOFF, *supra*, at 79-80. High sunk costs also increase the cost of failure to an entrant. Thus, if there is a substantial risk that entry will not be successful for various reasons, including uncertainty concerning demand for the firm's product and the firm's operational ability to enter the market and achieve profitability, then the presence of large sunk costs could raise the cost of failure and exit sufficiently to deter entry. DOUGLAS F. GREER, INDUSTRIAL ORGANIZATION AND PUBLIC POLICY 240 (3d ed. 1992). This risk could also be reflected in a higher cost of capital to entrants, thus discouraging entry into industries which are inherently risky. *See* VISCUSI, VERNON, & HARRINGTON, *supra* note 240, at 161; HMG § 3.3.

[245] Scale economies refer to lower average costs from producing a larger quantity of output. A more technical definition is that economies of scale exist at a particular range of output when the long run average total cost decreases as output expands. *See* KENNETH TRAIN, OPTIMAL REGULATION 5 (1991). Scale economies can be a barrier to entry if entrants are likely to acquire fewer customers and sell less output than the incumbent, and the resulting higher average cost for the entrants makes it difficult for them to compete with the incumbent, particularly if retail prices are close to the incumbent's average cost.

[246] Economies of scope exist when one firm can produce two or more products at a lower total cost than if each product were produced separately by different firms. *See* TRAIN, *supra* note 245, at 8. Scope economies can be a barrier to entry if entrants are unable to produce and sell all of the products the incumbent produces, and the resulting higher cost makes it unprofitable to enter the market. *See* SCHERER & ROSS, INDUSTRIAL MARKET STRUCTURE AND ECONOMIC PERFORMANCE 361 (3d ed. 1990).

[247] An incumbent has an absolute cost advantage if, for any given level of output, its per unit costs are lower than for an entrant. Possible sources of absolute cost advantages include privileged access to resources, control of a better technology or more efficient means of production which cannot be duplicated by the entrant, limitations in the availability of productive factors, the learning curve, and a lower cost of capital. *See* BAIN, BARRIERS TO NEW COMPETITION, *supra* note 240, at 144-45; GREER, *supra* note 244, at 241-42; VISCUSI, VERNON, & HARRINGTON, *supra* note 240, at 156; DON E. WALDMAN & ELIZABETH J. JENSEN, INDUSTRIAL ORGANIZATION: THEORY AND PRACTICE 139-41 (2d ed. 2001).

[248] Some argue that entrants, especially small entrants, are at a disadvantage to incumbents in raising large amounts of capital. Three possible reasons given are that entrants are a riskier investment, small entrants face higher transaction costs to raise funds, and the capital market is imperfect such that large firms have more market power to obtain loans at favorable rates. *See* GREER, *supra* note 244, at 256-57; WALDMAN & JENSEN, *supra* note 247, at 141-43.

[249] When a firm is able to gain an advantage in the marketplace as a result of entering the market first, it is said to have a first-mover advantage. There are a number of sources of first-mover advantages, such as advertising and gaining brand name preference, patents, sunk costs, and rights-of-way. *See* GREER, *supra* note 244, at 264-65; CARLTON & PERLOFF, *supra* note 244, at 80.

contracts,[252] and network externalities.[253] Despite the different definitions that have been proposed, economists, since the advent of economic game theory, have developed a better understanding of the factors that impede entry.[254] There is general agreement in the economics literature on the critical importance of sunk costs, absolute cost advantages, first-mover advantages, and, in the right circumstances, scale economies, in determining the likelihood of entry.[255] In their analysis of entry, the HMG consider economic barriers to entry, focusing in particular on sunk costs and minimum viable scale (in addition to other factors).[256]

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[250] Strategic behavior refers to actions by an incumbent that prevent entry from occurring. Game theory is now often used to model the behavior of incumbents and entrants, and determine the equilibrium set of strategies. Under certain circumstances, an incumbent could deter entry if it invested in additional capacity today, such that it would be likely to lower prices when entry occurs, creating losses for everyone. Such behavior is rational only if the incumbent expects that an entrant is likely to be deterred from entry as a result. *See* OZ SHY, INDUSTRIAL ORGANIZATION 186-206 (1995); TIROLE, *supra* note 244, at 314-21; Baker, *supra* note 241, at 7-9.

[251] Product differentiation refers to firms' attempts to distinguish their products from other firms' products and gain the ability to raise the price through advertising, the development of a brand name and product image, varying the product characteristics and quality, and selling in different locations. *See* WALDMAN & JENSEN, *supra* note 247, at 357 ("The objective of product differentiation is to increase profits by increasing demand and decreasing the price elasticity of demand. Sellers attempt to differentiate their products in many ways. Common forms of differentiation include location, service, physical characteristics, and subjective image differences."); *see also* BAIN, INDUSTRIAL ORGANIZATION, *supra* note 240, at 29-30.

[252] An incumbent monopolist can induce customers to sign long-term contracts, with substantial penalties for breaching the contract. These contracts can act as a barrier to entry, if they prevent customers from switching to an entrant. *See* Philippe Aghion & Patrick Bolton, *Contracts As a Barrier to Entry*, 77 AM. ECON. REV. 388-401 (1987); TIROLE, *supra* note 244, at 196-98; HMG § 3.3.

[253] Network externalities (or network effects) exist if the benefit that a consumer derives from purchasing a good is affected by whether others take the same service. Consumers then derive greater benefit from purchasing services from larger networks. Thus, larger networks gain a competitive advantage over small networks, which allows them to charge higher prices. *See* J. Farrell & G. Saloner, *Standardization, Compatibility, and Innovation*, 16 RAND. J. ECON. 70-83 (1985); M. Katz & C. Shapiro, *Network Externalities, Competition and Compatibility*, 75 AM. ECON. REV. 424-40 (1985); OZ SHY, THE ECONOMICS OF NETWORK INDUSTRIES 17 (2001). In telecommunications networks, network externalities refer to the greater value of a network in which all users can communicate with all other users.

[254] *See, e.g.*, Richard J. Gilbert, *Mobility Barriers and the Value of Incumbency*, in 1 HANDBOOK OF INDUSTRIAL ORGANIZATION 475 (Richard Schmalensee & Robert Willig, eds. 1989).

[255] *See* SHY, INDUSTRIAL ORGANIZATION, *supra* note 250, at 182-206; Gilbert, *supra* note 254, at 531; Baker, *supra* note 241, at 7-16; *see also* AT&T Reply, Declaration of Robert D. Willig (AT&T Willig Reply Decl.) at paras. 18-36.

[256] *See* HMG §§ 1.32, 3.3. Minimum viable scale is defined in the HMG as "the smallest average annual level of sales that the committed entrant must persistently achieve for profitability at premerger prices. Minimum viable scale is a function of expected revenues, based upon premerger prices, and all categories of costs associated with the entry alternative, including an appropriate rate of return on invested capital given that entry could fail and sunk costs, if any, will be lost." HMG § 3.3 (footnotes omitted). Scale economies are factored into the HMG's analysis through their impact on the minimum viable scale necessary for entry. Large scale economies are likely to create a (continued....)

76. *Some Factors Only Cause Barriers to Entry in Particular Circumstances.* While many factors can cause barriers to entry, the economics literature points out that some are only barriers in particular circumstances, or in combination with other factors. For example, some scholars only consider capital requirements a barrier in the presence of substantial sunk costs, first-mover advantages, or risky entry.[257] Likewise, some consider scale economies a barrier only if they are large enough to prevent additional firms from profitably entering the industry, and they are combined with other factors such as significant sunk costs, long-term contracts or brand preference by consumers.[258] The HMG consider scale economies to be a barrier to entry only if the minimum viable scale is larger than the sales an entrant is likely to achieve. Many scholars consider scale economies that are so pervasive as to make it less expensive for one firm to satisfy all demand within a market to be a formidable barrier to entry – a natural monopoly.[259]

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large minimum viable scale, because it will likely require a large volume of output and sales to achieve an average cost lower than the expected price. *See* HMG § 3.3, n.31 ("The minimum viable scale of an entry alternative will be relatively large when the fixed costs of entry are large, when the fixed costs of entry are largely sunk, when the marginal costs of production are high at low levels of output, and when a plant is underutilized for a long time because of delays in achieving market acceptance."); *see also* Letter from C. Frederick Beckner, III, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 1-8 (filed Nov. 14, 2002) (AT&T Nov. 14, 2002 *Ex Parte* Letter).

[257] Whether the cost of capital to entrants, particularly when large amounts of capital are needed, can be a barrier to entry has been controversial. Some argue that capital markets are imperfect, such that entrants – *e.g.*, small competitive LECs – would have poorer access to financial resources than incumbents. *See* BAIN, BARRIERS TO NEW COMPETITION, *supra* note 240, at 55; GREER, *supra* note 244, at 256-57; WALDMAN & JENSEN, *supra* note 247, at 141-43. Others argue that both incumbent and entrant have an equal need to spend money to build plant, or to create a brand name. Only in the presence of a significant risk of failure by the entrant, not shared by the incumbent, will the entrant's higher cost of capital, due to the need for a risk premium, create a cost disadvantage for the entrant. *See* Richard A. Posner, *supra* note 241, at 945-46; VISCUSI, VERNON, & HARRINGTON, *supra* note 240, at 161.

[258] The importance of scale economies has been controversial. While Bain considered them a barrier to entry, Stigler argued that the existence of scale economies alone could not be a barrier to entry, since incumbents and entrants would face the same costs. *See* STIGLER, *supra* note 241, at 67-69. Subsequent writers have suggested that entry is still possible in the face of scale economies when an entrant could, through contracts with the majority of the customers, gain the advantage from scale economies. For example, studies have shown that there are scale economies for garbage collection in smaller municipalities. Many municipalities put up the contract for bid, thus allowing entry, because whoever gains the contracts wins the whole market. *See* CARLTON & PERLOFF, *supra* note 244, at 76, 658.

[259] A natural monopoly exists "when the costs of production are such that it is less expensive for market demand to be met with one firm than with more than one." TRAIN, *supra* note 245, at 1. For the single product firm, this situation occurs in the presence of economies of scale over the entire range of output demanded. TRAIN, *supra* note 245, at 5; 2 ALFRED E. KAHN, THE ECONOMICS OF REGULATION: PRINCIPLES AND INSTITUTIONS 119 (1989). For the multiproduct firm, a natural monopoly occurs when the cost of production for the entire set of products would be minimized if produced by one firm, *i.e.*, costs are subadditive for all relevant ranges of output for all products. Cost subadditivity is said to exist at a particular level of output for a particular set of products when one firm can produce all of those products at that level of output at a lower cost than two or more firms. WILLIAM SHARKEY, THE THEORY OF NATURAL MONOPOLY 2 (1982). This occurs if there are both economies of scale and economies of (continued....)

77. *A Firm's Ability To Enter Is Affected by the Costs Incurred, Revenues Obtained, and Risk Involved in Entering a Market.* The economics literature generally states that a firm's decision to enter a market depends on whether the revenues it expects to obtain exceed the costs of entering and serving the market, factoring in the cost and risk of failure.[260] Thus, factors that raise an entrant's cost of service, limit its potential revenues,[261] or increase the risk or cost of failure reduce the likelihood of entry. Conversely, entry is made easier if an entrant has late-mover advantages, such as from using newer technologies or a better network architecture, or has additional revenue opportunities stemming from economies of scope. Operational barriers, which may not directly affect the long-term potential costs and revenues of the firm but could significantly delay or reduce the quality of the services an entrant is attempting to offer, must also be taken into consideration in determining the likelihood and extent of entry. In general, it is important to consider all of the relevant cost and demand characteristics of a market, including the presence and size of sunk costs, scale and scope economies, and absolute cost and first-mover advantages, as well as the full range of revenues available and countervailing late-mover advantages an entrant might possess, in determining whether entry is possible.[262]

78. *Need for Requirements To Be Economically Rational.* Many scholars and the federal courts have taken the view that the application of antitrust enforcement (including merger review and the essential facilities doctrine) is only necessary when the merger or behavior causes economic harm to consumers and society. That is, the antitrust law has been interpreted to include an element of economic rationality despite a lack of explicit language requiring such analysis in the statute.[263] Especially in light of guidance from courts that have already considered the Act's unbundling regime, we believe that any reasonable application of the impairment standard and unbundling requirements should be economically rational.[264]

(Continued from previous page)

scope for all products. When a natural monopoly exists, economic theory has traditionally held that it would be inefficient to have more than one firm in the market. SHARKEY, *supra*, at 54; 2 KAHN, *supra*, at ch. 4.

[260] Stated in more technical terms, the condition is whether the net present value of the expected economic profit is positive. *See* WALDMAN & JENSEN, *supra* note 247, at 146 ("Microeconomic theory predicts that profit-maximizing firms will enter an industry if the net present value of expected profits, appropriately adjusted for risk, is positive."). Economists define "economic profit" to be the firm's revenues minus the full cost (including opportunity costs of the assets employed) of the firm. The opportunity cost of an asset is the value of its best alternative use. *See* CARLTON & PERLOFF, *supra* note 244, at 239; *see also* STEPHEN MARTIN, INDUSTRIAL ECONOMICS: ECONOMIC ANALYSIS AND PUBLIC POLICY 17 (2d ed. 1994) ("Economic profit is any accounting profit over and above the normal rate of return on an investment.").

[261] HMG § 3.3.

[262] *See* STIGLER, *supra* note 241, at 67-70; BAIN, INDUSTRIAL ORGANIZATION, *supra* note 240, at 268-69; *see also* HMG § 3.1.

[263] *See* CARLTON & PERLOFF, *supra* note 244, at 604; VISCUSI, VERNON & HARRINGTON, *supra* note 240, at 66-67; ROBERT H. BORK, THE ANTITRUST PARADOX 89 (1978).

[264] *See Iowa Utils. Bd.*, 525 U.S. at 427-31 (Breyer, J., concurring); *USTA*, 290 F.3d at 425-30.

79. *Unbundling of Bottleneck Facilities Can Cause Harms.* Scholars have pointed out that there may be countervailing reasons why the owner of a bottleneck facility should not be required to make the facility available to its potential competitors. For example, some scholars argue that if providing access to the facility would not enhance competition or provide economic benefits, courts should consider not making the facility available. Similarly, if making the facility available would deter desirable activity on the part of the owner (such as investment in upgrades or new facilities) or the entrant (such as investment in alternatives), courts should consider not making the facility available.[265]

80. *The Size of Sunk Costs Is a Significant Factor in Determining the Likelihood That Competitors Will Enter.* Sunk costs are important for several reasons. Larger fixed[266] and sunk costs imply that fewer firms are able to survive profitably in the industry.[267] When combined with scale economies, high sunk costs increase the entrants' concern that the incumbent will lower its prices in response to entry, possibly to unprofitable levels for both incumbents and entrants. Large sunk costs also increase the cost of failure, so if there is a substantial risk of failure, entrants may be reluctant to take the risk, and investors may be reluctant to finance

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[265] *See, e.g.*, Areeda, *supra* note 242, at 841; David J. Gerber, *Rethinking the Monopolist's Duty To Deal: A Legal and Economic Critique of the Doctrine of "Essential Facilities,"* 74 VA. L REV. 1069 (1988); *see also* Qwest Comments, Attach., John Haring & Harry M. Shooshan, *Reorienting Regulation: Toward a More Facilities-Friendly Local Competition Policy* at 10-11 (Apr. 3, 2002) (Qwest Haring & Shooshan Paper); SBC Comments at 26 (citing PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW para. 787c (Supp. 2001)); Verizon Comments at 27-32, 34-36. In his *Epithet* article, Areeda argued that a requirement to provide access should not be imposed if: the denial of access was for a legitimate business purpose or for legitimate business reasons; it is administratively impractical for the court to supervise; it does not enhance competition in the marketplace and provide economic benefits; or if it would deter desirable activity on the part of the owner. *See* Areeda, *supra* note 242, at 852-53. Areeda provided six principles for limiting application of the essential facilities doctrine: (1) There is no general duty to share – compulsory access should be exceptional; (2) The facility should be considered essential only if it is critical for the plaintiff's ability to compete and for the development of competition in the market; (3) Providing access must be likely to improve competition substantially in the marketplace, provide economic benefits, and not chill desirable activity; (4) Denial of access must not have occurred for a legitimate business purpose; (5) The monopolist intended to exclude others by improper means; and (6) The court must be able to adequately explain and supervise the access requirement. Areeda, *supra* note 242, at 852-53; Bergman, *supra* note 242, at 409-10; *see also* BOC Shelanski Decl. at para. 38.

Gerber argued that the essential facilities doctrine should be applied only when it improves consumer welfare, and that the focus should be on the vertical relationship between the monopolist and the downstream market. He believes that the test used by most courts, that a facility is essential when its owner's refusal to provide access harms the ability of its competitors to compete, is inappropriate and fails to maximize consumer welfare. *See* Gerber, *supra*, at 1069-72. Areeda and Hovenkamp note that once a court determines to mandate access, a price that is set at the competitive level will reduce competitors' incentives to build alternative facilities, if and when this becomes feasible. *See* AREEDA & HOVENKAMP, *supra* note 242, para. 771b.

[266] Fixed costs are costs that do not vary with the level of output. *See* CARLTON & PERLOFF, *supra* note 244, at 28.

[267] *See* Nahata & Olson, *supra* note 244, at 236-23; SUTTON, *supra* note 244, at 8-11 and ch. 2.

entry.[268] The size of the sunk costs figures prominently in the HMG, with special analysis reserved for "committed entry," which is entry requiring significant sunk costs.[269]

81. *Costs Incurred To Enter a Market May Not Be a Barrier to Entry.* A cost incurred by an entrant upon entry, even if fairly significant, may not be a barrier to entry if it creates no cost disadvantage relative to the incumbent, does not generate a minimum viable scale that is too large for the entrant to achieve, and does not significantly raise the cost of failure and exit. Thus, to determine whether initial entry costs are a likely deterrent to entry, the economics literature considers, among other things: whether the incumbent had to incur the same costs; how large the costs are; whether the costs are sunk; the likelihood of success in entry; and the size of the scale economies and the likely share of the markets entrants can expect to take. Entrants are unlikely to be deterred by smaller, transient entry costs that are recoverable and that do not raise the minimum viable scale above the typical market share they can expect.[270]

82. *Some Barriers to Entry Are Not Harmful.* Not all barriers to entry are harmful to competition or consumers. Some barriers are the result of firms' attempts to develop new technologies and improve their efficiencies, and the barriers provide the appropriate reward for their innovative activity.[271] For example, patent protection is a powerful barrier to entry that denies new entrants the legal right to take advantage of the patent holder's research. But patent protection provides an incentive to invest in research that would otherwise be diminished if the innovator did not expect to reap monopoly profits from the innovation, at least for a period of time.[272]

83. *Incumbents' Behavior Can Influence Whether Entrants Will Want To Enter.* The extensive literature on strategic behavior and deterrence examines how incumbents, through present and future actions, could prevent entry.[273] For example, in assessing whether incumbents can profit from a price rise, the HMG do not assume that retail prices will remain elevated after

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[268] *See* HMG § 3.3.

[269] The HMG distinguish between uncommitted and committed entrants. Firms that are able to respond to a "small but significant and nontransitory" price increase within one year and with no significant sunk costs of entry and exit are considered uncommitted entrants, and treated as participants in the relevant market. HMG § 1.32. Committed entry requires significant sunk costs of entry and exit. A significant sunk cost is one that would not be recouped within one year of the commencement of the supply response, assuming a "small but significant and nontransitory" price increase in the relevant market. *Id.*

[270] GREER, *supra* note 244, at 241-46; STIGLER, *supra* note 241, at 67-70.

[271] The idea that barriers to entry and high market concentration are not always a concern to be combated with antitrust enforcement is an important point stressed by Stigler, Posner, and others in the "Chicago School." *See* VISCUSI, VERNON, & HARRINGTON, *supra* note 240, at 156; Weizsacker, *supra* note 241, at 399-400; Baker, *supra* note 241, at 5-6. *See generally* Posner, *supra* note 241.

[272] *See* CARLTON & PERLOFF, *supra* note 244, at 505-13; Qwest Haring & Shooshan Paper at 8-9.

[273] *See* SHY, INDUSTRIAL ORGANIZATION, *supra* note 250, at 186-206; TIROLE, *supra* note 244, at 314-21; GREER, *supra* note 244, at 305.

entry occurs, but rather take into account the possibility that incumbents will lower prices in response to entry, thus making the entry less rewarding for new competitors.[274]

d. Interpretation of the "Impair" Standard

84. We find a requesting carrier to be impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic. That is, we ask whether all potential revenues from entering a market exceed the costs of entry, taking into consideration any countervailing advantages that a new entrant may have. As explained in detail below, this granular analysis is informed by consideration of the relevant barriers to entry, as well as a careful examination of the evidence, especially marketplace evidence showing whether entry has already occurred in particular geographic and customer markets without reliance on the incumbent LECs' networks but instead through self-provisioning or reliance on third-party sources.[275]

(i) Types of Barriers to Entry

85. As suggested by the summary of economic and legal literature above,[276] there are different kinds of barriers to entry. We describe in this subpart which barriers we consider relevant to the impairment analysis. We also examine whether unbundling can address the impairment caused by these barriers. We focus on the barriers described below because we find that they are the most likely to create "impairment," that there is general recognition of the importance of these barriers in the economics literature described above and the HMG, and that they comport with our understanding of the characteristics of the telecommunications industry. We recognize, as did the *USTA* court, that at bottom all these barriers can be expressed in terms of costs, and thus to the extent described throughout this section, cost differences remain relevant

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[274] *See* HMG § 3.3.

[275] *See* Qwest Comments at 11 ("But, of course, there is no universal, magic formula by which the Commission or anyone else can assign weights to various factors and arrive at the answer as to whether a particular element meets the 'impair' standard and should be unbundled. The basic question is whether CLECs can feasibly provide service and meaningfully compete without access to a particular type of facility."); BellSouth Reply at 12-13 ("Once the UNE market is properly defined, impairment should be tested by asking whether a reasonably efficient CLEC retains the ability to compete even without access to the UNE."); BellSouth Reply, Attach. 2, Declaration of Howard A. Shelanski, at para. 2 (BOC Shelanski Reply Decl.) (also attached to SBC Reply and Verizon Reply) ("As an economic matter, impairment must at the very least mean that CLECs suffer some disadvantages relative to the ILEC that are sufficiently great that they could tip to the negative a rational CLEC's decision about whether or not to enter a local exchange market."); Letter from William P. Barr, Executive Vice President and General Counsel, Verizon, to Michael K. Powell, Chairman, FCC, CC Docket No. 01-338 at 3 (filed Oct. 16, 2002) (Verizon Oct. 16, 2002 *Ex Parte* Letter) ("The key to the impairment analysis therefore is whether an entrant can, over time using its own facilities, profitably serve less than the entire market."); Letter from James C. Smith, Senior Vice President, SBC, to Michael K. Powell, Chairman, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. 1 at 5 (SBC Jan. 14, 2003 *Ex Parte* Letter).

[276] *See supra* Part V.B.1.c.

to the impairment analysis.[277] Throughout our application of the impairment standard to individual elements, we ask whether the sum of these barriers is likely to make entry uneconomic, taking into account available revenues and any countervailing advantages that a requesting carrier may have.[278] Our analysis does not rest solely on the existence of cost disparities, but instead is based on determining whether entry would be profitable without the UNE in question. Therefore, the existence of cost disparities does not necessarily require a finding of impairment, but it can significantly affect our analysis through its impact on an entrant's ability to enter.[279]

86. Before discussing relevant barriers to entry, however, we note that the telecommunications industry is replete with the kinds of barriers described in the economics discussion above. For example, facilities-based entry into the telecommunications market requires a great deal of capital for equipment, network construction, and operating costs while customers are gradually added to an entrant's network.[280] The capital requirements are exacerbated by the length of time – months or years – that it can take before investments start to turn a profit owing to the pace of construction, the difficulties of luring customers away from incumbent LECs, and the need to invest in a great deal of equipment before serving the first

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[277] *See USTA*, 290 F.3d at 426 ("Of course any cognizable competitive 'impairment' would necessarily be traceable to some kind of disparity in cost."); *see also, e.g.*, WorldCom Reply at 13; Letter from Ruth Milkman, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 2 (filed Oct. 23, 2002) (WorldCom Oct. 23, 2002 *Ex Parte* Letter).

[278] *See, e.g.*, Verizon Oct. 16, 2002 *Ex Parte* Letter at 5 (urging the Commission to take into account any countervailing advantages, such as being able to sell other services, avoid costs, achieve qualitative advantages unavailable to the incumbent LEC, cherry-pick profitable customers or markets, and use more efficient equipment and network architectures); *see also* BellSouth Comments at 25; Verizon Comments at 58; BellSouth Reply at 10; Verizon Reply at 42-43; WorldCom Reply at 18-19 (noting that any competitive LEC advantages are outweighed by disadvantages); BellSouth Reply, Reply Declaration of National Economic Research Associates, Inc. (NERA Reply Decl.) at paras. 70-74; BOC Shelanski Reply Decl. at para. 3 (noting that new entrants may have advantages of more advanced equipment, lower labor costs, and the ability to serve larger areas or to market selectively to more attractive markets). We recognize that a precise calculation of a competitive LEC's advantage is difficult or impossible, but we attempt to make reasonable deductions through our examination of marketplace and other evidence. *See* AT&T Willig Reply Decl. at para. 57.

[279] *See also infra* para. 112.

[280] While we acknowledge that the telecommunications industry is capital-intensive, we will not base our impairment analysis on competitors' current ability to access capital markets, as suggested by some commenters. *See* CompTel Comments at 65-71; Covad Comments at 15-16; CompTel Reply at 6; *see also* Allegiance Reply at 3, 14-18. *But see* Verizon Reply at 135-36; BellSouth NERA Reply Decl. at para. 74. We recognize that today's market conditions make access to capital more difficult – and thus self-provisioning more difficult – than it may have been several years ago. But because the markets can change quickly, an impairment analysis that hung on the current state of the capital markets, and in particular on short-term fluctuations in access to capital, would either result in our rules quickly becoming out-of-date, or require frequent review that would contribute to market uncertainty. However, as part of the analysis to determine whether entry is economic, we recognize that a relevant factor is the cost of capital to competitors. Our impairment analysis will therefore consider the current and likely prospective cost of capital, based on our expectations of the availability and price of capital in the long-run.

customer.[281] The kinds of equipment needed to provide that service also pose barriers in the form of very high fixed costs, many of which are sunk. While switches and other "intelligence" equipment can be moved from place to place, construction of wireline transmission facilities is literally "sunk" – once invested in, it cannot be moved, even if customer demand patterns change. In addition, producing telecommunications services requires very substantial economies of scale and scope. With these facts in mind, we explain how we will analyze barriers to entry in the telecommunications market – including scale economies, sunk costs, first-mover advantages, and absolute cost advantages – and we explain our approach to unbundling as a means of overcoming certain barriers to entry.

87. *Scale Economies.* Scale economies, particularly when combined with sunk costs and first-mover advantages (described just below), can pose a powerful barrier to entry.[282] If entrants are likely to achieve substantially smaller levels of sales than the incumbent, then with scale economies their average costs will be higher than those of the incumbent, putting them at a potentially significant cost disadvantage to the incumbent. Profitable entry may not be possible if retail prices are close to the incumbent's average costs. The greater the extent and size of the scale economies throughout the range of likely demand, the higher the barrier they pose.[283] By

[281] *See, e.g.*, BTI Comments at 9 (noting that competitive LECs must amass a customer base before attracting private equity); Illuminet Comments at 8 (pointing out that "[t]he construction and operation of a stand-alone SS7 signaling system and the data bases necessary for provision of many services is a complex and very capital intensive undertaking which may serve as a barrier to entry for smaller firms.").

[282] *See* AT&T Reply at 38; AT&T Willig Reply Decl. at para. 19; BellSouth NERA Reply Decl. at para. 75 (urging the Commission not to unbundle all elements because of the possibility of scale economies posing a barrier); Qwest Reply at 9-10; Qwest Farrell Reply Decl. at para. 12 ("If an element displays only ordinary economies of scale, the Commission should not require its unbundling unless that element also exhibits certain *additional* features that (perhaps in conjunction with the scale economies) create true entry barriers . . . . Such features might include large sunk costs relative to recurring costs, low rates of innovation, and high costs relative to complements (other network elements)."); Letter from Joan Marsh, Director, Federal Government Affairs, AT&T, to Marlene Dortch, Secretary, FCC, CC Docket No. 01-338, Attach. at 2, 4 (filed Jan. 10, 2003) (AT&T Jan. 10, 2003 *Ex Parte* Letter); *see also* WorldCom Reply at 14-15 (noting that incumbent LECs derive significant and relevant cost advantages from their economies of scale).

[283] *See supra* note 259. Scale economies are necessarily more of a hurdle for small competitive LECs, which tend to serve fewer customers.

We recognize, as did the *USTA* court, that if scale economies are present over the entire relevant market, the element may be "one for which multiple, competitive supply is unsuitable," such that unbundling could be appropriate to avoid wasteful duplication of the facility. *See USTA*, 290 F.3d at 427 (citing 2 KAHN, *supra* note 259, at 119); *see also, e.g.*, Mpower Reply at 11 (arguing that competitive LECs should not have to replicate the incumbent LECs' networks unnecessarily). We do not agree that *USTA* requires us to limit unbundling to those situations only where an element is wholly "unsuitable for competitive supply." *See, e.g.*, Qwest Reply at 9 (quoting *USTA*, 290 F.3d at 427). Rather, *USTA* urges us to consider the cost characteristics of elements and ensure that we do not mistakenly equate just any cost disparity with impairment. *See USTA*, 290 F.3d at 427 ("[C]ost comparisons of the sort made by the Commission [in the *UNE Remand Order*], largely devoid of any interest in whether the cost characteristics of an 'element' render it at all unsuitable for competitive supply, seem unlikely either to achieve the balance called for explicitly by Justice Breyer or implicitly by the [Supreme] Court as a whole [in *Iowa Utils. Bd.*] in its disparagement of the Commission's readiness to find '*any*' cost disparity reason enough to order unbundling.") (emphasis in *USTA*).

contrast, scale economies are less of a barrier to entry if average costs reach a low point or begin to increase at some level of production less than total market demand, particularly if that level of production is one that a new firm can reasonably expect to achieve.[284] Thus, we will not find scale economies that typically exist for any entrant into any industry to pose a barrier, when they have not typically blocked such entry.[285] Indeed, the HMG ask whether a new entrant can achieve the minimum viable scale (*i.e.*, the lowest output at which entry is profitable), and thus recognize that scale economies that typically exist for any entrant into any industry do not pose a barrier, when they have not typically blocked entry.[286] In sum, we will consider whether the cost differences caused by scale economies are sufficiently large and persistent, alone or in combination with other factors, to be likely to make entry uneconomic. For similar reasons, we also examine scope economies to determine whether they, too, could contribute to a barrier to entry.

88. *Sunk Costs*. Sunk costs, particularly when combined with scale economies, can pose a formidable barrier to entry.[287] Sunk costs increase risk as well as an entrant's cost of failure, which in turn can increase the cost of capital and discourage entry.[288] In addition, an entrant that knows that an incumbent LEC has incurred substantial sunk costs may be disinclined to enter a market because the incumbent LEC is likely to drop its prices, possibly to levels below

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[284] The lowest output at which average costs reach their minimum (if it exists) is called the Minimum Efficient Scale. *See* CARLTON & PERLOFF, *supra* note 244, at 41.

[285] Similar to our analysis, the *USTA* court noted that "average unit costs are necessarily higher at the outset for any new entrant into virtually any business," *USTA*, 290 F.3d at 427, so scale economies (and cost differences in general) that pertain just to the beginning stages of entry might not be an appropriate factor in an unbundling analysis. *See also* Verizon Oct. 16, 2002 *Ex Parte* Letter at 3 ("A transient cost disparity resulting from differences in scale does not meet the standard for unbundling established by the Act."); *see also* Verizon Comments at 57-58 (arguing that new entrants in any industry routinely lose money for an initial period); AT&T Reply at 32-34, 37 (urging the Commission to find that cost differences and scale economies are relevant so long as they are not "universal" cost disparities, and to find that unbundling does not depend on an element being a natural monopoly); Qwest Reply at 9; SBC Reply at 46; Verizon Reply at 39-40; WorldCom Reply at 14; BOC Shelanski Reply Decl. at para. 2 ("Impairment must consist of more than the usual challenge of playing catch-up that any new entrant into a mature industry faces."), para. 3; Qwest Farrell Reply Decl. at paras. 9-12.

[286] *See supra* note 256; *see also* HMG § 3.3; AT&T Nov. 14, 2002 *Ex Parte* Letter, Attach. at 4-7.

[287] *See, e.g.*, AT&T Reply at 38-39; WorldCom Reply at 14-17; AT&T Willig Reply Decl. at para. 20 ("It is basic economics that the need to incur significant sunk costs to deploy facilities that have substantial scale economies establishes a significant entry barrier."), paras. 21-22; AT&T Jan. 10, 2003 *Ex Parte* Letter, Attach. at 4. *Cf.* BOC Shelanski Reply Decl. at para. 4 (urging Commission not to unbundle merely because new entrants face risks); Qwest Farrell Reply Decl. at para. 13.

[288] *See* AREEDA & HOVENKAMP, *supra* note 242, para. 421c; GREER, *supra* note 244, at 240; CARLTON & PERLOFF, *supra* note 244, at 78; VISCUSI, VERNON, & HARRINGTON, *supra* note 240, at 161; HMG § 3.3. Factors that can add to the risk of entry can include whether the entrant will attract enough customers to take advantage of scale economies, whether it can install its equipment at the estimated cost, whether the incumbent will perform its required tasks with the necessary timeliness and quality, and whether the incumbent will respond to entry by dropping its price, as well as legal and regulatory uncertainties about future rules. *Cf., e.g.*, AT&T Jan. 10, 2003 *Ex Parte* Letter, Attach. at 4.

average cost, in response to entry.[289] In these ways, sunk costs can act to give significant first-mover advantages to incumbent LECs.[290]

89. *First-Mover Advantages.* First-mover advantages can contribute to the factors described above.[291] First-mover advantages can include preferential access to buildings,[292] access to rights-of-way,[293] the higher risk of new entrants' failure (often exacerbated by high sunk costs), the fact that the incumbent LEC has substantial sunk capacity, operational difficulties faced by an entrant that have already been worked out by the incumbent LEC when it built out its network as a monopolist,[294] consumers' reluctance to switch carriers,[295] and advertising and brand name preference.[296] First-mover advantages often create an absolute cost disadvantage for entrants, which, if large enough, can be a barrier to entry.[297] Some of these factors interact with

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[289] *See* SHY, INDUSTRIAL ORGANIZATION, *supra* note 250, at 186-206.

[290] *See UNE Remand Order*, 15 FCC Rcd at 3736-37, paras. 77-80. *Cf.* Allegiance Reply at 13 (noting that requesting carriers incur sunk costs in negotiating arbitration agreements and deploying OSS for the purposes of ordering UNEs).

[291] *See, e.g.*, WorldCom Reply at 17-18; AT&T Willig Reply Decl. at paras. 29-31; AT&T Jan. 10, 2003 *Ex Parte* Letter, Attach. at 6-8.

[292] *See, e.g.*, AT&T Reply at 50 (noting that delays associated with obtaining building access can prevent carriers from providing service); Letter from Ruth Milkman, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. (filed Oct. 25, 2002) (WorldCom Oct. 25, 2002 *Ex Parte* Letter). The Commission has an open proceeding on building access issues. *See Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, CC Docket Nos. 96-98, 88-57, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, 15 FCC Rcd 22983 (2000) (*Competitive Networks Order*).

[293] *See, e.g.*, WorldCom Reply at 17-18. Section 224 of the Act provides a detailed scheme for the regulation of access to rights-of-way. 47 U.S.C. § 224. While section 224 provides certain rights to requesting telecommunications carriers, the requesting carriers must still face costs inherent in exercising those rights – costs that the incumbent LEC does not face because it already has access to rights-of-way (for its existing network).

[294] *See, e.g.*, AT&T Reply at 49-51 (noting that hot cut issues can cause delays and degrade quality of new entrant's service); Letter from Laurence J. Kotlikoff, Professor of Economics, Boston University, to Michael K. Powell, Chairman, FCC, *et al.*, CC Docket Nos. 01-338, 96-98, 98-147, Attach., *in* Letter from Penelope K. Alberg, AT&T, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Jan. 22, 2003) (AT&T Jan. 22, 2003 *Ex Parte* Letter). *Cf.* BOC Shelanski Decl. at paras. 30-31 (arguing that costs of combining network elements with non-incumbent facilities should not result in a finding of impairment unless they are so high as to make alternatives economically infeasible).

[295] Consumers' reluctance to switch carriers may be caused by inertia or the high costs of changing.

[296] We note, as well, that requesting carriers may also have very recognizable brand names. *See* BellSouth NERA Reply Decl. at para. 73.

[297] *See, e.g.*, Z-Tel Comments at 26 (noting that incumbent LECs have cost advantages resulting from their historic monopoly position); Allegiance Reply at 14 (noting that requesting carriers incur higher marketing and promotional costs than incumbent LECs).

other factors, such as scale economies, to create barriers to entry.[298] As we consider these factors, we will keep in mind that new entrants may have countervailing advantages (second mover advantages) that mitigate some of these factors. For example, competitors are able to design new networks, and may be able to offer higher quality services than incumbent LECs because they are relying on newer equipment.[299] While these countervailing advantages are relevant, they are not necessarily dispositive and do not, without further analysis of the other relevant factors we describe, demonstrate a lack of impairment.[300]

90. *Absolute Cost Advantages.* When the incumbent LEC has absolute cost advantages, other firms may be deterred from entering the market.[301] Particularly if the incumbent LEC is providing service at rates close to its average cost, competitive LECs may find it difficult or impossible to provide service in an economic fashion, because they likely will have higher average costs than the incumbent LEC. Small disadvantages, however, will not pose a barrier unless they raise an entrant's costs above revenues.[302]

91. *Barriers Within the Control of the Incumbent LEC.* We also examine those barriers to entry that are solely or primarily within the control of the incumbent LEC. We look to these barriers because it is within the control of the incumbent LEC to eliminate them or mitigate their effects, which could eliminate the need to unbundle network elements to overcome them. This approach flows from the Act's call for a deregulatory approach where possible.[303]

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[298] For example, the incumbent LEC's advantage in advertising or brand name preference can affect an entrant's ability to reach a large enough size to achieve the scale economies necessary to compete with the incumbent. Advertising and brand name preference play a critical role in the HMG in helping to determine whether an entrant can achieve the minimum viable scale. *See* HMG § 3.3 n.33 ("Entrants' anticipated share of growth in demand depends on incumbents' capacity constraints and irreversible investments in capacity expansion, as well as on the relative appeal, acceptability, and reputation of incumbents' and entrants' products to the new demand.").

[299] *See* SBC Comments at 36; Verizon Comments at 42; Verizon Reply at 42; BellSouth NERA Reply Decl. at para. 72. Competitive LECs may also have countervailing advantages in being free to avoid unattractive markets. *See* Verizon Reply at 43.

[300] *See* Verizon Reply at 41 (arguing that the incumbent LECs' scale and scope economies are irrelevant because competitors design new networks).

[301] *See, e.g.*, AT&T Jan. 10, 2003 *Ex Parte* Letter, Attach. at 6.

[302] We find support for considering absolute cost advantages, as does Professor Willig, in the HMG. The HMG ask whether potential committed entrants with significantly higher costs than the incumbents can act to hold prices down to pre-merger levels. Similarly, the HMG ask whether potential committed entrants can achieve the minimum viable scale – absolute cost advantages could prevent them from doing so. This is analogous to our question – whether new firms can enter the market to challenge the incumbent LECs. *See* AT&T Nov. 14, 2002 *Ex Parte* Letter, Attach. at 3-4, 7-8; Letter from C. Frederick Beckner, III, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 3 (filed Feb. 12, 2003) (AT&T Feb. 12, 2003 *Ex Parte* Letter); *see also* AT&T Jan. 22, 2003 *Ex Parte* Letter, Attach. *But see* Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. (filed Feb. 6, 2003) (Qwest Feb. 6, 2003 *Ex Parte* Letter) (citing A. Douglas Melamed that argues that the HMG do not contain any explicit reference to any absolute cost disadvantages.).

[303] *See* Preamble to the 1996 Act.

Thus, if there are technical or operational barriers solely or primarily within the incumbent LEC's control,[304] unbundling a network element may give the requesting carrier an opportunity to compete while the incumbent LEC determines whether or how it might cure the provisioning or operational problems. By contrast, factors that are within the control of the new entrant, such as those that might be caused by choosing a particular network architecture, are less likely to result in an unbundling determination to the extent they are truly within the new entrant's control.[305] Accordingly, we disagree with commenters that argue that we should give operational barriers less weight in our impairment analysis and deal with them more directly instead.[306] Rather, we find that some operational difficulties are inherent in the unbundling process, and find it necessary to take them into account in our analysis.

(ii) Evidence of Impairment

92. Parties have submitted an enormous amount of evidence for our consideration in this proceeding. We will address the merits of this evidence in the Parts below regarding the application of the unbundling analysis to specific UNEs. As guidance for our analysis, however, we explain here what kinds of evidence we will find most persuasive in those discussions. We do not adopt a "burden of proof" approach that places the onus on either incumbent LECs or competitors to prove or disprove the need for unbundling.[307] Rather, in the application of our standard, we examine the record evidence in light of the Act's goals to make the best determination regarding the need for unbundling.

93. As we anticipated in the *Triennial Review NPRM*, we agree with commenters that argue that actual marketplace evidence is the most persuasive and useful kind of evidence

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[304] *See, e.g.*, AT&T Reply at 49 ("Delays that would result from denials of access to a UNE materially diminish CLECs' ability to provide service in multiple ways. For example, hot cuts cause delays that have prevented CLECs from serving the overwhelming majority of customer locations . . . .").

[305] *See, e.g.*, Letter from Michael E. Glover, Senior Vice President and Deputy General Counsel, Verizon, and Susanne Guyer, Senior Vice President – Federal Regulatory Affairs, Verizon, to William F. Maher, Chief, Wireline Competition Bureau, FCC, at 6-7, *in* Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Jan. 10, 2003) (Verizon Jan. 10, 2003 UNE-P *Ex Parte* Letter).

[306] *See, e.g.*, SBC Comments at 36-37.

[307] *See, e.g.*, ALTS *et al.* Comments at 123-24; BellSouth Comments at 18-21; NuVox Reply at 24-25; Letter from Michael E. Glover, Senior Vice President and Deputy General Counsel, Verizon, and Susanne Guyer, Senior Vice President – Federal Regulatory Affairs, Verizon, to William F. Maher, Chief, Wireline Competition Bureau, FCC, at 3, *in* Letter from William P. Barr, Executive Vice President and General Counsel, Verizon, to Michael K. Powell, Chairman, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Dec. 17, 2002) (Verizon Dec. 17, 2002 *Ex Parte* Letter). Because we decline to adopt a "burden of proof" approach, we dismiss as moot that portion of the CompTel Nov. 26, 2001 Joint Conference Petition in which CompTel asks the Commission to impose a burden of proof on parties requesting that a UNE no longer be unbundled. *See* CompTel Nov. 26, 2001 Joint Conference Petition at 13.

submitted.[308] In particular, we are most interested in granular evidence that new entrants are providing retail services in the relevant market using non-incumbent LEC facilities, for two main reasons. First, it is faithful to the Supreme Court's admonition that we consider "the availability of elements outside the incumbent's network" as we apply the "impair" standard.[309] Second, this kind of evidence demonstrates better than any other kind what business decisions actual market participants have made regarding whether it is feasible to provide service without relying on the incumbent LEC. Specifically, this evidence shows us whether *new entrants*, as a practical matter, have surmounted barriers to entry in the relevant market.[310]

94. As we examine the evidence of facilities deployment by competitive LECs in the specific UNE discussions, we will give it substantial weight,[311] but we do not agree that we must find it conclusive or presumptive of a particular outcome without additional information or analysis.[312] For example, if the marketplace evidence shows that new entrants have deployed a certain type of facility, we will consider the facts as evidence that the barriers to entry in that market for that element are surmountable.[313] In deciding what weight to give this evidence, we will consider how extensively carriers have been able to deploy such alternatives, to serve what

[308] *See Triennial Review NPRM*, 16 FCC Rcd at 22789, para. 17; *see also* Qwest Comments at 5, 11-12; SBC Comments at 27; Qwest Farrell Reply Decl. at para. 17. *But see* Competitive Enterprise Institute Comments at 2 (urging the Commission not to rely on marketplace evidence in a way that freezes its rules to today's conditions).

[309] *Iowa Utils. Bd.*, 525 U.S. at 389; *see also* Letter from Karen Brinkmann, Counsel for ITTA, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 1 (filed Jan. 29, 2003) (ITTA Jan. 29, 2003 *Ex Parte* Letter) (noting that question is whether elements are available from sources other than incumbent LEC).

[310] *Cf., e.g.*, BOC Shelanski Reply Decl. at paras. 8-12 (arguing that, as facilities-based entry increases, unbundling makes less sense because it punishes earlier facilities-based entrants, fails to recognize that the market can only absorb a limited number of firms, and confuses impairment with lack of an attractive business case). We recognize the credibility of econometric analytical techniques, such as regression analysis, when properly specified and conducted.

[311] *See, e.g.*, BOC Shelanski Decl. at para. 17; Qwest Reply at 7-8; BOC Shelanski Reply Decl. at para. 17; Verizon Jan. 10, 2003 *Ex Parte* Letter, Attach. at 2 (arguing that the Commission should presume that alternative facilities can be deployed anywhere); Verizon Dec. 17, 2002 *Ex Parte* Letter, Attach. at 2 (arguing that no carriers are impaired in markets where competitive entry has occurred), 3 (arguing for presumption of no impairment when facilities at issue have been significantly deployed on a competitive basis). Similarly, we do not presume that if one carrier can enter the market without UNEs, there is no impairment.

[312] *See, e.g.*, CompTel Comments at 62 (urging the Commission not to rely on a "simple count" of alternative facilities); GCI Comments at 19; Z-Tel Comments at 23; AT&T Reply at 41-43; NuVox Reply at 23; SBC Reply at 10 ("If competitive facilities already have been deployed, then *ipso facto* they can be deployed. That does not mean that the mere presence of a single competitive facilities in a particular market necessarily precludes a finding of impairment in that market."); Talk America Reply at 18; WorldCom Reply at 29.

[313] *Cf.* Qwest Comments at 11-12.

extent of the market, and how mature and stable that market is.[314] Thus, while we agree that such evidence may indicate a lack of impairment, we disagree with commenters that argue that such evidence is dispositive or creates a rebuttable presumption of no impairment.[315] We likewise disagree that evidence of deployment of alternative facilities or availability of non-UNE alternatives from the incumbent LEC means that a market is "contestable" (as some parties use that term) and therefore *necessarily* shows a lack of impairment.[316] Rather, as just stated, evidence of alternative deployment is probative but not necessarily dispositive of a lack of impairment. And as we explain in detail below, the availability of non-UNE alternatives from incumbent LECs (such as tariffed services or resold retail services) has little bearing on our impairment analysis.[317]

95. Likewise, we disagree that evidence of alternative deployment is irrelevant unless access to those facilities is available to requesting carriers on a wholesale basis.[318] We examine whether wholesale suppliers exist, but our standard is not based solely on whether there is a wholesale market. Instead, we also consider the possibility of self-provisioning. We also disagree that deployment of alternative facilities is necessarily irrelevant unless carriers have been able to serve customers profitably over those facilities.[319] We may consider the extent to

[314] *See* CompTel Comments at 72-73 (noting that many carriers that have self-deployed are now bankrupt or have left the market); Covad Comments at 16-18; *see also* Talk America Comments at 22 (noting that industry must mature before facilities-based competition will emerge).

[315] *See* BellSouth Comments at 17, 23; Qwest Comments at 11 ("The fact of widespread CLEC entry without reliance on a particular UNE from the incumbent should be deemed to – and clearly does – establish that lack of access to that UNE under section 251 does not impair the ability of a CLEC to provide service."); SBC Comments at 27 ("That some CLECs are in fact providing service over their own facilities is *dispositive* evidence that carriers are not impaired without access to ILEC facilities.") (emphasis in original); Verizon Comments at 43-46 ("Thus, if some CLECs use non-ILEC facilities to serve particular types of customers or geographic locations, then no CLEC should be considered impaired without access to the relevant UNEs – not just with respect to the specific customers or locations served by the original CLECs, but with respect to all similar customers or locations [as well as where] circumstances are not strictly similar."); Verizon Reply at 38.

[316] *See, e.g.*, Verizon Dec. 17, 2002 *Ex Parte* Letter, Attach. at 2; Letter from Brian J. Benison, Associate Director – Federal Regulatory, SBC, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 2 (filed Jan. 29, 2003) (SBC Jan. 29, 2003 *Ex Parte* Letter). *But see* Letter from C. Frederick Beckner III, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Jan. 31, 2003) (AT&T Jan. 31, 2003 *Ex Parte* Letter) (arguing that a so-called "contestability" analysis that focuses on the presence of a single alternative on a specific route is insufficient to judge impairment).

[317] *See infra* para. 102.

[318] *See, e.g.*, Covad Reply at 13; *see also* NuVox Reply at 23, 28; Sprint Reply at 19; Talk America Reply at 18-20; Letter from Frederick W. Hitz, III, Director, Rates and Tariffs, General Communication, Inc., to William Maher, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147, 01-318, 98-56, 98-141 at 4, *in* Letter from John T. Nakahata, Counsel for GCI, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, 01-318, 96-56, 98-141 (filed Jan. 27, 2003) (GCI Jan. 27, 2003 *Ex Parte* Letter) (arguing that the wholesale market for inputs is the relevant market to consider in the impairment analysis).

[319] *See, e.g.*, AT&T Reply at 42-43.

which carriers have been able to serve customers profitably, but we recognize that profitability can be affected by many factors other than those we examine for the "impair" analysis, such as whether there is overcapacity in the market,[320] whether facilities-based carriers are still in the process of deploying capacity,[321] and the scope economies involved in providing multiple services.[322]

96. On the other hand, if the marketplace evidence shows that new entrants have not widely deployed a particular kind of facility, we will consider the facts as some evidence that barriers to entry in that market for that element are preventing the deployment. We will not generally presume from lack of entry or lack of deployment, however, that there are barriers to entry in the relevant market,[323] or that any barriers cannot be overcome through means other than unbundling without further analysis. For example, the market may be nascent and therefore not mature enough to determine whether the lack of entry demonstrates impairment. We also consider the possibility that past unbundling policies may have discouraged the build-out of facilities. We further recognize that many factors contribute to a new entrant's decision where to place its facilities, and that new entrants may in some cases simply choose not to enter a particular market. We will not necessarily presume from that lack of entry that unbundling is warranted.[324]

97. We also examine evidence that intermodal alternatives[325] can be used to provide telecommunications service. In appropriate instances, evidence of the deployment of intermodal alternatives informs our judgment on the "impair" factors described above, and in those circumstances we will give weight to deployment of intermodal alternatives in our analysis. Specifically, we consider whether these intermodal alternatives permit a requesting carrier to

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[320] If more facilities-based carriers have entered the market than can be supported by market demand, creating overcapacity and generating low prices, none of the carriers may be profitable. However, self-provisioning has been demonstrated to be achievable, and with exit of one or more carriers, the remaining carriers may achieve profitability.

[321] There may be clear evidence that carriers are profitably serving customers in a particular area, but have not achieved overall profitability because they are still in the process of expanding their business.

[322] It can be difficult to determine the profitability of an individual product for a multiproduct firm. While the revenues obtained from a particular product may not completely cover the stand-alone costs of providing just that product, they may be sufficient to cover the incremental costs, such that selling the product adds to the firm's profitability. *See* WILLIAM J. BAUMOL, JOHN C. PANZAR & ROBERT D. WILLIG, CONTESTABLE MARKETS AND THE THEORY OF INDUSTRY STRUCTURE 351-56 (1988).

[323] *See* Verizon Comments at 45, 60-61; SBC Reply at 47 ("To the extent competitive facilities have not been deployed in a particular market, therefore, the Commission must attempt to determine why, and it must differentiate between true impairment and factors that have nothing to do with impairment.").

[324] *See* Qwest Comments at 13; BOC Shelanski Decl. at paras. 4, 42; BOC Shelanski Reply Decl. at para. 25.

[325] By "intermodal," we refer generally to facilities or technologies other than those found in traditional telephone networks. These include, for example, traditional or new cable plant, wireless technologies (satellite, mobile, and fixed), power line (electric grid) technologies, or other technologies not rooted in traditional telephone networks.

serve the market, either through self-provisioning or by obtaining capacity on a wholesale basis.[326] We take these alternatives into account for several reasons. First, the Act expresses no preference for the technology that carriers should use to compete with the incumbent LECs. Second, we do not want to prejudice market participants' business decisions about whether to deploy alternative facilities by basing our unbundling rules on the presence or absence of any certain technology. Third, in some instances, the presence of intermodal alternatives can be just as probative of a lack of impairment as the presence of traditional wireline "telephone" deployment. The fact that an entrant has deployed its own facilities – regardless of the technology chosen – may provide evidence that any barriers to entry can be overcome. This approach is consistent with *USTA*'s admonition that we should consider intermodal competitors as relevant to our analysis.[327] Just as with regard to the deployment of new traditional facilities, however, we do not find the presence of intermodal alternatives dispositive in our impairment analysis,[328] as some commenters suggest.[329] We also disagree with commenters that suggest that deployment of intermodal alternatives is irrelevant if the facilities are not available to requesting carriers on a wholesale basis,[330] for reasons discussed in the preceding paragraphs. As we evaluate evidence of intermodal deployment, we will consider to what extent services provided over these intermodal alternatives are comparable in cost, quality, and maturity to incumbent LEC services.[331]

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[326] Many commenters have urged us to take services provided over intermodal alternatives into account. *See* Verizon Oct. 16, 2002 *Ex Parte* Letter at 4 ("In determining whether an element meets the standard for unbundling, the Commission must consider the full range of technologies by which that element's *function* could be performed.") (emphasis in original); *see also* Alcatel Comments at 17-18; Qwest Comments at 6-8, 15; USTA Comments at 4-5; Verizon Comments at 46-51; BOC Shelanski Decl. at para. 43; AT&T Reply at 57 ("[T]he Commission must consider whether substitute services that are offered outside the ILECs' networks have led to the profitable provision of service by multiple providers . . . ."); Qwest Reply at 16-17; BOC Shelanski Reply Decl. at para. 23; Qwest Farrell Reply Decl. at para. 18. *But see* Moline and CCG Comments at 8-11 (urging Commission not to give too much weight to intermodal competition); Sprint Comments at 12-13 (arguing that even where intermodal alternatives are available, unbundling may be necessary to promote robust competition); NuVox Reply at 21-22.

[327] *See USTA*, 290 F.3d at 429.

[328] *See supra* para. 64.

[329] *See, e.g.*, Qwest Comments at 6-9; Verizon Comments at 46-48.

[330] *See* ALTS *et al.* Comments at 39-40; ASCENT Comments at 26; UNE-P Coalition Comments at 19; *see also* Allegiance Reply at 21; ASCENT Reply at 13; Covad Reply at 13. *But see* Qwest Reply at 16-17. We also address this argument in more detail *infra* para. 112. We also disagree that intermodal alternatives should not be considered because "CLECs desire to offer wireline service, not wireless service or cable telephony." *See, e.g.*, ASCENT Reply at 13. As explained above and as the *USTA* decision explained, we look at alternatives for whether they provide comparable service, not the same technology. *See USTA*, 290 F.3d at 429.

[331] *See* Allegiance Reply at 24-25. Our analysis is necessarily based on the current technical capabilities, economic characteristics, and patterns of use of intermodal alternatives. These facts are likely to change going forward as these and other technologies develop. The changes may affect future impairment determinations.

98. In some cases, the differences between intermodal alternatives and traditional wireline deployments may reduce the weight we give to the deployment of alternatives. For example, some carriers relying on intermodal alternatives have not needed to overcome the same kinds of barriers as new entrants that start without any facilities at all. Cable telephony and cable modem service, for example, have developed because cable operators have been able to overlay additional capabilities onto networks that they built for other purposes, often under government franchise, and therefore have first-mover advantages and scope economies not available to other new entrants, which lower their incremental costs of providing the additional services.[332] Similarly, we recognize that some intermodal technologies will only be available to one or a few firms due to legal restrictions, such as spectrum licensing requirements, that may limit the number of firms that can use a given technology in one geographic area. When an intermodal technology is limited in availability to only one or a few telecommunications carriers – either because of the historical economic characteristics of their providers or legal restrictions – we will consider whether that technology contributes to a wholesale market in accessing the customer. We may give less weight to intermodal alternatives that do not contribute to the creation of a wholesale market in accessing the customer or do not provide evidence that self-deployment of such access is possible to other entrants. In addition, if the record evidence shows that there are limitations on the number or types of customers that can be served by a particular technology, we will consider whether an entrant could use this technology profitably to target only those customers that can be served by the alternative technology.

99. We will also give consideration to cost studies, business case analyses, and modeling if they provide evidence at a granular level concerning the ability of competitors economically to serve the market without the UNE in question. While these are useful tools for analysis, we may give this evidence less weight than actual marketplace evidence for several reasons. First, as stated above, actual marketplace evidence shows whether new entrants, as a practical matter, have surmounted barriers to entry in the relevant market. Second, these studies are generally based on estimates of costs and revenues that can be difficult to verify, and thus are more easily manipulated by the advocates in this proceeding. Third, there may be issues and factors that affect a competitor's ability to enter that are difficult to foresee (such as unexpected costs, delays, revenue streams, or new niche products). Thus, there will be uncertainty concerning the existence of such factors when examining these studies, while examination of actual marketplace evidence will reveal whether such factors exist and are significant.

100. In conducting our impairment analysis, we recognize that decisions on whether to enter are based not just on the cost of entry but also on the revenues to be gained.[333] Thus, we will consider, where provided, evidence of the revenue opportunities available to those carriers that provide services over the relevant facilities, keeping in mind that competitors are able to

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[332] *Cf.* AT&T Reply at 34 (arguing that the presence of a cable competitor has *no* relevance to the impairment analysis).

[333] *See, e.g.*, AT&T Comments at 36; CompTel Comments at 71 (urging the Commission to take profitability into account in the analysis of self-provisioning); Talk America Comments at 15 (noting that financial viability depends on the difference between retail rates and the cost of providing service).

choose which markets to enter and to avoid unattractive markets.[334] We consider *all* the revenue opportunities that a competitor can reasonably expect to gain over the facilities, from providing all possible services that an entrant could reasonably expect to sell,[335] taking into account limitations on entrants' ability to provide multiple services, such as diseconomies of scope in production, management, and advertising.[336]

101. In our impairment analysis, we examine both whether new entrants can provide retail services over non-incumbent facilities and whether new entrants can provide wholesale services over non-incumbent facilities.[337] Rather than providing the retail services itself,[338] a wholesaling carrier will be providing service to other carriers that will provide, individually or as a group, the range of services that customers want, at market-based prices. Thus, the wholesale carrier's sales and revenues are dependent on the services the retail carriers will demand and the prices they are willing to pay, which in turn depend on the revenues they gain from the retail services provided.[339] Wholesale carriers may not be limited by the same factors that limit the likely market share of carriers providing retail service, since they will be able to serve multiple carriers' needs. Thus, if advertising or diseconomies of scale or scope limit individual carriers' market shares and product lines, which could make self-deployment of facilities uneconomic, a wholesale carrier may be able to serve multiple carriers and overcome these limits in the aggregate.

102. We reaffirm our prior conclusion in the *UNE Remand Order* to afford little weight to evidence that requesting carriers are using incumbent LEC tariffed services as relevant to our unbundling determination.[340] Specifically, many commenters have urged us to find that requesting carriers are not necessarily impaired if they can use incumbent LEC resold or retail

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[334] *See USTA*, 290 F.3d at 423 (urging the Commission to consider high retail rates as they relate to revenue opportunities); Verizon Comments at 42.

[335] *See* Verizon Comments at 57.

[336] Diseconomies of scope are the opposite of economies of scope. Diseconomies of scope occur when the cost of producing a good rises when a firm attempts to produce a second good. *See* John C. Panzar, *Technological Determinations of Firm and Industry Structure, in* 1 HANDBOOK OF INDUSTRIAL ORGANIZATION 16 (Richard Schmalensee and Robert Willig, eds., 1989).

[337] The wholesale provision of services would not be limited to exchange access services, but would include all access services. *See infra* Part V.B.2.c.

[338] This implies the carrier is vertically integrated, providing both wholesale and retail service itself. The product it provides from its upstream wholesale service is then combined with other inputs to provide downstream retail service.

[339] The demand for the wholesale carrier services is therefore a derived demand from retail sales.

[340] *See UNE Remand Order*, 15 FCC Rcd at 3732-34, paras. 67-70; *see also* AT&T Comments at 38-39; ATTWS Comments at 14-16; CompTel Comments at 64-65; Allegiance Reply at 30-31; AT&T Reply at 56.

tariffed services, such as special access, to provide their retail service.[341] We decline to adopt this position. We conclude that it would be inconsistent with the Act if we permitted the incumbent LEC to avoid all unbundling merely by providing resold or tariffed services as an alternative.[342] Such an approach would give the incumbent LECs unilateral power to avoid unbundling at TELRIC rates simply by voluntarily making elements available at some higher price. Because the Act contains three modes of entry, we cannot find an approach that would so easily remove one mode from the Act to be a reasonable reading of Congress's intent.[343] Indeed, such an approach would also be contrary to the Act's requirement that unbundled facilities – facilities without which serving the market becomes uneconomic – should be priced at cost-based rates[344] and our determination that TELRIC is the appropriate methodology for determining those rates – an approach to rates that the Supreme Court has affirmed.[345] In addition, resold and retail tariffed offerings present different opportunities and risks for the requesting carrier than the use of UNEs or non-incumbent LEC alternatives.[346] Also, forcing requesting carriers to rely on tariffed offerings would place too much control in the hands of the incumbent LECs, which could subsequently alter their tariffs and thereby engage in a vertical price squeeze.[347]

103. Likewise, we disagree with commenters that argue that the presence of a tariffed offering that is subject to substantial competition in the retail market should preclude an impairment finding with respect to the UNEs used to provide the relevant service.[348] As explained in greater detail in Parts V.B.1.d(iii) and V.B.2.c below, our unbundling analysis considers service, but does not examine whether the relevant market is competitive as part of the unbundling analysis.

104. Similarly, as we found in the *UNE Remand Order*,[349] we do not find that wherever incumbent LECs have received pricing flexibility, we should not unbundle the relevant network

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[341] *See* SBC Comments at 27-29; Verizon Comments at 51-55; BOC Shelanski Reply Decl. at para. 21; Verizon Dec. 17, 2002 *Ex Parte* Letter, Attach. at 8-10.

[342] *UNE Remand Order*, 15 FCC Rcd at 3732-33, para. 67.

[343] *See also Iowa Utils. Bd.*, 120 F.3d at 809-10 (rejecting a similar interpretation urged by incumbent LECs that would have given them the freedom to circumvent the unbundling obligations of section 251(c)(3) by choosing to offer network elements as services).

[344] *See* 47 U.S.C. § 252(d)(1)(A)(i).

[345] *See Verizon*, 535 U.S. at 497-528.

[346] *UNE Remand Order*, 15 FCC Rcd at 3733, para. 68.

[347] *UNE Remand Order*, 15 FCC Rcd at 3733, para. 69. SBC, for one, points out that the Commission could evaluate tariffed services and refuse to consider as alternatives those that it finds to be in place merely to avoid the unbundling rules, but this misses the points described in the text. *See* SBC Comments at 28-29.

[348] *See, e.g.*, Verizon Comments at 53.

[349] *See UNE Remand Order*, 15 FCC Rcd at 3756-57, paras. 131-32, 3849, para. 341 n.673.

elements.[350] Our pricing flexibility rules go to protecting consumers from anticompetitive pricing, which is not the same as our unbundling rules, which go to asking whether entry into a market is economic and to serving a host of statutory goals beyond protecting consumers from anticompetitive pricing. Thus, the "impair" test and the test for pricing flexibility are different, reflecting these different aims. Moreover, our unbundling analysis is far more granular, in many cases, than our pricing flexibility analysis. This is because competition in some parts of a market may be sufficient to constrain prices, but insufficient to demonstrate a lack of impairment. In the discussions of particular elements below, we consider evidence that competitors have collocated or deployed alternative facilities as highly relevant to our impairment analysis, but we will not presume that a grant of pricing flexibility necessitates a finding of lack of impairment.

(iii) Rejection of Other Approaches to Impairment

105. In this Part, we explain why we reject other approaches to impairment that commenters have put forward.

106. *UNE Remand Impairment Approach.* We disagree with commenters that press us to maintain the approach to unbundling that the Commission adopted in the *UNE Remand Order*.[351] We recognize that there are benefits to keeping a single regulatory standard in place if doing so can provide market certainty and predictability. The *UNE Remand* approach, however, has proven overbroad in some instances, and was rejected by the D.C. Circuit as insufficiently rigorous.[352] We could thus not maintain it, even if we found a good policy reason to do so.[353] While we no longer rely on, or formally examine, the five *UNE Remand* factors as a basis for our analysis of impairment, these factors still play a role in our analysis as they relate to the barriers to entry we have identified above.[354]

107. *Essential Facilities Doctrine.* As explained above in Part V.B.1.c, we use the essential facilities doctrine as a guide in formulating our "impair" standard, but we do not adopt

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[350] *See* Verizon Comments at 53-54; Verizon Dec. 17, 2002 *Ex Parte* Letter, Attach. at 6-8.

[351] *See, e.g.*, ALTS *et al.* Comments at 27-28; ASCENT Comments at 15-18; AT&T Comments at 34-40; Eschelon Comments at 7; McLeodUSA Comments at 4; NewSouth Comments at 48-50; NuVox Comments at 20, 22-33; Ohio Commission Comments at 5; Progress Telecom Comments at 16; Sprint Comments at 7-8; UNE-P Coalition Comments at 16-17, 20-21; WorldCom Comments at 50-52; UNE-P Coalition Reply at 15-17; Mpower Oct. 11, 2002 *Ex Parte* Letter, Attach. at 4. *But see* Verizon Comments at 55-61.

[352] *See USTA*, 290 F.3d at 415.

[353] We do not address the comments of parties that focused on the *UNE Remand* factors in their opening comments, before the D.C. Circuit issued its *USTA* decision, except to the extent those comments are still relevant after *USTA*.

[354] *See, e.g.*, WorldCom Reply at 11-12 (urging Commission to keep *UNE Remand* standard with modifications to comport to *USTA*).

the essential facilities doctrine as our standard.[355] First, as in prior orders, we point out that Congress could have codified the essential facilities doctrine in section 251(d)(2), but chose not to. Indeed, legislative history shows that Congress was aware of the essential facilities doctrine when it enacted section 251(d)(2), yet chose to use the ambiguous word "impair" rather than suggesting that the existing law of essential facilities should determine which network elements should be unbundled.[356] Second, the structure of the Act itself suggests that we cannot equate impairment with the essential facilities doctrine. The essential facilities doctrine is more analogous to the "necessary" standard of section 251(d)(2)(A) than to the "impair" standard of section 251(d)(2)(B). That is, before a court would require an owner to share its facility with competitors, it would determine that the facility was "essential" for competition. "Essential" appears comparable to "necessary."[357] To equate "essential" with "impair" would collapse the Act's two unbundling standards, rather than respect the dichotomy that Congress established. Finally, to adopt the essential facilities doctrine would disregard the fact that Congress chose to use a different standard. That is, where Congress wanted to address points that are analogous to parts of the essential facilities doctrine, it did so. For example, once a court determines that a facility is "essential," it must decide how it should be shared and at what price. Congress already put these mechanisms in place through the sharing requirement of section 251(c)(3) and the pricing requirements of section 252(d)(1). Indeed, Congress's requirements that facilities be shared at cost-based rates, and on a nondiscriminatory basis, are potentially more rigorous than the requirements that most courts would impose on the owner of an essential facility.[358] This additional departure from the essential facilities doctrine lends support to our conclusion that Congress did not intend for us to read it into the "impair" standard.

108. However, we incorporate important lessons from scholars who have examined the essential facilities doctrine into our interpretation of "impair." As the D.C. Circuit has noted, the essential facilities doctrine can "offer useful concepts for agency guidance when Congress has *directed* an agency to provide competitor access in a specific industry."[359] Indeed, scholars have noted the drawbacks of mandatory sharing of facilities in their criticisms of the essential facilities doctrine, and we have found these criticisms useful in our standard as explained above.[360]

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[355] *Cf.* BellSouth NERA Reply Decl. at para. 58 ("[I]mpairment cannot occur when a network element does not meet the definition of an essential facility."). *But see* AT&T Reply at 35; NewSouth Reply at 9-10; WorldCom Reply at 19-20; Z-Tel Reply at 57-60.

[356] *See* 137 Cong. Rec. S7054, S7058 (daily ed. June 5, 1991 (reading S. 1200, 102d Cong. § 202 (1991)); *see also UNE Remand Order*, 15 FCC Rcd at 3728-30, paras. 57-61 (discussing essential facilities doctrine).

[357] Thus, a significant cost disadvantage that hinders the ability of competitors to enter may be sufficient to trigger a finding of impairment, but may not qualify the facility as essential.

[358] INGO VOGELSANG & BRIDGER M. MITCHELL, TELECOMMUNICATIONS COMPETITION: THE LAST TEN MILES 57 (1997).

[359] *USTA*, 290 F.3d at 427 n.4 (emphasis in original).

[360] *See supra* Part V.B.1.c.

109. *Market Power Analysis and the Use of Antitrust or HMG Analysis.* We reject the arguments that we should require the unbundling of network elements to remove an incumbent LEC's market power in the retail market and that we should use the HMG to identify market power.[361] The purposes of a market power analysis are not the purposes of section 251(d)(2). While this antitrust analysis attempts to determine whether market participants would be able to exercise market power and raise prices above competitive levels if a merger were consummated, the Act requires only that network elements be unbundled if competing carriers are impaired without them, regardless of whether the incumbent LEC is exercising market power or the unbundling would eliminate this market power. A market power analysis would go to the question of whether an incumbent LEC could raise its retail prices unchecked; the impair analysis asks whether a new entrant can provide its services without the UNE. A market power analysis might be appropriate if the only goal of the Act were to drive prices to cost,[362] but that approach disregards the Act's other goals of encouraging the deployment of alternative facilities and new technologies and reducing regulation.

110. We also decline to adopt a standard that equates or hinges a requesting carrier's impairment with an incumbent LEC's market power in the wholesale market for the input in question. Some commenters argue that an incumbent LEC's market power in the wholesale market will permit it to charge prices above cost for that input, thus creating or worsening a cost disadvantage for new entrants.[363] Similar to our reasoning just above, we point out that the Act is not directly aimed at eliminating an incumbent LEC's market power in any particular market, but in identifying new entrants' impairment. While incumbent LECs control wholesale facilities in a manner that often creates market power, we look instead for whether new entrants are impaired without those facilities. Indeed, there may be circumstances where an incumbent LEC has market power with regard to a particular input, but competitors are not impaired without access to the element, so unbundling would not be appropriate and might discourage new entrants from building their own facilities. In addition, an analysis that focused exclusively on the wholesale market would fail to give weight to the possibility or actuality of self-provisioning.

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[361] *See, e.g.*, AT&T Nov. 14, 2002 *Ex Parte* Letter, Attach. at 2; AT&T Jan. 22, 2003 *Ex Parte* Letter, Attach.; AT&T Feb. 12, 2003 *Ex Parte* Letter, Attach. at 2 ("[A]n economically rigorous 'impairment' analysis must assess whether facilities-based entry by competitive carriers (or more generally, entry by competitive carriers without access to unbundled network elements at cost-based prices) will be able to stop the incumbent LECs from exercising market power."). Covad argues that we should always order unbundling in highly concentrated markets (calculated using the Herfindahl-Hirschman Index), presumptively order unbundling in moderately concentrated markets, and not order unbundling in unconcentrated markets. *See* Covad Reply at 8-14; Covad Reply, Reply Declaration of Terry L. Murray (Covad Murray Reply Decl.) at paras. 12-42.

[362] *See* AT&T Nov. 14, 2002 *Ex Parte* Letter, Attach. at 2 ("[T]he Commission should continue to mandate unbundled access to network elements to the extent that such access is necessary to drive retail rates towards costs.").

[363] *See, e.g.*, Allegiance Comments at 6-11; Allegiance Reply at 3, 18-20. Allegiance has specifically suggested that we should find impairment unless there are four non-incumbent LEC sources of supply, either self-provisioned or wholesale offerings. *See* Allegiance Comments at 9-10; Allegiance Reply at 3-4.

111. *HMG Analysis of Committed Entry.* We disagree with commenters that suggest that we should adopt the HMG's analysis of "committed entry" as our "impair" standard.[364] The HMG apply a three-pronged test to determine whether committed entry is likely to deter anticompetitive behavior post-merger.[365] Specifically, the HMG consider whether committed entry would be timely,[366] likely,[367] and sufficient[368] in response to a "small but significant and nontransitory" post-merger price increase. Although we recognize a substantial amount of commonality between the HMG's framework for assessing ease of entry and our analysis of entry barriers above,[369] we do not adopt the standards and framework of the HMG for evaluating committed entry.[370] First, in contrast to the HMG, we are not considering whether new competitors will enter the market in response to a "small but significant and nontransitory" price rise,[371] nor do we assume that incumbent LECs will be ceding a portion of the market to competitors due to this price rise. Second, contrary to commenters' urgings as discussed above, our impairment analysis does not share the HMG's goal of determining whether committed entry will check incumbents' market power.[372] Third, the HMG do not take into consideration the other goals we do here – particularly encouraging investment in new facilities by both incumbent LECs and others – or the costs of unbundling that the courts have pointed out to us.[373] Finally, the time horizon of two years in the HMG is a fairly short period compared to the time it is likely

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[364] *See* AT&T Nov. 14, 2002 *Ex Parte* Letter.

[365] HMG § 3.0.

[366] The HMG consider entry to be timely if it can have a significant market impact within two years of initial planning. *See* HMG § 3.2.

[367] The HMG consider entry to be likely if it would profitable in the long run at pre-merger prices, if those prices are attainable. *See* HMG § 3.3.

[368] The HMG consider entry to be sufficient if it will force market prices to their pre-merger levels. *See* HMG §§ 3.0, 3.4.

[369] For example, as explained by Professor Willig on behalf of AT&T, the HMG ask whether entry would require significant sunk costs, HMG § 1.32, whether a new entrant could likely achieve a level of sales sufficient to be profitable, HMG § 3.3, and whether a new entrant suffers from absolute cost disadvantages as compared with the incumbent, HMG §§ 1.11, 1.32. And "[i]n short, consistent with established antitrust economics, the *Guidelines* conclude that the greater the magnitude of the fixed and sunk investment and the greater the scope of entry a new entrant needs to achieve unit costs that are comparable to the incumbent's, the less likely that such entry will occur." AT&T Nov. 14, 2002 *Ex Parte* Letter, Attach. at 3-8.

[370] *See* AT&T Nov. 14, 2002 *Ex Parte* Letter, Attach.; *see also* Covad Murray Reply Decl. at paras. 43-51.

[371] *But see* Covad Murray Reply Decl. at para. 25 (noting that "small but significant" price construct not directly relevant to impairment analysis).

[372] *But see* AT&T Feb. 12, 2003 *Ex Parte* Letter, Attach. at 1 ("[A]ny economically rigorous impairment analysis must determine whether the denial of access to a particular network element at cost-based rates would enable incumbent LECs to exercise market power by charging supra-competitive prices, and . . . the *Guidelines* contain a logical and accepted framework for accomplishing such analysis.").

[373] *See Iowa Utils. Bd.*, 525 U.S. at 428-29 (Breyer, J., concurring); *USTA*, 290 F.3d at 425, 427.

to take for full competition to develop in local telecommunications, particularly on a facilities basis.[374] The Act effectively attempts a restructuring of the local telecommunications market, and it often takes decades for a new technology or organizational structure to completely replace the old structure. Building new facilities and networks and developing and delivering new services will take a substantial period of time. We recognize that adopting a standard that has been revised and improved over decades, and subject to much scrutiny in judicial and regulatory proceedings, would have the benefit of providing predictability to our analysis.[375] We cannot, however, adopt a standard that does not fit the purposes of the Act.

112. *Cost Disadvantages.* We reject the proposal to find impairment whenever entrants would suffer from a substantial cost disadvantage (such as five percent), regardless of whether entry is still possible.[376] In a related argument, Z-Tel urges us to find impairment when entrants are likely to sell less of their product without the UNE than they would with the UNE – which Z-Tel explains would be a consequence of cost disparities.[377] A cost disadvantage standard would focus on maximizing entry to the detriment of the other goals of the Act, such as innovation, deployment of new technologies, and reduced regulation, which goals are most likely to be met through facilities-based competition. Second, entry may be possible despite cost disadvantages, and our "impair" standard takes into account costs as compared with potential

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[374] *But see* Covad Murray Reply Decl. at paras. 7, 45.

[375] *See, e.g.*, Covad Reply at 10.

[376] *See, e.g.*, Z-Tel Reply, Declaration of George S. Ford (Z-Tel Ford Reply Decl.) at paras. 26-30, 43-49, 82-83; Letter from Donna Sorgi, Vice President – Federal Advocacy, WorldCom, to William F. Maher, Chief, Wireline Competition Bureau, FCC, at 2-3, *in* Letter from Gil M. Strobel, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Jan. 8, 2003) (WorldCom Jan. 8, 2003 *Ex Parte* Letter); AT&T Jan. 22, 2003 *Ex Parte* Letter, Attach. at 8-9; Letter from Kemal Hawa, Counsel for MetTel and Bridgecom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 8 (filed Jan. 27, 2003) (MetTel Jan. 27, 2003 *Ex Parte* Letter) (noting importance of costs in impairment analysis); Letter from Gil M. Strobel, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 1-10 (filed Jan. 27, 2003) (WorldCom Jan. 27, 2003 *Ex Parte* Letter). Some commenters argue that new entrants' cost disadvantages could make entry unprofitable because incumbent LECs will likely lower prices to a level below entrants' costs (but above incumbent LECs' costs). *See, e.g.*, AT&T Nov. 14, 2002 *Ex Parte* Letter, Attach. at 3-4; WorldCom Jan. 8, 2003 *Ex Parte* Letter, Attach. at 1-5; Letter from Joan Marsh, Director, Federal Government Affairs, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 4-5 (filed Feb. 4, 2003) (AT&T Feb. 4, 2003 *Ex Parte* Letter). *But see, e.g.*, BOC Shelanski Reply Decl. at para. 3 ("Importantly, the case for impairment is not made by a showing that CLECs merely face some costs that are higher than the ILEC's corresponding costs."); SBC Jan. 14, 2003 *Ex Parte* Letter, Attach. 2 at 1-5 (arguing that an incumbent LEC cannot lower retail residential rates to keep out competitors because it serves many residential customers at a loss and relies on higher-end customers to make up the difference), Attach. 2 at 1-3.

[377] *See, e.g.*, Z-Tel Comments, Attach. 4, Z-Tel Public Policy Paper No. 5, *Some Thoughts on Impairment: An Economic Analysis of the Impairment Standard of the 1996 Telecommunications Act*; Z-Tel Reply at 21-25; Z-Tel Ford Reply Decl. at paras. 26-30 ("[I]t seems reasonable that to constitute a statutorily cognizable impairment, there must be a small, but significant and non-transitory decrease in the requesting carrier's output."); Letter from Timothy J. Simeone, Counsel for Z-Tel, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. 1 at 5-7 (filed July 24, 2002) (Z-Tel July 24, 2002 *Ex Parte* Letter).

revenues.[378] Indeed, unbundling when there are only small cost disadvantages is likely to make it more difficult for facilities-based competitors to compete against entrants relying on TELRIC-priced UNEs,[379] and would skew our analysis of marketplace evidence away from examining the presence of facilities-based entrants. Thus, we consider cost disadvantages as they reflect the factors described in our impairment standard, but we will consider them to create an impairment only when they are substantial enough to be likely to make entry into a market uneconomic, taking into consideration available revenues and any countervailing advantages that new entrants may have.[380] Similarly, we cannot agree that *any* cost a new entrant faces that is greater than the relevant TELRIC price necessarily demonstrates impairment.[381] The Supreme Court explicitly rejected this as an approach to impairment, criticizing a standard that equates "*any* increase in cost" to impairment.[382] Likewise, the D.C. Circuit criticized the Commission for "rely[ing] on cost disparities that are universal as between new entrants and incumbents in *any* industry."[383]

113. *Wholesale Market for Alternatives to the Incumbent LECs' Networks.* We disagree that we should continue to require unbundling of a network element until a vibrant wholesale market for that element exists, or that a wholesale market is the best evidence of the feasibility of self-provisioning.[384] First, while this approach might ensure that competitors have

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[378] *See, e.g.*, Verizon Oct. 16, 2002 *Ex Parte* Letter at 5 ("If an entrant's cost of providing an alternative element is higher than the incumbent's, but the entrant nevertheless can profitably do so because it can sell other services, avoid other costs, or achieve qualitative advantages in a way that is not available to the incumbent, the element can be supplied competitively and unbundling cannot be required. The question is whether the entrant can provide an overall service that is competitive, not whether the cost of each input matches that of the incumbent.").

[379] UNEs are priced using the TELRIC methodology. *See Local Competition Order*, 11 FCC Rcd at 15812-929, paras. 618-862. TELRIC prices reflect the forward-looking economic cost of the incumbent LEC's facilities, which take into account the scale and scope economies of the incumbent. *Id.* at 15846-47, para. 679. Thus, if scale economies are present, it would be difficult for an entrant with a small market share to achieve costs as low as the TELRIC price. *See also* BellSouth Comments at 12 ("The Commission's TELRIC pricing requirements effectively imposed an upper limit on what facilities-based carriers could charge, without losing customers to non-facilities-based UNE-P carriers."); SBC Reply at 23.

[380] WorldCom Jan. 27, 2003 *Ex Parte* Letter, Attach. at 7 ("Under existing precedent, therefore, the key objective is to determine *when* cost differences translate into impairment, not to adopt an approach unrelated to cost differences.") (emphasis in original).

[381] *But see, e.g.*, BellSouth Comments at 25; Qwest Comments at 12-14; Verizon Comments at 58 (urging the Commission not to find impairment based on the cost difference between using alternatives to UNEs and using TELRIC-priced UNEs); Allegiance Reply at 11-12 (arguing that TELRIC does not equate to the incumbent LEC's cost); Qwest Reply at 10-11; Verizon Reply at 40.

[382] *Iowa Utils. Bd.*, 525 U.S. at 389 (emphasis in original); *see also* SBC Comments at 34 (arguing that under Supreme Court precedent, cost differentials standing alone cannot constitute impairment).

[383] *USTA*, 290 F.3d at 427 (emphasis in original).

[384] *See, e.g.*, CompTel Comments at 63-64 (arguing that the existence of a wholesale market is "key evidence" in deciding whether to unbundle an element, and that the absence of such a market is "*prima facie*" evidence that self-deployment is not feasible); UNE-P Coalition Comments at 21; SWCTA Reply at 8; *see also* Covad Reply at 12 (arguing that the Commission should assess the state of the wholesale market in applying an HMG analysis as (continued....)

access – either through wholesale alternatives or access to UNEs – we are concerned that this approach might discourage investment in facilities by competitors. As we have emphasized above in our "impair" standard, one of the goals of the Act, impressed on us by the courts, is investment in facilities by both incumbent LECs and new entrants.[385] Second, as we noted in the *UNE Remand Order*, this approach disregards the possibility of self-provisioning as an alternative to using the incumbent LEC's network, contrary to the Supreme Court's direction.[386] Indeed, with regard to certain elements like switching, self-provisioning is far more common than leasing access from another non-incumbent LEC provider. While the record contains substantial evidence of self-deployment, we have little to no evidence of a wholesale market for switching services from alternate vendors.

114. *Evaluating Impairment Based on the Level of Retail Competition.* We do not adopt a standard that asks whether competition (as opposed to competitive carriers) is "impaired"[387] or base our impairment determination on whether the level of retail competition is sufficient such that unbundling is no longer required to enable further entry.[388] As explained above, evidence of retail competition over non-incumbent LEC facilities informs our analysis of whether competitive LECs are impaired without access to UNEs. But some carriers, for example, suggest that we not require any unbundling in markets where competitors have achieved a particular market share, where competitors have a certain number of collocations, or where consumers have a choice of facilities-based providers.[389] We decline to determine impairment based on a certain level of retail competition because section 251(d)(2) requires us to ask whether requesting carriers are "impaired," not whether certain thresholds of retail competition have been met.[390] While it is true that retail competition is a goal of the 1996 Act, it is not the only goal, and a standard that focused exclusively on retail competition would do so at the expense of Congress's other goals, such as investment in new facilities. Moreover, the

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described *supra* para. 109). *But see* Verizon Jan. 10, 2003 *Ex Parte* Letter, Attach. at 8 (arguing that the Act does not require a wholesale market to exist before finding no impairment for switching).

[385] *See supra* Part V.B.1.a; *see also USTA*, 290 F.3d at 427.

[386] *See UNE Remand Order*, 15 FCC Rcd at 3727, para. 56; *see also Iowa Utils. Bd.*, 525 U.S. at 389.

[387] *See* BOC Shelanski Reply Decl. at para. 11.

[388] *Cf.* ITTA Jan. 29, 2003 *Ex Parte* Letter, Attach. at 3-4 (urging Commission not to adopt a multiple-competitor standard); Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 2 (filed Jan. 14, 2003) (Verizon Jan. 14, 2003 *Ex Parte* Letter).

[389] *See, e.g.*, Letter from Karen Brinkmann, Counsel for ACS, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 13-14 (filed Jan. 6, 2003) (ACS Jan. 6, 2003 *Ex Parte* Letter); Letter from Karen Brinkmann, Counsel for ACS, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3 (filed Jan. 16, 2003) (ACS Jan. 16, 2003 *Ex Parte* Letter). *But see* GCI Jan. 27, 2003 *Ex Parte* Letter, Attach. at 4, 7-8.

[390] *See* 47 U.S.C. § 251(d)(2).

relationship between retail competition and unbundling is complex. In many instances, retail competition depends on the use of UNEs and would decrease or disappear without those UNEs; thus, a standard that takes away UNEs when a retail competition threshold has been met could be circular.[391] While evidence of retail competition over non-incumbent LEC facilities is highly relevant to our impairment analysis as explained above,[392] retail competition that relies on incumbent LEC facilities – whether UNEs, resale, or tariffed services – does less to inform our impairment analysis.[393] We explain in greater detail below why we do not conduct an analysis of individual services, and the levels of competition for those services, below.[394]

115. *Impairment of Individual Requesting Carriers or Carriers Pursuing a Particular Business Strategy.* We will not, as some commenters urge, evaluate whether individual requesting carriers or carriers that pursue a particular business strategy are impaired without access to UNEs.[395] We recognize that section 251(d)(2) refers to "*the* telecommunications carrier seeking access," but such a subjective, individualized approach could give some carriers access to elements but not others, and could reward those carriers that are less efficient or whose business plans simply call for greater reliance on UNEs. Providing UNEs to carriers with more limited business strategies would also disregard the availability of scale and scope economies gained by providing multiple services to large groups of customers.[396] Thus, an entrant is not

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[391] *See, e.g.*, GCI Jan. 27, 2003 *Ex Parte* Letter, Attach. at 1.

[392] *See supra* Part V.B.1.d.(ii); Verizon Jan. 14, 2003 *Ex Parte* Letter, Attach. at 2. Indeed, retail competition from multiple market participants that do not rely on incumbent LEC facilities at all may well demonstrate, as explained above, that barriers to entry in the relevant market at not so high as to make entry uneconomic.

[393] *See supra* para. 102.

[394] *See infra* Part V.B.2.c.

[395] *See, e.g.*, ALTS *et al.* Comments at 37-38; ACS Comments at 2-8 (arguing that that Commission must determine whether each competitor – including small competitive LECs – needs access to UNEs); GCI Comments at 19-20; Z-Tel Comments at 22-24; BellSouth Reply at 13 (arguing that the Commission should require individual competitive LECs to demonstrate both that they are "reasonably efficient" and that alternative elements are not available to them); NewSouth Reply at 11; Z-Tel Reply at 22; BellSouth NERA Reply Decl. at para. 135; Z-Tel Ford Reply Decl. at paras. 24-25; ACS Jan. 6, 2003 *Ex Parte* Letter at 9-11 (urging Commission to find Alaskan competitor not impaired); ACS Jan. 16, 2003 *Ex Parte* Letter (urging Commission to find Alaskan competitor not impaired); Letter from Karen Brinkmann, Counsel for ITTA, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 1 (filed Jan. 27, 2003) (ITTA Jan. 27, 2003 *Ex Parte* Letter). *But see, e.g.*, Qwest Reply at 24-25. The Commission also disagreed with this approach in the *UNE Remand Order*. *See UNE Remand Order*, 15 FCC Rcd at 3725-27, paras. 53-54.

[396] For example, a carrier could claim that it would be unable to pursue a strategy of providing local exchange service to all people with the first name "Sam." Because of the relatively small number of people with that name, the cost of providing such service would likely be very high, and thus entry would be impossible without UNEs. However, an entrant could achieve a much lower average cost of service while serving these people, by pursuing a business strategy of providing service to all potential customers in the market. It might be able to further lower its costs by offering other services, such as vertical features and data services. Our determination is thus based on an entrant providing the full range of services and to all customers supported by the marketplace. Our analysis must, however, take into account diseconomies of scale and scope that might exist, such as limitations on what services customers are willing to purchase as a bundle from a single provider. *But see* BTI Comments at 6 (noting that (continued....)

impaired if it could serve the market in an economic fashion using its own facilities, considering the range of customers that could reasonably be served and the services that could reasonably be provided with those facilities. Furthermore, a carrier- or business plan-specific approach would be administratively unworkable for regulators, incumbent LECs, and new entrants alike because it would require case-by-case determinations of impairment and continuous monitoring of the competitive situation. Finally, we do not read *Verizon* to state the contrary.[397] While *Verizon* noted that smaller entrants may be in greater need of UNEs than larger carriers,[398] the Supreme Court made those factual observations in the context of defending unbundling in general, not in the context of requiring any particular kind of impairment analysis. Thus, we agree with commenters that argue we cannot order unbundling merely because certain competitors or entrants with certain business plans are impaired.[399] Rather, we will achieve needed granularity through consideration of other factors discussed below in Part V.B.2.

116. For similar reasons, we decline to make impairment determinations on an incumbent LEC-by-incumbent LEC basis.[400] The "impair" inquiry of section 251(d)(2) focuses on requesting carriers, not incumbent LECs.[401] We recognize, however, that many aspects of our impairment analysis may coincidentally turn on the incumbent LEC, such as potential revenue opportunities, geographic areas (as explained below in Part V.B.2.b regarding Geographic Granularity), and costs. Likewise, we do not resolve here disputes between particular incumbent LECs and requesting carriers over compliance with the Act and our rules.[402] Such disputes are better handled in an enforcement context, not in a rulemaking.

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competitive LECs cannot compete with incumbent LEC scale economies); Eschelon Comments at 11-14 (noting that a competitive LEC that serves geographically dispersed customers may not be able to construct a duplicative network).

[397] *See* NewSouth Reply at 11; Z-Tel Ford Reply Decl. at para. 24.

[398] *See Verizon*, 535 U.S. at 503 n.20, 510 n.27.

[399] *See* Competitive Enterprise Institute Comments at 3 (cautioning Commission against setting different standards for different carriers); Verizon Comments at 42-43; BOC Shelanski Decl. at para. 39 (pointing out that antitrust law focuses on harms to competition, not harms to individual competitors). *But see, e.g.*, Eschelon Comments at 8 (noting that smaller, newer competitive LECs may face higher hurdles than larger, established competitive LECs).

[400] *See, e.g.*, ACS Jan. 6, 2003 *Ex Parte* Letter at 9-11 (arguing that unbundling is no longer warranted for Alaskan incumbent subject to substantial retail competition).

[401] 47 U.S.C. § 251(d)(2)(B) (The unbundling inquiry asks whether denial of a UNE "would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.").

[402] *See, e.g.*, Letter from Frederick W. Hitz, III, Director, Rates and Tariffs, General Communication, Inc., to William Maher, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 11, *in* Letter from John T. Nakahata, Counsel for GCI, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Nov. 21, 2002) (GCI Nov. 21, 2002 *Ex Parte* Letter); ACS Jan. 6, 2003 *Ex Parte* Letter at 6-9; Letter from Frederick W. Hitz, III, Director, Rates and Tariffs, General Communication, Inc., to William Maher, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2-10, *in* Letter from John T. Nakahata, Counsel for GCI, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Jan. (continued....)

117. *UNEs As Purely Transitional Measures for Competitive Development.* We recognize, as the Commission did in the *UNE Remand Order*, that in some instances (discussed in greater detail in the Parts on specific UNEs) UNEs can serve as transitions to facilities-based competition.[403] We do not, however, agree with commenters that urge that all UNEs must necessarily be limited to temporary availability.[404] The Act requires incumbent LECs to make an element available so long as requesting carriers would be impaired without it. While we could find impairment to be limited in time based on specific evidence in the record, we could not generally limit UNEs based on speculation that, at some time in the future, competitors might no longer be "impaired." Rather, we will let the facts and evidence guide our determination as to when unbundling obligations can be lifted.

2. Granularity of the Impairment Analysis

118. In this Part, we explain how and why our approach to unbundling will be granular. In the *Triennial Review NPRM*, the Commission asked many questions about whether and how to make the unbundling analysis more granular by considering such factors as specific services, specific geographic locations, the different types and capacities of facilities, and customer and business considerations.[405] Subsequently, the *USTA* decision directed us to approach the section 251(d)(2) impairment analysis by considering "market-specific variations in competitive impairment."[406] As explained in detail below, we will apply several types of granularity in our unbundling analysis, including considerations of customer class, geography, and service.[407] In addition, within our discussions of specific network elements, we will also

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23, 2003) (GCI Jan. 23, 2003 *Ex Parte* Letter). We therefore dismiss as moot the portion of the CompTel Nov. 26, 2001 Joint Conference Petition in which CompTel requests that the Commission not consider lifting unbundling obligations for a UNE unless the incumbent LEC making the request has "fully complied with its obligation to provide the UNE for a commercially reasonable period of time." CompTel Nov. 26, 2001 Joint Conference Petition at 14.

[403] *See UNE Remand Order*, 15 FCC Rcd at 3700-01, paras. 6-7; *see also, e.g.*, New York State Attorney General Reply at 14; Letter from James W. Cicconi, General Counsel and Executive Vice President – Law & Government Affairs, AT&T, to Michael K. Powell, Chairman, FCC, *et al.*, CC Docket Nos. 01-338, 96-98, 98-147 at 14-15 (filed Nov. 13, 2002) (AT&T Nov. 13, 2002 *Ex Parte* Letter).

[404] *See* Verizon Comments at 26-27, 70; Verizon Reply at 45, 60; *see also* Alcatel Comments at 21. *But see, e.g.*, California Commission Comments at 15; Eschelon Comments at 17; Maine CLEC Coalition Comments at 7; Colorado Commission Reply at 3-4; Sprint Reply at 14-15; WorldCom Oct. 23, 2002 *Ex Parte* Letter, Attach. at 16.

[405] *Triennial Review NPRM*, 16 FCC Rcd at 22797-98, paras. 34-35.

[406] *USTA*, 290 F.3d at 422.

[407] *See, e.g.*, GCI Comments at 20; BOC Shelanski Decl. at para. 40 (arguing that the Commission should define markets in terms of product and geography); BellSouth Reply at 10 (stating that *USTA* supports the views that "[d]ifferentiated (or 'partial') national unbundling rules are sustainable"; "[t]he Commission is capable of making market differentiations"; and "[a] nuanced concept of impairment requires a consideration of specific markets or market categories"); Ohio Commission Reply at 6; Qwest Reply at 26; SBC Reply at 67-68; BOC Shelanski Reply Decl. at para. 18 (arguing for careful market definition); GCI Nov. 21, 2002 *Ex Parte* Letter, Attach. at 2; ITTA Jan. 27, 2003 *Ex Parte* Letter, Attach. at 1.

inject granularity into our analysis by considering types and capacities of facilities.[408] While some have argued that granularity can only harm competition by making it more difficult for competitors to use UNEs,[409] we find that additional granularity takes into account "the state of competitive impairment in [a] particular market,"[410] and adds the needed "balance" to our unbundling rules that the courts have required.[411] Indeed, doing a granular analysis permits us to distinguish situations for which there is impairment from those for which there is none.[412]

119. We disagree that we should conduct a different impairment analysis for independent incumbent LECs than for BOCs, or that we should formulate different triggers for relief from unbundling obligations for these carriers.[413] Sections 251(c)(3) and 251(d)(2) apply equally to all incumbent LECs, both independents and BOCs,[414] and Congress applied a different standard to BOCs than to independent incumbent LECs in other areas of the 1996 Act, such as section 271.[415] That being said it is possible that our more granular analysis will produce different results in some independent incumbent LEC territories to the extent they are more rural or less densely populated than other territories. However, many rural LECs still retain the exemption from section 251(c)(3) of the Act as required by section 251(f), and as such, will not be subject to those particular unbundling requirements until such time as the exemption is lifted.[416]

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[408] Several commenters urged us to do so. *See, e.g.*, SBC Comments at 32-33.

[409] *See* AT&T Comments at 61-64. *See generally* Illinois Commission Comments at 5.

[410] *USTA*, 290 F.3d at 422.

[411] *Iowa Utils. Bd.*, 525 U.S. at 430 (Breyer, J., concurring); *USTA*, 290 F.3d at 427 (quoting *Iowa Utils. Bd.*, 525 U.S. at 429-30 (Breyer, J., concurring)).

[412] *See, e.g.*, ACS Reply at 4. This granularity may well result in different findings for urban versus rural markets. *See* ACS Jan. 16, 2003 *Ex Parte* Letter (urging Commission to take local Alaskan market conditions into account); ITTA Jan. 27, 2003 *Ex Parte* Letter, Attach. at 2-3 (arguing that the Commission should take the characteristics of independent incumbent LECs into account through a more granular analysis), 5-6 (finding support in section 251(f) for the proposition that Congress intended a market-specific impairment analysis, particularly for rural carriers). We do not in this Order address appropriate rules for state proceedings regarding the rural exemption of section 251(f). *Id.* at 5-6.

[413] *See generally, e.g.*, ACS Jan. 6, 2003 *Ex Parte* Letter; ITTA Jan. 27, 2003 *Ex Parte* Letter, Attach. at 3; ITTA Jan. 29, 2003 *Ex Parte* Letter, Attach.

[414] 47 U.S.C. § 251(c) ("[E]ach incumbent local exchange carrier has the following duties . . . ."); *id.* § 251(d)(2) ("In determining what network elements should be made available for purposes of subsection (c)(3) . . . .").

[415] *Id.* § 271(a) ("Neither a Bell operating company, nor any affiliate of a Bell operating company, may provide interLATA services except as provided in this section.").

[416] *Id.* § 251(f)(1), (2). Section 251(f)(1) involves a conditional exemption from section 251(c) for rural telephone companies, while section 251(f)(2) involves a right of rural carriers with fewer than 2% of the nation's subscriber lines to petition state commissions for suspension and modification of section 251(c) obligations. *Id.* § 251(f)(2).

120. We disagree with commenters that section 251(c)(3)'s reference to "a telecommunications service" means that a granular analysis is unlawful because UNEs must be available for any telecommunications service.[417] As we discuss in more detail in Part V.B.2.c., this argument is no longer consistent with the D.C. Circuit's call for granularity or its affirmation of the Commission's previous service-by-service inquiry.

121. We also disagree with commenters that the only type of granular analysis that would enhance the unbundling rules must be so granular as to be administratively unworkable, and therefore that the Commission should not pursue any granularity at all.[418] Furthermore, commenters argue, any granularity will involve line-drawing that will yield imperfect results – underinclusiveness and overinclusiveness – and will lead to litigation and opportunities for incumbent LECs to interpret rules aggressively in their own favor.[419] We conclude, as explained below, that we can incorporate granularity in an administratively workable fashion that results in meaningful distinctions in our unbundling rules. We cannot analyze each of the countless pieces of equipment in the incumbent LECs' networks individually. As we have stated, the courts have not required such an extreme level of granularity and we find that approach, in any event, administratively infeasible. We recognize, too, that Congress expressed its preference for "deregulation," but we do not agree that a general call for deregulation throughout implementation of the many provisions of the 1996 Act must trump our duty to make the unbundling analysis of section 251 adhere as closely as possible to the *many* goals of the Act by declining to engage in a careful, granular analysis.[420]

122. We also disagree with commenters that argue that the definition of "network element" contained in section 153(29) precludes any unbundling distinctions based on the granularity factors we have determined to examine.[421] The D.C. Circuit has instructed us to perform a more granular analysis.[422] Moreover, it is up to the Commission to determine *which* network elements, as defined by the Commission, must be unbundled. Section 251(d)(2) does not direct us to unbundle all elements in all circumstances. Likewise, section 251(c)(3) does not prevent us from making more granular assessments of unbundling. Section 251(c)(3) indicates *where* network elements must be unbundled (after a section 251(d)(2) analysis results in an

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[417] *See, e.g.*, ASCENT Comments at 28-30.

[418] *See* AT&T Comments at 98-99; CompTel Comments at 75-76; Sprint Reply at 23. *Cf.* ATTWS Comments at 7 (cautioning that too much granularity could make the Commission's rules too complicated and could increase market uncertainty); Dynegy Comments at 5; NewSouth Comments at 51; Qwest Comments at 16-17 (urging the Commission to adopt rules that are easy to administer and predictable); Allegiance Reply at 18, 26 (noting that a fully granular analysis is not possible).

[419] *See* AT&T Comments at 99-106; WorldCom Reply at 21; AT&T Willig Reply Decl. at para. 69. *See generally* NewSouth Comments at 55; SWCTA Comments at 16.

[420] *Cf.* Qwest Comments at 16.

[421] *See* CompTel Comments at 23.

[422] *USTA*, 290 F.3d at 415.

unbundling determination) and says nothing about the impairment finding that creates the unbundling obligations in the first instance.[423]

a. Customer Class Distinctions

123. In this Part, we distinguish broad classes of customers as the first step in introducing granularity into our analysis. We asked in the *Triennial Review NPRM* whether our analysis should consider the type of customer that a requesting carrier seeks to serve.[424] Subsequent to the *NPRM*, customer classes were specifically discussed as a relevant example of granularity in *USTA v. FCC*.[425] We find here that the economic characteristics of the mass market, small and medium enterprise, and large enterprise customer classes can be sufficiently different that they constitute major market segments. Much of our analysis in discussing the individual network elements will be organized around these classes, which may vary slightly from element to element because of the different economic considerations that surround the different elements.[426] These customer classes generally differ in the kinds of services they purchase,[427] the service quality they expect, the prices they are willing to pay, the levels of revenues they generate, and the costs of delivering them services of the desired quality. While our analysis will be performed on a granular level, we will only discuss those distinctions that could yield a difference in our finding of impairment. If different classes of customers have sufficiently similar economic characteristics such that we expect them to yield identical findings of impairment with regard to the network element in question, then we will analyze those classes together.

124. Based on the record before us, it is reasonable to distinguish these three classes of customers – mass market, small and medium enterprise, and large enterprise – for several reasons. These classes can differ significantly based on the services purchased, the costs of providing service, and the revenues generated. Because of these differences, for certain network elements the determination whether impairment exists may differ depending upon the customer class a competing carrier seeks to serve.

125. We reject the argument made by some commenters that distinguishing customers by customer class is either not required by the Act, nor administratively practicable.[428] As

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[423] *See Iowa Utils. Bd.*, 525 U.S. at 391.

[424] *Triennial Review NPRM*, 16 FCC Rcd at 22801-02, paras. 42-44.

[425] *USTA*, 290 F.3d at 422-26.

[426] Where it is appropriate, in our discussion of the individual network elements we will provide an even more granular analysis, examining whether impairment exists in the provision of different services, for different types of customers, located in different geographic areas.

[427] *See supra* Parts VI.A.4.b.(ii)(c) and VI.C.4.c.

[428] AT&T Comments at 97-100; CompTel Comments at 75; Covad Comments at 42; Georgia Commission Comments at 3-4; Illinois Commission Comments at 5; Sprint Comments at 14-17.

discussed earlier, a more granular analysis is required to determine whether competing carriers are impaired in providing the services they seek to provide.[429] Because carriers' impairment could vary by customer class, we are obligated to determine which customers could not be served by carriers without the UNEs in question, and, where practical, require unbundling only for those customers. We also find that distinguishing customers by class is administratively practical in our analysis for many of the network facilities. While we acknowledge that our analysis is limited by the administrative feasibility of performing a particular level of granular analysis, we find that distinguishing customers by class is both convenient and feasible, and increases the granularity of our analysis. It also allows us to examine more carefully whether competing carriers are able to serve small businesses, and determine the unbundling requirements needed to overcome competing carriers' impairment (if any) in serving these customers. We can thus ensure that our rules will bring the benefits of competition to small businesses.

126. We note that in previous orders, such as the *UNE Remand Order*, we found it appropriate to consider the customer classes a requesting carrier seeks to serve when considering whether to unbundle a network element.[430] Distinguishing customers by type is also consistent with our approach in merger orders, such as the *Bell Atlantic/NYNEX Merger Order*, the *SBC/Ameritech Merger Order*, and the *WorldCom/MCI Merger Order*.[431]

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[429] *See supra* Part V.B.2.

[430] *UNE Remand Order*, 15 FCC Rcd at 3737, para. 81 ("[T]he type of customers that a competitive LEC seeks to serve is relevant to our analysis of whether the cost of self-provisioning or acquiring an element from a third-party supplier impairs the ability of a requesting carrier to provide the services it seeks to offer."). This approach was subsequently applied in the *Line Sharing Order*. *Line Sharing Order*, 14 FCC Rcd at 20929, paras. 31-32.

[431] *Application of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and its Subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19985, 20016, para. 53 (1997) (*Bell Atlantic/NYNEX Merger Order*); *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14746, para. 68 (1999) (*SBC/Ameritech Merger Order*); *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18040-41, paras. 25-26 (1998) (*WorldCom/MCI Merger Order*). The approach in these merger orders follows that developed in the *LEC Classification Order*, which followed the 1992 Merger Guidelines. *See Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96-149, 96-61, Second Report in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15773-74, paras. 25-26 (*LEC Classification Order*); *WorldCom/MCI Merger Order*, 13 FCC Rcd at 18040, para. 25. The *Bell Atlantic/NYNEX Merger Order* found three separate customer groups, consisting of residential and small business, medium-sized businesses, and large business and government. *Bell Atlantic/NYNEX Merger Order*, 12 FCC Rcd at 20016, para. 53. In the *WorldCom/MCI Merger Order, SBC/Ameritech Merger Order,* and *Bell Atlantic/GTE Merger Order*, the Commission distinguished mass market consumers from larger business customers in its analysis of the provisioning of local exchange and exchange access services. *WorldCom/MCI Merger Order*, 13 FCC Rcd at 18119, para. 164; *SBC/Ameritech Merger Order*, 14 FCC Rcd at 14746, para. 68; *Application of GTE Corp.*, (continued....)

127. Mass market customers consist of residential customers and very small business customers.[432] Mass market customers typically purchase ordinary switched voice service (Plain Old Telephone Service or POTS) and a few vertical features. Some customers also purchase additional lines and/or high speed data services. Although the cost of serving each customer is low relative to the other customer classes, the low levels of revenue that customers tend to generate create tight profit margins in serving them. The tight profit margins, and the price sensitivity of these customers, force service providers to keep per customer costs at a minimum. Profits in serving these customers are very sensitive to administrative, marketing, advertising, and customer care costs. These customers usually resist signing term contracts.

128. Small and medium enterprises are willing to pay higher prices for telecommunications services than the mass market. Indeed, they are often required to do so under business tariffs. Because their ability to do business may depend on their telecommunications networks, they are typically very sensitive to reliability and quality of service issues. These customers buy larger packages of services than do mass market customers, and are willing to sign term contracts. These packages may include POTS, data, call routing, and customized billing, among other services. Although serving these customers is more costly than mass market customers, the facts that enterprise customers generate higher revenues, and are more sensitive to the quality of service, generally allow for higher profit margins. The higher profit margins and greater emphasis on quality of service can provide a greater incentive to competing carriers to provision their own facilities, and the higher revenues make it easier to cover the fixed costs of installing such facilities.

129. Large enterprises demand extensive, sophisticated packages of services. Reliability of service is essential to these customers, and they often expect guarantees of service quality. The services they might purchase include an internal voice and data network, local, long distance, and international POTS service to one or multiple locations, provisioning and maintenance of a data network such as ATM, frame relay or X.25, and customized billing. The large revenues these customers generate, and their need for reliable service and specialized equipment to serve them, provide a large incentive to suppliers to build their own facilities where possible, and carry these customers' traffic over their own networks.

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Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14088-89, para. 102 (*Bell Atlantic/GTE Merger Order*).

[432] Very small businesses typically purchase the same kinds of services as do residential customers, and are marketed to, and provided service and customer care, in a similar manner. Therefore, we will usually include very small businesses in the mass market for our analysis. We note, however, that there are some differences between very small businesses and residential customers. For example, very small businesses usually pay higher retail rates, and may be more likely to purchase additional services such as multiple lines, vertical features, data services, and yellow page listings. Therefore, we may include them with other enterprise customers, where it is appropriate in our analysis.

b. Geographic Granularity

130. In the *Triennial Review NPRM*, we sought comment on whether and how to reflect geographic differences in the application of our unbundling standard.[433] The *USTA* decision also found a need for a more granular analysis in general that takes "market-specific variations" into account.[434] As many commenters urge us to do, throughout our application of the analysis to specific elements we will consider whether impairment varies geographically throughout the country.[435] Indeed, several incumbent LECs urge this Commission to adopt an unbundling analysis that is far more granular than that of the *UNE Remand Order*.[436] Such an approach permits us to take the circumstances of rural carriers and the areas they serve into account.[437] In those instances where the record permits us to create unbundling rules that apply nationally – because the result would be the same as if we conducted a separate analysis of each geographic market – we agree with commenters that we should do so.[438] In other instances, we will create rules that will vary in their implementation in different areas of the country. Accordingly, in these circumstances, we may delegate authority to state commissions to ensure

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[433] *See Triennial Review NPRM*, 16 FCC Rcd at 22799-800, para. 39.

[434] *See USTA*, 290 F.3d at 422.

[435] *See, e.g.*, Alcatel Comments at 19-20; GCI Comments at 21; SBC Comments at 30-32; BOC Shelanski Decl. at para. 41; Verizon Reply at 35; Verizon Dec. 17, 2002 *Ex Parte* Letter, Attach. at 2-3.

We do not, however, evaluate in this proceeding whether states have set TELRIC prices at appropriate levels. *See, e.g.*, ACS Jan. 6, 2003 *Ex Parte* Letter (arguing that Alaska Commission has set UNE rates below cost). This proceeding is not the proper forum for such arguments, for which the Act has set up a separate review procedure in section 252(e)(6).

[436] *See* Qwest Reply at 26-27 ("[A] market specific analysis may be necessary to eliminate unbundling obligations in certain markets where it would be feasible for CLECs to obtain network elements from a non-ILEC source .... For example, ... the increased deployment of CLEC transport facilities in certain markets justifies geographic specificity in the unbundling analysis for the dedicated transport network element."); SBC Reply at 67 ("[T]he Commission may not make UNEs available where competitors are already using or should be able to use alternatives to UNEs .... With respect to ... elements [other than switching, transport, and high-capacity loops], it may be true in some areas but not yet in others. For those elements, the Commission *must* adopt a more granular analysis of when to order unbundling.") (emphasis in original); Verizon Reply at 35 ("[A] geographic-specific analysis is necessary, not to determine where CLECs are not impaired, but to identify those few remaining locations where they are impaired."); BellSouth NERA Reply Decl. at para. 136 ("To summarize, the geographic granularity sought by the Commission can be helpful for defining the market within which impairment analysis should be conducted.").

[437] *See, e.g.*, Eschelon Comments at 9 (noting that it services small business customers, which are often not located in downtown areas); Rural Independent Competitive Alliance Comments at 2-3; PACE Coalition Comments on Verizon Forbearance Petition at 6 (filed Sept. 3, 2002); NTCA Reply at 2-3 (arguing that rural areas cannot economically be served by several carriers).

[438] *See* SBC Comments at 32; Allegiance Reply at 4 (noting that the Commission can adopt a national market for some UNEs and disaggregated markets for others); Qwest Reply at 26; WorldCom Reply at 22-23.

that the unbundling rules are implemented on the most accurate level possible while still preserving administrative practicality.[439]

131. We disagree with commenters that urge us not to conduct any geographically-specific analysis or delegate any geographic analysis to the states because, for example, geographically-granular rules will raise the cost of advertising, eliminate the possibility of ubiquitous competitive service, or prove administratively unworkable.[440] In some cases, it is not possible for us to adopt nationally-applicable rules that adhere to the *USTA* court's call for additional granularity.[441] Indeed, where we do defer analysis to the states, we expect they will

[439] *Cf., e.g.*, ASCENT Comments at 32-33 (urging the Commission to permit the states to handle any location-specific analysis); BellSouth Comments at 23 (arguing that the Commission should use MSAs in all instances); California Commission Comments at 12-13 (noting geographic differences in competition); Covad Comments at 84 (noting that the Commission cannot likely do a geographically-specific analysis); Florida Commission Comments at 2-3; GCI Comments at 22-23 (urging caution in aggregating geographic areas); New York Department Comments at 5; NuVox Comments at 52 (urging the Commission to involve the states in any geographically-specific analysis); Qwest Comments at 16-17 (arguing that geographic markets smaller than MSAs are probably unworkable); Texas Commission Comments (urging strong role for states); UNE Platform Coalition Comments at 27-32 (urging Commission to permit states to have substantial role); Allegiance Reply at 4 (urging Commission to delegate loop and transport analysis to states), 25 (noting difficulties of generalizing markets); BellSouth Reply at 12 (urging use of MSA); Talk America Reply at 14-17 (arguing that only the states can make sufficiently granular rules); WorldCom Reply at 23-24; BellSouth NERA Reply Decl. at para. 125 (urging use of MSA); Covad Murray Reply Decl. at paras. 14-16 (noting that the Commission needs state help to do a geographically granular analysis); Letter from Russell M. Blau, Counsel for Lightship Telecom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 1 (filed June 28, 2002) (Lightship June 28, 2002 *Ex Parte* Letter) (arguing that MSAs are too large for meaningful granularity); GCI Nov. 21, 2002 *Ex Parte* Letter, Attach. at 11-12.

Thus, even in those circumstances where the record contains substantial evidence regarding market conditions in some localities, the Commission may determine that state commissions are better poised to assess local impairment through hearings or other fact-finding procedures. *But see* ACS Jan. 16, 2003 *Ex Parte* Letter (urging Commission to make a finding of no impairment for Alaskan markets). We also do not address ACS's request for forbearance contained within a written *ex parte* presentation, as this is a rulemaking proceeding. Parties remain free to file petitions for forbearance that comply with our rules. 47 C.F.R. § 1.53.

Covad has pointed out that if we adopted the HMG as our "impair" standard, it would require us to define a geographic market for our analysis. *See* Covad Reply at 10; *see also* BellSouth NERA Reply Decl. at paras. 123-24 (noting that HMG could form basis of granular analysis). We take this lesson of geographic granularity from the HMG without adopting the HMG wholesale, as explained above. *See supra* Part V.B.1.d.(iii).

[440] *See, e.g.*, Sprint Comments at 5, 14-15; WorldCom Comments at 63; Mpower Reply at 17-18; AT&T Willig Reply Decl. at paras. 67-68 (arguing that a national unbundling list is "deregulatory" in the sense that it is simpler and leads to less regulatory involvement). *But see* BellSouth NERA Reply Decl. at para. 127 (noting that ubiquity and a granular analysis are not compatible).

[441] *But see, e.g.*, Arch Wireless Reply at 6, 11, 18 (arguing that paging and CMRS carriers need national unbundling rules).

achieve a much finer delineation of impairment from non-impairment than what we could do nationally.[442]

c. Service Considerations

132. In this Part, we describe how we will use a service-specific framework to analyze the circumstances under which competitors qualify for access to UNEs. We adopt an approach that is consistent with the goals of the 1996 Act because it obligates incumbent LECs to provide access to UNEs only when requesting carriers seek to use those elements to compete against those services that traditionally have been the exclusive domain of incumbent LECs. As we explain below, Congress created the section 251 unbundling regime to foster competition in the incumbent LECs' core markets. Moreover, we set forth an approach that is consistent with the guidance we have received from the D.C. Circuit in the *USTA* and *CompTel* decisions.[443]

133. Under the approach we adopt today, a requesting carrier may access UNEs for the purpose of providing "qualifying services," as we define them below. Once a requesting carrier satisfies this condition, we reaffirm the Commission's existing rules that permit the carrier to use a UNE to provide additional services including non-qualifying telecommunications services and information services.[444] We reiterate that requesting carriers must be telecommunications carriers that seek to use the UNE to provide common carrier services, rather than private carrier services.

(i) Legal Background and Authority

134. Section 251(d)(2) sets forth the standard by which the Commission is to determine what network elements should be unbundled. Congress directed the Commission to consider whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the *services* that it seeks to offer."[445] In earlier orders, the Commission generally approached the unbundling analysis with

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[442] Likewise, we do not agree that we must unbundle everywhere so that requesting carriers can enter "ubiquitously," and that requiring unbundling in locations where there is no impairment will do no harm. *See, e.g.*, Sprint Comments at 15-16; SWCTA Comments at 16-17. *But see* BellSouth Comments at 26; Qwest Comments at 13; Verizon Reply at 37-39, 47; BOC Shelanski Decl. at para. 4. Because unbundling has costs as well as benefits, we determine to unbundle elements only where they meet our "impair" standard. *See USTA*, 290 F.3d at 422; *see also, e.g.*, SBC Reply at 22-23, 33. *But see, e.g.*, WorldCom Comments at 49 (noting that competitive LECs cannot build a totally ubiquitous network); AT&T Reply at 55 (noting that inability to provide service ubiquitously contributes to impairment by limiting the number of customers over which overhead costs can be spread); Talk America Reply at 6, 36 (arguing that competitive LECs will prefer to use their own facilities when possible).

[443] *See USTA*, 290 F.3d at 422-30; *CompTel*, 309 F.3d at 12-16.

[444] In Part VII.B. below, we describe that, with respect to high-capacity facilities over which several types of services may be provided (*i.e.*, local, long distance, or Internet access), we determine that certain eligibility requirements must be satisfied to ensure that these facilities are being used for a qualifying service.

[445] 47 U.S.C. § 251(d)(2)(B) (emphasis added). The statute also requires the Commission to consider whether "access to such network elements as are proprietary in nature is necessary." 47 U.S.C. § 251(d)(2)(A). That prong (continued....)

regard to all telecommunications services, rather than the specific types of services a requesting carrier sought to provide over an element.[446] More recently, the Commission began to take the service provided by a requesting carrier into account, but did not do so in a comprehensive and consistent fashion.[447] Instead of adopting an overall framework applicable to all UNEs, the Commission focused only on how the UNE was being used in the context of specific elements. In this Order, although we decline to adopt a service-by-service impairment framework, we conclude that only requesting carriers providing certain qualifying services are entitled to UNEs.

(ii) Qualifying Services

135. We find that, in order to gain access to UNEs, carriers must provide qualifying services using the UNE to which they seek access. By "qualifying," we mean those telecommunications services offered by requesting carriers in competition with those telecommunications services that have been traditionally the exclusive or primary domain of incumbent LECs. They include, for example, local exchange service, such as POTS, and access services, such as xDSL and high-capacity circuits.[448]

136. In determining which types of service qualify for UNEs, we first look to the text of the 1996 Act. Because the text of the Act does not provide unambiguous direction, we consider the structure and history of the relevant portions of the Act, including its stated purposes, and interpret the statute to reach a reasonable conclusion regarding Congress's intent. Ultimately, we rely upon the purposes of the Act to support the interpretation that a permissible use of a network element must include a qualifying component.

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of section 251(d)(2) does not include a reference to the "services that [the requesting carrier] seeks to offer." However, the same rationale applies to proprietary network elements as to non-proprietary network elements with respect to Congress's intent regarding when network elements would be available for requesting carriers. In fact, Congress intended a higher standard – when access to the element is necessary, not just when a carrier is impaired without access to the element – to govern the availability of proprietary network elements. Therefore, there is no reason to differentiate between proprietary and non-proprietary network elements with respect to the services for which they can be used. In any event, we do not analyze any proprietary elements in this Order, so consideration of which services will be provided using those UNEs is not necessary.

[446] *UNE Remand*, 15 FCC Rcd at 3911-12, para. 484; *Local Competition Order*, 11 FCC Rcd at 15671-72, para. 356.

[447] *See, e.g.*, *Supplemental Order Clarification* 15 FCC Rcd at 9598, para. 21 (usage restrictions applied to only EELs, not all UNEs). In the *Triennial Review NPRM*, the Commission sought comment on whether the unbundling analysis should be applied to specific services. *Triennial Review NPRM*, 16 FCC Rcd at 22798-99, para. 36. In a Public Notice issued following the *Supplemental Order Clarification*, the Commission also requested comment on whether it should undertake to conduct its impairment analysis on a service-by-service or market-by-market basis, and if so, how. *Comments Sought on the Use of Unbundled Network Elements to Provide Exchange Access Service*, CC Docket No. 96-98, Public Notice, DA 01-169 (rel. Jan. 24, 2001) (*Exchange Access Public Notice*). The Commission also asked whether the service-specific approach should be applied to all aspects of the section 251(d)(2) analysis or just the "impairment" prong. *Triennial Review NPRM*, 16 FCC Rcd at 22798-99, para. 36.

[448] These services must be offered on a common carrier basis, as explained below.

137. First, we note that section 251(d)(2)'s reference to the "services that [the carrier] seeks to offer" is ambiguous as to the question of which services we should analyze in the context of our impairment analysis.[449] Despite prior interpretations to the contrary, in the *Supplemental Order Clarification* the Commission concluded that this language was indeed ambiguous, and determined to examine section 251(d)(2)'s reference to "services" as part of the impairment analysis.[450] In the context of considering whether requesting carriers could lease UNEs *solely* to provide exchange access or long distance services,[451] the Commission noted that section 251(d)(2)'s "services" language likely would limit the conversion of special access to combinations of loop and transport UNEs:

> [Section 251(d)(2)] asks whether denial of access to network elements "would impair the ability of the telecommunications carrier seeking access to provide *the services that it seeks to offer*." Although ambiguous, that language is reasonably construed to mean that we may consider the markets in which a competitor "seeks to offer" services and, at an appropriate level of generality, ground the unbundling obligation on the competitor's entry into those markets in which denial of the requested elements would in fact impair the competitor's ability to offer services.[452]

138. We agree with the conclusion that the term "services" in section 251(d)(2) is ambiguous. Although Congress may have intended "services" in section 251(d)(2) to mean "telecommunications services" as used in section 251(c)(3), even this interpretation does not necessarily resolve the ambiguity concerning the scope of the section 251(d)(2) inquiry. While "telecommunications services" is more specific than "services," and thus limits the inquiry somewhat, we are still left to question which "telecommunications services" should be subject to the unbundling analysis.[453] Some parties have argued that section 251(d)(2) requires the Commission to analyze every telecommunications service using the impairment standard, and, that such a review would result in the unavailability of UNEs for most services except possibly

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[449] *Supplemental Order Clarification*, 15 FCC Rcd at 9595, para. 15; *USTA*, 290 F.3d at 422.

[450] *Supplemental Order Clarification*, 15 FCC Rcd at 9596, para. 15.

[451] *CompTel*, 309 F.3d at 11, 14.

[452] *Supplemental Order Clarification*, 15 FCC Rcd at 9595, para. 15 (footnotes omitted) (emphasis in original). Although the Commission in the *Supplemental Order Clarification* generally referred to use of a UNE in the provision of exchange access services, special access services, or long distance services, it is clear that the Commission was concerned about use of a UNE without appropriate consideration under the impair standard for how the UNE was to be used. *Supplemental Order Clarification*, 15 FCC Rcd at 9595-96, 9602, paras. 15-16, 28. Later in this Part, we specifically distinguish between the provision of exchange access services as part of a retail long distance service and the wholesale provision of exchange access services in competition with the incumbent LEC's special access services. As a result, issues raised in the *Exchange Access Public Notice* are either no longer relevant or resolved in this Order.

[453] 47 U.S.C. § 251(c)(3) (emphasis added).

local voice services.[454] Yet other parties argue that the Commission should not consider the particular services that a carrier seeks to offer at all, provided it seeks to offer a telecommunications service.[455] On this point, the D.C. Circuit observed that "[b]y referring to the 'services that [the requesting carrier] seeks to offer,' [Congress] seems to invite an inquiry that is specific to *particular* carriers and services."[456] Thus, we conclude that the language of section 251(d)(2) is ambiguous concerning the scope of the impairment inquiry.

139. An examination of the purposes behind the Act provides us with guidance as to the scope of section 251(d)(2). In passing the 1996 Act, Congress substantially changed many aspects of federal regulation of telecommunications services by establishing a "pro-competitive, de-regulatory national policy framework" designed to benefit all Americans "by opening all telecommunications markets to competition."[457] As its preamble notes, the Act was designed "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid development of new telecommunications technologies."[458] In particular, section 251's role in this regulatory scheme involves opening local markets to competition.[459] Indeed, Congress recognized that "it is

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[454] Under these commenters' proposed analysis, requesting carriers would not be impaired without UNEs for those services for which sufficient retail competition exists. BellSouth Comments at 30-31, 34; SBC Comments at 21 ("[P]rior to ordering unbundling, the Commission must carefully scrutinize the service market in which the carrier that seeks to purchase the UNE intends to provide service. And, if 'the very concept of impairment' is to be 'intelligible,' it cannot permit unbundling where the service at issue is competitive."); Verizon Comments at 39-40.

[455] *See, e.g.*, ASCENT Comments at 28-29 ("Section 251(c)(3), accordingly, requires application of the unbundling analysis on a functionality-by-functionality basis, not on a service-by-service, or customer-by-customer, or carrier-by-carrier basis."); ATTWS Comments at 17 (arguing that a service-specific analysis would violate the plain language of the Act); California Commission Comments at 14; CompTel Comments at 52-54 (arguing that when a competitor buys a UNE, it pays for the entire functionality; a usage limitation would diminish the UNE's value); Illinois Commission Comments at 5; Maine CLEC Coalition at 6-7; Missouri Commission Comments at 8; NewSouth Comments at 52; Norlight Comments at 10; NuVox Comments at 45. We deny, in part, the petition for reconsideration filed by CompTel requesting that the Commission reconsider its decision to allow use restrictions for the reasons we explain in this section. Competitive Telecommunications Association Petition for Reconsideration, CC Docket No. 96-98 (filed Feb. 17, 2000) (CompTel Feb. 17, 2000 Petition for Reconsideration).

[456] *CompTel*, 309 F.3d at 12-13 (emphasis added).

[457] Joint Conference Report at 1.

[458] Preamble to the 1996 Act.

[459] *Id.*; *see also Local Competition Order*, 11 FCC Rcd at 15506, para. 4 ("Competition in local exchange and exchange access markets is desirable, not only because of the social and economic benefits competition will bring to consumers of *local* services, but also because competition eventually will eliminate the ability of an incumbent local exchange carrier to use its control of bottleneck local facilities to impede free market competition."). *See, e.g.*, Letter from Herschel L. Abbott Jr., Vice President – Government Affairs, BellSouth, to Michael K. Powell, Chairman, FCC, CC Docket No. 01-338 at 2, *in* Letter from Jonathan Banks, General Attorney, BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 2 (filed Dec. 19, 2002) (BellSouth Dec. 19, 2002 *Ex Parte* Letter) (stating that Congress intended the Act "to provide competitive alternatives for basic wireline local (continued....)

unlikely that competitors will have a fully redundant network in place when they initially offer *local service* . . . [and] some facilities capabilities (*e.g.*, central office switching) will likely need to be obtained from the incumbent local exchange carrier as network elements pursuant to new section 251."[460] As the Commission noted in the *Local Competition Order*, under the 1996 Act, "the opening of one of the last monopoly bottleneck strongholds in telecommunications – the local exchange and exchange access markets – to competition is intended to pave the way for enhanced competition in all telecommunications markets, by allowing all providers to enter all markets."[461] We find that a reasonable interpretation of the statute is that our impairment inquiry should center on those telecommunications services that competitors provide in direct competition with the incumbent LECs' core services, which we call "qualifying services."[462]

140. As stated above, by "qualifying services," we mean those telecommunications services offered by requesting carriers in competition with those telecommunications services that have been traditionally within the exclusive or primary domain of incumbent LECs.[463] These services, whether they are sold to residential or business customers, include, for example, local exchange services, such as POTS and local data service[464], and access services, such as xDSL[465] and high-capacity circuits.[466] Parties have asked us to clarify whether CMRS would

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exchange service."); HTBC Comments at 41 ("Section 251 was intended to promote competition in a voice telephony market when [incumbent LECs] have market power and where no competitive alternatives to [incumbent LECs'] networks existed . . .").

[460] Joint Conference Report at 148 (emphasis added).

[461] *Local Competition Order*, 11 FCC Rcd at 15506, para. 4.

[462] *See* Letter from John J. Heitmann, Counsel for NuVox, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 3 (filed Jan. 15, 2003) (NuVox Jan. 15, 2003 *Ex Parte* Letter) (referencing the type of services it provides indicates NuVox "intends to and does compete with the Bells and other ILECs head on in the provision of LEC services.").

[463] Our determination in this Part moots the issues the Commission raised in the *Shared Transport Order*. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460, 12494-96, paras. 60-61 (1997) (*Shared Transport Order*) *aff'd, Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 597 (8th Cir. 1998) (affirming the Commission's decision that shared transport is a network element regardless of the fact that shared transport can be used only when combined with switching), *vacated, Ameritech Corp. v. FCC*, 526 U.S. 1142 (1999), *aff'd in part on reh'g, Southwestern Bell Telephone Co.*, 199 F.3d 996 (8th Cir. 1999) (reissuing its affirmation of the Commission's determination that shared transport is a network element but vacating and remanding for further consideration the issue of whether shared transport must be made available on an unbundled basis).

[464] Letter from John J. Heitmann, Counsel for NuVox, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 2 (filed Jan. 23, 2003) (NuVox Jan. 23, 2003 *Ex Parte* Letter) (noting that a point-to-point local service comprises "data transmission between two points within a designated local calling area.").

[465] Although the D.C. Circuit vacated the Commission's conclusion that xDSL service is a "telephone exchange service" or "exchange access service," as defined in the Act, these services are currently regulated as "access services" as defined by the Commission's rules. *WorldCom v. FCC*, 246 F.3d 690 (D.C. Cir. 2001); *see also GTE Telephone Operating Cos., GTOC Tariff No. 1, GTE Transmittal No. 1148*, CC Docket No. 98-79, Memorandum (continued....)

qualify for the use of a UNE.[467] We find that because CMRS are used to compete against telecommunications services that have been traditionally within the exclusive or primary domain of incumbent LECs services, CMRS providers also qualify for access to UNEs, subject to the limitations described herein.[468]

141. We find that our interpretation of sections 251(c)(3) and 251(d)(2) is the most reasonable because it ensures that the powerful regulatory tools made available through those provisions are focused on opening the bottleneck markets largely controlled by incumbent LECs. Given that unbundling is one of the most intrusive forms of economic regulation – and one of the most difficult to administer – it is unlikely that Congress intended to apply unbundling more generally absent an unambiguous mandate. Although we recognize that the Act's general purpose is to open all telecommunications markets to competition, section 251 of the Act is designed to achieve that goal in markets for local exchange services. Therefore, we believe it is more appropriate to interpret section 251(c) and (d) as applying to only those services that compete directly against traditional incumbent LEC services.

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Opinion and Order, 13 FCC Rcd 22466 (1998). For example, some carriers file access tariffs containing certain types of xDSL services, such as ADSL and SDSL. *See, e.g.*, National Exchange Carrier Association Tariff FCC No. 5, § 8; Sprint Local Telephone Co. Tariff FCC No. 3, § 8.5; Roseville Tariff FCC No. 1, § 9.1. We note that commenters, including incumbent LECs, do not dispute that xDSL service is appropriately considered in our section 251 impairment analysis. BellSouth Comments 36-44; HTBC Comments at 40-42; SBC Comments at 22-23 (arguing that, under the impairment analysis, carriers should not receive access to UNEs for xDSL-based broadband services). *But see* Qwest Comments at 42 (noting that some "new network facilities" that can be used to provide xDSL "fall outside the scope of the market-opening objectives of section 251."); Verizon Comments at 71; Letter from William P. Barr, Executive Vice President and General Counsel, Verizon, to Michael K. Powell, Chairman, FCC, CC Docket No. 01-338 at 5, *in* Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Nov. 22, 2002) (Verizon Nov. 22, 2002 *Ex Parte* Letter).

[466] These services must be offered on a common carrier basis, as explained below. Our list is intended to identify general categories of services that would qualify as eligible services. It is not intended to be an exhaustive list or to identify services in a more particular manner. Rather, we believe this list should provide adequate guidance for parties to determine whether a service qualifies or not. *See* NuVox Comments at 55-56. In contrast, "non-qualifying" are those services not traditionally provided exclusively by incumbent LECs. Among others, they would include long distance voice services and data services provided on an interexchange basis.

[467] ATTWS Comments at 23-24; CTIA Comments at 3-7; Nextel Comments at 2; *see also* ATTWS and VoiceStream Petition for Declaratory Ruling, CC Docket No. 96-98 at 5-6 (filed Nov. 19, 2001) (ATTWS/VoiceStream Nov. 19, 2001 Petition); *Triennial Review NPRM*, 16 FCC Rcd at 22809-10, para. 63. On the other hand, some commenters argue that wireless providers should not be able to obtain access to UNEs. *See* BellSouth Comments at 46-53; SBC Comments at 24.

[468] We grant the portion of the ATTWS/VoiceStream Nov. 19, 2001 Petition requesting that the Commission declare that CMRS providers are entitled to access to UNEs, as long as the CMRS provider meets the requirements outlined throughout this Order. ATTWS/VoiceStream Nov. 19, 2001 Petition at 6; *see also* Progress Telecom Comments at 6 ("Nothing in the Communications Act . . . even remotely suggests that a requesting carrier must use the standalone UNEs for the provision of *wireline* services in order to obtain them from the incumbent LECs.").

142. We disagree with those commenters that argue that section 251(d)(2) compels us to conduct an analysis of every possible service that a requesting carrier might want to offer.[469] Because section 251(d)(2)'s edict is far from clear, the Commission can use its discretion to reasonably interpret the statute.[470] Only if the statute were unambiguous would the Commission be compelled to undertake such an analysis as suggested by commenters.

143. *Use of UNEs for Non-Qualifying Services.* In the *Triennial Review NPRM*, the Commission sought comment on whether, if a network element is unbundled for one service, its availability should be limited to that service or whether requesting carriers should be able to use it for any service.[471] We conclude that, once a requesting carrier has obtained access to a UNE to provide a qualifying service, as defined above, the carrier may use that UNE to provide any additional services, including non-qualifying telecommunications and information services. This approach to the use of the network element, which maximizes the use of a network element once an unbundling decision has been made, is most consistent with the concerns raised by the *USTA* court regarding the "costs" associated with unbundling in the first instance.[472] In other words, once the Commission has determined to impose "the costs associated with mandatory unbundling" upon an incumbent LEC, it would be wasteful for the network element not to be put to its maximum use.

144. As discussed above, a requesting carrier must use a network element to provide a qualifying service in order to obtain unbundled access to that network element.[473] Section 251(c)(3) requires that incumbent LECs must provide UNEs to requesting carriers "for the provision of a telecommunications service."[474] Even if we presume that Congress may have intended "services" in section 251(d)(2) to mean "telecommunications services" as used in section 251(c)(3), as we noted above, this interpretation does not necessarily resolve the ambiguity regarding whether mixed use of UNEs is permissible. However, a reasonable interpretation of the Act, and an examination of its purposes, leads us to the conclusion that, when a UNE can be used to provide multiple services, Congress did not intend to require that UNEs be used exclusively to provide qualifying telecommunications services.

145. We note that section 51.100(b) of the Commission's current rules allows mixed use of UNEs.[475] We reaffirm this rule here. Moreover, the Commission's EELs rules were

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[469] SBC Reply at 61-67.

[470] *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 843 (1984).

[471] *Triennial Review NPRM*, 16 FCC Rcd at 22799, para. 38.

[472] *USTA*, 290 F.3d at 429.

[473] These services also must be offered on a common carrier basis, as explained below.

[474] 47 U.S.C. § 251(c)(3).

[475] 47 C.F.R. § 51.100(b) ("A telecommunications carrier that has interconnection or gained access under sections 251(a), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well.").

affirmed by the D.C. Circuit, and those rules permit a variety of services to be provided over this combination of network elements so long as a "significant amount of local exchange service" is also provided.[476] Generally, commenters do not contest these rules; instead, they debate how much local service should be required and what conditions should be placed upon that usage (*e.g.*, a collocation requirement).[477] We ensure below, through our impairment analysis and related eligibility requirements, that our decision permitting the use of UNEs for services other than qualifying services does not lead to the "gaming" of our rules. Those issues will be addressed later in this Order within the impairment analysis for each particular UNE.

146. Allowing requesting carriers to use UNEs to provide multiple services on the condition that they are also used to provide qualifying services will permit carriers to create a package of local, long distance, international, information, and other services tailored to the customer. Offering packages of services in one integrated offering is a marketing method increasingly utilized by incumbent LECs to sell end users their array of available services.[478] The record shows that carriers must have sufficient flexibility in how they package service offerings to customers in order to be able to fully participate in the telecommunications market.[479] Limiting competitive LECs' use of UNEs to qualifying services only would likely affect their ability to meaningfully compete against incumbent LECs.[480] Moreover, such an interpretation would hamper a competitive LEC's ability to provide innovative service packages to customers, a result that would directly undermine the Act's explicit goal of encouraging

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[476] *CompTel*, 309 F.3d at 12-18.

[477] *See, e.g.*, Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 1 (filed Dec. 19, 2002) (Qwest Dec. 19, 2002 EELs *Ex Parte* Letter) (proposing mixed use as long as 51% of traffic is local voice).

[478] Illinois Commission Comments at 3; Verizon Reply, Attach. B, Reply Declaration of Alfred E. Kahn and Timothy J. Tardiff (Verizon Kahn/Tardiff Decl.) at para. 39 (stating that Verizon has "long agreed with [AT&T's] position that carriers need to offer packages of services if they are to compete successfully.").

[479] CompTel Comments at 55-56; Illinois Commission Comments at 3; LDMI Comments at 17; NewSouth Communications Comments at 54-55; NuVox Comments at 56.

[480] We note that SBC has argued specifically that requesting carriers should not be allowed to use shared transport for intraLATA toll traffic. SBC Comments at 81-84; SBC Reply at 141-42; *But see* ALTS *et al.* Reply at 94-96 (responding in opposition to SBC on this point). SBC notes that some competing carriers that have purchased the shared transport UNE to provide local exchange service have asserted that they should be permitted to use it for intraLATA toll service as well. SBC Comments at 81 (citing a formal complaint, *CoreComm Communications, Inc. and Z-Tel Communications, Inc. v. SBC Communications, Inc. et al.*, EB-01-MD-017 (Aug. 28, 2001)). As we have previously indicated, the ability to compete in offering intraLATA toll services affects a competing LEC's ability to compete in the local market. *See SBC Communications Inc. Apparent Liability for Forfeiture*, File No. EB-01-IH-0030, Forfeiture Order, 17 FCC Rcd 19923, 19931-32, para. 15 (2002) (citing *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20738-40, paras. 377-78 (1997)). Under our decision here, once a requesting carrier gains access to the shared transport UNE to provide local service, the requesting carrier may also use it to provide *any* additional services, regardless whether those services are qualifying or non-qualifying. Accordingly, in light of the discussion above, we reject SBC's argument.

innovation.[481] As the Commission stated in the *Local Competition Order*, Congress intended the opening of local markets "to pave the way for enhanced competition in *all* telecommunications markets, by allowing all providers to enter all markets."[482] To limit competitors' use of UNEs to *only* qualifying services would force requesting carriers to either continue to provide services on a stand-alone basis, contrary to the market trend, or even more perversely, to provide a package of services over duplicative networks or through duplicative network configurations.[483] Either result would effectively preclude a competitor's ability to compete in the market, especially in a market in which the market leader – the incumbent LEC – is not similarly constrained.

147. Allowing the use of UNEs in this manner is similar to the approach the Commission adopted in its *Collocation Remand Order* for multi-functional equipment.[484] In that Order, the Commission required incumbent LECs to allow the collocation of competitive LEC equipment that contained functions that would not meet the standard as stand-alone functions, recognizing that "allowing the collocation of multi-functional equipment is critical to the realization of Congress's goal of promoting competition and technical innovation."[485] The Commission acknowledged that competitive LECs must be able to realize the same productivity increases that developments in new technologies offer.[486] For these reasons, the Commission found that as long as the primary function satisfies the requisite collocation test, the other functions are also permitted.[487] Here, we follow a similar rationale. Our approach ensures that a UNE is used for appropriate purposes but also recognizes that the market and end users may benefit from the use of the UNE to provide additional services. Furthermore, as a practical matter, if we did not allow carriers to use UNEs to provide services in addition to qualifying services, we would effectively limit a requesting carrier's ability to use innovative multi-functional collocation equipment. Carriers would be able to collocate multi-functional

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[481] Preamble to the 1996 Act; *see also* 47 U.S.C. § 157 nt ("The Commission . . . shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.").

[482] *Local Competition Order*, 11 FCC Rcd at 15506, para. 4.

[483] The same analysis applies in this context as in the commingling context. AT&T claims that the commingling ban creates a competitive barrier because it effectively requires competitive LECs to establish two parallel networks – one for local traffic and one for access traffic. AT&T Reply at 293. Furthermore, while it is theoretically possible to require a regime of differentiated pricing under which qualifying traffic would be priced at TELRIC and other traffic would be priced at market rates, such a regime would require undue policing of customer usage and would be administratively impractical and burdensome.

[484] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, CC Docket No. 98-147, 16 FCC Rcd 15435, 15454, para. 36 (2001) (*Collocation Remand Order*), *aff'd sub. nom. Verizon Telephone Cos. v. FCC*, 292 F.3d 903 (D.C. Cir. 2002).

[485] *Collocation Remand Order*, 16 FCC Rcd at 15453, para. 33.

[486] *Id.*

[487] *Id.* at 15454, para. 36. The Commission placed certain physical restrictions of the equipment allowed for other functions. *Id.*

equipment, as allowed by the *Collocation Remand Order*, but, under a rule restricting the use of UNEs, would be unable to use of all of the equipment's permitted functions.[488]

148. We disagree with commenters that state that the Act prohibits the use of UNEs for information services.[489] Section 251(c)(3) states that incumbent LECs have a duty "to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis."[490] The statute does not require that access be provided *exclusively* for telecommunications services. We note, in fact, that this statutory interpretation is consistent with Congress's intent to open existing markets served by incumbent LECs to competitive entry. As the foregoing discussion explains,[491] competitive LECs are providing integrated telecommunications and information service offerings in direct competition with the incumbent LEC provision of these services.[492] Moreover, such a rule may prohibit the packaging of services that would be considered advanced telecommunications capabilities, but are not telecommunications services themselves, thus conflicting with the goals of the Act.[493] We reasonably infer that a competitor may use a UNE to provide a broader category of services, provided that the competitor is, in fact, also providing qualifying service over the UNE.[494]

149. *Requesting carriers must offer a service on a common carrier basis.* Finally, we affirm that, in order to gain access to a UNE under section 251(c)(3), a requesting carrier must provide a "telecommunications service," and specifically a qualifying telecommunications service, over that UNE.[495] It cannot, for example, qualify for UNEs to the extent it provides exclusively private carrier services or information services.[496] Section 251(c)(3) uses the term "telecommunications service" and both sections 251(c)(3) and (d)(2) use the term "telecommunications carrier" to define the scope of the unbundling obligation.[497]

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[488] CompTel Comments at 55-56.

[489] Next Level Comments at 13 n.26; SBC Comments at 22; Verizon Comments at 71-81; SBC Reply at 88-112.

[490] 47 U.S.C. § 251(c)(3).

[491] *See* Part IV.B.1.

[492] *See* NuVox Jan. 15, 2003 *Ex Parte* Letter at 3.

[493] *See* 47 U.S.C. § 157 nt ("The Commission . . . shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.").

[494] This issue is discussed further in Part VII.B.

[495] 47 U.S.C. § 251(c)(3).

[496] This issue is discussed further in Part VII.B.

[497] 47 U.S.C. §§ 251(c)(3) and (d)(2).

150. The Act defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used,"[498] and defines "telecommunications carrier" as "any provider of telecommunications services."[499] The Commission has interpreted "telecommunications services" to mean services offered on a common carrier basis, and the D.C. Circuit has affirmed that interpretation.[500] Thus, to obtain access to a UNE, a requesting carrier must use the UNE to provide at least some services on a common, rather than private, carriage basis. We note that this provision of the Act is not ambiguous. Thus, Congress's use of "telecommunications service" in section 251(c)(3) has a clear meaning defined by the Act.

151. We find that the Act evokes an implicit tradeoff. In exchange for obtaining UNEs, a requesting carrier must not only provide services that compete head-to-head against the incumbent LEC, but must do so on a basis that ensures that the benefits of competition accrue to the general public. We find that it is reasonable to interpret the Act in a manner that ensures the availability of UNEs is not boundless and is appropriately limited to the furtherance of clear statutory purposes.[501]

152. Generally stated, a common carrier holds itself out to provide service on a non-discriminatory basis.[502] A private carrier, on the other hand, decides for itself with whom and on what terms to deal.[503] Common carrier status has been assessed by the Commission and the courts by the application of the two-part *NARUC* test: (1) whether the carrier "holds himself out

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[498] *Id.* § 153(46).

[499] *Id.* § 153(44).

[500] *See AT&T Submarine Systems, Inc.*, File No. S-C-L-94-006, 11 FCC Rcd 14885 (1996) (*AT&T Submarine Systems*), *appl. for rev. denied, AT&T Submarine Systems, Inc.*, 13 FCC Rcd 21585 (1998), *aff'd sub nom. Virgin Islands Tel. Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999).

[501] It is also fundamentally fair that carriers that choose to escape some of the regulation necessary to become a common carrier do not have the same benefits available to those carriers that do bear those burdens.

[502] *See AT&T Submarine Systems*, 11 FCC Rcd at 14885; *see also* 47 U.S.C. § 153(10) ("The term 'common carrier' or 'carrier' means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio . . . .").

[503] *See Southwestern Bell Telephone v. FCC*, 19 F.3d 1475, 1481 (D.C. Cir. 1994) ("If the carrier chooses its clients on an individual basis and determines in each particular case 'whether and on what terms to serve' and there is no specific regulatory compulsion to serve all indifferently, the entity is a private carrier for that particular service and the Commission is not at liberty to subject the entity to regulation as a common carrier" citing *National Ass'n. of Regulatory Utility Commissioners v. FCC*, 533 F.2d 601, 608-09 (1976) (*NARUC II*); *National Ass'n of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 643 (1976) (*NARUC I*)).

to serve indifferently all potential users"; and (2) whether the carrier allows customers to "transmit intelligence of their own design and choosing."[504]

153. Common carrier services may be offered on a retail or wholesale basis because common carrier status turns not on *who* the carrier serves, but on *how* the carrier serves its customers, *i.e.*, indifferently and to all potential users. For example, residential local voice services typically are both retail services and common carrier services because they are sold to end users through generally available offerings. Carriers that offer residential local voice services do not generally make individualized decisions whether and on what terms to deal with their customers. Likewise, although access services are wholesale offerings when sold to other carriers, they also are common carrier services when offered indifferently to all members of a particular class of customers. For example, if a carrier tariffed an access offering and made it available to other carriers as an input for their retail interexchange service, such access service would be a common carrier service. In contrast, the self-provision of access services used solely as an input to provide a retail interexchange service does not qualify as the provision of exchange access on a common carriage basis. Instead, in that instance, the carrier is providing exchange access to itself on a private carriage basis. Therefore an interexchange carrier would not be eligible to obtain a UNE exclusively to provide exchange access to itself in order to provide a retail interexchange service.

3. Implicit Support Flows

a. Background

154. In the *USTA* decision, the D.C. Circuit addressed the question of implicit support flows and their relationship to the Commission's decision making under section 251. The court concluded, among other things, that the Commission had not adequately explained its decision to adopt nationwide unbundling requirements in light of the implicit support flows found in telecommunications rates.[505] In this Part, we explain how our new impairment standard will address the concerns voiced by the D.C. Circuit and describe the nature and extent of existing implicit support flows.

155. In reaching the conclusion that the Commission's explanation was inadequate, the court expressed concerns about the Commission's approach to unbundling both in areas where the incumbent LEC's retail rates may exceed its costs (presumably referring to historic costs) and in areas where incumbent LEC retail rates may be below cost, although the court raised different concerns in each case. The court noted that "[c]ompetitors will presumably not be drawn to markets where customers are already charged below cost," although it recognized that

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[504] *NARUC II*, 533 F.2d at 608-09. Commission and court precedent provides guidance as to the characteristics of common carrier services. *Id.; NARUC I*, 525 F.2d at 644.

[505] *USTA*, 290 F.3d at 422-23. In the *Iowa Utilities Board* decision, the Supreme Court had previously rejected BOC arguments concerning implicit support flows, noting that "[section] 254 requires that universal-service subsidies be phased out, so whatever possibility of arbitrage remains will be only temporary." *Iowa Utils. Bd.*, 525 U.S. at 393-94.

competitors might be drawn to such areas if the new entrant could sell complementary services at prices high enough to offset the low local exchange rates.[506] While questioning entry into the higher cost markets, the court found the "gap in the Commission's reasoning . . . greatest" in requiring unbundling "in the other segments of the markets, where presumably ILECs must charge *above* cost . . . in order to offset their losses in the subsidized markets . . . ."[507] As explained below, however, the granular impairment analysis we adopt today, by focusing on the economic and operational viability of entry in different market segments, provides for a modification of the impairment standard that addresses these concerns, while supplying the detailed explanation the *USTA* court sought.

156. As the D.C. Circuit noted, the rates for telecommunications services historically have included implicit support flows between different classes of customers and geographic areas. In general, as the court recognized, these implicit support flows have tended to result in rates that are lower than they otherwise would be for residential and rural customers and rates that are higher than they otherwise would be for business and urban/suburban customers.[508] These implicit support flows still exist in many of the rates regulated by the state commissions, including those for local exchange service, intrastate exchange access, and intrastate toll rates. Such implicit support flows have also traditionally been found in the rates for interstate exchange access, and interstate toll service[509] subject to the Commission's regulatory jurisdiction.[510] Implicit support flows have traditionally been justified as supporting the universal availability of

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[506] *USTA*, 290 F.3d at 422. Thus, as the court suggested, even where the rate for an individual customer service offering may not cover the incumbent LECs' fully distributed historical book cost, that does not mean that such customers as a group are unprofitable or undesirable to serve.

[507] *Id.* (emphasis in original).

[508] *Id.*

[509] These implicit support flows result, in large part from rate averaging between rural and suburban/urban areas and the recovery of certain non-traffic sensitive costs through traffic sensitive per minute rates, which over-recovers costs from higher volume users, often business customers. *See generally, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board On Universal Service*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249 and Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 12971-72, para. 23 (2002) (*CALLS Order*) *aff'd in part, rev'd in part, and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001). The court affirmed the *CALLS Order* in most respects, but remanded for further analysis and explanation the decisions to size the Interstate Access Support (IAS) mechanism at $650 million and to adopt the 6.5 % "X-factor."

[510] The original Communications Act of 1934 established a bifurcated system for the regulation of telecommunications, generally leaving the regulation of communications that originated and terminated within the same state to the state commissions, while this Commission regulated communications that originated and terminated in different states, except in the case of multi-state local exchange areas. *See* 47 U.S.C. §§ 152(b)(2), 221(b). The 1996 Act also gives various responsibilities concerning the implementation of the local competition provisions to this Commission. *Iowa Utils. Bd.*, 525 U.S. at 378. In addition, section 253 requires the Commission to preempt state and local requirements that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a), (d).

local exchange telephone service at affordable rates, and ensuring reasonable interexchange toll rates for customers in all parts of the country.

157. Despite relatively widespread agreement on such broad general statements concerning implicit support flows,[511] this area is more complex than it might initially appear. The existence of "below cost" residential local exchange service rates does not mean that such customers are "unprofitable" to serve. Determining whether a customer class is desirable to serve[512] requires a comparison of costs and all potential revenues for the class, which will substantially exceed the local exchange service rate.[513] In addition, describing certain rates as being "above or below cost" itself involves complex questions concerning how costs should be defined. In the context of implicit support flows, describing a rate as "below cost" typically means that the rate is lower than the incumbent LEC's fully distributed historical cost of providing service.[514] This definition of "cost" does not necessarily provide a valid basis for comparison since in a fully competitive market, firms would typically price a service offering at long run incremental cost, which in the telecommunications industry may be considerably lower than fully distributed historical cost.[515] Moreover, telecommunications prices are not static, and will change over time in response to increased competition.[516]

158. Recognizing the potential effect of implicit support flows on the development of competition, the 1996 Act addresses this issue in section 254. This provision directs the Commission, after consultation with the Joint Board, to establish specific, predictable, and

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[511] *But see* AT&T Willig Reply Decl. at paras. 50-56; WorldCom Reply at 26-27; WorldCom Reply, Declaration of Daniel Kelley (WorldCom Kelley Reply Decl.) at paras. 60-64.

[512] Even if the class as a whole is not desirable to serve, certain categories of customers within the larger class will typically be desirable based on their usage patterns or cost characteristics.

[513] Residential customers typically take a number of different services from their LEC in addition to local exchange service. These include vertical features, as well as federal and state access charges typically paid to the local exchange service provider unless the service is provided through resale, in which case the incumbent LEC would receive the access charge revenues. *See Local Competition Order*, 11 FCC Rcd at 15646-47, para. 292. The LEC may also receive explicit support payments, and provide the customer with long distance service and Internet access service.

[514] It is worth noting that, except for smaller incumbent LECs and some mid-sized incumbent LECs, both the Commission and state regulators have generally moved from traditional rate-base/rate-of-return regulation to the use of "price cap" or "incentive" type regulation for telecommunications rates, which does not involve a direct link between cost showings and rate levels. Under price cap or incentive type regulation, for example, a regulated carrier's rates may be frozen for a period of time or subject to periodic adjustments that reflect factors such as the rate of inflation, historic productivity gains and certain cost changes deemed to be beyond the carrier's control.

[515] In addition, economic theory does not provide a clear answer to the question of how joint and common and fixed costs should be allocated for costing purposes. This is particularly problematic in the telecommunications industry due to the very high proportion of joint and common costs and fixed costs.

[516] *See, e.g.*, AT&T Willig Reply Decl. at para. 60.

sufficient federal support mechanisms to preserve and advance universal service.[517] In particular, section 254(e) states that federal support mechanisms "should be explicit and sufficient to achieve the purposes of this section."[518] At the same time, section 254(b) establishes a list of principles that the Commission must use in establishing its policies for the preservation and advancement of universal service, including the principle that consumers in rural, insular, and high-cost areas should have access to telecommunications services at rates that are "reasonably comparable to rates charged for similar services in urban areas."[519] In fact, section 254(g) of the Act requires nationwide averaging of interstate toll rates.[520] In addition, section 254(f) provides that the "[s]tate[s] may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service."[521]

159. The extent of interstate implicit support flows has decreased substantially since passage of the 1996 Act. In response to section 254, the Commission has taken a number of major steps to remove implicit support flows from interstate access charges and develop federal universal service support mechanisms that are portable, *i.e.*, available not only to the incumbent local exchange carrier, but also to other qualifying local exchange carriers. These measures are intended to make universal service support compatible with the increasingly competitive marketplace for telecommunications.

160. In the *CALLS Order*, the Commission adopted a five-year transitional interstate access and universal service reform plan for price cap carriers.[522] The Commission's decision was intended to "[reform] our interstate access charge regime to identify implicit universal service support and to remove such implicit support from our interstate access charges, and . . . [establish] new universal service mechanisms."[523] At the same time, the *CALLS Order* "keeps rates affordable in high cost areas, by replacing the subsidies with explicit interstate access universal service support."[524] In particular, the order "creates an explicit interstate access universal service support mechanism . . . to replace the implicit support, and makes interstate

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[517] 47 U.S.C. § 254.

[518] *Id.* § 254(e).

[519] *Id.* § 254(b)(3).

[520] *Id.* § 254(g); 47 C.F.R. § 64.1801.

[521] 47 U.S.C. § 254(f). The Commission has not interpreted section 254 as requiring the elimination of implicit support flows contained in state rates.

[522] The *CALLS Order* reforms apply only to price cap carriers. The Commission previously reformed interstate access charges in the 1997 *Access Charge Reform Order*. *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982 (1997).

[523] *CALLS Order*, 15 FCC Rcd at 12973, para. 25.

[524] *Id.* at 12975, para. 32.

access universal service support fully portable among eligible telecommunications carriers."[525] The Commission also reformed the interstate access charge regime and universal service support for rate-of-return carriers in the 2001 *MAG Order*.[526] The Commission has also taken steps to reform pre-existing universal service support mechanisms in light of section 254.[527]

161. While it would be difficult, if not impossible, to accurately quantify the implicit support flows that remain in state rates, it appears that substantial intrastate support flows remain. This is true even though some states have engaged in rate "rebalancing" in light of the developing competitive environment.[528] At the same time, under the current system of federal/state jurisdiction for telecommunications regulation, the primary responsibility for regulating rates for intrastate telecommunications services[529] rests with the state commissions and is largely beyond our jurisdiction. Thus, under the system of dual federal/state jurisdiction, the states are generally responsible for adjusting the rates for intrastate services to promote consumer welfare and competition.

162. We also note that the vast majority of incumbent telephone companies may qualify for an exemption from, or modification or suspension of the Commission's unbundling requirements under section 251(c) with the result that the scope of the issues posed by implicit support is further limited. In particular, section 251(f)(1) contains an exemption from the Commission's unbundling requirements for rural telephone companies, which provides that

> [s]ubsection (c) of this section [the unbundling requirements] shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or

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[525] *Id.*

[526] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613 (2001), *recon. pending* (*MAG Plan Order*).

[527] *See, e.g.*, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999) (*Ninth Report and Order*), *remanded sub nom. Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001). The *Ninth Report and Order* established a federal high-cost universal service support mechanism for non-rural carriers based on forward-looking economic costs. *Id.* at 20434-35, para. 2. The Commission is considering the Joint Board's recommendations regarding the remand of the *Ninth Report and Order*. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 17 FCC Rcd 20716 (2002).

[528] *See, e.g.*, Covad Reply at 52-53 (creation of intrastate universal service fund in California).

[529] As previously discussed, the 1996 Act gives the Commission a role in establishing the principles to be used in setting rates for UNEs and the discounts that apply to services when they are ordered for the purpose of resale. *See generally supra* note 510.

> network elements, and (ii) the State commission determines . . . that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 . . . .[530]

Section 251(f)(2) also provides for suspensions and modifications of the requirements of section 251(b) and (c), which includes unbundling obligations, for "local exchange carrier[s] with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nation-wide" in certain circumstances.[531] Only the BOCs and Sprint exceed the 2 percent standard and thus would not be eligible to seek relief under the provisions of this section.[532]

b. Discussion

163. As explained below, by focusing on the economic and operational viability of entry in different market segments, our revised impairment standard addresses the issue of implicit support flows in a manner that is responsive to the concerns raised in the D.C. Circuit's *USTA* decision. At the same time, we conclude that the statute is best interpreted as giving the Commission considerable discretion to address the relationship between implicit support flows and our impairment analysis. In particular, the statute does not specify how the Commission is to address this issue, although it does contain a number of provisions that relate to the existence of implicit support flows. For example, Congress addressed issues related to implicit support flows in section 254 of the Act, but chose not to include language addressing how the existence of implicit support flows should factor into our impairment analysis. In addition, the statute allows the state commissions to limit the extent of unbundling, and thereby address possible issues arising from unbundling and implicit support flows, for all but the largest incumbent LECs. In particular, section 251(f)(1) and (2) provide for an exemption from section 251(c) requirements for rural carriers, and permit suspension or modification of the section 251(c) requirements for carriers serving, in the aggregate, less than two percent of the nation's access lines.[533] Moreover, section 271, which governs BOC in-region, interLATA entry, requires that they provide local loops, local switching and local transport on an unbundled basis throughout their service areas without regard to the existence of implicit support flows.[534] Thus, we

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[530] 47 U.S.C. § 251(f)(1). Section 153(37) defines a rural telephone company. 47 U.S.C. § 153(37).

[531] *Id.* § 251(f)(2).

[532] *Trends in Telephone Service May 2002 Report* at 8-5.

[533] Thus, while the Commission has not interpreted the statute to require the development of comparable explicit support mechanisms at the state level, sections 251(f)(1) and (2) effectively permit the states to address the relationship between unbundling and implicit support flows in state rates by allowing the state commissions to limit unbundling for all but the largest incumbent LECs. This provision as well shows that Congress provided for mechanisms other than the impairment standard for the handling of implicit support flows.

[534] 47 U.S.C. § 271(c)(2)(B)(iv), (v), (vi). As discussed below, we interpret the "unbundling" requirement in section 271 to require that the network elements enumerated in the competitive checklist be priced based on the pricing standards in sections 201 and 202 of the Communications Act when they are not required to be unbundled pursuant to section 251(c)(3). *See infra* Part VIII.A.

conclude that the Act leaves the Commission with substantial discretion to address the appropriate relationship between implicit support flows and network unbundling within the confines of reasoned decision-making.

164. As explained below, the impairment standard adopted by the Commission and reflected in the more granular state commission proceedings mandated by this Order addresses the existence of implicit support flows in several ways. In general terms, the new impairment standard provides that a requesting carrier is deemed to be impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers that are likely to make entry into a market uneconomic.[535] In reaching this determination, our new impairment standard generally provides for consideration of any advantages as well as disadvantages that will be experienced by competitive LECs. Our impairment standard also provides for consideration of whether entry is economic by taking into account the potential revenue opportunities available.

165. In determining whether impairment exists, the Commission finds that actual marketplace evidence is the most persuasive and useful evidence, especially information concerning whether new entrants have deployed their own facilities or obtained wholesale facilities from entities other than the incumbent LEC for use in providing competitive retail services. While such market evidence will be given substantial weight, it is not necessarily conclusive or presumptive of a particular outcome without additional information. The Commission will also consider evidence of intermodal competition, when it is presented in the record.

166. Our impairment standard is unlikely to result in unwarranted unbundling in the case of areas and services for which local exchange rates generally exceed the incumbent LEC's costs. In fact, the services in urban areas and the enterprise services, which have tended to be priced "above" the incumbent LEC's "costs" have generally been the first areas to attract competitive entry,[536] probably due to the relatively high revenue opportunities available. Thus, these areas and services are the ones for which marketplace evidence of facilities-based competitive entry is most likely to warrant a finding of no impairment. Our impairment standard also generally provides for consideration of advantages experienced by new entrants as well as the barriers to entry that they encounter. Thus, our impairment standard will take into account circumstances in which the incumbent sets certain retail rates "above" its "cost," in order to provide support for other areas or services with retail rates that are "below cost," although we recognize that such rates are likely to change in response to competitive entry.[537] As a result, our impairment standard, which will be reflected in the granular analysis that the state commissions apply, will generally tend to reduce the likelihood of a finding of impairment in the case of areas

[535] *See* Part V.B.1.d. *supra.*

[536] *See supra* Part IV; *see also* Allegiance Reply at 23.

[537] *See supra* note 516.

and services for which prices are "above" the incumbent LEC's cost, and thus tend to reduce the extent of unbundling required in those areas.

167. Significantly, to the extent that incumbent LECs are required to make UNEs available pursuant to our impairment standard in the case of areas or services for which rates are "above cost," it will be based on an affirmative finding of impairment.[538] At the same time, such unbundling in "above cost" areas will tend to create pressure for the incumbent LECs[539] and state regulators to reduce or eliminate implicit support flows,[540] and establish rates that more closely reflect costs in conjunction with explicit support mechanisms. Insofar as unbundling in such areas brings about pressure for reductions in "above cost" rates, it should not be a matter for regulatory concern unless an incumbent LEC's overall earnings for telecommunications services fall below confiscatory levels.[541] This result is consistent with the Commission's long-standing support for movement toward cost-based rates and explicit support mechanisms.[542] It would also be in harmony with the general goals of section 254(b) for reform of interstate universal service support flows.

168. Furthermore, our impairment standard, which will be reflected in the granular analysis that the state commissions apply, should not produce unreasonable effects in areas and

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[538] Retail rates that exceed the incumbent's cost of providing service will not necessarily result in facilities-based competitive entry. Rather, competitors are likely to base entry decisions on whether all potential revenues exceed the cost of entry, taking into consideration any countervailing advantages a new entrant may have. *See, e.g.*, WorldCom Reply at 27; AT&T Willig Reply Decl. at para. 61; WorldCom Kelley Reply Decl. at para. 64. In addition, even in such areas, new entrants may initially choose not to enter on a facilities-basis due to the very high fixed costs involved.

[539] Incumbent LECs will generally have flexibility to reduce rates appropriately in response to competition.

[540] *See generally* Qwest Reply at 13 (state rate rebalancing); Sprint Reply at 9 n.11 (state rate rebalancing).

[541] *Permian Basin Area Rate Cases*, 390 U.S. 747, 767 (1968).

[542] The Commission has long supported federal rule changes designed to reduce implicit support flows and reflect cost causation principles in conjunction with explicit support mechanisms to protect universal service. The Commission began implementing such changes in the early and mid-1980s when it adopted measures to reform the jurisdictional separations process, which divides incumbent LEC costs between state and interstate operations, and adopted a system of interstate access charges which included a flat-rate end-user charge. For information concerning the initial steps in jurisdictional separations reform, see *Amendment of Part 67 of the Commission's Rules*, CC Docket No. 80-286, Decision and Order, 96 FCC 2d 781 (1984) *adopting* Second Recommended Decision and Order, 48 Fed. Reg. 46556 (Joint Board 1983), *aff'd sub nom. Rural Telephone Coalition v. FCC*, 838 F.2d 1307 (D.C. Cir. 1988). For information concerning the Commission's access charge plan *see, e.g., MTS and WATS Market Structure*, CC Docket No. 78-72, Third Report and Order, 93 FCC 3d 241 (1983); *modified on recon.*, 97 FCC 2d 682, (1984), *modified on recon.* 97 FCC 2d 834 (1984), *aff'd in principal part and remanded in part sub nom, NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert denied*, 469 U.S. 1227 (1985); *MTS and WATS Market Structure* and *Amendment of Part 67 of the Commission's Rules*, CC Docket Nos. 78-72, 80-286, Decision and Order, 50 Fed. Reg. 939 (1985), *adopting* Recommended Decision and Order, 49 Fed. Reg. 48325 (Joint Board 1984); *MTS and WATS Market Structure* and *Amendment of Part 67 of the Commission's Rules*, CC Docket Nos. 78-72, 80-286, Report and Order, 2 FCC Rcd 2953 (1987), *adopting* Recommended Decision and Order, 2 FCC Rcd 2324 (1987).

for services where local exchange rates are "below" the incumbent's "cost" of providing service. We recognize that "below cost" local exchange rates will tend to discourage competitive facilities-based entry, and that the absence of such entry will be considered as evidence of impairment. Our impairment standard, however, also provides for consideration of evidence concerning the full range of revenue opportunities available to carriers providing service over the relevant facilities. Thus, retail local exchange rates that are "below cost" do not mean that competitive entry will necessarily be uneconomic since a competitor will base entry decisions on a comparison of its costs and the full range of available revenue opportunities, not solely the local exchange rate.[543] Moreover, new entrants using alternative technologies may have lower costs than the incumbent LEC even when UNE rates are set at reasonable levels. Competitive entry under these circumstances would benefit consumers by increasing choice.[544]

169. Were our impairment standard to require unbundling for services and areas with "below cost" rates where actual competitive entry does not take place, little harm would result. As previously mentioned, the statute contains an exemption from the unbundling requirements for rural carriers and provides for state modification or suspension of the unbundling requirements for incumbent carriers serving, in the aggregate, less than two percent of the nation's access lines.[545] Thus, the state commissions are fully able to prevent any problems that they believe might result from unbundling requirements in these circumstances. Even without this statutory provision, little harm is likely to result in the event of unbundling requirements in situations where competitors do not actually enter the market.[546]

C. The "Necessary" Standard

170. Section 251(d)(2) requires the Commission, in making its unbundling determination, to consider whether "access to such network elements as are proprietary in nature is necessary."[547] In the *UNE Remand Order*, the Commission gave this interpretation of the "necessary" standard:

> We conclude that a proprietary network element is "necessary" within the meaning of section 251(d)(2)(A) if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack

[543] For example, a new entrant may offer a premium product or service package designed to be attractive to customers even when priced well above the incumbent LEC's rate for local exchange service.

[544] *See, e.g.*, Allegiance Reply at 22.

[545] 47 U.S.C. § 251(f)(1), (2).

[546] Until a competitor requests UNEs, most of the smaller incumbent LECs need to do little other than stand ready to negotiate in good faith. The BOCs and the larger independent incumbent LECs will already have incurred the full cost of developing and providing UNEs where entry has taken place.

[547] 47 U.S.C. § 251(d)(2)(A).

> of access to that element would, as a practical, economic, and operational matter, *preclude* a requesting carrier from providing the services it seeks to offer.[548]

171. In the *Triennial Review NPRM*, the Commission sought comment on whether to change the interpretation of "necessary" that was set forth in the *UNE Remand Order*.[549] We decline to change that interpretation.[550] The D.C. Circuit did not remand to us or vacate the "necessary" standard or instruct us to consider it further.[551] Particularly given how rarely the "necessary" standard is invoked as compared with the "impair" standard (indeed, in this Order we do not analyze any elements under the "necessary" standard), we find no reason to alter course.

D. "At a Minimum"

172. Section 251(d)(2) provides that "the Commission shall consider, *at a minimum*, whether . . . the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."[552] In reviewing our interpretation of that phrase under the *UNE Remand Order*, the D.C. Circuit found no fault with the Commission's determination that this language allows the Commission to consider factors other than those specified in subparagraphs (A) and (B) of section 251(d)(2) when determining whether or not to require unbundling. With regard to the Commission's authority to "consider other elements," the court stated, "[w]e assume in favor of the Commission that that is so."[553] But the court cautioned restraint, recognizing that any use of

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[548] *UNE Remand Order*, 15 FCC Rcd at 3721, para. 44 (emphasis in original). The Commission also set forth a definition of "proprietary," which was not challenged in *USTA v. FCC* and is not at issue in this proceeding. *See id.* at 3716-20, paras. 32-40.

In the *UNE Remand Order*, the Commission only found two instances where an element could be considered proprietary and thus susceptible to unbundling under the necessary standard. The Commission found that Ameritech's routing tables in switches "may be proprietary," *Id.* at 3806, para. 247, but the Commission applied the "impair" standard rather than the "necessary" standard because those routing tables were unlikely to distinguish Ameritech's service from its competitors', and because withholding access to the routing tables would jeopardize competition. *Id.* at 3807, paras. 250-51. The Commission also found that services created in the AIN platform and architecture were "proprietary," but found that they were not "necessary," and therefore did not unbundle them. *See id.* at 3875, para. 402, 3881-82, paras. 418-20.

[549] *See generally Triennial Review NPRM*, 16 FCC Rcd at 22790-91, paras. 18, 21.

[550] *See* ALTS *et al.* Comments at 26-27; Eschelon Comments at 6-7; NuVox Comments at 21.

[551] *See generally USTA*, 290 F.3d at 415.

[552] 47 U.S.C. § 251(d)(2) (emphasis added).

[553] *USTA*, 290 F.3d at 425. The court's discussion was premised on the Commission's determination in the *UNE Remand Order* that additional factors could be used to assess unbundling, whether as a further limitation on unbundling despite the presence of impairment, or as a justification of unbundling in the absence of evident impairment. *UNE Remand Order*, 15 FCC Rcd at 3745, para. 101.

factors in addition to impairment must be reasonably and responsibly tied to the statute. The court stated, "to the extent that the Commission orders access to UNEs in circumstances where there is little or no reason to think that its absence will genuinely impair competition . . . we believe it must point to something a bit more concrete than its belief in the beneficence of the widest unbundling possible."[554]

173. Consistent with the admonition of the courts that we not extend the unbundling obligations more widely than required to fulfill the purposes of the Act, we apply the phrase "at a minimum" in section 251(d)(2) with appropriate restraint. In this Order, we have not required the unbundling of any network element in the absence of impairment. Although we continue to find that section 251(d)(2), by its express terms, permits us to consider, where appropriate, "other" factors closely tied to the purposes of the statute in reaching an unbundling determination,[555] we have not found on this record any other factors that would require unbundling in the absence of impairment. We have, however, used this authority to inform our consideration of unbundling in contexts where some level of impairment may exist, but unbundling appeared likely to undermine important goals of the 1996 Act.[556] Specifically, in our analyses of fiber-to-the-home (FTTH) and hybrid loops, we have considered the goal set forth in section 706 of the Act, that the Commission "shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans,"[557] as well as the

[554] *Id.*

[555] Many commenters urge us to affirm this approach. *See* BellSouth Comments at 26-28; CompTel Comments at 29; GCI Comments at 29; HTBC Comments at 42; NuVox Comments at 33-35; SBC Comments at 11-12, 18, 21-22 (arguing that the Commission should take into account the goals of encouraging facilities-based competition, the deployment of advanced technologies, and protecting competition where it already exists); Verizon Comments at 26; HTBC Reply at 20; Qwest Reply at 18; *see also* UNE Platform Coalition Comments at 24 (urging Commission to take public interest into account in unbundling analysis); SBC Reply at 50 (urging Commission to examine whether unbundling will benefit or harm "competition" in particular circumstances). *But see* AT&T Comments at 41-43 (arguing that the Commission cannot consider whether unbundling would be harmful to competition, and that unbundling necessarily promotes competition and facilities-investment); CompTel Comments at 25 (arguing that the Commission can fully satisfy section 251(d)(2) by considering only "impair"), 26-27 (arguing that consideration of section 706 could only lead the Commission to order unbundling in the absence of impairment), 28-30 (arguing that "at a minimum" can only be used to order unbundling in the absence of impairment).

[556] Thus, we disagree with commenters that suggest that we cannot, consistent with the Act, consider whether unbundling will deter investment or whether unbundling is consistent with the goals of section 706. *See* Allegiance Comments at 11-12; ALTS *et al.* Comments at 29-35; CompTel Comments at 18, 27-28. We do not read section 251 in isolation, but in the larger context of the 1996 Act, including all its expressed purposes such as those contained in section 706. Indeed, the courts require as much. *See Iowa Utils. Bd.*, 525 U.S. at 388 (requiring the Commission "to apply *some* limiting standard, rationally related to the goals of the Act," as it considers "necessary" and "impair") (emphasis in original); *USTA*, 290 F.3d at 425 (urging the Commission to engage in some analysis of the trade-offs between unbundling and investment incentives).

[557] The Act defines "advanced telecommunications capability" "without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology." *Id.* § 157 nt (c)(1). The Commission considers services with upstream and downstream speeds in excess of 200 kbps to display "advanced telecommunications capability." *Third Section 706 Report 2002*, 17 FCC Rcd at 2850, para. 9.

(continued....)

presence of intermodal competition. In sum, we will continue to weigh other factors that may be relevant to a particular unbundling determination, but we will do so with an eye to the specific goals of the Act, as the D.C. Circuit has indicated we may do.

174. We reject arguments that the Commission can only use the "at a minimum" language to decline to unbundle despite impairment in order to remain faithful to the courts' admonitions to find a "limiting standard" for unbundling or that the Commission must decline to unbundle if unbundling would frustrate other Congressional goals.[558] First, we note that Congress did not specify what it meant by "at a minimum"; thus we disagree that the meaning of the phrase is not subject to interpretation. In addition, as explained above, we find that it is reasonable to interpret the phrase to permit the Commission to make unbundling determinations in light of the Act's many and conflicting goals, not just goals that would limit incumbent LECs' unbundling obligations. Finally, section 251(d)(2) does not direct us to unbundle only if all goals of the Act are satisfied by doing so. Rather, we must balance all these goals as we make our unbundling determinations. For similar reasons, we disagree that "at a minimum" can only be used to order unbundling in the absence of impairment.[559]

175. We disagree that the Commission must find, under section 706, that advanced telecommunications capability is not being deployed in a reasonable and timely fashion before it

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Our approach is entirely consistent with section 706 and the language of the Preamble to the 1996 Act, which states that the statute is "[a]n Act [t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Preamble to the 1996 Act. It is also consistent with section 7(a), which states that "[i]t shall be the policy of the United States to encourage the provision of new technologies and services to the public." 47 U.S.C. § 157(a); *see also infra* Part VI.A.4.a.(iv)(b); Covad Comments at 78; FTTH Council Comments at 2-3, 6; HTBC Comments at 43; TIA Comments at 23; USTA Comments at 5; SBC Reply at 51-52.

We disagree that the goals of sections 251 and 706 cannot be balanced because, as several commenters argue, these statutory provisions are aimed at separate and distinct product markets. Likewise, we also disagree that the goals of section 706 can only be encouraged by unbundling. *See* ALTS *et al.* Comments at 31-32; BellSouth Comments at 32; CompTel Comments at 26; McLeodUSA Comments at 5; NuVox Comments at 12-13, 34. *See generally* Allegiance Comments at 14-15; ASCENT Comments at 22-25; Illinois Commerce Commission Comments at 4; Moline Dispatch Publishing Comments at 7; Sprint Comments at 10. Rather, we find that markets covered by section 251 may well overlap with the markets addressed by section 706. And, as explained above, unbundling may not always promote the goals of section 706.

[558] *See* SBC Comments at 11 n.16; Verizon Comments at 26; Qwest Reply at 18-20; Verizon Reply at 45, 47-50. *But see* Minnesota Department of Commerce Reply at 6 (questioning why Commission would impose a higher standard for unbundling than "necessary" and "impair" now when capital markets are restricted).

[559] *See, e.g.*, ALTS *et al.* Comments at 35-36; CompTel Comments at 29-30; UNE Platform Coalition Comments at 21-23; WorldCom Comments at 52. Contrary to the views of AT&T, we find that unbundling where there is no impairment does not promote competition without any costs, even if new entrants "prefer" to use their own facilities where possible. *See* AT&T Comments at 46-47. Rather, as explained above, unbundling has administrative and social costs that the courts have cautioned us to consider carefully, and we cannot simply hope that competitors will choose to use their own facilities rather than UNEs. *See supra* Part V.B.

can take section 706 into account in its unbundling analysis.[560] Rather, as explained above, we find that the "at a minimum" language permits us to take many goals into account, including those expressed in section 706. While the Commission may have found that the goals of section 706 are being met on a reasonable and timely basis, that does not preclude us from taking measures to ensure that that continues to be the case or to accelerate the achievement of those goals.

176. We also reject parties' arguments that taking other goals into account, such as the Act's goals in section 706, amounts to forbearance under section 10(d), which is prohibited unless section 251(c) has been "fully implemented."[561] We are not "forbearing"; rather we are applying section 251(d)(2) to determine where unbundling serves the goals of the Act.[562] Contrary to arguments otherwise,[563] our approach is fully consistent with the *Advanced Services Order*, where we concluded that "section 706(a) directs the Commission to use the authority granted in other provisions . . . to encourage the deployment of advanced services,"[564] and with *ASCENT v. FCC*, where the D.C. Circuit admonished the Commission for the equivalent of forbearing from section 251(c).[565] The Commission has not proposed to relax in any way the requirements of section 251(c)(3), which establishes "'*where* unbundled access must occur, not *which* [network] elements must be unbundled.'"[566] Rather, we take section 706 into account in interpreting and applying section 251(d)(2), a separate provision. Indeed, section 251(d)(2), particularly the "at a minimum" clause, grants us all the authority we need to take Congress's goals into account as we decide "*which* [network] elements must be unbundled.'"[567] We do not need any "authority" from section 706(a) to take this approach.

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[560] *See* Consumer Federation *et al.* Comments at 20-21.

[561] *See* CompTel Comments at 19. *See generally* Allegiance Comments at 13; AT&T Comments at 87.

[562] Likewise, because we use section 706 as an "at a minimum" consideration as described above, we need not visit the question of whether we can or should forbear from section 251. *See* HTBC Comments at 45-47 (arguing that the Commission should forbear from unbundling broadband facilities, and that section 251 is "fully implemented" because incumbent LECs are subject to intermodal competition for broadband services); Progress & Freedom Foundation Comments at 34 (arguing that a grant of section 271 authority means that section 251 is "fully implemented" in that state); TIA Comments at 23-24. *But see* WorldCom Reply at 37-38.

[563] *See* AT&T Comments at 86.

[564] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-15, 98-78, 98-91, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24012, 24045, para. 69 (1998) (*Advanced Services Order*); *see also id.* at 24046, para. 74 ("[S]ection 706(a) gives this Commission an affirmative obligation to encourage the deployment of advanced services, relying on our authority established elsewhere in the Act.").

[565] *ASCENT v. FCC*, 235 F.3d 662, 666 (D.C. Cir. 2001).

[566] *Iowa Utils. Bd.*, 525 U.S. at 391 (quoting *Iowa Utils. Bd v. FCC.*, 120 F.3d at 810) (emphasis in 8th Circuit opinion, bracketed language inserted in Supreme Court opinion).

[567] *Id.*

177. We also disagree that section 706's direction to use measures that "promote competition in the local telecommunications market" means that the Commission cannot read section 706 to limit any unbundling obligations.[568] To the contrary, as explained above, the "at a minimum" language of section 251(d)(2) expressly contemplates that the Commission will take other factors into account, and we find that the explicit goals of the Act such as those contained in section 706 most likely reflect Congress's intent for what we should take into account. And in any event, we find in neither section 706 nor section 251 a direction that one provision always "trumps" the other; through our approach we seek balance between them both.

178. Also regarding section 706, we note that the discussions below of individual UNEs address the role that investment incentives play in our unbundling determination. Parties have taken widely divergent views throughout this proceeding on the question of whether mandatory unbundling obligations promote or deter investment in new infrastructure.[569] In general, the incumbent LECs and equipment manufacturers take the position that unbundling deters both incumbent LEC and competitive LEC capital investment.[570] The competitive industry criticizes the incumbent LEC studies as incomplete, skewed and inaccurate.[571] In contrast, the competitive industry advances its own studies that ascertain that certain unbundling

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[568] *See* AT&T Comments at 85.

[569] We address arguments concerning specific UNEs in the relevant sections. *See infra* Parts VI.A. and VI.D.

[570] *See, e.g.*, ACS Comments at 6-7; Alcatel Comments at 6-11; BellSouth Comments at 71-72; California Commission Comments at 8-10; GSA Comments at 11-12; Maine CLEC Coalition Comments at 4-6; Progress & Freedom Foundation Comments at 9-31, Attach., *Investment Incentives and Local Competition at the FCC*, Media Law & Policy, IX, 1, 1-18, Larry F. Darby and Joseph Fuhr; Ohio Commission Comments at 16; Qwest Comments at 14-16; Verizon Comments at 27-29, 34-36; ACS Reply at 6-8; AT&T Reply at paras. 126-36, 339-43; El Paso and CTC Reply at 11-16; Progress & Freedom Foundation Reply at 3; Qwest Reply at 13-15 and Attach. A, Declaration of Joseph Farrell at para. 5; SBC Reply at 22-45; *see Stimulating Investment and the Telecommunications Act of 1996*, Robert D. Willig, et. al. (AT&T Oct. 11, 2002 Willig Stimulating Investment) at 5, *in* Letter from Joan Marsh, Director, Government Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Oct. 11, 2002) (AT&T Oct. 11, 2002 *Ex Parte* Letter); Letter from Debbie Goldman, Research Economist, CWA, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1-4 (filed Jan. 14, 2003) (CWA Jan. 14, 2003 *Ex Parte* Letter).

[571] AT&T Reply at paras. 346-59; El Paso and CTC Reply at 16-23; Letter from Joan Marsh, Director – Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach., C. Michael Pfau, *Correcting the RBOCs' Empirical Analysis of the Linkage Between UNE-P and Investment* (AT&T Correcting) at 12, 14 (filed Oct. 16, 2002) (AT&T Oct. 16, 2002 *Ex Parte* Letter); Letter from Christopher J. Wright, Counsel for Z-Tel, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Nov. 7, 2002) (Z-Tel Nov. 7, 2002 *Ex Parte* Letter); Letter from Marc Goldman, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 13 (filed Nov. 13, 2002) (WorldCom Nov. 13, 2002 *Ex Parte* Letter); Letter from Kimberly Scardino, Senior Counsel, WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Nov. 27, 2002) (WorldCom Nov. 27, 2002 *Ex Parte* Letter); Letter from David R. Conn, Deputy General Counsel, McLeodUSA, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1-6 (filed Jan. 8, 2003) (McLeodUSA Jan. 8, 2003 *Ex Parte* Letter); Letter from David R. Conn, Deputy General Counsel, McLeodUSA, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1-4 (filed Jan. 17, 2003) (McLeodUSA Jan. 17, 2003 *Ex Parte* Letter).

obligations do not hinder, but rather encourage incumbent LECs to make capital investments to modernize their networks and deploy new services to meet increasing competition.[572] In addition, competitors assert that they make capital investments where such investments are economically rational and use UNEs elsewhere; that is, they contend that the availability of UNEs does not detract from competitive LECs deploying their own networks.[573] The incumbent LECs, in turn, challenge the competitive LEC studies as flawed and unreliable.[574] The evidence submitted by both sides is inconclusive. The economic studies presented by each side suffer from flaws that undermine their probative value. Studies submitted by the incumbent LECs are generally simple correlation models or state-to-state comparisons lacking adequate efforts to control for or explain other relevant variables.[575] Studies submitted by the competitive LECs

[572] AT&T Willig Decl.; Letter from Michael J. Hunseder, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed June 28, 2002) (AT&T June 28, 2002 *Ex Parte* Letter); *Innovation, Investment, and Unbundling: An Empirical Update*, Robert B. Ekelund, and George S. Ford, (Z-Tel Innovation) at 5, *in* Letter from Christopher J. Wright, Counsel for Z-Tel, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, (filed Oct. 7, 2002) (Z-Tel Oct. 7, 2002 *Ex Parte* Letter); AT&T Willig Stimulating Investment at 1-7, 28-39.

[573] AT&T Comments at 44-65; CompTel Comments at 78-82, Declaration of James N. Perry at paras. 9-24; CompTel Comments, Declaration of John Hunt at paras. 1-11; Dynegy Comments at 4-7; Eschelon Comments at 10-15; GCI Comments at 33-41; Indiana Commission Comments at 8-9; Moline and CCG Comments at 6-8; WorldCom Comments, Attach. A, *The Technology and Economics of Cross-Platform Competition In Local Telecommunications Markets*, Richard A. Chandler, A. Daniel Kelley, and David M. Nugent, HAI Consulting, Inc. (WorldCom Technology and Economics) at 88; Sprint Reply at 14-16; WorldCom Kelley Reply Decl. at 13; Z-Tel Reply at 74-90; Letter from Christopher J. Wright, Counsel for Z-Tel, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach., *Unbundling and Facilities-Based Entry by CLECs: Two Empirical Tests*, George S. Ford and Michael D. Pelcovits (Z-Tel Unbundling), at 2, and Attach. *Preliminary Evidence on the Demand for Unbundled Elements*, Robert B. Ekelund, and George S. Ford, at 2 (filed Oct. 7, 2002) (Z-Tel Oct. 7, 2002 Unbundling *Ex Parte* Letter); Letter from Genevieve Morelli, Counsel for CompTel, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1, 96-97 (filed Oct. 31, 2002) (CompTel and PACE Oct. 31, 2002 *Ex Parte* Letter); WorldCom Nov. 13, 2002 *Ex Parte* Letter at 11; Letter from Phil Marchesiello, Co-Chairman, The Official Committee of Unsecured Creditors of WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Jan. 30, 2003) (WorldCom Unsecured Creditors Jan. 30, 2003 *Ex Parte* Letter). Eschelon states that small competitive LECs like itself serving small enterprise customers are also encouraged investment in their own networks where UNEs are available to fill in service territories. Eschelon Comments at 11.

[574] BellSouth Reply at 60-61; BOC Shelanski Decl. at paras. 4-12; SBC Reply at 3-16; Verizon Nov. 18, 2002 *Ex Parte* Letter at 1-7.

[575] BOC Shelanski Decl. at 22. Verizon Reply, Appendix 2, *UNE-P and Investment*, Prepared for BellSouth, SBC, and Verizon, July 2002, (Verizon Unbundled Switching Study). The study consisted of a univariate regression, which AT&T characterizes as a correlation study. AT&T Oct. 15, 2002 *Ex Parte* Letter at 12, 14. AT&T notes that only two cable companies are significantly implementing cable telephony and they do not have franchises in New York, so any comparison between California and New York cable telephony is unsound. Also, the E-911 database used to estimate competitive LEC access lines can only provide an upper bound to competitive access lines and closer to 9.7 to 9.9 million lines as opposed to the 16.4 million lines used by the BOCs in their analysis. The study supposedly showing how high level of UNE-P equates to low facilities-based competitive LEC access lines simply plots competitive LEC facilities-based access lines against competitive LEC UNE-P lines but does not include all states. Pfau duplicates the calculation but includes all states demonstrating that there is no depression of investment. (continued....)

include multiple regression models, but their conclusions relate more to particular market strategies of some competitive LECs rather than the effect on competitive services that would be provided under an alternate unbundling obligation. Neither the overall levels of competitive LEC activity nor the not insubstantial costs associated with unbundling were generally addressed by either the competitive LECs or the incumbent LECs.[576] That said, we return to these issues in more detail in the specific unbundling sections below.

E. Role of the States

1. Background

179. Sections 201(b) and 251(d)(1) of the Act authorize and direct the Commission to establish rules to implement the network unbundling requirements of section 251(c)(3) and 251(d)(2) of the 1996 Act. Section 201(b) provides that "[t]he Commission may prescribe such

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Pfau also claims the BOCs significantly overstated the number of AT&T competitive LEC switches in California and New York by confusing local from long distance tandem switches. AT&T Pfau Correcting at 3-9.

[576] AT&T Willig Decl. The study was a multivariate regression between UNE pricing and incumbent LEC investment. It is methodologically suspect to use investment divided by state population as opposed to the more direct BOC measure of dividing by access lines: BOC access lines as a percentage of state population vary significantly. The author's independent variables of UNE rates, average revenue per access line and the incumbent LEC cost of investment are not well explained, subject to significant errors, and appear suspect lacking significant additional explanation. It is unclear if the error terms are robust, *i.e.*, heteroskedasticity-corrected, standard errors; if not, then conclusions about statistical significance could be inaccurate. The author's attributing the lack of significance in many of the variables to simply "noise" cannot be accepted without stronger justification. The competitive LEC access line data may significantly understate actual levels of competition as the data excludes competitive LECs with less than 10,000 access lines in a state. Willig expanded his analysis in AT&T Willig Stimulating Investment, but the essential analysis is unchanged. AT&T Willig Stimulating Investment. In WorldCom Technology and Economics, the authors do not provide an econometric model, but simply view the gross incumbent LEC investment since the 1996 Act and assert that this proves unbundling does not deter incumbent LEC investment. *See* WorldCom Technology and Economics at 88. Such a simple and gross comparison fails to take into account any other possible variables that might explain the investment pattern. Such a gross comparison cannot be given significant weight. *Id.* at 96-97. In Z-Tel Unbundling and in Z-Tel Preliminary Evidence, the two studies use multivariate econometric analysis and demonstrate that there is a downward sloping demand curve for UNE-P: as prices increase quantity demanded of UNEs by competitive LECs decrease. It is difficult to criticize the almost universal economic truism illuminated in the results, but whatever the validity of the results, they do not demonstrate what effect reducing availability of network elements would have on investment. The studies might be more persuasive if the authors attempted to extend their analysis to the direct matter of investment. In Z-Tel Innovation, the study attempts to estimate the market risks of incumbent LECs to determine if the cost of raising capital investigates changed with the introduction of unbundling obligations. The authors concluded that, despite the economic downturn in recent years, the risk of borrowing money for capital spending had not increased. They conclude that unbundling has therefore not decreased incumbent LECs investment. The effect of the decrease in value of incumbent LEC's stock value was not addressed. Even given the results, this study does not address whether or to what extent investment is changed by unbundling obligations, simply concluding that the risk associated with incumbent LECs borrowing funds had not increased in recent years.

rules and regulations as may be necessary in the public interest to carry out the provisions of this Act."[577] Section 251(d)(1) provides:

> Within six months of the date of enactment of the Telecommunications Act of 1996, the Commission shall complete all action necessary to establish regulations to implement the requirements of this section.[578]

Section 251(d)(2) directs the Commission to perform the "necessary and impair" analysis required to determine what network elements should be made available.[579]

180. The 1996 Act also preserves the states'[580] authority to establish unbundling regulations pursuant to state law as long as the exercise of state authority does not conflict with the Act and its purposes or substantially prevent the Commission's implementation. Section 251(d)(3) requires that, in prescribing and enforcing its regulations to implement the requirements of section 251 –

> the Commission shall not preclude the enforcement of any regulation, order, or policy of a State Commission that –
>
> (A) establishes access and interconnection obligations of local exchange carriers;
> (B) is consistent with the requirements of this section; and
> (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.[581]

Section 252(e)(3) preserves the state's authority in its review of interconnection agreements:

> Notwithstanding paragraph (2), but subject to section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.[582]

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[577] 47 U.S.C. § 201(b).

[578] *Id.* § 251(d)(1).

[579] *Id.* § 251(d)(2).

[580] For purposes of this Order, the term "state" includes the District of Columbia and the Territories and possessions, as defined in section 3(40) of the Act. *Id.* § 153(40).

[581] *Id.* § 251(d)(3).

[582] *Id.* § 252(e)(3).

Sections 261(b) and (c) generally preserve state authority to take action pursuant to state law, provided that such action is consistent with the Act and our federal framework.[583]

181. In the *Local Competition Order,* the Commission identified a national minimum list of UNEs that incumbent LECs must make available to new entrants upon request, as required by section 251(d)(2).[584] The Commission delegated to the states the authority to apply section 251(d)(2) – and the Commission's interpretation of that provision's "necessary" and "impair" standards – to require incumbent LECs to make available to new entrants additional network elements beyond those that the Commission identified in its minimum national list.[585]

182. The Supreme Court upheld the Commission's authority to implement the local competition provisions of the 1996 Act, including the unbundling requirements of section 251, in *AT&T Corp. v. Iowa Utilities Board.*[586] The Court found that Congress granted the Commission full authority to regulate with respect to matters addressed by the 1996 Act, even though, in doing so, Congress had "taken the regulation of local telecommunications competition away from the States."[587]

183. In the *UNE Remand Order,*[588] the Commission revisited its unbundling requirements in light of the Supreme Court's remand. In doing so, the Commission, among other things, stated that the source of authority relied upon for Rule 317 in the *Local Competition Order* was section 252(e)(3), which preserves a state's authority under state law when reviewing interconnection agreements.[589] The Commission amended Rule 317 in order to incorporate a revised "necessary" and "impair" standard into that rule.[590] The Commission also modified the

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[583] *Id.* §§ 261(b), (c).

[584] *Local Competition Order,* 11 FCC Rcd 15499.

[585] *Local Competition Order,* 11 FCC Rcd at 15641-42, paras. 281-82; *see also* 47 C.F.R. § 51.317(a) and (b) (1996). Original rule 317 provided that, when faced with a request for additional *federal* unbundling beyond that required by the Commission's minimum list, the state could "*decline* to require unbundling of the network element *only if*" that network element did not satisfy the applicable "necessary" or "impair" test. 47 C.F.R. § 51.317(b)(emphasis added).

[586] 525 U.S. 366. No party challenged the Commission's conclusion that it could authorize the states to apply those standards to require unbundling of additional network elements under federal law. However, the Supreme Court held that the Commission had not properly construed the "necessary" and "impair" standards of section 251(d)(2) and remanded to the Commission for further proceedings consistent with its opinion. *Id.* at 397. Following the Supreme Court's decision, the Eighth Circuit vacated Rule 317 because the rule incorporated the Commission's faulty construction of "necessary" and "impair" in its instructions to the states. *Iowa Utils. Bd. v. FCC,* 219 F.3d at 757.

[587] *Iowa Utils. Bd.*, 525 U.S. at 378 n.6.

[588] *UNE Remand Order*, 15 FCC Rcd 3696.

[589] *Id.* at 3762, para. 145 and nn. 249-50.

[590] *Id.* at 3767-68, para. 155.

language addressing state action with respect to additional unbundling requirements in two respects. First, the Commission's new language provided that "[a] state must comply with the standards set forth in this §51.317 when considering whether to require the unbundling of additional elements."[591] Second, the Commission rules provided that a state could not remove a network element from the national UNE list, but that the state could remove a network element that the state itself had added "in accordance with the requirements of this rule."[592] The Commission described the authority to be exercised by states under new Rule 317 as state law authority preserved by section 251(d)(3) of the Act, which preserves such authority regarding network elements to the extent that it is consistent with section 251 requirements and does not substantially prevent implementation of federal law.[593]

184. In *United States Telecom Ass'n v. FCC,*[594] the D.C. Circuit reversed the revised construction and application of section 251(d)(2) that the Commission had adopted in the *UNE Remand Order*. Among other things, the Court found fault with the Commission's adoption of a "uniform national rule" that mandated provision of unbundled access to most network elements throughout the country.[595] The court held that section 251(d)(2) required "a more nuanced concept of impairment" that took into account possible variations in impairment in different geographic and customer markets.

185. In the *Notice*, we sought comment on the proper role of state commissions in the implementation of unbundling requirements for incumbent LECs in light of the changes that have occurred since the initial implementation of the 1996 Act. Specifically, we sought comment on the extent to which state commissions can create, remove, and implement unbundling requirements and the statutory provisions that would provide authority to states to act, consistent with applicable limitations on delegations of authority to the states.[596]

2. Discussion

186. The Communications Act assigns the Commission the responsibility for establishing a framework to implement the unbundling requirements of section 251(d)(2). In this Order, we create rules for UNEs based on our new impairment standard and marketplace developments over the past three years. We are cognizant of the concern expressed by the court in *USTA* that our prior rules were not narrowly-tailored enough. We recognize that competition has evolved at a different pace in different geographic markets and for different market segments. Thus, to ensure that the proper degree of unbundling occurs, we rely, in certain

[591] 47 C.F.R. § 51.317(b)(4).

[592] *Id.*

[593] *UNE Remand Order,* 15 FCC Rcd at 3768, paras. 156-57.

[594] 290 F.3d at 415.

[595] *USTA,* 290 F.3d at 422.

[596] *Triennial Review NPRM,* 16 FCC Rcd at 22815-16, paras. 75-76.

instances when such analysis is necessary, on market-by-market fact-finding determinations made by the states. While we delegate to the states a role in the implementation of our federal unbundling requirements for certain network elements that require this more granular approach, we make clear that any action taken by the states pursuant to this delegated authority must be in conformance with the Act and the regulations we set forth herein. We find further that the 1996 Act preserved the states authority to prescribe access obligations pursuant to state law in section 251(d)(3), but only to the extent that state laws or regulations do not conflict with or frustrate the Act and its purposes or substantially prevent the federal implementation regime. In short, the statute allows states to continue to exercise federal authority delegated by this Commission or state authority that is consistent with and does not substantially prevent implementation of the federal regime.

a. Federal Authority and the Role of the States

187. As we explain in this Order, we conclude that a more targeted, granular unbundling analysis is needed in light of the lessons learned over the last three years. To achieve the successful implementation of our new framework, we have examined what role the states should play.[597] The policy framework we adopt in this Order is based on carefully targeted impairment determinations. Where appropriate, based on the record before us, we adopt uniform rules that specify the network elements that must be unbundled by incumbent LECs in all markets and the network elements that must not be unbundled, in any market, pursuant to federal law. In doing so, we exercise our authority pursuant to sections 201(b) and 251(d) of the Act. As we explain in this Order, we find that setting a national policy for unbundling some network elements is necessary to send proper investment signals to market participants and to provide certainty to requesting carriers, including small entities. We find that states do not have plenary authority under federal law to create, modify or eliminate unbundling obligations.

188. The record before us and the D.C. Circuit's emphasis in *USTA* on granularity in making unbundling determinations both lead us to conclude that asking states to take on some fact finding responsibilities would be the most reasonable way to implement the statutory goals for certain network elements.[598] We find that giving the state this role is most appropriate where,

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[597] As the Commission stated in 1996, if, upon review, decision-making responsibilities have been inefficiently or inappropriately allocated between the Commission and the states, the Commission will reallocate them. *Local Competition Order*, 11 FCC Rcd at 15520, para. 41. Many state commissions urge the Commission to convene a Federal/State Joint Conference on unbundling requirements pursuant to section 410(b) of the 1996 Act before promulgating new rules. NARUC Comments at 4-5; Michigan Commission Comments at 5-6; Illinois Commission Comments at 3; *see also* CompTel Nov. 26, 2001 Joint Conference Petition. Others oppose the Federal/State Joint Conference proposal as superfluous and creating delay in resolution of the issues. ALTS *et al.* Comments at 132-33; Pennsylvania Commission Comments at 3-4 n.7; BellSouth Comments at 112. In light of our responsibilities under the Act to implement the unbundling obligations as well as the D.C. Circuit Court's decision in *USTA*, we find it imperative to move forward to adopt new rules without reference to a Joint Conference and we therefore deny that portion of the CompTel Petition.

[598] *See infra* Part VI. A number of state commissions have urged the Commission to take advantage of their knowledge of local market conditions. *See* Michigan Commission Comments at 4-6; Florida Commission Reply at 2-3; Georgia Commission Comments at 3-4; Massachusetts Department Comments at 5-8. Competitive LECs have (continued....)

in our judgment, the record before us does not contain sufficiently granular information and the states are better positioned than we are to gather and assess the necessary information. A more granular analysis will also benefit small businesses by considering the differing levels of competition in rural and urban markets and the differing needs and resources of carriers serving mass market and small to medium business customers.[599] We conclude that we have the authority to delegate to the states some of our authority pursuant to section 251(d)(2). Express statutory authority is not required for an agency validly to delegate functions to another entity or sovereign.[600] Moreover, neither section 251(d)(2) nor any other provision of the 1996 Act prohibits delegation of the Commission's authority to "determine what network elements must be made available."[601] Incumbent LECs argue that the Commission may not "punt" unbundling decisions to the states.[602] They argue that, in those instances where impairment analysis requires a more granular approach, the Commission should establish "objective, carefully defined criteria for determining where unbundling is (and is not) appropriate."[603] We find that, provided our delegation to the states is consistent with applicable federal law and is undertaken in a way that is reasonably designed to ensure that the substantive function at issue will be performed consistently with the statute's substantive standards, we are in no way "punting" decisions to the states.[604] Rather, we are reasonably implementing the statute, particularly given that states may be in the best position to judge whether the Act's extraordinary unbundling remedies should be applied.

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made similar proposals. *See* AT&T Comments at 246-50; Letter from Heather B. Gold, Principle, KDW Group (for Broadview, Talk America, and Eschelon), to Marlene H. Dortch, Secretary, FCC, CC Docket 01-338, Attach. 1 (filed Dec. 31, 2002) (KDW Dec. 31, 2002 *Ex Parte* Letter). Some competitive carriers petitioned the Commission to adopt procedures that provide state public utility commissions with authority to determine which network elements should be unbundled in their states. *See* Promoting Active Competition Everywhere (PACE) Coalition Petition, CC Docket Nos. 01-338, 96-98, 98-147 (filed Feb. 6, 2002) (PACE Feb. 6, 2002 Petition). In light of our decision in this Order to delegate some of our unbundling authority to the states in appropriate circumstances, we dismiss the PACE petition as moot.

[599] *See* Eschelon Comments at 6, 8.

[600] *See, e.g., Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U.S. 111, 121-22 (1947); *Tabor v. Joint Board For Enrollment of Actuaries,* 566 F.2d 705, 708 n.5 (D.C. Cir. 1977); *Assiniboine and Sioux Tribes v. Board of Oil and Gas Conservation,* 792 F.2d 782, 795-96 (9th Cir. 1986).

[601] *See* 47 U.S.C. § 251(d)(2).

[602] Letter from Herschel L. Abbott, Jr., Vice President – Government Affairs, BellSouth *et al.*, to Michael K. Powell, Chairman, FCC at 2, *in* Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Nov. 19, 2002) (RBOC Joint Nov. 19, 2002 *Ex Parte* Letter).

[603] RBOC Joint Nov. 19, 2002 *Ex Parte* Letter at 4.

[604] *See Vierra v. Rubin*, 915 F.2d 1372, 1378 (9th Cir. 1990) (a state's authority to define a federal statutory term may not exceed the statutory authority given the federal agency by Congress in the first place); *see also Assiniboine and Sioux Tribe v. Board of Oil and Gas Conservation,* 792 F.2d at 795-96; *Nat'l. Park and Conservation Ass'n v. Stanton,* 54 F. Supp. 2d 7, 19 (D.D.C. 1999).

189. We find that a delegation to the states with standards from the Commission will best ensure that our unbundling decisions are implemented consistently with the Act's purposes. We find this approach is consistent with the Supreme Court's view that the state commissions' participation in the "new federal regime" should be "guided by federal-agency regulations."[605] We limit the states' delegated authority to the specific areas and network elements identified in this Order. To ensure that the states implement their delegated authority in the same carefully targeted manner as our federal determinations, we set forth in this Order federal guidelines to be applied by the states in the execution of their authority pursuant to federal law.

190. We delegate to the states our authority under section 251(d)(2) to undertake analyses set forth in this Order which will affect incumbent LECs' unbundling obligations for certain elements in particular areas in this Order. There can be no doubt that state commissions possess the ability and the competence to undertake such analyses for specific network elements successfully. Moreover, for the elements we have specified, state commissions are well situated to conduct the granular analysis required. If a state commission fails to perform the granular inquiry we delegate to them, any aggrieved party may petition this Commission to step into the state's role. Any party seeking Commission review of a state commission's failure to act shall file a petition with this Commission that explains with specificity the bases for the petition and information that supports the claim that the state has failed to act. The Commission will issue a public notice seeking comment on the petition and rule on the petition within ninety days from this public notice. If the Commission agrees that the state has failed to act, it will assume responsibility for the proceeding and make any findings in accordance with the rules set forth herein. These findings will be made nine months from the time the Commission has assumed responsibility for the proceeding.[606]

b. State Authority

191. Section 252(e)(3) preserves the states' authority to establish or enforce requirements of state law in their review of interconnection agreements. Section 251(d)(3) of the 1996 Act preserves the states' authority to establish unbundling requirements pursuant to state law to the extent that the exercise of state authority does not conflict with the Act and its purposes or our implementing regulations.[607] Many states have exercised their authority under state law to add network elements to the national list.[608]

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[605] *Iowa Utils. Bd.*, 525 U.S. at 378 n.6. We do not agree that the Court meant to suggest that states had no role to play, as some have argued. *See* SBC Comments at 42.

[606] In the case of switches used to serve customers in the enterprise market at the DS1 capacity and above, however, the Commission will issue its findings within 90 days from the time it has assumed responsibility for the proceeding. *See infra* Part VI.D.5.

[607] *See* 47 U.S.C. § 251(d)(3).

[608] *See, e.g.*, NARUC Comments at 8-9.

192. We do not agree with incumbent LECs that argue that the states are preempted from regulating in this area as a matter of law.[609] If Congress intended to preempt the field, Congress would not have included section 251(d)(3) in the 1996 Act. We likewise do not agree with those that argue that the states may impose any unbundling framework they deem proper under state law, without regard to the federal regime.[610] These commenters overlook the specific restraints on state action taken pursuant to state law embodied in section 251(d)(3), and the general restraints on state actions found in sections 261(b) and (c) of the Act.[611] Their arguments similarly ignore long-standing federal preemption principles that establish a federal agency's authority to preclude state action if the agency, in adopting its federal policy, determines that state actions would thwart that policy.[612] Under these principles, states would be precluded from

[609] *See, e.g.*, SBC Comments at 40-42; Verizon Comments at 65-66; RBOC Joint Nov. 19, 2002 *Ex Parte* Letter. *Cf. Iowa Utils. Bd.*, 525 U.S. 366 (rejecting incumbent LECs' assertions that the states, not the Commission, have authority to adopt rules to implement the local competition provisions of the 1996 Act).

[610] *See* NARUC Comments at 10 (urging the Commission "to defer to State determinations of whether unbundling requirements in any State should collapse to the existing or new federal minimums."); *see also* Z-Tel Comments at 89-90; AT&T Reply at 374-75; *see also* Letter from Edward A. Yorkgitis, Jr., Counsel for Talk America, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Nov. 15, 2002) (Talk America Nov. 15, 2002 Role of States *Ex Parte* Letter); AT&T Nov. 13, 2002 *Ex Parte* Letter at 4 (asserting that "section 251(d)(3) expressly bars the Commission from adopting regulations that preclude enforcement of State unbundling requirements that are in *addition* to those that the Commission adopts.").

[611] Z-Tel and Talk America argue that the Eighth Circuit has already found that section 251(d)(3) "constrains the FCC's authority" to preempt state access and interconnection obligations. Talk America Nov. 15, 2002 Role of States *Ex Parte* Letter at 2; Z-Tel Comments at 87-88, citing *Iowa Utils. Bd. v. FCC*, 120 F.3d. at 806-07. Z-Tel maintains that, in light of the Eighth Circuit's holding, the Commission should not attempt, in advance, to limit the state commissions' authority to create unbundling requirements but should conduct a separate adjudicative proceeding if an incumbent LEC seeks to preempt state unbundling requirements. Z-Tel Comments at 89. The Eighth Circuit found that the scope of federal rulemaking authority under section 251 of the 1996 Act was limited to six specific areas and interpreted section 251(d)(3) as a further constraint on Commission authority. *Iowa Utils. Bd. v. FCC*, 120 F.3d at 806. The Supreme Court reversed with respect to the scope of federal rulemaking authority in *Iowa Utilities Board*. The Commission did not appeal the Eighth Circuit's holding with respect to section 251(d)(3). That portion of the Eighth Circuit's opinion reinforces the language of the section, *i.e.*, that state interconnection and access regulations must "substantially prevent" the implementation of the federal regime to be precluded and that "merely an inconsistency" between a state regulation and a Commission regulation was not sufficient for Commission preemption under section 251(d)(3). *Id.* We believe our decision properly balances the broad authority granted to the Commission by the 1996 Act with the role preserved for the states in section 251(d)(3) and is fully consistent with the Eighth Circuit's interpretation of that provision.

[612] *See, e.g., Geier v. American Honda Motor Co.*, 529 U.S. 861, 873 (2000) (where state law frustrates the purposes and objectives of Congress, conflicting state law is "nullified" by the Supremacy Clause); *City of New York v. FCC*, 486 U.S. 57, 64 (1988); *see also Iowa Utils. Bd.*, 525 U.S. at 381 n.7 (the Court opined that, after the 1996 Act, the limitation on the Commission taking intrastate action embodied in section 152(b) of the Communications Act "may have less practical effect . . . because Congress, by extending the Communications Act into local competition, has removed a significant area from States' exclusive control.").

enacting or maintaining a regulation or law pursuant to state authority that thwarts or frustrates the federal regime adopted in this Order.[613]

193. Based on the plain language of the statute, we conclude that the state authority preserved by section 251(d)(3) is limited to state unbundling actions that are consistent with the requirements of section 251 *and* do not "substantially prevent" the implementation of the federal regulatory regime.[614] We disagree with those commenters that maintain that, because we have permitted states to add UNEs to our national list in the past, we cannot limit their ability to continue to do so.[615] Their argument ignores the clear directives Congress provided in the 1996 Act. Section 251(d)(3) preserves states' authority to impose unbundling obligations but only if their action is consistent with the Act and does not substantially prevent the implementation of our federal regime. Their argument also ignores the fact that prior Commission actions clearly had preemptive effect; as noted above, in the *UNE Remand Order*, the Commission prohibited the states from removing UNEs from the federally mandated list.

194. We also find that state action, whether taken in the course of a rulemaking or during the review of an interconnection agreement, is limited by the restraints imposed by subsections 251(d)(3)(B) and (C). We are not persuaded by AT&T's argument that a state commission may impose additional unbundling obligations in the context of its review of an interconnection agreement without regard to the federal scheme.[616] Section 252(e)(3) provides that nothing *in section 252* prohibits a state commission from imposing additional requirements of state law in its review of an interconnection agreement.[617] We find nothing in the language of

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[613] *Fidelity Federal Savings & Loan Assoc. v. de la Cuesta*, 458 U.S. 141, 154 (1982) ("A pre-emptive regulation's force does not depend on express congressional authorization to displace state law"); *City of New York v. FCC*, 486 U.S. 57, 64 (1988) ("The statutorily authorized regulations of an agency will pre-empt any state or local law that conflicts with such regulations or frustrates the purposes thereof."). Even where Congress has preserved some role for the states the Supreme Court has found that "state law is nullified to the extent that it actually conflicts with federal law." *Fidelity Federal Savings & Loan Assoc. v. de la Cuesta,* 458 U.S. at 154. The Court stated that such a "conflict" arises ". . . when state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,' *Hines v. Davidowitz,* 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941)." *Id.*

[614] We find that Congress' reference to the "implementation of the requirements of this section" in section 251(d)(3)(C) means the Commission's section 251 implementing regulations. AT&T's argument that the validity of state unbundling regulations must be measured solely against the Act's purposes fails to recognize that the Commission is charged with implementing the Act and its purposes are fully consistent with the Act's purposes. *See* AT&T Nov. 13, 2002 *Ex Parte* Letter at 6; Letter from Mark Rosenblum, Vice President – Law, AT&T, to Michael K. Powell, Chairman, FCC, *et al.*, CC Docket No. 01-338 at 7, *in* Letter from Joan Marsh, Director, Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Dec. 18, 2002) (AT&T Dec. 18, 2002 Rosenblum *Ex Parte* Letter).

[615] *See* California Commission Comments at 23; New York Department Comments at 8-9; NARUC Comments at 6; Florida Commission Comments at 5-6; AT&T Reply at 373-75; Letter from Access Integrated Networks *et al.*, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2-3 (filed Oct. 24, 2002) (Access Integrated Networks Oct. 24, 2002 *Ex Parte* Letter).

[616] *See* AT&T Dec. 18, 2002 Rosenblum *Ex Parte* Letter at 9.

[617] *See* 47 U.S.C. § 252(e)(3).

section 251(d)(3) to limit its application to state rulemaking actions. Therefore, we find that the most reasonable interpretation of Congress' intent in enacting sections 251 and 252 to be that state action, whether taken in the course of a rulemaking or during the review of an interconnection agreement, must be consistent with section 251 and must not "substantially prevent" its implementation.

195. Parties that believe that a particular state unbundling obligation is inconsistent with the limits of section 251(d)(3)(B) and (C) may seek a declaratory ruling from this Commission. If a decision pursuant to state law were to require the unbundling of a network element for which the Commission has either found no impairment – and thus has found that unbundling that element would conflict with the limits in section 251(d)(2) – or otherwise declined to require unbundling on a national basis, we believe it unlikely that such decision would fail to conflict with and "substantially prevent" implementation of the federal regime, in violation of section 251(d)(3)(C). Similarly, we recognize that in at least some instances existing state requirements will not be consistent with our new framework and may frustrate its implementation. It will be necessary in those instances for the subject states to amend their rules and to alter their decisions to conform to our rules.

196. We find that our federal framework, which provides for uniform national rules for some network elements and a more granular approach for others, offers the certainty and stability necessary to enable parties to make investment decisions. This approach is required under *USTA*.[618] Commenters have argued that nothing could create more instability, and be more destructive of investment incentives for both incumbent LECs and competitive LECs, than the establishment of multiple, separate state decisions as to which UNEs have to be offered and under what conditions.[619] In this Order we have balanced the need for a more granular analysis with the need for certainty through a federal unbundling regime. In light of policy reasons and the fact that the D.C. Circuit has found fault with our uniform national rules, we find that the availability of certain network elements may vary between geographic regions. However, the basis on which those more granular determinations will be made is straightforward and predictable. Additionally, we find that the limitations embodied in section 251(d)(3)(B) and (C) will prevent states from taking actions under state law that conflict with our framework and create disincentives for investment.

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[618] *See USTA*, 290 F.3d at 427 (finding that Commission's concept of impairment failed to take account of relevant cost disparities).

[619] Verizon Reply at 51. Verizon also urges the Commission to expeditiously halt existing state efforts to craft expanded unbundling requirements. *Id.* at 53; *see also* SBC Reply at 71-83.

VI. UNBUNDLING REQUIREMENTS FOR INDIVIDUAL NETWORK ELEMENTS

A. Loops

1. Summary

197. Consistent with our statutory mandate and relevant judicial precedent, we focus on specific market and customer characteristics as informed by the various loop types and capacities that typically serve these markets and customers to undertake the granular inquiry necessary to determine where loop impairment exists.[620] In distinguishing among the various types of loop facilities, *i.e.*, DS0 (voice-grade/POTS), DS1, DS3, OCn and dark fiber, we recognize that these facilities, as a practical matter, typically serve distinct classes of customers,[621] resulting in different economic considerations for competitive carriers seeking to self-deploy.[622] Through this approach we are able to more precisely calibrate our rules to ensure that competitive LECs only gain access to unbundled loops where they are impaired under the standard we adopt above, *i.e.*, where they cannot economically self-provision loops and competitive alternatives do not exist.[623] To that end, we conduct separate loop impairment analyses based on loop types and capacity levels, which also consider two relevant customer classes – the mass market and the enterprise market.[624]

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[620] Specifically, the local loop network element is a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises. This network element also includes all features, functions and capabilities of such transmission facility, including the NID. It also includes all electronics, optronics, and intermediate devices (including repeaters and load coils) used to establish the transmission path to the end-user customer premises as well as any inside wire owned or controlled by the incumbent LEC that is part of that transmission path. *See infra* note 628.

[621] *See, e.g.*, SBC Comments at 96-98; NewSouth Reply at 16.

[622] As explained in Part VI.A.4.a. below, we make a further distinction in our unbundling analysis for mass market loops based upon the type of loop facility (*e.g.*, copper or fiber).

[623] Our loop unbundling analyses takes into account the relevant customer market typically served by the loop capacity involved. However, we recognize that although each loop type and capacity level may be used predominantly to provide service to a particular customer group, that same loop also may be used to provide service across a range of customer categories. For that reason, though our loop unbundling analysis focuses upon the customer classes most likely to be served by a specific type of loop, the unbundling rules we adopt apply with equal force to every customer served by that loop type. *See infra* paras. 209-10.

[624] As described in Part V.B.2.a. above, the mass market consists primarily of residential and similar, very small, business users of analog POTS. The enterprise market is a business customer market of typically medium to large businesses with a high demand for a variety of sophisticated telecommunications services. *See supra* Part V.B.2.a. The record reflects that high-capacity loops, DS1 to OCn, are generally provisioned to enterprise customers, while voice-grade analog loops, DS0 loops, and loops that deploy xDSL services, are used to serve customers typically associated with the mass market. We note, however, that while the enterprise market is comprised of business customers of varying size and capacity requirements, these customers reside, most often, in multiunit premises which are owned or controlled by another entity. Competitive carriers serving multiunit premises face deployment barriers that are not present when a competitive carrier seeks to deploy service to a customer located in a premises that such customer owns or controls. *See infra* Part VI.B.2. (addressing in detail barriers associated with accessing (continued....)

198. With respect to our mass market analysis, we make national impairment determinations for loops based on general economic and operational factors that do not vary significantly by geographic region.[625] As we explain more fully below, we find that the technical characteristics of the loop facilities generally deployed for use by mass market customers counsel for adopting rules that take into account the various technologies now used in loops. In crafting our unbundling requirements, we consider other factors, most notably our mandate under section 706 of the Act to promote the rapid deployment of advanced services throughout the nation. Additionally, we reach our findings after full recognition and consideration of intermodal platforms, notably cable and CMRS.

199. Given the steep economic barriers associated with alternative loop deployment that are compounded by various identified operational issues, we require that loops consisting of either all copper or hybrid copper/fiber facilities must be provided on an unbundled basis so that requesting carriers may provide narrowband services over them.[626] For these reasons, we also direct incumbent LECs to unbundle stand-alone copper loops and subloops for the provision of broadband service. However, subject to a transition plan discussed below, we do not reinstate the Commission's vacated line sharing rules because we determine that continued unbundled access to stand-alone copper loops and subloops enables a requesting carrier to offer and recover its costs from all of the services that the loop supports, including broadband service.

200. In addition, we find that different policy considerations, as well as different technical considerations, are associated with copper loops, hybrid copper/fiber loops, and FTTH loops. For example, we decline to require incumbent LECs to provide unbundled access to their hybrid loops for the provision of broadband services.[627] Similarly, we decline to unbundle loops that consist of FTTH facilities for broadband services. As explained more fully below, this unbundling approach – *i.e.*, greater unbundling for legacy copper facilities and more limited unbundling for next-generation network facilities – appropriately balances our goals of

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customers in multiunit premises). When customers typically associated with the mass market reside in multiunit premises, carriers seeking to self-deploy their own facilities to serve these customers face the same barriers as when serving multiunit premise-based enterprise customers. Because we find that the barriers faced by requesting carriers in accessing customers in multiunit premises are not unique to enterprise market customers residing in such premises but extend to all classes of customers residing therein, including residential or other mass market tenants, the conclusions we reach for high-capacity loops in the enterprise market apply equally to mass market customers in multiunit premises. This in no way affects or changes the conclusions we reach with respect to DS0 and xDSL capable loops in our mass market analysis.

[625] *See, e.g.*, AT&T Reply at 146, 165.

[626] As explained below, in overbuild situations where the incumbent LEC elects to retire existing copper loops for FTTH loops, we also require incumbent LECs to make available unbundled access to a 64 kbps transmission path over that FTTH loop so that a competitor may provide narrowband service to that end-user customer.

[627] Incumbent LECs must continue to provide unbundled access to the TDM features, functions, and capabilities of their hybrid loops. This will allow competitive LECs to continue providing both traditional narrowband services (*e.g.*, voice, fax, dial-up Internet access) and high-capacity services like DS1 and DS3 circuits.

promoting facilities-based investment and innovation against our goal of stimulating competition in the market for local telecommunications services.

201. With respect to our enterprise market analysis, we make national impairment determinations based on loop characteristics that do not vary significantly from area to area. Our conclusions with respect to loop deployment do vary, however, according to the loop type, *i.e.*, dark fiber[628] or "lit" fiber,[629] and the capacity level of the particular loop. We find that different economic characteristics impact a competitive LEC's ability to self-deploy or utilize wholesale alternatives based on the capacity level of the loop facility demanded by its customer.[630]

202. With regard to the highest capacity loop facilities, *i.e.*, OCn loops,[631] we conclude that no impairment exists on a nationwide basis. At the OCn level, requesting carriers have the ability to economically self-provision their own loops or are able to obtain unbundled dark fiber and light it at the OCn level. With respect to dark fiber loops,[632] DS3 loops,[633] and DS1 loops,[634]

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[628] Dark fiber is optical fiber through which no light is transmitted and no signal is carried. It is unactivated deployed fiber that is left dark, *i.e.*, with no necessary equipment, *i.e.*, "opto-electronics" or "optronics" attached to light the fiber to carry a signal to serve customers. *See* NEWTON'S TELECOM DICTIONARY 201 (18th ed. 2002) (definition of Dark Fiber); *see also UNE Remand Order*, 15 FCC Rcd at 3771, para. 162 n.292. Once the optronics are attached to the fiber to make signal transmission possible the dark fiber becomes "lit." *See* NEWTON'S TELECOM DICTIONARY 538-39 (18th ed. 2002) (definition of Opto-Electronics and Optronics).

[629] *Id.*; *see also* NEWTON'S TELECOM DICTIONARY 433 (18th ed. 2002) (definition of Lit Fiber).

[630] We also know that alternative transmission technologies such as fixed wireless, satellite and unlicensed wireless may exist as potential enterprise market loop alternatives in limited circumstances and, therefore, consider these alternative transmission capabilities in our impairment analysis where appropriate. *See, e.g.*, BellSouth Comments at 42-44; SBC Reply at 91; Verizon Comments at 118-19.

[631] OCn is an optical interface designed to work with a Synchronous Optical Network (SONET). *See* NEWTON'S TELECOM DICTIONARY 528 (18th ed. 2002) (definition of OCn). SONET is an optical interface standard for translating electronic communications signals into photonic signals for transmission across fiber optic facilities. Ideally, SONET transmission systems are laid out in a ring formation to provide redundancy. *See* NEWTON'S TELECOM DICTIONARY 684-85 (18th ed. 2002) (definition of SONET). OCn transmission facilities are deployed as SONET channels having a bandwidth of typically 155.52 Mbps (OC3 or the equivalent capacity of 3 DS3s) and higher, *e.g.*, OC12 (622.08 Mbps); OC48 (2.488 Gbps) etc. *See* NEWTON'S TELECOM DICTIONARY 527 (18th ed. 2002) (definitions of OC3, OC12, and OC48).

[632] In the *UNE Remand Order*, the Commission determined that the loop facility includes dark fiber, stating that both copper and fiber alike represent unused loop capacity therefore dark fiber and extra copper both fall within the loop network element's "facilities, functions, and capabilities." *See UNE Remand Order*, 15 FCC Rcd at 3776, para. 174. The Commission went on to state that there is "no reason to distinguish dark fiber from our general unbundling analysis for loops." *UNE Remand Order*, 15 FCC Rcd at 3785, para. 196. The record contains no basis for departing from this determination.

[633] A DS3 loop is a digital local loop having a total digital signal speed of 44.736 Mbps provided over various transmission media including but not limited to fiber optics, coaxial cable, or radio. DS3 loops can be channelized into 28 DS1 channels. *See infra* note 634. They can also be unchannelized. *See* NEWTON'S TELECOM DICTIONARY 242 (18th ed. 2002) (defining DS3).

[634] A DS1 is a 1.544 Mbps first-level signal in the digital transmission hierarchy. In the time division multiplexing (continued....)

we conclude that requesting carriers are impaired on a location-by-location basis without unbundled access to incumbent LEC loops nationwide. We find, however, that some competitive carriers have been able to deploy certain high-capacity loops to particular customer locations and that some wholesale alternatives also exist at particular customer locations. Because the record does not provide the specific information necessary to identify the precise customer locations where this deployment has occurred,[635] we delegate to state commissions the authority to make findings of fact within the scope of the deployment triggers we define, to identify on a more granular scale where carriers are not impaired without access to incumbent LEC unbundled high-capacity loops.

2. Background

203. Loops in their simplest form are the transmission facilities between a central office and the customer's premises, *i.e.*, "the last mile" of a carrier's network that enables the end-user customer to receive, for example, a telephone call or a facsimile, as well as to originate similar communications.[636] Loops were included on the initial list of UNEs in the *Local Competition Order*, and even the incumbent LECs agreed that the loop network element must be

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hierarchy of the telephone network, DS1 is the initial level of multiplexing. Traditionally, 24 64 kbps DS0 channels have been multiplexed up to the 1.544 Mbps DS1 rate, with each DS0 channel carrying the digital representation of an analog voice channel. *See* TELCORDIA, INC., NOTES ON THE NETWORK, TELCORDIA TECHNOLOGIES SPECIAL REPORT, SR-2275, Issue 4, Oct. 2000, Glossary at 46 (TELCORDIA NOTES ON THE NETWORK). DS1 loops are provided over various transmission media and combinations of transmission media, including but not limited to two-wire and four-wire copper, fiber optics, or radio. DS1 loops may be channelized typically into up to 24 DS0 channels of 56/64 kbps each, or unchannelized, *i.e.*, providing a continuous bit stream for data (such as frame relay, ATM, or Internet access) or other customer applications. We note that throughout the record in this proceeding parties use the terms DS1 and T1 interchangeably when describing a symmetric digital transmission link having a total 1.544 Mbps digital signal speed. Carriers frequently use a form of DSL service, *i.e.*, High-bit rate DSL (HDSL), both two-wire and four-wire HDSL, as the means for delivering T1 services to customers. We will use DS1 for consistency but note that a DS1 loop and a T1 are equivalent in speed and capacity, both representing the North American standard for a symmetric digital transmission link of 1.544 Mbps. *See* NEWTON'S TELECOM DICTIONARY 242 (18th ed. 2002) (definition of DS1); *id.* at 718 (definition of T1); *see also* ENGINEERING AND OPERATIONS IN THE BELL SYSTEM 198-201 (R.F. Ray Technical ed., 2d ed. 1983) (channelization process for transmission of telecommunications), 369-73 (technical characteristics of DS1 loops), 386-93 (describing T-carrier hierarchy and necessary equipment); TELCORDIA, INC., NOTES ON THE NETWORK, SR-2275, section 7.7 (Dec. 2000) (describing digital data services provided over local loops) at 7-23 (overview of DS hierarchy).

[635] We do, however, determine that the record contains sufficient information to enable us to identify appropriate triggers and related criteria that will, after a more particularized analysis, identify the specific customer locations where certain types of high-capacity loop impairment does not exist. To that end, we develop a mechanism for a further level of granular inquiry by state commissions on a customer location-specific basis where our defined triggers exist. We both delegate authority to and direct state commissions to undertake more granular analyses for dark fiber loops, DS3 loops, and DS1 loops at specific customer locations based upon our defined triggers and related criteria for each of these three types of loops, as described below. These more granular impairment analyses may result in non-impairment determinations for one or more of these three types of high-capacity loop facilities at specified customer locations.

[636] *Local Competition Order*, 11 FCC Rcd at 15691, para. 380.

unbundled pursuant to sections 251(c)(3) and 251(d)(2) of the Act.[637] In the *UNE Remand Order,* the Commission broadened the definition of the loop to include all features, functions, and capabilities of these transmission facilities, including high-capacity loops, dark fiber and all attached electronics (except those used for providing advanced services).[638] The Commission also concluded that obtaining all types of loops from alternative, non-incumbent LEC sources, *i.e.*, third party or self-provisioning, would impede competitive entry by materially raising entry costs; delaying entry; and limiting the scope and timeliness of competitor's offerings.[639] Accordingly, the Commission applied a one-size-fits-all approach to loops, and ordered unbundling of all incumbent LEC loops, from DS0 to OCn and dark fiber, throughout the nation.[640]

204. In the *Triennial Review NPRM,* as part of its overall inquiry about the viability of adopting more granular unbundling rules, the Commission asked whether its impairment analysis should make "service, geographic, capacity or other distinctions to the unbundled loop."[641] In addition, the Commission asked whether there were meaningful distinctions between those loops capable of providing basic services versus those capable of advanced or broadband services.[642] Finally, for high-capacity loops (DS1 and above), the Commission sought comment on whether there was a particular capacity level at which new entrants could economically self-deploy.[643]

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[637] *Id.* at 15689-90, para. 377; *see also UNE Remand Order*, 15 FCC Rcd at 3771, para. 162 n.292.

[638] *UNE Remand Order*, 15 FCC Rcd at 3772, paras. 166-67 nn.300 & 301; *see also* 47 C.F.R. § 51.319(a)(1), which defined loops as:

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

[639] *UNE Remand Order*, 15 FCC Rcd at 3772, para. 165.

[640] In the *UNE Remand Order*, the Commission did not engage in a capacity-based analysis beyond confirming that high-capacity loops were included in the definition of the loop. The Commission found that because "the wire facility used for transmission of the traffic is indistinguishable from any other copper wire" there was no reason to modify the definition of loops to describe various categories of capacity. *UNE Remand Order*, 15 FCC Rcd at 3777, para. 176. The Commission, however, did separately consider dark fiber local loops, finding the characteristics to be similar to dark fiber transport ("Because fiber is currently a more significant component of interoffice transport than the loop network element, we discuss aspects of dark fiber common to both elements when we discuss interoffice transport below."). *UNE Remand Order*, 15 FCC Rcd at 3785-86, para. 198.

[641] *Triennial Review NPRM,* 16 FCC Rcd at 22804, para. 51.

[642] *Id.* at 22804-05, para. 51.

[643] *Id.*

3. General Economic Characteristics of Loop Deployment

205. Constructing loop plant is both costly and time consuming, regardless of the type of loop being deployed.[644] Notably, both the Supreme Court and the D.C. Circuit recognized that incumbent LECs may be required to unbundle loop facilities because they are "very expensive to duplicate."[645] Because the distribution portion of the loop serves a specific location,[646] and installing and rewiring that loop is very expensive, most of the costs of constructing loops are sunk costs. Unless that loop is subsequently purchased by another provider wishing to serve that same location, a carrier's ability to recover the cost of that loop is generally constrained except in limited circumstances at certain capacity levels. While fixed costs for constructing loops are quite high, economies of scale in deployment can accrue in constructing loops to locations that are geographically close to a carrier's transport network, assuming other barriers do not preclude construction.[647] This is especially true in urban areas where the concentration of potential customer locations is very dense.[648] Conversely, because of long loop lengths required to reach more distant, geographically dispersed customers, loops are more expensive to build in rural areas, raising the average cost per loop for equipment, installation, and maintenance.[649] In addition to the cost-related barriers discussed above, competitive carriers deploying loops also face difficulties in acquiring municipal and private rights-of-ways as well as gaining building access from owners of multiunit premises.[650] These additional factors can further affect

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[644] *See, e.g.*, ALTS *et al.* Comments at 56-57 (stating that fiber deployment costs $100,000-$300,000 per mile underground, $50,000 per mile on poles, and $10,000 to $60,000 through pipelines and adding a building averages $250,000 – and that if the building is more than a mile from the competitive LEC's existing networks , it can cost more that $1,000,000 per mile to construct fiber loops in urban areas); WorldCom Comments at 74-75 (stating that it costs approximately $250,000 for a "building add" and can take six to nine months for a competitive LEC to deploy a new DS1 loop).

[645] *USTA*, 290 F.3d at 426 (citing *Verizon*, 535 U.S. 467 at n.27).

[646] This contrasts with the feeder portion of the loop which may serve multiple locations.

[647] *See, e.g.*, AT&T Comments at 134.

[648] *See, e.g.*, Letter from Douglas A. Dawson, CCG Consulting, (on behalf of 20 "network-based" competitive LECs) to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 6-7 (filed July 17, 2002) (submitting survey-based "State Of CLEC Competition") (CCG July 17, 2002 CLEC Survey *Ex Parte* Letter) (demonstrating that for the six major metropolitan areas surveyed the concentration of competitive LEC loop deployment is in the downtown area); Allegiance Comments at 23.

[649] In addition, we note that scale economies may particularly affect small businesses.

[650] *See, e.g.*, AT&T Reply at 174-79 (discussing other barriers linked to the incumbent LECs' historical monopoly that preclude competitive loop deployment independent of cost factors); *see also* NuVox Comments at 74; KMC Duke Aff. at paras. 7-8 (citing proprietary information), Affidavit of Joseph Polito, SNiP LiNK, Inc. (SNiP LiNK Polito Aff.) at paras. 4-7; Sprint Comments at 22; Letter from Ruth Milkman, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2-3 (filed Oct. 25, 2002) (discussing building access barriers) (WorldCom Oct. 25, 2002 Building Access *Ex Parte* Letter); ALTS *et al.* Comments at 56.

competitive carriers' ability to sign up customers that need predictability in their business decisions.[651]

206. For fiber-based loops, the cost of construction does not vary significantly by loop capacity, *i.e.*, the per-mile cost of building a DS1 loop does not differ significantly from the cost to construct an OCn loop. The most significant portion of the costs incurred result from deploying the physical fiber infrastructure in the ground, rather than from lighting the fiber optical cable.[652] The ability to recover these construction costs for different loop capacities does, however, vary based on the relevant capacity level of the loop to be provided. Accordingly, a key consideration in our impairment analysis is the loop capacity level at which a competitive entrant can recover its construction costs. Similarly, the ability to overcome other operational barriers to deployment varies based on the capacity of the loop. The record confirms that loop capacity level directly affects the potential revenue stream that can reasonably be obtained to offset construction costs in an economically feasible timeframe.[653] Thus, in addition to the barriers a new entrant faces in deploying loops, we consider the revenue potential associated with particular loop capacity,[654] as well as the ability to mitigate construction delays that affect provisioning intervals as keys to determining the degree to which an entrant is impaired in deploying a particular loop capacity.

207. Unlike transport facilities, loops generally do not aggregate multiple customers' traffic. As a result, loop impairment is more closely related to the demands of the individual customer served by such loop. In that regard, customer class distinctions are useful in

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[651] *See, e.g.*, AT&T Reply at 175 (describing how it keeps statistics on "breakage," *i.e.*, instances where it initially won a customer but subsequently lost it due to delay in gaining building access to provision the customer); *see also* Sprint Comments at 23 ("Customers will not wait the months required by CLECs to acquire permits, cut streets, install additional equipment, engineer, construct, and test new facilities.").

[652] *See, e.g.*, AT&T Comments at 130; AT&T Reply at 148 (arguing that the cost of loop deployment primarily lies in the structures and rights-of-way, not in the copper or fiber conductor).

[653] *See, e.g.*, WorldCom Comments at 76; Letter from Timothy J. Regan, Senior Vice President – Government Affairs, Corning, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 32 (filed Nov. 26, 2002) (Corning Nov. 26, 2002 *Ex Parte* Letter); Corning Comments, App. A at 10 (Cambridge Strategic Management Group, *Assessing the Impact of Regulation on Deployment of Fiber to the Home* (2002) (*CSMG Study*)).

[654] In considering potential revenue streams from the various types of loops, it is necessary to factor in the ability to enter into and enforce long-term contracts with customers. We have some evidence that certain states have adopted or are considering regulations that limit the ability of carriers to bind a customer to a long-term local service contract (*i.e.*, longer than one year) and associated termination charges. *See, e.g., Missouri Public Service Commission, Southwestern Bell Telephone Company's Proposed Revisions to PSC Mo. No. 26, Long Distance Message Telecommunications Service Tariff*, Report and Order, Case Nos. TT-2002-227 *et al.* (June 27, 2002) (local service terms in excess of one year will not be permitted); California Public Utilities Commission, *Rules Governing Telecommunications Consumer Protection*, Interim Decision, Rulemaking 00-02-004, Rule 3 (June 6, 2002). To the extent such limitations exist, a carrier's ability to rely on a guaranteed long-term revenue stream from a loop to recover sunk construction costs is adversely affected.

understanding competitive carriers' decisions and economic abilities regarding deployment of loops typically used to serve customers generally associated with that particular class.

208. Consistent with our impairment framework set out above,[655] our loop analysis considers alternative transmission technologies that are capable of providing transmission to individual customers as alternatives to the incumbent LEC's loop facility. These alternative technologies may use non-wireline platforms to offer other kinds of services to customers, *i.e.*, intermodal competition, such as cable operators providing cable telephony and cable modem service in addition to cable television, or may be used solely to provide telephone and data communications service, such as fixed wireless technologies. As explained above, we will consider whether these alternative technologies permit a requesting carrier to serve the market, either through self-provisioning the necessary transmission capacity to the customer, or by obtaining the transmission capacity on a wholesale basis from other firms deploying that technology.

4. Loop Impairment by Customer Market

209. The record reflects that customers generally associated with the mass market typically use different types of loop facilities than customers generally associated with the enterprise market. We note that very small business customers, like residential customers, typically purchase analog loops, DS0 loops, or loops using xDSL-based technologies. We address the loops provisioned to these customers as part of our mass market analysis. All other business customers – whom we characterize as the enterprise market – typically purchase high-capacity loops, such as DS1, DS3, and OCn capacity loops. We address high-capacity loops provisioned to these customers as part of our enterprise market analysis.[656] We first analyze those loops generally provisioned to mass market customers and then analyze the high-capacity loops generally provisioned to enterprise customers.

210. In considering the different customer markets to inform our understanding of competitive carrier loop deployment, we note that our market classifications allow us to conduct our impairment analyses for the various loop types at a more granular level but are not intended to prohibit the use of UNE loops by customers not typically associated with the respective customer market class. For example, business customers typically associated with the enterprise market may require DS0 lines, particularly if they have remote business locations staffed by only a few employees where high-capacity loop facilities are not required.[657] Because a competitive

[655] *See supra* Part V.B.

[656] We note that through the application of our new impairment standard to high-capacity loops, including impairment analyses based on each particular loop capacity level, we have considered evidence raised by joint petitioners in the High-Capacity Loop and Transport Petition. *See, e.g.*, BellSouth, SBC, and Verizon, Joint Petition for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport, CC Docket No. 96-98 (filed Apr. 5, 2001) (High-Capacity Loop and Transport Petition). Because we base our unbundling obligations with respect to high-capacity loops on our findings of impairment and non-impairment according to our new impairment standard, we dismiss the High-Capacity Loop and Transport Petition as moot.

[657] *See, e.g.*, WorldCom Comments at 14.

carrier faces the same economic characteristics to serve these customers at their remote locations with a DS0 loop that it faces to serve residential customers served by the same loop type, our customer class distinctions are not intended to preclude a competitive LEC from obtaining an unbundled DS0 loop to serve these business customers. Similarly, a competitive LEC faces the same economic considerations in provisioning a DS1 loop to a large business customer typically associated with the enterprise market that it faces in provisioning that same loop type to a very small business or residential customer typically associated with the mass market. Thus, while we adopt loop unbundling rules specific to each loop type, our unbundling obligations and limitations for such loops do not vary based on the customer to be served.

a. Mass Market Loops

(i) Introduction

211. We conclude that requesting carriers seeking to serve the mass market face varying levels of impairment without unbundled access to the transmission path between the central office and the customer premises depending upon whether the loop used to complete this path consists entirely of copper, or consists of a hybrid of fiber and copper cables, and whether a requesting carrier seeks to offer narrowband or broadband services or both. In fact, for those loops consisting of fiber from the central office to the customer premises, *i.e.*, FTTH loops, we find no impairment on a national basis.[658] Based on our review of the record, which covers the current deployment of local loops, technological advancements in incumbent LEC outside plant, and the economic barriers and revenue opportunities facing competitive providers today with regard to loops, we conclude that incumbent LECs must provide, as UNEs pursuant to section 251(c)(3), copper loops, including copper loops conditioned to provide xDSL service. As discussed below, we also require incumbent LECs to provide competitive LECs the ability to line split, which allows two competitive LECs to split the loop so that one carrier can provide narrowband service and the other can provide broadband service.

212. As for our unbundling rules related to broadband, we recognize there are special considerations in crafting unbundling rules for loops used to provide broadband service. Broadband deployment is a critical domestic policy objective that transcends the realm of communications. While the development of broadband infrastructure is a fundamental and integral step in ensuring that consumers are able to fully reap the benefits of the information age, even more broadly, it is vital to the long-term growth of our economy as well as our country's continued preeminence as the global leader in information and telecommunications technologies. The Commission's primary regulatory challenge for broadband is to determine how we can help drive the enormous infrastructure investment required to turn the broadband promise into a reality. This challenge is squarely raised in our consideration of unbundling rules for last-mile facilities.

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[658] As discussed more fully below, there is an unbundling obligation for narrowband voice services in one FTTH loop deployment scenario, *i.e.*, overbuild deployment in which an incumbent LEC constructs fiber transmission facilities parallel to or in replacement of its existing copper loop plant. *See infra* Part VI.A.4.a.(v)(b).

213. With respect to unbundling obligations for facilities used to provide broadband service, we are charged with determining the potential impact of our rules on advanced services, including those supported by broadband deployment and infrastructure investment, as directed by section 706 of the 1996 Act.[659] For this reason, we craft unbundling rules that provide the right incentives for all carriers, including incumbent LECs, to invest in broadband facilities. Thus, we decline to require unbundling on a national basis of the features, functions, and capabilities of the packetized fiber facilities of incumbent LEC hybrid loops. We require, however, incumbent LECs to provide unbundled access to the time division multiplexing (TDM) features, functions, and capabilities of their hybrid loops on a national basis. Subject to a three-year transition period explained below, we also decline to require incumbent LECs to continue to unbundle the high frequency portion of the loop. Our rules strike the appropriate statutorily required balance between ensuring competitive access and maintaining incentives to invest in next-generation networks.

(ii) Mass Market Loop Types

214. At its most basic level, a local loop that serves the mass market consists of a transmission medium, which almost always includes copper wires of various gauges. The loop may include additional components (*e.g.*, load coils, bridge taps, repeaters, multiplexing equipment) that are usually intended to facilitate the provision of narrowband voice service.

215. As a general matter, incumbent LECs use two local exchange network configurations to connect customers to their switching systems. First, carriers connect customers directly to a central office via a loop dedicated solely to a particular customer. In this configuration, the local loop consists of a single cable pair – for copper loops, this is often referred to as "home-run copper."[660] For the mass market, carriers can use copper loops to provide both narrowband voice service and broadband xDSL services.[661] Providing broadband service requires the use of special equipment, such as DSLAMs[662] located in the central office (or

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[659] 47 U.S.C. § 157 nt.

[660] *See, e.g.*, Letter from Stephen C. Gray, President, McLeodUSA, to William Maher, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 96-98, 98-147, 01-338, 02-33 at 8 (filed Dec. 18, 2002) (McLeodUSA Dec. 18, 2002 *Ex Parte* Letter). McLeod states that customers are served by "a connected-through copper loop, with a direct analog electrical connection between the customer's network interface and the central office main distribution frame" or one of two types of DLC systems.

[661] Subject to certain distance limitations, a carrier can provide various types of xDSL service over a copper loop with appropriate conditioning. We use the term "xDSL" to refer to DSL as a generic transmission technology, as opposed to a specific type of DSL such as ADSL (asymmetric digital subscriber line), HDSL (high-speed digital subscriber line), UDSL (universal digital subscriber line), VDSL (very-high speed digital subscriber line), and RADSL (rate-adaptive digital subscriber line).

[662] DSLAMs send the customer's voice traffic to the public, circuit-switched telephone network and the customer's data traffic (combined with that of other xDSL users) to a packet-switched data network. *See Line Sharing Order*, 14 FCC Rcd at 20920, para. 9; *see also* Walter Goralski, ADSL AND DSL TECHNOLOGIES at 252-60 (describing DSLAMs).

remote terminals in the incumbent LEC's outside plant) and xDSL modems or other equipment at the customer's premises.

216. Second, incumbent LECs deploy "feeder plant" to a centralized location (referred to as a "remote terminal") where the carrier aggregates "distribution plant," *i.e.*, copper cable pairs that are used to serve individual customers. In this second configuration, then, the local loop portion of the network consists of two parts, *i.e.*, feeder plant and distribution plant.[663] The feeder plant consists of a large number of high-capacity cable pairs to accommodate a large volume of telecommunications traffic. In recent years, carriers have started deploying fiber optic cable in the feeder plant to handle more efficiently the increasing volume of traffic (although some legacy technologies continue to require use of copper feeder plant).[664] By contrast, the distribution plant consists generally of many copper cable pairs, *i.e.*, one direct connection or transmission path to each customer premises.

217. Carriers use digital line carrier (DLC) systems to aggregate the many copper loops that terminate at a remote terminal location,[665] multiplex such signals onto a fiber or copper feeder loop facility, and transport them to the carrier's central office.[666] These DLC systems may be integrated directly to the carrier's switch (*i.e.*, Integrated DLC systems) or not (*i.e.*, Universal

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[663] TELCORDIA NOTES ON THE NETWORK at § 12 (describing LEC distribution networks); AT&T Comments at 184-86; AT&T Reply at 149. We recognize that carriers may categorize their outside plant facilities into three sections, *i.e.*, feeder, distribution, and customer drops. *See* AT&T Reply at 149. For the purposes of our unbundling analysis, we consider customer drops to be part of an incumbent LEC's distribution plant.

[664] WorldCom Comments, Joint Declaration of Tom Stumbaugh and David Reilly (WorldCom Stumbaugh/Reilly Joint Decl.) at paras. 8-10; Letter from Leonard G. Ray, Government Relations Committee Chairman, FTTH Council, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 10 (filed Jan. 8, 2003) (FTTH Council Jan. 8, 2003 FTTH Deployment *Ex Parte* Letter) (noting that fiber feeder optimized the network for voice transmission); Letter from Kimberly Scardino, Senior Counsel, WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-98, 98-147, 01-338 at 2 (filed Dec. 12, 2002) (WorldCom Dec. 12, 2002 Next-Generation Networks *Ex Parte* Letter).

[665] Although there are different varieties of DLC systems, they typically consist of cross-connect and multiplexing equipment that are housed in remote terminals, which are intended to house a limited amount of equipment. There are three basic types of remote terminals: (1) huts, which are above-ground structures with environmental control capabilities; (2) controlled environmental vaults (CEVs), which are below-ground structures that are accessed through manholes and contain environmental control capabilities; and (3) cabinets, which are above-ground structures that are typically designed as an integrated system. *See Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, CC Docket No. 98-141, Second Memorandum Opinion and Order, 15 FCC Rcd 17521, 17539, para. 34 n.94 (2000) (*Pronto Modification Order*) (describing remote terminals).

[666] Carriers historically deployed local loops on a one-for-one basis, *i.e.*, one direct copper cable pair connecting a customer to the central office. WorldCom Stumbaugh/Reilly Decl. at para. 7. Carriers started using DLC for feeder pair relief in urban areas. *Id.* at para. 9.

DLC systems).[667] Through the use of feeder loop plant and DLC systems, carriers can reduce the costs of constructing, deploying, and maintaining their outside plant.[668]

218. Although originally deployed to manage voice networks, carriers now use DLC systems to provide both voice and data services. Technological improvements have enabled carriers to use DLC systems to deliver broadband services (*e.g.*, ADSL) in addition to narrowband services.[669] In particular, manufacturers have developed "line cards" that can be installed (along with other components) into a DLC system to provide broadband services, or a combination of broadband and narrowband service, to customers served by DLC systems.[670] By deploying this DSLAM functionality in a DLC system, carriers can serve customers whose copper loop facility would otherwise be too long to support the provision of xDSL service.[671] To do so has generally required incumbent LECs deploying this technology to segregate and minimize the traffic in a different way – that is, carriers dedicate a segment of their feeder plant to serving narrowband voice traffic and another segment to serving broadband traffic.[672] The

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[667] Universal DLC systems consist of a "central office terminal" and a "remote terminal," *i.e.*, a DLC system in the carrier's central office terminal mirrors the deployment at the remote terminal. Notes on the Network at § 12.6. By contrast, an Integrated DLC system does not require the use of a central office terminal because the DLC system is integrated into the carrier's switch (thus, the naming convention). *Id.* § 12.7; *see also* Letter from David R. Conn, Deputy General Counsel, McLeodUSA, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-98, 98-147, 01-338, 02-33 at 8 (filed Nov. 15, 2002) (McLeodUSA Nov. 15, 2002 DLC systems *Ex Parte* Letter); McLeodUSA Dec. 18, 2002 *Ex Parte* Letter at 8; *see also* TELCORDIA NOTES ON THE NETWORK at 2-2 to 2-5 (describing DLC systems).

[668] TELCORDIA NOTES ON THE NETWORK at § 12.6-12.7.

[669] WorldCom Stumbaugh/Reilly Decl. at paras. 9-11 (describing technological developments in DLC systems); AT&T Reply at 152-53 (noting that incumbent LECs can upgrade existing DLC systems by replacing the line cards installed in such systems). In their original form, carriers connected DLC systems to copper transmission facilities that comprised the feeder loop plant. The DLC system would convert analog signals transmitted from the customer's premises to digital signals suitable for transmission over the carrier's network. By the late 1990s, carriers were purchasing "Next Generation Digital Loop Carrier" (NGDLC) systems, which were designed for use with fiber optic cable. In addition to the fiber capability, NGDLC systems have more flexible and remote configuration capabilities than their predecessors and, depending on the manufacturer, they may contain additional features like the ability to provide broadband services. *See* Walter Goralski, ADSL AND DSL TECHNOLOGIES, 273 (1998); NEWTON'S TELECOM DICTIONARY 510 (18th ed. 2002) (defining NGDLC systems as "DLC [that] can receive and aggregate large amounts of bandwidth (higher than T-1)); *see also* Letter from Jim Lamourex, Senior Counsel, SBC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 1-2 (filed Dec. 12, 2002) (SBC Dec. 12, 2002 *Ex Parte* Letter) (stating that SBC "considers DLC that provides both time slot interchanger and xDSL functionality as NGDLC.").

[670] Alcatel Comments at 26; Catena Comments in CC Dkt. Nos. 02-33, 95-20, and 98-10, at 5 n.7 (describing Catena's DLC system upgrade); WorldCom Stumbaugh/Reilly Decl. at para. 13; Alcatel Reply at 6; *see Pronto Modification Order*, 15 FCC Rcd at 17523-31, paras. 4-19 (describing SBC's DLC network architecture used to provide broadband service).

[671] WorldCom Stumbaugh/Reilly Decl. at para. 13.

[672] *Id.* at para. 15; Letter from W. Scott Randolph, Director – Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-337, 01-338, 96-98, 98-147, 02-33 at 10 (filed Sept. 30, 2002) (continued....)

feeder loop plant transporting voice traffic connects to the carrier's switch in its central office (often through intermediate electronics in the central office).[673] By contrast, the feeder loop plant transporting the broadband signal terminates at a packet switch (usually referred to as an "optical concentration device" or OCD) also located in the carrier's central office.[674]

219. In recent years, carriers have started deploying FTTH – that is, using fiber optic cable to replace traditional copper loops. Whereas the use of fiber feeder plant and DLC systems is an augmentation of the existing network and relies on the continued use of copper (albeit to a lesser degree) in the loop plant, FTTH is essentially a broad replacement of the existing loop plant. The use of fiber optic cable requires the deployment of network equipment with different features and capabilities from comparable equipment used for copper cable. As noted above, deployment of FTTH loops – that is, a transmission path consisting entirely of fiber optic cable and associated equipment between the customer's premises and the central office – remains in its infancy.

220. Carriers use different technologies to transport telecommunications over their networks. As digital transmission technologies replaced analog systems, carriers started using TDM to combine multiple transmission paths onto a single cable.[675] TDM provides a transmission path by dividing a circuit into time slots and providing a dedicated time slot to an end user for the duration of the call. More recently, carriers have started using packet-switched technologies (*e.g.*, ATM or frame relay) to combine different types of traffic over shared facilities.[676] By using packet-switched technology, carriers can transmit voice, fax, data, video, and other over a single transmission path at the same time.

221. In light of the foregoing, we find that our unbundling rules for local loops serving the mass market must account for these different loop architectures. Therefore, we craft unbundling rules specific to each different loop type. First, we address our unbundling rules for loops consisting of copper pairs of various gauges and associated electronics (*e.g.*, load coils,

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(Verizon Sept. 30, 2002 *Ex Parte* Letter) (submitting diagram showing the use of two parallel feeder loops to provide broadband service through DLC systems).

[673] Alcatel Reply at 6 (explaining that voice and data traffic are segregated in the incumbent LEC's central office).

[674] AT&T Comments at 187-89; Covad Comments at 65; WorldCom Comments at 108; WorldCom Stumbaugh/Reilly Decl. at para. 13; Letter from Jonathan J. Boynton, Associate Director – Federal Regulatory, SBC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 5 (filed Jan. 15, 2003) (SBC Jan. 15, 2003 *Ex Parte* Letter); Verizon Sept. 30, 2002 *Ex Parte* Letter at 10. Several parties explain that an OCD is equivalent to a main distribution frame. *See, e.g.*, Covad Comments at 65 (noting that the OCD demultiplexes data transmissions from the fiber feeder and distributes the signal to its next destination).

[675] *See, e.g.*, Walter Goralski, ADSL AND DSL TECHNOLOGIES 77-98 (1998) (describing differences between packet-switched and circuit-switched networks); Walter Goralski, SONET 99-108 (2d. ed. 2000) (describing T-carrier and different multiplexing techniques).

[676] For example, some carriers use packet-switching technology as the building blocks of their networks. *See, e.g.*, NewSouth Comments at 11-13 (describing use of packet-switching technology in its network).

repeaters, multiplexers), which we refer to as copper loops. Second, we address our unbundling rules for loops consisting of DLC systems that are fed by fiber optic cable, which we refer to as "hybrid loops." Finally, we address our unbundling rules for loops consisting entirely of fiber optic cable, which we refer to as FTTH loops.

(iii) Evidence of Loop Deployment

222. The record indicates that deployment of alternative local loop facilities for the purposes of providing telecommunications services to the mass market has been minimal. The record also indicates, however, that there is evidence that other types of network facilities deployed primarily for other purposes (*e.g.*, cable television systems, satellite technologies) can and are increasingly being modified to support the delivery of narrowband and broadband services, particularly telephony and high-speed Internet access services, to the mass market. As a general matter, while these systems are increasingly being used for the delivery of retail narrowband and broadband services (*e.g.*, telephony and high-speed Internet access services), the record indicates that such systems are not being used currently to provide wholesale local loop offerings that might substitute for access to incumbent LECs' loop facilities.

223. The factual record consists of three parts. First, several parties submitted detailed studies describing local loop deployment and conditions surrounding competitive access to local loops.[677] Second, many parties described their network operations, experiences, and future deployment plans in comments and *ex parte* letters.[678] Finally, the Commission staff has

[677] *See, e.g.*, BOC UNE Fact Report 2002; Letter from Dee May, Assistant Vice President, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Oct. 23, 2002) (submitting *UNE Rebuttal Report 2002* commissioned by the BOCs); CCG July 17, 2002 CLEC Survey *Ex Parte* Letter. These studies in turn rely on additional evidence to support their conclusions, such as briefings to the investment community, analyst reports, newspaper articles, and trade industry reports. Some commenters argue that unbundling requirements decrease incumbent LECs' financial rewards from selling future broadband services by increasing the risk of investment, thereby decreasing the amount of investment incumbent LECs will make in broadband infrastructure. *See, e.g.*, Corning Comments at 5-9; HTBC Comments at 28-33, App. A (submitting John Haring and Jeffrey H. Rohlfs, *The Disincentives for ILEC Broadband Deployment Afforded by the FCC's Unbundling Policies* (July 16, 2002)); Verizon Comments at 27-32 (submitting Declaration of Alfred E. Kahn and Timothy J. Tardiff); Letter from Matthew J. Tanielian, Vice President – Governmental Relations, ITI – Information Technology Industry Council, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Apr. 22, 2002) (HTBC Apr. 22, 2002 *Ex Parte* Letter); Letter from W. W. Jordan, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Oct. 15, 2002) (BellSouth Oct. 15, 2002 *Ex Parte* Letter). By contrast, other commenters argue that unbundling requirements do not decrease the incentives for BOCs to provide broadband services over fiber-fed loops. *See, e.g.*, AT&T Willig Decl. at paras. 15, 175; Letter From Jason D. Oxman, Vice President and Assistant General Counsel, Covad, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Nov. 22, 2002) (Covad Nov. 22, 2002 *Ex Parte* Letter); Covad Murray Reply Decl. at paras. 99-113; Letter from C. Frederick Beckner III, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 4 (filed Dec. 6, 2002) (AT&T Dec. 6, 2002 *Ex Parte* Letter).

[678] *See, e.g.*, ACS Reply at 5-6 (describing market conditions in Alaska); BellSouth Rely, Reply Declaration of Prof. Robert G. Harris (BellSouth Harris Reply Decl.) at paras. 11-21 (submitting projections and market data related to broadband services); New York State Attorney General Reply at 4, 9-11 (describing competitive entry in New York); Letter from Rebecca H. Sommi, Vice President Operations Support, Broadview Networks, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Oct. 16, 2002) (Broadview Oct. 16, 2002 (continued....)

published reports arising from its monitoring of the deployment of advanced telecommunications capability and the development of local competition throughout the country.[679]

224. Relying on these sources, the record shows that incumbent LECs continue to control the vast majority of voice-grade local loops throughout the nation. The Commission staff's recent *Local Telephone Competition December 2002 Report* noted that incumbent LECs served approximately 167.5 million switched access lines, or approximately 88.6 percent of the national market.[680] The record reflects a significant growth in the amount of fiber incumbent LECs are deploying in the local loop, with most of this deployment occurring in the feeder plant rather than the distribution plant. According to some estimates, upwards of 30 percent of incumbent LEC access lines are now supported by the use of mixed fiber-copper loop facilities.[681]

(a) Self-Deployment

225. The record reflects that competitive LECs have not self-deployed alternate copper local loops to provide telecommunications services (or packages of telecommunications and other services) to the mass market. Moreover, the record indicates that, in those limited cases where competitors are deploying alternative loop facilities, competitive LECs are using fiber, although such deployment continues to be targeted primarily to serving the enterprise market rather than the mass market. We recognize, however, that potential self-deployment could use existing wireline telephony technologies and facilities or could employ other approaches that bear little or no resemblance to the current network architecture of the incumbent LECs.

226. No party seriously asserts that competitive LECs are self-deploying copper loops to provide telecommunications services to the mass market. Indeed, in the BOC UNE Fact Report 2002, the BOCs provide no evidence that competitive LECs have made any progress towards replicating the incumbent LECs' embedded base of voice-grade copper local loops.[682] Likewise, no competitive LEC claims to have made, let alone attempted to make, such progress. Competitive LECs generally argue that building new local loops to serve the mass market would

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Ex Parte Letter); Letter from Jason Oxman, Vice President and Assistant General Counsel, Covad, to William Maher, Chief, Wireline Competition Bureau, FCC, CC Docket No. 01-338 (filed Oct. 15, 2002) (Covad Oct. 15, 2002 Broadband Deployment *Ex Parte* Letter); Letter from Thomas Jones, Counsel for Allegiance, to William Maher, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3-4 (filed Dec. 12, 2002) (Allegiance Dec. 12, 2002 *Ex Parte* Letter).

[679] *See Seventh Wireless Report 2002*; *Third Section 706 Report 2002*, 17 FCC Rcd at 2844.

[680] *Local Telephone Competition December 2002 Report* at Table 1.

[681] Covad Comments at 55 n.105 (citing *Trends in Telephone Service May 2002 Report* at Table 18.3 (21.7% of working telecommunications channels are fiber)); AT&T Reply at 80 (citing *Trends in Telephone Service May 2002 Report* at Table 18.3 (32.5% of working telecommunications channels are fiber)).

[682] In their UNE Fact Report, the BOCs rely primarily on intermodal sources to argue that viable alternatives exist to incumbent LEC local loop facilities. We address these arguments below.

be prohibitively expensive.[683] Considered as a whole, the record indicates that competitive LECs rely primarily on unbundled local loops to serve the mass market on a nationwide basis.[684]

227. The record demonstrates that current deployment of FTTH for providing telecommunications services to the mass market is still in its infancy.[685] Corning, for example, presents evidence of FTTH deployment to approximately 26,000 homes and asserts that competitive LECs account for 77 percent of this FTTH deployment to date.[686] The record shows further that some competitive LECs are self-deploying fiber transmission facilities primarily to serve business customers in downtown locations.[687] The record also shows that competitive LECs are self-deploying fiber transmission facilities to the mass market in certain circumstances. In particular, competitive LECs are competing in so-called "greenfield" markets, which require entirely new construction of local loops (in addition to the deployment of the necessary switching and other network equipment) to serve new residential communities.[688] According to at least one study, non-incumbent LEC providers (*i.e.*, competitive LECs and municipalities) have deployed 90 percent of current FTTH.[689] We also note that the Commission staff's *High Speed Services December 2002 Report* found that parties *other than* incumbent LECs deployed 92 percent of FTTH and fixed wireless service lines.[690]

(b) Intermodal Loops

228. The record presents some evidence that intermodal platforms increasingly support the provision of narrowband and broadband services to the mass market. In particular, the record indicates that cable and wireless technologies are currently being used, and will likely

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[683] *See* Covad Comments at 16-18; AT&T Comments at 132.

[684] CompTel Reply at 24 (citing statistics compiled by Commission staff showing that competitive LECs serve 23% of the access lines in New York, 14% of the access lines in Texas, and 13% of the access lines in Illinois). Incumbent LECs assert that competitive LECs have deployed on a national basis somewhere between 16 and 23 million loops based on their interpretation of data in E911 databases. *See* BOC UNE Fact Report 2002 at I-5, II-4, and A-2. We note that CompTel's data, among other competitive LECs', are generally closer to those published by the Commission in the *Local Telephone Competition December 2002 Report.*

[685] AT&T Reply at 74.

[686] Corning Reply at 12 (citing *CSMG Study* at 51). In other studies submitted on the record, Corning estimates that competitive LECs account for 68% of the FTTH deployment nationwide. *See* Corning Nov. 20, 2002 *Ex Parte* Letter at 7.

[687] CCG July 17, 2002 CLEC Survey *Ex Parte* Letter at 6 (noting that five competitive LECs are deploying fiber in Chicago and four competitive LECs are deploying fiber in Boston and Portland).

[688] BOC UNE Fact Report 2002 at IV-16.

[689] FTTH Council Second Reply at 2.

[690] *High Speed Services December 2002 Report* at Table 5. In that report, staff found that, as of June 2002, carriers provided 6,120 fiber lines capable of supporting data transmissions over 200 kbps in at least one direction. *See id.* at Table 3.

increasingly be used, to provide loop substitutes to support services that compete with incumbent local services.[691]

229. Cable companies have widely deployed local broadband service in the form of high-speed Internet access offered via cable modem service. As of June 2002, cable companies provided more than 9.1 million high speed lines for Internet access to consumers nationwide and the service is available to more than 70 million homes in the nation.[692] Some cable companies also have augmented their networks to enable the provision of two-way voice telephony services.[693] For such services, the cable infrastructure serves as a replacement for loops. At this time, however, deployment of voice telephony by cable companies has been substantially exceeded by the deployment of cable modem service.[694] In their *UNE Fact Report*, the BOCs note that 1.5 million homes[695] subscribe to cable telephony on a nationwide basis. The record indicates that circuit-switched cable telephony has been deployed in portions of 20 states and is now available to about 10 million households in the United States, or about 9.6 percent of the total households in the nation.[696] Because companies originally deployed cable television systems for the provision of a one-way mass media service, retrofitting cable infrastructure to support cable telephony and broadband services requires substantial investment and modification.[697] For those cable operators that have not already augmented their networks to

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[691] BOC UNE Fact Report 2002 at IV-8 to IV-14. Current estimates are that only 1.7% of U.S. households rely on other technologies to replace their traditional wireline voice service. Allegiance Reply at 35 n.38.

[692] Cable companies provided 9,172,895 high speed lines for Internet access as of June 30, 2002. *High Speed Services December 2002 Report* at Table 1. *See* Letter from Jason D. Oxman, Vice President and Assistant General Counsel, Covad, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338, Declaration of Stephen Siwek and Su Sun (Covad Siwek/Sun Decl.) at paras. 58-59 (filed Nov. 20, 2002) (Covad Nov. 20, 2002 *Ex Parte Letter*). Some parties estimate that cable modem service is available to two-thirds or more of the homes in the nation. BOC UNE Fact Report 2002 at IV-12 n.59 (estimating that cable modem service is available to 70-75 million homes).

[693] BellSouth Comments at 64 (noting cable companies upgraded to provide voice in Atlanta, Jacksonville, Miami and Louisville); Letter from Florence M. Grasso, Covad, to Marlene M. Dortch, Secretary, FCC, Docket Nos. 01-338, 96-98, 98-147 at 6 (filed Apr. 19, 2002) (Covad Apr. 19, 2002 *Ex Parte* Letter) (noting cable companies spent $55 billion to upgrade their facilities).

[694] As of June 2001, only 1% of all local access lines terminated over coaxial cable facilities. For example, AT&T notes that UNE-P providers in New York alone have as many customers as cable-provided telephony does on a nationwide basis. AT&T Reply at 26.

[695] BOC UNE Fact Report 2002 at IV-10. There are approximately 108.3 million households in the nation. *See* Industry Analysis and Technology Division, Wireline Competition Bureau, *Telephone Subscribership in the United States* (Nov. 8, 2002) at Table 1 (*Telephone Subscribership November 2002 Report*).

[696] BOC UNE Fact Report 2002 at II-11, IV-10 (noting that Cox has the capability to offer cable telephony to "75 to 95 percent" of the consumers in Rhode Island).

[697] WorldCom Comments at 35-36, Attach. A at 23, 25-27 (Richard A. Chandler, A. Daniel Kelley, David M. Nugent, *The Technology and Economics of Cross-Platform Competition in Local Telecommunications Markets* (Apr. 4, 2002) (HAI Report)). Although precise numbers are difficult to assemble because much of the necessary information is not publicly available, there is substantial evidence in our record concerning actual and projected completion of cable plant upgrades necessary to provide voice and data services. For example, according to a (continued....)

offer cable telephony, which encompasses the majority of the cable networks currently in operation, significant technical and operational issues must still be resolved.[698] Thus, it is difficult to predict at what point cable telephony will be deployed on a more widespread and ubiquitous basis. In addition, the record reflects that a number of cable operators are delaying their deployment of voice telephony until they are able to deploy such services over a packet-switched platform.

230. The record also shows that narrowband local services are widely available through CMRS providers. As discussed in Part IV above, one study estimates that 64.3 million households (*i.e.*, 61 percent of all U.S. households) use wireless phones.[699] The record shows that CMRS, while continuing to be primarily a complementary technology to wireline narrowband service, is growing as a substitute to wireline narrowband service with about three to five percent of CMRS subscribers using their service as a replacement for *primary* fixed voice wireline service.[700] While this percentage is small, it continues to show increasing growth. Indeed, the Commission recently relied on wireless substitution to support the Track A findings in two section 271 proceedings where residential customers in New Mexico and Nevada had replaced their landline phones with wireless ones.[701] In addition, the record demonstrates that,

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Yankee Group Report, at the end of 2000, 50% of United States households had cable modem service available and this percentage was predicted to exceed 80% by the end of 2005. BellSouth Comments at 39 (citing *Broadband Access Technology: Whose Number is Up?*, Yankee Group Report (Sept. 19, 2001)). BellSouth offered more recent numbers: at the end of 2001, 70% of United States households had cable modem service available. BellSouth Reply at 48 (citing BellSouth Harris Reply Decl. at para. 9).

[698] For example, potential cable telephony providers must determine how to provide power to the consumer premises equipment (wireline systems utilizing copper facilities already provide power through the same network telephony service is provided, thus ensuring continuous access to telecommunications in the event of power outages) and ensure accurate 911 service. Allegiance Reply at 33. Allegiance notes that incumbent LEC comments rely not on current deployment but on predictions such as whether Comcast will deploy telephony after merger with AT&T and future deployment of IP telephony over cable networks.

[699] *See* BOC UNE Fact Report 2002 at IV-12 (citing *Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993*, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Sixth Report, 16 FCC Rcd 13350, 13381 n.211 (2001) (*Sixth Wireless Report 2001*). Wireless phones are now a mass market consumer device used by some 45% of the United States. *Seventh CMRS Report* at 31. One study estimates that 64.3 million households (*i.e.*, 61% of all U.S. households) use wireless phones. *Id.* By contrast, 103.4 million households (*i.e.*, 95.5% of all U.S. households) own and use wireline telephones. *Telephone Subscribership November 2002 Report* at Table 1. BellSouth Comments at 64 (arguing wireless is a substitute for wireline).

[700] *See Seventh CMRS Report* at 32 n.208; *see also* BOC UNE Fact Report 2002 at IV-12 (citing *Sixth Wireless Report 2001*, 16 FCC Rcd at 13381 n.211).

[701] *See Application by SBC Communications Inc., Nevada Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Authorization to Provide In-Region, InterLATA Services in Nevada*, WC Docket No. 03-10, Memorandum Opinion and Order, 18 FCC Rcd 7196, 7206, para. 18 (2003) (*SBC Nevada 271 Order*); *Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in New Mexico, Oregon and South Dakota*, WC Docket No. 03-11, Memorandum Opinion and Order, 18 FCC Rcd 7325, 7336 n.53 (2003) (*Qwest New Mexico 271 Order*); *see also In the Matter of Application of* (continued....)

although promising, wireless CMRS connections in general do not yet equal traditional landline local loops in their quality, their ability to handle data traffic, and their ubiquity.[702] Finally, the record indicates that CMRS is not yet capable of providing broadband services to the mass market – although a growing number of wireless carriers make available Internet access, such access is generally limited to transmissions of 25 to 66 kbps.[703]

231. The record indicates that, at present, fixed wireless and satellite services remain nascent technologies, with limited availability, when used to provide broadband services to the mass market. Although current satellite services may be available in all 50 states, their transmission capabilities remain limited and their mass market services have few subscribers.[704] For example, combined, satellite and fixed wireless provide broadband services to approximately 200,000 customers nationwide.[705] In addition, recent financial difficulties of fixed wireless carriers suggest the potential to use such services as substitutes for local loops used to serve the mass market is limited, at least for the short term.[706]

232. Finally, we note that other technologies that can substitute for loops in providing narrowband and broadband service are currently under development. For example, some companies are experimenting with delivering narrowband voice service via power lines.[707] Such technologies have not been deployed beyond an experimental basis (*e.g.*, technical trials) at this time.

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BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, Interlata Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20606, 20622-23, paras. 11, 29-33 (1998) (*BellSouth Louisiana II 271 Order*) (finding that PCS can be a substitute for wireline service).

[702] BellSouth Comments at 41 (stating that wireless is "[not] very effective in transmitting large amount of data at high speed."). AT&T points out, for example, that wireless service is engineered to provide only roughly 70% call completion rate while wireline call completion rates exceed 99%. AT&T Reply at 25; *see also id.* at 162-63.

[703] *Seventh CMRS Report* at 53-54. By the end of 2001, approximately eight to ten million people accessed the Internet through their wireless telephones, up from 2 to 2.5 million the year before. *Id.* at 53.

[704] *See, e.g.*, WorldCom Comments at 4, 47, Attach. A at 76-78.

[705] *See High Speed Services December 2002 Report* at Table 3.

[706] *See* Sprint Comments at 24-25; *see also* Covad Siwek/Sun Decl. at paras. 49-57 & Schedule 5 (arguing that consumers are not buying satellite broadband because it does not work well in inclement weather, requires unobstructed view of southern sky, and is too expensive); Letter from Florence Grasso, Covad, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 6 (filed Oct. 21, 2002) (Covad Oct. 21, 2002 *Ex Parte* Letter).

[707] *See* Committee on Broadband Last Mile Technology, Computer Science and Telecommunications Board, National Research Council, BROADBAND: BRINGING HOME THE BITS 135-36 (2002).

(c) Third-Party Offerings

233. The record indicates that no third parties are effectively offering, on a wholesale basis, alternative local loops capable of providing narrowband or broadband transmission capabilities to the mass market.[708] This includes intermodal platforms such as cable and satellite that have no statutory or regulatory obligation comparable to the unbundling requirements of section 251(c).[709] We note that, in their various reports and other submissions, the incumbent LECs have not demonstrated that third parties are offering alternate local loop transmission on a wholesale basis.

(iv) Unbundling Analysis

234. We engage in a balancing test in determining our unbundling requirements for mass market local loops. We recognize, of course, that impairment remains our statutory touchstone. We do not rely exclusively, however, on an impairment analysis to make our unbundling determination. We retain the flexibility under our section 251(d)(2) "at a minimum" authority to consider other factors. We use this flexibility sparingly. However, we believe that the goal of swift and ubiquitous broadband deployment is so important to the United States that we consider the statutory goals outlined in section 706 and how they relate to broadband as additional factors when considering loops. In addition, we also consider the comparative weight of the costs versus benefits of unbundling and the effect of intermodal competition.[710] As explained below, based on our analysis of impairment and evaluation of other factors, we adopt loop unbundling rules for the mass market that ensure competitive access through extensive unbundling of the legacy copper loop facilities while promoting incentives to invest in next-generation network facilities and equipment through more limited unbundling of fiber-based loop facilities.

235. We conclude that requesting carriers seeking to serve the mass market face varying levels of impairment on a national basis without unbundled access to the transmission path between the central office and the customer premises depending upon whether the loop used to complete this path consists entirely of copper, or consists of a hybrid of fiber and copper cables, and whether a requesting carrier seeks to offer narrowband or broadband services or both. Pursuant to our section 251(d)(2) unbundling standard, we consider generally whether the potential revenue opportunity exceeds the costs, taking into consideration the relevant entry barriers – *i.e.*, scale economies, sunk costs, first-mover advantages, and barriers within the control of the incumbent LEC – and evidence of actual marketplace conditions.

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[708] Covad Comments at 35 (no copper alternative); *see also* Access Integrated Networks Reply at 13; Allegiance Reply at 32-33 (contending that incumbent LEC arguments are based on predictions and speculation rather than actual marketplace conditions).

[709] Covad Comments at 36-37 (arguing cable, wireless satellite and competitive fiber are not capable of providing xDSL quality or ubiquity); *see* AT&T Reply at 95-98, 161-63; WorldCom Reply at 87.

[710] *See supra* Part V.D.

236. Because of the importance of broadband to the American public and telecommunications users generally, we also consider other factors, foremost among these our obligation to ensure adequate incentives for infrastructure investment under section 706 of the Telecommunications Act of 1996, under our "at a minimum" authority in section 251(d)(2). For copper loops, we find on a national basis that requesting carriers are impaired without access to these loops, including copper subloops, because their absence is likely to make entry uneconomic.[711] For other types of loops (*i.e.*, FTTH loops and hybrid fiber/copper loops used in packet-based transmissions), however, we recognize that additional revenue opportunities associated with increased bandwidth capabilities may alleviate, in direct proportion to the level of fiber deployment, at least some of these entry barriers. Moreover, our obligation to ensure adequate infrastructure investment incentives pursuant to section 706 supports limitations on the unbundling of fiber-based loops. Finally, the existence of intermodal competition for mass market broadband services reduces the need for more extensive unbundling rules.

(a) Impairment

237. The costs of local loops serving the mass market are largely fixed and sunk. By fixed we mean that these costs are largely insensitive to the number of customers being served.[712] Much of the cost applies whether a carrier serves a single residential customer or ten thousand residential customers: that carrier must secure rights-of-way, dig trenches or place poles, and run wire underground or along poles.[713] Such deployment costs are also sunk. That is, local loop facilities are not fungible because they cannot be used for any other purpose if the investment fails.[714] If a new entrant overbuilds to serve a mass market customer and loses that customer to another carrier, the new entrant cannot economically redeploy that loop to another location. Its investment might be lost unless it could find a purchaser for its redundant loops. This is true regardless of whether the new entrant was providing narrowband or broadband service, or both. A carrier will not deploy mass market loops unless it knows in advance that it will have

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[711] In its *Verizon* decision, the Supreme Court stated that "the most costly and difficult part of [replicating the incumbent LEC's network] would be laying down the 'last mile' of feeder wire, the local loop, to the thousands (or millions) of terminal points in individual houses and businesses." *Verizon*, 535 U.S. at 490-91. Indeed, in its *USTA* decision, the D.C. Circuit quotes the following passage from this Supreme Court decision in its discussion of cost disparities: "entrants may need to share some facilities that are *very expensive to duplicate* (say, loop elements) in order to be able to compete in other, *more sensibly duplicable* elements (say, digital switches or signal-multiplexing technology)." *USTA*, 290 F.3d at 426 (citing *Verizon*, 535 U.S. at 510 n.27) (emphasis added by D.C. Circuit).

[712] Covad Comments at 28; AT&T Reply at 150, 154-55 (citing AT&T Comments, Attach. B, Declaration of Richard N. Clarke (AT&T Clarke Decl.) at para. 23); WorldCom Reply at 14-18 (citing WorldCom Reply, Attach. A, Declaration of Mark T. Bryant (WorldCom Bryant Reply Decl.) at paras. 3, 5-14).

[713] *See* Covad Comments at 28 (arguing that incumbents could afford such massive fixed costs because they had 100% of the market share when they constructed their loop plant); WorldCom Reply at 63 (citing WorldCom Bryant Reply Decl. at para. 11). We note that fixed costs may strongly affect small businesses because, among other things, they likely serve fewer customers. See *supra* Part V.B. for a discussion of the relationship between fixed costs and scale economies.

[714] AT&T Reply at 144; WorldCom Reply at 16.

customers that will generate sufficient revenues to allow it to recover its sunk loop investment.[715] This certainty could most easily be achieved through long-term service contracts and a large, guaranteed customer base. In contrast to the enterprise market, however, long-term contracts are not commonplace in the mass market for either the narrowband or the broadband services and we have no information in our record to indicate that consumers ordinarily would accept such terms.[716] As new entrants, competitive LECs do not enjoy a large guaranteed subscriber base that would provide a predictable source of funding to offset their local loop deployment costs.[717] For these reasons, we find that the costs of self-provisioning mass market loop facilities are demonstrably greater than those faced universally by new entrants in other industries.[718]

238. Incumbent LECs also enjoy first-mover advantages that work with the steep costs noted above to compound the entry barriers associated with local loop deployment. When the incumbent LECs installed most of their loop plant, they had exclusive franchises and, as such, the record shows that they secured rights-of-way at preferential terms and at minimal costs.[719] By contrast, our record shows that new entrants have no such advantage.[720] Even if a competitive LEC obtains speedy resolution of rights-of-way issues, it may still experience delays involved with constructing new loop plant. Incumbent LECs, of course, experience no such delays when providing narrowband or broadband services over their legacy copper loops.

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[715] NuVox Comments at 74-75; AT&T Reply at 154 (citing AT&T Willig Reply Decl. at paras. 21-22, 26, 39); *see also* Covad Reply at 16 (arguing that there are no "uncommitted entrants" because of the extremely high sunk costs in constructing loop plant).

[716] The record reflects that mass market customers typically purchase services offered over voice-grade loops on a month-to-month basis at relatively low prices. Compared to higher-capacity loops demanded by other customer classes, loops serving the mass market require less complex technology. Nevertheless, replicating a single loop for a mass market customer is prohibitively expensive due to the relatively low revenue per loop as compared to the cost of construction. This factor, coupled with the market's predominant use of short-term customer commitments, equates to a very low profit margin per loop, especially for new entrants. Moreover, loops for mass market customers exhibit substantial economies of scale, in that the larger the number of loops provisioned in a given area, the lower the average cost of provisioning each loop.

[717] As noted earlier in this Order, large sunk costs make it more difficult to ramp up to scale and, therefore, overcome a scale economies problem. *See supra* Part V.B.

[718] AT&T Comments at 127; Covad Reply at 15-18; WorldCom Reply at 14-18 (citing WorldCom Bryant Reply Decl. at paras. 3, 5-14).

[719] *See, e.g.*, Covad Comments at 28 (stating that incumbents often obtained rights-of-way through the use of the states' eminent domain power); AT&T Willig Decl. at paras. 62-63 (arguing that as the first mover, incumbents received rights-of-way from local governments with only minimal transaction costs because the residents in that neighborhood or municipality otherwise would not receive any telecommunications services).

[720] *See* WorldCom Comments at 33 (contending that competitive LECs have been hindered in their ability to install their own loops by "municipal ordinances that have imposed excessive, non-cost based fees on access to rights-of-way and have also delayed such access through unnecessary and cumbersome application procedures and bonding requirements."). Although section 224 of the Act imposes nondiscriminatory access obligations on incumbent LECs with respect to their poles, ducts, conduits, and rights-of-ways, we note that such access does not eliminate the transaction costs or first-mover advantages described above. 47 U.S.C. § 224.

Because these loops are already deployed, they are available immediately for providing narrowband services (*i.e.*, voice, fax, dial-up Internet access) and available after performing any necessary line conditioning for providing broadband service. Furthermore, competitive LECs are also faced with the problem of overcoming the incumbent LECs' established brand name recognition for providing reliable service in order to convince (potentially reluctant) mass market customers to change carriers.

239. According to several commenters, due to the high fixed costs described above, the incumbents LECs designed their networks to minimize the extent to which they must modify their loop plant when adding new customers or services.[721] Accordingly, when incumbent LECs construct loops, they typically add several spare wire pairs to the customer's location because the cost of these spare wires is small in comparison to the cost of adding these pairs at a later date.[722] This design lowers the incumbent LECs' cost of adding customers. Incumbent LECs achieved low average costs because historically they have served 100 percent of demand in any given area. Their investments were recovered, in most cases, through regulated rates and an authorized rate of return.[723] For a new entrant to match or even come close to the incumbent LECs' economies of scale, at a minimum, it would have to capture quickly a significant percentage of the market.[724]

240. We recognize, however, that the deployment of next-generation network facilities and equipment – that is, fiber optic cables and equipment used to provide packet-based services – affects our analysis. Although some of the entry barriers exist for both all-copper and all-fiber loops (*e.g.*, the costs are both fixed and sunk, and such deployment is characterized by scale economies),[725] the revenue opportunities are significantly greater for fiber-based construction. The record indicates that carriers can earn significant returns on their fiber-based investment by providing a suite of services ranging from traditional voice to full-motion video.[726] In fact, the

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[721] *See* AT&T Reply at 149.

[722] *See id.* (stating that "a customer drop may contain six pairs of wires rather than two because the carrying costs of the extra capacity are small compared to the cost of deploying additional capacity later (*e.g.*, to add a second or third line)"); *see also* AT&T Reply at 150 n.101 (explaining the incumbent LECs' use of bridged tap and additional transmission electronics to maximize the use of the existing plant); WorldCom Reply at 15 (citing WorldCom Bryant Reply Decl. at paras. 11-14; AT&T Clarke Decl. at para. 23) (arguing that "once a cable route is established, there are only small incremental structure costs to serving additional customer lines located along the route.").

[723] AT&T Reply at 150 (citing AT&T Reply, Tab C, Declaration of Anthony Fea and Anthony Giovannucci (AT&T Fea/Giovannucci Reply Decl.) at paras. 6-7).

[724] *See, e.g.*, AT&T Reply at 157 (arguing that even with an "aggressive" market share of 30%, the new entrant's loop investments per line costs would exceed the incumbent's by 45 to 87% and its monthly loop costs would exceed the incumbent's by 39 to 65%).

[725] Covad Comments at 27 (arguing that xDSL "signals are no easier or cheaper to replicate than loops carrying POTS"); WorldCom Reply at 15 (citing AT&T Clarke Decl. at para. 23).

[726] Corning Comments at 19-20 (asserting that incumbent and competitive LECs are on equal footing for FTTH deployment). Corning and the FTTH Council estimate that FTTH loops allow revenue opportunities of approximately $33 per subscriber compared to $18 per subscriber for xDSL-based services. Letter from Timothy J. (continued....)

potential rewards of fiber deployment may offset the likelihood that competitive LECs will view entry as uneconomic. In addition, the barriers faced in deploying fiber loops, as opposed to existing copper loops, may be similar for both incumbent LECs and competitive LECs.[727] Both incumbent and competitive LECs must purchase fiber and the associated equipment, negotiate access to the necessary rights-of-way, obtain any necessary government permits, hire skilled labor, and manage their construction projects in order to deploy fiber loops. Moreover, by some estimates, competitive LECs enjoy advantages that incumbent LECs do not have, such as lower labor costs and superior back office systems.[728]

(b) Other Considerations

241. As we have stated elsewhere, broadband deployment is a critical policy objective that is necessary to ensure that consumers are able to fully reap the benefits of the information age.[729] In this regard, we weigh how our rules related to broadband deployment address other policy considerations. In particular, we seek to encourage investment in next-generation network architecture suitable for delivering advanced telecommunications capability throughout the nation. We also look to promote the potential of broadband in a minimally regulated environment in accordance with the deregulatory intent of the 1996 Act. Finally, we seek to unleash the innovation that has been characteristic of the computer and software industries. We expect to develop unbundling rules that serve these broad goals so that consumers ultimately benefit from a ubiquitous, efficient, nationwide broadband deployment.

242. *Section 706.* In determining what our unbundling rules for loops used for broadband services should be, we also are guided by the goals of, and our obligations under, section 706 of the 1996 Act.[730] Section 706 directs the Commission to "encourage the

(Continued from previous page)

Regan, Senior Vice President, Corning, to Marlene H. Dortch, Secretary, FCC, CC Docket 01-338, Attach. at 33 (filed Nov. 26, 2002) (Corning Nov. 26, 2002 FTTH Deployment *Ex Parte* Letter).

[727] *See, e.g.*, Verizon Reply at 40 n.117 (arguing that both incumbents and competitive LECs must incur and recover the costs of obtaining franchises and construction permits, and building out fiber loops). Similarly, as discussed earlier in this Order, incumbent LECs' first-mover advantages would be greatly reduced in greenfield situations. *See supra* Part V.B.

[728] Corning estimates construction accounts for more than 50% of FTTH deployment costs. Letter from Timothy J. Regan, Senior Vice President, Corning, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338, Attach. 2 at 9 (filed Nov. 20, 2002) (Corning Nov. 20, 2002 FTTH Deployment *Ex Parte* Letter). Corning further explains that labor is "the largest component" of construction costs, and that competitive LECs enjoy an advantage. *Id.*, Attach. 2 at 10-11. *See CSMG Study* at 14 (noting that competitive LEC FTTH construction costs for labor are lower than those of incumbent LECs); BOC Shelanski Reply Decl. at para. 3; *see also* Verizon Reply at 42.

[729] *See, e.g., Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket Nos. 02-33, 95-20, 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) (*Wireline Broadband NPRM*); *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, 16 FCC Rcd 22745, 22747, para. 4 (2001) (*Dom/Non-Dom NPRM*).

[730] 47 U.S.C. § 157 nt.

deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans" by using regulatory measures that "promote competition in the local telecommunications market" and "remove barriers to infrastructure investment."[731] Through its "at a minimum" language, section 251(d)(2) provides the Commission with the discretion to consider factors in addition to impairment before requiring unbundling.[732] We find that this discretion is appropriately exercised by evaluating whether unbundling of local loops used to provide broadband services to the mass market is consistent with our section 706 mandate. In particular, we consider whether our unbundling requirements encourage the deployment of advanced telecommunications capability to all Americans by, among other things, promoting competition in the local market, promoting facilities-based deployment, promoting the delivery of innovative advanced services offerings, and removing barriers to infrastructure investment. In addition, we note that section 706 promotes the deployment of "high-speed, switched, broadband telecommunications capability," which counsels in favor of measures aimed at spurring the deployment of packet-switching technologies.[733]

243. Upgrading telecommunications loop plant is a central and critical component of ensuring that deployment of advanced telecommunications capability to all Americans is done on a reasonable and timely basis and, therefore, where directly implicated, our policies must encourage such modifications. Although a copper loop can support high transmission speeds and bandwidth, it can only do so subject to distance limitations and its broadband capabilities are ultimately limited by its technical characteristics.[734] The replacement of copper loops with fiber will permit far greater and more flexible broadband capabilities.[735] Although both the material used in the transmission path and the attached equipment work together to enable broadband capabilities, the record shows that, of the two, it is the upgrade to the transmission path (the loop) that is, by far, the more costly, complex, and risky endeavor.

244. In establishing our unbundling requirements, we consider our section 706 mandate in light of the technical characteristics of local loops. As we discuss in more detail below, we determine that our obligation to ensure the deployment of advanced telecommunications capability under section 706 warrants different approaches with regard to existing loop plant and new loop plant. With existing copper loops, all investment in advanced

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[731] *Id.*

[732] With regard to the Commission's authority to "consider other elements" under the "at a minimum" language, the Court of Appeals for the D.C. Circuit has stated, "[w]e assume in favor of the Commission that is so." *USTA*, 290 F.3d at 425.

[733] 47 U.S.C. § 157 nt. Section 706 defines "advanced telecommunications capability" as "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology."

[734] *Line Sharing Order*, 14 FCC Rcd at 20919, para. 8 n.9.

[735] BROADBAND: BRINGING HOME THE BITS, *supra* note 707, at 129-30; Corning Comments at 2; Letter from Timothy Regan, Senior Vice President, Corning, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338, FTTH Council Attach. at 28 (filed Jan. 29, 2003) (Corning Jan. 29, 2003 *Ex Parte* Letter).

telecommunications capability is necessarily limited to the equipment, not the transmission facility. Therefore, our obligation to encourage infrastructure investment tied to legacy loops is more squarely driven by facilitating competition and promoting innovation. Because the incumbent LEC has already made the most significant infrastructure investment, *i.e.*, deployed the loop to the customer's premises, we seek, through our unbundling rules, to encourage both intramodal and intermodal carriers (in addition to incumbent LECs) to enter the broadband mass market and make infrastructure investments in equipment. In addition, we seek to promote the deployment of equipment that can unleash the full potential of the embedded copper loop plant so that consumers can experience enhanced broadband capabilities before the mass deployment of fiber loops. We expect that more innovative products and services will follow the deployment of new loop plant and associated equipment. With new loop plant, however, encouraging infrastructure investment must be balanced between ensuring that incumbent LECs retain adequate incentives to upgrade their loop plant and ensuring that competition continues to drive the deployment of innovative broadband services. These considerations come into play most acutely in determining the appropriate unbundling requirements for loops used to provide broadband service to the mass market.[736]

245. *Intermodal Competition.* Upon review of the extensive record on intermodal competition compiled in this proceeding, we determine that, although the existence of intermodal loops does not warrant a finding of no impairment, such competition is a factor to consider in establishing our unbundling requirements. We have discussed the competitive characteristics of intermodal loops in preceding paragraphs. Indeed, the broadband competition posed by cable operators in the mass market supports our decision to refrain from unbundling requirements on the features, functions, and capabilities of certain types of loops. Similarly, the state of intermodal competition, including competition from wireless telephony, in the mass market for narrowband services supports our approach to unbundling the legacy loops of incumbent LECs. Neither wireless nor cable has blossomed into a full substitute for wireline telephony. In addition, because wireless does not yet demonstrate the technical characteristics necessary to provide broadband services, unbundling incumbent LEC legacy loops is necessary for mass market consumers to realize the benefits of competition both for narrowband and broadband services, as well as both combined as a bundle.

246. There appear to be a number of promising access technologies on the horizon[737] and we expect intermodal platforms to become increasingly a substitute for wireline voice telephony services and for wireline broadband services. As we continue to assess impairment in the future, we recognize that the increased presence of viable alternative platforms may help increase competitive alternatives, both retail and wholesale, in the narrowband and broadband mass markets. The presence of such alternatives in the future may enable us to find that

[736] We note that one party, Corning, requested that the Commission forbear from imposing on incumbent LECs the resale requirements set forth in section 251(c)(4) for FTTH loops. Corning Comments at 31-33. Obviously, Corning's request is outside the scope of this proceeding and, thus, we will not address it in this Order.

[737] *See, e.g., Third Section 706 Report 2002*, 17 FCC Rcd at 2877-80, paras. 79-88 (describing other potential intermodal platforms capable of providing broadband service).

requesting carriers are no longer impaired in their ability to compete without access to incumbent LEC loops.[738]

(v) Specific Unbundling Requirements for Mass Market Loops

247. In this section, we address the specific unbundling requirements for mass market loops. We address the requirements based on the three primary types of local loops noted above, *i.e.*, copper loops, FTTH loops, and hybrid fiber/copper loops.

(a) Legacy Networks

248. *Stand-Alone Copper Loops.* As discussed above, we find that requesting carriers are generally impaired on a national basis without unbundled access to an incumbent LEC's local loops, whether they seek to provide narrowband or broadband services, or both.[739] However, we determine that unbundled access to conditioned, stand-alone copper loops (which, of course, may be shared between two competitive LECs as discussed below) is sufficient to overcome such impairment for the provision of broadband services. Consequently, we find that, subject to the grandfather provision and transition period explained below, incumbent LECs do not have to unbundle the HFPL for requesting telecommunications carriers.

249. With more than 6 million kilometers of copper cable deployed, it is clear that copper remains the predominant loop type serving the mass market[740] and no party seriously asserts that stand-alone copper loops should not be unbundled in order to provide services to the mass market.[741] To address the impairment discussed above, we conclude that incumbent LECs must provide unbundled access to local loops comprised of copper wire.[742] That is, incumbent LECs shall provide, as a UNE, access to the complete transmission path comprised of a copper local loop between the central office and the customer's premises. The copper loop network element is a single local loop, including all intermediate devices (*e.g.*, repeaters, load coils) used

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[738] We note that the impairment standard set forth in section 251 is different from, and does not prejudge, the standard we use to assess a carrier's dominant or non-dominant status. *See Dom/Non-Dom NPRM.*

[739] *See* our discussion of the high fixed and sunk costs, large economies of scale, and operational barriers such as rights-of-way, *supra* Part VI.A.4.a(iv)(a).

[740] *See Statistics of Communications Common Carriers September 2002 Report* at Table 2.2.

[741] *See, e.g.*, SBC Reply at 109 (stating that competitive LECs have "ample opportunity to offer voice and data over the legacy network" and can "access the copper distribution subloop at the first accessible point in the ILEC's network . . . and use it to provision DSL service."). In addition, we note that some commenters assumed continued unbundling of loops to support their argument that UNE-P is unnecessary. *See, e.g.*, Verizon Reply at 113 (arguing that UNE-P is unnecessary because a competitive LEC could simply "use hot cuts and a UNE-L strategy to serve mass market customers.").

[742] To be clear, we require incumbent LECs to unbundle both existing copper loops and copper loops as they are newly deployed.

to establish the transmission path. Consistent with the definition the Commission adopted in the *UNE Remand Order*, this complete transmission path between the incumbent LEC's main distribution frame (or its equivalent) in its central office and the demarcation point at the customer's premises[743] also includes the features, functions, and capabilities of the copper loop.[744] We include within this network element all local loops comprised of copper cable, including two- and four-wire analog voice-grade loops, digital loops (*e.g.*, DS0s and ISDN lines) and two- and four-wire loops conditioned to transmit the digital signals needed to provide xDSL service. Consistent with their obligation to provide unbundled local loops on just, reasonable, and nondiscriminatory terms and conditions, incumbent LECs must provide the requesting carriers with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent LEC in the same time intervals it is provided to the incumbent LEC's retail operations.[745] We note that our requirements for stand-alone copper loops apply to both copper loops that are in active service and those that are deployed in the network as spares.[746]

250. The practical effect of this unbundling requirement is to ensure that requesting carriers have access to the copper transmission facilities they need in order to provide narrowband or broadband services (or both) to customers served by copper local loops. We understand that this unbundling obligation may require an incumbent LEC to provide the functionality available in certain equipment, as well as to remove the functionality from other equipment (*i.e.*, to condition the loop), in order to provide a complete transmission path between its main distribution frame (or equivalent) and the demarcation point at the customer's premises.[747] As noted elsewhere in this Order, we find that line conditioning constitutes a form

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[743] As discussed below, this also includes any inside wire owned by the incumbent LEC. *See infra* Part VI.B.2 (discussing inside wire).

[744] As noted above, the Act defines the term "network element" as "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." 47 U.S.C. § 153(29).

[745] *See supra* Part VI.I (discussing incumbent LECs' OSS obligations); *see also UNE Remand Order*, 14 FCC Rcd at 3884-87, paras. 426-31 (requiring incumbent LECs to provide, among other things, the composition of the loop material; the existence, location and type of any electronic or other equipment on the loop; the loop length; the wire gauge(s) of the loop; and the electrical parameters of the loops); *Line Sharing Order*, 14 FCC Rcd at 20958-73, paras. 96-130; 47 C.F.R. § 51.319(g).

[746] These requirements also include the obligation to condition the spare pair so that the requesting carrier may provide xDSL service. As Qwest points out, when incumbent LECs construct new loop plant, they frequently overlay fiber facilities that supplement existing loops. Qwest Comments at 45; *see* Alcatel Comments at 16 (noting that, when incumbent LECs deploy fiber loops, competitive LECs would continue to maintain access to legacy copper transmission facilities). Thus, the construction of new facilities does not in itself alter a competitive LEC's ability to use the incumbent LEC's network. Qwest explains that it "does not proactively remove copper facilities in the case of an overlay" so that requesting carriers should be able to continue providing service in these circumstances. Qwest Comments at 45-46.

[747] As discussed in Part VI.A. *infra*, we readopt incumbent LECs' line conditioning obligations. The Commission noted in its *Line Sharing Order* that devices such as load coils and bridged taps interfere with the provision of xDSL service and, absent a certain showing by the incumbent LEC to the relevant state commission, must be removed at the request of the competitive LEC. *See Line Sharing Order*, 14 FCC Rcd at 20952-54, paras. 83-86. We (continued....)

of routine network modification that must be performed at the competitive carrier's request to ensure that a copper local loop is suitable for providing xDSL service.[748]

251. *Line Splitting.* We find that when competitive carriers opt to take an unbundled stand-alone loop, the incumbent LEC must provide the requesting carrier with the ability to engage in line splitting arrangements. We use the term "line splitting" to describe the scenario where one competitive LEC provides narrowband voice service over the low frequency of a loop and a second competitive LEC provides xDSL service over the high frequency portion of that same loop. The Commission previously found that existing rules require incumbent LECs to permit competing carriers to engage in line splitting where a competing carrier purchases the whole loop and provides its own splitter to be collocated in the central office.[749] We reaffirm those requirements but, for purposes of clarity and ensuring regulatory certainty, we find that it is appropriate to adopt line splitting-specific rules.

252. Included among these rules is the requirement that incumbent LECs modify their OSS in such a manner as to facilitate line splitting. We also readopt the Commission rules requiring incumbent LECs to provide access to physical loop test access points on a nondiscriminatory basis for the purpose of loop testing, maintenance, and repair activities, and allowing incumbent LECs to maintain control over the loop and splitter equipment and functions in certain circumstances. We do not anticipate that the incumbent LECs will have any difficulty implementing such an obligation because the Commission required as much from them in its *Line Sharing Reconsideration Order.*[750] Furthermore, so long as the unbundled loop-switch

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determine that, upon the competitive LEC's request, incumbent LECs must similarly condition unbundled stand-alone loops to make them xDSL-compatible.

[748] We also require such conditioning for the HFPL consistent with the grandfather provision and transition period described below. *See Line Sharing Order*, 14 FCC Rcd at 20952-54, paras. 83-87.

[749] *See Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18515-16, paras. 324-25 (2000) (*SWBT Texas 271 Order*); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 16 FCC Rcd 2101, 2109-14, paras. 16-26 (2001) (*Line Sharing Reconsideration Order*). These orders expressly determined that rules 51.307(c) (requiring incumbent LECs to provide unbundled access to a UNE in a manner that "allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element") and 51.309(a) (prohibiting an incumbent LEC from imposing "limitations, restrictions, or requirements on . . . the use of unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner" the requesting carrier intends) require incumbent LECs to permit line splitting.

[750] *See Line Sharing Reconsideration Order*, 16 FCC Rcd at 2111, para. 20 (requiring incumbent LECs to make all necessary network modifications, including providing nondiscriminatory access to OSS necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements). For the reasons explained herein, we grant WorldCom's request for clarification that requesting carriers may engage in line (continued....)

combination is permitted in a particular state, the rules make clear that incumbent LECs must permit competitive LECs providing voice service through that arrangement to line split with another competitive LEC.[751] As the Commission did before, we encourage incumbent LECs and competitors to use existing state commission collaboratives and change management processes to address OSS modifications that are necessary to support line splitting.[752]

253. *Unbundled Access to Copper Subloops.* We require incumbent LECs to provide unbundled access to their copper subloops, *i.e.*, the distribution plant consisting of the copper transmission facility between a remote terminal and the customer's premises.[753] We conclude that our impairment finding extends to copper subloops because they are part and parcel of the local loop plant of incumbent LECs – requesting carriers face precisely the same barriers to entry for a subloop as with a copper loop that extends from the incumbent LEC's central office to the customer's premises. Indeed, we note that several incumbent LECs argue that accessing copper subloops provides competitive LECs with sufficient access to the loop for the provision of the services that they seek to provide.[754] Consistent with our section 706 goal to spur deployment of advanced telecommunications capability, we do not require incumbent LECs to provide access to their fiber feeder loop plant on an unbundled basis as a subloop UNE. As explained below, in light of our decision to refrain from unbundling the packetized capabilities of incumbent LECs, incumbent LECs will provide access to their fiber feeder plant only to the extent their fiber feeder plant is necessary to provide a complete transmission path between the central office and the customer premises when incumbent LECs provide unbundled access to the TDM-based capabilities of their hybrid loops. We encourage parties to negotiate access arrangements that would facilitate competitive LEC access to copper subloops. Specifically, we expect that incumbent LECs will develop wholesale service offerings for access to their fiber feeder to

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splitting. MCI WorldCom Petition for Clarification, CC Docket No. 96-98 at 10 (filed Feb. 17, 2000) (MCI WorldCom Feb. 17, 2000 Petition for Clarification).

[751] Again, the Commission required this in an earlier order. *See Line Sharing Reconsideration Order*, 16 FCC Rcd at 2110-11, para. 19.

[752] *See id.* at 2111-12, para. 21. We note with support the work already performed by state commissions in this area and we encourage states to continue overseeing and participating in such collaboratives. *See, e.g.*, New York Department Comments at 6-7. Some commenters claimed that BOCs reject competitive LEC xDSL orders because the BOCs are not the local voice provider and they refuse to coordinate the HFPL order with the voice competitive LEC. *See, e.g.*, WorldCom Comments, Declaration of Ian Graham (WorldCom Graham Decl.) at para. 33. We do expect incumbent LECs to implement, in a timely fashion, "practical and reasonable measures" to enable competitive LECs to line split. *Id.*

[753] Letter from Derek R. Khlopin, High Tech Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338, Attach. at 2 (filed Feb. 14, 2003) (HTBC Feb. 14, 2003 *Ex Parte* Letter) (submitting proposed rule language).

[754] Qwest Comments at 46; SBC Comments at 53-54; Verizon Comments at 89 n.296.

ensure that competitive LECs have access to copper subloops. Of course, the terms and conditions of such access would be subject to sections 201 and 202 of the Act.[755]

254. We define the copper subloop UNE as the distribution portion of the copper loop that is technically feasible to access at terminals in the incumbent LEC's outside plant (*i.e.*, outside its central offices), including inside wire.[756] We find that any point on the loop where technicians can access the cable without removing a splice case constitutes an accessible terminal. As HTBC points out, a non-exhaustive list of these points includes the pole or pedestal, the serving area interface (SAI), the NID itself, the MPOE, the remote terminal, and the feeder/distribution interface. To facilitate competitive LEC access to the copper subloop UNE, we require incumbent LECs to provide, upon a site-specific request, access to the copper subloop at a splice near their remote terminals.[757] With respect to the copper subloop, in addition to providing greater specificity of access points consistent with the HTBC proposal, we readopt our previous requirements for providing unbundled access to subloop UNEs. Unlike our previous subloop unbundling rules, however, the rules we adopt herein do not require incumbent LECs to provide unbundled access to their feeder loop plant as stand-alone UNEs, thereby limiting incumbent LEC subloop unbundling obligations to their distribution loop plant.

255. *High Frequency Portion of the Loop.* Although we make the whole copper loop and the copper subloop available to requesting carriers as UNEs, along with the ability to engage in line splitting, some parties have requested that we also make available the high frequency portion of the copper loop. For reasons we discuss below, we decline to do so except as specified on a grandfathered basis. As an initial matter, we use the term "line sharing" to describe when a competing carrier provides xDSL service over the same line that the incumbent LEC uses to provide voice service to a particular end user, with the incumbent LEC using the low frequency portion of the loop and the competing carrier using the HFPL. Continued access to the incumbent LEC's conditioned, stand-alone copper loops and subloops enables a requesting carrier to offer and recover its costs from all of the services that the loop supports, including xDSL service.[758] Commenters have not argued that it is technically infeasible to provide xDSL

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[755] For example, incumbent LECs could develop, and provide pursuant to sections 201/202 of the Act, telecommunications services that are similar to the special access services they already provide. Such services would, in effect, offer competitive LECs access to the shared fiber feeder plant (and any necessary cross-connections or similar functions) in order to obtain access to equipment in a remote terminal or to the copper subloop itself. We note that at least one incumbent LEC has supported making available wholesale broadband service offerings because such arrangements would make commercial sense. *See, e.g.*, Verizon Comments at 82 (arguing that incumbent LECs should be permitted to offer wholesale broadband services in lieu of unbundling its broadband network equipment and facilities). *But see* WorldCom Reply at 120-21 (criticizing Verizon's proposal).

[756] HTBC Feb. 14, 2003 *Ex Parte* Letter at 2 (submitting proposed rule language).

[757] *Id.*

[758] Moreover, as explained above, the Commission reaffirms the incumbent LECs' obligation to permit line splitting so that a competitive LEC seeking only to offer xDSL service (*i.e.*, a data LEC) may partner with a voice-only competitive LEC to provide the service – xDSL – that the data LEC offered under the Commission's now-vacated rules.

service over a stand-alone copper loop nor have they argued that it is technically infeasible to provide xDSL service over a line split loop (*i.e.*, a loop that is shared by two competitive LECs – one offering voice service and the second offering xDSL service). Advocates for reinstating unbundled access to the HFPL instead offer various economic and operational reasons for why they would be impaired without such access, generally reiterating the same reasons that were offered in the Commission's original line sharing proceeding in 1999.[759]

256. As we noted above, the D.C. Circuit vacated these rules and directed the Commission to apply some limiting standard rationally related to the goals of the Act.[760] The D.C. Circuit stated that the Commission must weigh the costs associated with unbundling in making its section 251(d)(2) determinations.[761] More generally, the D.C. Circuit explained that the Commission must make an effort to balance these costs against the benefits of unbundling.[762] It is against this backdrop that the Commission makes its decision on line sharing.

257. In its *Line Sharing Order*, the Commission found that competitive LECs were impaired without unbundled access to the HFPL because, among other things, purchasing a stand-alone loop would be too costly for carriers seeking to offer only broadband service.[763] It also determined that requiring these carriers to offer voice service in order to provide xDSL service would impose on them the cost of providing circuit-switched voice services, which includes the development of marketing, billing, and customer care infrastructure to serve the needs of voice customers.[764] In addition, the Commission found no evidence that requesting carriers could obtain the HFPL from another competitive LEC (*i.e.*, what the Commission subsequently termed "line splitting").[765]

258. As an initial matter, we disagree with the Commission's prior finding that competitive LECs are impaired without unbundled access to the HPFL because purchasing a stand-alone loop would be too costly for carriers seeking to offer a broadband service. Whereas in the *Line Sharing Order*, the focus was only on the revenues derived from an individual service, our focus is on the all potential revenues derived from using the full functionality of the loop. As stated above, the impairment standard we adopt today considers whether *all* potential revenues from entering a market exceed the costs of entry, taking into account consideration of

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[759] *Line Sharing Order*, 14 FCC Rcd at 20931-38, paras. 38-53.

[760] *USTA*, 290 F.3d at 429 (citing *Iowa Utils. Bd.*, 525 U.S. at 386-88). The D.C. Circuit also cautioned the Commission against imposing the costs of unbundling if doing so would not bring on a significant enhancement of competition. *Id.*

[761] *Id.* at 429.

[762] *Id.* at 427, 429.

[763] *Line Sharing Order*, 14 FCC Rcd at 20932-35, paras. 39-43.

[764] *Id.* at 20936, para. 48.

[765] *Id.* at 20938, para. 53.

any advantages a new entrant may have.[766] Thus, in the instant case, we take into the account the fact that there are a number of services that can be provided over the stand-alone loop, including voice, voice over xDSL (i.e., VoDSL), data, and video services. In so doing, we conclude that the increased operational and economic costs of a stand-alone loop (including costs associated with the development of marketing, billing, and customer care infrastructure) are offset by the increased revenue opportunities afforded by the whole loop.

259. Moreover, we can no longer find that competitive LECs are unable to obtain the HFPL from other competitive LECs through line splitting. For example, the largest non-incumbent LEC provider of xDSL service, Covad, recently announced plans to offer ADSL service to "more of AT&T's 50 million consumer customers" through line splitting.[767] In addition, in the 1999 *Line Sharing Order*, the Commission relied on the marketplace conditions present at the time to justify, at least partially, its decision to unbundle the HFPL. Specifically, the Commission noted the nascency of local competition and the lack of viable alternatives for a provider of broadband services.[768] Although we recognize that these circumstances have not been completely reversed, significant strides have been made by competitors in the local market. Competitors now serve more than three times the number of voice customers that were served in 1999.[769] Moreover, the conditions for further competitive entry are much better established as evidenced by the Commission's approval of 43 section 271 applications, which requires the Commission to find that the local telephone market is open to competition in a particular state, since 1999.[770] Since some incumbent LECs have thus far refused to provide xDSL service to customers that obtain voice service from a competitive LEC, by necessity, any of the over 11 million voice customers served by competitive LECs who seek xDSL service would have to obtain that service from a competing carrier.[771]

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[766] *See supra* para. 84.

[767] *See* Covad Communications, *AT&T and Covad Extend Residential DSL Relationship*, Press Release (dated Jan. 6, 2003) <http://www.covad.com/companyinfo/pressroom/pr_2003/010603_press.shtml> (stating that this agreement will enable more of AT&T's 50 million consumer customers to obtain xDSL service through Covad's network, which itself covers more than 40 million households and businesses nationwide). We thus do not find credible Covad's argument that the Commission's previous finding, that there are no third-party alternatives to the incumbent LEC's HFPL, remains valid. *See* Covad Comments at 42.

[768] *See, e.g., Line Sharing Order*, 14 FCC Rcd at 20938, 20939-40, paras. 53, 56.

[769] *See Local Telephone Competition December 2002 Report* at Table 2 (comparing 3.4 million mass market customers in December 1999 with over 11 million mass market customers in June 2002). We also note that several voice providers, AT&T and WorldCom, subsequently purchased the assets of two former data LECs: NorthPoint and Rhythms NetConnections, respectively. *See, e.g.*, WorldCom Reply, Reply Declaration of Ian Graham (WorldCom Graham Reply Decl.) at para. 1.

[770] We note that in 1999, only one state, New York, had been granted section 271 authority. Since then, the Commission has approved section 271 applications in 42 other states (including the District of Columbia).

[771] *See Local Telephone Competition December 2002 Report* at Table 2. As noted by WorldCom, the need for line splitting is likely to grow as penetration by competitive voice providers increases. WorldCom Comments at 104.

260. We find that allowing competitive LECs unbundled access to the whole loop and to line splitting but not requiring the HFPL to be separately unbundled creates better competitive incentives than the alternatives. This is largely due to the difficulties in pricing the HFPL as a separate element. As we explained in the *Line Sharing Order*, the same physical loop is used for multiple services, and there is no single correct method for allocating loop costs among these services and the HFPL.[772] Pricing the HFPL thus creates a dilemma: either incumbent LECs are allowed to over-recover their loop costs by fully charging for both the HFPL and the low frequency portion of the loop, or competitive LECs are allowed to purchase the HFPL at a price of roughly zero.[773] Following our pricing rules, most states did the latter.[774] The result is that competitive LECs purchasing only the HFPL have an irrational cost advantage over competitive LECs purchasing the whole loop and over the incumbent LECs. In contrast, allowing competitive LECs unbundled access to the whole loop and to line splitting but not requiring the HFPL to be separately unbundled puts competitive LECs using only the HFPL in a more fair competitive position with respect to other competitive LECs and to the incumbent LECs. Each carrier faces the same loop costs and, it if wishes, each can partner with another carrier to provide service over the HFPL alone or the low frequency portion of the loop alone as it wishes.

261. We expressly reject the Commission's earlier finding that "line sharing will level the competitive playing field . . . ."[775] In fact, rules requiring line sharing may skew competitive LECs' incentives toward providing a broadband-only service to mass market consumers, rather than a voice-only service or, perhaps more importantly, a bundled voice and xDSL service offering. In addition, readopting our line sharing rules on a permanent basis would likely discourage innovative arrangements between voice and data competitive LECs and greater product differentiation between the incumbent LECs' and the competitive LECs' offerings. We find that such results would run counter to the statute's express goal of encouraging competition and innovation in all telecommunications markets.

262. Furthermore, in vacating the Commission's line sharing rules, the D.C. Circuit found that the Commission failed to consider the relevance of broadband competition coming from cable and, to a lesser extent, satellite providers.[776] The Commission staff's *High Speed Services December 2002 Report* shows that, nationally, cable modem service is the most widely

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[772] *Line Sharing Order*, 14 FCC Rcd at 20975, para. 138; *see also Intercarrier Compensation NPRM*, 16 FCC Rcd at 9625, para. 39 (describing generally the difficulties associated with allocating common costs among services).

[773] *Line Sharing Order*, 14 FCC Rcd at 20975, para. 137.

[774] *See, e.g.*, Covad Dec. 27, 2002 *Ex Parte* Letter at 6 (noting that 73% of the states in which Covad does business have approved a zero rate for the HFPL). *See also CALLS Order*, 15 FCC Rcd at 13001, para. 98 (stating that, as of 2000, the Commission was unaware of any incumbent LEC allocating any loop costs to ADSL service).

[775] *Line Sharing Order*, 14 FCC Rcd at 20930-31, para. 35.

[776] *USTA*, 290 F.3d at 428.

used means by which the mass market obtains broadband service.[777] Indeed, two reports show that the gap between cable modem and ADSL subscribership continues to widen.[778]

263. As discussed earlier, the Commission also has acknowledged the important broadband potential of other platforms and technologies, such as third generation wireless, satellite, and power lines.[779] Although cable modem's lead in broadband deployment is not dispositive in our impairment analysis,[780] the fact that broadband service is actually available through another network platform and may potentially be available through additional platforms helps alleviate any concern that competition in the broadband market may be heavily dependent upon unbundled access to the HFPL. Indeed, as noted by Allegiance, the existence of some measure of intermodal alternatives in the residential market lessens the benefits of unbundling.[781] Given that the whole loop is available, on an unbundled basis, we find that the costs of unbundling the HFPL outweigh the benefits when taking into account the skewed entry incentives discussed above. Moreover, we anticipate that the Commission's decisions in this Order and other proceedings will encourage the deployment of new technologies providing the mass market with even more broadband options.[782]

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[777] *See High Speed Services December 2002 Report* at Table 5 (noting that cable modem service is provided over nine million lines, which is approximately 57% of all high-speed lines).

[778] *Compare* Industry Analysis and Technology Division, Wireline Competition Bureau, *High Speed Services July 2002 Report* at Table 5 (noting that the difference in number of high-speed lines served by cable modem service and ADSL service was 3.11 million as of December 2001) *with High Speed Services December 2002 Report* at Table 5 (noting that the difference in number of high-speed lines served by cable modem service and ADSL service was 4.07 million as of June 2002).

[779] *See, e.g., Third Section 706 Report 2002*, 17 FCC Rcd at 2877-81, paras. 79-88.

[780] *See supra* Part V.B. (discussing intermodal alternatives in the general impairment Part of this Order).

[781] *See* Letter from Thomas Jones, Counsel for Allegiance, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2 (filed Feb. 13, 2003) (Allegiance Feb. 13, 2003 *Ex Parte* Letter).

[782] Chairman Powell claims that our decision on line sharing contains some compromises, which, he contends, are improper. *Chairman Powell Statement* at 15-16. There is nothing improper about our decision. The Commission is composed of five people, each of whom sometimes has a different view of the right answer. When that occurs, it is essential to work together to find common ground, or else the agency cannot function. Compromise is inherently part of that process, and "good public policy often must be[] a balanced compromise of conflicting values and judgments." Separate Statement of Commissioner Michael K. Powell, *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12559, 12669 (1999); *see also* Separate Statement of Commissioner Michael K. Powell, *1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, Report and Order, 15 FCC Rcd. 9219, 9296-97 (1999) ("Well, this time we are not doing much to modify or eliminate the rule and I do not agree with all of the findings and competitive analysis in the item. . . . Most importantly, in the spirit of compromise, the item recognizes three things that I find somewhat comforting in my decision today to support the item."). In fact, "compromise . . . is within the Commission's purview," *Interstate Natural Gas Ass'n v. FERC*, 285 F.3d 18, 36 (D.C. Cir. 2002), so long as an "agency articulate[s] a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Ass'n of American Railroads v. Surface Transp. Bd.*, 161 F.3d 58, 66 (D.C. Cir. 1998) (quoting *Michigan Consol. Gas Co. v. FERC*, 883 F.2d 117, 120-21 (D.C. Cir. 1989)) (continued....)

264. *Line Sharing Transition.* We recognize that a number of competitive LECs have relied on the existence of line sharing to provide broadband service to end users since the adoption of the *Line Sharing Order.* These carriers have built internal systems to order the HFPL from incumbent LECs and have designed products that depend on line sharing as an input. In order to ensure that these carriers have adequate time to implement new internal processes and procedures, design new product offerings, and negotiate new arrangements with incumbent LECs to replace line sharing, we adopt a three-year transition period for new line sharing arrangements of requesting carriers.[783] In addition, until the next biennial review, a proceeding that will commence in 2004, we grandfather all existing line sharing arrangements unless the respective competitive LEC, or its successor or assign, discontinues providing xDSL service to

(Continued from previous page)

(quotation marks omitted). Here, we have offered a detailed justification of our actions. Specifically, as discussed, the Commission's previous decision to require line sharing was unequivocally vacated by the D.C. Circuit; the Commission's earlier assessment of costs and revenues from the local loop failed to consider all potential revenues; competitive LECs are now able to obtain the HFPL from other competitive LECs through line splitting; the Commission's previous line sharing rule created warped incentives, because there is no single correct method for allocating the costs attributable to the HFPL; and cable television providers, who are not subject to line sharing obligations, serve a majority of the current residential broadband customers, while incumbent LECs have only a fraction of this market share.

[783] In response to the transition mechanism for line sharing voted on February 20th, the dissent raised some concerns regarding aspects of the transition for existing customers that had not been previously discussed. Separate Statement of Commissioner Kathleen Q. Abernathy, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, 98-147, FCC 03-36 (rel. Feb. 20, 2003) ("I am also troubled by the majority's decision to establish a three-year transition period for the elimination of line sharing. I believe that the majority should own up to the fact that, by cutting off data LECs' access to line sharing, it has shut down residential broadband competition over the copper loop. Any talk of a glide path is fanciful, because, in all likelihood, there will regrettably be no providers left to participate in a transition three years from now."); Separate Statement of Chairman Michael K. Powell, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, 98-147, FCC 03-36 (rel. Feb. 20, 2003) ("By some estimates, 40% of DSL providers use line shared inputs. The decision to kill off this element and replace it with a transition of higher wholesale prices will lead quite quickly to higher retail prices for broadband consumers . . ."). As the Commission has concluded in other contexts, "some of those concerns were well thought out and prompted the majority to rethink its position and further explain its rationale. Those steps improved this Order --and in turn resulted in a higher quality product for the American people. At the end of the day that should be the goal of all the Commissioners." Joint Statement of Chairman Michael Powell and Commissioner Kathleen Q. Abernathy, *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, ET Docket No. 98-206, RM-9147, RM-9245, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9807 (2002) (*Joint Statement of Chairman Powell and Commissioner Abernathy on Northpoint*). Those concerns prompted the majority to address the status of existing customers and further explain its rationale. The interim grandfathering rule we adopted improved this Order, responds to the dissenters' call for the need to strengthen the glide path we set forth on February 20th, and further ameliorates the immediate impact of our decision on retail prices for broadband consumers. In addition, immediate change of existing service may be unnecessary in light of frequent broadband customer churn and our effort to reevaluate the extent that grandfathered customers remain prior to the end of the three-year transition in the context of our next biennial review. While ideally we would engage in the dialogue at an earlier stage, "continuous improvement of our items is the right thing to do." *See id*; *see also infra* note 1396.

that particular end-user customer. During this interim period, we direct incumbent LECs to charge competitive LECs the same price for access to the HFPL for those grandfathered customers that they charged prior to the effective date of this Order. Consistent with our stated policy goal of preventing harm to consumers caused by a discontinuance of service, we conclude that establishing a grandfathering rule is necessary to prevent consumers who currently rely on line sharing from losing their broadband service.[784] This interim grandfathering rule will help alleviate the impact of such a significant rule change on end-user customers.[785] Consistent with our findings set forth above in Part V.E, if a decision taken pursuant to state law after this Order becomes effective were to require line sharing obligations, any party that believes such decision is inconsistent with the limits of section 251(d)(3)(B) and (C) may seek a declaratory ruling from this Commission.[786]

265. The three-year transition period for new line sharing arrangements will work as follows. During the first year, which begins on the effective date of this Order, competitive LECs may continue to obtain new line sharing customers through the use of the HFPL at 25 percent of the state-approved recurring rates or the agreed-upon recurring rates in existing interconnection agreements for stand-alone copper loops for that particular location.[787] During the second year, the recurring charge for such access for those customers will increase to 50

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[784] *See e.spire Application to Discontinue Domestic and International Telecommunications Services*, Order, Comp. File No. 592, 17 FCC Rcd 14785, para. 1 (WCB 2002) (denying application to discontinue telecommunications service because such action would disrupt service to consumers); *Rhythms Link Inc. Section 63.71 Application to Discontinue Domestic Telecommunications Services*, Order, NSD File No. W-P-D-517, 16 FCC Rcd 17024, 17025, paras. 4, 13 (CCB 2001) (granting application to discontinue telecommunications service after determining that Rhythms gave proper notice to its customers, which resulted in most affected customers being migrated to other carriers without a service interruption).

[785] We note that both Qwest and Verizon suggested some form of grandfathering line sharing customers. For example, Qwest proposed grandfathering existing locations for line sharing. Qwest Comments at 44-45. Although Qwest's proposal was premised on the D.C. Circuit upholding the Commission's line sharing rules, we find that a modification of this proposal to address current marketplace conditions is appropriate. *Id.* at 45 n.115. Namely, instead of permitting competitive LECs to continue obtaining unbundled access to the HFPL at all current locations, which presumably would allow requesting carriers to add new subscribers served out of those locations, we limit this proposal to existing customers only. Even after issuance of the *USTA* decision, Verizon suggested grandfathering existing competitive LEC xDSL customers served over line shared loops. *See* Letter from William P. Barr, Verizon, to Michael Powell, Chairman, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 5 (filed Jan. 17, 2003) (Verizon Jan. 17, 2003 *Ex Parte* Letter) (noting that "[a]s a purely transitional measure . . . existing [line sharing] customers could be grandfathered for some period of time."). As a practical matter, because of the churn rates associated with this industry, we find that our grandfathering requirement described above is not without end.

[786] *See supra* Part V.E for our discussion of the role of the states.

[787] We determine that it is appropriate to permit requesting carriers to continue obtaining new customers during the first year of the transition. This augmented customer base will enable requesting carriers, especially data LECs, to continue their day-to-day operations while modifying their business plans and working to preserve access arrangements with incumbent LECs. *See* Letter From Jason D. Oxman, Vice President and Assistant General Counsel, Covad, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2 (Covad Feb. 24, 2003 *Ex Parte* Letter).

percent of the state-approved recurring rate or the agreed-upon recurring rate in existing interconnection agreements for a stand-alone copper loop for that particular location. Finally, in the last year of the transition period, the competitive LECs' recurring charge for access to the HFPL for those customers obtained during the first year after release of this Order will increase to 75 percent of the state-approved recurring rate or the agreed-upon recurring rate for a stand-alone loop for that location.[788] After the transition period, any new customer must be served through a line splitting arrangement, through use of the stand-alone copper loop, or through an arrangement that a competitive LEC has negotiated with the incumbent LEC to replace line sharing.[789] We strongly encourage the parties to commence negotiations as soon as possible so that a long-term arrangement is reached and reliance on the shorter-term default mechanism that we describe above is unnecessary.

266. The purpose of this transition is to minimize disruption to the customers that obtain xDSL service through line shared loops and to provide a reasonable glide path to competitive LECs currently availing themselves of this UNE. The Commission has established transition periods of this length in the past. For example, in establishing a three-year interim intercarrier compensation regime for ISP-bound traffic, the Commission stated that it would be "prudent to avoid a 'flash cut' to a new compensation regime that would upset the legitimate business expectations of carriers and their customers."[790] We find that a similar approach is required here. It is entirely appropriate to fashion a transition period of sufficient length to enable competitive LECs to move their customers to alternative arrangements and modify their business practices and operations going forward.[791]

267. As one commenter noted in describing the Commission's authority to establish interim rates for unbundled local circuit switching, in combination with other elements, inherent in the Commission's authority to establish transitional rules is its authority to establish transitional rates.[792] Section 201(b) gives the Commission broad authority to adopt the transition mechanism set forth in this Part and nothing in that provision limits our authority with respect to

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[788] After this third year, competitive LECs will not have unbundled access to the HFPL, pursuant to section 251(c)(3), to provide those customers obtained after the Order became effective xDSL service over line shared loops. That is, after this third year, the recurring charge for the HFPL increases to 100% of the recurring charge for a stand-alone loop.

[789] By new customers, we mean any customer obtained during the three-year transition period or after the three-year transition period. New customers do not include, however, those line sharing customers who have been grandfathered, as described above in para. 264.

[790] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9186-87, paras. 77-78 (2001) (*ISP Remand Order*).

[791] *See, e.g.*, Letter from Susan Guyer and Michael Glover, Verizon, to William F. Maher, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 4 (filed Jan. 10, 2003).

[792] *See* Letter from Gary L. Phillips, Counsel for SBC, to Michael K. Powell, Chairman, FCC, CC Docket No. 01-338 at 2 (filed Dec. 19, 2002) (SBC Dec. 19, 2002 *Ex Parte* Letter) (citing the Commission's *ISP Remand Order*).

rates. Indeed, we agree with those commenters that contend that a transitional rate is often the most effective means by which to implement a "glide path from one regulatory/pricing regime to another."[793] The incremental approach we adopt here will encourage requesting carriers either to migrate their customers to the whole loop in an orderly manner or to reach agreement, if it is desired, with the incumbent LEC to continue access to the HFPL on different terms and conditions.

268. In order to implement the line sharing transition plan described above, we find that it is necessary to reinstate certain rules concerning the HFPL.[794] Specifically, we define the HFPL as the frequency range above the voiceband on a copper loop facility that is being used to carry analog circuit-switched voiceband transmissions.[795] The features, functions, and capabilities of the HFPL network element are those that establish a complete transmission path on the frequency range above the one used to carry analog circuit-switched voice transmissions between the incumbent LEC's distribution frame (or its equivalent) in its central office and the demarcation point at the customer's premises, and includes any inside wire owned by the incumbent LEC. Incumbent LECs must condition loops to enable requesting carriers to access the HFPL.[796] Finally, incumbent LECs must provide physical loop test access points on a nondiscriminatory basis for the purposes of loop testing, maintenance, and repair activities.[797]

269. In addition, incumbent LECs are only required to provide access to the HFPL if the incumbent LEC is providing, and continues to provide, analog circuit-switched voiceband services on the particular loop over which the requesting carriers seeks access to provide ADSL service.[798] In the event that the customer ceases purchasing voice service from the incumbent

[793] *Id.*

[794] To be clear, although the D.C. Circuit referred broadly to vacating the *Line Sharing Order*, it did not address the Commission's spectrum management rules or that portion of the order in its decision. Consequently, the Commission finds that these rules were unaffected by the *USTA* decision and therefore do not need to be readopted because they remain in effect. *See, e.g.*, 47 C.F.R. §§ 51.230-.233. Finally, we find no reason to modify these rules in this Order.

[795] 47 C.F.R. § 51.319(h)(1); *Line Sharing Order*, 14 FCC Rcd at 20926-27, para. 26.

[796] *Line Sharing Order*, 14 FCC Rcd at 20952-54, paras. 83-87; 47 C.F.R. § 51.319(h)(5). Included among the incumbent LECs' conditioning requirements that we reinstate is the requirement that, after determining that conditioning a loop will significantly degrade the voiceband service offered by the incumbent LEC on that loop, the incumbent LEC must either locate another loop and migrate its voice service to that loop while providing the requesting carrier with access to the HFPL, or demonstrate to the relevant state commission that the loop cannot be conditioned without significantly degrading the voiceband service and no alternative loop exists to which the customer's voiceband service can be moved to enable line sharing. *See* 47 C.F.R. § 51.319(h)(5)(ii); *see also infra* Part VII.D (discussing modifications to the existing network).

[797] *See Line Sharing Order*, 14 FCC Rcd at 20964-67, paras. 111-18; 47 C.F.R. § 51.319(h)(7).

[798] *Line Sharing Order*, 14 FCC Rcd at 20947, para. 72; 47 C.F.R. § 51.319(h)(3). Finally, we also readopt our finding contained in the *Line Sharing Order* that if an incumbent LEC disconnects a customer's voice service in accordance with applicable law, then the competitive LEC must purchase the entire loop to continue providing that customer with xDSL service. *Line Sharing Order*, 14 FCC Rcd at 20947-48, para. 73.

LEC, either the new voice provider or the xDSL provider, or both, must purchase the full stand-alone loop to continue providing xDSL service. Finally, as the Commission found before, incumbent LECs may also maintain control over the loop and splitter equipment and functions.[799]

270. *Low Frequency Portion of the Loop.* We disagree with CompTel that we should separately unbundle the low frequency portion of the loop, which is the portion of the copper local loop used to transmit voice signals.[800] We conclude that unbundling the low frequency portion of the loop is not necessary to address the impairment faced by requesting carriers because we continue (through our line splitting rules) to permit a narrowband service-only competitive LEC to take full advantage of an unbundled loop's capabilities by partnering with a second competitive LEC that will offer xDSL service.

271. *Retirement of Copper Loops and Copper Subloops.* As we note below in our discussion of FTTH loops, we decline to prohibit incumbent LECs from retiring copper loops or copper subloops that they have replaced with fiber. Instead, we reiterate that our section 251(c)(5) network modification disclosure requirements (with the minor modifications also noted below in that same discussion) apply to the retirement of copper loops and copper subloops.[801] In addition, any state requirements that currently apply to an incumbent LEC's copper loop or copper subloop retirement practices will continue to apply.

(b) Next-Generation Networks

272. Although we require the unbundling of legacy technology used over hybrid loops, we decline to attach unbundling requirements to the next-generation network capabilities of fiber-based local loops, *i.e.*, those loops that make use of fiber optic cables and electronic or optical equipment capable of supporting truly broadband transmission capabilities based on the analysis described earlier in this subsection. We expect that this decision to refrain from unbundling incumbent LEC next-generation networks – which is based on our evaluation of an extensive record developed over more than two years – will stimulate facilities-based deployment in two ways. First, with the certainty that their fiber optic and packet-based networks will remain free of unbundling requirements, incumbent LECs will have the opportunity to expand their deployment of these networks, enter new lines of business, and reap the rewards of delivering broadband services to the mass market. Thus, we conclude that relieving incumbent LECs from unbundling requirements for these networks will promote investment in, and deployment of, next-generation networks. Second, with the knowledge that incumbent LEC next-generation networks will not be available on an unbundled basis, competitive LECs will need to continue to seek innovative network access options to serve end users and to fully compete against incumbent LECs in the mass market. The end result is that

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[799] *Id.* at 20949-50, paras. 76-79.

[800] CompTel Comments at 43-45.

[801] *See* 47 U.S.C. § 251(c)(5) (specifying network disclosure requirements); 47 C.F.R. §§ 51.324-.335.

consumers will benefit from this race to build next generation networks and the increased competition in the delivery of broadband services.

(i) FTTH Loops

273. We conclude that requesting carriers are not impaired without access to FTTH loops,[802] although we find that the level of impairment varies to some degree depending on whether such loop is a new loop or a replacement of a pre-existing copper loop.[803] With a limited exception for narrowband services, our conclusion applies to FTTH loops deployed by incumbent LECs in both new construction and overbuild situations. Only in fiber loop overbuild situations where the incumbent LEC elects to retire existing copper loops must the incumbent LEC offer unbundled access to those fiber loops, and in such cases the fiber loops must be unbundled for narrowband services only. Incumbent LECs do not have to offer unbundled access to newly deployed or "greenfield" fiber loops.

274. FTTH loop deployment is still in its infancy. Corning notes, for example, that only 47 communities throughout the nation currently enjoy widespread FTTH deployment.[804] The record demonstrates that mass market FTTH loops are used almost entirely for providing broadband services (or broadband in conjunction with narrowband services) at this time, and that carriers are not deploying such loops to provide narrowband services alone.[805] The record further indicates that FTTH loops display several economic and operational entry barriers in common with copper loops – that is, the costs of FTTH loops are both fixed and sunk, and deployment is expensive.[806] The record also shows, however, that the potential rewards from FTTH deployment are significant. Corning notes, for example, that carriers will be able to earn a substantially greater return on their FTTH investment by offering voice, data, video, and other

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[802] By "FTTH loop," we mean a local loop consisting entirely of fiber optic cable (and the attached electronics), whether lit or dark fiber, that connects a customer's premises with a wire center (*i.e.*, from the demarcation point at the customer's premises to the central office). *See* Corning Nov. 20, 2002 *Ex Parte* Letter at 2 (submitting proposed definition of FTTH loop).

[803] Alcatel Comments at 15-16; Corning Comments at 22-26 (arguing that no impairment exists for FTTH loops); Corning Nov. 26, 2002 *Ex Parte* Letter, Attach. 1 at 17-21, 78-89, Attach. 2 at 7-10; HTBC Comments at 40-41. We therefore disagree with those parties who argue we should require unbundling of FTTH loops. *See* ALTS *et al.* Comments at 82 (contending that the Commission should require incumbent LECs to provide unbundled access to "broadband fiber"); CompTel Comments at 40-42; Covad Comments at 54-58 (arguing that the Commission should unbundle fiber loops).

[804] Letter from Timothy Regan, Senior Vice President, Corning, to Marlene H. Dortch, Secretary, FCC, CC Docket 01-338 at 5 (filed Dec. 20, 2002) (Corning Dec. 20, 2002 FTTH *Ex Parte* Letter).

[805] Deployment of FTTH loop plant enables a carrier to provide both narrowband voice and broadband services – in essence, voice telephony becomes an application provided over an integrated network. *See* Corning Comments at 2 (asserting that FTTH allows carriers to provide narrowband voice service, full motion video, and high speed data transfers simultaneously), 16-18; FTTH Council Comments at 1; HTBC Comments at 6-8, 14-17.

[806] *See* Corning Nov. 20, 2002 *Ex Parte* Letter, Attach. at 7-10 (estimating costs involved with deploying FTTH loops).

services.[807] Thus, we find that the substantial revenue opportunities posed by FTTH deployment help ameliorate many of the entry barriers presented by the costs and scale economies.

275. With respect to new FTTH deployments (*i.e.*, so-called "greenfield" construction projects), we note that the entry barriers appear to be largely the same for both incumbent and competitive LECs – that is, both incumbent and competitive carriers must negotiate rights-of-way, respond to bid requests for new housing developments, obtain fiber optic cabling and other materials, develop deployment plans, and implement construction programs.[808] Indeed, the record indicates that competitive LECs are currently leading the overall deployment of FTTH loops after having constructed some two-thirds or more of the FTTH loops throughout the nation.[809] Competitive LECs' active participation in deploying FTTH loops demonstrates that carriers are not impaired if we refrain from unbundling these loops.[810] Thus, we conclude that incumbent LECs do not have a first-mover advantage that would compound any barriers to entry in this situation. In addition, we conclude that incumbent LECs have no advantages concerning the sunk costs of greenfield FTTH loops – both incumbent LECs and competitive LECs are faced with the same issue in their deployment of such loops. As a result of our analysis, we do not require incumbent LECs to provide unbundled access to new FTTH loops for either narrowband or broadband services.[811]

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[807] Corning Nov. 26, 2002 *Ex Parte* Letter, Attach. at 33. Corning indicates that, through FTTH deployment, carriers could reasonably earn a return of $33 per subscriber, compared to $18 for ADSL deployment and $21 for cable modem service. *Id.*

[808] Some parties contend that competitive LECs actually have a competitive advantage in deploying FTTH loops because their labor costs are generally lower. *See* Corning Comments at 4; Corning Jan. 29, 2003 *Ex Parte* Letter at 19; Corning Nov. 20, 2002 *Ex Parte* Letter, Attach. 2 at 10. In addition, some parties argue that FTTH loop costs are declining because of the cost of the necessary attached electronics is dropping. Corning Comments at 13, n. 33. BellSouth notes that competitive LECs have "a mandatory right to access the rights-of-way of [incumbent LECs] and presumptive rights to access other utility rights-of-way." BellSouth Comments at 68-69.

[809] Corning Comments at 5; HTBC Comments at 42 (asserting that competitive LECs and incumbent LECs are on equal footing for deploying FTTH loops); Corning Reply at 12; Letter from Jeffrey S. Linder, Counsel for Corning, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338, Attach 1 at 2 (filed Feb. 6, 2003) (Corning Feb. 6, 2003 *Ex Parte* Letter); Letter from Larry Aiello, President and Chief Executive Officer, Corning Cable Systems, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 3 (filed Feb. 3, 2003) (noting that competitive LECs have deployed 68% of the existing FTTH deployment to date) (Corning Feb. 3, 2003 *Ex Parte* Letter); Letter from Derek R. Khlopin, HTBC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 4 (filed Jan. 14, 2003) (arguing that competitive LECs are not impaired without access to FTTH loops) (HTBC Jan. 14, 2003 *Ex Parte* Letter); Letter from Timothy J. Regan, Senior Vice President, Corning, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 , Attach. 2 at 7 (filed Jan. 29, 2003) (Corning Jan. 29, 2003 FTTH *Ex Parte* Letter). Corning estimates that competitive LECs have deployed FTTH loops to 44,890 homes, that small incumbent LECs have deployed FTTH loops to 3,600 homes, that the BOCs have deployed FTTH loops to some 400 homes, and that municipalities have deployed FTTH loops to about 18,100 homes. Corning Jan. 29, 2003 FTTH *Ex Parte* Letter, Attach. at 7.

[810] Corning Jan. 29, 2003 FTTH *Ex Parte* Letter at 6-7.

[811] By FTTH loop, we mean a loop consisting entirely of fiber optic cable between the main distribution frame (or its equivalent) and the demarcation point at the customer's premises. We recognize that other "fiber-in-the-loop" (continued....)

276. We recognize that one FTTH deployment scenario, *i.e.*, overbuild deployment in which an incumbent LEC constructs fiber transmission facilities parallel to or in replacement of its existing copper plant, merits slightly different treatment than greenfield FTTH deployments. Although the record indicates that this scenario is largely theoretical, at least today, the evidence suggests that impairment would not exist for two reasons. First, as with greenfield deployments, competitive and incumbent LECs largely face the same obstacles in deploying overbuild FTTH loops, although incumbent LECs still enjoy an established customer base. Both competitive LECs and incumbent LECs must obtain materials, hire the necessary labor force, and construct the fiber transmission facilities. Second, we note that the revenue opportunities associated with deploying any type of FTTH loop are far greater than for services provided over copper loops. Besides providing narrowband services like voice, fax, and dial-up Internet access, competitive LECs could also deploy a wide-array of video and other broadband applications over such FTTH loops.[812] In fact, broadband platforms enabled by the deployment of FTTH loops will likely enable a variety of new services and applications, competing directly with the market-leading cable broadband offerings and the broadband offerings potentially provided by other technological platforms, such as satellite and wireless, thereby weakening the case for unbundling. Thus, the potential rewards for deploying overbuild FTTH loops are distinctly greater than those associated with deploying copper loops and thus present a different balance when weighed against the barriers to entry.

277. We agree with Corning and Verizon, however, that in a FTTH overbuild situation we must ensure continued access to an unbundled transmission path suitable for providing narrowband services to customers served by FTTH loops.[813] The record indicates that deployment of overbuild FTTH loops could act as an additional obstacle to competitive LECs seeking to provide certain services to the mass market. By its nature, an overbuild FTTH deployment enables an incumbent LEC to replace and ultimately deny access to the already-existing copper loops that competitive LECs were using to serve mass market customers. In this regard, incumbent LECs potentially have an entry barrier within their sole control (*i.e.*, the decision to replace pre-existing copper loops with FTTH). In order to ensure continued narrowband access in this situation, incumbent LECs have the option to either (1) keep the

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network architectures exist, such as "fiber to the curb" (FTTC), "fiber to the node" (FTTN), and "fiber to the building" (FTTB). *See* Telcordia, Inc., NOTES ON FIBER-IN-THE-LOOP (FITL), SR-Notes-Series-10, Issue 1 at 5-1 to 6-17 (Jul. 2001). Our definition of FTTH loops excludes such intermediate fiber deployment architectures. For purposes of our unbundling rules, we consider any loop consisting of fiber optic and copper cable to be a hybrid loop.

[812] *See* Corning Comments at 2; HTBC Comments at 15-16 (describing services that can be offered over FTTH loops); *CSMG Study* at 10 (describing key revenue drivers for FTTH loops), 18-24 (comparing revenue opportunities for xDSL-based networks and FTTH networks); Corning Nov. 26, 2002 *Ex Parte* Letter at 28.

[813] Letter from Timothy J. Regan, Senior Vice President, Corning, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 2 (filed Feb. 5, 2003) (Corning Feb. 5, 2003 FTTH Overbuild *Ex Parte* Letter); Verizon Jan. 17, 2003 *Ex Parte* Letter at 7 (asserting that incumbent LECs should only have to provide unbundled access to a 64 kbps transmission path over their fiber transmission facilities).

existing copper loop connected to a particular customer after deploying FTTH;[814] or (2) in situations where the incumbent LEC elects to retire the copper loop, it must provide unbundled access to a 64 kbps transmission path over its FTTH loop.[815] Under the first option, we do not require incumbent LECs to incur relief and rehabilitation costs for that loop unless a competitive LEC requests unbundled access to it and such loop is placed back into service. We conclude that these measures counteract any obstacles competitive LECs face in overbuild FTTH situations much like other provisions of the Act offset certain entry barriers. We note that this is a very limited requirement intended only to ensure continued access to a local loop suitable for providing narrowband services to the mass market in situations where an incumbent LEC has deployed overbuild FTTH and elected to retire the pre-existing copper loops.

278. As noted above, section 706 informs our policymaking as we determine what unbundling rules, if any, should apply to FTTH loops.[816] All parties agree that FTTH loops meet the definition of advanced telecommunications capability,[817] and so we determine that promoting the deployment of FTTH loops is particularly important in light of our section 706 mandate. Simply put, delivering broadband service is impossible without a transmission path to the customer's premises that supports broadband capabilities. While copper loops enable carriers to deliver xDSL-based broadband services, FTTH loops significantly enhance the broadband capabilities a carrier can deliver to consumers. Thus, we determine that, particularly in light of a competitive landscape in which competitive LECs are leading the deployment of FTTH, removing incumbent LEC unbundling obligations on FTTH loops will promote their deployment of the network infrastructure necessary to provide broadband services to the mass market.[818]

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[814] Corning Feb. 5, 2003 FTTH Overbuild *Ex Parte* Letter at 2 (proposing policy recommendations related to overbuild FTTH); Corning Feb. 6, 2003 *Ex Parte* Letter at 5; Letter from Timothy J. Regan, Senior Vice President, Corning, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 2 (filed Feb. 13, 2003) (proposing overbuild FTTH policies) (Corning Feb. 13, 2003 *Ex Parte* Letter); Letter from Leonard G. Ray, Government Relations Committee Chairman, FTTH Council, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 2-3 (filed Feb. 13, 2003).

[815] *See* Letter from Timothy J. Regan, Corning, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338, Attach. 3 at 1 (providing key definitions); Verizon Jan. 17, 2003 *Ex Parte* Letter at 7 (asserting that incumbent LECs should only have to provide unbundled access to a 64 kbps transmission path over their fiber transmission facilities). A key part of the HTBC proposal is ensuring that competitive LECs maintain access to "all existing non-packet loop capabilities over hybrid fiber/copper facilities." Letter from Derek. R. Khlopin, HTBC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338, Attach. 1 at 1 (filed Jan. 24, 2003) (HTBC Jan. 24, 2003 Khlopin *Ex Parte* Letter). As an example, HTBC states that "DS-1s provided over TDM facilities would remain subject to a Section 251 impairment analysis." *Id.*

[816] Section 706(a) of the Telecommunications Act of 1996. *See* Corning Comments at 10-11 (arguing that the Commission should consider section 706 in crafting its unbundling framework); HTBC Comments at 43-44.

[817] *See, e.g.*, Corning Comments at 2, 11-13; HTBC Comments at 5.

[818] Corning Comments at 3, 10-14; SBC Reply at 55-60; Letter from Jeffrey S. Linder, Counsel for Corning, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338, Attach. at 6 (filed Jan. 31, 2003) (estimating that unbundling relief will increase FTTH deployment by a factor of 6.2).

279. We further agree with Corning that our FTTH policy adopted herein should not adversely affect competitive LECs for several reasons.[819] First, competitive LECs have demonstrated that they can self-deploy FTTH loops and are doing so at this time. Second, competitive LECs can continue to use resale as a means for serving mass market customers after incumbent LECs deploy FTTH loops. Finally, competitive LECs can continue to have unbundled access to existing copper facilities, to the extent such facilities are available.

280. For these reasons, we disagree with AT&T that we should further study issues surrounding the deployment of FTTH loops used to serve the mass market.[820] The record contains sufficient information concerning the current deployment of FTTH loops and the economic barriers surrounding such deployment, as well as a number of studies and projections of future FTTH deployment.[821]

281. *Retirement of Copper Loops.* We decline to impose a blanket prohibition on the ability of incumbent LECs to retire any copper loops or subloops they have replaced with FTTH loops. Several parties also propose extensive rules that would require affirmative regulatory approval prior to the retirement of any copper loop facilities.[822] We find that such a requirement is not necessary at this time because our existing rules, with minor modifications, serve as adequate safeguards.[823] Pursuant to the Act and the Commission's rules, incumbent LECs must provide public notice of any network change that will affect a competing carrier's performance or ability to provide service.[824] Because the retirement of copper loop plant is a network modification that affects the ability of competitive LECs to provide service,[825] we clarify that

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[819] *See* Corning Feb. 6, 2003 *Ex Parte* Letter at 5.

[820] AT&T Reply at 74 (advocating that the Commission study FTTH deployment issues further before determining what unbundling requirements, if any, apply to FTTH loops used to serve the mass market).

[821] *See* Corning Nov. 26, 2002 *Ex Parte* Letter, Attach. at 29-33 (describing revenue opportunities), 42-45 (describing competitive LEC ability to self-deploy FTTH loops); *CSMG Study* at 10-14 (providing overview of study conclusions).

[822] Allegiance Comments at 25; California Commission Comments at 18 (proposing rule requiring incumbent LEC to maintain copper plant); Letter from Timothy J. Regan, Corning, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 9 (filed Nov. 27, 2002) (Corning Nov. 27, 2002 *Ex Parte* Letter) (arguing that incumbent LECs should have the option of retiring or selling copper plant where FTTH is deployed); HTBC Comments at 36-37 (proposing measures regarding incumbent LEC retirement of legacy copper plant); TIA Comments at 17-18 (proposing rule to prohibit incumbent LECs from retiring copper loops unless they allow access to broadband facilities); AT&T Reply at 216-19 (asserting that a home-run copper loop may be of inferior quality).

[823] *See* Verizon Jan. 17, 2003 *Ex Parte* Letter at 7 (arguing that a duty to maintain two networks would impose additional costs).

[824] 47 U.S.C. § 251(c)(5); 47 C.F.R. §§ 51.325-.335. This disclosure requirement applies to the retirement of both feeder plant and distribution plant.

[825] *See, e.g.*, Sprint Comments at 45 (arguing that a competitive LEC could be stranded after an incumbent LEC upgrades its loop plant); Supra Comments at 10-13.

incumbent LECs must provide notice of such retirement in accordance with our rules. Thus, incumbent LECs must disclose among other things the planned date for retiring a copper loop and a description of the reasonably foreseeable impact of the planned changes.[826] Such notifications will ensure that incumbent and competitive carriers can work together to ensure the competitive LECs maintain access to loop facilities.

282. Consistent with the proposals of Corning and HTBC, we modify our network modification rules with respect to the retirement of copper loops.[827] Specifically, when a copper loop is retired and replaced with a FTTH loop, we allow parties to file objections to the incumbent LEC's notice of such retirement. Consistent with our existing network disclosure rules, such oppositions must be filed with the Commission and served on the incumbent LEC within nine business days from the release of the Commission's public notice.[828] Unless the copper retirement scenario suggests that competitors will be denied access to the loop facilities required under our rules, we will deem all such oppositions denied unless the Commission rules otherwise upon the specific facts and circumstances of the case at issue within 90 days of the Commission's public notice of the intended retirement.

283. We note that, with respect to network modifications that involve copper loop retirements, the rules we adopt herein differ in two respects from the notification rules that apply to other types of network modifications.[829] First, we establish a right for parties to object to the incumbent LEC's proposed retirement of its copper loops for both short-term and long-term notifications as outlined in Part 51 of the Commission's rules. By contrast, our disclosure rules for other network modifications permit oppositions only for instances involving short-term notifications.[830] Second, we establish a mechanism to deny such objections automatically unless the Commission rules otherwise within 90 days of the Commission's public notice of the intended retirement. As a practical matter, this mechanism redefines the short-term notice rules for a subset of network modifications, *i.e.*, retirement of copper loops that are replaced by FTTH loops, and means that incumbent LECs must file their disclosures for copper loop retirements at least 91 days prior to their planned retirement date.

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[826] *See* 47 C.F.R. § 51.327.

[827] Corning Feb. 6, 2003 *Ex Parte* Letter at 7 (proposing a 90-day application process before the Commission with respect to the retirement of any copper loops); Letter from Derek R. Khlopin, HTBC, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3 (filed Jan. 23, 2003) (HTBC Jan. 23, 2003 *Ex Parte* Letter) (stating that HTBC's proposal would prohibit incumbent LECs "from retiring the existing copper loop absent permission from the Commission.").

[828] Objections to both short and long-term notices should be made in accordance with section 51.333(c) of the Commission's rules. Moreover, incumbent LECs may respond to such objections in accordance with section 51.333(d) of the Commission's rules. *See* 47 C.F.R. § 51.333(c)-(d).

[829] These modified network notification requirements apply only to the retirement of copper loops and copper subloops, but not to the retirement of copper feeder plant.

[830] *See* 47 C.F.R. § 51.333(c)-(d).

284. As a final matter, we stress that we are not preempting the ability of any state commission to evaluate an incumbent LEC's retirement of its copper loops to ensure such retirement complies with any applicable state legal or regulatory requirements. We also stress that we are not establishing independent authority based on federal law for states to review incumbent LEC copper loop retirement policies. We understand that many states have their own requirements related to discontinuance of service, and our rules do not override these requirements. We expect that the state review process, working in combination with the Commission's network disclosure rules noted above, will address the concerns noted by Corning and others regarding the potential impact of an incumbent LEC retiring its copper loops.

(ii) Hybrid Loops

285. Hybrid loops represent an important step towards the deployment of a fiber-based network capable of supporting a wide array of advanced telecommunications and other services. Several incumbent LECs note that they pursue their construction and network modification projects in incremental ways – first, deployment of fiber in the feeder plant and associated equipment like DLC systems (often with line cards capable of providing xDSL services), followed by fiber-to-the-curb, followed by FTTH.[831] In light of this practice, we view our task with respect to hybrid loops as determining an unbundling approach that addresses impairment, but also aligns business incentives with the explicit congressional goal of promoting the rapid deployment of advanced services.

286. In making our unbundling determination for hybrid loops, we consider both impairment and, through our section 251(d)(2) "at a minimum" authority, additional factors. As noted above, we find that competitive LECs are impaired on a national basis without unbundled access to a transmission path when seeking to provide service to the mass market. We further find that this impairment at least partially diminishes with the increasing deployment of fiber. In addition, we retain the flexibility to determine the unbundling approach that best addresses the impairment in a manner that advances other goals of the Act. In this regard, balanced against impairment, we evaluate three primary factors to determine the most appropriate unbundling requirements for hybrid loops. First, we consider the costs of unbundling, *i.e.*, whether refraining from unbundling requirements will stimulate facilities-based investment and promote the deployment of advanced telecommunications infrastructure. Second, we consider the effect of alternatives to mandating unbundled access to the hybrid loops of incumbent LECs. In particular, we consider whether unbundled access to subloops, spare copper loops, and the non-packetized portion of incumbent LEC hybrid loops, as well as remote terminal collocation, offer suitable alternatives to an intrusive unbundling approach. Finally, we consider the state of intermodal competition in crafting our unbundling approach. As explained further below, after balancing these three primary factors against our impairment findings, we adopt a national approach that relieves incumbent LECs of unbundling requirements for the next-generation network capabilities of their hybrid loops, while at the same time ensures requesting carriers have access to the transmission facilities they need to serve the mass market.

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[831] *See* Verizon Nov. 22, 2002 *Ex Parte* Letter at 1.

287. We discuss our unbundling rules for hybrid loops below. These rules vary depending upon whether a competitive LEC seeks access for the provision of broadband or narrowband services. Therefore, our discussion is separated into two parts in order to clearly reflect this important distinction.

288. *Broadband Services*. We decline to require incumbent LECs to unbundle the next-generation network, packetized capabilities of their hybrid loops to enable requesting carriers to provide broadband services to the mass market.[832] AT&T, WorldCom, Covad, and others urge the Commission to extend our unbundling requirements to the packet-based and fiber optic portions of incumbent LEC hybrid loops. We conclude, however, that applying section 251(c) unbundling obligations to these next-generation network elements would blunt the deployment of advanced telecommunications infrastructure by incumbent LECs and the incentive for competitive LECs to invest in their own facilities, in direct opposition to the express statutory goals authorized in section 706. The rules we adopt herein do not require incumbent LECs to unbundle any transmission path over a fiber transmission facility between the central office and the customer's premises (including fiber feeder plant) that is used to transmit packetized information.[833] Moreover, the rules we adopt herein do not require incumbent LECs to provide unbundled access to any electronics or other equipment used to transmit packetized information over hybrid loops, such as the xDSL-capable line cards installed in DLC systems or equipment used to provide passive optical networking (PON) capabilities to the mass market.[834]

289. Although packetized fiber capabilities will not be available as UNEs, incumbent LECs remain obligated, however, to provide unbundled access to the features, functions, and capabilities of hybrid loops that are not used to transmit packetized information. Thus, as discussed more specifically in the Enterprise Loops section, consistent with the proposals of HTBC, SBC, and others, incumbent LECs must provide unbundled access to a complete transmission path over their TDM networks to address the impairment we find that requesting

[832] As noted above in our description of the record evidence, incumbent LECs have deployed, and are continuing to deploy, a substantial amount of "hybrid loops," *i.e.*, local loops consisting of both copper and fiber optic cable (and associated electronics, such as DLC systems). Incumbent LECs appear to be at various stages of fiber deployment and have chosen a number of FITL architectures (*e.g.*, FTTC, FTTN) and hybrid loops. Thus, we treat such intermediate deployments of fiber as hybrid loops because they consist of both copper and fiber optic cable.

[833] *See* Letter from Robert Holleyman, HTBC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Jan. 24, 2003) (HTBC Jan. 24, 2003 *Ex Parte* Letter); Letter from Veronica O'Connell, Director, HTBC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Feb. 7, 2003) (HTBC Feb. 7, 2003 *Ex Parte* Letter); HTBC Feb. 14, 2003 *Ex Parte* Letter. Because we decline to require unbundling of packet-switching equipment, we deny WorldCom's petitions for reconsideration and clarification requesting that we unbundle packet-switching equipment, DSLAMs, and other equipment used to deliver DSL service. MCI WorldCom Petition for Reconsideration, CC Docket No. 96-98 at 2-18 (filed Feb. 17, 2000) (MCI WorldCom Feb. 17, 2000 Petition for Reconsideration); MCI WorldCom Feb. 17, 2000 Petition for Clarification at 2, 13.

[834] *See* HTBC Feb. 14, 2003 *Ex Parte* Letter at 1-4.

carriers currently face.[835] This requirement ensures that competitive LECs have additional means with which to provide broadband capabilities to end users because competitive LECs can obtain DS1 and DS3 loops, including channelized DS1 or DS3 loops and multiple DS1 or DS3 loops for each customer.

290. Section 706 requires the Commission to encourage deployment of advanced telecommunications capability by using, among other things, "methods that remove barriers to infrastructure investment."[836] Unbundling access to hybrid loops in the manner adopted herein – that is, limiting the requesting carrier's access to the TDM portion of the hybrid loop and precluding unbundled access to the packet-based networks (and associated fiber transmission facilities) of incumbent LECs – promotes our section 706 goals in two ways. First, it limits access to the (in many cases) newly deployed fiber transmission facility, and thereby gives incumbent LECs an incentive to deploy fiber (and associated next-generation network equipment, such as packet switches and DLC systems) and develop new broadband offerings for mass market consumers free of any unbundling requirements.[837] Although incumbent LECs have been deploying fiber feeder plant for some time, such deployment was generally limited to the purpose of increasing network efficiency for the provision of narrowband services rather than enhancing network capabilities to deliver broadband services. In addition, fiber feeder deployment (and the broadband capabilities attendant to such deployment) is far from ubiquitous. Moreover, incumbent LECs have not widely deployed the next-generation networking equipment (*e.g.*, DLC systems with xDSL-capable line cards) needed to deliver broadband services to mass market customers served by hybrid loops.[838] Second, by prohibiting access to the packet-based networks of incumbent LECs, we expect that our rules will stimulate competitive LEC deployment of next-generation networks. Because competitive LECs will not have unbundled access to the packet-based networks of incumbent LECs, they will need to continue to seek innovative access options, including the deployment of their own facilities necessary for providing broadband services to the mass market.

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[835] HTBC Feb. 7, 2003 *Ex Parte* Letter at 2 (advocating a requirement to unbundle "non-packet loop capabilities" only); SBC Jan. 24, 2003 *Ex Parte* Letter at 12-13 (describing proposal to ensure competitive LECs have unbundled access to TDM and non-packet capabilities of SBC's networks); Letter from Jonathan J. Boynton, Associate Director, SBC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 5 (filed Jan. 15, 2003) (SBC Jan. 15, 2003 Broadband *Ex Parte* Letter) (explaining that competitive LECs will have continued unbundled access to "non packet fiber" feeder plant combined with copper distribution plant).

[836] Section 706(a) of the Telecommunications Act of 1996. *See* Corning Comments at 10-11 (arguing that the Commission should consider section 706 in crafting its unbundling framework); CompTel Comments at 26 (arguing that the Commission should use section 706 to expand unbundling obligations); HTBC Comments at 42-45; SBC Reply at 95-96.

[837] *See* Corning Jan. 29, 2003 *Ex Parte* Letter at 12 (estimating that FTTH deployment will reach 31% of U.S. households if no unbundling requirements apply to incumbent LECs, but only 5% of U.S. households if unbundling requirements apply); *CSMG Study* at 26-28, 30 (concluding that incumbent LECs will deploy more FTTH loops if relieved from unbundling obligations).

[838] Indeed, some incumbent LECs contend that the regulatory environment has deterred their deployment of such equipment. *See, e.g.*, SBC Reply at 96-104.

291. In making our unbundling determination, we are also guided by the availability of other loop alternatives within the networks of incumbent LECs. In particular, we determine that unbundled access to incumbent LEC copper subloops adequately addresses the impairment competitive LECs face so that intrusive unbundling requirements on incumbent LEC packetized fiber loops facilities is not necessary. Unbundled access to subloops also better promotes our section 706 goals than unbundling incumbent LEC packetized fiber loops. In particular, subloop access promotes competitive LEC investment in next-generation network equipment (*e.g.*, packet switches, remote DSLAMs, etc.) and transmission facilities (*e.g.*, fiber loop facilities built to points in incumbent LEC networks closer to the home). Furthermore, unbundled subloop access furthers our goal of promoting innovation because it enables competitive LECs to differentiate their product and service offerings from those of the incumbent LEC. In addition to subloop unbundling, as discussed more fully below, we require incumbent LECs to continue providing unbundled access to the TDM-based features, functions, and capabilities of their hybrid loops where impairment exists. As discussed above, in addition to subloop unbundling, the availability of TDM-based loops, such as DS1s and DS3s, provide competitive LECs with a range of options for providing broadband capabilities. We therefore find that competitive LECs retain alternative methods of accessing loop facilities in hybrid loop situations and disagree with WorldCom and others concerning the appropriate unbundling requirements for the next-generation broadband features, functions, and capabilities of hybrid loops.[839]

292. We are also informed in our analysis by the state of intermodal competition for broadband service.[840] As noted above, cable companies have made significant inroads in providing broadband service to the mass market, but these same companies have made less progress in the market for traditional narrowband services. For example, cable companies have widely deployed broadband service in the form of high-speed Internet access offered via cable modem service, but cable telephony deployment is still in its infancy. According to a Commission staff report, more consumers continue to obtain their high speed Internet access by cable modem service than by xDSL, and the rate of growth for cable modem subscribership continues to outpace the rate of growth for xDSL subscribership (*i.e.*, since the period June to December 2001, cable modem subscribership for high speed Internet access increased 55 percent versus an increase of only 35 percent for xDSL-based subscribership).[841] A primary benefit of

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[839] WorldCom Dec. 12, 2002 Next-Generation Networks *Ex Parte* Letter at 3 (arguing that, without unbundled access to hybrid loops, competitive LECs will not be able to serve certain customers).

[840] *See* SBC Reply at 95; Allegiance Feb. 13, 2003 *Ex Parte* Letter at 2 (asserting that the Commission should consider the existence of an intermodal competitor with a leading position in the market).

[841] *High Speed Services December 2002 Report* at Table 2 (noting that cable companies provide 6.8 million lines capable of providing at least 200 kbps in both direction, compared to only 1.8 million xDSL lines). The *High Speed Services December 2002 Report* notes the percentage change of growth. For coaxial cable services providing at least 200 kbps in both directions, cable companies provided 4.394 million lines as of December 2001. This number increased to 6.819 million lines by June 2002. By comparison, wireline carriers provided 1.369 million such lines as of December 2001 and a total of 1.852 million such lines by June 2002. Thus, not only do cable companies provide more high speed lines capable of providing at least 200 kbps in both directions than xDSL-based carriers, but cable companies continue to outpace xDSL-based carriers in terms of the rate of growth of such subscribership. *See id.* at Table 2; *see also id.* at Table 1 (noting that cable companies provide 9.1 million cable modem-based lines (continued....)

unbundling hybrid loops – that is, to spur competitive deployment of broadband services to the mass market – appears to be obviated to some degree by the existence of a broadband service competitor with a leading position in the marketplace.[842] We therefore tailor our unbundling requirements to most effectively address those services that are not yet fully subject to competition (*i.e.*, narrowband services in the mass market) rather than the broadband services that are currently provided in a competitive environment.

293. Several parties have advocated drawing a bright line between "old" and "new" investment in network architectures and using such a division to articulate our unbundling requirements.[843] Others contend that we should make no such distinction.[844] Based on our evaluation of impairment, as informed by the two factors noted above, we determine that drawing such a bright line is practical, if the line is drawn between legacy technology and newer technology. In fact, we conclude that such a line is best drawn based on technological boundaries rather than transmission speeds, bandwidth, or some other factor – the technical characteristics of packet-switched equipment versus TDM-based equipment, for example, are well-known and understood by all members of the industry.

294. We stress that the line drawing in which we engage does not eliminate the existing rights competitive LECs have to obtain unbundled access to hybrid loops capable of providing DS1 and DS3 service to customers.[845] These TDM-based services – which are generally provided to enterprise customers rather than mass market customers – are non-packetized, high-capacity capabilities provided over the circuit switched networks of incumbent LECs. To provide these services, incumbent LECs typically use the features, functions, and capabilities of their networks as deployed to date – *i.e.*, a transmission path provided by means of the TDM form of multiplexing over their digital networks – or certain capabilities of multi-

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compared to 5.1 million ADSL-based lines provided by LECs); *see also* Covad Siwek/Sun Decl. at paras 58-59. As a result, cable companies' leading position in providing broadband services to the mass market appears to be increasing rather than leveling off.

[842] Allegiance Feb. 13, 2003 *Ex Parte* Letter at 2 (asserting that the Commission should consider the existence of an intermodal competitor with a leading position in the market).

[843] *See, e.g.*, Alcatel Comments at 15-17; SBC Reply at 109; Verizon Jan. 10, 2003 *Ex Parte* Letter at 6-7 (proposing a line drawn on voice-grade versus broadband capability); Verizon Nov. 22, 2002 *Ex Parte* Letter at 4.

[844] AT&T Reply at 216-19 (advocating "unified loops" theory and arguing that home-run copper is not sufficient to address impairment); Covad Reply at 46-54; WorldCom Reply at 111-13 (advocating in support of unbundling all the features, functions, and capabilities of loops, including those provided by means of DLC systems and packet-switching equipment); Letter from Jonathan Askin, General Counsel, ALTS, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 5 (filed Feb. 13, 2003) (ALTS Feb. 13, 2003 *Ex Parte* Letter) (arguing that the Commission should not limit access to capacity on any fiber-fed loop plant); Letter from Jonathan Askin, General Counsel, ALTS, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 3 (filed Jan. 31, 2003) (ALTS Jan. 31, 2003 *Ex Parte* Letter) (advocating in support of unbundling requirements on fiber-fed loop plant).

[845] HTBC Feb. 7, 2003 *Ex Parte* Letter at 2; SBC Jan. 24, 2003 *Ex Parte* Letter.

use integrated equipment (*e.g.*, integrated line cards deployed in DLC systems).[846] Incumbent LECs remain obligated to comply with the nondiscrimination requirements of section 251(c)(3) in their provision of loops to requesting carriers, including stand-alone spare copper loops, copper subloops, and the features, functions, and capabilities for TDM-based services over their hybrid loops. In this regard, we prohibit incumbent LECs from engineering the transmission capabilities of their loops in a way that would disrupt or degrade the local loop UNEs (either hybrid loops or stand-alone copper loops) provided to competitive LECs. To ensure competitive LECs receive the transmission path within the parameters we establish, we determine that any incumbent LEC practice, policy, or procedure that has the effect of disrupting or degrading access to the TDM-based features, functions, and capabilities of hybrid loops for serving the customer is prohibited under the section 251(c)(3) duty to provide unbundled access to loops on just, reasonable, and nondiscriminatory terms and conditions.[847]

295. Finally, in balancing potential impairment against our obligations under section 706, we conclude that the costs associated with unbundling these packet-based facilities outweigh the potential benefits. A number of parties have argued that unbundling requirements deter the incentive of incumbent LECs to take risks and deploy fiber-based networks because they would face reduced returns on their investment.[848] We recognize that, particularly in the realm of next-generation network capabilities, unbundling requirements could have the unintended effect of blunting innovation because such an approach would largely lock competitive LECs to the technological choices of the incumbent LECs. We therefore consider the effect of other approaches, such as the subloop access and remote terminal collocation requirements, discussed above, on stimulating the deployment of advanced telecommunications infrastructure. For these reasons, we conclude that it is consistent with our section 706 mandate to promote investment in infrastructure by refraining from unbundling incumbent LECs' next-generation network facilities and equipment.

296. *Narrowband Services.* With respect to providing unbundled access to hybrid loops for a requesting carrier to provide narrowband service,[849] we require incumbent LECs to provide an entire non-packetized transmission path capable of voice-grade service (*i.e.*, a circuit equivalent to a DS0 circuit) between the central office and customer's premises. Pursuant to this requirement, competitive LECs will be able to obtain access to UNE loops comprised of the feeder portion of the incumbent LEC's loop plant, the distribution portion of the loop plant, the

[846] In their submissions in this proceeding, incumbent LECs demonstrate that they typically segregate transmissions over hybrid loops onto two paths, *i.e.*, a circuit-switched path using TDM technology and a packet-switched path (usually over an ATM network). *See, e.g.*, SBC Jan. 15, 2003 *Ex Parte* Letter at 4 (providing diagram to illustrate that its network architecture consists of a TDM-based portion and a packet-switched portion).

[847] Notwithstanding our prohibition against disrupting or degrading unbundled access to the TDM capabilities of hybrid loops, incumbent LECs may remove copper loops from their plant so long as they comply with our Part 51 network notification requirements, as amended by this Order, and any applicable state law.

[848] *See* Corning Comments at 7-9.

[849] Narrowband services include traditional voice, fax, and dial-up modem applications over voice-grade loops.

attached DLC system, and any other attached electronics used to provide a voice-grade transmission path between the customer's premises and the central office.[850] Consistent with the access requirements for broadband services noted above, we limit the unbundling obligations for narrowband services to the TDM-based features, functions, and capabilities of these hybrid loops. Incumbent LECs may elect, instead, to provide a homerun copper loop rather than a TDM-based narrowband pathway over their hybrid loop facilities if the incumbent LEC has not removed such loop facilities.[851]

297. We recognize that providing unbundled access to hybrid loops served by a particular type of DLC system, *e.g.*, Integrated DLC systems, may require incumbent LECs to implement policies, practices, and procedures different from those used to provide access to loops served by Universal DLC systems.[852] These differences stem from the nature and design of Integrated DLC architecture. Specifically, because the Integrated DLC system is integrated directly into the switches of incumbent LECs (either directly or through another type of network equipment known as a "cross-connect") and because incumbent LEC's typically use concentration as a practice for engineering traffic on their networks, a one-for-one transmission path between an incumbent's central office and the customer premises may not exist at all times. Even still, we require incumbent LECs to provide requesting carriers access to a transmission path over hybrid loops served by Integrated DLC systems.[853] We recognize that in most cases this will be either through a spare copper facility or through the availability of Universal DLC systems.[854] Nonetheless even if neither of these options is available, incumbent LECs must present requesting carriers a technically feasible method of unbundled access.[855]

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[850] As discussed below, we do not require incumbent LECs to maintain or retain copper loops if they have deployed fiber replacements. Incumbent LECs have the option of either providing competitive LECs with unbundled access to a voice-grade channel over a hybrid loop or, to the extent a copper loop exists, the existing copper loop.

[851] As Qwest points out, when incumbent LECs construct new loop plant, they frequently overlay fiber facilities that supplement existing loops. Qwest Comments at 45; Alcatel Comments at 16 (noting that, when incumbent LECs deploy fiber loops, competitive LECs would continue to maintain access to legacy copper transmission facilities). Thus, the construction of new facilities does not in itself alter a competitive LEC's ability to use the incumbent's network. Qwest Comments at 45. Qwest explains that it "does not proactively remove copper facilities in the case of an overlay" so that requesting carriers should be able to continue providing service in these circumstances. Qwest Comments at 45-46.

[852] McLeodUSA Dec. 18, 2002 *Ex Parte* Letter at 10-11; Letter from Joan Marsh, Director, Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2-3 (filed Dec. 4, 2002) (AT&T Dec. 4, 2002 *Ex Parte* Letter) (describing operational issues related to providing unbundled access to loops served by DLC systems using a GR-303 interface, *i.e.*, integrated DLC systems, and proposing some solutions); McLeodUSA Nov. 15, 2002 *Ex Parte* Letter at 1.

[853] *See* SBC Jan. 15, 2003 *Ex Parte* Letter at 3; SBC Jan. 24, 2003 *Ex Parte* Letter, Attach. 2 at 3-4.

[854] *See* Letter from Jim Lamoureux, Senior Counsel, SBC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 1 (filed Dec. 10, 2002) (SBC Dec. 10, 2002 *Ex Parte* Letter) (describing DLC deployment in SBC's region). SBC explains that, for 99.88% of SBC's lines served over Integrated DLC, competitive LECs have access (continued....)

b. Enterprise Market Loops

(i) Record Evidence

298. The record contains a wealth of evidence to inform our enterprise market loop analyses. First, it reflects that competitive LECs have deployed fiber that enables them to reach customers entirely over their own loop facilities.[856] When competitive LECs self-deploy fiber

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to Universal DLC or spare copper facilities as alternatives to the transmission path over SBC's Integrated DLC system. *Id.*

[855] We recognize that it is technically feasible (though not always desirable for either carrier) to provide unbundled access to hybrid loops served by Integrated DLC systems. Incumbent LECs can provide unbundled access to hybrid loops served by integrated DLC systems by configuring existing equipment, adding new equipment, or both. *See* McLeodUSA Dec. 18, 2002 *Ex Parte* Letter 10-11. Qwest explains, for example, that it can provide a UNE loop over Integrated DLC systems by using a "hairpin" option, *i.e.*, configuring a "semi-permanent path" and disabling certain switching functions. *See* Qwest Nov. 13, 2002 *Ex Parte* Letter at 23 (describing "hairpin" solution to providing UNE loop over Integrated DLC system); *see also* Telcordia, Inc., NOTES ON THE NETWORKS, SR-2275, Issue 4, 12.13.2.1 (Oct. 2000) (describing means for incumbent LECs to provide unbundled loops to competitive LECs over integrated DLC systems). In addition, we understand that some Integrated DLC systems can simulate Universal DLC systems. *See* Telcordia, Inc., NOTES ON FIBER-IN-THE-LOOP (FITL), SR-Notes-Series-10, Issue I, 2.3 (Jul. 2001) (noting that many modern Integrated DLC systems "can operate in UDLC mode."). Frequently, unbundled access to Integrated DLC-fed hybrid loops can be provided through the use of cross-connect equipment, which is equipment incumbent LECs typically use to assist in managing their DLC systems. McLeodUSA Nov. 15, 2002 DLC systems *Ex Parte* Letter at 10-11 (describing use of cross-connect equipment to provide unbundled loops over Integrated DLC systems); *Pronto Modification Order*, 15 FCC Rcd at 17565-66, App. B, C (showing that SBC typically uses a cross-connect in its network to establish the connection between the feeder loop plant and its circuit and packet switches); Verizon July 19, 2002 *Ex Parte* Letter at 3 (showing that Verizon typically uses central office terminations and cross-connects). McLeodUSA explains that an incumbent LEC can configure most Integrated DLC systems to assign requesting carriers "individual interface groups" that assist in establishing a complete transmission path between the central office and the customer's premises. In this way, incumbent LECs can provide Integrated DLC-fed hybrid loops on an unbundled basis. McLeodUSA Dec. 18, 2002 *Ex Parte* Letter at 10. In addition, McLeodUSA further explains that manufacturers either already account for an incumbent LEC's regulatory obligations in designing equipment (and software used to upgrade that equipment) or are planning to do so. *Id.* at 11 n.15.

[856] Both competitive LECs and incumbent LECs report that approximately 30,000, *i.e.*, between 3% to 5%, of the nation's commercial office buildings are served by competitor-owned fiber loops. *See, e.g.*, ALTS *et al.* Comments at 52 (citing to WorldCom Comments, CC Docket Nos. 96-98 at 7 (filed June 11, 2001) (WorldCom June 11, 2001 High-capacity Comments)); Sprint Comments at 23-24; WorldCom Comments at 74-76; *see also BOC UNE Rebuttal Report* at iv, 44; Letter from Ruth Milkman, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3 (filed Oct. 30, 2002) (discussing high-capacity transmission facility deployment) (WorldCom Oct. 30, 2002 *Ex Parte* Letter); AT&T Comments at 152 (citing proprietary information); Cbeyond *et al.* Comments, CC Docket 96-98 at 23 (filed June 11, 2001) (Cbeyond *et al.* June 11, 2001 High-capacity Comments) (citing confidential information in attached Affidavit of Michael P. Duke, KMC Telecom, Inc. (KMC Duke June 11, 2001 High-capacity Aff.) at para. 5); NuVox *et al.* Comments, Affidavit of Nicholas D. Jackson, TDS Metrocom, Inc. (TDS Jackson Aff.) at para. 6; El Paso *et al.* Comments at 16. Competitive carriers indicate that most of these commercial office buildings are carrier hotels or large office buildings. *See, e.g.*, ALTS *et al.* Comments at 52; WorldCom June 11, 2001 High-capacity Comments at 9; El Paso *et al.* Comments at 16. Some commenters indicate that other facilities-based competitive LECs may have self- (continued....)

they predominantly do so at the OCn-level.[857] In addition, the record shows that competitors have built fiber loops to buildings that carry a significant portion of the competitive traffic in certain MSAs.[858] In contrast, the record contains little evidence of self-deployment, or availability from alternative providers, for DS1 loops.[859] As for DS3 loops, evidence of self-deployment and wholesale availability is somewhat greater than for DS1s and is directly related to location-specific criteria.[860] Indeed, competitive LECs agree that at a three DS3 loop capacity

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deployed high-capacity loops, but have not submitted comments in this proceeding. *See, e.g.*, SBC Comments at 102; Verizon Comments at 117.

[857] *See, e.g.*, ALTS *et al.* Comments at 52; CCG July 17, 2002 CLEC Survey *Ex Parte* Letter at 6-7; WorldCom Comments at 76; WorldCom Fleming Decl. at para. 10; NewSouth Reply at 17.

[858] *See, e.g.*, *BOC UNE Rebuttal Report* at 45 (relating this figure to a typical Tier-1 MSA but stating that New York, San Francisco, Washington, D.C., and Los Angeles account for 40% of all data revenue nationwide).

[859] Based on the record as a whole, for DS1 loops and some DS3 loops, overbuilding to enterprise customers that require services over these facilities generally does not present sufficient opportunity for competitors to recover their costs and, therefore, may not be economically feasible. *See, e.g.*, Covad Reply at 56; AT&T Jan. 14, 2003 *Ex Parte* Letter at para. 3 n.5; Letter from Joan Marsh, Director, Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. B (filed Nov. 25, 2002) (AT&T Nov. 25, 2002 *Ex Parte* Letter) (providing loop build/no-build cost analysis); WorldCom Comments at 7; WorldCom Fleming Decl. at para. 10; Allegiance Reply at 38; NewSouth Reply at 17. In limited cases where evidence exists that a competitive LEC is serving customers via their own DS1 loops, the record suggests this is largely because these competitive LECs have *already* self-provisioned OCn level capacity to that specific location and other deployment barriers have not precluded them from using that capacity to serve other customers at lower loop capacity levels at that same location. *See* Letter from Joan Marsh, Director, Governmental Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338, at para. 2 (AT&T Jan. 14, 2003 *Ex Parte* Letter); WorldCom June 11, 2001 High-capacity Comments at 8 (citing confidential information) and Attach. B, Proprietary and Confidential Declaration of Jay Slocum (WorldCom Slocum Decl.) at paras. 3-6.

[860] *See, e.g.*, WorldCom Fleming Decl. at para. 10 (when customer demand is projected at several DS3s or optical level capacity a self-build decision is made); WorldCom Comments at 7 (customers in a building must commit to at least three DS3 circuits before it is economically viable to extend fiber to that building); AT&T Comments at 134 (a competitive LEC can only self-deploy to a location with enormous demand, the smallest of which would be at the OC3 level); AT&T Nov. 25, 2002 *Ex Parte* Letter at 3 (the amount of committed traffic to support construction of loops for large business customers is about three DS3s, *i.e.*, an OC3), and Attach. B at 9 (at least three DS3s worth of demand is required before a facility build can generally be proven as financially prudent). The record also contains some evidence that DS3 loop services may be available from alternative providers other than the incumbent LECs in some buildings where competitive capacity to the building has already been provisioned at the OCn level. *See* Sprint Comments at 23-24; Letter from John E. Benedict, Senior Attorney, Sprint, to Marlene H. Dortch, Secretary, FCC, CC Docket 01-338, 96-98, 98-147, Attach. at 1 (filed Oct. 16, 2002) (Sprint Oct. 16, 2002 *Ex Parte* Letter); WorldCom Comments at 16; KMC Duke June 11, 2001 High-capacity Aff. at para. 5 (citing confidential information); SBC Reply at 143 (citing AT&T Comments at 150 n.10 (citing confidential information)); WorldCom Slocum Decl. at paras. 3-6; AT&T Reply at 185 (citing CCG July 17, 2002 CLEC Survey *Ex Parte* Letter at 6 & Table 3); NuVox *et al.* Comments at 7.

level of demand, it is economically feasible to self-deploy,[861] and record evidence reveals that both AT&T and WorldCom have self-provisioned DS3 circuits to many customer locations.[862]

299. The record also contains extensive, albeit contradictory, evidence regarding the degree to which competitors rely on the incumbent LEC's facilities versus their own to provision loops to their customers. According to the BOC UNE Fact Report 2002, market statistics show that competitive LECs are now serving between 13 and 20 million business lines off their own switches – yet they have obtained only about 1.5 million unbundled loops to serve business customers.[863] The BOCs conclude that competitive LECs are, therefore, serving the remaining 85-95 percent of those 13-20 million self-switched business lines using "alternative facilities" instead of unbundled loops.[864] In addition, the BOCs state that virtually all of the high-capacity unbundled loops that competitive LECs have purchased in the BOC territories are DS1 loops and that competitive LECs have purchased only 140 unbundled DS3 loops, and not a single unbundled loop above a DS3 level.[865] The BOCs reason that these figures reflect that competitive LEC fiber networks are now so extensive in urban markets that they readily can be – and routinely are – extended as needed to pick up additional traffic from new customers in adjacent buildings, or down the block, and on outward from there.[866] According to the BOCs, once a competitive LEC deploys its initial fiber ring, extending that fiber incrementally to new customers is comparatively inexpensive.[867]

300. Competitive LECs strongly disagree with the BOCs' figures on line deployment, claiming these numbers are far less reliable than the data the Commission itself collects to measure competitive LEC deployment and the level of local competition.[868] Competitive carriers point to our own statistics which reveal that competitive LECs serve fewer than 9 million business lines nationwide, *i.e.*, not the 13 to 20 million lines that the incumbent LECs claim.[869]

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[861] *See supra* note 860.

[862] *See* SBC Reply at 143 (citing AT&T Comments at 150 n.10 (confidential information)); WorldCom Slocum Decl. at paras. 3-6; *see also* CCG Jul. 17, 2002 CLEC Survey *Ex Parte* Letter (indicating that competitive loop capacity has been deployed into buildings but not indicating at what capacity level customers are served in those buildings).

[863] BOC UNE Fact Report 2002 at IV-1 through IV-4.

[864] The BOCs also claim that competitive LECs have deployed approximately 1,800 fiber "networks" in the 150 largest MSAs. BOC UNE Fact Report 2002 at I-3.

[865] BOC UNE Fact Report 2002 at IV-6. Specifically, the BOC UNE Fact Report 2002 states that competitive LECs have purchased a total of 72,000 high-capacity loops UNEs – all but 140 of which are DS1s. *Id.*

[866] *See* BOC UNE Fact Report 2002 at IV-4.

[867] *Id.*

[868] *See, e.g.*, El Paso *et al.* Comments at 16-18 & n.68 (citing numerous other competitive LEC comments).

[869] AT&T Reply, Declaration of C. Michael Pfau (AT&T Pfau Reply Decl.) at paras. 2, 12-14 (describing how the incumbent LECs' methods for determining the number of competitive loops deployed substantially overstates the (continued....)

They further claim that this discrepancy is due in large part to the BOCs' inclusion of special access lines as alternative facilities in the BOC UNE Fact Report 2002.[870] Further, these commenters correctly note that the Commission staff's *Local Competition Report*, which calculates approximately 8.9 million voice-grade equivalent (VGE) lines for competitive LECs, explicitly indicates that it does not count special access lines as competitive LEC self-provisioned or "alternative provided" lines.[871] The BOCs acknowledge the inclusion of special access lines in their data, thus accounting for the approximate 15.8 million VGE differential from the Commission's *Local Competition Report*.[872]

301. Finally, the record indicates that various types of alternative transmission technologies to high-capacity local loops, *i.e.*, fixed-wireless, unlicensed-wireless, and satellite facilities, have been deployed in limited circumstances at certain locations.[873] The record, however, does not indicate the extent to which these alternative transmission technologies have been deployed or where they are available on a wholesale basis.[874] Nevertheless, it appears that, in certain circumstances, such technologies have been used by competitive LECs as alternatives to incumbent LEC unbundled high-capacity loops.[875] Incumbent LECs report that competitive carriers can often deploy fixed wireless connections more quickly and cheaply than fiber, and that free space optics, *i.e.*, laser-guided high-bandwidth connections to a fiber backbone, is now

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actual number by including, *inter alia*, leased special access circuits and other "flawed" assumptions). *See* Covad Reply 55; AT&T Reply at 182-85; NuVox *et al.* Reply at 42; WorldCom Comments at 76 (arguing that even in the most competitive market in the country, incumbent LECs have seven times more fiber than competitive LECs do).

[870] *See, e.g.*, AT&T Pfau Reply Decl. at paras. 14 (indicating that his experience recognizes that a much greater proportion of circuits are bought as special access).

[871] *See Local Competition June 2002* at 1 n.2, <http://www.fcc.gov/wcb/iatd/stats.html>.

[872] S*ee BOC UNE Rebuttal Report* at 45 (acknowledging that special access lines are, indeed, included in their numbers). In evaluating the extent to which competitive LECS have self-provisioned, the Commission has instructed competitive carriers to exclude local services provisioned over special access facilities in their reported data. *See supra* note 871. Because the Commission places little weight on the availability of special access in its impairment analysis, we do not rely on evidence that includes such lines.

[873] *See, e.g.*, BellSouth Comments at 42-43; SBC Comments at 91; Verizon Comments at 118.

[874] *See, e.g.*, ALTS *et al.* Comments at 45; Allegiance Comments at 19-22; Allegiance Reply at 36; AT&T Fea/Giovannucci Reply Decl. at 21 n.19; WorldCom June 11, 2001 High-capacity Comments at 13-14; Covad Comments at 49-50; Sprint Comments at 24-25; TDS Jackson Aff. at para. 9.

[875] *See Local Telephone Competition December 2002* Report; *see also* Allegiance Comments at 20-21; Sprint Comments at 25; Verizon Comments at 118.

a viable technology.[876] Competitive LECs, however, question the extent to which this deployment is widespread and point to certain technical limitations of such technologies.[877]

(ii) Impairment Analysis

(a) Operational and Economic Barriers to Serving the Enterprise Market

302. Enterprise market customers demand reliable services that include customized products, significant customer care, and enhanced security features.[878] Moreover, they prefer a single provider capable of meeting all their needs at each of their business locations which may be in multiple locations in different parts of the city, state or country.[879] The economics of serving a particular enterprise customer at each of its business' facilities may be very different depending on the location of the facility.[880] Small to medium-sized business customers generally demand services at the DS1, and to a lesser extent, DS3 capacities.[881] Competitive LECs meet these demands by providing packages of services, carrying both voice and data traffic, sold under month-to-month or short-term contracts.[882] In contrast, larger enterprise customers

[876] *See, e.g.*, Verizon Comments at 118 (stating that fixed wireless and free space optics is available for high-capacity links); SBC Reply at 91 (fixed wireless and satellite are broadband options for small business users).

[877] *See, e.g.*, Sprint Comments at 24-25 (indicating its significant experience with fixed wireless and noting its limitations and delayed development); TDS Jackson Aff. at para. 9 (indicating wireless loop alternatives are too costly, not available in TDS markets, and are not sufficiently robust platforms for TDS services); WorldCom June 11, 2001 High-capacity Comments, Attach. D, Affidavit of A. Daniel Kelley & Richard A. Chandler (WorldCom Kelley & Chandler June 11, 2001 High-capacity Aff.) at paras. 38-45 (arguing that there have been abortive attempts by competitors to provide high-capacity access to business customers using several fixed wireless technologies). We note that fixed wireless alternatives require Commission issued licenses and are subject to the availability of limited spectrum resources.

[878] *See, e.g.*, GCI Reply at 20.

[879] *See, e.g.*, WorldCom Comments at 13-18; Covad Reply at 57.

[880] *Id.* The loop capacity impairment approach we adopt today accommodates the need to serve a single enterprise customer at multiple locations because it recognizes that it may only be economical to build at the primary location where the loop capacity demanded is very high, enabling the competitive LEC to obtain unbundled lower capacity loops to serve the customer's other business locations.

[881] *See, e.g.*, NewSouth Reply at 16 (DS1 loops serve smaller businesses and DS3 and OCn serve larger businesses); NuVox *et al.* Reply at 39-41 (T1 facilities serve innovative bundled service offerings efficiently to small and medium business customers); Allegiance Reply at 35-36 (a significant segment of business customers are small and medium-sized enterprises that use DS1 capacity services).

[882] *See, e.g.*, ITC^Deltacom Aug. 16, 2001 Petition at 1-2; NewSouth Comments at 5; Affidavit of Edward J. Cadieux, NuVox (NuVox Cadieux Jan. 24, 2003 Aff.) at paras. 4-5, *in* Letter from Steven A. Augustino, Counsel for NuVox *et al.*, to William Maher, Chief, Wireline Competition Bureau, FCC, CC Docket No. 01-338, 96-98, 98-147 (filed Jan. 24, 2003); *see also* Letter from Kimberly Scardino, Senior Counsel, WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3 (filed Jan. 31, 2003) (WorldCom Jan. 31, 2003 *Ex Parte* Letter).

demand extensive services using multiple DS3s or OCn loops typically offered under long-term arrangements which guarantee a substantial revenue stream over the life of the contract.[883]

303. Because the cost to self-deploy local loops at any capacity is great,[884] and the cost to deploy fiber does not vary based on capacity,[885] a competitive LEC that plans to self-deploy its own facilities must target customer locations where there is sufficient demand from a potential customer base, usually a multiunit premises location, to generate a revenue stream that could recover the sunk construction costs of the underlying loop transmission facility, including laying the fiber and attaching the requisite optronics to light the fiber.[886] For competitive LECs deploying a very high-capacity loop facility to a particular customer location, the revenue commitment relative to the cost of constructing that loop facility may result in a positive profit margin for that single customer location, making it economically feasible from a profitability perspective, to self-provision in that particular case.[887] Even when the customer demand at a certain location may support self-deployment from a pure cost recovery perspective, however, there are other obstacles that must be overcome before such self-deployment can effectively occur.[888] These other barriers include the inability to obtain reasonable and timely access to the customer's premises both in laying the fiber to the location and getting it into the building thereafter,[889] as well as convincing customers to accept the delays and uncertainty associated with deployment of alternative loop facilities.[890]

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[883] *Id.*

[884] In discussing the general economic characteristics of loop deployment above, we noted that loop construction costs do not vary by the capacity of the loop and that the ability to recover the high fixed and sunk costs is the key factor to considering impairment. We also observed that loop impairment is closely related to the demands of the individual customer served by such loop and the capacity level of the loop provided. *See supra* Part VI.A.3.

[885] *See supra* Part VI.A.3.; *see also* Letter from Stephen W. Crawford, General Counsel, El Paso Global Networks, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1 (filed Feb. 5, 2003) (El Paso Feb. 5, 2003 *Ex Parte* Letter).

[886] *See, e.g.*, Allegiance Comments at 23; WorldCom Comments at 76; AT&T Reply at 145; *see also* TDS Jackson Aff. at para. 8.

[887] *Id.*; *see also* TDS Jackson Aff. at paras. 8-10.

[888] *See, e.g.*, El Paso *et al.* Comments at 20-21.

[889] *See, e.g.*, ALTS *et al.* Comments at 56 (discussing other barriers competitive LECs face in self-deployment); AT&T Reply at 174-79.

[890] *See, e.g.*, Sprint Comments at 23; AT&T Reply at 175. Competitive LECs argue that they can not feasibly construct loop facilities and justify the fixed and sunk costs that self-provisioning will entail in advance of securing firm customer commitments guaranteeing the likelihood of cost recovery. *See, e.g.*, NuVox *et al.* Comments at 74; AT&T Reply at 176-77; Supra Comments at 7. This barrier to entry can be exacerbated when states adopt service quality rules that require local service providers to be in a position to provision service within a specified number of days after a customer signs up for service. *See, e.g.*, Ohio Admin Code Ch. 4901 § 1-5-20 (C); 220 ILCS 5 § 13-712; 83 ILAC § 730.540.

304. The record reflects that constructing local loops generally takes between 6-9 months without unforeseen delay.[891] Competitive LECs describe numerous ways in which further delay affecting construction decisions and deployment occurs. These delays can be attributable to securing rights-of-way from local authorities which is necessary before competitive LECs can dig up streets to lay fiber. Often, carriers must engage in lengthy negotiations with local authorities over the ability to use the public rights-of-way.[892] Similarly, obtaining building and zoning permits adds further delay as local authorities often conduct extensive inquiries into the planned construction activity of the competitive carrier.[893] Moreover, commenters note that many local jurisdictions impose construction moratoriums which prevent the grant of a franchise agreement to construct new fiber facilities in the public rights-of way.[894]

305. In addition to delays associated with gaining access to rights-of-ways and permits from local or municipal authorities, competitive LECs face additional barriers with regard to serving multiunit premises due to difficulties and sometimes outright prohibitions in gaining building access.[895] Although multiunit premises could present substantial economic opportunities for competitors, if the entity or individual controlling access to the premises does not allow a competitor to reach its customer residing therein (or places unreasonable burdens on the competitive LEC as a condition of entry), the competitive LEC may be unable to serve its customer via its own facilities,[896] even where a competitive carrier may be ready, willing, and otherwise able to self-deploy the loop.[897]

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[891] *See, e.g.*, ALTS *et al.* Comments at 58; WorldCom Comments at 75 (citing WorldCom Fleming Decl.).

[892] Because of the expense and delay associated with filing a preemption petition, carriers rarely avail themselves of section 253(c) of the Act. *See* 47 U.S.C. § 253(c).

[893] *See, e.g.*, ALTS *et al.* Comments at 23-24. Incumbent LECs argue, however, that actual competitive LEC deployment undermines these arguments. *See, e.g.*, SBC Reply at 156.

[894] *See, e.g.*, ALTS *et al.* Comments at 42, 50, 56, 58; *see also* New York Department Comments at 4. Incumbent carriers, however, generally argue that competitive LECs are not impaired by rights-of-way costs and delays. BellSouth argues that mandatory access to rights-of-way means that there are not generally extreme delays caused by disputes, and competitive LECs can turn to the accelerated docket if need be. BellSouth Comments at 68-69.

[895] *See, e.g.*, AT&T Reply at 175 (stating that the time to negotiate building access arrangements can be up to 18 months); *see also* WorldCom Oct. 25, 2002 Building Access *Ex Parte* Letter.

[896] *See, e.g.*, AT&T Reply at 178-79. Verizon argues that, in the interim, competitive LECs can purchase special access services or use wireless or "free-space optics" loop in the interim during construction of the loop. Verizon Comments at 120-23. Competitive LECs, however, question the extent to which these wireless modes are available for use on an interim basis. *See supra* Part VI.A.4.a.(iii)(b). As for Verizon's suggestion that the use of special access services is sufficient, the Commission has stated it does not factor the availability of incumbent LEC's special access services into its loop impairment analysis. *See supra* Part V.B.1.d.(ii).

[897] *See, e.g.*, ALTS *et al.* Comments at 56-58; WorldCom Oct. 25, 2002 Building Access *Ex Parte* Letter; AT&T Reply at 175. We address building access-related barriers to loop deployment in greater detail below in our subloop and NID unbundling analyses, particularly, with respect to the Inside Wire Subloop. We expect that the subloop and NID unbundling rules that we adopt today will substantially mitigate the adverse impact of many of the building access-related barriers requesting carriers face with respect to serving customers in multiunit premises, particularly (continued....)

306. In conducting our impairment analysis, we give substantial weight to the cost of constructing a loop facility in relation to the ability of the competitive carrier to recover those costs over time, *i.e.*, where the traffic volume and associated revenue potential from the loop facility allow a carrier to earn a return necessary to sustain its operations at that location. We do, however, consider other factors affecting competitive LEC loop deployment, including access to public and private rights-of-way and multiunit premises access, that incumbent LECs have not or do not similarly face as a result of their first-mover advantage. Altogether, these factors directly influence the ability of competitive carriers to raise capital to deploy service to customers using their own loop facilities in a timely manner. The record reflects that these barriers can be overcome at certain loop capacity levels and certain service locations as we explain below.[898]

(b) General Framework

307. We organize our analysis of high-capacity loops based on capacity level because it is a more reliable indicator of the economic abilities of a requesting carrier to utilize third-party alternatives, or to self-deploy. At the same time, we recognize that operational and economic concerns will vary depending on the geographic market served. We find that the extent of competitive deployment of high-capacity loop facilities can vary tremendously by geographic area. More specifically, the barriers to entry requesting carriers face are most precisely identified on each geographic route serving a particular customer location. Where our record permits, however, we distill general characteristics of high-capacity loop deployment on a national level sufficient to make nationwide determinations of impairment and non-impairment. Where the record indicates impairment and that only with more granular evidence could a finding of non-impairment be made, we establish triggers to identify non-impairment based on customer location-specific evidence.

308. In conducting our impairment analyses for the various types of high-capacity loops, we first consider evidence of whether competitive LECs have self-deployed such loop facilities, on either an intermodal or intramodal basis, to provide retail services to enterprise market customers.[899] In our analysis, we recognize that a variety of alternative high-capacity loop transmission technologies, in various stages of development and use, are offered to enterprise customers in certain locations as potential alternatives to their traditional high-capacity loops, *i.e.*, different types of fixed-wireless, *e.g.*, 38 GHz, LMDS, MMDS, and 24 GHz;

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where the incumbent LEC's network extends beyond the minimum point of entry at the premises and the wiring in the building is owned and controlled by the incumbent LEC. Moreover, the Commission still has an open proceeding, WT Docket No. 99-217, related to building access. *See Competitive Networks Order*, 15 FCC Rcd 22983.

[898] *See supra* para. 298; *see also* Allegiance Comments at 23; ALTS *et al.* Comments at 58.

[899] *Iowa Utils. Bd.*, 525 U.S. at 389 (noting that the Commission must consider the availability of elements "outside the incumbent's network" when applying the "impair" standard). *See also* ITTA Jan. 29, 2003 *Ex Parte* Letter, Attach. at 1 (noting that the question is whether elements are available from sources other than incumbent LEC).

satellite facilities; and unlicensed wireless.[900] As we have indicated above,[901] evidence of self-deployment demonstrates better than any other kind of evidence what business decisions competitive carriers have *actually* made regarding the feasibility to deploy facilities without relying on the incumbent LEC. This evidence shows us, as a practical matter, that competitive LECs have been able to surmount barriers to entry with respect to that particular loop deployment. We then consider the extent of this deployment, whether it occurs or could occur on a nationwide basis, or is more limited in scope. Next we look at the extent to which wholesale alternatives to the incumbent LEC's unbundled loops are available to competitive LECs to provision high-capacity loops to their customers. We consider whether these alternatives, including alternative transmission technologies, are available ubiquitously or only in certain places.

309. We note that our consideration of alternative loop technologies in the enterprise market analysis differs from our consideration of intermodal alternatives in our mass market analysis. Different approaches are warranted because of the differences in how these technologies are deployed in these markets based on their suitability to individual customers, as well as the likelihood these technologies could be self-provisioned or made available to competitive carriers on a wholesale basis.[902] In the enterprise market, companies are able to target individual buildings and customers and determine which technology is the optimal means of reaching each customer. On the other hand, in the mass market where revenues are small, customers are typically served in large groups, using uniform technologies and mass marketing and provisioning techniques to minimize the cost of serving each customer.[903] As such, creating mechanisms to identify intermodal alternatives on an individual customer basis in the mass market is impractical, whereas it is feasible, in certain cases, in the enterprise market.

310. We find that certain types of alternative loop technologies could be made available on a wholesale basis to competitive carriers for providing high-capacity loop services to particular building locations in the enterprise market. Providers of viable intermodal alternatives to mass market customers have shown no inclination to provide access to competing carriers to serve their customers, nor would we expect them to.[904] With respect to the ability of a competitive LEC to self-provision high-capacity loops using alternative loop technologies, there are substantial differences between the mass market and the enterprise market. For example, one

[900] *See, e.g.*, BellSouth Comments at 42-43; SBC Comments at 91; Verizon Comments at 118; *see also* ALTS *et al.* Comments at 45; Allegiance Comments at 19-22; Allegiance Reply at 36; AT&T Fea/Giovannucci Reply Decl. at 21.

[901] *See supra* Part V.B.

[902] *See supra* Part V.B.1.d.(ii); *see also supra* Part VI.A.4.a.(iv).

[903] Thus, those technologies that can only be used for accessing certain customers and require equipment installation at the customer location, such as fixed wireless, have only proven to be economically viable for customers found in the enterprise market.

[904] A provider that has privileged access to a single mass market customer potentially will lose the customer if it provides wholesale access to a potential competitor.

of the mass market's major alternative loop technologies, cable telephony, is only available to cable TV companies that, because of their unique economic circumstances of first-mover advantages[905] and scope economies,[906] have access to the customer that other competitive carriers lack. Other technologies, such as fixed wireless, have not proven to be viable or deployable on a mass market scale. This contrasts with the enterprise market, where the record reflects that alternative technologies are available to some degree at certain locations that might be used by competitive carriers to provide high-capacity loops to enterprise customers.

(c) Capacity-based Impairment Findings

(i) Dark Fiber Loops

311. We find on a national basis that requesting carriers are impaired at most customer locations without access to dark fiber loops. Dark fiber, unlike "lit" fiber, is unused fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.[907] Users of unbundled dark fiber loops, similar to users of dark fiber transport,[908] provide the electronic equipment necessary to activate the dark fiber strands to provide services.[909] While the underlying capacity level of a strand of dark fiber is comparable in total capacity to an OCn loop, we address dark fiber loops separately from OCn loops due to economic and operational characteristics that distinguish dark fiber from "lit" fiber.[910] We make our determination of impairment based on the high sunk costs associated with

[905] These companies had the advantage of beginning with exclusive franchises and a captive market. These advantages are not available to other entrants.

[906] Scope economies exist when the cost of providing a service is lower when combined with other services. The cost of providing cable telephony to customers is lower for cable TV companies because they also provide video services to those customers.

[907] *See supra* note 628 (definition of dark fiber).

[908] *See infra* Part VI.C.4.c.(i).

[909] By itself, dark fiber has virtually unlimited capacity. It is the electronics that define the capacity. *See* El Paso Feb. 5, 2003 *Ex Parte* Letter at 2; *see also* AT&T Comments at 130; Letter from Thomas Jones, Counsel for Conversent Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1-2 (filed Dec. 24, 2002) (Conversent Dec. 24, 2002 *Ex Parte* Letter).

[910] For example, competitive providers that use unbundled dark fiber claim that it can offer a higher level of service than "lit" transmission because unbundled dark fiber integrates more efficiently into their networks by reducing the number of failure points and by providing the competing carrier with greater ability to test for quality and maintenance. *See* Conversent Comments at 7; Letter from Scott Sawyer, Vice President - Regulatory Affairs, Conversent Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3 (filed Oct. 10, 2002) (Conversent Oct. 10, 2002 *Ex Parte* Letter). Other competitive carriers indicate that dark fiber gives them greater control over their own network components which is an important aspect of their competitive service offerings. *See* Letter from Lawrence R. Freedman, Counsel for Norlight, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3 (filed Dec. 30, 2002) (Norlight Dec. 30, 2002 *Ex Parte* Letter). In the *UNE Remand Order*, we recognized that the characteristics of dark fiber do not vary between loop and transport deployment. Because dark fiber is more extensively used in transport, we discuss its characteristics in more detail below in our discussion of dark fiber transport and do not repeat such discussion here other than to (continued....)

deploying high-capacity loop facilities and lack of evidence showing alternatives at specific customer locations.

312. Dark fiber exists in a carrier's network as unused fiber available because that carrier has deployed fiber in the first instance for the express purpose of lighting certain strands of it to serve a particular customer location.[911] The "dark" fiber strands, however, remain unlit. Dark fiber loop construction, like loops generally, involves substantial fixed and sunk costs. The primary costs associated with fiber deployment lie in the substantial sunk costs associated with physically laying the fiber cable.[912] In addition, there are other barriers that must be overcome before deployment can effectively occur.[913] These other barriers include the inability to obtain reasonable and timely access to the customer's premises both in laying the fiber to the location and getting it into the building thereafter,[914] as well as convincing customers to accept the delays and uncertainty associated with deployment of alternative loop facilities.[915] It is only when a competitive LEC has sufficient demand for "lit" fiber to a particular customer location to enable it to recover the fixed and sunk costs of the fiber deployment that it is economically feasible for that competitor to deploy fiber to that location.[916] When a fiber build decision is made, carriers take advantage of the fact that they are already incurring substantial fixed costs to obtain the rights-of way, dig up the streets, and trench the cable, to lay more fiber than they immediately need. Once the significant fiber construction cost is incurred,[917] the record reflects that it is relatively easy and inexpensive to install fiber strands in excess of current demand at that time to maximize the use of the conduit and avoid the need to incur duplicate costs to retrench the same

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indicate that the characteristics of dark fiber described therein pertain to dark fiber loops as well. *See infra* Part VI.C.4.c.(i). Any operational or provisioning requirements associated with incumbent LEC provisioning of unbundled dark fiber transport apply equally to provisioning unbundled dark fiber loops. *See id.*, para. 384 (discussing issues associated with dark fiber access and granting states the flexibility to establish reasonable limitations and technical parameters).

[911] Competitive carriers indicate that they, unlike the incumbent LEC, can not build fiber loop plant until they have secured a substantial customer base and revenue stream. *See* Letter from Robert J. Aamoth, Counsel for Dominion Telecom, to Michael K. Powell, Chairman, FCC, CC Docket No. 01-338 at 4 (filed Jan. 28, 2003) (Dominion Jan. 28, 2003 Aamoth *Ex Parte* Letter); *see also* El Paso *et al.* Comments at 9.

[912] *See supra* Part VI.A.3 (discussing loop construction costs); *see also* El Paso Feb. 5, 2003 *Ex Parte* Letter at 1.

[913] *See, e.g.*, El Paso *et al.* Comments at 20-21.

[914] *See, e.g.*, ALTS *et al.* Comments at 56 (discussing other barriers competitive LECs face in self-deployment); AT&T Reply at 174-79.

[915] *See supra* note 890.

[916] *See infra* Part VI.A.4.b.(i) (stating that evidence that the specific level of demand must be OCn or 3 DS3s of capacity into a particular customer location to justify competitive loop deployment); *see also supra* note 911.

[917] *See supra* Part VI.A.3 (discussing loop construction costs); *see also* El Paso *et al.* Comments at 20-21.

location in the future if demand for additional fiber facilities occurs.[918] As such, incumbent LECs are the largest source of intracity dark fiber nationwide as a result of their "first-mover" fiber deployment to the majority of customer locations.[919] This sharply contrasts with the availability of competitive dark fiber loops, which is necessarily limited by the economic barriers inherent in deploying alternative fiber loops, generally, except to certain customer locations.[920]

313. Because it is generally not economically feasible to deploy duplicate fiber loop facilities, the record reflects that a number of facilities-based competitive LECs rely on incumbent LEC unbundled dark fiber to provision "last-mile" services to small and medium-sized customers, particularly in rural, unserved, or underserved areas of the country.[921] These users of unbundled dark fiber provide the necessary optronics[922] and collocations that are preconditions to activating the fiber to serve customers. These carriers extensively deploy their own network facilities, *e.g.*, switches, transport, and the necessary optronics to light dark fiber to enable the provision of competitive high-capacity local service to end users in direct competition with the incumbent LEC.[923] These competitive LECs argue that they seek to construct their own fiber loops all the way to the customer if economically feasible to self-deploy, but that in many areas the level of demand is not sufficient to warrant overbuilding the dark fiber already available from incumbent LECs.[924] Because it is not economically feasible to self-deploy to many enterprise market customer locations, particularly less densely populated areas, unbundled dark fiber loops enable competitive carriers to build facilities-based networks to serve customers

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[918] *See, e.g.*, El Paso *et al.* Comments at attached TPUC testimony at 8 (indicating an industry average of a "mere" $1.00 per foot to increase fiber placement from a 72 fiber strand cable to the next standard 144 size fiber strand cable); *see also* Norlight Dec. 30, 2002 *Ex Parte* Letter at 5.

[919] *See* Norlight Dec. 30, 2002 *Ex Parte* Letter at 5 (the first carrier to lay fiber to a particular location will lay significantly more than it will need because the incremental cost of burying additional fibers is negligible; requiring competitors to construct duplicate facilities where there is already excess capacity in place is precisely the inefficiency the *USTA* court instructed the Commission to avoid).

[920] *See supra* note 905.

[921] *See, e.g.*, Dominion Jan. 28, 2003 Aamoth *Ex Parte* Letter at 4 (dark fiber loops are especially critical because they are often located in areas where few or no competitors presently serve customers; eliminating unbundled dark fiber loops would deprive hundreds of businesses in Tier II and III cities from receiving competitive service); Norlight Dec. 30, 2002 *Ex Parte* Letter at 5 (in smaller rural markets where dark fiber exists there typically is no demand or expected growth in demand to warrant additional facilities); Norlight Comments at 2-4 (Norlight serves Tier II and III cities where the incumbent LEC is the only option other than cost prohibitive self-deployment to extend competitive service to customers).

[922] We note that the cost of electronics, such as those used to activate dark fiber, are not sunk costs like fiber construction costs because they can be moved from one location to another location upon exit from a particular location.

[923] *See, e.g.*, Norlight Dec. 30, 2002 *Ex Parte* Letter at 2.

[924] *Id* at 5. Carriers also note that in these more rural areas it actually may be less costly to both in time and dollars to self-deploy fiber than in more urban areas, but the level of demand to a customer location may simply be too low to justify the cost of installing duplicative facilities. *Id* at 3.

at those locations[925] with the least reliance on the incumbent LEC's facilities.[926] We find that dark fiber loops allow competing carriers to provide services without incurring many of the high sunk costs of self-deploying the loop facility, but still require significant investment in collocation and optronics. We expect that unbundling of dark fiber loops will encourage construction of alternative facilities because it will provide facilities-based carriers the means of obtaining the last-mile facility necessary to serve customers over competitive networks comprised largely of facilities other than the incumbent LEC's. The availability of dark fiber loops increases the ability of facilities-based competitive LECs to reduce their reliance on unbundled "lit" high-capacity loops at locations where dark fiber loops are available to them, encouraging investment in the optronics necessary to light the fiber.[927] Moreover, unbundling dark fiber enables the Commission to limit unbundling obligations with respect to certain high-capacity "lit" loops as we discuss below.

314. In most areas, competing carriers are unable to self-deploy and have no alternative to the incumbent LEC's facility.[928] However, the record indicates that competitive LECs have been able to self-deploy fiber to some customer locations, although the record does not reveal the specific locations of such deployment.[929] For this reason, we delegate to the states the authority to collect and analyze more specific evidence of loop deployment on a customer location basis, applying a uniform national trigger that measures self-provisioning to determine customer locations where competitive carriers are not impaired without access to incumbent LEC unbundled dark fiber loops.[930]

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[925] *See, e.g.*, Dominion Jan. 28, 2003 Aamoth *Ex Parte* Letter at 2; Norlight Dec. 30, 2002 *Ex Parte* Letter at 5.

[926] *See, e.g.*, Letter from Joshua M. Bobeck, Counsel for El Paso Global Networks, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338, 96-98, 98-147 at 2 (filed Oct. 4, 2002) (El Paso Oct. 4, 2002 *Ex Parte* Letter) (dark fiber is the UNE that is closest to 100% facilities-based competition).

[927] *See* Letter from Stephen W. Crawford, General Counsel, El Paso Networks, and Scott Sawyer, Vice President and Counsel, Conversent Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 1 (filed Nov. 26, 2002) (El Paso/Conversent Nov. 26, 2002 *Ex Parte* Letter).

[928] *See supra* note 856; *see also* Letter from Brad E. Mutschelknaus, Counsel for OnFiber Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338, 96-98, 98-147 at 2 (filed Feb. 6, 2003) (OnFiber Feb. 6, 2003 *Ex Parte* Letter) (asserting that the vast expense associated with deploying dark fiber precludes self-provisioning and prevents any kind of alternative market from developing).

[929] *See supra* note 856; *see also* Letter from Patrick J. Donovan, Counsel for El Paso Networks LLC, to Marlene H. Dortch, Secretary, FCC, CC *Docket* No. 01-338 (filed Jan. 22, 2003) (El Paso Jan. 22, 2003 *Ex Parte* Letter); Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 19 (filed Jan. 31, 2003) (discussing competition for special access) (Verizon Jan. 31, 2003 Special Access *Ex Parte* Letter); Norlight Dec. 30, 2002 *Ex Parte* Letter at 2.

[930] *See infra* Part VI.A.4.b.(ii)(d) (discussing in detail the state reviews on a customer-location specific basis applying the defined Self-Provisioning Trigger and Competitive Wholesale Facilities Trigger).

(ii) OCn Loops

315. We find that requesting carriers are not impaired on a nationwide basis without access to unbundled "lit" OCn loops because the barriers relating to the deployment of OCn "lit" loops can be overcome through self-deployment at the OC3 and above level, the use of unbundled dark fiber, or the use of "lit" DS3s.[931] Record evidence reflects competitive deployment of loops at the OCn level and competitive carriers confirm they are often able to economically deploy these facilities to the large enterprise customers which use them.[932] Further, there does not appear to be any evidence of demand for incumbent LEC OCn level unbundled loops.[933] Competitive LECs have deployed OCn capacity to some commercial buildings nationwide, including Tier II and Tier III markets.[934] We find this evidence of deployment persuasive in demonstrating that competitive LECs can often overcome the barriers associated with loop deployment at the OCn level.

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[931] OCn circuits range from OC3 to OC192. The smallest common OCn capacity circuit, an OC3, is comparable in capacity to 3 DS3s, 84 DS1s, or 2016 voice-grade loops. Our impairment finding for OCn level loops differs from our finding for dark fiber loops as the economics of deploying "lit" fiber at the OCn level differs from deploying dark fiber at a comparable capacity level. While the construction-related costs in laying the fiber are the same, the ability to recover these sunk costs differs if considered as distinct types of loop facilities. As we noted in our discussion of dark fiber loops above, dark fiber is unused deployed fiber along a particular route that is not associated with a specific potential revenue stream from a known customer at the time of construction. *See supra* para. 312. A competitive LEC does not deploy dark fiber to use in self-provisioning high-capacity local service to customers *unless* that competitive LEC already has sufficient customer demand at a "lit" fiber level, *i.e.*, at the OCn or 3 DS3 level, to recover the sunk costs of the fiber construction. *See supra* note 911; *see also* Dominion Jan. 28, 2003 Aamoth *Ex Parte* Letter at 4. In other words, competitive carriers can not economically deploy dark fiber on a stand-alone basis for self-deployment purposes without an associated "lit" fiber demand. While carriers deploying OCn fiber loops must necessarily first deploy dark fiber and then attach the requisite optronics to activate the fiber for service capability at the OCn level, carriers deploying fiber to meet a particular customer demand for OCn capacity are viewed as deploying an OCn loop to serve that customer rather than deploying dark fiber to serve that customer.

[932] *See, e g.*, WorldCom Fleming Decl. at para. 10 (when customer demand is projected at several DS3s or optical level capacity a self-build decision is made); Letter from Ruth Milkman, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338, 96-98, 98-147, Attach. at 5 (filed Oct. 7, 2002) (WorldCom Oct. 7, 2002 *Ex Parte* Letter) (for self-deployment to be feasible, the demand must be for at least multiple DS3s); AT&T Comments at 134 (a competitive LEC can only self-deploy to a location with enormous demand, *i.e.*, the smallest of which would be at the OC3 level); AT&T Nov. 25, 2002 *Ex Parte* Letter at 2 (the amount of committed traffic to support construction of loops for large business customers is about 3 DS3s, *i.e.*, an OC3), and Attach. B at 9 (at least 3 DS3s worth of demand is required before a facility build can generally be proven as financially prudent).

[933] *See supra* para. 299 (BOCs state that not a single unbundled loop above a DS3 level has been purchased).

[934] *See* KMC Duke June 11, 2001 High-capacity Aff. at para. 3 (naming the Tier III markets they serve with their own facilities); CCG July 17, 2002 CLEC Survey *Ex Parte* Letter (explaining that the six metropolitan areas chosen to represent competitive LEC loop buildout – Albany, Augusta, Boston, Chicago, Corpus Christi, and Portland – represent a broad cross section of populations and business concentrations); *see also* WorldCom Oct. 30, 2002 *Ex Parte* Letter.

316. Commenters indicate that services offered over OCn loops produce revenue levels which can justify the high cost of loop construction, providing the opportunity for competitive LECs to offset the fixed and sunk costs associated with the loop construction. Large enterprise customers purchasing services over OCn loops[935] enter into long-term contracts committing to revenue streams and associated early termination charges that provide the ability for carriers to recover their substantial non-recurring "set-up" or construction costs.[936] Customers obtaining services at the OCn level also understand that transitioning such services to a new provider is not an overnight process. Because of their level of business planning sophistication, as a practical matter, they begin the process of seeking a new or alternative service provider well in advance of their actual need for the service.[937] Accordingly, they are more receptive to the inherent provisioning delays associated with constructing these high-capacity loops to meet their particular needs than smaller business customers served by lower capacity loops.[938] Competitive carriers deploying fiber at the OCn capacity level are therefore able to accommodate provisioning delays and additional expense at the start of the construction process, mitigating obstacles to self-deploying they may face in gaining access to public and private rights-of-way.[939]

317. Furthermore, enterprise customers requiring OCn level capacity are often located in multiunit premises where they may have the ability to exert greater influence over building access because: (1) their operations are so substantial that they own the premises outright; (2) they control the access to the premise; or (3) they have sufficient influence over the

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[935] We recognize that large enterprise customers may also have remote business locations that do not require the capacity of an OCn loop. We reiterate that we do not tailor our rules to restrict or limit unbundling based on the size or class of the customer served. A large enterprise customer's particular loop capacity demand at a given service location is determined by multiple factors unique to that customer's needs at that specific location, rather than the size of that customer. Merely because large enterprise customers are typically the only type of customer that purchase OCn capacity loops does not equate to the fact that OCn loops are the only type of loop such customers demand.

[936] *See supra* note 932; *see also* Declaration of Alfred E. Kahn and William E. Taylor, RM No. 10593 at 32-33 (discussing generally how long-term contracts and associated termination penalties are used to ensure cost recovery) *in* Verizon Jan. 31, 2003 Special Access *Ex Parte* Letter. Long-term contracts are used to minimize risk exposure and stabilize construction costs over time when the seller incurs heavy sunk costs as part of a transaction. *Id.*

[937] If this customer's competitive OCn loop is to be provisioned at their current business location, we understand they will generally begin the process of looking at alternative service providers months in advance of the expiration date of their current contract for service, which will usually include a provision for month-to-month service thereafter for as long as needed. If service is to be provided at a brand new location that the customer is moving to, or having built, at an OCn level of capacity, decisions regarding which service provider will provision that service will similarly be made months before occupancy. Each of these scenarios mitigates the impact of the lead time to build new loops with respect to serving these customers.

[938] *See, e.g.*, Sprint Comments at 23; WorldCom Fleming Decl. at paras. 9-10.

[939] To the extent these initial obstacles are in the form of unreasonably high costs for rights-of-way access, competitive LECs deploying fiber to serve customers at the OCn level are better able to overcome these barriers as the revenues associated with OCn capacity service contracts are quite high. *See generally* AT&T Comments at 134; WorldCom Comments at 76; *see also* TDS Jackson Aff. at para. 8.

landlord/building owner to overcome building access impairments the competitive provider may encounter due to the amount of leased occupancy space for which this enterprise customer has committed.[940]

318. Competitive carriers requiring OCn capacity "lit" loops to serve customers will also have the ability to purchase dark fiber, including unbundled dark fiber loops, and attach their own optronics to activate such loops to serve their customers at those locations where unbundled dark fiber is available. In circumstances where competitive LECs may be unable to self-deploy the underlying OCn fiber loop, the record demonstrates that there is no impairment with respect to obtaining and attaching the requisite optronics necessary to light dark fiber at the OCn level to provide service. Based on record evidence that self-deployment of the loop transmission facility at the OCn level is generally feasible, it necessarily follows that the lesser cost of self-providing just the optronics to light the fiber at the OCn level is economically feasible. While we recognize that dark fiber may not be available at every customer location nationwide, a competitive carrier may also access "lit" loops. Because the record demonstrates, however, that competitive carriers routinely self-deploy when customer demand is three DS3s (or optical capacity) as discussed further below, we limit the availability of "lit" DS3 loops to a maximum of two unbundled DS3 loops per carrier at each customer location.[941]

319. Finally, as we have noted, at least in the BOC regions, the record reflects that competitive LECs have not obtained unbundled loops at the OCn level.[942] Thus, there are few, if any, transition issues with regard to OCn loops. In the event a competitive LEC of which we are not aware is currently providing service over an unbundled OCn loop, the transition scheme that we have adopted herein governs such situation.[943]

(iii) DS3 Loops

320. We make a national finding that requesting carriers are impaired on a customer-location-specific basis without access to unbundled DS3 loops. The inability to recover the significant fixed and sunk construction costs of DS3 loops, coupled with the additional barriers to loop deployment associated with accessing rights-of-way; obtaining and paying for building access; and other service provisioning delays impair the ability of requesting carriers to self-provision single DS3 loops.[944] Unlike deployment at even the lowest OCn level, the record indicates that a single DS3 loop, generally, can not provide a sufficient revenue opportunity to

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[940] *See, e.g.*, AT&T Reply at 174-77.

[941] *See infra* para. 321.

[942] *See supra* para. 299.

[943] *See supra* Part VIII.D (addressing the transition process adopted herein).

[944] *See supra* Part VI.A.3 for a discussion of the general economic characteristics of loop deployment. Because the cost of constructing a fiber loop facility does not vary to any significant degree with loop capacity, to economically justify a particular loop construction expenditure, a competitive carrier must have some reasonable expectation of being able to recover its cost over time.

overcome these barriers.[945] Because our impairment analysis rests most heavily on the ability of a self-deploying carrier to recover its sunk and fixed costs, the inability to recover such costs at a single DS3 level results in impairment. In finding impairment based on the inability to recover sunk costs, we find that the other economic and operational barriers faced by competitive LECs in self-deploying loops generally, *i.e.*, difficulties in acquiring municipal and private rights-of-ways as well as gaining building access from owners of multiunit premises,[946] exist for competitive LECs with respect to single DS3 loop deployment.[947]

321. Despite the economic barriers that a competitive LEC faces in deploying single DS3 loops, the record indicates that some carriers have been able to overcome these barriers when providing multiple DS3s to a specific customer location.[948] Because the record does not, however, provide sufficient evidence to determine the specific factors that make such deployment feasible at these locations, we are unable to conclude with any precision exactly where requesting carriers would not be similarly impaired without access to unbundled DS3 loops.[949] Similarly, the record reflects a small but potentially growing wholesale alternative DS3 loop market.[950] Once again, however, the record in this proceeding does not specify exactly where this deployment has occurred. Therefore, as discussed below, we delegate to the states the

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[945] *See supra* note 860. The potential revenue stream associated with a customer commitment for a single DS3 loop is far less than the revenue stream associated with an OCn loop, yet the cost to construct the loop facility is the same. At the smallest OCn level, *i.e.*, OC3, there are 2,016 voice-grade equivalent lines. A single DS3 is equivalent to 672 voice-grade equivalent lines. A simple comparison of the relative voice-grade equivalent lines demonstrates that a customer commitment in terms of potential revenue stream for a DS3 is many times smaller than that of an OC3 loop. Accordingly, it takes a longer period of time for a competitive LEC to recover its costs of deploying a single DS3 loop facility.

[946] *See, e.g.*, AT&T Reply at 174-79 (discussing other barriers linked to the incumbent LECs' historical monopoly that preclude competitive loop deployment independent of cost factors); *see also* NuVox *et al.* Comments at 74; KMC Duke Aff. at paras. 7-9 (citing proprietary information); SNiP LiNK Polito Aff. at paras. 3-7; Sprint Comments at 22; Letter from Ruth Milkman, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2 (filed Oct. 25, 2002) (discussing building access barriers) (WorldCom Oct. 25, 2002 Building Access *Ex Parte* Letter); ALTS *et al.* Comments at 56.

[947] *See supra* Part VI.A.3. for evidence of the existence of the other operational barriers to DS3 loop capacity deployment.

[948] The record indicates that some competitive carriers have economically self-deployed DS3 capacity loops to certain customer locations where the aggregate demand for DS3 capacity at those locations is *three* or more. *See supra* note 860; *see also* Letter from David L. Lawson, Counsel for AT&T to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 02-33 at 1 n.2 (filed Feb. 3, 2003) (AT&T Feb. 3, 2003 Lawson *Ex Parte* Letter) (citing AT&T Nov. 25, 2002 *Ex Parte* Letter indicating competitors can economically self-deploy at 3 DS3s worth of traffic).

[949] Indeed, we note that competitive carriers do not have an incentive to volunteer such information in our record. The record does provide sufficient information to enable us to impose a limitation on the number of DS3 unbundled loops that a requesting carrier can obtain to any single customer location. *See infra* para. 324.

[950] *See* AT&T Comments at 150 n.110 (citing confidential information that indicates that some of its DS3 level loop capacity is obtained from non-incumbent LEC sources).

authority to collect and analyze more specific evidence of DS3 loop deployment on a customer location-specific basis, applying uniform national triggers that measure self-provisioning or wholesale alternative availability to determine customer locations where competitive carriers are not impaired without access to incumbent LEC unbundled DS3s.[951]

322. If, as the incumbent LECs argue, "a small number of buildings in each metropolitan area typically account for a large fraction of the traffic,"[952] we expect that the triggers that we adopt today will provide incumbent LECs substantial relief from their unbundling obligations while simultaneously ensuring that competitive carriers get unbundled high-capacity loop access only where they are unable to economically self-deploy or use alternative facilities.[953]

323. In finding that competitive carriers are impaired without unbundled access to DS3 loops, we disagree with incumbent LECs' claims that market evidence of DS3 deployment in certain situations demonstrates that, in *all* situations, traffic and revenue potential justify a nationwide finding of DS3 non-impairment. The limited record evidence we have of self-deployment does not permit such broad extrapolation.

324. *Limitation on Multiple Unbundled DS3 Loops.* Finally, consistent with our finding of no impairment at the OCn loop capacity level, and because the record confirms that it is economically possible to self-deploy at a three DS3 loop level to a particular customer location, we limit an incumbent LEC's unbundling obligation to a total of two DS3s per requesting carrier to any single customer location.[954] We find that as a carrier approaches customer demand for three DS3s of capacity at a particular customer location, it is feasible for that carrier to self-deploy its own high-capacity facilities. Our unbundled DS3 loop quantity

[951] *See infra* Part VI.A.4.b.(ii)(d) (discussing in detail the state reviews on a customer-location specific basis applying the defined Self-Provisioning Trigger and Competitive Wholesale Facilities Trigger).

[952] *BOC UNE Rebuttal Report* at 45.

[953] One commenter indicates that 200 to 300 out of 15,000 multiunit premises in a typical Tier-I MSA generate 80% of the data revenues. *Id.* Verizon indicates a Tier I MSA is typically defined as an MSA with a population of one million or more. *See* Verizon Jan. 31, 2003 Special Access *Ex Parte* Letter at 13 n.62.

[954] We note that our unbundled DS3 loop cap is smaller than the unbundled DS3 transport cap. *See infra* Part VI.C.4.c.(ii). The unbundled DS3 loop cap is based on record evidence indicating the feasibility of DS3 loop self-deployment at a 3 DS3 level. Indeed, AT&T's record evidence indicates economic feasibility at about 2.75 DS3s or 77 DS1s worth of traffic. *See* AT&T Jan. 14, 2003 *Ex Parte* Letter at 4 (citing AT&T Nov. 25, 2002 *Ex Parte* Letter, Attach. B). Once a competitive carrier's customer demand at a location exceeds 2 DS3 loops, the competitive carrier should plan to self-deploy DS3 capacity to that customer location. The record evidence for the self-provisioning feasibility level for DS3 transport varies, but because it generally is within a higher range than for DS3 loops, establishing the DS3 transport limit at a higher number is appropriate.

limit is location specific, maintaining consistency with our impairment conclusions about OCn capacity loop deployment,[955] as well as DS3 loop deployment.

(iv) DS1 Loops

325. We find that requesting carriers generally are impaired without access to unbundled DS1 loops.[956] The record contains little evidence of competitive LECs' ability to self-deploy single DS1 capacity loops[957] and scant evidence of wholesale alternatives for serving customers at the DS1 level.[958] Commenters expressly state that a competitive carrier would not construct its own DS1 or lower capacity loops.[959] Indeed, incumbent LECs recognize a distinction between provisioning DS1 level loops and other higher capacity loops.[960] The record shows that requesting carriers seeking to serve DS1 enterprise customers face extremely high economic and operational barriers in deploying DS1 loops to serve these customers.[961]

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[955] We have noted that the lowest common OCn capacity standard, OC3, is equivalent to three DS3 circuits in terms of capacity. *See supra* note 931.

[956] DS1 loops will be available to requesting carriers, without limitation, regardless of the technology used to provide such loops, *e.g.*, two-wire and four-wire HDSL or SHDSL, fiber optics, or radio, used by the incumbent LEC to provision such loops and regardless of the customer for which the requesting carrier will serve unless otherwise specifically indicated. *See supra* Part VI.A.4.a.(v) (discussing FTTH). The unbundling obligation associated with DS1 loops is in no way limited by the rules we adopt today with respect to hybrid loops typically used to serve mass market customers. *See supra* Part VI.A.4.a.(v)(b)(i).

[957] We note that at least two competitive LECs have provided evidence that indicates that they self-provide some DS1 capacity loops to certain customer locations. *See supra* note 859. It is important to note, however, that this evidence of self-provisioning has been possible where that same carrier is already self-provisioning OCn or a 3 DS3 level of loop capacity to that same customer location. Thus, this evidence does not support the ability to self-deploy stand-alone DS1 capacity loops nor does it impact our DS1 impairment finding. *See* AT&T Comments at 150 n.10 (citing confidential information); WorldCom Slocum Decl. at paras. 3-6.

[958] *See* Covad Reply at 56 (discussing no alternative DS1 capacity providers); NewSouth Comments at 13-17; NewSouth Reply at 17; WorldCom Comments at 74; AT&T Jan. 14, 2003 *Ex Parte* Letter at 2; WorldCom Oct. 30, 2002 *Ex Parte* Letter; AT&T Feb. 3, 2003 Lawson *Ex Parte* Letter at 13. The record indicates that even competitive carriers that have deployed their own loop facilities do not have the back office support systems in place that are necessary to offer any excess capacity on a wholesale basis to other competitive LECs. *See, e.g.*, KMC Duke Aff at para. 13 (discussing what systems are necessary to wholesale service to other carriers).

[959] *See* AT&T Jan. 14, 2003 *Ex Parte* Letter at 3 n.5; Covad Comments at 47; Allegiance Reply at 38.

[960] SBC Comments at 100-01; SBC Reply at 156 (recognizing that impairment may exist for certain DS1 loops and proposing a carve-out).

[961] *See supra* Part VI.A.4.b.(ii)(a) for a discussion of the economic and operational barriers to DS1 loop capacity deployment. The record indicates that many competitive carriers providing DS1 capacity loops to enterprise market customers serve the small to medium-sized segment of this market which is characterized as typically underserved by incumbent LECs. Indeed, many of these competitive LECs, which are themselves small to medium size businesses, have entered the competitive telecommunications market specifically to serve these smaller business customers requiring primarily DS1 level capacity. The DS1 loop unbundling rule we adopt today recognizes the dependency that smaller business customers and carriers have on DS1 capacity loops and accommodates those (continued....)

Customers demanding services over DS1 loops possess significantly different economic characteristics for competitive carriers than large enterprise market customers. In particular, small and medium enterprise customers served by DS1 loops provide much lower revenue opportunities than large enterprise market customers and, generally, resist long-term contract obligations.[962] These factors lead to a greater potential to change providers on a more frequent basis, *i.e.*, churn, resulting in the inability of competitive LECs to rely on a long-term DS1 revenue stream, as they can with much higher loop capacity demands. Taken together, these factors make it economically infeasible for competitive LECs to deploy DS1 loops, which require the same significant sunk and fixed construction costs as higher capacity loops.

326. While DS1 loops are typically used to serve small to medium-sized business customers associated with the enterprise market, they are also used to serve customers associated with the mass market. Although we recognize different characteristics between these two markets, *e.g.*, enterprise customers are more concentrated in urban locations, in multiunit premises, and demand greater variety and higher quality services than mass market customers, the economics of constructing DS1 loop facilities to serve these different customer classes are not significantly different. The average revenue available per customer in either of these markets is very low relative to larger enterprise market customers using higher capacity loops.[963] While we recognize that retail business customer rates are typically higher than residential rates, the record reflects that the revenues generated from small and medium enterprise customers are not sufficient to make self-deploying DS1 loops economically feasible from a cost recovery perspective.[964] As we have stated, our impairment findings rely most heavily on the economic feasibility of competitive LECs to self-deploy and recover sunk costs.[965] Competitive LECs do not have the ability to recover sunk costs in self-deploying DS1 loops. Furthermore, the other economic and operational barriers faced by competitive LECs in self-deploying loops generally, *e.g.*, the inability to obtain reasonable and timely access to the customer's premises both in laying the fiber to the location and bringing it into a building thereafter,[966] as well as convincing customers to accept the delays and uncertainty associated with deployment of alternative loop

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needs consistent with our impairment framework. *See also* NuVox Cadieux Jan. 24, 2003 *Ex Parte* Aff. (for general discussion of serving small to medium business customers with DS1 capacity); NuVox *et al.* Comments, attached Profiles & Affidavits; Covad Reply at 54; NewSouth Reply at 16-17; Allegiance Reply at 36-38.

[962] *See, e.g.*, NewSouth Reply at 18 (discussing the lower traffic volumes and revenue potential that can be generated from a DS1); *see also* TDS Jackson Aff. at para. 10.

[963] This fact can be most easily demonstrated by simply comparing voice-grade line equivalents, *i.e.*, a single DS1 is equivalent to 24 voice-grade lines whereas 3 DS3s (the number of DS3 capacity loops where self-provisioning begins to be economically feasible) is equivalent to 2016 voice-grade equivalents.

[964] *See supra* note 962.

[965] *See supra* para. 206.

[966] *See, e.g.*, AT&T Reply at 174-79; ALTS *et al.* Comments at 56 (discussing, generally, some of the other barriers competitive LECs face to self-deployment).

facilities exist with DS1 loop self-deployment.[967] Indeed, because the ability to absorb the additional "costs" associated with these other economic and operational barriers over time becomes increasingly more difficult at lower loop capacity levels, these barriers impact the ability to self-deploy at a DS1 level to an even greater extent than at higher loop capacity levels.[968]

327. Because the record does not demonstrate that carriers can economically self-provision at the DS1 level, we do not delegate to the states the authority to consider DS1 loop impairment on a location-specific basis based on a self-provisioning trigger.[969] On the other hand, although the record indicates little evidence of wholesale alternative DS1 loop capacity, evidence of alternative providers at the DS3 and higher capacity levels suggests that there may be specific locations where competitive carriers have deployed fiber and could offer excess capacity at the DS1 loop level. Thus, we recognize the possibility that non-incumbent LEC DS1 loop alternatives may be available now or in the near future at particular customer locations. As explained below, we delegate to the states the authority to collect and analyze more specific evidence of wholesale alternatives to DS1 loops on a customer location-specific basis, applying a uniform national trigger that measures the availability of wholesale competitive alternatives to determine customer locations where competitive carriers are not impaired without access to incumbent LEC unbundled DS1s.[970]

(d) Location-Specific Review Conducted By States Applying Federal Triggers

328. In making affirmative impairment findings on a nationwide basis for dark fiber loops, DS3 loops, and DS1 loops, we recognize that limited alternative deployment has occurred at particular customer locations not specified in our record for certain of these high-capacity loop types which could lead to a finding of no impairment for that loop type at that location. Thus, for these loop types, a more granular impairment analysis should be applied on a customer-by-customer location basis. To that end, we delegate to states a fact-finding role to identify where competing carriers are not impaired without unbundled high-capacity loops pursuant to two triggers. If a state commission finds that the federal triggers for a finding of non-impairment have been satisfied for a specific type of high-capacity loop at a particular customer location, the incumbent LEC will no longer be required to unbundle that loop type at that location according to the transition schedule adopted by the state commission.[971] Incumbent LECs must make the

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[967] *See supra* Part VI.A.3., Part VI.A.4.b(ii)(a) for evidence of the existence of the other operational barriers to DS1 loop capacity deployment.

[968] *See supra* para. 315 (discussing the ability to absorb these costs at the OCn loop level).

[969] *See infra* Part VI.A.4.b(ii)(d) (discussing in detail the state reviews on a customer-location specific basis) and para. 334 (describing why states will not apply the Self-Provisioning Trigger to DS1).

[970] *See infra* Part VI.A.4.b(ii)(d) (discussing in detail the Competitive Wholesale Facilities Trigger).

[971] *See infra* Part VIII.D (discussing the transition process).

unbundled high-capacity loops for which we find impairment on a nationwide basis available to qualifying requesting carriers except at those customer locations where a state commission's granular review has confirmed that no impairment exists and unbundling is no longer required. In the event a state commission declines to exercise the authority we delegate to it, a party may petition this Commission to conduct such analysis.[972]

329. We establish two different types of triggers to identify the specific customer locations where there may be no impairment for the high-capacity loops we identify below and the incumbent LEC unbundling obligation can be eliminated at that customer location: 1) where a specific customer location is identified as being currently served by two or more unaffiliated competitive LECs with their own loop transmission facilities at the relevant loop capacity level (Self-Provisioning Trigger); or 2) where two or more unaffiliated competitive providers have deployed transmission facilities to the location and are offering alternative loop facilities to competitive LECs on a wholesale basis at the same capacity level (Competitive Wholesale Facilities Trigger). Although both triggers focus on whether there are two alternative loop providers at a particular customer location, they are different because the Competitive Wholesale Facilities Trigger can be satisfied by alternative loop providers that have deployed their own facilities *or* by alternative providers that are using unbundled network elements but otherwise satisfy the "wholesaling" requirement of the Competitive Wholesale Facilities Trigger. For example, unbundled dark fiber loops obtained from the incumbent LEC and activated by the alternative provider through attaching its own optronics to offer wholesale "lit" loop capacity may be used to satisfy the Competitive Wholesale Facilities Trigger to remove the unbundling obligation for DS3 and DS1 loops at a particular customer location. Unbundled dark fiber loops, however, may not be used to satisfy the Self-Provisioning Trigger. It is possible, however, that the Self-Provisioning Trigger could, in some circumstances, overlap with the Competitive Wholesale Facilities Trigger. On the other hand, the Competitive Wholesale Facilities Trigger will capture loop alternatives even where barriers have prevented competitive LECs from entirely deploying their own facilities[973] These triggers, tailored to respond to specific record evidence demonstrating that self-deployment is economically feasible or competitive alternatives are available at particular customer locations, will identify those locations where a more granular analysis is required to overcome the finding of impairment.[974]

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[972] *See supra* Part V.E.2 (discussing the role of the states).

[973] *See infra* paras. 333, 340. Thus, while a particular customer location may not satisfy the Self-Provisioning trigger because one or both of the alternative providers "lights" unbundled dark fiber to self-provide loops to customers at that location, these providers could satisfy the Competitive Wholesale Facilities Trigger at that location to eliminate loop unbundling requirements.

[974] We establish the number of competitors to the incumbent LEC necessary to satisfy each trigger for high-capacity loops subject to a finding of impairment at two in order to ensure that multiple competitive entry at each location is feasible. *See USTA*, 290 F.3d at 427. Limiting our high-capacity loop triggers to only one competitor runs the risk of failing to accommodate unusual circumstances unique to that single provider that may not reflect the ability of other competitors to similarly deploy. Establishing a higher number, for example three, would likely render our high-capacity loop triggers meaningless for the many customer locations where the potential aggregate customer demand would never support more than two competitive alternatives to the incumbent LEC. Moreover, (continued....)

330. We establish the number of competitors to the incumbent LEC necessary to satisfy each trigger for high-capacity loops subject to a finding of impairment at two in order to ensure that multiple competitive entry at each location is feasible.[975] We choose a lower threshold for our high-capacity loops self-provisioning trigger than we did for the self-provisioning triggers for transport and switching (*i.e.*, two versus three) for two reasons. First, we are taking into consideration the more limited ability of the market to support multiple carriers providing their own loops to a particular location, compared to the demand available to support multiple carriers using their own self-provisioned transport and switching. Unlike both transport and switching, few customers can be served over a single loop facility, and the traffic of multiple customers is generally not aggregated over loops. Thus, establishing a higher number, for example three, would likely render our high-capacity loop triggers meaningless for the many customer locations where the potential aggregate customer demand would never support more than two facilities-based competitive alternatives to the incumbent LEC.[976] Second, we are concerned that this limited demand could provide a greater disincentive to build out any alternative loops if the trigger were set at three. The more limited demand for loops means that there is a lesser likelihood that a third competitive provider would build out to a particular location. This, in turn, creates a greater disincentive for the first and second providers to build out to the location, because if the trigger were set at three, they will likely have to compete against unbundled incumbent LEC loop facilities at TELRIC-based prices for a significant period of time.

331. We choose these specific triggers because we find that: (1) evidence of actual deployment indicates barriers to entry can be overcome; and (2) the availability of competitive wholesale alternatives eliminates impairment for competitive LECs. Eliminating unbundling obligations where no impairment exists furthers the goals of the Act by ensuring that the availability of unbundled network elements at cost-based rates does not discourage the deployment of facilities by competitive LECs where such deployment is economically feasible.

(i) Self-Provisioning Trigger

332. *Trigger Defined.* Where two or more competitive LECs have self-provisioned loop transmission facilities, either intermodal[977] or intramodal facilities, to a particular customer

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establishing the trigger at too high a number could discourage competitive buildout because would-be competitive facilities-based providers would know that two additional competitors would have to first deploy their own facilities before unbundled loop facilities at TELRIC-based prices would no longer be available at that location.

[975] *See USTA*, 290 F.3d at 427.

[976] Moreover, limiting our high-capacity loop triggers to only one competitor runs the risk of failing to accommodate unusual circumstances unique to that single provider that may not reflect the ability of other competitors to similarly deploy.

[977] *See supra* Part V.B.1.d.(ii) (describing intermodal alternatives generally, and factors affecting differences in the extent to which various intermodal alternatives are considered); Part VI.A.3. *supra* (describing how intermodal alternatives are considered for loops generally); paras. 308-309 *supra* (describing how intermodal alternatives are considered for enterprise market loops).

location at the loop capacity level for which the state impairment analysis is being conducted, competitive LECs are not impaired without access to unbundled incumbent LEC loops at that capacity level at those particular customer locations.[978] This determination involves a finding that there are two competitive LECs that have existing facilities in place serving customers at that location over the relevant loop capacity level.[979] If the state commission makes a finding of no impairment based on the application of the Self-Provisioning Trigger, it is not necessary to separately apply the Competitive Wholesale Facilities Trigger.

333. *Trigger Applied.* In conducting its proceeding with respect to the Self-Provisioning Trigger, the state commission must verify that the two competitive providers identified to satisfy this trigger are unaffiliated with the incumbent LEC and each other.[980] In addition, the facilities these competitors use must be their *own facilities* and not facilities owned or controlled by one of the other two providers to the premises, *i.e.*, the incumbent LEC and the other competitive provider. To be clear, a competitive LEC using the special access facilities of the incumbent LEC or the transmission facilities of the other competitive provider in the building would *not* satisfy the definition of a self-provisioning competitor for purposes of satisfying the trigger. We find, however, that when a competitive carrier has obtained dark fiber on a long-term indefeasible-right-of-use (IRU) basis, that dark fiber facility can be counted as a separate, unaffiliated facility for self-provisioning determination purposes.[981]

334. *Special Considerations For Dark Fiber and DS1 Loops.* When applying the Self-Provisioning Trigger to eliminate an incumbent LEC's requirement to unbundle dark fiber loops at a particular customer location, the mere existence of two unaffiliated competitive providers (in addition to the incumbent LEC) that have deployed fiber to that location, *whether or not they are offering dark fiber to other carriers to serve end-user customers at that location*, will satisfy the

[978] If two or more competitive LECs have been able to economically self-deploy at a particular location at the loop capacity level being considered by the state, based on information contained in the record, we determine that the barriers to self-deployment at that customer location for that loop capacity level are likely able to be similarly overcome by other competitive entrants.

[979] For example in applying the Self-Provisioning Trigger to DS3 loops, the state commission must determine that two or more competitive LECs provide DS3 loops *over their own facilities* to customers at that particular customer location.

[980] We use the term affiliated and affiliate as the Act defines "affiliate." Section 3 of the Act defines the term "affiliate" as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent." 47 U.S.C. § 153(1).

[981] For purposes of the "own facilities" prong of the Self-Provisioning Trigger, a competitive carrier that has obtained dark fiber transmission facilities from the incumbent LEC on a long-term IRU basis will be considered to operate its own unaffiliated facilities. We believe that dark fiber IRU type contracts protect against short-term gaming by the incumbent LEC. Moreover, we do not want to foreclose incumbent LECs from negotiating long term dark fiber leases with competitive LECs. To be clear, however, because we want to be certain of the independent ownership of the loop transmission facilities, we find that loop transmission facilities transferred on an IRU basis is limited only to dark fiber and does not include "lit" fiber IRUs obtained from the incumbent LEC or the other provider.

Self-Provisioning Trigger for dark fiber loops and require a finding of no impairment at that location. Therefore, we do not apply a wholesale trigger to unbundled dark fiber loops because such trigger would necessarily overlap with the Self-Provisioning Trigger.[982] Because there is little record evidence demonstrating that carriers construct facilities to serve customers exclusively at the DS1 level, as well as the lack of economic evidence showing such self-deployment is possible, the Self-Provisioning Trigger *will not* be applied to DS1 loops.

335. *State Analytical Flexibility.* In applying the Self-Provisioning Trigger to high-capacity loops, we find that actual competitive deployment is the best indicator that requesting carriers are not impaired, and therefore emphasize that this quantitative trigger is the primary vehicle through which non-impairment findings will be made. We recognize, however, that this high-capacity loop trigger measures only the existence of *actual* deployed competitive alternatives at a customer location rather than whether that particular customer location *could* be economically served by competitive carriers through deployment of alternative loop transmission facilities. Thus, when conducting its customer location specific analyses, a state must consider and may also find no impairment at a particular customer location even when this trigger has not been facially met *if* the state commission finds that no material economic or operational barriers at a customer location preclude competitive LECs from economically deploying loop transmission facilities to that particular customer location at the relevant loop capacity level. In making a determination that competitive LECs *could* economically deploy loop transmission facilities at that location at the relevant capacity level, the state commission must consider various factors affecting the ability to economically deploy at that particular customer location. These factors include: evidence of alternative loop deployment at that location; local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber or copper; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; building access restrictions/costs; availability/feasibility of similar quality/reliability alternative transmission technologies at that particular location.

336. In other circumstances, by contrast, state commissions may believe notwithstanding satisfaction of this trigger for a particular customer location, that continued access to unbundled loops at the capacity level under analysis should be maintained at the customer location because impairment, in fact, remains due to the existence of a barrier to further competitive facilities deployment at that location. An example of such a situation might be where a municipality has imposed a long-term moratorium on granting additional rights-of way permits along the routes necessary to serve the particular customer location.[983] In these circumstances, a state commission may file a petition for waiver with the Commission to

[982] Because dark fiber loops are not typically retail offerings like "lit" loops, it is necessary to modify somewhat the application of the Self-Provisioning Trigger for dark fiber loops to ensure that the granular state analyses include all those locations where at least two alternative carriers to the incumbent LEC have deployed fiber.

[983] This example is provided for illustrative purposes only and is not meant to be exclusive or dispositive.

maintain the incumbent LEC's unbundling obligation at that location until the barrier identified in the waiver petition no longer exists.

(ii) Competitive Wholesale Facilities Trigger

337. *Trigger Defined.* Where competitive LECs have two alternative choices (apart from the incumbent LEC's network) to purchase wholesale high-capacity loops, including intermodal alternatives, at a particular premises, we conclude that impairment does not exist at that location for that type of high-capacity loop.[984] Specifically, where the relevant state commission determines that two or more unaffiliated alternative providers, including alternative transmission technology providers that offer an equivalent wholesale loop product at a comparable level of capacity, quality, and reliability, have access to the entire multiunit customer premises, and offer the specific type of high-capacity loop over their own facilities on a widely available wholesale basis to other carriers desiring to serve customers at that location, then incumbent LEC loops at the same loop capacity level serving that particular building will no longer be unbundled.[985] Similar to including dark fiber IRUs as facilities that satisfy the "own facilities" prong of the Self-Provisioning Trigger,[986] dark fiber IRUs also satisfy the "own facilities" prong of the Competitive Wholesale Facilities Trigger. Furthermore, in addition to dark fiber IRUs, we also include the use of dark fiber obtained on any other lease/purchase basis, *including obtaining it from the incumbent LEC on an unbundled basis*,[987] as long as the alternative provider has attached its own optronics to "light" the dark fiber in order to make "lit" fiber loops available to competitive LECs on a wholesale basis.[988]

338. *Trigger Applied.* In evaluating the two competitive wholesale loop providers, states should not undertake a financial viability analysis with respect to each provider. However,

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[984] For example, in applying the Competitive Wholesale Facilities Trigger to DS3 loops, the state must find that two alternative providers to the incumbent LEC offer wholesale DS3 loops to competitive LECs at that particular customer location.

[985] While the record indicates little evidence of wholesale DS1 loop capacity presently, evidence of some alternative providers at the DS3 and higher capacity levels suggests that there may be specific locations where competitive carriers have deployed fiber and might offer unused capacity at the DS1 loop level. Because we expect our loop unbundling rules to encourage greater facilities-based deployment where it is economically feasible, it is not unreasonable to accommodate the possibility that non-incumbent LEC DS1 loop alternatives may be available now or in the near future at particular customer locations. By accommodating this possibility in the trigger mechanism we craft today, we seek to ensure that our DS1 loop unbundling rules are not in conflict with *USTA*.

[986] *See supra* note 981.

[987] By counting wholesale loop offerings over dark fiber UNEs, an incumbent LEC could be relieved of its unbundling obligation at a specific loop capacity level at certain customer locations even where no other "alternative" fiber has been deployed, but where alternatives to incumbent LEC unbundled "lit" loops are nevertheless available.

[988] Similarly, as we determine in our dark fiber transport requirements, when applying this trigger to dark fiber loop impairment, the state may ensure that dark fiber wholesalers have sufficient quantity of dark fiber available. *See infra* para. 416.

there should be some reasonable expectation that these providers are operationally capable of continuing to provide wholesale loop capacity to that customer location.[989] We recognize that, while the record indicates that there are presently a limited number of alternative wholesale loop providers serving multiunit premises, we anticipate that a competitive wholesale market will continue to develop, particularly where competitive LECs have already deployed fiber and seek to derive revenue from excess capacity. We expect this granular trigger to encourage alternative high-capacity transmission providers to deploy more facilities and offer them on a wholesale basis, creating a more robust competitive market for high-capacity loop facilities to many areas nationwide.

(iii) State Action Under Both Triggers

339. We expect states to complete their initial reviews applying the triggers and other analysis discussed above within nine months from the effective date of this Order. Unbundled DS1, DS3, and dark fiber loops will remain available to all customer locations until the state commission determines that unbundled loops at particular capacities serving specific customer locations are no longer required. States that conduct this review need only address specific customer locations for which there is relevant evidence in the proceeding that the customer location satisfies one of the triggers or the potential deployment analysis specified in this Part.[990] To the extent that a state commission does not complete its proceedings in this nine month period,[991] aggrieved parties may file a petition with this Commission demonstrating a state's failure to act pursuant to the procedures we outline today.[992] We expect that states will require an appropriate period for competitive LECs to transition from any unbundled loops that the state finds should no longer be unbundled.

340. After completion of their initial reviews, we expect state commissions to conduct further granular reviews, pursuant to the procedures the state commissions adopt, to identify additional customer locations that satisfy the triggers. Such proceedings shall be completed

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[989] We note that carriers operating under chapter 11 bankruptcy are still capable of providing service while they reorganize their operations. Relatedly, in the case of a chapter 7 liquidation, the physical transmission facility assets of a competitive provider will continue to exist at that location as the purchaser of those assets will likely provide similar wholesale service or use such facilities to self-provide retail service. Under either scenario, the triggers which resulted in a finding of no impairment at that location will continue to be met. *See infra* Part VI.C.4. (discussing similar financial viability issues with respect to wholesale transport providers).

[990] *See supra* para. 335.

[991] By "complete," we mean that a state commission, upon receiving sufficient evidence, has an affirmative obligation to review the relevant evidence associated with any customer location submitted by an interested party, and to apply the trigger and any other analysis specified in this Part to such evidence.

[992] As discussed above, if a state fails to act, we set forth procedures for the Commission to step into the role of the state. *See supra* Part V.E. (discussing the role of the states).

within six months of the filing of a petition or other pleading submitted in accordance with the prescribed state commission procedures.[993]

(e) Other Loop Unbundling Proposals.

341. Commenters have proposed various alternatives to the method we have adopted herein for conducting our loop impairment analysis and reaching our resulting conclusions. To the extent the methods we use and the conclusions we reach differ from those proposed, we expressly decline to incorporate them herein. We note, however, that we agree with the proposals of SBC and other commenters that the Commission distinguish among loop types and make capacity-based distinctions. The analysis we have undertaken has, indeed, distinguished not only among the various loop capacities, *e.g.*, DS0, DS3, OCn, but also the type of loop technology where appropriate, *e.g.*, "lit" fiber, dark fiber, copper, as well as the customer market class typically served by such loops. Through our approach, we recognize the different economic characteristics of serving customers demanding services provided over different loop capacity levels, eliminating or limiting unbundling obligations accordingly.[994] We disagree with SBC,[995] Verizon,[996] and BellSouth[997] to the extent each proposes that we base our loop unbundling analyses and conclusions consistent with our special access pricing flexibility rules.[998] Evidence of competitive LECs' ability to self-deploy local loop facilities or have wholesale non-incumbent LEC alternative loop facilities available to them is the proper inquiry in our loop impairment analysis. This analysis serves a host of statutory goals beyond the goal of the *Pricing Flexibility*

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[993] Subsequent to the initial review, states have the flexibility to adopt reasonable and timely procedures for the periodic collection and evaluation of evidence indicating the satisfaction of the loop triggers at additional customer locations to remove unbundling obligations. For example, a state may decide to include self-reporting information regarding alternative loop deployment in an annual or semi-annual report, either as an independent obligation or as part of the competitive carriers' periodic filing obligations. Alternatively, a state may decide to accept evidence of alternative deployment through petitions filed during prescribed filing windows or through rulemaking proceedings. Regardless of the procedures adopted, however, states that conduct further reviews must complete their evaluation of the evidence and reach a determination within six months of the filing of a petition or other pleading filed pursuant to the state procedures.

[994] As we have noted above, we expect that the triggers that we adopt today for use by the states will provide incumbent LECs substantial relief from their unbundling obligations while simultaneously ensuring that competitive carriers get unbundled high-capacity loop access only where they are unable to economically self-deploy or use alternative facilities. *See supra* para. 322.

[995] *See, e.g.*, SBC Comments at 101 (proposing a DS1 trigger at two or more fiber-based collocators, serving 15,000+ business lines, and $150,000 or more per month in special access revenues and no unbundling at all above the DS1 level).

[996] *See, e.g.*, Verizon Comments at 119-20 (proposing, generally, the elimination of high-capacity loop unbundling where the incumbent LEC has obtained pricing flexibility for special access circuits).

[997] *See, e.g.*, BellSouth Comments at 67 n.240 (stating it makes no sense to find impairment where BellSouth has obtained pricing flexibility for special access circuits).

[998] *See Pricing Flexibility Order*, 14 FCC Rcd at 14221.

Order, which is limited to protecting consumers from anticompetitive pricing. While each of these pricing flexibility proposals vary somewhat, they are consistent in arguing that wherever and whenever incumbent LECs have received pricing flexibility for special access services, unbundled high-capacity loops, to some degree, should not be required.[999] Incumbent LECs have received special access pricing flexibility in numerous MSAs throughout their regions, based almost exclusively on meeting the *Pricing Flexibility Order's* triggers based on special access revenues.[1000] As we note below in our transport unbundling analysis, because the special access revenue triggers require only a single collocated competitor to purchase substantial amounts of special access in a concentrated area, this test provides little, if any, indication that even that competitor has been able to widely, if at all, self-deploy alternative loop facilities in that area.[1001] Evidence of self-deployment of transport facilities is not necessarily evidence of the economic ability of a competitive LEC to self-deploy loops. Moreover, the presence of a single competitive LEC's collocated transport facility as a trigger for purposes of protecting consumers from anticompetitive pricing, *i.e.*, the purpose of our pricing flexibility rules, is not sufficient evidence that facilities-based competitive entry into a market at the local loop level is economically feasible. Under a special access pricing flexibility trigger, such as suggested by incumbent LECs, DS1 loops would no longer be unbundled in many large geographic areas nationwide. This conclusion would clearly contravene our unbundling mandate due to the pervasive competitive LEC impairment at the DS1 loop level resulting from an economic inability to self-deploy and limited available wholesale alternatives. Similarly, we reject geographic zone distinctions for analyzing impairment for high-capacity local loops.[1002] Like we find in rejecting a pricing flexibility approach, the record simply does not contain evidence that

[999] Phase I pricing flexibility related to special access revenue is triggered on an MSA basis when wire centers accounting for at least 30% of (non-channel termination) special access revenues have at least one competitor that has collocated using non-incumbent transport. Phase II pricing flexibility related to special access revenues is triggered on an MSA basis when wire centers accounting for at least 65% of (non-channel termination) special access revenues have at least one competitor that has collocated using non-incumbent transport.

[1000] *See* Letter from Jake E. Jennings, NewSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98 at 2 (filed Dec. 12, 2002) (NewSouth Dec. 12, 2002 *Ex Parte* Letter) (describing details of where and how BellSouth has received special access pricing flexibility); *see also* BellSouth Oct. 15, 2002 Transport and Loop *Ex Parte* Letter, Attach. at 5 (stating that BellSouth has received Phase I and Phase II special access pricing flexibility in 100% of its national top 150 MSAs); Verizon Dec. 17, 2002 *Ex Parte* Letter at 7 (stating that Verizon has pricing flexibility in 37% of its wire centers); Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 5 (filed Oct. 11, 2002) (Qwest Oct. 11, 2002 Transport *Ex Parte* Letter) (stating that Qwest has been granted pricing flexibility in 33 of its 45 MSAs, many of which are not national top 100 MSAs).

[1001] Covad Reply at 57-58 (arguing SBC's proposal of two or more fiber-based collocators is no indication that competitive networks serve any more than a limited number of buildings in the area, much less the wire center's entire service area).

[1002] Incumbent LECs argue that the Commission should consider geographic distinctions, such as MSAs or even individual wire centers, for some or all UNEs, where there are differing levels of alternatives. *See, e.g.*, BellSouth Reply at 11-12 (arguing that the appropriate geographic market for the impairment analysis is the MSA). Competitive carriers, however, argue that there is no geographic area or market anywhere in the United States today where a geographic consideration would find no-impairment for any UNE. *See, e.g.*, NuVox *et al.* Comments at 53.

loop impairment/non-impairment determinations can be appropriately made on a zone basis due to the location-specific factors which impact impairment determinations at most high-capacity loop levels.

342. Finally, several commenters argue that the Commission should remove or modify its unbundling obligations for incumbent LECs based on evidence of adequate incumbent LEC performance in provisioning network elements.[1003] These parties argue that incumbent LECs should be required to demonstrate certain levels of compliance with existing unbundling performance measurements, such as section 271 performance metrics, for a commercially reasonable period of time prior to any removal of an unbundling obligation.[1004] Commenters suggest such a rule would provide incentives to incumbent LECs to comply with their performance obligations.[1005] The record, however, does not reveal that incumbent LEC performance has a significant, if any, direct relationship to the ability of competitive LECs to economically self-deploy local loops. Rather, the record demonstrates that competitive LEC deployment is primarily driven by general economic considerations. While these economic considerations are influenced by factors which the incumbent LEC did not, or does not, similarly face, *i.e.*, its historical ability to maximize scale economies and benefit from first–mover advantages, these factors are not so related to performance measurement compliance that consideration of such compliance would inform our impairment analysis.

B. Subloops For Multiunit Premises Access and NIDs

1. Background

343. In the *Triennial Review NPRM*,[1006] the Commission sought comment on whether it should maintain unbundling requirements for subloops[1007] and NIDs.[1008] A subloop is a smaller

[1003] *See, e.g.*, CompTel Comments at 86-87; NARUC Comments at 10.

[1004] *See, e.g.*, CompTel Comments at 86-87; Maine CLEC Coalition Comments at 5-7; *see also* Pennsylvania Commissioner Wilson Comments at 8 (arguing that although the Commission should not remove unbundling obligations based on UNE or special access performance data, the states should have the authority to do so).

[1005] *Id.*

[1006] *Triennial Review NPRM*, 16 FCC Rcd at 22803, para. 48.

[1007] Subloops were first included in the list of specific UNEs in the *UNE Remand Order* as a means of providing competitive carriers "maximum flexibility to interconnect their own facilities" to various accessible points within the incumbent LEC's outside loop plant closer to a customer's premises. Subloops were defined as "any portion of the loop that is technically feasible to access at terminals in the incumbent LEC's outside plant, including inside wire." *UNE Remand Order*, 15 FCC Rcd at 3801, para. 234; *see also* 47 C.F.R. § 51.319(a)(2).

[1008] NIDs were included in the initial set of UNEs and defined as "a cross-connect device used to connect loop facilities to inside wiring." *Local Competition Order*, 11 FCC Rcd at 15697, para. 392. The Commission later modified the definition of a NID to be more flexible and technology neutral, recognizing that its rules enabled methods other than just a cross-connect device for interconnecting customer premises wiring with the incumbent LEC's loop distribution plant. *UNE Remand Order*, 15 FCC Rcd at 3790, para. 207; *see also* 47 C.F.R. § 51.319(b).

included segment of an incumbent LEC's local loop plant, *i.e.*, a portion of the loop from some technically accessible terminal beyond the incumbent LEC's central office[1009] and the network demarcation point,[1010] including that portion of the loop, if any, which the incumbent LEC owns and controls inside the customer premises.[1011] The Commission's rules permit the demarcation point of the incumbent LEC's network at a customer's premises to vary depending on the type of premises, *i.e.*, single unit or multiunit, and the date the premises was built.[1012] A competitor purchasing a subloop from an incumbent LEC to serve a particular customer location will access the incumbent LEC's loop along its distribution path at a technically feasible accessible terminal,[1013] generally, outside of the incumbent LEC's central office. These access points include, but are not limited to, a feeder distribution interface (FDI);[1014] a pole or pedestal;[1015] the MPOE;[1016] or the NID.[1017] The technically feasible points where subloops can be accessed can be further categorized as local loop plant consisting of customer premises wiring owned by the incumbent LEC as far as the point of demarcation (the "inside wire" subloop),[1018] and other portions of the loop from the central office to the point where the "inside wire" subloop begins.

[1009] *UNE Remand Order*, 15 FCC Rcd at 3789, para. 206; *see also* 47 C.F.R. § 51.319(a)(2).

[1010] 47 C.F.R. § 68.3; *see also Competitive Networks Order*, 15 FCC Rcd at 23007, para. 54.

[1011] *UNE Remand Order*, 15 FCC Rcd at 3791, para. 210; *see also* 47 C.F.R. § 51.319(a)(2)(i).

[1012] Section 68.105 of the rules govern the location of the incumbent LEC's point of demarcation. Specifically, in single unit premises the demarcation point is within 12 inches of the protector or, if no protector, within 12 inches of where the telephone wire enters the customer's premises. 47 C.F.R. § 68.105(c). For multiunit premises, depending on whether the premises existed prior to 1990 or was constructed thereafter, the incumbent LEC's demarcation point may be located at the MPOE or at some other point or points within the premises. *Id.* § 68.105(d). The MPOE is defined to be either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building. *Id.* § 68.105(b). In multiunit premises where the demarcation point is not located at the MPOE, the incumbent LEC's network extends into the premises resulting in an inside wire subloop.

[1013] Accessible terminals contain cables and their respective wire pairs that terminate on screw posts which enables a competitor's technician to cross connect its terminal to the incumbent LEC's to access the incumbent LEC's loop from that point all the way to the end-user customer. *UNE Remand Order*, 15 FCC Rcd at 3789, para. 206 n.395.

[1014] The FDI is the point in the loop where the trunk line or "feeder" leading back to the incumbent LEC's central office, and the "distribution" plant branching out to the subscribers, meet, and interface. *UNE Remand Order*, 15 FCC Rcd at 3790, para. 206.

[1015] The pole or pedestal is near the customer premises and is the point where the "distribution" connects to the dedicated wire connecting the subscriber to the network. *UNE Remand Order*, 15 FCC Rcd at 3790, para. 206.

[1016] The MPOE is the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building. *See supra* note 1012.

[1017] At whatever point a subloop is accessed, requesting carriers gain access to the loop from that point up to, and including, the demarcation point of that loop. An incumbent LEC charge for that subloop should reflect a single rate up to the point of termination, including the NID if it is before or at the point of termination.

[1018] *See* 47 C.F.R. § 51.319(a)(2)(i).

In this section, we address only subloops for access to multiunit premises, including the "inside wire" subloops.[1019] Furthermore, because the incumbent LEC's network demarcation point may be located at the NID, before the NID or beyond the NID,[1020] which is always located at the customer's premises, it is appropriate to discuss the NID together with the "inside wire" subloop.[1021]

[1019] We consider other types of subloops in the context of our loop unbundling rules. *See supra* Part VI.A.4.a.(v).

[1020] *UNE Remand Order*, 15 FCC Rcd at 3774, para. 169.

[1021] In using the phrase "inside wire" to define a discrete subloop within the incumbent LEC's local loop, we are cognizant of the fact that prior to the addition of the subloop to the list of UNEs in 1999, the term "inside wire" generally was thought to refer only to that deregulated portion of wiring within an end-user customer's premises that connected the customer premises equipment (CPE) to the incumbent LEC's telephone network or other CPE and was not part of the incumbent LEC's regulated network, because it was located on the customer's side of the demarcation point. In the *UNE Remand Order*, the Commission recognized that its rules regarding the location of the demarcation point, particularly in multiunit buildings, resulted in situations where the incumbent LEC owned and controlled wire within a customer premises that did, indeed, remain part of the incumbent LEC's regulated network. The Commission referred to this wire as "inside wire" also. *See* 47 C.F.R. § 51.319(a)(2)(i). The *UNE Remand Order* made clear that this "inside wire" was not limited only to wire that was physically inside the premises but may be located out-of-doors for many multiunit premises, for example, as may be the case in a garden apartment or campus environment. *See UNE Remand Order*, 15 FCC Rcd at 3774, para. 170. Similarly, in the *UNE Remand Order*, we noted that our use of the phrase "customer premises" encompassed not just the actual premises of end-user subscribers, but also the premises of the property owner such as "a landlord, a condominium, a university and so on," *i.e.*, "customer premises" encompassed any premises where the owner of that premises has the right to designate the MPOE. *See* 47 C.F.R. § 68.105(b).

We acknowledge that our previous use of the phrase "inside wire" to describe three different scenarios involving premises wiring, *i.e.*, (1) the unregulated wire on the end-user side of the demarcation point; (2) the wiring from the MPOE up to the end-user customer suite that may be under the control of the premises owner when the incumbent LEC's demarcation point is located at the MPOE; and (3) the customer premises wire that extends beyond the MPOE to the demarcation point of the incumbent LEC's network that remains under the incumbent LEC's control if the premises owner has not exercised its right to have the demarcation point and the MPOE coincide, may cause some confusion as noted by BellSouth. *See* BellSouth Petition for Reconsideration and Clarification, CC Docket No. 96-98 at 1-4 (filed Feb. 17, 2000) (BellSouth Feb. 17, 2000 Petition for Reconsideration); BellSouth Comments at 76. For this reason, we will refer to the "inside wire" on the incumbent LEC network side of the demarcation point, *i.e.*, between the MPOE and the demarcation point as the Inside Wire Subloop. We decline to define this wiring as "intra-building network cabling" as requested by BellSouth, *see* BellSouth Feb. 17, 2000 Petition for Reconsideration at 3, as that definition, which is found in Part 32 of the rules and used for accounting purposes, potentially limits the definition of the "Inside Wire Subloop." Part 32 defines "intra-building network cable" as follows: "This account shall include the original cost of cables and wires located on the company's side of the demarcation point or standard network interface inside subscribers' buildings or between buildings on one customer's same premises. Intra-building network cables are used to distribute network access facilities to equipment rooms, cross-connection or other distribution points at which connection is made with customer premises wiring." 47 C.F.R. § 32.2426(a). While we deny BellSouth's request, we have addressed herein the potential confusion that may have previously arisen in using the phrase "inside wire" to describe different portions of the premises wiring by defining the wiring that remains part of the incumbent LEC's network at a multiunit premises as the Inside Wire Subloop. The rules we adopt today with respect to the Inside Wire Subloop are not intended to impact or otherwise modify any aspect of our existing rules regarding the inside wire on the non-network side of the (continued....)

344. In the *Local Competition Order*, the Commission declined to identify particular subloop elements as separate UNEs, because the record at that time did not sufficiently address the technical issues raised by the incumbent LECs as impediments to subloop unbundling.[1022] The Commission acknowledged that subloop unbundling could provide competitors flexibility in deploying portions of their own loop facilities and promised to revisit subloop unbundling at a later time.[1023] In the *UNE Remand Order*, however, the Commission determined that competitive LECs would be impaired without access to the incumbent LECs' subloops.[1024] The Commission found that access to subloops was likely to be the catalyst to the eventual deployment of competitive loops and without such access competitive LEC's would be discouraged from attempting to construct their own feeder facilities which, when combined with the incumbent LEC's distribution plant, would enable the competitor to serve customers with minimal reliance on the incumbent LEC.[1025] Specifically, subloop unbundling was adopted to redress three particular requesting carrier deployment impairments identified in the record at that time: 1) the need to interconnect with the incumbent LEC's network at or near customer premises to serve customers in multiunit premises; 2) the need to provide service to customers served by IDLC loops; and, 3) the need to access the copper portion of a loop to offer competitive xDSL service.[1026]

345. In ordering the unbundling of subloops, the Commission gave particular attention to unbundled inside wire subloops, specifically recognizing the impairments associated with facilities-based entry in multiunit buildings or campus environments.[1027] Indeed, the inside wire subloop was the only subloop for which the Commission devoted a separate subsection of its subloop rules.[1028] The Commission concluded that "requiring competitive LECs to convince landlords and customers to permit construction of redundant inside wiring would substantially impede market entry and competition."[1029] In addition, it found that lack of access to the inside

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demarcation point, either inside the subscriber's suite or under the control of the premises owner as set forth in sections 68.100 *et seq.* *Id.* § 68.100 *et seq.*

[1022] *Local Competition Order*, 11 FCC Rcd at 15695-96, paras. 390-91.

[1023] *Id.* at 15696, para. 391.

[1024] *UNE Remand Order*, 15 FCC Rcd at 3789, para. 205.

[1025] *Id.*

[1026] *See id.* at 3792-95, paras. 215-18.

[1027] *See id.* at 3793, para. 216.

[1028] *See* 47 C.F.R. § 51.319(a)(2)(i). When the first Inside Wire Subloop rules were adopted in 1999, the Commission had commenced a related rulemaking proceeding, the *Competitive Networks* proceeding, to address, generally, barriers, including access to all types of customer premises wiring, which competitive LECs faced in gaining access to end-user customers in multiunit buildings or other environments where the premises occupied by the end-user customer was in a building owned or controlled by another. *See Competitive Networks*, 15 FCC Rcd at 22983.

[1029] *See UNE Remand Order*, 15 FCC Rcd at 3793, para. 216.

wire subloop would impede facilities-based carriers' ability to develop their own networks which, once developed, could eventually lead to the elimination of the loop element from unbundling obligations.[1030]

346. Similarly, in the *Local Competition Order*, the Commission ordered the unbundling of the NID, finding that competitors deploying their own loops must be able to interconnect those loops to customer premises wiring in order to provide service using their own facilities, especially to customers in multiunit buildings.[1031] In the *UNE Remand Order*, the Commission broadened the definition of the NID to encompass any means of interconnection of the incumbent LEC's distribution plant to customer premises wiring and to require that incumbent LECs permit a competitor to connect its own loop facilities to customer premises wiring through the incumbent LEC's NID if desired.[1032] The Commission declined to include the NID in the definition of the loop, or any other subloop element, emphasizing its intent to provide competitors flexibility in where they can access the subloop.[1033] Together, the subloop and NID unbundling rules recognize the necessity of these UNEs to overcoming existing impairments with respect to accessing customer premises wiring to provide competitive local services to customers desiring to take such services, particularly for facilities-based loop providers, in multiunit premises.[1034]

2. Subloops For Multiunit Premises Access

347. We limit our analysis herein to only those subloops associated with access to premises wiring at or near a multiunit customer premises.[1035] Parties submitting comments on subloops, other than subloop access at remote terminal locations, do so almost exclusively in the

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[1030] *Id.* at 3792, para. 215.

[1031] *Local Competition Order*, 11 FCC Rcd at 15697, para. 392.

[1032] *UNE Remand Order*, 15 FCC Rcd at 3802, para. 237; *see also* 47 C.F.R. § 51.319(a)(2).

[1033] *Id.*

[1034] *See UNE Remand Order*, 15 FCC Rcd 3793, para. 216 ("a facilities-based provider's ability to offer service in a multi-unit building or campus may be severely impaired if it must install duplicative inside wiring . . . requiring landlords and customers to permit the construction of redundant inside wiring could substantially impede market entry and competition"); *see also id.* at 3801, para. 232 ("the record indicates that requiring a requesting carrier to self-provision NIDs for all customers it seeks to serve would materially raise the cost of entry, delay broad facilities-based market entry and materially limit the scope and quality of competitors service offerings.")

[1035] We include within the definition of the subloops for which we require unbundled access, not only the Inside Wire Subloop, but also any other loop-accessible terminal *at, or near*, a multiunit customer premises where, as a result of the incumbent LEC's network architecture, a requesting carrier may need subloop access to utilize the Inside Wire Subloop or NID to reach the end user. These subloop unbundling rules seek to encompass the various other network configurations that may occur at a multiunit premises when the demarcation point, the MPOE, and the NID are not all located at the same point, *e.g.*, in the basement utility room of the particular building to be served. The Commission has defined "multiunit premises" in section 68.105 of the rules. *See* 47 C.F.R. § 68.105 (multiunit premises include but are not limited to, residential, commercial, shopping center and campus situations).

context of multiunit premises.[1036] We, therefore, limit our focus accordingly. To the extent parties address unbundled subloop access unrelated to multiunit premises, *e.g.*, access at remote terminals for the purpose of accessing IDLC loops or to provide xDSL services, we consider those subloop issues in the context of our loop unbundling rules.[1037] We conclude that requesting carriers are impaired without access to unbundled subloops associated with accessing customer premises wiring at multiunit premises.[1038] Based on evidence in the record, we find that the barriers faced by requesting carriers in accessing customers in multiunit premises are not unique to customers typically associated with the enterprise market residing in such premises but extend to all customers residing therein, including residential or other tenants typically associated with the mass market.[1039] Thus, we, expressly require subloop unbundling to reach all customers residing in multiunit premises.[1040] The use of unbundled subloops to access customers in multiunit premises is also not limited by the type or capacity of the loop the requesting carrier will provide.[1041]

[1036] *See, e.g.*, WorldCom Comments at 119-120; ALTS *et al.* Comments at 48; Sprint Comments at 30; AT&T Reply at 176.

[1037] *See supra* Part VI.A.4.a.(v). Specifically, because these other types of subloop access arise in the context of serving customers typically associated with the mass market over DS0 level mixed copper/fiber loops, we address them in the Mass Market loop impairment analysis. We note that the subloop unbundling rules adopted in this section are not intended to modify or otherwise change any aspect of the loop or subloop unbundling rules we also adopt today except to the extent expressly indicated.

[1038] We noted in the *UNE Remand Order*, for example, that the FDI which is the meet point between the feeder trunk line leading back to the central office and the "distribution" plant to the subscriber may be located in a utility room in a multiunit premises and the loop may go directly from the feeder to the inside wire. In this scenario, under the rules we adopt today, unbundled access to the FDI would be required as a subloop necessary to access the inside wire in the building. *See UNE Remand Order*, 15 FCC Rcd at 3790, para. 206 & n.398. Similarly, any other network configuration whereby access to the incumbent LEC's network in or near the multiunit premises facilitates access to the Inside Wire Subloop or other inside wire at the premises must be unbundled. In other words, any other technically feasible access point to these subloops, including but not limited to, the pole or pedestal, the NID, the MPOE, and the SPOI must be provided on an unbundled basis.

[1039] *See, e.g.*, AT&T Reply at 174-77 (incorporating by reference its March 8, 2002 Comments in WT Docket No. 99-217, *Competitive Networks*); WorldCom Oct. 25, 2002 Building Access *Ex Parte* Letter at n.21 (incorporating by reference multiple documents discussing these and related issues); ALTS *et al.* Comments at 48 n.118 (incorporating into record SBPP Mar. 8, 2002 Comments in *Competitive Networks*).

[1040] Competitive LECs serving customers residing in multiunit premises typically associated with the mass market face the same economic and operational barriers as serving customers residing in multiunit premises typically associated with the enterprise market.

[1041] While we recognize impairments related to multiunit premises access as one of a number of factors considered in crafting our unbundling rules for high-capacity loops, we accord substantially greater weight to these impairments with respect to subloop unbundling for multiunit premises access. We recognize that carriers seeking to provide all types of loop capacities to end users in these premises may encounter these impairments on an equal basis. For example, in a building where unbundled DS3 loops from the incumbent LEC are no longer required because such capacity has met the self-provisioning or available wholesale alternatives trigger, the availability of such capacity *to* the building does not correlate to the ability to take that capacity *up through the* building to the (continued....)

348. We find that competitive carriers are impaired on a nationwide basis[1042] without access to unbundled subloops used to access customers in multiunit premises.[1043] Because of their prior exclusive access, incumbent LECs have first-mover advantages with respect to access to customers in multiunit premises. Requesting carriers face many barriers in accessing customers in multiunit premises, including a general prohibition against facilities-based access; prohibitive sunk costs associated with rewiring a building to serve potentially only a single customer; the refusal for reasonable access to the existing premises wiring; or the refusal to allow installation of the carrier's own new wiring. Subloops associated with access to multiunit premises have economic characteristics similar to loops generally, *i.e.*, they are extremely time-consuming and expensive to duplicate on a pervasive scale and self-provisioning can be prohibitively costly.[1044] As explained above, the loop itself can be overwhelmingly difficult for competitors to self-deploy due to the sunk and fixed costs associated with entry. Many types of loops continue to represent an enduring "last-mile" bottleneck.[1045] Finally, the record reflects that no third-party wholesale alternatives to these subloops are available.[1046] Our findings regarding impairment with respect to subloops to serve multiunit premises, is consistent with our findings regarding loops, generally.[1047] Failure to recognize these barriers and their substantial preclusive effect on the ability of facilities-based entry to multiunit premises undermines the objectives of our unbundling mandates. For all requesting carriers, especially carriers constructing facilities-based networks, the ability to access subloops at, or near, the customer's premises in order to reach the infrastructure in those premises where they otherwise would not be able to take their loop the full way to the customer, is critical.[1048]

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floor or suite of a customer to be served. *See, e.g.*, AT&T Reply at 176 (describing "fiber to the floor" limitations). Thus, to be clear, unbundled subloops for multiunit premises access are available to requesting carriers irrespective of the capacity level or type of loop such carrier will provide to its customer at that premises. We note that existing premises wiring may often be suboptimal for provisioning higher capacity loops depending on the age of the wiring. Ideally, in these circumstances, competitive carriers prefer to install new wiring *if, and when*, they are permitted.

[1042] We note that some states have adopted rules that address various aspects of multiunit tenant access by competitive LECs. *See, e.g.*, Order Establishing Statewide Policy for MDU Access, Application No. C-1878/PI-23, (Neb. P.S.C. Mar. 2, 1999); Conn. Gen. Stat. § 16-2471 (1997); 16 Tex. Admin. Code § 26-129 (Sept. 7, 2000); Mass. DTE 98-36-A. These rules vary widely in scope and application and we have little evidence that that these provisions sufficiently mitigate the barriers to multiunit premises access associated with our subloop impairment finding.

[1043] *See* NuVox *et al.* Comments at 70 ("[n]o 'changed circumstances' have developed over the past two years that would support or justify removal of . . . subloops or NIDs from the national UNE list.").

[1044] *See id.* at 81-82; ALTS *et al.* Comments at 46.

[1045] *See supra* Part VI.A.4.

[1046] *See* NuVox *et al.* Comments at 81-82.

[1047] *See supra* Part VI.A.4.

[1048] *See* GCI Comments at 44; Sprint Comments at 30; ALTS *et al.* Comments at 46.

349. In reaching our conclusion, we note that no commenter, including incumbent LECs, argue that subloops associated with accessing wiring at multiunit premises, generally, should be removed from the list of UNEs.[1049] Indeed, one incumbent LEC states that it has not incurred large burdens or increased costs in having subloops defined as UNEs and doubts if it has been a burden for other LECs either.[1050] We acknowledge that the record contains some evidence that competitor's use of subloop UNEs, to date, has been limited.[1051] We agree that this is largely the result of the fact that competitive carriers have relied more heavily on entry methods such as loops in combination with switching or stand-alone loops which take them all the way to the end-user customer, even in multiunit premises, rather than self-provisioning facilities-based networks, including loop plant, to the customer's premises. We expect that, collectively, the unbundling rules we adopt today will both facilitate and encourage facilities-based provisioning and, thus, lead to a greater demand for these unbundled subloops in the future. Accordingly, we seek to ensure that those carriers that self-deploy loops are able to access the last few feet necessary to serve the end-user customer residing in a multiunit premises.

350. Finally, our previous subloop unbundling rules contained a provision stating that access to the subloops is subject to the Commission's collocation rules.[1052] This provision was included to facilitate remote terminal access particularly for accessing IDLC loops and copper loop portion for xDSL service.[1053] The record indicates that this provision may have been interpreted to require either that a requesting carrier establish collocation as its chosen method of interconnection pursuant to section 51.321 of our rules[1054] in order to obtain a subloop, or that the

[1049] *See* GCI Comments at 43-44 (discussing the fact that a competitive LEC is impaired without access to the loop or subloop because constructing loop facilities is not a viable alternative to unbundling; there are no economically feasible alternative sources available; and even GCI, who is constructing its own loop facilities, is years away from being able to do it on a widespread basis); ALTS *et al.* Comments at 46-47 (asserting that the Commission should continue to require unbundled access to subloops for the same reasons it must continue to provide unbundled access to loops; access to the subloop remains crucial to competitive LECs who self-provision parts of their networks and need access to discrete portions of the loop); Sprint Comments at 30; BellSouth Comments at 74-76; *see also* Supra Comments at 9; Texas Commission Reply at 12; California Commission Comments at 17. We note, however, that BellSouth and Verizon take issue with the way multiunit premises subloop access at a SPOI has been required. *See* BellSouth Feb. 17, 2000 Petition for Reconsideration at 4-5; Bell Atlantic Petition for Reconsideration and Clarification, CC Docket No. 96-98 at 13-15 (filed Feb. 17, 2000) (Verizon Feb. 17, 2000 Petition for Reconsideration). We address subloop access through a SPOI below. *See infra* note 1058. Other parties argue, generally, that the Commission should retain its entire currently-specified list of unbundled elements including subloops. *See, e.g.*, Rural Independent Competitive Alliance Comments at 2; Illinois Commission Comments at 5; GSA Comments at 5; Pennsylvania Office of the Consumer Advocate *et al.* Comments at 19-22.

[1050] *See* Sprint Comments at 30; *see also* Qwest Comments at 45-46 (suggesting the continued availability of subloops in arguing against unbundling for advanced services).

[1051] *See* Sprint Comments at 30.

[1052] 47 C.F.R. § 51.319(a)(2)(iv).

[1053] *See UNE Remand Order*, 15 FCC Rcd at 3794-3800, paras. 218-29.

[1054] 47 C.F.R. § 51.321(b).

requesting carrier must establish a collocation arrangement at the specific point it accesses the subloop, including those subloops associated with multiunit premises access.[1055] The rules we adopt today make clear that *no* collocation requirement exists with respect to subloops used to access the infrastructure in multiunit premises. Incumbent LECs are required to provide subloops to access multiunit premises without collocation.[1056] Competitive carriers are able to access these subloops at any technically feasible terminal point at or near the building *in any technically feasible* manner.[1057] This will provide facilities-based competitors the greatest flexibility in designing their networks and most efficiently accessing these subloops only at the point necessary.[1058]

[1055] The record contains evidence that at least one incumbent LEC imposes a collocation requirement on requesting carriers ordering subloops at multiunit premises. *See* Letter from J.G. Harrington, Counsel for Cox Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Dec. 19, 2002) (discussing issues associated with accessing multiunit premises wiring) (Cox Dec. 19, 2002 *Ex Parte* Letter).

[1056] This is not to suggest that a requesting competitive LEC and an incumbent LEC may not agree that some method of "collocating" a competitor's terminal to cross-connect with the incumbent LEC's terminal at a subloop access point at a multiunit premises is desirable, taking into account space availability.

[1057] To the extent there is disagreement with respect to what is "technically feasible" with respect to subloop access at a multiunit premises, this issue is left to the state in the context of particular interconnection arrangements pursuant to section 252 of the Act, which can take into account the particular incumbent LEC's network architecture as well as the requesting carrier's network. *See UNE Remand Order*, 15 FCC Rcd at 3797, para. 224. Once a state determines that it is technically feasible to unbundle a subloop at a particular point, an incumbent LEC shall have the burden of demonstrating that it is not technically feasible to unbundle its own loop at that point. WorldCom requests clarification that state determinations of "technically feasible" subloop unbundling may occur in state proceedings that are not limited solely to section 252 arbitration proceedings, but may include other state proceedings conducted pursuant to and consistent with section 252 of the Act. We agree that this is an important clarification and therefore reflect it in our rules. *See* MCI WorldCom Feb. 17, 2000 Petition for Clarification at 20-21.

[1058] In requiring unbundled subloops at, or near, a multiunit premises for access to the wiring at the premises, including Inside Wire Subloops, we note that our current requirement relating to the incumbent LEC's obligation to construct a single point of interconnection (SPOI) at multiunit premises locations for access to these subloops requires the incumbent LEC to construct a SPOI even where it has no facilities into the premises. We agree with BellSouth that if an incumbent LEC has no facilities which it owns, controls or leases at a multiunit premises through which it serves, or can serve, customers at such premises, it should not be obligated to construct an SPOI. *See* BellSouth Feb. 17, 2000 Petition for Reconsideration at 4-5. Thus, we grant that portion of BellSouth's petition requesting that we limit the incumbent LEC's obligation to construct a SPOI to only those multiunit premises where the incumbent LEC has distribution facilities to that premises and either owns, controls, or leases the inside wire at the multiunit premises, including the Inside Wire Subloop, if any, at such premises. We further clarify as requested by BellSouth that the incumbent LEC's obligation to build a SPOI for multiunit premises only arises when a requesting carrier indicates that it intends to place an order for access to an unbundled subloop network element via a SPOI. *See* BellSouth Feb. 17, 2000 Petition for Reconsideration at 4-5; *see also* BellSouth Comments at 75.

In clarifying the rules we adopt today regarding the extent of an incumbent LEC's obligation to construct a SPOI, we deny Verizon's request to eliminate the SPOI requirement. *See* Verizon Feb. 17, 2000 Petition for Reconsideration at 13-15. Verizon claims a SPOI rule requires it to construct a new network element. A SPOI is a means of interconnection with a network element, rather than part of the network element. We locate our authority to require the SPOI in the section 251(c)(2) requirement that incumbent LECs provide interconnection "at any (continued....)

a. Inside Wire Subloops and NIDs.

351. We find that requesting carriers continue to be impaired on a nationwide basis without unbundled access to the incumbent LEC inside wire subloops and NIDs. The record conclusively supports our determination that inside wire subloops and NIDs should be unbundled. The economic impairment competitive LECs face, generally, with respect to most loops is exacerbated through the outright barriers they face in gaining access to customers from owners of multiunit premises. This impairment is especially problematic in situations where competitors are able to construct and provision a local loop using their own facilities all the way to a customer premises, yet still remain unable to reach the end user in that premises.[1059] If competitors can only get as far as the building or property line MPOE with their own facilities because they are prohibited from installing their own customer premises wiring to reach a customer at that premises, the incumbent LEC's inside wire subloop or NID may be the exclusive means of reaching an end user. Often, there is no alternative inside wiring other than the incumbent LEC's available at the premises.[1060] In cases where customer premises wire is not part of the incumbent LEC's network, hence not an inside wire subloop, the NID may be the sole means of accessing this customer premises wire.

352. We note that the *Triennial Review NPRM* raised the issue of whether the NID is appropriately considered part of the loop when a competitor requests access to the loop or a subloop.[1061] We have previously declined to include the NID as part of the loop[1062] in adopting subloop unbundling rules, yet we have recognized that the loop network element does, indeed, include the NID functionality when an end-to-end loop is provided.[1063] Under the rules we adopt

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technically feasible point within the carrier's network. *See* 47 U.S.C. § 251(c)(2). We reject the argument advanced by Verizon that the SPOI requirement is inconsistent with either section 251(c)(2) of the Act or the Eighth Circuit's decision in *Iowa Utils. Bd.* The Eighth Circuit endorsed the Commission's statement that "the obligations imposed by sections 251(c)(2) and section 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements." *Iowa Utils. Bd.*, 120 F.3d at 813 n.33. Section 251(c)(2) expressly requires incumbent LECs to provide interconnection "at any technically feasible point" and the Eighth Circuit held that, pursuant to section 251(c)(2), incumbent LECs must modify their networks to accommodate interconnection and access to UNEs. Thus, incumbent LECs are under a continuing obligation to accommodate technically feasible methods of interconnection, including modifying their networks to do so, and the Eighth Circuit's decision does not relieve incumbent LECs of the requirement to construct a SPOI necessary to accommodate subloop access at multiunit premises.

[1059] Owners of multiunit premises have no nationwide obligation to provide competitive LECs reasonable and nondiscriminatory access to their premises on the same terms that the incumbent LEC has access. This often includes the ability to timely and economically install customer premises wiring and other necessary facilities (including the NID functionality) to reach end-user customers. *See infra* para. 353.

[1060] *See, e.g.*, Letter from John T. Nakahata, Counsel for GCI, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, 01-318, 98-56, 98-141, Attach. at 7 (filed Jan. 15, 2003).

[1061] *Triennial Review NPRM*, 16 FCC Rcd at 22803, para. 48 n.110.

[1062] *UNE Remand Order*, 15 FCC Rcd at 3802, para. 235.

[1063] *Line Sharing Order*, 14 FCC Rcd at 20923, para. 17 n.29.

today, we identify at least three scenarios where competitive LECs are impaired without access to the NID functionality: (1) access to a stand alone unbundled NID; (2) access to the NID functionality as a component of an unbundled end-to-end loop or a subloop and (3) access to the NID to utilize the inside wire subloop. We note that different incumbent LEC network configurations determine where the NID occurs in each of the three scenarios[1064] and we specify the incumbent LEC's unbundling obligations with respect to each of these scenarios.

353. First, we require the NID to be offered as a separate UNE for requesting carriers requiring only stand alone NID access. Incumbent LECs are required to provide unbundled access to the NID on the incumbent LEC's network side on a stand-alone basis to permit a requesting carrier to connect its own loop facilities to the premises wiring at any customer location.[1065] The incumbent LEC's NID in this case provides a critical and necessary element to enable the competitor to reach its customer and a UNE-based rate for this access is appropriate. Second, when a requesting carrier requests access to an unbundled local loop or subloop to reach a customer, the NID functionality is an included component of that loop or subloop, and must be

[1064] For example, the NID can mark the end of the loop, hence, the end of the incumbent LEC's network. The NID can also be within the loop at a multiunit premises if the incumbent LEC's network extends into the building beyond the MPOE; in this case the NID can be characterized as part of a subloop. Similarly, competitive LEC's may need unbundled access to the NID on the incumbent LEC's network side to utilize wiring in the building that is not part of the incumbent LEC's network, or they may need only one time contact with the incumbent LEC's NID on the customer's side of the NID to disconnect the customer's dedicated wiring and reconnect it to the competitive LEC's own NID if the competitive LEC has installed its own NID. In this latter case, the competitive LEC's contact with the NID on the customer side does not constitute access to an incumbent LEC's UNE and the competitive LEC should neither incur a charge from the incumbent LEC associated therewith nor can the incumbent LEC require the presence of one of its technicians.

[1065] For example, a competitor will generally need access to the NID on a stand-alone basis on the incumbent LEC's network side of the NID when the competitive LEC is provisioning its own loops to the premises; the NID and the demarcation point are located at the MPOE; and the wiring in the premises is not part of the incumbent LEC's network. In this scenario, accessing the incumbent LEC's NID on the network side enables the competitor to directly access the premises wiring to serve its customer either because the competitor has been prevented from installing its own NID and duplicative premises wiring, or the cost of doing so to serve a single customer is prohibitively expensive. Verizon opposes a requirement that permits competitive LECs to connect their loops directly to the incumbent LEC's NID because of the risk of overvoltage. Verizon Feb. 17, 2000 Petition for Reconsideration at 11-13. We reject Verizon's argument that requesting carriers be denied direct access to the NID because of the risk of overvoltage. The record does not support a finding that overvoltage is a likely occurrence at NIDs because competitive LECs generally deploy fiber loops, which will ground in the terminating box rather than the NID. *See* WorldCom Comments in Response to Verizon Feb. 17, 2000 Petition for Reconsideration at 10-11 (Prevalence of fiber loops deployed by requesting carriers and the spare grounding terminals at incumbent LEC NIDs guard against overvoltage); *see also* AT&T Comments In Response to Verizon Feb. 17, 2000 Petition for Reconsideration at 12; MediaOne Comments in Response to Verizon Feb. 17, 2000 Petition for Reconsideration at 2; Sprint Comments in response to Verizon Feb. 17, 2000 Petition for Reconsideration at 9 (it is technically feasible for requesting carriers to connect their loops directly to incumbent LEC NIDs). Where a requesting carrier may deploy copper, incumbent LECs can require requesting carriers interconnecting at the NID to take appropriate steps to properly secure displaced or turned-back wiring, such as taping the ends of the wire, or attaching the displaced wire to spare terminals within the NID, through interconnection arrangements. We therefore deny Verizon's petition with respect to enabling competitive LECs to directly connect their loops to the incumbent LEC's NID. *Id.*

provided to the requesting carrier as such.[1066] In this case the incumbent LEC should not impose a separate charge for the NID functionality as it should be included in the unbundled loop or subloop charge. Similarly, in network configurations where the NID does not coincide with the termination point of the incumbent LEC's network at a multiunit premises, *i.e.*, the demarcation point, and a portion of the loop extends beyond the NID, a competitor accessing the NID for the purpose of connecting to the incumbent LEC's inside wire subloop is entitled to the NID functionality as part of the inside wire subloop.[1067] Finally, we note that in scenarios where a competitive LEC has constructed its own NID at a premises and needs only to make contact with the incumbent LEC's NID to disconnect the customer's wiring from the incumbent LEC's NID and reconnect it to the competitive LEC's NID, the competitive LEC is *not* accessing or using the incumbent LEC's NID on an unbundled basis and no associated incumbent LEC charge may be imposed on the competitive LEC.[1068]

(i) Inside Wire Subloop Impairment

354. We require incumbent LECs to unbundle the inside wire subloop. We conclude that a finding of impairment for the inside wire subloop removes a disincentive for competitors to deploy their own loop infrastructure. Without unbundled access to the inside wire subloop, a facilities-based competitor could conceivably construct an entire facilities-based network with no reliance whatsoever on the incumbent LEC's network elements, and still be unable to reach an end user in a multiunit premises or campus-type environment.[1069] Unless a competitor has access to the unbundled incumbent LEC inside wire subloop, competitors may simply have no alternative, especially in multiunit premises, if the premises owner simply refuses to enable the

[1066] For example, a competitive LEC ordering a full loop or a subloop at some accessible point before the loop reaches the customer premises wiring will be doing so because it is unable to otherwise reach its customer. In this scenario, ordering the loop or subloop is intended to take the competitor all the way to the customer. Because the NID is the functionality that connects the distribution plant to the customer premises wiring it is part of that loop and must be provisioned as such. Depending again on where the incumbent LEC's network demarcation point is located at the premises, the NID may either mark the end of the loop or be at some point within the loop before the demarcation point. One commenter suggests that competitive LECs ordering an end-to-end loop (or subloop) to reach a customer should have the NID functionality included in the loop *without a separate charge. See* AT&T Comments at 162. We agree and expect that the NID rules we adopt today make that clear going forward. In the unlikely event that a competitive LEC does not need the NID at a location where it orders an unbundled loop or subloop that includes the NID functionality, this scenario should be accommodated through a separate negotiation.

[1067] In buildings where the incumbent LEC has not located the demarcation point at the MPOE and its network extends into the building, the NID may nevertheless be located at the MPOE. In this scenario, a competitor may need access to that NID to gain access to the Inside Wire Subloop. Since the NID would not mark the end of the incumbent LEC's network in this scenario, accessing the Inside Wire Subloop at the NID would provide the NID functionality for that subloop.

[1068] *See* AT&T Comments at 162.

[1069] It would be an unintended perverse result which would run afoul of one of our principal objectives in implementing the Act--the encouragement of facilities-based competition--if our rules did not accommodate this impairment while enabling competitors that continue to rely on the incumbent LEC for a full unbundled local loop (which by definition includes the Inside Wire Subloop) to gain unimpaired access to the same end users.

competitive LEC to construct its own wiring.[1070] In situations where the competitor may be able to negotiate the right to install its own wiring, consistent with our finding of financial/economic barriers for self-provisioning most loops and subloops, generally, duplication of the inside wire subloop, particularly for a limited number of tenants is both cost and time prohibitive and could require competitors to incur sunk costs which may never be recoverable.[1071]

355. Commenters confirm that in those premises where the demarcation point of the incumbent LEC's network is not located at the MPOE and the incumbent LEC's network extends into the premises, a competitor's access to the incumbent LEC's inside wire is often the only means by which a competitive LEC can practically offer service to customers.[1072] There is no evidence that any third-party alternative providers exist and self-provisioning is extremely difficult, if not impossible. The record further reflects that competitive carriers continue to experience barriers with respect to their ability to gain access to multiunit premises to install their own facilities as building owners regularly impose unreasonably high entry rates on competitive LECs; fail to negotiate on a timely basis;[1073] or impose uneconomic limitations on the installation of inside wiring.[1074]

(ii) NID Impairment

356. We conclude that the NID should remain available as an UNE as the means to enable a competitive LEC to connect its loop to customer premises inside wiring.[1075] As noted by

[1070] If there is a portion of the incumbent LEC's loop at the premises on the incumbent LEC's side of the NID, the subloop unbundling rules we adopt today will ensure useful access to the NID. *See* WorldCom Comments at 119-20. We recognize that at those premises where the building owner has exercised its right to require the incumbent LEC to place its demarcation point at the MPOE pursuant to 47 C.F.R. § 68.105, the wiring at that premises will not be part of the incumbent LEC's local loop and our Inside Wire Subloop rules may not aid the competitor in reaching the customer if the building owner will not enable the competitor to construct its own wiring (assuming such construction would even be economically feasible). In this situation, however, enabling competitive LECs to connect their loop to the incumbent LEC's unbundled NID gives competitive LECs access to the existing inside wire used by the incumbent LEC to reach its customers even though this inside wire may not be an UNE. We reiterate our requirement that access to such wiring be provided to a competitive LEC on non-discriminatory terms where another carrier providing service at the premises over such wire, *e.g.*, the incumbent LEC, has responsibility for the installation and maintenance of the wire. Similarly, we expect building owners to exercise the control of this wiring in a non-discriminatory way. *See Competitive Networks Order*, 15 FCC Rcd at 23009, para. 57.

[1071] *See* ALTS *et al.* Comments at 42.

[1072] WorldCom Reply at 170; NuVox *et al.* Comments at 81 (citing TDS Jackson Aff. at para. 10 n.251) ("For residential and small business customers who are served off basic loops or subloops, there is absolutely no way to justify overbuilding LEC facilities using current technology.").

[1073] *See, e.g.*, WorldCom Comments at 120 (noting that it takes 6-9 months to negotiate); AT&T Reply at 174-79.

[1074] *See, e.g.*, AT&T Reply at 176.

[1075] *See, e.g.*, NuVox *et al.* Comments at 83-84; NuVox *et al.* Reply at 39; GCI Comments at 43-44; WorldCom Comments at 119-20; WorldCom Reply at 170-71; Supra Comments at 9; Sprint Comments at 31; ALTS *et al.* Comments at 60.

commenters, the NID is the gateway to the consumer and thus the key to local competition.[1076] Indeed, the record shows that the NID may often be the only means through which a competitive LEC can provide facilities-based service to customers, particularly those located in multiunit premises.[1077] As we noted above in our discussion of the inside wire subloop, unbundled access to the NID ensures that competitors are able to access customer premises inside wiring owned, controlled or used by the LEC, even if competitors are precluded by the premises owner from installing duplicative, yet necessary, wiring to reach their customer.[1078] The Commission first recognized this in the *Local Competition Order*[1079] and we find it to remain the case today. If anything, the record suggests that as more and more competitors begin deploying their own local loop facilities in lieu of relying on the incumbent LEC loop, access to the unbundled NID will be more critical than ever.[1080] We agree that unbundled access to the NID remains a crucial catalyst to facilities-based competition.[1081] The record demonstrates that competitive carriers face numerous situations where access to the unbundled NID is critical to the ability to access the LEC's inside wire subloop or other customer premises inside wiring beyond the demarcation point in order to reach the end-user customer.[1082] Only one commenter, Verizon, opposed continued unbundling of the NID. We disagree with Verizon that because no requests for unbundled access to the NID have been made in Verizon territory, no requesting carrier can reasonably claim that it is impaired without access to the LEC's unbundled NID.[1083] The record reflects otherwise on a nationwide basis.

[1076] NuVox *et al.* Comments at 83.

[1077] *See, e.g.*, WorldCom Comments at 120; Sprint Comments at 31-32.

[1078] *See supra* para. 352.

[1079] *Local Competition Order*, 11 FCC Rcd at 15697, para. 392.

[1080] *See, e.g.*, GCI Comments at 43; WorldCom Reply at 170-71; Sprint Comments at 32; ALTS *et al.* Comments at 60.

[1081] *See, e.g.*, ALTS *et al.* Comments at 60 (noting that "unbundling the NID promotes facilities-based competition by allowing carriers to reduce their reliance on the incumbent by interconnecting their facilities closer to the customer.").

[1082] *See, e.g.*, WorldCom Comments at 120; WorldCom Reply at 170-71; Sprint Comments at 31-32; *see also* Cox Dec. 19, 2002 *Ex Parte* Letter.

[1083] *See* Verizon Comments at 122 n.433. While it may initially appear that AT&T, like Verizon, suggests that the NID need not be separately unbundled from the loop so as to prevent competitors from accessing it on a stand-alone basis, AT&T's comments appear to be directed both at how a competitive LEC is *charged* for access to the NID functionality and whether the NID functionality is to be provided as part of a loop or subloop when ordered by a competitive LEC rather than whether it should be available as a separate unbundled element to the extent competitive LECs require access to the NID on a stand-alone basis. *See* AT&T Comments at 162; AT&T Corp. Petition For Reconsideration and Clarification of the Third Report and Order, CC Docket No. 96-98 at 19-20 (filed Feb. 17, 2000) (AT&T Feb. 17, 2000 Petition for Reconsideration). We have distinguished above those scenarios where the NID must be provisioned as part of the loop or subloop when a competitive LEC orders a loop or subloop and those scenarios when charges for stand-alone NID access are appropriate. The NID and subloop unbundling rules we adopt herein ensure that competitive LECs obtain a full loop or subloop, including the network termination (continued....)

357. The record also reveals that the equipment, labor and construction cost of duplicating the NID functionality at every customer location continues to be prohibitive,[1084] and, thus, presents a barrier to entry.[1085] Moreover, the record indicates that no competitive NID providers exist.[1086] Finally, commenters offer compelling evidence that from an operational perspective, denying competitors the ability to access the incumbent LEC's unbundled NID could result in complicated inside wire rearrangements that would result in lengthy service delays and costs and result in a waste of resources for all carriers involved.[1087]

358. We decline to adopt in this Order more specific rules defining, on a nationwide basis, the manner and scope of access to the unbundled NID functionality.[1088] Individual incumbent LEC and competitive LEC arrangements governing the process and procedures for obtaining access to an UNE to which a competitive LEC is entitled, are more appropriately addressed in the context of individual interconnection agreements pursuant to section 252 of the Act. Should a competitive LEC believe that the incumbent LEC is imposing unreasonable or discriminatory requirements, either in the negotiation or implementation stage of an interconnection arrangement, forums to address such issues are set forth in the Act.[1089] These

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portion of that loop or subloop, if required, yet preserves the ability of facilities-based LECs to obtain access to only the NID on a stand-alone basis when required. AT&T's February 17, 2000 petition for reconsideration with respect to loop and subloop unbundling requirements is therefore moot.

[1084] *See, e.g.*, Sprint Comments at 31 ("[I]t is the total cost of installing a NID at every customer location that substantially impairs requesting carriers"); ALTS *et al.* Comments at 59 ("The cost/benefit equation of self-provisioning NIDs has not changed since the *UNE Remand Order*. Self-provisioning NIDs at numerous locations would cause competitive LECs to incur duplicative expense and delay the timeframe in which they are able to provide service."); *see also* GCI Comments at 42- 43; WorldCom Comments at 120; NuVox *et al.* Comments at 84; NuVox *et al.* Reply at 39 n.169.

[1085] We reached a similar conclusion in the *UNE Remand Order*. *See UNE Remand Order*, 15 FCC Rcd at 3801, para. 232.

[1086] NuVox *et al.* Comments at 84 ("[T]he CLEC Coalition knows of no vendor that can provide it with or install NIDS at the locations they serve. Thus, they must continue to rely on LECs for NID access in order to have entry to customer premises."); *see also* Sprint Comments at 32 ("Sprint is unaware of any alternative providers of standalone NIDs.").

[1087] *See* Sprint Comments at 32; *see also* WorldCom Comments at 120 ("It would be prohibitively expensive for a CLEC leasing unbundled loops to single unit premises to dispatch technicians to each unit to install a new NID, and it would be wasteful to impose on new entrants the costs both of disconnecting loops and NIDs that are normally combined in ILEC's networks and of installing new and unnecessary NIDs.").

[1088] *See* BellSouth Comments at 75-76 (discussing hypothetical "hazards" that competitive LECs may cause to an end user's premises through accessing the incumbent LECs NID and arguing that competitive LECs need to agree to follow practices and procedures that ensure safety and continuity of service); *see also* Cox Dec. 19, 2002 *Ex Parte* Letter (discussing its experience with requirements imposed by certain incumbent LECs associated with a competitive LECs need to access the NID functionality and requesting that the Commission adopt a uniform nationwide rule which would prohibit unreasonable requirements).

[1089] *See generally* section 252 of the Act governing the process for interconnection negotiations and related disputes. 47 U.S.C. § 252.

same forums are available to the incumbent LEC. We note, however, that the record contains evidence that at least one incumbent LEC requires competitive LECs seeking access to the NID or inside wire subloop to undertake a lengthy and burdensome process at the customer premises to "collocate" a separate terminal facility in order to gain access to the inside wire subloop, or other inside wire used by the LEC to access customers in multiunit premises.[1090] We find such a requirement to be contrary to the NID and inside wire subloop unbundling rules we adopt today and therefore prohibit such requirements.[1091] Similarly, a competitive LEC seeking to make contact with the incumbent LEC's NID for the purpose of disconnecting wiring on the customer's side of the NID so that the competitive LEC can reconnect such customer wiring to its own NID is *not* accessing the incumbent LEC's NID as a UNE. As such, an incumbent LEC requirement to have its technician present and to impose an associated charge on the competitive LEC for such contact on the non-network side of the NID would also be contrary to the rules we adopt today. Accordingly, we therefore prohibit these types of requirements as well.

C. Dedicated Transport

1. Summary

359. Pursuant to the approach of the *Triennial Review NPRM*, the Commission adopts in this Order a more granular unbundling analysis for transport facilities.[1092] As discussed above, this analysis comports with the guidance of the Supreme Court and the D.C. Circuit which call for the Commission "to apply *some* limiting standard" and to demonstrate "a reasonable basis for thinking that competition is suffering . . . impairment."[1093] Our findings reflect these admonitions as we carefully assess the availability of network elements from alternative sources outside the incumbent LECs' facilities.[1094] As an initial matter, we limit our definition of the dedicated transport network element to only those transmission facilities connecting incumbent LEC switches or wire centers. The Commission makes findings regarding impairment as to different capacities of transport. We believe that our analysis of transport will create market certainty and provide incentives for competitive LECs to deploy and utilize alternate facilities.[1095] Specifically, based on the evidence in the record, we make the following determinations:

[1090] *See* Cox Dec. 19, 2002 *Ex Parte* Letter.

[1091] As we have noted in para. 350, *supra*, we recognize that facilities-based carriers, in particular, may use an alternative method of interconnection as provided in for in section 51.321 of the rules, 47 C.F.R. § 51.321. Moreover, with respect to subloops to access multiunit premises including Inside Wire Subloops, a collocation requirement would be unduly burdensome and unnecessary.

[1092] *Triennial Review NPRM*, 16 FCC Rcd at 22809-11, paras. 63-64.

[1093] *Iowa Utils. Bd.*, 525 U.S. at 388 (emphasis in original); *USTA*, 299 F.3d at 422.

[1094] *See UNE Remand Order*, 15 FCC Rcd at 3861-62, paras. 366-68.

[1095] Providing a limitation on the availability of higher capacity unbundled transport may also encourage technological innovation that allows more efficient use of lower capacity bandwidth levels.

- *OCn Transport.* We find on a national level that requesting carriers are not impaired without access to unbundled OCn transport facilities.[1096]

- *Dark Fiber Transport.* We find on a national level that requesting carriers are impaired without access to unbundled dark fiber transport facilities,[1097] subject to both a granular route-based review by the states to identify available wholesale facilities and to identify where transport facilities can be deployed.

- *DS3 Transport.* We find on a national level that requesting carriers are impaired without access to DS3 transport, subject to both a granular route-based review by the states to identify available wholesale facilities and to identify where transport facilities can be deployed.

- *DS1 Transport.* We find on a national level that requesting carriers are impaired without access to unbundled DS1 transport facilities, subject to a granular route-based review by the states to identify available wholesale facilities.

360. Our impairment findings with respect to DS1, DS3 and dark fiber transport facilities recognize that competing carriers face substantial sunk costs and other barriers to self-deploy facilities and that competitive facilities are not available in a majority of locations, especially non-urban areas.[1098] The record further indicates, however, that competitive DS1, DS3, and dark fiber transport facilities are available on a wholesale basis in some areas, and that competing carriers have deployed their own transport networks in some areas. Because the record is not sufficiently detailed concerning exactly where these facilities have been deployed, and because the nature of transport facilities requires a highly granular impairment analysis, we establish specific triggers for states to apply in conducting such an analysis. We establish two ways for an incumbent LEC or other party to show where requesting carriers are not impaired without unbundled transport: (1) by identifying specific point-to-point routes where carriers have the ability to use alternatives to the incumbent LEC's network, or (2) by identifying specific point-to-point routes where self-provisioning transport facilities is economic. We delegate to state regulators the authority to make findings of fact within the scope of these triggers to identify on a more granular scale where carriers are not impaired without access to incumbent LEC unbundled transport. In addition to allowing a more precise finding of

[1096] As discussed below, OCn transport refers both to a capacity and technical distinction based on fiber optic technology. *See infra* para. 372.

[1097] Dark fiber transport facilities, as discussed below, are transport facilities without any activated electronics. *See infra* para. 381.

[1098] We note that through the application of our new impairment standard to high-capacity transport, including impairment analyses based on each particular capacity level, we have considered evidence raised by joint petitioners in the High-Capacity Loop and Transport Petition. *See* High-Capacity Loop and Transport Petition. Because we base our unbundling obligations with respect to transport on our findings of impairment and non-impairment according to our new impairment standard, we dismiss the High-Capacity Loop and Transport Petition as moot.

impairment, our analysis provides a roadmap for deregulation where regulation does not serve the goals of the Act.[1099]

2. Background

361. Dedicated interoffice transmission facilities (transport) are facilities dedicated to a particular customer or competitive carrier that it uses for transmission among incumbent LEC central offices and tandem offices.[1100] Competing carriers generally use interoffice transport as a means to aggregate end-user traffic to achieve economies of scale. They do so by using dedicated transport to carry traffic from their end users' loops, often terminating at incumbent LEC central offices, through other central offices to a point of aggregation. Ultimately, the traffic is carried to the competitor's switch or other equipment, often from an incumbent LEC central office along a circuit generally known as an entrance facility.

362. The definition of dedicated transport adopted by the Commission in the *UNE Remand Order* broadly applied to all technically feasible capacity levels between incumbent LEC wire centers, or between switches owned by incumbent LECs or requesting telecommunications carriers.[1101] Although the *UNE Remand Order* defined transport broadly, the record reveals that the availability of these facilities has been limited in a number of ways. First, although the Commission determined that requesting carriers are impaired without access to entrance facilities,[1102] availability has been very limited as a practical matter because new facilities often must be constructed to deploy this circuit.[1103] Second, CMRS providers have demanded, and incumbent LECs have denied, access to unbundled transmission circuits.[1104] Third, some incumbent LECs have interpreted commingling and use restrictions to further limit

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[1099] In contrast, in the *Local Competition Order* and *UNE Remand Order*, despite observing that competitive transport facilities were available in many locations, the Commission concluded that incumbent LECs must provide interoffice transmission facilities, including dedicated and shared transport, on an unbundled basis to requesting carriers, practically without limit. *Local Competition Order*, 11 FCC Rcd at 15717, para. 439; *UNE Remand Order*, 15 FCC Rcd at 3842, para. 321; *see also Shared Transport Order*, 12 FCC Rcd at 12475, para. 25.

[1100] We refer generically to "transport" in this Part as meaning dedicated transport. We address shared transport in Part VI.E. of this Order.

[1101] The Commission defined dedicated transport as "incumbent LEC transmission facilities including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by the incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers." 47 C.F.R. § 51.319(d)(1)(i).

[1102] *See UNE Remand Order*, 15 FCC Rcd at 3851-52, paras. 347-48.

[1103] For a detailed discussion of limitations on new facilities construction, see our discussion of this aspect of network modifications at Part VII.D below. *See also Supplemental Order*, 15 FCC Rcd at 1760, para. 4 & n.5 (discussing a limitation on converting entrance facilities from incumbent LEC special access to unbundled transport).

[1104] We address CMRS carrier access to unbundled transport more fully below.

the ability of carriers to obtain unbundled transport facilities.[1105] Finally, incumbent LECs have denied requesting carriers access to transport using SONET technology.[1106]

363. Reviewing courts have considered the Commission's broad network element definitions and unbundling requirements. The Supreme Court stated that the Commission's impairment analysis "cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent LEC's network."[1107] More recently, the D.C. Circuit questioned how the Commission could find that an element like transport "is significantly deployed on a competitive basis," but remains available as an unbundled element from the incumbent LEC.[1108] In both *Iowa Utilities Board* and *USTA*, the courts were reviewing broad unbundling requirements for transport that made little to no distinction in capacity, geography, or customer class.

364. In the *Triennial Review NPRM*, the Commission sought comment on how to analyze impairment for transport, especially in light of the manner in which the Commission's rules have been interpreted by courts and carriers in the industry. Importantly, the Commission sought comment on whether it should refine its unbundling analysis for transport by applying a more granular analysis based on service, geographic, or capacity distinctions.[1109] The Commission also invited comments and "proposals for guidelines or bright-line rules that would provide sufficient guidance [to] all parties involved to minimize disputes arising from implementation of unbundling requirements adopted in this proceeding."[1110]

3. Definition of Dedicated Transport

365. We limit our definition of dedicated transport under section 251(c)(3) to those transmission facilities connecting incumbent LEC switches and wire centers within a LATA.[1111] The Commission previously defined dedicated transport as:

[1105] For further discussion of the Commission's previous use and commingling restrictions, *see* Part VII.A. *infra.*

[1106] BellSouth Comments at 56; *see also UNE Remand Order*, 15 FCC Rcd at 3843, para. 324. SONET is an optical interface standard for translating electronic communications signals into photonic signals for transmission across fiber optic facilities. Ideally, SONET transmission systems are laid out in a ring formation to provide redundancy. *See* NEWTON'S TELECOM DICTIONARY 684-86 (18th ed. 2002).

[1107] *Iowa Utils. Bd.*, 525 U.S. at 389. The Court intimated that the Commission should consider when elements can be "self-provision[ed]" or "purchas[ed] from another provider." *Id.*

[1108] *USTA*, 290 F.3d at 422.

[1109] *Triennial Review NPRM*, 16 FCC Rcd at 22810, para. 64.

[1110] *Id.* at 22811, para. 65.

[1111] Section 271 of the Act prohibits BOCs from providing in-region interLATA services unless the BOC meets very specific requirements, but transport and other services are permitted within a LATA without meeting such requirements. *See* 47 U.S.C. § 271. Therefore, we find that LATA boundaries serve as a reasonable limitation on the scope of BOC obligations to unbundle transport.

> incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications *between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.*[1112]

We conclude that our previous definition was overly broad. As we explain in this Part, competitive LECs often use transmission links including unbundled transport connecting incumbent LEC switches or wire centers in order to carry traffic to and from its end users. These links constitute the incumbent LEC's own transport network. However, in order to access UNEs, including transmission between incumbent LEC switches or wire centers, while providing their own switching and other equipment, competitive LECs require a transmission link from the UNEs on the incumbent LEC network to their own equipment located elsewhere. Competitive LECs use these transmission connections between incumbent LEC networks and their own networks both for interconnection and to backhaul traffic. Unlike the facilities that incumbent LECs explicitly must make available for section 251(c)(2) interconnection,[1113] we find that the Act does not require incumbent LECs to unbundle transmission facilities connecting incumbent LEC networks to competitive LEC networks for the purpose of backhauling traffic.

366. We find that a more reasonable and narrowly-tailored definition of the dedicated transport network element includes only those transmission facilities *within* an incumbent LEC's transport network, that is, the transmission facilities between incumbent LEC switches.[1114] Because the Act does not provide guidance on which transmission facilities should be included in the definition of the transport network element, we believe we have discretion to adopt a definition that is in keeping with the section 251's goal of opening the incumbent LEC's local network to competition. We find that transmission facilities connecting incumbent LEC switches and wire centers are an inherent part of the incumbent LECs' local network Congress intended to make available to competitors under section 251(c)(3). On the other hand, we find that transmission links that simply connect a competing carrier's network to the incumbent LEC's network are not inherently a part of the incumbent LEC's local network. Rather, they are transmission facilities that exist *outside* the incumbent LEC's local network. Accordingly, such transmission facilities are not appropriately included in the definition of dedicated transport. We

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[1112] *Local Competition Order*, 11 FCC Rcd at 15718, para. 440, *reaffirmed in UNE Remand Order*, 15 FCC Rcd at 3842, paras. 322-23 (emphasis added); *see* 47 C.F.R. § 51.319(d)(1)(i); *see* NuVox *et al.* Reply at 34-36 (noting that the Commission's rules explicitly unbundle transmission facilities connecting incumbent LEC switches or wire centers with competitive LEC switches).

[1113] Specifically, section 251(c)(2) requires access to "the facilities and equipment" used by competing carriers for "interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access . . . ." The *Local Competition Order* discussed the relationship between sections 251(c)(2) and 251(c)(3) only to the extent that the obligation under section 251(c)(3) "allows unbundled elements to be used for a broader range of services than subsection (c)(2) allows for interconnection." *Local Competition Order*, 11 FCC Rcd at 15636-37, para. 270.

[1114] For further discussion of the Commission's definition of "network elements," see *supra* Part V.A.

note that a previous Commission reached a different result finding that, because unbundling this type of transmission facility is "technically feasible" and "will reduce entry barriers into the local exchange market," it was appropriate to include such facilities within the definition of dedicated transport.[1115] We find that this approach was misguided. The standard for unbundling is not "technical feasibility" and, moreover, just because a facility is capable of being unbundled does not mean that it is appropriately considered to be a network element for purposes of section 251(c)(3). We find that the more reasonable approach, and the one that is most consistent with the goals of section 251, is to not consider those facilities outside of the incumbent LEC's local network as part of the dedicated transport network element that is subject to unbundling.[1116] In reaching this determination we note that, to the extent that requesting carriers need facilities in order to "interconnect[] with the [incumbent LEC's] network," section 251(c)(2) of the Act expressly provides for this and we do not alter the Commission's interpretation of this obligation.[1117] Therefore, we find that the dedicated transport network element includes only those "features, functions, and capabilities" of equipment and facilities that coincide with the incumbent LEC's transport network – the transmission links connecting incumbent LEC switches or wire centers.[1118]

367. Our conclusion in this respect is buttressed by the fact that the economics of dedicated facilities used for backhaul between networks are sufficiently different from transport within an incumbent LEC's network that our analysis must adequately reflect this distinction. Competing carriers have control over where to locate their network facilities to minimize self-deployment costs, or the costs of using third-party alternatives for transport from the incumbent LEC's network.[1119] These backhaul facilities from incumbent LEC networks to competitors' networks are distinguished from other transport facilities because competing carriers have some control over the location of their network facilities that is lacking with regard to transport as we define it here. Competing carriers control, in part, how they design and locate their networks, as

[1115] *Local Competition Order*, 11 FCC Rcd at 15718-19, paras. 440-43.

[1116] Our determination here effectively eliminates "entrance facilities" as UNEs and, therefore, moots the Commission's *Fourth Further NPRM* insofar as it proposes limitations on obtaining entrance facilities as UNEs. *UNE Remand Order*, 15 FCC Rcd at 3914-15, paras. 492-96 (setting forth the *Fourth Further NPRM*). We note that the terms of the *Fourth Further NPRM* were expanded to include unbundled loop/transport combinations in addition to entrance facilities. *See generally Supplemental Order*, 15 FCC Rcd 1760; *Supplemental Clarification Order*, 15 FCC Rcd 9587. We address issues related to unbundled loop/transport combinations *infra* Part VII.A.

[1117] Section 251(c)(2) requires access to "the facilities and equipment" used by competing carriers for "interconnection with the local exchange carrier's *network* . . . for the transmission and routing of telephone exchange service and exchange access." 47 U.S.C. § 251(c)(2) (emphasis added).

[1118] *Id.* § 153(29).

[1119] Although we are not in this subsection conducting an impairment analysis, we find that this economic difference significantly distinguishes our analysis of intra-incumbent LEC transmission facilities – which we define to be transport – from inter-network transmission facilities used for backhaul. *See supra* Part V.B. (discussing the impairment standard).

opposed to obtaining a connection between two incumbent LEC wire centers.[1120] For instance, a competing carrier can choose to locate its switch very close to an incumbent LEC wire center to minimize costs associated with deploying fiber over longer distances. Similarly, a competing carrier can choose to locate its network equipment, such as its switch, near other competing carriers to share costs, or near existing competitive fiber providers that have already deployed competitive transport facilities.[1121] Competing carriers have no such choice in seeking to obtain transport within the network of incumbent LECs. We also note that transmission facilities used for backhaul from an incumbent LEC office to a competitive LEC network often represents the point of greatest aggregation of traffic in a competing carrier's network, and such carriers are more likely to self-deploy these facilities because of the cost savings such aggregation permits.[1122] Moreover, we find that our more limited definition of transport is consistent with the Act because it encourages competing carriers to incorporate those costs within their control into their network deployment strategies rather than to rely exclusively on the incumbent LEC's network.[1123]

[1120] The Commission recognized this principle in the *Local Competition Order* in its discussion of the choices competing carriers make in choosing an efficient point of interconnection. *See Local Competition Order*, 11 FCC Rcd at 15608, para. 209.

[1121] Additionally, the BOCs describe "collocation hotels" as points of telecommunications traffic aggregation used by multiple carriers and ISPs to interconnect with each other. These collocation hotels are often located very close to an incumbent LEC central office for carriers to connect to the incumbent LEC's network. BOC UNE Fact Report 2002 at III-4 through III-5; *see also* Verizon Jan. 10, 2003 UNE-P *Ex Parte* Letter at 6 (describing the choice competitors have in the location of their network facilities when entering a market); WorldCom Reply at 130 ("Collocation hotels are useful places for carriers and very large customers to meet."). We find that collocation hotels, however, do not provide a substitute for the need to access within an incumbent LEC's network. *See* WorldCom Reply at 130.

[1122] Competing carriers agree that the most competitive type of transport is the link between an incumbent LEC wire center and a competitor's network. *See* Letter from Ruth Milkman, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 7 (filed Nov. 18, 2002) (WorldCom Nov. 18, 2002 EELs *Ex Parte* Letter) (asserting that because "entrance facility" deployment is so pervasive, incumbent LEC special access pricing closely mirrors UNE rates); Letter from Patrick J. Donovan, Counsel for Cbeyond, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Declaration of Richard Batelaan at para. 10 (filed Nov. 22, 2002) (Cbeyond Nov. 22, 2002 Transport *Ex Parte* Letter) (stating that "alternative provider [transport] facilities are typically used between Cbeyond's non-ILEC collocation point of presence ("POP") and the ILEC tandem office or offices where Cbeyond aggregates traffic.").

[1123] Finally, we do not want to delay the further development of intermodal solutions, such as point-to-point microwave, that competing carriers may use to hub traffic back to a common location. Some CMRS carriers state that they are able to use point-to-point microwave as an alternative to incumbent LEC transmission facilities on some routes. Nextel Comments at 6-7; Letter from Michael H. Pryor, Counsel for AT&T Wireless, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 11 (filed Jan. 7, 2003) (ATTWS Jan. 7, 2003 *Ex Parte* Letter) (approximately 4% of ATTWS transport links are microwave). We note that these carriers cite limitations on microwave including the need for zoning approval for towers, licensing, limited space on cell towers, and reliability concerns. *Id.* As a result, this type of self-provisioning is "not common." Nextel Comments at 6-7; *see* ATTWS Jan. 7, 2003 *Ex Parte* Letter, Attach. at 11.

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368. We note that this change in definition applies to all competitors alike, including intermodal competitors. We find that no requesting carrier shall have access to unbundled inter-network transmission facilities under section 251(c)(3). Thus, assuming *arguendo*, that a CMRS carrier's base station is a type of requesting carrier switch, CMRS carriers are ineligible for dedicated transport from their base station to the incumbent LEC network.[1124] However, all telecommunications carriers, including CMRS carriers, will have the ability to access transport facilities *within* the incumbent LEC's network, pursuant to section 251(c)(3), and to interconnect for the transmission and routing of telephone exchange service and exchange access, pursuant to section 251(c)(2).[1125]

369. We find that this technology-neutral approach best comports with the statute, suits the development of intermodal competition, and recognizes the role of the requesting carrier in controlling the costs associated with where to locate its network. Accordingly, we limit the dedicated transport network element to those incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between switches or wire centers owned by incumbent LECs.[1126] We conduct our impairment analysis based on this definition of the transport network element.

4. Impairment Analysis

a. General Economic and Operational Characteristics of Transport

370. Competing carriers generally use dedicated transport as a means to aggregate end-user traffic to achieve economies of scale. Such transport carries their traffic within the incumbent LEC's network through the incumbent LEC's central offices to a point of aggregation. As noted above, ultimately, the traffic is carried to the competitor's switch, or other equipment, from an incumbent LEC central office along an inter-network facility often known as an entrance facility. When carriers self-deploy transport facilities, they typically deploy fiber

[1124] Our decision moots the ATTWS/VoiceStream Petition to the extent that it requests that CMRS carriers have access to unbundled transport facilities from an incumbent LEC wire center to a CMRS base station or mobile switching center (MSC). ATTWS/VoiceStream Petition at 19-26.

[1125] Accordingly, to the extent that the Petition for Declaratory Rulemaking filed by AT&T Wireless and VoiceStream requests that unbundled transport be available to CMRS carriers, that portion of the Petition is moot. ATTWS/VoiceStream Petition at 5-19; *see also Triennial Review NPRM*, 16 FCC Rcd at 22809-10, para. 63.

[1126] We recognize that incumbent LECs may "reverse collocate" in some instances by collocating equipment at a competing carrier's premises, or may place equipment in a common location, for purposes of interconnection. *See, e.g.*, Letter from Steven A. Augustino, Counsel for SNiP LiNK, to William Maher, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1-3 (filed Feb. 5, 2003) (SNiP LiNK Feb. 5, 2003 Reverse Collocation *Ex Parte* Letter). However, to the extent that an incumbent LEC has local switching equipment, as defined by the Commission's rules, "reverse collocated" in a non-incumbent LEC premises, the transmission path from this point back to the incumbent LEC wire center shall be unbundled as transport between incumbent LEC switches or wire centers to the extent specified in this Part.

rings that may connect several incumbent LEC central offices in a market.[1127] On these rings, carriers aggregate end-user traffic for backhaul to their switch, or other equipment, in a similar manner to the way in which carriers do in using incumbent LEC facilities. However, these fiber rings are often deployed to maximize the ability of competitors eventually to deploy loop facilities to connect directly buildings and customers to the transport fiber ring, without accessing unbundled loops at an incumbent LEC central office.[1128]

371. Deploying transport facilities is an expensive and time-consuming process for competitors, requiring substantial fixed and sunk costs.[1129] Most competing carriers' comments have focused on the costs of self-deploying transport facilities. Among the costs associated with self-deployment of transport facilities are collocation costs,[1130] the cost of fiber, the cost of physically deploying the fiber,[1131] and the cost of the optronics necessary to light the fiber.[1132] Moreover, parties have explained that carriers deploying fiber facilities must obtain rights-of-way, which can delay deployment. While we find that substantial sunk costs are required to deploy transport, the economic characteristics of transport vary from those of loops.[1133]

[1127] *See* KMC Duke Aff. at para. 3 (stating that KMC typically invests in a local SONET network and collocates at three incumbent LEC offices, including the tandem); Letter from Joan Marsh, Director - Federal Government Affairs, AT&T to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 5-8 (filed Oct. 4, 2002) (AT&T Oct. 4, 2002 *Ex Parte* Letter) (describing how AT&T deploys "metro rings").

[1128] For example, KMC designs its networks to reach 80% of the commercial buildings in each local market that it serves by either direct "on-net" service, or by using unbundled loops aggregated at incumbent LEC offices. KMC Duke Aff. at para. 3. Of the 80% of total buildings KMC is able to reach, over 36% can be reached "on-net," indicating that KMC's fiber ring deployment is significantly designed to bypass the incumbent LEC loop network where possible, rather than simply mirroring the incumbent LEC's transport network connecting incumbent LEC wire centers. *Id.*; AT&T Nov. 25, 2002 *Ex Parte* Letter, Attach. B at 1-2 (describing local "building rings" that are approximately 30 miles each and connect 10-15 buildings).

[1129] *See* WorldCom Comments at 77 (extending WorldCom's transport network to an additional incumbent central office generally costs at least $1 million); AT&T Nov. 25, 2002 *Ex Parte* Letter, Attach. A.

[1130] *See* AT&T Comments at 145. We note that the Commission's collocation rules define the statutory duties of incumbent LECs to allow competitive LECs to collocate in incumbent LEC premises. *See Collocation Remand Order*, 16 FCC Rcd at 15435.

[1131] *See, e.g.*, Conversent Comments, Exh. 1, Declaration of David A. Graham (Conversent Graham Decl.) at para. 30 (estimating the costs of deploying fiber to replicate its unbundled dark fiber network).

[1132] *See* ALTS *et al.* Comments at 73; AT&T Nov. 25, 2002 *Ex Parte* Letter, Attach. A at 6 (stating that "relatively little equipment" is required to be placed in a collocation arrangement for interoffice transport including "optical path panels (to terminate and cross-connect the fiber facility), optical multiplexers, and power distribution (*e.g.*, power filtering and fuses) equipment.").

[1133] Like loops, transport costs (aside from attached electronics) are substantially sunk insofar as the facility cannot be moved to another location upon exit from the market. However, because transport facilities typically connect points of network traffic aggregation, the sunk costs of transport are different from the sunk cost of deploying loops (especially lower capacity loops) because the carrier is less dependent upon maintaining any particular customer relationship, but rather must maintain an aggregate level of traffic sufficient to justify the costs. Moreover, the facility may be useful to other carriers aggregating traffic at the same location.

Incumbent LECs assert that they face similar fixed costs for deploying fiber as competitive LECs[1134] and that new technologies may reduce the costs of deploying fiber.[1135] The record indicates that deploying fiber is significantly less expensive in rural areas than it is in urban areas[1136] and that how the fiber is deployed affects the cost of deployment.[1137] Competing carriers also explain that deploying transport facilities can take a long period of time.[1138] The record indicates that obtaining rights-of-way delays entry and imposes sunk costs on competitive LEC efforts to deploy transport.[1139]

372. Carriers have developed and continue to operate copper technologies as well as fiber optic transmission technologies, such as SONET, to transport telecommunications signals.[1140] When carriers deploy new transport facilities, they deploy fiber optic facilities.[1141]

[1134] Verizon Comments at 110 n.380.

[1135] BOC UNE Fact Report 2002 at III-8 (describing CityNet's process for deploying fiber through utility pipes rather than trenching to bury fiber cables).

[1136] *See, e.g.*, Letter from Lawrence R. Freedman, Counsel for Norlight, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 3 (filed Dec. 30, 2002) (Norlight Dec. 30, 2002 *Ex Parte* Letter) (noting that deployment in rural areas is faster and less costly because cabling can be run on poles and does not need to be buried); WorldCom Fleming Decl. at para. 18 (stating that deploying fiber in urban and suburban areas is costlier than in rural areas because trenching requires digging up and then repairing streets and sidewalks).

[1137] El Paso *et al.* Comments at 21 (indicating that placing fiber underground can cost $100,000 to $300,000 per mile while placing fiber on poles can cost $50,000 per mile and placing fiber in pipelines costs $10,000 to $60,000 per mile); Conversent Graham Decl. at para. 30 (estimating the costs in Massachusetts of underground fiber deployment where conduit is not available at $485,812.80 per mile and aerial fiber deployment at $44,915.40 per mile).

[1138] For instance, obtaining permits may take 2 weeks to 90 days. TDS Comments, CC Docket No. 96-98, at 6 (filed June 11, 2001) (TDS June 11, 2001 High-Capacity Comments); Verizon Comments at 111 n.385. Obtaining necessary rights-of-way likely takes 4-6 months. AT&T Comments at 144. Building the actual fiber facilities takes approximately 6-9 months. Sprint Comments at 46. Fiber can be deployed in a buried manner in rural areas at a rate of several miles per day, in suburban areas, at a rate of up to a half a mile per day, while in urban areas, daily construction averages only a few hundred feet. In total, WorldCom estimates that constructing fiber transport facilities takes nine months to obtain the rights-of-way, collocation application, and equipment, while it takes five months to build fiber, construct the collocation, install, and test equipment. Letter from Ruth Milkman, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 12 (filed Nov. 18, 2002) (WorldCom Nov. 18, 2002 Transition to UNE-L *Ex Parte* Letter).

[1139] *See, e.g.*, AT&T Comments at 142-44. *See supra* Part V.B.1.d.(i). (discussing the first-mover advantages possessed by incumbent LECs); *but see* Verizon Comments at 110 & n.380 (asserting that incumbent LECs can face similar fixed costs for deploying fiber as competitive LECs); BOC UNE Fact Report 2002 at III-8 (describing stating that new technologies are emerging that may reduce the costs and delays associated with deploying fiber).

[1140] *See infra* note 1106 (describing SONET).

[1141] For instance, AT&T discusses the low capacity limitations of copper facilities and states that virtually all incumbent LEC transport facilities are fiber. AT&T Comments at 132-34 (citing AT&T Comments, CC Docket No. 98-147, Declaration of Joseph P. Riolo at paras. 18-19 (filed Oct. 11, 2001)) (describing the technological progression from copper to optical transport facilities).

The optical circuits operate and interface at a range of capacities, up to OC192.[1142] This variation in capacity is almost exclusively based on the attached optronic equipment used to activate or light the fiber optic cable.[1143] Each increasing capacity level technology, while nominally a multiple of a lower capacity system, requires a slightly different interface. Effectively, an OC3 capacity circuit carries the same capacity as three DS3 circuits, but an OC3 circuit terminates on a different technological interface. Incumbent LECs generally operate their interoffice transport networks at OCn capacity levels.[1144] When transport is leased as an unbundled element to competing carriers, for example, a DS3 capacity circuit, the leased dedicated circuit is channelized within the larger OCn circuit operated by the incumbent LEC.[1145] Therefore, competing carriers are not necessarily leasing physically separate facilities, but rather, dedicated bandwidth capacities along a given route.[1146] However, through electronic equipment such as multiplexers and de-multiplexers, the circuit is provided to the requesting carrier at the requested capacity on the relevant interface, such as a DS3 interface.

373. As we have discussed, transport facilities generally are used to carry traffic aggregated from multiple customers, or even multiple carriers, within an incumbent LEC's network and, thus, the economics of transport facilities can be well-suited to a wholesale business. There are costs to carriers associated with using transport provided on a wholesale basis by third party competitive transport providers. Because a competitive transport provider may not always offer facilities that mirror the market a competing carrier serves, a competing carrier may have to make arrangements with multiple providers, thus raising its costs. Also, if a point-to-point route along which a carrier seeks transport can only be served by a combination of different competitive transport providers, commenting parties assert that service quality, especially testing for maintenance and repair, becomes much more difficult to maintain.[1147] Finally, for a collocated competing carrier to access the transport facilities terminated in the collocation arrangement of another carrier, a cross-connect must be provisioned between collocation arrangements.[1148]

[1142] *See supra* Part VI.A.4.b.(ii) (discussing capacity distinctions with respect to enterprise loops).

[1143] AT&T Comments at 130.

[1144] AT&T asserts that most carriers, including incumbent LECs, typically operate their transport networks at the OC48 capacity. AT&T Comments at 134.

[1145] *See* WorldCom Comments at 79; Covad Joshi *et al.* Decl. at paras. 46-48.

[1146] To the extent CompTel petitioned the Commission for access to packetized transport, we find CompTel's petition to be mooted by our decision today. CompTel Feb. 17, 2000 Petition for Reconsideration at 5-10.

[1147] Letter from Jonathan Askin, General Counsel, ALTS, and Jonathan Lee, Vice President – Regulatory Affairs, CompTel, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 3 & Attach. A (filed Oct. 28, 2002) (ALTS/CompTel Oct. 28, 2002 Transport *Ex Parte* Letter) (describing the problems associated with piecing together transport from different vendors along a single route). For further discussion of this issue with respect to our route-specific triggers, *see infra* paras. 401-402.

[1148] *See Collocation Remand Order*, 16 FCC Rcd at 15465, para. 58.

374. Collocation costs need not be a factor for every competing carrier. Firms that deploy competitive transport facilities have the ability to obtain UNEs, such as loops, for the purpose of providing a wholesale product on a common carrier basis.[1149] Therefore, competing carriers may be able to avoid the costs of collocating in central offices in which their competitive transport provider is able to access end-user loops. We also note, to the extent incumbent LECs want to remove their unbundling obligation for DS1, DS3, and dark fiber transport, they have an incentive to allow alternate transport providers to collocate in their central offices for the purposes of providing alternative transport.[1150]

375. Unlike our analysis of certain other elements, we do not make distinctions in analyzing transport based on different customer classes. While the characteristics of serving different market classes (*i.e.*, mass market and enterprise markets) may provide a rough understanding of the how carriers use transport, the characteristics do not necessarily inform when a carrier is impaired without access to unbundled transport.[1151] Because mass market customers provide low revenue per customer relative to enterprise customers, competitors serving the mass market customer class achieve economies of scale by aggregating traffic from multiple incumbent LEC loops, often from several incumbent LEC central offices, to their switches.[1152] Carriers serving enterprise customers, on the other hand, can typically serve a more geographically concentrated area. They are more certain of recovering costs associated with self-providing transport facilities, and are able to achieve economies of scale by aggregating traffic from loops serving many fewer end users. These factors, principally the ability to aggregate greater quantities of traffic, make the self-provisioning of facilities more economically feasible for competing carriers serving enterprise customers than carriers serving the mass market customer class. Because customer class distinctions do not help refine our unbundling analysis of transport facilities, however, we do not develop an unbundling framework for transport based on such distinctions.

376. Instead, we organize our analysis of transport based on capacity level because it is a more reliable indicator of the economic abilities of a requesting carrier to utilize third-party alternatives, or to self-deploy. At the same time, we recognize that operational and economic concerns, though of lesser significance, will vary depending on the geographic market served. We find that the extent of competitive deployment of transport facilities can vary tremendously

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[1149] *See supra* Part V.B.2.c.

[1150] *See* our discussion *infra* Part VI.C.4.d for a more detailed discussion of this incentive.

[1151] For instance, a carrier serving the mass market customer class may achieve very high levels of loop concentration in an area enabling it to justify transport facilities deployment while a carrier serving a single enterprise customer in an area with a DS1 loop faces different economic costs per customer to backhaul its loop traffic to its switch. Moreover, because transport facilities are used to carry aggregated traffic, competing carriers may utilize the same transport facility to carry loop traffic serving both the mass market and enterprise customer classes.

[1152] To date, competing carriers serving the mass market have relied most extensively on shared transport, used in combination with unbundled switching.

by geographic area. More specifically, the barriers to entry that requesting carriers face are most precisely identified on each geographic route connecting two points.[1153] Where our record permits, however, we distill general characteristics of transport routes on a national level sufficient to make nationwide determinations of impairment and non-impairment. Where the record indicates impairment and that only with more granular evidence could a finding of non-impairment be made, we establish triggers to identify non-impairment based on route-specific evidence.

377. For these reasons, a reliable measure of the ability of competing carriers to incur additional costs related to obtaining transport from an alternative provider, or self-providing, is based on the capacity competing carriers require along a transport route.[1154] Because a carrier using higher capacity levels of transport has a greater incentive and broader revenue base to support the self-provisioning of transport facilities, we adopt an approach to analyzing transport that considers different capacity levels.[1155] We expressly consider the ability of competing carriers to self-provision transport facilities, as well as the ability to manage the fixed costs associated with using competitive alternatives, based on different transport capacity levels.[1156]

b. Record Evidence

378. The record indicates that competing carriers have deployed significant amounts of fiber transport facilities to serve local markets. The BOCs claim that competitors have deployed over 184,000 route miles of fiber.[1157] An ALTS report claims that competitors have deployed

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[1153] *See infra* paras. 401-402 (further discussing our route-specific analysis).

[1154] The *Triennial Review NPRM* asks whether the Commission should pursue distinctions based on facilities in order to refine its unbundling analysis. *Triennial Review NPRM*, 16 FCC Rcd at 22800-01, 22804-05, 22809, paras. 41, 51, 62. A single voice-grade circuit can be digitized to its equivalent digital capacity of DS0. A DS1 capacity circuit carries the traffic equivalent to 24 voice-grade or DS0 channels. A DS3 capacity circuit contains the equivalent of 28 DS1 channels or 672 DS0 channels. An OC3 circuit equals the capacity of three DS3 circuits, or 84 DS1 circuits, or 2016 DS0s. Effectively, each OCn capacity interval indicates the capacity of the equivalent number of DS3 circuits – for example, an OC48 circuit has the capacity equivalent to 48 DS3 circuits.

[1155] As WorldCom states, "for any given amount of traffic, the cost per unit of traffic will be lower where larger amounts of traffic can be aggregated and carried a short distance." WorldCom Reply at 122; WorldCom Bryant Reply Decl. at para. 16. Thus, competitive carriers with lower amounts of traffic aggregation, such as new market entrants, face economies of scale that can act as a barrier to entry.

[1156] In the *UNE Remand Order*, the Commission found that access to all technically feasible transport capacities, such as DS1, DS3, and OCn capacities, and would promote competition in the local exchange market. *UNE Remand Order*, 15 FCC Rcd at 3842-43, paras. 321-23; *see also Local Competition Order*, 11 FCC Rcd at 15717-18, para. 439.

[1157] *See* BOC UNE Fact Report 2002 at III-6 & nn.26-27 (asserting the number to be highly conservative as it does not include fiber miles deployed by "competitive Independent Operating Companies, utility CLECs, data providers, or Gig-E providers" and maintaining that the figure has been adjusted downward to address competitive LEC comments made during a prior proceeding); UNE Fact Rebuttal Report at 41-42 (addressing comments claiming that some of the reported route miles were long-haul fiber miles).

over 339,500 route-miles.[1158] The record also indicates that much of this deployment has occurred in more densely populated areas.[1159] According to the BOC Fact Report, competitive LECs have built fiber to approximately 13 percent of BOC wire centers.[1160] However, in the 25 largest metropolitan areas served by each BOC, competitive LECs have built fiber to 35 percent of wire centers, which provide access to 61 percent of the incumbent LECs' lines.[1161] Moreover, at least one competitor has deployed fiber to BOC wire centers with more than 5,000 business lines 48 percent of the time, providing access to 84 percent of all business lines.[1162] Even competing carriers recognize that they have available to them along many routes alternatives to the incumbent LEC's transport. In fact, a variety of carriers state that they have at least one alternative transport provider available to them on a range from 20 percent to over 50 percent of their routes.[1163]

379. The record also indicates that fiber transport facilities have been deployed by firms other than incumbent LECs with the intention of solely or partially providing wholesale transport capacity as well as dark fiber transport to other carriers.[1164] These carriers continue to

[1158] *See* SBC Reply at 143 (citing ALTS, THE STATE OF LOCAL COMPETITION 2002, Annual Report (Apr 2002) at 17).

[1159] The Commission has previously noted that competing carriers "have deployed interoffice transport along selected point-to-point routes, primarily in dense market areas." *UNE Remand Order*, 15 FCC Rcd at 3846-47, para. 333. Indicia of widespread fiber deployment is most prominent in the largest metropolitan areas and connections to the largest incumbent LEC wire centers. BOC UNE Fact Report 2002 at III-2 to III-3 & Tables 1-3.

[1160] BOC UNE Fact Report 2002 at III-2, Table 1; *see* BellSouth Jan. 17, 2003 *Ex Parte* Letter, Attach. at 5, 7 (identifying 1018 fiber-based collocation arrangements in the BellSouth region). The BOCs also present evidence, supported by the record, that competitive LEC local fiber facilities often bypass the incumbent LEC network at least partially. *Id.* at III-4. For example, AT&T describes how it deploys fiber "building rings" in order to directly connect enterprise customers to its network, bypassing the incumbent LEC's loop facilities. AT&T Nov. 25, 2002 Loop and Transport Costs *Ex Parte* Letter, Attach. B.

[1161] BOC UNE Fact Report 2002 at III-3, Table 2.

[1162] *Id.* at Table 3.

[1163] *See* Broadview Aug. 2, 2002 *Ex Parte* Letter, Attach. at 14 (Broadview able to order alternative interoffice transport 20% of the time); Covad Comments at 67-68; Covad Comments, CC Docket No. 96-98 at 8 (filed June 11, 2001) (Covad June 11, 2001 High-Capacity Comments) (competitors have terminated non-incumbent fiber in their collocation arrangements in over 51% of the incumbent central offices in which Covad also collocates); Mpower Reply at 13-16 (competitors have terminated non-incumbent fiber in their collocation arrangements in over 51% of the incumbent central offices in which Mpower also collocates); Allegiance Comments at 28 (Allegiance self-provides or leases alternative transport facilities for 30% of its routes). These carriers do not propose that where only one alternative exists, they do not face impairment for unbundled transport. These numbers have not been provided in a consistent format.

[1164] BOC UNE Fact Report 2002 at III-6 through III-11 (describing "carrier-agnostic" wholesale suppliers and CAPs); Coalition of Competitive Fiber Providers Reply, at 1-2 ("Coalition members provide competitive fiber-based transport services and dark fiber to competitive local exchange carriers . . . collocated in ILEC central offices.").

deploy local fiber facilities today.[1165] The record also indicates that multiple carriers often coordinate a single transport construction project to share the one-time costs of deployment.[1166] Moreover, we note that competitive carriers seek to use existing alternatives to incumbent LEC transport facilities, including dark fiber purchases of competitive transport facilities.[1167] Therefore, it is likely that the costs of transport deployment need not be borne by a single carrier, but rather can be shared by multiple carriers.

c. Capacity-Based Impairment Analysis

380. As described above, we conduct our impairment analysis of transport on a capacity basis as we find this to be the most informative manner to review the economic barriers to entry that affect how a competing carrier is impaired without access to unbundled transport. Thus, we analyze transport according to different capacities and make findings of impairment or non-impairment based on the record.

(i) Dark Fiber Transport

381. We find on a national basis that competing carriers are impaired without access to unbundled dark fiber transport. Dark fiber is unactivated fiber optic cable, deployed by a carrier, that has not been activated through connections to optronics that light it, and thereby render it capable of carrying communications.[1168] Once supplied with the proper optronics and activated, dark fiber transport is used by carriers for the same purposes as lit dedicated transport. We make our determination of impairment based on the high sunk costs associated with deploying fiber facilities and the lack of evidence showing on a route-specific basis alternative fiber facilities. The same economic factors and barriers, especially the sunk cost of deploying fiber, that affect the ability of carriers to self-deploy lit transport apply equally to dark fiber transport. We address dark fiber separately from OCn transport because commenting parties identify some operational characteristics that distinguish dark fiber transport from lit transport.[1169] Dark fiber

[1165] *See* UNE Fact Rebuttal Report at 41-43.

[1166] AT&T Fea/Giovannucci Reply Decl. at para. 28 ("AT&T often engages in joint builds with other CLECs in order to share the high fixed costs of construction."). While AT&T reports that financial problems with building partners have proved troublesome, AT&T states that partners are often willing to make "significant payments toward construction costs" which can mitigate the up front fixed costs incurred by the lead partner actually constructing the facility. *Id.*

[1167] *See* Allegiance Comments at 28; Conversent Comments at 8-9.

[1168] *UNE Remand Order*, 15 FCC Rcd at 3776, 3843, paras. 174, 325. The dark fiber transport element has been defined by the Commission as "incumbent LEC optical transmission facilities without attached multiplexing, aggregation, or other electronics." 47 C.F.R. § 51.319(d)(1)(ii). In the *UNE Remand Order*, the Commission found that dark fiber fits within the definition of "network element" as a "facility or equipment used in the provision of a telecommunications service, including "features, functions, and capabilities that are provided by means of such facility or equipment." *UNE Remand Order*, 15 FCC Rcd at 3844, para. 326.

[1169] *See* El Paso/Conversent Nov. 26, 2002 *Ex Parte* Letter, Attach. at 1, 12-14.

transport is activated by competing carriers using self-provided optronic equipment. We find that where carriers are impaired in their ability to self-provision the transmission conduit itself, but are not impaired by the costs of collocation and electronics necessary to activate dark fiber, that unbundled dark fiber most closely addresses the impairment faced by competing carriers.

382. The record indicates that when competing carriers self-deploy transport facilities, they often deploy fiber optic facilities that are activated at OCn levels.[1170] However, this does not mean that a carrier that requires OCn capacity can necessarily self-deploy transport facilities. As we have described above, large fixed and sunk costs are required to self-provision fiber transport facilities.[1171] These fixed and sunk costs include obtaining rights-of-way, the costs of fiber, the cost of deploying the fiber, and the optronic equipment necessary to activate the fiber.[1172] Unlike "lit" unbundled transport, however, users of unbundled dark fiber provide the optronic equipment necessary to activate the dark fiber strands.[1173] While users of unbundled dark fiber provide optronics, the record indicates that a substantial part of the costs of deploying transport facilities is in the sunk cost of burying, or otherwise deploying the fiber.[1174] Moreover, the costs associated with actually deploying the fiber transmission facilities are all sunk costs, such as obtaining rights-of-way, digging up streets or attaching cabling to poles.[1175] Therefore, the barriers to deployment faced by carriers that use unbundled dark fiber are very similar to those of other competing carriers. However, carriers that request dark fiber transport, used to provide relatively high-capacity transport, must purchase and deploy necessary electronics and collocations, thus requiring them to deploy those facilities for which there is no impairment. Our finding of impairment recognizes that the costs of deploying fiber, especially the sunk costs, make self-deployment of transport facilities uneconomic in some situations.

[1170] *See, e.g.*, AT&T Oct. 4, 2002 *Ex Parte* Letter.

[1171] *See supra* para. 371 (describing the costs and barriers to entry associated with deploying transport facilities); *see also* El Paso/Conversent Nov. 26, 2002 *Ex Parte* Letter, Attach. at 15-17 (describing the sunk costs associated with fiber deployment).

[1172] *See* El Paso/Conversent Nov. 26, 2002 *Ex Parte* Letter, Attach. at 1, 15-17 (describing the electronic equipment a competitive LEC must deploy to activate dark fiber).

[1173] We note that the cost of electronics, such as those used to activate dark fiber, are not sunk costs because they can be moved to another location upon exit from the market.

[1174] AT&T, for example, states that the monthly costs of operating interoffice transport between two collocations is allocated roughly as follows: 50% to the cost of the transport ring, 30% to equipment and other costs, and 20% to collocation. AT&T Oct. 4, 2002 *Ex Parte* Letter, Attach. at 13. Conversent states that it has spent over $30 million in capital costs for purchasing electronics while it estimates that replicating its fiber network in eastern Massachusetts would cost $81 million. Letter from Christi Shewman, Counsel for Conversent, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 2, 5 (filed Sept. 24, 2002) (Conversent Sept. 24, 2002 *Ex Parte* Letter). Similarly, El Paso states that the electronics necessary to light an OC12 loop require $80,000 in capital investment. El Paso Oct. 4, 2002 *Ex Parte* Letter, Attach. *Regulatory Briefing* at 8.

[1175] *See* El Paso/Conversent Nov. 26, 2002 *Ex Parte* Letter, Attach. at 1; *see also supra* para. 371.

383. The record also indicates that competing carriers using unbundled dark fiber transport can operate more efficiently than when using lit transport. Conversent and El Paso argue that they can offer a higher level of service because unbundled dark fiber integrates more efficiently into their networks by reducing the number of failure points and by providing them greater control including the ability to test for quality and maintenance.[1176] Commenters also argue that dark fiber more precisely addresses impairment they face in deploying fiber.[1177] We agree that dark fiber allows competing carriers to provide service without incurring the high sunk costs of self-deploying transport, especially when the fiber is not being used by the incumbent LEC. Competing carriers assert that this also avoids unnecessary digging of streets.[1178] Commenters also argue that unbundled dark fiber users must deploy significant facilities including optronic equipment and collocation in order to light the dark fiber.[1179] We find that this investment advances the facilities deployment goals of the Act.[1180]

384. Although the record indicates that dark fiber can be self-provisioned in some circumstances or obtained on a wholesale basis from carriers other than the incumbent LEC, the record does not reveal the specific routes where such transport is available.[1181] In addition, dark fiber transport is generally not available in most areas of the country. In fact, in many areas, competing carriers are unable to self-deploy and have no alternative to the incumbent LEC's facilities.[1182] On the current record, we are unable to identify those specific routes where

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[1176] *See* El Paso/Conversent Nov. 26, 2002 *Ex Parte* Letter, Attach. at 1, 12-13. Specifically, dark fiber reduces the number of points of failure within a local transport network and is integrated more easily into the competitor's network. *See id.*; Conversent Comments at 7; Conversent Oct. 10, 2002 *Ex Parte* Letter at 3.

[1177] *See* El Paso/Conversent Nov. 26, 2002 *Ex Parte* Letter, Attach. at 1. For example, Conversent asserts that it is not impaired without the electronics needed to activate transport facilities, but is impaired without the actual facilities. *See* Conversent Dec. 24, 2002 *Ex Parte* Letter at 2.

[1178] *See, e.g.*, Stephanie A. Joyce, Counsel for Dominion Telecom, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 4 (filed Jan. 28, 2003) (Dominion Jan. 28, 2003 Dark Fiber *Ex Parte* Letter).

[1179] *See, e.g.*, Letter from Scott Sawyer, Vice President – Regulatory Affairs, Conversent, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 1-3 (filed Dec. 6, 2002) (Conversent Dec. 6, 2002 *Ex Parte* Letter); El Paso/Conversent Nov. 26, 2002 *Ex Parte* Letter, Attach. at 1.

[1180] While it could be argued that permitting use of unbundled dark fiber acts as a disincentive to alternative transport deployment by allowing competing carrier to obtain the fiber transport without incurring sunk costs that a self-deploying carrier would incur, we find that, through the application of our triggers, described below, any disincentive effect is minimized.

[1181] *See supra* paras. 378-379 (describing record evidence of competitive LEC transport deployment); NuVox *et al.* Comments, Affidavit of Robert Riordan, (MFN Riordan Aff.) at paras. 2-4; BOC UNE Fact Report 2002 at III-1 to III-14. As discussed, above at para. 376, we find that transport is appropriately reviewed on a route-specific basis.

[1182] Conversent asserts that of its 166 dark fiber transport routes throughout six New England states, alternative dark fiber is available on only 25 routes (approximately 15%). Conversent Sept. 24, 2002 *Ex Parte* Letter, Attach. at 4-5; *see also* Conversent Comments at 8-9.

competing carriers are not impaired without access to unbundled dark fiber.[1183] As we describe below, however, we delegate to the states the authority to collect and analyze more specific evidence of transport deployment on a route-specific basis, applying uniform national triggers that measure self-provisioning or wholesale alternative transport availability to determine routes where competitive carriers are not impaired without access to incumbent LEC unbundled dark fiber transport.[1184]

385. *Access to Dark Fiber*. Because dark fiber requires an incumbent LEC to unbundle whole fibers, the Commission previously granted states "the flexibility to establish reasonable limitations and technical parameters for dark fiber unbundling."[1185] We affirm that conclusion.[1186] Additionally, requesting carriers state that they have been denied nondiscriminatory access to unbundled dark fiber in a number of ways.[1187] We note that many state commissions have directly addressed these issues through arbitrations and other proceedings.[1188] For example, states have addressed the pre-ordering and ordering processes including determinations about what information incumbent LECs must make available about

[1183] As described below, we develop specific triggers for states to identify where competing carriers are not impaired without access to dark fiber due to the ability to self-deploy or the availability of third-party wholesale alternatives. We find that our national determination that requesting carriers are impaired without access to dark fiber transport, subject to a more granular analysis, benefits competitors that operate where no competitive alternatives exist and where self-provisioning is not possible. *See, e.g.*, Conversent Comments at 4; BrahmaCom Reply at 1-2; Maine CLEC Coalition Comments at 4-5.

[1184] As discussed in detail below, we find on a national basis that requesting carriers are not impaired without dark fiber transport along point-to-point routes when a state commission finds that either three competing carriers have self-provided transport facilities on that route (irrespective of whether they make available wholesale capacity), or two competing carriers make available wholesale dark fiber transport on that route. *See infra* Part VI.C.4.d.

[1185] *UNE Remand Order*, 15 FCC Rcd at 3854-55, para. 352. Again, we note the difficult balance between putting spare incumbent LEC fiber to use and the carrier-of-last-resort-obligations and planning interests of the incumbent LEC. As noted in the *UNE Remand Order*, some states such as Texas have developed processes to allow for the equitable use of dark fiber while addressing the legitimate concerns of incumbent LECs. *See UNE Remand Order*, 15 FCC Rcd at 3854, para. 352 n.694 (affirming as reasonable some of the parameters the Texas Commission developed regarding the use of unbundled dark fiber).

[1186] Accordingly, our determination moots Mpower's petition asking the Commission to establish a "first-come, first-served" policy for access to dark fiber as we grant states the flexibility to develop rules that incorporate policy objectives such as reservation policies and meeting carrier of last resort obligations. MGC Communications Petition for Clarification on Reconsideration and Request for Expedited Treatment, CC Docket Nos. 96-98, 95-185 at 4-6 (filed Feb. 17, 2000) (Mpower Feb. 17, 2000 Petition for Clarification). Additionally, the Mpower Petition for Clarification is moot to the extent that it requests the Commission to take action before May 17, 2000. Mpower Feb. 17, 2000 Petition for Clarification at 2-4, 6.

[1187] Conversent Oct. 10, 2002 *Ex Parte* Letter at 1-4; El Paso/Conversent Nov. 26, 2002 *Ex Parte* Letter, Attach. at 2-11.

[1188] *See, e.g.*, El Paso *et al.* Comments at 36-75; El Paso/Conversent Nov. 26, 2002 *Ex Parte* Letter at 3-10.

the location of dark fiber,[1189] the extent to which incumbent LECs must allow or perform splicing and other preparatory work,[1190] and access to dark fiber transport that traverses through intermediate central offices where the competitive LEC is not collocated.[1191] We recognize the hard work of the state commissions to make dark fiber meaningfully available and endorse such efforts here. We retain rule 51.307(e) which establishes an incumbent LEC's obligation to provide technical information about the incumbent LEC's network facilities.[1192]

(ii) DS3 Capacity Transport

386. We conclude on a nationwide basis that requesting carriers are impaired on a route-specific basis without access to unbundled DS3 transport. We make this determination based on the high fixed and sunk costs associated with self-providing transport and the lack of route-specific evidence showing alternative facilities as well as the difficulty of overcoming these obstacles at this transmission level. The need for DS3 capacity transport indicates that a carrier is aggregating a substantial amount of traffic from end users.[1193] However, as we discuss above, the cost of deploying a transmission facility does not vary significantly with capacity because much of the cost of the facility is related to the deployment itself, such as trenching or attaching to poles, rather than the cost of the cabling and other equipment.[1194] Moreover, the ability to economically justify transport deployment is based on the reasonable expectation of recovering the costs of deployment over time.[1195] Therefore, due to scale economies, we find,

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[1189] *See, e.g.*, El Paso *et al.* Comments at 58-80 (describing decisions made by the states of Texas, New Hampshire, Rhode Island, New Jersey and Maine); El Paso/Conversent Nov. 26, 2002 *Ex Parte* Letter at 7-10 (describing decisions made by the states of Texas, New Hampshire, Rhode Island, New Jersey, and Maine).

[1190] *See, e.g.*, El Paso *et al.* Comments at 39-44, 50, 53-57 (describing decisions made by the states of Texas, Indiana, Massachusetts, New Hampshire, Rhode Island, and the District of Columbia); Conversent Oct. 10, 2002 *Ex Parte* Letter at 1-4; El Paso/Conversent Nov. 26, 2002 *Ex Parte* Letter, Attach. at 3-7 (describing decisions made by the states of California, Texas, Indiana, Massachusetts, New Hampshire, Rhode Island, and the District of Columbia). To the extent that access to unbundled dark fiber requires some routine modification of an existing facility, our discussion, *infra* Part VII.D, may provide additional clarity. *See, e.g.*, El Paso *et al.* Comments at 53-57 (describing existing fiber facilities not attached to termination equipment).

[1191] *See, e.g.*, El Paso *et al.* Comments at 36-39 (describing decisions made by the states of Massachusetts, Rhode Island, New Jersey and Maine).

[1192] Section 51.307(e) states, "[a]n incumbent LEC shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve access to unbundled network elements consistent with the requirements of this section."

[1193] A DS3 circuit has the equivalent capacity to 672 voice-grade loops or 28 DS1 loops.

[1194] *See* AT&T Oct. 4, 2002 *Ex Parte* Letter, Attach. at 12 (stating that transmission electronics generally do not scale with demand); *see also supra* para. 371 (describing costs and other barriers to entry associated with deploying transport facilities).

[1195] The potential revenue stream associated with a single DS3 is far less than the revenue stream associated with aggregating traffic that requires an OCn circuit, yet the cost to deploy the facilities can be practically the same. *See* (continued....)

generally, that the inability to recover the fixed and sunk costs of deploying transport facilities, coupled with the barriers to obtaining rights-of-way, impairs the ability of requesting carriers to self-provision DS3 transport.

387. There is substantial evidence that carriers lease non-incumbent LEC transport at the DS3 capacity where competitive alternatives are available or self-deploy transport when multiple DS3 transport circuits are required to carry aggregated traffic along a route.[1196] The record indicates that competitive transport facilities exist in a number of areas and are often being made available on a wholesale basis at the DS3 level.[1197] However, while some local markets have competitive alternatives, the record does not establish with route-specificity where such deployment has occurred.[1198] While a few competing carriers have stated in the aggregate that there is an alternative transport facility on up to approximately 50 percent of routes they use, these carriers do not serve all geographic areas, especially rural areas, and have not shown that the alternative is available to them.[1199] Although we find that alternative facilities are not available to competing carriers in a majority of areas, the record indicates that, particularly in dense urban areas, alternative transport facilities are readily available. As we describe below, however, we delegate to the states the authority to collect and analyze more specific evidence of

(Continued from previous page)

AT&T Oct. 4, 2002 *Ex Parte* Letter, Attach. at 12 (stating that transmission electronics generally do not scale with demand). Accordingly, it takes a longer period of time for a competitive LEC to recover its costs of deploying a single DS3 transmission facility.

[1196] *See supra* para. 379 (discussing competitive wholesale supply). Importantly, where alternative transport is available, DS3 circuits are very commonly a standard unit of wholesale provisioning.

[1197] AT&T uses non-incumbent LEC facilities, including its own facilities, for a substantial portion of its DS3 transport while Allegiance uses non-incumbent LEC facilities for 30% of its DS3 transport. AT&T Comments at 150 (citing confidential data); Allegiance Comments at 28. Thus, the record indicates that when a carrier aggregates sufficient traffic to require DS3 transport, the carrier is not impaired by the fixed costs associated with negotiating for alternative facilities and obtaining a cross-connect.

[1198] BOC UNE Fact Report 2002 at III-2, Table 1 (stating that, on average, only 13% of BOC wire centers have a single competing carrier collocated using non-incumbent transport facilities). However, in the largest 25 MSAs served by each BOC, 35% of BOC wire centers have a single competing carrier collocated using non-incumbent transport facilities. BOC UNE Fact Report 2002 at III-3, Table 2. Additionally, the BOCs argue that larger central offices are more likely to have competitors collocate alternative transport facilities. BOC UNE Fact Report 2002 at III-3, Table 3 (showing that at least one competitive fiber-based collocation exists in 48% of central offices with over 5,000 business lines). Finally, the BOCs argue that the largest metropolitan areas have a significant number of competitive LEC networks. BOC UNE Fact Report 2002 at III-7, Table 4 (showing an average of 15 competitive networks operate in the top 50 MSAs). As discussed above, we find that transport is appropriately reviewed on a route-specific basis. *See supra* para. 376.

[1199] For example, Mpower states that, in 50% of the central offices in which Mpower is collocated, at least one alternative transport provider also is collocated. Mpower Reply at 13-16; Mpower Oct. 11, 2002 *Ex Parte* Letter, Attach. at 5. In the offices in which Covad is collocated in four of Covad's major markets (San Francisco, Chicago, New York Tri-State, and Washington, D.C.), Covad observes that one or more competitors have terminated non-incumbent fiber in over 51% of these central offices. Covad Comments, CC Docket No. 96-98, Declaration of Mark Shipley and Marie Chang at para. 18, Table 1 (filed June 11, 2001).

transport deployment on a route-specific basis, applying uniform national triggers that measure self-provisioning or wholesale alternative transport availability to determine routes where competitive carriers are not impaired without access to incumbent LEC unbundled DS3 transport.[1200]

388. *Limitation on Multiple DS3 Circuits and OCn*. Consistent with our analysis of dark fiber transport, we find that as a carrier develops traffic along a route consisting of multiple DS3s worth of capacity, it can overcome barriers to entry including sunk costs and economies of scale such that it can prepare to self-deploy transmission facilities or optronic equipment to activate dark fiber.[1201] Indeed, our record shows that carriers add capacity in increments of DS3 capacity as demand for additional transport increases. Based on the predominance of record evidence, we establish a maximum number of twelve unbundled DS3 transport circuits that a competing carrier or its affiliates[1202] may obtain along a single route.[1203] In making this decision, we considered a wide range of evidence in the record. For instance, BellSouth states that one-third of its end offices require only three DS3 transport circuits or less.[1204] Meanwhile, competitive LECs assert that it is not economic for them to deploy transport facilities with less than ten to eighteen DS3 circuits on a route.[1205] Moreover, the record shows that carriers have

[1200] As discussed in detail below, we find on a national basis that requesting carriers are not impaired without DS3 transport along point-to-point routes when a state commission finds that either three competing carriers have self-provided transport facilities on that route (irrespective of whether they make available wholesale capacity), or two competing carriers make available wholesale DS3 transport on that route. *See infra* Part VI.C.4.d. We find that our national determination that requesting carriers are impaired without access to DS3 transport, subject to a more granular analysis, benefits small business competitors that operate where no competitive alternatives exist and where self-provisioning is not possible. *See, e.g.*, BrahmaCom Reply at 1-2; Maine CLEC Coalition Comments at 4-5.

[1201] *See supra* para. 371 (describing costs and barriers to entry associated with deploying transport facilities).

[1202] We incorporate the Act's definition of "affiliate" to define the extent to which a carrier or its affiliates may obtain multiple DS3 circuits on a route. *See* 47 U.S.C. § 153(1).

[1203] Because our record indicates that the cost of deploying transport can be greater than the cost of deploying some fiber loops, we set the limit on unbundled DS3 circuits at 12 per route, per carrier, higher than the permissible number of DS3 loops per location. *See supra* Part VI.A.4.b.(ii)(c)(iii) (imposing a limitation of two DS3 capacity loops per location).

[1204] Letter from Jonathan Banks, General Attorney, BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2 (filed Feb. 5, 2003) (BellSouth Feb. 5, 2003 Transport *Ex Parte* Letter) (explaining that two-thirds of its end offices are served by fewer than 18 DS3 equivalent circuits while one-third of its end offices require only three DS3 circuits or less, and suggesting that scale economies can be achieved at these capacities); *see also* High-Capacity Loop and Transport Petition (petitioning to eliminate unbundling for all loop and transport circuits greater than DS1 capacity on the basis that competing carriers are not impaired in further deployment because these facilities have been extensively deployed and are available on a wholesale basis).

[1205] *See* Letter from Steven A. Augustino, Counsel for SNiP LiNK, to William Maher, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1-2 (filed Feb. 7, 2003) (SNiP LiNK Feb. 7, 2003 Transport *Ex Parte* Letter) (stating that SNiP LiNK built its own transport facilities when it required the equivalent of 12 DS3 circuits); AT&T Oct. 4, 2002 *Ex Parte* Letter, Attach. at 14 (stating that it makes economic sense for AT&T to deploy transport only when it requires 12 or more DS3s on a route); AT&T Nov. 25, 2002 *Ex Parte* Letter (continued....)

deployed transmission facilities at the twelve DS3 level and above to serve enterprise customers,[1206] in areas across the country,[1207] and to provide wholesale transmission services and facilities to carriers.[1208] In limiting the unbundling obligation on a route to twelve DS3 circuits per carrier, we recognize that we are engaging in an act of line-drawing.[1209] Nevertheless, we draw this line as informed by an extensive record and based on our predictive judgment that this point will serve as an incentive for further facilities deployment while still allowing competitive entrants the opportunity to use unbundled transport at lower capacity levels, and to use dark fiber for higher capacities, to attain sufficient scale to self-deploy.[1210]

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at 1 & Attach. A (stating that, compared to incumbent LEC special access prices, it is economic for AT&T to self-deploy transport only when it has 18 DS3s worth of traffic); Letter from Thomas Jones, Counsel for Allegiance Telecom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3 (filed Feb. 3, 2003) (Allegiance Feb. 3, 2003 Transport *Ex Parte* Letter) (stating that it is generally economic for Allegiance to deploy facilities when it requires 10 DS3s on a route); Letter from Cathleen A. Massey, Vice President – External Affairs, XO Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1-2 (filed Feb. 5, 2003) (XO Feb. 5, 2003 Transport *Ex Parte* Letter) (contending that it is generally economic for XO to deploy facilities when it requires 10 to 12 DS3s on a route); Letter from Patrick J. Donovan, Counsel for Cbeyond, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2 (filed Feb. 13, 2003) (Cbeyond Feb. 13, 2003 *Ex Parte* Letter) (stating that any limitation "should be close to or at the OC-12 level"); *but see* AT&T Fea/Giovannucci Reply Decl. at para. 28 ("AT&T often engages in joint builds with other CLECs in order to share the high fixed costs of construction.").

[1206] *See* KMC Duke Aff. at paras. 3, 6, 10 (describing how KMC has deployed over 2100 route miles of local SONET transport networks in several geographic markets, an average of 60 miles each, serving customers using self-deployed and unbundled loops at the DS1 capacity and higher); AT&T Comments, Attach. E, Declaration of Michael E. Lesher and Robert J. Frontera at para. 9 (citing AT&T's 17,000 fiber route miles); *see also supra* Part IV (describing the evolution of the market for local telecommunications services); SNiP LiNK Feb. 7, 2003 Transport *Ex Parte* Letter at 1-2 (stating that SNiP LiNK built its own transport facilities when it maximized the use of an OC12 circuit).

[1207] For example, KMC serves markets ranging between 100,000 and 750,000 in population using its extensive fiber transport network. KMC Duke Aff. at para. 3; *see also* BOC UNE Fact Report 2002 at III-7, Table 4 (showing that several competitive LECs operate networks, even in much smaller MSAs with an average of 4.8 networks in MSAs ranked 101 to 125 and 3.4 competitive LEC networks in MSAs 126-150). We also note that the costs of deploying fiber in rural areas can be substantially lower, thus requiring a lower aggregation of traffic sufficient to take on the costs of fiber deployment. *See supra* para. 371.

[1208] BOC UNE Fact Report 2002 at III-6 through III-11 (describing "carrier-agnostic" wholesale suppliers and CAPs); Coalition of Competitive Fiber Providers Reply at 1-2 ("Coalition members provide competitive fiber-based transport services and dark fiber to competitive local exchange carriers . . . collocated in ILEC central offices.").

[1209] *See* ALTS Feb. 13, 2003 *Ex Parte* Letter at 4 (stating that an "acceptable trade-off would logically occur at 12 DS-3s.").

[1210] *See infra* para. 403 (indicating the need to draw bright-line rules for the sake of market certainty and administrative practicality).

389. The Commission previously unbundled all transport capacities up "through OC192 and such higher capacities as evolve over time."[1211] We do not perpetuate such broad unbundling today. As described above, we find that requesting carriers are not impaired without lit transport beyond twelve DS3s on a route due to the ability to self-provision transport facilities, or to self-provision optronic equipment necessary to activate unbundled dark fiber. Because we find no impairment above a twelve DS3 level and transport below this level is unbundled, we need not unbundle OCn interface transmission facilities. Rather, we find that dark fiber and multiple DS3 circuits provide reasonable substitutes for OCn interface circuits at these capacities and find that requesting carriers are not impaired without OCn or SONET interface transport.[1212]

(iii) DS1 Capacity Transport

390. We find that requesting carriers generally are impaired without access to DS1 capacity transport.[1213] We make this determination based on the high entry barriers associated with deploying or obtaining transport used to serve relatively few end-user customers and the lack of route-specific evidence showing sufficient alternative deployment.

[1211] *UNE Remand Order*, 15 FCC Rcd at 3842-43, para. 323. Typically, carriers employ OCn circuits in OC3, OC12, OC48, and OC192 capacity intervals. *See supra* note 1154 (describing capacity equivalencies). We also note that most carriers operate their transport networks at OC48 levels as the associated electronics are only incrementally more expensive in relation to the large jump in available scale. AT&T Comments at 134; AT&T Oct. 4, 2002 *Ex Parte* Letter, Attach. at 12 (stating, "transmission electronics . . . generally do not scale with demand (*e.g.*, an OC48 is not generally 4 times as costly as an OC12)").

[1212] Commenting parties provide differing interpretations of the availability of unbundled transport using SONET technology, as set forth in the *UNE Remand Order*. *See UNE Remand Order*, 15 FCC Rcd at 3843, para. 324; NuVox *et al.* Comments at 93-94; BellSouth Comments at 56 ("The Commission has not required ILECs to provide unbundled access to SONET rings."). Because we find that competing carriers are not impaired without access to optical capacity transport circuits, there is no need to clarify whether competing carriers can access a circuit directly provided on a SONET interface. However, because an incumbent LEC's interoffice transport facilities often operate using SONET technology, we clarify that incumbent LECs must unbundle DS1 and DS3 capacity circuits and dark fiber (on which a competing carrier may use SONET technology provided by its own electronics) on a point-to-point basis where subject to an unbundling obligation. Specifically, we note that this obligation exists regardless of the underlying technology the incumbent employs, and includes point-to-point transport provided on SONET rings operated by incumbent LECs. *See also infra* Part VII.D (discussing incumbent LEC unbundling obligations for specially constructed network facilities).

[1213] Unlike the DS3 cap we establish today, we do not find it prudent to establish a limit on the number of unbundled DS1 transport circuits a carrier may lease on a route. Instead, we are convinced that both operational and pricing efficiencies exist that serve to limit a competing carrier's incentive to over-subscribe DS1 transport on a route, even where unbundled DS3 transport is not available. Specifically, our record shows that the coordination of large multiples of DS1 circuits quickly becomes burdensome and much more costly than using larger capacity DS3 transport. *See, e.g.*, Letter from Henry Hultquist, Senior Attorney, WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. (filed Oct. 29, 2002) (WorldCom Oct. 29, 2002 Loops and Transport *Ex Parte* Letter).

391. The record indicates that competing carriers generally cannot self-provide DS1 transport. A carrier requiring only DS1 capacity transport between two points typically does not have a large enough presence along a route (generally loop traffic at a central office) to justify incurring the high fixed and sunk costs of self-providing just that DS1 circuit.[1214] This is because a requesting carrier in need of DS1 capacity transport faces the same fixed and sunk costs as other carriers deploying transport or using alternatives, but faces substantially higher incremental costs across its customer base than a carrier requesting higher capacity transport.[1215]

392. The record also indicates that, although competitive fiber has been deployed in many areas, DS1 transport is not generally made available on a wholesale basis[1216] and the record lacks the specificity for us to analyze appropriately transport on a route-specific basis.[1217] At this time, while we find that the market for competitive wholesale DS1 transport is nascent, even where higher capacity competitive transport is already made available on a wholesale basis, we find that applying a wholesale availability trigger is appropriate. While carriers suggest that a wholesale market for DS1 transport has not developed due to operational and cost considerations, we find that technological advances may allow this market to become practical.[1218] It is our predictive judgment that wholesale provision of DS1 transport will develop

[1214] DS1 transport is the lowest standard capacity level of dedicated transport, although dedicated transport can be ordered at the DS0 capacity. Unbundled DS0 dedicated transport is not used by competing carriers as a practical matter.

[1215] *See supra* para. 371 (discussing transport costs and entry barriers). Even some incumbent LECs concede that some impairment exists at the DS1 level according to the impairment tests they propose. For example, while BellSouth asserts that transport at the DS3 level and above should not be unbundled, BellSouth proposes to use a trigger proxy at the DS1 level. Letter from Robert T. Blau, Vice President – Executive and Federal Regulatory Affairs, BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338 and 02-33, Attach. at 8 (filed Jan. 16, 2003) (BellSouth Jan. 16, 2003 *Ex Parte* Letter); *see also* Letter from W. W. Jordan, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-321, 01-338, Attach. at 3 (filed Aug. 26, 2002) (BellSouth/Time Warner Aug. 26, 2002 Transport and Performance Measures *Ex Parte* Letter) (advocating a trigger be applied to determine impairment for all dedicated transport). Similarly, SBC proposes (in the alternative to removing unbundling for all DS1 and above transport) that unbundling for DS1 transport should be determined according to triggers similar to those adopted in the *Pricing Flexibility Order*. SBC Reply at 153.

[1216] While it is relatively common for carriers to obtain wholesale transport at higher capacities, we have very limited evidence of carriers using alternative DS1 transport. AT&T "almost never" uses non-incumbent LEC facilities for its DS1 transport while it uses non-incumbent LEC facilities a substantially higher percentage of its DS3 transport. AT&T Comments at 149-50 (citing confidential data); *see also* Cbeyond Nov. 22, 2002 Transport *Ex Parte* Letter, Declaration of Richard Batelaan at para. 11 (concluding that "alternative providers for DS1 level transport are at best nascent"); NuVox *et al.* Comments, Affidavit of Edward J. Cadieux (NuVox Cadieux Aff.) at para. 9 (where "third-party providers exist they either do not offer dedicated transport at the DS1 level (only at the DS3 level or higher) or that operational interfaces at the DS1 level are too problematic for third-party providers to be a viable facility source."); ALTS/CompTel Oct. 28, 2002 Transport *Ex Parte* Letter at 3 (stating that competition at the DS3 capacity level does not equate to competition for DS1 transport).

[1217] As discussed in para. 376 above, we find that transport is appropriately reviewed on a route-specific basis.

[1218] Competing transport providers would have to install additional multiplexing equipment and refine back office systems to handle DS1 interface wholesale transport. KMC Duke Aff. at para. 13; NuVox Cadieux Aff. at para. 9 (continued....)

as technology improvements make wholesale provision of DS1 circuits economic such that carriers have an incentive to invest in the equipment necessary to provide this capacity service.[1219] As we state below, however, we delegate to the states the ability to collect and analyze more specific evidence of transport deployment on a route-specific basis, applying a uniform national trigger that measures wholesale alternative transport availability to determine routes where competitive carriers are not impaired without access to incumbent LEC unbundled DS1 transport.[1220]

393. We also note that unbundled DS1 transport is often used by competing carriers in a loop/transport combination when collocation at the customer's end-office is uneconomic.[1221] In this manner, DS1 transport is used by competing carriers to expand into new service areas and may be used as a transition mechanism for carriers just entering an area, or for carriers serving a customer in an area only as a supplement to its primary operations in another area. In these situations, carriers are able to enter new markets to begin accumulating traffic, but do not have sufficient traffic to self-deploy.[1222] Under our analysis, new market entrants will have the ability to access unbundled DS1 transport, or access DS1 transport from multiple competing carriers.

d. Route-Specific Review Conducted by States Applying Federal Triggers

394. The Supreme Court required that the Commission apply "*some* limiting standard" to its impairment analysis.[1223] In this regard, the Court advised that "[t]he Commission cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent's network," including whether requesting carriers are able to "self-provision, or . . . purchas[e] from another provider."[1224] We also recognize that the D.C. Circuit questioned how the

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(where "operational interfaces at the DS1 level are too problematic for third-party providers to be a viable facility source"); *see also* Eschelon Kunde Aff. at para. 11 (describing the costs associated with using multiple transport vendors including the added complexity of managing multiple contracts, ordering processes, maintenance processes, and bills).

[1219] Therefore, our wholesale availability test, explained in detail below, while not likely to have an immediate impact at the DS1 capacity level, ensures that our analysis is flexible enough to accommodate innovation in the marketplace.

[1220] As discussed in detail below, we find on a national basis that requesting carriers are not impaired without DS1 transport along point-to-point routes when a state commission finds that two competing carriers make available wholesale DS1 transport on that route. *See infra* Part VI.C.4.d.

[1221] *See infra* Part VII.A (describing combinations of UNEs).

[1222] For the reasons outlined above, nationwide availability of DS1 transport will benefit small business competitors, especially those just entering a new market, as well as small business telecommunications consumers that use DS1 capacity services.

[1223] *Iowa Utils. Bd.*, 525 U.S. at 388.

[1224] *Id.* at 389.

Commission could find that an element like transport "is significantly deployed on a competitive basis," but remains available as an unbundled element from the incumbent LEC.[1225] As discussed above, we make affirmative national findings of impairment and non-impairment for transport at the national level, as supported by the record. However, evidence suggests that requesting carriers likely are not impaired without access to unbundled transport in some particular instances, but evidence in the record is not sufficiently detailed to identify these specific routes. Therefore, as described in detail below, we delegate to states a fact-finding role to identify where competing carriers are not impaired without unbundled transport, pursuant to two triggers.

395. Commenting parties suggested various proposals for how the Commission should apply a more granular impairment analysis for dedicated transport as suggested in the *Triennial Review NPRM*. We review these proposals here as they inform our conclusions about an appropriate level of granularity.

396. While the competitive LEC community generally supports unlimited unbundling of all transport,[1226] in the alternative, competitive LECs generally support removing the unbundling obligation for transport on a route-specific basis only when a transport market on that route is fully competitive.[1227] ALTS and CompTel proposed that the Commission adopt the Department of Justice merger guidelines to determine when each transport route is sufficiently competitive because such a test will ensure that no alternative transport provider, or the incumbent LEC, maintains market power along every route for which no impairment is found. We reject this proposal because, as we describe above, this introduces a standard other than the impairment standard we have adopted more generally for determining unbundling obligations.[1228] Additionally, market power analyses are neither easily verifiable nor administratively simple for purposes of our instant inquiry; they rely on market share analysis that is complicated and requires considerable time and expense to prepare.[1229] Moreover, such an analysis is likely to be

[1225] *USTA*, 290 F.3d at 422.

[1226] *See, e.g.*, ALTS *et al.* Comments at 60-61; NuVox *et al.* Comments at 84-91.

[1227] *See, e.g.*, Letter from H. Russell Frisby, President, CompTel, and John Windhausen, President, ALTS, to William F. Maher, Chief, Wireline Competition Bureau, FCC, CC Docket No. 01-338, Attach. at 1-4 (filed Oct. 8, 2002) (ALTS/CompTel Oct. 8, 2002 Transport *Ex Parte* Letter); ALTS/CompTel Oct. 28, 2002 Transport *Ex Parte* Letter at 5-6; Letter from Douglas I. Brandon, Vice President – External Affairs and Law, AT&T Wireless, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1-3 (filed Dec. 20, 2002) (ATTWS Dec. 20, 2002 *Ex Parte* Letter). Indeed, competitive LECs opposed geographic granular analysis that did not consider route-specific factors, or applied only to broader geographic areas. *See, e.g.*, ALTS Feb. 13, 2003 *Ex Parte* Letter at 3-4; Letter from Praveen Goyal, Senior Counsel, Covad, to Michelle Carey, Chief, Competition Policy Division, Wireline Competition Bureau, FCC, CC Docket No. 01-338 at 4-5 (filed Jan. 21, 2003) (Covad Jan. 21, 2003 *Ex Parte* Letter).

[1228] *See supra* Part V.B.1.d.(iii) (describing why the Commission does not adopt an antitrust-style market power analysis as a part of its impairment analysis).

[1229] *See Pricing Flexibility Order*, 14 FCC Rcd at 14271-72, para. 90.

controversial and difficult to resolve.[1230] We conclude that a route-specific bright-line standard is more manageable for the parties and administratively more practical.[1231]

397. SBC, Verizon, and BellSouth all propose that the Commission find no impairment for all DS3 and greater transport, including dark fiber.[1232] In the alternative, they and Qwest argue that if the Commission should adopt a trigger to identify impairment, the Commission should adopt a competitive trigger based on those in the Commission's *Pricing Flexibility Order* for special access.[1233] In general, these incumbent LECs argue that wherever and whenever they have received pricing flexibility for special access, they should not be required to unbundle transport.[1234] The record indicates that incumbent LECs have qualified for special access pricing flexibility in numerous MSAs throughout their regions, almost exclusively by meeting the triggers based on special access revenues.[1235] Because the revenue trigger requires only a single

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[1230] *Id.*

[1231] *See, e.g.*, WorldCom Reply at 127 (suggesting a bright-line standard of four wholesale competitors on a route); Allegiance Reply at 47 (suggesting a bright-line standard of four wholesale competitors on a route); Letter from Thomas Jones, Counsel for Allegiance, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1-5 (filed Jan. 30, 2003) (Allegiance Jan. 30, 2003 Transport *Ex Parte* Letter) (proposing a bright-line standard of 2 competitive wholesale providers or 3 competitive providers on a route as sufficient to satisfy the impairment standard); XO Jan. 28, 2003 Transport *Ex Parte* Letter at 1-2 (advocating a bright-line route-based standard of at least four competitors collocated at both end points of a transport route, three of which must offer wholesale transport).

[1232] *See, e.g.*, Verizon Comments at 105-13; BellSouth Comments at 90-102; SBC Comments at 96. To the extent that these arguments are based on the availability of incumbent LEC tariffed "special access" services serving as an alternative to UNEs, we address these arguments in our impairment analysis, *supra* Part V.B.1.d.(iii). *See* Verizon Dec. 17, 2002 *Ex Parte* Letter at 1, 8-11 (arguing that competitive LECs are not impaired without unbundled transport because they use incumbent LEC special access transport services).

[1233] *See, e.g.*, Qwest Comments at 32-39. We note that while their various proposals may differ slightly, they are all based expressly on the triggers set forth in the Commission's *Pricing Flexibility Order*. *Pricing Flexibility Order*, 14 FCC Rcd 14221.

[1234] *See, e.g.*, Qwest Comments at 32. Although they argue non-impairment should be identified based on Phase I pricing flexibility, in the alternative, the BOCs argue that Phase II pricing flexibility should apply as a non-impairment trigger. Phase I pricing flexibility for certain special access services is triggered on an MSA basis when (1) 15% of wire centers have one collocated competitor using non-incumbent transport, or (2) in wire centers accounting for at least 30% of revenues for these services, at least one competitor has collocated using non-incumbent transport. Phase II pricing flexibility is triggered on an MSA basis when (1) 50% of wire centers have one collocated competitor using non-incumbent transport, or (2) in wire centers accounting for at least 65% of revenues for these services, at least one competitor has collocated using non-incumbent transport. *See* 47 C.F.R. § 69.709.

[1235] *See supra* note 1234 (describing the *Pricing Flexibility Order* triggers based, alternatively, on competitive transport-based collocation or special access revenues); *see also* NewSouth Dec. 12, 2002 *Ex Parte* Letter at 2 (describing details of where and how BellSouth has received special access pricing flexibility); BellSouth Oct. 15, 2002 Transport and Loop *Ex Parte* Letter, Attach. at 5 (stating that BellSouth has received Phase I and Phase II special access pricing flexibility in 100% of nation's top 150 MSAs in its region); Verizon Dec. 17, 2002 *Ex Parte* Letter at 7 (stating that Verizon has pricing flexibility in 37% of its wire centers); Qwest Oct. 11, 2002 Transport *Ex* (continued....)

collocated competitor and the purchase of substantial amounts of special access in a concentrated area, this test provides little indication that competitors have self-deployed alternative facilities, or are not impaired outside of a few highly concentrated wire centers. Additionally, the pricing flexibility trigger based on alternative transport-based collocation requires no consideration of the ubiquity of the competitive transport facilities throughout an MSA. The measure does not indicate that the competitive fiber facilities connect to collocations in any other incumbent LEC central offices. The measure may only indicate that numerous carriers have provisioned fiber from their switch to a single collocation rather than indicating that transport has been provisioned to transport traffic between incumbent LEC central offices. Therefore, we find that Commission approval for special access pricing flexibility, finding that competing carriers have made "irreversible sunk investments," is not sufficiently tailored to identify where requesting carriers are not impaired without unbundled transport.[1236]

398. There is no disagreement among the parties that alternative transport facilities have been deployed and are available as alternatives to unbundled transport in some locations. However, the record does not identify the location of alternative transport facilities, and parties dispute the degree to which competitive facilities must be deployed before competing carriers are no longer impaired without unbundled transport. We need not resolve in this Order the factual identification of where alternative facilities exist. Rather, we are able to discern impairment at the national level based on aggregated data. However, because we recognize that the record is insufficiently detailed to make more precise findings regarding impairment, we delegate to the states, subject to appeal back to this Commission if a state fails to act, a fact-finding role to determine on a route-specific basis where alternatives to the incumbent LECs' networks exist such that competing carriers are no longer impaired.[1237]

399. As discussed above, the record indicates that competing carriers have self-deployed significant quantities of local fiber transport facilities. Moreover, the record indicates that competing carriers often use transport provided by competitive transport providers where available, rather than facilities provided by the incumbent LEC. However, substantial barriers to self-deploying transport including high fixed and sunk costs indicate that carriers are impaired in many instances without access to incumbent LEC facilities. Therefore, we adopt two triggers designed to identify where carriers are not impaired without access to incumbent LEC transport based on the two primary ways carriers can overcome impairment: (1) the ability to self-deploy

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Parte Letter, Attach. at 5 (stating that Qwest has been granted pricing flexibility in 33 of its 45 MSAs, many of which are not national top 100 MSAs).

[1236] *See supra* Part V.B.1.d.(iii) (distinguishing the purposes of the "impair" standard and the pricing flexibility standard).

[1237] Appeals of state inaction shall be filed as pursuant to the procedures we adopt today. *See supra* Part V.E.

facilities, and; (2) access to third party alternatives.[1238] We adopt both triggers to best address the guiding principles provided by reviewing courts.[1239]

400. The first trigger is designed to identify routes along which the ability to self-provide transport facilities is evident based on the existence of several competitive transport facilities. Specifically, where three or more competing carriers, not affiliated with each other or the incumbent LEC, each have deployed non-incumbent LEC transport facilities along a specific route, regardless of whether these carriers make transport available to other carriers, we find that to be sufficient evidence that competing carriers are capable of self-deploying.[1240] The second trigger is designed to identify where competitive wholesale alternatives are available. Specifically, we find that competing carriers are not impaired where competing carriers have available two or more alternative transport providers, not affiliated with each other or the incumbent LEC, immediately capable and willing to provide transport at a specific capacity along a given route between incumbent LEC switches or wire centers.[1241] If a state commission finds no impairment for a specific capacity of transport on a route, the incumbent LEC will no longer be required to unbundle that transport along that route, according to the transition schedule adopted by the state commission.

401. Both triggers we adopt today evaluate transport on a route-specific basis. We define a route, for purposes of these tests, as a connection between wire center or switch "A" and wire center or switch "Z."[1242] Even if, on the incumbent LEC's network, a transport circuit from "A" to "Z" passes through an intermediate wire center "X," the competitive providers must offer service connecting wire centers "A" and "Z," but do not have to mirror the network path of the incumbent LEC through wire center "X." We find that analyzing transport at this very granular level will provide the most accurate determination of impairment. BellSouth's and other BOC's

[1238] *See Iowa Utils. Bd.*, 525 U.S. at 389; *see also supra* Part V.B (discussing the impair standard).

[1239] We expect states to implement both triggers as each addresses only part of the analysis. Were we to adopt (or states to implement) only a test for the ability to self-provision transport, two carriers could conceivably deploy transport facilities and make them available to other carriers such that competing carriers are not impaired without access to the incumbent LEC's facilities, but the incumbent would remain subject to an unbundling obligation. Likewise, were we to adopt (or states to implement) only a test for wholesale availability, it is possible that wholesale opportunities may not exist despite the ability of several carriers to overcome the barriers to deploy along a route. We note that where a state makes a finding of non-impairment under either trigger, there is no reason to apply the other trigger on that route.

[1240] *See infra* para. 405.

[1241] *See infra* para. 413.

[1242] *See, e.g.*, Letter from Steven A. Augustino, Counsel for SNiP LiNK *et al.*, to William Maher, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3-6 (filed Jan. 24, 2003) (SNiP LiNK *et al.* Jan. 24, 2003 Transport *Ex Parte* Letter); Letter from Michael H. Pryor, Counsel for NewSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, Attach. at 2 (filed Feb. 3, 2003) (NewSouth Feb. 3, 2003 Transport *Ex Parte* Letter); Letter from Jonathan Askin, General Counsel, ALTS, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 1 (filed Jan. 29, 2003) (ALTS Jan. 29, 2003 Transport *Ex Parte* Letter); Covad Jan. 21, 2003 *Ex Parte* Letter at 1, 4-5.

fiber-based collocation proposals are based solely on the presence of alternative transport at one end of a route such that when one end of a route is competitive (a central office with fiber-based collocation), no unbundled transport will be available in or out of that competitive central office.[1243] These proposals would effectively leverage the existence of competition in one location to remove the unbundling obligation to perhaps several other locations without any proof that a requesting carrier could self-provide or utilize alternative transport to reach those other locations.[1244] A route-specific test is sufficiently granular to avoid falsely identifying as competitive a route between two offices.[1245] Also, the route-based triggers we adopt allow carriers to avoid the costs and operational problems associated with cobbling together multiple vendor links to complete a route between two incumbent LEC central offices.

402. We consider, but decline to adopt, a test based on each link between two incumbent LEC central offices.[1246] While this may have benefits of being easier to implement, a link-specific test raises practical operational problems of linking together facilities of multiple providers to complete a single circuit, sometimes called daisy-chaining. That is, a competing carrier may have to coordinate multiple vendors for a single route if the complete route a competing carrier requests goes through an intermediate central office and one of the two links comprising the complete route is not unbundled.[1247] This almost inevitably would raise costs, increase provisioning time intervals, and make maintenance and repair more difficult.[1248] We also consider, but decline to adopt, an analysis of transport markets on a broader scale, such as a city, MSA, or other zone and reject these approaches as too over- and under-inclusive.[1249] That is, there may be actual impairment on some routes, but not others within a wider geographic area. Thus, a finding of impairment or non-impairment throughout an area could permit

[1243] *See, e.g.*, BellSouth and Time Warner Telecom propose finding no impairment for unbundled transport where "3 or more competitive transport providers exist in either A or Z wire center." BellSouth/Time Warner Aug. 26, 2002 Transport and Performance Measures *Ex Parte* Letter, Attach. at 3.

[1244] *See, e.g.*, ALTS *et al.* Comments at 67.

[1245] *See* ALTS Jan. 29, 2003 *Ex Parte* Letter at 1; SNiP LiNK *et al.* Jan. 24, 2003 Transport *Ex Parte* Letter at 3-6; Covad Jan. 21, 2003 *Ex Parte* Letter at 4-5. As ALTS and CompTel state in a metaphor, "[A] passenger at Dulles Airport seeking to fly to San Francisco would not ask an airline: 'Do any of your flights have seats available?' Instead, the question would be: 'Do any of your flights to San Francisco have seats available?'" ALTS/CompTel Oct. 8, 2002 Transport *Ex Parte* Letter at 1.

[1246] By a "link," we mean a direct connection between two incumbent LEC switches or wire centers, without passing through any intermediate wire centers or switches. On the other hand, a "route" may connect wire centers or switches that are not directly connected to each other.

[1247] ALTS/CompTel Oct. 28, 2002 Transport *Ex Parte* Letter at 3, 6 & Attach. A (describing the costs associated with not using a whole route approach and multi-span routes).

[1248] *Id.*

[1249] *See supra* para. 397 (discussing incumbent LEC suggestions to incorporate the MSA-based *Pricing Flexibility Order* triggers into the Commission's impairment analysis of transport).

unbundling on routes where no impairment exists, or foreclose access to unbundled transport on routes where impairment does exist.

403. As the Commission has done in other circumstances, we adopt these triggers as a mechanism for determining impairment. Adopting triggers with objective criteria can avoid the delays caused by protracted proceedings and can minimize administrative burdens.[1250] Our selection of various thresholds, as in rate setting, is not an exact science.[1251] Rather, the thresholds are based on our agency expertise, our interpretation of the record, and our desire to provide bright-line rules to guide the industry in implementing section 251.[1252] Our effort to select triggers that precisely measure impairment for transport is hampered by the lack of verifiable data concerning competitor's facilities. Given these constraints, we adopt triggers that, in our reasoned judgment, minimize administrative burdens while still reasonably applying our impairment standard.

404. We also expect that the triggers we adopt will produce desirable incentives for competing carriers to build out their transport networks. As a policy matter, we find that unbundling can create a disincentive for competitive LECs to deploy transport. After incurring substantial fixed and sunk costs, a carrier that has deployed transport facilities must continue to compete against carriers able to obtain unbundled transport without incurring any large costs. Moreover, the triggers will benefit competing carriers that invest or have invested in their own transport facilities by attracting additional wholesale customers to mitigate the costs of deployment if their facilities trigger a finding of no impairment that eliminates unbundling.

(i) Self-Provisioning Trigger

405. We delegate to state commissions the authority to declare requesting carriers not to be impaired without unbundled transport when there is sufficient evidence that facilities deployment is possible on a particular route, regardless of the availability of wholesale transport. Reviewing courts have instructed the Commission to identify those areas in which lack of access to an incumbent LEC's facilities does not present an insurmountable barrier to entry as evidenced by the suitability of "multiple, competitive supply."[1253] As noted above, we give substantial weight to actual commercial deployment of an element by competing carriers.[1254]

[1250] *Pricing Flexibility Order*, 14 FCC Rcd at 14267-68, para. 84.

[1251] *United States v. FCC*, 707 F.2d 610, 618 (D.C. Cir. 1983); *see also Pricing Flexibility Order*, 14 FCC Rcd at 14276, 14297-98, paras. 96, 144.

[1252] Although ALTS and CompTel do not support a test based on a strict count of the number of alternative transport providers, they urge the Commission to set numbers "at a level sufficient to insure meaningful competition, and that the viability of the providers is clear and unquestioned." ALTS/CompTel Oct. 8, 2002 Transport *Ex Parte* Letter, Attach. at 2.

[1253] *USTA*, 290 F.3d at 427; *see supra* Part V.B. (discussing the framework for the Commission's impairment analysis).

[1254] *See supra* Part V.B. (discussing the impair standard).

Therefore, our trigger identifies existing examples of deployment by multiple competitive LECs on a route-specific basis. Specifically, we delegate to states authority to determine where three or more unaffiliated competing carriers each have deployed transport facilities on a route.[1255] We find that, when three carriers, in addition to the incumbent LEC, have each made sunk investment in transport facilities on a route, that is a sufficient indication that sunk costs, economies of scale, and other barriers to deploying transport facilities do not present an insurmountable barrier on a particular route such that requesting carriers are not impaired without access to unbundled transport.

406. Each counted self-provisioned facility along a route must be operationally ready to provide transport into or out of an incumbent LEC central office.[1256] We find that the competitive transport facilities counted to satisfy this trigger must terminate in a collocation arrangement which may be arranged either pursuant to contract, tariff or, where appropriate, section 251(c)(6) of the Act.[1257] We find it beneficial to count for purposes of this test all types of collocation arrangements, including those that may not qualify for collocation under section 251(c)(6).[1258] This provides an incentive to incumbent LECs to enable competitive LEC, including the "carrier-agnostic" wholesale transport providers, identified by incumbent LECs, to develop their transport networks by developing viable alternatives to unbundled transport.[1259]

407. We set the number of competitive facilities at three for several reasons. First, we want to be assured that the route can support "multiple, competitive" transport networks.

[1255] Allegiance proposes a granular impairment analysis to identify where carriers can self-provision very similar to this test. *See* Allegiance Jan. 30, 2003 Transport *Ex Parte* Letter at 2-4; Letter from Thomas Jones, Counsel for Conversent, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1 (filed Feb. 5, 2003) (Conversent Feb. 5, 2003 *Ex Parte* Letter) (supporting the transport impairment test Allegiance proposes in its January 30, 2003 *ex parte* letter).

[1256] This requirement is intended to preclude counting competitive facilities before the facility is capable of operation on that route. For example, the incumbent LEC must have fully provisioned the collocation arrangement (*e.g.*, provided space and power) before the route could be considered complete. In this same regard, states should not review the financial stability of alternative transport provisioners, except to the extent the carrier remains in operation. *See infra* para. 415. States also shall consider carriers that have self-deployed intermodal transport facilities that meet the requirements of this trigger.

[1257] Collocation may be in a more traditional collocation space or fiber can be terminated on a fiber distribution frame, or the like, to which any other competing carrier collocated in that central office can obtain a cross-connect under nondiscriminatory terms. *See* MFN Riordan Aff. at paras. 6-13 (describing Verizon's CATT arrangement for terminating transport fibers). Our impairment analysis recognizes alternatives outside the incumbent LEC's network regardless of the authority under which they came to exist.

[1258] *See* Coalition of Competitive Fiber Providers Petition for Declaratory Ruling, CC Docket No. 01-77 (filed Mar. 15, 2001) (stating that competitive fiber providers must reach a central office in order to be able to provide alternative transport to competing carriers collocated there, but are often denied access to section 251(c)(6) collocation rights); Coalition of Competitive Fiber Providers Reply at 3-9; ALTS *et al.* Comments at 69; Cbeyond Nov. 22, 2002 *Ex Parte* Letter at 2.

[1259] MFN Riordan Aff. at paras. 6-13; *see* BOC UNE Fact Report 2002 at III-6.

Second, setting the trigger at three competitive facilities allows for the possibility that some network owners may not be interested in providing wholesale services, in contrast with the wholesale availability trigger which counts only actual wholesalers.[1260] Third, due to the sunk nature of transmission facilities, facilities will remain on a route even if a competitive transport provider exits the market.[1261] Furthermore, we note that where, through the application of this trigger, impairment for unbundled transport at a particular capacity is no longer found, substantial competitive transport facilities, and perhaps other capacities of UNE transport will be available.[1262] Therefore, if this trigger removes unbundled transport at a particular capacity level, carriers will remain capable of serving end-user customers in all areas. This will provide certainty for new market entrants.

408. The competitive transport providers identified to satisfy this trigger on a route must be unaffiliated with the incumbent LEC and each other.[1263] This requires that separate facilities are counted and avoids counting as a true alternative a provider that uses the transport facilities of the incumbent LEC or another alternative provider to provide service on that route.[1264] We find, however, that when a company has obtained dark fiber from another carrier on a long-term IRU basis and activated that fiber with its own optronics, that facility should be counted as a separate, unaffiliated facility.[1265] As described above, the record suggests that

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[1260] *See, e.g.*, KMC Duke Aff. at paras. 12-14 (indicating KMC's lack of interest in providing wholesale transport services on its network).

[1261] UNE Fact Rebuttal Report at 20-24, 41-43.

[1262] Transport facilities may also be available from the incumbent LEC as a special access service. As noted in our earlier general discussion, the presence or absence of these facilities is not a factor in our impairment analysis.

[1263] Affiliated companies will be counted together in order to prevent gaming. We use the term affiliated and affiliate as the Act defines "affiliate." Section 3 of the Act defines the term "affiliate" as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent." 47 U.S.C. § 153(1). As discussed above, we find, for the limited purposes described herein, that when a company acquires dark fiber, but not lit fiber, from another carrier on a long-term IRU or comparable basis, that facility should be counted as a separate, unaffiliated facility. *See* ALTS/CompTel Oct. 28, 2002 Transport *Ex Parte* Letter at 3 (stating that, for a route-specific test, "a facilities-based transport provider must offer transport capacity via fiber it either owns, or else leases from a third party via long term lease.").

[1264] Thus, the self-provisioning trigger may be satisfied on a route by a combination of carriers' facilities that were self-deployed to provide wholesale transport to other carriers and facilities self-deployed by carriers to serve their own needs.

[1265] ALTS/CompTel Oct. 28, 2002 Transport *Ex Parte* Letter at 3 (stating that, for a route-specific test, "a facilities-based transport provider must offer transport capacity via fiber it either owns, or else leases from a third party via long term lease."). For purposes of this test, a competing carrier that has obtained dark fiber transport facilities from the incumbent LEC on an IRU basis should be considered to operate its own unaffiliated facilities. We believe that dark fiber IRU-type contracts protect against short-term gaming of this trigger. Moreover, we do not want to foreclose incumbent LECs from negotiating dark fiber IRU agreements with competitive LECs. Because we want to be certain of the independent ownership of the transport facilities, we find that consideration of transport facilities transferred on an IRU basis is limited to dark fiber and does not include "lit" fiber IRUs.

competing carriers are able to engage and have engaged in joint efforts to deploy transport, so that imposing a trigger that requires each facility on a route to have been separately deployed would fail to consider and may inhibit such cooperative deployment efforts.[1266] However, each competitive transport facility on a route counted to satisfy the trigger must terminate in a collocation arrangement in the incumbent LEC central office. This demonstrates that true alternatives to the incumbent LEC's network have been deployed[1267] and is consistent with the Supreme Court's interpretation of impairment.[1268] There is no requirement that the competing carriers identified to meet this trigger offer wholesale access to their transport networks.

409. *Specific Application.* As described above, the record indicates that competing carriers generally cannot self-provide DS1 transport. Therefore, we find that the self-provisioning trigger described above should not apply at the DS1 level.

410. *State Analytical Flexibility.* In applying the self-provisioning trigger, we find that actual competitive deployment is the best indicator that requesting carriers are not impaired and, therefore, emphasize that this quantitative trigger is the primary vehicle through which non-impairment findings will be made. However, we recognize that this trigger identifies only the existence of *actual* competitive facilities and does not address the *potential* ability of competitive LECs to deploy transport facilities along a particular route.[1269] Therefore, when conducting its analysis, a state must consider and may also find no impairment on a particular route that it finds is suitable for "multiple, competitive supply," but along which this trigger is not facially satisfied. States must expressly base any such decision on the following economic characteristics: local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; the availability or feasibility of alternative transmission technologies with similar quality and reliability; customer density or

[1266] AT&T Fea/Giovannucci Reply Decl. at para. 28 (describing coordinated deployment projects); *see* Letter from Stephen W. Crawford, General Counsel, El Paso Global Networks, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 6 (filed Feb. 5, 2003) (El Paso Feb. 5, 2003 Transport *Ex Parte* Letter) (asserting that only separately deployed facilities should be considered); Letter from Jonathan D. Lee, Vice President – Regulatory Affairs, CompTel, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 12-13 (filed Feb. 6, 2003) (CompTel Feb. 6, 2003 Dark Fiber *Ex Parte* Letter) (asserting that only separately deployed facilities should be considered).

[1267] As the Commission explained in the *Pricing Flexibility Order*, the lease of facilities from the incumbent does not indicate the type of lasting competitive infrastructure that can provide competition. *See Pricing Flexibility Order*, 14 FCC Rcd at 14270-71, para. 88.

[1268] *Iowa Utils. Bd.*, 525 U.S. at 389 (discussing "self-provision" and looking for "the availability of elements *outside* the incumbent's network") (emphasis added).

[1269] For example, incumbent LECs claim that competing carriers have deployed transport networks that entirely "bypass" parts of the incumbent LECs' networks. *See* BOC UNE Fact Report 2002 at III-4; *WorldCom v. FCC*, 238 F.3d. 440, 462 (D.C. Cir. 2001) (quoting *Pricing Flexibility Order*, 14 FCC Rcd at 14275-76, para. 95).

addressable market;[1270] and existing facilities-based competition. We believe that it is important to delegate this limited additional analysis because states are best positioned to analyze the characteristics of local markets where national aggregation does not appear possible.[1271]

411. In other instances, by contrast, states may identify impairment on specific routes that facially satisfy the self-provisioning trigger, but where some significant barrier to entry exists such that deploying additional facilities is entirely foreclosed. For example, a state might find impairment, despite the facial satisfaction of this trigger, if a municipality has imposed a long-term moratorium on obtaining the necessary rights-of-way such that a competing carrier can not deploy new facilities. In these circumstances, a state commission may petition the Commission for a waiver of application of the trigger until the impairment to deployment identified by the state no longer exists. Nevertheless, as explained in the following Subpart, a state must make a finding of non-impairment under the wholesale availability trigger if two or more carriers make transport available at wholesale, pursuant to the trigger.

(ii) Competitive Wholesale Facilities Trigger

412. Because the record demonstrates that competing carriers can obtain transport facilities from alternative providers offering wholesale dark fiber, DS3, and DS1 capacity transport along certain routes, carriers are not impaired without access to unbundled transport along those routes at the capacities made available. However, the record before the Commission is not granular enough to determine along which routes multiple alternative providers are able and willing to offer service to other competing carriers on a point-to-point basis. Therefore, we delegate to state commissions the fact-finding role of identifying on which routes requesting carriers are not impaired without unbundled transport at a specific capacity when there is evidence that two or more competing carriers, not affiliated with each other or the incumbent LEC, offer wholesale transport service completing that route.[1272] This test ensures that transport can readily be obtained from a firm using facilities that are not provided by the incumbent LEC.

413. We choose two competitive wholesale providers as the appropriate trigger because it ensures the suitability of "multiple, competitive supply" and will provide an incentive for new transport facilities deployment while allowing competitive pressures from the wholesalers to control pricing and terms.[1273] A competing carrier that is considering whether to

[1270] The record indicates that competitive transport facilities are most likely to connect central offices with large addressable markets. *See* BOC UNE Fact Report 2002 at III-3, Table 3.

[1271] *See, e.g.*, Michigan Commission Comments at 4-5; Massachusetts Department Comments at 3; Kansas Commission Comments at 4; Ohio Commission Comments at 10; Oklahoma Commission Comments at 4.

[1272] Although wholesale providers may lease entire transport ring offerings, for purposes of this trigger, a wholesale offering must be made available on a route-specific basis. *See* El Paso Feb. 5, 2003 Dark Fiber *Ex Parte* Letter at 5-6.

[1273] *USTA*, 290 F.3d at 427. Although Allegiance initially advocated the use of the Department of Justice market concentration guidelines, Allegiance asserts that two is an appropriate number of competitive wholesale providers on a route to identify non-impairment. Allegiance Jan. 30, 2003 Transport *Ex Parte* Letter at 1-4. We also find, given the way we have developed our triggers for transport, that setting the number of wholesale providers at three (continued....)

deploy transport facilities for the purpose of providing a wholesale offering is likely to be encouraged to deploy if its deployment will eliminate transport priced at TELRIC, which is often lower than incumbent LEC tariffed special access rates. Because we want to provide an incentive for competing carriers to deploy facilities, we avoid setting the required number of wholesalers as high as competing carriers suggest.[1274] Finally, we find that two wholesale providers, in addition to the incumbent LEC, should provide competitive pressures on pricing and terms and avoid "umbrella pricing" while providing incentives to deploy.[1275]

414. The competitive transport providers identified to satisfy this trigger must be unaffiliated with the incumbent LEC and each other.[1276] This requires that separate facilities are counted and avoids counting as a true alternative a provider that uses the lit transport facilities of the incumbent LEC or another alternative provider to provide service on that route. We find, however, that when a wholesale transport provider has obtained dark fiber from another carrier, including unbundled dark fiber from the incumbent LEC, and activates and operates that fiber with its own optronic equipment, that facility should be counted as a separate, unaffiliated facility.[1277] Additionally, the competitive transport providers must be operationally ready and

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or more would conflict with our determination that three self-provisioned facilities on a route indicates a lack of impairment on that route. *See supra* para. 407.

[1274] *See, e.g.*, WorldCom Reply at 127; ALTS/CompTel Oct. 8, 2002 Transport *Ex Parte* Letter at 2; El Paso Feb. 5, 2003 Transport *Ex Parte* Letter at 2-4. If we established a higher number than two as the threshold, such as four, to ensure the market is fully competitive, the first potential entrant might be deterred from deploying facilities by the prospect of facing competition from providers using unbundled transport for a long time – until three other competitors deployed facilities. With a threshold of two, the first entrant to deploy and wholesale facilities need only wait until one other entrant deploys and wholesales facilities before a finding of no impairment is warranted and they no longer face competition with transport priced at TELRIC.

[1275] Umbrella pricing occurs when a smaller market entrant is able to price its product or service immediately below the price of the larger market leader, but does not have sufficient market presence to affect the market leader's price. *See* CARLTON & PERLOFF, MODERN INDUSTRIAL ORGANIZATION 111 (3d ed.) (stating, "[i]t is often asserted that a dominant firm provides a *pricing umbrella* for smaller firms. As long as competing firms price at or below the level of the dominant firm, they will be able to find buyers."). We find that the risk of umbrella pricing is high when only one wholesale competitor enters the market in competition with the incumbent LEC, but is substantially reduced when two or more competitors provide wholesale transport in competition with the market leader, the incumbent LEC. *See also* Allegiance Jan. 30, 2003 Transport *Ex Parte* Letter at 4 (stating, "the choice of two non-ILEC wholesalers . . . avoids the extreme inefficiencies created by a duopoly market structure."). We therefore recognize the balance between encouraging facilities deployment and ensuring that competitors have access to facilities on a competitive basis.

[1276] We use the term affiliated and affiliate as the Act defines "affiliate." Section 3 of the Act defines the term "affiliate" as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent." 47 U.S.C. § 153(1).

[1277] Competing carriers that offer wholesale DS1 and DS3 transport using unbundled dark fiber will be counted for purposes of this test if they activate and operate the unbundled dark fiber with their own electronic equipment. However, the availability of unbundled dark fiber will not affect the application of this wholesale availability trigger as applied to dark fiber. Thus, a provider of wholesale dark fiber must own the fiber it wholesales. *See* Allegiance Jan. 30, 2003 Transport *Ex Parte* Letter at 3 (stating that the Commission should consider as viable wholesale (continued....)

willing to provide the particular capacity transport on a wholesale basis along the specific route.[1278] This safeguards against counting alternative fiber providers that may offer service, but do not yet have their facilities terminated or collocated in the incumbent LEC central office, or are otherwise unable immediately to provision service along the route.[1279] Moreover, the quality and terms of the competing carriers' wholesale offerings need not include the full panoply of services offered by incumbent LECs.[1280] Finally, for purposes of this test, the competitive transport provider must make the specific capacity transport services widely available. These provisions avoid counting alternative transport facilities owned by competing carriers not willing to offer capacity on their network on a wholesale basis.[1281]

415. We find that states should not evaluate any other factors, such as the financial stability or well-being of the competitive transport providers.[1282] Bankrupt competing carriers in Chapter 11 are often still providing service and, regardless of their financial status, the physical assets remain and may be bought by someone else and remain in service.[1283] Requiring states to determine the financial ability of competitive wholesale providers to provide service in the future could hamper economic recovery efforts of companies in financial distress. The key principle is

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alternatives competing carriers that obtain dark fiber on a long-term basis and activate that fiber with their own electronics); ALTS/CompTel Oct. 28, 2002 Transport *Ex Parte* Letter at 3 (stating that, for a route-specific test, "a facilities-based transport provider must offer transport capacity via fiber it either owns, or else leases from a third party via long term lease.").

[1278] *See* ALTS/CompTel Oct. 8, 2002 Transport *Ex Parte* Letter, Attach. at 3; Cbeyond Nov. 22, 2002 *Ex Parte* Letter at 2 (asserting that the Commission should ensure that competitive fiber providers are able to extend facilities into incumbent central offices and establish a presence in that central office that will permit ready and economical access to competing carriers). States also shall consider carriers that utilize intermodal transport facilities to provide wholesale transport capacity to the extent that they satisfy the requirements of this trigger.

[1279] We believe that a connection such as a cross-connect between collocations, or the ability to connect to a competitive fiber termination panel, similar to the CATT tariffed offering by Verizon, qualifies as ready to provision, so long as other carriers can obtain such a connection in a reasonable and nondiscriminatory manner. *See* ALTS/CompTel Oct. 8, 2002 Transport *Ex Parte* Letter, Attach. at 3 (advocating that economical and reliable access to competitive transport facilities should be a prerequisite of a route-by-route analysis); MFN Riordan Aff. at paras. 6-11 (describing Verizon's CATT fiber termination offering). This ensures that the wholesale trigger counts only wholesale offerings that are readily available. The Commission's collocation rules provide clarity on nondiscriminatory principles including the right to interconnect with other collocated competing carriers by cross-connection. *See generally Collocation Remand Order*, 16 FCC Rcd 15435.

[1280] We expect that providers of alternative transport will have an incentive to offer competitive terms with those of the incumbent LEC.

[1281] We note that carriers with transport facilities on a route not willing to provide wholesale services will be counted in the self-provisioning trigger described above.

[1282] *See* ALTS/CompTel Oct. 8, 2002 Transport *Ex Parte* Letter, Attach. at 3.

[1283] UNE Fact Rebuttal Report at 20-24, 41-43.

that they are currently offering and able to provide service.[1284] Another factor that states should not consider is whether the incumbent LEC allows multi-vendor end-to-end testing of circuits.[1285] Our trigger looks at the entire requested route and so avoids the pitfalls of multi-span patchwork problems. Finally, we do not expect states to consider the economic feasibility of competitive offerings.[1286] Again, this type of review would engender great uncertainty and variability from state to state. We find that economic forces will act to constrain uneconomic wholesale offerings. Moreover, an offering that may not be feasible for one competing carrier may be feasible for another.

416. *Specific Application to Different Capacities.* Unlike the wholesale availability tests for lit DS1 and DS3 transport, unbundled dark fiber from the incumbent LEC is not to be considered a wholesale alternative for dark fiber. States may ensure that wholesalers of dark fiber have sufficient quantities of dark fiber available to satisfy current demand.[1287]

(iii) State Action Under Both Triggers

417. We expect states to complete their initial reviews applying the triggers and other analysis discussed above within nine months from the effective date of this Order. Unbundled DS1, DS3, and dark fiber transport will remain available in all locations until the state commission determines that unbundled transport at particular capacities in specific locations is no longer required. States that conduct this review need only address routes for which there is relevant evidence in the proceeding that the route satisfies one of the triggers or the potential deployment analysis specified in this Part.[1288] To the extent that a state commission does not complete its proceedings in this nine month period,[1289] aggrieved parties may file a petition with this Commission demonstrating a state's failure to act pursuant to the procedures we outline today.[1290] We expect that states will require an appropriate period for competitive LECs to transition from any unbundled transport that the state finds should no longer be unbundled.

[1284] For instance, states should review whether the competitive transport provider has filed a notice to terminate service along the route in question.

[1285] *See* ALTS/CompTel Oct. 8, 2002 Transport *Ex Parte* Letter, Attach. at 3.

[1286] ALTS/CompTel Oct. 28, 2002 Transport *Ex Parte* Letter at 1-2 (asserting that alternative transport must be economically feasible).

[1287] *See* Allegiance Jan. 30, 2003 Transport *Ex Parte* Letter at 3; Conversent Feb. 5, 2003 *Ex Parte* Letter at 1.

[1288] *See supra* para. 410.

[1289] By "complete," we mean that a state commission, upon receiving sufficient evidence, has an affirmative obligation to review the relevant evidence associated with any route submitted by an interested party, and to apply the trigger and any other analysis specified in this Part to such evidence.

[1290] As discussed above, if a state fails to act, we set forth procedures for the Commission to step into the role of the state. *See supra* Part V.E (discussing the role of the states).

418. After completion of their initial reviews, we expect state commissions to conduct further granular reviews, pursuant to the procedures the state commissions adopt, to identify additional routes that satisfy the triggers. Such proceedings shall be completed within six months of the filing of a petition or other pleading submitted in accordance with the prescribed state commission procedures.[1291]

D. Local Circuit Switching

1. Summary

419. Pursuant to the approach set forth in the *Triennial Review NPRM*,[1292] the Commission adopts in this Order a more granular analysis for access to unbundled incumbent LEC local circuit switching. Specifically, based on the evidence in the record, we make the following determinations:

- *Local Circuit Switches Serving DS1 Capacity and Higher Enterprise Customers.* Based on evidence of competing carriers' widespread switch deployment to provide DS1 and above capacity service, we find on a national level that requesting carriers are not impaired without access to unbundled local circuit switching when serving DS1 enterprise customers. The states may rebut this finding by petitioning this Commission based on a granular review of specifically enumerated operational and economic criteria regarding facilities-based entry in specific markets.

- *Local Circuit Switches Serving Mass Market Customers.* We find on a national level that requesting carriers are impaired without access to unbundled local circuit switching when serving mass market customers. This finding is subject to a more granular review by the states pursuant to specifically enumerated triggers and other operational and economic criteria regarding facilities-based entry in specific geographic markets.[1293]

[1291] Subsequent to the initial review, states have the flexibility to adopt reasonable and timely procedures for the periodic collection and evaluation of evidence indicating the satisfaction of the transport triggers on additional routes to remove unbundling obligations. For example, a state may decide to include self-reporting information regarding alternative transport deployment in an annual or semi-annual report, either as an independent obligation or as part of the competitive carriers' periodic filing obligations. Alternatively, a state may decide to accept evidence of alternative deployment through petitions filed during prescribed filing windows or through rulemaking proceedings. Regardless of the procedures adopted, however, states that conduct further reviews must complete their evaluation of the evidence and reach a determination within six months of the filing of a petition or other pleading filed pursuant to the state procedures.

[1292] *Triennial Review NPRM*, 16 FCC Rcd at 22806, para. 55.

[1293] *USTA*, 290 F.3d at 422. By establishing an overarching national framework while at the same time developing precisely the type of granularity test called for by the D.C. Circuit in *USTA*, our switching approach allows for the Commission to take advantage of, and build on, the wealth of knowledge and expertise within a national regime for local telephone competition consistent with the federal-state partnership envisioned by the Congress in the Act.

420. We organize our analysis of local circuit switching based on the customer market served and the corresponding loop capacity levels used to serve each customer market. These categories are reliable indicators of the ability of a requesting carrier to utilize self-deployed switches. Our analysis focuses on, among other things, the different processes for transferring loops from incumbent LEC switches to competing carriers' switches to serve enterprise customers and mass market customers.[1294]

421. In conducting our impairment analyses, we consider marketplace evidence of competitive LEC deployment of switches to provide competing local services to enterprise or mass market customers. Our impairment analysis with respect to DS1 enterprise customers (*i.e.*, customers that are or could be served by competitors using DS1 capacity and above facilities) recognizes the significant existing deployment of competitive LEC switches to serve such customers.[1295] The evidence in our record establishes that, in most areas, competitive LECs can overcome barriers to serving enterprise customers economically using their own switching facilities in combination with unbundled loops (or loop facilities). The facilities used to provide DS1 capacity or above services to enterprise customers typically are not pre-wired to incumbent LEC switches, allowing competing carriers to avoid the costs and service disruptions associated with "hot cuts" – the manual process by which customer lines are migrated to competitor switches. Enterprise customers also generally offer increased revenue opportunities and are more willing to enter long-term contracts, allowing competitive LECs a greater ability to recover the nonrecurring costs associated with providing service using their own switches. Accordingly, we make a national finding that competitors are not impaired without unbundled access to incumbent LEC local circuit switching when serving DS1 enterprise customers.[1296] We recognize, however, that special circumstances may create impairment without access to

[1294] *See infra* Parts VI.D.5-6. As discussed below, we refer to this process of transferring, or cutting over, the loop as a "hot cut." Specifically, a hot cut refers to a process requiring incumbent LEC technicians to disconnect manually the customer's loop, which was hardwired to the incumbent LEC switch, and physically re-wire it to the competitive LEC switch, while simultaneously reassigning (*i.e.*, porting) the customer's original telephone number from the incumbent LEC switch to the competitive LEC switch. *See generally* Letter from Ron Gavillet, BiznessOnline.Com, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 7 (filed Feb. 14, 2003) (BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter).

[1295] Specifically, the record reflects that competing carriers have deployed as much as 1,300 local circuit switches and are primarily utilizing these switches to serve enterprise customers. AT&T Comments at 208-09; BOC UNE Fact Report 2002 at II-1; *see also* Letter from Michael A. Peterson, Executive Vice President – Chief Operating Officer and Chief Financial Officer, ATX, to Hon. Kevin Martin, Commissioner, FCC, CC Docket No. 01-338 at 1-2, 4 (filed Jan. 22, 2003) (ATX Jan. 22, 2003 *Ex Parte* Letter) (stating that "ATX has learned (as have most other CLECs that ATX is familiar with) that local switching facilities can be used to compete for larger customers"). ATX states that, to its knowledge, "virtually all CLEC switches are today focused on serving DS1 customers." *Id.* at 3.

[1296] We define "DS1 enterprise customers" for our impairment analysis as customers for which it is economically feasible for a competing carrier to provide voice service with its own switch using a DS1 or above loop. We find that this includes all customers that are served by the competing carrier using a DS1 or above loop. After the state commission conducts a "multiline DS0 cut-off" inquiry, it includes customers who could be served by the competing carrier using a DS1 or above loop. *See infra* para. 497.

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unbundled local circuit switching to serve enterprise customers in particular markets. We thus allow states 90 days to petition the Commission to rebut the national finding in individual markets based on specific operational evidence regarding loop, collocation, and transport provisioning and specific economic evidence including the actual deployment of competitive switches and competitors' costs in serving enterprise customers.[1297]

422. In contrast, the record indicates that there has been only minimal deployment of competitive LEC-owned switches to serve mass market customers. The characteristics of the mass market give rise to significant barriers to competitive LECs' use of self-provisioned switching to serve mass market customers. Inherent difficulties arise from the incumbent LEC hot cut process for transferring DS0 loops, typically used to serve mass market customers, to competing carriers' switches. These hurdles include increased costs due to non-recurring charges and high customer churn rates, service disruptions, and incumbent LECs' inability to handle a sufficient volume of hot cuts. Accordingly, based on those barriers, we make a national finding that competitive carriers providing service to mass market customers are impaired without unbundled access to local circuit switching.

423. While our analysis could end with this conclusion, we nevertheless put in place concrete steps to mitigate these causes of impairment. Specifically, we ask the state commissions, within nine months of the effective date of this Order, to approve and implement a batch cut migration process – a seamless, low-cost process for transferring large volumes of mass market customers – or to issue detailed findings that a batch cut process is unnecessary in a particular market because incumbent LEC hot cut processes do not give rise to impairment in that market. We believe that the institution of such processes could significantly reduce or eliminate the causes of impairment we identify, thereby enabling significantly greater facilities-based competition in mass market switching.

424. While the record establishes that, on a national level, requesting carriers are impaired without access to unbundled local circuit switching when serving mass market customers, we institute a more granular market-by-market analysis of impairment on a going forward basis. Specifically, we provide enumerated impairment triggers and criteria for the states to apply in individual markets. In conducting such an analysis, the states shall apply specific triggers to evaluate impairment in the specific market and, if the triggers are not satisfied, examine evidence of the potential for switch self-provisioning that takes into account current switch deployment, revenues, costs, processes, network architecture, and other factors in the market under consideration.[1298] If, after applying the triggers and examining evidence of switch deployment and other factors, a state commission has made a finding of impairment in

[1297] Most state commenters in this proceeding requested such a role. *See, e.g.*, NARUC Reply at 1-6.

[1298] As discussed below, a state must also examine factors including incumbent LEC performance in fulfilling unbundling, collocation, and other statutory obligations, difficulties in performing customer migrations between competitive LECs, difficulties in performing collocation cross-connects between competing carriers, and the significant cost disadvantages competitive carriers face in obtaining access to the loop and backhauling the circuit to their own switches. *See infra* paras. 456, 477-478.

any particular market, it must consider whether this impairment could be addressed by a narrower rule making unbundled switching temporarily available for a minimum of 90 days for customer acquisition purposes, rather than making unbundled switching available for an indefinite period of time.[1299] Finally, we ask the state commissions to conduct periodic reviews of impairment for unbundled local circuit switching.

425. We have asked the state commissions to take on these roles, because, as explained below, they require analysis of geographic and market specific factors.[1300] For example, hot cut processes, as well as recurring and non-recurring charges for critical UNE inputs such as collocation, loops, and transport, often vary substantially between states.[1301] Within a state UNE loop rates can vary tremendously among zones.[1302] Revenue potential also varies dramatically, as retail rates can vary between states, by the type of customer, and within the state.[1303] State

[1299] We refer to this as "rolling use" because a competitive LEC gets access to unbundled local circuit switching for each customer acquisition for some defined period of time, and, at the end of this period, it must upgrade that customer to its own facilities.

[1300] Chairman Powell maintains that our switching analysis is flawed because, he claims, the economic criteria we set forth might be applied by the states in "divergent and subjective ways." *Chairman Powell Statement* at 8; *see also id.* at 8 n.20 (citing the "subjective, multi-factor impairment [switching] analysis"). This criticism is flatly inconsistent with the high-capacity loop and transport sections, which Chairman Powell proposed and the Commission unanimously approved. Just as in those sections, states must first employ triggers that examine actual deployment; only if the triggers are not met must the states apply criteria to assess whether entry is uneconomic. The criteria we provide for switching are no more "subjective" or susceptible to "divergent" application than are the criteria we provide for high-cap loops and transport. With respect to loop facilities, for example, the state must examine a range of factors to determine whether "competitive LECs could economically deploy loop transmission facilities at that location at the relevant capacity level." *See supra* para. 335. These factors include "evidence of alternative loop deployment at that location; local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber or copper; the cost of equipment needed for transmission; installation and other necessary costs involved in setting service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; building access restrictions/costs; [and] availability of similar quality/reliability alternative transmission technologies at that particular location." *Id.*; *see also id.* at para 410 (listing similar criteria for transport). The Commission provides no guidance on how these various factors are to be assessed and weighed. In contrast, we provide considerable guidance on how to assess and weigh the factors for switching. For example, we make clear that evidence of enterprise switch deployment must be given "substantial weight" and the existence of a single competitively deployed mass market switch must be given "particularly substantial weight." *Id.* at para. 517.

[1301] According to one source, recurring loop rates can vary from $2.59 (Illinois) to $66.31 (Nevada), with a national average of $12.98. Billy Jack Gregg, *A Survey of Unbundled Network Element Prices in the United States* (Updated Jan. 1, 2003), <http://www.nrri.ohio-state.edu/documents/unepricesl03.pdf> and <http://www.nrri.ohio-state.edu/documents/unepricesmatrixl03_001.pdf>.

[1302] Many states have defined at least three geographic zones for the pricing of unbundled loops pursuant to section 252(d)(1) of the Act. 47 C.F.R. § 51.507(f) ("State commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences.").

[1303] For a sample of 95 urban areas, residential rates for flat-rate service ranged from $14.68 (Phillipsburg, New Jersey) to $30.87 (West Memphis, Arkansas), including surcharges and taxes. Rates also sometimes vary substantially within a state, such as in California, where the residential rate is $16.39 in Salinas and $25.18 in Long Beach. *FCC Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service*, July 2002 (continued....)

commissions, which have traditionally exercised jurisdiction over intrastate telecommunications, have significantly closer proximity and more intimate knowledge of this information than does this Commission. They have greater knowledge, for instance, of how their intrastate retail rates are set, including where the implicit subsidies lie.[1304] They also have experience in making the kind of market-specific determinations we seek, from conducting interconnection arbitrations, making intrastate universal service decisions, and retail ratemaking.[1305] Accordingly, we believe that by setting specifically enumerated national triggers and criteria for impairment, which we explain below, to be applied by the state commissions, we can best provide the kind of granular impairment analysis called for by the statute.[1306]

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(*FCC Reference Book*), at Table 1.3. According to data in a separate report, rural rates can be higher (Georgia), lower (Connecticut), or the same (Massachusetts) as urban rates. TELECOMMUNICATIONS: FEDERAL AND STATE UNIVERSAL SERVICE PROGRAMS AND CHALLENGES TO FUNDING, U.S. General Accounting Office Report, GAO-02-187, Feb. 2002 (GAO Report on Universal Service), at Appendix IV. The report notes that states used different methods of setting rates, including cost-based prices (such that rural rates are higher), value-of-service pricing (such that rural rates tend to be lower), and geographic rate averaging (such that rates are constant). A nationwide examination of rates showed that there is no consistent relationship between residential rates and the cost of providing service. *Id.* at 14-15. Business customers generally pay higher rates than residential customers. Based on the survey of 95 urban areas, on average business rates are double residential rates, at $44.80 for a business purchasing a single line versus $21.84 for a residential line. *FCC Reference Book*, at Tables 1.1 and 1.8; GAO Report on Universal Service at 16 ("For every type of place, average single-line business rates are approximately twice as high as residential rates.").

[1304] The existence of such subsidies and their impact on revenue opportunities is taken into account in our impairment analysis. *See supra* Part V.B.3.

[1305] *See infra* para. 496.

[1306] *See USTA*, 290 F.3d at 422 (directing the Commission to approach the section 251(d)(2) impairment analysis by considering "market-specific variations in competitive impairment."). The BOCs and Chairman Powell have previously advocated giving the states precisely the kind of role we give the states in this item. Chairman Powell previously argued that this Commission should consider whether "regulators with closer proximity and more intimate knowledge of the availability of non-incumbent elements (*e.g.*, state commissioners) should take a leading role in that [impairment] analysis." *Statement of Commissioner Michael K. Powell, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 14 FCC Rcd 8694, 8721 (1999); *see also, e.g., id.* ("I am somewhat skeptical that the Commission can give meaningful effect to the requirement that we assess the availability of non-incumbent elements and related geographic variation for all areas and markets in the nation. Although I think the Commission could potentially conduct such a sweeping assessment, at least in theory, that project would likely necessitate an exhaustive, fact-intensive inquiry to which I fear the Commission would devote inadequate time and resources."); *Statement of Commissioner Michael K. Powell, Dissenting in Part, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 16 FCC Rcd 1732, 1733 n.6 (1999) ("A preferable option would have been to provide some time-limited ability for state commissions that perceive their markets are different to remove elements from the national list . . ."). For their part, the BOCs have consistently advocated for a significant state role in analyzing impairment. In the UNE Remand proceeding, for example, U S WEST argued that "[a]s Commissioner Powell has observed, state commissions have 'closer proximity and more intimate knowledge' of these facts. They would thus be ideally positioned to track such localized data on a current basis and to determine where the Commission's unbundling presumptions would or would not apply." U S WEST Comments at 30, CC Docket No. 96-98 (May 26, 1999) (citation omitted). (continued....)

426. This Commission will provide guidance to and exercise oversight of state commissions as they make these determinations. A party aggrieved by a state commission determination may seek a declaratory ruling from this Commission, and state commissions or other parties may at any time seek a declaratory ruling where necessary to remove uncertainty or eliminate a controversy.[1307] In addition, as the Commission articulated in the Local Competition Report and Order, an aggrieved party can always file a section 208 complaint with this Commission, alleging that the incumbent LEC or requesting carrier has failed to comply with the requirements of sections 251 and 252.[1308]

427. At the same time, we anticipate, and several parties have explicitly advocated, that state commission unbundling decisions will be incorporated into the arbitration agreement process; indeed, at least one party has argued that a failure to incorporate the unbundling analysis into the arbitration process would be legally suspect.[1309] Specifically, the Act provides that state commissions will resolve issues related to unbundling in conducting arbitrations between carriers and approving interconnection agreements and statements of generally available terms pursuant to the Act and regulations promulgated by this Commission. Under section 252,

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BellSouth asserted that "[i]t is imperative that the state commissions play an important part in defining network elements due to their knowledge of local market conditions and their extensive experience in making factual determinations about local competition issues." Letter from Robert T. Blau, Vice President – Executive and Federal Regulatory Affairs, BellSouth to Magalie Roman Salas, Secretary, FCC, CC Docket No. 96-98 (filed Feb. 11, 1999). GTE's general counsel, who is now general counsel for Verizon, stated that "because actual facilities deployment by CLECs varies by geographic area, type of customer and type of service, the Commission cannot adopt a single, 'one size fits all' national list of UNEs merely for the sake of simplicity and uniformity." Letter from William P. Barr, General Counsel, GTE Service Corporation, to Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC, CC Docket No. 96-98 at 4 (filed March 1, 1999) (GTE Mar. 1, 1999 *Ex Parte* Letter). According to Verizon's general counsel, "[t]he rule must be tailored to accommodate variations in the facilities-based competition that already exists and that is currently possible through the use of available substitutes." *Id.* He also stated that "the Act clearly establishes a mechanism – individualized arbitrations conducted by state commissions – to take such variations into account. Any departure by the Commission from the localized determination of what elements are essential for unbundling, which the Act's arbitration process enables, must be strictly justified and narrowly tailored." *Id.* SBC agreed and argued that "[s]tates may administer the national standards set by the Commission (*e.g.*, by applying the standards to specific geographic areas or making specific factual determinations) . . . ." SBC Comments at 18, CC Docket No. 96-98 (filed May 26, 1999).

[1307] *Local Competition Order*, 11 FCC Rcd at 15563-64, para. 125.

[1308] *Id.* at 15564, paras. 127-28. Indeed, we do not believe we could prohibit such petitions and complaints, which are statutory, from being filed at the Commission.

[1309] *See* GTE Mar. 1, 1999 *Ex Parte* Letter at 4 ("It is simply not rational to attempt to determine what is 'needed,' or what will 'impair' a CLEC's ability to compete, on a single, nationwide basis and without taking into account the particular variations associated with different geographic areas and types of service. And the Act clearly establishes a mechanism – individualized arbitrations conducted by state commissions – to take such variations into account. Any departure by the Commission from the localized determination of what elements are essential for unbundling, which the Act's arbitration process enables, must be strictly justified and narrowly tailored.").

parties wishing to appeal such determinations may do so in federal district court.[1310] Accordingly, there is no exclusive right of appeal to this Commission.[1311]

428. Incumbent LECs argue that the Commission may not "punt" unbundling decisions to the states.[1312] They argue that, in those instances where impairment analysis requires a more granular approach, the Commission should establish "objective, carefully defined criteria for determining where unbundling is (and is not) appropriate."[1313] We agree. As explained in detail below, we do establish 'objective, carefully defined criteria for determining where unbundling is (and is not) appropriate.'[1314] These criteria – including our triggers – ensure that states undertake the tasks we give them consistently with the statute's substantive standards and stay within the parameters of federally established guidelines.[1315] Accordingly, we are not 'punting' unbundling decisions to the states.

[1310] *See* 47 U.S.C. § 252(e)(6).

[1311] Chairman Powell finds fault with the fact that we do not provide for exclusive appeals of state commission switching decisions to this Commission. *Chairman Powell Statement* at 8. However, the suggestion that we should bar court review of state commission switching decisions seems unnecessary and potentially conflicts with the statute. *See Local Competition Order*, 11 FCC Rcd at 15563, para. 124 ("Pursuant to section 252(e)(6), a party aggrieved by a state commission arbitration determination under section 252 has the right to bring an action in federal district court."); 47 U.S.C. § 252(e)(6) ("In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 of this title and this section.").

[1312] Letter from Herschel L. Abbott, Jr., Vice President – Government Affairs, BellSouth *et al.*, to Michael K. Powell, Chairman, FCC at 2, *in* Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Nov. 19, 2002) (RBOC Joint Nov. 19, 2002 *Ex Parte* Letter).

[1313] RBOC Joint Nov. 19, 2002 *Ex Parte* Letter at 4.

[1314] *See, e.g., infra* paras. 493-524.

[1315] Similarly, contrary to the dissents' assertions, we did not unlawfully delegate authority to the states. The dissents' assertions that we have failed to provide state commissions sufficient guidance in their decisionmaking is inconsistent and difficult to understand, *see Chairman Powell Statement* at 5-9; *Commissioner Abernathy Statement* at 7-8, as our approach is essentially identical to our treatment of dedicated transport and loops, which Chairman Powell proposed and both he and Commissioner Abernathy fully support. *See* Parts VI.C.4.d (transport), VI.A.4.b.(ii)(d) (loops). More importantly, the assertion is wrong.

For enterprise switches, we have made a nationwide finding of no impairment, which states can displace only by filing a petition for waiver with this Commission based on explicitly enumerated factors. For mass market switches, we make a nationwide finding of impairment and require the states to conduct a more granular analysis by applying mandatory and exhaustive federal triggers. Specifically, where a state commission determines that there are three or more carriers, unaffiliated with either the incumbent LEC or each other, that are serving mass market customers in a particular market using self-provisioned switches, the state must find no impairment in that market unless it petitions this Commission for a waiver of the trigger. A state must also find no impairment when it determines that there are two or more competitive wholesale suppliers of unbundled local circuit switching, unaffiliated with the incumbent or each other. Indeed it is exactly these kind of factors that Chairman Powell has (continued....)

2. Background

429. We note that an important function of the local circuit switch is as a means of accessing the local loop.[1316] Competitive LECs can use their own switches to provide services only by gaining access to customers' loop facilities, which predominately, if not exclusively, are provided by the incumbent LEC. Although the record indicates that competitors can deploy duplicate switches capable of serving all customer classes, without the ability to combine those switches with customers' loops in an economic manner, competitors remain impaired in their ability to provide service. Accordingly, it is critical to consider competing carriers' ability to have customers' loops connected to their switches in a reasonable and timely manner.

430. In addition, incumbent LEC local circuit switching performs several specific functions, including connecting loop facilities to the network, switching loops to other lines and trunks, and providing service capabilities to customers, such as dial tone and vertical features. In prior orders addressing the unbundling of network elements, the Commission concluded that incumbent LECs must provide access to unbundled local switching and defined the switching element to include "line-side facilities," "trunk-side facilities," and all the features, functions, and capabilities of the switch.[1317] In the *UNE Remand Order*, the Commission generally found that for the largest 50 MSAs in the country, competitors were impaired without access to switching only for serving mass market customers.[1318] Noting that commenters had not identified the characteristics that distinguish the mass market from medium and large business customers, the Commission found that a significant portion of the mass market could be identified as customers with no more than four access lines. This four-line limit would include nearly all

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advocated be used in the past. *See Commissioner Powell Second NPRM Statement* at 3 ("Further, to the extent other facilities-based competitors do not use elements of the incumbent's network, the presence of those competitors in a particular market should be probative in evaluating whether other firms would be impaired in their ability to provide service in that market absent mandated access to the incumbent's elements. It follows directly, then, that assessments of whether an element is necessary to provide service or whether failing to mandate access to that element would impair a new entrant's ability to provides service will vary significantly among different markets, states, and regions."). Where neither of these two triggers is satisfied, we establish specific and mandatory criteria that state commissions must apply to determine whether a market *allows* self-provisioning of switching. It is difficult to see how we could provide more guidance in this analysis. Indeed, we provide considerably more guidance than we do for the states' analysis of dedicated transport, which again both the dissenters voted to approve.

[1316] As discussed more fully in our discussion above regarding local loop unbundling, no party disputes that competitors need access to incumbent LECs' loops to compete in the mass market. *See infra* Part VI.A.4.a.

[1317] *See Local Competition Order*, 11 FCC Rcd at 15706, para. 412. The line-side facilities include the connection between a loop termination at, for example, a main distribution frame, and a switch line card. Trunk-side facilities include the connection between, for example, trunk termination at a trunk-side cross-connect panel and a trunk card.

[1318] *UNE Remand Order*, 15 FCC Rcd at 3821-22, para. 274.

residential users and those business users that, because they had fewer than four access lines, were more similar to residential users than they were to large businesses.[1319]

431. Although in the past the Commission's rules required incumbent LECs to provide switching unbundled from other network elements, competitors widely use unbundled local circuit switching in combination with incumbent LEC loops and shared transport.[1320] This combination has been primarily used to serve mass market customers, and within that market, depending on the state, a varying mix of residential and business customers.[1321] In contrast, new entrants that do not rely on incumbent LECs for switching generally obtain UNE-L from incumbent LECs and connect these loops to their switches.[1322]

432. In the *Triennial Review NPRM*, the Commission sought comment on whether, in light of changed circumstances, it should retain these unbundling requirements and if so, whether it should modify these requirements or the existing definition for unbundled local circuit switching.[1323] The Commission also sought comment on the benefits and burdens resulting from continuing unbundled switching and whether there are any alternative, less burdensome options to achieve the goals of the Act.[1324]

3. Definition of Unbundled Local Circuit Switching Element

433. We define local circuit switching to encompass line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch.[1325] The features, functions, and

[1319] *UNE Remand Order*, 15 FCC Rcd at 3829, paras. 292-93. Specifically, in density zone one of the top 50 MSAs, incumbent LECs that make the EEL combination available were not obligated to provide unbundled local circuit switching to requesting carriers for serving customers with four or more lines. *Id.* at 3822-31, paras. 276-78.

[1320] Letter from Joan Marsh, Director, Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1 (filed Feb. 13, 2003) (AT&T Feb. 13, 2003 *Ex Parte* Letter).

[1321] The evidence in the record demonstrates that, by the end of 2002, more than ten million residential and small business lines were being served by competitive LECs using unbundled loops combined with unbundled local circuit switching. PACE Jan. 14, 2003 *Ex Parte* Letter at 2; *see also* George S. Ford, Ph.D, *UNE-Platform, Impairment and Natural Monopoly: Bell Company Estimates of Cost Disparities and Their Consequences* at 1, *in* Letter from Christopher J. Wright, Counsel for Z-Tel, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Jan. 29, 2003) (Z-Tel Jan. 29, 2003 *Ex Parte* Letter). Unbundled local circuit switching usage is heavily concentrated in residential markets: approximately 70% of such lines serve residential customers. Verizon Unbundled Switching Study at 3. In contrast to the other three BOCs, Qwest claims that the majority of customers in its region that are served by unbundled loops combined with unbundled local circuit switching are business customers. *Id.* This appears, however, to be due to Qwest's offering of Centrex lines (typically used for business customers) on a unbundled basis. *See id.*

[1322] As discussed above, UNE-L describes an entry mode where a competitive LEC combines unbundled loops procured from the incumbent LEC with the competitive LEC's own switching and transport network.

[1323] *Triennial Review NPRM*, 16 FCC Rcd at 22806, para. 55.

[1324] *Id.*

[1325] 47 C.F.R. § 51.319(c)(1).

capabilities of the switch include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks. In addition, we conclude that the features, functions, and capabilities of the local circuit switching UNE also include the same basic capabilities that are available to the incumbent LEC's customers, such as telephone number, directory listing, dial tone, signaling, and access to 911, and, in the cases described below, operator services and directory assistance.[1326] The end office switching element includes all vertical features that the switch is capable of providing, including custom calling, CLASS features, and Centrex, as well as any technically feasible customized routing functions. Thus, when a requesting carrier purchases the unbundled local switching element, it obtains all switching features in a single element on a per-line basis. A requesting carrier will deploy individual vertical features on its customers' lines by designating, via an electronic ordering interface, features which the incumbent LEC must activate for particular customer lines.[1327]

434. We disagree with SBC that, to the extent that the switch is unbundled, the Commission should not unbundle access to switch routing tables.[1328] We include access to switch routing tables as a "function" of the switch because one of the most essential functions a switch performs is to provide routing information that sends a call to the appropriate destination.[1329] Requiring requesting carriers to engage in the potentially lengthy process of compiling traffic studies and populating routing tables with data in the incumbent LEC's switch would deny a requesting carrier meaningful access to unbundled local circuit switching to serve customers. Accordingly, consistent with the Commission's finding in the *Local Competition Third Order on Reconsideration*, we find no support for SBC's assertion that the switch as a

[1326] *See infra* Part VI.H.2. We readopt here the definitions of "operator services" and "directory assistance" set forth in the *UNE Remand Order*. *See UNE Remand Order*, 15 FCC Rcd at 3892, para. 443.

[1327] Because signaling networks are accessed via the switch, when carriers purchase switching as a UNE under the terms established in this Order, they shall continue to obtain access to the incumbent LEC's signaling networks. Moreover, because competitive carriers access call-related databases through signaling networks, in such instances where switching remains a UNE, competitive carriers purchasing the switching UNE shall have access to the call-related databases that the signaling networks permit carriers to access. *See infra* Parts VI.G, VI.H. Indeed, in light of the technical complexity associated with making the necessary network modifications to use an incumbent's switch in combination with competitively provided signaling networks and call-related databases, it seems unlikely that incumbents would prefer a different rule. We also note that, as described above, when a requesting carrier purchases unbundled access to the incumbent LEC's switching, the incumbent LEC must also offer unbundled access to operator service and directory assistance (OS/DA) services if the incumbent LEC does not provide customized routing.

[1328] SBC Comments at 79-81 (arguing that routing tables should not be unbundled because they contain confidential information).

[1329] *See In the Matter Of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460, 12486-87, para. 45 (1997) (*Local Competition Third Reconsideration Order*) (rejecting Ameritech's arguments that the Commission should not unbundle switch routing tables).

network element does not include access to the functionality provided by the incumbent LEC's routing tables.[1330]

4. Impairment Analysis

a. Evidence of Switch Deployment

435. In conducting our impairment analysis, we first consider evidence of competitive LEC circuit switch deployment in the relevant customer market. As indicated above, evidence of self-deployment is the best indicator of whether competitive LECs have been able to overcome barriers to entry with respect to facilities deployment.[1331] We find that the extent of competitive LEC circuit switch deployment varies tremendously in the enterprise and mass markets. In particular, we find that the record demonstrates significant nationwide deployment of switches by competitive providers to serve the enterprise market, but extremely limited deployment of competitive LEC circuit switches to serve the mass market.[1332]

436. There is no dispute in the record that competitive carriers have significantly increased their switch deployment and the number of lines they have served since 1999. Specifically, the record shows that competitive LEC switch deployment has almost doubled in two years, growing from 700 in 1999 to as much as 1,300 in 2001.[1333] In addition, more than 200

[1330] *Local Competition Third Reconsideration Order*, 12 FCC Rcd at 12487, para. 45. Because we continue to require access to routing tables to the extent we unbundle switching, we reject CompTel's argument that proprietary treatment prevents unbundling of such tables, and deny CompTel's petition for reconsideration of this conclusion. CompTel Feb. 17, 2000 Petition for Reconsideration at 17-18.

[1331] *See supra* Part V.B.1.d.

[1332] Chairman Powell offers contradictory arguments to support his opposition to unbundled switching. He first argues that there are sufficient switching alternatives already used to serve the mass market and then argues that such alternatives will not be deployed so long as unbundled switching is available. *Compare Chairman Powell Statement* at 11-12 with 13. Chairman Powell also suggests that any impairment determination for switching should be overridden by "the social and economic costs of unbundling switching" and thus there is no need even to conduct an impairment analysis. We disagree that this Commission should reach such a conclusion for the entire nation on the basis of the current record and believe an impairment analysis should be conducted. Moreover, Chairman Powell seems to focus only on the costs or benefits depending on whether or not he wants to retain access to an element. For example, with respect to line sharing he ignores the impairment standard and argues that line sharing should be retained because it "has generated clear and measurable benefits for consumers." *Chairman Powell Statement* at 1. With regard to switching he appears to disregard the "clear and measurable benefit to consumers" standard and instead focuses only on the costs of unbundling.

[1333] *See, e.g.*, BOC UNE Fact Report 2002 at II-1-II-2, II-4 (citing numbers based on Jan. 2002 LERG data and a New Paradigm Resources Group (NPRG) Report based on year-end 2001 data); *Local Competition Rules Must Encourage Investment and Job Growth in the Telecommunications Industry, in* Letter from Debbie Goldman, Research Economist, Research and Development Department, Communications Workers of America, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3 (filed Feb. 6, 2003) (CWA Feb. 6, 2003 *Ex Parte* Letter). For example, BellSouth estimates that there are 284 competitive voice switches deployed in its region. *See* Letter from Robert T. Blau, Vice President – Executive and Federal Regulatory Affairs, BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 02-33, Attach. at 10 (filed Jan. 24, 2003) (BellSouth Jan. 24, 2003 *Ex Parte* Letter). BellSouth estimates that, since the release of the *UNE Remand Order*, the number (continued....)

competitive LECs of all sizes have deployed local voice switches.[1334] The record also shows that vendors have produced switches (at declining prices) that are readily available for purchase.[1335] These switches are capable of serving significantly broader service areas than traditional incumbent LEC rate centers.[1336]

437. Incumbent LECs claim that the Commission should remove virtually all unbundling obligations regarding local switching on a national basis simply because competitive carriers have deployed 1,300 switches and are serving, according to the BOC UNE Fact Report 2002, over 16 million lines with those switches.[1337] This argument, however, ignores significant differences in the evidence concerning the enterprise market and mass market. The record is replete with evidence showing that competitive LECs are successfully using their own switches to serve large business customers that require high-capacity loops (which can be connected to

(Continued from previous page)

of competitive LEC switches in the Atlanta, Miami, and New Orleans MSAs have doubled. BellSouth Comments at 79. *But see* Letter from Kimberly Scardino, Senior Counsel, WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2 (filed Jan. 31, 2003) (WorldCom Jan. 31, 2003 Switching *Ex Parte* Letter). WorldCom argues that the record demonstrates that the 1,300 switches cited in the BOC UNE Fact Report are overstated by at least 33% once various inaccuracies are corrected. First, WorldCom states that the BOCs' estimate of competitive LEC switches includes "hundreds of switches" that can only be used to serve customers with high-capacity connections or PBXs. *Id.* at 2. Second, WorldCom states that the record demonstrates that the BOC UNE Fact Report overstates the number of switches deployed by four competitive LECs by 105 switches, or 8%. *Id.* at 2; Letter from Dana Frix, Counsel for Bridgecom and Metropolitan Telecommunications, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Feb. 5, 2003) (Bridgecom Feb. 5, 2003 *Ex Parte* Letter). WorldCom's criticisms of the BOCs' computations, however, would also apply to the 700 competitive switches the BOCs claim existed in 1999, resulting in a lower figure. WorldCom's filing does not set forth the effects its analysis would have on a year-to-year basis. Thus, even taken at face value, that filing fails to refute the central point that competitive switching deployment has risen dramatically.

[1334] BOC UNE Fact Report 2002 at II-1. The BOC calculation of 1,300 competitive LEC local circuit switches does not include packet switches. BOC UNE Fact Report 2002 at I-1 (stating that competitive LECs have deployed approximately 1,700 packet switches). We note that the record reflects that competitive LEC deployed packet switches are not used to serve analog mass market customers. *See, e.g.*, WorldCom Jan. 31, 2003 Switching *Ex Parte* Letter at 3 ("As WorldCom and other CLECs have demonstrated, the types of circuits provisioned and the equipment used to serve business customers are quite different than those used to serve analog residential and small business customers.").

[1335] Z-Tel Reply at 45.

[1336] BOC UNE Fact Report 2002 at II-1.

[1337] BellSouth Comments at 77-90; Qwest Comments at 20-31; Verizon Comments at 94-105. Qwest would eliminate the unbundled switching requirements in areas where multiple competitive LECs have deployed their own switches. *See* Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Feb. 13, 2003) (Qwest Feb. 13, 2003 *Ex Parte* Letter). For those LATAs where competitive LECs have deployed three or more local exchange voice switches, Qwest would have this Commission eliminate local circuit switching as a UNE. The Qwest proposal assumes that if three competitive LEC switches physically exist in a LATA, a wholesale market for local switching will develop, thereby enabling competitive LECs to refrain from deploying their own switches to serve customers.

competitive carrier switches with few of the obstacles that affect voice-grade loops).[1338] For example, BiznessOnline.Com cites data compiled by a coalition of competitive carriers which examined six representative markets and found that approximately 90 percent of the loops used by competitive carriers in these markets are DS1 capacity or higher loops.[1339] Specifically, according to the BOCs, competitive LECs are, as of year-end 2001, serving at least 13 million business lines over their own switches.[1340]

438. On the other hand, the record indicates that competitive LECs have self-deployed few local circuit switches to serve the mass market.[1341] The BOCs claim that, as of year-end 2001, approximately three million residential lines were served via competitive LEC switches.[1342] Others argue that this figure is significantly inflated.[1343] Even accepting that figure, however, it represents only a small percentage of the residential voice market. It amounts to less than three percent of the 112 million residential voice lines served by reporting incumbent LECs.[1344]

439. We find, moreover, that the BOCs' competitive LEC residential line count does not accurately depict the ability of an entering competitive LEC to overcome the barriers to entry generated by the hot cut process, and to serve the mass market using incumbent LEC loops. Specifically, many of the lines cited by the incumbents are served by carriers that, for one reason or another, are able to use their own loops. We have made detailed findings that competitors are

[1338] *See, e.g.*, ATX Jan. 22, 2003 *Ex Parte* Letter at 1-2, 4 (stating that competitive carriers are deploying switches to serve high volume customer locations that require DS1 or higher loop connectivity); WorldCom Jan. 31, 2003 Switching *Ex Parte* Letter at 1; AT&T *et al.* Feb. 3, 2003 *Ex Parte* Letter at 2. Since 1999, AT&T has continued to deploy circuit switches, but uses those switches almost exclusively to provide service to large businesses. AT&T Comments at 207-09, 219; AT&T Comments, Attach. A, Declaration of Ellyce Brenner (AT&T Brenner Decl.) at paras. 24-29; *see also* Z-Tel Comments at 48-50 ("The fact that some CLECs have deployed switches to serve the large business market or broadband market does not support the conclusion that CLECs are not impaired without access to unbundled switching to serve the mass market."); CompTel Comments at 62-63.

[1339] *See* BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 23 (citing CCG July 17, 2002 CLEC Survey *Ex Parte* Letter at Table 4).

[1340] BOC UNE Fact Report 2002 at II-1; Verizon Unbundled Switching Study at 3.

[1341] Letter from Marc A. Goldman, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2 (filed Nov. 13, 2002) (WorldCom Nov. 13, 2002 Unbundled Switching *Ex Parte* Letter).

[1342] BOC UNE Fact Report 2002 at II-1. This number may count only competitor lines in BOC-served territories, excluding the former GTE and SNET territories. BOC UNE Fact Report 2002 at II-4, Table 2.

[1343] BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 24; Z-Tel Reply at 41; AT&T Pfau Reply Decl. at paras. 28-31.

[1344] Industry Analysis and Technology Division, Wireline Competition Bureau, *Statistics of Communications Common Carriers September 2002 Report* at Table 2.6. The 112 million line figure represents the number of residential access lines for incumbent LECs that are required to report residential line figures to the Commission. *Id.*

impaired without access to incumbents' voice-grade local loops.[1345] Indeed, no party seriously contends that competitors should be required to self-deploy voice-grade loops.[1346] Thus, for the typical entrant, entry into the mass market will likely require access to the incumbent's loops, using the UNE-L strategy. As described below, this strategy raises operational and economic difficulties associated with accessing the loop.[1347] Indeed, as discussed above, a crucial function of the incumbent's local circuit switch is to provide a means of accessing the local loop.[1348]

440. Of the three million residential lines purportedly served by competitive switches at year-end 2001, approximately 2.2 million lines were served by cable telephony providers that bypass the incumbent LECs' networks entirely.[1349] Of the remaining access lines, Z-Tel offers evidence that most are served by large, independent incumbent LECs expanding into adjacent areas and by cable overbuilders.[1350] Z-Tel then estimates that only 200,000 mass market lines are served through UNE-L.[1351] Accordingly, much of the deployment relied upon by the BOCs in fact provides no evidence that competitors have successfully self-deployed switches as a means to access the incumbents' local loops, and have overcome the difficulties inherent in the hot cut process.[1352]

[1345] *See supra* Part VI.A.4.a.(v).(a).

[1346] Nor is there any wholesale market for such loops. *See* Access Integrated Networks Reply at 13; Allegiance Reply at 32-33; Covad Comments at 35-37; WorldCom Reply at 87.

[1347] *See supra* Part VI.D.6.a.(i).

[1348] *See supra* Part VI.D.2.

[1349] Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of December 31, 2001* (July 2002) at Table 5 (*Local Telephone Competition July 2002 Report*). As noted above, in mid-2002, cable telephony represented 2.6 million access lines, a 39% growth over the previous year. *Id.* at Table 5. Virtually all cable subscribers are mass market customers. *See* AT&T Comments at 224 (noting that "virtually no businesses subscribe to cable"); *see also* WorldCom Comments, Attach. A at 21 ("The cable industry provides service to almost no large business customers."), 37 ("Cable systems were for the most part built to serve residential and suburban areas."), 35 ("Cable television systems do not have the capacity to serve large numbers of business customers requiring DS-1 and higher-speed services."). The BOCs' arguments confirm that cable is primarily suited for service to residential customers, rather than to business customers. *See, e.g.*, BellSouth Comments at 38-41; SBC Comments at 53, 56; Verizon Comments at 12-14.

[1350] Z-Tel Reply at 43-46; *see also* WorldCom Reply at 143-44 ("Others such as TDS Telecom and ALLTEL are using their monopoly incumbent LEC base to expand into neighboring incumbent territories."). Z-Tel argues that the 1996 Act was not intended to foster local competition only by companies with the resources of cable or incumbent assets. Z-Tel Reply at 41-43. In addition, WorldCom argues that the small group of competitive LECs that have deployed switches serving the mass market, including the cable overbuilders, focus only on high-density areas and that their future expansion is in doubt. WorldCom Reply at 143-44.

[1351] Z-Tel Reply at 48-49.

[1352] We note, however, that some of this competitive deployment could be considered by states in determining whether the triggers discussed below have been satisfied in specific markets.

441. Additionally, the BOCs' suggestion that our analysis should treat switches deployed to serve large enterprise customers exactly the same as those deployed to serve mass market customers ignores the substantial modifications, and attendant costs, necessary to serve mass market customers with an enterprise switch. For example, in order to enable a switch serving large enterprise customers to serve mass market customers, competitive LECs may need to purchase additional analog equipment, acquire additional collocation space, and purchase additional cabling and power.[1353] Thus, while we agree that deployment of an enterprise switch is one piece of evidence relevant to the possibility of serving mass market customers – and, indeed, our impairment analysis takes such deployment into account, as discussed below – the fact remains that competitors using their own switches are currently serving extremely few mass market customers, through enterprise switches or otherwise.[1354]

442. Moreover, because no party offers evidence to show that third parties are currently offering switching on a wholesale basis – that is, selling switching capacity to third-party carriers to use in their offerings – we find that no significant third-party alternatives to unbundling local switching exist. Thus, we are unable to find that this evidence demonstrates that competitive LECs are able to economically enter the mass market without unbundled access to incumbent LEC circuit switching.

443. *Intermodal Switching Alternatives.* We determine that, although the existence of intermodal switching is a factor to consider in establishing our unbundling requirements, current evidence of deployment does not presently warrant a finding of no impairment with regard to local circuit switching.[1355] In particular, we determine that the limited use of intermodal circuit

[1353] *See, e.g.*, WorldCom Nov. 18, 2002 Transition to UNE-L *Ex Parte* Letter at 7. WorldCom states that in order to modify one of its switches in Manhattan serving enterprise customers to serve the mass market, WorldCom would be required to: purchase and install analog-capable equipment; increase the existing collocation cage space by 200 square feet; and pay Verizon for additional cabling and power. *Id.*

[1354] The dissents' assertion that enterprise switches should be considered in our mass market triggers ignores these substantial differences between the switches serving the different markets. *Chairman Powell Statement* at 6; *Commissioner Abernathy Statement* at 4-5. Most importantly, as explained above, unlike mass market loops, facilities used to serve enterprise customers are typically not pre-wired to incumbent LEC switches, allowing competing carriers to avoid the costs and service disruptions associated with hot cuts. The dissents also ignore the substantial differences in the mass market and the enterprise market – such as the fact that enterprise customers generally offer increased revenue opportunities and are more willing to enter long-term contracts than are mass market customers. These differences elsewhere led them to agree to "conduct separate . . . impairment analyses based on [among other things] two relevant customer classes – the mass market and the enterprise market." *See supra* para. 197. Our loops discussion, for example, conducts an entirely separate analysis and arrives at different conclusions for loops used to serve mass market customers than it does for loops used to serve enterprise customers. *See supra* Part VI.A. While we do not make the same distinction for transport, that is only because transport is used to aggregate significant volumes of traffic, and neither the economics nor the operations significantly differ for mass market and enterprise customers. As we indicate, however, that is an exception to the practice adopted by the Commission and explicitly approved by both the dissenters. *See supra* para. 197.

[1355] We note that our analysis of intermodal switching alternatives is informed by the evidence of intermodal alternatives relating to local loops. Because commenters devoted a significant amount of discussion to cable and wireless facilities as substitutes for local loops, evidence of intermodal alternatives is also discussed under our analysis of local loop unbundling.

switching alternatives for the mass market is insufficient for us to make a finding of no impairment in this market, especially since these intermodal alternatives are not generally available to new competitors.[1356]

444. The Commission's *Local Competition Report* shows that only about 2.6 million homes subscribe to cable telephony on a nationwide basis,[1357] even though there are approximately 103.4 million households in the United States.[1358] Moreover, the record indicates that circuit-switched cable telephony is only available to about 9.6 percent of the total households in the nation.[1359] Ultimately, because retrofitting cable infrastructure to support cable telephony requires substantial investment and modification, and because significant technical and operational issues must still be resolved for those cable operators that have not already augmented their networks to offer cable telephony (which are the majority of the cable networks currently in operation), it is difficult to predict at what point cable telephony will be deployed on a more widespread and ubiquitous basis.[1360]

445. We also find that, despite evidence demonstrating that narrowband local services are widely available through CMRS providers, wireless is not yet a suitable substitute for local circuit switching.[1361] In particular, only about three to five percent of CMRS subscribers use their service as a replacement for primary fixed voice wireline service, which indicates that

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[1356] BOC UNE Fact Report 2002 at IV-8 to IV-14. Current estimates are that only 1.7% of U.S. households rely on other technologies to replace their traditional wireline voice service. Allegiance Reply at 35.

[1357] *Local Telephone Competition December 2002 Report* at 2. In their joint BOC UNE Fact Report 2002, the BOCs claim that 1.5 million homes subscribe to cable telephony. BOC UNE Fact Report 2002 at IV-10.

[1358] *See Telephone Subscribership November 2002 Report* at Table 1. According to Verizon, cable telephony providers already offer circuit switched telephone services to some ten million households nationwide, already serve more than two million lines, and are adding roughly 100,000 lines each month. *See* Letter from Michael E. Glover, Senior Vice President and Deputy General Counsel, Verizon, to William F. Maher, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1 (dated Jan. 10, 2003) (Verizon Jan. 10, 2003 Switching *Ex Parte* Letter) *in* Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Jan. 10, 2003) ; *see also Unbundling Switching, UNE-P, and Hot Cuts*, SBC Presentation to FCC, *in* Letter from Brian J. Benison, Associate Director – Federal Regulatory, SBC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 10 (filed Jan. 7, 2003) (SBC Jan. 7, 2003 *Ex Parte* Letter).

[1359] BOC UNE Fact Report 2002 at II-11, IV-10 (noting that Cox has the capability to offer cable telephony to "75 to 95 percent" of the consumers in Rhode Island).

[1360] BellSouth Comments at 38, 40 (citing *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 01-129, 8th Annual Report, FCC 01-389, at para. 34 (2001)).

[1361] The Commission, however, recently relied on wireless broadband PCS substitution to support Track A findings in two section 271 proceedings where residential customers in New Mexico and Nevada had replaced their landline service with wireless service. *SBC Nevada 271 Order*, 18 FCC Rcd at 7206, para. 18; *Qwest New Mexico 271 Order*, 18 FCC Rcd at 7336 n.53; *see also BellSouth Louisiana II 271 Order*, 13 FCC Rcd at 20606, 20622-23, paras. 11, 29-30. This, however, was based on a different analysis than that required under the necessary and impair standards.

wireless switches do not yet act broadly as an intermodal replacement for traditional wireline circuit switches.[1362] Lastly, the record demonstrates that wireless CMRS connections in general do not yet equal traditional landline facilities in their quality and their ability to handle data traffic.[1363]

446. Moreover, both cable and CMRS are potential alternatives not simply for switching, but for the entire incumbent LEC telephony platform, including the local loop. We are unaware of any evidence that either technology can be used as a means of accessing the incumbents' wireline voice-grade local loops.[1364] Accordingly, neither technology provides probative evidence of an entrant's ability to access the incumbent LEC's wireline voice-grade local loop and thereby self-deploy local circuit switches. Rather, competition from cable telephony and CMRS providers only serves as evidence of entry using *both* a self-provisioned loop *and* a self-provisioned switch.

447. *Impact of Unbundling on Switching Deployment.* Commenters have raised questions regarding the impact of unbundling on carriers' incentives to construct and deploy switching facilities.[1365] We find that the record evidence on this matter is inconclusive. As we

[1362] *See Seventh Wireless Report 2002* at 32 n.208; *see also* BOC UNE Fact Report 2002 at IV-12 (citing *Sixth Wireless Report 2001*, 16 FCC Rcd at 13381 n.211).

[1363] BellSouth Comments at 41 (stating that wireless is ineffective in transmitting large amounts of data at high speeds); *see also* AT&T Reply at 25, 162-63 (stating that wireless service is engineered to provide only roughly 70% call completion rate while wireline call completion rates exceed 99%).

[1364] *See infra* Part V.B.

[1365] The dissents also argue that triggers based on deployment will never be met for switching because the unbundling of switching itself creates such a disincentive for deployment that neither competitors nor incumbents will build new switching facilities. *Chairman Powell Statement* at 5-6; *Commissioner Abernathy Statement* at 4-5. The dissents offer no evidence whatsoever to support this conclusion. To the contrary, the Chairman himself acknowledges that, despite the current nationwide availability of unbundled switching, "a number of competitors have overcome whatever economic impediments exist and are using that switching capability to serve mass market customers." *Chairmant Powell Statement* at 7. Moreover, neither Chairman Powell nor Commissioner Abernathy explain how their disincentives argument is consistent with the conclusions they support throughout the rest of the Order that the best evidence of lack of impairment is "evidence that new entrants are providing retail services in the relevant market using non-incumbent LEC facilities." *See supra* paras. 93-94. Indeed, in both the transport and high-capacity loop sections of the Order, they have agreed to eliminate unbundling obligations only after a finding that there is sufficient deployment of alternative facilities. As both dissenters have agreed in the transport section, the probability of a disincentive effect from unbundling is addressed by establishing relatively low thresholds for the triggers. *See supra* para. 413 & note 1274. Thus, for example, the triggers for the transport network element eliminate unbundling requirements on a particular route where there are three competitive self-providers of transport or two competitive wholesale providers. These are the same thresholds that we use for eliminating unbundled switching. In addition, similar to transport and loops, even where there is no deployment and these triggers are not met, states must consider whether potential deployment is possible based on specific criteria consistent with our impairment standard.

Looking at the record on this point, we found the evidence of disincentives inconclusive at best. The incumbents' evidence purports to show disincentives consisted of studies alleging that as lines served by unbundled loops combined with unbundled local circuit switching increases in a given state, the number of facilities based (continued....)

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competitive LEC-owned lines decreases. However, as explained in the Order, these studies suffer from fundamental flaws that undermine their probative value. *See infra* note 1374. At the same time, there were studies purporting to show that unbundling obligations in fact encourage carriers to make capital investments in facilities. *See infra* note 1373. In the end, we found neither compelling. We found significantly more probative the evidence that in areas where competitors have their own switches for other purposes (*e.g.*, enterprise switches), they are not converting them to serve mass market customers and are instead relying on unbundled loops combined with unbundled local circuit switching. Given the fixed costs already invested in these switches, competitors have every incentive to spread the costs over a broader base. Their failure to do so bolsters our findings that significant barriers caused by hot cuts and other factors make entry uneconomic.

Chairman Powell's suggestion that the number of lines that competing carriers serve with their own switches has decreased while the number of lines served with unbundled switching has increased is simply wrong. *See Chairman Powell Statement* at 6. In fact, Commission data show that the number of customers served with self-deployed switches has consistently increased. For example, incumbent LECs provided about 3.2 million unbundled loops without switching in June 2001, about 3.7 million unbundled loops without switching in December 2001, about 4.1 million unbundled loops without switching in June 2001, and about 4.3 million unbundled loops without switching in December 2002. *See Local Telephone Competition*, Status as of December 31, 2002 (June 2003); *Local Telephone Competition*, Status as of June 30, 2002 (December 2002); *Local Telephone Competition*, Status as of December 31, 2001 (July 2002); *Local Telephone Competition*, Status as of June 30, 2001 (February 2002); *Local Telephone Competition*, Status as of December 31, 2000 (May 2001); *Local Telephone Competition*, Status as of June 30, 2000 (December 2000); *Local Telephone Competition*, Status as of December 31, 1999 (August 2000). Thus, the availability of unbundled switching does not appear to have stopped the development of facilities-based competition. While Chairman Powell is correct that, in certain states, the rate of growth in lines using unbundled switching has increased at a higher rate than has the rate of growth for lines served with competitively deployed switches, that fact falls far short of showing any significant disincentive effect from the availability of unbundled switching. More importantly, this data is fully consistent with the evidence in the record that significant barriers caused by hot cuts and other factors make self deployment uneconomic. *See supra* paras. 466-470. For example, the record shows that AT&T spent over $11 billion in an effort to use its own switches with unbundled loops to serve low-volume business customers, but that this effort failed as a result of hot cut problems. *See* AT&T Comments at 218. Customer conversions took an average of 45 days from the time of sale to the establishment of dial tone. *See id.* at 219. Service outages during cutovers occurred 6 to 9% of the time. *See id.* As a result, over half of AT&T's orders were cancelled prior to actual conversion. *See id.* Chairman Powell offers no response whatsoever to this evidence or the other evidence in the record on the barriers caused by hot cuts.

Moreover, the dissents fail to consider the incentives created by our decisions on packet switching and advanced services. Specifically, we no longer unbundle packet switching and the advanced networks used with such switching. This means that to the extent there are significant disincentives caused by unbundling of circuit switching, incumbents can avoid them by deploying more advanced packet switching. This would suggest that incumbents have every incentive to deploy these more advanced networks, which is precisely the kind of facilities deployment we wish to encourage. At the same time, competitors have incentives to build comparable facilities to compete. And because we count competitive deployment of packet switches – and other intermodal facilities – in our circuit switching triggers, such deployment can lead to the elimination of unbundling requirements on circuit switches.

In the end, the dissents would simply eliminate unbundled switching and wait for competition to arise from other platforms. We have chosen to eliminate unbundling more gradually, as we do for other elements, by both attacking the causes of impairment for circuit switching and encouraging intermodal competition through the switching triggers. Unlike the approach advocated by the dissents, our approach maintains appropriate incentives without throwing away the competition that exists today.

(continued....)

have explained above, section 251(d)(2)'s "at a minimum" clause permits us to consider, when appropriate, factors that are closely tied to the purposes of the statute but distinct from the "necessary" and "impair" standards in reaching an unbundling determination.[1366] Above, we have exercised this authority in our analysis of FTTH and hybrid loops, where we have given weight to section 706's directive that the Commission "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."[1367] While section 251(d)(2) permits us to consider factors other than the statutory "necessary" and "impair" standards, we are mindful of the courts' admonitions that we not extend incumbents' unbundling obligations more widely than required to fulfill the purposes of the Act. As explained above, we thus apply the "at a minimum" language with due restraint. Here, we consider investment incentives in the context of unbundled local circuit switching, but conclude that given the insufficient record evidence on this issue and the fact that the goals of section 706 are not directly implicated in the context of switching, our findings of impairment are not overcome in this context.

448. Although our consideration of investment incentives in our FTTH and hybrid loops decisions is largely driven by the Act's direction to do so contained in section 706, we believe that consideration of economic incentives, pursuant to section 251(d)(2)'s "at a minimum" language, is appropriate in the context of unbundled circuit switching because such consideration accords weight to the Act's aim of encouraging facilities-based competition. As explained above, the Supreme Court in *Verizon* emphasized that the Commission has discretion to evaluate the role of investment incentives when implementing the Act's local competition provisions.[1368] We note, however, that the particular incentives primarily at issue here differ in a key respect from those at issue in the FTTH and hybrid loops discussion above. There, the primary inquiry involved the *incumbents'* incentives to develop and deploy new broadband-capable loop facilities if those facilities were subject to unbundling. Here – where the

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Finally, we note that to the extent Chairman Powell and Commissioner Abernathy are concerned that the price of using unbundled switching is too attractive when compared with using self-deployed switches, this issue is more appropriately addressed in the forthcoming proceeding on TELRIC pricing.

[1366] *See supra* Part V.D. Section 251(d)(2) provides that "the Commission shall consider, *at a minimum*, whether . . . the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." 47 U.S.C. § 251(d)(2) (emphasis added).

[1367] The Commission *considers* services with upstream and downstream speeds in excess of 200 kbps to display "advanced telecommunications capability." *Third Section 706 Report 2002*, 17 FCC Rcd at 2850, para. 9.

[1368] *Verizon*, 535 U.S. at 500; *see also id.* at 523 ("In short, the incumbents have failed to carry their burden of showing unreasonableness to defeat the deference due the Commission."). In *Verizon*, the Court recognized that it was in no position to assess the precise economic significance of the parties' opposing arguments regarding incentives created by TELRIC, and that it "ha[d] no idea whether a different forward-looking pricing scheme would have generated even greater competitive investment than the $55 billion that the entrants claim." *Id.* at 517. Thus, it merely acknowledged that the Commission had been forced to decide whether it was "better to risk keeping more potential entrants out, or to induce them to compete in less capital-intensive facilities with lessened incentives to build their own bottleneck facilities," and found that in such circumstances, "[i]t was not obviously unreasonable for the FCC to prefer the latter." *Id.* at 510.

incumbents already operate ubiquitous legacy circuit switching networks – our inquiry into unbundling's impact on investment incentives focuses primarily on the *competitive LECs'* incentives to deploy alternative switching facilities. In fact, given that we do not require packet switches to be unbundled, there is little, if any, basis for an argument that our treatment of circuit switches gives LECs a disincentive to upgrade their switches.

449. The parties submit conflicting evidence regarding the relationship between unbundled local circuit switching and investment incentives. The incumbent LECs claim that unbundling obligations undermine competitive LECs' incentives to invest in local circuit switching facilities because the competitive carriers will always prefer to use the incumbent's switching facilities, which are available to them at TELRIC rates that assume the use of the most efficient technologies available.[1369] For example, the incumbents' *UNE-P and Investment* study asserts that as unbundled local circuit switching usage increases in a given state, the number of competitive LEC-owned lines decreases.[1370] Competitive LECs deny that elimination of unbundled local switching will result in additional competitive LEC switch deployment.[1371] In support of their contentions, however, the competitive carriers advance their own studies purporting to show that unbundling obligations in fact encourage carriers to make capital

[1369] Incumbents also argue that local circuit switch unbundling obligations undermine their *own* incentives to make capital investment in their own facilities because competitive LECs are free to use those same facilities, at TELRIC rates, to compete for the incumbent LECs' customers. *See, e.g.*, SBC Comments at 6.

[1370] Verizon Unbundled Switching Study. The study consisted of a univariant regression, which AT&T characterizes as a correlation study. *See also* Verizon Reply, App. 1, Harold Ware, *UNE-P Use and Facilities-Based Competition, in New York and Other States, in* Z-Tel Nov. 7, 2002 *Ex Parte* Letter. The study regresses competitive LEC facilities based access lines per 1,000 BOC access lines against competitive LEC access lines served by unbundled loops combined with unbundled local circuit switching per 1,000 BOC access lines for all states where competitive LEC access lines (unbundled loops combined with unbundled local circuit switching and full facilities) combined exceed 10% of BOC lines. Verizon Unbundled Switching Study at 3-4.

[1371] AT&T Comments at 222-23; WorldCom Reply at 153-57. WorldCom, for example, claims that it has built more switches in states where unbundled switching has been available without restriction. *See also* Letter from Lawrence R. Freedman, Counsel for WorldNet, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 3 (filed Jan. 6, 2003) (WorldNet Jan. 6, 2003 *Ex Parte* Letter) (stating that its business plan is largely dependent upon its ability to purchase unbundled loops combined with unbundled local circuit switching from the incumbent as a transition step). SBC challenges this claim. *See* SBC Jan. 7, 2003 *Ex Parte* Letter at 6 (stating that, in New York, AT&T and WorldCom operate 28 switches and serve over one million residential customers using unbundled incumbent LEC local circuit switching, but have not converted a single residential customer to their switches); CWA Jan. 14, 2003 *Ex Parte* Letter. We find, however, that the fact that competitors have not converted unbundled loops combined with unbundled local circuit switching or served residential customers with existing switches only serves to demonstrate the barriers to such service. AT&T Comments at 207-08, 224-31; BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 23-24; Z-Tel Comments at 34-36; WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter at 3-4. Given the sunk costs already invested in deployed switches, competitors have every incentive to spread those costs over a larger base. AT&T Comments at 211-12; BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 2-3; NewSouth Reply at 29-30; Z-Tel Comments at 52-54 & n.113. Barriers caused by hot cuts and other factors simply make this uneconomic. AT&T Comments at 207-08, 212, 214-17; BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 8-11; NewSouth Reply at 26-28; Z-Tel Comments at 35-36.

investments to meet increasing competition.[1372] We find, however, that the economic studies presented by both sides of the industry suffer from several fundamental flaws that undermine their probative value.[1373] Thus, we are unable to conclude from the parties' studies that the availability of unbundled local circuit switching either depresses or stimulates infrastructure investment.

450. Section 706's directive to promote advanced telecommunications is not undermined by the unbundling of local circuit switching because such unbundling imposes requirements with respect to the legacy telephone network, and thus does not deter carriers' investment in advanced telecommunications capabilities. Accordingly, we do not believe that section 251(d)(2)'s "at a minimum" language justifies any departure from our impairment findings in the switching context.[1374]

5. DS1 Enterprise Customers

451. We find that the record evidence establishes that there are few barriers to deploying competitive switches to serve customers in the enterprise market at the DS1 capacity and above, and thus no operational or economic impairment on a national basis.[1375]

[1372] *See, e.g.*, AT&T Comments at 65-97; AT&T Willig Decl.; Z-Tel Oct. 7, 2002 Innovation *Ex Parte* Letter at 5; AT&T Willig Stimulating Investment at 1-7, 28-39.

[1373] The studies submitted by the incumbent LECs, such as Verizon Unbundled Switching Study, are overly simplified correlation models or state-to-state comparisons lacking adequate explanation of relevant variables. BOC Shelanski Decl. at 22; AT&T Oct. 15, 2002 *Ex Parte* Letter, Attach. C at 12, 14 (AT&T Pfau Correcting) (asserting that the study supposedly showing how the high level of unbundled loops combined with unbundled local circuit switching equates to low facilities-based competitive LEC access lines simply plots competitive LEC facilities based access lines against competitive LEC unbundled loops combined with unbundled local circuit switching lines but does not include all states).

[1374] Several incumbent LECs express particular opposition to any outcome that would maintain the availability of unbundled loops combined with unbundled local circuit switching. *See, e.g.*, Verizon Comments at 6; SBC Comments at 76. This opposition appears to stem from the incumbent LECs' claim that the TELRIC rates they obtain for UNEs do not, in fact, compensate them for the costs associated with provisioning these UNEs to requesting carriers. *See, e.g.*, Verizon Comments at 32-33; SBC Comments at 34-35; BellSouth Reply at 43, 51 n.118. As explained below, however, we intend to review our TELRIC framework in a future proceeding. *See infra* Part VIII.B.2. To the extent the incumbent LECs' concerns relate not to the proper interpretation of the section 251(d)(2) standards governing access to UNEs, but rather to the section 252(d)(1) UNE pricing standards, those concerns should properly be addressed in that future proceeding rather than in this Order.

[1375] The dissents' claim that, when we voted February 20th, we intended to make only "presumptions" on impairment and that we have now significantly changed the item in making an affirmative finding. *Chairman Powell Statement* at n.42; *Commissioner Abernathy Statement* at 4. This argument completely misses the mark. In both the language we adopted February 20th and in this item, we had exactly the same intent: to make a national finding based on the record evidence but to allow the states to rebut that finding based on a more granular inquiry. In this manner, we intended to treat switching exactly as Chairman Powell proposed and the Commission unanimously voted to treat transport and loops. We previously characterized this approach as a "presumption" because Chairman Powell's proposed draft of the item used the "presumption" terminology in the transport and loops sections to convey that a finding of impairment (or non-impairment) is subject to a more a granular review by the states. The presumption language in the loops and transport sections was subsequently changed, and, (continued....)

Consequently, we establish a national finding that competitors are not impaired with respect to DS1 enterprise customers that are served using loops at the DS1 capacity and above.[1376] DS1 enterprise customers are characterized by relatively intense, often data-centric, demand for telecommunications services sufficient to justify service via high-capacity loops at the DS1 capacity and above. The evidence in the record demonstrates that it becomes viable to aggregate loops at a customer location and provide service at a DS1 capacity interface or higher.[1377] Specifically, if a customer has purchased services from the competitive carrier that require a DS1 or above loop, it is economically feasible to digitize the traffic and aggregate the customer's voice loops at the customer's premises and put them onto a high-capacity circuit.[1378] This obviates the need for hot cuts at the incumbent LEC's central office,[1379] which, as discussed above, is a significant source of impairment. Specifically, the conversion process for enterprise customers generally involves the initiation of service to the competitor's new digital loop while the incumbent's service remains in place.[1380] During migration of an enterprise customer from analog services to a new digital loop, the enterprise customers remain on the incumbent's analog facilities while the new digital loop is installed and service initiated.[1381] Similarly, where enterprise customers are being converted from the digital facilities, the competing carrier installs

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accordingly, we changed the switching language to be consistent. In no sense did we intend to change our approach. The claim that we "made no findings at all" is simply false. Although we used the "presumption" terminology in accord with Chairman Powell's proposed language for transport and loops, we were explicit that our switching determination was based on findings of fact – *i.e.*, the impairments associated with cutting over large volumes of loops, the NRCs associated with cutting over those loops, and the churn rates. Despite any confusion, throughout this process we have consistently endeavored to create a document that reflects the majority's views. Today's item is fully consistent with the positions taken in the negotiations leading to the vote on February 20th, and the majority's views today.

[1376] For purposes of determining whether impairment exists according to our standard, we define DS1 enterprise customers as those customers for which it is economically feasible for a competing carrier to provide voice service with its own switch using a DS1 or above loop. We determine that this includes all customers that are served by the competing carrier using a DS1 or above loop, and all customers meeting the DS0 cutoff described below in paragraph 497. As discussed below, however, we determine that the state commissions are best situated to identify *potential* enterprise customers, *i.e.*, those customers for whom it could be economically feasible to serve using a DS1 or above loop. *See infra* para. 497. Because of the expected difficulties and detailed information needed in conducting this inquiry, we allow the states nine months to make this identification, which would include determining the maximum number of lines that a carrier may obtain from a particular customer before that customer is classified as a enterprise customer. We expect such analysis to be conducted at the same time as the analysis of the mass market. State commissions have discretion to define the relevant markets for purposes of this inquiry, provided they follow the guidelines described here and below. *See infra* Part VI.D.6.a.(ii)(b)(i) (discussing the market definition to be used by states).

[1377] Z-Tel Comments at 52.

[1378] BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 14.

[1379] *See* NewSouth Reply at 27-28; NewSouth Fury Reply Aff. at para. 6.

[1380] NewSouth Fury Reply Aff. at paras. 6, 14.

[1381] *Id.* at para. 14.

and initiates service on a new digital loop in parallel with the customer's existing service.[1382] In each case, the incumbent's service is disconnected only after the competitor's service over a new loop has been initiated.[1383] Thus, enterprise customers avoid potentially lengthy disruption of service due to physical hot cuts, occasionally experiencing an outage of only 10 to 30 seconds for incoming calls as their numbers are updated in the industry databases used to route calls.[1384] As a result, competitive carriers neither incur the costs of hot cuts nor experience the quality degradation associated with the cut over process to serve customers with loops with DS1 capacity and above.[1385] Accordingly, competitive LECs generally face the same opportunities and challenges as incumbents on connecting such facilities to their switches.

452. In addition, the revenue opportunities associated with serving DS1 enterprise customers generally are sufficient to justify the sunk and fixed costs associated with using and installing the switch.[1386] DS1 enterprise customers are typically medium or large business customers with high demand for a variety of sophisticated telecommunications services that use loops with DS1 capacity and above. DS1 enterprise customers purchase extensive local services, resulting in significant revenues to the service provider, allowing a greater opportunity for the competitive LEC to recover any non-recurring costs associated with the "set-up" of the loop and switch facilities necessary to provide services.[1387] DS1 enterprise customers are more receptive to entering into long-term contracts, which likewise gives competing carriers a greater ability to recover non-recurring costs. Moreover, because large business customers generate comparably greater revenues than residential customers, requesting carriers are more willing to tolerate any provisioning difficulties that may be present in the installation process.

453. The record demonstrates that competitive LECs are competing successfully in the provision of switched services, using a collocation network with associated backhaul transport, to medium and large enterprise customers without unbundled local circuit switching.[1388] The characteristics of the enterprise market support use of self-provisioned switching in combination with unbundled loops (or loop facilities) without the imposition of substantial barriers upon the

[1382] *Id.* at paras. 18-19.

[1383] *Id.* at para. 19.

[1384] *Id.* at paras. 15-17.

[1385] NewSouth Fury Reply Aff. at para. 6; Letter from Joan Marsh, Director, Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2 (filed Jan. 17, 2003) (AT&T Jan. 17, 2003 *Ex Parte* Letter); BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 14.

[1386] NewSouth Reply at 29-30; NewSouth Fury Reply Aff. at paras. 5-6.

[1387] NewSouth Reply at 30; NewSouth Fury Reply Aff. at para. 6.

[1388] Allegiance, for example, serves several enterprise customers using its own switches. Verizon Reply at 103 (citing Allegiance SEC Form 10-K for the period ending December 31, 2001). In addition, Conversent Communications also "provides local and long distance voice and data service to small and medium sized business customers in second and third tier urban and suburban markets" using its own switch. Conversent Comments at 1-2.

competitive LEC. The record indicates that competitive LECs are serving at least 13 million business lines through self-deployed switches, approximately 89 percent of all UNE-L lines served by competitive switches.[1389] Accordingly, while the enterprise market characteristics do not eliminate all of the cost and operational disadvantages that competitive carriers may face when using their own switches to serve enterprise customers, we find that evidence in the record shows that, unlike for the mass market, the elimination of cut over cost differentials and other operational issues supports a national finding of no impairment.[1390] That is, the record indicates that denial of access to unbundled switching would not impair a competitor's ability to serve the enterprise markets, including all customers which are served by the competitor over loops of DS1 capacity and above.[1391]

454. Although the record shows no impairment on a national basis, we recognize that a geographically specific analysis could possibly demonstrate that competitive carriers are impaired without access to unbundled incumbent LEC local circuit switching for DS1 enterprise customers in a particular market.[1392] As discussed above, while the record shows that cut over cost differentials are eliminated and other operational challenges may be mitigated when competitive carriers use their own switches to serve enterprise customers, the characteristics of enterprise markets do not eliminate all of the cost and operational disadvantages. For example, in a local market with low retail rates, it is possible that difficulties in obtaining collocation space, costs accompanying collocation, high UNE rates for local loops, and backhaul costs could make it uneconomic for competitive LECs to self-deploy switches specifically to serve the enterprise market. In particular, the record suggests that such factors make impairment more likely in rural areas.[1393]

455. While the record in this proceeding does not contain evidence identifying any particular markets where competitive carriers would be impaired without unbundled access to local circuit switching to serve enterprise customers, state commissions are uniquely positioned to evaluate local market conditions and determine whether DS1 enterprise customers should be granted access to unbundled incumbent LEC circuit switching.[1394] To that end, we permit state

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[1389] BOC UNE Fact Report 2002 at II-1; Verizon Unbundled Switching Study at 3.

[1390] *See, e.g.*, Letter from Christopher J. Wright, Counsel for Z-Tel, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2-3 (filed Oct. 10, 2002) (Z-Tel Oct. 10, 2002 *Ex Parte* Letter) (stating that large businesses with intensive bandwidth needs are a different market than the mass market – they will agree to enter into long-term contracts and can tolerate some degree of manual installation).

[1391] *See* Verizon Reply at 103 (citing Allegiance Telecom, Inc. SEC Form 10-K for year ending December 31, 2001, at 30, 34).

[1392] We also note that these costs may only be considered a barrier to entry if they are sufficient to prevent economic entry, and thus they would not be considered "the kinds of costs any new entrant would bear."

[1393] *See, e.g.*, UNE-P Coalition Comments at 51; PACE Dec. 12, 2002 *Ex Parte* Letter.

[1394] Moreover, where we have found no impairment, states may alter that determination only by petitioning this Commission. It is solely where we have found impairment that states may alter the finding without petitioning us (continued....)

commissions to rebut the national finding of no impairment by undertaking a more granular analysis utilizing the economic and operational criteria contained herein. State commissions will have 90 days from the effective date of this Order to petition the Commission to waive the finding of no impairment.[1395] State commissions wishing to do so must make an affirmative finding of impairment showing that carriers providing service at the DS1 capacity and above should be entitled to unbundled access to local circuit switching in a particular market.[1396] State

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first. This further undercuts the dissents' claims that the role we provide for the states is biased in favor of finding impairment.

[1395] Chairman Powell complains that the majority "fails to reach a conclusive finding of no-impairment in competitive business markets." *Chairman Powell Statement* at 14. In fact, we have made a nationwide finding that switching for enterprise customers should not be unbundled, which states can displace only by filing a petition for waiver with this Commission based on explicitly enumerated factors. Chairman Powell's assertion that we should not allow waivers of our determination is difficult to fathom. The Commission's governing rules state that "Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown." 47 C.F.R. § 1.3. Moreover, in sections of the Order proposed by Chairman Powell and adopted unanimously, we explicitly note that our unbundling determinations for transport and high-cap loops can be displaced by states through filing of a waiver with this Commission.

[1396] In voting on February 20th, we noted that the manner in which state commissions could rebut our national finding of impairment for enterprise switches was subject to further analysis regarding the viability of that approach. After completing this further analysis and reviewing concerns raised by the dissents that had not been previously discussed, we decided that allowing state commissions to rebut the national findings through a waiver petition to this Commission was the best way to effectuate its overall intent in the item and provide effective oversight. As the Commission has concluded in other contexts, "[s]ome of those concerns were well thought-out and prompted the majority to rethink its position and further explain its rationale. Those steps improved this Order – and in turn resulted in a higher quality product for the American people. At the end of the day that should be the goal of all the Commissioners." *Joint Statement of Chairman Powell and Commissioner Abernathy on Northpoint*, 17 FCC Rcd at 9807. The waiver process we adopted improved this Order and also responds to some of the dissenters' concerns about oversight. While ideally we would engage in the dialogue at an earlier stage, "continuous improvement of our items is the right thing to do." *See Joint Statement of Chairman Powell and Commissioner Abernathy on Northpoint*, 17 FCC Rcd at 9807. The Commission routinely clarifies its intent and strengthens its orders through "post-adoption edits" before an item's release. *See Joint Statement of Chairman Powell and Commissioner Abernathy on Northpoint*, 17 FCC Rcd at 9807 n.705 ("There is nothing procedurally inappropriate in making changes, substantive or non-substantive, after adoption to further elucidate the rationale for the Commission's decision. Such revisions are permissible when all non-dissenting Commissioners concur in the changes. Here, all of the Commissioners who supported the relevant sections agreed to the post-adoption edits."); Statement of Chairman William E. Kennard, *1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MM Docket No. 98-35, Biennial Review Report, 15 FCC Rcd 11058, 11126 n.6 (2000) ("Contrary to the suggestion of dissenting Commissioners, there is nothing procedurally inappropriate in making revisions, substantive or non-substantive, to the biennial review report after adoption in order to further elucidate the rationale for the decision to retain the national ownership rule. Such revisions are permissible when all non-dissenting Commissioners concur in the revisions. Here, all the Commissioners who supported the relevant sections agreed to the post-adoption edits. Post-adoption edits are not uncommon."); Separate Statement of Commissioner Kevin J. Martin, *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, MB Docket Nos. 02-277, 03-130, MM Docket Nos. 01-235, 01-317, 00-244, at 2-3 n.1 (rel. July 2, 2003) (enumerating some of the substantive post-adoption edits to that item). Indeed, elsewhere in this item, after initially requiring that incumbent LECs seek state approval before retiring copper loops, the Chairman proposed, and the majority agreed, (continued....)

commissions have discretion to define the relevant markets for purposes of this inquiry, provided they follow the guidelines described here and below.[1397] After the 90-day period, states may wish, pursuant to state-determined procedures, to revisit whether competitive LECs are impaired without access to unbundled local circuit switching to serve enterprise customers due to changes in the specified operational and economic criteria.[1398]

456. *Operational Criteria.* In order to rebut the Commission's finding of no impairment as it relates to operational barriers, the states must examine whether operational factors are impairing competitors, according to our impairment standard discussed above.[1399] In particular, state commissions must consider whether incumbent LEC performance in provisioning loops, difficulties in obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC, or difficulties in obtaining cross-connects[1400] in an incumbent's wire center, are making entry uneconomic for competitive LECs. We believe, based on the large record in this proceeding, that these factors can raise barriers to entry.[1401] We lack, however, sufficient specific evidence concerning whether and where they will be significant enough to constitute impairment. We therefore ask state commissions to consider evidence, which could include performance metrics and standards for BOCs or other types of evidence for non-BOC incumbent LECs, of whether these factors are impairing entrants in the enterprise market, and whether unbundling will overcome this impairment.

457. *Economic Criteria.* To rebut the Commission's finding that competitive LECs are not impaired by the lack of access to unbundled local circuit switching, the states must find that entry into a particular market is uneconomic in the absence of unbundled local circuit switching. To make this determination, states must weigh competitive LECs' potential revenues from serving enterprise customers in a particular geographic market against the cost of entry into that market. In evaluating competitive LECs' potential revenues, the states should consider all likely revenues to be gained from entering the enterprise market (not necessarily any carrier's individual business plan), including revenues derived from local exchange and data services. The states should also consider the prices entrants are likely to be able to charge, after considering the prevailing retail rates the incumbents charge to the different classes of customers

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to remove this approval requirement. Here in this item, all of the Commissioners who support the relevant section agree to the post-adoption edits, as each has signed the Commission form designated for precisely that purpose.

[1397] *See infra* Part VI.D.6.a.(ii)(b)(i) (discussing the market definition to be used by the states).

[1398] Any subsequent review to rebut the Commission's finding remains subject to the petition process discussed in this paragraph above. The proceedings described in this paragraph shall be completed within six months of the filing of a petition or other pleading submitted in accordance with the prescribed state procedures.

[1399] *See supra* Part V.B.1 (discussing our impairment standard).

[1400] A cross-connect is defined as "[a] connection scheme between cabling runs, subsystems, and equipment using patch cords or jumpers that attach to connecting hardware on each end." NEWTON'S TELECOM DICTIONARY at 191 (18th ed. 2002).

[1401] *See infra* Part VI.D.5.

in the different parts of the state. In determining the cost of entry into a particular geographic market, the states should consider the costs imposed by both operational and economic barriers to entry.

458. The states must consider all relevant factors in determining whether entry is uneconomic in the absence of unbundled access to local circuit switching. For example, even in a market where retail rates would give competitive carriers the opportunity to earn considerable revenues, entry may nonetheless be uneconomic. For example, the potential revenues could be outweighed by a combination of even higher economic and operational costs, such as untimely and unreliable provisioning of loops, transport, or collocation by the incumbent LEC at high non-recurring charges, and significant costs to purchase equipment and backhaul the local traffic to the competitor's switch. However, where competitive LECs have the opportunity to earn revenues that outweigh the costs associated with entry, carriers are not impaired without unbundled access to local circuit switching for DS1 enterprise customers.

6. Mass Market Customers

459. The record demonstrates that customers for mass market services are different from customers in the enterprise market.[1402] The mass market for local services consists primarily of consumers of analog "plain old telephone service" or "POTS" that purchase only a limited number of POTS lines and can only economically be served via analog DS0 loops.[1403] We find on a national basis, that competing carriers are impaired without access to unbundled local circuit switching for mass market customers.[1404] This finding is based on evidence in our record regarding the economic and operational barriers caused by the cut over process.[1405] These

[1402] Mass market customers are residential and very small business customers – customers that do not, unlike larger businesses, require high-bandwidth connectivity at DS1 capacity and above. Z-Tel Comments at 30-31. Mass market customers' accounts tend to be smaller, lower revenue accounts and are often serviced on a month-to-month basis and not pursuant to annual contracts. The record shows that consumers of DS1 capacity and above telecommunications are more willing to sign annual or term commitments. *Id.* at 32.

[1403] Z-Tel Comments at 30.

[1404] As mentioned, the dissenters are simply wrong in claiming that, when we voted on February 20th, we intended to make only "presumptions" on impairment and that we have now significantly changed the item. *See supra* note 1375. In both the language we adopted February 20th and in this item, we had exactly the same intent: to make a national finding based on a more granular inquiry. In this manner, we intended to treat switching the exactly as Chairman Powell proposed and the Commission unanimously voted to treat transport and loops. We previously characterized this approach as a "presumption" because Chairman Powell's proposed draft of the item used the "presumption" terminology in the transport and loops sections to convey that a finding impairment (or nonimpairment) is subject to a more granular review by the states. The presumption language in the loops and transport sections was subsequently changed, and, accordingly, we changed the switching language to be consistent. As we explained, *see supra* note 1375, in no sense did we intend to change our approach.

[1405] Chairman Powell claims that "[t]he Majority finds impairment based solely on the basis of operational impairment" but, he asserts, "it empowers the states to find economic impairment (even after curing the operational concern) based on a laundry list of possible economic disadvantages." *Chairman Powell Statement* at 7. The Chairman misrepresents our analysis. To begin with, we base our impairment finding on "*economic* and operational barriers." *See supra* paras. 459-475. Among other things, for example, we find that high non-recurring per-line (continued....)

barriers include the associated non-recurring costs, the potential for disruption of service to the customer, and our conclusion, as demonstrated by our record, that incumbent LECs appear unable to handle the necessary volume of migrations to support competitive switching in the absence of unbundled switching. These hot cut barriers not only make it uneconomic for competitive LECs to self-deploy switches specifically to serve the mass market, but also hinder competitive carriers' ability to serve mass market customers using switches self-deployed to serve enterprise customers.

460. In this section, we ask state commissions to take specific actions designed to alleviate impairment in markets over which they exercise jurisdiction. Because we find that operational and economic factors associated with the current hot cut process used to transfer a loop from one carrier's switch to another's serve as barriers to competitive entry in the absence of unbundled switching, state commissions must, within nine months from the effective date of this Order, approve and implement a batch cut process that will render the hot cut process more efficient and reduce per-line hot cut costs. In the alternative, if appropriate for any particular geographic market, state commissions must issue detailed findings supporting a conclusion that current hot cut processes do not give rise to impairment in a market and that a batch cut process is therefore unnecessary.

461. We also recognize that a more granular analysis may reveal that a particular market is not subject to impairment in the absence of unbundled local circuit switching. We therefore set forth two triggers that state commissions must apply in determining whether requesting carriers are impaired in a given market. Our triggers are based on our conclusion that actual deployment is the best indicator of whether there is impairment, and accordingly evidence of actual deployment is given substantial weight in our impairment analysis. Thus, we determine that states should examine these triggers first in their analyses.

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charges for connecting a carrier's own switch to an unbundled loop in combination with customer churn may make entry uneconomic. *Id.* Moreover, Chairman Powell's suggestion that we allow states to find impairment on the basis of factors that we did not consider is simply wrong, as we did consider and address all of these factors. We found that "the record evidence indicates that these factors may give rise to impairment in a given market, even setting aside the problems associated with hot cuts." *See supra* para. 476. We did not base our national impairment finding on these factors because "[t]he evidence in the record is not sufficiently detailed to conclude that impairment exists on a national basis due to these factors, as they vary on a geographic basis." *See supra* para. 476 note 1472. It is for that reason that we have asked the states to investigate them. Finally, Chairman Powell's intimation that we have tilted the scales in favor of finding impairment by listing what he considers to be a "laundry list" of factors fundamentally misunderstands the impairment inquiry. *Chairman Powell Statement* at 7. Chairman Powell and the rest of the Commission have all agreed that actual deployment is the best evidence of impairment. The factors that Chairman Powell criticizes here come into play only if our deployment triggers are not met. As such, the factors' purpose is to determine whether the lack of deployment is due to actual impairment or some other reason by inquiring whether entry is in fact uneconomic. In making this determination, Chairman Powell has acknowledged that one must consider all "costs of entry" as well as all potential revenues. *See supra* para. 84. Just as in our analysis of high-capacity loops and transport, which Chairman Powell proposed and the Commission adopted unanimously, this inquiry requires consideration of a number of different factors.

462. *Framework of Analysis.* The analysis we prescribe with regard to mass market switching is as follows. First, where a state determines that there are three or more carriers, unaffiliated with either the incumbent LEC or each other, that are serving mass market customers in a particular market using self-provisioned switches, the state must find "no impairment" in that market. As described below, we recognize that there may be some markets where three or more carriers are serving mass market customers with self-provisioned switches, but where some significant barrier to entry exists such that additional carriers with self-provisioned switches are foreclosed from serving mass market customers. For example, if there is no collocation space available for additional competitive LEC equipment, further competitive entry may be impossible, irrespective of other economic or operational circumstances. Where the self-provisioning trigger has been satisfied and the state commission identifies an exceptional barrier to entry that prevents further entry, the state commission may petition the Commission for a waiver of the application of the trigger, to last until the impairment to deployment identified by the state no longer exists.

463. Second, a state must find no impairment when it determines that there are two or more competitive wholesale suppliers of unbundled local circuit switching, unaffiliated with the incumbent or each other. Where neither of these two triggers is satisfied, we establish a framework that state commissions must apply to determine whether a market *allows* self-provisioning of switching, notwithstanding the absence of three actual independent self-provisioning carriers. In conducting this inquiry, states must consider evidence of actual competitive deployment of local circuit switches, operational barriers to competitive entry, and economic barriers to competitive entry. Where these factors suggest the feasibility of self-provisioning of switching, states may render a "no impairment" finding for the market at issue. In the event a state does not reach such a finding and the triggers are not met for a particular market, we direct states to consider whether, in a given market, requesting carrier's impairment without access to local circuit switching would be cured by a more limited unbundling rule – specifically, "rolling" access to unbundled local circuit switching for a period of 90 days or more. Where such "rolling" access would cure all relevant sources of impairment – for example, by allowing competitive LECs to aggregate customers in preparation for a batch cut over and to avoid certain non-recurring costs associated with end users who might discontinue service during the first few months after becoming customers of the competitive LEC – we direct states to implement such rolling access to unbundled local circuit switching instead of a broader unbundling rule. Finally, we ask the state commissions to conduct continuing reviews of impairment for unbundled switching.

a. Impairment Caused by Incumbent LEC Hot Cut Process

464. Unlike the incumbent LECs, competitive LECs do not own entire exchanges in which the customers' loops are already connected to their switches through a pre-wired connection. Instead, switch-based competitive LECs must gain access to those customers' loop facilities, which predominately, if not exclusively, are provided by the incumbent LEC.[1406]

[1406] Competitors use unbundled dedicated transport to provide the loop extensions that they need to connect their customers with their switches. In contrast, an incumbent LEC can connect its copper loop directly to its switch by (continued....)

Specifically, in order to use its own switch to provide end-user services, the competitor must connect its switch to the incumbent loop (*i.e.*, "last-mile connectivity"). To interconnect with an incumbent LEC or to access an incumbent LEC's UNEs, competitors must be able to directly access the incumbent's facilities with their own equipment. The most practical and efficient places in an incumbent's network where this direct access can occur are those centralized points where individual, subscriber-generated telecommunications traffic is aggregated onto common links for transmitting the traffic through the network or onto other networks. Collocation allows competitors to place their own equipment directly into these centralized points in the incumbent's network.[1407] Competitive LECs must collocate facilities at the incumbent LEC's central offices, and then build additional transport facilities to extend those loops to competitive LEC switches, and route all of their customers' traffic to their own switches.[1408]

465. The physical transfer of a customer's line from the incumbent LEC switch to the competitive LEC switch currently requires a coordinated loop cut over or "hot cut" for each customer's line.[1409] The record shows that hot cut capacity is limited by several factors, such as the labor intensiveness of the process, including substantial incumbent LEC and competitive resources devoted to coordination of the process, the need for highly trained workers to perform the hot cuts, and the practical limitations on how many hot cuts the incumbent LECs can perform without interference or disruption.[1410] Regardless of whether a customer was previously being served by the competitive LEC using unbundled local circuit switching, or by the incumbent

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merely running a jumper wire across its main distribution frame in the central office. *See generally* AT&T Oct. 4, 2002 *Ex Parte* Letter.

[1407] AT&T Comments at 211-12; NewSouth Comments at 40-45; BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 3-4.

[1408] AT&T Reply at 310.

[1409] As discussed above, a hot cut is a largely manual process requiring incumbent LEC technicians to manually disconnect the customer's loop, which was hardwired to the incumbent LEC switch, and physically re-wire it to the competitive LEC switch, while simultaneously reassigning (*i.e.*, porting) the customer's original telephone number from the incumbent LEC switch to the competitive LEC switch. *See generally* BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 7. From the time the technician disconnects the subscribers loop until the competitor re-establishes service, the subscriber is without service. Simultaneously, incumbent LEC and competitor technicians must coordinate to ensure that the subscriber's telephone number is "ported" to the competitor's switch so that inbound calls are properly routed to the requesting carrier's switch. This process necessarily disconnects service to the customer for a brief period of time, as the physical connection between the loop and the incumbent LEC switch is broken and then a new connection with the competitive LEC switch is made. The process of number porting also potentially subjects the customer to some period of time where incoming calls will not be received (*i.e.*, until the number porting process is correctly completed, the customer's number will not correctly route incoming calls to the competitive LEC switch now serving that customer). Some parties contend that hot cuts are practically infeasible in an increasing number of cases that leave requesting carriers with no workable means of obtaining access to unbundled loops. GCI Comments at 8-9, 16. GCI states that where the incumbent LEC has deployed IDLC architecture, it "simply cannot obtain access to the unbundled UNE loop in order to interconnect and direct that traffic to its collocation space." *Id.* at 9.

[1410] Z-Tel Comments at 38.

itself, a hot cut must be performed. The record contains evidence that hot cuts frequently lead to provisioning delays and service outages, and are often priced at rates that prohibit facilities-based competition for the mass market.[1411] The barriers associated with the manual hot cut process are directly associated with incumbent LECs' historical local monopoly, and thus go beyond the burdens universally associated with competitive entry.[1412] Specifically, the incumbent LECs' networks were designed for use in a single carrier, non-competitive environment and, as a result, the incumbent LEC connection between most voice-grade loops and the incumbent LEC switch consists of a pair of wires that is generally only a few feet long and hardwired to the incumbent LEC switch.[1413] Accordingly, for the incumbent, connecting or disconnecting a customer is generally merely a matter of a software change.[1414] In contrast, a competitive carrier must overcome the economic and operational barriers associated with manual hot cuts.[1415] Our finding concerning operational and economic barriers associated with loop access reflects these significant differences between how the incumbent LEC provides service and how competitive LECs provide service using their own or third-party switches.

466. Competitive carriers contend that the current hot cut process prevents an orderly and seamless migration, at least with respect to mass market customers.[1416] Requesting carriers must wait for coordinated cut overs before providing service with their own switch, delay that prevents the competitive LEC from providing service in a way that mass market customers have come to expect. Service disruptions also will influence customer perceptions of competitive LECs' ability to provide quality service, and thus affect competitive LECs' ability to attract customers. Competitive LECs, like ATX, provide ample testimony in the record reporting on their efforts to serve mass market locations using the hot cut process, claiming that they were forced to cease marketing and discontinue plans to provide switch-based services to mass market customers because they experienced difficulties with service implementation associated with the hot cut process to connect voice-grade loops to their switches.[1417] Similarly, AT&T contends that it lost over one-half of its UNE-L customers before the customers were even cut over due to the impact the hot cut process had on customers.[1418] AT&T also states that it experienced so many problems with coordinated hot cuts used to connect loops to its switches that it "was forced to

[1411] AT&T Comments at 212, 214-17; New York Department Comments at 2-4; BTI Comments at 11; UNE-P Coalition Comments at 49-50; WorldCom Comments at 86-87; Z-Tel Comments at 38-47.

[1412] AT&T Reply at 311; *see also* BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 4, 7-8, 10-11.

[1413] *See* BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 7.

[1414] *See id.*

[1415] *See id.*

[1416] Bridgecom Feb. 5, 2003 *Ex Parte* Letter at 9.

[1417] *See* ATX Jan. 22, 2003 *Ex Parte* Letter at 3-5 (stating that the problems with hot cuts were so bad that it had to create special processes to handle hot cuts on a "special project basis" with Ameritech).

[1418] AT&T Comments at 214-17, 219; AT&T Brenner Decl. at paras. 34-42.

stop marketing its switch-based service to all customer locations that did not have enough traffic to warrant the use of a DS-1 or higher capacity loop."[1419]

467. Most importantly, mass market customers generally demand reliable, easy-to-operate service and trouble-free installation.[1420] WorldCom asserts that, before the competitive LEC has established an ongoing business relationship with its new customer, the customer is unlikely to tolerate any disruption of service caused by a manual hot cut – no matter how minor – during customer acquisition.[1421] Moreover, competition is meant to benefit consumers, and not create obstacles for them. The record shows that customers experiencing service disruptions generally blame their provider, even if the problem is caused by the incumbent.[1422] Indeed, Z-Tel states that one glitch or delay in the cut over process for a mass market customer may be enough to convince the customer to go back to the incumbent.[1423] In contrast, when a competitive LEC provisions a higher capacity service, such as DS1 capacity and above, to an enterprise customer, there generally is no "hot cut" of the customer.[1424] In addition, enterprise customers are often more willing to pay for redundancy to protect against disruption in the cut over process. Accordingly, we find the evidence in the record persuasive that the hot cut problem would be particularly great for transferring existing mass market customers in a cost-effective and operationally seamless manner.

468. Competitive carriers also argue that the manual hot cut process is not suitable for mass market customers because the incumbents cannot handle the necessary volume of transactions to support competitive switching in the absence of unbundled local circuit switching and that the non-recurring costs associated with hot cuts are prohibitively expensive.[1425] In

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[1419] AT&T Comments at 207; *see also* UNE-P Coalition Comments at 47-48; Letter from Christopher J. Wright, Counsel for Z-Tel, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Dec. 16, 2002) (Z-Tel Dec. 16, 2002 *Ex Parte* Letter); Letter from Robert A. Curtis, President, and Thomas M. Koutsky, Vice President – Law and Public Policy, Z-Tel, to Michael K. Powell *et al.*, FCC, *in* Letter from Christopher J. Wright, Counsel for Z-Tel, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1-2 (filed Feb. 6, 2003) (Z-Tel Feb. 6, 2003 Powell *Ex Parte* Letter) (noting generally that manual hot cuts are inadequate to handle the scale, quality, and efficiency needed if switching were eliminated).

[1420] WorldCom Reply at 141; Z-Tel Comments at 32-33.

[1421] WorldCom Reply at 141.

[1422] AT&T Comments at 19-20; Z-Tel Comments at 47; Navigator Comments at 4.

[1423] Z-Tel Comments at 32, 36, 47.

[1424] *See* NewSouth Reply at 27-28; NewSouth Fury Reply Aff. at para. 6.

[1425] *See* Letter from Ruth Milkman, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 3 (filed Dec. 5, 2002) (WorldCom Dec. 5, 2002 *Ex Parte* Letter); Letter from Donna Sorgi, Vice President, Federal Advocacy, WorldCom, to William F. Maher, Chief, Wireline Competition Bureau, FCC, at 5, *in* Letter from Gil M. Strobel, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Jan. 8, 2003) (WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter) (stating that the hot cut process permits a few thousand transactions per month, not the million needed to bring competition to the mass market); Letter from Ruth E. Holder, Legal Specialist for WorldCom, to Marlene (continued....)

deciding whether competitors are impaired by incumbent LEC provisioning processes, we must necessarily make a predictive judgment concerning this systemic capability to handle anticipated future hot cut volumes, which (absent access to unbundled local circuit switching) would be greater than volumes that have been experienced in the past.[1426] Competitive carriers have shown that, although they have used hot cuts to serve certain small segments of the market, no competitive carrier relies on hot cuts to offer service to significant numbers of customers served by voice-grade loops. Having reviewed the record evidence, we find that it is unlikely that incumbent LECs will be able to provision hot cuts in sufficient volumes absent unbundled local circuit switching in all markets. For instance, AT&T has presented evidence in the record that, despite years of effort to serve low-volume business locations with a UNE-L strategy that relied on hot cuts, hot cuts could not be provided in the volumes required to support AT&T's customer demand, leading to cancellation of orders for AT&T's competitive service offering.[1427] GCI, a carrier operating in Alaska, attempted to rely in part on hot cuts to provide service to the mass market, but it claimed that it had "continual problems with provisioning unbundled loops, especially for small business loops which require a hot cut."[1428] GCI states that its business plan required the incumbent LEC to perform approximately 500 hot cuts per day, but that the incumbent LEC at its peak has averaged only approximately 100 per day.[1429] McLeod states that in the former Ameritech region, SBC has performed at most 35 hot cuts per central office per day.[1430] Moreover, the evidence in the record shows that some incumbent LECs expressly limit the number of lines that can be cut over in a given day.[1431] Specifically, Broadview states that Verizon limits the number of lines that can be cut over in a given day to 125 for the entire region.[1432]

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H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Feb. 12, 2003) (WorldCom Feb. 12, 2003 *Ex Parte* Letter) (showing hot cut NRCs and how they vary across the country).

[1426] Market data confirm that, by the end of 2002, competing carriers served an estimated ten million residential and small business lines via unbundled loops combined with unbundled local circuit switching. PACE Jan. 14, 2003 *Ex Parte* Letter at 2.

[1427] AT&T Comments at 219-20; AT&T Brenner Decl. paras. 39-42.

[1428] GCI Comments at 8.

[1429] *Id.* These problems so adversely affected its business plans that GCI determined that it would "pa[y] the cost" for the incumbent LEC "to hire 25 additional workers to increase hot cut volume, which cost GCI over $3 million per year." *Id.* at 34; *id.*, Declaration of Frederick W. Hitz, III at para. 14.

[1430] Letter from Stephen C. Gray, President, McLeodUSA, to William F. Maher, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147, 02-33 at 12 (filed Dec. 17, 2002) (McLeodUSA Dec. 17, 2002 *Ex Parte* Letter).

[1431] *See id.* (noting in general that "RBOCs typically impose limitations on the number of conversions from UNE-P to stand-alone unbundled loops that [can] be performed in a given CO in a given day," and notes that SBC is "most restrictive" with a limit of 25-35 orders per central office per day in the SBC Midwest region).

[1432] Letter from Rebecca M. Sommi, Vice President, Operations Support, Broadview, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Oct. 16, 2002) (Broadview Oct. 16, 2002 *Ex Parte* (continued....)

469. While incumbent LECs reference the Commission's determination in multiple section 271 orders that BOCs provision hot cuts at a level of quality that offers efficient competitors a meaningful opportunity to compete,[1433] and argue that performance data show that current hot cut performance is satisfactory, even as the number of hot cuts has increased,[1434] we find that the number of hot cuts performed by BOCs in connection with the section 271 process is not comparable to the number that incumbent LECs would need to perform if unbundled switching were not available for all customer locations served with voice-grade loops.[1435] In the

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Letter). *But see* Letter from W. Scott Randolph, Director – Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 6 (dated Dec. 23, 2002) (Verizon Dec. 23, 2002 Hot Cut *Ex Parte* Letter) (claiming that Verizon's current internal guidelines contemplate as many as 150 hot cuts per central office). Verizon's filing, however, provides no evidence that the company has actually been able to perform hot cuts at such volumes consistently over a long-term period, as would be required upon any transition away from unbundled switching. Moreover, while Verizon claims that its guidelines could be adjusted to permit more than 150 hot cuts per day if necessary, Verizon provides no evidence that its current processes are sufficient to meet that increased demand.

[1433] *See, e.g., SWBT Texas 271 Order*, 15 FCC Rcd at 18490-93, paras. 268-73.

[1434] *See* Verizon Dec. 23, 2002 Hot Cut *Ex Parte* Letter at 3. Verizon states that between 2000 and 2001, its hot cut volume increased by 50% in Massachusetts (14,114 to 21,089), 40% in Pennsylvania (22,184 to 31,592), and more than 200% in New Jersey (3,918 to 11,845). *Id.* at 3. Verizon claims that its on-time performance in those states was 98.41%, 97.56%, and 95.91%, respectively. *Id.* Qwest also contends that its hot cut performance is excellent. Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 5 (filed Jan. 7, 2003) (Qwest Jan. 7, 2003 *Ex Parte* Letter); *see also* Letter from Lawrence E. Sarjeant, Vice President Law and General Counsel, USTA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 3 (filed Dec. 11, 2002) (USTA Dec. 11, 2002 *Ex Parte* Letter) (stating that "USTA incumbent LEC members are able to perform hot cuts in volumes and timeframes that, in the context of their particular circumstances, support the finding that the removal of switching from the UNE list will not impair the ability of competitive LECs to provide local exchange and exchange access services"). Verizon states that its performance data show that it "routinely meets 95 percent or more of its installation appointments on time." Verizon Comments at 102.

[1435] Based entirely on the Commission's prior findings in section 271 orders, Chairman Powell and Commissioner Abernathy claim that incumbent LEC hot cut processes cannot be a source of impairment. *See Chairman Powell Statement* at 4-5; *Commissioner Abernathy Statement* at 5-6. To begin with, the dissenters completely ignore the volume of evidence in the record of this proceeding that hot cuts create significant barriers to providing service, offering no response or explanation whatsoever. Moreover, contrary to their contentions, the Commission's prior findings in section 271 orders do not support a finding here that competitive carriers would not be impaired if they were required to rely on the hot cut process to serve all mass market customers. At most, these orders found that the specific companies at issue "will be able to handle reasonably foreseeable demand volumes." *Commissioner Abernathy Statement* at 6 (quoting *Bell Atlantic New York 271 Order*, 15 FCC Rcd at 3993, para. 89). Leaving aside the fact that these orders applied only to specific BOCs in specific states and by no means make any findings with respect to BOCs or incumbent LECs generally, these orders examined the adequacy of hot cuts at a time when competitive LECs were principally using unbundled local circuit switching to compete for mass market customers. Indeed, the BOCs frequently relied on evidence of customers being served by unbundled loops combined with unbundled local circuit switching to support their Track A findings of sufficient facilities-based competition. *See, e.g., BellSouth Georgia/Louisiana 271 Order*, 17 FCC Rcd at 9026-27, para. 15; *SBC California 271 Order*, 17 FCC Rcd at 25656, para 12; *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global* (continued....)

states where section 271 authorization has been granted, unbundled local circuit switching has been available and, accordingly, the BOCs' hot cut performance has generally been limited.[1436] Moreover, we find that the issue is not how well the process works currently with limited hot cut volumes, rather the issue identified by the record identified is an inherent limitation in the number of manual cut overs that can be performed, which poses a barrier to entry that is likely to make entry into a market uneconomic.[1437] Our finding is also corroborated by the comments of

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Networks Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 01-9, Memorandum Opinion and Order, 16 FCC Rcd 8988, 8990, para. 224 (2001) (*Verizon Massachusetts 271 Order*); *Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Vermont*, CC Docket No. 02-7, Memorandum Opinion and Order, 17 FCC Rcd 7625, 7630-31, para. 11 (2002) (*Verizon Vermont 271 Order*); *Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota , Utah, Washington and Wyoming*, WC Docket No. 02-314, Memorandum Opinion and Order, 17 FCC Rcd 26303, 26317, para. 29 (2002) (*Qwest 9-State 271 Order*); *see also* Letter from Brad E. Mutschelknaus, Counsel for Broadview *et al.*, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2 (filed Jan. 21, 2003) ("Notably, all four of the RBOCs have relied, in one or more States, upon the presence of UNE-P, to advance their bids for Section 271 authority."). And Chairman Powell and Commissioner Abernathy repeatedly voted to approve orders characterizing such deployment as "facilities-based competition" for purposes of meeting section 271's requirement of the "presence of a facilities-based competitor." *See, e.g., Qwest 9-State 271 Order*, 17 FCC Rcd at 26303, para. 29 (stating that Qwest satisfies Track A, section 271(c)(1)(a)); *SBC California 271 Order*, 17 FCC Rcd at 25657, para. 15 (stating that SBC satisfies Track A, section 271(c)(1)(a)); *Verizon Vermont 271 Order*, 17 FCC Rcd at 7630-31, para. 11 (stating that Verizon satisfies Track A, section 271(c)(1)(a)). Furthermore, even in those states where there was not significant unbundled switching-based competition (*see Commissioner Abernathy Statement* at 6-7 n.12) when the Commission granted the section 271 applications for those states, the availability of unbundled loops combined with unbundled switching as a mode of entry informed the Commission's determination of reasonably foreseeable demand volumes. Here, we must consider the adequacy of current hot cut practices for handling the volumes that would be expected if competitive LECs were denied unbundled access to unbundled local circuit switching – something that was by no means "reasonably foreseeable" in the context of the section 271 orders. The section 271 orders thus tell us very little about a BOC's ability to provision large batches of cut overs in a timely and reliable manner under these circumstances. In Broadview's experience, for example, Verizon's performance measures do not apply to bulk migrations on a project-managed basis. Broadview Jan. 15, 2003 *Ex Parte* Letter at 4; *see also Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc.(d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a/ Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey*, CC Docket No. 02-67, Memorandum Opinion and Order, 17 FCC Rcd 12275, 12326, para. 109 n.309 (2002). Accordingly, the Commission's section 271 holdings by no means find that incumbent LEC performance is now adequate to meet the demands of UNE-L-based competition. Finally, our decision does not overlook the possibility that if in some markets the incumbents' ability to perform batch hot cuts does not pose impairment, the states may simply make findings to this effect.

[1436] BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 9-10.

[1437] The dissents assert that the majority makes unwarranted assumptions about incumbent LECs' ability to handle increased volumes in the absence of unbundled loops combined with unbundled local circuit switching. *Chairman Powell Statement* at 5; *Commissioner Abernathy Statement* at 5. It appears that they would support a finding of no impairment based on affidavits and declarations submitted by incumbent LECs attesting to their willingness and ability to handle any requested volume of hot cuts. *Commissioner Abernathy Statement* at 5. We find, however, incumbent LECs' promises of future hot cut performance insufficient to support a Commission finding that the hot cut process does not impair the ability of a requesting carrier to provide the service it seeks to offer without at least some sort of unbundled circuit switching. While incumbent LECs state that they have the capacity to meet any (continued....)

state commissions, most notably the New York Department, which concluded that "Verizon would need to dramatically increase the number of hot cut orders per month if UNE-P was terminated and CLEC customers were switched."[1438] The New York Department concluded that "it would take Verizon over 11 years to switch all the existing UNE-P customers to UNE-L."[1439] Indeed, the New York Department is currently examining ways to "migrat[e] large volumes of customers from Verizon's switches to CLECs' switches more efficiently."[1440] For those reasons, the Commission's prior findings in section 271 orders do not support a finding here that competitive carriers would not be impaired if they were required to rely on the hot cut process to serve all mass market customers.

470. Competitive carriers also argue that the cost of hot cuts, exacerbated by churn, creates a cost disparity that makes it uneconomic to serve mass market customers.[1441] Competitors seeking to use their own switches must incur the costs associated with a hot cut, including both the charges assessed by the incumbent LEC and their own costs of managing and participating in the hot cut process.[1442] The hot cut cost assessed by the incumbent LEC is a non-recurring per-line charge on competitive carriers that connect their own switches to unbundled loops.[1443] The record shows that the cost of connecting each customer to the competitive LEC's switch makes it difficult to compete.[1444] Although hot cut costs vary among incumbent LECs, we

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reasonable foreseeable increase in demand for stand-alone loops that might result from increased competitive LEC reliance on self-provisioned switching, there is little other evidence in the record to show that the incumbent LECs could efficiently and seamlessly perform hot cuts on a going-forward basis for competitors who submit large volumes of orders to switch residential subscribers. As described above, moreover, we ascribe more weight to actual evidence of competitive entry serving the relevant market than to predictive claims of incumbents' ability to handle hypothetical volumes – and the incumbents have been unable to offer compelling evidence that they have actually provisioned hot cuts in the requisite quantity. Moreover, where incumbent LECs have undergone comprehensive testing of their loop provisioning processes, state commissions have found difficulties regarding hot cut performance. Indeed, in its initial comments in this proceeding, the New York Department recognized the hot cut process as one of the "major issues that hamper the development of facilities based competition," and concluded that "[u]ntil hot cuts can be performed in much greater volumes, competitive LECs' lack of access to the UNE-P will materially diminish their ability to provide local service." New York Department Comments at 3.

[1438] New York Department Comments at 4 n.18.

[1439] *Id.*

[1440] *Id.* at 3.

[1441] *See, e.g.*, WorldCom Comments at 33 ("[A]fter a comprehensive evaluation, WorldCom concluded that it did not make economic sense to spend additional capital necessary to attempt . . . to enter the mass market through end-to-end facilities-based service.").

[1442] BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 4-5.

[1443] *See, e.g.*, ASCENT Comments at 36; Letter from Kimberly Scardino, Senior Counsel, WorldCom, to Michelle Carey, Chief, Competition Policy Division, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1-2 (filed Nov. 15, 2002) (WorldCom Nov. 15, 2002 Customer Churn *Ex Parte* Letter).

[1444] *See, e.g.*, AT&T Comments at 216; ASCENT Comments at 36; GCI Comments at 36; WorldCom Comments at 86; ASCENT Reply at 7. If the competitive LEC uses unbundled incumbent LEC loops, this "loop access" cost (continued....)

find on a national level that that these costs contribute to a significant barrier to entry.[1445] WorldCom submitted hot cut non-recurring costs (NRCs) for several states, with an average non-recurring charge of approximately $51, with several states having NRCs in excess of $100.[1446] According to WorldCom, in New York, the hot cut NRC will soon rise to $185 (from $35) for each line served.[1447] Z-Tel's analysis of the New York market indicates that even if the switch itself, collocation, and maintenance were free, with a non-recurring hot cut charge of $185 per line, it would not be economic to deploy a switch to serve mass market customers in New York.[1448] In addition to the high non-recurring charges imposed by the incumbent LECs, the evidence in the record shows that hot cuts also require significant internal resources and expenditures which must be borne by the competitive LEC. Thus, the record evidence indicates that the non-recurring costs associated with cutting over large volumes of loops would likely be prohibitively expensive for a competitive carrier seeking to provide service without the use of unbundled local circuit switching.

471. Moreover, the evidence in the record demonstrates that there is a significant amount of churn, or movement, among mass market customers. Mass market customers move freely from carrier to carrier when they desire, and have come to expect the ability to change local service providers in a seamless and rapid manner.[1449] We find that this movement, or churn, happens most frequently in the first few months after the customer switches to a new carrier and is often driven by "winback" activities.[1450] WorldCom, for example, states that it loses 50

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includes the nonrecurring costs of moving the customer's line to the competitive LEC switch and establishing a collocation arrangement, and the recurring costs of maintaining collocation and transport to connect the customer's POTS line to the competitive LEC's switch. Because competitive LECs generally do not collocate a switch in every incumbent LEC end office but rather serve a number of collocation arrangements from a single switch, competitive LECs generally connect their switches to unbundled loops via transport facilities.

[1445] *See, e.g.*, ASCENT Comments at 36 (noting "repeated attempts by incumbent LECs to dramatically increase hot cut charges . . . confirm that hot cut costs will continue to be a highly adverse factor"); ASCENT Reply at 7; AT&T Reply at 321 (stating that "the current charges for hot cuts in many states forecloses the use of UNE-L, even in narrow situations"); BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 5 n.12.

[1446] WorldCom Feb. 12, 2003 *Ex Parte* Letter at 2-3; BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 5 n.12.

[1447] WorldCom Feb. 12, 2003 *Ex Parte* Letter at 2-3.

[1448] Z-Tel Oct. 10, 2002 *Ex Parte* Letter at 2. Considering only the non-recurring cost of hot cuts, Talk America estimates that it would incur costs of $840,000 just to convert its existing customer base in New York served by unbundled loops combined with unbundled local circuit switching to stand-alone loops based on the promotional rate of $35 per hot cut adopted by the New York Department. Talk America Reply at 25.

[1449] *See, e.g.*, UNE-P Coalition Comments at 46 (noting that mass market customers are not used to and will not tolerate service degradation as a cost of moving from one carrier to another); Z-Tel Comments at 46-47 (stating that mass market customers expect to be able to switch their local carriers seamlessly as they can switch long distance carriers).

[1450] WorldCom Nov. 15, 2002 Customer Churn *Ex Parte* Letter at 1-2.

percent of its new local customers within the first three months of signing up for service.[1451] Z-Tel estimates that at least four percent of its lines turn over each month.[1452] Because of this churn, Z-Tel asserts that carriers in a competitive market cannot expect to keep any particular customer for more than 18-24 months.[1453] The evidence in the record demonstrates that customer churn exacerbates the operational and economic barriers to serving mass market customers. For example, competitive LECs incur non-recurring costs upon establishing an end user's service, but generally recover those costs over time, spreading them out over monthly customer bills; high churn rates thus often deprive competitive carriers the opportunity fully to recover those outlays. The record demonstrates that the current level of churn for carriers providing service to the mass market has significant negative revenue effects on the ability of competitive carriers to recover the high costs associated with manual hot cuts.[1454] Finally, higher volumes of customer turnover necessitate higher volumes of hot cuts than the record demonstrates incumbent carriers are currently able to provide.

472. In making our national finding of impairment due to the incumbent LEC hot cut process, we do not rely on the results of the cost studies and business case analyses some commenters submitted concerning the economic feasibility of competitive entry into the mass market without access to unbundled switching. Specifically, BellSouth and SBC presented studies in support of their claim that economic entry by competitive LECs was possible using UNE-L without unbundled switching, at least in wire centers with 5,000 lines or more.[1455] AT&T and WorldCom claimed that competitive LECs were impaired without unbundled switching based on studies estimating the cost disadvantage relative to the incumbent LEC experienced by competitive LECs serving customers using UNE-L, although WorldCom's study suggested that

[1451] *Id.* WorldCom estimates that, for customers that choose its "Neighborhood" bundled local and long distance products, on average, it loses 25% of its customers within three months, 50% within six months, and 4% to 6% per month after the six-month threshold. *Id.* Although we do not rely on any individual competitors churn data, we agree that the evidence in the record establishes that churn in the mass market affects the economics of serving this market.

[1452] Z-Tel Comments at 31.

[1453] *Id.* at 33.

[1454] Competitive LECs contend that, given the high degree of churn and relatively low monthly revenues for mass market customers, it is difficult to recoup this non-recurring charge over the entire customer base. WorldCom Nov. 15, 2002 Customer Churn *Ex Parte* Letter at 2 (stating that the high non-recurring costs associated with the hot cut process are almost impossible to recover for customers that switch to another carrier within the first six months). Z-Tel states that even if a competitive LEC received revenues of $30 per month, it would take the competitor more than six months to recover the hot cut costs, a long period of time for a market with significant churn. Z-Tel Comments at 35-36. To ameliorate these cost disadvantages, WorldCom states that UNE-L would be more feasible in many areas if competitive carriers could obtain volume discounts for hot cuts, lower transport rates, and lower collocation charges, or alternatives (other than collocation) for accessing the loop, such as EELs. *See* WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter at 6.

[1455] *See generally* Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, FCC (filed Jan. 30, 2003) (BellSouth Jan. 30, 2003 *Ex Parte* Letter); SBC Jan. 14, 2003 *Ex Parte* Letter.

it may be possible to alleviate the impairment in the largest wire centers.[1456] These studies are discussed in detail below.[1457] We find that technical shortcomings in each of these studies preclude us from relying on their results to evaluate impairment at the national level.[1458] These shortcomings include: (1) failure to use the proper framework when determining impairment;[1459] (2) insufficient granularity in their analyses;[1460] (3) failure to consider the typical revenues gained from serving the average customer in the market; and (4) inadequate support for the parameters they employed. Each study's particular inputs and assumptions heavily influenced its results, and there was significant disagreement in the record about the proper inputs and assumptions.[1461] Although we are not able to rely on the results of these studies with respect to our national finding of impairment, the studies do highlight various factors which should be evaluated by the states on a market-specific basis as part of their impairment analyses, as discussed in greater detail below.[1462]

473. Our national finding of impairment is based on the combined effect of all aspects of the hot cut process on competitors' ability to serve mass market voice customers. Thus, while many of the factors discussed above may vary from location to location, such as hot cut NRCs,[1463] we find the overall impact of the current hot cut process raises competitors' costs, lowers their quality of service, and delays the provisioning of service, thereby preventing them from serving the mass market in the large majority of locations. However, observed variations in these factors suggest that requesting carriers may not be impaired without access to unbundled switching in some particular instances, but evidence in the record is not sufficiently detailed to identify these specific markets. Therefore, as described in detail below, we ask the states to identify where competing carriers are not impaired without unbundled switching, pursuant to the triggers and analysis of competitors' potential to deploy.

[1456] *See generally* AT&T Jan. 17, 2003 *Ex Parte* Letter; WorldCom Jan. 8, 2003 *Ex Parte* Letter.

[1457] *See infra* Part VI.D.6.a.(i).

[1458] *See supra* para. 178 (discussing the shortcomings of the studies).

[1459] The AT&T and WorldCom studies do not consider the potential revenues available to an entrant.

[1460] All of the studies rely on averages, and fail to provide geographically disaggregated results.

[1461] For example, the commenters disagree about what revenues to use when calculating net profits, and use different estimates regarding the size of the wire center and where it is located, the competing carrier's predicted market share, the cost of inputs such as transport and collocation, the estimated revenue, and whether the competing carrier had existing facilities. *See* AT&T Jan. 17, 2003 *Ex Parte* Letter at 3; WorldCom Jan. 8, 2003 *Ex Parte* Letter at Attach. A, 3-6; SBC Jan. 14, 2003 *Ex Parte* Letter at 3; BellSouth Jan. 30, 2003 *Ex Parte* Letter at 2-8, Attach. at 4, 7-9.

[1462] *See infra* Part VI.D.6.a.(i) (discussing other factors which potentially could cause impairment, but for which the present record does not warrant a national finding of impairment).

[1463] According to one commenter, non-recurring charges for hot cuts can vary from $2 (in Minnesota) to $117 (in Oregon). WorldCom Feb. 12, 2003 *Ex Parte* Letter at 2.

474. The record evidence strongly suggests that the hot cut process could be improved if cut overs were done on a bulk basis, such that the timing and volume of the cut over is better managed.[1464] We expect that such improvements would result in some reduction of the non-recurring costs that, according to competitive carriers, prevent entry. Indeed, at this time, we find such improvements are likely to be essential to overcome the operational impairment that competitors face in serving mass market customers.[1465] Without such improvement, the record shows that carriers are likely to be unable to economically serve a market characterized by low margins. Incumbent LECs argue that Frame Due Time (FDT) and project managed approaches offer sufficient efficiency. With FDT cut overs, both the incumbent and the competing carrier perform necessary work at pre-arranged times, with no communication required at the time of the hot cut. Project managed cut overs involve the conversion of a number of lines at one time, pursuant to provisioning requirements and intervals negotiated by the incumbent and the competitive LEC. We find that these approaches are not sufficiently developed or widespread enough to adequately address the impairment created by the loop cut over process. The evidence in the record demonstrates that the carriers that have used project-managed cut overs have used them only for business customers,[1466] and only after acquiring the customer through a means that offered the use of incumbent LEC loops and switches in combination.[1467] Further, competitive carriers rarely know in advance the precise locations of new mass market customers, and the facilities used to serve them, hindering the use of project managed processes, which must be negotiated well in advance of customer conversion.[1468] In addition, the FDT and project managed approaches do not offer rates (*i.e.*, volume discounts) that reflect efficiencies to these

[1464] Verizon states that it can efficiently manage the conversion of the anticipated hot cut volumes associated with the embedded base on a negotiated project managed basis, as it has done with carriers like AT&T and Broadview. *See* Verizon Dec. 23, 2002 Hot Cut *Ex Parte* Letter at 2, 5-6. We note, however, that there is no completion interval associated with such conversions, and that Verizon therefore is not subject to penalties for inadequate performance.

[1465] We recognize that any such "operational" impairment would result in a disparity between an incumbent's cost to serve a customer and a new entrant's cost to serve a customer. We will treat any such cost disparity separately from other economic issues because it is tied closely to the hot cut process, which is uniquely within the control of the incumbent LEC.

[1466] *See* Letter from Rebecca Sommi, Vice President – Operations, Broadview Networks *et al.*, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 6 (filed Jan. 15, 2003) (Broadview *et al.* Jan. 15, 2003 *Ex Parte* Letter) (asserting that the project managed hot cuts had been primarily used with small business customers as opposed to mass market customers); BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 11 (asserting that the project managed hot cuts were mostly used for business customers). Broadview states that the Commission should accord no credibility to Verizon's claim that it can handle hot cuts on a project-managed basis as well as it handles hot cuts on an order-by-order basis, given the fact that Verizon has failed to provide the data that indicate that the quality of the hot cut is not impacted when managed as a project. Broadview *et al.* Jan. 15, 2003 *Ex Parte* Letter at 6.

[1467] AT&T Brenner Decl. at 44-55; Broadview *et al.* Jan. 15, 2003 *Ex Parte* Letter at 6; BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 11.

[1468] BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 11.

approaches. Finally, because there generally are no performance intervals associated with these approaches, incumbent LECs are not subject to financial penalties for inadequate performance.

475. Accordingly, we conclude that the operational and economic barriers arising from the hot cut process create an insurmountable disadvantage to carriers seeking to serve the mass market, demonstrating that competitive carriers are impaired without local circuit switching as a UNE. Although we find that current conditions at the national level demonstrate that competitive LECs are impaired without unbundled switching for mass market customers based on the costs and delays associated with hot cuts, we take affirmative steps to reduce this impairment and promote an environment suitable for increased facilities-based competition. As described below, we find that the present impairment can be mitigated by an improved loop provisioning process.

(i) Other Operational and Economic Impairment

476. Above we have concluded that economic and operational barriers associated with the hot cut process justify a national finding that requesting carriers are impaired without access to unbundled local circuit switching. We have, however, asked states to identify markets in which requesting carriers are not impaired without access to unbundled local circuit switching, pursuant to the guidance set forth below.[1469] In doing so, we ask the states to examine evidence of sources of impairment other than hot cuts, in the manner we describe below, as the record shows that requesting carriers may be impaired without access to unbundled incumbent LEC local circuit switching because of operational and economic factors other than those associated with hot cuts. Commenters have alleged that these barriers – which include poor incumbent LEC performance in fulfilling unbundling, collocation, and other statutory obligations, difficulties in performing customer migrations between competitive LECs, difficulties in performing collocation cross-connects between competing carriers,[1470] and the significant cost disadvantages competitive carriers face in obtaining access to the loop and backhauling the circuit to their own switches[1471] – can be sufficient to hinder or prevent entry even if impairment caused by hot cuts were fully resolved. Although these factors *do not* form the basis of our national impairment finding,[1472] we recognize that the record evidence indicates that these factors may give rise to impairment in a given market, even setting aside the problems associated with hot cuts, and that they therefore will be relevant to state commissions' determinations with respect to unbundled local circuit switching. We describe these potential barriers here.

[1469] State commissions can alternatively make a finding that there is impairment based on other economic and operational factors in the manner explained below.

[1470] *See, e.g.*, BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter.

[1471] *See* UNE-P Coalition Comments at 44-46; WorldCom Jan. 8, 2003 *Ex Parte* Letter at 3 (noting that switching has high fixed costs that must be spread over a large number of customers if a competitive carrier is to achieve cost efficiencies similar to those enjoyed by the incumbent LEC).

[1472] The evidence in the record is not sufficiently detailed to conclude that impairment exists on a national basis due to these factors, as they vary on a geographic basis.

(a) Operational Factors

477. *Collocation.* We find that the absence of sufficient collocation space in the incumbent LEC central office or offices might in some markets render competitive entry impossible and thus result in impairment. The record evidence indicates that in some markets, competitive LECs may face a lack of sufficient collocation space in the incumbent LEC's central office or offices. For competitive LECs that rely on the incumbent LEC's transmission facilities but not on unbundled local circuit switching, collocation of facilities in the incumbent's central office is essential to the provision of local service. The incumbent's failure to provide adequate collocation space may render competitive entry uneconomic. Thus, as set forth below, when states evaluate the prospects for self-provisioned switching in a given market, we direct them to consider whether a lack of sufficient collocation space gives rise to impairment in that market.

478. *Incumbent LEC Provisioning of Competitive LEC-to-Competitive LEC Cross – Connects.* We further find that an incumbent LEC's failure to provide cross-connections[1473] between the facilities of two competitive LECs on a timely basis can also result in impairment. Competition in the absence of unbundled local circuit switching requires seamless and timely migration not only to and from the incumbent's facilities, but also to and from the facilities of other competitive carriers.[1474] Such interconnection requires that the incumbent LEC place cross connections between the competitive carriers' facilities in its central office on a timely basis. The incumbent's failure to do so will tend to delay competitors' entry, and thus to increase competitors' costs. We conclude that in some cases, such failure can give rise to impairment in the absence of unbundled local circuit switching.

(b) Economic Factors

479. Competing carriers contend that many economic factors also prevent them from using UNE-L and thus impair their ability to serve the mass market without access to unbundled switching. Competing carriers maintain that even using the most efficient network architecture available for entry using the UNE-L strategy, they are at a significant cost disadvantage vis-à-vis the incumbent in all areas. In addition to the hot cut-related costs discussed above, competitive LECs cite the cost of backhauling the voice circuit to their switch from the customer's end office.[1475] They allege that these hot cut and backhaul costs are not faced by the incumbent, and

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[1473] Cross-connection is the "attachment of one wire to another usually by anchoring each wire to a connecting block and then placing a third wire between them so that an electrical connection is made." *Id.*; *see also* AT&T Brenner Decl. at para. 21; Z-Tel Comments, Declaration of Peggy Rubino at para. 12.

[1474] *See Collocation Remand Order*, 16 FCC Rcd at 15436, 15464-78, paras. 2, 55-84 (concluding that "while an incumbent LEC need not allow collocators to install and maintain cross-connects between different carriers' collocated equipment, an incumbent LEC itself must provide these cross-connects upon reasonable request"); *Local Competition Order*, 11 FCC Rcd at 15801, para. 594 ("We believe that it serves the public interest and is consistent with the policy goals of section 251 to require that incumbents permit two or more collocators to interconnect their networks at the incumbent's premises."); *UNE Remand Order*, 15 FCC Rcd at 3777-78, paras. 178-79.

[1475] BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 3-4; Letter from Joan Marsh, Director, Federal Regulatory Affairs, AT&T, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2-5 (filed Nov. 26, (continued....)

thus put competing carriers at a significant relative disadvantage.[1476] The costs faced only by competitive LECs are, they claim, especially burdensome given the high churn rates associated with serving mass market customers that they face in the first few months of service. Incumbent LECs respond that the marketplace evidence showing deployment of switches for both business and residential customers, and an analysis of the costs and revenues of entry using the UNE-L strategy, demonstrate that competitors are able to enter the voice mass market economically, and that economic factors do not justify a national impairment finding. As described above, we believe that economic and operational barriers associated with the hot cut process do justify such a national finding, but authorize the state commissions to find otherwise where there is no impairment. In this section, we discuss economic factors that, based on our record, may be relevant to the states' determinations.

480. The need to backhaul the circuit derives from the use of a switch located in a location relatively far from the end user's premises, which effectively requires competitors to deploy much longer loops than the incumbent.[1477] Competing carriers assert that the costs of backhaul, which include the costs of collocating in the customer's serving wire center,[1478] installing equipment in the wire center in order to digitize, aggregate, and transmit the voice traffic, and paying the incumbent to transport the traffic to the competitor's switch, put them at a significant cost disadvantage to the incumbent.[1479] Since many of these costs are fixed, competitors argue that these costs must be spread over a large number of customers if a competitive carrier is to achieve cost efficiencies similar to those enjoyed by the incumbent LEC.[1480] Thus in smaller wire centers, where the competitors' customer base is likely to be

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2002) (AT&T Nov. 26, 2002 *Ex Parte* Letter); AT&T Oct. 4, 2002 *Ex Parte* Letter at 8-9, 21; Letter from Joan Marsh, Director, Federal Regulatory Affairs, AT&T, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 6-11 (filed Nov. 12, 2002) (AT&T Nov. 12, 2002 *Ex Parte* Letter); WorldCom Oct. 12, 2002 *Ex Parte* Letter, Attach. at 34-38; WorldCom Bryant Reply Decl. at paras. 22-24.

[1476] *See, e.g.*, ASCENT Comments at 36; ASCENT Reply at 7; WorldCom Nov. 15, 2002 Customer Churn *Ex Parte* Letter; BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 4; CompTel/PACE Oct. 31, 2002 *Ex Parte* Letter at 2-4. The current system of hot cuts involves a constant charge per line, such that there are no benefits from handling larger volumes. This may change with the use of a batch cut over system, however, if volume discounts are provided to competitors.

[1477] BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 3; AT&T Oct. 4, 2002 *Ex Parte* Letter at 8.

[1478] On average, for example, NewSouth estimates that it incurs costs totaling approximately $500,000 over the first 3 years at each collocation site. NewSouth Reply at 25-26; NewSouth Fury Reply Aff. at para. 4. According to NewSouth, these costs include expenses associated with building the collocation space, recurring charges for rent and power, and the costs of purchasing and installing the equipment in the collocation space. NewSouth Reply at 26; Fury Reply Aff. at para. 4.

[1479] BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 3-4; AT&T Nov. 26, 2002 *Ex Parte* Letter at 2-5; AT&T Oct. 4, 2002 *Comparing ILEC and CLEC Local Network Architectures Ex Parte* at 8-9, 21; AT&T Nov. 12, 2002 *Ex Parte* Letter, Attach. at 6-11; WorldCom Oct. 12, 2002 *Ex Parte* Letter, Attach. at 34-38; WorldCom Bryant Reply Decl. at paras. 22-24.

[1480] WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter at 3-4.

smaller and they are unable to take advantage of scale economies, the cost disadvantage due to backhaul is much larger.[1481]

481. In support of their arguments, several parties have submitted detailed cost studies and business case analyses concerning whether entry into the mass market is economically feasible without access to the incumbent's switch.[1482] The studies submitted by AT&T[1483] and WorldCom[1484] examine only the costs a competing carrier would incur that would not be incurred by the incumbent to determine whether a competitive LEC utilizing UNE-L would suffer a cost disadvantage relative to the incumbent.[1485] AT&T submitted two studies, one of which found that competitors suffer from a cost disadvantage of at least $8 per line in larger wire centers, and

[1481] BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 4-6; Letter from Access Integrated Networks *et al.*, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3-6 (filed Dec. 11, 2002) (Access Integrated Networks *et al.* Dec. 11, 2002 *Ex Parte* Letter). For example, WorldCom finds that the average monthly cost of collocation, transport, hot cut, and collocated equipment assuming that it serves 7% of the local service market and has no physical network to begin with, is $11.40 per line served in incumbent end offices with switches larger than 25,000 lines, and $49.92 in incumbent end offices with switches under 5,000 lines. WorldCom Comments at Appendix, Table 1. AT&T examined the costs attributable to hot cuts and backhaul that are not faced by the incumbent. In the first study it found that for a model competitor, the cost disadvantage for a 20% market share is $9.53 per line served in a typical incumbent end office of 15,000 lines and $8.12 per line in a wire center of 100,000 lines. AT&T Jan. 17, 2003 *Ex Parte* Letter at 2-3. The second study examined the cost of serving customers in every existing incumbent wire center for a model competitor, assuming that collocation space and backhaul are being used for other purposes as well as for serving analog loops. The study showed that to serve all incumbent wire centers with at least 5,000 lines, a competitor with 5% market share will suffer a cost impairment per line of $4.72 for collocation and digitization/concentration equipment costs, $0.84 for backhaul transport, and $2.44 for hot cuts, with a cost offset of $0.60 because the competitor is able to use all digital lines, for a net cost disadvantage of $7.41. If the competitor has a 20% market share in each end office, the net cost disadvantage falls to $6.24, taking into account the $0.60 cost offset. AT&T Jan. 17, 2003 *Ex Parte* Letter at 3-4 & n.9.

[1482] *See generally* AT&T Jan. 17, 2003 *Ex Parte* Letter; BellSouth Jan. 30, 2003 *Ex Parte* Letter; BellSouth Jan. 30, 2003 *Ex Parte* Letter; Letter from James C. Smith, Senior Vice President, SBC, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Jan. 14, 2003) (SBC Jan. 14, 2003 Unbundled Switching *Ex Parte* Letter); WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter.

[1483] AT&T Jan. 17, 2003 *Ex Parte* Letter.

[1484] WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter.

[1485] In addition, Birch and PACE submitted a joint analysis of the costs of market entry. *See* Letter from Genevieve Morelli, Counsel for PACE, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 4, 6 (filed Dec. 9, 2002) (PACE *et al.* Dec. 9, 2002 *Ex Parte* Letter). Although not a full cost study, this analysis purported to show that it was uneconomic for competing carriers to serve DS0 customers via either existing enterprise switches or alternative approaches such as the use of EELs or incumbent LEC multiplexers. *Id.* Granite also submitted an analysis of its projected costs to enter a market using its own switch. *See* Letter from William B. Wilhelm, Jr. and Patrick J. Donovan, Counsel for Granite, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1-2 & Attach. (filed Dec. 16, 2002) (Granite Dec. 16, 2002 *Ex Parte* Letter). This analysis suggests that, to enter the Boston local market, a competing carrier using its own switch would incur costs of $12 million during the first year. *Id.*, Attach. at 3. Based on this analysis, Granite argues that migration from service using unbundled incumbent LEC local circuit switching to UNE-L is not economically feasible. *Id.* at 1-2.

from a greater cost disadvantage in smaller incumbent end offices.[1486] AT&T argues that this cost disparity means that competitors are impaired without access to the incumbent's switching. WorldCom's study purports to show that, assuming a market share of seven percent, WorldCom suffers from a cost disadvantage of at least $10 per line, in wire centers where it has its own collocation, transport and nearby switch, and that this disadvantage rises to $21.59 per line in wire centers where it lacks facilities and collocation. WorldCom further argues that in central offices with fewer than 25,000 residential lines, the cost of UNE-L service will constitute an insurmountable barrier to entry and competition, even if there are significant reductions in incumbent LEC charges.[1487] WorldCom also claims that in central offices serving 25,000 or more residential lines, competitive LECs that achieve a reasonable (*e.g.*, seven percent) market share can economically migrate customers served by unbundled local circuit switching to their own switches, provided that operational and economic barriers have already been substantially reduced or removed by state commissions.[1488]

482. The studies presented by SBC and BellSouth examine whether economic entry is possible, taking into consideration the revenue opportunities available and the typical costs of utilizing a UNE-L strategy. The incumbents claim that competitive LECs have successfully

[1486] In the first study, AT&T found that for a model competitor, the minimum cost disadvantage to a competing carrier is $8.12 per line, assuming a 20% market share in a wire center of 100,000 lines. The cost disadvantage was larger for smaller wire centers and lower market shares. For a typical incumbent end office of 15,000 lines, the total net impairment was found to equal $9.53. AT&T Jan. 17, 2003 *Ex Parte* Letter at 2-3. The second study examined the costs of serving customers in every existing incumbent wire center for a model competitor, assuming that collocation space and backhaul were being used for other purposes as well as serving analog loops. The study showed that to serve all incumbent wire centers with at least 5,000 lines, a competitor with 5% market share will suffer a cost impairment per line of $4.72 for collocation and digitization/concentration equipment costs, $0.84 for backhaul, and $2.44 for hot cuts, with a cost offset of $0.60 because the competitor would be able to use all digital lines, for a net cost disadvantage of $7.41. If the competitor had a 20% market share in each end office, the cost disadvantage would fall to $6.24, taking into account the $0.60 cost offset. *Id.* at 3-4 and n.9.

[1487] WorldCom examined the additional costs (in the major categories of collocation, digitization and concentration, transport, switching, OSS, and hot cuts) incurred in serving residential customers in BOC territories using WorldCom switches, based on WorldCom's existing network. WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter. BOC central offices were classified into three groups: offices where WorldCom already has collocation, on-net transport, and nearby switching (case 1); offices where WorldCom has a switch in the LATA but no collocation or transport (case 2); and offices with no WorldCom collocation, switching or transport (case 3). Estimates of the cost disadvantage were broken down by case, size of wire center, WorldCom's assumed market share, and whether WorldCom uses UNEs or special access for transport. WorldCom claimed that, assuming a 7% market share, on average WorldCom would be at a 56% ($10.03), 178% ($17.92), and 301% ($25.84) cost disadvantage using UNE-L relative to the BOCs' unbundled loop and circuit switching combination cost (excluding the cost of the loop for both) for cases 1, 2, and 3, respectively. WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter at 2-3, Attach. A at 6-7 and Appendix Table 1. We note that most of the additional costs were due to the costs of collocation and of the equipment needed for backhaul. For example, for case 3 with 7% market share, the digitization, concentration, and switching equipment and OSS cost $6.70 and collocation $11.08, while transport was $1.31 and hot cut charge was $2.50, for a total cost of $21.59. MICRA Jan. 8 Study at 3-6 and App. Table 1.

[1488] *See* WorldCom Jan. 8, 2003 Switching *Ex Parte Letter* at 7; Letter from A. Richard Metzger, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Jan. 23, 2003) (WorldCom Jan. 23, 2003 Unbundled Switching *Ex Parte Letter*).

served the business market using self-provisioned switches, and that they could use these switches to serve the mass market as well, thus taking advantage of economies of scope.[1489] They note, too, that competitive LECs are free to serve only high-margin customers, rather than being required, as are the incumbents, to provide underpriced service to rural and/or residential consumers.[1490] Moreover, incumbent LECs contend that switches deployed by competitive LECs may be able to serve larger geographic areas than switches deployed by the incumbent LEC, thereby reducing the per-line fixed cost of purchasing circuit switching capability and allowing requesting carriers to create their own switching efficiencies.[1491] Based on the prices competitors have charged to high-revenue mass market customers, and the likely scale economies entrants could achieve using a UNE-L strategy with collocated transmission equipment, incumbent LECs argue that competitors could economically enter and serve the mass market using their own centrally located switches.[1492] Specifically, SBC and BellSouth claim that competitive LECs can earn a positive margin providing facilities-based residential service in wire centers with 5,000 or more lines.[1493] SBC further asserts that any losses in the wire centers of under 5,000 lines would be more than offset by the profits a competitive LEC will accrue from serving wire centers of 5,000 lines or more. Thus, SBC argues, a competitor could economically serve all wire centers.[1494]

[1489] BOC UNE Fact Report 2002 at II-10-11.

[1490] *See* Verizon Reply at 42-43; SBC Reply at 2, 26; BellSouth NERA Reply Decl. at viii.

[1491] *See* BellSouth Comments at 79-80 (citing BOC UNE Fact Report 2002 at II).

[1492] SBC Jan. 14, 2003 Unbundled Switching *Ex Parte* Letter.

[1493] *See* SBC Jan. 14, 2003 Unbundled Switching *Ex Parte* Letter at 2; BellSouth Jan. 30, 2003 *Ex Parte* Letter. In its study, SBC assumes that MCI had deployed switches to serve residential customers in wire centers with 5,000 or more lines (which, according to SBC, accounts for 57.7% of SBC wire centers in suburban and rural areas). In California, Michigan, and Texas, the SBC study determines that MCI would be able to cover its UNE-L provisioning costs if MCI set its retail prices (for residential customers) at $40-$60 per line and had a market share of at least 5% in each wire center with more than 5,000 lines. SBC Jan. 14, 2003 Unbundled Switching *Ex Parte* Letter at 3. SBC's model compares the costs of a UNE-L arrangement to the residential revenue opportunities available to competitors. *See* Letter from Jay Bennett, Executive Director – Federal Regulatory, SBC, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 4 (filed Jan. 24, 2003) (SBC Jan. 24, 2003 *Ex Parte* Letter). Specifically, SBC concludes that competitive LECs winning 5% to 10% of access lines in wire centers of 5,000 access lines or more can profitably serve residential customers using their own switches. *Id.*

BellSouth examines whether a competitor with a 5% market share could profitably serve customers in wire centers of various sizes, grouped into the following categories: greater than 25,000 lines, 15,000 to 25,000 lines, 5,000-15,000 lines, and under 5,000 lines. The study relies on the cost estimates supplied by WorldCom, to which BellSouth adds the cost of an average UNE loop. *See generally* WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter. Under each of the three scenarios presented, which varies according to the estimates of collocation costs and retail revenues available, BellSouth's study determines that competitors could profitably serve the groups of wire centers with greater than 5,000 lines, and would lose money only for wire centers of less than 5,000 lines. BellSouth Jan. 30, 2003 *Ex Parte* Letter at 7-9.

[1494] SBC Jan. 14, 2003 Unbundled Switching *Ex Parte* Letter at 3-4 ("The critical issue is not whether CLECs can serve every wire center profitably, but whether they can viably serve a particular *market*. Because wire centers with (continued....)

483. We find that these studies fail to provide sufficient evidence to form a basis for making a national finding of no impairment, or a finding of impairment on the basis of non-hot cut factors alone. These studies either failed to adopt the proper framework for determining impairment, were insufficiently granular, or failed to provide sufficient support for the parameters they employed. We observe that the results of these studies were very sensitive to the inputs used and the assumptions employed. The studies' cost estimates depend on the competitor's predicted market share in each incumbent end office and the size of the end office, as well as on the cost of various UNEs and equipment, some of which were disputed.[1495] The cost estimates were also sensitive to whether or not the competing carrier was assumed already to have installed facilities, such as collocation, transmission equipment and backhaul, a switch, and/or their own transport network, for the purpose of providing other services – for example, to serve the medium and large enterprise market.[1496] The studies failed to provide sufficient support for many of these parameters, and often failed to take into account geographic variations in these parameters. While providing significant evidence that competitors operate at a cost disadvantage compared to the incumbent, the studies presented by WorldCom and AT&T also did not adopt the proper framework, because they failed to consider all revenue opportunities associated with entry. These studies were therefore unable to determine when entry would be uneconomic. The incumbent LEC studies also used incorrect revenues, failing to use the likely revenues to be obtained from the typical customer. Moreover, all of the studies relied on averages, either national or regional, for some of their revenue and cost parameters, despite the fact that a granular analysis must wherever possible account for market-specific factors. Accordingly, based on the foregoing, the studies provide insufficient evidence either for or against a finding of impairment.

484. However, we are persuaded that other economic factors, in addition to the economic and operational barriers associated with the current hot cut process that we have already identified, may make entry uneconomic without access to the incumbent's switch. If

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fewer than 5,000 lines account for a minority of all subscriber lines, notwithstanding that they represent almost half (42.3%) of SBC's wire centers, its is reasonable to assume that any losses a CLEC incurs in those wire centers will be more than offset by profits earned in larger wire centers in those same markets.")

[1495] Besides the total number of lines in each incumbent end office and the competitor's market share, other input parameters that affect the calculation included competitor capital costs; depreciation rates; maintenance costs; customer churn rates; collocation space preparation costs and monthly rental fees; digital loop carrier equipment costs, capacities and degree of concentration; UNE transport and special access charges; competitor switch termination costs; and hot cut costs. AT&T Jan. 17, 2003 *Ex Parte* Letter at 2.

[1496] Thus, a competitor may have already set up collocation and transport (using the incumbent's transport network) for a particular end office, and installed its own switch, in order to serve business customers in that end office. Some competing carriers also have established extensive fiber transport networks in metropolitan areas. Use of these facilities would potentially reduce or eliminate the costs of collocation, transmission equipment, backhaul, and switching. AT&T Jan. 17, 2003 *Ex Parte* Letter at 3; WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter, Attach. A at 3-6; SBC Jan. 14, 2003 Unbundled Switching *Ex Parte* Letter at 3. In these cases, the cost of these facilities would have already been recovered by the revenues recovered in connection with these other services, and thus the carriers would be taking advantage of the scope economies available from the facilities' other uses.

nothing else, the evidence provided to us demonstrates that whether entry will be economic depends critically on the values of certain factors affecting a competing carrier's likely costs and revenues,[1497] and that these factors vary significantly among locations and types of customers.[1498] It is quite possible that carriers can economically enter with their own facilities in low cost, high revenue locations, but not in high cost, low revenue locations.[1499] Although we lack sufficient evidence in the record to determine the accuracy of the inputs used to generate their results, we observe that all of the studies mentioned – including the BOC studies – suggest that it would be uneconomic for a competing carrier to serve customers in smaller wire centers. All the studies found that in such wire centers, entry would be much more expensive for the competitive LEC than for the incumbent, or simply would be uneconomic. WorldCom found that, for customers for which it lacks facilities, its cost disadvantage rises from an average of $11.40 per line for wire centers of over 25,000 lines, to $49.92 for wire centers of under 5,000 lines.[1500] AT&T's study shows that, assuming a market share of seven percent, a competitor's cost disadvantage rises from $8.78 for a wire center of 100,000 lines to $71.73 for a wire center of 2,000 lines.[1501] Even the studies by the incumbent LECs, SBC and BellSouth, found that entry would be uneconomic for wire centers of under 5,000 lines.[1502] BellSouth found that for wire centers of under 5,000 lines,[1503] a competitor would likely experience a net loss of $1.93 per line assuming

[1497] According to the standard set forth above, our analysis must take into consideration the full range of revenues that are likely to be obtained by an entrant providing voice and related services, and the costs likely to be incurred. All factors affecting a competing carrier's likely revenues and costs must be examined to determine if they affect its ability to enter a market economically. Because economic entry depends on whether the sum total of all likely revenue sources exceeds the sum total of all likely costs of serving the market, any factor that limits or lowers the potential revenues available to a competing carrier, or raises the cost of serving a set of customers, is a potential barrier to entry. It is only by evaluating all the factors together that we may determine whether the likely revenues from entry will exceed the likely costs. Therefore, no factor should be examined in isolation.

[1498] To utilize a UNE-L strategy, which is the most likely network architecture a new competing carrier would use to serve a mass market voice customer in the absence of unbundled switching, a competing carrier would have to incur costs for the loop, backhaul, collocation space, digitizing and aggregating equipment in the customer's wire center, a switch, interconnection, transport, and the transfer of the customer to its switch using a hot cut, as well as internal administrative costs, the cost of capital, and other costs. Likely revenues depend on the prevailing retail rate and other revenues to be gained from selling local service, including those associated with access charges and vertical features. Also important is whether a competing carrier can sell other products in the region or wire center, which might generate sufficient revenues to help justify expenditures on collocation, backhaul, and a switch.

[1499] Entry is more likely to be economic in locations served by larger wire centers with greater line density, and in areas with low UNE loop rates, high retail rates relative to cost, high subscription rates for vertical features, large numbers of business customers, low UNE rates, and high retail rates. This list does not necessarily include all possible factors that may vary.

[1500] WorldCom Jan. 8, 2003 *Ex Parte* Letter at 2-3, Attach. A at 6-7 and App. Table 1, Case 3.

[1501] AT&T Jan. 17, 2003 *Ex Parte* Letter, Attach. 1 (using 7% market share and switch sizes of 100,000 and 2,000 lines used as inputs).

[1502] SBC admits that competitive LECs cannot earn a profit serving customers in wire centers of under 5,000 lines, but provides no analysis of the likely per-line losses. SBC Jan. 14, 2003 *Ex Parte* Letter.

[1503] The average size of these wire centers is 1,968 lines. BellSouth Jan. 30, 2003 *Ex Parte* Letter at 8.

BellSouth's average retail local revenues.[1504] However, as discussed above, there was significant disagreement concerning whether entry would be economic for larger wire centers.[1505]

485. All of these studies, including those provided by the BOCs, strongly support the need for a more granular analysis of impairment. We have insufficient evidence in the record, however, to conduct this granular analysis. Such an analysis would require complete information about UNE rates, retail rates, other revenue opportunities, wire center sizes, equipment costs, and other overhead and marketing costs. While some of this information was submitted to us, or is available to us from other sources, the available data do not sufficiently facilitate a granular inquiry into precisely where entry is economic. That market-specific data is needed is indicated by the significant variation in the costs and revenues an efficient entrant is likely to face. For example, costs appear to vary significantly among locations and types of customers.[1506] The recurring and non-recurring charges for critical UNE inputs such as collocation, loops, and transport often vary substantially between states.[1507] Within a state UNE loop rates can vary tremendously among rate zones.[1508] Parties also agree that the average cost per customer for collocation and equipment varies according to the number of customers served in a wire center, which is likely to depend on the size of the wire center and the likely market share of an efficient competitor.[1509] Some costs also vary according to the total size of the market served.[1510] The revenue estimates, which depend on customers' predicted expenditures on local voice service, were particularly controversial, and appear to have had a significant impact on the results.[1511] Retail rates can vary between states, by the type of customer, and within the state.[1512]

[1504] BellSouth Jan. 30, 2003 *Ex Parte* Letter at 8.

[1505] *See supra* Part VI.D.4.a.

[1506] *See supra* note 1498.

[1507] *See supra* note 1301.

[1508] Most states have adopted three rate zones, which is the minimum required by the Commission. *See Local Competition Order*, 11 FCC Rcd at 15882-83, para. 765. Some states have adopted four zones.

[1509] *See supra* Part VI.D.6.a.(i).

[1510] AT&T Jan. 17, 2003 *Ex Parte* Letter at 2-3, 7-8 (discussing collocation space costs, which relate to the number of customers served, and backhaul costs, which relate to the distance between the customers' premises and the competitive LEC's switch); WorldCom Jan. 8, 2003 Switching *Ex Parte Letter*, Attach. at 7 ("Economies of scale are critical to the level and structure of costs incurred by the CLECs.").

[1511] There is significant disagreement concerning what revenues to use in calculating net profits. AT&T, WorldCom, and Z-Tel argue that retail rates should not be relied upon, and that instead we should examine the cost disparity the competitor suffers using UNE-L relative to the incumbent. AT&T Jan. 17, 2003 *Ex Parte* Letter at 3; WorldCom Jan. 8, 2003 Switching *Ex Parte Letter* at Attach. A, 3-6. SBC and BellSouth argue that we should examine whether entry is economic using typical retail revenues. SBC Jan. 14, 2003 Unbundled Switching *Ex Parte* Letter at 3. In its study SBC used the typical retail revenue charged by WorldCom for its nationwide offering of combined local and long distance service, called The Neighborhood. *Id.* BellSouth suggests using the incumbent's average retail per-line local revenues, or the price of the incumbent's retail local offerings as the basis for determining competitor's revenues. BellSouth Jan. 30, 2003 *Ex Parte* Letter at 2-8.

Other revenues from mass market customers,[1513] and additional revenue opportunities from other types of customers,[1514] may also vary between and within states. Therefore, we expect that the states will consider the economic factors discussed here on a market-by-market basis and will determine whether it is appropriate to find "no impairment" in any particular market. This approach is consistent with our standard, which requires a determination of impairment on a granular basis, and with the dictates of *USTA*.[1515]

(ii) State Actions and Determinations

486. In this section, we ask state commissions to take certain actions designed to alleviate impairment in the markets over which they exercise jurisdiction. We also set forth a detailed process by which states may perform analysis on a more granular basis, and may identify where competing carriers are not impaired without access to unbundled switching.

(a) Incumbent LEC Batch Cut Processes

487. We have found that a seamless, low-cost batch cut process for switching mass market customers from one carrier to another is necessary, at a minimum, for carriers to compete effectively in the mass market.[1516] We conclude that the loop access barriers contained in the

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[1512] *See supra* note 1303.

[1513] Revenues associated with related services purchased by mass market customers, such as vertical features, are not included in residential rates, and may vary among the states and within a state. Revenues can also vary according to the state Subscriber Line Charge (SLC) and the state and federal access charges that can be applied. FCC Reference Book at 1; *MAG Plan Order*, 16 FCC Rcd at 19636-37, 19669, paras. 47, 131. Many state commissions report setting intrastate access charges above cost. GAO Report on Universal Service at 18.

[1514] Additional revenue opportunities are likely to be greatest in areas with large numbers of enterprises, especially if some of those enterprises are heavy users of telecommunications services.

[1515] *USTA*, 290 F.3d at 422-26.

[1516] Commissioner Abernathy emphasizes that despite the availability of a managed hot cut process in some states, carriers with their own switches have been increasing their reliance on unbundled switching. *See Commissioner Abernathy Statement* at 5 n.9. However, the record evidence demonstrates that competitive LECs have been forced to abandon plans to provide switch-based services to mass market customers because of the difficulties associated with the current hot cut process. *See supra* para. 466. Moreover, Commissioner Abernathy overlooks the fact that current market conditions warrant the availability of unbundling at a minimum, to transition to competitive switch deployment. *See* WorldCom Reply at 155. More importantly, Commissioner Abernathy fails to recognize that the record evidence indicates that incumbent LECs are not well-equipped to handle hot cut volumes even with the existence of a procedure to manage bulk migrations on a project-managed basis. Indeed, in New York, where Verizon has worked with carriers such as Broadview and AT&T to handle bulk migrations on a project-managed basis, there continue to be quality issues associated with hot cuts. Broadview Jan. 15, 2003 *Ex Parte* Letter at 6. This fact is illustrated by an order issued by the New York Department confirming that although the New York hot cut process is "working" and is "well refined . . . at least at current volumes," "an efficient bulk-hot-cut process and rate is critical to the development of facilities-based competition," and thus instituted a proceeding to address that problem. *See* BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 9 n.26 (citing Order Instituting Proceeding, *Proceeding on Motion of the Commission to Examine the Process, and Related Costs of Performing Loop Migrations on a More Streamlined (e.g., Bulk) Basis*, Case 02-C-1425 (Nov. 22, 2002)).

record may be mitigated through the creation of a batch cut process by spreading loop migration costs among a large number of lines, decreasing per-line cut over costs.[1517]

488. State commissions must approve, within nine months of the effective date of this Order, a batch cut migration process to be implemented by incumbent LECs that will address the costs and timeliness of the hot cut process. Alternatively, state commissions must make detailed findings explaining why such a process is not necessary in a particular market, as described below. We find that state regulators are closest to the facts particular to the provisioning issues applicable to their respective markets, and are in the best position to judge whether the incumbent LEC has indeed developed an efficient loop migration process. There can be no doubt that state commissions possess the competence to implement a cost-effective and fast process for provisioning unbundled local loops. State commissions possess the requisite expertise to apply Commission-prescribed standards, and they routinely utilize the processes and procedures – including discovery, sworn testimony, and cross examination on the record – that are essential to reasoned fact-finding. Should a state commission fail to approve a batch cut migration process or provide a detailed explanation why such a process is not necessary within nine months of this Order's effective date, an aggrieved party will be permitted to initiate a proceeding with this Commission.[1518]

489. As an initial matter, state commissions should adopt a batch cut over "increment" for migrating customers served by unbundled loops combined with unbundled local circuit switching to unbundled stand-alone loops. In other words, states should decide the appropriate volume of loops that should be included in the "batch." In conjunction with incumbent LECs and competitive LECs, states should also approve specific processes to be employed when performing a batch cut. The processes adopted will necessarily vary based on the relevant incumbent's particular network design and cut over practices. Generally, however, we expect these processes to result in efficiencies associated with performing tasks once for multiple lines that would otherwise have been performed on a line-by-line basis. For example, pursuant to the processes in place in at least some states, the incumbent LEC currently will pre-wire circuits on the central office frame, verify the presence of dial tone, and communicate with competitive LECs regarding problems encountered on a line-by-line basis.[1519] Under a batch cut process, these activities might be undertaken simultaneously for all lines affected by a given batch order. In addition to developing a cost-effective hot cut process, state commissions should evaluate

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[1517] In theory, electronic loop provisioning might one day obviate the need for a hot cut when migrating a loop from one carrier's switch to another's. *See, e.g.*, AT&T Comments, Attach. C, Declaration of Irwin Gerzberg, at paras. 6, 18-19, 25-28; Z-Tel Reply at 53. As discussed below, however, the record in this proceeding does not support a determination that electronic provisioning is currently feasible.

[1518] *See supra* Part V.E.2.a (discussing the role of the states).

[1519] *See, e.g., Application by Verizon New Jersey, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Service in New Jersey*, Supplemental Declaration of Patrick A. Garzillo and Marsha S. Prosini at Attach. 2, WC Docket No. 02-67 (filed Mar. 26, 2002) (describing Verizon's hot cut process in New York and New Jersey).

whether the incumbent LEC is capable of migrating batch cutovers of unbundled loops combined with unbundled local circuit switching to unbundled stand-alone loops for any requesting carrier in a timely manner. Specifically, state commissions may require that incumbent LECs comply with an average completion interval metric, including any further disaggregation of existing loop performance metrics (*i.e.*, quality or maintenance and repair metrics), for provisioning high volumes of loops. Finally, if they have not done so already, state commissions should adopt TELRIC rates for the batch cut activities they approve. These rates should reflect the efficiencies associated with batched migration of loops to a competitive LEC's switch, either through a reduced per-line rate or through volume discounts.

490. If a state should conclude that the absence of a batch cut migration process is not causing impairment for a particular market, however, that conclusion will render the creation of such a process unnecessary. For example, in a small, rural wire center, where there is not a significant volume of customer migrations, the absence of a batch cut process may not cause impairment.[1520] In such cases, the state commission may decline to institute a batch cut process, so long as it instead issues detailed findings regarding the volume of UNE-L migrations that could be expected if competitive LECs were no longer entitled to unbundled local circuit switching, the ability of the incumbent to meet that demand in a timely and efficient manner using the existing hot cut process, and the non-recurring costs associated with the hot cut process. If a state commission determines that these findings demonstrate that existing hot cut practices would be adequate even in the absence of unbundled local circuit switching, and that the costs of such processes will not deter entry by competitive LECs, it may conclude that a batch cut process is not necessary. Only such detailed findings, however, will serve as an adequate substitute for the development of a batch cut migration process. We emphasize, moreover, that a state's decision not to develop a batch cut process will not relieve the state commission of its obligation to conduct the analysis set forth below in assessing whether requesting carriers are actually not impaired without access to unbundled switching in any given market.

491. *Other Issues.* We note that AT&T and WorldCom propose other mechanisms intended to mitigate the disruptions and other practical difficulties inherent in the current loop infrastructure.[1521] First, AT&T argues that unbundled switching for voice-grade loops is essential until incumbent LECs offer an electronic loop provisioning (ELP) method of transferring large volumes of local customers in the mass market from one carrier to another that it describes as being analogous to the existing process used to change a customer's long distance provider and

[1520] *See* BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 7 (noting that Commission has found current hot cut processes adequate for the relatively small volumes under consideration in section 271 proceedings).

[1521] *See* AT&T Comments at 63; *see also* Letter from Kimberly Scardino, Senior Counsel, WorldCom, to Michelle Carey, Chief, Competition Policy Division, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1 (filed Nov. 13, 2002) (WorldCom Nov. 13, 2002 DS0 EELs *Ex Parte* Letter).

as eliminating the need for physical hot cuts.[1522] We agree with AT&T that it is easier for a competitive LEC to manage the hot cut process when migrating large numbers of lines served by unbundled loops combined with unbundled local circuit switching to stand-alone loops than in individual hot cut situations, because the conversions can be project-managed by both the incumbent LEC and the requesting carrier.[1523] However, the evidence in the record suggests that an ELP process, to be effective, would require significant and costly upgrades to the existing local network at both the remote terminal and central office. AT&T's ELP proposal proposes to "packetize" the entire public switched telephone network for both voice and data traffic, at a cost one party estimates to be more than $100 billion.[1524] Incumbent LECs state that AT&T's proposal would entail a fundamental change in the manner in which local switches are provided and would require dramatic and extensive alterations to the overall architecture of every incumbent LEC local telephone network.[1525] Given our conclusions above, we decline to require ELP at this time, although we may reexamine AT&T's proposal if hot cut processes are not, in fact, sufficient to handle necessary volumes.

492. In order to mitigate perceived difficulties with a transition from unbundled loops combined with unbundled local circuit switching to stand-alone loops, WorldCom proposes to establish rules ensuring that competitive LECs may obtain concentrated EELs at the DS0 level.[1526] WorldCom asserts that "TELRIC-priced EELs with concentration" could facilitate the competitive growth based on a UNE-L strategy.[1527] We agree with WorldCom that DS0 EELs can minimize collocation costs and increase the geographic reach of competitive LECs, thereby facilitating the expansion of competition based on UNE-L strategies in some markets.[1528] We

[1522] AT&T Comments at 235-39. The UNE-P Coalition states that electronic provisioning will allow thousands more migrations per day, thereby affording more consumers a competitive choice of provider. UNE-P Coalition Comments at 7.

[1523] AT&T Comments at 237.

[1524] *See* SBC Reply at 131 (estimating that, including the entire cost of all equipment necessary to implement AT&T's proposal, and assuming that a rough benchmark based on SBC's Project Pronto would be applicable to other incumbent LECs, it could cost more than $100 billion to implement ELP nationwide).

[1525] *See, e.g.*, SBC Reply at 129 (stating that AT&T's proposal would require substantial modifications to outside plant equipment, central office equipment, and OSS).

[1526] WorldCom Nov. 13, 2002 DS0 EELs *Ex Parte* Letter. The term "concentrated EELs" refers to an arrangement in which the competitive LEC utilizes concentration equipment allowing it to transport four to six DS0s or more on a single DS0-equivalent circuit. Thus, for example, using concentration a competitive LEC might use one DS1 circuit to carry 144 (rather than only 24) DS0s. WorldCom claims that such aggregation allows it to reach more customers more efficiently. *See id.* at 2; *see also* Letter from Jay Bennett, Executive Director – Federal Regulatory, SBC, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 4 (filed Nov. 14, 2002) (SBC UNE-Loop/Special Access *Ex Parte* Letter); Letter from Rebecca M. Sommi, Vice President – Broadview Networks *et al.*, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Nov. 26, 2002) (Broadview *et al.* Nov. 26, 2002 *Ex Parte* Letter).

[1527] WorldCom Nov. 13, 2002 DS0 EELs *Ex Parte* Letter.

[1528] *Id.*

decline, however, to establish at this time rules requiring concentration. The record demonstrates that DS0 EELs could increase loop costs[1529] and may raise several additional operational issues.[1530] Accordingly, we are not convinced, based on the limited record before us, that we should require incumbent LECs to include concentration when they provide UNEs to requesting carriers.[1531]

(b) State Commission Determinations

493. Although we find competitors to be impaired without access to the incumbent LEC's switch on a national level when serving the mass market, we authorize state commissions to play a fact-finding role – as set forth below – to identify where competing carriers are not impaired without access to unbundled local circuit switching.[1532] As discussed above, the record does not contain sufficient detail concerning which geographic and customer markets may in fact allow economic entry. In addition, impairments that exist today in certain markets may be remedied in the future due to the implementation of a batch cut process, as discussed above. Because our standard and the guidance from the *USTA* decision require that the determination of impairment be made on a granular basis, and because the record provides insufficient evidence concerning the characteristics of particular markets, we find it appropriate to ask the states to assess impairment in the mass market on a market-by-market basis.[1533]

[1529] Letter from Access Integrated *et al.*, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Dec. 11, 2002) (Access Integrated *et al.* Dec. 11, 2002 *Ex Parte* Letter); Letter from AT&T *et al.* to Michael K. Powell *et al.*, Chairman, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1 (filed Feb. 4, 2003) (AT&T *et al.* Feb. 4, 2003 *Ex Parte* Letter).

[1530] Letter from David A. Kunde, Executive Vice President of Network Operations, Eschelon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Oct. 21, 2002) (Eschelon Oct. 21, 2002 *Ex Parte* Letter).

[1531] According to WorldCom, some variant of the DS0 EEL is available and has been priced in at least the following states: Arizona, Arkansas, Colorado, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, and Wyoming. WorldCom Nov. 13, 2002 DS0 EELs *Ex Parte* Letter at 3 n.8.

[1532] Chairman Powell asserts that this proceeding has "transformed into a battle not over what should be unbundled, but who should decide – this Commission or the states." *See Chairman Powell Statement* at 3 (emphasis in original). Chairman Powell essentially characterizes the Commission's decision regarding unbundled switching as a battle over forum shopping. To the contrary, throughout the decision the Commission sets forth the same analytical framework – not only for the unbundled switching element but for other elements, including transport – that provides specific federal guidance under which the states perform a granular analysis to identify where competitive carriers are not impaired without access to a particular element. Surprisingly, Chairman Powell seems troubled by the framework as applied to unbundled switching yet appear unfazed by its existence and support its similar application to other elements.

[1533] Chairman Powell contends that with respect to unbundled switching there is a "default assumption of impairment" and that "[o]nly when all barriers to profitability have been eliminated does this Commission empower states to eliminate" unbundled switching. *Chairman Powell Statement* at 10 (emphasis in original); *see also* Commissioner Abernathy Statement at 6 (stating that "[t]he majority's multifactor test starts with a default (continued....)

494. We expect state commissions to follow a two-step process in determining whether to find "no impairment" in a particular market. In the first step, states will apply self-provisioning and wholesale triggers to a particular market to determine if the marketplace evidence of deployment of circuit switches serving the mass market requires a finding of no impairment. If the triggers are satisfied, the states need not undertake any further inquiry, because no impairment should exist in that market.[1534] If the triggers are not satisfied, the state commission shall proceed to the second step of the analysis, in which it must evaluate certain operational and economic criteria to determine whether conditions in the market are actually conducive to competitive entry, and whether carriers in that market actually are not impaired without access to unbundled local circuit switching. The states should evaluate evidence of switch deployment that does not automatically satisfy the triggers, but nonetheless may demonstrate the absence of impairment in the market.[1535]

(i) Defining the Market

495. The triggers and analysis described below must be applied on a granular basis to each identifiable market. State commissions must first define the markets in which they will evaluate impairment by determining the relevant geographic area to include in each market.[1536]

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presumption of impairment and cannot be overcome unless every conceivable obstacle to profitability has been eliminated."). That is incorrect. First, the Commission's decision makes a national finding "that competitors are not impaired without unbundled access to incumbent LEC local circuit switching when serving DS1 enterprise customers." Second, as to determinations of impairment regarding unbundled switching for mass market customers, the framework of analysis is essentially the same as the "assumptions" used to make findings of impairment for other elements, such as transport facilities. For example, for both unbundled local circuit switching and transport, the Commission requires states to examine triggers based on actual competitive deployment first, and when neither of these triggers is satisfied, the Commission sets forth factors that state commissions must apply to determine whether a market allows self-provisioning of the element. Where these factors suggest feasibility of self-provisioning of the element, states may render a "no impairment" finding. The dissent not only mischaracterizes the Commission's impairment test on unbundled switching, it also chooses to ignore the fact it supported application of the same test to other elements.

[1534] As explained below, we recognize that exceptional circumstances may preclude a state determination that there is no impairment in a given market even when one of the triggers has been satisfied.

[1535] Commissioner Abernathy states that, throughout this proceeding, she was willing to "peg[] non-impairment findings to deployment of a threshold number of switches." *Commissioner Abernathy Statement* at 3. However, throughout this process and prior to February 20th, she has been unwilling to distinguish the enterprise and mass markets in this analysis – the approach we adopt here. We believed – and continue to believe – that our approach is more consistent with the general impairment section approved unanimously by the full Commission. In that section, we agree to "conduct separate . . . impairment analyses based on [among others] two relevant customer classes – the mass market and the enterprise market." *See supra* para. 197.

[1536] Chairman Powell's criticism of the discretion we give states to define the relevant geographic market for purposes of the switching analysis is misplaced. *See Chairman Powell Statement* at 6-7. It is fundamental to our general impairment analysis to consider whether alternative facilities deployment shows a lack of impairment in serving a particular market. Indeed, we adopt triggers for the states to apply to measure impairment by considering this alternative facilities deployment in our analysis of loops, transport, and switching. Although the incumbent LECs argue that we should apply a zone approach to transport and loops, we define the relevant geographic market (continued....)

State commissions have discretion to determine the contours of each market, but they may not define the market as encompassing the entire state. Rather, state commissions must define each market on a granular level, and in doing so they must take into consideration the locations of customers actually being served (if any) by competitors,[1537] the variation in factors affecting competitors' ability to serve each group of customers,[1538] and competitors' ability to target[1539] and serve specific markets economically and efficiently using currently available technologies. While a more granular analysis is generally preferable, states should not define the market so narrowly that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market. State commissions should consider how competitors' ability to use self-provisioned switches or switches provided by a third-party wholesaler to serve various groups of customers varies geographically and should

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for transport as route-by-route, and the relevant geographic market for enterprise loops as customer-by-customer, because of the economic and operational issues associated with alternative transport and loops deployment. As Chairman Powell recognizes, a switch can theoretically serve wide areas (provided that the costs of transporting traffic back to the switch are not cost prohibitive), so one would expect a broader market definition for switching than for loops or transport. *Chairman Powell Statement* at 7. Indeed, because we measure alternative "switching" in a given market, not switches located in that market, the physical location of the switch is not necessarily relevant to defining the geographic market. For example, a switch located in Rhode Island could satisfy the switching trigger in Massachusetts if it is serving customers in the relevant market in Massachusetts. *Chairman Powell Statement* at 7. To the extent the states define a geographic market broadly, it is more likely that such geographic market will capture sufficient switching alternatives to satisfy the trigger, thus resulting in removal of the particular UNE in that geographic market (a result the dissents would seem to endorse). The exact parameters of these geographic markets, however, cannot be defined nationally for switching because, as both incumbent LECs and competitive LECs agree, there are extreme variations in population density, and thus wire center line densities, across the country. *See generally* AT&T Jan. 17, 2003 *Ex Parte* Letter; SBC Jan. 14, 2003 UNE P *Ex Parte* Letter; WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter. States are, therefore, better positioned to draw these lines. Because states are more familiar with how these variations have affected competitive entry, and because there was no credible record evidence to show how we could establish these boundaries based on a national rule, we ask the states to create these boundaries. We do, however, provide the states significant guidance. We require state commissions to define each geographic market on a granular level and direct them to take into consideration the locations of customers actually being served by competitors, the variation in factors affecting competitors' ability to serve each group of customers, and competitors' ability to target and serve specific markets economically and efficiently using currently available technologies. We make clear that state commissions cannot define a market as encompassing an entire state and that they should not define the market so narrowly that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market.

[1537] For example, if competitors with their own switches are only serving certain geographic areas, the state commission should consider establishing those areas to constitute separate markets.

[1538] For example, if UNE loop rates vary substantially across a state, and this variation is likely to lead to a different finding concerning the existence of impairment in different parts of the state, the state commission should consider separating zones with high and low UNE loop rates for purposes of assessing impairment.

[1539] For example, competitors often are able to target particular sets of customers, or customers in particular wire centers or rate zones.

attempt to distinguish among markets where different findings of impairment are likely. The state commission must use the same market definitions for all of its analysis.[1540]

496. Thus, for example, a state commission may choose to consider how UNE loop rates vary across the state, how retail rates vary geographically, how the number of high-revenue customers[1541] varies geographically, how the cost of serving customers varies according to the size of the wire center and the location of the wire center, and variations in the capabilities of wire centers to provide adequate collocation space and handle large numbers of hot cuts. We recognize that many states have implemented varied administrative tools to distinguish among certain markets within a state on a geographic basis for other purposes including retail ratemaking, the establishment of UNE loop rate zones, and the development of intrastate universal service mechanisms. If a state determines, after considering the factors just described, that these already-defined markets would be appropriate to use in this context as well, it may choose to use these market definitions.

497. For purposes of the examination described here, mass market customers are analog voice customers that purchase only a limited number of POTS lines, and can only be economically served via DS0 loops. Some mass market customers (*i.e.*, very small businesses) purchase multiple DS0s at a single location. The previous Commission determined that incumbent LECs that make the EEL combination available are not obligated to provide unbundled local circuit switching to requesting carriers for serving customers with four or more DS0 loops in density zone one of the top fifty MSAs.[1542] The previous Commission found that under such circumstances, lack of access to unbundled local circuit switching would not impair requesting carriers in these specific areas.[1543] At some point, customers taking a sufficient number of multiple DS0 loops could be served in a manner similar to that described above for enterprise customers – that is, voice services provided over one or several DS1s,[1544] including the same variety and quality of services and customer care that enterprise customers receive. Therefore, as part of the economic and operational analysis discussed below, a state must determine the appropriate cut-off for multi-line DS0 customers as part of its more granular review. This cross over point may be the point where it makes economic sense for a multi-line customer to be served via a DS1 loop. We expect that in those areas where the switching carve-out was applicable (*i.e.*, density zone 1 of the top 50 MSAs), the appropriate cutoff will be four

[1540] Therefore the market definitions used for the analysis of the triggers must also be used for the second step of the analysis, if the triggers are not satisfied.

[1541] These include, for example, business customers, as well as those residential customers likely to take vertical features and ancillary services such as data and voice mail service.

[1542] *UNE Remand Order*, 15 FCC Rcd at 3822-31, paras. 276-98.

[1543] *Id.*

[1544] The evidence in the record indicates that it may be viable to aggregate loops at a customer location and provide service at a DS1 capacity or higher. Specifically, if a customer has enough lines to justify the expense of purchasing multiplexing equipment and a high-capacity line, it makes sense to aggregate the customer's loops at the customer's premises, which avoids the need for hot cuts at the incumbent LEC's central office.

lines absent significant evidence to the contrary. We are not persuaded, based on this record, that we should alter the Commission's previous determination on this point.[1545] Accordingly, we authorize the states, within nine months of the effective date of this Order, to determine the appropriate cross over point.[1546]

(ii) Triggers

498. We adopt triggers as a principal mechanism for use by states in evaluating whether requesting carriers are in fact not impaired in a particular market. As noted above, we give substantial weight to actual commercial deployment of particular network elements by competing carriers.[1547] We find that the presence of facilities-based competitors is the best indicator that requesting carriers are not impaired. Therefore, our triggers identify existing examples of multiple competitive LECs using their own switches to serve mass market customers, or to provide a switching wholesale service. We require state commissions to find "no impairment" in a particular market when either trigger is satisfied, subject to the limitations described below. The use of triggers keyed to objective criteria can avoid the delays caused by protracted proceedings and can minimize administrative burdens.[1548] Our selection of various thresholds is based on our agency expertise, our interpretation of the record, and our desire to provide bright-line rules to guide the state commission in implementing section 251.

499. The triggers we set forth rely on the number of carriers that self-provision switches or the number of competitive wholesalers offering independent switching capacity in a

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[1545] Because the previous carve out only applied where "new" EELs were made available and because this Commission allowed state commissions to require switching to be unbundled even in areas where the carve-out test was met, it appears that the four-line carve-out was adhered to in very few areas in the country. SBC Reply at 30; BellSouth NERA Reply Decl. at 51-52. As part of their analysis, we expect states to make a finding of whether or not the carve out was in effect.

[1546] Commissioner Abernathy claims that our decision not to preserve the previous Commission's four-line carve-out represents a "potentially massive expansion" of unbundled switching. *Commissioner Abernathy Statement* at 8 n.27. This claim makes no sense. If a state finds that the appropriate cut-off for distinguishing enterprise from mass market customers in density zone 1 of the top 50 MSAs is four lines, there will be no more unbundled switching available than there was under the previous carve-out. Indeed, since the previous carve-out was conditioned on the availability of EELs and appears to have actually been in effect in very few areas of the country, *see supra* note 1545, setting the cut-off at an unconditional four lines would result in more customers being treated as enterprise customers subject to our finding of no impairment. If, on the other hand, a state finds based on record evidence that a cut-off of more than four lines is appropriate, more multi-line customers will be treated as mass market customers. But in no way will this result in an "expansion" of unbundled switching. To the contrary, as Commissioner Abernathy points out, "dozens of CLECs serve business customers of such size using their own switches." *Commissioner Abernathy Statement* at 8 n.27. Such widespread deployment of competitive switches would be considered under our mass market triggers. In such markets, then, it is more likely that there will be a finding of no impairment for the entire market, leading to significantly less unbundled switching than was available under the previous four-line carve-out.

[1547] *See supra* Part V.B.1 (discussing the impair standard).

[1548] *Pricing Flexibility Order*, 14 FCC Rcd at 14267-68, para. 84.

given market.[1549] In both cases, the competitive switch providers that the state commission relies upon in finding either trigger to be satisfied must be unaffiliated with the incumbent LEC and with each other.[1550] In addition, they should be using or offering their own separate switches.[1551] This requirement avoids counting as a true alternative a provider that uses the switching facilities of the incumbent LEC or *another* alternative provider that has already been counted. Moreover, the identified competitive switch providers should be actively providing voice service to mass market customers in the market. They must also be operationally ready and willing to provide service to all customers in the designated market.[1552] They should be capable of economically serving the entire market, as that market is defined by the state commission. This prevents counting switch providers that provide services that are desirable only to a particular segment of the market. Identified carriers providing *wholesale* service should be actively providing voice service used to serve the mass market, and providing it at a cost and quality and geographic scope that allow resellers to serve the entire market. However, the competing carriers' wholesale offerings need not include the full panoply of services offered by incumbent LECs.[1553]

[1549] As in the impairment triggers for high-capacity loops and dedicated transport, states also shall consider carriers that provide intermodal voice service using their own switch facilities (including packet and soft switches) that meet the requirements of these triggers and Part V above. *See supra* Part V.B.1.d.(ii) (describing intermodal alternatives generally, and factors affecting differences in the extent to which various intermodal alternatives are considered); *see also supra* paras. 332, 337 and notes 1256, 1278. In deciding whether to include intermodal alternatives for purposes of these triggers, states should consider to what extent services provided over these intermodal alternatives are comparable in cost, quality, and maturity to incumbent LEC services. *See supra* para. 97. For example, we note that CMRS does not yet equal traditional incumbent LEC services in its quality, its ability to handle data traffic, its ubiquity, and its ability to provide broadband services to the mass market. *See supra* para. 230. Thus, just as CMRS deployment does not persuade us to reject our nationwide finding of impairment, *see supra* para. 445, at this time, we do not expect state commissions to consider CMRS providers in their application of the triggers. In applying the triggers, states must consider packet switches to the extent they are used to provide local voice service to the mass market.

[1550] Affiliated companies will be counted together, in order to prevent gaming. We use the term affiliated and affiliate as the Act defines "affiliate." Section 3 of the Act defines the term "affiliate" as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent." 47 U.S.C. § 153(1).

[1551] While the record indicates that competitors do not currently purchase wholesale switching from non-incumbent-LEC providers, we find, for the limited purposes described herein, that if a carrier were to acquire the long term right to the use of a non-incumbent-LEC switch sufficient to serve a substantial portion of the mass market, that carrier should be counted as a separate, unaffiliated self-provider of switching.

[1552] In circumstances where switch providers (or the resellers that rely on them) are identified as currently serving, or capable of serving, only part of the market, the state commission may choose to consider defining that portion of the market as a separate market for purposes of its analysis.

[1553] We expect, however, that providers of switching will have an incentive to offer competitive terms with those of the incumbent LEC.

500. For the purposes of these triggers, we find that states shall not evaluate any other factors, such as the financial stability or well-being of the competitive switching providers.[1554] Competing carriers in Chapter 11 bankruptcy protection are often still providing service. Regardless of their financial status, the physical assets remain viable and may be bought by someone else and remain in service.[1555] We note that requiring states to determine the financial ability of competitive wholesale providers to provide service in the future could hamper economic recovery efforts of companies in financial distress. The key consideration to be examined by state commissions is whether the providers are currently offering and able to provide service, and are likely to continue to do so.[1556]

(a) Self-Provisioning Trigger

501. We determine that – subject only to the limited exception set forth below – a state must find "no impairment" when three or more unaffiliated competing carriers each is serving mass market customers in a particular market with the use of their own switches.[1557] We set the number of competitive facilities at three for several reasons. First, we choose three self-provisioners as the appropriate threshold in order to be assured that the market can support "multiple, competitive" local exchange service providers using their own switches.[1558] Second, setting the trigger at three competitive facilities takes into consideration the likelihood that self-providers will not offer their service for wholesale, based on the evidence that local exchange service providers have generally not shown an interest in providing wholesale services, in contrast to the wholesale trigger, described below, which is met if there are two actual wholesalers.[1559] Finally, we believe that the existence of three self-provisioners of switching demonstrates adequately the technical and economic feasibility of an entrant serving the mass

[1554] For the potential deployment analysis, however, the state commission may consider financial evidence relating to the difficulty in serving the mass market by existing competitive switch providers.

[1555] BOC UNE Fact Rebuttal Report at 20-24, 41-43.

[1556] For instance, states should review whether the competitive switching provider has filed a notice to terminate service in that market.

[1557] Competitors with their own switch that are providing service only on a wholesale basis should be counted for this test. Thus, for example, this test will be satisfied if there are three carriers providing service to mass market voice customers using their own switch, with two of the carriers providing only retail service, and one providing only wholesale service.

[1558] We therefore deny Bell Atlantic's petition seeking the elimination of unbundled switching in all geographic markets for all customer classes where a single competitive switch has been deployed. Verizon Feb. 17, 2000 Petition for Reconsideration at 9-11.

[1559] *See* Talk America Reply at 19; SWCTA Comments at 8-9; SWCTA Reply at 7; Supra Comments at 36; Navigator Comments at 6; Eschelon Comments at 28-29.

market with its own switch, and indicates that existing barriers to entry are not insurmountable.[1560]

502. We find, based on our review of the record, that competitive carriers providing service to mass market customers are impaired without access to local circuit switching.[1561] We determine that this is caused, in part, by the problems with the hot cut process identified above. We believe that this is unlikely to change until incumbent LECs implement batch cut processes. Nevertheless, particularly in light of the batch cut processes we are requiring states to approve and implement, we believe that competitive carriers will likely begin to utilize self-provisioned switches in greater numbers going forward. As discussed below, we require state commissions to monitor circumstances in their respective states for any significant changes in factors that may cause impairment.[1562] After a batch cut process has been put into place, we expect state commissions in subsequent reviews to reevaluate the circumstances surrounding self-provisioning, and expect that states will begin to find that requesting carriers are *not* impaired without access to unbundled switching as competing carriers self-provision switches in greater numbers.[1563]

503. *Exceptional Sources of Impairment.* In exceptional circumstances, states may identify specific markets that facially satisfy the self-provisioning trigger, but in which some significant barrier to entry exists such that service to mass market customers is foreclosed even to carriers that self-provision switches. For example, if there is no collocation space available for additional competitive LEC equipment, further competitive entry may be impossible, irrespective of other economic or operational circumstances. Where the self-provisioning trigger has been satisfied and the state commission identifies an exceptional barrier to entry that prevents further entry, the state commission may petition the Commission for a waiver of the

[1560] We recognize that when one or more of the three competitive providers is also self-deploying its own local loops, this evidence may bear less heavily on the ability to use a self-deployed switch as a means of accessing the incumbent's loops. Nevertheless, the presence of three competitors in a market using self-provisioned switching and loops, shows the feasibility of an entrant serving the mass market with its own facilities.

[1561] The Chairman claims that "the Majority blinds itself to the significant self-provisioned switching capacity that exists in the market and the fact that a number of competitors have overcome whatever economic impediments exist and are using that switching capability to serve mass market customers." *Chairman Powell Statement* at 7-8. This claim is simply wrong. We require the states to apply triggers that look only at actual deployment as the principal mechanism for evaluating impairment in a particular market. If the deployment triggers are met, the states must find no impairment. Even if these triggers are not met, we require the states to give evidence of a single competitively deployed mass market switch "particularly substantial weight" and evidence of enterprise switch deployment "substantial weight" in determining whether entry is economic. *See supra* paras. 508, 510. Moreover, the Chairman's contention that significant competitive mass market switching deployment exists currently, while unbundled switching is universally available, is in direct tension with his claim that "it is unreasonable to expect that competitors will utilize self-provisioned switching capacity while a steeply-discounted and long-term UNE-P alternative exists." *Chairman Powell Statement* at 6.

[1562] *See* Part VI.D.6.a.(ii)(e) (discussing continuing review).

[1563] We note, as described below, that state commissions will undertake subsequent granular reviews. *See infra* Part VI.D.6.a.(ii)(e) (discussing continuing review).

application of the trigger, to last until the impairment to deployment identified by the state no longer exists.[1564]

(b) Competitive Wholesale Facilities Trigger

504. Separate from the inquiry into self-provisioning, we direct states to consider whether switching facilities are available from competitive wholesale providers in a given market to serve mass market customers. Consistent with our approach with regard to transport and loops, we determine that carriers are not impaired if they are able to obtain switching from third parties offering access to their own switches on a wholesale basis. While the record shows that such wholesale alternatives are not generally available at this time, we establish this trigger as a mechanism for identifying markets with adequate wholesale alternatives, in the expectation such alternatives may well develop in the future. Therefore, state commissions should identify those markets in which requesting carriers are not impaired without unbundled local circuit switching because two or more competing carriers, not affiliated with each other or the incumbent LEC, offer wholesale switching service for that market using their own switch.[1565] In those markets, states should determine that requesting carriers are not impaired without access to unbundled local circuit switching. This test will ensure that local circuit switching can readily be obtained from a firm using facilities that are not provided by the incumbent.

505. We choose two competitive wholesale providers as the appropriate threshold because this standard ensures that states will only find "no impairment" where the market can support "multiple, competitive supply" and establishes an incentive for new local circuit switching facilities deployment while allowing competitive pressures from the wholesalers to control pricing and terms. A competitive carrier that is considering deploying switching facilities for the purpose of providing a wholesale offering is likely to be encouraged to deploy if its deployment will eliminate switching priced at TELRIC rates. Because we want to provide an incentive for competing carriers to deploy facilities, we do not demand the presence of more than two competitive wholesalers.[1566] Finally, we find that two wholesale providers, in addition to the

[1564] We do not find these types of barriers to be applicable to the wholesale trigger described below, because if the wholesale trigger is satisfied, even if further facilities-based entry is inhibited, the existence of two wholesale providers already provides a certain assurance that necessary facilities can be obtained by new entrants at competitive rates. Therefore we limit the state's ability to petition us, when an exceptional barrier to entry has been identified, to the application of the self-provisioning trigger.

[1565] We note that carriers providing switching services to the mass market not willing to provide wholesale services will be counted in the self-provisioning trigger described above.

[1566] Thus, if we were to establish a higher number than two as the threshold, such as four, to ensure the market is fully competitive, the first facilities-based potential entrant might be deterred from entry by the prospect of facing competition from providers using unbundled local circuit switching for a long time – until three other facilities-based competitors enter. With a threshold of two, the first facilities-based entrant need only wait until one other facilities-based entrant appears, before a finding of no impairment is warranted and they no longer face competition with switching priced at TELRIC.

incumbent LEC, should provide competitive pressures on pricing and terms and minimize the risk of "umbrella pricing" while encouraging deployment.[1567]

(iii) Analysis of Potential Deployment

506. Above, we have found that actual competitive deployment is the best indicator that requesting carriers are not impaired and, therefore, emphasize that the states should apply the self-provisioning and wholesale triggers described above, in their determination of whether impairment exists. We recognize, however, that the self-provisioning trigger discussed above identifies only the existence of *actual* competitive facilities serving the mass market and does not address the *potential* ability of competitive LECs to deploy their own switches to serve this market. For example, there may well be markets where self-provisioning of switching is economic notwithstanding the fact that no three carriers have *in fact* provisioned their own switches. In such cases, we expect states to find "no impairment." Therefore, we find that where neither of the triggers described above have been satisfied, the state must conduct further analysis to determine whether the market in question is suitable for "multiple, competitive supply."

507. In evaluating whether to find that requesting carriers are not impaired without access to local circuit switching, notwithstanding a market's failure to satisfy the triggers described above, the states shall evaluate three types of evidence, set forth more fully below. First, states must examine whether competitors are using their own switches to serve enterprise or mass market customers in the market at issue. Second, states must consider the role of potential operational barriers, specifically examining whether incumbent LEC performance in provisioning loops, difficulties in obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC, and difficulties in obtaining cross-connects in an incumbent's wire center, are making entry uneconomic for competitive LECs. Third, states must consider the role of potential economic barriers associated with the use of competitive switching facilities. Analyzing these factors in concert, state commissions must determine whether, in any particular market or markets, it is appropriate to find "no impairment."

(a) Evidence of Actual Competitive Deployment of Local Circuit Switches

508. States should first examine whether competitors are already using their own switches to serve voice customers in the relevant market. We determine that to the extent that there are two wholesale providers or three self-provisioners of switching serving the voice *enterprise* market, and the state commission determines that these providers are operationally and economically capable of serving the *mass* market, this evidence must be given substantial weight by the state commissions in evaluating impairment in the mass market. We find the existence of switching serving customers in the *enterprise* market to be a significant indicator of the possibility of serving the mass market because of the demonstrated scale and scope economies of serving numerous customers in a wire center using a single switch. Although

[1567] *See supra* para. 413 (describing umbrella pricing).

switches serving the enterprise market do not qualify for the triggers described above, we believe that, after implementation of a batch cut process, switches being used to serve the enterprise market are likely to be employed to serve the mass market as well, and that the state commission should investigate the feasibility of this. The evidence in the record shows that the cost of providing mass market service is significantly reduced if the necessary facilities are already in place and used to provide other higher revenue services, and a more efficient cut over process is in place.[1568] We choose three self-provisioners and two competitive wholesale providers as the appropriate threshold in order to be assured that the market can support "multiple, competitive" local exchange service providers using their own switch, and for the reasons described in the Trigger section above.[1569]

509. As with regard to the triggers described above, any competitive switch provider relied upon in the state's analysis here must be unaffiliated with the incumbent LEC and with any other carrier relied upon, and must be relying on its own switch.[1570] This requirement ensures that no provider that uses the switching facilities of the incumbent LEC or another alternative provider to provide service is counted as a separate alternative provider.

510. We also find that to the extent there is a switch in an area serving the local exchange mass market, this fact must be given particularly substantial weight. The existence of a competitor that is serving the local exchange mass market with its own switch provides evidence that the mass market can be served effectively. The state commission should consider whether the entire market could be served by this switch.[1571] Although a single self-provisioned switch is not sufficient to invoke the mandatory triggers described above, we conclude that the existence of even one such switch might in some cases justify a state finding of no impairment, if it determines that the market can support "multiple, competitive supply."[1572]

[1568] For example, a study by WorldCom purports to show that the average cost disadvantage a competitor labors under relative to the incumbent is significantly lower if the competitor already has its own switching, collocation, and transport facilities in place ($10.03 per customer, assuming the competitor has a 7% market share), than if it must build and install them ($21.59 per customer). WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter at 3, Attach. A at 2, Appendix: Table 1.

[1569] *See supra* paras. 501, 505.

[1570] Affiliated companies will be counted together, in order to prevent gaming. As described above, we use the term affiliated and affiliate as the Act defines "affiliate." *See supra* note 1550.

[1571] For example, a mass market switch with relatively high variable costs per customer (*i.e.*, in cases where the cost of acquiring and serving each additional customer is high, excluding the fixed costs of entry and collocation) may be able to serve only high revenue customers in the market economically. These variable costs would be determined by hot cut costs, churn, loop costs, and other customer-acquisition outlays.

[1572] Whether this competitor is using the incumbent's loops or its own loops should bear on how much weight to assign this factor, at least until such time as incumbent loops are no longer required to be unbundled.

(b) Operational Barriers to be Examined

511. As discussed above, state commissions should examine the role of potential operational barriers in determining whether to find "no impairment." In particular, state commissions should examine whether incumbent LEC performance in provisioning loops, difficulties in obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC, and difficulties in obtaining cross-connects in an incumbent's wire center, are making entry uneconomic for competitive LECs. As described above, we find that these factors can raise barriers to entry, but they are not the bases for our national finding of impairment.[1573]

512. *Loop Provisioning.* We have found on a national basis that the delays and costs associated with loop provisioning – those specifically arising from the hot cut process – impair a requesting carrier's entry into the mass market. Above, we have directed the state commissions to implement batch cut processes to reduce the economic and operational barriers posed by the present hot cut process. We recognize, though, that even after such processes are implemented, competitive carriers may face barriers associated with loop provisioning – even problems arising from the newly improved hot cut processes – which may continue to impair a requesting carrier's entry into the mass market. We therefore ask the state commissions to consider more granular evidence concerning the incumbent LEC's ability to transfer loops in a timely and reliable manner. Specifically, we ask the states to determine whether incumbent LECs are providing nondiscriminatory access to unbundled loops.[1574] Evidence relevant to this inquiry might include, for example, commercial performance data demonstrating the timeliness and accuracy with which the incumbent LEC performs loop provisioning tasks and the existence of a penalty plan with respect to the applicable metrics. For incumbent LECs that are BOCs subject to the requirements of section 271 of the Act, states may choose to rely on any performance data reports and penalty plans that might have been developed in the context of a past, pending, or planned application for long-distance authority. For other incumbent LECs, the states may choose to minimize the regulatory burden posed by extensive metric reporting and penalty plan requirements by reviewing other forms of evidence. State commissions should also consider

[1573] As noted above, we lack sufficient specific evidence concerning whether and where these factors will be significant enough to constitute impairment, particularly after a batch cut process has been implemented. Therefore, as part of its analysis, a state must consider evidence of whether operational considerations permit or prevent competitive entry in each market, and, if the latter, whether unbundling would overcome the impairment found. Here, we detail three particular types of operational barriers that may or may not give rise to impairment, even in the presence of a batch cut process.

[1574] In determining whether granular evidence contradicts our finding that the hot cut process imposes an operational barrier, the state commission should review evidence of consistently reliable performance in three areas: (1) Timeliness: percentage of missed installation appointments and order completion interval; (2) Quality: outages and percent of provisioning troubles; and (3) Maintenance and Repair: customer trouble report rate, percentage of missed repair appointments, and percentage of repeat troubles. This review is necessary to ensure that customer loops can be transferred from the incumbent LEC main distribution frame to a competitive LEC collocation as promptly and efficiently as incumbent LECs can transfer customers using unbundled local circuit switching. This evidence will permit states to evaluate whether competitive carriers are impaired because the quality of their services is below that offered by the incumbent.

whether the incumbent's facilities, human resources, and processes are sufficient to handle adequately the demand for loops, collocation, cross connects, and other services required by competitors for facilities-based entry into the voice market.

513. *Collocation.* As described above, we find that the absence of sufficient collocation space in the incumbent central office or offices might in some markets render competitive entry impossible and thus result in impairment. We therefore direct the state commissions to consider evidence concerning the costs and physical constraints associated with collocation in a particular market. We direct state commissions to consider whether competitive entry is inhibited, or is likely to be inhibited going forward, by the exhaustion of available collocation space in the incumbent LEC's central offices. Evidence relevant to this inquiry would include, for example, the amount of space currently available in those central offices; the expected growth or decline, if any, in the amount of space available; and the expected growth or decline, if any, of requesting carriers' collocation space needs, assuming that access to unbundled switching were curtailed. The state commissions shall consider this factor in determining whether to find that requesting carriers are not impaired without access to unbundled local circuit switching.

514. *Competitive LEC – to – Competitive LEC Cross Connects.* We have also determined that an incumbent LEC's failure to provide cross-connections between the facilities of two competitive LECs on a timely basis can result in impairment. Therefore, a state commission considering whether to find "no impairment" with regard to mass market switching must evaluate whether such delays increase requesting carriers' costs to such a degree that entry into the market is rendered uneconomic in the absence of unbundled switching. Evidence relevant to this inquiry would include, for example, information regarding the incumbent's practices and procedures with regard to provision of cross-connects linking competitive carriers' facilities, competitive LECs' complaints regarding the incumbent's past performance in this area, the incumbent LEC's response to these complaints, the costs incurred in connection with deficient performance in this regard, and the degree to which those costs render entry into a given market uneconomic.

(c) Economic Barriers to be Examined

515. State commissions conducting a review of unbundled switching must next examine whether economic factors associated with the use of competitive switching facilities are preventing competitive entry into the mass market, and, if not, whether it is appropriate to find that requesting carriers are not impaired without access to unbundled circuit switching in any particular market. Competing carriers argue that even using the most efficient network architecture available for entry, the UNE-L strategy, they are at a significant cost disadvantage vis-à-vis the incumbent.[1575] As discussed above, these carriers focus on two primary types of costs that only they face: (1) the costs of migrating incumbent LEC loops to their switches; and

[1575] *See* UNE-P Coalition Comments at 44-46; WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter at 3 (noting that switching has high fixed costs that must be spread over a large number of customers if a competing carrier is to achieve cost efficiencies similar to those enjoyed by the incumbent LEC).

(2) the costs of backhauling voice circuits to their switches from the end offices serving their customers, which as noted above, include the costs associated with collocation in the incumbent LECs' central offices.[1576]

516. As discussed above, we find that the record does not contain sufficient detail concerning the scope and scale of the barrier posed by the costs associated with migration and backhaul in particular markets to permit us to determine whether and where there may be exceptions to our national finding that competing carriers cannot economically serve the mass market without access to unbundled local switching.[1577] Accordingly, we ask state commissions to examine, on a granular basis, evidence that may demonstrate that requesting carriers are not impaired without access to unbundled local circuit switching.

517. *Evidence of Whether Entry is Economic.* In considering whether a competing carrier could economically serve the market without access to the incumbent's switch, the state commission must also consider the likely revenues and costs associated with local exchange mass market service, as detailed below.[1578] Specifically, state commissions must determine whether entry is likely to be economic utilizing the most efficient network architecture available to an entrant.[1579] While most comments have focused on the UNE-L strategy,[1580] in which a requesting carrier combines the incumbent's loops and transport with its own switch, collocation and backhaul, state commissions must also consider whether new technologies provide a superior means of serving customers. The analysis must be based on the most efficient business model for entry rather than to any particular carrier's business model. Because this analysis involves comparing the potential revenues to the potential costs of entry, a state will necessarily be weighing advantages and disadvantages an entrant has in attempting to serve mass market customers. In judging whether entry is economic, states must also consider how sunk costs and competitive risks affect the likelihood of entry.[1581]

[1576] *See infra* Part VI.D.6.a.(i) (discussing possible economic impairment).

[1577] *See id.*

[1578] *See infra* para. 519.

[1579] Consistent with the impairment standard we adopt today, state commissions must determine whether competitors are unable economically to serve the market. State commissions should not focus on whether competitors operate under a cost disadvantage. State commissions should determine if entry is economic by conducting a business case analysis for an efficient entrant. This involves estimating the likely potential revenues from entry, and subtracting out the likely costs (accounting for scale economies likely to be achieved). We note that for switching, at least, parties have submitted business case analyses to demonstrate the likely profitability of entry. *See* SBC Jan. 14, 2003 Unbundled Switching *Ex Parte* Letter; BellSouth Jan. 30, 2003 *Ex Parte* Letter; *see also* AT&T Jan. 17, 2003 *Ex Parte* Letter; WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter.

[1580] SBC Jan. 14, 2003 Unbundled Switching *Ex Parte* Letter; BellSouth Jan. 30, 2003 *Ex Parte* Letter; AT&T Jan. 17, 2003 *Ex Parte* Letter; WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter; AT&T Oct. 4, 2002 *Ex Parte* Letter; BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter; PACE Dec. 11, 2002 *Ex Parte* Letter.

[1581] We reject the dissenters' "bootstrapping" argument that other UNEs should not be considered in our impairment analysis. *Chairman Powell Statement* at 11-12; *Commissioner Abernathy Statement* at 7-8. First, we (continued....)

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note that consideration of these factors only arises where the competitive triggers have not been met. Second, we note that even though nondiscrimination and pricing obligations under section 251(c)(3) and 252 for each individual UNE certainly lower the cost of entry, these provisions do not necessarily establish that they will lower costs sufficiently to make entry economic without access to any one particular element. Even if interconnection and unbundling are performed as efficiently as is technically feasible, these costs must still be considered in our business case analysis to determine whether entry is uneconomic without access to a particular network element.

To illustrate, even if the unbundling of transport significantly lowers the cost of entry, the cost of using unbundled transport (priced at TELRIC) is still a cost that competitors will likely have to incur to provide local exchange service, and should be included in a business case analysis for determining whether entry is economic. Furthermore, to the extent that transport is needed to extend the loops from the subscriber's wire center to the competitor's collocation, that is an additional cost that should be included in a business case analysis. And even if a market would otherwise be capable of sustaining switch deployment, if an incumbent lacked sufficient collocation space, then, the additional cost (including securing building, additional space, power, etc.) should be considered in the business case analysis. Similarly, if competing carriers were unable to cross connect their cages, a competitive voice LEC would not be able to engage in line splitting with a competitive data LEC, reducing its potential revenues. The dissent is incorrect to conclude that this analysis equates calculating a cost for purposes of a business case analysis with "a source of competitive disadvantage." *Chairman Powell Statement* at 12; *see also Commissioner Abernathy Statement* at 8.

The dissents mischaracterize our intention. Unlike in the *UNE Remand Order*, we do not intend that the availability of any UNE at state established wholesale (TELRIC) rates could by itself constitute impairment without considering all costs and revenues in a business case analysis. Rather, we are requiring the states to conduct an analysis of whether entry is economic by comparing the potential revenues to the potential costs of providing a particular service. Mass market switching, in isolation, is not a service and thus cannot be easily evaluated. Instead, to evaluate the feasibility of self-deploying a switch, states should perform a business case analysis of providing local exchange service. As described, the potential revenues include basic service, vertical features, access charges, *see infra* para. 519, revenues beyond just "switching" revenues. Likewise, costs include the forward-looking, TELRIC costs of the other elements necessary to provide local service. *See infra* para. 520. The cost factors listed should not be considered in isolation, but only in the context of a broad business case analysis that examines all likely potential costs and revenues.

Contrary to the dissents' assertions, our determination of whether competitors are impaired without unbundled switching does not depend on, and is not directly related to, whether loops or transport are unbundled. Rather than compelling the unbundling of switching, the fact that such complementary inputs may be available on an unbundled basis serves to lower the cost of providing service and thereby makes facilities-based entry more likely to be economic. Indeed, the alternative to assuming that competitors will use UNEs priced at TELRIC as complementary inputs would be to conduct the business case analysis using the cost of self-provisioning all of the elements necessary to provide local exchange service. Such an analysis, however, would lead to significantly greater unbundling, as the costs of self-providing these elements is likely much higher than obtaining them from the incumbent priced at TELRIC. For example, the cost of self-providing a loop could be extremely high and using that cost in the business case analysis for switching would always lead to a finding of impairment. Thus, we reject such an approach and in our business case analysis consider the minimum cost of entering the market, which includes the wholesale (forward-looking, TELRIC) prices of UNEs purchased from the incumbent LEC that are necessary to provide the relevant service. Moreover, we note that to the extent that incumbent LECs believe that TELRIC prices are too low, as they claim, (*see, e.g.,* BellSouth Comments at 25; Verizon Comments at 32), it should make it easier to satisfy this business case analysis for determining whether switching can be self provisioned in a market.

Chairman Powell also asserts that we improperly considered factors that have "characteristics that are not linked to natural monopoly." *Chairman Powell Statement* at 12. As an initial matter, we note that our switching analysis avoids finding impairment on the basis of "natural monopoly" characteristics associated with elements that

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518. State commissions should also consider how the existence of universal service payments and implicit support flows will impact competitors' ability to serve the specific market. As discussed in Part V.B.3 above, universal service payments and implicit support flows have been used to ensure the universal availability of local exchange service at affordable rates.[1582] These payments and support flows are likely to affect whether entry is economic, and therefore our impairment standard requires that they be taken into consideration. Particularly significant is the fact that implicit support flows have been incorporated into retail rates, such that retail rates for particular services may vary significantly from the cost of providing those services. State commissions should consider how competitors' ability to serve the market is facilitated in those areas where rates are "above cost," and is impeded where rates are "below cost," while recognizing that rates are likely to change over time in response to competition.[1583]

519. *Potential Revenues.* In determining the likely revenues available to a competing carrier in a given market, the state commission must consider *all* revenues that will derive from service to the mass market, based on the most efficient business model for entry. These potential revenues include those associated with providing voice services, including (but not restricted to) the basic retail price charged to the customer, the sale of vertical features, universal service payments, access charges, subscriber line charges, and, if any, toll revenues.[1584] The state must

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are complementary inputs (such as loops), because it assumes competitors will use UNEs purchased at TELRIC rates, where they are available. When we list various cost factors for state commissions to consider in their impairment analysis, we do so only because we determined that they were likely costs of entry, and were therefore relevant to a business case analysis.

[1582] *See infra* Part V.B.3. Section 254 of the 1996 Act requires that federal support mechanisms be "explicit and sufficient to achieve the purposes of this section", and should be based on a set of principles enumerated in section 254(b), including the principle that consumers in rural and high-cost areas should have access to telecommunications services at rates that are reasonably comparable to those charged in urban areas. 47 U.S.C. § 254(b). Section 254(f) permits states to adopt regulations "to preserve and advance universal service within that [s]tate," provided that these regulations are "not inconsistent with the Commission's rules to preserve and advance universal service." 47 U.S.C. § 254(f). States may also adopt regulations providing additional definitions and standards to promote universal service, but only to the extent that "such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms." *Id.*

[1583] As discussed above in Part V.B.3., to the extent that unbundling tends to create pressures to reduce or eliminate these implicit support flows, we note that the states may choose to rebalance rates, adopt an explicit and portable support mechanism, and/or exempt rural and small incumbent LECs from unbundling obligations as provided in section 251(f)(1) of the Act.

[1584] *See, e.g.*, Letter from Joan Marsh, Director, Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3, 11 (filed Sept. 25, 2002) (AT&T Sept. 25, 2002 *Ex Parte* Letter); SBC Jan. 14, 2003 Unbundled Switching *Ex Parte* Letter. The dissents' claim that considering, in the impairment analysis, retail rates that are low as a result of implicit universal service subsidies will "perpetuate reliance on UNE-P" is wrong. To begin with, our analysis considers such rates only if the triggers are not met. Moreover, the dissenters voted to approve an impairment analysis that specifically takes such rates into account. As mentioned, our general impairment standard – which Chairman Powell proposed and the Commission voted unanimously to approve – asks "whether all potential revenues from entering a market exceed the costs of entry, taking into account consideration of any counterveiling advantages that a new entrant may have." *See supra* para. (continued....)

also consider the revenues a competitor is likely to obtain from using its facilities for providing data and long distance services and from serving business customers.[1585] Moreover, state commissions must consider the impact of implicit support flows and universal service subsidies on the revenue opportunities available to competitors. State commissions must ensure that a facilities-based competitor could economically serve all customers in the market before finding no impairment.[1586] Consideration of potential revenues is consistent with our standard, as described in Part V above, and with the guidance of the *USTA* decision.[1587]

520. *Potential Costs.* Similarly, the state must consider all factors affecting the costs faced by a competitor providing local exchange service to the mass market.[1588] If the state

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84. This analysis requires examination of "prices," *see supra* para. 85, which, as the Order states in a section proposed by Chairman Powell and approved unanimously by the full Commission, may be low as a result of implicit universal service subsidies. *See supra* para. 164 ("[T]he impairment standard adopted by the Commission and reflected in the more granular state commission proceedings mandated by this Order addresses the existence of implicit support flows in several ways. . . . Our impairment standard . . . provides for consideration of whether entry is economic by taking into account the potential revenue opportunities available."). In the same section, again proposed by Chairman Powell and approved unanimously by the full Commission, we explicitly "recognize that 'below-cost' local exchange rates will tend to discourage competitive facilities-based entry, and the absence of such entry will be considered as evidence of impairment." *See supra* para. 168. As Chairman Powell and Commissioner Abernathy agreed, however, consideration of such evidence will not "perpetuate reliance" on UNEs. Specifically, facilities-based competitive entry may still occur because "new entrants using alternative technologies may have lower costs than the incumbent LEC even when UNE rates are set at reasonable levels" and because "[o]ur impairment standard also provides for consideration of evidence concerning the full range of revenue opportunities available" such as "premium" services "attractive to customers even when priced well above the incumbent LEC's rate for local exchange service." *See supra* para. 168 & n.543. Competing carriers can also gain access to the same universal service subsidies available to incumbent carriers by applying for "eligible telecommunications carrier" status. 47 U.S.C. § 214(e)(6); *see also* 47 U.S.C. § 254(e). These subsidies should encourage entry and, even where our deployment triggers are not met, the availability of the subsidies must be taken into account in determining whether entry is uneconomic. In addition, "the statute contains an exemption from the unbundling requirements for rural carriers and provides for state modification or suspension of the unbundling requirements for incumbent carriers serving, in the aggregate, less than two percent of the nation's access lines." Id

[1585] This analysis will therefore take into account the scale and scope economies available to carriers using existing facilities to provide a variety of services to all customers that are likely to be served by an efficient entrant.

[1586] Thus, in determining whether impairment exists in a market including a particular group of customers, the typical revenue to be obtained from *all* customers in that group must be considered, to ensure that an entering competitor will be able to serve all customers.

[1587] The *USTA* decision expressed concern that in some markets incumbent LECs' prices were above cost, and that the Commission failed to take this gap, and the advantage it conferred on competitors, into consideration in its impairment analysis in the *Local Competition Order*. *USTA*, 290 F.3d at 422-23. As discussed in Part V.B.3. (discussion of implicit support flows) *supra*, our standard, involving a granular analysis examining both the cost and revenues associated with entry, automatically incorporates competitive LECs' advantages such as these, and therefore addresses the *USTA* decision's concern about these situations.

[1588] The dissents argue that any consideration of the same factors that were considered in the *UNE Remand Order* is impermissible according to the *USTA* decision. *Chairman Powell Statement* at 11 n.30; *Commissioner Abernathy Statement* at 6 n.16. The use of factors common to the *UNE Remand Order* is beside the point. In this Order, we have fundamentally changed the formula (*i.e.*, the unbundling framework and standard) by which we consider these (continued....)

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factors. Thus, as stated above and unlike in the *UNE Remand Order*, they may play a role in our analysis, but are not individually dispositive of an impairment determination. *See supra* para. 106 ("While we no longer rely on, or formally examine, the five UNE Remand factors as a basis for our analysis of impairment, these factors still play a role in our analysis as they relate to the barriers to entry we have identified above."). Moreover, the dissents' claims that the factors we require states to examine as part of their granular inquiries are inconsistent with the *USTA* decision are wrong. *Chairman Powell Statement* at 9-11; *Commissioner Abernathy Statement* at 6 n.16. Their arguments are predicated upon a mischaracterization of *USTA* and are inconsistent with the Commission's decision in other sections of this Order that they have affirmatively supported.

For example, the dissents argue that the switching analysis relies on costs that are merely ordinary start-up costs and that these costs may not be taken into account under *USTA*. *Chairman Powell Statement* at 9; *Commissioner Abernathy Statement* at 7-8. As an initial matter, we note that these costs are only considered if the automatic triggers are not met. Moreover, although the Commission's switching analysis requires the states to examine certain factors that may contribute to the start-up costs of a new entrant, this is not the end of the inquiry. Consistent with the unbundling analysis applied in the rest of the Order and the guidance from *USTA*, we have examined these costs to determine whether, as balanced against the potential revenues that may be achieved, they are *sufficiently large* to prevent entry. That is, the inquiry we adopt today considers whether, after weighing all the costs associated with entry against the potential revenues and offsetting advantages, entry into the market is economic. A cost disparity that is typical of, and has not prevented, entry into the industry is insufficient to justify impairment under our standard. With respect to the factors themselves, there is general agreement in the record that the relevant start-up costs associated with entry into the local market include purchasing collocation, transmission equipment, transport, and loops. Indeed, in the cost studies submitted by the BOCs themselves they largely utilize the very same factors that we require the states to consider. *USTA* did not require us to ignore the costs associated with these factors; rather, the court directed us to set a higher threshold for determining when these costs, considered cumulatively, are sufficiently large as to create impairment. While any single cost factor may appear to be a small hindrance, it is only by considering the cumulative effect of all cost factors that the total potential hindrance to entry can be fully evaluated.

Notably, in criticizing our switching analysis, the dissents appear to attack the very impairment standard that they proposed, voted for, and applied to the Commission's analysis of transport and loops – other sections of the Order that they affirmatively supported. For example, Chairman Powell complains that "the Majority's switching decision conflates an impairment standard that properly asks whether entry is 'uneconomic' with the question of whether entry is profitable." *Chairman Powell Statement* at 14. We are at a loss to understand his complaint. The switching section in no way states a requirement to consider "profitability" – that is discussed in the general impairment section which was proposed by Chairman Powell and adopted unanimously by the Commission. The general impairment standard that Chairman Powell proposed and the Commission adopts unanimously asks "whether all potential revenues from entering a market exceed the costs of entry, taking into account consideration of any countervailing advantages that a new entrant may have." *See supra* para. 84. Furthermore, the general impairment section makes clear, in a passage proposed by Chairman Powell and adopted unanimously, that this analysis "is based on determining whether entry would be *profitable* without the UNE in question." *See supra* para. 85 (emphasis added). We merely ask whether entry is economic, and it is Chairman Powell that engages in bootstrapping, criticizing the very standard that he has proposed we consider.

Similarly, Chairman Powell claims that applying in the switching section the impairment standard he proposed and the Commission unanimously adopted "has converted the impairment standard into a protector of individual business plans." *Chairman Powell Statement* at 11. The Order's general impairment section, which again was proposed by Chairman Powell and adopted unanimously, devotes an entire paragraph to explaining why our impairment analysis does not entail assessing individual business plans. That paragraph – entitled "Impairment of Individual Requesting Carriers or Carriers Pursuing a Particular Business Strategy" states that "[w]e will not, as some commenters urge, evaluate whether individual requesting carriers or carriers that pursue a particular business strategy are impaired without access to UNEs." *See supra* para. 115. Rather, we explain, "an entrant is not

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commission determines that a UNE-L strategy is the most efficient means of serving the customer, these costs would likely include (among others):[1589] the cost of purchasing and installing a switch;[1590] the recurring and non-recurring charges paid to the incumbent LEC for

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impaired if it could serve the market in an economic fashion using its own facilities, concerning the range of customers that could reasonably be served and the services that could reasonably be provided with those facilities." *Id.* This same analysis applies in the switching section no less than it does in the other sections of this Order. *See supra* note 1579 (stating that "[t]he business case analysis pertains to "an efficient entrant" and an estimation of the "likely potential revenues" and the "likely costs").

Chairman Powell claims that "the Majority directs states to consider whether price and revenue reductions that result from additional competitive entrants can form the basis of impairment." *Chairman Powell Statement* at 13. This is simply false, as we do not direct states to consider any such thing. While we recognize that an academically pure interpretation of the impairment standard proposed by Chairman Powell and adopted unanimously in this item might take such reductions into account, we agree with Chairman Powell that a more administratively practicable approach would be to consider prevailing prices and revenues. Accordingly, we expect states to consider prices and revenues prevailing at the time of their analyses. We believe that these are reasonable proxies for likely prices and revenues after competitive entry and will result in a more administrable standard.

Finally, Chairman Powell maintains that our switching analysis "ignores the fact that the rates for collocation and hot cuts as well as other UNEs, are not within the control of the incumbent LEC and therefore are not cognizable under section 251(d)(2)." *Chairman Powell Statement* at 12. This claim is doubly wrong. First, each of these factors is within the incumbent LEC's control. The statute is clear that incumbent LECs are free to negotiate rates for UNEs, hot cuts, and collocation irrespective of statutory standards. *See* 47 U.S.C. § 252(a) ("[A]n incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251."). Second, to the extent that these factors are impacted by forces beyond the incumbent LEC's control – for example, to negotiate UNE rates, an incumbent LEC must come to an agreement with a requesting carrier – there is no basis whatsoever for Chairman Powell's claim that they "are not cognizable under section 251(d)(2)." The text of the section 251(d)(2) does not mention or in any way suggest such a limitation. *See* 47 U.S.C. § 251(d)(2) ("In determining what network elements should be made available . . ., the Commission shall consider, at a minimum, whether . . . the failure to provide access to such network element would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."). And the impairment standard proposed by Chairman Powell and adopted unanimously by the Commission requires consideration of "the costs of entry," which necessarily includes some factors entirely beyond the incumbent LEC's control. *See supra* para. 84. Indeed, with respect to high-capacity loop facilities, the Chairman proposed and the Commission unanimously approved consideration of multiple criteria outside the control of incumbent LECs, including. among other things, "local topography such as hills and rivers," "availability of reasonable access to rights-of-way," and "building access restrictions/costs." *See supra* para. 335; *see also id.* at para. 410 (listing similar criteria for transport).

[1589] Note that these costs are likely to be affected by whether the entrant is using the same facilities to serve customers in other markets, thus taking advantage of available scale and scope economies. Thus, a portion of the costs may be paid for by revenues generated in other markets, and the full cost should not be attributed to serving just one market. For example, it would be unreasonable to assume that the cost of developing a complete OSS system would have to be recovered within a single granular market. Also, if it is determined that an efficient entrant could efficiently serve both enterprise and mass market customers with the same switch, collocation and transport facilities, then the state's analysis of mass market customers in a particular market should not assume that the entire cost of these facilities is borne by these customers.

[1590] Granite Dec. 16, 2002 *Ex Parte* Letter.

loops, collocations, transport, hot cuts, OSS, signaling, and other services and equipment necessary to access the loop;[1591] the cost of collocation and equipment necessary to serve local exchange customers in a wire center, taking into consideration an entrant's likely market share, the scale economies inherent to serving a wire center, and the line density of the wire center;[1592] the cost of backhauling the local traffic to the competitor's switch;[1593] other costs associated with transferring the customer's service over to the competitor; the impact of churn on the cost of customer acquisitions;[1594] the cost of maintenance, operations, and other administrative activities;[1595] and the competitors' capital costs.[1596] State commissions should pay particular attention to the impact of migration and backhaul costs on competitors' ability to serve the market. We also note that parties to this proceeding have placed evidence in the record that economic impairment may be especially likely in wire centers below a specific line density.[1597] Before finding "no impairment" in a particular market, therefore, state commissions must consider whether entrants are likely to achieve sufficient volume of sales within each wire

[1591] SBC Jan. 14, 2003 Unbundled Switching *Ex Parte* Letter; BellSouth Jan. 30, 2003 *Ex Parte* Letter; AT&T Jan. 17, 2003 *Ex Parte* Letter; WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter; ASCENT Comments at 36; ASCENT Reply at 7; BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 4.

[1592] New South Reply at 25-26; NewSouth Fury Reply Aff. at para. 4; AT&T Jan. 17, 2003 *Ex Parte* Letter; WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter; BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 4.

[1593] The state commission should consider whether EELs or digital loop carrier remote terminals are the most effective means for a competitor to backhaul the traffic to its switch.

[1594] WorldCom Nov. 15, 2002 Customer Churn *Ex Parte* Letter; BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter at 4.

[1595] *See, e.g.*, BellSouth Jan. 30, 2003 *Ex Parte* Letter at 7; *see also* AT&T Feb. 4, 2003 UNE-L Cost Impairment *Ex Parte* Letter at 10.

[1596] These include the capital carrying costs for the period it takes a competitor to set up operations and achieve profitability. AT&T Feb. 4, 2003 UNE-L Cost Impairment *Ex Parte* Letter at 2, 10. Some of the costs listed here are unlikely to constitute by themselves a barrier to entry, particularly if the incumbent incurs the same costs for the provisioning of its retail service. A state commission should take them into consideration in performing a business case analysis, which requires consideration of all likely revenues and costs.

[1597] SBC and BellSouth have presented studies to show that competitors using their own switches should be able to earn a positive profit in wire centers serving at least 5,000 lines. SBC Jan. 14, 2003 Unbundled Switching *Ex Parte* Letter; BellSouth Jan. 30, 2003 *Ex Parte* Letter. WorldCom and AT&T provided studies to show that a competitor would operate under a significant cost disadvantage, and that this disadvantage is larger in small wire centers. AT&T Jan. 17, 2003 *Ex Parte* Letter; WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter. WorldCom claims that its cost study shows that in central offices with fewer than 25,000 residential lines, the cost of UNE-L will constitute an insurmountable barrier to entry and competition, even if there are significant reductions in incumbent LEC charges. In central offices serving 25,000 or more residential lines, competitive LECs that achieve a reasonable market share (*e.g.*, 7%) can profitably migrate customers served by unbundled loops combined with unbundled local circuit switching to their own switches, provided that state commissions ensure that operational and economic barriers are substantially reduced or removed. WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter at 7.

center, and in the entire area served by the entrant's switch, to obtain the scale economies needed to compete with the incumbent.[1598]

(c) Baseline Rolling Use of Unbundled Switching for Customer Acquisition Purposes

521. If, after applying the triggers and the flexible analysis of potential deployment described above, a state commission concurs that requesting carriers are impaired in the mass market in any particular market, we conclude that it must next consider the use of "rolling access to unbundled local circuit switching" to address impairment in that market. Specifically, we conclude that, in some cases, impairment in a given market could be mitigated by granting requesting carriers access to unbundled local circuit switching for a temporary period, permitting carriers first to acquire customers using unbundled incumbent LEC local circuit switching and later to migrate these customers to the competitive LECs' own switching facilities.[1599] As set forth below, we conclude that where transitional access to unbundled switching would cure any impairment that would otherwise undermine competition if requesting carriers were denied access to unbundled local circuit switching, the state must implement such "rolling" access rather than perpetuating permanent access to the switching element.[1600]

522. We note at the outset that in at least some cases, "rolling" access to unbundled local circuit switching could adequately address certain barriers to entry associated with the

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[1598] BiznessOnline.Com Feb. 14, 2003 *Ex Parte* Letter; PACE Dec. 11, 2002 *Ex Parte* Letter at 5-10; AT&T Jan. 17, 2003 *Ex Parte* Letter; WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter; AT&T Oct. 4, 2002 Comparing ILEC and CLEC Local Network Architectures *Ex Parte* Letter.

[1599] We refer to this as "rolling use" because under such a framework, each competitive LEC would obtain limited access to unbundled local circuit switching on a customer-by-customer basis.

[1600] Chairman Powell claims that our impairment test for switching is "unworkable." *Chairman Powell Statement* at 13. To the extent the impairment test for switching is not simple, however, it is because the facts surrounding impairment are not simple. For example, hot cut processes and the charges for them often vary substantially between states. Revenue potential also varies dramatically, as retail rates can vary between states, by the type of customer, and within the state. In order to conduct a granular analysis of the type called for by the D.C. Circuit, it is necessary to take these variations into account. Indeed, in the past, Chairman Powell has argued that such geographic variations and "complicated" factors must be taken into account. *See Commissioner Powell Second NPRM Statement*, 14 FCC Rcd at 8720-21 ("The availability of elements outside the incumbent's network could potentially turn on many factors, such as the existence of vendors and distribution channels, the presence of competing facilities-based LECs and the price of non-incumbent elements relative to the requesting competitor's ability to pay. These factors are likely to vary significantly from one market to the next . . . . It follows directly, then, that assessments of whether an element is necessary to provide service or whether failing to mandate access to that element would impair a new entrant's ability to provides service will vary significantly among different markets, states, and regions."). While a more simple solution would have been to find impairment or – as Chairman Powell would have found – no impairment nationwide, this approach would not have been responsive to the statute, the court, or the record in this case. Moreover, the enterprise loop analysis delegated to the states is arguably even more complicated as it requires the states to conduct a location-specific review on an individual customer-by-customer basis. *See supra* para. 328. Similarly, the transport analysis requires a route-by-route review. Again, both Chairman Powell and Commissioner Abernathy support these more complicated analyses.

switching element. First, competitive LECs may face difficulties in accumulating enough customers to justify batch line migration processing in both new central offices and existing collocations. Because the evidence in the record demonstrates that the provisioning delays caused by the manual hot cut process may place new entrants at a significant competitive disadvantage relative to the incumbent LECs, which are able to offer service to customers immediately after they receive a customer's order,[1601] we find that the availability of unbundled local circuit switching – even on a temporary basis – may enable competitors to acquire customers, aggregate them, and migrate them to the carrier's own switch in a manner that would not be feasible if the customers each had to be migrated individually upon signing up with the competitive LEC.

523. Second, rolling access to unbundled local circuit switching might satisfactorily address barriers associated with high customer turnover.[1602] Competitive LECs contend that high churn rates render them unable fully to recover the high non-recurring costs associated with the provision of UNE-L service to end users, because such costs are generally recovered on an amortized basis.[1603] We find that transitional access to unbundled local circuit switching could mitigate some of the costs related to customer churn. Such rolling access would allow the competitive LEC to incur the non-recurring costs associated with UNE-L service only *after* it had served the end user in question for some time. Given the record evidence that churn is most frequent in the first few months after the customer switches to a new carrier,[1604] rolling access to unbundled switching could eliminate a substantial portion of the non-recurring costs for which competitive LECs would otherwise have gone uncompensated.

524. In light of the prospect that rolling access to unbundled local circuit switching could permit requesting carriers to compete when they otherwise would have been impaired without access to the switching element, we require states to consider and to mandate such rolling access when appropriate, as described here. When a state commission finds that requesting carriers would be impaired in a particular market without access to unbundled local circuit switching, it must next determine whether granting such carriers rolling access to the switching element for a transitional period of 90 days or more would address the impairment

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[1601] As discussed above, the manual nature of the hot cut process, which requires coordination between competitive LEC and incumbent LEC technicians in a central office, takes a significant period of time. *See* WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter at 5. CompTel contends that the provisioning interval for lines served by unbundled loops combined with unbundled local circuit switching is, on average, 1-3 days where the corresponding average interval for an unbundled loop is five to six days. CompTel/PACE Oct. 31, 2002 *Ex Parte* Letter at 3.

[1602] WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter at 6.

[1603] *See, e.g.*, WorldCom Comments at 34 ("Customers may migrate away from the CLEC before the CLEC recovers installation and non-recurring costs."); Z-Tel Reply at 28-29.

[1604] WorldCom Nov. 15, 2002 Customer Churn *Ex Parte* Letter. As noted above, WorldCom estimates that it loses about 50% of all new customers within the first three months of service. For customers that choose its "Neighborhood" bundled local and long distance products, WorldCom loses, on average, 25% of its customers within 3 months. *Id.*

found.[1605] We conclude that in such cases, the narrow rolling access approach is more appropriate than an approach requiring continued open-ended unbundled access to the switching element. Thus, where the impairment is due primarily or exclusively to the problems associated with the economies of scale, the churn problem, or other issues that would be addressed by rolling access to unbundled local circuit switching, we ask the state commission to implement such a transitional access period for requesting carriers. That transitional period shall be no shorter than 90 days, though the state commissions may determine that a longer period is appropriate, and permit rolling access to unbundled local circuit switching for a period of more than 90 days.[1606]

(d) Transition Rules

525. To minimize potential service disruptions that could occur from the changes that we adopt today regarding local circuit switching, we retain the four-line "carve-out" from the unbundled local circuit switching obligation on an interim basis,[1607] pending state commission determinations pursuant to the framework set forth above. In the *UNE Remand Order*, the Commission determined that incumbent LECs are not obligated to provide unbundled local circuit switching to requesting carriers for serving customers with four or more DS0 loops in density zone one of the top fifty MSAs.[1608] If we were not to retain the carve-out, carriers could

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[1605] We recognize that the record includes support for a wide range of potential customer acquisition periods. WorldCom argues that, because of the high customer turnover, unbundled local circuit switching must not only be available for acquisition of new customers, but also remain available for each new customer for six months after acquisition. WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter at 6. According to Talk America, competitive LECs must still be able to acquire customers using unbundled local circuit switching for 18 months to achieve sufficient numbers for lines for batch migration; to acquire customers in non-collocated locations to build toward density triggers; and to acquire and serve customers who have both on-net and off-net locations. Letter from Heather Gold, Counsel for Talk America *et al.*, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 4 (filed Dec. 17, 2002) (Talk America *et al.* Dec. 17, 2002 *Ex Parte* Letter). We choose a 90-day period here because the evidence in this proceeding suggests that a substantial portion of churn occurs within the first three months of service, and because the 90 day period allows competitive LECs significant opportunities to accumulate enough end users to justify a batch hot cut. *See, e.g.*, WorldCom Nov. 15, 2002 Customer Churn *Ex Parte* Letter.

[1606] As described in the following section, a state determination to require rolling access to unbundled switching – like a state determination to require open-ended access to the switching element – is subject to modification during a state commission's subsequent review.

[1607] We find that we have the authority to retain the four-line carve out, especially in light of case law suggesting that agencies are given additional deference for "interim" or "transitional" mechanisms. *See, e.g.*, *CompTel*, 117 F.3d at 1068 (stating that although temporary agency rules are subject to judicial review notwithstanding their transitory nature, substantial deference by courts is accorded to an agency when the issue concerns interim relief); *CompTel*, 87 F.3d at 531; *MCI*, 750 F.2d at 140.

[1608] 47 C.F.R. § 51.319(c)(2); *UNE Remand Order*, 15 FCC Rcd at 3822-31, paras. 276-98. We note that the Commission, in the *UNE Remand Order*, had also required incumbent LECs subject to the switching carve-out rule to provide new EEL combinations. This aspect of the rule has become moot in light of the Supreme Court's ruling in *Verizon*. *See Verizon*, 535 U.S. at 531-38. Thus, we dismiss as moot Intermedia's petition for clarification of the carve-out's EELs requirements. *See* Intermedia Communications, Inc. Petition for Reconsideration and (continued....)

potentially accumulate more multi-line DS0 customers while states pursued their inquiries, only to risk losing those customers after states make their determinations pursuant to the framework described above. This inquiry will likely limit any multi-line DS0 unbundling obligation – either through the detailed review described in the preceding sections, or through a state determination of the appropriate cut-off for multi-line DS0 customers (*i.e.*, the point at which it makes economic sense for a multi-line customer to be served via a DS1 loop).[1609] By extending the four-line carve-out on an interim basis, pending such state commission action, we seek to avoid service disruptions that may result from expanding and then possibly reducing the eligibility for local circuit switching in this manner.[1610]

(e) Continuing Review

526. We emphasize that the framework set forth here contemplates ongoing state review of the status of unbundled switching. The operational and economic factors governing the analysis we have described are unlikely to remain constant as technology advances, customer needs change, and the competitive market for local service continues to mature. Therefore, after completion of the initial review described here, we expect states to conduct further granular reviews, pursuant to the procedures the state adopts, to reevaluate whether competitive LECs are impaired without access to unbundled local circuit switching, and whether such impairment, if found, could be cured by rolling access to such facilities. Like the initial proceeding, these further reviews might result in a state conclusion that requesting carriers are impaired in a particular market without access to unbundled local circuit switching, that carriers are *not* impaired, or that carriers *would be* impaired but for the availability of rolling access to such facilities. Where a state finds, applying the standards set forth above, that requesting carriers are no longer impaired without unbundled access to circuit switching, it shall reverse its previous decision that such access is required under section 251(c)(3). The proceedings described in this

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Clarification, in *Implementation of the Local Competition Provisions of the of the Telecommunications Act of 1996*, CC Docket No. 96-98 at 15-17 (filed Feb. 17, 2000) (Intermedia Feb. 17, 2000 Petition for Reconsideration).

[1609] *See supra* para. 497. We expect that in those areas where the switching carve-out was applicable (*i.e.*, density zone 1 of the top 50 MSAs), the appropriate cutoff will be four lines absent significant evidence to the contrary. *See id.*

[1610] We therefore reject arguments that we establish a national carve-out. *See, e.g.*, NewSouth Reply at 30; Z-Tel Comments at 52-54 & n.113; WorldCom Reply at 159-61; BellSouth Reply at 23. Because we retain the carve-out only on a transitional basis, and ask the states to establish an appropriate multiline DS0 cut-off point as part of their more granular review, we dismiss as moot the various requests before the Commission to reconsider and clarify the carve-out's terms. *See* Verizon Feb. 17, 2000 Petition for Reconsideration at 7-11; CompTel Feb. 17, 2000 Petition for Reconsideration at 2-5; Telecommunications Resellers Association Petition for Reconsideration, CC Docket No. 96-98 at 1-11 (filed Feb. 17, 2000); MCI WorldCom Feb. 17, 2000 Petition for Reconsideration at 20-23; AT&T Feb. 17, 2000 Petition for Reconsideration at 12-19; Birch Petition for Partial Reconsideration, CC Docket No. 96-98 at 1-9 (filed Feb. 17, 2000); Sprint Petition for Reconsideration and Clarification, CC Docket No. 96-98 at 7-9 (filed Feb. 17, 2000).

paragraph shall be completed within six months of the filing of a petition or other pleading submitted in accordance with the prescribed state procedures.[1611]

(f) State Commission Failure to Act

527. For the mass market, state commissions will conduct their initial reviews, applying the triggers and factors discussed above,[1612] within nine months of the effective date of this Order. The incumbent LEC must continue providing unbundled circuit switching in all locations until a state commission completes its proceedings. To the extent that a state commission fails to complete the granular inquiry,[1613] any aggrieved party may file a petition with this Commission demonstrating a state's failure to act pursuant to the procedures we outline today.[1614] Moreover, should a state commission fail to approve a batch cut migration process or provide a detailed explanation why such a process is not necessary within nine months of this Order's effective date, any aggrieved party will be permitted to initiate a proceeding with this Commission.[1615] The incumbent LEC must continue providing unbundled local circuit switching, subject to the four-line carve-out described above,[1616] while such a petition is pending with this Commission.

7. Transition of the Embedded Customer Base

528. We recognize the need to establish a transition plan to migrate the embedded unbundled local circuit switching customer base to an alternative service arrangement when unbundled local circuit switching is no longer made available. We find that we have the authority to establish such a plan because whether competing carriers can deploy facilities in a timely fashion is a key consideration in determining whether there is impairment. In instances when existing network elements may potentially be eliminated pending a fact-intensive investigation, we find that section 251(d)(2) gives us authority to promulgate reasonable transition rules to protect the public interest by preserving the status quo pending the outcome of the investigation and by giving competitive carriers a realistic opportunity to deploy their own

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[1611] *See supra* note 1291.

[1612] This includes the state commissions' approval of a batch cut migration process or, in the alternative, the provision of a detailed explanation why such a process is not necessary within nine months of this Order's effective date.

[1613] By "complete," we mean that a state commission, upon receiving sufficient evidence, has an affirmative obligation to review the relevant evidence associated with any market submitted by an interested party, and to apply the trigger and any other analysis specified in this Part to such evidence.

[1614] As discussed above, if a state fails to act, we set forth procedures for the Commission to step into the role of the state. *See supra* Part V.E.2. (discussing the role of the states).

[1615] *See id.*

[1616] *See supra* para. 525.

facilities.[1617] Because the record contains a wide range of proposals that, in many respects, do not on their own account fully for the interests of all stakeholders involved, we further recognize a need to exercise discretion in establishing the specific parameters for the transition plan. Our exercise of discretion is one that inherently resists mathematical precision, calling on us instead to make reasonable judgments based on a totality of competing factors.

529. The most critical aspect of any industry-wide transition plan is to avoid significant disruption to the existing customer base served via unbundled local circuit switching so that consumers will continue to have access to their telecommunications service. The record reflects that, by the end of 2002, more than ten million residential and small business lines were being served by competitive LECs via unbundled local circuit switching arrangements.[1618] We agree with carriers on the need to establish quantifiable milestones to ensure the transition takes place in an orderly manner.[1619] We recognize that eliminating unbundled access to incumbent LEC switching on a flash cut basis could substantially disrupt the business plans of some competitors. This is especially unacceptable, given that the record contains substantial evidence – including cost studies submitted by the incumbent LECs themselves – that competitive carriers suffer cost disadvantages and other barriers when they self-deploy switching in some locations.[1620] There is also a need for an orderly transition to afford sufficient time for carriers to implement any necessary business and operational plans and practices to account for the changed regulatory environment, including the need to modify or revise their interconnection agreements. For example, competitive LECs may need to develop new UNE-L provisioning systems, including hiring, training, and equipping loop provisioning and switch technicians; purchase and collocate new equipment; create additional customer service and trouble maintenance groups; revise wholesale billing systems; and develop capabilities for E911 and local number portability.[1621] Moreover, our transition plan must require the incumbent LEC to unbundle its local circuit switching facilities for some limited period *after* a state commission has found "no impairment," because otherwise a competitive LEC would be forced to halt its advertising and customer acquisition activities between the time the state commission issued its findings and the time the competitive LEC was able to serve its customers using alternative facilities. Finally, our plan must ensure that, as a practical matter, the transition occurs in a timely manner. We balance these important considerations against the reality that it would frustrate the statutory scheme and the court's conclusion that impairment is the "touchstone" of our unbundling

[1617] *See* Letter from Jay Bennett, Executive Director – Federal Regulatory, SBC, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 5-7 (filed Nov. 19, 2002) (SBC Nov. 19, 2002 *Ex Parte* Letter).

[1618] PACE Jan. 14, 2002 *Ex Parte* Letter at 2.

[1619] SBC Reply at 112.

[1620] Letter from Jay Bennett, Executive Director – Federal Regulatory, SBC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338, Attach. *Residential Customers Can Be Profitably Served Using UNE-L* at 2 (filed Jan. 24, 2003) (SBC Jan. 24, 2003 *Ex Parte* Letter); *see also* BellSouth Jan. 24, 2003 *Ex Parte* Letter at 12.

[1621] *See, e.g.*, WorldCom Nov. 18, 2002 Transition to UNE-L *Ex Parte* Letter at 4.

decision if customers are not transitioned from required unbundled switching as expeditiously as possible.

530. The parties take diverging positions regarding a transition from unbundled switching to facilities-based service (*i.e.*, UNE-L or resale).[1622] Incumbent LECs generally support elimination of their obligation to unbundle local circuit switching and propose transition plans away from unbundled incumbent LEC local circuit switching.[1623] Competitive LECs generally oppose the incumbent LEC transition proposals and argue that the Commission should not establish triggers to transition away from incumbent LEC unbundled local circuit switching. In several *ex parte* presentations, a number of parties softened their initial positions and proposed narrowly tailored transition proposals towards promoting facilities-based competition. For example, incumbent LECs propose transition plans based on a finding of no impairment for all customer classes. Several competitive LECs propose migration from unbundled switching to competitive LEC-owned switching over time based on ensuring that competitive LECs migrate to their own switching platform as self-provisioned switching becomes technically and economically feasible, with all proposals envisioning substantial state involvement to administer

[1622] SBC, for example, offers a proposal with respect to customers served by unbundled loops combined with unbundled local circuit switching, which relies on the establishment of a national two-year transitional wholesale offering for serving residential customers that is functionally equivalent to such an arrangement at a rate of $26 per month. *See* SBC Nov. 19, 2002 *Ex Parte* Letter at 5. Under SBC's proposal, resale and UNE-L options would remain available for competitive LECs to serve the mass market. Several competitive LECs propose migration from unbundled switching to competitive LEC-owned switching over time based on ensuring that competitive LECs migrate to their own switching platform as self-provisioned switching becomes technically and economically feasible. *See* Letter from Heather B. Gold, Representative for Broadview, Talk America, and Eschelon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Jan. 2, 2003) (Broadview *et al.* Jan. 2, 2003 Unbundled Switching to Unbundled Loop Proposed Migration *Ex Parte* Letter).

[1623] *See* Verizon Oct. 16, 2002 *Ex Parte* Letter at 18; Verizon Jan. 10, 2003 *Ex Parte Letter* at 2 (stating that if the Commission chooses to adopt a transition plan for residential customers, an appropriate transition would be one that moves quickly to the resale price prescribed by Congress). According to Verizon, the Commission should transition the residential rates for access to unbundled loops combined with unbundled local circuit switching to the state-established resale rate over a 12-month period. *See* Verizon Jan. 10, 2003 *Ex Parte* Letter at 2. One third of the differential would be eliminated immediately, as of the date of the Commission's order. *Id.* Another third would be eliminated after six months. *Id.* At the end of the 12-month period, the residential rates for access to unbundled loops combined with unbundled local circuit switching would be the resale rate. *Id.* at 2-3. Verizon further recommends that these transitional rates apply to the embedded base of residential customers served by unbundled loops combined with unbundled local circuit switching as well as any new customers added for the first six months after the Commission's order. *Id.* Qwest's plan, for example, would require the following: (1) Day 60 – Competitive LECs would declare its preferred transition option; (2) As soon as possible – Transition existing customers served by unbundled loops combined with unbundled local circuit switching to Resale or Unbundled Switching; (3) August 2003 – Transition existing customers served by unbundled loops combined with unbundled local circuit switching to new market-based product offering from Qwest; and (4) December 2003 – Transition existing customers served by unbundled loops combined with unbundled local circuit switching to stand-alone loops on a negotiated project basis. *See* Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, Attach. at 2 (filed Oct. 30, 2002) (Qwest Oct. 30, 2002 Switching *Ex Parte* Letter).

the phase-out.[1624] For example, Broadview, Eschelon, and Talk America propose a four-step migration plan, which requires incumbent LECs to create efficient loop provisioning processes for hot cutting unbundled loops combined with unbundled local circuit switching to unbundled stand-alone loops migration once competitive LECs exceed prescribed line densities.[1625] Z-Tel details a five-step plan for building wholesale switching and transport alternatives, which, it contends, will support the entry of several telecommunications firms.[1626] While we decline to adopt these proposed transition plans,[1627] and any other transition proposal in full, we base our decision on evaluation of those proposals in the record and our transition plan goals noted above.

531. We find that state commissions are well suited to monitoring the operational aspects of this migration, and we therefore incorporate a state role into our transition plan. State commissions have strong incentives both to encourage competition (as a means of providing citizens of their states with a choice of service providers) as well as to foster new investment (as a means of promoting economic growth in their states). The evidence in the record demonstrates that state commissions have a strong interest in creating the conditions for transition from service using unbundled local circuit switching to unbundled stand-alone loops wherever possible, and managing the transition in a way that promotes investment as well as continued choice for consumers. We therefore require competitive and incumbent LECs to jointly submit the details

[1624] Broadview *et al.* Jan. 2, 2003 Unbundled Switching to Unbundled Loop Proposed Migration *Ex Parte* Letter; Letter from Heather B. Gold, Counsel for Broadview, Talk America, and Eschelon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 2 (filed Dec. 31, 2002) (Broadview *et al.* Dec. 31, 2002 *Ex Parte* Letter).

[1625] Broadview *et al.* Jan. 2, 2003 Unbundled Switching to Unbundled Loop Proposed Migration *Ex Parte* Letter at 2. According to the plan, step 1 requires incumbent LECs to develop, implement, and then have certified a loop migration process in each state. *Id.* Then, according to step 2, once an incumbent LEC has implemented a satisfactory migration process, it can petition the state to determine sufficient customer density to justify facilities investment. *Id.* at 4. Step 3 provides competitive LECs with at least 18 months to migrate lines above the requisite numbers to their own facilities; for subsequent migrations, competitive LECs will have six months to establish collocation and migrate lines above the requisite number to their own facilities. Lastly, step 4 of their proposal requires that competitive LECs be able to acquire customers using unbundled local circuit switching, pending implementation of an incumbent LEC efficient loop migration process.

[1626] *See* Letter from Christopher J. Wright, Counsel for Z-Tel, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Nov. 22, 2002) (Z-Tel Nov. 22, 2002 *Ex Parte* Letter). Z-Tel's plan envisions the availability of unbundled access to switching until vibrant, effective, and efficient wholesale alternative providers of mass market switching and transport services are in place. *Id.* at 1. The five-step plan consists of equal access requirements for loop provisioning; competitive wholesale interoffice transport; switch-based competitive LEC transfer from unbundled local circuit switching; competitive analysis of wholesale providers by state commissions; and a transition to wholesale providers. *Id.* at 2. A key aspect of the plan is to make sure the steps are completed in sequence before proceeding to the next step. *Id.* According to Z-Tel, the principal adjudicator as to whether a step has been completed is the state commission. *Id.* at 6.

[1627] While the Supreme Court has advised that "[t]he Commission cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent's network," including review of requesting carriers ability to "self-provision, or purchas[e] from another provider," the Commission is not obligated to establish a wholesale market for switching and transport. *See Iowa Utils. Bd.*, 525 U.S. at 389.

of their implementation plan to the appropriate state commission. In addition, we require competitive LECs to notify the relevant state commissions when they have submitted their orders for migration. Finally, we require incumbent LECs to notify the relevant state commission when they have completed the migrations.

532. Competing carriers must transfer their embedded base of DS1 enterprise customers to an alternative service arrangement within 90 days from the end of the 90-day state commission consideration period, unless a longer period is necessary to comply with a "change of law" provision in an applicable interconnection agreement.[1628] To the extent a state commission finds "no impairment" for mass market customers in a particular market, we require mass market carriers to commit to an implementation plan with the appropriate incumbent LEC within two months from the finding of no impairment. Thus, if a state commission determines that there is no impairment for a particular market in its initial 9 month review, the carriers must have a plan in place within 11 months of the effective date of this Order. By five months after a finding of no impairment, competitive LECs may no longer request access to unbundled local circuit switching. Moreover, we require competitive LECs to submit the necessary orders[1629] for one-third of their customers in accordance with the following schedule: (1) 13 months after a finding of no impairment: Each competitive LEC must submit orders for one-third of all its unbundled local circuit switching end users; (2) 20 months after a finding of no impairment: Each competitive LEC must submit orders for half of its remaining unbundled local circuit switching end users; and (3) 27 months after a finding of no impairment: Each competitive LEC must submit orders for its remaining unbundled local circuit switching end users.[1630]

[1628] *See infra* Part VIII.D (transition period).

[1629] For purposes of calculating the number of customers who must be migrated, the embedded base of customers shall include all customers served using unbundled switching that are not being served with transitional unbundled switching.

[1630] We disagree with Chairman Powell's claim that permitting competitive LECs to transition their mass market customers off of unbundled switching over the course of a three-year period is either unreasonable or unlawful. *Chairman Powell Statement* at 13. As an initial matter, we note that, at the time of this Order's adoption, there were over ten million customers receiving local service over unbundled local switches. Chairman Powell concedes that the Commission has the discretion to set forth reasonable transition periods and, given the enormous number of customers that may potentially be affected, we believe that three years is a reasonable amount of time. *Chairman Powell Statement* at 13. Further, we note that this Commission voted unanimously to give the states unlimited discretion to determine the appropriate transition period for migrating customers off of enterprise loops and transport UNEs where they find no impairment for these facilities. *See, e.g., supra* para. 338 (stating expectation that states will give competitors an "appropriate period" to transition from unbundled loops). Significantly, Chairman Powell does not appear to be concerned about legality of continued access to these facilities after an "*express finding* of no impairment." *Chairman Powell Statement* at 13. Moreover, under our switching transition period, competitive LECs must begin transitioning one-third of their customers to their own facilities 13 months after a finding of no impairment. Once competitive carriers have incurred the fixed costs associated with deploying their own switching facilities to support one-third of their customers, we find it likely that such carriers will have an incentive to fill the capacity of their switch such that they will not necessarily need the full three years to complete the migration – assuming, of course, that the incumbents can successfully manage the cutover process. Finally, providing a sufficiently long transition for the embedded base of customers should have the effect of encouraging competitive entry and investment in the future. Without such a transition, potential entrants might fear that (continued....)

E. Shared Transport

1. Background

533. In the *Triennial Review NPRM*, the Commission sought comment on whether it should retain or modify the existing unbundling obligations for shared transport.[1631] The Commission previously has defined shared transport as "transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches in the incumbent LEC's network."[1632] In the *Shared Transport Order*, the Commission clarified the extent to which incumbent LECs are obligated to provide requesting carriers with access to shared transport.[1633] The Commission later found in the *UNE Remand Order* that, without access to shared transport, requesting carriers are impaired in their ability to use unbundled local circuit switching.[1634]

2. Discussion

534. Incumbent LECs and competitive LECs demonstrate that the use of unbundled shared transport is tied exclusively to unbundled local switching.[1635] Verizon and SBC assert that because switching and shared transport are inextricably linked, if incumbent LECs are no longer obligated to unbundle switching, they should no longer be obligated to unbundle shared transport.[1636] We agree. Therefore, we find that requesting carriers are impaired without access to unbundled shared transport only to the extent that we find they are impaired without access to unbundled switching.[1637] Because unbundled shared transport is linked to the use of unbundled

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investments they make in facilities, office systems, and marketing would be stranded if future unbundling decisions suddenly made their business plans no longer viable.

[1631] *Triennial Review NPRM*, 16 FCC Rcd at 22809-10, para. 63.

[1632] *UNE Remand Order*, 15 FCC Rcd at 3862, para. 370; 47 C.F.R. § 51.319(d)(1)(iii); *see generally Shared Transport Order*, 12 FCC Rcd 12460.

[1633] *Shared Transport Order*, 12 FCC Rcd at 12462, para. 2.

[1634] *UNE Remand Order*, 15 FCC Rcd at 3862-66, paras. 369-79.

[1635] *See, e.g.*, SBC Comments at 81; Verizon Comments at 95 n.319; SBC Reply at 141; Letter from Peter Karoczkai, InfoHighway Communications Corp., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 1 (filed Feb. 14, 2003) (InfoHighway Feb. 14, 2003 *Ex Parte* Letter); Z-Tel Reply at 68-69; *UNE Remand Order*, 15 FCC Rcd at 3862, para. 369 n.731 (stating, "the only carrier that would need shared transport facilities would be one that was using an unbundled local switch"); *Id.* at 3863, para. 371 (stating, "shared transport is technically inseparable from unbundled switching.").

[1636] *See* SBC Comments at 81; Verizon Comments at 95 n.319; SBC Reply at 141.

[1637] This conclusion is similar to the Commission's conclusion in the *UNE Remand Order*. *See* 15 FCC Rcd at 3862, para. 369 ("where an incumbent LEC provides requesting carriers with access to unbundled switching, we require incumbent LECs also to provide access to unbundled shared transport services").

switching, and because the Commission delegates a role to state commissions in identifying impairment for unbundled circuit switching,[1638] states should incorporate into their analyses of switching the economic characteristics of shared transport and other backhaul.[1639] Thus, we find that requesting carriers are impaired without access to unbundled shared transport – transmission facilities shared by more than one carrier between end office switches, between end office switches and tandem switches, and between tandem switches[1640] in the incumbent LEC's network – to the extent that local circuit switching is unbundled.

F. Packet Switching

1. Background

535. In the *UNE Remand Order*, the Commission defined "packet switching capability" as "routing or forwarding packets, frames, cells or other data units based on address or other routing information contained in the packets, frames, cells or other data units" as well as the functions performed by DSLAMs.[1641] The Commission also excluded packet switching functionalities from the section 251(c)(3) unbundling obligations, except in limited circumstances.[1642]

[1638] *See supra* Part VI.D (describing the role states may take in identifying impairment for unbundled local circuit switching).

[1639] The record indicates that without access to unbundled shared transport, a requesting carrier with access to unbundled switching would have to obtain dedicated transport from the incumbent LEC, from a third party, or by self-provisioning. *See, e.g.*, AT&T Comments at 159, 161; *see also UNE Remand Order*, 15 FCC Rcd at 3864, para. 374. Our discussion of dedicated transport, above, analyzes the barriers to entry related to self-deploying or otherwise obtaining dedicated transport facilities. *See* Part VI.B.3.d, *supra*. The record also indicates that shared transport is rarely available from third party sources and no incumbent LEC presents evidence of third-party alternatives to unbundled shared transport. *See* UNE-P Coalition Comments at 54; CTC Reply at 18.

[1640] Shared transport between local tandem switches sometimes is used by competing carriers for "transiting" – a means of indirectly interconnecting with other competing carriers for the purpose of terminating local and intraLATA traffic. *See, e.g.*, InfoHighway Feb. 14, 2003 *Ex Parte* Letter at 2. To date, the Commission's rules have not required incumbent LECs to provide transiting. *See Application by Verizon Maryland Inc., Verizon Washington, D.C. Inc., Verizon West Virginia Inc., Bell Atlantic Communications Inc., (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, WC Docket No. 02-384, Memorandum Opinion and Order, 18 FCC Rcd 5212, 5271, para. 101 (2003) (*Verizon Maryland/DC/West Virginia 271 Order*). The Commission plans to address transiting in its pending *Intercarrier Compensation* rulemaking proceeding. *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) (*Intercarrier Compensation NPRM*).

[1641] *UNE Remand Order*, 15 FCC Rcd at 3833-34, paras. 302-04; *see* 47 C.F.R. § 51.319(c)(4).

[1642] *UNE Remand Order*, 15 FCC Rcd at 3838-39, para. 313; *see* 47 C.F.R. § 51.319(c)(5). An incumbent LEC must provide access to unbundled packet switching only where the incumbent LEC has deployed digital loop carrier systems or otherwise deployed fiber optic facilities in the distribution part of the loop; has no spare copper loops (continued....)

536. In the *Triennial Review NPRM*, the Commission sought comment on whether, in light of changed circumstances, it should retain this limited unbundling requirement and if so, whether it should modify this requirement or the existing definition of packet switching, including the DSLAM functionality.[1643] The Commission also sought comment on the benefits and burdens resulting from the packet switching unbundling requirement and whether there are any alternative, less burdensome options available to achieve the goals of the Act.[1644]

2. Discussion

537. We find, on a national basis, that competitors are not impaired without access to packet switching, including routers and DSLAMs.[1645] Accordingly, we decline to unbundle packet switching as a stand-alone network element.[1646] We further find that the Commission's limited exception to its packet-switching unbundling exemption is no longer necessary.[1647] Lastly, our decision not to unbundle stand-alone packet switching is consistent with the goals of section 706 of the 1996 Act.[1648]

538. Evidence in our record demonstrates that the considerations applied in the *UNE Remand Order* apply with equal force at this time to support our earlier decision not to unbundle packet switching as a stand-alone network element.[1649] Specifically, the record shows that a wide range of competitors are actively deploying their own packet switches, including routers and

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capable of providing the xDSL service the requesting carrier seeks to offer; has not permitted the requesting carrier to collocate its own DSLAM at an appropriate subloop point; and has deployed packet switching for its own use.

[1643] *Triennial Review NPRM*, 16 FCC Rcd at 22809, paras. 61-62.

[1644] *Id.* at 22809, para. 62.

[1645] As discussed below, this conclusion applies to both the mass market and the enterprise market.

[1646] *See UNE Remand Order*, 15 FCC Rcd at 3835, para. 306. The incumbent LECs contend that packet switching should not be required as a UNE. *See, e.g.*, SBC Comments at 52; Qwest Comments at 41. Sprint also states that it "does not quarrel with this position, at least in the central office environment." *See* Sprint Reply at 32.

[1647] *See UNE Remand Order*, 15 FCC Rcd at 3838-39, para. 313. Access to packet switching functionalities as used in DLC loop architecture is discussed in Part VI.A.4., *infra*, which addresses unbundled loops.

[1648] 47 U.S.C. § 157 nt.

[1649] Based on the record in this proceeding, we deny the portion of WorldCom's Petition for Reconsideration arguing that the Commission should reconsider its prior decision to not unbundle packet switching beyond the limited exception provided for in our vacated rules. *See* MCI WorldCom Feb. 17, 2000 Petition for Reconsideration at 2-15. For the same reasons, we deny the portion of the Petition for Reconsideration and Clarification of Intermedia Communications, Inc. arguing that the Commission should reconsider its prior decision to not unbundle packet switching. *See* Intermedia Feb. 17, 2000 Petition for Reconsideration at 3-13. Because we decline to unbundle packet switching as a stand-alone UNE under our new unbundling framework, we dismiss as moot the arguments raised in the Intermedia Petition for Reconsideration and the Petition for Reconsideration filed by CompTel dealing with forms of packet switching and combinations that include packet switching. *See* Intermedia Feb. 17, 2000 Petition for Reconsideration at 3-13; CompTel Feb. 17, 2000 Petition for Reconsideration.

DSLAMs to serve both the enterprise and mass markets,[1650] and that these facilities are much cheaper to deploy than circuit switches.[1651] In fact, according to the BOC UNE Fact Report 2002, unrebutted in the record, competitive LEC deployment of packet switching has doubled since the *UNE Remand Order*, from 860 in 1998 to at least 1,700 in 2001.[1652] In addition, more than 55 competitive LECs have deployed packet switches in more than 200 different cities.[1653] In the top 100 MSAs, the average number of packet switches per MSA has grown by an average of nearly 150 percent since our last UNE review.[1654] The record also shows that several carriers maintain their own frame relay and ATM networks with AT&T, WorldCom, and Sprint each operating extensive, nationwide networks.[1655] In addition, competitive carriers lead incumbent LECs in the deployment of Gigabit Ethernet switches.[1656]

539. Consistent with the *UNE Remand Order*, we conclude that any collocation costs and delays incurred by requesting carriers to provide packet switched services do not rise to a level so as to require us to modify the Commission's previous finding not to unbundle packet switching.[1657] In fact, the record shows that any advantages that competitive LECs may have in obtaining collocation space are likely outweighed by their advantage in relying solely on newer, more efficient technology.[1658] In addition, most of the arguments regarding the difficulties associated with collocation for packet switches deal with collocation at the remote terminal, rather than the central office. We discuss this particular issue in our discussion of unbundled

[1650] According to the BOC UNE Fact Report 2002, the largest providers of both Frame Relay and ATM services are AT&T, WorldCom, and Sprint. *See* BOC UNE Fact Report 2002 at II-24. In addition, Covad has deployed DSLAMs, routers, ATM equipment in nearly 2000 central offices – reaching 45% of the country in 35 states. *See* Letter from Florence Grasso, Covad, to Marlene H. Dortch, Secretary, FCC, CC Docket 01-338, Attach. at 2 (filed Nov. 7, 2002) (Covad Nov. 7, 2002 *Ex Parte* Letter); Covad Comments at 5; *see also Third Section 706 Report 2002*, 17 FCC Rcd at 2873-74, para. 70.

[1651] According to the BOC UNE Fact Report 2002, packet switches are much cheaper to deploy than circuit switches. *See* BOC UNE Fact Report 2002 at II-33. Because of extensive self-deployment by competitive LECs, we need not rely on the existence of a wholesale market for packet switching.

[1652] *Id.* at II-23.

[1653] *Id.*

[1654] *Id.* at II-23 and Table 11.

[1655] *Id.* at II-24 and Figure 5.

[1656] *Id.* at II-25.

[1657] *See UNE Remand Order*, 15 FCC Rcd at 3835-40, paras. 306-17; *see also* Covad Comments at 56 (discussing the costs associated with remote terminal collocation); *see also* ASCENT Comments at 40; *but see* Verizon Comments at n.289 (stating that "subsequent developments – principally, the nearly pervasive collocation of companies such as Covad, the availability of cageless and shared collocation, and the adoption of strict intervals for establishing collocation arrangements – demonstrate than any impairment no longer exists.").

[1658] *See* BOC UNE Fact Report 2002 at II-33 & n.127.

loops.[1659] Accordingly, there do not appear to be any barriers to deployment of packet switches that would cause us to conclude that requesting carriers are impaired with respect to packet switching. We therefore find that the evidence in the record confirms the Commission's findings in the *UNE Remand Order* that competitors continue to actively deploy their own packet switches, including routers and DSLAMs, and are not impaired without unbundled access to these facilities from incumbents.

540. Most parties that favor the unbundling of packet switching focus their arguments on unbundling the packet switching functionality as it exists in DLC systems that are deployed in the loop plant to provide multiplexing, switching, and routing functionalities between the customer premises and the central office.[1660] Our rules covering these situations are discussed in Part VI.A.4.a.(v), which addresses unbundled loops. In view of our analysis in that section, we decline to permit any limited exceptions to our decision not to unbundle packet switching.[1661]

541. Finally, because packet switching is used in the provision of broadband services, our decision not to unbundle stand-alone packet switching is also guided by the goals of, and our obligations under, section 706 of the 1996 Act.[1662] In order to ensure that both incumbent LECs and competitive LECs retain sufficient incentives to invest in and deploy broadband infrastructure, such as packet switches, we find that requiring no unbundling best serves our statutorily-required goal. Thus, we decline to require unbundling on a national basis for stand-alone packet switching because it is the type of equipment used in the delivery of broadband.

G. Signaling Networks

1. Background

542. In the *Triennial Review NPRM*, the Commission sought comment on whether it should modify its requirement that signaling be unbundled for competitive LECs.[1663] Signaling systems facilitate the routing of telephone calls between switches and are necessary components of providing circuit-based telecommunications services.[1664] The telecommunications network in the United States employs out-of-band signaling, meaning that the signaling network is

[1659] *See infra* Part VI.A.4. (addressing unbundled loops).

[1660] *See, e.g.*, Sprint Comments at 40-45; WorldCom Comments at 113-19; Covad Comments at 54-65.

[1661] In addition, the rules we adopt for unbundled loops do not require incumbent LECs to provide unbundled access to any electronics or other equipment used to transmit packetized information over hybrid loops, such as xDSL-capable line cards installed in DLC systems or equipment used to provide passive optical networking capabilities to the mass market. *See infra* Part VI.A.4.a.(v).

[1662] 47 U.S.C. § 157 nt.

[1663] *Triennial Review NPRM*, 16 FCC Rcd at 22811, para. 65.

[1664] *Local Competition Order*, 11 FCC Rcd at 15723-24, para. 455.

physically separate from the carrier's voice network.[1665] Out-of-band signaling is performed using the SS7 protocol and requires access to an SS7 network.[1666]

543. In the *Local Competition Order*, the Commission determined that competitive LECs would be impaired without access to the incumbent LECs' unbundled signaling links and STPs.[1667] The Commission concluded that the alternative signaling methods available would provide a lower quality of service to the competitive carriers.[1668] In the *UNE Remand Order*, however, the Commission recognized that a competitive signaling market was emerging. Nevertheless, the Commission determined that these alternative networks could not match the incumbent LECs' signaling systems in terms of quality and ubiquity, and accordingly, ruled that signaling networks must continue to be unbundled.[1669]

2. Discussion

544. As explained above in our discussion of unbundled switching, in the instances in which incumbent LECs will be required to provide access to switching as a UNE, carriers purchasing the switching UNE must also gain access to incumbent LEC signaling.[1670] In all other cases, however, we determine that there are sufficient alternatives in the market available to incumbent LEC signaling networks and competitive LECs are no longer impaired without access to such networks as UNEs for all markets.[1671]

545. We conclude that, in the last several years, the market for signaling networks has matured. The record reflects that multiple alternative providers are available to provide rival signaling services to competitive LECs.[1672] Accordingly, we conclude that, as a general matter, competitive LECs are no longer impaired without access to the incumbent LECs' signaling networks as a UNE. In performing our impairment analysis, we consider whether barriers exist for a competitive LEC to serve customers through either deploying its own signaling network or

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[1665] *Id.*

[1666] SS7 networks use signaling links to transmit routing messages between switches and call-related databases (such as the Line Information Database, Toll Free Calling Database, and Advanced Intelligent Network Databases). These links enable a switch to send queries via the SS7 network to call-related databases, which return customer information or instructions for call routing to the switch. A typical SS7 network includes a signaling link that transmits signaling information in packets, from a local switch to a STP, which is a high-capacity packet switch. *UNE Remand Order*, 15 FCC Rcd at 3866, para. 380 n.746.

[1667] *Local Competition Order*, 11 FCC Rcd at 15740, para. 482.

[1668] *Id.*

[1669] *UNE Remand Order*, 15 FCC Rcd at 3873, para. 397.

[1670] *See supra* Part VI.D.

[1671] As stated below, this conclusion applies to both the mass market and the enterprise market.

[1672] *See, e.g.*, Sprint Comments at 49-50; Illuminet Comments at 3-5; Verizon Comments at 129-32.

by purchasing signaling from alternative providers to the incumbent LEC. We determine that no such barriers exist. A review of our record reveals that there are numerous competitive suppliers of signaling services, such as Illuminet, TSI, Southern New England Telephone, AT&T, WorldCom and Sprint,[1673] all of which are actively providing signaling services to competitive LECs on a commercial basis. For instance, Illuminet, which owns the largest signaling network in the United States that is unaffiliated with an incumbent LEC, has access to all of the LATAs of the BOCs and major independent LECs, operates 14 STP pairs, and provides signaling to competitive carriers on a national scope.[1674] Similarly, TSI provides a nationwide signaling service that offers SS7 access to and from nearly all LATAs within the United States.[1675] There are also regional SS7 options for competitive carriers. Sprint, for example, operates a regional SS7 network, which contains ten pairs of regional STPs and one national STP pair that serves Sprint customers in 18 states.[1676] ICG also offers a regional SS7 service, which is available from over thirty cities via ICG's regional STP access hub nodes.[1677] Indeed, there is evidence in the record that many competitive LECs are using alternative providers for most or all of their signaling needs.[1678] There is also evidence of self-deployment of SS7 network capabilities by competitive carriers, such as TimeWarner Telecom and NewSouth.[1679] We find, therefore, that for competitive carriers deploying their own switches, there are no barriers to obtaining signaling or self-provisioning signaling capabilities and we do not require incumbent LECs to continue offering access to signaling as a UNE under section 251(c)(3) of the Act.

546. Consistent with this analysis, we reject the claims of competitive carriers that signaling networks should remain available as UNEs.[1680] Even those carriers arguing for the

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[1673] *See* Illuminet Comments at 4 n.3; Verizon Comments at 129-33.

[1674] Illuminet Comments at 5.

[1675] *See* SBC Reply at 164; *see generally TSI Connections: Home* (visited Jan. 3, 2003) <http://www.tsiconnections.com>.

[1676] Sprint Reply, Attach. A, Joint Declaration of John D. Chapman and Jeffrey L. Leister (Sprint Chapman/Leister Reply Decl.) at para. 6.

[1677] *See* Verizon Comments at 131; *see generally Welcome to ICG Communications* (visited Jan. 3, 2003) <http://www.icgcom.com>.

[1678] For instance Illuminet states that it has more than 900 customers, including incumbent LECs, competitive LECs, interexchange carriers, CMRS providers and Internet service providers that are connected to its network by approximately 2700 access links and 950 signaling points. Illuminet Comments at 5. In addition, Sprint provides evidence that the vast majority of competitive LECs providing service in Sprint's local territories do not purchase UNE signaling from Sprint. Sprint Comments at 50.

[1679] Sprint Reply at 40; Verizon Comments at 132 (citing evidence that Time Warner and NewSouth have deployed their own signaling networks); *see also NewSouth Communications Completes SS7 Network Buildout* (Mar. 29, 2001) <www.newsouth.com/news/press_releases/a349.asp>.

[1680] *See, e.g.*, Allegiance Comments at 31-37; ALTS *et al.* Comments at 87-89; NuVox Comments at 106-07; *see also* Letter from Joseph O. Kahl, Director – Regulatory Affairs, RCN Telecom Services, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Jan. 23, 2003) (RCN Jan. 23, 2003 *Ex Parte* Letter).

retention of signaling as a UNE recognize that multiple alternative providers exist.[1681] These carriers argue, however, that because alternative providers utilize fewer STPs,[1682] instead of one STP in each LATA, such providers do not offer the same level of ubiquity and thus, are not a genuine substitute to the incumbent LECs' signaling.[1683] We find these arguments unpersuasive. Our impairment analysis does not require exact replication of the incumbent LECs' networks. Rather, when it is evident that there are alternative providers for a particular network element, the Commission must determine whether the alternative product or self-provisioning can be used in an economic manner to enter and stay in the market. This is clearly the case with signaling networks. The record reflects that many competitive LECs use either their own signaling networks or the networks of alternative providers to provide signaling for their customers.[1684] Although competitive SS7 providers state that their networks tend to have STPs in various strategically located points, while the BOCs have STPs in every LATA, such providers claim that it is unnecessary to have an STP in every LATA to ensure network redundancy and reliability.[1685] Moreover, there is evidence in the record that the incumbent LEC signaling facilities are being modified more closely to resemble the networks of the alternative providers. For instance, BellSouth has reduced the number of STPs it has deployed by 50 percent and no longer has an STP in every LATA.[1686]

547. We find the appropriate level of granularity for our analysis to be at the national level. Two of the alternative signaling networks discussed above are national networks that competitive LECs can utilize throughout the country. Both the Illuminet and TSI networks are designed with pairs of STPs strategically located throughout the country, in order to offer competitive carriers access to their SS7 networks nationwide.[1687] Other SS7 providers, such as ICG and Sprint, have fewer STP pairs and offer a more regional SS7 service—but still a service

[1681] For instance, Allegiance admits that Illuminet, TSI, Southern New England Telephone, AT&T, WorldCom and Sprint all provide signaling services that bear a resemblance to unbundled incumbent LEC SS7. Allegiance Comments at 31.

[1682] STPs are packet switches that provide access to the SS7 network and route SS7 messages among service switching points and service control points. These are the traffic controllers of the SS7 network and typically consist of highly reliable computers running special software. Allegiance Comments at 32 n.49. We readopt here the *UNE Remand Order*'s conclusion that when a requesting telecommunications carrier purchases unbundled local circuit switching from an incumbent LEC, the incumbent LEC must allow the competitive LEC to use its service control point element in the same manner, and via the same signaling links, as the incumbent LEC itself. *See UNE Remand Order*, 15 FCC Rcd at 3878, para. 410.

[1683] *See, e.g.*, Allegiance Comments at 32; ALTS *et al.* Comments at 88.

[1684] *See* Illuminet Comments at 5; Verizon Comments at 129-33.

[1685] For instance, Sprint operates eleven STPs that serve Sprint's customers in eighteen states. *See, e.g.*, Sprint Reply; *see also* Sprint Chapman/Leister Reply Decl. at paras. 3, 6-7.

[1686] BellSouth Comments at 103.

[1687] *See, e.g.*, Illuminet Comments at 4; SBC Reply at 164.

that spans numerous states and markets.[1688] Thus, the availability of alternatives does not vary significantly from region to region. Indeed, the main distinction between signaling offered in different geographic areas is the identity of the incumbent LEC providing signaling, rather than the availability of alternative providers. Moreover, our conclusion applies equally to the mass market and the enterprise market. Signaling networks are multistate in scope and the feasibility of using alternative providers is linked to whether a carrier has deployed its own switches, rather than the types of customers the carrier serves.[1689] Accordingly, as we stated above, in the instances that carriers purchase switching as a UNE under the terms established in this Order they will continue to obtain access to the incumbent LECs' signaling networks. For carriers deploying their own switches, the signaling networks are accessed via the switch, therefore, the feasibility of using alternative signaling providers would not be different whether the carrier serves enterprise or mass market customers.

548. Finally, we note that although we are no longer requiring incumbent LECs, pursuant to section 251(c)(3), to provide unbundled access to their signaling networks, there is a clear obligation on the incumbent LECs, pursuant to sections 251(a), 251(c)(2) and our rules implementing these requirements, to provide for interconnection between their signaling networks and the signaling networks of alternative providers.[1690] Based on the evidence in the record that third party providers of signaling are currently interconnected with the incumbent LEC signaling networks, we conclude that such interconnection is clearly technically feasible and that nothing in this Order should be interpreted as altering those interconnection obligations.[1691]

H. Call-Related Databases

1. Background

549. Call-related databases are databases that are used in signaling networks for billing and collection or for the transmission, routing or other provision of telecommunications services.[1692] We have identified several specific databases as covered by our call-related

[1688] *See* Sprint Reply at 40; SBC Reply at 164.

[1689] Switch technology requires each local switch to connect to a single STP. Therefore, a carrier that has deployed its own switch may link its switch to a signaling network of its choosing. *See UNE Remand Order*, 15 FCC Rcd at 3868-69, paras. 367-87.

[1690] 47 U.S.C. §§ 251(a), 251(c)(2).

[1691] For example, Sprint's SS7 network is interconnected with a variety of signaling providers including: AT&T, WorldCom, Transaction Network Services, SNET, Illuminet, Qwest, Bell South, Verizon, SBC, and AT&T Wireless. Sprint Chapman/Leister Reply Decl. at para. 5.

[1692] These are not those databases and systems covered by the Commission's operations support systems (OSS) requirements, discussed in Part VI.I. *infra*. *See UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

database requirements: (i) LIDB;[1693] (ii) CNAM;[1694] (iii) Toll Free Calling;[1695] (iv) LNP;[1696] (v) AIN;[1697] and (vi) E911.[1698] Parties have identified in the record no additional databases covered by the *UNE Remand Order's* definition for call-related databases.

550. In the *UNE Remand Order*, the Commission found that competitors--even those that deployed their own switching equipment--would be impaired without access to the incumbent LECs' call-related databases.[1699] Moreover, the Commission noted that its analysis of call-related databases is intertwined with its analysis of signaling, because signaling is necessary to obtain access to certain call-related databases.[1700]

2. Discussion

551. We find that competitive carriers that deploy their own switches are not impaired in any market without access to incumbent LEC call-related databases, with the exception of the 911 and E911 databases as discussed below.[1701] For carriers that deploy their own switches, there is evidence in the record that, along with signaling, there are a substantial number of competitive suppliers of call-related databases that competitive LECs can reliably utilize as an alternative to the incumbent LEC's services. Moreover, because competitive carriers access call-related databases through signaling networks, it follows that since we found that competitive carriers

[1693] The Line Information Database or "LIDB" contains all valid telephone numbers and calling card information in a specific region (*i.e.*, incumbent LEC in-region territory). NEWTON'S TELECOM DICTIONARY 429 (18th ed.2002). Access to the LIDB supports carrier provision of such services as Originating Line Number Screening, Calling Card Validation, Billing Number Screening, Calling Card Fraud and Public Telephone Check. These services are provided in conjunction with local exchange, toll and other telecommunications services.

[1694] The Caller ID with Name database or "CNAM" allows carriers to provide Caller ID and other CLASS services. *See UNE Remand Order*, 15 FCC Rcd at 3876, para. 406.

[1695] Databases at the core of all toll free number services (*i.e.*, 800, 888) are administered by an independent number administrator. *See Toll Free Service Access Codes*, CC Docket No. 95-155, Fifth Report and Order, 15 FCC Rcd 11939, 11948-49, para. 25 (2000) (*Toll Free Order*).

[1696] Local Number Portability databases are used to facilitate the porting of numbers between local exchange carriers and are deployed through a system of multiple regional databases. Each regional database is managed by the local number portability administrator (LNPA). *See Telephone Number Portability*, CC Docket No. 95-116, Second Report and Order, 12 FCC Rcd 12281, 12296, para. 21 (1997) (*Number Portability Order*).

[1697] The Advanced Intelligent Network (AIN) uses distributed intelligence in centralized databases to control call processing and manage network information, eliminating the need for those functions to be performed at every switch. *UNE Remand Order*, 15 FCC Rcd at 3875, para. 404.

[1698] 911 and E911 databases are used to support the provision of emergency 911 services. *UNE Remand Order*, 15 FCC Rcd at 3876, para. 406.

[1699] *Id.* at 3879, para. 411.

[1700] *Id.*

[1701] As stated below, this conclusion applies to both the mass market and the enterprise market.

have alternative providers available and are not impaired without access to unbundled signaling, competitive carriers are also not impaired without access to call-related databases. In such instances where switching remains a UNE, however, competitive carriers purchasing the switching UNE will have access to signaling and the call-related databases that the signaling networks permit carriers to access.[1702]

552. As with signaling, we find the appropriate level of granularity for our analysis to be at the national level. The alternative call-related database networks discussed below are national and regional networks that competitive LECs would be able to use throughout the country.[1703] Because these networks are multistate in scope the availability of alternatives does not vary significantly from market to market. Indeed, the main distinction between call-related databases offered in different geographic areas is the identity of the incumbent LEC providing access to the databases, rather than the availability of alternative providers. In addition, our conclusion applies equally to the mass market and the enterprise market. Call-related databases are accessed through signaling networks, which are national in scope and the feasibility of using alternative providers is linked to whether a carrier has deployed its own switches, rather than the types of customers the carrier serves.[1704] Accordingly, as we stated above, carriers that purchase switching as a UNE will also obtain unbundled access to the incumbent LEC's call-related databases. For carriers deploying their own switches, the call-related databases are accessed through signaling networks, which are accessed via the switch, therefore, the feasibility of using alternative providers would not be different whether the carrier serves mass market or enterprise customers.

553. In performing our impairment analysis, we consider whether competitive LECs can serve customers through either deploying their own call-related databases or by purchasing call-related databases from providers other than the incumbent LEC. The record in this proceeding reveals that there are a number of competitive suppliers providing call-related database services that are comparable to the functionality of unbundled access, and these suppliers are actively providing such services to competitive LECs on a commercial basis.[1705] For example, Sprint maintains national database platforms, including Toll Free Calling, CNAM, LIDB and LNP.[1706] Illuminet provides its signaling customers with access to call-related databases, including Toll Free Calling, LNP, CNAM, and LIDB.[1707] Alternative providers such as Tekelec also provide access to AIN databases that competitive LECs can utilize to control call

[1702] *See supra* Part V.D.

[1703] With regard to the 911 and E911 databases, there is no evidence of alternative providers in any part of the country. Accordingly, the granularity of our impairment analysis is at the national level as well.

[1704] *UNE Remand Order*, 15 FCC Rcd at 3878, para. 410.

[1705] *See* Sprint Comments at 50-51; Verizon Comments at 133-36.

[1706] Sprint Chapman/Leister Reply Decl. at para. 9.

[1707] Illuminet Comments at 5-7.

processing and manage network information.[1708] All of these providers offer competitive LECs call-related database products as an alternative to the incumbent LECs' services.[1709] Moreover, certain competitive LECs have self-deployed their own call-related databases.[1710]

554. We therefore reject the general claims of commenters that they are impaired without access to the incumbent LECs' call-related databases.[1711] Specifically, a number of carriers argue that they are impaired without access to the incumbent LECs' CNAM and LIDB databases. Although such carriers recognize that alternative providers are available for these databases, they contend that third-party CNAM and LIDB databases are inferior to those of the incumbent LECs.[1712] We find these arguments for impairment to be unpersuasive. When it is evident that there are alternative providers for a particular network element, the question is not whether the alternatives are an exact replica of the element offered by the incumbent LEC, but whether the alternative products or self-provisioning are reliable products that can be used in an economically sound manner to enter and stay in the market. In this instance, it is clear that carriers can either self-provision or use alternative providers to obtain CNAM and LIDB database services. Indeed, WorldCom has constructed its own CNAM database that it accesses using its own signaling network.[1713] Furthermore, there is evidence in the record that many competitive carriers are using alternative providers to obtain CNAM and LIDB database services, and commenters provide no persuasive evidence as to why CNAM and LIDB databases offered by such vendors are insufficient alternatives to the incumbent LEC.[1714] For instance, Illuminet claims that it offers access, through its SS7 network, to all of the LIDB databases in the United States for various purposes, and also manages and operates its own LIDB database.[1715] Illuminet also offers a CNAM database and a CNAM delivery access and transport service that provides SS7 connectivity to all available CNAM databases for nationwide name delivery for wireline and wireless carriers.[1716] In addition, Targus Information Services offers a Caller Name Express services that provides nationwide calling name delivery with over 140 million names,

[1708] Verizon Comments at 134-35.

[1709] *See, e.g.*, Illuminet Comments at 5-7; Sprint Comments at 39-40.

[1710] For instance, WorldCom has constructed its own CNAM database. WorldCom Reply at 164. In addition, according to Verizon, Time Warner Telecom has, or is in the process of constructing, a LNP database in addition to its own SS7 network. Verizon Comments at 132 n.475.

[1711] *See, e.g.*, AT&T Comments at 239-40; CompTel Comments at 86; ALTS *et al.* Comments at 90; WorldCom Comments at 122-27; *see also* AT&T Jan. 10, 2003 *Ex Parte* Letter.

[1712] *See, e.g.*, ALTS *et al.* Comments at 90.

[1713] WorldCom Reply at 165.

[1714] For instance, WorldCom claims that it would be unable to duplicate the LIDB database, however, it fails to address the alternative providers of LIDB that are available. WorldCom Reply at 165.

[1715] Illuminet Comments at 6-7.

[1716] *Id.*, App. B at 2.

from a database accessible through SS7.[1717] We find, therefore, that competing carriers are not impaired without access to incumbent LEC CNAM and LIDB databases.

555. We similarly find that carriers are not impaired without access to the Toll Free Calling and LNP databases. Like CNAM and LIDB databases, there are third-party vendors available to provide competitive carriers access to Toll Free Calling and LNP databases. For instance, Illuminet's SS7 network provides access to all toll free numbers in the country for call-routing.[1718] Illuminet also provides competitive carriers extensive local number portability services, including service order administration and network transport routing of all queries to nationwide LNP databases.[1719] Sprint also provides access to Toll Free Calling and LNP databases to customers of its SS7 services.[1720] Moreover, we note that competitive carriers have not claimed that these third-party alternatives to the incumbent LEC's Toll Free Calling and LNP databases are inferior to those offered by the incumbent LECs.

556. With regard to AIN databases, in the *UNE Remand Order*, the Commission determined that incumbent LECs were required to provide unbundled access to AIN platform and architecture, but concluded that the AIN service software was proprietary and not "necessary" for competitive LECs to gain unbundled access under section 251(d)(2)(A).[1721] Like the call-related databases discussed above, we conclude that the market for AIN platform and architecture has matured since the Commission adopted the *UNE Remand Order* and we no longer find that competitive LECs are impaired without unbundled access to those databases. For instance, Illuminet provides carriers access to AIN services that permit subscribers to manage incoming and outgoing calls through a web interface.[1722] In addition, the record indicates that Tekelec provides an AIN service center, which includes a service creation environment that "provides complete local visibility and control over network services, allowing telecommunications providers to rapidly bring new services to market."[1723] We also note that parties that supported unbundling did not provide specific information rebutting the evidence that these alternative offerings can be used by carriers in an economically sound manner to enter and stay in the market.[1724]

[1717] Sprint Comments at 51.

[1718] Illuminet Comments at 7.

[1719] *Id.* at 6.

[1720] Sprint Chapman/Leister Reply Decl. at para. 8.

[1721] *UNE Remand Order*, 15 FCC Rcd at 3875, 3882, paras. 402, 419.

[1722] Illuminet Comments, App. B at 2.

[1723] *See* Verizon Comments at 134-35 n.490.

[1724] Consistent with our findings regarding the AIN databases, we dismiss as moot Low Tech Designs' Petition for Reconsideration of several aspects of the *UNE Remand Order*. Because we no longer require incumbent LECs to unbundle access to the AIN databases for carriers not using the incumbent LEC's switching capabilities, it is (continued....)

557. We conclude that competitive carriers continue to be impaired on a national basis without access to the 911 and E911 databases. Therefore, access to such databases must continue to be unbundled. Significantly, we note that no commenter has argued otherwise. Contrary to the call-related databases discussed above, no commenter in this proceeding has provided evidence of alternative providers of 911 or E911 databases that competitive carriers could utilize or of carriers self-provisioning their own services. Moreover, because of the unique nature of 911 and E911 services and the public safety issues inherent in ensuring nondiscriminatory access to such databases, we conclude that without evidence of alternative providers or the ability to self-deploy, competitive carriers must continue to obtain unbundled access to those databases to ensure that their customers have access to emergency services.

558. We reject competitive LECs' assertions that, we should require in this proceeding unbundled access to the incumbent LEC databases for bulk transfer of information for competitive carriers to maintain their own call-related databases.[1725] Specifically, competitive LECs claim that they should be able to access the CNAM database via batch download, which would allow them to obtain a copy and thus, maintain their own CNAM databases.[1726] We conclude that this issue is more properly addressed pursuant to the dialing parity requirements under section 251(b)(3),[1727] rather than our impairment analysis under section 251(d)(2). Our impairment analysis is necessarily focused on the appropriate access to incumbent LEC facilities that competitive LECs are unable to self-provide or obtain from other sources, and as explained above, there is persuasive evidence that competitive LECs have alternative sources available to obtain access to call-related databases generally, and the CNAM database specifically. To the extent that competition may lead to inability to obtain complete CNAM databases that could impede the continued availability of nondiscriminatory dialing parity for all providers of local exchange services, that is an issue that ultimately will impact incumbent LECs as significantly as competitive LECs and therefore is more appropriate for treatment under the requirements of section 251(b)(3) than in this docket.[1728]

(Continued from previous page)

unnecessary to consider modifying the definition or the manner in which those carriers would be able to obtain access to those databases. *See* Low Tech Designs Petition for Reconsideration, CC Docket No. 96-98 (filed Feb. 15, 2000).

[1725] *See, e.g.*, WorldCom Comments at 122-27.

[1726] WorldCom Comments at 125.

[1727] 47 U.S.C. § 251(b)(3). All local exchange carriers have the duty to provide nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

[1728] *See In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan For Dallas And Houston, Ordered By The Public Utility Commission Of Texas, Administration of the North American Numbering Plan*, CC Docket Nos. 96-98, 95-185, 92-237, NSD File No. 96-8, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19446, para. 106 (1996) (*Local Competition Second Report and Order*).

559. We also dismiss as moot WorldCom's Petition for Declaratory Ruling requesting Commission confirmation that requesting carriers are entitled to access LIDB data at cost-based rates when they use such data to provide interexchange and exchange access service.[1729] Because, as explained above, we conclude that competitive carriers are not impaired without access to the LIDB database as a UNE, it is unnecessary for us to determine whether use restrictions should be applied.[1730]

560. We also reject the arguments of some parties that we should require incumbent LECs to provide unbundled access to Operator Services and Directory Assistance (OS/DA), contrary to the Commission's finding that there was no impairment in the *UNE Remand Order*.[1731] Moreover, we deny the Petition for Reconsideration of RCN Telecom Services arguing that the Commission should reconsider its prior decision to remove OS/DA from the UNE list.[1732] As the Commission concluded in the *UNE Remand Order*, there are multiple alternative providers of OS/DA that are available to competitive carriers and offer a level of quality similar to that of the incumbent LECs' services.[1733] The parties requesting the Commission to unbundle the databases underlying these services fail to provide evidence that the alternative providers cited in the *UNE Remand Order* no longer make these elements available. Instead, these parties claim that the alternative sources of OS/DA fail to provide the same level of quality as the incumbent LEC services.[1734] As we stated above in the signaling section, the Commission need not conclude that alternative providers are an exact substitute for the incumbent LEC in order to find no impairment. We have no evidence to suggest that anything has changed since the Commission's findings in the *UNE Remand Order* that would impair the ability of competitive LECs to obtain alternative sources for OS/DA. Furthermore, for the same reasons in the *UNE Remand Order*, we find that in order to ensure that competitive carriers have access to OS/DA, in those circumstances where switching is unbundled, we require incumbent

[1729] Petition of WorldCom for a Declaratory Ruling that ILECs are Prohibited from Imposing Use Restrictions on UNEs such as LIDB, CC Docket No. 01-338 (filed Aug. 8, 2002).

[1730] However, for general discussion of the types of services competitive carriers may use UNEs to provide *see supra* Part V.B.2.c.

[1731] *See, e.g.*, ALTS *et al.* Comments at 90-95; WorldCom Comments at 127-29.

[1732] *See* RCN Telecom Services Petition for Reconsideration, CC Docket No. 96-98 (filed Feb. 17, 2000) (RCN Feb. 17, 2000 Petition for Reconsideration). We also deny MCI WorldCom's Petition for Reconsideration to the extent the Petition requests that OS/DA continue to be available as a UNE. *See* MCI WorldCom Feb. 17, 2000 Petition for Reconsideration at 18-19.

[1733] *UNE Remand Order*, 15 FCC Rcd at 3894, paras. 447-48.

[1734] *See* ALTS *et al.* Comments at 92. Moreover, RCN argues that operator services should remain a UNE because consumers sometimes rely on operators to route calls to PSAPs in emergency situations. RCN Petition for Reconsideration at 3. As we concluded in the *UNE Remand Order*, there are only limited instances where an operator would connect a consumer with a PSAP and there is no persuasive evidence that incumbent LEC call centers would be better able to determine the correct PSAP than alternative providers, especially if the incumbent LEC utilizes remote call centers. *UNE Remand Order*, 15 FCC Rcd at 3901, para. 460.

LECs to provide unbundled access to competitive carriers purchasing the switching UNE, if the incumbent LEC does not provide customized routing necessary to use alternative providers.[1735] Lastly, we note, as the Commission did in the *UNE Remand Order*, that incumbent LECs continue to remain obligated pursuant to section 251(b)(3) to provide nondiscriminatory access to OS/DA.[1736]

I. OSS Functions

1. Background

561. In our previous orders, we defined OSS as consisting of five functions: pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information.[1737] These functions are essential for carriers to serve mass market and enterprise customers. OSS includes manual, computerized, and automated systems, together with associated business processes and the data maintained and kept current in those systems.[1738] In the *UNE Remand Order*, we clarified that the pre-ordering OSS functions include access to loop qualification information.[1739] Based on this definition, in both the *Local Competition Order* and the *UNE Remand Order*, the Commission concluded that requesting carriers are impaired without access to the incumbent LEC's OSS as a UNE, and required incumbent LECs to provide nondiscriminatory access to all OSS functions.[1740] The Commission noted that the incumbent LECs' OSS provides access to vital information that is not available from third parties and is critical to the ability of competitive LECs to offer local exchange and exchange access service.[1741] In the *Triennial Review NPRM*, the Commission

[1735] Moreover, we grant in part the Petitions for Clarification of MCI WorldCom and AT&T to the extent they request the Commission to clarify that such customized routing must be provided in a manner that allows competitive LECs to efficiently access either a third party's OS/DA platform or their own OS/DA Platform. *See* AT&T Feb. 17, 2000 Petition for Reconsideration at 20-24; MCI WorldCom Feb. 17, 2000 Petition for Clarification at 16-20; *see also* LSSI Reply at 5 (arguing that incumbent LECs have not yet made sufficient customized routing available).

[1736] *See UNE Remand Order*, 15 FCC Rcd at 3903, para. 464.

[1737] *See Local Competition Order*, 11 FCC Rcd at 15764, para. 518; *UNE Remand Order*, 15 FCC Rcd at 3884, para. 425. The Commission determined that incumbent LECs must make these five functions of OSS available to competitors on an unbundled basis.

[1738] *UNE Remand Order*, 15 FCC Rcd at 3884, para. 425.

[1739] Loop qualification information identifies the physical attributes of the loop plant (such as loop length, the presence of load coils and bridge taps, and the presence and type of Digital Loop Carrier) that enable carriers to determine whether the loop is capable of supporting xDSL and other advanced technologies. *Id.* at 3885, para. 426.

[1740] *Local Competition Order*, 11 FCC Rcd at 15763, para. 516; *UNE Remand Order*, 15 FCC Rcd at 3887, para. 433.

[1741] *See UNE Remand Order*, 15 FCC Rcd at 3887, para. 433.

sought comment on whether we should retain these unbundling requirements in light of any changed circumstances that exist in the market.[1742]

2. Discussion

562. We adopt again the same definition of OSS as in our prior orders, including statements about loop qualification.[1743] No commenters have put forth alternative definitions or modifications to our existing definition. We further find that competitive LECs providing qualifying services continue to be impaired on a national basis without access to OSS. Accordingly, we require incumbent LECs to continue to provide unbundled access to OSS. This requirement includes an ongoing obligation on the incumbent LECs to make modifications to existing OSS as necessary to offer competitive carriers nondiscriminatory access and to ensure that the incumbent LEC complies with all of its network element, resale and interconnection obligations in a nondiscriminatory manner—including any new obligations established in this Order.[1744] We note that even the incumbent LECs have not argued against OSS continuing to be available as a UNE.[1745]

563. Commenters in this proceeding generally agree that OSS functions must remain available to competitive carriers as UNEs.[1746] Competitive LECs contend that no substitutable alternative market for OSS has developed because the incumbent LECs retain access to exclusive information and functionalities required to provide OSS services.[1747] Indeed, competitive LECs assert that access to all five OSS functions the Commission has identified in addition to the business processes associated with the change management procedures are essential to ensure that competitive LECs are not impaired without access to these functions.[1748] We agree with these commenters and conclude that, to the extent a competitive LEC is providing a qualifying service it is entitled to access the incumbent LEC's OSS to offer that service.

564. In reaching this conclusion, we find that the systems, databases, and personnel that the incumbent LEC uses to provide OSS functions represent an extensive infrastructure that would be difficult, if not impossible, for competitors to duplicate. Indeed, there is no evidence in the record that any competitive LEC has been able to successfully self-provision OSS functions,

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[1742] *Triennial Review NPRM*, 16 FCC Rcd at 22811, para. 64.

[1743] *See UNE Remand Order*, 15 FCC Rcd at 3884-87, paras 425-31.

[1744] *See infra* Parts VI.B.1.d.(i) and VI.B.5. In these sections, we note modifications that incumbent LECs must make to their OSS in order to comply with unbundling obligations specified in this Order.

[1745] *See, e.g.*, SBC Reply at 167.

[1746] *See, e.g.*, ALTS *et al.* Comments at 77-80; Sprint Comments at 51-52; WorldCom Comments at 129-33; AT&T Comments at 240-41; Allegiance Comments at 37-38; Covad Comments at 74-77.

[1747] *See* Allegiance Comments at 37-38; Covad Comment at 75; ALTS *et al.* Comments at 78-79.

[1748] WorldCom Comments at 131.

and there is no evidence of any alternative providers available. Accordingly, because these systems, databases and personnel are under the exclusive control of the incumbent LEC and are necessary for competitors effectively to access network elements, resell incumbent LEC services and interconnect with the incumbent LEC, we find that competitive LECs are impaired without access to incumbent LECs' OSS.

565. Although the specific systems, databases and personnel used to provide OSS functions may vary by incumbent LEC and by state, the OSS functions as defined apply universally for all incumbent LECs and there is no evidence in the record that would suggest a more geographically disaggregated approach to our OSS unbundling requirement. We therefore adopt an unbundling requirement for OSS functions on a national basis.

566. However, we recognize the wide variety of systems and databases that comprise the OSS of incumbent LECs, and the important role that state commissions have played in facilitating access to incumbent LEC OSS through the section 271 process and other state proceedings. Although our determination that OSS for qualifying services must continue to be unbundled is a national rule, we expect that states will continue their important role in working with the incumbent LECs and competitive LECs to ensure that competitors obtain necessary access to the particular incumbent LEC OSS systems in each state for the qualifying services.[1749] In addition, our conclusions apply equally to the mass market and the enterprise market. Because there are no alternative OSS providers and competitive LECs are impaired without access to OSS, whether the customers are mass market or enterprise, we find that there is no reason to distinguish between such markets in establishing the availability of OSS as a UNE.

567. SBC, however, urges the Commission to clarify that incumbent LECs do not need to provide direct access to back office systems.[1750] SBC suggests that, under the approach taken in the *UNE Remand Order*, an incumbent LEC may satisfy its obligations with respect to loop qualification information by providing carriers with the same underlying information that it has in any of its own databases or internal records without offering direct access to those records.[1751] We agree, and note that this conclusion was recently reflected in our *Qwest 9-State Order*, in

[1749] Along those lines, we reject Illuminet's request that we require all incumbent LECs to standardize their OSS functionalities and specifically their pre-ordering processes. Illuminet Comments at 9. The Act does not require nationwide uniformity among all incumbent LECs. We also note that in most states, BOCs' OSS processes have already been subject to third-party testing and state commission review, and we decline to require the substantial modifications to such systems necessary to achieve uniformity.

[1750] SBC claims that back office systems may contain proprietary information about other competitive LEC facilities, and other highly sensitive information. SBC suggests that such information is not "necessary" for competitive carriers to compete, and thus suggests that competitive LECs should not be allowed direct access to systems and databases containing such information. *See* SBC Reply at 168.

[1751] *Id.* at 168-69.

which we held that Qwest was not required to permit competitive LECs direct access to its back office loop qualification database.[1752]

568. Covad also argues that incumbent LECs should modify their OSS to provide certain additional information related to certain facilities and network elements, consistent with its view of the facilities and network elements it is entitled to access under section 251.[1753] For example, Covad asks that we expressly mandate access to a wide range of information related to remote terminal feature availability.[1754] Because we do not adopt Covad's approach to unbundling, we recognize that Covad may not require all of the information it describes in its Comments. We thus decline to reach the level of detail requested by Covad or change our approach to OSS and loop qualification information, but note that Covad remains entitled on a going-forward basis to nondiscriminatory access to OSS as defined herein.

VII. SCOPE OF UNBUNDLING OBLIGATIONS

A. Combinations of Network Elements

1. Background

569. In the *Local Competition Order*, the Commission adopted rules that prohibited incumbent LECs from separating network elements that ordinarily are combined.[1755] In addition, the Commission adopted rules requiring incumbent LECs to provide combinations of UNEs when requested by competitive LECs and to perform the necessary functions to make such combinations available.[1756] After various appeals before the Eighth Circuit, the Supreme Court addressed both requirements. First, in *Iowa Utilities Board*, the Court reinstated the Commission's rules prohibiting incumbent LECs from separating network elements ordinarily combined.[1757] Second, in *Verizon*, the Court reversed the vacatur of sections 51.315(c) through 51.315(f), which required incumbent LECs to provide UNE combinations and perform the necessary functions involved with that process.[1758] Specifically, *Verizon* concluded that the

[1752] *Qwest 9-State 271 Order*, 17 FCC Rcd at 26317, para. 29. In addition, to the extent that Bell Atlantic requested the same clarification, we grant their request. *See* Verizon Feb. 17, 2000 Petition for Reconsideration at 15-17.

[1753] Covad Comments at 76-77. We therefore deny WorldCom's request to adopt additional rules stating specific characteristics of the local loop plant that incumbent LECs must disclose to requesting carriers. MCI WorldCom Feb. 17, 2000 Petition for Reconsideration at 23-24.

[1754] Covad Comments at 76-77. (arguing that it is entitled to information about the software versions and channel units used in each remote terminal).

[1755] *Local Competition Order*, 11 FCC Rcd at 15646-47, paras. 292-93; 47 C.F.R. § 51.315(b).

[1756] *Local Competition Order*, 11 FCC Rcd at 15647-48, paras. 294-97.

[1757] *Iowa Utils. Bd.*, 525 U.S. at 391-96.

[1758] The Eighth Circuit subsequently reinstated the rules. *Iowa Utils. Bd. v. FCC*, 301 F.3d 957.

Commission's rules reflected a reasonable reading of section 251(c)(3) intended to remove practical barriers to competitive entry into the local exchange market.[1759]

570. In the *UNE Remand Order*, the Commission required incumbent LECs to provide EELs (*i.e.*, a particular combination of network elements) pursuant to section 51.315(b) of the Commission's rules, which prohibits incumbent LECs from separating currently combined network elements before providing them to requesting carriers.[1760] At the same time, the Commission recognized and explored significant legal and policy issues surrounding the use of EELs and the Commission's universal service and access charge rules. Shortly after the release of the *UNE Remand Order*, the Commission issued the *Supplemental Order* in which it established an interim usage requirement related to EELs while considering the legal and policy issues implicated by making EELs available. In particular, the Commission determined that competitive LECs must provide a "significant amount of local exchange service" to a particular customer in order to use an EEL.[1761] In the *Supplemental Order Clarification*, the Commission clarified the "significant amount of local usage" requirement and established three safe harbors to define the term.[1762] The Commission also adopted the commingling restriction, which prevented a requesting carrier from connecting a loop or EEL to tariffed access services used as interoffice transmission facilities.[1763] In October 2002, the D.C. Circuit resolved CompTel's appeal of the *Supplemental Order Clarification.* In *CompTel*, the court found that CompTel had not demonstrated that the *Supplemental Order Clarification*'s commingling restriction was arbitrary and capricious.[1764]

571. In the *Notice*, the Commission sought comment on issues related to the EEL, which is a UNE combination consisting of an unbundled loop and dedicated transport and may sometimes include additional electronics (*e.g.*, multiplexing equipment). In particular, the Commission sought comment on whether offering EELs is an appropriate precondition to the switching carve-out adopted in the *UNE Remand Order*, whether the availability of EELs serves to address impairment in the absence of unbundled switching, and whether certain EELs-related issues (*e.g.*, use restrictions, commingling) warrant revision in light of industry developments

[1759] *Verizon*, 535 U.S. at 531-38.

[1760] The Commission explained that because incumbent LECs may not separate loop and transport elements that are currently combined and purchased through their special access tariffs, competitive LECs are entitled to obtain these existing loop-transport combinations at UNE prices. *UNE Remand Order*, 15 RCC Rcd at 3909, para. 480.

[1761] *Supplemental Order*, 15 FCC Rcd at 1761, para. 4.

[1762] *Supplemental Order Clarification*, 15 FCC Rcd at 9598-9600, para. 22.

[1763] *Id.* at 9598-9600, 9602, paras. 22, 28; *see, e.g., Net2000 Communications, Inc. v. Verizon - Washington, D.C., Inc.*, File No. EB-00-018, Memorandum Opinion and Order, 17 FCC Rcd 1150, 1159, paras. 29-30 (2001).

[1764] *CompTel*, 309 F.3d at 17-18.

since the release of the *UNE Remand Order*.[1765] In addition, the Commission incorporated the record related to these issues from earlier proceedings.[1766]

2. Discussion

572. In this section, we address our rules for UNE combinations, specific issues pertaining to EELs, the ability of requesting carriers to commingle UNEs and UNE combinations with other wholesale services, issues surrounding conversions of access services to UNEs.

a. New Combinations of Unbundled Network Elements

573. We reaffirm our existing rules regarding UNE combinations.[1767] Our rules require incumbent LECs to provide UNE combinations upon request and prohibit incumbent LECs from separating UNE combinations that are ordinarily combined except upon request. Section 251(c)(3) requires incumbent LECs to "provide unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide" a telecommunications service.[1768] As noted in the Supreme Court's *Verizon* decision, the statute does not specify which party must perform the functions necessary to effectuate UNE combinations.[1769] Based on the nondiscrimination requirements of section 251(c)(3),[1770] and because incumbent LECs are in the best position to perform the functions necessary to provide UNE combinations (and to separate UNE combinations upon request) through their control of the elements of their networks that are unbundled, our rules require incumbent LECs to provide UNE combinations upon request. The record does not indicate that these recently-reinstated rules are problematic.

574. We reiterate the conditions that apply to the duty of incumbent LECs to provide UNE combinations upon request, *i.e.*, that such a combination must be technically feasible and must not undermine the ability of other carriers to access UNEs or interconnect with the incumbent LEC's network.[1771] As noted in the *Verizon* decision, the limitation on technical

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[1765] *Triennial Review NPRM*, 16 FCC Rcd at 22807-08, 22814-15, paras. 57, 60, 73.

[1766] *Id.* at 22814, para. 72.

[1767] 47 C.F.R. § 51.315.

[1768] 47 U.S.C. § 251(c)(3); *Local Competition Order*, 11 FCC Rcd at 15646-48, paras. 292-97; *see* LDMI Comments at 11; NewSouth Comments at 42-46; Norlight Comments at 5-7; OpenBand Comments at 10-12; Sprint Comments at 26-27; UNE-P Coalition Comments at 35-38; Letter from Joan Marsh, Director, AT&T Corp. to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2, 6-7 (filed Dec. 23, 2002) (AT&T Dec. 23, 2002 EELs and New Combinations *Ex Parte* Letter).

[1769] *Verizon*, 535 U.S. at 534 (reading section 251(c)(3) as "leaving open who should do the work of combination.").

[1770] *Id.* at 537-38 (noting the statutory requirement of nondiscriminatory access); *Iowa Utils. Bd.*, 525 U.S. at 394-95 (discussing section 251(c)(3) nondiscrimination requirements).

[1771] 47 C.F.R. § 51.315(c).

feasibility is meant to preserve the reliability and security of the incumbent LEC's network, and a UNE combination is "not technically feasible if it impedes an incumbent carrier's ability to retain responsibility for the management, control, and performance of its own network."[1772] Incumbent LECs must prove to state commissions that a request to combine UNEs in a particular manner is not technically feasible or would undermine the ability of other carriers to obtain access to UNEs or to interconnect with the incumbent LEC's network.[1773]

b. EELs

575. As noted above, our rules currently require incumbent LECs to make UNE combinations, including loop-transport combinations, available in all areas where the underlying UNEs are available and in all instances where the requesting carrier meets the eligibility requirements.[1774] We decline to designate EELs as additional UNEs for which an impairment analysis is necessary. Instead, we continue to view EELs as UNE combinations consisting of unbundled loops and unbundled transport (with or without multiplexing capabilities). Pursuant to the statute, requesting carriers are entitled to nondiscriminatory access to UNE combinations on just, reasonable, and nondiscriminatory rates, terms and conditions. Apart from the service eligibility criteria for high-capacity (DS1 or DS3) EELs set forth in Part VII below, our rules do not permit incumbent LECs to impose additional conditions or limitations upon obtaining access to EELs and other UNE combinations, such as requiring a competitive LEC to purchase special access and then convert such facilities to UNEs.[1775] Thus, to the extent DS1 transport facilities are available along a specific route, for example, the incumbent LEC must provide (upon request) a DS1 EEL consisting of unbundled loop and unbundled transport facilities to any requesting carrier that qualifies for access to that combination.[1776] Similarly, if desired, a

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[1772] *Verizon*, 535 U.S. at 536 (citing *Local Competition Order*, 11 FCC Rcd at 15605-06, para. 203).

[1773] 47 C.F.R. § 51.315(e), (f). We note that our prior rules used the word "impair" in defining an incumbent LEC's obligations to provide UNE combinations upon request. *See* 47 C.F.R. §§ 51.315(c), (f). To avoid confusion between the standard under these rules and the impairment standard in section 251(d)(2)(B) of the Act, we amend these rules to eliminate this use of "impair." *See infra* App. B.

[1774] *Local Competition Order*, 11 FCC Rcd at 1646-48, paras. 292-97; *Verizon*, 535 U.S. at 531-38 (upholding the Commission's rules on UNE combinations). *See USTA*, 290 F.3d at 428 (concluding that "the Commission has the authority to require [loop-transport] combinations, affirmatively"); *see also* AT&T Reply at 299; XO Reply at 5-7.

[1775] *See* ALTS *et al.* Comments at 102; AT&T Comments at 105-06 (asserting that incumbent LECs require pre-auditing); BrahmaCom Reply at 2 (arguing that incumbent LECs impose a conversion requirement on EELs); Focal Apr. 5, 2001 Comments at 5-6; Letter from Thomas Jones, Counsel for Conversent, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 4 (filed Nov. 5, 2002) (Conversent Nov. 5, 2002 Transport and Loops *Ex Parte* Letter). We therefore grant CompTel's request to clarify that requesting carriers need not purchase special access circuits in order to qualify for EELs. CompTel Feb. 17, 2000 Petition for Reconsideration. We deny, however, CompTel's request to specify the EEL as an additional network element. *Id.* at 13-14. In addition, in light of our determination herein regarding EELs, we dismiss as moot WorldCom's petition for clarification regarding the proper interpretation of section 51.315(b) of the Commission's rules. MCI WorldCom Feb. 17, 2000 Petition for Clarification at 2, 13.

[1776] *See infra* Part V.B.; *see also* BellSouth Reply at 22.

competitive LEC could obtain access to a DS0 EEL so long as the underlying UNEs are available pursuant to our impairment analysis.[1777]

576. Based on the record before us, we conclude that EELs facilitate the growth of facilities-based competition in the local market.[1778] The availability of EELs extends the geographic reach for competitive LECs because EELs enable requesting carriers to serve customers by extending a customer's loop from the end office serving that customer to a different end office in which the competitive LEC is already located. In this way, EELs also allow competitive LECs to reduce their collocation costs by aggregating loops at fewer collocation locations and then transporting the customer's traffic to their own switches. Moreover, we find that access to EELs also promotes self-deployment of interoffice transport facilities by competitive LECs because such carriers will eventually self-provision transport facilities to accommodate growing demand.[1779] We further agree that the availability of EELs and other UNE combinations promotes innovation because competitive LECs can provide advanced switching capabilities in conjunction with loop-transport combinations.[1780]

577. As discussed below, a competitive LEC must meet the eligibility criteria in order to obtain a high-capacity EEL on an unbundled basis.[1781] On a going-forward basis, a requesting carrier may obtain a high-capacity EEL any time the underlying network elements are available pursuant to our impairment analysis and the carrier meets the eligibility criteria.[1782] We conclude that pre-audits and requirements to purchase special access and then convert to UNE

[1777] WorldCom Nov. 13, 2002 *Ex Parte* Letter at 1-3 (describing DS0 EEL arrangements); Letter from William Jordan, Vice President, BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Nov. 25, 2002) (BellSouth Nov. 25, 2002 EELs *Ex Parte* Letter) (describing BellSouth's EEL offerings).

[1778] ALTS *et al.* Comments at 76-77; AT&T Comments at 99, 203; Letter from Julia O. Strow, Vice President, Cbeyond, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, 01-318, 01-321 at 1-2 (filed Dec. 16, 2002) (Cbeyond Dec. 16, 2002 EELs *Ex Parte* Letter).

[1779] AT&T Reply at 252; NewSouth Comments at 14-15 (explaining practices implemented to make network more efficient).

[1780] Letter from Patrick J. Donovan, Counsel for Cbeyond, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1-2 (filed Dec. 16, 2002) (Cbeyond Dec. 16, 2002 *Ex Parte* Letter); BroadRiver Apr. 5, 2001 Comments at 5 (arguing that EEL availability will "accelerate the rollout of next generation networks"); WorldCom Apr. 5, 2001 Comments at 28-29 (arguing that EEL availability promotes innovation).

[1781] *See infra* Part VII.B.; *see also* AT&T Comments at 104-05; AT&T Reply, Tab F, Declaration of Michael E. Lesher (AT&T Lesher Reply Decl.) at para. 33; CompTel Comments at 90-95; CompTel Apr. 30, 2001 Reply at 2-4. AT&T Apr. 5, 2001 Comment at 20. *But see* SBC Reply at 67-69. *See, e.g.*, Letter from Ann D. Berkowitz, Project Manager, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 13 (filed Oct. 16, 2002) (Verizon Oct. 16, 2002 Section 251 Obligations *Ex Parte* Letter) (arguing that the Commission should limit the use of UNEs to providing local service).

[1782] Thus, a requesting carrier may obtain access to a "new" EEL or other UNE combination. *See* BroadRiver Apr. 5, 2001 Comments at 16-19 (arguing that the Commission should allow competitive LECs to obtain access to new EELs).

combinations constitute unjust, unreasonable, and discriminatory terms and conditions for obtaining access to UNE combinations and are prohibited by the Act and our rules.[1783]

578. We decline to link the availability of EELs and other UNE combinations to our analysis in the *Pricing Flexibility Order*.[1784] Because the comprehensive impairment analysis we adopt herein addresses the arguments of Qwest and other incumbent LECs concerning the availability of alternative transmission facilities, additional conditions are not necessary to determine the availability of EELs and other UNE combinations.

c. General Commingling Issues for Transmission Facilities

579. We eliminate the commingling restriction that the Commission adopted as part of the temporary constraints in the *Supplemental Order Clarification* and applied to stand-alone loops and EELs. We therefore modify our rules to affirmatively permit requesting carriers to commingle UNEs and combinations of UNEs with services (*e.g.*, switched and special access services offered pursuant to tariff), and to require incumbent LECs to perform the necessary functions to effectuate such commingling upon request. By commingling, we mean the connecting, attaching, or otherwise linking of a UNE, or a UNE combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more such wholesale services. Thus, an incumbent LEC shall permit a requesting telecommunications carrier to commingle a UNE or a UNE combination with one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to a method other than unbundling under section 251(c)(3) of the Act. In addition, upon request, an incumbent LEC shall perform the functions necessary to commingle a UNE or a UNE combination with one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to a method other than unbundling under section 251(c)(3) of the Act. As a result, competitive LECs may connect, combine, or otherwise attach UNEs and combinations of UNEs to wholesale services (*e.g.*, switched and special access services offered pursuant to tariff), and incumbent LECs shall

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[1783] 47 U.S.C. §§ 201-202, 251(c)(3); 47 C.F.R. §§ 51.311-.315. *See* XO Reply at 7 (arguing that competitive LECs may obtain EELs without conversion requirements); Cbeyond Apr. 5, 2001 Comments at 6-9 (arguing that incumbent LECs have required compliance audits before providing access to a UNE combination); Focal Apr. 30, 2001 Reply at 6.

We note that, because the Eighth Circuit had vacated our rules concerning new combinations, competitive LECs could obtain access to EELs through a conversion process under section 51.315(b) of our rules, which prohibited incumbent LECs from separating network elements ordinarily combined. In light of *Verizon*, our new combinations rules were reinstated, and thus, competitive LECs may order new UNE combinations and need not convert special access (or other previously combined network elements) to UNE combinations. *See Verizon*, 535 U.S. at 531-38 (upholding the Commission's rules on UNE combinations).

[1784] Qwest Reply at 56-57. We note that Qwest later modified its position to support the availability of EELs. *See* Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 15-17 (filed Dec. 17, 2002) (Qwest Dec. 17, 2002 *Ex Parte* Letter).

not deny access to UNEs and combinations of UNEs on the grounds that such facilities or services are somehow connected, combined, or otherwise attached to wholesale services.

580. As explained below, however, we do not require incumbent LECs to "ratchet"[1785] individual facilities. Thus, we do not require incumbent LECs to implement any changes to their billing or other systems necessary to bill a single circuit at multiple rates (*e.g.*, a DS3 circuit at rates based on special access services and UNEs) in order to charge competitive LECs a single, blended rate. Although we do not require ratcheting, we do note that incumbent LECs shall not deny access to a UNE on the ground that the UNE or UNE combination shares part of the incumbent LEC's network with access services or other non-qualifying services.[1786]

581. We conclude that the Act does not prohibit the commingling of UNEs and wholesale services and that section 251(c)(3) of the Act grants authority for the Commission to adopt rules to permit the commingling of UNEs and combinations of UNEs with wholesale services, including interstate access services. An incumbent LEC's wholesale services constitute one technically feasible method to provide nondiscriminatory access to UNEs and UNE combinations.[1787] We agree with the Illinois Commission, the New York Department, and others that the commingling restriction puts competitive LECs at an unreasonable competitive disadvantage by forcing them either to operate two functionally equivalent networks – one network dedicated to local services and one dedicated to long distance and other services – or to choose between using UNEs and using more expensive special access services to serve their customers.[1788] Thus, we find that a restriction on commingling would constitute an "unjust and

[1785] Ratcheting is a pricing mechanism that involves billing a single circuit at multiple rates to develop a single, blended rate.

[1786] More specifically, our approach to ratcheting does not mean that an incumbent LEC can refuse to commingle a UNE with a special access service because the incumbent LEC multiplexes traffic for multiple customers onto one facility within its own network. For example, an incumbent LEC shall not refuse to provide a UNE DS1 transport (where such UNEs are available) on the grounds that the UNE shares a transmission facility with tariffed access services or other wholesale services.

[1787] *See* NewSouth Comments at 42-43 (describing connections and work processes); Qwest Dec. 17, 2002 *Ex Parte* Letter at 15-16 (proposing and describing EEL arrangements); Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 4-6 (filed Dec. 18, 2002) (Qwest Dec. 18, 2002 EELs *Ex Parte* Letter) (describing Qwest's commingling proposal); Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3 (filed Feb. 6, 2003) (Qwest Feb. 6, 2003 EELs *Ex Parte* Letter) (describing Qwest's commingling proposal); AT&T Apr. 5, 2001 Comments at 22. In addition, we find that commingling is a technically feasible practice. *See, e.g.*, AT&T Apr. 30, 2001 Reply, CC Docket No. 96-98, Decl. of Anthony Fea and William J. Taggart III (AT&T Apr. 30, 2001 Fea/Taggart Reply Decl.) at para. 40 (asserting that linking loops or loop-transport combinations with high-capacity special access services is technically feasible). In light of the determinations we make herein, we grant WorldCom's request to clarify that requesting carriers may commingle UNEs with other types of services. MCI WorldCom Feb. 17, 2000 Petition for Clarification at 21-23.

[1788] In the *Local Competition Order*, the Commission concluded that those "terms require incumbent LECs to provide unbundled elements under terms and conditions that would provide an efficient competitor with a meaningful opportunity to compete." 11 FCC Rcd at 15660, para. 315; *see UNE Remand*, 15 FCC Rcd at 3913-14, paras. 490-91. A number of parties persuade us that a commingling restriction, combined with the reduced (continued....)

unreasonable practice" under 201 of the Act, as well as an "undue and unreasonable prejudice or advantage" under section 202 of the Act.[1789] Furthermore, we agree that restricting commingling would be inconsistent with the nondiscrimination requirement in section 251(c)(3).[1790] Incumbent LECs place no such restrictions on themselves for providing service to any customers by requiring, for example, two circuits to accommodate telecommunications traffic from a single customer or intermediate connections to network equipment in a collocation space.[1791] For these

(Continued from previous page)

unbundling obligations, would raise the costs of competitive LECs. AT&T Comments at 106-107; ALTS *et al.* Comments at 106; CompTel Comments at 97; Illinois Commission Comments at 5; Sprint Comments at 55-57; WorldCom Comments at 55; AT&T Reply at 293 (citing AT&T Lesher Reply Decl. at paras. 34-36); NewSouth Reply at 37; Sprint Reply at 46; NuVox *et al.* Reply at 52; XO Reply at 17; Letter from Ruth Milkman, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 13 (filed Oct. 7, 2002) (WorldCom Oct. 7, 2002 EELs *Ex Parte* Letter) (asserting that commingling "forces needless inefficiencies on competitors"); Letter from Michael H. Pryor, Counsel for NewSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98 (filed Oct. 18, 2002) (NewSouth Oct. 18, 2002 Loops and Commingling *Ex Parte* Letter); ALTS/CompTel Oct. 28, 2002 *Ex Parte* Letter at 5; Cbeyond Nov. 22, 2002 *Ex Parte* Letter; Letter from Jonathan Askin, General Counsel, ALTS, to William F. Maher, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 5 (filed Nov. 14, 2002) (ALTS Nov. 14, 2002 Use and Commingling Restrictions *Ex Parte* Letter); WorldCom Nov. 22, 2002 *Ex Parte* Letter at 13-14; AT&T Dec. 23, 2002 *Ex Parte* Letter at 8 (arguing that commingling restrictions force competitive LECs into inefficient network architectures); Letter from Ruth Milkman, Counsel for WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3 (filed Feb. 13, 2003) (WorldCom Feb. 13, 2003 EELs *Ex Parte* Letter); Letter from Patrick Donovan, Counsel for Cbeyond, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338 at 4 (filed Feb. 13, 2003) (Cbeyond Feb. 13, 2003 EELs and Commingling *Ex Parte* Letter). *See* Cbeyond *et al.* Apr. 5, 2001 Comments at 14 (requesting clarification that competitive LECs can purchase access to a DS1 EEL that is "riding on a DS3 circuit with other types of ancillary traffic"); CompTel Apr. 5, 2001 Comments at 33; AT&T Apr. 30, 2001 Fea/Taggart Reply Decl. at paras. 41-42. We therefore disagree with Qwest and the other incumbent LECs who argue that the commingling restriction does not impede competitive LECs from deploying efficient network configurations. *See* SBC Comments at 108 (noting that commingling restriction precludes competitive LECs from obtaining UNEs and access services that share the same facility); BellSouth Reply at 40 (stating that competitive LECs can connect UNEs and access services at collocation arrangements); Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98 at 3 (filed Oct. 28, 2002) (Qwest Oct. 28, 2002 Transport and Commingling *Ex Parte* Letter).

[1789] ALTS *et al.* Comments at 105; ALTS/CompTel Oct. 28, 2002 *Ex Parte* Letter at 5; WorldCom Nov. 18, 2002 *Ex Parte* Letter at 15; Cbeyond Nov. 22, 2002 *Ex Parte* Letter at 13-14.

[1790] AT&T Comments at 107; Illinois Commission Comments at 5; WorldCom Reply at 32; ALTS/CompTel Oct. 28, 2002 *Ex Parte* Letter at 5; AT&T Nov. 23, 2002 *Ex Parte* Letter at 8 (arguing that commingling restriction is discriminatory).

[1791] AT&T Comments at 107 (arguing that "the co-mingling ban deprives CLECs of obtaining the same network efficiencies as the ILEC enjoys because the ILEC can place any traffic on any facility to maximize efficiency"); NewSouth Comments at 42-46; Sprint Reply at 46-48; WorldCom Apr. 30, 2001 Reply at 14; CompTel Apr. 5, 2001 Comments at 33; AT&T Apr. 30, 2001 Fea/Taggart Reply Decl. at paras. 41-42); *see* 47 C.F.R. § 51.315(b) (requiring incumbent LECs to provide access to UNEs on terms and conditions no less favorable to those under which the incumbent LEC provides such UNEs to itself). *But see* SBC Comments at 108 (noting requirement for competitive LECs to collocate in certain circumstances); Verizon Comments at 141 (acknowledging that it combines all telecommunications traffic on the same facilities); BellSouth Reply at 40 (acknowledging collocation requirement); *see* 47 C.F.R. § 51.315(b) (requiring incumbent LECs to provide access to UNEs on terms and conditions no less favorable to those under which the incumbent LECs provides such UNEs to itself).

reasons, we require incumbent LECs to effectuate commingling by modifying their interstate access service tariffs to expressly permit connections with UNEs and UNE combinations.[1792]

582. We decline, however, to require "ratcheting," which is a pricing mechanism that involves billing a single circuit at multiple rates to develop a single, blended rate.[1793] The Commission's pricing rules for UNEs already ensure that competitive LECs are paying appropriate rates for UNEs and UNE combinations, and that incumbent LECs are adequately compensated for the use of their networks. To permit ratcheting would be to create an additional series of discounts for situations in which all parties' interests are already protected.[1794] Thus, our rules permit incumbent LECs to assess the rates for UNEs (or UNE combinations) commingled with tariffed access services on an element-by-element and a service-by-service basis.[1795] This ensures that competitive LECs do not obtain an unfair discount off the prices for

[1792] We note that sections 202 and 203 of the Act provide specific penalties for noncompliance. *See* 47 U.S.C. §§ 202(c), 203(e). These amounts have been adjusted to $7,600 for each offense and $330 for each day of the continuance of the offense. 47 C.F.R. § 1.80(b)(4). Thus, any incumbent LEC policy or practice that has the effect of prohibiting commingling could subject the incumbent LEC to enforcement action for imposing an "undue or unreasonable prejudice or disadvantage" upon competitive LECs. In addition, the Commission's rules establish a five-year statute of limitations for violations of sections 202 and 203. *Id.* at § 1.80(c)(2).

[1793] CompTel Comments at 97-98 (citing *BellSouth Telecommunications, Inc. Part 69(g)(1) Public Interest Petition to Establish New Rate Elements for Switched Access Versions of BellSouth's SMARTGate Service and BellSouth SPA Managed Shared Network*, Memorandum Opinion and Order, 14 FCC Rcd 1838, 1839, para. 2, n.2 (CCB 1998) (*BellSouth Ratcheting Order*); Sprint Comments at 56, n.48; Sprint Reply at 47. As explained in the *BellSouth Ratcheting Order*, ratcheting allows special access charges to be reduced by 1/24th for each switched access voice-grade circuit on a special access DS1 or 1/672nd for each switched access voice-grade circuit on a special access DS3. *BellSouth Ratcheting Order*, 14 FCC Rcd at 1839 n.2. We note that some parties contend that any Commission rule requiring ratcheting would necessitate substantial modifications to incumbent LEC billing systems and operational procedures. *See* Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Feb. 6, 2003) (BellSouth Feb. 6, 2003 Ratcheting *Ex Parte* Letter). Because we do not require ratcheting, however, we find no need to address these arguments.

[1794] Our decision not to require ratcheting does not affect a competitive LEC's ability to obtain UNEs, UNE combinations, and wholesale services. Thus, an incumbent LEC may not deny access to a UNE or UNE combination on the grounds that such UNE or UNE combination shares part of the incumbent LEC's network with access or other non-UNE services. Some competitive LECs have contended, for example, that incumbent LECs deny access to UNE combinations on the grounds that a UNE and access service share certain multiplexing equipment. *See* Letter from Brad E. Mutschelknaus *et al.*, Counsel for ALTS *et al.*, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, CC Docket No. 96-98 (filed Aug. 1, 2001) (ALTS Aug. 1, 2001 EELs *Ex Parte* Letter), *in* Letter from Steven A. Augustino, Counsel for ALTS *et al.*, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 96-98 (filed Aug. 1, 2001). By eliminating the commingling restriction, we will ensure that competitive LECs will be able to obtain all available UNEs, UNE combinations, and wholesale services, albeit at the rates established pursuant to tariffs, interconnection agreements or other contracts.

[1795] *See infra* Part VII.B.

wholesale services, while at the same time ensuring that competitive LECs do not pay twice for a single facility.[1796]

583. We therefore disagree with SBC, Verizon, and others who argue in favor of adopting a permanent commingling restriction. First, we determine that the eligibility qualifications adopted herein (and applied to all conversions of a special access circuit to a high-capacity EEL; to obtaining a new high-capacity EEL; and to obtaining at UNE pricing part of a high-capacity loop-transport combination) address the universal service and access charge arguments by ensuring competitive LECs purchase UNEs for legitimate competitive purposes.[1797] Second, we conclude that the commingling restriction is no longer necessary to preserve the status quo while the Commission grapples with potential modifications to its universal service and access charge policies.[1798] We recognize that some issues remain outstanding, but we conclude that the remaining issues do not, by themselves, warrant a permanent restriction on commingling UNEs and UNE combinations with wholesale services. Third, we find that commingling does not constitute the creation of a new UNE for which an impairment analysis is required.[1799] Instead, commingling allows a competitive LEC to connect or attach a UNE or UNE combination with an interstate access service, such as high-capacity multiplexing or transport services. Because commingling will not enable a competitive LEC to obtain reduced or discounted prices on tariffed special access services because we are not requiring ratcheting,[1800] our general impairment analysis for individual UNEs is adequate. Fourth, we conclude that permitting commingling is consistent with the D.C. Circuit's *CompTel* decision. Verizon incorrectly characterizes that decision as finding that a commingling restriction is

[1796] For example, a competitive LEC connecting a UNE loop to special access interoffice transport facilities would pay UNE rates for the unbundled loops and tariffed rates for the special access service. We recognize that, at some point, competitive LECs may make a business decision to either use UNEs or wholesale services to serve a customer. For example, a competitive LEC buying UNE DS1 transport continues to add UNE DS1 transport facilities to its network. At some point, the competitive LEC will make a business decision to either buy DS3 special access (and convert its traffic onto the larger facility) or to buy UNE DS3 transport, where available and if the competitive LEC meets the service eligibility requirements.

[1797] AT&T Reply at 284; WorldCom Reply at 36. *But see* SBC Comments at 107; NECA Reply at 4-5.

[1798] ALTS *et al.* Comments at 105-06; CompTel Comments at 76-77; NuVox *et al.* Comments at 49-51 (citing *CALLS* and *MAG* Orders); Norlight Comments at 9-10; AT&T Reply at 284, 290; WorldCom Reply at 36; Letter from Joan Marsh, Director, Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 13 (filed Oct. 7, 2002) (AT&T Oct. 7, 2002 Transport and Commingling *Ex Parte* Letter); 13; Nov. 14, 2002 ALTS *Ex Parte* Letter at 3, 5. *But see* NECA Reply at 3; NECA Apr. 5, 2001 Comments at 3-5; TDS Apr. 5, 2001 Comments at 1-7; USTA Apr. 5, 2001 Comments at 9-11.

[1799] Letter from Brad E. Mutschelknaus, Counsel for ALTS, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 96-98 at 3-5 (filed Aug. 20, 2001) (ALTS Aug. 20, 2001 EELs *Ex Parte* Letter); SBC/Verizon Apr. 5, 2001 Comments at 30.

[1800] As discussed below, we are not requiring incumbent LECs to blend the rates of a transmission facility according to the amount of UNE usage and access service usage. Thus, competitive LECs that commingle UNEs or UNE combinations with, for example, interstate access services would pay the appropriate rates for each service.

necessary because its absence would allow mass conversions.[1801] Instead, the court concluded that, based on the information submitted by the parties, it could not conclude that the Commission's prior commingling restriction was arbitrary and capricious.[1802] Further, as we explain in detail below, we obviate the risk identified by the court by applying service eligibility criteria to commingled loop-transport combinations. Finally, we conclude that the billing and operational issues raised by Verizon do not warrant a permanent commingling restriction, but instead can be addressed through the same process that applies for other changes in our unbundling requirements adopted herein, *i.e.*, through change of law provisions in interconnection agreements.[1803] We expect that change of law provisions will afford incumbent LECs sufficient time to complete all actions necessary to permit commingling.[1804]

584. As a final matter, we require that incumbent LECs permit commingling of UNEs and UNE combinations with other wholesale facilities and services, including any network elements unbundled pursuant to section 271 and any services offered for resale pursuant to section 251(c)(4) of the Act. Section 251(c)(4) places the duty on incumbent LECs "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on" the resale of telecommunications services provided at retail to customers who are not telecommunications carriers.[1805] Any restriction that prevents commingling of UNEs (or UNE combinations) with resold services constitutes a limitation on both reselling the eligible service and on obtaining access to the UNE or UNE combination. We conclude that a restriction on commingling UNEs and UNE combinations with services eligible for resale is inconsistent with the section 251(c)(4) prohibition on "unreasonable . . . conditions or limitations" because it would impose additional costs on competitive LECs choosing to compete through multiple entry strategies, and because such a restriction could even require a competitive LEC to forego using efficient strategies for serving different customers and markets. We agree with ALTS that an incumbent LEC's obligations under sections 251(c)(3) and 251(c)(4) are not mutually exclusive.[1806] In addition, a restriction on obtaining UNEs and UNE combinations in conjunction with services available for resale would constitute a discriminatory condition on the resale of

[1801] Verizon Dec. 17, 2002 *Ex Parte* Letter at 5; Letter from Ann D. Berkowitz, Project Manager, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2 (filed Jan. 30, 2003); Letter from Ann D. Berkowitz, Project Manager, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 2-3 (filed Feb 6, 2003).

[1802] *CompTel*, 309 F.3d at 17-18.

[1803] CompTel Comments at 97-98; NewSouth Comments at 41; Sprint Comments at 56; WorldCom Reply at 33-34; Sprint Reply at 47. *But see* Verizon Comments at 140. We note that, taken to its extreme, the incumbent LEC argument would prevent any modification of our UNE rules because billing and operational changes would certainly follow any such change.

[1804] For example, incumbent LECs will have to modify their interstate tariffed offerings to permit commingling of interstate access services with UNEs and UNE combinations.

[1805] 47 U.S.C. § 251(c)(4).

[1806] ALTS *et al.* Comments at 98.

eligible telecommunications services because incumbent LECs impose no such limitations or restrictions on their ability to combine facilities and services within their network in order to meet customer needs.[1807]

d. Conversions

585. We decline the suggestions of several parties to adopt rules establishing specific procedures and processes that incumbent LECs and competitive LECs must follow to convert wholesale services (*e.g.*, special access services offered pursuant to interstate tariff) to UNEs or UNE combinations, and the reverse, *i.e.*, converting UNEs or UNE combinations to wholesale services.[1808] Because both the incumbent LEC and requesting carriers have an incentive to ensure correct payment for services rendered, and because both parties are bound by duties to negotiate in good faith, we conclude that these carriers can establish any necessary procedures to perform conversions with minimal guidance on our part.

586. We conclude that carriers may both convert UNEs and UNE combinations to wholesale services and convert wholesale services to UNEs and UNE combinations, so long as the competitive LEC meets the eligibility criteria that may be applicable. To the extent a competitive LEC fails to meet the eligibility criteria for serving a particular customer, the serving incumbent LEC may convert the UNE or UNE combination to the equivalent wholesale service in accordance with the procedures established between the parties. Likewise, to the extent a competitive LEC meets the eligibility requirements and a particular network element is available as a UNE pursuant to our impairment analysis, it may convert the wholesale service used to serve a customer to UNEs or UNE combinations in accordance with the relevant procedures. Converting between wholesale services and UNEs or UNE combinations should be a seamless process that does not affect the customer's perception of service quality.[1809] We recognize that conversions may increase the risk of service disruptions to competitive LEC customers because they often require a competitive LEC to groom interexchange traffic off circuits and equipment that are already in use in order to comply with the eligibility criteria.[1810]

[1807] *See, e.g.*, AT&T Comments at 107; NewSouth Comments at 42-46; Sprint Reply at 46-48.

[1808] *See* ALTS *et al.* Comments at 101 (arguing that the Commission should establish explicit time period for effectuating conversions); Focal Apr. 30, 2001 Reply at 6-7. We therefore grant in part WorldCom's request to clarify that competitive LECs may convert existing special access services to combinations of loop and transport network elements, but only to the extent such conversions meet the service eligibility criteria for EELs adopted herein. MCI WorldCom Feb. 17, 2000 Petition for Clarification at 24. Furthermore, we dismiss as moot Intermedia's request to issue another supplementary order clarifying that incumbent LECs must make available loop and transport network elements that are currently combined as tariffed special access services. Intermedia Feb. 17, 2000 Petition for Reconsideration at 14-15.

[1809] We note that no party seriously contends that it is technically infeasible to convert UNEs and UNE combinations to wholesale services and vice versa.

[1810] WorldCom explains that the grooming process requires "submission of circuit-level disconnect orders, and circuit-level reconnect orders" during limited periods of time in order to segregate telecommunications traffic onto the redundant facilities required by the commingling restriction. WorldCom Apr. 5, 2001 Comments at 37-38. *See* (continued....)

Thus, requesting carriers should establish and abide by any necessary operational procedures to ensure customer service quality is not affected by conversions.

587. We decline to require incumbent LECs provide requesting carriers an opportunity to supersede or dissolve existing contractual arrangements through a conversion request. Thus, to the extent a competitive LEC enters into a long-term contract to receive discounted special access services, such competitive LEC cannot dissolve the long-term contract based on a future decision to convert the relevant circuits to UNE combinations based on changes in customer usage.[1811] We recognize, however, that once a competitive LEC starts serving a customer, there exists a risk of wasteful and unnecessary charges, such as termination charges, re-connect and disconnect fees, or non-recurring charges associated with establishing a service for the first time. We agree that such charges could deter legitimate conversions from wholesale services to UNEs or UNE combinations, or could unjustly enrich an incumbent LEC as a result of converting a UNE or UNE combination to a wholesale service.[1812] Because incumbent LECs are never required to perform a conversion in order to continue serving their own customers, we conclude that such charges are inconsistent with an incumbent LEC's duty to provide nondiscriminatory access to UNEs and UNE combinations on just, reasonable, and nondiscriminatory rates, terms, and conditions.[1813] Moreover, we conclude that such charges are inconsistent with section 202 of the Act, which prohibits carriers from subjecting any person or class of persons (*e.g.*, competitive LECs purchasing UNEs or UNE combinations) to any undue or unreasonable prejudice or disadvantage.[1814]

588. We conclude that conversions should be performed in an expeditious manner in order to minimize the risk of incorrect payments. We expect carriers to establish any necessary timeframes to perform conversions in their interconnection agreements or other contracts. We decline to adopt ALTS's suggestion to require the completion of all necessary billing changes within ten days of a request to perform a conversion because such time frames are better established through negotiations between incumbent LECs and requesting carriers.[1815] We recognize, however, that converting between wholesale services and UNEs (or UNE combinations) is largely a billing function. We therefore expect carriers to establish appropriate mechanisms to remit the correct payment after the conversion request, such as providing that any pricing changes start the next billing cycle following the conversion request.

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ALTS *et al.* Comments at 105 (arguing that "force moves" are inefficient and risky); AT&T Comments at 108 (citing AT&T Apr. 5, 2001 Comments at 22); Sprint Reply at 46-48.

[1811] We would expect competitive LECs to take into account the possibility of future conversions to UNE combinations before entering into a long-term contract (with associated discounts) for wholesale services.

[1812] AT&T Reply at 296-300; AT&T Nov. 23, 2002 *Ex Parte* Letter at 12-13.

[1813] 47 U.S.C. § 251(c)(3).

[1814] *Id.* § 202(a).

[1815] ALTS *et al.* Comments at 101.

589. As a final matter, we decline to require retroactive billing to any time before the effective date of this Order. The eligibility criteria we adopt in this Order supersede the safe harbors that applied to EEL conversions in the past. To the extent pending requests have not been converted, however, competitive LECs are entitled to the appropriate pricing up to the effective date of this Order.

B. Service Eligibility to Access UNEs

1. Background

590. A requesting carrier may obtain a UNE where it provides qualifying services over that UNE.[1816] In the *Local Competition Order* and *UNE Remand Order*, the Commission determined not to impose eligibility thresholds for UNE access.[1817] In the *Supplemental Order*, it restricted the ability of competitive carriers to convert special access arrangements to EELs, unless such a carrier provides a "significant amount of local exchange services."[1818] In the *Supplemental Order Clarification*, the Commission clarified what constitutes a "significant amount of local exchange service" by defining three safe harbors for requesting carriers to demonstrate local usage to convert special access arrangements to EELs, two of which specified in detail a variety of local voice traffic requirements by circuit.[1819] In the *Triennial Review NPRM*, the Commission sought comment on several issues relating to the safe harbors, including whether they effectively tailor access to EEL combinations to those requesting carriers seeking

[1816] *See supra* Part V.B.2.c.

[1817] *Local Competition Order*, 11 FCC Rcd at 15679, para. 356; *UNE Remand Order*, 15 FCC Rcd at 3911-12, para. 484.

[1818] *Supplemental Order*, 15 FCC Rcd at 1760, para. 2.

[1819] The safe harbor exceptions require, in relevant part, that:

(1) the requesting carrier certifies it is the exclusive provider of an end user's local exchange service;

(2) the requesting carrier certifies that it provides local exchange and exchange access service to the end-user customer's premises and handles at least one third of the end-user customer's local traffic as measured as a percent of total end-user dialtone lines; for DS1 circuits and above, at least 50 percent of the activated channels on the loop portion of the loop-transport combination have at least 5 percent local voice traffic individually, and the entire loop facility has at least 10 percent local voice traffic; or

(3) the requesting carrier certifies that at least 50 percent of the activated channels on a circuit are used to provide originating and terminating local dialtone service and at least 50 percent of the traffic on each of these channels is local voice traffic and the entire loop facility has at least 33 percent local voice traffic.

Options (1) and (2) also require that the loop-transport combinations in question terminate at the requesting carrier's collocation arrangement in at least one incumbent LEC central office. For DS1 to DS3 multiplexing, each of the individual DS1 circuits must meet these criteria. *Supplemental Order Clarification*, 15 FCC Rcd at 9598-600, para. 22. All three options prohibited commingling EELs with tariffed access services, a restriction which we conclude is no longer necessary. *See supra* Part VII.A.2.

to provide "significant local usage" to their end users.[1820] Since the issuance of the *Triennial Review NPRM*, the D.C. Circuit has denied a petition for review of these safe harbors.[1821]

2. Discussion

a. Scope of Eligibility Criteria Limited to High-Capacity EELs

591. As we explain in detail under our service-specific approach, a carrier seeking access to an unbundled element of the incumbent LEC's network must provide qualifying service to a customer in order to obtain access to that facility pursuant to our section 251 unbundling rules.[1822] With respect to combinations of high-capacity (DS1 and DS3) loops and interoffice transport, we adopt additional eligibility criteria that do not apply to other UNEs. Based on the record before us, we find that it is reasonable to adopt such eligibility criteria for these high-capacity circuits due to the potential for "gaming" by non-qualifying providers that is uniquely possible because of the technical characteristics of these facilities. By gaming of our eligibility criteria, we mean the case of a provider of exclusively non-qualifying service obtaining UNE access in order to obtain favorable rates or to otherwise engage in regulatory arbitrage. This includes the intentional circumvention of the intent of our rules to restrict unbundled network access to bona fide providers of qualifying service, such as a national data network provider carrying minimal qualifying service solely to obtain UNE pricing.

592. We do not, however, impose these additional requirements on access to UNEs other than high-capacity EELs. The record does not indicate concern over misuse of voice-grade UNE loops, high-capacity loops, or other UNEs.[1823] By contrast, it discloses significant disagreements between incumbent LECs and competitive LECs over application and administration of use restrictions on high-capacity EELs. Accordingly, although a requesting carrier must provide qualifying services to obtain access to loops, lower-capacity EELs and other UNEs and UNE combinations, we need not provide more detailed rules for application of these requirements to other elements at this time, given the lack of controversy and the greater administrative burdens that enforcing such protections places on requesting carriers, incumbent LECs, and the Commission.[1824] Should there become an apparent need in the future, however, to

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[1820] *Triennial Review NPRM*, 16 FCC Rcd at 22814, para. 74.

[1821] The court denied petitions for review that argued that the safe harbors were arbitrary and capricious. *CompTel*, 309 F.3d at 16-18.

[1822] We also conclude in Part V.B.2.c. that a requesting carrier providing qualifying service can also use that UNE to provide multiple services to a customer.

[1823] At least one incumbent LEC indicates that the Commission does not need to apply the same use restrictions to DS0 and other lower-capacity circuits as the Commission should apply to high-capacity circuits. *See* BellSouth Jan. 16, 2003 *Ex Parte* Letter, Attach. at 4 (stating that a simplified use restriction could be implemented so long as the protections for DS1 and higher-capacity circuits are continued and not subject to gaming).

[1824] We conclude that a requesting carrier qualifies for access to loops, transport, subloops, and other stand-alone UNEs, as well as EELs combining lower-capacity loops, so long as that carrier provides a qualifying service to the end-user customer. In contrast to the potential for interexchange carriers to use high-capacity EELs without (continued....)

guard against access to other parts of the network for the provision of non-qualifying services, we would revisit this decision.

593. To ensure that our rules on service eligibility are not gamed in whole or in part, we make clear that the service eligibility criteria must be satisfied (1) to convert a special access circuit to a high-capacity EEL; (2) to obtain a new high-capacity EEL; or (3) to obtain at UNE pricing part of a high-capacity loop-transport combination (commingled EEL). The *Supplemental Order Clarification* targeted the scope of its restrictions to protect a specific definition of special access service from conversion, namely, a service that "employs dedicated, high-capacity facilities that run directly between an end user, usually a large business customer, and the IXC's point of presence."[1825] Although that order did not rely expressly on the commingling restriction to prevent partial UNE conversions, the D.C. Circuit deduced that a commingling ban would appear to prevent gaming because "commingling will allow the entire base of the loop or 'channel termination' portion of special access circuits to be converted into unbundled loops."[1826] Pointing to this pronouncement from the court, incumbent LECs argue that permitting commingling, as we do in this Order, would risk conversion of the entire channel termination base.[1827]

594. In response to this concern, we apply service eligibility criteria to commingled loop-transport combinations and therefore avoid the possibility of across-the-board loop arbitrage, yet protect access to the UNE portion of a circuit that would otherwise qualify for conversion under the EELs rules we adopt today.[1828] For example, where a state commission

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providing any qualifying services, the record before us does not show such issues exist for transport, loops or other last-mile UNEs. *See, e.g.*, Covad Jan. 21, 2003 *Ex Parte* Letter at 3 (arguing that "a regime of use restrictions on standalone UNE loops, which affects all facilities-based carriers, to avoid speculative concerns about access charge bypass by a few carriers would be a vastly over-inclusive solution in search of a very narrow, speculative problem."). Although BellSouth states that local use restrictions are necessary for stand-alone UNEs, it focuses on the importance of conducting a local service impairment inquiry for all UNEs, and does not identify UNE access by non-local wireline providers as a problem. Letter from Glenn Reynolds, Vice President – Federal Regulatory, BellSouth, to William F. Maher, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3 (filed Jan. 21, 2003) (BellSouth Jan. 21, 2003 *Ex Parte* Letter). Accordingly, we find that certification is unnecessary to verify that carriers provide qualifying services over these UNEs.

[1825] *Supplemental Order Clarification*, 15 FCC Rcd at 9593, para. 10 n.36 (citations omitted). Our revised definition of dedicated transport, which is limited to transmission facilities within an incumbent LEC's network, squarely removes a key segment of those facilities from the incumbent LEC's unbundling obligation. *See supra* Part VI.C.3.

[1826] *CompTel*, 309 F.3d at 17-18. Incumbent LECs typically sell transmission service over a loop facility out of their special access tariffs as "channel termination." The court went on to explain that "[t]he reason is that there are no use restrictions on unbundled loops, and therefore allowing loops to be freely connected to special access services would allow loops that provide no local services to be unbundled and then merely attached to special access transports." *Id.* at 18.

[1827] *See, e.g.*, Verizon Dec. 17, 2002 *Ex Parte* Letter at 5.

[1828] At least one incumbent LEC endorses the availability of a commingled EEL subject to service eligibility restrictions. Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, (continued....)

finds that transport on a specific route is not available as a UNE pursuant to a Commission-defined trigger, a UNE loop would still be available in combination with a special access transport service on that route *so long as the eligibility criteria are satisfied.* Accordingly, a competitive LEC that provides local voice service would be able to obtain the UNE loop portion of a commingled circuit, but interexchange carriers would be unable to obtain the remaining loop base of special access circuits because of the service eligibility criteria we establish below.

b. Service Eligibility Criteria for High-Capacity EELs

595. A central goal of the service eligibility criteria we establish in this Order is to safeguard the ability of bona fide providers of qualifying service to obtain access to high-capacity EELs while simultaneously addressing the potential for gaming. To that end, we therefore focus on local voice service due to its verifiability and its role as the core competitive offering, either on a stand-alone or bundled basis, in direct competition to traditional incumbent LEC service.[1829] Importantly, in devising a gating mechanism to obtain high-capacity EELs, we recognize that we must go beyond superficial indicia and require satisfaction of multiple network-specific and circuit-specific criteria to ensure that the requesting carrier demonstrates a commitment to the local voice market.

596. In crafting eligibility requirements for competitive access to high-capacity EELs, we find our experience with the safe harbors set forth in the *Supplemental Order Clarification* to be instructive. On the one hand, several incumbent LECs argue that the safe harbors have provided certainty and accountability, have survived judicial review, and urge the Commission to retain them.[1830] On the other hand, many competitive LECs submit evidence that that the safe harbors and auditing procedures have proved to be unworkable and susceptible to abuse by the incumbent LECs.[1831] While the assignment of a local telephone number and other characteristics of local voice service provide a significant degree of bright-line measurability, we are mindful that overly intrusive and onerous compliance requirements, such as monitoring traffic over individual circuits, serve as a drag on competitive entry. To avoid the difficulties and unwanted effects of measuring usage or certifying to exclusivity in providing qualifying services, we adopt

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Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2 (filed Feb. 13, 2003) (Qwest Feb. 13, 2003 Commingled EEL *Ex Parte* Letter).

[1829] Our identification of local voice service as the touchstone for high-capacity EEL eligibility does not limit our definition of qualifying services or otherwise affect our impairment findings.

[1830] *See, e.g.*, BellSouth Reply at 39-41; SBC Reply at 157-63; Verizon Dec. 17, 2002 *Ex Parte* Letter at 1.

[1831] *See, e.g.*, CompTel Comments at 99 n.206; NuVox *et al.* Reply at 51 (claiming that the safe harbors are "too cumbersome" and "amount to a mad science that challenges network engineers, marketing personnel and provisioners – and leaves far too much opportunity for creative interpretation by the ILECs.").

rules based largely on elements of the proposed architectural solutions advanced by SBC, Qwest, and BellSouth.[1832]

597. We conclude that where a requesting carrier satisfies the following three categories of criteria, it is a bona fide provider of qualifying services and thus is entitled to order high-capacity EELs. First, we find that each requesting carrier must have a state certification of authority to provide local voice service. Second, to demonstrate that it actually provides a local voice service to the customer over every DS1 circuit, we find that the requesting carrier must have at least one local number assigned to each circuit and must provide 911 or E911 capability to each circuit. Third, we find the following additional circuit-specific architectural safeguards to prevent gaming are necessary: each circuit must terminate into a collocation governed by section 251(c)(6) at an incumbent LEC central office within the same LATA as the customer premises;[1833] each circuit must be served by an interconnection trunk in the same LATA as the customer premises served by the EEL for the meaningful exchange of local traffic, and for every 24 DS1 EELs or the equivalent, the requesting carrier must maintain at least one active DS1 local service interconnection trunk; and each circuit must be served by a Class 5 switch or other switch capable of providing local voice traffic. Requesting carriers must certify to meeting all three criteria (authorization, local number and E911 assignment, and architectural safeguards) to qualify for the high-capacity circuit, subject to the certification and auditing requirements set forth in Part VII.C, below.

598. When applied in their totality, the criteria we adopt here to demonstrate that a requesting carrier has undertaken substantial regulatory and commercial measures to provide local voice service will ensure that the requesting carrier is indeed a provider of qualifying services. In this manner, the criteria afford high-capacity EEL access to an integrated communications provider that sells a bundle of local voice, long-distance voice, and Internet access to small businesses, because such a provider is competing against the incumbent LEC's local voice offerings.[1834] In contrast, a provider of exclusively long-distance voice or data

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[1832] *See* Letter from Julia O. Strow, Vice-President – Regulatory & Industry Relations, Cbeyond *et al.*, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338, Attach. at 3 (filed Feb. 7, 2003) (SBC/NuVox/Cbeyond/SNiP LiNK Feb. 7, 2003 *Ex Parte* Letter); Qwest Feb. 13, 2003 *Ex Parte* Letter; Letter from Herschel L. Abbott, Jr., Vice President – Government Affairs, BellSouth, to Chairman Michael Powell, FCC, CC Docket No. 01-338, Attach. (filed Feb. 13, 2003) (BellSouth Feb. 13, 2003 *Ex Parte* Letter), *in* Letter from Jonathan Banks, General Attorney, BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Feb. 13. 2003). As we discuss later in this Part, several parties, these carriers as well as competitive LECs such as Cbeyond have supplemented their original comments and filed alternative proposals that incorporate network-design solutions intended to allow UNE access for local voice traffic, while seeking to minimize gaming by providers of non-qualifying services. We do not adopt in whole the proposals submitted by any of these carriers.

[1833] 47 U.S.C. § 251(c)(6). We therefore deny WorldCom's request to clarify that a collocation requirement is not necessary for competitive LECs to obtain EELs. MCI WorldCom Feb. 17, 2000 Petition for Clarification at 25.

[1834] For example, Cbeyond reports that well over 95% of its nearly 5000 customers had narrowband access and no T1 service prior to signing up for Cbeyond's integrated package. Letter from Julia Strow, Vice President – Regulatory & Legislative Affairs, Cbeyond, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2 (filed Dec. 16, 2002) (Cbeyond Dec. 16, 2002 EELs *Ex Parte* Letter); *see also* Letter from Michael H. Pryor, Counsel for NewSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2 (continued....)

services that seeks to use high-capacity UNE facilities without providing any local services would fall short of one of the tests, if not all. As a further check on potential for abuse, we make clear that these requirements apply to all wholesale as well as retail service offerings over high-capacity EELs.

599. We apply the service eligibility requirements on a circuit-by-circuit basis, so each DS1 EEL (or combination of DS1 loop with DS3 transport) must satisfy the service eligibility criteria. Importantly, our adoption of this circuit-specific approach rather than a customer-specific one prevents gaming, so the qualification of one DS1 EEL to a customer does not qualify other DS1 EELs to that customer. Similarly, for arrangements where DS1 loops are multiplexed onto DS3 transport facilities, each DS1 loop that subtends the DS3 transport must qualify in order to obtain the transport at a UNE price.[1835] We also recognize that the harms associated with gaming by long-distance providers increase in direct proportion to the capacity level that a competitor seeks to utilize. Therefore, for a requesting carrier to obtain a DS3 EEL as a UNE, the requesting carrier must satisfy the criteria for service eligibility for the DS1-equivalent circuit capacity of that DS3 EEL.

600. As the Commission explained in adopting thresholds for pricing flexibility, our selection of tests here is not an exact science, but a determination based on agency expertise, our reading of the record before us, and a desire to provide an easily implemented and reasonable bright-line rule to guide the industry.[1836] Specifically, we find that each of these criteria is highly probative of legitimate provision of a qualifying service, and not overly burdensome for a requesting carrier to satisfy. We are persuaded on the record before us that while no single requirement can prevent gaming, the criteria we adopt are *collectively* sufficient to restrict the availability of these UNE combinations to legitimate providers of local voice service. The cost of taking the steps necessary to meet these criteria – especially collocation and network re-configuration – outweighs the benefits of lowering that carriers' special access rate to a UNE rate. Accordingly, the burdens and inefficiencies for a provider to meet these criteria for non-qualifying service would deter a carrier of non-qualifying services from re-designing its operations to subvert our rules. If these criteria prove insufficient to prevent the gaming of high-capacity EEL use, we stand ready to take corrective action to remedy any abuse.

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(filed Sept. 26, 2002) (NewSouth Sept. 26, 2002 *Ex Parte* Letter) (stating that over 90% of new customers are upgraded from analog to digital broadband services).

[1835] As explained above in Part VI.B.5., we do not require incumbent LECs to ratchet transmission facilities in a blended rate of UNE and special access pricing. Where a requesting carrier serves customers through DS1 facilities that are multiplexed onto a DS3 special access transport service, that carrier may obtain DS1 loops where it satisfies the service eligibility criteria for each loop.

[1836] *See Pricing Flexibility Order*, 14 FCC Rcd at 14276, para. 96 (citing *United States v. FCC*, 707 F.2d, 610, 618 (D.C. Cir. 1983)); *see also* NuVox *et al.* Jan. 10, 2003 *Ex Parte* Letter at 6 ("We can think of no test that will eliminate all possibilities of gaming and any need for enforcement activity.").

(i) Authorization to Provide Voice Service

601. The first prong, certification to provide local voice service, typically involves the review of technical and financial fitness by a state commission. Because some states only require providers of local voice service to be registered as telecommunications providers, certification is not mandatory in those states. As we explain in the discussion of certification and audit procedures below, evidence of registration, tariffing, filing of fees, or other regulatory compliance can demonstrate satisfaction of this criterion.[1837] We emphasize that the entity seeking to obtain the EEL must have direct authorization to do so, and cannot rely on certification granted to an affiliate.

(ii) Actually Providing Local Voice Service to the Customer Over Every Circuit

602. We find that local number assignment to a DS1 circuit, as well as 911/E911 capabilities, indicate that a requesting provider does, in fact, provide local voice service over that circuit to a customer. To ensure the legitimacy of these assignments, we adopt Qwest's proposal that the origination and termination of local voice traffic should not include a toll charge, and should not require dialing special digits beyond those normally required for a local voice call.[1838] Because some competitive LECs do not assign telephone numbers at the time of ordering,[1839] we find that a requesting carrier may satisfy the numbering and 911/E911 criteria to initiate the ordering process for a new EEL circuit by certifying that it will not begin to provide service until a local number is assigned and 911 or E911 capability is provided.[1840] Further, we also clarify that each DS1-equivalent circuit of a DS3 EEL must have its own local number assignment, so that each DS3 must have at least 28 local voice numbers assigned to it.

(iii) Architectural Safeguards to Prevent Gaming

603. Numerous parties to this proceeding proposed different limitations on access to EELs, many of which featured a variety of architectural solutions. The three elements of the criteria we adopt – collocation, interconnection, and termination at a local switch – build off of these proposals.

604. *Collocation.* We find that termination of a circuit into a section 251(c)(6) collocation arrangement in an incumbent LEC central office is an effective tool to prevent arbitrage, because collocation is a necessary building block for providing local voice services

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[1837] *See infra* Part VI.B.8.

[1838] Qwest Feb. 13, 2003 *Ex Parte* Letter, Attach. at 1.

[1839] Letter from John J. Heitman, Counsel for ALTS *et al*, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 9 (filed Dec. 16, 2002) (ALTS *et al.* Dec. 16, 2002 *Ex Parte* Letter).

[1840] However, in any event, a requesting carrier must assign the number and implement 911/E911 capability within 30 days after provisioning of the circuit. *See id.* (noting that proof can be supplied in such a timeframe).

and is traditionally not used by interexchange carriers. More specifically, because traditional interexchange configurations route long-distance traffic from a customer premises over tariffed channel termination and transport facilities directly to an interexchange POP, a section 251(c)(6) collocation requirement ensures that a carrier has set up an architecture that ensures that traffic can leave the incumbent LEC network prior to hitting the POP.[1841] Accordingly, the collocation criterion serves as an easily verifiable test that the circuit terminating at the collocation arrangement carries local voice traffic. As further evidence that a carrier provides qualifying voice service, the collocation arrangement must be within the same LATA as the customer premises.[1842]

605. We emphasize that the collocation must be within the incumbent LEC network, and cannot be at an interexchange carrier POP or ISP POP. However, a requesting carrier can satisfy this prong through reverse collocation. For the purposes of this test, we adopt SNiP LiNK's definition of all mutually-agreeable interconnection methodologies.[1843] We also clarify that any non-incumbent LEC collocation arrangement pursuant to section 251(c)(6) meets this test.[1844] Permitting indirect collocation to satisfy this test is especially critical in light of the fact that fewer transmission facilities will be unbundled than previously following the issuance of this Order,[1845] and our conclusion that incumbent LEC prohibitions on the commingling of UNEs with tariffed services are unjust and unreasonable.[1846]

[1841] A carrier that routes traffic directly from a customer premises to a POP on an inter-city network without providing local service would not have a reason to arrange and pay for collocation and local interconnection trunks. For instance, AT&T reports that 75% of its special access circuits terminate at its interexchange carrier POP. AT&T proposes that, to the extent that the Commission determines to limit the use of UNE combinations (but not individual UNEs), special access combinations terminating at an interexchange carrier POP would not be eligible for UNE conversion. AT&T Jan. 16, 2003 *Ex Parte* Letter at 1, 3-4. We therefore dismiss the assertions by some parties that a collocation requirement is unnecessary to ensure the provision of local service. *See, e.g.*, CompTel Comments at 98-99. We also reject the argument that collocation is too insignificant because "direct connections [to a POP] are not the norm for special access customers." Letter from Dee May, Assistant Vice President, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 2 (filed Jan. 27, 2003).

[1842] *See* AT&T Jan. 16, 2003 *Ex Parte* Letter at 7 ("It is a virtual certainty, however, that facilities used to provide non-switched services between two points in a LATA are used to provide significant amounts of 'local' voice or data traffic."). Where there is no single customer premises, such as where the traffic from multiple DS1 wireline end-user loops are aggregated onto a DS3 transport facility, the point of aggregation will serve as the customer premises for the purpose of this requirement.

[1843] Letter from Steven A. Augustino, Counsel for SNiP LiNK, to William Maher, Bureau Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1 (filed Feb. 5, 2003). This definition would include the installation of incumbent LEC equipment at the premises of a competitive LEC or any other entity not affiliated with that incumbent LEC, regardless of whether the incumbent LEC has a cage.

[1844] For example, an EEL connected to a third-party entrance facility originating in that third-party's section 251(c)(6) collocation would satisfy the collocation requirement.

[1845] *See supra* Part VI.C. (finding that carriers are not impaired without access to inter-network transmission facilities (entrance facilities) and implementing triggers for states to make further findings of non-impairment).

[1846] *See supra* Part VII.B.

606. Although at least one carrier contends that a collocation requirement would fail to recognize an alternative network arrangement that carries local voice and other services,[1847] we find that collocation is a necessary threshold to prevent providers of non-qualifying services from improperly gaining access, and that the exclusion of qualifying voice service would be minimal.[1848] We acknowledge the difficulties in anticipating every possible configuration or arrangement of a provider of qualifying services, but our approach has the advantage of relatively easy verification by leveraging the current legal commitments necessary to provide qualifying service.

607. *Interconnection.* As an additional indicator of providing local voice service, we find that each EEL circuit must be served by an interconnection trunk in the same LATA as the customer premises served by the EEL, and that for every 24 DS1 EELs or the equivalent, the requesting carrier must maintain at least one active DS1 interconnection trunk for the exchange of local voice traffic. As a further safeguard against gaming, where a requesting carrier strips off the calling party number (CPN) on calls exchanged over the interconnection trunk, that trunk shall not be counted towards meeting the trunk/EEL ratio.[1849] The costs and difficulties of network configuration necessary to satisfy the interconnection and collocation requirements minimize the potential for these safeguards to be gamed; only a bona fide provider of qualifying local services would undertake these measures, all of which are a necessary precondition to compete directly against the incumbent LEC's voice service.[1850]

608. The 24-to-1 EEL to interconnection trunk ratio provides a reliable gauge that the competitive LEC exchanges local traffic with the incumbent LEC in a manner that indicates that it is a bona fide provider of local voice service.[1851] One incumbent LEC claims that even at full

[1847] NewSouth states that in certain instances, it procures a DS1 loop from the incumbent LEC which terminates on the incumbent LEC's main distribution frame at the central office. Under this arrangement, NewSouth purchases a cross-connect to the incumbent LEC's multiplexing equipment, which is connected to a channel facility assignment (CFA) block and then connected to incumbent LEC or third party backhaul to NewSouth's switch. NewSouth Comments at 43. NewSouth characterizes the CFA block it purchases from the incumbent LEC tariff as a "POP."

[1848] Indeed, even NewSouth notes that most of the local loops that it purchases from incumbent LECs terminate at a NewSouth collocation. NewSouth Comments at 42. Other competitive LECs inform us that a collocation requirement would not present a barrier to many competitive LECs using EELs today. *See, e.g.*, ALTS *et al.* Dec. 13, 2002 *Ex Parte* Letter, Attach. at 7. Accordingly, we dismiss the MCI WorldCom Petition for Clarification to the extent that it seeks a rule explicitly stating that incumbent LECs cannot require competitive LECs to collocate in order to obtain EELs. *See* MCI WorldCom Feb. 17, 2000 Petition for Clarification at 24-25.

[1849] *See* SBC/NuVox/Cbeyond/SNiP LiNK EELs *Ex Parte* Letter, Attach. at 3.

[1850] We establish these requirements for purposes of unbundling high-capacity EELs only, and not for the purposes of the ongoing reciprocal compensation proceeding or any other docket.

[1851] The proponents of a proposal that incorporates the 24-to-1 ratio as a safeguard for smaller competitive LECs explain that "the Commission could reasonably conclude that, in its expert judgment, the purchase and use of proportional and bona fide local interconnection capacity for every DS1 EEL (1) demonstrates a carrier's commitment to facilities-based entry into the *local exchange* market in the relevant LATA and (2) indicates a reasonable likelihood that a significant amount of local traffic is carried on given EEL facilities." Cbeyond *et al.* Feb. 4, 2003 *Ex Parte* Letter at 4.

local utilization this ratio allows only for a maximum of four percent local usage and therefore cannot be considered "significant," on the apparent theory that one channel on an interconnection trunk is necessary to serve one voice channel of the 24 channels in a DS1 EEL.[1852] However, proponents of the ratio explain that it has its roots in the general engineering principle that one DS0 interconnection trunk can serve every five local access lines,[1853] so that one active DS1 local service interconnection trunk can serve 24 DS1 EELs that have 5 local voice channels on each EEL. We find that this ratio therefore provides a reasonable proxy for the capacity of interconnection that a bona fide provider of local voice service competing against the incumbent LEC would require.[1854] Moreover, as we explain above in this Part, we base our EEL eligibility criteria on whether a requesting carrier is a bona fide provider of local voice service, and do not retain the temporary threshold of "significant amount of local exchange service" established in the *Supplemental Order*.

609. Verizon asserts that trunks inbound to a competitive LEC frequently carry Internet-bound traffic and are not obtained by the competitive LEC, and that only competitive LEC-outbound trunks should count toward the ratio.[1855] Due to the variety of interconnection arrangements that a bona fide local voice service provider may choose to implement, we do not exclude all one-way inbound trunks as they can be part of a legitimate interconnection arrangement.[1856] However, where a competitive LEC does not arrange for a meaningful exchange of traffic – which must include hand-offs of local voice calls that flow in both directions – those arrangements cannot be attributed towards satisfaction of this criterion. For similar reasons, we also reject Qwest's proposal that a competitive LEC must associate the individual EEL collocation termination point with a local interconnection trunk in the same wire center.[1857] Because a legitimate provider of local voice service may configure its network in

[1852] Letter from Susanne Guyer, Senior Vice President, Federal Regulatory Affairs and Ed Shakin, Vice President and Associate General Counsel, Verizon, to the Honorable Michael Powell, Chairman, FCC, at 4 (dated Feb. 12, 2003) (Verizon Feb. 12, 2003 *Ex Parte* Letter), *in* Letter from Dee May, Assistant Vice President, Verizon to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Feb. 12, 2003).

[1853] Letter from John J. Heitmann, Counsel for SNiP LiNK and NuVox, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 4 (filed Feb. 14, 2003).

[1854] Verizon concedes that establishing a "reasonable" ratio of trunks to EELs, such as 4-to-1, would help shore up this test. Letter from W. Scott Randolph, Director – Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2 (filed Feb. 14, 2003) (Verizon Feb. 14, 2003 *Ex Parte* Letter). The nature of interconnection trunk concentration, in which five EELs can be served by one interconnection trunk, supports the test we adopt. Furthermore, as the competitive LEC proponents of the SBC/CLEC EELs proposal point out, competitive LEC customers do place calls to each other that never reach the incumbent LEC network, so that the interconnection trunks between a competitive LEC and incumbent LEC do not capture all the local voice traffic that a competitive LEC originates and terminates. Cbeyond *et al.* Feb. 13, 2003 *Ex Parte* Letter at 4.

[1855] Verizon Feb. 12, 2003 *Ex Parte* Letter at 4.

[1856] For example, a competitive LEC may choose to purchase a two-way trunk, or may purchase a one-way trunk and arrange for the incumbent LEC to purchase a one-way trunk in the opposite direction.

[1857] Letter from Cronan O'Connell, Vice President – Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338, 96-98, 98-147 at 1 (filed Feb. 13, 2003) (Qwest Feb. 13, 2003 *Ex Parte* Letter).

various ways such that each EEL is not terminated in the same wire center as the interconnection trunk,[1858] adopting such a proposal could impose inefficient traffic engineering requirements. Moreover, our requirement that each EEL must be in the same LATA as the interconnection trunk associated with that EEL adequately ensures that interexchange carriers will not game the criteria by purchasing sham trunks that are remote and unrelated to the EEL circuits that carry local voice traffic.

610. *Local Switching.* We find that each EEL circuit must be served by a Class 5 switch or other switch capable of providing local voice traffic. To ensure that the traffic carried over each EEL is not exclusively non-local, a requesting carrier must certify that the switching equipment is either registered in the LERG as a Class 5 or that it can switch local voice traffic. In adopting this safeguard, we also reject the proposal of certain competitive LECs that we should adopt an eligibility restriction whereby a requesting carrier cannot obtain UNEs on circuits that "are served by switching equipment used exclusively to provide interexchange voice services (registered in the LERG as a Class 4-only switch)."[1859] We are not persuaded that a "switch class" approach based solely on LERG registration is sufficiently linked to our service qualification goals. As the *Supplemental Order Clarification* explained in rejecting a proposal to presume that circuits terminating in a Class 5 switch are exclusively local, switch type does not provide a basis for assuming the traffic type of every terminating circuit.[1860] Our record in this proceeding demonstrates that the proposal to ban termination at a Class 4 switch would be over-exclusive, as at least one party informs us that, in the same manner as other carriers, it can and does provide local service over Class 4 switches and "soft" (or packet) switches.[1861] Moreover, grounding our requirements in the technology of the traditional Class 5 circuit-switched network would create a disincentive to the deployment of micro-switching and the integration of data and voice traffic.[1862] In light of the evolving uses of equipment and innovations, we are not inclined to categorically rule out any carrier on the basis of the class of switches it deploys.[1863]

[1858] For example, a competitive LEC could build a fiber ring that connects two or more incumbent LEC wire centers where EELs terminate, and hub the traffic from those wire centers to an interconnection trunk that connects to only one wire center.

[1859] ALTS *et al.* Dec. 13, 2002 *Ex Parte* Letter, Attach. at 6; ALTS Nov. 14, 2002 *Ex Parte* Letter at 4-5.

[1860] *Supplemental Order Clarification*, 15 FCC Rcd at 9601, para. 25.

[1861] *See* AT&T Apr. 30, 2001 Fea/Taggart Reply Decl. at para. 3 n.1; AT&T Feb. 12, 2003 *Ex Parte* Letter at 12.

[1862] *Collocation Remand Order*, 16 FCC Rcd at 15453, para. 33 (concluding that "multi-functional equipment is designed to enable telecommunications carriers, both incumbent LECs and their competitors, to offer their customers an ever-increasing array of telecommunications services, including advanced services, with ever-increasing efficiency"); *see also, e.g.*, Taqua Comments at 2-3 (discussing its development of alternatives to legacy telecommunications networks and equipment in systems that combine traditional end office switching with integrated softswitch functionality and the ability to provide next-generation subscriber services in a single chassis).

[1863] The local switching safeguard we adopt renders irrelevant WorldCom's pending request for a presumption that circuits that terminate on a Class 5 switch are local circuits. *See* WorldCom, Inc. Petition for Waiver, CC Docket (continued....)

611. The record also indicates that, for many carriers the costs of gaming a local switching requirement outweigh the benefit of a reduction in special access payments. For example, WorldCom explains that none of its Class 5 switches provide dedicated access services and that its long distance switches do not provide local service, and that it cannot reconfigure its Class 5 switches to provide dedicated access-based services.[1864]

(iv) Other Service Eligibility Proposals

612. We conclude that none of the other eligibility tests proposed on the record before us is preferable to the indicia of qualifying services that we adopt here. For example, SBC, BellSouth, and Verizon support a continuation of or limited modification to the current safe harbors,[1865] and Qwest proposes a local use restriction requiring a certification that the facility carries at least 51 percent local voice traffic.[1866] As an initial matter, we note that the Commission established the usage restrictions in the safe harbors as a temporary restriction on conversions while the Commission compiled an adequate record to address the legal and policy issues raised in the *Fourth FNPRM*.[1867] They were meant to be a temporary proxy rather than a permanent restriction, and now that we have had practical experience with traffic tests and adequate time to evaluate them and the underlying record in this proceeding, for several reasons we decline to perpetuate current local voice thresholds mandated by safe harbors (2) and (3), or to adopt any proposal based on enumerated percentages of traffic.

613. We agree with Cbeyond that measuring minutes of use is antithetical to the Act's goals of encouraging the provision new technologies and advanced services, because those usage tests could conceivably work only for channelized DS1 providers and would improperly exclude those carriers deploying packetized networks.[1868] Classifying and measuring voice traffic separately from data traffic is incompatible with the integration of voice and data in new

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No. 96-98 at 1, 2, 15 (filed Sept. 12, 2000) (WorldCom Waiver Petition). In addition, we note that favoring a switch-neutral approach could benefit smaller businesses by giving them flexibility to purchase innovative and more efficient switches.

[1864] WorldCom Waiver Petition at 9 ("WorldCom cannot reconfigure its Class 5 switches to carry long-distance traffic without restructuring large portions of its network and related systems and process infrastructure, including its diverse customer and carrier billing, ordering, and provisioning systems.").

[1865] *See, e.g.*, BellSouth Jan. 16, 2003 *Ex Parte* Letter at 4; Verizon Feb. 14, 2003 *Ex Parte* Letter at 2 (stating that "[a]ny enhancement to the existing safe harbors must contain a local traffic requirement.").

[1866] Along with a threshold test that a requesting carrier satisfies the 51% local traffic threshold or is the exclusive local provider, Qwest proposes several other architectural safeguards and a marketing requirement. Qwest Feb. 13, 2003 *Ex Parte* Letter, Attach. at 1. BellSouth's proposed requirements include a 50% threshold for local voice traffic. BellSouth Jan. 21, 2003 *Ex Parte* Letter at 6.

[1867] *Supplemental Order Clarification*, 15 FCC Rcd at 9592, para. 8.

[1868] 47 U.S.C. § 157; Cbeyond Dec. 16, 2002 *Ex Parte* Letter at 2-3. Cbeyond delivers a bundle of local, long-distance, and Internet access services by utilizing dynamic bandwidth allocation of a DS1 through packetized IP technology.

packetized networks, and we find that basing our new rules on the distinction between voice and data would inhibit this new technology. Moreover, mandating thresholds based upon percentages of qualifying traffic would penalize technological advancements in voice compression, and have the perverse effect of disqualifying the most efficient and innovative deployment of voice technology.[1869]

614. In addition, the record demonstrates that requiring competitors to ascertain and certify to traffic percentages is burdensome and difficult to administer. This has been the case even in the context of converting an existing customer facility from special access to UNEs, and therefore would be even more difficult in the context of initiating service over newly-provisioned circuits.[1870] More specifically, because the carrier providing service does not control customer calling patterns, and local usage can fluctuate day to day or month to month, requiring competitors to certify to future customer use as a precondition to obtaining a UNE puts them in an untenable position.[1871] Although some carriers have been able to measure and categorize their traffic sufficiently to certify to these safe harbors,[1872] many other competitive LECs report that the safe harbor regime is burdensome and unworkable because they lack sufficient information to make the necessary certification at the time the EEL is requested, and have no feasible way to obtain the necessary information going forward to ensure continued compliance.[1873] Further, many competitive LECs allege that incumbent LECs have misconstrued the auditing process and improperly denied competitors' self-certifications.[1874] Although the D.C. Circuit upheld the safe harbors as interim measures, due to the measuring difficulties and potential for burdensome

[1869] *See, e.g.*, Cbeyond Dec. 16, 2002 *Ex Parte* Letter at 3.

[1870] For example, AT&T explains that because requesting carriers typically order backhaul infrastructure facilities that are not immediately placed in service, "such facilities are not identified with any specific customers and carry no traffic" and thus "it is not even possible to tell which of them would be used to provide any particular type of traffic." Letter from Joan Marsh, Director, Federal Government Affairs, AT&T, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, and 98-147 at 2 (filed Jan. 16, 2003).

[1871] *See, e.g.*, Letter from Ross A. Buntrock, Counsel for e.spire, to Magalie R. Salas, Secretary, FCC, CC Docket No. 96-98, Attach. at 9 (filed Apr. 19, 2000) ("e.spire can commit to channels carrying local traffic, but e.spire cannot predict the extent to which a given customer's T-1s will carry local traffic"); WorldCom Waiver Petition at 14 ("it is impossible to predict how many switched access long-distance calls a particular customer might make or receive in the aggregate on all of the local channels provided by WorldCom.").

[1872] *CompTel*, 309 F.3d at 17.

[1873] *See, e.g.*, CompTel Comments at 99 n.206; AT&T Comments at 164 (contending that the circuit-by-circuit certification process is "inherently unworkable because CLECs' systems – including AT&T's – are not built to provide the kind of data necessary to support such record keeping requirements"); AT&T Jan. 16, 2003 *Ex Parte* Letter at 2 ("Thus, it is not even possible to tell which [facilities] would be used to provide any particular type of traffic. Accordingly, any attempt to isolate 'UNEs' to 'local' traffic and 'services (or elements that are not UNEs)' to 'non-local' traffic would be impossible."); Cbeyond *et al.* Feb. 13, 2003 *Ex Parte* Letter at 3 (noting that the measurement requirements contained in the usage-based qualification criteria of safe harbors (2) and (3) require additional circuit-specific engineering and monitoring).

[1874] *See, e.g.*, ALTS *et al.* Comments at 100; NuVox Petition at 1.

audits inherent to traffic thresholds, we conclude that these usage restrictions are inferior to those we adopt here.[1875]

615. To recognize the increasing market demand for diverse network infrastructure and for other reasons, we also do not perpetuate safe harbor (1), which allowed a carrier to convert special access circuits to EELs upon certification that it is the "exclusive" provider of local exchange service. As competitive carriers inform us, many customers seek multiple local carriers to ensure connectivity in the event of temporary constraints or problems[1876] as well as to apply competitive pressure,[1877] and we are reluctant to adopt rules that encourage carriers to obtain commitments contrary to the market trend towards diversity, or that add additional layers of regulation to the customer-provider relationship.[1878] In addition, because a carrier may certify to exclusivity in good-faith reliance upon a customer's misrepresentation that it has only one local service provider, or that subscribes to a second local service provider at a later time, this safe harbor presents significant difficulties in administration.[1879]

616. We also reject the joint proposal from SBC, NuVox, Cbeyond, and SNiP LiNK to subject a carrier with total telecommunications revenues above two percent of total industry local and toll revenues to the *Supplemental Order Clarification* safe harbors, but apply a more limited set of non-usage safeguards to a "smaller CLEC" with revenues below that threshold.[1880] We find that establishing two tiers of eligibility restrictions based on revenue is not tailored to our goals in imposing restrictions of encouraging local competition but minimizing the arbitrage

[1875] Because we are not extending the safe harbors going forward, we hereby dismiss as moot the petitions for waiver of particular safe harbors filed by ITC^DeltaCom and WorldCom. *See* ITC^DeltaCom Waiver Petition; WorldCom Waiver Petition.

[1876] *See, e.g.*, AT&T Feb. 12, 2003 *Ex Parte* Letter at 6 (noting that mid-sized and large business end users "are sophisticated customers that demand flexibility" to adjust the number of providers they use and the amount of service).

[1877] Cbeyond Dec. 16, 2002 *Ex Parte* Letter at 3.

[1878] *See* AT&T Jan. 16, 2003 *Ex Parte* Letter at 6 & n.11 (stating that "it is nearly impossible to get customers to certify what their usage will be on particular facilities," and that "many customers may simply consider it not to be any of the CLEC's business whether they are using other providers.").

[1879] "[E]ven if a CLEC could obtain a representation from a customer that it is the customer's only supplier of local services, there is no reasonable way for a CLEC to determine whether it continues to be the customer's sole supplier over time, other than by continually asking the customer, which is at best difficult and awkward from a marketing perspective, and at worst anticompetitive." AT&T Comments on WorldCom Petition for Waiver, CC Docket No. 96-98 (filed Oct. 2, 2000) at 6-7.

[1880] More specifically, a carrier qualifies as a "smaller CLEC" if "its total telecommunications revenues do not exceed two percent of total telecommunications industry local and toll service revenues, and its gross annual toll service revenues do not exceed two percent of all toll service revenues," based upon the industry revenue figures published most recently by the Wireline Competition Bureau. SBC/NuVox/Cbeyond/SNiP Link Feb. 7, 2003 EELs *Ex Parte* Letter at 3. The total industry local and toll service telecommunications revenues for 2000 were $292.8 billion. *Trends in Telephone Service May 2002 Report* at Table 16.1.

opportunities for providers of non-qualifying services. The proponents of the tiered approach argue that the fixed costs of deploying systems to track and report the mix of traffic over given facilities "have a more significant economic impact on a smaller carrier with smaller overall telecommunications revenues than on larger carriers," and therefore are more likely to affect the entry decisions of smaller carriers.[1881] However, the SBC/NuVox/Cbeyond proposal fails to capture the decision-making process of a competitive LEC entering a market and the potential for gaming. Any cost/benefit analysis should not involve the ability to spread the costs over other revenues, but should be limited to identifying the costs of being able to obtain a specific set of EEL circuits against the benefits of obtaining those circuits.[1882] Similarly, the proponents of this test fail to demonstrate that the costs are "fixed," as they would appear to vary with the number of circuits and customers.[1883] Moreover, the record before us does not support the implementation of any tiered system based upon administrative costs and revenue size because there is no evidence of their sizes, much less of their relationship to each other. As Verizon notes, the proponents of this proposal do not quantify or substantiate the costs and burdens of compliance, and would screen out only the very largest carriers – a carrier with over four billion dollars in revenues would qualify as a "smaller CLEC."[1884]

617. We decline to adopt the requirement proposed by Qwest and BellSouth that the service offered to an end user over a high-capacity EEL must be marketed and sold as a local exchange service, or a bundle of services.[1885] State commissions currently regulate the tariffing and other terms of service of common carrier local voice services, and the practical difficulties of policing carriers' marketing and advertising efforts do not support the initiation of additional regulation. Furthermore, we also find Qwest's proposal to require a requesting carrier to have

[1881] SBC/NuVox/Cbeyond/SNiP LiNK EELs *Ex Parte* Letter at 3.

[1882] For example, there is no reason that a large interexchange carrier or out-of-region incumbent LEC seeking to obtain a small amount of EEL circuits over the course of a year should be held to a more burdensome standard than a mid-sized competitive LEC seeking to obtain a large amount of EEL circuits. In this instance, the mid-sized carrier has a greater incentive for non-qualifying service arbitrage and a greater benefit from lower UNE rates, yet is held to a lesser compliance standard.

[1883] "The only way to determine whether any *particular* circuit qualifies for conversion to an EEL is to undertake very expensive measurement processes with respect to that circuit. . . . [M]easuring the traffic mix on 1,000 circuits is not materially less expensive *per circuit* than measuring the traffic mix on 100 circuits." AT&T Feb. 12, 2003 *Ex Parte* Letter at 9 (emphasis in original).

[1884] Verizon Feb. 12, 2003 *Ex Parte* Letter at 3; *see also* BellSouth Feb. 13, 2003 *Ex Parte* Letter at 3 (seeking further study of the feasibility and costs of traffic measurement as well as the revenue thresholds). The explanation by the competitive LEC proponents of the proposal that the two percent revenue figure is based on the section 251(f)(2) suspension of certain unbundling obligations is unavailing, as the two percent figure in that section of the Act is based on lines, not revenues; is designed for incumbent LECs, not competitive LECs; and addresses a wholly different set of administrative burdens. Cbeyond *et al.* Feb. 12, 2003 *Ex Parte* Letter at 5.

[1885] *See, e.g.*, Qwest Feb. 13, 2003 *Ex Parte* Letter, Attach. at 1; BellSouth Jan. 31, 2003 *Ex Parte* Letter, Attach. 2 at 1.

percent of local use arrangements (PLUs) on file[1886] to be overexclusive, because not all competitive LECs report PLUs on local interconnection trunks, and because it has the same usage measurement problems as those described above.[1887]

618. We conclude that the three criteria we adopt here together comprise the most probative and administratively reasonable indicia of providing qualifying traffic. We reject proposals to permit access to UNEs based upon partial satisfaction of a broader number of indicators.[1888] For example, several carriers propose allowing requesting carriers to obtain UNEs by meeting a subset of a broader menu of compliance indicia, including local telephone number assignment; "offer[ing] local voice, local data and/or Internet access in the LATA;" and the presence of a switch that is not exclusively used to provide long distance service that serves the circuit.[1889] Some of these additional indicia, such as LERG registration of switch class type, are problematic for the reasons we describe above, or are inconsistent with the qualifying service approach that we adopt. Moreover, because some criteria are more essential to providing qualifying service than others, we are not persuaded that an approach permitting the partial satisfaction of a list of factors is superior to our approach of a focused list of mandatory requirements. If a carrier had a local number assignment and collocations but, for some reason,

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[1886] Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 Attach. at 19 (filed Nov. 14, 2002) (Qwest Nov. 14, 2002 *Ex Parte* Letter).

[1887] ALTS *et al.* Dec. 16, 2002 *Ex Parte* Letter, Attach. at 10 (explaining that some competitive LECs use meet-point rather than trunking arrangements).

[1888] We also reject the other proposed iterations of service eligibility restrictions on the record, because they are more attenuated from implementing the goals of our service considerations. For example, NuVox submits a "business plan" test, permitting access to high-capacity UNEs based upon a general determination of whether a competitive LEC offers service in direct competition with incumbent LECs, without regard as to whether specific facilities are used as part of that offering. Letter from John J. Heitmann, NuVox, to Christopher Libertelli, Legal Advisor to Chairman Powell, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2-3 (filed Jan. 15, 2003) (NuVox Jan. 15, 2003 *Ex Parte* Letter). We expressly reject above such a business strategy-specific notion of impairment. *See supra* Part V.B.1.

[1889] For instance, a group of carriers propose that circuits be made available as UNEs upon certification by a requesting carrier that at least two of the following five compliance criteria are met:

> the circuit is connected to a collocation in an ILEC end office; or
> the CLEC has active local interconnection trunks with the ILEC in the LATA; or
> the CLEC offers local voice, local data and/or Internet access in the LATA; or
> the CLEC assigns a local telephone number associated with the circuit; or
> the circuit is not served by a switch that is used exclusively to provide long distance service.

Letter from John J. Heitmann, Counsel for Nuvox, SNiP LiNK, Xspedius and KMC Telecom, to Michelle Carey, Chief, Competition Policy Division, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 5-6 (filed Jan. 17, 2003). Other carriers have suggested modified versions of this approach. *See, e.g.*, NuVox Jan. 15, 2003 *Ex Parte* Letter at 3-4 (proposing a "3 of 5" standard or a "2 plus 1 of 3" standard, based on additional compliance with one of two or more alternative criteria); XO Feb. 5, 2003 *Ex Parte* Letter, Attach. at 4 (proposing that four out of five criteria must be met).

no longer had a valid certification to provide service or local interconnection, that carrier should not be eligible for a high-capacity EEL facility. We find that requiring all requesting carriers seeking high-capacity EELs to satisfy the same three categories of criteria provides predictability and certainty, and will ensure that the audit process is more easily administered and, therefore, less costly to both incumbent LECs and competitors.

619. Finally, we do not endorse the requests advanced by some incumbent LECs for additional dialogue on architectural solutions with the goal of a collaborative resolution.[1890] In the many months since the issuance of the temporary restrictions of the *Supplemental Order Clarification*, as well as the issuance of the *January 24, 2001 Public Notice*, and the *Triennial Review NPRM*, the Commission has amassed through numerous pleadings, *ex parte* meetings and an industry roundtable a considerable record of the pragmatic difficulties of the current safe harbors and the risk of conversions.[1891] Now that we have answered the questions regarding service-by-service analysis that led to the interim safe harbors, we conclude that we have a sufficient record to resolve eligibility issues by issuing findings of the appropriate criteria, and that further delay would retard the development of local competition.

C. Certification and Auditing

1. Background

620. In order to allow carriers meeting the safe harbors set forth in the *Supplemental Order Clarification* to convert tariffed loop-transport combinations to UNE rates, the Commission established a framework of self-certification and auditing.[1892] The Commission declined to identify precise terms of certification, but recognized that a letter sent to the incumbent LEC is a practical method.[1893] Further, upon receiving a request from a requesting

[1890] BellSouth Feb. 13, 2003 *Ex Parte* Letter at 1-3 (contending also that "further industry dialogue in a less rushed atmosphere is likely to result in an improved and more focused proposal"); Verizon Feb. 12, 2003 *Ex Parte* Letter at 4 (asking for more time for various parties to analyze proposals and provide input to the Commission to avoid unintended and unanticipated consequences); Letter from William P. Barr, Verizon, to Michael K. Powell, Chairman, FCC, *in* Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2 (filed Feb. 6, 2003) (Verizon Feb. 6, 2003 Barr *Ex Parte* Letter) (asking for the Commission to obtain comment on the various proposals).

[1891] Several parties note that the issues associated with access to EELs are not new and do not warrant further delay. *See, e.g.*, Letter from John J. Heitmann, Counsel for NuVox and SNiP LiNK, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2 (filed Feb. 12, 2003) (noting that EEL access issues have been extensively vetted in the *Triennial Review* proceeding and associated proceedings); AT&T Feb. 12, 2003 *Ex Parte* Letter at 4 (arguing that "the Bells have now had *years* to submit evidence supporting use restrictions generally and the interim rules in particular") (emphasis in original).

[1892] *Supplemental Order Clarification*, 15 FCC Rcd at 9602-04, paras. 28-33.

[1893] *Id.* at 9602-03, para. 29.

carrier certifying to meeting one of the safe harbors, the incumbent LEC should immediately process the conversion.[1894]

621. The Commission also found that, to confirm reasonable compliance with the local usage requirements in that Order, incumbent LECs may conduct limited audits only to the extent reasonably necessary to determine a requesting carrier's compliance with the local usage options identified by the carrier.[1895] The Commission emphasized "that incumbent LECs may not require a requesting carrier to submit to an audit prior to provisioning combinations of unbundled loop and transport network elements."[1896] Moreover, the Commission concluded that "audits will not be routine practice, but will only be undertaken when the incumbent LEC has a concern that a requesting carrier has not met the criteria for providing a significant amount of local exchange service."[1897] Relying upon broad agreement between incumbent and competitive LECs in that proceeding on audit procedures, and to reduce the burden on requesting carriers, the Commission set forth additional principles providing competitors with notice, limiting the frequency of audits, and establishing practical recordkeeping requirements.[1898]

[1894] *Id.* at 9603-04, para. 31.

[1895] *Id.* at 9602-03, para. 29

[1896] *Id.* at 9603-04, para. 31.

[1897] *Id.* at 9603-04 n.86.

[1898] The Commission found "that incumbent LECs must provide at least 30 days written notice to a carrier that has purchased [an EEL] that it will conduct an audit;" "may not conduct more than one audit of the carrier in any calendar year unless an audit finds non-compliance;" and that when "an incumbent LEC provides notice of an audit to the affected carrier, it should send a copy of the notice to the Commission" so the Commission can monitor the implementation. These carriers also agreed that incumbent LECs requesting an audit should hire and pay for an independent auditor to perform the audit, and that the competitive LEC should reimburse the incumbent LEC if the audit uncovers non-compliance with the local usage options. The Commission also stated its expectation "that requesting carriers will maintain appropriate records . . . to support their local usage certification," but emphasized "that an audit should not impose an undue financial burden on smaller requesting carriers that may not keep extensive records," and found that, "in the event of an audit, the incumbent LEC should verify compliance for these carriers using the records that the carriers keep in the normal course of business." *Supplemental Order Clarification* at 9603-04, paras. 31-32.

On May 17, 2002, NuVox filed a Petition for Declaratory Ruling in Docket No. 96-98 identifying certain auditing issues, and seeking further declaration from the Commission regarding auditing procedures. *Pleading Cycle Established for Comments on NuVox, Inc. Petition for Declaratory Ruling*, Public Notice, CC Docket No. 96-98, DA 02-1302, Public Notice (rel. June 3, 2002). Among other relief, NuVox requests that the Commission declare that an independent LEC must provide requesting carrier proof of the independence of the third party auditor, and that competitive LECs must reimburse the incumbent LEC for only the *pro rata* share of the circuits found to be non-compliant. NuVox and other carriers make reference to those pleadings in their comments to the instant proceeding, and we address the relevant portions of the responsive pleadings in this Order.

2. Discussion

622. We adopt certification and auditing procedures comparable to those established in the *Supplemental Order Clarification* for our service eligibility criteria, and tailor the substantive requirements to our eligibility restrictions, as set forth below. Although the bases and criteria for the service tests we impose in this Order differ from those of the *Supplemental Order Clarification*, we conclude that they share the basic principles of entitling requesting carriers unimpeded UNE access based upon self-certification, subject to later verification based upon cause, are equally applicable. Significantly, because the eligibility criteria we adopt in this Order are based upon indicators such as collocation more easily verified than traffic measurement or categorization of the safe harbors, we anticipate that these procedures can effectively limit UNE access to bona fide providers of qualifying service without imposing undue burdens upon them.

a. Certification

623. We conclude that requesting carrier self-certification to satisfying the qualifying service eligibility criteria for high-capacity EELs is the appropriate mechanism to obtain promptly the requested circuit, and consistent with our findings of impairment.[1899] A critical component of nondiscriminatory access is preventing the imposition of any undue gating mechanisms that could delay the initiation of the ordering or conversion process. Unlike the situation before the Commission when it issued the *Supplemental Order Clarification*, which only addressed EEL conversions, new orders for circuits are subject to the eligibility criteria. Due to the logistical issues inherent to provisioning new circuits, the ability of requesting carriers to begin ordering without delay is essential.[1900]

624. Before accessing (1) a converted high-capacity EEL, (2) a new high-capacity EEL, or (3) part of a high-capacity commingled EEL as a UNE, a requesting carrier must certify to the service criteria set forth in Part VII.B.2.b in order to demonstrate that it is a bona fide provider of qualifying service. We do not specify the form for such a self-certification, but we readopt the Commission's finding in the *Supplemental Order Clarification* that a letter sent to the incumbent LEC by a requesting carrier is a practical method.[1901]

[1899] No certification is necessary for requesting carriers to obtain access to loops, transport, subloops, and other stand-alone UNEs, as well as EELs combining lower-capacity loops, although carriers must provide a qualifying service over those UNEs to obtain them. *See supra* Part VII.B.

[1900] If a requesting carrier certifies that it will provide qualifying services over high-capacity EELs in accordance with the Commission's rules, an incumbent LEC that wishes to challenge the certification may not engage in self-help by withholding the facility in question. The success of facilities-based competition depends on the ability of competitors to obtain the unbundled facilities for which they are eligible in a timely fashion. Thus, an incumbent LEC that questions the competitor's certification may do so by initiating the audit procedures set forth below.

[1901] *Supplemental Order Clarification*, 15 FCC Rcd at 9602-03, para. 29.

b. Auditing

625. As a threshold matter, we set forth basic principles regarding carriers' rights to undertake and defend against audits. However, we recognize that the details surrounding the implementation of these audits may be specific to related provisions of interconnection agreements or to the facts of a particular audit, and that the states are in a better position to address that implementation.[1902] For example, to the extent that the parties dispute the definition of an "independent" auditor and whether a given party satisfies the test for independence, the more appropriate forum for this determination is a state commission.[1903]

626. We conclude that incumbent LECs should have a limited right to audit compliance with the qualifying service eligibility criteria. In particular, we conclude that incumbent LECs may obtain and pay for an independent auditor to audit, on an annual basis, compliance with the qualifying service eligibility criteria.[1904] We conclude that an annual audit right strikes the appropriate balance between the incumbent LECs' need for usage information and risk of illegitimate audits that impose costs on qualifying carriers. The independent auditor must perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA), which will require the auditor to perform an "examination engagement" and issue an opinion regarding the requesting carrier's compliance with the qualifying service eligibility criteria.[1905] We note that, because the concept of materiality governs this type of audit, the independent auditor's report will conclude whether the competitive LEC complied in all material respects with the applicable service eligibility criteria.[1906] Consistent with standard auditing practices, such audits require compliance testing designed by the independent auditor, which typically include an examination of a sample selected in accordance with the independent auditor's judgment.

[1902] *See, e.g.*, BellSouth Opposition, CC Docket No. 96-98 at 2 (filed June 3, 2002) (reporting that BellSouth filed a complaint with the Georgia Commission on May 13, 2002 requesting the Georgia Commission to direct NuVox to allow the audit to commence immediately).

[1903] *See* NuVox Petition at 6-7.

[1904] *See* NuVox Petition at 2 (proposing that incumbent LECs obtain and pay for the services of an independent third party auditor).

[1905] Letter from John J. Heitmann, Counsel for NuVox, to Michelle Carey, Chief, Competition Policy Division, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 6 (filed Jan. 10, 2003) (NuVox Jan. 10, 2003 EELs and Auditing *Ex Parte* Letter) (proposing that Commission should require AICPA-compliance auditor to perform such audits). *See* American Inst. of Certified Pub. Accountants, STATEMENTS ON STANDARDS FOR ATTESTATION ENGAGEMENTS NO. 10, at § 6.30 (Jan. 2001) (AICPA ATTESTATION STANDARDS). The AICPA also has standards and other requirements related to standards for determining the independence of an auditor shall govern the audit of requesting carrier compliance.

[1906] AICPA ATTESTATION STANDARDS at §§ 6.36 (explaining concept of materiality), 6.64 (explaining reporting issues related to material noncompliance).

627. To the extent the independent auditor's report concludes that the competitive LEC failed to comply with the service eligibility criteria, that carrier must true-up any difference in payments, convert all noncompliant circuits to the appropriate service, and make the correct payments on a going-forward basis. In addition, we retain the requirement adopted in the *Supplemental Order Clarification* concerning payment of the audit costs in the event the independent auditor concludes the competitive LEC failed to comply with the service eligibility criteria.[1907] Thus, to the extent the independent auditor's report concludes that the competitive LEC failed to comply in all material respects with the service eligibility criteria, the competitive LEC must reimburse the incumbent LEC for the cost of the independent auditor. We expect that this requirement should provide an incentive for competitive LECs to request EELs only to the extent permitted by the rules we adopt herein.

628. Similarly, to the extent the independent auditor's report concludes that the requesting carrier complied in all material respects with the eligibility criteria, the incumbent LEC must reimburse the audited carrier for its costs associated with the audit.[1908] We expect that this reimbursement requirement will eliminate the potential for abusive or unfounded audits, so that incumbent LEC will only rely on the audit mechanism in appropriate circumstances. We further expect that these reimbursement requirements will ensure the audit process (and importantly, the resolution of any issues arising out of any audits) occurs in a self-executing manner with minimal regulatory involvement.

629. Although we do not establish detailed recordkeeping requirements in this Order, we do expect that requesting carriers will maintain the appropriate documentation to support their certifications. For instance, to demonstrate satisfaction of the first category for high-capacity EELs (authorization to provide voice service), we anticipate that state certification would be the most prevalent form of documentation, but that evidence of registration, tariffing, filing of fees, or other regulatory compliance would be adequate where there is no state certification requirement. To verify that the EEL circuit terminates into a section 251(c)(6) collocation, circuit facility assignment on the order would be sufficient supporting evidence.[1909] The local interconnection component of the third criterion can be established after examination of the governing interconnection agreement and the physical circuit connections. We emphasize that these records are only examples of the documentation that carriers should keep, and not intended to be an exhaustive list. Due to the variation in telecommunications systems and technology, and to provide flexibility to competitive LECs in establishing the most efficient

[1907] *Supplemental Order Clarification*, 15 FCC Rcd at 9603-04, para. 31 (requiring competitive LECs to "reimburse the incumbent if the audit uncovers non-compliance with the local usage options.").

[1908] We note that audited carriers should account for the staff time and other appropriate costs for responding to the audit (*e.g.*, collecting data in response to the auditor's inquiries, meeting for interviews, etc).

[1909] *See* Letter from Julia O. Strow, Vice President – Regulatory & Legislative Affairs, Cbeyond, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3 (filed Jan. 6, 2003).

architectural arrangements to provide local voice service, we do not adopt any of the specific documentation requirements proposed by some carriers in this proceeding.[1910]

D. Modification of Existing Network

1. Background

630. In *Iowa Utilities Board*, the Eighth Circuit held that section 251(c)(3) requires "unbundled access only to an incumbent LEC's existing network – not to a yet unbuilt superior one."[1911] Specifically, the Eighth Circuit explained that incumbent LECs can be required to modify their facilities "to the extent necessary to accommodate interconnection or access to network elements," but cannot be required "to *alter substantially* their networks in order to provide *superior* quality interconnection and unbundled access."[1912]

631. In the *Triennial Review NPRM*, the Commission sought comment on its authority to require incumbent LECs to engage in activities necessary to activate loops that are not currently activated in the network.[1913] The Commission also asked about the extent to which incumbent LECs have an obligation to modify their existing networks in order to provide access to network elements.[1914] Commenters identified several specific issues regarding the interpretation of the Eighth Circuit's holding, most notably in which situations incumbent LECs have responded to an order for high-capacity loop by attaching equipment and facilities to its network, or could issue a "no facilities available" response; whether carriers must remove equipment from a line in order to condition it; and the extent to which specially constructed transmission facilities are subject to unbundling obligations. To resolve these related questions about the scope of the incumbent LEC network that must be unbundled and which modifications constitute "construction," and because they share a fundamental relationship to the definition of the network, we address them together in this section.

2. Discussion

a. Routine Network Modifications to Existing Facilities

632. We require incumbent LECs to make routine network modifications to unbundled transmission facilities used by requesting carriers where the requested transmission facility has

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[1910] *See, e.g.*, Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. at 1 (filed Feb. 13, 2003) (Qwest Feb. 13, 2003 Proposed EELs Safe Harbors *Ex Parte* Letter) (listing proposed documentation requirements, including the Qwest-designated "26 code" for each local interconnection trunk group).

[1911] *Iowa Utils. Bd. v. FCC*, 120 F.3d at 813.

[1912] *Id.* at 813 n.33 (emphasis added).

[1913] *Triennial Review NPRM*, 16 FCC Rcd at 22805, para. 52.

[1914] *Id.* at 22811-12, paras. 65-66.

already been constructed. By "routine network modifications" we mean that incumbent LECs must perform those activities that incumbent LECs regularly undertake for their own customers. Routine modifications, however, do not include the construction of new wires (*i.e.*, installation of new aerial or buried cable) for a requesting carrier. The routine modification requirement that we adopt today resolves a controversial competitive issue that has arisen repeatedly, in both this proceeding and in the context of several section 271 applications, and is designed to provide competitive carriers with greater certainty as to the availability of unbundled high-capacity loops and other facilities throughout the country.

633. Parties in the record disagree where the boundary exists between, on one hand, modifying the loop element to provide competitive LECs with access to all the functions of that element,[1915] and, on the other, requiring substantial alteration of the loop facility to provide superior quality access. In particular, competitive LECs assert that certain incumbent LECs have taken an exceedingly narrow interpretation of their obligations to furnish high-capacity loops and request that the Commission clarify the scope of the loop unbundling obligation.[1916] We conclude that incumbent LECs, in provisioning high-capacity loop facilities to competitors, must make the same routine modifications to their existing loop facilities that they make for their own customers. This conclusion is consistent with the Eighth Circuit's ruling. Specifically, requiring incumbent LECs to engage in activities necessary to activate loops that are not currently activated in the network complies with the Eighth Circuit's holding that the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to the incumbent LEC's facilities to the extent necessary to accommodate access to existing network elements -- in this case, high-capacity loops.[1917] Were we not to adopt such a requirement, the incumbent LECs would have the ability to dictate the parameters of their unbundling requirements and thereby readily thwart competitors' ability to obtain access to high-capacity loops.

634. Due to the continually evolving and dynamic nature of telecommunications networks, however, we reject the argument that our rule should list the precise electronics that the incumbent LEC must add to the loop in order to transform a DS0 voice-grade loop to an unbundled DS1 loop. Rather, our operating principle is that incumbent LECs must perform all loop modification activities that it performs for its own customers. By way of illustration, we find that loop modification functions that the incumbent LECs routinely perform for their own customers, and therefore must perform for competitors, include, but are not limited to,

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[1915] *See Iowa Utils. Bd. v. FCC*, 120 F.3d at 808-09 (holding that providing access to a network element includes the full functionality of that element).

[1916] *See, e.g.*, NewSouth Reply at 38.

[1917] *Iowa Utils. Bd. v. FCC*, 120 F.3d at 813 n.33. Because the Eighth Circuit struck down the Commission's "superior quality" rules and that decision is final, we conform our regulations accordingly. *See also* NewSouth Reply at 40. NewSouth also proposes that the Commission clarify that "existing facilities" includes incumbent LEC facilities available in the existing service area where the request is made, not just facilities available for the specific origination and termination points for the element requested. NewSouth Comments at 40. Rather than adopting such a geographic test, however, we conclude that the routine modification requirement described herein more accurately defines an incumbent LEC's responsibilities, and, further, is more administratively practical.

rearrangement or splicing of cable;[1918] adding a doubler or repeater;[1919] adding an equipment case;[1920] adding a smart jack;[1921] installing a repeater shelf; adding a line card; and deploying a new multiplexer or reconfiguring an existing multiplexer.[1922]

635. The record reveals that attaching routine electronics, such as multiplexers, apparatus cases, and doublers, to high-capacity loops is already standard practice in most areas of the country.[1923] Moreover, performing such functions is easily accomplished. The record shows that requiring incumbent LECs to make the routine adjustments to unbundled loops discussed above that modify a loop's capacity to deliver services in the same manner as incumbent LECs provision such facilities for themselves is technically feasible[1924] and presents

[1918] Letter from Stephen W. Crawford, General Counsel, El Paso Global Networks to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 2 (filed Dec. 17, 2002) (El Paso Dec. 17, 2002 *Ex Parte* Letter).

[1919] Although a digital signal loses its shape as it transverses a circuit due to noise and attenuation, a repeater can read the weakened and distorted signal and retransmit it at the proper level of signal strength. NEWTON'S TELECOM DICTIONARY 623 (defining "repeater"). A DS1 loop generally requires line repeaters to be placed approximately every mile along its cable route in order to maintain signal integrity. Virginia State Corporation Commission Staff Reply at 4.

[1920] Line repeaters are housed in apparatus cases, and cable pairs are either spliced into a case to serve a specific end user via an assigned service terminal, or are pre-assigned along a route with splicing occurring at or near the end user's service terminal in order to access the needed cable pairs. *Id.* at 4-5.

[1921] Mpower Reply at 30. A smart jack is a device installed on the customer premises that tests the integrity of DS1 circuits, and is activated remotely from the central office without having to dispatch a technician to the site. NEWTON'S TELECOM DICTIONARY 677 (18th ed. 2002) (defining "smart jack").

[1922] Letter from Mary C. Albert, Vice President – Regulatory and Interconnection, Allegiance, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3 (dated Sept. 30, 2002) (Allegiance Sept. 30, 2002 *Ex Parte* Letter), *in* Letter from Mary C. Albert, Vice President – Regulatory Interconnection, Allegiance, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Oct. 1, 2002); El Paso Dec. 17, 2002 *Ex Parte* Letter, Declaration of Javier Galindo (El Paso Galindo Decl.) at paras. 10, 15; *see also Petitions of WorldCom, Inc., Cox Virginia Telcom, Inc., and AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes With Verizon Virginia, Inc. and For Expedited Arbitration*, CC Docket Nos. 00-218, 00-249, 00-251, 17 FCC Rcd 27039, 27283 n.1658 (WCB 2002) ("Verizon cannot refuse to provision a particular loop by claiming that multiplexing equipment is absent from the facility. In that case, Verizon must provide the multiplexing equipment, because the requesting carrier is entitled to a fully functioning loop."); *see also* Letter from Patrick J. Donovan, Counsel for Cbeyond, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3 (filed Nov. 23, 2002) (Cbeyond Nov. 23, 2002 *Ex Parte* Letter).

[1923] The record reflects that different incumbent LECs perform varying degrees of network modifications when provisioning unbundled high-capacity loops. *See, e.g.*, Letter from Patrick J. Donovan, Counsel for Cbeyond, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (Cbeyond Dec. 16, 2002 No Facilities *Ex Parte* Letter), Declaration of Richard Batelaan at paras. 8-9 (filed Dec. 16, 2002) (discussing the different "no facilities" policies of Qwest, SBC, and Verizon).

[1924] *See* Allegiance Sept. 30, 2002 *Ex Parte* Letter at 5, Attach. 4 (citing Verizon Maryland, Inc.'s response to a data request stating "[g]enerally speaking, Verizon MD does not reject DS1 requests for end users due to no facilities.").

no significant operational issues.[1925] In fact, the routine modifications that we require today are substantially similar activities to those that the incumbent LECs currently undertake under our line conditioning rules.[1926] Specifically, based on the record, high-capacity loop modifications and line conditioning require comparable personnel; can be provisioned within similar intervals; and do not require a geographic extension of the network.[1927]

636. We do not find, however, that incumbent LECs are required to trench or place new cables for a requesting carrier. Requests for altogether new transmission facilities, whether serving an existing customer or along a new route, demand far more planning, engineering, and technical resources than the routine modifications discussed above, and include rights-of-way issues, greater demands for on-site construction personnel, and substantial periods of actual construction.[1928] We believe, however, the physical work and technical requirements required to perform routine modifications described above do not implicate these concerns and are therefore encompassed in the incumbent LECs' unbundling requirements.[1929]

637. Further, activities such as accessing manholes, splicing into existing cable, deploying bucket trucks to reach aerial cable, and installing equipment casings do not render a modification a substantial alteration or constitute the provision of a superior unbuilt network.[1930] Rather, these activities can be described as comprising the "routine, day-to-day work of managing an [incumbent LEC's] network."[1931] That is, rather than encompassing extensive

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[1925] *See* Allegiance Sept. 30, 2002 *Ex Parte* Letter at 2.

[1926] *See infra* Part VII.D.2.b. Specifically, in the *UNE Remand Order*, the Commission held that incumbent LECs must remove certain devices, such as bridge taps, low-pass filters, and range extenders, from basic copper loops in order to enable the requesting carrier to offer advanced services. *UNE Remand Order*, 15 FCC Rcd at 3775, para. 172. Although Verizon rejects unbundled DS1 loop orders where there is no apparatus or doubler case on the loop claiming that installation of these cases is "complex" – requiring a truck roll to either dig up existing cable or a "bucket" to reach aerial cables in order to splice open the cable sheath – it must perform similar activities to accommodate line conditioning requests. *See* Letter from W. Scott Randolph, Director – Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 4-5 (filed Oct. 18, 2002) (Verizon Oct. 18, 2002 No Facilities *Ex Parte* Letter); *see also* El Paso Galindo Decl. at para. 14 ("When an ILEC outside plant technician conditions a copper loop for xDSL by removing bridged tap and Load Coils in the loop, the work is generally performed by the same staff that performs rearrangement for DS1 services.").

[1927] *See* Cbeyond Nov. 23, 2002 *Ex Parte* Letter at 3. Furthermore, these routine modifications are generally provided by incumbent LECs within relatively short intervals. Mpower Reply at 29 (stating that Verizon's customers "[i]n almost every instance . . . can order service and have it installed within one week.").

[1928] Verizon Oct. 18, 2002 No Facilities *Ex Parte* Letter at 1-6.

[1929] *See* Cbeyond Dec. 16, 2002 *Ex Parte* Letter at 2-3 (describing the routine tasks that Verizon performs to operate, maintain, and repair its network).

[1930] *See* Verizon Oct. 18, 2002 No Facilities *Ex Parte* Letter at 1-6.

[1931] Letter from Jake E. Jennings, NewSouth, to Christopher Libertelli, Legal Advisor, Office of Chairman Michael K. Powell, FCC, CC Docket Nos. 01-338, 96-98 at 3 (filed Nov. 6, 2002) (NewSouth Nov. 6, 2002 *Ex Parte* Letter). While we largely agree with NewSouth's proposed definition of UNE availability, we believe that adopting a definition that attempts to list various pieces of electronics provides an opportunity for gaming by incumbent (continued....)

delays caused by, for example, securing permits or rights-of-way, constructing new manholes or conduits, or installing altogether new terminals, the routine modifications described above generally require incumbent LEC personnel to visit sites within the existing and readily accessible incumbent LEC architecture. We therefore conclude that the local loop definition includes routine modifications and we require incumbent LECs to add types of electronics that incumbent LECs ordinarily attach to a loop for a customer requiring a DS1 loop, even if such electronics are not attached to a particular loop.[1932]

638. Several carriers comment that the difficulties in accessing facilities includes access to dark fiber loops and transport, as well as to lit DS1 loops.[1933] The requirement we establish for incumbent LECs to modify their networks on a nondiscriminatory basis is not limited to copper loops, but applies to all transmission facilities, including dark fiber facilities. For example, several state commissions have rejected incumbent LEC attempts to deny competitive access to dark fiber where a competitive LEC seeks access to the network in the same manner as the incumbent LEC.[1934] Incumbent LECs must make the same routine modifications to their existing dark fiber facilities for competitors that they make for their own customers – including the work done on dark fiber to provision lit capacity to end users. Although the record before us does not support the enumeration of these activities in the same detail as we do for lit DS1 loops, we encourage state commissions to identify and require such modifications to ensure nondiscriminatory access.

639. We reject Verizon's argument that the Commission lacks authority to compel incumbent LECs to deploy new equipment to meet the demands of a competitive carrier.[1935]

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LECs, *i.e.*, if each and every piece of equipment that modifies a DS0 loop to a DS1 loop is not listed, the incumbent LEC may reject an order for no facilities available. *Id.* at 6-7. Instead, in addition to providing several examples of routine modifications incumbent LECs are required to provide we describe various factors, such as personnel requirements and timeliness, that determine whether the modification is routine or provides access to a superior quality network.

[1932] We agree with Mpower that requiring incumbent LECs to attach electronics that they routinely provide to their customers does not constitute the provision of a new network element. Mpower Reply at 29-30; *see also* Covad Comments at 45; NewSouth Comments at 19-20; ALTS *et al.* Comments at 116-17; Sprint Comments at 20, 26.

[1933] *See, e.g.*, Dominion Jan. 28, 2003 Aamoth *Ex Parte* Letter at 5 (claiming that incumbent LECs change their standard loop provisioning practice by laying new loop fiber without terminating it in order to avoid compliance with unbundling obligations).

[1934] *See, e.g., New England Telephone and Telegraph Company d/b/a NYNEX*, Decision D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 – Phase 3, at 48 (Mass. DTE Dec. 4, 1996) ("We therefore see little distinction between a splice performed on behalf of NYNEX and that performed for another carrier.").

[1935] Verizon Comments at 62; *see also* Verizon Reply at 99 n.310; Letter from Susanne Guyer, Senior Vice President, Federal Regulatory Affairs, Verizon, to William F. Maher, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1-2 (filed Jan. 17, 2003), *in* Letter from Susanne Guyer, Senior Vice President, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC (dated Jan. 17, 2003) (Verizon Jan. 17, 2003 Guyer *Ex Parte* Letter). Verizon's policies concerning high-capacity loops have also arisen in context with its section 271 obligations, *i.e.*, checklist item 4 – unbundled local loops. In the *Verizon Pennsylvania 271* proceeding, several competing carriers alleged that Verizon violates the Commission's rules by (continued....)

Verizon contends that the Commission cannot require incumbent LECs to *add* capacity or circuits, including constructing and modifying loops by adding electronics, where these facilities do not already exist.[1936] That is, Verizon argues that these modifications are not necessary to provide access to existing UNEs, they are the "creation of *new or improved* UNEs" that would unlawfully force an incumbent LEC to provide superior quality access.[1937] In particular, Verizon claims that the Commission is barred from requiring incumbent LECs to build a new loop, place new line cards or electronics on a circuit, and provide line conditioning, because these are all "substantial alterations to an ILEC's existing network."[1938] We disagree and, with the exception

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refusing to provide high-capacity loops as UNEs unless all necessary equipment and electronics are present on the line and at the customer's premises. *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17469-70, para. 91 (2001). Ultimately, the Commission was unable to find in the *Verizon Pennsylvania 271* proceeding that Verizon's high-capacity loop policy expressly violates the Commission's unbundling rules. *Id.* at 17470, para. 92 ("We disagree with commenters that Verizon's policies and practices concerning the provisioning of high-capacity loops, as explained to us in the instant proceeding, expressly violate the Commission's unbundling rules."). Instead the Commission relied on its policy that new interpretative disputes concerning the precise content of an incumbent LEC's obligations to its competitors, or disputes that the Commission's rules have not yet addressed and that do not involve *per se* violations of the Act or the Commission's rules, are not appropriately dealt with in the context of a section 271 proceeding. To the extent parties have specific disputes with Verizon's actual practice in implementing its high-capacity loop policies, the Commission explained that such disputes are best addressed in an alternative forum. *Id.* (citing *Verizon Massachusetts Order*, 16 FCC Rcd at 8993, para. 10).

[1936] Verizon states that it will fill a competitive LEC's unbundled high-capacity loop order where "the facilities necessary to provision the service requested exist and are currently available." Verizon Oct. 18, 2002 No Facilities *Ex Parte* Letter at 2. That is, Verizon states that will provision unbundled high-capacity loops where equipment need only be removed, but not when certain equipment must be added. The six situations where Verizon argues it is not required to undertake construction, *i.e.*, where orders are rejected for "no facilities available" are: (1) no available copper spares, (2) no apparatus/doubler case, (3) no central office or remote terminal repeater equipment, (4) no riser cable or buried drop, (5) no fiber or multiplexer (DS1s and DS3s over fiber), or (6) no capacity for the service requested on existing multiplexer (DS1s and DS3s over fiber). *Id.* at 3-7. The percentages of competitive LEC high-capacity loop orders rejected by Verizon between January and June 2002 in the former Bell Atlantic South states for these six "no facilities" situations, respectively, are: 12%, 45.2%, 4.6%, 0.4%, 30.5%, and 3.5%. *Id.*

[1937] Verizon Comments at 63-64 (emphasis in original). Nonetheless, Verizon states that it will make certain changes to available wires in order to provision high-capacity loops. Specifically, in its comments, Verizon states that:

> Verizon's current policy is to add certain electronics to available wire or fiber facilities to fill a [competitive] LEC's order for an unbundled DS1 loop. When Verizon receives an order for an unbundled DS1 loop, it checks whether the required common equipment is installed in the central office and has available ports or slots. If there is capacity, Verizon will install the necessary line cards. Verizon also will cross-connect the common equipment to the wire or fiber facility running to the end user. At the end user's premises, Verizon terminates the DS1 loop in the appropriate NID. This practice goes well beyond Verizon's legal obligations under the Act.

Id. at 64 n.218.

[1938] Verizon Comments at 63.

of constructing an altogether new local loop, we find that requiring an incumbent LEC to modify an existing transmission facility in the same manner it does so for its own customers provides competitors access only to a functionally equivalent network, rather than one of superior quality. Indeed, incumbent LECs routinely add a drop for a second line without objection.[1939] We conclude that with the exception of building a loop from scratch by trenching or pulling cable, because incumbent LECs are able to provide routine modifications to their customers with relatively low expense and minimal delays, requesting carriers are entitled to the same attachment of electronics.[1940] Lastly, to the extent that certain routine network modifications to existing loop facilities affect loop provisioning intervals, contained in, for example, section 271 performance metrics, we expect that states will address the impact of these modifications as part of their recurring reviews of incumbent LEC performance.

640. The Commission's pricing rules provide incumbent LECs with the opportunity to recover the cost of the routine network modifications we require here.[1941] State commissions have discretion as to whether these costs should be recovered through non-recurring charges or recurring charges. We note that the costs associated with these modifications often are reflected in the recurring rates that competitive LECs pay for loops. Specifically, equipment costs associated with modifications may be reflected in the carrier's investment in the network element, and labor costs associated with modifications may be recovered as part of the expense associated with that investment (*e.g.*, through application of annual charge factors (ACFs)). The Commission's rules make clear that there may not be any double recovery of these costs (*i.e.*, if costs are recovered through recurring charges, the incumbent LEC may not also recover these costs through a NRC).[1942]

[1939] We note that it is only with respect to DS1 loops that certain incumbent LECs seem to argue that they are under no obligation to modify loops from their existing condition.

[1940] The record reflects that Verizon provides the routine modifications listed above with minimal delay, in most cases, to their own retail customers. Covad Comments at 51. We also dismiss Verizon's claim that the availability of special access services on a par with Verizon's own retail customers is fully compliant with the Act, and in particular Verizon's recently instituted "procedure under which it voluntarily allows carriers whose UNE orders are rejected for lack of facilities to purchase Verizon's special access service and later convert it to a UNE after a minimum in-service period (provided it meets the conversion criteria established by the Commission)." Verizon Jan. 17, 2003 Guyer *Ex Parte* Letter at 1, 3. We find this policy to be discriminatory on its face.

[1941] *See Local Competition Order*, 11 FCC Rcd at 15847, para. 682 ("Directly attributable forward-looking costs include the incremental costs of facilities and operations that are dedicated to the element. Such costs typically include the investment costs and expenses related to primary plant used to provide that element."); *see also id.* at 15851, para. 691 ("Costs must be attributed on a cost-causative basis. Costs are causally-related to the network element being provided if the costs are incurred as a direct result of providing the network elements, or can be avoided, in the long run, when the company ceases to provide them.").

[1942] 47 C.F.R. § 51.507(e) ("Nonrecurring charges shall be allocated efficiently among requesting telecommunications carriers, and shall not permit an incumbent LEC to recover more than the total forward-looking economic cost of providing the applicable element.").

641. A number of parties filed petitions for reconsideration of the *UNE Remand Order* asking the Commission to find that charges for certain types of network modification (loop conditioning, unbundling of IDLC loops) were inconsistent with the Commission's TELRIC pricing rules.[1943] We deny these petitions. The petitions raise complicated economic and technical issues that the Commission would prefer to address on a more complete and up-to-date record. Accordingly, we will include these issues in the Commission's upcoming proceeding on TELRIC-related issues. In the interim, we leave it to state commissions to decide in the first instance whether a particular cost should be recovered from a competitive LEC through a recurring charge, a non-recurring charge, or not at all, in accordance with the principles identified above.[1944] A state commission could decide, for example, that loop conditioning costs should be recovered through a NRC only in extraordinary situations, such as removing load coils on loops that exceed 18,000 feet in length,[1945] and that any other conditioning costs should be recovered in recurring charges just like other loop maintenance costs.

b. Line Conditioning

642. As noted above, we conclude that incumbent LECs must provide access, on an unbundled basis, to xDSL-capable stand-alone copper loops because competitive LECs are impaired without such loops.[1946] Such access may require incumbent LECs to condition the local loop for the provision of xDSL-capable services.[1947] Accordingly, we readopt the Commission's

[1943] *See* Petition of MCI WorldCom Feb. 17, 2000 Petition for Reconsideration at 15-18 (loop conditioning); Rhythms Netconnections, Inc. and Covad Communications Company Joint Petition for Reconsideration, CC Docket Nos. 95-185, 96-98 (filed Jan. 21, 2000) (loop conditioning); @Link Networks, Inc. *et al.* Joint Petition for Reconsideration, CC Docket No. 96-98 (filed Feb. 17, 2000) (loop conditioning); McLeodUSA Telecommunications Services, Inc. Petition for Reconsideration, CC Docket No. 96-98 (filed Feb. 17, 2000) (unbundling of IDLC loops).

[1944] Accordingly, we grant WorldCom's Petition for Clarification to the extent it seeks clarification that states have discretion to conclude that loop conditioning costs are not forward-looking costs or that they are more appropriately recovered through recurring charges for the loop. *See* Petition of MCI WorldCom Feb. 17, 2000 Petition for Clarification at 13-15.

[1945] The Commission recognized in the *UNE Remand Order* that "networks built today should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter." *UNE Remand Order*, 15 FCC Rcd at 3784, para. 193.

[1946] *See supra* Part VI.A.4.a.(v)(a).

[1947] In the *UNE Remand Order*, the Commission made clear that incumbent LECs must condition loops to allow requesting carriers to offer advanced services, and identified the removal of bridge taps, load coils, and similar devices as part of this obligation. *UNE Remand Order*, 15 FCC Rcd at 3775, para. 172. The Commission specifically rejected the contention that the Eighth Circuit's holding on "superior quality" overturned the rules requiring incumbents to provide conditioned loops even where the incumbent itself is not providing advanced services to those customers. *Id.* at 3775, para. 173 ("We find that loop conditioning, rather than providing a 'superior quality' loop, in fact enables a requesting carrier to use the basic loop."). The Commission subsequently refined the conditioning obligation to cover loops of any length, to recognize the potential degradation of analog voice service, and to enable incumbent LECs to charge for conditioning loops. *Line Sharing Order*, 14 FCC Rcd 20912, 20951-53, paras. 81-87.

previous line and loop conditioning rules for the reasons set forth in the *UNE Remand Order*.[1948] Line conditioning is necessary because of the characteristics of xDSL service – that is, certain devices added to the local loop in order to facilitate the provision of voice service disrupt the capability of the loop in the provision of xDSL services. In particular, bridge taps, load coils, and other equipment disrupt xDSL transmissions.[1949] Because providing a local loop without conditioning the loop for xDSL services would fail to address the impairment competitive LECs face, we require incumbent LECs to provide line conditioning to requesting carriers.

643. Line conditioning does not constitute the creation of a superior network, as some incumbent LECs argue.[1950] Instead, line conditioning is properly seen as a routine network modification that incumbent LECs regularly perform in order to provide xDSL services to their own customers. As noted above, incumbent LECs must make the routine adjustments to unbundled loops to deliver services at parity with how incumbent LECs provision such facilities for themselves. Similarly, in order to provide xDSL services to their own customers, incumbent LECs condition the customer's local loop.[1951] Thus, line conditioning is a term or condition that incumbent LECs apply to their provision of loops for their own customers and must offer to requesting carriers pursuant to their section 251(c)(3) nondiscrimination obligations. We therefore agree with the commenters that argue that requiring the conditioning of xDSL-capable loops is not mandating superior access,[1952] and reject Verizon's renewed challenge that the Commission lacks authority to require line conditioning.[1953] Competitors cannot access the loop's inherent "features, functions, and capabilities" unless it has been stripped of accretive devices. We therefore view loop conditioning as intrinsically linked to the local loop and include it within the definition of the loop network element.[1954]

[1948] We note that the *USTA* court did not expressly opine on the Commission's line and loop conditioning rules.

[1949] *See* Telcordia Technologies, Inc. NOTES ON DSL at 2-10 to 2-16 (describing limitations of xDSL service); Padmanand Warrier and Balaji Kumar, XDSL ARCHITECTURE 95-97 (2000) (describing the effect of bridge taps, load coils, various gauges of copper cable, and analog/digital conversions on xDSL transmissions); *see also Line Sharing Order*, 14 FCC Rcd at 20951-52, para. 83.

[1950] *See* Verizon Jan. 17, 2003 Guyer *Ex Parte* Letter at 3-4 (arguing that line conditioning constitutes the creation of a superior network).

[1951] We note that all BOCs offer xDSL service throughout their service areas. *See, e.g.*, Verizon, *Verizon Online DSL for Your Home Including Personal or Office Use and Price Packages for DSL*, <http://www22.verizon.com/ForHomeDSL/channels/dsl/forhomedsl.asp> (describing Verizon's xDSL offerings for residential customers).

[1952] *See, e.g.*, NuVox *et al.* Reply at 43; WorldCom Reply at 42-43.

[1953] Verizon Comments at 63 (arguing that "loop conditioning plainly is an unlawful requirement to provide a superior quality network."). More specifically, we do not accept Verizon's contention that line conditioning is a "significant construction activity" that provides a "*superior* quality network facility." Jan. 17, 2003 Verizon Guyer *Ex Parte* Letter at 4.

[1954] As the Commission noted in the *UNE Remand Order*, the Eighth Circuit expressly affirmed the Commission's determination that section 251(c)(3) requires incumbent LECs to provide modifications to their facilities in order to (continued....)

644. As a final matter, we determine that requiring incumbent LECs to perform line conditioning advances our section 706 goals.[1955] Specifically, line conditioning speeds the deployment of advanced services by ensuring that competitive LECs are able to obtain, as a practical matter, a local loop UNE with the features, functions, and capabilities necessary to provide broadband services to the mass market. Consistent with our analysis for mass market loops, then, we conclude that the unbundling obligations of incumbent LECs include conditioning loops for the provision of xDSL services.

c. Special Construction of Transmission Facilities

645. We do not require incumbent LECs to construct transmission facilities so that requesting carriers can access them as UNEs at cost-based rates. As the Commission concluded in the *UNE Remand Order*, although "an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures, we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use."[1956] Although we recognize that our conclusion in this Order not to unbundle inter-network transport facilities, including circuits from the incumbent LEC network to CMRS to base stations and mobile switching centers, will diminish the significance of this issue for many commenters, the issues surrounding special construction play an important role in infrastructure growth for new channel termination and transport facilities.

646. At present, incumbent LECs generally offer to build out transmission facilities to a customer's specific needs through the special construction provisions of their special access tariffs or a stand-alone special construction tariff.[1957] These provisions typically contain NRCs and termination liabilities over a fixed term to ensure compensation in the event that the customer defaults or otherwise cancels its contract prior to the expiration of its term commitment.[1958] Because our unbundling rules do not require incumbent LECs to be construction agents for requesting carriers, this limitation on the incumbent LEC unbundling

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accommodate access to network elements. *UNE Remand Order*, 15 FCC Rcd at 3775, para. 173 (citing *Iowa Utils. Bd. v. FCC*, 120 F.3d at 813, n.33). With respect to making routine network modifications, the Eighth Circuit stated: "Although we strike down the Commission's rules requiring incumbent LECs to alter substantially their networks in order to provide superior quality interconnection and unbundled access, we endorse the Commission's statement that 'the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements.'" *Iowa Utils. Bd. v. FCC*, 120 F.3d at 813, n.33 (citing *Local Competition Order*, 11 FCC Rcd at 15602-03, para. 198).

[1955] As we noted in our unbundling analysis for mass market loops, section 706 informs the manner in which we craft our unbundling obligations. *See supra* Part VI.A.4.a.(iv).

[1956] *UNE Remand Order*, 15 FCC Rcd at 3843, para. 324.

[1957] These facilities include entrance facilities, connections from the incumbent LEC tandem office to a CMRS mobile base station, and other inter-network facilities for which no unbundling is required. *See supra* Part VI.C.

[1958] *See, e.g.*, National Exchange Carriers Association, Tariff FCC No. 3 (Special Construction), § 2.6.4.

obligation provides a critical safeguard against excessive unbundling at UNE prices.[1959] To the extent that commenters require such special construction and new facilities, they may purchase this as a service from the incumbent LEC special access tariff.

647. We reject the argument advanced by certain incumbent LECs, however, that specially constructed facilities, once constructed, are to be permanently exempted from unbundling obligations. These carriers contend that all of their SONET rings are built to the customer's definitive request, and that such customized facilities are not required to be unbundled by future requesting carriers.[1960] In support of this position, the incumbent LECs rely heavily on the *UNE Remand Order*'s statement that "[n]otwithstanding the fact that we require incumbents to unbundle high-capacity transmission facilities, we reject Sprint's proposal to require incumbent LECs to provide unbundled access to SONET rings."[1961] Regardless of the Commission's decision not to adopt a specific proposal in a prior proceeding, we clarify that an incumbent LEC's unbundling obligation includes all deployed transmission facilities in its network, unless specifically exempted in this Order.[1962] So long as a requesting carrier seeks access to an already existing transmission facility for which it is impaired, we do not deny access simply because the facility was constructed to the specifications of that carrier or another carrier.

648. To ensure that no incumbent LEC is obligated to build out facilities at TELRIC pricing, we clarify that the tariffed termination liabilities for special construction apply to the conversion of special access circuits built to customer specification. In this manner, no incumbent LEC will be uncompensated for constructing facilities – the tariffed non-recurring charges and termination liabilities that protect incumbent LECs from uncompensated build-outs where a competitor seeks to terminate a contract provide the same protection against UNE conversion.[1963] Competitors have commented broadly that no termination liabilities should apply

[1959] *See, e.g.*, Sprint Comments at 54 (recommending conditions where an incumbent LEC is obligated to undertake construction that include where the requesting carrier is willing to pay TELRIC-based non-recurring charges).

[1960] BellSouth Comments at 56-57; BellSouth Reply at 41-42; *see also* Qwest Comments at 40 (explaining that it undertook construction for CMRS providers pursuant to the specification of those carriers); Letter from John W. Kure, Executive Director – Federal Policy and Law, Qwest, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 96-98, Attach. at 3 (filed Sep. 26, 2001) (arguing that optic fiber rings built for wireless carriers are not part of the Qwest "ubiquitous transport network."). As we explain in Part VI.C., *supra*, our interoffice transport rules are technology neutral, and SONET rings are subject to unbundling obligations in the same manner as any other transport facility. Although many commenters raise issues of special construction and SONET ring unbundling in the context of CMRS provider access to UNEs, our discussion here addresses all facilities.

[1961] BellSouth Reply at 42 (citing *UNE Remand Order*, 15 FCC Rcd at 3843, para. 324); Qwest Comments at 40.

[1962] We affirm that for those facilities that incumbent LECs do not have to provide on an unbundled basis to competitors, incumbent LECs may deploy them in their networks without making them available as UNEs on a nondiscriminatory basis.

[1963] Accordingly, the incumbent LEC concerns about lack of compensation are misplaced. *See, e.g.*, Qwest Comments at 40 ("Qwest agrees to undertake this construction only because the CMRS providers promised to compensate Qwest the tariffed price for these circuits. Qwest would not have constructed, nor would it have been obligated under the Commission's rules to construct, the circuits at the non-compensatory rates demanded by the CMRS providers.") (citations omitted).

to any conversions from special access to UNEs.[1964] While much of their focus appears directed toward those penalties triggered by long-term contracts, including stand-alone loop facilities, we are not persuaded to grant them relief from termination liabilities for special construction.[1965]

VIII. REMAINING ISSUES

A. Section 271 Issues

1. Background

649. As detailed above, section 251 of the Act is the source of incumbent LECs' unbundling obligations. Section 251(c)(3) requires all incumbent LECs (including BOCs) to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[1966] Section 251(d)(2) directs the Commission to determine whether access to particular proprietary elements is *necessary* and whether the unavailability of non-proprietary elements would *impair* a competitor's ability to provision service.[1967] These section 251 obligations are referenced and incorporated as obligations of BOCs under section 271(c)(2)(B)(ii) of the Act.[1968]

650. Section 271 establishes both the procedures by which a BOC may apply to provide interLATA services in one of its in-region states and the substantive standards by which that application must be judged. In particular, section 271(c)(2)(B) of the Act specifies the "competitive checklist" of access and interconnection requirements that BOCs must meet before they are allowed to offer in-region long-distance services.[1969] Four of these checklist items relate to network elements in earlier orders the Commission has deemed to be UNEs under the standards of section 251(c)(3). In particular, checklist items 4 through 6 and 10 require: "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local

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[1964] *See, e.g.*, NuVox *et al.* Reply at 52 ("As part of this [fresh look] proposal, all special access circuits (whether equivalent to standalone UNEs, EELs or some other UNE combination) should be subject to conversion without termination penalties or imposition of nonrecurring charges other than a cost-based conversion charge designed exclusively to recover administrative expenses associated with converting associated billing from special access to UNE billing."); ALTS *et al.* Comments at 103 ("Furthermore, the FCC should mandate that no termination liability charges are to be assessed to CLECs converting circuits to UNE pricing.")

[1965] We address the specific issue of granting "fresh look" relief for conversions of EELs ordered during the vacatur of the Commission's combination rules in Part VIII.C. below.

[1966] 47 U.S.C. § 251(c)(3).

[1967] *Id.* § 252(d)(2). We note that to the extent an incumbent LEC is providing network elements pursuant to section 251(c)(3), section 252(d)(1) further requires that it provide such elements at rates that are nondiscriminatory and cost-based. *Id.* § 252(d)(1).

[1968] *Id.* § 271(c)(2)(B)(ii).

[1969] *Id.* § 271(c)(2)(B).

switching or other services;"[1970] "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services;"[1971] "[l]ocal switching unbundled from transport, local loop transmission, or other services,"[1972] and "[n]ondiscriminatory access to databases and associated signaling necessary for call routing and completion."[1973]

651. In the *Triennial Review NPRM*, the Commission sought comment on how the access requirements specified in the section 271 competitive checklist relate to the unbundling requirements derived from sections 251(c)(3) and 251(d)(2). The Commission first noted its conclusion in the *UNE Remand Order* that BOCs must continue to provide access to those network elements described in checklist items 4-6 and 10, even if such access is not mandated under section 251 (and checklist item 2).[1974] The Commission also concluded, in that Order, that market prices should be permitted to prevail for such network elements, rather than requiring forward-looking prices.[1975] The *Triennial Review NPRM* sought additional comment on these conclusions, on "how to evaluate a checklist item where there is no unbundling requirement for the network element that corresponds to that checklist item, and on the appropriateness of evaluating a tariffed service that corresponds to that network element."[1976]

652. Some commenters seek to alter the Commission's determination in the *UNE Remand Order* that section 271 establishes a separate BOC access obligation for network elements no longer listed under section 251(c)(3) and its conclusion that the marketplace, rather than our TELRIC methodology, should determine the price for delisted network elements under section 271. For example, Verizon argues that once the Commission has determined that a network element is not necessary under section 251(d)(2), the corresponding checklist item should be construed as being satisfied.[1977] Several competitive carriers counter that section 271

[1970] *Id.* § 271(c)(2)(B)(iv).

[1971] *Id.* § 271(c)(2)(B)(v).

[1972] *Id.* § 271(c)(2)(B)(vi).

[1973] *Id.* § 271(c)(2)(B)(x).

[1974] We note that section 271(c)(2)(B)(ii)'s requirement that BOCs provide nondiscriminatory access to network elements is referred to herein as checklist item 2.

[1975] *UNE Remand Order*, 15 FCC Rcd at 3906, para. 473, *see also Triennial Review NPRM*, 16 FCC Rcd at 22814, para. 72.

[1976] *Triennial Review NPRM*, 16 FCC Rcd at 22814, para. 72; *see also Bell Atlantic New York 271 Order*, 15 FCC Rcd at 4126-27, para. 340.

[1977] Verizon Comments at 66-67. Verizon argues, in the alternative, that the Commission should forbear from applying checklist items (4) through (6) and (10) "once the corresponding elements no longer need to be unbundled under section 251(d)(2)." Verizon Petition for Forbearance of the Verizon Telephone Companies Pursuant to Section 160(c), CC Docket 01-338 at 3 (filed July 29, 2002). We do not address Verizon's forbearance petition in this *Triennial Review* proceeding. Rather, we will address the petition separately consistent with the procedures outlined in section 10 of the Act. At the time we address the forbearance petition we will also address Verizon's (continued....)

requires BOCs to provide access to loops, switching, transport, and signaling regardless of impairment under section 251.[1978] Z-Tel further argues that competitors are entitled to access to loops, switching, transport, and signaling at TELRIC rates, even if the Commission were to remove these items from the list of UNEs under section 251.[1979] For the reasons outlined below, we reaffirm that BOCs have an independent obligation, under section 271(c)(2)(B), to provide access to certain network elements that are no longer subject to unbundling under section 251, and to do so at just and reasonable rates.

2. Discussion

653. *Independent Access Obligation.* For reasons set forth below, we continue to believe that the requirements of section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under section 251.

654. First, the plain language and the structure of section 271(c)(2)(B) establish that BOCs have an independent and ongoing access obligation under section 271. Checklist item 2 requires compliance with the general unbundling obligations of section 251(c)(3) and of section 251(d)(2) which cross-references section 251(c)(3).[1980] Checklist items 4, 5, 6, and 10 separately impose access requirements regarding loop, transport, switching, and signaling,[1981] without mentioning section 251. Had Congress intended to have these later checklist items subject to section 251, it would have explicitly done so as it did in checklist item 2.[1982] Moreover, were we to conclude otherwise, we would necessarily render checklist items 4, 5, 6, and 10 entirely redundant and duplicative of checklist item 2 and thus violate one of the enduring tenets of statutory construction: to give effect, if possible, to every clause and word of a statute.[1983] Verizon asserts that an interpretation of the Act that recognizes the independence of sections 271

(Continued from previous page)

related argument that BOCs that offer access to delisted checklist items pursuant to section 271 alone are under no obligation to combine the elements for requesting carriers. Verizon Reply at 59.

[1978] ALTS *et al.* Comments at 117-18; NuVox *et al.* Comments at 115-16; CompTel Comments at 20; UNE-P Coalition Comments at 17; Z-Tel Comments at 4-15.

[1979] Z-Tel Comments at 7; *see also* UNE-P Coalition Reply at 37 (noting that the "Coalition agrees with Z-Tel . . .").

[1980] *See* 47 U.S.C. § 271(c)(2)(B)(ii).

[1981] *See* 47 U.S.C. § 271(c)(2)(B)(iv), (v), (vi), (x).

[1982] *Bates v. U.S.*, 522 U.S. 23, 29-30 (1997) (stating that "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (internal quotation marks omitted). As such, our decision is entitled to deference because the interpretation involves matters about which the Act is silent. *Chevron*, 467 U.S. at 843.

[1983] *See United States v. Menasche*, 348 U.S. 528, 538-39 (1955).

and 251(d)(2) places these sections in conflict with each other.[1984] We disagree. Verizon's reading of section 271 would provide no reason for Congress to have enacted items 4, 5, 6, and 10 of the checklist because checklist item 2 would have sufficed.

655. Second, it is reasonable to interpret section 251 and 271 as operating independently. Section 251, by its own terms, applies to *all* incumbent LECs, and section 271 applies only to BOCs, a subset of incumbent LECs.[1985] In fact, section 271 places specific requirements on BOCs that were not listed in section 251. These additional requirements reflect Congress' concern, repeatedly recognized by the Commission and courts, with balancing the BOCs' entry into the long distance market with increased presence of competitors in the local market.[1986] Before the 1996 Act's passage, the BOCs, the local progeny of the once-integrated Bell system, were barred by the terms of the MFJ from entering certain lines of business, including providing interLATA services.[1987] The ban on BOC provision of long distance services was based on the MFJ court's determination that such a restriction was "clearly necessary to preserve free competition in the interexchange market."[1988] The protection of the interexchange market is reflected in the fact that section 271 primarily places in each BOC's hands the ability to determine if and when it will enter the long distance market. If the BOC is unwilling to open its local telecommunications markets to competition or apply for relief, the interexchange market remains protected because the BOC will not receive section 271 authorization. The same historical underpinning, however, is not relevant to section 251, which is a mandatory provision designed to ensure a minimum level of openness in the local market. Therefore, we reject Verizon's claim that any interpretation of section 271 that recognizes its independence from section 251 would improperly single out BOCs for treatment different from other incumbent LECs.[1989] As explained above, recognizing an independent obligation on BOCs under section 271 would by no means be inconsistent with the structure of the statute. Section 271 was written for the very purpose of establishing specific conditions of entry into the long distance that are

[1984] Verizon Comments at 67; Verizon Reply at 54-55.

[1985] This fact alone demonstrates that section 271 is not dependent on section 251 because a more limited set of carriers was made subject to the demands of section 271. It is consistent with norms of statutory construction that section 251 as a general statutory provision does not control the more specific section 271. *See Gozlon-Peretz v. United States*, 498 U.S. 395 (1991) (a specific provision controls over one of a more general application).

[1986] Section 271 is the direct progeny of the Modification of Final Judgment (MFJ) that contained the terms of the settlement of the Department of Justice's antitrust suit against AT&T. *See United States v. Western Elec. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom., Maryland v. United States,* 460 U.S. 1001 (1983). The MFJ sought to avoid the emergence of an unregulated telecommunications monopoly by imposing specific line-of-business restrictions that explicitly barred the BOCs from providing service for calls that occurred between LATAs. Although the Telecommunications Act of 1996 generally superseded the MFJ, section 271 conditionally continued the interLATA line-of-business restriction in the form of the competitive checklist.

[1987] The MFJ contained the terms of the settlement of the Department of Justice's antitrust suit against AT&T. *See id.*

[1988] *Id.* at 188.

[1989] Verizon Comments at 67; Verizon Reply at 54-55.

unique to the BOCs. As such, BOC obligations under section 271 are not necessarily relieved based on any determination we make under the section 251 unbundling analysis.[1990]

656. *Prices, Terms and Conditions.* It is a different question, however, as to what pricing standard applies to network elements that are unbundled by BOCs solely because of the requirements set forth in section 271. Where there is no impairment under section 251 and a network element is no longer subject to unbundling, we look to section 271 and elsewhere in the Act to determine the proper standard for evaluating the terms, conditions, and pricing under which a BOC must provide the checklist network elements. Contrary to the claims of some commenters, TELRIC pricing for checklist network elements that have been removed from the list of section 251 UNEs is neither mandated by statute nor necessary to protect the public interest. Rather, Congress established a pricing standard under section 252 for network elements unbundled pursuant to section 251 *where impairment is found to exist.* Here, however, we are discussing the appropriate pricing standard for these network elements where there is no impairment. Under the no impairment scenario, section 271 requires these elements to be unbundled, but not using the statutorily mandated rate under section 252. As set forth below, we find that the appropriate inquiry for network elements required only under section 271 is to assess whether they are priced on a just, reasonable and not unreasonably discriminatory basis – the standards set forth in sections 201 and 202.[1991]

657. By their own terms, neither section 252(d)(1) nor section 271(c)(2)(B) requires that the section 252(d)(1) pricing standard be applied to checklist network elements. Section 252(d)(1) provides the pricing standard "for network elements for purposes of [section 251(c)(3)],"[1992] and does not, by its terms, apply to network elements that are required only under section 271. Indeed, section 252(d)(1) is quite specific that it only applies for the purposes of implementation of section 251(c)(3) – meaning only where there has been a finding of impairment with regard to a given network element. Moreover, as noted above, while checklist item 2 provides that a BOC must provide access to UNEs "in accordance with the requirements of sections 251(c)(3) and 252(d)(1)," the checklist items establishing the specific, separate network element obligations do not contain this language. We disagree with Z-Tel's argument that the cross-reference in checklist item 2 should be read into the later checklist items, and is implicit in them.[1993] Reading this language into these provisions would change their plain meaning, and Z-Tel offers no indication that this is what Congress intended. Moreover, we

[1990] We decline to require BOCs, pursuant to section 271, to combine network elements that no longer are required to be unbundled under section 251. Unlike section 251(c)(3), items 4-6 and 10 of section 271's competitive checklist contain no mention of "combining" and, as noted above, do not refer back to the combination requirement set forth in section 251(c)(3). We also decline to apply our commingling rule, set forth in Part VII.A. above, to services that must be offered pursuant to these checklist items.

[1991] 47 U.S.C. §§ 201, 202.

[1992] *Id.* § 252(d)(1).

[1993] Letter from Christopher J. Wright, Counsel for Z-Tel, to Marlene H. Dortch, Secretary, FCC, CC Docket 01-338 at 11 (filed Dec. 20, 2002) (Z-Tel Dec. 20, 2002 *Ex Parte* Letter).

reject Z-Tel's argument that the cross-references were omitted simply to conserve space or to avoid repetition.[1994] To the contrary, we find Congress' decision to omit cross-references particularly meaningful in this instance: half of the checklist items contain explicit cross-references to other statutory provisions, and it is reasonable to conclude that Congress would have inserted a cross-reference into items 4-6 and 10 had that been its intention.

658. We also decline to use section 271, as suggested by Z-Tel, to broaden the unbundling obligations of section 251. Z-Tel notes that section 251(d)(2) directs the Commission to consider "impair[ment]" "at a minimum" in determining which network elements must be unbundled, and thus argues that the Commission may require unbundling pursuant to section 251 and 252 even in the absence of an impairment finding.[1995] In analyzing section 252(d)(2) the D.C. Circuit in *USTA* determined that the "at a minimum" language potentially could justify the imposition of unbundling obligations under that provision even in the "absence" of impairment.[1996] However, the *USTA* decision contained key limitations to the exercise of such authority. In order to apply the "at a minimum" language in the absence of impairment, the *USTA* court required that the Commission "point to something a bit more concrete than its belief in the beneficence of the widest unbundling possible."[1997] Were we to accept Z-Tel's argument, we would again impose a virtually unlimited standard to unbundling, based on little more than faith that more unbundling is better, regardless of context. Checklist items 4 through 6 and 10 do not require us to impose unbundling pursuant to section 251(d)(2). Rather, the checklist independently imposes unbundling obligations, but simply does so with less rigid accompanying conditions.

659. In interpreting section 271(c)(2)(B), we are guided by the familiar rule of statutory construction that, where possible, provisions of a statute should be read so as not to create a conflict.[1998] So if, for example, pursuant to section 251, competitive entrants are found not to be "impaired" without access to unbundled switching at TELRIC rates, the question becomes whether BOCs are required to provide unbundled switching at TELRIC rates pursuant to section 271(c)(2)(B)(vi). In order to read the provisions so as not to create a conflict, we conclude that section 271 requires BOCs to provide unbundled access to elements not required to be unbundled under section 251, but does not require TELRIC pricing. This interpretation allows us to reconcile the interrelated terms of the Act so that one provision (section 271) does not gratuitously reimpose the very same requirements that another provision (section 251) has eliminated.

[1994] Z-Tel Dec. 20, 2002 *Ex Parte* Letter at 11.

[1995] Z-Tel Comments at 17.

[1996] *USTA*, 290 F.3d at 425.

[1997] *Id.*

[1998] *See Washington Market Co. v. Hoffman,* 101 U.S. 112 (1879).

660. We reject arguments by Z-Tel and certain other competitive LECs that the proper way to reconcile any such conflict is to find that our section 251 impairment determinations with respect to unbundled local loops, switching and transport would apply only to non-BOC incumbent LECs.[1999] Z-Tel's argument posits that particular network elements enumerated in the section 271 checklist are the "core" elements, and thus concludes that while the standards in section 251 would still apply to all carriers as to any network elements not mentioned in the checklist, section 271 requirements (as construed by Z-Tel) would supercede section 251 standards as to the most critical network elements delineated by Congress. We think that this reading of the two provisions is illogical. BOCs control 85.9 percent of incumbent LEC local switched access lines.[2000] Of the remaining lines, 11.6 percent of the lines are served by certain rural telephone companies that section 251(f) expressly exempts from the unbundling obligations set forth in 251(c). So, under the Z-Tel interpretation of sections 251 and 271, Z-Tel would have section 251(c), which is arguably the most important market-opening provision of the Act, apply to a mere 2.5 percent of incumbent LEC lines on the issues and facilities that matter most to local competition.[2001] The section 271 checklist cannot be read to have such a broad effect – while it does set forth particular conditions Congress wished to impose on entry into the in-region interLATA market, Congress could not have intended the checklist to render section 251 itself superfluous.

661. Our recognition that pricing pursuant to section 252 does not apply to network elements that are not required to be unbundled is consistent with the Commission's general approach in the *UNE Remand Order*, and has been applied –apparently with no adverse effect – with respect to access to directory assistance and operator services. The Commission removed directory assistance and operator services from the list of UNEs in the *UNE Remand Order*.[2002] These network elements, like loops, transport, switching and signaling databases, are separately listed in the competitive checklist.[2003] Accordingly, as explained in subsequent section 271 Orders, access to directory assistance and operator services remains a condition of long distance entry – but the standard applicable to rates and conditions is not derived from sections 251 and 252.[2004] We note that no party has sought to overturn this aspect of the seventeen section 271 Orders that have applied this analysis since directory assistance and operator services were removed from the list of section 251 UNEs, and no party has suggested in this proceeding that the Commission's interpretation of the statute has produced a perverse policy impact with respect to a BOC's provision of these network elements.

[1999] Z-Tel Comments at 7-8.

[2000] *Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2003*, Submitted by the Universal Service Administrative Company (filed Nov. 1, 2002).

[2001] *Id.*

[2002] *UNE Remand Order*, 15 FCC Rcd at 3891-92, paras. 441-42.

[2003] *See* 47 U.S.C. § 271(c)(2)(B)(vii)(II)-(III).

[2004] *See, e.g., SWBT Texas 271 Order*, 15 FCC Rcd at 18527, para. 348.

662. We note, however, that in the *UNE Remand Order* the Commission stated that "[i]f a checklist network element is unbundled, the applicable prices, terms and conditions are determined in accordance with sections 251 and 252. If a checklist network element does not satisfy the unbundling standards in section 251(d)(2), the applicable prices, terms and conditions for that element are determined in accordance with sections 201(b) and 202(a)."[2005] We reach essentially the same result here, but we clarify our reasoning below.

663. The Supreme Court has held that the last sentence of section 201(b), which authorizes the Commission "to prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act," empowers the Commission to adopt rules that implement the new provisions of the Communications Act that were added by the Telecommunications Act of 1996.[2006] Section 271 is such a provision.[2007] Thus, the pricing of checklist network elements that do not satisfy the unbundling standards in section 251(d)(2) are reviewed utilizing the basic just, reasonable, and nondiscriminatory rate standard of sections 201 and 202 that is fundamental to common carrier regulation that has historically been applied under most federal and state statutes, including (for interstate services) the Communications Act.[2008] Application of the just and reasonable and nondiscriminatory pricing standard of sections 201 and 202 advances Congress's intent that Bell companies provide meaningful access to network elements.

664. Whether a particular checklist element's rate satisfies the just and reasonable pricing standard of section 201 and 202 is a fact-specific inquiry that the Commission will undertake in the context of a BOC's application for section 271 authority or in an enforcement proceeding brought pursuant to section 271(d)(6). We note, however, that for a given purchasing carrier, a BOC might satisfy this standard by demonstrating that the rate for a section 271 network element is at or below the rate at which the BOC offers comparable functions to similarly situated purchasing carriers under its interstate access tariff, to the extent such analogues exist. Alternatively, a BOC might demonstrate that the rate at which it offers a section 271 network element is reasonable by showing that it has entered into arms-length agreements with other, similarly situated purchasing carriers to provide the element at that rate.

665. *Post Entry Requirements.* In the event a BOC has already received section 271 authorization, section 271(d)(6) grants the Commission enforcement authority to ensure that the BOC continues to comply with the market opening requirements of section 271. In particular,

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[2005] *UNE Remand Order*, 15 FCC Rcd at 3905, para. 470.

[2006] *Iowa Utils. Bd.*, 525 U.S. at 377-81.

[2007] The Court found that this grant of authority was "unaffected by" the jurisdictional limitation regarding intrastate matters that was contained in section 2(b) of the 1934 Act. *Id.* at 379. The Court found that since new sections 251 and 252 applied to interstate as well as intrastate matters, section 201(b) authorized the Commission to adopt rules implementing the full scope of those provisions. *Id.* at 379-81.

[2008] *See* 47 U.S.C. §§ 201(b), 202(a). Therefore, we reject the argument of Z-Tel that section 252(d)(1) is the only basis for the Commission to evaluate checklist elements not required to be unbundled under section 251.

this section provides the Commission with enforcement authority where a BOC "has ceased to meet any of the conditions required for such approval."[2009] We conclude that for purposes of section 271(d)(6), BOCs must continue to comply with any conditions required for approval, consistent with changes in the law. While we believe that section 271(d)(6) established an ongoing duty for BOCs to remain in compliance, we do not believe that Congress intended that the "conditions required for such approval" would not change with time. Absent such a reading, the Commission would be in a position where it was imposing different backsliding requirements on BOCs solely based on date of section 271 entry, rather than based on the law as it currently exists. We reject this approach as antithetical to public policy because it would require the enforcement of out-of-date or even vacated rules.

666. Two commenters in this proceeding ask the Commission to adopt special procedural vehicles for re-examining section 271 authorizations, in light of potential rule changes that would change a BOC's obligations under section 251. First, Z-Tel asserts that the Commission must revisit every section 271 authorization to consider "[a]ny significant change to the availability of the UNE platform."[2010] Second, Talk America asks the Commission to adopt a procedure that would freeze in place a BOC's unbundling obligations under section 251, at least pending a review of potential backsliding under section 271(d)(6).[2011] Specifically, Talk America contends that, for a BOC that has previously received section 271 authorization, the "anti-backsliding" requirements of section 271(d)(6) would require it to continue providing unbundled local switching (and UNE-P) at TELRIC prices in the event it is no longer required to do so under section 251. Talk America suggests that any rule change that lessens a BOC's obligation to provide access to unbundled switching could decrease the level of facilities-based competition in either residential or business markets, thereby potentially causing a "backsliding" violation under section 271(d)(6) to the extent the BOC relied on UNE-P based competition to support its showing under section 271(c)(1)(A) (Track A). Accordingly, to address this risk of this type of "backsliding," Talk America would require BOCs to file a petition with the Commission – *before* they may be permitted to cease providing switching and UNE-P at TELRIC-based rates – demonstrating the existence of facilities-based competition from carriers that do not rely in any material part on the availability of unbundled local switching or UNE-P at TELRIC-based rates.[2012]

667. We decline to adopt the extraordinary procedural steps requested by Z-Tel and Talk America. With respect to Talk America's proposal, by reexamining whether a BOC

[2009] 47 U.S.C. § 271(d)(6).

[2010] Z-Tel Comments at 83-84.

[2011] Letter from Brad A. Mutschelknaus, Counsel for Talk America and Broadview Networks, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 15 (filed Dec. 6, 2002) (Talk America/Broadview Networks Dec. 6, 2002 *Ex Parte* Letter); *see also* Letter from Brad A. Mutschelknaus, Counsel for Talk America, to Marlene H. Dortch, Secretary, FCC, CC Docket 01-338 at 3 (filed Dec. 30, 2002) (Talk America Dec. 30, 2002 *Ex Parte* Letter).

[2012] Talk America Dec. 30, 2002 *Ex Parte* Letter at 3.

continues to qualify for "Track A" *before* conditions change in the market ignores the reality that competitors may take steps to retain customers served by UNE-P. For example, it is entirely possible that a competitive LEC may transition customers from UNE-P to an arrangement using unbundled loops combined with its own switching – thereby retaining the same level of facilities-based competition. Accordingly, the before-the-fact review proposed by Talk America would necessarily require speculation and would hold a BOC to a higher standard than under its initial section 271 application. Finally, there is no suggestion that the procedure proposed by Talk America is necessary to detect discrimination or bad conduct – indeed, the harm alleged by Talk America would result from a BOC's *compliance with* federal unbundling rules. Accordingly, we do not believe the public interest warrants adoption of this special procedural step. For similar reasons, we decline Z-Tel's request to "revisit" every section 271 authorization to consider changes regarding UNE-P.

B. Clarification of TELRIC Rules

1. Background

668. Section 252(d)(1) of the Act provides that rates for interconnection and unbundled elements shall be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element" and "may include a reasonable profit."[2013] In the *Local Competition Order*, the Commission adopted guidelines to be applied by state commissions when they are called on to arbitrate disputes regarding the prices for interconnection and UNEs pursuant to section 252(d).[2014] Specifically, the Commission adopted a forward-looking economic cost methodology, which it called "Total Element Long Run Incremental Cost" or "TELRIC." The Supreme Court affirmed the Commission's TELRIC rules in *Verizon v. FCC*.[2015]

669. Based on the Commission's finding that prices in a competitive market will tend towards long-run incremental cost,[2016] the TELRIC methodology is designed to derive prices for particular elements in the incumbent LEC's network that "replicate[], to the extent possible," what the incumbent LEC would be able to charge in a competitive market.[2017] Specifically, TELRIC equates the current market value of the existing network of an incumbent telecommunications provider with the cost the incumbent LEC would incur today if it built a

[2013] 47 U.S.C. § 252(d)(1).

[2014] *Local Competition Order*, 11 FCC Rcd at 15515, para. 29. The Commission also concluded that rates for reciprocal compensation under section 252(d)(2) should be based on the same principles. *Id.* at 16023, para. 1054.

[2015] *Verizon*, 535 U.S. at 467.

[2016] *Local Competition Order*, 11 FCC Rcd at 15845, para. 675.

[2017] *Id.* at 15846, para. 679.

local network that could provide all the services its current network provides, to meet reasonably foreseeable demand, using the least-cost, most-efficient technology currently available.[2018]

670. The Commission's decision to equate the current value of existing equipment with the forward-looking cost of currently available equipment "rests on the rational economic assumption that, as new, more efficient equipment becomes available, the value of older, less efficient equipment will be affected."[2019] TELRIC assumes that the value of an incumbent LEC's network is constrained by the most efficient technology available, even if the incumbent LEC itself does not deploy, or plan to deploy, that technology. In the competitive market assumed under TELRIC, we assume that the most efficient technology currently available will be deployed by at least one carrier, and that the value of all competing networks, and the prices for elements of those networks, will be constrained by the value of the more efficient network.[2020]

671. The TELRIC of a network element is the sum of three components – operating expenses, depreciation expense, and cost of capital.[2021] *Operating expenses* are the annual costs associated with operating a particular asset. Specifically, rates established under TELRIC should reflect the operating expenses associated with a network that uses the most efficient technology currently available.[2022] *Depreciation* is the mechanism by which the investment in an asset is recovered over the life of the asset. In describing the TELRIC methodology, the Commission stated that depreciation expense should be based on "economic depreciation" that "reflects the true changes in economic value of an asset."[2023] *Cost of capital* reflects the rate of rate of return required to attract capital, *i.e.*, the rate of return that investors expect to receive from alternative investments that have the same risk. In the *Local Competition Order*, the Commission stated that regulators should adjust the cost of capital to reflect the risks faced by the incumbent LEC as competition is introduced into its local market.[2024]

672. In paragraph 24 of the *Triennial Review NPRM*, we sought comment on whether, "to encourage investment in new facilities, we might clarify or modify our pricing rules to allow

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[2018] *Local Competition Order*, 11 FCC Rcd at 15848-49, para. 685; 47 C.F.R. §§ 51.501–51.511. The Commission added one additional constraint on the design of the network: the new network must take as given the existing wire center locations. *Local Competition Order*, 11 FCC Rcd at 15848-49, para. 685.

[2019] *Verizon v. FCC*, Reply Brief for Petitioners United States and FCC at 8 (FCC Reply Brief). As the Supreme Court noted, "what the incumbents call the 'hypothetical' element is simply the element valued in terms of a piece of equipment an incumbent may not own." *Verizon*, 535 U.S. at 501.

[2020] Although it is appropriate for a TELRIC analysis to consider existing technology that is not currently deployed by an incumbent LEC, it is not appropriate to consider technologies that may be available in the future but are not currently available.

[2021] *Local Competition Order*, 11 FCC Rcd at 15856, para. 703.

[2022] *Id.* at 15848-49, para. 685.

[2023] *Id.* at 15856, para. 703.

[2024] *Id.*

incumbent LECs to recover for any unique costs and risks associated with such investment." In their comments and reply comments, both incumbent LECs and equipment manufacturers argue that a reexamination of TELRIC is necessary because our rules discourage carriers from investing in new facilities.[2025] Competitive LECs generally oppose any modification of our pricing rules on the ground that TELRIC-based rates are fully compensatory and higher rates would create inefficient investment incentives.[2026] Some parties, such as Covad, argue that, if the Commission decides that changes are needed to encourage investment, it is better to modify our pricing rules than to eliminate unbundling requirements.[2027]

673. Subsequently, in a series of *ex parte* letters, a number of incumbent LECs provided a more detailed analysis of their concerns about the effect of TELRIC pricing on their investment incentives.[2028] The incumbent LECs identify five specific aspects of TELRIC that they contend require clarification or modification to ensure that UNE pricing sends correct economic signals: network assumptions, cost of capital, depreciation, fill factors, and NRCs.[2029] Verizon argues that resolution of these issues is necessary so that UNE prices send "the best possible market signals to incumbent LECs, competitive LECs and intermodal competitors, a result that is critical to the continued investment by all competing providers."[2030] Similarly, SBC urges the Commission to "strive to ensure that the regulatory methodology for setting wholesale prices is economically rational and creates the right incentives for incumbent and new entrants alike."[2031] Qwest requests "restoration of TELRIC to its original purpose: the creation of economically appropriate price signals for competitive LECs as they choose between leasing facilities from incumbent LECs and procuring their own."[2032]

[2025] *See, e.g.*, Verizon Comments at 32-33; ACS Comments at 7-8; Alcatel Comments at 24-25.

[2026] *See, e.g.*, WorldCom Comments at 65-70.

[2027] Covad Comments at 63; *see also* Massachusetts Department Comments at 6-7.

[2028] *See* Letter from William P. Barr, Executive Vice President and General Counsel, Verizon, to Michael K. Powell, Chairman, FCC (dated July 16, 2002), *in* Letter from W. Scott Randolph, Director-Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed July 18, 2002) (Verizon July 18, 2002 TELRIC *Ex Parte* Letter); Letter from William M. Daley, President, SBC Communications, to Michael K. Powell, Chairman, FCC (dated Sept. 4, 2002), *in* Letter from Jim Lamoureux, Senior Counsel, SBC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Sept. 9, 2002) (SBC Sept. 9, 2002 TELRIC *Ex Parte* Letter); Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Oct. 28, 2002) (Qwest Oct. 28, 2002 TELRIC *Ex Parte* Letter).

[2029] Verizon July 18, 2002 TELRIC *Ex Parte* Letter at 2-5; Letter from William M. Daly, President, SBC, to Michael K. Powell, Chairman, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 3 (dated Sept. 4, 2002) (SBC Sept. 9, 2002 TELRIC *Ex Parte* Letter), *in* Letter from Jim Lamoureux, Senior Counsel, SBC, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147, 00-218, 00-249, 00-251 (filed Sept. 9, 2002).

[2030] Verizon July 18, 2002 TELRIC *Ex Parte* Letter at 5.

[2031] SBC Sept. 9, 2002 TELRIC *Ex Parte* Letter at 2.

[2032] Qwest Oct. 28, 2002 TELRIC *Ex Parte* Letter, Attach. at 3.

674. In response, competitive LECs contend that the TELRIC methodology, properly applied, does send appropriate pricing signals.[2033] AT&T challenges the notion that TELRIC pricing diminishes the investment incentives of the incumbent LECs. According to AT&T, "there is no reason why unbundling under the TELRIC standard, properly applied, should lead to underinvestment."[2034] Rather, existing TELRIC rules provide incumbent LECs the opportunity to "establish the UNE rates that are necessary to reflect the particular costs and risks they face."[2035] Similarly, McLeodUSA states that "current TELRIC rules can and do promote investment in the integrated network."[2036]

2. Discussion

675. We conclude that it is necessary to clarify the application of two components of TELRIC that have a major impact on UNE prices – cost of capital and depreciation. These two components of TELRIC are the primary vehicles by which any risks associated with new facilities and new services may be reflected in UNE prices, and therefore it is appropriate to consider these issues in response to the question presented in the *Triennial Review NPRM*. We believe the guidance we provide below is responsive to the concerns raised by the parties and will assist states in their efforts to establish UNE prices that appropriately reflect these risks.

676. In addition to clarification of our rules, some of the incumbent LECs have proposed fundamental changes to the theory underlying the TELRIC rules.[2037] These proposals go well beyond the single pricing issue identified in the *Triennial Review NPRM* – whether to modify or clarify our rules to encourage investment in new facilities. We find that the record in this proceeding does not support the type of dramatic changes proposed by the incumbent LECs.[2038] Rather, we find that issues related to modification of our TELRIC pricing framework

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[2033] *See* Letter from James W. Cicconi, General Counsel and Executive Vice President, AT&T, to Michael K. Powell, Chairman, FCC, (dated July 26, 2002), *in* Letter from Joan Marsh, Director-Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed July 26, 2002) (AT&T July 26, 2002 TELRIC *Ex Parte* Letter); Letter from Chris Frentrup, Senior Economist, WorldCom, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Oct. 23, 2002) (WorldCom Oct. 23, 2002 TELRIC *Ex Parte* Letter); McLeodUSA Jan. 8, 2003 TELRIC *Ex Parte* Letter.

[2034] AT&T July 26, 2002 TELRIC *Ex Parte* Letter at 2.

[2035] *Id.*

[2036] McLeodUSA Jan. 8, 2003 TELRIC *Ex Parte* Letter at 4.

[2037] Verizon, for example, suggests we establish prices based on the costs of its actual network, rather than a hypothetical network. *See* Verizon July 18, 2002 TELRIC *Ex Parte* Letter at 4 ("[T]he Commission should alter its methodology to eliminate the assumption that the existing network is completely 'reconstructed' to reflect a technology mix that goes beyond what likely will ever be in place in any real-world network.").

[2038] Both incumbent LECs and competitive LECs have presented some evidence attempting to establish the relationship between UNE prices and investment. *See, e.g.*, Qwest Reply, Attach. *UNE Prices and Telecommunications Investment*; AT&T Oct. 11, 2002 Willig Stimulating Investment; *The Role of Competition in Stimulating Telecommunications Investment*, Hassett and Kotlikoff (dated Oct. 2002), *in* Letter from Kevin A. Hassett, Resident Scholar, The American Enterprise Institute, to Marlene H. Dortch, Secretary, FCC, CC Docket (continued....)

are best addressed in a future proceeding dedicated to that topic. Accordingly, we will leave the general TELRIC framework intact at this time and consider the need for changes on a more complete record in a future review proceeding.

a. Cost of Capital

677. The cost of capital component of TELRIC is one mechanism by which risk is reflected in UNE prices. In the *Local Competition Order*, the Commission stated that the "currently authorized rate of return at the federal or state level is a reasonable starting point," and that incumbent LECs "bear the burden of demonstrating with specificity that the business risks that they face providing unbundled network elements and interconnection services would justify a different risk-adjusted cost of capital or depreciation rate."[2039] The Commission noted that 11.25 percent was the currently authorized rate of return at the federal level, but held that states may "adjust the cost of capital if a party demonstrates to a state commission that either a higher or lower level of cost of capital is warranted."[2040]

678. Verizon urges the Commission to clarify that, "because TELRIC requires that prices be set based on various competitive assumptions, the cost of capital calculated under TELRIC must reflect the risks associated with those assumptions."[2041] Both Verizon and SBC claim that the risks faced by incumbent LECs today are much greater than they were in 1996 when the Commission stated that 11.25 percent should be used as the starting point in calculating cost of capital.[2042]

679. In response, AT&T states that paragraph 702 of the *Local Competition Order* requires consideration of the *actual* competitive risks an incumbent LEC faces, not the risks it would face in the competitive market that TELRIC assumes.[2043] Specifically, AT&T emphasizes that incumbent LECs have to burden to "demonstrate with specificity" the business risks that "they face" in providing UNEs, not the risks "they might face" if the market were fully

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No. 01-338 (filed Nov. 15, 2002). The only conclusion that we can draw from these studies is that wholesale pricing may be one of the many factors that influence carriers' investment decisions, but that the relative importance of the wholesale pricing regime on investment incentives is uncertain.

[2039] *Local Competition Order*, 11 FCC Rcd at 15856, para. 702.

[2040] *Id.*

[2041] Verizon July 18, 2002 TELRIC *Ex Parte* Letter at 2.

[2042] SBC Sept. 9, 2002 TELRIC *Ex Parte* Letter at 3-4; Verizon July 18, 2002 TELRIC *Ex Parte* Letter at 2.

[2043] AT&T July 26, 2002 TELRIC *Ex Parte* Letter, Attach. at 1. AT&T's position on this issue appears to have evolved over the course of this proceeding. In a subsequent *ex parte* letter, AT&T states that TELRIC compensates incumbent LECs for investing in upgraded facilities, such as fiber loops, because a TELRIC-based price "fully compensates the incumbent for its *prospective risk*." Letter from David Lawson, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 16 (filed Dec. 23, 2002) (emphasis added) (AT&T Dec. 23, 2002 Lawson *Ex Parte* Letter).

competitive.[2044] AT&T also challenges the assertion that an incumbent LEC's UNE business faces risks that are greater than they were in 1996, arguing that even Verizon's own witnesses have conceded in state proceedings that facilities-based competitive LECs are unlikely to make significant inroads in the foreseeable future.[2045]

680. To ensure that UNE prices set by the states appropriately reflect the risks associated with new facilities and new services, we think it would be helpful to clarify two types of risks that should be reflected in the cost of capital. First, we clarify that a TELRIC-based cost of capital should reflect the risks of a competitive market. The objective of TELRIC is to establish a price that replicates the price that would exist in a market in which there is facilities-based competition. In this type of competitive market, all facilities-based carriers would face the risk of losing customers to other facilities-based carriers, and that risk should be reflected in TELRIC prices.

681. We do not agree with AT&T that paragraph 702 of the *Local Competition Order* limits a state to considering only the actual competitive risk the incumbent LEC currently faces in providing UNEs. Because the objective of TELRIC pricing is to replicate pricing in a competitive market,[2046] and prices in a competitive market would reflect the competitive risks associated with participating in such a market, we now clarify that states should establish a cost of capital that reflects the competitive risks associated with participating in the type of market that TELRIC assumes. The Commission specifically recognized that increased competition would lead to increased risk, which would warrant an increased cost of capital.[2047] Although paragraph 702 states that there was limited competition for network elements at the time, it is clear from our discussion of the TELRIC methodology that future competition must be considered in assessing risk.[2048]

682. The approach advocated by AT&T and WorldCom does not provide optimal incentives for investment. To calculate rates based on an assumption of a forward-looking network that uses the most efficient technology (*i.e.*, the network that would be deployed in a

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[2044] AT&T July 26, 2002 TELRIC *Ex Parte* Letter, Attach. at 1 (citing *Local Competition Order*, 11 FCC Rcd at 15856, para. 702).

[2045] *Id.*

[2046] *Local Competition Order*, 11 FCC Rcd at 15846, para. 679.

[2047] *Id.* at 15856, para. 702.

[2048] *Id.* at 15848, para. 683 ("Forward-looking cost methodologies, like TELRIC, are intended to consider the costs that a carrier would incur in the future."); *see also id.* at 15854, para. 700 ("The concept of normal profit is embedded in forward-looking costs because the forward-looking cost of capital, *i.e.*, the cost of obtaining debt and equity financing, is one of the forward-looking costs of providing the network elements. This forward-looking cost of capital is equal to a normal profit."). Even if the *Local Competition Order* could be read to suggest that a TELRIC analysis should consider only the current competitive risk faced by an incumbent LEC, we now modify that requirement as described in the text. We think this modification is necessary to send appropriate economic signals as addressed in the next paragraph.

competitive market), without also compensating for the risks associated with investment in such a network, would reduce artificially the value of the incumbent LEC network and send improper pricing signals to competitors. Establishing UNE prices based on an unreasonably low cost of capital would discourage competitive LECs from investing in their own facilities and thus slow the development of facilities-based competition.

683. Second, we clarify that a TELRIC-based cost of capital should reflect any unique risks (above and beyond the competitive risks discussed above) associated with new services that might be provided over certain types of facilities.[2049] In the *Local Competition Order*, the Commission stated that different UNEs may have different costs of capital.[2050] We now clarify that the use of UNE-specific costs of capital is an acceptable method of reflecting in UNE prices any risk associated with new facilities that employ new technology and offer new services. A carrier in a TELRIC proceeding could, for example, attempt to demonstrate that the cost of capital associated with new services that might be provided over mixed copper/fiber loops is higher than the cost of capital used for voice services provided over other UNEs. We think this approach responds to the incumbent LECs' concern that our rules provide no opportunity for them to recover the cost of investing in facilities to provide services that are more advanced than those modeled under TELRIC.[2051]

684. We are not aware of any state proceedings that have considered the use of different costs of capital for different elements. Moreover, the record in this proceeding does not specifically identify or quantify the additional risk that may be associated with investing in facilities to support advanced services. We cannot tell, therefore, whether the benefits of using multiple costs of capital will in all cases outweigh the possible increased administrative burden associated with establishing multiple costs of capital. Accordingly, we believe parties should continue to have the option to propose (and states should have the option to adopt) a single cost of capital for all UNEs that appropriately reflects the risks associated with competitive markets for the services provided over incumbent LEC networks. We think this approach provides incumbent LECs the opportunity to seek compensation for any additional risks associated with new services and facilities, while preserving flexibility for all parties and for state commissions with respect to implementation of our TELRIC rules.

[2049] There seems to be some agreement among the parties on this point. In an *ex parte* filing, AT&T states that "TELRIC-based rates in this context would be calculated by including the potential risk that consumers would not purchase services provided over upgraded facilities." AT&T Dec. 23, 2002 Lawson *Ex Parte* Letter at 16. Similarly, McLeodUSA states that state commissions should "consider whether the risks associated with the equipment providing integrated (including broadband) services warrants an increase in the rate of return used to calculate the TELRIC price." McLeodUSA Jan. 8, 2003 TELRIC *Ex Parte* Letter at 4.

[2050] *Local Competition Order*, 11 FCC Rcd at 15856, para. 702 ("We note that the risk-adjusted cost of capital need not be uniform for all elements.").

[2051] *See, e.g.*, Verizon Oct. 16, 2002 *Ex Parte* Letter at 2 (stating that the current regime "permits telephone companies to earn back their costs (or less under TELRIC) and requires them to bear the full downside risk of investments that fail, while leaving others to capture any upside of investments that succeed.").

b. Depreciation

685. Like cost of capital, the depreciation component of TELRIC provides a mechanism by which UNE prices will reflect certain risks associated with new facilities and new services. The *Local Competition Order* contains a very limited discussion of depreciation. Specifically, the Commission stated that properly designed depreciation schedules should take into account expected declines in the value of goods.[2052] Similarly, our rules require the use of "economic depreciation" but provide no additional detail.[2053] There appears to be general agreement among the parties that depreciation should reflect any factors that would cause a decline in asset values, such as competition or advances in technology.[2054]

686. There are two components of depreciation – the useful life of the asset, and the rate at which the asset is depreciated over the useful life. In their comments, the incumbent LECs address only the issue of asset lives. Verizon requests that, "at an absolute minimum, the Commission should make clear that the starting point should be the same lives that are used for financial reporting purposes in accordance with well-recognized accounting principles."[2055] These lives are "intrinsically forward-looking and are updated frequently to reflect technological and other changes that affect the length of an asset's economic life."[2056] SBC takes a similar approach, noting that Commission action is necessary because "virtually all states applying TELRIC have applied historical, backward-looking legacy regulation depreciation rates devised years ago."[2057] SBC states that these legacy depreciation rates are "inconsistent with real depreciation lives of real telephony assets in the ground, and they are even more inconsistent with the forward-looking TELRIC methodology itself, which assumes, after all, a hypothetical competitor that maintains state-of-the-art equipment."[2058]

687. AT&T and WorldCom respond by arguing that no clarification of TELRIC is necessary. AT&T states that the incumbent LEC position "misrepresents the Commission-prescribed depreciation lives" because "those lives reflect a rigorous application of forward-

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[2052] *Local Competition Order*, 11 FCC Rcd at 15849, para. 686.

[2053] 47 C.F.R. § 51.505(b)(3).

[2054] AT&T, for example, states that "if a competitive environment makes it more likely that an incumbent's capital will be devalued (say by entry or by more rapid technical progress), TELRIC depreciation will reflect this." AT&T Dec. 23, 2002 Lawson *Ex Parte* Letter at 17. This statement appears to be consistent with the basic approach advocated by the incumbent LECs. *See, e.g.*, Verizon July 18, 2002 TELRIC *Ex Parte* Letter at 3 (advocating asset lives based on financial reporting because they are "updated frequently to reflect technological and other changes that affect the length of an asset's economic life.").

[2055] Verizon July 18, 2002 TELRIC *Ex Parte* Letter at 2-3.

[2056] *Id.* at 3.

[2057] SBC Sept. 9, 2002 TELRIC *Ex Parte* Letter at 3.

[2058] *Id.*

looking principles."[2059] Depreciation lives based on financial accounting, on the other hand, are "biased towards the low (shorter) side because they are driven by corporate objectives, including the objective of protecting shareholders."[2060] WorldCom echoes these arguments, and notes that the Commission rejected the use of financial lives, and endorsed the use of Commission-prescribed regulatory lives, for use in the TELRIC model used to calculate universal service support.[2061]

688. We decline to adopt the incumbent LECs' suggestion that we mandate the use of financial lives in establishing depreciation expense under TELRIC. The incumbent LECs have not provided any empirical basis on which we could conclude that financial lives always will be more consistent with TELRIC than regulatory lives. Both financial lives and regulatory lives were developed for purposes other than, or in addition to, reflecting the actual useful life of an asset.[2062] We cannot conclude on this record that one set of lives or the other more closely reflects the actual useful life of an asset that would be anticipated in a competitive market. Accordingly, state commissions continue to have discretion with respect to the asset lives they use in calculating depreciation expense.

689. Although we decline to mandate a particular method of deciding the useful life of an asset, we believe that clarification of our rules is necessary with respect to the rate at which an asset is depreciated over its useful life. As noted above, the various components of TELRIC rates should be developed using a consistent set of assumptions about competition. In calculating depreciation expense, therefore, the rate of depreciation over the useful life should reflect the actual decline in value that would be anticipated in the competitive market TELRIC assumes. In this way our "economic depreciation" requirement is designed to replicate the results that would be anticipated in a competitive market.

690. We clarify that under our "economic depreciation" requirement, a carrier may accelerate recovery of the initial capital outlay for an asset over its life to reflect any anticipated decline in its value. For example, an approach that accelerates cost recovery based on an index showing that equipment prices are declining over time may be consistent with our requirement to use economic depreciation. Recovering more of the initial capital outlay for the asset in the early years would enable a carrier to recover less in later years, thereby allowing it to compete with carriers that have purchased new, lower-priced equipment in those later years.

[2059] AT&T July 26, 2002 TELRIC *Ex Parte* Letter, Attach. at 2.

[2060] *Id.*

[2061] WorldCom Oct. 23, 2002 TELRIC *Ex Parte* Letter at 3 (citing *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism For High Cost Support For Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Tenth Report and Order, 14 FCC Rcd 20156, 20344-46, paras. 426-29 (1999)).

[2062] *See 1998 Biennial Regulatory Review – Review of Depreciation Requirements for Incumbent Local Exchange Carriers*, Report and Order in CC Docket No. 98-137 and Memorandum Opinion and Order in ASD 98-91, 15 FCC Rcd 242, 262-63, paras. 48-49 (1999) (noting that Generally Accepted Accounting Principles (GAAP) and other non-FCC regulatory safeguards are intended to protect investor interests, while the Commission's depreciation requirements are intended to protect ratepayer interests).

691. To date, state commissions generally have used straight-line depreciation, rather than accelerated depreciation that reflects the anticipated decline in value of assets. Accordingly, the use of accelerated depreciation may raise issues that have not been addressed previously in state proceedings. Among the questions that would have to be addressed by regulators - either the Commission or the states - are how to measure the anticipated decline in value of assets, whether shorter asset lives represent an alternative method of capturing this decline, how UNE prices should be structured to reflect decreases in depreciation expense from one period to the next, and whether levelizing rates across periods, as most cost models do, diminishes, or even eliminates the intended effect of the acceleration. The record in this proceeding does not provide sufficient information for the Commission to resolve these questions at this time, but we encourage state commissions to consider these issues in future UNE pricing proceedings.[2063]

C. Fresh Look

692. In the *UNE Remand Order*, the Commission declined to grant relief for competitors from liability under contractual early termination clauses in the event that an incumbent LEC's carrier-customer converts a special access circuit to a UNE.[2064] Early termination clauses are provisions that are typically found in fixed term contracts that require payment of a fee if a customer terminates the contract prior to the end of the mutually agreed upon contract term. As a general matter, early termination provisions can be mutually beneficial. Providers are given a measure of certainty because such penalty provisions ensure that costs will be recouped in the event a customer fails to utilize the service for the stipulated period of time. On the other hand, customers enjoy discounted and stable priced services over the life of the contract term.

693. In the *Triennial Review NPRM,* the Commission sought comment on "what bases competitors should be able to obtain a 'fresh look' for long-term commitments."[2065] In response, some competitive LECs have indicated that the Commission should not permit incumbent LECs to impose early termination liabilities on competitive LECs converting from special access to UNEs because the law requires such a result. Notably, they contend that: (1) no "termination" occurs because circuits are "converted" to EELs;[2066] (2) the Commission is obligated to correct the results of an erroneous decision by the Eighth Circuit;[2067] and (3) termination penalties

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[2063] As noted above, the Commission plans to commence a proceeding to consider these and other issues related to TELRIC pricing in the near future.

[2064] *UNE Remand Order*, 15 FCC Rcd at 3912, para. 486 n.985.

[2065] *Triennial Review NPRM*, 16 FCC Rcd 22819, para. 83.

[2066] *See, e.g.*, Letter from M. Gavin McCarty, Chief Legal Officer, Globalcom, to William Maher, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1-2 (dated Nov. 11, 2002), *in* Letter from M. Gavin McCarty, Chief Legal Officer, Globalcom, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Nov. 14, 2002) (Globalcom Nov. 14, 2002 *Ex Parte* Letter).

[2067] Globalcom Nov. 14, 2002 *Ex Parte* Letter at 2.

constitute "restrictions" on access to UNEs, which is prohibited by section 251.[2068] Competitive LECs also contend that the Commission should exercise its discretion to adopt fresh look because: (1) incumbent LECs exercise market power to force competitive LECs to buy special access facilities which were only affordable with long-term discounts;[2069] and (2) in light of high special access charges and NRCs, termination penalties would be a windfall to incumbent LECs.[2070]

694. Despite these arguments, we will not disturb the Commission's earlier determination related to fresh look for special access to EEL conversions. As indicated below, there is no legal basis that requires the Commission to institute a fresh look policy for EEL conversions. Moreover, we conclude that restructuring these contracts may be unfair to both incumbent LECs and other competitors, disruptive to the market place, and ultimately inconsistent with the public interest. While we recognize that fresh look may have been granted in other circumstances, we nevertheless note that the grant of fresh look is a very rare occurrence.

695. As an initial matter, we remain unconvinced by the general argument advanced by several commenters that converting a special access circuit to a UNE does not constitute a termination within the meaning of the termination provisions of incumbent LEC tariffs. Globalcom suggests that such "conversions" do not constitute a termination if the competitive carrier would agree to maintain the UNE loop/transport combination for the remainder of the special access term.[2071] In support of this position, Globalcom noted that the Illinois Commerce Commission determined that termination charges should not apply under Ameritech's intrastate special access tariffs because the termination charges "were not designed for the situation . . . where the provider-customer relationship continues."[2072] Globalcom, however, has not demonstrated that a similar interpretation is required under incumbent LECs' interstate special access tariffs.[2073] In essence, Globalcom claims that no termination has occurred during conversions because the continuation of some other service cancels out the fact that the original

[2068] NuVox *et al.* Comments at 116.

[2069] *See* AT&T Reply at 297; *see also* ALTS *et al.* Comments at 128 (arguing that long-term special access arrangements prevent consumers from obtaining the benefits of competition); NuVox *et al.* Comments at 116-17 (arguing that conversion to UNEs was previously denied by incumbent LECs).

[2070] *See* ALTS *et al.* Comments at 129; *see also* Globalcom Nov. 14, 2002 *Ex Parte* Letter at 2 (arguing that after the termination penalty is assessed the competitive LEC will continue to pay TELRIC compensation).

[2071] Globalcom Nov. 14, 2002 *Ex Parte* Letter at 3.

[2072] Globalcom Nov. 14, 2002 *Ex Parte* Letter at 3 (citing *Globalcom v. Illinois Bell Telephone d/b/a Ameritech Illinois*, ICC Docket 02-0365 (Ill. C.C. Oct, 23, 2002)).

[2073] We note that Globalcom has not provided any specific information (including citations to specific provisions) from its interstate special access contracts.

service under the tariff will be discontinued.[2074] While we do not foreclose this as a proper reading of a particular tariff provision, we also do not find support on this record for the conclusion that this reading necessarily is proper for all tariff provisions.

696. Globalcom also argues that "but for" the protracted litigation regarding UNE rules, competitive LECs would not have been forced to order special access circuits and incumbent LECs would not have been able to charge higher special access rates or cost prohibitive termination fees.[2075] Globalcom seeks to have the Commission go back in time to resolve the inequities that it claims resulted from the decision of the Eighth Circuit to vacate sections 51.315(c)-(f) of our rules, which required incumbent LECs to combine elements on behalf of competitive LECs on request.[2076] We decline to engage in such an exercise. We find that doing so would neither be in the public interest nor represent a competitively neutral approach to the rule changes that have affected both incumbent LECs and competitive LECs alike. Indeed, in overturning the Commission's unbundling rules the D.C. Circuit wrote that UNEs had been "available to CLECs in many markets where there is no reasonable basis for thinking that competition is suffering from any impairment . . . ."[2077] In response to this judicial concern, we have revisited our unbundling requirements in this Order. However, we have not sought to establish rules that would retroactively resolve issues related to the issuance of the *UNE Remand Order*. Doing so would require a level of speculation and conjecture that does not forward the public interest. Moreover, to the extent that Globalcom seeks protection from regulatory and judicial uncertainty, it was free to negotiate to include a change of law provision that would have protected it against the Eighth Circuit's ruling.

697. NuVox *et al.* contends that the Commission is legally required to institute a fresh look policy, arguing that a denial of fresh look would be inconsistent with section 251, which does not permit the imposition of impediments to or restrictions on access to UNEs.[2078] We disagree with the logic of NuVox. Nothing in section 251 mandates that the Commission deny incumbent LECs termination liability payments to which they are entitled under contracts in the event of an EEL conversion. As noted above, contracts that provide for term pricing and early termination penalties may benefit both parties and thus do not represent the type of impediment or restriction to access that section 251 prohibits. While we agree that incumbent LECs are not permitted to establish unilateral barriers that work to restrict access to UNEs, that is not the case here. The termination penalties were established by a process of bilateral negotiation or arbitration, not fiat.

[2074] *See also* NuVox *et al.* Comments at 116 (arguing that fresh look does not require a carrier to switch to another provider, but "to convert from one type of [incumbent] LEC service to another.").

[2075] Globalcom Nov. 14, 2002 *Ex Parte* Letter at 3.

[2076] *See Iowa Utils. Bd. v. FCC*, 120 F.3d at 813.

[2077] *Id.*

[2078] NuVox *et al.* Comments at 116.

698. Although we not persuaded that there are any legal requirements mandating that we adopt a fresh look for all special access contracts,[2079] the Commission may, in its discretion, take such action pursuant to its authority under sections 201 through 205 of the Act.[2080] We decline to pursue such a market-disrupting remedy in this instance because there is not sufficient evidence, in this record, of abuse of market power by the incumbent LECs or some other wrong that must be retroactively addressed here.[2081] We note that linking a price discount to a contractual term is a reasonable, accepted commercial practice, both inside and outside of the telecommunications industry. It is the specific application of such provisions, rather than the very existence, that could offend the Communications Act. Determining whether such provisions were applied unlawfully is a fact-intensive inquiry. In light of the likely marketplace disruption of adopting a fresh look policy along with the lack of specific evidence on the record, we are not convinced that the abrogation of negotiated terms will be in the public interest in this instance. We, nevertheless, caution incumbent LECs that their ability to apply termination penalties is not unfettered. We concur with the conclusion in the *UNE Remand Order* "that any substitution of unbundled network elements for special access would require the requesting carrier to pay any *appropriate* termination penalties required under volume or term contracts."[2082] Thus, to the extent a carrier can provide more specific evidence that incumbent LEC termination penalties are inappropriate, we will resolve such a matter through an enforcement proceeding.

699. Finally, although competitive carriers contend that incumbent LECs will receive a windfall in the absence of fresh look,[2083] we conclude that the inverse may be true as well. Competitive LECs that entered into long-term special access contracts benefited from term discount arrangements which allowed for lower costs. It may be unfair for these carriers to completely avoid costs they knowingly agreed to shoulder. Indeed, it would put them in a far better position than those competitive LECs that chose to avoid early termination provisions, and to select shorter contract periods with higher prices.

D. Transition Period

700. We recognize that many of our decisions in this Order will not be self-executing. Indeed, under the statutory construct of the Act, the unbundling provisions of section 251 are implemented to a large extent through interconnection agreements between individual carriers.[2084] The negotiation and arbitration of new agreements, and modification of existing

[2079] Globalcom Nov. 14, 2002 *Ex Parte* Letter at 3.

[2080] *See, e.g., Special Access Order*, 7 FCC Rcd at 7463, para. 40.

[2081] AT&T and Globalcom contend that long-term special access contracts were signed under the pressure of economic duress in order to provide economically feasible products to their customers. *See* AT&T Reply at 298; Globalcom Nov. 14, 2002 *Ex Parte* Letter at 2. On the record before us, we find insufficient evidence to demonstrate that carriers seeking long-term special access commitments were suffering under economic duress.

[2082] *UNE Remand Order*, 15 FCC Rcd at 3912, para. 486 n.985 (emphasis added).

[2083] *See, e.g.*, ALTS *et al.* Comments at 129.

[2084] *See* 47 U.S.C. § 252.

agreements to reflect these new rules, cannot be accomplished overnight. We recognize that many interconnection agreements contain change of law provisions that allow for negotiation and some mechanism to resolve disputes about new agreement language implementing new rules. Although some parties believe that the contract modification process requires Commission intervention in this instance, we believe that individual carriers should be allowed the opportunity to negotiate specific terms and conditions necessary to translate our rules into the commercial environment, and to resolve disputes over any new agreement language arising from differing interpretations of our rules.

701. Thus, to the extent our decision in this Order changes carriers' obligations under section 251, we decline the request of several BOCs that we override the section 252 process and unilaterally change all interconnection agreements to avoid any delay associated with renegotiation of contract provisions.[2085] Permitting voluntary negotiations for binding interconnection agreements is the very essence of section 251 and section 252. We do not believe that the lag involved in negotiating and implementing new contract language warrants the extraordinary step of the Commission interfering with the contract process. We also recognize that commenters have argued that a Commission-mandated transition period is needed so carriers have time to adjust their business practices, and to make arrangements to accommodate their customers. Except as expressly provided above in Parts VI.A.4.a.(v).(a) and VI.D.4.c.(iii).(d), we decline to establish such a transition period and find, instead, that contract arrangements should govern. We note, however, that the practical effect of this negotiation of new terms may be that parties are provided a transition period.

[2085] *See* Letter from Cronan O'Connell, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket 01-338 at 10 (filed Nov. 21, 2002) (Qwest Nov. 21, 2002 *Ex Parte* Letter) (arguing that competitive LECs "typically claim that change of law provisions are not self-executing"); *see also* Letter from Michael K. Kellogg, Counsel for SBC, Qwest and BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket 01-338 at 3-5 (filed Jan. 21, 2003) (SBC/Qwest/BellSouth Jan. 21, 2003 *Ex Parte* Letter) (arguing that the Commission may "negate" certain contract terms under the *Mobile-Sierra* doctrine). Competitive LECs, however, have forcefully argued that the *Mobile-Sierra* doctrine does not apply to interconnection agreements that are filed with the states. *See* Letter from Christopher J. Wright, Counsel for Z-Tel, to Marlene H. Dortch, Secretary, FCC, CC Docket 01-338 at 5-9 (filed Jan. 30, 2003); *see also* AT&T Feb. 3, 2003 *Ex Parte* Letter; Letter from Broadview Networks *et al.* to Marlene H. Dortch, Secretary, FCC, CC Docket 01-338 (filed Feb. 3, 2003).

[2087] Section 252(a)(1) states that "[u]pon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers." If the parties cannot reach agreement, the party requesting interconnection, services, or network elements may petition the relevant state commission to arbitrate the dispute. *See* 47 U.S.C. § 252(b)(1). Such petitions must be submitted between the 135th to the 160th day (inclusive) after the date on which an incumbent LEC received the request for interconnection, services, or network elements. *Id.* The state Commission must resolve the dispute no later than nine months after the date on which the incumbent LEC received the request for interconnection, services, or network elements. *See* 47 U.S.C. § 252(b)(4)(C). Although section 252(a)(1) and section 252(b)(1) refer to requests that are made *to* incumbent LECs, we find that in the interconnection amendment context, either the incumbent or the competitive LEC may make such a request, consistent with the parties' duty to negotiate in good faith pursuant to section 251(c)(1).

702. While we decline to depart from the section 252 process, we believe that additional guidance is needed here to ensure that parties make the necessary changes to their interconnection agreements in response to this Order in a timely manner. We, therefore, provide some guidance below to give individual carrier negotiations a framework that will avoid undue delay or confusion.

703. First, we require incumbent and competitive LECs to use section 252(b) as a default timetable for modification of interconnection agreements that are silent concerning change of law and/or transition timing.[2087] We find that delay in the implementation of the new rules we adopt in this Order will have an adverse impact on investment and sustainable competition in the telecommunications industry. Therefore, to ensure that there is no undue delay in commencing the renegotiation of interconnection provisions, the effective date of the rules we adopt in this Order shall be deemed the notification or request date for contract amendment negotiations under this default approach. We believe that this requirement will ensure that carriers will begin immediately to negotiate in good faith pursuant to section 251(c)(1) of the Act to modify their interconnection agreements to the extent necessary in view of the rules we adopt today.[2088] Further, under the section 252(b) timetable, where a negotiated agreement cannot be reached, parties would submit their requests for state arbitration as soon as 135 days after the effective date of this Order but no longer than 160 days after this Order becomes effective.[2089] In turn, the state commissions would conclude their consideration of such disputes within nine months of the effective date of this Order.[2090] We will rely on state commissions to be vigilant in monitoring compliance with the provisions of sections 251 and 252. Although parties have sought to have the Commission intervene in this process, we believe that the statutory maximum transition period of nine months will ensure an orderly transition to the new rules. We further note that the nine-month period outlined by Congress is reasonably consistent with the transition periods sought by the parties.[2091]

704. Second, we believe that the section 252 process described above provides good guidance even in instances where a change of law provision exists. As under the default process described above, we expect that parties would begin their change of law process promptly. Once a contract change is requested by either party, we expect that negotiations and any timeframe for resolving the dispute would commence immediately. We also find that the section 251(c)(1) duty to negotiate in good faith applies to these contract modification discussions, as they do under the section 252 process. Accordingly, any refusal to negotiate or cooperate with the

[2088] For example, negotiation or modification requests received before the rules become effective would not start the negotiation clock. In addition, a party cannot contend that the negotiation time period did not begin because another party failed to send a request for negotiation because such actions do not constitute the trigger for negotiations. Instead, as indicated above, negotiations will be deemed to commence upon the effective date of this Order.

[2089] *See* 47 U.S.C. § 252(b)(1).

[2090] *See id.* § 252(b)(4).

[2091] *See, e.g.*, Eschelon Comments at 18-19.

contractual dispute resolution process, including taking actions that unreasonably delay these processes, could be considered a failure to negotiate in good faith and a violation of section 251(c)(1).[2092] Finally, to the extent a contractual change of law provision envisions a state role, we believe a state commission should be able to resolve a dispute over contract language at least within the nine-month timeframe envisioned for new contract arbitrations under section 252.

705. Third, we recognize that some BOCs are concerned that the negotiation process may be unnecessarily delayed where a change of law provision provides for interconnection agreement modification pursuant to "legally binding intervening law or final and unappealable [judicial] orders."[2093] In essence, these companies contend that it would be inappropriate to read these provisions as being triggered only after all appeals of this Order become final and unappealable. Instead, the BOCs contend that the only logical reading of such provisions is that such provisions are triggered when the decision of the D.C. Circuit reversing the Commission's prior UNE rules becomes final and nonappealable.[2094] We believe that the BOCs' interpretation of such provisions is reasonable and that either a court or a state commission would agree with such a reading. Indeed, once the *USTA* decision is final and no longer subject to further review, or the new rules adopted in this Order become effective, the legal obligation upon which the existing interconnection agreements are based will no longer exist.[2095] Given that the prior UNE rules have been vacated and replaced today by new rules, we believe that it would be unreasonable and contrary to public policy to preserve our prior rules for months or even years pending any reconsideration or appeal of this Order.

706. Finally, we reiterate that section 251(c) imposes a good faith negotiation requirement that applies to both incumbent LECs and competitive LECs. Based on past history, we understand that parties may disagree significantly on what constitutes a breach of the good faith negotiation requirement. While we realize that whether a carrier violates its section 251(c)(1) is a fact-specific inquiry, we nevertheless admonish all parties to avoid gamesmanship and behavior that may reasonably lead to a finding of bad faith. For example, parties may not refuse to negotiate any subset of the rules we adopt herein. Once the rules established herein are effective, and any applicable change of law process has been triggered, a party's refusal to negotiate (or actions that would otherwise delay unnecessarily the resolution of) any single issue may be deemed a violation of section 251(c)(1).

[2092] 47 U.S.C. § 251(c)(1). As we have recognized in the past, a failure to engage in change of law negotiations may constitute a failure to negotiate in good faith under section 251(c)(1). *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 17806, 17825-26, paras. 34-36 (2000).

[2093] SBC/Qwest/BellSouth Jan. 21, 2003 *Ex Parte* Letter at 2.

[2094] *See USTA*, 290 F.3d at 415.

[2095] SBC/Qwest/BellSouth Jan. 21, 2003 *Ex Parte* Letter at 2.

E. Periodic Review of National Unbundling Rules

1. Background

707. Our decisions in this Order regarding the network elements that should be unbundled are consistent with the determination in the *UNE Remand Order* that rapid changes in technology, competition, and the economic conditions of the telecommunications market would require amendments to the list of UNEs that meet the standards of section 251(d)(2).[2096] To ensure that the list of UNEs is current and responsive to market and economic realities, the Commission further determined in the *UNE Remand Order* that it would periodically review its rules in this area.[2097]

708. At the time of the *UNE Remand Order*, three years had passed since the Commission first adopted unbundling requirements and considerable market changes had taken place that required the Commission to reassess the availability of elements outside the incumbent LECs' networks.[2098] While a constantly evolving marketplace makes such review necessary, the Commission wisely concluded that modifications to the list must be done systematically: "[e]ntertaining, on an *ad hoc* basis, numerous petitions to remove elements from the list, either generally or in particular circumstances, would threaten the certainty that we believe is necessary to bring rapid competition to the greatest number of consumers."[2099] In order to provide market certainty, the Commission declined to adopt an automatic sunset mechanism for removing unbundling obligations and instead chose a three-year review period.[2100]

709. In the *Triennial Review NPRM*, the Commission sought comment on whether the Commission should continue with a fixed-period review process that bars the filing of petitions to remove unbundling obligations between cycles, and whether the Commission should adopt a sunset approach to removing unbundling obligations.[2101] In particular, the Commission sought comment on whether a sunset period for remaining unbundling obligations could create incentives for facilities deployment and investment.[2102] The Commission also invited parties to provide guiding principles that should be employed to determine whether and how existing unbundling rules should be modified on an ongoing basis.[2103] To the extent a periodic review

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[2096] *UNE Remand Order*, 15 FCC Rcd at 3765, paras. 148-49.

[2097] *Id.* at 3765, para. 148.

[2098] *Id.* at 3765, para. 149. The Commission explained that even as early as 1999, there was evidence that competition was developing in some geographic markets for certain customer groups.

[2099] *Id.* at 3765-66, para. 150.

[2100] *Id.* at 3766, para. 151.

[2101] *Triennial Review NPRM*, 16 FCC Rcd at 22817-18, para. 80.

[2102] *Id.*

[2103] *Id.*

period is retained the Commission also sought comment on whether three years is the appropriate length for the review cycle in light of competitors' experiences with network design, ability to attract investment, and execution of their business strategies.[2104] The *Triennial Review NPRM* also sought comment on whether triennial UNE review was consistent with the requirement of section 11 of the Act to review in even-numbered years whether regulations in effect continue to serve the public interest.[2105]

2. Discussion

710. We conclude that a commitment to a further *de novo* triennial review is not necessary at this time. Rather, as the Commission does with all of its other rules, we will rely on the biennial review mechanism established in section 11 of the Act.[2106] This is not *de novo* review. Instead, consistent with its biennial review procedures, the Commission's review will be limited to assessing whether documented market changes merit modifications in our rules. We conclude that reopening every issue on a biennial basis is not in the public interest because it would increase regulatory uncertainty unnecessarily in this area. We also note that in the period between biennial reviews, it will be the policy of this Commission not to entertain *ad hoc* motions or petitions to remove or add UNEs, and we will summarily dismiss such petitions to ensure certainty in the marketplace.

711. We specifically decline the suggestion of BellSouth and Verizon to adopt a sunset period for our UNE rules.[2107] Verizon argues that the Commission must set a firm sunset date no longer than three years for the elimination of all remaining UNEs to ensure that competitive LECs make prudent investments and to minimize obstacles to investment by the incumbent LECs.[2108] Several commenters oppose a sunset period for UNEs as unnecessary and inconsistent with key goals of the Act.[2109] We agree. We find that, considering the complexity of the analysis required to apply the impairment standard, a sunset provision would be arbitrary, would risk premature withdrawal of UNEs, and would be likely to undercut incumbent LEC incentives to comply as the sunset date approaches.[2110] Moreover, the adoption of a sunset provision is

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[2104] *Id.* at 22818, para. 81.

[2105] *Id.* ("Although our completion of the instant review in 2002 satisfies both review cycles, we seek comment on whether the Commission could wait until 2005 for a subsequent UNE review, or whether section 11 requires a UNE review in 2004.").

[2106] 47 U.S.C. § 161.

[2107] BellSouth Comments at 66, 72; Verizon Reply at 62-63.

[2108] Verizon Reply at 60-61.

[2109] ASCENT Comments at 50; CompTel Comments at 87; ALTS *et al.* Comments at 124; WorldCom Comments at 64-65; Eschelon Comments at 17-18; LDMI Comments at 13.

[2110] ALTS *et al.* Comments at 124; ASCENT Comments at 50; CompTel Comments at 87; Eschelon Comments at 17-18; WorldCom Comments at 64-65.

inconsistent with the requirements of the Act. Sections 251(c) and (d) require the Commission to use objective criteria to determine impairment.[2111] Notably, section 251(d) sets out the necessary and impair standard as the statutory floor for the Commission's UNE review.[2112] Thus, under the Act, UNEs remain so long as impairment remains. The mere passage of time cannot replace this statutory mandate.[2113]

F. Duty to Negotiate in Good Faith

712. We amend our duty-to-negotiate rule 51.301(c)(8)(ii) to make the rule conform to the text of the *Local Competition Order*. In that order the Commission stated a new entrant could reasonably withhold information about its own costs because the negotiations concern unbundling or leasing of the incumbent LECs' networks, not the new entrants' networks. Rule 51.301(c)(8)(ii) states that refusal by a requesting telecommunications carrier to furnish cost data that would be relevant to setting rates if the parties were in arbitration is among the actions or practices that violate the duty to negotiate in good faith.[2114] The text of the *Local Competition Order*, by contrast, states that it would *not* be unreasonable for a new entrant to withhold information about its own costs because the negotiations do not concern unbundling or leasing the new entrants' networks.[2115] We therefore amend rule 51.301(c)(8)(ii) to correct this typographical error and replace the word "requesting telecommunications carrier" with "incumbent LEC."

IX. FURTHER NOTICE OF PROPOSED RULEMAKING

713. In this proceeding and in comments filed in response to a related Petition for Forbearance and Rulemaking filed by Mpower Communications (Mpower May 25, 2001 Petition),[2116] several parties have argued that the Commission should reconsider its current rules implementing section 252(i) (*i.e.*, "pick-and-choose rule"), under which requesting carriers are

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[2111] 47 U.S.C. §§ 251(c), 251(d).

[2112] "In determining what network elements should be made available for purposes of subsection (c)(3), the Commission should consider *at a minimum*, whether – (A) access to such network elements as are proprietary in nature is necessary; and (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." 47 U.S.C. § 251(d)(2) (emphasis added).

[2113] Eschelon Comments at 17-18.

[2114] 47 C.F.R. § 51.301(c)(8)(ii). The rule 51.301 states in relevant part that: "(c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith: . . . (8) Refusing to provide information necessary to reach agreement. Such refusal includes, but is not limited to: . . . (ii) Refusal by a requesting telecommunications carrier to furnish cost data that would be relevant to setting rates if the parties were in arbitration."

[2115] *Local Competition Order*, 11 FCC Rcd at 15577-78, para. 155 (emphasis added).

[2116] Mpower Communications Corp. Petition for Forbearance and Rulemaking, CC Docket No. 01-117 (filed May 25, 2001) (Mpower May 25, 2001 Petition).

permitted to opt into individual portions of interconnection agreements without accepting all the terms and conditions of such agreements.[2117] In the view of Mpower, a competitive LEC, and several incumbent LECs, this regime has impeded the type of marketplace negotiations that Congress intended to make a centerpiece of the transition from regulated monopolies to competition. In this section, we seek comment on whether the Commission should alter its interpretation of section 252(i) to promote more meaningful commercial negotiations. We tentatively conclude that a modified approach would better serve the goals embodied in section 252(i) and sections 251-252 generally. As discussed more fully below, once an incumbent LEC obtains state approval of a statement of generally available terms and conditions (SGAT) pursuant to section 252(f) – which essentially functions as a standardized interconnection agreement – the incumbent LEC and competitive carriers then would be permitted to negotiate alternative agreements that third parties could opt into only in their entirety or not at all.

714. We hereby incorporate the Mpower May 25, 2001 Petition and the comments and *ex parte* presentations in CC Docket No. 01-117 into this docket. Commenters need not resubmit material previously filed in these proceedings.

A. Background

715. Section 252(i) of the Act provides that a "local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved under [Section 252] to which it is a party to any other requesting carrier upon the same terms and conditions as those provided in the agreement."[2118] When the Commission initially sought comment on the appropriate interpretation of section 252(i), competitive LECs generally argued that they should be entitled to opt into each distinct term and condition in an interconnection agreement approved pursuant to section 252.[2119] Incumbent LECs, by contrast, argued that such an approach would deter meaningful negotiations, because an incumbent LEC would be reluctant to make any significant concession (in exchange for some benefit) for fear that the concession would, without all of the bargained-for considerations, become available to every potential entrant in the market.[2120] In the *Local Competition Order*, the Commission adopted the interpretation advanced by competitive carriers, finding that "incumbent LECs must permit third parties to obtain access under section 252(i) to any *individual* interconnection, service or network element arrangement on the same terms and conditions as those contained in any agreement approved under section 252."[2121] This decision has allowed competitive carriers to "pick and choose" any provision in an approved interconnection agreement between another competitor and the incumbent LEC.

[2117] 47 C.F.R. §§ 51.809(a)-(c).

[2118] 47 U.S.C. § 252(i).

[2119] *Local Competition Order*, 11 FCC Rcd at 16135-36, paras. 1304-05.

[2120] *Id.* at 16134, para. 1303.

[2121] *Id.* at 16139, para. 1314 (emphasis added); *see also* 47 C.F.R. § 51.809.

716. On review, the U.S. Court of Appeals for the Eighth Circuit vacated the pick-and-choose rule, holding that it would unreasonably deter voluntarily negotiated agreements "by making incumbent LECs reluctant to grant quids for quos, so to speak, for fear that they would have to grant others the same quids without receiving quos."[2122] The Supreme Court reversed the Eighth Circuit and reinstated the rule. The Court agreed with the incumbent LECs that it would be "eminently fair" if "[a] carrier who wants one term from an existing agreement . . . [were] required to accept *all* the terms in the agreement."[2123] The Court held, however, that the Commission's interpretation of section 252(i) was reasonable (and indeed the "most readily apparent" reading of section 252(i)), because it closely tracked the statutory text.[2124] Ultimately, the Court concluded that the question of "whether the Commission's approach will significantly impede negotiations (by making it impossible for favorable interconnection- service or network-element terms to be traded off against unrelated provisions) is a matter eminently within the expertise of the Commission and eminently beyond our ken."[2125]

717. In its petition, Mpower Communications, a competitive LEC, seeks relief from the pick-and-choose requirement, arguing that the rule "inhibit[s] innovative deal-making."[2126] Mpower observes that the existing rule has produced "a great sameness and very little meaningful choice."[2127] In an effort to "'add an arrow to the quiver' of ILECs and CLECs who want to make competition work,"[2128] Mpower proposes authorizing "FLEX contracts" as an alternative to the pick-and-choose regime. A FLEX contract would be a voluntarily negotiated wholesale agreement between an incumbent LEC and a competitive LEC that other carriers could opt into only as a "package deal" – that is, they would be required to accept the entire agreement "rather than be able to pick just 'the best parts' of the deal."[2129] To accomplish this goal, Mpower argues that the Commission should forbear from section 252(i), as well as from the requirement in section 252(e) to submit interconnection agreements for state commission approval.[2130] Only the Commission would be permitted to enforce the terms of FLEX contracts, and such terms would not be admissible in any "unrelated proceeding."[2131] Creating this safe

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[2122] *Iowa Utils. Bd.*, 525 U.S. at 377 (citing *Iowa Utils. Bd. v. FCC*, 120 F.3d at 801).

[2123] *Id.* at 395-96.

[2124] *Id.* at 396.

[2125] *Id.*

[2126] Mpower May 25, 2001 Petition at 9.

[2127] *Id.*

[2128] *Id.* at 4.

[2129] *Id.* at 8.

[2130] *Id.* at 14-15.

[2131] *Id.* at 16.

harbor from the pick-and-choose rule, Mpower argues, would pave the way toward improved wholesale relationships between incumbent LECs and competitive carriers.[2132]

718. Several parties filed comments in response to the Mpower May 25, 2001 Petition. Incumbent LECs support the Petition, arguing that the pick-and-choose rule undermines the regime of commercial negotiations envisioned by Congress.[2133] Commenters opposing the Mpower May 25, 2001 Petition object to circumventing the requirement of state commission approval of interconnection agreements, arguing that the forbearance standard is not satisfied.[2134] These commenters also express the concern that requiring competitors to opt into an entire FLEX contract would enable incumbent LECs to create "poison pills" – "provisions that do not negatively affect the contracting parties but that would make the contract unpalatable to other carriers."[2135]

719. In a January 17, 2003 *ex parte* letter, Verizon, joined by BellSouth, SBC and Qwest, press for the abandonment of the pick-and-choose rule, arguing that it permits a competitive LEC "to cherry-pick individual provisions of any approved interconnection agreement previously negotiated under § 252 between an [ILEC] and another CLEC, without any obligation to accept the remaining provisions of the agreement."[2136] These carriers contend that "[e]liminating the pick-and-choose rule entirely, not merely for Mpower's proposed flexible contract mechanism, would encourage mutually beneficial business relationships between ILECs and CLECs, as opposed to the adversarial, regulation-based relationships that are more typical today."[2137]

B. Request for Comment

720. We seek comment on whether the Commission should eliminate the pick-and-choose rule and substitute an alternative interpretation of section 252(i). We agree with commenters that, as the Commission implements a granular analysis under which some network elements will no longer be available on an unbundled basis in all markets, it will be especially important for the Commission "to provide market-based incentives for incumbents and CLECs

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[2132] *Id.* at 17.

[2133] *See, e.g.*, Verizon Comments on Mpower May 25, 2001 Petition at 2; BellSouth Comments on Mpower May 25, 2001 Petition at 2; Qwest Comments on Mpower May 25, 2001 Petition at 1.

[2134] *See, e.g.*, AT&T Comments on Mpower May 25, 2001 Petition at 3-4; Focal Comments on Mpower May 25, 2001 Petition at 5-6; Sprint Comments on Mpower May 25, 2001 Petition at 3; ASCENT Comments on Mpower May 25, 2001 Petition at 8.

[2135] AT&T Comments on Mpower May 25, 2001 Petition at 3.

[2136] *See* Verizon Jan. 17, 2003 *Ex Parte* Letter at 1.

[2137] Verizon Jan. 17, 2003 *Ex Parte* Letter at 3.

to negotiate innovative commercial alternatives to the UNE platform"[2138] and other network elements and interconnection arrangements.

721. As an initial matter, we seek comment on the Commission's legal authority to alter its interpretation of the statute. As the Supreme Court observed, the pick-and-choose rule "tracks the pertinent language almost exactly" and is the "most readily apparent" reading of the statute.[2139] The Court also stated, however, that judging whether the pick-and-choose rule "will significantly impede negotiations (by making it impossible for favorable interconnection-service or network-element terms to be traded off against unrelated provisions) is a matter eminently within the expertise of the Commission and eminently beyond our ken."[2140] Reading these statements together, we tentatively conclude that the Commission may adopt a different rule pursuant to section 252(i), provided the Commission's modified rule remains a reasonable interpretation of the statutory text.[2141] We seek comment on this analysis.

722. We next seek comment on the extent to which the pick-and-choose rule impedes meaningful negotiations. Mpower contends that, "[f]rom the standpoint of innovative and effective contracting," negotiations under the pick-and-choose regime are "reminiscent of the Gobi Desert."[2142] Incumbent LECs generally echo this sentiment, stating that "the pick-and-choose rule has produced one-size-fits-all agreements that function much like generally applicable tariffs."[2143] We tentatively conclude based on our experience since 1996 that Mpower and other commenters are correct that the pick-and-choose rule discourages the sort of give-and-take negotiations that Congress envisioned. The record produced in response to the Mpower May 25, 2001 Petition indicates that incumbent LECs seldom make significant concessions in return for some trade-off for fear that third parties will obtain the equivalent benefits without making any trade-off at all.[2144] Parties that disagree with this assessment should provide concrete evidence that meaningful negotiations in fact occur under the pick-and-choose rule.

723. Competitive carriers identify two primary concerns with Mpower's proposal to allow voluntary FLEX contracts as an alternative to the existing pick-and-choose process —

[2138] *Id.* at 2.

[2139] *Iowa Utils. Bd.*, 525 U.S. at 396.

[2140] *Id.*

[2141] *See* Verizon Jan. 17, 2003 *Ex Parte* Letter at 4 (citing *Clinchfield Coal Co. v. Federal Mine Safety & Health Review Comm'n*, 895 F.2d 773, 777-78 (D.C. Cir. 1990) (holding that agency may replace previously affirmed reasonable interpretation of statute with a different reasonable interpretation, even if a reviewing court assumes that the previous view "was the better one.").

[2142] Mpower May 25, 2001 Petition at 9.

[2143] Verizon Jan. 17, 2003 *Ex Parte* Letter at 3.

[2144] *See, e.g.*, Verizon Comments on Mpower May 25, 2001 Petition at 2; Qwest Comments on Mpower May 25, 2001 Petition at 1-2; BellSouth Comments on Mpower May 25, 2001 Petition at 2-3; USTA Reply on Mpower May 25, 2001 Petition at 3-4.

concerns that would apply equally to any proposal to replace the existing rule with a requirement to opt into entire agreements as package deals. First, commenters argue that if competitive carriers were required to opt into an entire agreement rather than individual provisions, incumbent LECs would insert "poison pills" into agreements to make them unsuitable for adoption by third parties.[2145] The Commission credited this argument in the *Local Competition Order*, where it observed that "failure to make provisions available on an unbundled basis could encourage an incumbent LEC to insert into its agreement onerous terms for a service or element that the original carrier does not need, in order to discourage subsequent carriers from making a request under that agreement."[2146] The Commission accordingly opined that "requiring requesting carriers to elect an entire agreement would appear to eviscerate the obligation Congress imposed in section 252(i)."[2147] Second, in response to Mpower's suggestion that FLEX contracts exist alongside the pick-and-choose rule, commenters argue that there is no valid basis for exempting carriers from the requirement to submit interconnection agreements for state commission approval or from other requirements in section 252.[2148]

724. We believe that the concerns expressed in the *Local Competition Order* remain valid, but, in light of the shortcomings of the pick-and-choose regime, we seek comment on whether an alternative interpretation of section 252(i) could restore incentives to engage in give-and-take negotiations while maintaining effective safeguards against discrimination. We ask commenters to address whether concerns expressed previously by the Commission about "poison pills" and other types of discrimination could be addressed through narrower means than the current pick-and-choose rule. We also seek comment on whether any new rule adopted pursuant to an alternative interpretation of section 252(i) should be applied to all existing approved interconnection agreements or only those interconnection agreements approved prior to the adoption of such new rule.

725. We seek comment on the following proposal and whether it would address the criticisms of the current pick-and-choose rule without undermining competitors' rights under the Act. If incumbent LECs do not file and obtain state approval for a SGAT, the current pick-and-choose rule would continue to apply to all approved interconnection agreements between the incumbent LEC and other carriers. If incumbent LECs do file and obtain state approval for a SGAT, however, the current pick-and-choose rule would apply solely to the SGAT, and all other approved interconnection agreements would be subject to an "all-or-nothing" rule requiring carriers to adopt the interconnection agreement in its entirety.[2149] The SGAT condition would

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[2145] *See, e.g.*, AT&T Reply on Mpower May 25, 2001 Petition at 3.

[2146] *Local Competition Order*, 11 FCC Rcd at 16138, para. 1312.

[2147] *Id.*

[2148] *See, e.g.*, WorldCom Comments on Mpower May 25, 2001 Petition at 5-6.

[2149] As discussed below in paragraph 727, we acknowledge that only BOCs are subject to § 252(f) and seek comment on whether we can provide alternate means for non-BOC incumbent LECs to meet our proposed SGAT condition.

guarantee competitors access to a minimum set of terms and conditions for interconnection and access to UNEs or resale (or services provided pursuant to section 251). Once the incumbent LEC met the SGAT condition, the incumbent LEC would be free to negotiate more customized agreements with the knowledge that third parties would be limited to opting into the entirety of such agreements, rather than taking individual terms without making any trade-offs.[2150]

726. We note that such an approach, unlike Mpower's FLEX contract proposal, would leave in place all of the safeguards in sections 251 and 252. The Commission would not exercise any forbearance authority. Rather, the Commission would reinterpret section 252(i) to limit carriers' opt-in rights to the entire agreement, subject to the SGAT condition. Importantly, states would be able to draw on their considerable expertise in deciding whether to approve an SGAT. Moreover, any "customized" agreement entered into, subsequent to the satisfaction of the SGAT requirement, would continue to be subject to the duty of good faith negotiation in section 251(c)(1), as well as the state approval requirement in section 252(e). Incumbent LECs also would remain subject to the nondiscrimination provisions and other safeguards in sections 201 and 202 of the Act.

727. We seek comment on the reasonableness of interpreting section 252(i) to allow carriers to opt into entire agreements, but not individual provisions, subject to satisfaction of the above described SGAT condition. We recognize that section 252(f) refers only to BOCs, rather than to incumbent LECs generally. We seek comment on whether conditioning a departure from the pick-and-choose rule on approval of an SGAT – but not otherwise making non-BOC incumbent LECs subject to section 252(f) – would be consistent with the statute.[2151] We also seek comment on whether this conditional approach would adequately address the shortcomings in the existing pick-and-choose rule. Moreover, would such an approach adequately protect competitors from discrimination and other anti-competitive effects? Would the SGAT condition, together with the preservation of the good-faith obligation and nondiscrimination safeguards, be sufficient to prevent the more limited approach to opt-in rights from "eviscerat[ing] the obligation Congress imposed in section 252(i)"?[2152] We seek comment on whether the proposal described above would be workable for all classes of carriers, including smaller competitive

[2150] If the Commission were to adopt such a rule change, state commissions could not prevent its implementation by rejecting a proposed interconnection agreement on the ground that it is available to competitors only on a package-deal basis. Rather, the state commission could reject a customized agreement as discriminatory only if the commission found that the parties intended to discriminate against other carriers. The fact that a third party might be unable to opt into the agreement as a practical matter would not constitute unreasonable discrimination in light of the availability of interconnection, UNEs, and services under the state-approved SGAT.

[2151] Although § 252(f) applies specifically only to BOCs, in order to provide the same opportunity to non-BOC incumbent LECs to enter into customized agreements, we would allow non-BOC incumbent LECs to file a single interconnection agreement for state approval and designate it as an SGAT-equivalent that is subject to the current pick-and-choose rule. Because non-BOC incumbent LECs already file multiple interconnection agreements for state approval under the current pick-and-choose rule, this requirement would not impose any new requirements on non-BOC incumbent LECs, but rather provide them with the same opportunity we propose to provide BOCs to adopt more customized interconnection agreements with third parties.

[2152] *Local Competition Order*, 11 FCC Rcd at 16138, para. 1312.

LECs that lack the resources of larger competitors. We ask commenters to describe any relevant experience requesting or provisioning network elements and services out of SGATs.

728. We tentatively conclude that limiting carriers' opt-in rights to entire agreements (subject to satisfaction of the SGAT condition) would be consistent with the text of section 252(i), which requires only that an incumbent LEC "make available any interconnection, service, or network element provided under an agreement approved under [section 252] to which it is a party to any other requesting telecommunications carrier *upon the same terms and conditions* as those provided in the agreement."[2153] We note that the ambiguous nature of this italicized phrase prompted the Supreme Court to conclude that the appropriate interpretation of section 252(i) is "eminently within the Commission's expertise."[2154] Our view on the reasonableness of the interpretation proposed above is strongly influenced by our tentative judgment that conditioning relief from the pick-and-choose rule on an SGAT requirement would strike an appropriate balance among the competing policy interests at stake. We seek comment on these tentative conclusions.

729. Finally, we seek comment on other means of restoring the congressional goal of meaningful marketplace negotiations. Are there modifications to the approach described above that would better serve the statutory goals? Would a different approach be preferable? We ask commenters to describe in detail any proposal and explain how the proposal (a) would restore market-based incentives to negotiate, and (b) protect competitors from discrimination.

X. PROCEDURAL ISSUES

A. Final Regulatory Flexibility Analysis

730. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[2155] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Federal Register summary of the *Triennial Review NPRM*.[2156] The Commission sought written public comments on the proposals in the *Triennial Review NPRM*, including comments on the IRFA. Comments addressed the proposals contained in the *Triennial Review NPRM,* as well as the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) addresses comments on the IRFA and conforms to the RFA.[2157]

[2153] 47 U.S.C. § 252(i) (emphasis added).

[2154] *Iowa Utils. Bd.*, 525 U.S. at 396.

[2155] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2156] 67 Fed. Reg. 1947 (Jan. 15, 2002).

[2157] *See* 5 U.S.C. § 604.

1. Need for, and Objectives of, the Rules

731. This Order fulfills the commitment the Commission undertook in its 1999 *UNE Remand Order* to reexamine, in three years, the list of network elements that incumbent LECs must offer to competitors on an unbundled basis, and responds to several significant judicial rulings that have been issued since the Commission last conducted a comprehensive review of its unbundling rules.[2158] More specifically, this Order refines the "impair" standard set forth in section 251(d)(2) of the Act, and applies the revised standard to an array of "transmission" and "intelligence" network elements. The revised "impair" standard is designed to reflect both the experience of the local service market during the seven years since the Act's market-opening provisions took effect and the legal guidance mentioned above. Applying this standard, which pays special attention to the requesting carrier's ability to self-provision the element or to obtain it from a source other than the incumbent LEC, this Order adopts a list of network elements that must be unbundled and sets forth the particular circumstances in which unbundling will be required. The approach adopted is substantially more granular than our earlier formulations of the "impair" standard, accounting for considerations of customer class, geography, and service. This Order also reaffirms a state commission's authority to establish unbundling requirements, as long as the unbundling obligations are consistent with the requirements of section 251(d)(3) and do not substantially prevent implementation of the requirements of that section and the purposes of the Act, and authorizes state commissions to make certain factual determinations necessary to implementation of the granular analysis we adopt here.

2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

732. In this section, we respond to various arguments raised by TeleTruth, the National Federation of Independent Businesses (NFIB), and the Office of Advocacy of the Small Business Administration (SBA Advocacy) relating to the IRFA presented in the *Triennial Review NPRM*.[2159] We also address concerns raised by Senator (then-Representative) James Talent in a letter submitted in response to the *UNE Remand Order*, which was later incorporated into this proceeding.[2160] To the extent we received comments raising general small business concerns during this proceeding, those comments are discussed throughout the Order and are summarized in Part X.A.5, below.

733. As an initial matter, we reject the contention that the Commission failed to consider the needs of small business customers of competitive LECs in fashioning the analysis set forth in this Order. We have grappled, throughout this proceeding and throughout this Order, with the consequences our determinations will have on all market participants, including small

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[2158] *See, e.g., Verizon*, 535 U.S. 467; *CompTel*, 309 F.3d 8; *USTA*, 290 F.3d 415.

[2159] TeleTruth's reply comments were filed in several separate dockets, and are not specific to the IRFA prepared for this proceeding. *See generally TeleTruth Reply.* Here, we address only those concerns pertinent to this proceeding. We will address TeleTruth's remaining arguments in subsequent Orders, as appropriate.

[2160] *Triennial Review NPRM*, 16 FCC Rcd at 22788, para. 13.

business providers and the small business end users about which TeleTruth, NFIB, SBA Advocacy, and Senator Talent express concern.[2161] We have also considered various alternatives to the rules we adopt, and have stated the reasons for rejecting these alternative rules, as commenters have urged.[2162] A summary of our analysis regarding small business concerns, and of alternative rules that we considered in light of those concerns, is presented in subsection 5 of the FRFA, *infra*.

734. Many of the complaints raised regarding the Commission's IRFA hinge on the argument that in performing the analysis mandated by the RFA, an agency must analyze the effects its proposed rules will have on "customers" of the entities it regulates.[2163] But as the courts have made clear time and again, this is not the case. Indeed, the D.C. Circuit "has consistently held that the RFA imposes no obligation to conduct a small entity impact analysis of effects on entities which [the agency conducting the analysis] does not regulate."[2164] Thus, we emphasize that the RFA imposes no independent obligation to examine the effects an agency's action will have on the customers of the companies it regulates unless those customers are, themselves, subject to regulation by the agency. In any event, as noted above, we have considered the needs of small business customers of competitive (and incumbent) LECs

[2161] For example, we have considered the argument that new unbundling rules will affect competitive LECs' broadband capabilities, and in turn end users' access to broadband service. *See supra* Part VI.A.4.a; *see also* TeleTruth Reply at 37.

[2162] *See* TeleTruth Reply at 26; Letter from Dan Danner, Senior Vice President – Public Policy, NFIB, to Michael K. Powell, Chairman, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1 (filed Feb. 5, 2003) (NFIB Feb. 5, 2003 *Ex Parte* Letter); Letter from Thomas M. Sullivan, Chief Counsel for SBA Advocacy, to Michael K. Powell, Chairman, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 4 (filed Feb. 5, 2003) (SBA Advocacy Feb. 5, 2003 *Ex Parte* Letter); Letter from James M. Talent, Chairman, Committee on Small Business, House of Representatives, to William Kennard, Chairman, FCC, CC Docket No. 96-98 at 2, 3 (filed July 20, 2000) (Talent July 20, 2000 *Ex Parte* Letter); 5 U.S.C. § 604(a)(5).

[2163] *See, e.g.*, TeleTruth Reply at 15 (asserting that "[t]he [c]ustomer" had been "[t]otally [l]eft [o]ut" of the proceeding and contending that "[f]or the average customer, the [NPRM and other FCC documents] might as well be in Aramaic, or Urdic"), 16 (arguing that the RFA imposes a notice requirement vis-à-vis small businesses that happen to consume telecommunications services), 18 (alleging that the IRFA failed to address "small business . . . customers" of telecommunications providers), 20 ("The FCC has failed to accurately assess the number of small business entities that depend on [small telecommunications competitors], from the small business users to the small business suppliers."), 34-35 (presenting analysis of the number of online customers of ISPs potentially affected by Commission's rulemakings), 43 ("A 'class' of small businesses that is totally missing from [the IRFA] are the small businesses that depends [sic] on . . . ISPs and CLECs [that will be affected by the Commission's ruling]."); *see also* NFIB Feb. 5, 2003 *Ex Parte* Letter at 1 ("[T]he FCC should make certain that it fully considers the direct and indirect impacts of its rulemaking on small-business consumers. We urge the FCC to review all data to ensure that any action taken does not hinder the availability of competition for small businesses needing local telephone services.").

[2164] *Michigan v. EPA*, 213 F.3d 663, 689 (D.C. Cir. 2000) (internal quotation marks omitted); *see also Motor & Equip. Mfrs. Ass'n. v. Nichols*, 142 F.3d 449, 467 (D.C. Cir. 1998); *United Distribution Cos. v. FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996); *American Trucking Ass'ns, Inc. v. EPA*, 175 F.3d 1027, 1044, *reh'g granted in part, denied in part* 195 F.3d 4 (D.C. Cir. 1999), *rev'd in part on other grounds*, 531 U.S. 457 (2001).

throughout this Order. Our analysis of small business concerns is summarized in Part X.A.5, below.

735. TeleTruth argues that the Commission has taken inadequate steps to notify small businesses of this and other proceedings, in violation of the RFA.[2165] We disagree. The RFA requires the Commission to "assure that small entities have been given an opportunity to participate in the rulemaking," and proposes as example five "reasonable techniques" that an agency might employ to do so.[2166] In this proceeding, the Commission has employed several of these techniques: it has published a "notice of proposed rulemaking in publications likely to be obtained by small entities";[2167] has "inclu[ded] . . . a statement that the proposed rule may have a significant economic effect on a substantial number of small entities" in the *Triennial Review NPRM*;[2168] has solicited comments over its computer network;[2169] and has acted "to reduce the cost or complexity of participation in the rulemaking by small entities" by, among other things, facilitating electronic submission of comments.[2170] We thus conclude that the Commission has satisfied its RFA obligation to assure that small companies were able to participate in this proceeding.

736. TeleTruth further contends that the Commission's IRFA was flawed by its use of "boilerplate" language that differed little from the language used in the IRFAs prepared for other proceedings.[2171] However, the only language it cites does not even appear in the IRFA prepared for this proceeding. Moreover, TeleTruth has suggested no reason why the use of similar language in several proceedings is at all problematic. Indeed, the particular language about which it complains merely describes the "number of telephone companies affected" by a given proceeding – a class that is likely to differ little, if at all, among industry-wide rulemakings such as this.

737. TeleTruth next complains that the IRFA used outdated census data from 1992 in estimating the number of small businesses that might be affected by the Commission's decisions

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[2165] *See* TeleTruth Reply at 16-18; Letter from Bruce Kushnick, Chairman, TeleTruth, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 at 5 (filed Feb. 5, 2003) (TeleTruth Feb. 5, 2003 *Ex Parte* Letter).

[2166] *See* 5 U.S.C. § 609.

[2167] 5 U.S.C. § 609(a)(2). We disagree with TeleTruth's argument that small companies pertinent to our analysis cannot be expected to learn of actions reported in the Federal Register. *See* TeleTruth Reply at 16. As explained above, the obligations imposed by the RFA relate only to companies regulated by the agency; TeleTruth has provided no reason to believe that small *telecommunications* companies would be unfamiliar with the Federal Register, in which all federal regulations pertinent to those companies' operations are published.

[2168] 5 U.S.C. § 609(a)(1).

[2169] *Id.* § 609(a)(2).

[2170] *Id.* § 609(a)(5).

[2171] *See* TeleTruth Reply at 19-20.

here.[2172] While certain 1997 census data became available in late 2000 and were not incorporated into the previous NPRM, this updating would not, we believe, have affected a small entity's decisions concerning IRFA. This more recent data are reflected in subsection 3 of the FRFA, *infra*.

738. TeleTruth also contends that "[a] true IRFA analysis about small business telecom competitors would conclude that the current FCC is in violation of the Telecom Act and all of its provisions" because the Commission purportedly has failed to enforce its local competition rules.[2173] Such an assertion falls outside the scope of this rulemaking proceeding and our analysis herein. Complaints regarding carriers' compliance with the Commission's Rules are properly addressed in other venues. For example, section 208 of the Communications Act specifically permits small businesses and other entities to lodge complaints regarding other carriers' activities, and to seek enforcement of Commission regulations.[2174] Also, to the extent an incumbent LEC's obligations under section 251 are implemented through interconnection agreements, those obligations are enforceable as a matter of contract law through the courts.

739. TeleTruth next argues the RFA requires "an impact study on how [an agency's regulations] will harm small businesses," and that "the FCC has not done anything of the sort for this proceeding."[2175] We disagree: the RFA requires us to provide precisely the information contained in this FRFA, but does not mandate a separate "impact study."[2176] The Commission has therefore satisfied its RFA obligations.

740. In a letter challenging the *UNE Remand Order*, Senator Talent argued that that Order violated section 3(a)(2)(C) of the Small Business Act.[2177] Specifically, Senator Talent noted that the *UNE Remand Order* differentiated between businesses that used fewer than four access lines and those that used four or more lines, in contravention of the Small Business Act's directive that "unless specifically authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern," unless certain procedural requirements are satisfied.[2178] In the present Order, our action does not establish any special small business size standard.

741. TeleTruth and Senator Talent suggest that section 257 of the Act dictates a particular substantive result in this matter. Specifically, TeleTruth claims that this "Triennial

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[2172] *See id.* at 22.

[2173] *See id.* at 37-39, 41.

[2174] 47 U.S.C. § 208.

[2175] TeleTruth Feb. 5, 2003 *Ex Parte* Letter at 4.

[2176] *See* 5 U.S.C. § 604.

[2177] *See* 15 U.S.C. § 632(a)(2)(C).

[2178] *Id.*

Review is mandated in Section [257(c)]," and requires an outcome favorable to entrepreneurs and small businesses.[2179] Senator Talent argued that in limiting the class of elements subject to section 251(c), the *UNE Remand Order* "erected a new barrier to entry" by small business carriers, and consequently violated section 257 of the Communications Act. Section 257, however, did *not* mandate this proceeding and in no way cabins this Commission's exercise of its authority to adopt rules implementing the Act. Section 257 required the Commission to conduct a proceeding designed to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services" within 15 months of the enactment of the 1996 Act,[2180] and periodically to review its regulations and report to Congress on any such barriers.[2181] The Commission concluded the requisite proceeding in 1997[2182] and issued its first subsequent section 257 Report to Congress in 2000.[2183] Thus, this proceeding is *not* mandated (or in any way governed) by section 257. Rather, as described above, this Order fulfills the Commission's commitment – set forth in the *UNE Remand Order* – to reevaluate unbundling requirements, and responds to various judicial rulings regarding those requirements.[2184]

742. TeleTruth, the NFIB, and SBA Advocacy caution that this Order may stand in violation of Executive Order 13272.[2185] Setting aside the question of whether a multi-member independent agency such as the FCC must comply with that Executive Order, we note that affected agencies must: (1) comply with the RFA, (2) give SBA Advocacy advanced notice of any proposed rules that might substantially impact small businesses, and (3) give "appropriate consideration to" and provide a written response to "any comments provided by" SBA Advocacy. Here, the Commission did send SBA Advocacy a copy of the published Triennial Review NPRM (which pre-dated the Executive Order).[2186] Moreover, in this FRFA, we fully satisfy our obligations under the RFA. Finally, we address SBA Advocacy's other comments below. Therefore, this proceeding stands in compliance with Executive Order 13272.

[2179] TeleTruth Feb. 5, 2003 *Ex Parte* Letter at 3.

[2180] *See* 47 U.S.C. § 257(a).

[2181] *See id.* § 257(c).

[2182] *See Section 257 Proceeding To Identify and Eliminate Market Entry Barriers For Small Businesses*, GN Docket No. 96-113, Report, 12 FCC Rcd 16802 (1997).

[2183] *See Section 257 Report to Congress, Identifying and Eliminating Market Entry Barriers For Entrepreneurs and Other Small Businesses*, Report, 15 FCC Rcd 15376 (2000).

[2184] *See supra* Parts I, III.

[2185] Executive Order No. 13272, 67 Fed. Reg. 53461 (Aug. 16, 2002); *see* TeleTruth Feb. 5, 2003 *Ex Parte* Letter at 6-7; NFIB Feb. 5, 2003 *Ex Parte* Letter at 1; SBA Advocacy Feb. 5, 2003 *Ex Parte* Letter at 2-3.

[2186] *Triennial Review NPRM*, 16 FCC Rcd at 22836, para. 135.

743. SBA Advocacy argues that the Commission's IRFA "did not consider the impact of delisting unbundled network elements . . . on small competitive local exchange carriers."[2187] While SBA Advocacy recommends that we issue a revised IRFA to account more fully for the impact our rules might have on competitive LECs, it recognizes that we might appropriately address any such impact in this FRFA instead.[2188] We have adopted the latter course. We note that we have considered the concerns of competitive LECs throughout this Order, and those considerations are summarized in Part X.A.5, below. Moreover, in Part X.A.3, we attempt to estimate the number of competitive LECs that will be affected by the rules we adopt herein.

744. SBA Advocacy also claims that the proposals contained in the *Triennial Review NPRM* were not sufficiently specific to allow small businesses the opportunity to comment meaningfully.[2189] We disagree. This proceeding has elicited well over one thousand filings, submitted by scores of parties. These parties – which include numerous small businesses – found in the Notice sufficient specificity to permit meaningful comment. SBA Advocacy notes its "particular concern" that the Commission "is considering removing elements from the list" of incumbent LECs' unbundling obligations, whereas the *Triennial Review NPRM* purportedly gave no indication of this eventuality.[2190] But in fact, the *Triennial Review NPRM* clearly explained that the Commission was considering "an unbundling analysis that is more targeted," including approaches "that take into consideration specific services, facilities, and customer and business considerations."[2191] The Commission expressly sought comment "on applying the unbundling analysis to define the network elements" subject to unbundling,[2192] and indicated its intention to "probe whether and to what extent we should adopt a more sophisticated, refined unbundling analysis."[2193] The Commission also specifically stated its intention to reexamine unbundling obligations with respect to loops,[2194] switching,[2195] interoffice transport,[2196] OSS,[2197] call-related signaling,[2198] and call-related databases.[2199] We are thus not persuaded that the Notice

[2187] SBA Advocacy Feb. 5, 2003 *Ex Parte* Letter at 1.

[2188] *Id.* at 1-2.

[2189] *See id.* at 3-4.

[2190] *Id.* at 3.

[2191] *Triennial Review NPRM*, 16 FCC Rcd at 22789, para. 16.

[2192] *Id.*

[2193] *Id.* at 22797-98, para. 34.

[2194] *See id.* at 22803-05, paras. 49, 51-52.

[2195] *See id.* at 22806-09, paras. 56-62.

[2196] *See id.* at 22810-12, paras. 64-66.

[2197] *See id.* at 22813, para. 70.

[2198] *See id.* at 22812, para. 68.

somehow failed to signal the Commission's intent to examine rules that might result in modification of the list of elements (including possible removal of elements) subject to section 251(c)(3)'s unbundling requirements.

3. Description and Estimate of the Number of Small Entities To Which the Actions Taken Will Apply

745. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules.[2200] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[2201] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[2202] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[2203]

746. In this section, we further describe and estimate the number of small entity licensees and regulatees that may be affected by rules adopted in this Order. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission published in its *Trends in Telephone Service May 2002* report.[2204] The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,[2205] Paging,[2206] and Cellular and Other Wireless Telecommunications.[2207] Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and

(Continued from previous page)

[2199] *See id.* at 22812-13, para. 69.

[2200] 5 U.S.C. §§ 603(b)(3), 604(a)(3).

[2201] *Id.* § 601(6).

[2202] *Id.* § 601(3) (incorporating by reference the definition of "small business concern" set forth in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

[2203] 15 U.S.C. § 632.

[2204] *Trends in Telephone Service May 2002 Report* at Table 5.3.

[2205] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 513310 (changed to 517110 in Oct. 2002).

[2206] *Id.* § 121.201, NAICS code 513321 (changed to 517211 in Oct. 2002).

[2207] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in Oct. 2002).

others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

747. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a wired telecommunications carrier having 1,500 or fewer employees), and "is not dominant in its field of operation."[2208] SBA Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[2209] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

748. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[2210] According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.[2211] Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.[2212] Thus, under this size standard, the great majority of firms can be considered small.

749. *Incumbent LECs*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[2213] According to Commission data, 1,329 carriers reported that they were engaged in the provision of local exchange services.[2214] Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer

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[2208] 5 U.S.C. § 601(3).

[2209] Letter from Jere W. Glover, Chief Counsel for SBA Advocacy, and Eric E. Menge, Assistant Chief Counsel for Telecommunications, SBA Advocacy, to William E. Kennard, Chairman, FCC, CC Docket Nos. 98-147, 99-68, 97-181 (filed May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[2210] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

[2211] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)" (1997 Economic Census, Establishment and Firm Size), Table 5, NAICS code 513310 (issued Oct. 2000).

[2212] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[2213] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

[2214] *Trends in Telephone Service May 2002 Report* at Table 5.3.

employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

750. *Competitive LECs.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[2215] According to Commission data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive LEC services.[2216] Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees.[2217] In addition, 55 carriers reported that they were "Other Local Exchange Carriers." Of the 55 "Other Local Exchange Carriers," an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees.[2218] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

751. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[2219] According to Commission data, 229 companies reported that their primary telecommunications service activity was the provision of interexchange services.[2220] Of these 229 companies, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees.[2221] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and policies adopted herein.

752. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to OSPs. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that

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[2215] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

[2216] *Trends in Telephone Service May 2002 Report* at Table 5.3.

[2217] *Id.*

[2218] *Id.*

[2219] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

[2220] *Trends in Telephone Service May 2002 Report* at Table 5.3.

[2221] *Id.*

size standard, such a business is small if it has 1,500 or fewer employees.[2222] According to Commission data, 22 companies reported that they were engaged in the provision of operator services.[2223] Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees.[2224] Consequently, the Commission estimates that the great majority of OSPs are small entities that may be affected by the rules and policies adopted herein.

753. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[2225] According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards.[2226] Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees.[2227] Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

754. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, OSPs, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[2228] According to Commission's data, 42 companies reported that their primary telecommunications service activity was the provision of payphone services.[2229] Of these 42 companies, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees.[2230] Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the rules and policies adopted herein.

755. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of Paging[2231] and

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[2222] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

[2223] *Trends in Telephone Service May 2002 Report* at Table 5.3.

[2224] *Id.*

[2225] 13 C.F.R. § 121.201, NAICS code 513330 (changed to 517310 in Oct. 2002).

[2226] *Trends in Telephone Service May 2002 Report* at Table 5.3.

[2227] *Id.*

[2228] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

[2229] *Trends in Telephone Service May 2002 Report* at Table 5.3.

[2230] *Id.*

[2231] 13 C.F.R. § 121.201, NAICS code 513321 (changed to 517211 in Oct. 2002).

Cellular and Other Wireless Telecommunications.[2232] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1320 firms in this category, total, that operated for the entire year.[2233] Of this total, 1303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[2234] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[2235] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[2236] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

756. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years.[2237] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years."[2238] These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[2239] No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business

[2232] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in Oct. 2002).

[2233] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997" (1997 Economic Census, Employment Size of Firms), Table 5, NAICS code 513321 (issued Oct. 2000).

[2234] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[2235] 1997 Economic Census, Employment Size of Firms, Table 5, NAICS code 513322 (issued Oct. 2000).

[2236] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[2237] *See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, Report and Order, 11 FCC Rcd 7824 (1996) (*Parts 20 and 24 Amendment Order*); *see also* 47 C.F.R. § 24.720(b).

[2238] *See Parts 20 and 24 Amendment Order*, 11 FCC Rcd 7824.

[2239] *See, e.g., Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5332 (1994).

bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[2240] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

757. *Narrowband PCS.* To date, two auctions of narrowband PCS licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.[2241] A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.[2242] In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

[2240] FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997); *see also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, WT Docket No. 97-82, Second Report and Order, 12 FCC Rcd 16436 (1997).

[2241] *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, Docket Nos. ET 92-100, PP 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 10456 (2000).

[2242] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (SBA Dec. 2, 1998 *Ex Parte* Letter).

758. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This standard provides that such a company is small if it employs no more than 1,500 persons.[2243] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[2244] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[2245] If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

759. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[2246] This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[2247] A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards.[2248] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[2249] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three

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[2243] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in Oct. 2002).

[2244] 1997 Economic Census, Employment Size of Firms, Table 5, NAICS code 513322 (issued Oct. 2000).

[2245] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[2246] *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service,* PR Docket No. 89-552, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, at paras. 291-95 (1997) (*220 MHz Third Report and Order*).

[2247] *Id.* at 11068-69, para. 291.

[2248] *See* Letter from Aida Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (filed Jan. 6, 1998) (SBA Jan. 6, 1998 *Ex Parte* Letter).

[2249] *See generally Phase II 220 MHz Service Auction Closes, Winning Bidders in the Auction of 908 Phase II 220 MHz Service Licenses Down Payments Due November 6, 1998, FCC Form 601s Due November 6, 1998, Ten-Day Petition to Deny Period,* Report No. AUC-18-F, 14 FCC Rcd 605 (1998).

nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[2250]

760. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively.[2251] These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the Small Business Act. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

761. *Common Carrier Paging.* In the Paging Third Report and Order, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[2252] A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.[2253] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000

[2250] *Phase II 220 MHz Service Spectrum Auction Closes*, Report No. AUC-24-E, 14 FCC Rcd 11218 (1999).

[2251] 47 C.F.R. § 90.814(b)(1).

[2252] *220 MHz Third Report and Order*, 12 FCC Rcd at 11068-70, paras. 291-95.

[2253] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085, para. 98 (1999).

Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the *Trends in Telephone Service May 2002 Report*, 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services.[2254] Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.[2255]

762. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[2256] A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[2257] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[2258]

763. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[2259] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[2260] The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.[2261] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

[2254] *Trends in Telephone Service May 2002 Report* at Table 5.3.

[2255] *Id.* The SBA size standard is that of Paging, 13 C.F.R. § 121.201, NAICS code 517211.

[2256] *See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000).

[2257] *See generally 220 MHz Service Auction Closes*, Report No. WT 98-36 (rel Oct. 23, 1998).

[2258] *700 MHz Guard Band Auction Closes*, Report No. AUC-38-F, 16 FCC Rcd 4590 (2001).

[2259] The service is defined in section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

[2260] BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757 and 22.759.

[2261] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in Oct. 2002).

764. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[2262] We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.[2263] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

765. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[2264] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[2265] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

766. *Fixed Microwave Services.* Fixed microwave services include common carrier,[2266] private operational-fixed,[2267] and broadcast auxiliary radio services.[2268] At present, there are

[2262] The service is defined in section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

[2263] 13 C.F.R. § 121.201, NAICS codes 513322 (changed to 517212 in Oct. 2002).

[2264] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in Oct. 2002).

[2265] *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[2266] *See* 47 C.F.R. § 101 *et seq.* (formerly Part 21 of the Commission's Rules) for common carrier fixed microwave services (except MDS).

[2267] Persons eligible under Parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[2269] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

767. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[2270] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services.[2271] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[2272]

768. *Wireless Communications Services (WCS).* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the WCS auction. A "small business" is an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards.[2273] The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business"

(Continued from previous page)

[2268] Auxiliary Microwave Service is governed by Part 74 of the Commission's Rules. *See* 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[2269] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in Oct. 2002).

[2270] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 C.F.R. §§ 22.1001-22.1037.

[2271] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in Oct. 2002).

[2272] *Id.*

[2273] *See* SBA Dec. 2, 1998 *Ex Parte* Letter.

entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

769. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of $40 million or less in the three previous calendar years.[2274] An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[2275] The SBA has approved these small business size standards.[2276] The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices adopted herein.

770. *Multipoint Distribution Service (MDS), Multichannel Multipoint Distribution Service (MMDS), and Instructional Television Fixed Service (ITFS).* MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS.[2277] In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years.[2278] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts.[2279] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[2280] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also

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[2274] *See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, Report and Order and Second Notice of Proposed Rulemaking, 12 FCC Rcd 18600 (1997).

[2275] *Id.*

[2276] SBA Feb. 4, 1998 *Ex Parte* Letter.

[2277] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Docket Nos. MM 94-131, PP 93-253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

[2278] 47 C.F.R. § 21.961(b)(1).

[2279] 13 C.F.R. § 121.201, NAICS code 513220 (changed to 517510 in Oct. 2002).

[2280] 1997 Economic Census, Establishment and Firm Size, Table 4, NAICS code 513220 (issued Oct. 2000).

appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[2281] Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

771. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[2282] The auction of the 1,030 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[2283] An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[2284] The SBA has approved these small business size standards in the context of LMDS auctions.[2285] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

772. *218-219 MHz Service.* The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry-over losses), has no more than $2 million in annual profits each year for the previous two years.[2286] In the 218-219 MHz Report and Order and Memorandum Opinion and Order, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues

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[2281] In addition, the term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

[2282] *See Local Multipoint Distribution Service*, Second Report and Order, CC Docket No. 92-297, 12 FCC Rcd 12545 (1997).

[2283] *Id.*

[2284] *Id.*

[2285] *See* SBA Jan. 6, 1998 *Ex Parte* Letter.

[2286] *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

not to exceed $15 million for the preceding three years.[2287] A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.[2288] We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218-219 MHz spectrum.

773. *24 GHz – Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons.[2289] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[2290] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[2291] Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc.[2292] It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

774. *24 GHz – Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million.[2293] "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for

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[2287] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

[2288] *Id.*

[2289] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in Oct. 2002).

[2290] 1997 Economic Census, Employment Size of Firms, Table 5, NAICS code 513322 (issued Oct. 2000).

[2291] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[2292] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[2293] *Amendments to Parts 1,2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 para. 77 (2000) (*Parts 1, 2; 87 and 101 Amendment Order*); *see also* 47 C.F.R. § 101.538(a)(2).

the preceding three years.[2294] The SBA has approved these small business size standards.[2295] These size standards will apply to the future auction, if held.

775. *Internet Service Providers.* While internet service providers (ISPs) are only indirectly affected by our present actions, and ISPs are therefore not formally included within this present FRFA, we have addressed them informally to create a fuller record and to recognize their participation in this proceeding. The SBA has developed a small business size standard for Online Information Services, which consists of all such companies having $21 million or less in annual receipts.[2296] According to Census Bureau data for 1997, there were 2,751 firms in this category, total, that operated for the entire year.[2297] Of this total, 2,659 firms had annual receipts of $9,999,999 or less, and an additional 67 had receipts of $10 million to $24,999,999.[2298] Thus, under this size standard, the great majority of firms can be considered small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

776. Pursuant to sections 251(c) and (d) of the Act, incumbent LECs, including those that qualify as small entities, are required to provide nondiscriminatory access to UNEs.[2299] The only exception to this rule applies to qualifying rural carriers that have gone through the process of obtaining an exemption, suspension, or modification pursuant to section 251(f) of the Act. This Order represents, in large part, a fresh examination of the issues presented in implementing the unbundling requirements of section 251, based on comments from interested parties responding to the *Triennial Review NPRM.* This Order also interprets the necessary and impair standards of section 251(d)(2) in a manner that satisfies the D.C. Circuit's directives that (1) the Commission eschew broad national standards in favor of more granular analysis,[2300] and that, (2) in determining whether a carrier is "impaired" by diminished access to a given element, the Commission distinguish between "cost disparities that are universal as between new entrants and

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[2294] *Parts 1, 2; 87 and 101 Amendment Order*, 15 FCC Rcd at 16967, para. 77; *see also* 47 C.F.R. § 101.538(a)(1).

[2295] *See* Letter from Gary M. Jackson, Assistant Administrator, SBA, to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed July 28, 2000) (SBA July 28, 2000 *Ex Parte* Letter).

[2296] 13 C.F.R. § 121.201, NAICS code 514191 (changed to 518111 in Oct. 2002).

[2297] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Receipts Size of Firms Subject to Federal Income Tax: 1997" (1997 Economic Census, Receipts Size of Firms), Table 4, NAICS code 514191 (issued Oct. 2000).

[2298] *Id.*

[2299] 47 U.S.C. § 251(c), (d).

[2300] *USTA*, 290 F.3d at 422.

incumbents in *any* industry" and disparities resulting specifically from the conditions of natural monopoly that the Act is designed to redress.[2301]

777. In this Order, we determine that requesting carriers (1) are impaired without access to local circuit switching in providing service to mass market customers using DS0 capacity loops;[2302] (2) are presumed not impaired without access to unbundled local circuit switching for the enterprise market;[2303] (3) are not impaired without access to packet switching, including routers and DSLAMs;[2304] (4) are not impaired without access to incumbent LECs' signaling systems except where they are also impaired without access to the incumbent LEC's unbundled circuit switching;[2305] (5) are impaired without unbundled access to the incumbent LEC's 911 and e911 databases;[2306] (6) are not impaired without access to the incumbent LEC's other call-related databases if they deploy their own switches, but otherwise are impaired;[2307] (7) are impaired without access to incumbent LECs' OSS;[2308] (8) are impaired without access to copper loop or subloop facilities (and must condition copper loops for provision of advanced services), but are not impaired without access to line-sharing (subject to a three-year transition) or hybrid loops;[2309] (9) are not impaired without access to new build/greenfield fiber-to-the-home (FTTH) loops for broadband or narrowband services or overbuild/brownfield FTTH loops for broadband services;[2310] (10) are not impaired without unbundled access to OCn capacity loop facilities, but are impaired, subject to certain triggers, without access to dark fiber loops, DS1 loops, and DS3 loops;[2311] (11) are impaired without access to unbundled subloops associated with accessing customer premises wiring at multiunit premises and are also impaired without unbundled access to the incumbent LEC Inside Wire Subloops and NIDs, regardless of loop type;[2312] (12) are not impaired without unbundled access to OCn transport facilities, but are impaired, subject to certain triggers, without access to dark fiber transport facilities, DS1

[2301] *Id.* at 426.

[2302] *See supra* Part VI.D.6.

[2303] State commissions may rebut this finding as specified above. *See supra* Part VI.D.1.

[2304] *See supra* Part VI.A.2.

[2305] *See supra* Part VI.A.3.

[2306] *See supra* Part VI.A.4.

[2307] *See id.*

[2308] *See supra* Part VI.A.5.

[2309] Incumbent LECs also may not retire copper loops without state approval. *See supra* Part VI.B.1. The Commission reaffirms incumbent LEC line-splitting obligations. *See supra* Part VI.B.1.

[2310] *See supra* Part VI.B.2.

[2311] *See supra* Part VI.B.3.

[2312] *See supra* Parts VI.B.2, VI.B.3.

transport facilities, and DS3 transport facilities;[2313] and (13) are impaired without access to unbundled shared transport only to the extent they are impaired without access to local circuit switching.[2314] The Order also affirms that incumbent LECs are obligated to provide access to UNE combinations.[2315]

778. In this Order, we adopt rules to implement a congressionally-mandated scheme, embodied in Section 251 of the Act, that imposes upon incumbent LECs an obligation to provide unbundled access to certain network elements. This Order articulates a new impairment standard to govern which network elements incumbent LECs must unbundle for competitors in accordance with the Act. While this Order imposes no general obligations on competitive LECs, the Order does require competitive LECs to satisfy certain reporting requirements in order to obtain as UNEs certain high-capacity network elements from incumbent LECs. We have attempted to keep the obligations imposed by this Order to the minimum necessary to implement the requirements of the Act.

779. In addition, this Order outlines procedures whereby states may conduct proceedings to determine whether certain network elements satisfy our impairment standard according to specific guidelines and triggers, as outlined in the Order. While this Order does not specifically impose any obligations on carriers in this regard, records regarding facility use may be necessary for these state proceedings.

780. The various compliance requirements contained in this Order will require the use of engineering, technical, operational, accounting, billing, and legal skills. The carriers that are affected by these requirements already possess these skills. This Order contains new or modified information collections, which are subject to Office of Management and Budget review pursuant to the Paperwork Reduction Act of 1995.[2316]

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

781. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small

[2313] *See supra* Part VI.B.3.

[2314] *See supra* Part VI.B.4.

[2315] *See supra* Part VI.B.6.

[2316] Pub. L. No. 104-13, 109 Stat. 163 (codified at 44 U.S.C. § 3507).

entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[2317]

782. In this Order, we adopt rules regarding the unbundling of network elements. We have modified our impairment analysis to find that a requesting carrier is impaired when lack of access to a facility in the incumbent LEC's network poses barriers that are likely to make entry into the market uneconomic.[2318] These can include both operational and economic barriers, such as scale economies, sunk costs, first mover advantages, absolute cost advantages, and barriers within the control of the incumbent LEC. In adopting this interpretation, we considered a variety of factors relating to the size of regulated entities and the customers they serve.[2319] We considered a number of barriers to competitive entry, including those faced by small competitors, as well as the importance of scale economies as they relate to small entities.[2320] Finally, we considered and rejected a number of suggested approaches to impairment.[2321]

783. In applying our impairment analysis to specific network elements, we adopt a more granular approach, including the considerations of customer class, geography, and service. We found that conducting a more granular analysis permits us to distinguish, with more particularity, those situations for which there is impairment from those for which there is none. We also found that an even more granular analysis – loop by loop, for example – is neither administratively feasible nor required by the courts.[2322] We considered the differing needs of three classes of telecommunications customers: mass market customers (*i.e.*, residential customers and sometimes very small business customers), small and medium enterprise customers, and large enterprise customers.[2323] Mass market customers typically generate lower revenue and tighter profit margins than the other classes and therefore require service providers to minimize costs. Small and medium business customers typically are willing to pay higher prices but are more sensitive to reliability and quality of service. Large enterprise customers tend to demand extensive and sophisticated service packages, and reliability and quality of service are essential to these customers.

784. In addition, because requiring unbundling in the absence of impairment imposes unnecessary costs – including for small or rural incumbent LECs – we considered whether impairment varies geographically throughout the country. We make unbundling decisions on a

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[2317] 5 U.S.C. § 603(c).

[2318] *See supra* Part V.B.

[2319] *See id.*

[2320] *See id.*

[2321] These include, for example, the essential facilities doctrine, an antitrust analysis, a market power analysis, and the approach to impairment the Commission took in the *UNE Remand Order*. *See supra* Part V.B.

[2322] *See supra* Part V.B.

[2323] *Id.*

national scale where the record permits us to, but delegate some determining role to the states where it appears that impairment might exist in some regions of the country but not others.[2324] In this regard, we note that Congress provided a mechanism – in section 251(f) of the Act – to exempt small and rural incumbent LECs from several of the Act's obligations.[2325] For example, unbundling rules shall not apply to a rural telephone company until it receives a bona fide request for interconnection and until the state commission determines that the request is technically feasible, not unduly economically burdensome, and consistent with section 254.[2326] Or, a LEC with fewer than two percent of the nation's subscriber lines may obtain relief from unbundling if the state commission decides, among other things, that relief is necessary to avoid imposing a economically burdensome requirement or other significant adverse economic impact.[2327]

785. Through our granular impairment analysis, we have considered the resources and needs of various carriers, including small businesses, and have examined the state of the marketplace to determine whether it was economically feasible for competitors to self-provision network elements or obtain them from competitive sources other than incumbent LECs.[2328] We believe this approach strikes the appropriate balance between the needs of competitors – including small competitors – to access certain network elements, against the burdens unbundling imposes upon incumbent LECs – including small incumbents – and yields a more accurate picture of the state of competition for each of the varied network elements composing the local telephone network. For those network elements for which carriers may be impaired only in certain geographic markets, such as certain high-capacity loops and transport, we adopt an approach that permits localized determination – with a role for the states – as to where and whether impairment exists.[2329] In this way, we have sought to take a more specific view of the needs of differently situated competitors.

786. We also have established service eligibility requirements for UNEs which are designed to ensure that carriers use UNEs primarily to provide local services in competition with incumbent LECs, "while avoiding burdensome administrative rules that serve as a drag on competitive entry."[2330] While we recognize that regulatory requirements may disproportionately impact smaller entities, we have adopted the least burdensome of several available alternatives in

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[2324] *Id.*

[2325] *See* 47 U.S.C. § 251(f).

[2326] *See id.* § 251(f)(1).

[2327] *See id.* § 251(f)(2).

[2328] *See, e.g., supra* Part VI.B.3. (Dedicated Interoffice Transmission Facilities).

[2329] *See, e.g., supra* Parts V.E. (Role of the States), VI.B.3. (Dedicated Interoffice Transmission Facilities).

[2330] *See, e.g., supra* Parts V.B.2. (Granularity of the Impairment Analysis), VI.B.6 (Service Eligibility to Access UNEs).

requiring competitors to satisfy certain service eligibility criteria.[2331] For example, rather than requiring carriers to certify to be the sole provider of local service in order to access certain elements (*e.g.*, high-capacity loops and transport) – an approach that might require frequent and costly assurance from a carrier's customers – we permit carriers to certify that they are the primary providers of local service.[2332] In this regard, we find that being certified as a competitive LEC is probative of providing qualifying service.[2333] We also adopt collocation and local interconnection requirements as less burdensome ways of assuring service eligibility.[2334] By contrast, we have rejected a number of suggested approaches as unnecessarily burdensome, such as measuring minutes or traffic percentages, separately measuring voice and data use, or permitting UNEs only where a competitive carrier uses certain types of switches.[2335] We find that our adopted indicia of service eligibility serve as adequate and less burdensome assurance that a carrier is using UNEs in a manner consistent with the local competition goals of the Act.[2336]

6. Report to Congress

787. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[2337] In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for SBA Advocacy. The Order and FRFA, or summaries thereof, will also be published in the Federal Register.[2338]

B. Initial Regulatory Flexibility Analysis

788. As required by the RFA,[2339] the Commission has prepared this IRFA of possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this FNPRM. Written public comments are sought on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM, provided below in Part X.C. The Commission will send a copy of the FNPRM,

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[2331] *Id.*

[2332] *See, e.g., supra* Part VI.B.6. (Service Eligibility to Access UNEs).

[2333] *Id.*

[2334] *Id.*

[2335] *Id.*

[2336] *Id.*

[2337] *See* 5 U.S.C. § 801(a)(1).

[2338] *See* 5 U.S.C. § 604(b).

[2339] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the SBREFA, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

including this IRFA, to the Chief Counsel for SBA Advocacy.[2340] In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.[2341]

1. Need for, and Objectives of, the Proposed Rules

789. We initiate the FNPRM portion of this proceeding to ensure that market-based incentives exist for incumbent and competitive LECs to negotiate innovative commercial interconnection arrangements. The current pick-and-choose rules implementing section 252(i) may discourage give-and-take negotiation because incumbent LECs may be reluctant to make significant concessions (in exchange for negotiated benefit) if those concessions become automatically available – without any tradeoff – to every potential market entrant. We therefore seek comment on whether alternate approaches to implementing section 252(i), such as requiring third parties to opt into entire agreements, would promote more innovative and flexible arrangements between parties. Any changes to the current pick-and-choose rule, however, may raise concerns as to whether there is the potential for parties to interconnection agreements to include "poison pill" language that would deter third parties from opting into those agreements under section 252(i). This FNPRM proposes an approach that would eliminate the current pick-and-choose regime for incumbent LECs wherever the incumbent LEC has filed and received state approval of a statement of generally available terms and conditions (SGAT), and this FNPRM seeks to build a record from which to judge the wisdom of this approach.

2. Legal Basis

790. The legal basis for any action that may be taken pursuant to the FNPRM is contained in Sections 1, 3, 4, 201-205, 251, 256, 271, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, 251, 252, 256, 271, 303(r).

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Would Apply

791. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules.[2342] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[2343] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[2344] A

[2340] *See* 5 U.S.C. § 603(a).

[2341] *Id.*

[2342] 5 U.S.C. §§ 603(b)(3), 604(a)(3).

[2343] *Id.* § 601(6).

[2344] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an (continued....)

small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[2345]

792. In this section, we further describe and estimate the number of small entity licensees and regulatees that may be affected by rules proposed in this FNPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report.[2346] The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,[2347] Paging,[2348] and Cellular and Other Wireless Telecommunications.[2349] Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

793. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a wired telecommunications carrier having 1,500 or fewer employees), and "is not dominant in its field of operation."[2350] SBA Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[2351] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

(Continued from previous page)

agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

[2345] 15 U.S.C. § 632.

[2346] *Trends in Telephone Service May 2002 Report* at Table 5.3.

[2347] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 513310 (changed to 517110 in Oct. 2002).

[2348] 13 C.F.R. § 121.201, NAICS code 513321 (changed to 517211 in Oct. 2002).

[2349] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in Oct. 2002).

[2350] 5 U.S.C. § 601(3).

[2351] Letter from Jere W. Glover, Chief Counsel for SBA Advocacy, and Eric E. Menge, Assistant Chief Counsel for Telecommunications, SBA Advocacy, to William E. Kennard, Chairman, FCC, CC Docket Nos. 98-147, 99-68, 97-181 (filed May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

794. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[2352] According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.[2353] Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.[2354] Thus, under this size standard, the great majority of firms can be considered small.

795. *Incumbent LECs.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[2355] According to Commission data, 1,329 carriers reported that they were engaged in the provision of local exchange services.[2356] Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

796. *Competitive LECs.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[2357] According to Commission data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive LEC services.[2358] Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees.[2359] In addition, 55 carriers reported that they were "Other Local Exchange Carriers." Of the 55 "Other Local Exchange Carriers," an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees.[2360] Consequently, the Commission estimates that most providers of competitive local

[2352] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

[2353] 1997 Economic Census, Establishment and Firm Size, Table 5, NAICS code 513310 (issued Oct. 2000).

[2354] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[2355] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

[2356] *Trends in Telephone Service May 2002 Report* at Table 5.3.

[2357] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

[2358] *Trends in Telephone Service May 2002 Report* at Table 5.3.

[2359] *Id.*

exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

797. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[2361] According to Commission data, 229 companies reported that their primary telecommunications service activity was the provision of interexchange services.[2362] Of these 229 companies, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees.[2363] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and policies adopted herein.

798. *OSPs.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to OSPs. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[2364] According to Commission data, 22 companies reported that they were engaged in the provision of operator services.[2365] Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees.[2366] Consequently, the Commission estimates that the great majority of OSPs are small entities that may be affected by the rules and policies adopted herein.

799. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[2367] According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards.[2368] Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees.[2369] Consequently, the Commission estimates that the great

(Continued from previous page)

[2360] *Id.*

[2361] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

[2362] *Trends in Telephone Service May 2002 Report* at Table 5.3.

[2363] *Id.*

[2364] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

[2365] *Trends in Telephone Service May 2002 Report* at Table 5.3.

[2366] *Id.*

[2367] 13 C.F.R. § 121.201, NAICS code 513330 (changed to 517310 in Oct. 2002).

[2368] *Trends in Telephone Service May 2002 Report* at Table 5.3.

[2369] *Id.*

majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

800. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, OSPs, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[2370] According to Commission's data, 42 companies reported that their primary telecommunications service activity was the provision of payphone services.[2371] Of these 42 companies, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees.[2372] Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the rules and policies adopted herein.

801. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of Paging[2373] and Cellular and Other Wireless Telecommunications.[2374] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1320 firms in this category, total, that operated for the entire year.[2375] Of this total, 1303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[2376] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[2377] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[2378] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

[2370] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

[2371] *Trends in Telephone Service May 2002 Report* at Table 5.3.

[2372] *Id.*

[2373] 13 C.F.R. § 121.201, NAICS code 513321 (changed to 517211 in Oct. 2002).

[2374] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in Oct. 2002).

[2375] 1997 Economic Census, Employment Size of Firms, Table 5, NAICS code 513321 (issued Oct. 2000).

[2376] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[2377] 1997 Economic Census, Employment Size of Firms, Table 5, NAICS code 513322 (issued Oct. 2000).

[2378] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

802. *Broadband PCS.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years.[2379] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years."[2380] These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[2381] No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[2382] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 305, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

803. *Narrowband PCS.* To date, two auctions of narrowband PCS licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.*[2383] A "small business" is an entity that,

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[2379] *See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, Report and Order, 11 FCC Rcd 7824 (1996); *see also* 47 C.F.R. § 24.720(b).

[2380] *See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, Report and Order, 11 FCC Rcd 7824 (1996).

[2381] *See, e.g., Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5332 (1994).

[2382] *Broadband PCS, D, E and F Block Auction Closes*, (rel. Jan. 14, 1997); *see also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, WT Docket No. 97-82, Second Report and Order, 12 FCC Rcd 16436 (1997).

[2383] *In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, Docket Nos. ET 92-100, PP 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 10456 (2000).

together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.[2384] In the future, the Commission will auction 459 licenses to serve MTAs and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

804. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This standard provides that such a company is small if it employs no more than 1,500 persons.[2385] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[2386] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[2387] If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

805. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[2388] This small business size

[2384] *See* SBA Dec. 2, 1998 *Ex Parte* Letter.

[2385] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in Oct. 2002).

[2386] 1997 Economic Census, Employment Size of Firms, Table 5, NAICS code 513322 (issued Oct. 2000).

[2387] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[2388] *220 MHz Third Report and Order*, 12 FCC Rcd at 11068-70, paras. 291-295.

standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[2389] A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards.[2390] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[2391] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional EAG Licenses, and 875 EA Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[2392]

806. *800 MHz and 900 MHz SMR Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for SMR geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively.[2393] These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the Small Business Act. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

[2389] *Id.* at para. 291.

[2390] *See* SBA Jan. 6, 1998 *Ex Parte* Letter.

[2391] *See generally, Phase II 220 MHz Service Auction Closes, Winning Bidders in the Auction of 908 Phase II 220 MHz Service Licenses, Down Payments Due November 6, 1998, FCC Form 601s Due November 6, 1998, Ten-Day Petition to Deny Period*, Report No. AUC-18-F, DA No. 98-2143, 14 FCC Rcd 605 (rel. Oct. 23, 1998).

[2392] *Phase II 220 MHz Service Spectrum Auction Closes*, Report No. AUC-24-E, DA 99-1287, 14 FCC Rcd 11218 (rel. July 1, 1999).

[2393] 47 C.F.R. § 90.814(b)(1).

807. *Common Carrier Paging.* In the Paging Third Report and Order, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[2394] A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of MEA licenses commenced on February 24, 2000, and closed on March 2, 2000.[2395] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the *Trends in Telephone Service May 2002 Report*, 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services.[2396] Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.[2397]

808. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[2398] A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 MEA licenses commenced on September 6, 2000, and closed on September 21, 2000.[2399] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[2400]

[2394] *220 MHz Third Report and Order*, 12 FCC Rcd at 11068-70, paras. 291-95.

[2395] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, para. 98 (1999).

[2396] *Trends in Telephone Service May 2002 Report* at Table 5.3.

[2397] *Id.* The SBA size standard is that of Paging, 13 C.F.R. § 121.201, NAICS code 517211.

[2398] *See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000).

[2399] *See generally, 220 MHz Service Auction Closes*, Report No. WT 98-36 (rel Oct. 23, 1998).

[2400] *700 MHz Guard Band Auction Closes*, Report No. AUC-38-F, DA 01-478, 16 FCC Rcd 4590 (rel. Feb. 22, 2001).

809. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[2401] A significant subset of the Rural Radiotelephone Service is the BETRS.[2402] The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.[2403] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

810. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[2404] We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.[2405] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

811. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a VHF marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[2406] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding

[2401] The service is defined in section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

[2402] BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757 and 22.759.

[2403] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in Oct. 2002).

[2404] The service is defined in section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

[2405] 13 C.F.R. § 121.201, NAICS codes 513322 (changed to 517212 in Oct. 2002).

[2406] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in Oct. 2002).

three years not to exceed $3 million dollars.[2407] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

812. *Fixed Microwave Services.* Fixed microwave services include common carrier,[2408] private operational-fixed,[2409] and broadcast auxiliary radio services.[2410] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[2411] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

813. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[2412] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless

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[2407] *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[2408] *See* 47 C.F.R. §§ 101 *et seq.* (formerly, Part 21 of the Commission's Rules) for common carrier fixed microwave services (except MDS).

[2409] Persons eligible under Parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[2410] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[2411] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in Oct. 2002).

[2412] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 C.F.R. §§ 22.1001-22.1037.

Telecommunications" services.[2413] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[2414]

814. *WCS.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the WCS auction. A "small business" is an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards.[2415] The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

815. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of $40 million or less in the three previous calendar years.[2416] An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[2417] The SBA has approved these small business size standards.[2418] The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices adopted herein.

816. *MDS, MMDS, and ITFS.* MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS.[2419] In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years.[2420] The MDS auctions resulted in 67 successful

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[2413] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in Oct. 2002).

[2414] *Id.*

[2415] *See* SBA Dec. 2, 1998 *Ex Parte* Letter.

[2416] *See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, Report and Order and Second Notice of Proposed Rulemaking, 12 FCC Rcd 18600 (1997).

[2417] *Id.*

[2418] *See* SBA Feb. 4, 1998 *Ex Parte* Letter.

[2419] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Docket Nos. MM 94-131, PP 93-253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

[2420] 47 C.F.R. § 21.961(b)(1).

bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts.[2421] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[2422] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[2423] Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

817. *LMDS.* LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[2424] The auction of the 1,030 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[2425] An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[2426] The SBA has approved these small business size standards in the context of LMDS auctions.[2427] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

[2421] 13 C.F.R. § 121.201, NAICS code 513220 (changed to 517510 in Oct. 2002).

[2422] 1997 Economic Census, Establishment and Firm Size, Table 4, NAICS code 513220 (issued Oct. 2000).

[2423] In addition, the term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

[2424] *See Local Multipoint Distribution Service*, CC Docket No. 92-297, Second Report and Order, 12 FCC Rcd 12545 (1997).

[2425] *Id.*

[2426] *Id.*

[2427] *See* SBA Jan. 6, 1998 *Ex Parte* Letter.

818. *218-219 MHz Service.* The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 MSA licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry-over losses), has no more than $2 million in annual profits each year for the previous two years.[2428] In the 218-219 MHz Report and Order and Memorandum Opinion and Order, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years.[2429] A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.[2430] We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218-219 MHz spectrum.

819. *24 GHz – Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons.[2431] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[2432] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[2433] Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc.[2434] It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

[2428] *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

[2429] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

[2430] *Id.*

[2431] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in Oct. 2002).

[2432] 1997 Economic Census, Employment Size of Firms, Table 5, NAICS code 513322 (issued Oct. 2000).

[2433] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[2434] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

820. *24 GHz – Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million.[2435] "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[2436] The SBA has approved these small business size standards.[2437] These size standards will apply to the future auction, if held.

821. *ISPs.* While ISPs are only indirectly affected by our present actions, and ISPs are therefore not formally included within this present IRFA, we address them informally to create a fuller record. The SBA has developed a small business size standard for Online Information Services, which consists of all such companies having $21 million or less in annual receipts.[2438] According to Census Bureau data for 1997, there were 2,751 firms in this category, total, that operated for the entire year.[2439] Of this total, 2,659 firms had annual receipts of $9,999,999 or less, and an additional 67 had receipts of $10 million to $24,999,999.[2440] Thus, under this size standard, the great majority of firms can be considered small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

822. In this FNPRM, we seek comment on proposed rules that would eliminate the current pick-and-choose rules under some circumstances.[2441] The proposed changes may restrict competitive LECs' choices to opt into specific terms and conditions of existing interconnection agreements, perhaps requiring competitors to opt into entire agreements or negotiate their own agreements with incumbents. The proposed rules may encourage incumbent LECs to seek approval from state public utility commissions for statements of generally available terms and conditions.

[2435] *Amendments to Parts 1,2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 (2000); *see also* 47 C.F.R. § 101.538(a)(2).

[2436] *Amendments to Parts 1,2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 (2000); *see also* 47 C.F.R. § 101.538(a)(1).

[2437] *See* SBA July 28, 2000 *Ex Parte* Letter.

[2438] 13 C.F.R. § 121.201, NAICS code 514191 (changed to 518111 in Oct. 2002).

[2439] 1997 Economic Census, Receipts Size of Firms, Table 4, NAICS code 514191 (issued Oct. 2000).

[2440] *Id.*

[2441] *See supra* Part IX.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

823. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[2442]

824. In this FNPRM, we seek comment on amending the pick-and-choose rules in a manner that encourages more customized contracts between competitive and incumbent LECs, as envisioned by the Act. The FNPRM proposes to remove disincentives to the ability of incumbent LECs and competitive LECs to negotiate more customized agreements, including agreements that may include significant concessions in exchange for negotiated benefits. In doing so, the FNPRM also seeks to minimize the potential for discrimination against third parties that may seek to opt into the entire agreement by proposing that incumbent LECs first file and receive state approval for a statement of generally available terms and conditions (SGAT) before the incumbent LEC may file other interconnection agreements not subject to the pick-and-choose rules.

825. Changing the current rules, in favor of an approach where competitive LECs – including small entities – must opt into entire agreements, rather than individual terms and conditions, may impose additional burdens on these parties than they currently bear. We will consider, therefore, maintaining the current pick-and-choose rules. The current rules, however, may expose incumbent LECs to the risk that subsequent entrants may reap a one-sided benefit from negotiated concessions made between the incumbent LEC and the actual contracting competitive LEC, and this may form a disincentive to negotiation to both negotiating parties. This may, in turn, impose additional burdens on competitors and incumbents as the parties attempt to reach agreements and resolve disputes, often through arbitration and litigation, in a regulatory environment that creates disincentives for either party to compromise. For this reason, we do not propose to establish a separate pick-and-choose regime to govern small business incumbents or competitors. We believe the alternative advanced in the FNPRM – by proposing to modify the application of the pick-and-choose rule for any incumbent LEC that files and receives state approval of a statement of generally available terms and conditions (SGAT) – would serve the Commission's goal of encouraging negotiation while protecting the rights and interests of competitors, including small businesses. We invite comment on this approach, and we plan to review the record assembled in response to the FNPRM with a view to considering the least burdensome way to achieve market-driven contract negotiations.

[2442] 5 U.S.C. § 603(c).

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

826. None.

C. Other Procedural Matters

1. Ex Parte Presentations

827. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[2443] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented in generally required.[2444] Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

2. Comment Filing Procedures

828. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[2445] interested parties may file comments not later than 30 days after publication of this Notice in the Federal Register and may file reply comments not later than 30 days after the date for filing comments. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[2446] Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and five copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service

[2443] 47 C.F.R. § 1.1200 *et seq.*

[2444] *See* 47 C.F.R. § 1.1206(b)(2).

[2445] 47 C.F.R. §§ 1.415, 1.419,

[2446] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

3. Scope of Written *Ex Parte* Presentations Included in This Proceeding

829. The Commission adopted the substance of this Order at an open meeting on February 20, 2003. Originally, this meeting was scheduled for February 13, 2003 by a notice issued February 6, 2003, which initiated the Sunshine period prohibition on *ex parte* presentations to the Commission and staff. The Commission lifted this Sunshine restriction late on February 10, 2003, but reimposed it on February 13, 2003 by releasing a public notice announcing inclusion of this proceeding on the Sunshine agenda for a Commission meeting on February 20, 2003. In light of these facts and the widespread interest in this proceeding, we find it in the public interest to include in the record *ex parte* presentations that were made on February 10, but prior to the lifting of the Sunshine restriction. We also include in the record *ex parte* presentations made during the imposition of the Sunshine restriction in direct response to an express request by a Commissioner or Commission staff.

XI. ORDERING CLAUSES

830. Accordingly, IT IS ORDERED that pursuant to Sections 1, 3, 4, 201-205, 251, 256, 271, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, 251, 252, 256, 271, 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt, the *Report and Order on Remand and Further Notice of Proposed Rulemaking* in CC Docket No. 01-338 IS ADOPTED, and that Part 51 of the Commission's Rules, 47 C.F.R. Part 51, is amended as set forth in Appendix B. The requirements of this Order shall become effective 30 days after publication in the Federal Register, pending Office of Management and Budget (OMB) approval.[2447] The Commission will publish a document in the Federal Register announcing the effective date of these rules.

831. IT IS FURTHER ORDERED that the collection of information contained herein is contingent upon approval by the OMB.

832. IT IS FURTHER ORDERED, pursuant to sections 1, 3, 4, 201-205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt. that the petitions for reconsideration of the *UNE Remand Order* filed in CC

[2447] In light of the importance of these rules, the Commission is seeking emergency approval from OMB.

Docket No. 96-98 by Low Tech Designs, Inc. on February 15, 2000 and by the Telecommunications Resellers Association on February 18, 2000; the petition for partial reconsideration of the *UNE Remand Order* filed in CC Docket No. 96-98 by Birch Telecom, Inc. on February 17, 2000; the petition for reconsideration and clarification of the *UNE Remand Order* filed in CC Docket No. 96-98 by Sprint Corporation on February 17, 2000; the petition for clarification on reconsideration of the *UNE Remand Order* filed in CC Docket No. 96-98, 95-185 by MGC Communications, Inc., d/b/a Mpower Communications, Corp. on February 17, 2000; the joint petition filed in CC Docket No. 96-98 by BellSouth Corporation and BellSouth Telecommunications, Inc., SBC Communications, Inc., and Verizon Telephone Companies on April 5, 2001; the petitions for waiver of the supplemental order clarification filed in CC Docket No. 96-98 by WorldCom, Inc. on September 12, 2000 and ITC^DeltaCom Communications, Inc. on August 16, 2001; the petition filed in CC Docket Nos. 01-338, 96-98, 98-147 by Promoting Active Competition Everywhere (PACE) Coalition on February 6, 2002; and the petition for declaratory ruling filed in CC Docket No. 01-338 by WorldCom, Inc. on August 8, 2002 ARE DISMISSED AS MOOT.

833. IT IS FURTHER ORDERED, pursuant to sections 1, 3, 4, 201-205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt. that the joint petition for declaratory ruling filed in CC Docket No. 96-98 by AT&T Wireless Services, Inc. and VoiceStream Wireless, Corp. on November 19, 2001 IS GRANTED to the extent indicated herein and otherwise IS MOOT.

834. IT IS FURTHER ORDERED, pursuant to sections 1, 3, 4, 201-205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt. that the petition for reconsideration/clarification of the *UNE Remand Order* filed in CC Docket No. 96-98 by BellSouth Corporation and BellSouth Telecommunications, Inc. on February 17, 2000 IS GRANTED to the extent indicated herein and otherwise ARE DENIED.

835. IT IS FURTHER ORDERED, pursuant to sections 1, 3, 4, 201-205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt. that the petitions for reconsideration of the *UNE Remand Order* filed in CC Docket Nos. 96-98, 95-185 by Rhythms Netconnections Inc. and Covad Communications Co. on January 21, 2000, @Link Networks, Inc., DSL.net, Inc. and MGC Communications, Inc., d/b/a Mpower Communications Corp. on February 17, 2000, McLeodUSA Telecommunications Services, Inc. and the petition for reconsideration of the *UNE Remand Order* filed in CC Docket No. 96-98 by RCN Telecom Services, Inc. on February 17, 2000 ARE DENIED.

836. IT IS FURTHER ORDERED, pursuant to sections 1, 3, 4, 201-205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt. that the petition of the *UNE Remand Order* filed in CC Docket No. 96-98 by Competitive Telecommunications Association on November 26, 2001; and the petitions for

reconsideration of the *UNE Remand Order* filed in CC Docket No. 96-98 by Intermedia Communications, Inc. and by MCI WorldCom, Inc. on February 17, 2000 ARE DENIED to the extent indicated herein and otherwise ARE DISMISSED AS MOOT.

837. IT IS FURTHER ORDERED, pursuant to sections 1, 3, 4, 201-205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt. that the petition for clarification of the *UNE Remand Order* filed in CC Docket No. 96-98 by MCI WorldCom, Inc. on February 17, 2000; the petition for reconsideration of the *UNE Remand Order* filed in CC Docket No. 96-98 by the Competitive Telecommunications Association on February 17, 2000; the petition for reconsideration and clarification of the *UNE Remand Order* filed in CC Docket No. 96-98 by Bell Atlantic on February 17, 2000; and the petition for reconsideration and clarification of the *UNE Remand Order* filed in CC Docket No. 96-98 by AT&T Corp. on February 17, 2000 ARE GRANTED to the extent indicated herein and otherwise ARE DENIED or DISMISSED AS MOOT.

838. IT IS FURTHER ORDERED that the Public Notice, *Comments Sought on the Use of Unbundled Network Elements to Provide Exchange Access Service*, CC Docket No. 96-98, DA 01-169 (rel. Jan. 24, 2001); *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 16 FCC Rcd 2101 (2001); *Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, Third Order on Reconsideration and Further Notice of Proposed Rulemaking, CC Docket Nos. 96-98 and 95-185, 12 FCC Rcd 12460 (1997); and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, 15 FCC Rcd 3696 (1999) ARE TERMINATED.

839. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order and Order on Remand*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

840. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A – LIST OF COMMENTERS

Comments	Abbreviation
Aaron Wilson, Jr., Pennsylvania Public Utilities Commission	Pennsylvania Commissioner Wilson
Advanced Tel, Inc.	Advanced Tel
Alaska Communications Systems	ACS
Alcatel USA, Inc.	Alcatel
Allegiance Telecom, Inc.	Allegiance
Association for Local Telecommunications Services Cbeyond Communications, LLC DSLNET Communications, LLC El Paso Networks, LLC Focal Communications Corporation New Edge Network, Inc. Pac-West Telecomm, Inc. Paetec Communications, Inc. RCN Telecom Services, Inc. US LEC Corp.	ALTS *et al.*
Association of Communications Enterprises	ASCENT
AT&T Corp.	AT&T
AT&T Wireless Services, Inc.	ATTWS
BellSouth Corporation	BellSouth
Business Telecom, Inc.	BTI
California Public Utilities Commission	California Commission
Catena Networks	Catena
Cellular Telecommunications & Internet Association	CTIA
Competitive Enterprise Institute	Competitive Enterprise Institute
Competitive Telecommunications Association	CompTel
Consumer Federation of America Texas Office of Public Utility Counsel Consumers Union Center for Digital Democracy	Consumer Federation *et al.*
Conversent Communications	Conversent
Corning, Inc.	Corning
Covad Communications Company	Covad
Dynegy Global Communications, Inc.	Dynegy
El Paso Networks, LLC CTC Communications Corp. ConEdison Communications, LLC	El Paso *et al.*
Eschelon Telecom, Inc.	Eschelon
Fiber-to-the-Home Council	FTTH Council
Florida Public Service Commission	Florida Commission
General Communication Inc.	GCI

Comments	Abbreviation
General Services Administration	GSA
Georgia Public Service Commission	Georgia Commission
High Tech Broadband Coalition	HTBC
Illinois Commerce Commission	Illinois Commission
Illuminet	Illuminet
Indiana Utility Regulatory Commission	Indiana Commission
Kansas Corporation Commission	Kansas Commission
Long Distance of Michigan, Inc.	LDMI
Louisiana Public Service Commission	Louisiana Commission
Maine CLEC Coalition	Maine CLEC Coalition
Massachusetts Department of Telecommunications and Energy	Massachusetts Department
McLeodUSA Telecommunications Services	McLeodUSA
Michigan Public Service Commission	Michigan Commission
Missouri Public Service Commission	Missouri Commission
Moline Dispatch Publishing Company Competitive Communications Group	Moline and CCG
Mpower Communications Corp.	Mpower
National Association of Regulatory Utilities	NARUC
National Telecommunications Cooperative Association	NTCA
Navigator Telecommunications, LLC	Navigator
NewSouth Communications	NewSouth
New York State Department of Public Service	New York Department
Next Level Communications	Next Level
Nextel Communications, Inc.	Nextel
Norlight Telecommunications, Inc.	Norlight
NuVox Inc. KMC Telecom, Inc. e.spire Communications, Inc. TDS Metrocom, Inc. Metromedia Fiber Network Services, Inc. SNiP LiNK, LLC	NuVox *et al.*
Oklahoma Corporation Commission	Oklahoma Commission
Openband of Virginia, LLC	Openband
Pennsylvania Office of the Consumer Advocate, Ohio Consumers Counsel New Hampshire Office of Consumer Advocate West Virginia Consumer Advocate Division Maryland Office of Peoples Counsel	Pennsylvania Office of the Consumer Advocate *et al.*
Pennsylvania Public Utilities Commission	Pennsylvania Commission
Progress & Freedom Foundation	Progress & Freedom Foundation

Comments	Abbreviation
Progress Telecom Corporation	Progress Telecom
Public Utilities Commission of Ohio	Ohio Commission
Public Utilities Commission of Texas	Texas Commission
Qwest Communications International Inc.	Qwest
Rural Independent Competitive Alliance	Rural Independent Competitive Alliance
SBC Telecommunications	SBC
Southwest Competitive Telecommunications Association	SWCTA
Sprint Corporation	Sprint
Supra Telecom	Supra
Talk America, Inc.	Talk America
Taqua, Inc.	Taqua
Telecommunications Industry Association	TIA
UNE Platform Coalition	UNE-P Coalition
United States Telecom Association	USTA
Verizon Telephone Companies	Verizon
VoiceStream Wireless Corporation	VoiceStream
WorldCom, Inc.	WorldCom
Z-Tel Communications	Z-Tel

Replies	Abbreviation
Access Integrated Networks, Inc.	Access Integrated Networks
Advanced Tel, Inc.	Advanced Tel
Alabama Public Service Commission	Alabama Commission
Alaska Communications Systems	ACS
Alcatel USA, Inc.	Alcatel
Allegiance Telecom, Inc.	Allegiance
Arch Wireless, Inc.	Arch Wireless
Association for Local Telecommunications Services Cbeyond Communications, LLC DSLNET Communications, LLC El Paso Networks, LLC Focal Communications Corporation New Edge Network, Inc. Pac-West Telecomm, Inc. Paetec Communications, Inc. RCN Telecom Services, Inc. US LEC Corp.	ALTS *et al.*
Association of Communications Enterprises	ASCENT
AT&T Corp.	AT&T
BellSouth Corporation	BellSouth
BrahmaCom	BrahmaCom
Catena Networks, Inc.	Catena
CCG Consulting, Inc.	CCG
Choice One Communications Inc.	Choice One
Coalition of Competitive Fiber Providers	Coalition of Competitive Fiber Providers
Colorado Public Utilities Commission	Colorado Commission
Communications Workers of America	CWA
Competitive Telecommunications Association	CompTel
Consumer Federation of America, Texas Office of Public Utility Counsel Consumers Union Center for Digital Democracy Media Access Project	Consumer Federation *et al.*
Conversent Communications LLC	Conversent
Corning, Inc.	Corning
Covad Communications Company	Covad
CTC Communications Corp.	CTC
Dobson Communications Corp.	Dobson
Earthlink, Inc.	Earthlink

Replies	Abbreviation
El Paso Networks, LLC CTC Communications Corp.	El Paso and CTC
Fiber-to-the-Home Council	FTTH Council
Florida Public Service Commission	Florida Commission
General Communication Inc.	GCI
High Tech Broadband Coalition	HTBC
Hugh Carter Donahue, Ph.D.	Donahue
Illinois Commerce Commission	Illinois Commission
Information Technology Industry Council	ITIC
ITC^DeltaCom Communications, Inc.	ITC^DeltaCom
Kansas Corporation Commission	Kansas Commission
LSSi Corp.	LSSi
Michigan Public Service Commission	Michigan Commission
Minnesota Department of Commerce	Minnesota Department
Missouri Public Service Commission	Missouri Commission
Mpower Communications Corp.	Mpower
National ALEC Association, Prepaid Communications Association	Nat'l ALEC and Prepaid Communications Ass'ns
National Association of Regulatory Utilities	NARUC
National Exchange Carrier Association	NECA
National Telecommunications Cooperative Association	NTCA
Nebraska Public Service Commission	Nebraska Commission
NewSouth Communications	NewSouth
New York State Office of the Attorney General	New York State Attorney General
Next Level Communications	Next Level
Nextel Communications	Nextel
NuVox Inc. KMC Telecom, Inc. TDS Metrocom, Inc. Core Communications, Inc. SNiP LiNK, LLC	NuVox *et al.*
Oregon Public Utilities Commission	Oregon Commission
Pennsylvania Public Utilities Commission	Pennsylvania Commission
Pilgrim Telephone, Inc.	Pilgrim
Progress & Freedom Foundation	Progress & Freedom Foundation
Public Utilities Commission of Ohio	Ohio Commission
Qwest Communications International	Qwest
Regulatory Commission of Alaska	Alaska Commission
SBC Telecommunications	SBC
Southwest Competitive Telecommunications Association	SWCTA

Replies	Abbreviation
Sprint Corporation	Sprint
Talk America, Inc.	Talk America
Telecommunications Industry Association	TIA
TeleTruth	TeleTruth
Texas Office of the Attorney General	Texas Attorney General
Texas Public Utilities Commission	Texas Commission
UNE Platform Coalition	UNE-P Coalition
United States Telecom Association	USTA
Verizon Telephone Companies	Verizon
Virginia State Corporation Commission	Virginia Commission
Washington Utilities and Transportation Commission	Washington Commission
WorldCom, Inc.	WorldCom
XO Communications, Inc.	XO
Z-Tel Communications, Inc.	Z-Tel

APPENDIX B – FINAL RULES

Part 51 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 51 – INTERCONNECTION

1. The authority citation for part 51 is revised to read as follows:

Authority: Sections 1-5, 7, 201-05, 207-09, 218, 225-27, 251-54, 256, 271, 303(r), 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. §§ 151-55, 157, 201-05, 207-09, 218, 225-27, 251-54, 256, 271, 303(r), 332, and section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, February 8, 1996, 110 Stat. 153, as amended, Pub. L. No. 107-110, January 8, 2002, 115 Stat. 2093, 47 U.S.C. § 157 note, unless otherwise noted.

2. Section 51.5 is amended by adding six new definitions in alphabetical order and by revising the definition of "state commission" to read as follows:

§ 51.5 Terms and Definitions.

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Commingling. Commingling means the connecting, attaching, or otherwise linking of an unbundled network element, or a combination of unbundled network elements, to one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC, or the combining of an unbundled network element, or a combination of unbundled network elements, with one or more such facilities or services. Commingle means the act of commingling.

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Enhanced extended link. An enhanced extended link or EEL consists of a combination of an unbundled loop and unbundled dedicated transport, together with any facilities, equipment, or functions necessary to combine those network elements.

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Intermodal. The term intermodal refers to facilities or technologies other than those found in traditional telephone networks, but that are utilized to provide competing services. Intermodal facilities or technologies include, but are not limited to, traditional or new cable plant, wireless technologies, and power line technologies.

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Non-qualifying service. A non-qualifying service is a service that is not a qualifying service.

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Qualifying service. A qualifying service is a telecommunications service that competes with a telecommunications service that has been traditionally the exclusive or primary domain of incumbent LECs, including, but not limited to, local exchange service, such as plain old telephone service, and access services, such as digital subscriber line services and high-capacity circuits.

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State commission. A state commission means the commission, board, or official (by whatever name designated) which under the laws of any state has regulatory jurisdiction with respect to intrastate operations of carriers. As referenced in this part, this term may include the Commission if it assumes responsibility for a proceeding or matter, pursuant to section 252(e)(5) of the Act or § 51.320. This term shall also include any person or persons to whom the state commission has delegated its authority under sections 251 and 252 of the Act and this part.

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Triennial Review Order. The Triennial Review Order means the Commission's Report and Order and Order on Remand and Further Notice of Proposed Rulemaking in CC Docket Nos. 01-338, 96-98, and 98-147.

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3. Section 51.301 is amended by revising paragraph (c)(8)(ii) to read as follows:

§ 51.301 Duty to negotiate.

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(c) ***

(8) ***

(ii) Refusal by an incumbent LEC to furnish cost data that would be relevant to setting rates if the parties were in arbitration.

4. Section 51.305 is amended by removing paragraph (a)(4), redesignating paragraph (a)(5) as paragraph (a)(4), and revising paragraph (a)(3) to read as follows:

§ 51.305 Interconnection.

(a) ***

(3) That is at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party. At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC's network. This obligation is not limited to a consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier; and

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5. Section 51.309 is amended by revising paragraphs (a) and (b), and by adding paragraphs (d) through (g) to read as follows:

§ 51.309 Use of unbundled network elements.

(a) Except as provided in § 51.318, an incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements for the service a requesting telecommunications carrier seeks to offer.

(b) A requesting telecommunications carrier may not access an unbundled network element for the sole purpose of providing non-qualifying services.

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(d) A requesting telecommunications carrier that accesses and uses an unbundled network element pursuant to section 251(c)(3) of the Act and this part to provide a qualifying service may use the same unbundled network element to provide non-qualifying services.

(e) Except as provided in § 51.318, an incumbent LEC shall permit a requesting telecommunications carrier to commingle an unbundled network element or a combination of unbundled network elements with wholesale services obtained from an incumbent LEC.

(f) Upon request, an incumbent LEC shall perform the functions necessary to commingle an unbundled network element or a combination of unbundled network elements with one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC.

(g) An incumbent LEC shall not deny access to an unbundled network element or a combination of unbundled network elements on the grounds that one or more of the elements:

(1) Is connected to, attached to, linked to, or combined with, a facility or service obtained from an incumbent LEC; or

(2) Shares part of the incumbent LEC's network with access services or inputs for non-qualifying services.

6. Section 51.311 is amended by revising paragraphs (a) and (b), removing paragraph (c), redesignating paragraphs (d) and (e) as paragraphs (c) and (d) to read as follows:

§ 51.311 Nondiscriminatory access to unbundled network elements.

(a) The quality of an unbundled network element, as well as the quality of the access to the unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be the same for all telecommunications carriers requesting access to that network element.

(b) To the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides to itself. If an incumbent LEC fails to meet this requirement, the incumbent LEC must prove to the state commission that it is not technically feasible to provide the requested unbundled network element, or to provide access to the requested unbundled network element, at a level of quality that is equal to that which the incumbent LEC provides to itself.

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7. Section 51.315 is amended by revising paragraphs (c) and (f) to read as follows:

§ 51.315 Combination of unbundled network elements.

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(c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination:

(1) Is technically feasible; and

(2) Would not undermine the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

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(f) An incumbent LEC that denies a request to combine unbundled network elements pursuant to paragraph (c)(2) of this section must demonstrate to the state commission that the requested combination would undermine the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

8. Section 51.316 is added to read as follows:

§ 51.316 Conversion of unbundled network elements and services.

(a) Upon request, an incumbent LEC shall convert a wholesale service, or group of wholesale services, to the equivalent unbundled network element, or combination of unbundled network elements, that is available to the requesting telecommunications carrier under section 251(c)(3) of the Act and this part.

(b) An incumbent LEC shall perform any conversion from a wholesale service or group of wholesale services to an unbundled network element or combination of unbundled network elements without adversely affecting the service quality perceived by the requesting telecommunications carrier's end-user customer.

(c) Except as agreed to by the parties, an incumbent LEC shall not impose any untariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and an unbundled network element or combination of unbundled network elements.

9. Section 51.317 is revised to read as follows:

§ 51.317 Standards for requiring the unbundling of network elements.

Proprietary network elements. A network element shall be considered to be proprietary if an incumbent LEC can demonstrate that it has invested resources to develop proprietary information or functionalities that are protected by patent, copyright or trade secret law. The Commission shall undertake the following analysis to determine whether a proprietary network element should be made available for purposes of section 251(c)(3) of the Act:

(a) Determine whether access to the proprietary network element is "necessary." A network element is "necessary" if, taking into consideration the availability of alternative elements outside the incumbent LEC's network, including self-provisioning by a requesting telecommunications carrier or acquiring an alternative from a third-party supplier, lack of access to the network element precludes a requesting

telecommunications carrier from providing the services that it seeks to offer. If access is "necessary," the Commission may require the unbundling of such proprietary network element.

(b) In the event that such access is not "necessary," the Commission may require unbundling if it is determined that:

(1) The incumbent LEC has implemented only a minor modification to the network element in order to qualify for proprietary treatment;

(2) The information or functionality that is proprietary in nature does not differentiate the incumbent LEC's services from the requesting telecommunications carrier's services; or

(3) Lack of access to such element would jeopardize the goals of the Act.

10. Section 51.318 is added to read as follows:

§ 51.318 Eligibility criteria for access to certain unbundled network elements.

(a) Except as provided in paragraph (b) of this section, an incumbent LEC shall provide access to unbundled network elements and combinations of unbundled network elements without regard to whether the requesting telecommunications carrier seeks access to the elements to establish a new circuit or to convert an existing circuit from a service to unbundled network elements.

(b) An incumbent LEC need not provide access to an unbundled DS1 loop in combination, or commingled, with a dedicated DS1 transport or dedicated DS3 transport facility or service, or to an unbundled DS3 loop in combination, or commingled, with a dedicated DS3 transport facility or service, unless the requesting telecommunications carrier certifies that all of the following conditions are met:

(1) The requesting telecommunications carrier has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area.

(2) The following criteria are satisfied for each combined circuit, including each DS1 circuit, each DS1 enhanced extended link, and each DS1-equivalent circuit on a DS3 enhanced extended link:

(i) Each circuit to be provided to each customer will be assigned a local number prior to the provision of service over that circuit;

(ii) Each DS1-equivalent circuit on a DS3 enhanced extended link must have its

own local number assignment, so that each DS3 must have at least 28 local voice numbers assigned to it;

(iii) Each circuit to be provided to each customer will have 911 or E911 capability prior to the provision of service over that circuit;

(iv) Each circuit to be provided to each customer will terminate in a collocation arrangement that meets the requirements of paragraph (c) of this section;

(v) Each circuit to be provided to each customer will be served by an interconnection trunk that meets the requirements of paragraph (d) of this section;

(vi) For each 24 DS1 enhanced extended links or other facilities having equivalent capacity, the requesting telecommunications carrier will have at least one active DS1 local service interconnection trunk that meets the requirements of paragraph (d) of this section; and

(vii) Each circuit to be provided to each customer will be served by a switch capable of switching local voice traffic.

(c) A collocation arrangement meets the requirements of this paragraph if it is:

(1) Established pursuant to section 251(c)(6) of the Act and located at an incumbent LEC premises within the same LATA as the customer's premises, when the incumbent LEC is not the collocator; and

(2) Located at a third party's premises within the same LATA as the customer's premises, when the incumbent LEC is the collocator.

(d) An interconnection trunk meets the requirements of this paragraph if the requesting telecommunications carrier will transmit the calling party's number in connection with calls exchanged over the trunk.

10. Section 51.319 is revised to read as follows:

§ 51.319 Specific unbundling requirements.

(a) Local loops. An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the local loop on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraphs (a)(1) through (a)(9) of this section. The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises. This element includes all features,

functions, and capabilities of such transmission facility, including the network interface device. It also includes all electronics, optronics, and intermediate devices (including repeaters and load coils) used to establish the transmission path to the end-user customer premises as well as any inside wire owned or controlled by the incumbent LEC that is part of that transmission path.

(1) Copper loops. An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the copper loop on an unbundled basis. A copper loop is a stand-alone local loop comprised entirely of copper wire or cable. Copper loops include two-wire and four-wire analog voice-grade copper loops, digital copper loops (*e.g.*, DS0s and integrated services digital network lines), as well as two-wire and four-wire copper loops conditioned to transmit the digital signals needed to provide digital subscriber line services, regardless of whether the copper loops are in service or held as spares. The copper loop includes attached electronics using time division multiplexing technology, but does not include packet switching capabilities as defined in paragraph (a)(2)(i) of this section. The availability of DS1 and DS3 copper loops is subject to the requirements of paragraphs (a)(4) and (a)(5) of this section.

(i) Line sharing. Beginning on the effective date of the Commission's Triennial Review Order, the high frequency portion of a copper loop shall no longer be required to be provided as an unbundled network element, subject to the transitional line sharing conditions in paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) of this section. Line sharing is the process by which a requesting telecommunications carrier provides digital subscriber line service over the same copper loop that the incumbent LEC uses to provide voice service, with the incumbent LEC using the low frequency portion of the loop and the requesting telecommunications carrier using the high frequency portion of the loop. The high frequency portion of the loop consists of the frequency range on the copper loop above the range that carries analog circuit-switched voice transmissions. This portion of the loop includes the features, functions, and capabilities of the loop that are used to establish a complete transmission path on the high frequency range between the incumbent LEC's distribution frame (or its equivalent) in its central office and the demarcation point at the end-user customer premises, and includes the high frequency portion of any inside wire owned or controlled by the incumbent LEC.

(A) Line sharing customers before the effective date of the Commission's Triennial Review Order. An incumbent LEC shall provide a requesting telecommunications carrier with the ability to engage in line sharing over a copper loop where, prior to the effective date of the Commission's Triennial Review Order, the requesting telecommunications carrier began providing digital subscriber line service to a particular end-user customer and has not ceased providing digital subscriber line service to that customer. Until such end-user customer cancels or otherwise discontinues its subscription to the digital subscriber line service of the requesting telecommunications carrier, or its successor or assign, an incumbent LEC shall continue to provide access to the high frequency portion of the loop at the same rate that the incumbent LEC charged for such access prior to the effective date of the Commission's Triennial

Review Order.

(B) Line sharing customers on or after the effective date of the Commission's Triennial Review Order. An incumbent LEC shall provide a requesting telecommunications carrier with the ability to engage in line sharing over a copper loop, between the effective date of the Commission's Triennial Review Order and three years after that effective date, where the requesting telecommunications carrier began providing digital subscriber line service to a particular end-user customer on or before the date one year after that effective date. Beginning three years after the effective date of the Commission's Triennial Review Order, the incumbent LEC is no longer required to provide a requesting telecommunications carrier with the ability to engage in line sharing for this end-user customer or any new end-user customer. Between the effective date of the Commission's Triennial Review Order and three years after that effective date, an incumbent LEC shall provide a requesting telecommunications carrier with access to the high frequency portion of a copper loop in order to serve line sharing customers obtained between the effective date of the Commission's Triennial Review Order and one year after that effective date in the following manner:

(1) During the first year following the effective date of the Commission's Triennial Review Order, the incumbent LEC shall provide access to the high frequency portion of a copper loop at 25 percent of the state-approved monthly recurring rate, or 25 percent of the monthly recurring rate set forth in the incumbent LEC's and requesting telecommunications carrier's interconnection agreement, for access to a copper loop in effect on that date.

(2) Beginning one year plus one day after the effective date of the Commission's Triennial Review Order until two years after that effective date, the incumbent LEC shall provide access to the high frequency portion of a copper loop at 50 percent of the state-approved monthly recurring rate, or 50 percent of the monthly recurring rate set forth in the incumbent LEC's and requesting telecommunications carrier's interconnection agreement, for access to a copper loop in effect on the effective date of the Commission's Triennial Review Order.

(3) Beginning two years plus one day after effective date of the Commission's Triennial Review Order until three years after that effective date, the incumbent LEC shall provide access to the high frequency portion of a copper loop at 75 percent of the state-approved monthly recurring rate, or 75 percent of the monthly recurring rate set forth in the incumbent LEC's and requesting telecommunications carrier's interconnection agreement, for access to a copper loop in effect on the effective date of the Commission's Triennial Review Order.

(ii) Line splitting. An incumbent LEC shall provide a requesting telecommunications carrier that obtains an unbundled copper loop from the incumbent LEC with the ability to engage in line splitting arrangements with another competitive LEC using a splitter collocated at the central office where the loop terminates into a distribution frame or its equivalent. Line splitting is the process in which one competitive LEC provides narrowband voice service over the low frequency portion of a copper loop and a second competitive LEC provides digital subscriber line service over the high frequency portion of that same loop.

(A) An incumbent LEC's obligation, under paragraph (a)(1)(ii) of this section, to provide a requesting telecommunications carrier with the ability to engage in line splitting applies regardless of whether the carrier providing voice service provides its own switching or obtains local circuit switching as an unbundled network element pursuant to paragraph (d) of this section.

(B) An incumbent LEC must make all necessary network modifications, including providing nondiscriminatory access to operations support systems necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements.

(iii) Line conditioning. The incumbent LEC shall condition a copper loop at the request of the carrier seeking access to a copper loop under paragraph (a)(1) of this section, the high frequency portion of a copper loop under paragraph (a)(1)(i) of this section, or a copper subloop under paragraph (b) of this section to ensure that the copper loop or copper subloop is suitable for providing digital subscriber line services, including those provided over the high frequency portion of the copper loop or copper subloop, whether or not the incumbent LEC offers advanced services to the end-user customer on that copper loop or copper subloop. If the incumbent LEC seeks compensation from the requesting telecommunications carrier for line conditioning, the requesting telecommunications carrier has the option of refusing, in whole or in part, to have the line conditioned; and a requesting telecommunications carrier's refusal of some or all aspects of line conditioning will not diminish any right it may have, under paragraphs (a) and (b) of this section, to access the copper loop, the high frequency portion of the copper loop, or the copper subloop.

(A) Line conditioning is defined as the removal from a copper loop or copper subloop of any device that could diminish the capability of the loop or subloop to deliver high-speed switched wireline telecommunications capability, including digital subscriber line service. Such devices include, but are not limited to, bridge taps, load coils, low pass filters, and range extenders.

(B) Incumbent LECs shall recover the costs of line conditioning from the requesting telecommunications carrier in accordance with the Commission's forward-looking pricing principles promulgated pursuant to section 252(d)(1) of the Act and in compliance with rules governing nonrecurring costs in § 51.507(e).

(C) Insofar as it is technically feasible, the incumbent LEC shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.

(D) Where the requesting telecommunications carrier is seeking access to the high frequency portion of a copper loop or copper subloop pursuant to paragraphs (a) or (b) of this section and the incumbent LEC claims that conditioning that loop or subloop will significantly degrade, as defined in § 51.233, the voiceband services that the incumbent LEC is currently providing over that loop or subloop, the incumbent LEC must either:

(1) Locate another copper loop or copper subloop that has been or can be conditioned, migrate the incumbent LEC's voiceband service to that loop or subloop, and provide the requesting telecommunications carrier with access to the high frequency portion of that alternative loop or subloop; or

(2) Make a showing to the state commission that the original copper loop or copper subloop cannot be conditioned without significantly degrading voiceband services on that loop or subloop, as defined in § 51.233, and that there is no adjacent or alternative copper loop or copper subloop available that can be conditioned or to which the end-user customer's voiceband service can be moved to enable line sharing.

(E) If, after evaluating the incumbent LEC's showing under paragraph (a)(1)(iii)(D)(2) of this section, the state commission concludes that a copper loop or copper subloop cannot be conditioned without significantly degrading the voiceband service, the incumbent LEC cannot then or subsequently condition that loop or subloop to provide advanced services to its own customers without first making available to any requesting telecommunications carrier the high frequency portion of the newly conditioned loop or subloop.

(iv) Maintenance, repair, and testing. (A) An incumbent LEC shall provide, on a nondiscriminatory basis, physical loop test access points to a requesting telecommunications carrier at the splitter, through a cross-connection to the requesting telecommunications carrier's collocation space, or through a standardized interface, such as an intermediate distribution frame or a test access server, for the purpose of testing, maintaining, and repairing copper loops and copper subloops.

(B) An incumbent LEC seeking to utilize an alternative physical access methodology may request approval to do so from the state commission, but must show that the proposed alternative method is reasonable and nondiscriminatory, and will not disadvantage a requesting telecommunications carrier's ability to perform loop or service testing, maintenance, or repair.

(v) Control of the loop and splitter functionality. In situations where a requesting telecommunications carrier is obtaining access to the high frequency portion of a copper loop either through a line sharing or line splitting arrangement, the incumbent LEC may maintain control over the loop and splitter equipment and functions, and shall provide to the requesting telecommunications carrier loop and splitter functionality that is compatible with any transmission technology that the requesting telecommunications carrier seeks to deploy using the high frequency portion of the loop, as defined in paragraph (a)(1)(i) of this section, provided that such transmission technology is presumed to be deployable pursuant to § 51.230.

(2) Hybrid loops. A hybrid loop is a local loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant.

(i) Packet switching facilities, features, functions, and capabilities. An incumbent LEC is not required to provide unbundled access to the packet switched features, functions and capabilities of its hybrid loops. Packet switching capability is the routing or forwarding of packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells or other data units, and the functions that are performed by the digital subscriber line access multiplexers, including but not limited to the ability to terminate an end-user customer's copper loop (which includes both a low-band voice channel and a high-band data channel, or solely a data channel); the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; the ability to extract data units from the data channels on the loops; and the ability to combine data units from multiple loops onto one or more trunks connecting to a packet switch or packet switches.

(ii) Broadband services. When a requesting telecommunications carrier seeks access to a hybrid loop for the provision of broadband services, an incumbent LEC shall provide the requesting telecommunications carrier with nondiscriminatory access to the time division multiplexing features, functions, and capabilities of that hybrid loop, including DS1 or DS3 capacity (where impairment has been found to exist), on an unbundled basis to establish a complete transmission path between the incumbent LEC's central office and an end user's customer premises. This access shall include access to all features, functions, and capabilities of the hybrid loop that are not used to transmit packetized information.

(iii) Narrowband services. When a requesting telecommunications carrier seeks access to a hybrid loop for the provision of narrowband services, the incumbent LEC may either:

(A) Provide nondiscriminatory access, on an unbundled basis, to an entire hybrid loop capable of voice-grade service (*i.e.*, equivalent to DS0 capacity), using time division multiplexing technology; or

(B) Provide nondiscriminatory access to a spare home-run copper loop serving that customer on an unbundled basis.

(3) Fiber-to-the-home loops. A fiber-to-the-home loop is a local loop consisting entirely of fiber optic cable, whether dark or lit, and serving a residential end user's customer premises.

(i) New builds. An incumbent LEC is not required to provide nondiscriminatory access to a fiber-to-the-home loop on an unbundled basis when the incumbent LEC deploys such a loop to a residential unit that previously has not been served by any loop facility.

(ii) Overbuilds. An incumbent LEC is not required to provide nondiscriminatory access to a fiber-to-the-home loop on an unbundled basis when the incumbent LEC has deployed such a loop parallel to, or in replacement of, an existing copper loop facility, except that:

(A) The incumbent LEC must maintain the existing copper loop connected to the particular customer premises after deploying the fiber-to-the-home loop and provide nondiscriminatory access to that copper loop on an unbundled basis unless the incumbent LEC retires the copper loop pursuant to paragraph (a)(3)(iii) of this section.

(B) An incumbent LEC that maintains the existing copper loop pursuant to paragraph (a)(3)(ii)(A) of this section need not incur any expenses to ensure that the existing copper loop remains capable of transmitting signals prior to receiving a request for access pursuant to that paragraph, in which case the incumbent LEC shall restore the copper loop to serviceable condition upon request.

(C) An incumbent LEC that retires the copper loop pursuant to paragraph (a)(3)(iii) of this section shall provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the fiber-to-the-home loop on an unbundled basis.

(iii) Retirement of copper loops or copper subloops. Prior to retiring any copper loop or copper subloop that has been replaced with a fiber-to-the-home loop, an incumbent LEC must comply with:

(A) The network disclosure requirements set forth in section 251(c)(5) of the Act and in § 51.325 through § 51.335; and

(B) Any applicable state requirements.

(4) DS1 loops. (i) An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS1 loop on an unbundled basis except where the state commission has found, through application of the competitive wholesale facilities trigger in

paragraph (a)(4)(ii) of this section, that requesting telecommunications carriers are not impaired without access to a DS1 loop at a specific customer location. A DS1 loop is a digital local loop having a total digital signal speed of 1.544 megabytes per second. DS1 loops include, but are not limited to, two-wire and four-wire copper loops capable of providing high-bit rate digital subscriber line services, including T1 services.

(ii) Competitive wholesale facilities trigger for DS1 loops. A state commission shall find that a requesting telecommunications carrier is not impaired without access to a DS1 loop at a specific customer location where two or more competing providers not affiliated with each other or with the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each satisfy the conditions in paragraphs (a)(4)(ii)(A) and (a)(4)(ii)(B) of this section:

(A) The competing provider has deployed its own DS1 facilities, and offers a DS1 loop over its own facilities on a widely available wholesale basis to other carriers desiring to serve customers at that location. For purposes of this paragraph, the competing provider's DS1 facilities may use dark fiber facilities that the competing provider has obtained on an unbundled, leased, or purchased basis if it has attached its own optronics to activate the fiber.

(B) The competing provider has access to the entire customer location, including each individual unit within that location.

(5) DS3 loops. Subject to the cap in paragraph (a)(5)(iii), an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS3 loop on an unbundled basis except where the state commission has found, through application of either paragraph (a)(5)(i) of this section or the potential deployment analysis in paragraph (a)(5)(ii) of this section, that requesting telecommunications carriers are not impaired without access to a DS3 loop at a specific customer location. A DS3 loop is a digital local loop having a total digital signal speed of 44.736 megabytes per second.

(i) Triggers for DS3 loops. A state commission shall find that a requesting telecommunications carrier is not impaired without access to unbundled DS3 loops at a specific customer location where two or more competing providers not affiliated with each other or with the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, satisfy either paragraph (a)(5)(i)(A) or paragraph (a)(5)(i)(B) of this section:

(A) Self-provisioning trigger for DS3 loops. To satisfy this trigger, a state commission must find that each competing provider has either deployed its own DS3 facilities at that specific customer location and is serving customers via those facilities at that location, or has deployed DS3 facilities by attaching its own optronics to activate dark fiber transmission facilities obtained under a long-term indefeasible right of use and is serving customers via those facilities at that location.

(B) Competitive wholesale facilities trigger for DS3 loops. To satisfy this trigger, a state commission must find that each competing provider satisfies the conditions in paragraphs (a)(5)(i)(B)(1) and (a)(5)(i)(B)(2) of this section.

(1) The competing provider has deployed its own DS3 facilities, and offers a DS3 loop over its own facilities on a widely available wholesale basis to other competing providers seeking to serve customers at the specific customer location. For purposes of this paragraph, the competing provider's DS3 facilities may use dark fiber facilities that the competing provider has obtained on an unbundled, leased, or purchased basis if it has attached its own optronics to activate the fiber.

(2) The competing provider has access to the entire customer location, including each individual unit within that location.

(ii) Potential deployment of DS3 loops. Where neither trigger in paragraph (a)(5)(i) of this section is satisfied, a state commission shall consider whether other evidence shows that a requesting telecommunications carrier is not impaired without access to an unbundled DS3 loop at a specific customer location. To make this determination, a state must consider the following factors: evidence of alternative loop deployment at that location; local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber or copper; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; building access restrictions/costs; and availability/feasibility of similar quality/reliability alternative transmission technologies at that particular location.

(iii) Cap on unbundled DS3 circuits. A requesting telecommunications carrier may obtain a maximum of two unbundled DS3 loops for any single customer location where DS3 loops are available as unbundled loops.

(6) Dark fiber loops. An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a dark fiber loop on an unbundled basis except where a state commission has found, through application of the self-provisioning trigger in paragraph (a)(6)(i) of this section or the potential deployment analysis in paragraph (a)(6)(ii) of this section, that requesting telecommunications carriers are not impaired without access to a dark fiber loop at a specific customer location. Dark fiber is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.

(i) Self-provisioning trigger for dark fiber loops. A state commission shall find that a requesting telecommunications carrier is not impaired without access to a dark fiber loop at a specific customer location where two or more competing providers not affiliated with each other or with the incumbent LEC, have deployed their own dark

fiber facilities at that specific customer location. For purposes of making this determination, a competing provider that has obtained those dark fiber facilities under a long-term indefeasible right of use shall be considered a competing provider with its own dark fiber facilities. Dark fiber purchased on an unbundled basis from the incumbent LEC shall not be considered under this paragraph.

(ii) Potential deployment of dark fiber loops. Where the trigger in paragraph (a)(6)(i) of this section is not satisfied, a state commission shall consider whether other evidence shows that a requesting telecommunications carrier is not impaired without access to an unbundled dark fiber loop at a specific customer location. To make this determination, a state must consider the following factors: evidence of alternative loop deployment at that location; local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; building access restrictions/costs; and availability/feasibility of similar quality/reliability alternative transmission technologies at that particular location.

(7) State commission proceedings. A state commission shall complete the proceedings necessary to satisfy the requirements in paragraphs (a)(4), (a)(5), and (a)(6) of this section in accordance with paragraphs (a)(7)(i) and (a)(7)(ii) of this section.

(i) Initial review. A state commission shall complete any initial review applying the triggers and criteria in paragraphs (a)(4), (a)(5), and (a)(6) of this section within nine months from the effective date of the Commission's Triennial Review Order.

(ii) Continuing review. A state commission shall complete any subsequent review applying these triggers and criteria within six months of the filing of a petition or other pleading to conduct such a review.

(8) Routine network modifications. (i) An incumbent LEC shall make all routine network modifications to unbundled loop facilities used by requesting telecommunications carriers where the requested loop facility has already been constructed. An incumbent LEC shall perform these routine network modifications to unbundled loop facilities in a nondiscriminatory fashion, without regard to whether the loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

(ii) A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable a requesting telecommunications carrier to obtain access to a dark fiber loop. Routine

network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the construction of a new loop, or the installation of new aerial or buried cable for a requesting telecommunications carrier.

(9) Engineering policies, practices, and procedures. An incumbent LEC shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to a local loop or subloop, including the time division multiplexing-based features, functions, and capabilities of a hybrid loop, for which a requesting telecommunications carrier may obtain or has obtained access pursuant to paragraph (a) of this section.

(b) Subloops. An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to subloops on an unbundled basis in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraph (b) of this section.

(1) Copper subloops. An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a copper subloop on an unbundled basis. A copper subloop is a portion of a copper loop, or hybrid loop, comprised entirely of copper wire or copper cable that acts as a transmission facility between any point of technically feasible access in an incumbent LEC's outside plant, including inside wire owned or controlled by the incumbent LEC, and the end-user customer premises. A copper subloop includes all intermediate devices (including repeaters and load coils) used to establish a transmission path between a point of technically feasible access and the demarcation point at the end-user customer premises, and includes the features, functions, and capabilities of the copper loop. Copper subloops include two-wire and four-wire analog voice-grade subloops as well as two-wire and four-wire subloops conditioned to transmit the digital signals needed to provide digital subscriber line services, regardless of whether the subloops are in service or held as spares.

(i) Point of technically feasible access. A point of technically feasible access is any point in the incumbent LEC's outside plant where a technician can access the copper wire within a cable without removing a splice case. Such points include, but are not limited to, a pole or pedestal, the serving area interface, the network interface device, the minimum point of entry, any remote terminal, and the feeder/distribution interface. An incumbent LEC shall, upon a site-specific request, provide access to a copper subloop at a splice near a remote terminal. The incumbent LEC shall be compensated for providing this access in accordance with §§ 51.501 through 51.515.

(ii) Rules for collocation. Access to the copper subloop is subject to the Commission's collocation rules at §§ 51.321 and 51.323.

(2) Subloops for access to multiunit premises wiring. An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the subloop for access to multiunit premises wiring on an unbundled basis regardless of the capacity level or

type of loop that the requesting telecommunications carrier seeks to provision for its customer. The subloop for access to multiunit premises wiring is defined as any portion of the loop that it is technically feasible to access at a terminal in the incumbent LEC's outside plant at or near a multiunit premises. One category of this subloop is inside wire, which is defined for purposes of this section as all loop plant owned or controlled by the incumbent LEC at a multiunit customer premises between the minimum point of entry as defined in § 68.105 of this chapter and the point of demarcation of the incumbent LEC's network as defined in § 68.3 of this chapter.

(i) Point of technically feasible access. A point of technically feasible access is any point in the incumbent LEC's outside plant at or near a multiunit premises where a technician can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within to access the wiring in the multiunit premises. Such points include, but are not limited to, a pole or pedestal, the network interface device, the minimum point of entry, the single point of interconnection, and the feeder/distribution interface.

(ii) Single point of interconnection. Upon notification by a requesting telecommunications carrier that it requests interconnection at a multiunit premises where the incumbent LEC owns, controls, or leases wiring, the incumbent LEC shall provide a single point of interconnection that is suitable for use by multiple carriers. This obligation is in addition to the incumbent LEC's obligations, under paragraph (b)(2) of this section, to provide nondiscriminatory access to a subloop for access to multiunit premises wiring, including any inside wire, at any technically feasible point. If the parties are unable to negotiate rates, terms, and conditions under which the incumbent LEC will provide this single point of interconnection, then any issues in dispute regarding this obligation shall be resolved in state proceedings under section 252 of the Act.

(3) Other subloop provisions. (i) Technical feasibility. If parties are unable to reach agreement through voluntary negotiations as to whether it is technically feasible, or whether sufficient space is available, to unbundle a copper subloop or subloop for access to multiunit premises wiring at the point where a telecommunications carrier requests, the incumbent LEC shall have the burden of demonstrating to the state commission, in state proceedings under section 252 of the Act, that there is not sufficient space available, or that it is not technically feasible to unbundle the subloop at the point requested.

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

(c) Network interface device. Apart from its obligation to provide the network interface device functionality as part of an unbundled loop or subloop, an incumbent LEC also shall provide

nondiscriminatory access to the network interface device on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part. The network interface device element is a stand-alone network element and is defined as any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant, such as a cross-connect device used for that purpose. 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.

(d) Local circuit switching. An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to local circuit switching, including tandem switching, on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraph (d) of this section.

(1) Definition. Local circuit switching is defined as follows:

(i) Local circuit switching encompasses all line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks.

(ii) Local circuit switching includes all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions.

(2) DS0 capacity (*i.e.*, mass market) determinations. An incumbent LEC shall provide access to local circuit switching on an unbundled basis to a requesting telecommunications carrier serving end users using DS0 capacity loops except where the state commission has found, in accordance with the conditions set forth in paragraph (d)(2) of this section, that requesting telecommunications carriers are not impaired in a particular market, or where the state commission has found that all such impairment would be cured by implementation of transitional unbundled local circuit switching in a given market and has implemented such transitional access as set forth in paragraph (d)(2)(iii)(C) of this section.

(i) Market definition. A state commission shall define the markets in which it will evaluate impairment by determining the relevant geographic area to include in each market. In defining markets, a state commission shall take into consideration the locations of mass market customers actually being served (if any) by competitors, the variation in factors affecting competitors' ability to serve each group of customers, and competitors' ability to target and serve specific markets profitably and efficiently using currently available technologies. A state commission shall not define the relevant geographic area as the entire state.

(ii) Batch cut process. In each of the markets that the state commission defines

pursuant to paragraph (d)(2)(i) of this section, the state commission shall either establish an incumbent LEC batch cut process as set forth in paragraph (d)(2)(ii)(A) of this section or issue detailed findings explaining why such a batch process is unnecessary, as set forth in paragraph (d)(2)(ii)(B) of this section. A batch cut process is defined as a process by which the incumbent LEC simultaneously migrates two or more loops from one carrier's local circuit switch to another carrier's local circuit switch, giving rise to operational and economic efficiencies not available when migrating loops from one carrier's local circuit switch to another carrier's local circuit switch on a line-by-line basis.

(A) A state commission shall establish an incumbent LEC batch cut process for use in migrating lines served by one carrier's local circuit switch to lines served by another carrier's local circuit switch in each of the markets the state commission has defined pursuant to paragraph (d)(2)(i) of this section. In establishing the incumbent LEC batch cut process:

(1) A state commission shall first determine the appropriate volume of loops that should be included in the "batch."

(2) A state commission shall adopt specific processes to be employed when performing a batch cut, taking into account the incumbent LEC's particular network design and cut over practices.

(3) A state commission shall evaluate whether the incumbent LEC is capable of migrating multiple lines served using unbundled local circuit switching to switches operated by a carrier other than the incumbent LEC for any requesting telecommunications carrier in a timely manner, and may require that incumbent LECs comply with an average completion interval metric for provision of high volumes of loops.

(4) A state commission shall adopt rates for the batch cut activities it approves in accordance with the Commission's pricing rules for unbundled network elements. These rates shall reflect the efficiencies associated with batched migration of loops to a requesting telecommunications carrier's switch, either through a reduced per-line rate or through volume discounts as appropriate.

(B) If a state commission concludes that the absence of a batch cut migration process is not impairing requesting telecommunications carriers' ability to serve end users using DS0 loops in the mass market without access to local circuit switching on an unbundled basis, that conclusion will render the creation of such a process unnecessary. In such cases, the state commission shall issue detailed findings regarding the

volume of unbundled loop migrations that could be expected if requesting telecommunications carriers were no longer entitled to local circuit switching on an unbundled basis, the ability of the incumbent LEC to meet that demand in a timely and efficient manner using its existing hot cut process, and the non-recurring costs associated with that hot cut process. The state commission further shall explain why these findings indicate that the absence of a batch cut process does not give rise to impairment in the market at issue.

(iii) State commission analysis. To determine whether requesting telecommunications carriers are impaired without access to local circuit switching on an unbundled basis, a state commission shall perform the inquiry set forth in paragraphs (d)(2)(iii)(A) through (d)(2)(iii)(C) of this section:

(A) Local switching triggers. A state commission shall find that a requesting telecommunications carrier is not impaired without access to local circuit switching on an unbundled basis in a particular market where either the self-provisioning trigger set forth in paragraph (d)(2)(iii)(A)(1) of this section or the competitive wholesale facilities trigger set forth in paragraph (d)(2)(iii)(A)(2) of this section is satisfied.

(1) Local switching self-provisioning trigger. To satisfy this trigger, a state commission must find that three or more competing providers not affiliated with each other or the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each are serving mass market customers in the particular market with the use of their own local circuit switches.

(2) Local switching competitive wholesale facilities trigger. To satisfy this trigger, a state commission must find that two or more competing providers not affiliated with each other or the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each offer wholesale local circuit switching service to customers serving DS0 capacity loops in that market using their own switches.

(B) Additional state authority. If neither of the triggers described in paragraph (d)(2)(iii)(A) of this section has been satisfied, the state commission shall find that requesting telecommunications carriers are not impaired without access to unbundled local circuit switching in a particular market where the state commission determines that self-provisioning of local switching is economic based on the following criteria:

(1) Evidence of actual deployment. The state commission shall consider whether switches actually deployed in the market at issue permit competitive entry in the absence of unbundled local circuit switching. Specifically, the state commission shall examine whether, in the market at issue, there are either two wholesale providers or three self-provisioners of local switching not affiliated with each other or the incumbent LEC, serving end users using DS1 or higher capacity loops in the market at issue; or there is any carrier, including any intermodal provider of service comparable in quality to that of the incumbent LEC, using a self-provisioned switch to serve end users using DS0 capacity loops. If so, and if the state commission determines that the switch or switches identified can be used to serve end users using DS0 capacity loops in that market in an economic fashion, this evidence must be given substantial weight.

(2) Operational barriers. The state commission also shall examine the role of potential operational barriers in determining whether to find "no impairment" in a given market. Specifically, the state commission shall examine whether the incumbent LEC's performance in provisioning loops, difficulties in obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC, or difficulties in obtaining cross-connects in an incumbent LEC's wire center render entry uneconomic for requesting telecommunications carriers in the absence of unbundled access to local circuit switching.

(3) Economic barriers. The state commission shall also examine the role of potential economic barriers in determining whether to find "no impairment" in a given market. Specifically, the state commission shall examine whether the costs of migrating incumbent LEC loops to requesting telecommunications carriers' switches or the costs of backhauling voice circuits to requesting telecommunications carriers' switches from the end offices serving their end users render entry uneconomic for requesting telecommunications carriers.

(4) Multi-line DS0 end users. As part of the economic analysis set forth in paragraph (d)(2)(iii)(B)(3) of this section, the state commission shall establish a maximum number of DS0 loops for each geographic market that requesting telecommunications carriers can serve through unbundled switching when serving multiline end users at a single location. Specifically, in establishing this "cutoff," the state commission shall take into account the point at which the increased revenue opportunity at a

single location is sufficient to overcome impairment and the point at which multiline end users could be served in an economic fashion by higher capacity loops and a carrier's own switching and thus be considered part of the DS1 enterprise market.

(C) Transitional use of unbundled switching. If the triggers described in paragraph (d)(2)(iii)(A) of this section have not been satisfied with regard to a particular market and the analysis described in paragraph (d)(2)(iii)(B) of this section has resulted in a finding that requesting telecommunications carriers are impaired without access to local circuit switching on an unbundled basis in that market, the state commission shall consider whether any impairment would be cured by transitional ("rolling") access to local circuit switching on an unbundled basis for a period of 90 days or more. "Rolling" access means the use of unbundled local circuit switching for a limited period of time for each end-user customer to whom a requesting telecommunications carrier seeks to provide service. If the state commission determines that transitional access to unbundled local circuit switching would cure any impairment, it shall require incumbent LECs to make unbundled local circuit switching available to requesting telecommunications carriers for 90 days or more, as specified by the state commission. The time limit set by the commission shall apply to each request for access to unbundled local circuit switching by a requesting telecommunications carrier on a per customer basis.

(iv) DS0 capacity end-user transition. If a state commission finds that no impairment exists in a market or that any impairment could be cured by transitional access to unbundled local circuit switching, all requesting telecommunications carriers in that market shall commit to an implementation plan with the incumbent LEC for the migration of the embedded unbundled switching mass market customer base within 2 months of the state commission determination. A requesting telecommunications carrier may no longer obtain access to unbundled local circuit switching 5 months after the state commission determination, except, where applicable, on a transitional basis as described in paragraph (d)(2)(iii)(C) of this section.

(A) Transition timeline. Each requesting telecommunications carrier shall submit the orders necessary to migrate its embedded base of end-user customers off of the unbundled local circuit switching element in accordance with the following timetable, measured from the day of the state commission determination. For purposes of calculating the number of customers who must be migrated, the embedded base of customers shall include all customers served using unbundled switching that are not customers being served with transitional unbundled switching pursuant to paragraph (d)(3)(iii)(C) of this section.

(1) Month 13: Each requesting telecommunications carrier must submit orders for one-third of all its unbundled local circuit switching end-user customers;

(2) Month 20: Each requesting telecommunications carrier must submit orders for half of its remaining unbundled local circuit switching end-user customers, as calculated pursuant to paragraph (d)(2)(iv)(A)(1) of this section; and

(3) Month 27: Each requesting telecommunications carrier must submit orders for its remaining unbundled local circuit switching end-user customers.

(B) Operational aspects of the migration. Requesting telecommunications carriers and the incumbent LEC shall jointly submit the details of their implementation plans for each market to the state commission within two months of the state commission's determination that requesting telecommunications carriers are not impaired without access to local circuit switching on an unbundled basis. Each requesting telecommunications carrier shall also notify the state commission when it has submitted its orders for migration. Each incumbent LEC shall notify the state commission when it has completed the migration.

(3) DS1 capacity and above (*i.e.*, enterprise market) determinations. An incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS1 capacity and above loops except where the state commission petitions this Commission for waiver of this finding in accordance with the conditions set forth in paragraph (d)(3)(i) of this section and the Commission grants such waiver.

(i) State commission inquiry. In its petition, a state commission wishing to rebut the Commission's finding should petition the Commission to show that requesting telecommunications carriers are impaired without access to local circuit switching to serve end users using DS1 capacity and above loops in a particular geographic market as defined in accordance with paragraph (d)(2)(i) of this section if it finds that operational or economic barriers exist in that market.

(A) In making this showing, the state commission shall consider the following operational characteristics: incumbent LEC performance in provisioning loops; difficulties associated with obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC; and the difficulties associated with obtaining cross-connects in the incumbent LEC's wire center.

(B) In making this showing, the state commission shall consider the following economic characteristics: the cost of entry into a particular market, including those caused by both operational and economic barriers to entry; requesting telecommunications carriers' potential revenues from serving enterprise customers in that market, including all likely revenues to be gained from entering that market; the prices requesting telecommunications carriers are likely to be able to charge in that market, based on a consideration of the prevailing retail rates the incumbent LEC charges to the different classes of customers in the different parts of the state.

(ii) Transitional four-line carve-out. Until the state commission completes the review described in paragraph (b)(2)(iii)(B)(4) of this section, an incumbent LEC shall comply with the four-line "carve-out" for unbundled switching established in Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3822-31, paras. 276-98 (1999), reversed and remanded in part sub. nom. United States Telecom Ass'n v. FCC, 290 F.3d 415 (D.C. Cir. 2002).

(A) DS1 capacity and above end-user transition. Each requesting telecommunications carrier shall transfer its end-user customers served using DS1 and above capacity loops and unbundled local circuit switching to an alternative arrangement within 90 days from the end of the 90-day state commission consideration period set forth in paragraph (d)(5)(i), unless a longer period is necessary to comply with a "change of law" provision in an applicable interconnection agreement.

(4) Other elements to be unbundled. Elements relating to the local circuit switching element shall be made available on an unbundled basis as set forth in paragraphs (d)(4)(i) and (d)(4)(ii) of this section.

(i) An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to signaling, call-related databases, and shared transport facilities on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part, to the extent that local circuit switching is required to be unbundled by a state commission. These elements are defined as follows:

(A) Signaling networks. Signaling networks include, but are not limited to, signaling links and signaling transfer points.

(B) Call-related databases. Call-related databases are defined as databases, other than operations support systems, that are used in signaling networks for billing and collection, or the transmission, routing, or other provision of a telecommunications service. Where a requesting

telecommunications carrier purchases unbundled local circuit switching from an incumbent LEC, an incumbent LEC shall allow a requesting telecommunications carrier to use the incumbent LEC's service control point element in the same manner, and via the same signaling links, as the incumbent LEC itself.

(1) Call-related databases include, but are not limited to, the calling name database, 911 database, E911 database, line information database, toll free calling database, advanced intelligent network databases, and downstream number portability databases by means of physical access at the signaling transfer point linked to the unbundled databases.

(2) Service management systems are defined as computer databases or systems not part of the public switched network that interconnect to the service control point and send to the service control point information and call processing instructions needed for a network switch to process and complete a telephone call, and provide a telecommunications carrier with the capability of entering and storing data regarding the processing and completing of a telephone call. Where a requesting telecommunications carrier purchases unbundled local circuit switching from an incumbent LEC, the incumbent LEC shall allow a requesting telecommunications carrier to use the incumbent LEC's service management systems by providing a requesting telecommunications carrier with the information necessary to enter correctly, or format for entry, the information relevant for input into the incumbent LEC's service management system, including access to design, create, test, and deploy advanced intelligent network-based services at the service management system, through a service creation environment, that the incumbent LEC provides to itself.

(3) An incumbent LEC shall not be required to unbundle the services created in the advanced intelligent network platform and architecture that qualify for proprietary treatment.

(C) Shared transport. Shared transport is defined as the transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC network.

(ii) An incumbent LEC shall provide a requesting telecommunications carrier nondiscriminatory access to operator services and directory assistance on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part, to

the extent that local circuit switching is required to be unbundled by a state commission, if the incumbent LEC does not provide that requesting telecommunications carrier with customized routing, or a compatible signaling protocol, necessary to use either a competing provider's operator services and directory assistance platform or the requesting telecommunications carrier's own platform. Operator services are any automatic or live assistance to a customer to arrange for billing or completion, or both, of a telephone call. Directory assistance is a service that allows subscribers to retrieve telephone numbers of other subscribers.

(5) State commission proceedings. A state commission shall complete the proceedings necessary to satisfy the requirements in paragraphs (d)(2) and (d)(3) of this section in accordance with paragraphs (d)(5)(i) and (d)(5)(ii) of this section.

(i) Timing. A state commission shall complete any initial review applying the triggers and criteria in paragraph (d)(2) of this section within nine months from the effective date of the Commission's Triennial Review Order. A state commission wishing to rebut the Commission's finding of non-impairment for DS1 and above enterprise switches must file a petition with the Commission in accordance with paragraph (d)(3) within 90 days from that effective date.

(ii) Continuing review. A state commission shall complete any subsequent review applying these triggers and criteria within six months of the filing of a petition or other pleading to conduct such a review.

(e) Dedicated transport. An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to dedicated transport on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraph (e)(1) through (e)(5) of this section. As used in those paragraphs, a "route" is a transmission path between one of an incumbent LEC's wire centers or switches and another of the incumbent LEC's wire centers or switches. A route between two points (*e.g.*, wire center or switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or switches (*e.g.*, wire center or switch "X"). Transmission paths between identical end points (*e.g.*, wire center or switch "A" and wire center or switch "Z") are the same "route," irrespective of whether they pass through the same intermediate wire centers or switches, if any.

(1) Dedicated DS1 transport. (i) An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to dedicated DS1 transport on an unbundled basis except where the state commission has found, through application of the competitive wholesale facilities trigger in paragraphs (e)(1)(ii) of this section, that requesting telecommunications carriers are not impaired without access to dedicated DS1 transport along a particular route. Dedicated DS1 transport consists of incumbent LEC interoffice transmission facilities that have a total digital signal speed of 1.544 megabytes per second and are dedicated to a particular customer or carrier.

(ii) Competitive wholesale facilities trigger for dedicated DS1 transport. A state commission shall find that a requesting telecommunications carrier is not impaired without access to dedicated DS1 transport along a particular route where two or more competing providers not affiliated with each other or with the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each satisfy the conditions in paragraphs (e)(1)(ii)(A) through (e)(1)(ii)(D) of this section.

(A) The competing provider has deployed its own transport facilities and is operationally ready to use those facilities to provide dedicated DS1 transport along the particular route. For purposes of this paragraph, the competing provider's DS1 facilities may use dark fiber facilities that the competing provider has obtained on an unbundled, leased, or purchased basis if it has attached its own optronics to activate the fiber.

(B) The competing provider is willing immediately to provide, on a widely available basis, dedicated DS1 transport along the particular route.

(C) The competing provider's facilities terminate in a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(D) Requesting telecommunications carriers are able to obtain reasonable and nondiscriminatory access to the competing provider's facilities through a cross-connect to the competing provider's collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and though a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(2) Dedicated DS3 transport. Subject to the cap in paragraph (e)(2)(iii) of this section, an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to dedicated DS3 transport on an unbundled basis except where the state commission has found, through application of either paragraph (e)(2)(i) of this section or the potential deployment analysis in paragraph (e)(2)(ii) of this section, that requesting telecommunications carriers are not impaired without access to dedicated DS3 transport along a particular route. Dedicated DS3 transport consists of incumbent LEC interoffice transmission facilities that have a total digital signal speed of 44.736 megabytes per second and are dedicated to a particular customer or carrier.

(i) Triggers for dedicated DS3 transport. A state commission shall find that a requesting telecommunications carrier is not impaired without access to unbundled dedicated DS3 transport along a particular route where either of the triggers in paragraphs (e)(2)(i)(A) or (e)(2)(i)(B) of this section is satisfied.

(A) Self-provisioning trigger for dedicated DS3 transport. To satisfy this

trigger, a state must find that three or more competing providers not affiliated with each other or with the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each satisfy the conditions in paragraphs (e)(2)(i)(A)(1) and (e)(2)(i)(A)(2) of this section.

(1) The competing provider has deployed its own transport facilities and is operationally ready to use those transport facilities to provide dedicated DS3 transport along the particular route. For purposes of this paragraph, the competing provider's DS3 transport facilities may use dark fiber facilities that the competing provider has obtained on a long-term, indefeasible-right of use basis and that it has deployed by attaching its own optronics to activate the fiber.

(2) The competing provider's facilities terminate at a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(B) Competitive wholesale facilities trigger for dedicated DS3 transport. To satisfy this trigger, a state must find that two or more competing providers not affiliated with each other or with the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each satisfy the conditions in paragraphs (e)(2)(i)(B)(1) through (e)(2)(i)(B)(4) of this section.

(1) The competing provider has deployed its own transport facilities, including transport facilities that use dark fiber facilities that the competing provider has obtained on an unbundled, leased, or purchased basis if it has attached its own optronics to activate the fiber, and is operationally ready to use those facilities to provide dedicated DS3 transport along the particular route.

(2) The competing provider is willing immediately to provide, on a widely available basis, dedicated DS3 transport along the particular route.

(3) The competing provider's facilities terminate in a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(4) Requesting telecommunications carriers are able to obtain reasonable and nondiscriminatory access to the competing provider's facilities through a cross-connect to the competing provider's collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and though a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(ii) Potential deployment of dedicated DS3 transport. Where neither trigger in paragraph (e)(2)(i) of this section is satisfied, a state commission shall consider whether other evidence shows that a requesting telecommunications carrier is not impaired without access to unbundled dedicated DS3 transport along a particular route. To make this determination, a state must consider the following factors: local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber or copper; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; availability/feasibility of similar quality/reliability alternative transmission technologies along the particular route; customer density or addressable market; and existing facilities-based competition.

(iii) Cap on unbundled DS3 circuits. A requesting telecommunications carrier may obtain a maximum of 12 unbundled dedicated DS3 circuits for any single route for which dedicated DS3 transport is available as unbundled transport.

(3) Dark fiber transport. An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to dark fiber transport on an unbundled basis except where the state commission has found, through application of either paragraph (e)(3)(i) of this section or the potential deployment analysis in paragraph (e)(3)(ii) of this section, that requesting telecommunications carriers are not impaired without access to unbundled dark fiber transport along the particular route. Dark fiber transport consists of unactivated optical interoffice transmission facilities.

(i) Triggers for dark fiber transport. A state commission shall find that a requesting telecommunications carrier is not impaired without access to dark fiber transport along a particular route where either of the triggers in paragraph (e)(3)(i)(A) or paragraph (e)(3)(i)(B) of this section is satisfied.

(A) Self-provisioning trigger for dark fiber transport. To satisfy this trigger, a state commission must find three or more competing providers not affiliated with each other or with the incumbent LEC, each satisfy paragraphs (e)(3)(i)(A)(1) and (e)(3)(i)(A)(2) of this section.

(1) The competing provider has deployed its own dark fiber facilities, which may include dark fiber facilities that it has

obtained on a long-term, indefeasible-right of use basis.

(2) The competing provider's facilities terminate in a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(B) Competitive wholesale facilities trigger for dark fiber transport. To satisfy this trigger, a state commission must find that two or more competing providers not affiliated with each other or with the incumbent LEC, each satisfy paragraphs (e)(3)(i)(B)(1) through (e)(3)(i)(B)(4) of this section. In applying this trigger, the state commission may consider whether competing providers have sufficient quantities of dark fiber available to satisfy current demand along that route.

(1) The competing provider has deployed its own dark fiber, including dark fiber that it has obtained from an entity other than the incumbent LEC, and is operationally ready to lease or sell those facilities for the provision of fiber-based transport along the particular route.

(2) The competing provider is willing immediately to provide, on a widely available basis, dark fiber along the particular route.

(3) The competing provider's dark fiber terminates in a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(4) Requesting telecommunications carriers are able to obtain reasonable and nondiscriminatory access to the competing provider's dark fiber through a cross-connect to the competing provider's collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and though a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(ii) Potential deployment of dark fiber transport. Where neither trigger in paragraph (e)(3)(i) of this section is satisfied, a state commission shall consider whether other evidence shows that a requesting telecommunications carrier is not impaired without access to unbundled dark fiber transport along a particular route. To make this determination, a state must consider the following factors: local engineering costs of building and utilizing transmission facilities; the cost of

underground or aerial laying of fiber; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; availability/feasibility of similar quality/reliability alternative transmission technologies along the particular route; customer density or addressable market; and existing facilities-based competition.

(4) State commission proceedings. A state commission shall complete the proceedings necessary to satisfy the requirements in paragraphs (e)(1), (e)(2), and (e)(3) of this section in accordance with paragraphs (e)(4)(i) and (e)(4)(ii) of this section.

(i) Initial review. A state commission shall complete any initial review applying the triggers and criteria in paragraphs (e)(1), (e)(2), and (e)(3) of this section within nine months from the effective date of the Commission's Triennial Review Order.

(ii) Continuing review. A state commission shall complete any subsequent review applying these triggers and criteria within six months of the filing of a petition or other pleading to conduct such a review.

(5) Routine network modifications. (i) An incumbent LEC shall make all routine network modifications to unbundled dedicated transport facilities used by requesting telecommunications carriers where the requested dedicated transport facilities have already been constructed. An incumbent LEC shall perform all routine network modifications to unbundled dedicated transport facilities in a nondiscriminatory fashion, without regard to whether the facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

(ii) A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; installing a repeater shelf; and deploying a new multiplexer or reconfiguring an existing multiplexer. They also include activities needed to enable a requesting telecommunications carrier to light a dark fiber transport facility. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the installation of new aerial or buried cable for a requesting telecommunications carrier.

(f) 911 and E911 databases. An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to 911 and E911 databases on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part.

(g) Operations support systems. An incumbent LEC shall provide a requesting

telecommunications carrier with nondiscriminatory access to operations support systems on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part. Operations support system functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. An incumbent LEC, as part of its duty to provide access to the pre-ordering function, shall provide the requesting telecommunications carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent LEC.

11. Section 51.320 is added to read as follows:

§ 51.320 Assumption of responsibility by the Commission.

If a state commission fails to exercise its authority under § 51.319, any party seeking that the Commission step into the role of the state commission shall file with the Commission and serve on the state commission a petition that explains with specificity the bases for the petition and information that supports the claim that the state commission has failed to act. Subsequent to the Commission's issuing a public notice and soliciting comments on the petition from interested parties, the Commission will rule on the petition within 90 days of the date of the public notice. If it agrees that the state commission has failed to act, the Commission will assume responsibility for the proceeding, and within nine months from the date it assumed responsibility for the proceeding, make any findings in accordance with the Commission's rules.

12. Section 51.325 is amended by adding paragraph (a)(4) to read as follows:

§ 51.325 Notice of network changes: Public notice requirement.

(a) ***

(4) Will result in the retirement of copper loops or copper subloops, and the replacement of such loops with fiber-to-the-home loops, as that term is defined in § 51.319(a)(3).

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13. Section 51.331 is amended by adding paragraph (c) to read as follows:

§ 51.331 Notice of network changes: Timing of notice.

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(c) Competing service providers may object to incumbent LEC notice of retirement of copper

loops or copper subloops and replacement with fiber-to-the-home loops in the manner set forth in § 51.333(c).

14. Section 51.333 is amended by revising the section heading, paragraphs (b) and (c) introductory test, and by adding paragraph (f) to read as follows:

§ 51.333 Notice of Network Changes: Short term notice, objections thereto and objections to retirement of copper loops or copper subloops.

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(b) Implementation date. The Commission will release a public notice of filings of such short term notices or notices of replacement of copper loops or copper subloops with fiber-to-the-home loops. The effective date of the network changes referenced in those filings shall be subject to the following requirements:

(i) Short term notice. Short term notices shall be deemed final on the tenth business day after the release of the Commission's public notice, unless an objection is filed pursuant to paragraph (c) of this section.

(ii) Replacement of copper loops or copper subloops with fiber-to-the-home loops. Notices of replacement of copper loops or copper subloops with fiber-to-the-home loops shall be deemed approved on the 90th day after the release of the Commission's public notice of the filing, unless an objection is filed pursuant to paragraph (c) of this section. Incumbent LEC notice of intent to retire any copper loops or copper subloops and replace such loops or subloops with fiber-to-the-home loops shall be subject to the short term notice provisions of this section, but under no circumstances may an incumbent LEC provide less than 90 days notice of such a change.

(c) Objection procedures for short term notice and notices of replacement of copper loops or copper subloops with fiber-to-the-home loops. An objection to an incumbent LEC's short term notice or to its notice that it intends to retire copper loops or copper subloops and replace such loops or subloops with fiber-to-the-home loops may be filed by an information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network. Such objections must be filed with the Commission, and served on the incumbent LEC, no later than the ninth business day following the release of the Commission's public notice. All objections filed under this section must:

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(f) Resolution of objections to replacement of copper loops or copper subloops with fiber-to-the-home loops. An objection to a notice that an incumbent LEC intends to retire any copper loops or copper subloops and replace such loops or subloops with fiber-to-the-home loops shall be deemed denied 90 days after the date on which the Commission releases public notice of the

incumbent LEC filing, unless the Commission rules otherwise within that time. Until the Commission has either ruled on an objection or the 90-day period for the Commission's consideration has expired, an incumbent LEC may not retire those copper loops or copper subloops at issue for replacement with fiber-to-the-home loops.

15. Section 51.509 is amended by revising paragraph (a) and adding paragraph (h) to read as follows:

§ 51.509 Rate structure standards for specific elements.

(a) Local loop and subloop. Loop and subloop costs shall be recovered through flat-rated charges.

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(h) Network interface device. An incumbent LEC must establish a price for the network interface device when that unbundled network element is purchased on a stand-alone basis pursuant to § 51.319(c).

SEPARATE STATEMENT OF CHAIRMAN MICHAEL K. POWELL APPROVING IN PART AND DISSENTING IN PART

Re: *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338), Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No.96-98), and Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147).*

Today, the Commission concludes one of its most significant proceedings ever. The Triennial Review has been a complicated and difficult undertaking, but one that will set critical parameters for competition and broadband deployment for years to come. There are some important achievements in this Order that have long been objectives of mine—namely, substantial broadband relief. Yet, regrettably, there are some fateful decisions as well that I believe represent poor policy and which flout the law. While I am pleased that the Majority has made a number of changes to their UNE-P decision that respond to my concerns, significant legal failings remain. Accordingly, I must respectfully dissent.

I. The Order Takes Bold Steps to Promote Broadband Investment

I begin with the substantial step we take today to create a broadband regulatory regime that will stimulate and promote deployment of next-generation infrastructure, bringing a bevy of new services and applications to consumers. I have long stated that broadband deployment is the most central communications policy objective of our day. Today, we at last put some substance into that stated goal. I am proud to say that we take some vital steps across the desert from the analog world to the digital one. Today's decision makes significant strides to promote investment in advanced architecture and fiber by removing unbundling obligations consistent with a faithful application of Congress' impair standard. Consistent with the statute, the Order removes unbundling obligations that have applied to last mile "Fiber to the Home" deployments. In hybrid copper-fiber networks, the Commission has determined that incumbent LECs are not required to unbundle packet-switching functionality provided over these facilities; but competitors will continue to receive access to high-capacity loops provided over incumbent LEC Time Division Multiplexing ("TDM") networks.[1] These decisions mean that the digital migration is one step further along, as more investment flows into the deployment of these advanced networks.

To date, line sharing is the Commission's most successful broadband policy and it has

[1] In so doing, we require incumbent LECs to unbundle legacy technologies such as HDSL while removing barriers to the deployment of innovative advanced electronics such as Passive Optical Networking ("PON") components.

generated clear and measurable benefits for consumers. It has unquestionably given birth to important broadband suppliers. This additional facilities-based competition has directly contributed to lower prices for new broadband services.

I also believe the argument that removing line sharing is a form of positive regulatory relief to stimulate broadband is ill-conceived. Line sharing rides on the old copper infrastructure, not on the new advanced fiber networks that we are attempting to push to deployment. Indeed, the continued availability of line sharing and the competition that flowed from it likely would have pressured incumbents to deploy more advanced networks in order to move from the negative regulatory pole to the positive regulatory pole, by deploying more fiber infrastructure. This decision actually diminishes the competitive pressure to do so.

II. The Majority's Switching Decision Is Bad Law, Bad Policy and Ultimately Bad for Consumers

In opening this proceeding, this Commission committed itself to conduct a thorough review of its unbundling policies. This review took on greater importance in light of a slumping telecommunications sector and the D.C. Circuit's *USTA* decision vacating the rules that unbundled every element of an incumbent's network. Thus, the Commission was ordered to reconstruct its list of unbundled elements from the ground up – making an element available only if the Commission could show a competitor was significantly impaired without it. As we have endeavored to do so, the most controversial judgment rested with the switching element. The importance of this element is not in its particular functionality, but that it represents the capstone of what has become known as the unbundled platform or UNE-P. UNE-P is nothing more than a complete use of the incumbent's network, priced by element. This results in a substantially lower price than the statute allows for resale. If switching is available, it is very likely a carrier can resell the entire incumbent's network, at heavily discounted rates set by regulators, without having to provide anything in the way of its own infrastructure. After one sorts through the legal contortions of the Majority's switching decision he will find an Order remarkably similar to the prior two fatal decisions – one that preserves UNE-P as the favored mode of competition, without any meaningful consideration of the social and economic costs of unbundling. This is bad policy and bad law.

Consistently underlying my position is a commitment to promote and advance competition that is meaningful and sustainable, and that will eventually achieve Congress' goal of reducing regulation and promoting facilities-based competition.[2] The benefits of such a policy are straightforward:

[2] The Commission recognized in the last unbundling order that the goal of our regime is to "promote the development of facilities-based competition." *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3696, para. 7 (1999) ("UNE Remand Order"). Today's UNE-P decision, however, does not support the established proposition that facilities-based competition is the preferred method to achieve the twin Congressional goals of deregulation and competition.

- Facilities-based competition means a competitor can offer service differentiated from the incumbent.
- Facilities-based competitors own more of their network and can control more of their costs, thereby offering consumers real potential for lower prices.
- Facilities-based competitors are less dependent on the incumbent thereby reducing the need for regulation – an explicit Congressional goal.
- Facilities-based competitors also create vital redundant networks that can serve our nation if other facilities are damaged by those hostile to our way of life.

Apparently, the Majority is a big fan of UNE-P, because it has contorted the letter and spirit of the statute and the court's interpretation of our responsibilities in an effort to ensure its indefinite preservation. What is remarkable about this decision is that one looks in vain to find a clear or coherent federal policy in the Majority's choices. Today's decision clearly steps back from a pro-facilities policy, by favoring extensive regulatory management of incumbent networks. Under this regime, state regulators set retail rates, state regulators set all wholesale rates, and state regulators determine what elements will be made available. More distressing than giving facilities providers the back of their hand, I see no meaningful federal policy put in its place, other than vague and solicitous pronouncements about the states playing the lead role in making these determinations and a commitment to "competition," no matter how anemic or artificial. Congress demanded the Commission not be so demur when it vested it with responsibility for the unbundling regime.

This proceeding began properly as an exercise to determine what elements should be unbundled. It was transformed into a battle not over *what* should be unbundled, but *who* should decide – this Commission or the states. Make no mistake, the role of the states dominated this proceeding solely because states are perceived as a more favorable venue for preserving the *status quo* of aggressive unbundling rights. Indeed, this perception is not without support as the states, through the National Association of Regulatory Utility Commissions (NARUC), supported the "universal availability of UNE-P."[3] Competitors who once viewed states as less than perfect protectors of competition, swapped positions and took refuge in a states rights debate that was a stalking horse for a policy of maximum unbundling. In this environment, the Majority decided to take a politically expedient course instead of the right course: they decided not to make any of the difficult calls that this proceeding demanded. Notwithstanding the tens of thousands of pages of record evidence compiled over the course of a full year and the tireless work of Commission staff, the Majority ruled that there was little basis in the record for any conclusive decision and that states, instead, should make the lion's share of unbundling determinations. The record was beside the point, the goal was to keep UNE-P in place. In so doing, the Majority's decision substantially repeats the errors of our past approaches to unbundling.

[3] Letter from Joan Smith, Chair, NARUC to Chairman Michael K. Powell (December 5, 2001).

III. The Majority's Decision Does Not Establish A Meaningful Limit on Unbundled Switching As the Courts Require

A. The Majority's Decision to Unbundle Switching for the Mass Market is Flawed

I also dissent from the switching section of this *Order* because I find a Commission majority for the third time in seven years substituting its preference for a heavily permissive unbundling regime for Congress's judgment that no element should be provided unless the Commission can affirmatively conclude that a competitor is impaired without it. The Supreme Court admonished that section 251(d)(2) placed "clear limits" on the Commission's authority to order unbundling. *AT&T v. Iowa Utils. Bd.*, 525 U.S. 388, 397 (1999). The Commission's second unbundling attempt also failed, when the D.C. Circuit vacated our rules last summer. The D.C. Circuit emphasized that the Commission could not treat unbundling as an unqualified good and had to consider the social costs as well. *See United States Telcom Ass'n v. FCC*, 290 F.3d 415, 427 (D.C. Cir. 2002). It also admonished that the standard employed and applied by the FCC had to demonstrate that a typical entrant was effectively prohibited from entering the market due to barriers associated with the monopoly power of the incumbent and not just typical start-up costs or costs naturally associated with entry. *Id.* at 422. In reaching its switching decision, the Majority flouts the D.C. Circuit's mandate.

I begin with a discussion of the Majority's mass market switching decision. First I question whether the Majority has adequately explained its conclusion that competitors are operationally impaired without unbundled switching as a national matter. Second, I discuss whether the Majority's economic impairment analysis provides a meaningful limitation on the availability of UNE-P. Finally, I examine the Majority's approach to UNE-P in the business market.

i. The Majority Decision Ignores Record Evidence of Hot Cut Performance as a Limitation on Unbundled Switching

In the mass market, the Majority rests its switch unbundling requirement solely on the blanket judgment that the incumbent "hot cut" process – a process that relates solely to loop provisioning – justifies unbridled switch unbundling. This speculative, nationalized finding ignores substantial record evidence and cannot be squared with this Commission's own findings that incumbent LECs perform hot cuts at sufficient levels to demonstrate that competitors are presented with a meaningful opportunity to compete. Indeed, in each and every one of the orders approving Bell Company applications to provide long distance service, the Commission has found, after painstaking state review, that this standard is met.[4] The Majority on the other hand

[4] Indeed we have now examined the hot cut processes in 42 states and the District of Columbia and found that each and every BOC has in place a hot cut process that provides competitors a meaningful opportunity to compete. *See e.g., Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance; Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, CC Docket No. 00-65, FCC 00-238, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18490-93, paras. 268-73 (2000); *Joint Application* (continued....)

has loftily abstracted away from the granular findings of this Commission's 271 Orders in favor of vague pronouncements that lead back to variation on that same state-sponsored process. Such a tautology cannot withstand scrutiny.

The Majority disregards this objective evidence in the record on the ground that hot cut volumes could substantially increase if UNE-P were phased out. Based entirely on speculation that such an increase could result in a degradation of hot cut performance, the Majority presumes impairment. But even here the Majority is not entirely certain of its own conclusion, stating that "it is *unlikely* that incumbent LECs will be able to provision hot cuts in sufficient volumes absent unbundled local switching in all markets."[5] I cannot agree with a Commission finding that the hot cut process is so presumptively broken that incumbents must offer UNE-P indefinitely without a "more nuanced concept" of where and when that process might cause impairment. *United States Telecom Ass'n v. FCC*, 290 F.3d at 426. The Majority's finding likewise flies in the face of substantial record evidence that incumbents can perform at levels to meet "reasonably foreseeable demand volumes" for hot cuts. *E.g., New York 271 Order*, 15 FCC Rcd at 3993.[6] Additionally, there are other, more direct methods of ensuring that the hot cut process is working that fall short of the extraordinary remedy of unbundling the switch.[7] I would have preferred to continue the existing partnership with state regulators to further define an incumbent's obligations in this area and, where it is demonstrated that the hot cut processes has broken down, order a narrowly tailored remedy.

ii. The Majority's Mass Market Switch Triggers Are Illusory

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by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, FCC 01-29, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6340, para. 207 (2001); *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc for Provision of In-Region, InterLATA Services In Georgia and Louisiana*, CC Docket No. 02-35, FCC 02-147, Memorandum Opinion and Order, 16 FCC Rcd 9018, 9145, para. 220 (2002); *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, FCC 99-404, Memorandum Opinion and Order, 15 FCC Rcd 3953, 4104-05, para. 291 (1999); *Application by Qwest Communications Internationl, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, WC Docket No. 02-314, FCC 02-332, Memorandum Opinion and Order, 17 FCC Rcd 26,303, 26,370, para. 107 (2002).

[5] Order para. 468 (emphasis added).

[6] The Majority erroneously cites the New York Commission's conclusion that "it would take Verizon over 11 years to switch all the existing UNE-P customers to UNE-L" without disclosing that the New York Commission did not assume any increase in the incumbent's hot cut capacity scaled to meet reasonable forecasts of demand. *See* Order para. 469.

[7] For example, state regulators could continue their existing, active approach to enforcing hot cut performance measures; unbundled switching might serve as a remedy where poor hot cut performance is demonstrated.

After wading through the complexity of the Majority's regulatory framework for mass market switching, two conclusions emerge from the tangle of conflicting pronouncements: First, the "objective" switch triggers relied upon by the Majority are an illusory limitation. Second, because the switching triggers are not a meaningful limitation, states are essentially free to do as they wish.

The Majority purports to constrain state discretion by removing unbundled switching where 3 self-provisioned switches or 2 wholesalers are present in a given market.[8] This is no limitation at all. Indeed there may be few markets, if any, that include three competitors using self-provisioned switching to serve the mass market. Directing states to apply this trigger is therefore largely a meaningless exercise. Why? Because an honest inquiry into this area must recognize what the record amply demonstrates: there is a correlation between the availability of UNE-P and the failure of competitors to utilize their own switching capacity. I fully appreciate the challenges that carriers face in utilizing self-provisioned switching to serve the mass market. I cannot square the Majority's approach, which sets a trigger at a level that is presently satisfied almost nowhere, with a record that shows competitors are *now* widely serving mass market customers using their own switches and unbundled loops.

Furthermore, the Commission's own data is replete with findings that the average number of lines that competing carriers serve with their own switches and unbundled loops dropped sharply between the beginning of 2000 and June of 2002. In just eight of the states where carriers now make extensive use of UNE-P, competitors are connecting more than 45,000 fewer lines per month – or more than half a million *fewer* lines per year – to their own switches using unbundled loops compared to 2000.[9] Far from fostering a transition to facilities-based networks, the Commission's data suggest that some carriers are moving existing lines from their switches to UNE-P, leaving competitor switches underutilized.[10] These facts suggest that it is unreasonable to expect that competitors will utilize self-provisioned switching capacity while a

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[8] Order para. 463.

[9] The eight states are New York, New Jersey, Massachusetts, Georgia, Florida, Illinois, California, and Texas. *Selected RBOC Local Telephone Data, available at:* http://www.fcc.gov/wcb/iatd/comp.html (RBOC Local Telephone Dec 1999.xls; RBOC Local Telephone June 2000.xls; RBOC Local Telephone Dec. 2000.xls; RBOC Local Telephone June 2001.xls; RBOC Local Telephone Dec 2001.xls; RBOC Local Telephone June 2002.xls).

[10] The Commission's data show that the number of CLEC-owned lines other than those provided by cable decreased by half a million lines between December 2002 and June 2002, while the number of UNE-P lines increased from 5.8 to 7.5 million. *See Local Telephone Competition: Status as of June 30, 2002* (December 2002) at Tables 2, 3 & 5; *Local Telephone Competition: Status as of June 30, 2000* (December 2000) at Table 5. *See, e.g.*, UNE Rebuttal Report 2002, Prepared for BellSouth, SBC, Qwest, and Verizon, filed with the Federal Communications Commission, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, at 30 (October 2002) ("UNE Rebuttal Report"). The failure of facilities-based CLECs to accelerate their deployment plans may likewise explain why the rollout of cable telephony has proceeded at a slower pace than many expected.

steeply discounted and long-term UNE-P alternative exists.[11]

The purportedly "objective" and "mandatory" switch trigger is also undermined by unheeled discretion states are permitted in defining the market to which the trigger applies. Every antitrust lawyer knows that the outcome of any case is generally won or lost over how the market is defined. The same is true of the Majority's impairment analysis.[12] While conceding that the "triggers and analysis . . . must be applied on a granular basis to each identifiable market" the Majority bounds the market definition exercise only by acknowledging that states "may not define the market as encompassing the entire state."[13] Under this guidance, it could be argued, that the state of Rhode Island cannot define the geographic scope of its market any larger than its 1545 square miles will permit; but next door, Massachusetts regulators are free to define the market nearly seven times larger than their Rhode Island counterparts. Never mind that it is possible for switches located in Providence to serve a customer in Boston. This is not granularity, it is gerrymandering. Put simply, states are likely to reach wildly different results in applying the trigger because the trigger is tied to state market definitions that can be as large as a LATA and as small as a wire center.[14] The Majority responds that the physical location of the switch may have little if anything to do with the location of the customer served by a switch; but that rationale calls into question the very premise that states are uniquely qualified to make these judgments, which is the cornerstone of the Majority's holding, and suggests a national finding is more appropriate. The Majority's market-definition approach is therefore not sufficiently grounded in objective, limiting criteria.

iii. The Majority Delegates to the States the Power to Unbundle Switching Based on Economic Impairment, Without Meaningful Limits

The Majority finds impairment based solely on the basis of operational impairment and the "hot cut" process. Yet, it empowers states to find economic impairment (even after curing the operational concern) based on a laundry list of possible economic disadvantages.[15] The first

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[11] I cannot agree that the presence of a batch migration process will sufficiently counter the powerful incentive of carriers to send merely an order to obtain a UNE-P arrangement rather than utilize their own switching capacity.

[12] States are granted "discretion to determine the contours of each market" in conducting their impairment inquiries. Order para. 495.

[13] Order para. 495.

[14] *See* Order para. 495.

[15] The Majority's list of possible sources of economic impairment could hardly be longer. Potential costs that a state commission must consider include: "the cost of purchasing and installing a switch, the recurring and non-recurring charges paid to the incumbent LEC for loops, collocations, transport, hot cuts, OSS, signaling, and other services and equipment necessary to access the loop; the cost of collocation and equipment necessary to serve local exchange customers in a wire center, taking into consideration an entrant's likely market share, the scale economies inherent to serving a wire center and the line density of the wire center; the cost of backhauling the local traffic to the competitors switch; other costs associated with transferring the customer's service over to the competitor; the (continued....)

error it makes in taking this path is that the Majority blinds itself to the significant self-provisioned switching capacity that exists in the market and the fact that a number of competitors have overcome whatever economic impediments exist and are using that switching capability to serve mass market customers.[16] I believe the record supports an approach that would have enlisted states in a joint enforcement regime designed to address operational issues that might frustrate a transition to facilities-based competition. Instead, the Majority has unleashed a chaotic process that directs the states to find economic impairment that is simply not cognizable under section 251(d)(2).

As described below, states are free to do what they choose in weighting the Majority's economic criteria in divergent and subjective ways. Indeed, given these economic criteria, it would be difficult to judge whether an individual state has complied with the delegation granted to it.[17] Perhaps this is why the Majority has resisted an exclusive appeal right to this Commission and suggested that federal district courts – in lieu of this Commission – are an appropriate venue to review state decisions that apply these factors.[18] The significance of *Commission* oversight over this delegation should not be underestimated.[19] In my view, the statute commits to this Commission the ultimate responsibility for ensuring *its* unbundling decisions are adhered to. To remain faithful to the statutory scheme and principles of federal supremacy, however, the Commission must retain the *primary* decision making authority, and we must establish *clear* standards for the states to apply.[20]

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impact of churn on the cost of customer acquisitions; the cost of maintenance, operations and other administrative activities and the competitors' capital costs." Order para. 520.

[16] *See* BOC UNE Fact Report 2002 at I-9, Figure 6 Use of UNE Platforms by CLECs Providing Service to 25,000 or More Residential Lines Using Their Own Switches ("CLECs providing service to 25,000 or more facilities-based residential lines include: ALLTEL, Broadview, Cavalier Telephone, Intermedia, Knology, McLeodUSA, RCA, TOTALink).

[17] Federal district courts reviewing state decisions are likely to fare no better for the same reasons this Commission would have difficulty comparing state action against non-existent federal standards.

[18] The Majority admits that interested parties could file a section 208 complaint or petition for declaratory ruling with this Commission to ensure oversight with the Commission's switching framework. *See* Order para. 426. I cannot agree, however, that a section 208 adjudicatory proceeding is an appropriate procedural vehicle for oversight of state unbundling determinations of general applicability made pursuant to section 251(d)(2).

[19] For this reason, Commissioner Abernathy and I supported a specific, exclusive appeal right to this Commission to implement the transport decision; but such a right was not supported by the Majority. Transferring oversight responsibility to federal district courts under the guise of their arbitration review authority is, in my view, inconsistent with the statutory command that "the Commission shall consider" which network elements will be unbundled. 47 U.S.C. § 251(d)(2).

[20] For this reason, I fully support the Commission's delegation of federal authority to states to implement the Commission's unanimous transport and high-cap loop decision. In reaching the Commission's binding transport and high-capacity loop decisions we grant states a fact-finding role to implement our decision and therefore avoid abdicating our responsibilities under the Act. The Majority struggles to square the circle and harmonize its switching approach with our unanimous transport decision; but significant differences remain. First, because the (continued....)

There is no doubt that the statute does contemplate a state/federal partnership in certain areas. States are given control over the rates set for unbundled elements, but it is principally the obligation of this Commission to determine what those elements will be, faithfully implementing the impairment clause. States can assist in that effort, but our responsibilities should not be released to them. Justice Antonin Scalia, whose credentials are unchallenged as a leading voice for states' rights, eloquently addressed the division of federal and state authority when he wrote:

> [t]he question in these cases is not whether the Federal Government has taken the regulation of local telecommunications competition away from the States. With regard to the matters addressed by the 1996 Act, it unquestionably has. The question is whether the state commissions in the administration of the new *federal* regime is to be guided by federal-agency regulations. If there is any 'presumption' applicable to this question it should arise from the fact that a federal program administered by 50 independent state agencies is surpassing strange . . . .

AT&T v. Iowa Utils. Bd. 525 U.S. 388, 391. I could not agree more.[21]

1. The Majority's Subjective Economic Criteria Treats UNE-P as an Unqualified Good and Engages in Impermissible Bootstrapping

The *USTA* court cautioned this Commission not to rely on start up costs ordinarily associated with entry or conditions set by regulatory bodies in reaching our unbundling

(Continued from previous page) ———————————

triggers are set at an appropriate level for the transport market, our transport decision establishes a meaningful limitation on unnecessary unbundling. Second, because the transport triggers establish a meaningful limitation, there is less of a need for the Commission to direct the states to engage in a subjective, multi-factor impairment analysis as in the Majority's switching decision.

[21] Compromise within the limits of the law is undoubtedly necessary for the administrative process to function smoothly; but on the question of federal – state relations, our efforts to compromise must not run afoul of the statutory scheme. The Majority charges me with hypocrisy by citing a single sentence in a past statement taken out of context, as evidence that I should support the switching result in the item released today. Order para. 425 n. 1306. The Majority stresses their opinion that the dissenters did not make sufficient efforts at compromise; but their citations to my past statements and parts of the item to which I consented, leaves me wondering whether the Majority may be more interested in one-upsmanship than compromise. As I describe below, I continue to believe that state regulators can assist in our efforts to achieve a rational unbundling regime, but our responsibilities should not be released to them. There is no inconsistency between my past statements and my current position that the Majority simply goes too far in that direction. If questions remain about my views, there is no doubt that I have grown in my concern about the long-term viability of UNE-P. This concern was amplified after the D.C. Circuit's *USTA* decision. To the extent a judicial decision intervened to change the legal landscape and caused me to rethink and expand upon my initial position, I do so humbly and openly, mindful that "wisdom too often never comes, and so one ought not to reject it merely because it comes late." *Henslee v. Union Planters*, 335 U.S. 595 (1949) (Frankfurter, J., dissenting).

decision.[22] Yet the Majority repeatedly relies upon ordinary start-up costs or other impediments within the control of federal and state regulators to justify its conclusion competitors are, or could be, impaired without switching. The result is a framework that treats UNE-P as an unqualified good without sufficient regard for the costs associated with the Majority's forced sharing requirements.

Many factors cited by the Majority are cost disparities universally faced by any new market entrant. For example, the Majority explicitly finds that customer churn rates – a prime example of ordinary start-up costs – contributes to impairment.[23] Thus the Commission, once again, has relied upon factors specifically rejected by the *USTA* court. The Majority goes on to note that competitor switching architecture "effectively requires competitors to deploy much longer loops than the incumbent."[24] I do not contest the fact that competitors must reach their loops farther away from self-provisioned switches compared to incumbents who have deployed ubiquitous switching capability. What I do contest is the Majority's failure to adequately recognize that this network configuration demonstrates that competitors generate their own countervailing competitive *advantage* by self-provisioning switching.[25] While the cost of backhauling traffic to a central switching point may or may not be marginally greater than the incumbent's cost of backhaul, competitors experience more advantageous cost conditions – including UNE transport rates – by avoiding the cost of deploying ubiquitous switching to every incumbent LEC wire center, thereby mitigating impairment.[26]

Reasonable minds could differ regarding the extent of this cost/benefit tradeoff but the law requires the Commission to confront this question in a serious manner that addresses both the benefits and social costs of unbundling – something the Majority has not done. Regrettably, given the porous nature of the switching triggers, there is simply no barrier that would preclude a

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[22] The Court noted that "average unit costs are necessarily higher at the outset for any new entrant into virtually any business." *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3696, para. 7 (1999).

[23] Order para. 471 ("The record demonstrates that the current level of churn for carriers providing service to the mass market has significant negative revenue effects on the ability of competitive carriers to recover the high costs associated with manual hot cuts.").

[24] Order para 480. The majority describes the costs of backhaul, which "include the costs of collocating in the customer's serving wire center, installing equipment in the wire center in order to digitize, aggregate, and transmit the voice traffic, and paying the incumbent to transport the traffic to the competitors switch, put [competitors] at a significant cost disadvantage to the incumbent." Id. 480.

[25] *See* Separate Statement of Commissioner Michael K. Powell, Dissenting in part, CC Docket No. 96-98 (November 5, 1999).

[26] *See USTA* at 290 F.3d at 427 (faulting the Commission for failing to identify countervailing competitor economy of scale advantages in switching "over the entire extent of the market."). *See also id.* at 423 (faulting the Commission for failing to consider "the advantage CLECs enjoy in being free of any duty to provide underpriced service to rural and/or residential customers.").

state from using low retail rates or high startup costs as a way to ensure UNE-P will continue to be available. The Majority approach, in effect, begins with a default assumption of impairment. Only when all barriers to *profitability* have been eliminated does this Commission empower states to eliminate UNE-P.[27] This exercise is unlikely to achieve the balance called for explicitly by Justice Breyer in *Verizon* or "implicitly by the Court as a whole in its disparagement of the Commission's readiness to find 'any' cost disparity reason enough to order unbundling." *United States Telecom Ass'n, v. FCC, 290 F.3d 415, 428.*

The Commission's task is to determine whether competitors are impaired without a given "element." By directing states to examine factors that are chosen to focus on and overstate competitor cost disadvantages without meaningful consideration of countervailing advantages, the Commission has focused not on whether competitors are impaired without the switching *element* but, rather, the Majority has endorsed a regime that focuses on whether self-provided switching is as *profitable* as UNE-P. It is the Commission's job to ensure that local markets are open to competition and that competitors are given a fighting chance to participate in that market. By explicitly engaging in a profitability analysis, the Commission has converted the impairment standard into a protector of individual business plans.[28] In so doing, the Majority asks the wrong question and provides the wrong answer.

The Majority attempts to guide states' evaluation of switching impairment with a shot-gun blast of every imaginable economic criterion. In so doing, however, it revives the very type of factors explicitly rejected by the *USTA* court. It is said that the average cost of collocation, the cost of backhauling local traffic to a competitor's switch, the cost of capital and a competitor's back office expenses bear on a state's decision to find impairment.[29] These factors are problematic because they are almost identical to the factors rejected in the *UNE Remand* decision.[30] I am particularly troubled that we are – once again – importing into the impairment

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[27] The Majority's comparison of costs and revenues amounts to a consideration of whether entry by a competitor is profitable. See Order paras. 517, 519-520.

[28] Order para. 517 n. 1579 (states may conduct "a business case analysis for an efficient entrant.").

[29] Order para. 520.

[30] The item's approach is virtually identical to the discredited "totality of the circumstances" test of the *UNE Remand Order*. *See* Order para. 458. Under the guise of granularity, it appears that the majority merely renamed the cost, quality, and ubiquity factors vacated by the D.C. Circuit by focusing the state analysis on precisely the alleged "impairments" analyzed by the Commission in the *UNE Remand* decision. *Compare UNE Remand Order* para. 263 (finding non-recurring costs of collocation constitutes impairment) *with Order* para. 520 (finding that states should consider whether non-recurring costs of collocation constitute impairment); *Compare UNE Remand Order* para. 266 (finding that loop cutovers costs constitute impairment) *with Order* para. 512 (finding that states should consider whether loop cutovers costs constitute impairment); *Compare UNE Remand Order* para. 256 (finding that geographic specific factors may determine impairment) *with Order* para. 520 (finding that states should consider whether geographic specific factors determine impairment); *Compare UNE Remand Order* para. 262 (finding that self-provisioning switching costs constitutes impairment) *with Order* para. 520 (finding that states should consider whether self-provisioning switching costs constitutes impairment).

analysis problems that do not result directly from denying competitors access to unbundled switching. To the extent collocation is a problem for competitors attempting to deploy their own switches, it is difficult to argue that this problem directly results from denying competitors access to unbundled switching.[31]

The Majority approach is more indefensible because through regulation we have addressed competitor collocation rights, and for the first time, solidified this area of competition policy with a judicial endorsement of their consistency with the Act.[32] Yet despite this success, the Majority would pervert these stable rules into sources of regulatory instability and impairment. Never mind that after this order, competitors will enjoy forward-looking prices for hot cuts, collocation and unbundled transport.[33] Never mind that Congress provided a direct remedy for competitor collocation in section 251. Instead, somehow the super-efficient pricing of collocation, hot cuts and transport (which is set by regulators) has been twisted into a source of competitive disadvantage and possible reason to order forced sharing of the incumbent's switch. This bootstrapping flies in the face of the Court's admonition that factors set by regulators can hardly justify economic impairment.[34]

The Majority's bootstrapping of UNE rights further ignores the fact that the rates for collocation and hot cuts as well as other UNEs, are not within the control of the incumbent LEC and therefore are not cognizable under section 251(d)(2).[35] The Majority has threaded its impairment analysis with characteristics that are not linked to natural monopoly in direct contravention of the *USTA* decision. The state commissions are ultimately responsible for setting the rates for collocation and unbundled transport. State commissions are likewise responsible for setting retail local phone rates. We stray too far from a reasonable interpretation of section 251(d)(2) when we cite these government-controlled prices as the reason that private

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[31] *See* Separate Statement of Commissioner Michael K. Powell, Dissenting in part, CC Docket No. 96-98 (November 5, 1999).

[32] Indeed the costs, delays, and physical constraints associated with collocation have already been addressed through the Commission's default provisioning interval. *See* Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Fourth Report and Order*, CC Docket No. 98-147, 16 FCC Rcd 15435, 15454, para. 36 (2001) (Collocation Remand Order*), aff'd sub. nom. Verizon Telephone Cos. v. FCC*, 292 F.3d 903 (D.C. Cir. 2002).

[33] When geographic differences point to the elimination of an unbundling requirement, the Majority is all too happy to assume away these differences in favor of a national finding. *See* Order para. 470 ("Although hot cut costs vary among incumbent LECs, we find on a national level that these costs contribute to a significant barrier to entry.").

[34] Order para. 91 ("We examine those barriers to entry that are solely or primarily within the control of the incumbent LEC.") *See also USTA* at 427 (linking impairment to "natural monopoly" characteristics not conditions outside of control of incumbent LEC).

[35] Rather they are generally set according to state ratemaking authority found in section 252(d)(1)(A)(i). The statute does provide for interconnection agreements outside of the section 252 framework; but those arrangements are *bilateral* negotiations the terms of which are not entirely within the control of incumbent LECs.

companies should be required to unbundled their networks. The Majority's approach risks the possibility that government will sponsor competition through indirect decisions and endorsement of continued implicit subsidies designed to prop up synthetic competition.

When Congress adopted section 251(d)(2), it granted this Commission a toolbox to open local telephone markets to competition. One of those specific tools was unbundling. Unbundling is specifically designed to address impairments within the incumbent's control. The Majority's reliance on such things as collocation, CLEC-CLEC cross-connects, transport availability and retail rate structures is simply too far afield from the question of whether competitors are impaired without access to unbundled switching. I cannot support a decision to use the impairment standard as a hammer, a wrench, a screwdriver, etc., to fix every perceived problem that may ail rational competition in telecommunications markets.

I also have serious concerns that the Majority's switching approach is, in practice, unworkable.[36] The Majority's impairment model is dependent upon hundreds of assumptions about local exchange markets and costs. Simply by making different assumptions about local exchange networks, or by picking different input values for the costs, the Commission and implementing state commissions can reach widely varying conclusions, undermining a coherent federal regime and distorting entry decisions.[37] This uncertain environment disadvantages competitors and incumbents alike as neither is in a position to make rational investment decisions based on stable rules.

Finally, even in circumstances where a state has found no mass market impairment, the Commission has seen fit to allow unbundling for three full years. Given the *USTA* court's emphasis on the significant social costs that unbundling imposes, it is legally problematic to require unbundled switching for *three years* when there has been an *express finding* of no impairment. I concede that the Commission is permitted to afford a reasonable transition to avoid undue customer disruption, but this period is nothing of the sort. Its true intent is made obvious by allowing unbundling clear through the Commission's next comprehensive

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[36] "Factor based" unbundling requirements have been tried by this Commission before, to little consistent effect. In the *UNE Remand Order*, the Commission created a straightforward 4-part test for unbundled packet switching. Despite this objective test, state commissions took diametrically opposed views of whether packet switching should be required. *Compare* Arbitration Award, Case No. 01-1319-TP-ARB, at 52 (Pub. Utils. Comm'n of Ohio, Nov. 7, 2002) ("the criteria" of the FCC's packet switching rule "should be evaluated on an RT-by-RT basis or location-by-location basis") *and* Final Order on Arbitration, Docket No. 010098-TP, order No. PSC-02-0765-FOF-TP, at 16 (Fla. Publ. Serv. Comm'n, June 5, 2002) (FCC's packet switching rule "contemplates a case-by-case analysis of whether [the four] conditions are met at specific remote terminals") *with* Order on Rehearing, Docket No. 00-0393, at 36 (Ill. Comm. Comm'n, Sept. 26, 2001 ("We reject Ameritech's notion that these situations must be viewed on an RT by RT basis.").

[37] The majority makes much of the fact that its approach responds to the *USTA* court's demand for granularity. Yet, in response to this decision, the states have already organized themselves into regional and national cooperatives that appear to be a far cry from the localized, market-specific findings the majority expected them to arrive at. *See* www.naruc.org/programs/trip/index.shtml.

unbundling review. This is not a decision that supports the transition to facilities-based networks; it is a decision that cleverly pushes UNE-P along until the next UNE review.

2. The Majority's Approach to Revenue Impairment is Inconsistent with the *USTA* Decision

Since we voted this item on February 20th, the Majority has attempted to harmonize the switching framework with other sections of the item. Turning heads to tails, the Majority now argues that dissenting criticisms of the switching approach rest on a mischaracterization of the *USTA* decision and are otherwise inconsistent with sections of the Order to which I have approved. This criticism boils down to a disagreement over the manner in which the impairment standard is *applied.* For example, the Majority's switching decision conflates an impairment standard that properly asks whether entry is "uneconomic" with the question of whether entry is profitable.[38] Under its profitability analysis the Majority directs states to consider whether price and revenue *reductions* that result from additional competitive entrants can form the basis of impairment.[39]

First, I cannot agree that the very entry this Commission should rightly encourage can form the basis for a continuing impairment. This is a staggering endorsement of a centrally managed artificial competition standard that pays little attention to the positive consumer benefits that result from facilities-based competition. Second, I am at a loss to understand how a well-intentioned state commissioner can implement this decision. Is a 10 percent price reduction cause for impairment? 20 percent? It is quite simply an *ad hoc* calculation, permitting any result whatsoever. Third, this approach endorses a least common denominator circularity that is not faithful to the statute. If a first mover enters a market and is followed by a second entrant, can this be grounds to say that the third is impaired? The third entrant is not impaired, rather three is merely one too many for the market to sustain. Such regulatory calculus impedes the proper functioning of a market, which signals the right levels of scale and scope. The Majority's switching construct ignores the fundamentals of economics.

Furthermore, it is widely accepted that because of universal service cross subsidies, many residential rates are priced below cost and, thus, the retail revenues associated with those services may, in some cases, not cover the costs incurred to provide the service. The D.C. Circuit, however, rejected the notion that competitors' decision not to enter subsidized markets

[38] Order at para. 84.

[39] The Majority notes that "potential revenues could be outweighed by a combination of even higher economic and operational costs, such as untimely and unreliable provisioning of loops, transport, or collocation by the incumbent LEC at high non-recurring charges and significant costs to purchase equipment and backhaul the local traffic to the competitor's switch." Order para. 458.

with their own facilities demonstrates impairment.[40] In this situation, it is the retail rate structure that causes impairment, not the incumbent's monopoly position in the market. Thus, to the extent that the Majority's approach to revenue-impairment includes an analysis of artificially low retail voice rates, it is specifically barred by *USTA*.

B. The Majority Fails to Reach a Conclusive Finding of No-Impairment in Competitive Business Markets

In the business market, the Majority permits states to unbundle switching for business customers without a thorough analysis of sufficiently granular facts. As discussed above, my primary objection to the Commission's initial vote was the complete transfer of decision making authority to state commissions through a series of unreviewable presumptions of impairment.[41] I am pleased that in the released decision the Majority has jettisoned its initial presumptive approach to business switching.[42] In its place however, it has provided a procedural mechanism that provides for UNE-P in a segment of the market where facilities-based competitors have been the most successful. The record shows that more than 200 competitors have deployed more than 1,300 switches nationwide addressing 86 percent of Bell Operating company wire centers.[43] I

[40] The D.C. Circuit stated that "[I]f competition performed with ubiquitously provided ILEC facilities counts, the more unbundling there is, the more competition," but then explained that if fact this competition does not support the goals of the Act because it is "completely synthetic." *USTA*, 290 F.3d at 422, 424.

[41] I appreciate the willingness of my colleagues to reform parts of their unbundling approach in response to my concerns at that time; but ultimately the Majority's approach has fallen short of the mark. On February 20, I dissented to the Majority's switching approach because unlike our impairment frameworks for transport and high-capacity loops, the Majority's switching decision made no findings at all and ensured that the transfer of ultimate decision making to the states was complete by withdrawing an appeal right to this Commission. Today the released version of the item does not use a pure presumptive approach but finds that the "hot cut" process currently inflicts a nationwide impairment on competitive LECs for mass market customers that only unbundled switching cures. The Majority declares that "[o]ur national finding of impairment is based on the combined effect of all aspects of the hot cut process on competitors' ability to serve mass market voice customers." Order para. 473. In the business market, today's order adopts a national non-impairment finding, but provides a vehicle for state commissions to place switching on the list. I remain concerned that this approach renders the finding inconclusive and permits states to overturn the Commission's judgment.

[42] The Order's initial approach completely released its unbundling decision to the states without a right of appeal to this Commission, thereby "totally abdicat[ing] its ultimate responsibility for enforcing the [statutory] provision." *American Civil Liberties Union v. FCC*, 823 F.2d 1554, 1574-75 (D.C. Cir. 1987). Now the Majority relies on a state waiver process to protect against charges that it has avoided its responsibilities to determine which network elements should be unbundled.

[43] *See* BOC UNE Fact Report at I-9. The Majority's national business switching "findings" are presumptions by another name. Indeed the Majority notes that states may "rebut that finding based on a more granular inquiry." Order para. 451 n. 1375. In adopting this approach the Majority tests the limits of its authority and may well have, in effect, avoided the statutorily prescribed impairment test by means of a rebuttable presumption. The D.C. Circuit has explained that an "agency is not free to ignore statutory language by creating a presumption on grounds of policy to avoid the necessity for finding that which the legislature requires to be found." *United Scenic Artists, Local 829 v. NLRB*, 762 F.2d 1027 (D.C. Cir. 1987).

am concerned that state decisions endorsing UNE-P, particularly to serve small enterprise customers, may devalue the assets of providers serving these markets and exert pressure on legitimate facilities-based providers to begin using UNE-P. Instead of providing for a waiver process that allows states to unbundle UNE-P for business customers, I believe the record fully supports conclusively removing unbundled switching to serve business customers, subject to an appropriate transition to protect against customer disruption.

IV. The Majority Made Incongruous Compromises

I am concerned that there are incongruous compromises apparently designed only to preserve UNE-P. Take the Majority's decision on line sharing. Companies such as Covad presented specific, credible arguments that competitors are impaired without line sharing. The public statements of some of my colleagues make very clear that a majority of the Commission actually supported line sharing, yet it was sacrificed to secure votes to achieve the higher priority of indefinitely preserving UNE-P.[44] Courts have been quick to reverse agencies when they engage in "unprincipled compromises of Rube Goldberg complexity." *Schurz Communications Inc. v. Federal Communications Commission*, 982 F.2d 1043, 1050 (1992). With this in mind, we need to more fully explain the claim that competitors are not impaired without line sharing. One could have responsibly accepted or rejected Covad's arguments, but the claims should rise or fall on the merits. Here, members of the Commission seem to credit the merits, but nonetheless sacrificed parties who rely on line sharing in order to achieve something wholly unrelated and of little interest to companies like Covad.[45]

V. Conclusion

I believe this decision will prove too chaotic for an already fragile telecom market. In choosing to abdicate its responsibility to craft clear and sustainable rules on unbundling to the state commissions the Majority has brought forth a molten morass of regulatory activity that may very well wilt any lingering investment interest in the sector. And, I fear as much or more for competitors as I do incumbents, for the prolonged uncertainty of rights and responsibilities may prove stifling.

The nation will now embark on 51 major state proceedings to evaluate what elements

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[44] "I would have preferred to maintain this access, known as line sharing." Separate Statement of Commissioner Michael Copps, February 20, 2003. "There has been a great deal of comprise [sic] in this process. I am very comfortable with some of the decisions, while others quite frankly give me pause." Separate Statement of Commissioner Jonathan S. Adelstein, February 20, 2003.

[45] I expect that even this decision is cold comfort for providers who depend on line shared inputs to provide service. When the Commission voted on this item on February 20th, it was clear that it did not grandfather existing customers. Today, the Commission decides that carriers are impaired for grandfathered customers and orders continued access to line sharing. At the same time, however, the Majority concludes that this impairment mysteriously vanishes for new customers because of the presence of whole loop alternatives. The item does not explain why whole loop alternatives are not good enough for grandfathered customers.

will be unbundled and made available to competitors. These decisions will be litigated through 51 different federal district courts. These 51 cases will likely be decided in multiple ways—some upholding the state, some overturning the state and little chance of regulatory and legal harmony among them at the end of the day. These 51 district court cases are likely to be heard by 12 Federal Courts of Appeals—do we expect they will all rule similarly? If not, we will eventually be back in the Supreme Court of the United States to resolve any conflicts—the same Court that vacated our excessively permissive unbundling regime in 1999. This process will take many years and will hardly be the quieting and stabilizing regime that was so craved by a rocky market. It is, in short, a litigation bonanza.

This Majority's UNE-P decision could prove harmful to consumers in the long-run, and I cringe to see their welfare raised on the staff of the Majority's decision. Make no mistake, UNE-P may have very limited merits as a transitional strategy, but it is fatally flawed as sustainable local competition. This is not the low lying plateau on which the high aspirations of the 1996 Act should be planted. It is a model that only works if hundreds of stars align perfectly and stay that way: every state needs to continue to make every last element available; every decision to do so must be sustained by every court that examines it; the Commission must never tamper with it and Congress better not ever alter the rights. The regulatory arbitrage bubble expands ever more perilously with each regulatory variable and is sure to eventually pop, like dot coms of old, if government policy does not diligently steer the balloon to stable ground.

There are great strides being made today in the march of Digital Migration, which realize some of my most important objectives. I am disappointed, however, by today's decision on UNE-P. Nonetheless, it is the fair result of a democratic institution in which Majority rules. I also recognized that state commissions will now have an enormous task before them and I sincerely wish them the very best as they struggle through what the Commission could not. I pledge to work with them in partnership to yield the best result for the nation. And, I sincerely hope that those carriers who fought so fiercely for this result will now prove their value in the marketplace and actually deliver the local competition, lower prices and more innovative services that they insisted they would if they prevailed. I, for one, will be watching. This has been a tough proceeding, but I look forward to getting it behind us and moving to other matters pressing for the Commission's attention.

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY APPROVING IN PART AND DISSENTING IN PART

Re: Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98 & 98-147, Report and Order and Further Notice of Proposed Rulemaking (rel. August 21, 2003).

The release of this Order and Further Notice concludes a long and difficult chapter in the Commission's review of its rules regarding unbundled network elements. As I explained upon adoption of the Order,[1] I strongly support the decision to create a national policy that exempts new broadband investment from unbundling at deeply discounted TELRIC rates. This bold action should restore incentives for carriers to build next-generation fiber-based networks that will support a host of exciting new broadband applications. I also support ensuring access to the bottleneck transport and loop elements that are critical to the continued development of facilities-based competition, and I am encouraged that my colleagues have unanimously supported my call to seek comment on proposed modifications of the pick-and-choose regime.

Nevertheless, I remain disappointed by the Commission's decision to perpetuate reliance on the unbundled network element platform (UNE platform or UNE-P) in the face of widespread switch deployment by competitive LECs. While the majority has modified the unbundled switching framework since the February 20 decision, and I am gratified that their changes address some of my previously stated concerns, the majority's framework still falls short. The core flaw in the decision — its failure to impose meaningful limits on the availability of unbundled switching — unfortunately remains. Indeed, the majority's framework all but ensures that state commissions will preserve UNE-P in virtually all markets throughout the country for CLECs serving mass market customers. The Communications Act and the D.C. Circuit's *USTA* decision plainly preclude such an approach. Moreover, from a policy perspective, I would have placed greater faith in market forces and facilities-based competition where CLECs have deployed their own switches. Relying on state commissions to apply a convoluted regulatory framework inevitably will produce disparate results in similarly situated markets and will engender litigation in each and every state for years to come. I believe we should have brought far greater certainty to a turbulent market that craves it. I therefore dissent from the majority's treatment of unbundled switching.

I also dissent from the portion of the item concerning line sharing. The question of impairment regarding the high-frequency portion of the loop presents a close call on which

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[1] Press Statement of Commissioner Kathleen Q. Abernathy, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; and Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98 & 98-147* (February 20, 2003).

reasonable minds can differ. But I cannot discern any lawful basis for grandfathering all existing line sharing arrangements. In light of the majority's determination that competitors are not impaired without access line sharing, the Commission plainly lacks authority to mandate unbundling indefinitely for existing customers.

I elaborate below on the two most pressing issues in this proceeding, broadband loops and unbundled switching, and I further explain my reasons for dissenting from the line sharing decision.

A. Broadband Loops

One of the 1996 Act's most important mandates, and accordingly one of my core goals as a Commissioner, is to facilitate the deployment of broadband infrastructure. The key question posed in this proceeding is *how* we should accomplish that end. The answer, in my view, is to remove regulatory obstacles to deployment and thereby ensure that network owners have adequate incentives to make the costly and risky investments needed to deliver broadband to all Americans.

The stakes in this debate could hardly be higher: While the FCC has been pondering the appropriate unbundling framework for broadband facilities, capital expenditures have fallen off a cliff. Carriers and equipment manufacturers alike have laid off thousands of workers, and bankruptcies have become commonplace. Despite our historical global leadership in communications technology and deployment, several other countries now surpass the United States in terms of broadband penetration and performance. American service providers and equipment vendors have been forced to slash research and development budgets and this trend is not easy to reverse.

Faced with this situation, the Commission is forced to balance two sometimes competing goals in the statute: preserving carriers' incentives to invest in new facilities, on the one hand, and providing competitive access to incumbents' networks, on the other. I believe that the balance we strike should vary both with the degree of new investment at issue and the bottleneck nature of the facility in question. At one end of the spectrum is fiber-to-the-home (FTTH) investment, which entails a complete replacement of legacy facilities (or entirely new construction in greenfield situations) and thus imposes immense costs and risks on incumbents as well as new entrants. The Order accordingly refrains from unbundling these new, non-bottleneck FTTH facilities. At the other end of the spectrum is existing copper plant. Granting competitors access to copper loops or to the high-frequency portion of the loop (line sharing) in my view does not create any real disincentive to invest, because the loops in question already exist and the electronics used to provide line sharing already have been exempted from unbundling. As discussed below, I therefore believe that the majority should have preserved our line sharing requirements.

I am heartened by the Commission's decision to provide significant regulatory relief for new broadband investment. I firmly believe that this decision, in due time, will bring consumers the benefits of increased investment and innovation — which translates into better, faster, more

robust services. I also believe that consumers will benefit from broadband competition — both intermodal (from cable modem, wireless, satellite, and powerline broadband providers) and intramodal (from competitive LECs using their own facilities and incumbents' loops and subloops). And because the telecom sector has become such an important driver of overall fiscal health, I expect that regulatory relief for broadband will serve as a much-needed stimulant to the economy.

B. Unbundled Switching (UNE-P)

While I enthusiastically support the decision to remove regulatory obstacles to broadband deployment, I remain opposed to the majority's resolution of the unbundled switching issue. As described in detail below, the majority seems intent on preserving UNE-P in virtually all markets throughout the country in spite of the widespread deployment of CLEC-owned switches in most areas.

As I indicated in February, I believe the statute does not permit this Commission to transfer ultimate decisionmaking authority to the state commissions. I thus dissented on the ground (among others) that, unlike our impairment frameworks for interoffice transport and high-capacity loops, which conclusively find an absence of impairment in markets where a threshold number of competitors have deployed alternative facilities, the majority's decision on switching made no findings at all.[2] Throughout this proceeding, and in particular in my February 20 statement, I argued that there were a number of reasonable options proposed in the record, including pegging non-impairment findings to deployment of a threshold number of switches in a LATA (or other geographic area) — an approach backed by two respected former Chairpersons of NARUC's Telecommunications Committee.[3] The one thing I was not willing to do was transfer the ultimate decision on the presence of impairment to the state commissions.[4]

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[2] Rather, the majority merely adopted presumptions that gave state commissions virtually unfettered discretion to make impairment findings based on a myriad of factors. Particularly problematic was the majority's refusal to find non-impairment even where CLECs seek unbundled switching to serve enterprise customers at a DS-1 capacity and above; in spite of overwhelming record evidence demonstrating that dozens of CLECs serve such customers using self-provisioned switches, the majority was only willing to adopt a presumption of non-impairment, which states were free to overcome at their discretion. Aggrieved parties could not appeal state impairment findings to the Commission, ensuring that states would exercise the ultimate decisionmaking authority.

[3] *See* Joint Statement of Bob Rowe, Chairman, Montana Public Service Commission, and Joan Smith, Commissioner, Oregon Public Utility Commission (Jan. 30, 2003).

[4] As I explained in my statement accompanying the February 20 decision, the Commission plainly may not abdicate its statutory responsibility under section 251(d)(2) to determine which network elements shall be unbundled. As Justice Scalia explained for the Court in *Iowa Utilities Board*, "the question . . . is not whether the Federal Government has taken the regulation of local telecommunications competition away from the States. With regard to matters addressed by the 1996 Act, *it unquestionably has*." *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 378 n.6 (1999) (emphasis added); *see also id.* (opining that the notion of "a federal program administered by 50 independent state agencies is surpassing strange"). Other courts also have made clear that the FCC may not thwart Congress's intention to create a federal scheme by surrendering its ultimate decisionmaking authority. *See, e.g., American Civil Liberties Union v. FCC*, 823 F.2d 1554, 1574-75 (D.C. Cir. 1987) (affirming that "the *ultimate* responsibility for (continued....)

The released version of the majority's decision does not utilize a rebuttable presumption of non-impairment in the enterprise market, but instead makes a national finding of non-impairment. For mass market customers, the majority has found impairment on a national level and mirrored the consensus approach to transport and high-capacity loops by adopting federal triggers that (theoretically, at least) require states to make non-impairment findings in certain circumstances. As described below, however, the majority's framework still falls short in a number of respects.

The majority's revised impairment framework for unbundled switching used to serve mass market customers provides only illusory constraints. The majority's failure to account for the extensive deployment of circuit switches by CLECs and its failure to limit unbundling to situations where entry would be uneconomic in its absence flout the clear mandate of the D.C. Circuit in the *USTA* decision.[5]

In particular, the majority directs state commissions to find non-impairment where there are three competitor-owned switches deployed in a particular geographic area — *unless* those switches are being used only to serve enterprise customers.[6] This exception completely swallows the rule: While more than 200 competitors of all sizes have deployed circuit switches — totaling approximately 1,300 nationwide[7] — the majority declares that these simply do not count. The majority assumes away the existence of virtually all CLEC-owned switches because, with a limited number of exceptions, CLECs have chosen not to serve mass market customers using their own switches. The majority attempts to justify its exclusion of most existing circuit switches by characterizing them as "enterprise switches" — as if they were a different species of equipment. In actuality, the very same switches can be used to serve customers of all sizes and classes. The majority's assertion that CLECs cannot economically serve residential or small business customers using their own switches is unavailing for two principal reasons, even apart from the fact that some CLECs *are* in fact serving mass market customers on a UNE-L basis.[8]

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ensuring a 'national policy' . . . lies with the federal agency responsible for administering the Communications Act" and upholding FCC rule at issue on ground that "the Commission has *not totally abdicated its ultimate responsibility* for enforcing the [statutory] provision," and thus did not thwart "Congress' efforts to establish a federal standard") (emphasis in original).

[5] *USTA v. FCC*, 290 F.3d 415, 425-28 (D.C. Cir. 2002).

[6] The majority also declares that state commissions must find a lack of impairment where there are two wholesale switching providers apart from the incumbent LEC, but the majority readily acknowledges that no wholesale switching market exists.

[7] Order at para. 436.

[8] *See BOC UNE Fact Report* at I-9, Figure 6-*Use of UNE Platforms by CLECs Providing Service to 25,000 or More Residential Lines Using Their Own Switches* ("CLECs providing service to 25,000 or more facilities-based residential lines include: ALLTEL, Broadview, Cavalier Telephone, Intermedia, Knology, McLeodUSA, RCN, TDS, TOTALink"); WorldCom Reply at 144 (stating the Cavalier is a "small competitive LEC experimenting with a UNE-L strategy"). *See also* Letter from Joseph O. Kahl, Director, Regulatory Affairs, RCN Telecom Services, (continued....)

First, the majority simply ignores the possibility — indeed, likelihood — that CLECs are generally refraining from using their own switches to serve mass market customers *because of the availability of UNE-P*. Why undertake the cost of connecting loops to your own switch if you can avoid investing any capital or taking any risk by purchasing the entire platform at a superefficient TELRIC price?[9] Bootstrapping from the pervasive reliance on UNE-P to justify the continued availability of UNE-P is hardly the kind of rigorous impairment analysis required by Congress and the reviewing courts.

Second, the majority makes unwarranted assumptions about incumbent LECs' ability to connect loops to competitors' switches in a timely, reliable, and cost-effective manner. While incumbent LECs have submitted declarations attesting to their willingness and ability to handle any requested volume of hot cuts, the majority concludes that "it is *unlikely* that incumbent LECs will be able to provision hot cuts in sufficient volumes absent unbundled local switching in all markets."[10]

Such a predictive judgment *might* warrant deference if the Commission were writing on a blank slate, but we are not. In granting 37 section 271 applications by February 20 (now 43 applications), the Commission found time and again that the BOCs' hot cut processes are timely, cost-effective, and accurate.[11] The Commission cannot wipe these findings away by questioning whether the BOCs would be able to meet increased volumes in the absence of UNE-P. To the

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Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Jan. 23, 2003); Letter from Mark Jenn, Manager-Federal Affairs, TDS Metrocom. to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Oct. 24, 2002); Florida Digital Network February 2003, Presentation to the FCC, *in* Letter from Michael C. Sloan, Counsel to Florida Digital Network, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Feb. 6, 2003) (all describing UNE-L strategies).

[9] The majority has great faith that batch cut processes will induce UNE-P providers to transition voluntarily to a UNE-L model, but the record does not bear this out: Despite the availability of managed hot cut processes in some states, carriers with their own switches have been *increasing* their reliance on UNE-P. *See 2002 Local Competition Report* at Tables 3 & 5; *2000 Local Competition Report* at Table 5. That is hardly surprising given that UNE-P reduces costs to the level of a hypothetical, superefficient competitor; reduces risk; and eliminates the need to invest capital in new facilities.

[10] Order at para. 468 (emphasis added).

[11] *See, e.g., Joint Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, 17 FCC Rcd 9018, 9146 (2002) (finding that BellSouth provisions hot cuts "in a timely manner and at an acceptable level of quality, with a minimal service disruption and a minimum number of troubles"); *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance, Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, 15 FCC Rcd 18354, 18486-95 (2000) (same); *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, 15 FCC Rcd 3953, 4104-4115 (1999) (same).

contrary, in evaluating the BOCs' operational support systems, the Commission affirmatively found that the BOCs "will be able to handle reasonably foreseeable demand volumes."[12] At a minimum, to avoid an arbitrary departure from Commission precedent, the majority should have presumed that the BOCs' hot cut processes are workable in states for which section 271 authority has been granted. In those states and others, it would have been perfectly appropriate to authorize state commissions to impose strict performance standards, and to require switch unbundling as a post-hoc remedial measure in the event of an ILEC's unsatisfactory performance. Indeed, I favored such an approach to avoid backsliding. But to assume failure at the outset and make a *nationwide* finding of impairment — in the face of the Commission's repeated findings regarding the adequacy of BOC hot cut processes — is plainly unjustified. The Supreme Court has made clear that the burden of demonstrating impairment rests with the Commission;[13] we cannot mandate unbundling on the ground that that the BOCs have not yet *proven* non-impairment. In addition, since the Supreme Court has made clear that "[t]he Commission cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent's network,"[14] the majority certainly cannot blind itself to the availability of the CLECs' own already-deployed switches.

Given the illusory nature of the switching triggers, as a practical matter, the only way a state can make a finding of non-impairment for CLECs serving mass market customers is if it finds that each and every one of a long list of potential entry barriers have been overcome (*see* Order at paras. 511-20). The majority states that, while CLEC switches that are serving enterprise customers cannot be counted for purposes of the "triggers," such deployment nevertheless should be given "substantial weight."[15] But this is mere lip service. The majority's multifactor test starts with a default presumption of impairment and cannot be overcome unless every conceivable obstacle to profitability has been eliminated. In this respect, it is essentially the same flawed framework that has been twice rejected by the reviewing courts.[16] This

[12] *New York 271 Order*, 15 FCC Rcd at 3993 (setting standard that has been deemed satisfied in each section 271 approval order). The majority asserts that demand for unbundled loops in the absence of UNE-P could not have been reasonably foreseen at a time when many section 271 applications were granted as a result of UNE-P competition. Order at para. 469 n.1435. This assertion ignores the fact that UNE-P competition was practically non-existent in numerous states where section 271 applications were granted. More fundamentally, it is hard to fathom how the majority can square their assertion that increased volumes of hot cuts were unforeseeable with their characterization of UNE-P as a transitional mechanism designed to promote facilities-based competition. In other words, if we all agree that facilities-based competition has long been the Commission's goal (and in some cases is a reality already), then it is untenable to contend that increased volumes of hot cuts were not "reasonably foreseeable."

[13] *Iowa Utils. Bd.*, 525 U.S. at 390-91.

[14] *Id.* at 389.

[15] Order at para. 508.

[16] Indeed, the majority's "all relevant factors" approach, Order at para. 458, is essentially the same as the totality-of-the-circumstances approach in the *UNE Remand Order*, which was struck down in *USTA*.

approach fails to heed the Supreme Court's mandate to avoid providing blanket access and instead impose a limiting standard rationally related to the goals of the Act.[17] It even more starkly violates the D.C. Circuit's instruction that the Commission's impairment framework cannot be based on "an open-ended notion of . . . cost disparit[ies]."[18]

First, the majority directs states to consider "operational barriers" before making any finding of non-impairment. Specifically, a state would have to conclude that "the incumbent's facilities, human resources, and processes are sufficient to handle adequately the demand for loops, collocation, cross-connects, and other services required by competitors."[19] The majority fails to recognize, however, that remedies far less intrusive than unbundling — such as performance metrics tied to penalty payments for poor performance — have been found adequate (during the section 271 process and otherwise) to address such issues. Indeed, the costs, delays, and physical constraints associated with collocation[20] already have been addressed through rules adopted pursuant to section 251(c)(6). Perhaps state and federal regulators need to improve their oversight and enforcement, but any failings on regulators' part cannot be considered impairment.

Second, and just as problematically, the majority lists a number of "economic barriers" that also must be overcome to warrant a finding of non-impairment. The majority directs states to examine both revenues and costs in a manner that seems destined to perpetuate reliance on UNE-P. For example, states must consider the retail revenues a CLEC would earn from serving residential customers; presumably, if those revenues are low, that would warrant a continued finding of impairment. Here, again, the majority engages in bootstrapping, rather than an appropriately limited impairment analysis: If states have set residential rates artificially low, for example in rural areas, that would justify continued reliance on UNE-P under the majority's framework, even though the real barrier to competition is the retail rate structure (which states are free to change), as opposed to a natural monopoly cost. Thus, the majority still has failed to explain how "want of unbundling can be said to impair competition in such markets, where, given the ILECs' regulatory hobbling, any competition will be wholly artificial."[21]

On the cost side of the equation, the majority instructs state commissions to consider "the recurring and non-recurring charges paid to the incumbent LEC for loops, collocations, transport, hot cuts, OSS, signaling, and other services and equipment necessary to access the loop."[22] And, as if that were not enough, states also must somehow determine "an entrant's

[17] *Iowa Utils. Bd.*, 525 U.S. at 388-90.

[18] *USTA*, 290 F.3d at 426.

[19] Order at para. 512.

[20] *Id.* at para. 513.

[21] *USTA*, 290 F.3d at 422.

[22] Order at para. 520.

likely market share, the scale economies inherent to serving a wire center, and the line density of the wire center; . . . the impact of churn on the cost of customer acquisitions; the cost of maintenance, operations, and other administrative activities; and the competitors' capital costs."[23] Among other problems, the majority overlooks the fact that recurring and non-recurring charges for collocation, transport, hot cuts and the like are already set at TELRIC prices. Permitting findings of impairment based on such costs is another example of impermissible bootstrapping, given that these inputs are priced based on a hypothetical, forward-looking cost model that sets wholesale rates below the incumbent LEC's own embedded costs. In other words, unbundled transport, loops, and other UNEs are the *remedy* for impairment, not a source of it.[24] Moreover, in telling states to consider whether "rolling UNE-P" can mitigate any impairment resulting from the above factors, the majority further violates *USTA*. If a competitor can quickly overcome a temporally limited startup disadvantage — such as a high churn rate experienced during the first few months of service — then the Commission should conclude that there is no impairment at all, given that new entrants in all industries typically must operate at a loss for an initial period.[25]

At bottom, the majority's open-ended framework does nothing to prevent state commissions from finding impairment based solely on their "belief in the beneficence of the widest unbundling possible."[26] A state need only cite low retail rates, or high startup costs, and it may preserve UNE-P forever, notwithstanding that numerous CLEC-owned switches may be available for use serving mass market customers. Thus, rather than narrowly employing switch unbundling to alleviate natural monopoly conditions, as the courts have instructed, the majority has told states they may treat switch unbundling as a cure-all. If the hot cut process is not functioning properly, despite the Commission's findings in the section 271 proceedings, they say: unbundle the switch. If transport costs are high, unbundle the switch. If collocation and cross-connect take months to provision, unbundle the switch. As we have been told in successive decisions vacating our rules, the law does not permit such extensive and indiscriminate use of the unbundling remedy.[27]

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[23] *Id.*

[24] I recognize that high backhaul costs and other expensive inputs do in fact make it difficult for CLECs to compete in rural areas, where retail rates are quite low, but, far from demonstrating impairment, this signals the need for rate rebalancing.

[25] *See USTA*, 290 F.3d at 427 ("To rely on cost disparities that are universal as between new entrants and incumbents in *any* industry is to invoke a concept too broad, even in support of an initial mandate, to be reasonably linked to the purpose of the Act's unbundling provisions.")

[26] *Id.*

[27] In my February 20 press statement, I noted that the majority had abandoned the previous four-line limit that prevented competitors from purchasing unbundled switching to serve most business customers. The majority now announces that it is preserving that limit on an interim basis. Once that initial period ends, however, the majority will have expanded the potential availability of UNE-P to CLECs serving business customers with up to 20 lines. *See* Order at paras. 497, 525. As noted in my earlier statement, while justifying the status quo seems difficult enough, it is even harder to see how a potentially massive *expansion* of UNE-P, in the face of evidence that dozens (continued....)

C. Line Sharing

Finally, I also dissent from the majority's decision to eliminate line sharing. This is a close call, but, on balance, I believe that line sharing provides substantial procompetitive benefits without unduly constraining investment by incumbent LECs. Unlike the prospect of unbundling fiber-to-the-home loops or next-generation hybrid architectures, the record suggests that line sharing spurs ILEC investment in DSL, rather than retarding it. The reason is that, by definition, line sharing is available only over legacy copper loops — there is simply no loop upgrade that incumbents are deterred from making. Thus, as we weigh the goals of competitive access and promoting investment in new facilities, the balance favors reinstatement of a line-sharing obligation.

I am certainly mindful of the arguments against line sharing. For example, cable modem providers, rather than DSL providers, currently lead the broadband marketplace, making a line sharing obligation for LECs alone somewhat incongruous. Moreover, data LECs can obtain an entire unbundled loop and provide a combination of voice and data service, as the incumbent LECs do. Yet I believe that the record rebuts these arguments. Most importantly, the presence of cable modem service in many (but not all) local markets does not seem sufficient to support a blanket finding of non-impairment for telecommunications carriers seeking to provide DSL service. I am also sympathetic to the argument that a carrier should not be forced to enter the voice telephony market simply to provide competitive DSL service. On balance, I cannot join the majority's decision to eliminate line sharing because the record demonstrates that line sharing promotes competition *and* investment. But the issue is, as noted, a close call, and I can appreciate the legal reasoning underlying the conclusion that carriers are not impaired without access to the high frequency portion of the loop (HFPL).

By contrast, I have significant concerns about the majority's post-adoption decision to grandfather existing customers indefinitely. In light of the majority's finding of non-impairment, and its resultant decision not to unbundle the HFPL, there is plainly no basis to require incumbent LECs to continue unbundling the HFPL indefinitely for existing customers. The majority attempts to couch this as a "transitional" mechanism, but these grandfathered customers are not being transitioned *to* any new carrier or arrangement. And the fact that the Commission will have an opportunity to revisit this decision during the next Biennial Review does not provide any certain end date. Rather, CLECs will continue to service such customers using the TELRIC-priced HFPL, notwithstanding the majority's unequivocal determination that the HFPL is no longer an unbundled network element under section 251(c)(3). This decision is inconsistent with the rule of law.

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of CLECs serve business customers of such size using their own switches, can possibly be squared with *USTA*.

In conclusion, the Order is a decidedly mixed result in my view. It scores a big win for consumers by promoting broadband investment, but it potentially undermines that victory by turning unbundled switching into a regulatory morass that carriers will be stuck in for years to come. I therefore approve in part and dissent in part.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL J. COPPS APPROVING IN PART, CONCURRING IN PART, DISSENTING IN PART

Re: *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338)*

Seven years ago, Congress enacted a sweeping reform of our nation's telecommunications laws. In doing so, it sought to promote competition in all telecommunications markets and replace the heritage of monopoly with the vitality of competition. Provisions to open the local markets to competition are at the very heart of this Congressional framework. The Act contemplates three modes of competitive entry into the local market—construction of new networks, use of unbundled elements and resale of services. The competition envisioned in the legislation only now is becoming a reality. Today, because of the vision of Congress and the hard work of American entrepreneurs across the country, there are nearly 25 million competitive lines serving consumers. As the Commission's own data on local competition reflect, this number has continued to grow even during the economic downturn that the telecommunications industries and the nation as a whole have suffered. This proceeding offered us the opportunity to encourage this competition and fulfill the mandate of the law, which is "to secure lower prices and higher quality for American consumers."

In some ways, our action advances that mandate. We chart a course that preserves burgeoning voice competition in the local markets and steers it in the direction of further growth. We accord the states an enhanced role in making the granular determinations about where the rules of the game may need to be changed and where they should be maintained in order to foster competition. In other equally important ways, however, we fail our charge. The majority decision plays fast and loose with the country's broadband future, denying it the competitive air it needs to breathe in order to flourish. Consumers, innovation and the Internet may well suffer.

This decision is not just a big-ticket item for telecommunications companies on one side or another of a set of complex and arcane issues. It affects us all. It is next month's telephone bill. It is also the next generation's broadband deployment. It is the future of the Internet. It will deeply affect our country's future.

As a result, this proceeding has been the subject of heated debate. Although our decision is plagued by shifting pluralities, I appreciate the willingness of my colleagues to engage in discussion to find common ground. In my own review I have tried always to keep in mind that setting competition policy is the exclusive jurisdiction of Congress. I have done my utmost to remain faithful to the public interest and to the competitive framework that Congress adopted in the 1996 Act. I believe those aspects of the decision I support and those I concur in are consistent with Congressional intent. Where I am unable to square a decision with statutory directives—no matter how hot the rhetoric—I am compelled to dissent.

I am pleased to support the rules we adopt to address the availability of local switching. In the face of intense pressure for the Commission to make broad nationwide findings on

impairment—findings that would have doomed the future of unbundled elements such as switching—we have instead managed to fashion a majority for a more reasonable process to conduct a granular analysis that takes into account geographic and customer variation in different markets. In doing so, we are able to consider the very real differences in economies of scale involved in providing service to residential and small business customers on the one hand and larger business customers on the other. We also have recognized that the states have a critical role to play in our unbundling determinations. The path to success is not through preemption of the role of the states, but through cooperation with the states. State commissions more proximate to and familiar with local markets are often best positioned to make the fact intensive determinations about impairments faced by competitors. I am therefore pleased with our decision that states should have an active role in conducting the granular analysis necessary to determine whether and where network elements such as switching should be available as unbundled network elements.

The decision regarding line sharing was a difficult one. I believe that line sharing has made a contribution to the competitive landscape. Had I the luxury of developing our list of unbundled network elements on a blank slate, I would have supported its inclusion. Our analysis in this decision, however, was etched against the very real background of the D.C. Circuit's decision ***vacating*** the Commission's line sharing rules. That decision and the record in this proceeding lead me to concur in this aspect of the Order. Circumscribed as we were here, my focus has been on providing a realistic transition and on developing carrier and consumer options. I am pleased that the decision provides an extended transition period to allow competitors to purchase the full loop facility as a network element. Carriers also may pair with competitive voice providers and collectively offer a full range of services to customers.

Critically, there are also parts of this Order with which I strongly disagree. Most importantly, I am troubled that we are undermining competition in the broadband market by limiting—on a nationwide basis in all markets for all customers—competitors' access to broadband loop facilities whenever an incumbent deploys a mixed fiber/copper loop. In essence, as incumbents deploy fiber anywhere in their loop plant, they are relieved of the unbundling obligations that Congress imposed to ensure adequate competition in the local market. The majority assures us that by somehow ignoring the intent of Congress and tearing away the infrastructure that undergirds competition, this will promote investment in advanced architectures. Rather than "new wires, new rules," I fear the majority adopts a system of "no rules, old monopolies." This is not a brave new world of broadband, but simply the old system of local monopoly dressed up in a digital cloak.

The Commission has recognized time and again that loops are the ultimate bottleneck facility. Yet, here the Commission chooses to perpetuate the bottleneck, and it does so on a nationwide basis without adequate analysis of the impact on consumers, without analyzing different geographic or customer markets and without conducting the granular, fact-intensive inquiry demanded by the courts. I fail to see how the majority finds that competitors are impaired without access to the loop, but abandons this finding the minute that fiber is found in the loop architecture. To make matters even worse, in some markets such as the small business market, there may not be any competitive alternatives if competitors cannot get access to loop

facilities. In other words, our nation's small businesses—the engines of so much entrepreneurial activity and economic growth—may be stuck without competitive choices and prices when it comes to critical broadband services. I fear this decision will result in higher prices for consumers and put us on the road to re-monopolization of the local broadband market.

As harmful as this decision is, it may not be the last battle this year in the headlong rush to deregulate broadband. Shortly, we may be considering whether to deregulate broadband entirely by removing core communications services from the statutory framework established by Congress. This strikes many, including me, as substituting our own judgment for that of the law. It is playing a game of regulatory musical chairs by moving technologies from one statutory definition to another. We will also consider whether large incumbent carriers providing broadband services should henceforth be regulated as non-dominant or lacking market power, rather than dominant and exercising market power. And we commit in this Order to reviewing the Commission's forward-looking economic cost methodology for network elements in a soon-to-be-initiated proceeding that improperly crafted could create more problems than it resolves. In light of our goals of establishing certainty and stability, I hope we can agree to not use these other proceedings to overturn our new unbundling obligations over the next few short months. But I caution that it could indeed happen.

Finally, I am troubled by the less than satisfactory process that generated this decision. When Congress passed its landmark legislation seven years ago, the Commission generally implemented its regulatory directives in a bipartisan fashion by unanimous vote, reaching consensus under extremely short statutory deadlines. By contrast, this decision was adopted in a split fashion and based on a roughly conceived outline produced under the threat of a judicial deadline. I am disappointed that we were not able to reach compromise on all of the questions and issue a unanimous decision as previous Commissions were often able to accomplish. Perhaps, given the different philosophical and regulatory approaches which exist among us, that just was not in the cards here. Nevertheless, this proceeding and our recent decision on media concentration provide serious lessons about smoothing the process within, exchanging ideas and paper earlier on, and making sure we have enough time to reach and hammer out final agreements. I also believe that the constraints placed upon independent regulatory Commissioners by laws that forbid more than two of us from meeting together, talking together and reaching agreement together hobble the regulatory process and retard our ability to tackle complex proceedings like this one. I do not know of any other institution that is forced to operate in this fashion. Perhaps the ability to manage our discussions differently would not have rescued this item—or others where the disagreement among my colleagues has been substantial—but I do think it could make a difference going forward. And we certainly have a lot of work to do going forward.

In light of the positive and negative parts of today's decision, I vote to approve in part, concur in part, and dissent in part. This has been a complex decision and a complex process. Nonetheless, I appreciate all the work that so many dedicated individuals at the Commission put in to ensure that this Order finally sees the light of day.

SEPARATE STATEMENT OF
COMMISSIONER KEVIN J . MARTIN

Re: *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, 98-147, 02-33

Today, the Commission finally releases the Triennial Review Order, which fully explains the decisions we made on February 20th. As I stated in my February 20th statement, this Order achieves a balanced approach that provides substantial regulatory relief for broadband investment, where there is vigorous competition, while preserving and facilitating competition for local residential service – the competition that has enabled millions of consumers to benefit from lower telephone rates. While I would have liked to release the Order sooner, I appreciate everyone on the Commission's desire to explain fully their views on these very important issues. My views are explained in my February 20th statement, which is attached.

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.
See MCI v. FCC. 515 F 2d 385 (D.C. Circ 1974).

FOR IMMEDIATE RELEASE
February 20, 2002

Contact: Emily Willeford
202-418-2100

COMMISSIONER KEVIN J. MARTIN'S PRESS STATEMENT ON THE TRIENNIAL REVIEW

I support this item because it achieves a principled, balanced approach. It ensures that we have competition and deregulation. We deregulate broadband, making it easier for companies to invest in new equipment and deploy the high-speed services that consumers desire. We preserve existing competition for local service – the competition that has enabled millions of consumers to benefit from lower telephone rates. And we continue the strong role of the states in promoting local competition and protecting consumers. Finally, we accomplish these goals in a manner that is consistent with the statute and the rulings of the courts.

Deregulating Broadband and Attracting New Investment

This Order takes important steps toward deregulating broadband and encouraging new investment. I have long believed that the Commission should make broadband its top priority and create proper incentives for new investment in advanced services. The action we take today provides sweeping regulatory relief for broadband and new investments. It removes unbundling requirements on all newly deployed fiber to the home. It provides regulatory relief for new hybrid fiber-copper facilities, while ensuring continued access to existing copper. And, it adjusts the "wholesale" prices for all new investment. In fact, we endorse and *adopt in total* the High Tech Broadband Coalition's proposals for the deregulation of fiber to the home and any fiber used with new packet technology.

Companies desiring to push fiber further to the home will now be able to make a fair return on their investment. And more consumers will be able to enjoy the fast speeds and exciting applications that a true broadband connection offers.

I hope this relief will jump start investment in next-generation networks and facilitate the deployment of advanced services to all consumers, including rural America. Our actions could then revitalize the advanced services market, leading to a new period of growth in telecommunications and most importantly manufacturing.

Preserving Local Competition

This Order also works to preserve local competition. The Telecommunications Act requires that competitors have access to pieces of the incumbents' networks when they are "impaired" in their ability to provide service. The Court of Appeals has made clear that in analyzing impairment, "uniform national rules" may be inappropriate. Rather, the Commission should take into account specific market conditions and look at specific geographic areas. Today's item follows these admonitions, putting in place a granular analysis that recognizes that competitors face different operational and economic barriers in different markets. For example, the barriers competitors face in deploying equipment and trying to compete are different in Manhattan, Kansas than in Manhattan, New York.

Although some of my colleagues disagreed with certain aspects of this analysis, this disagreement primarily concerns the switching network element for residential customers, a small piece of the puzzle. We all agree that states should play a significant role in determining whether impairment exists for transport. We all agree that states should play a significant role in determining whether impairment exists for loop facilities. And, we all agree that incumbents should no longer be required to unbundle switching for business customers.

Some of my colleagues also wish to end the unbundling of all residential switching immediately. I believe such action would be inconsistent with recent court decisions and the state of competition in the market. It is true that there are now a significant number of residential telephone customers that receive service from a CLEC, but *the overwhelming majority of these customers is currently served through an incumbents' switch.* To declare an immediate end to the unbundling of all switching in every market in the country would ignore the Court's mandate for a more granular analysis and effectively end residential competition. Accordingly, I support the item's approach to treat residential switching as we do other network elements, removing unbundling obligations only after a fact specific market analysis.

Maintaining a Role for State Authorities

In establishing a market-specific impairment analysis for unbundling network elements, this item provides an important role for the states. During my time at the Commission, I have witnessed first hand the helpful role that the states have played in our mutual goal of implementing the Telecommunications Act. I believe that the states are best positioned to make the highly fact intensive and local "impairment" determinations required by the Court of Appeals.

All of my colleagues agree with this principle when applied to the unbundling of transport and other network elements. Some felt, however, that we should not allow the states a role in determining the unbundling of switching. In my view, the item correctly treats switching as it does other network elements, recognizing that the states are better able to make individual, factual determinations about particular geographic markets than are federal regulators in Washington. And, just as we do for other network elements, the Commission provides the states detailed guidelines of what constitutes impairment. For example, we specifically require states

to consider and resolve problems with provisioning – the so-called "hot cut" problem. We also require states to consider whether competitors have been successfully able to deploy their own switching facilities. We provide a roadmap for states to use in making their analysis, putting us on the road to facilities-based competition.

Conclusion

I believe we have crafted a balanced package of regulations to revitalize the industry by spurring investment in next generation broadband infrastructure while also maintaining access to the network elements necessary for new entrants to provide competitive services. This Order adopts clear rules and immediate regulatory relief for broadband deployment and new investment; it removes the obligation to unbundle switches for business customers immediately; and it provides a detailed roadmap for eliminating the remaining unbundling obligations for network elements.

I believe in limited government. I believe that competition – not regulation – is the best method of delivering the benefits of choice, innovation, and affordability to consumers. The 1996 Act puts in place a policy that requires local markets be opened to competition first, and then provides for deregulation. I believe we have faithfully implemented this policy today. Where there is facilities-based competition, for example from cable modems n the broadband market or CLECs in the business market, we have provided deregulation. That is what the law and the courts require.

In sum, this Order achieves a balanced approach that provides regulatory relief for incumbents' new investment in advanced services while ensuring that local competitors will continue to have the access they need to provide service to consumers. I believe these steps will benefit consumers and the industry, and I support this Order.

- FCC -

Remarks by Commissioner Kevin J. Martin
20th Annual PLI/FCBA Telecom Conference
December 12, 2002
Washington, D.C.

"At the Crossroads"

Thank you, Dick, for that kind introduction. And thank you for inviting me to speak at this annual conference. The PLI and FCBA serve the communications bar so well with these informative sessions. I recall going to this one in particular as a junior associate, and I still remember how much I relied on the discussions and primers throughout much of the next year. I'm not sure that what I'll have to say today will be quite as educational as some of the speakers I heard then, but I hope at least to keep your attention. And perhaps I'll even spark a healthy debate.

I. Deliberation to Decision-Making

As most of you know, the Commission has spent almost a year collecting, reviewing, and discussing various policy proposals for local competition and broadband service. These issues are of critical importance, and certainly, a significant amount of time is needed to clearly think through the complicated legal and policy issues at stake.

At some point, however, the Commission must move to wrap up the debate and must start making the tough decisions. We must move from deliberation to decision-making.

I believe we now are at the crossroads where choices must be made. We have four critical rulemakings that have been pending since the beginning of the year: the Triennial Review of unbundled network elements, the dominant/nondominant proceeding, the wireline broadband NPRM, and the cable modem service NPRM. The records are complete, we have considered and debated the issues at length, and the proceedings are now ripe for action.

Moreover, industry conditions cry out for answers. Companies are struggling under too much debt, unable to recoup the past investments they have made. Markets are valuing companies at depressed levels, leaving companies with little capital. Carriers are postponing the purchase of the equipment necessary to deploy competitive local and advanced services, leaving the manufacturers to suffer the consequences.

As more manufacturers founder, we risk being left with too few domestic providers of critical infrastructure for advanced services, a significant threat to our national security. Finally, investors are questioning whether communications continues to be a profitable industry in which to risk capital.

I believe the prolonged uncertainty regarding such critical issues as local competition and broadband may have aggravated existing market troubles. Prolonged uncertainty can serve as a

disincentive to invest in new and upgraded facilities, as a barrier to entry for potential competitors, and as a deterrent against modifying outdated business plans. Companies need to know the rules of the road, and they need to be able to rely on them.

It is time to eliminate uncertainty and instability. We must make the difficult policy choices and conclude these four proceedings. Our decisions are vital to industry, to national security, and to the consumers who ultimately will benefit from more competitive and advanced services.

Last May, I expressed my desire that the Commission take action on these pending proceedings by the end of year. Given the potential significance of our decisions on the economic conditions, I did not think that was an unreasonable goal. Indeed, last November the Commission committed to completing the Broadband proceedings by the end of this year,[1] and the D.C. Circuit has expressed their expectation that we complete our Triennial Review this year, as well.[2] I am disappointed that we will not make it, but I am hopeful that we will act soon.

The Commission recently sought another extension of the D.C. Circuit's USTA decision mandate until February 20th, and I am beginning to become concerned with whether we will be able to make that deadline. If we are to meet that deadline, I believe we need to begin a more specific dialogue with the public, and with affected industries in particular, regarding the policy direction the FCC intends to take.

If I'm going to call for FCC action by the end of this year, however, I too must be prepared to share what I am thinking on these critical issues. Therefore, I offer the following thoughts in order to spur debate, respond to my own deadline, and to help the Commission finish its deliberative process and reach finality on these issues.

II. Principles for Decision-Making

I believe it is important for the Commission to begin with certain core values and goals. Once we have articulated and prioritized these principles, we can begin to evaluate concrete actions. Following are three principles that I believe should govern our decision making.

First, the Commission should make its top priority new investment and deployment of advanced network infrastructure. We have a number of issues before us that are vital to the marketplace and need timely resolution. Nevertheless, we must begin somewhere. I believe the

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[1] *See Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri*, CC Docket No. 01-194, Memorandum Opinion and Order, 16 FCC Rcd 20719 at 20754 (2001).

[2] *See United States Telecom Ass'n v. Federal Communications Commission*, 290 F.3d 415 (D.C. Cir. 2002).

Commission should focus first on creating the right incentives for companies to invest in and deploy advanced services.

Until we create a stable regulatory framework for deploying and providing such services, our country's communications network and services will remain stagnant, not improving, not developing. The many people without access to advanced services now, particularly consumers in rural America, will remain without. And competition – the driver of innovation, growth, and effective pricing – will remain minimal.

Even if we correct the incentives with respect to the provision of basic telephony, and even if the market corrects its valuations of telecom carriers, companies will not invest in advanced services until we ensure that the governing regulations will not deprive companies of the ability to make a return on their investment.

Second, the Commission must minimize further questions and avoid creating greater uncertainty or prolonging ambiguity in this area. After having already taken a year to review a set of issues and debate various policy outcomes, we should resolve all of the issues, not just definitions, but also the implications on wholesale obligations. To put off the decisions that have the greatest impact on the marketplace to another day will only aggravate current market conditions and prolong the angst and uncertainty that surround the deployment of advanced services.

Third, the Commission must be responsive to the courts by outlining a clear standard on the necessary and impair test while remembering Congress's goal of ensuring that the local markets are truly open to competition. In so doing, we must address the court's criticism regarding our existing unbundling framework, while also ensuring access to essential facilities.

Priority I: A Regulatory Environment that Encourages New Investment

As you know, telecommunications has been responsible for much of this nation's economic growth during the past decade. The availability of advanced telecommunications is essential to the economy in the 21st century, dramatically reducing the costs of exchanging information, improving efficiency and productivity, and allowing previously local businesses to serve the world.

I am confident that spurring investment in the deployment of new facilities and advanced network infrastructure will lead to a new period of growth.

I believe that at the outset, there are three immediate steps the Commission can take to speed that growth and ensure that all Americans have greater access to advanced services.

1. Adjust TELRIC Pricing

First, we need to adjust the TELRIC pricing formula for all new investment on a going forward basis.

In my view, the TELRIC pricing formula provides incumbent service providers with an insufficient return on investment capital for new infrastructure.

In a nutshell, the existing TELRIC formula fails to accurately measure the true risk of capital investment under current economic conditions, and creates an unnecessary barrier for the deployment of broadband facilities.

We also need to adjust the depreciation schedules within the TELRIC formula to more adequately account for new investment. I believe that greater flexibility in depreciation time frames will provide a greater economic incentive for service providers to invest in and deploy new network infrastructure.

We therefore should conclude in the Triennial Review proceeding that we must adjust the TELRIC formula on a going forward basis to spur deployment in new facilities and services.

2. Deregulate New "Fiber to the Home"

Secondly, I believe we also need to adopt the principles set forth in recent proposals regarding the regulatory framework for new fiber investment deployed to a customer premises.

Under these proposals, "fiber to the home" facilities would be relieved from unbundling requirements and incumbents would be relieved of any obligation to deploy copper facilities in new build situations where fiber to the home is deployed. Incumbents also would have several options and obligations with respect to the existing copper plant in new build situations.

In the recent DC Circuit decision overturning our unbundled network element regime, the Court criticized the Commission for not fully taking into account the ability of new entrants to invest in and deploy new network infrastructure. I believe that it is not "necessary" for a competitor to have access to a new fiber loop.

I believe that if incumbent service providers decide to build new fiber local loops to a customer premise, they should be free of "old-style" legacy rules. Legacy rules are ill-suited for new facilities and new services in the supercharged IP and fiber broadband worlds of tomorrow.

3. Provide Regulatory Relief for Hybrid Facilities but Ensure Continued Access

In my view, new entrants should only use incumbent facilities that are truly necessary for

new entrants to provide service. That does not mean that we should allow incumbents to stop providing any elements overnight, and we need to acknowledge the distinctions among what different competitors may need to compete for small and medium-sized business or residential customers.

We also ought to reexamine how our unbundling and/or pricing rules apply to incumbent deployment of new facilities. For example, once we have determined that a particular state's market "is fully and irreversibly open to competition," how is access to yet-unbuilt new facilities at super efficient prices necessary to enable a new entrant to compete, especially if existing facilities or their equivalent capacity are maintained at current prices?

I must give Tom Tauke of Verizon credit for this policy construct. About a year and a half ago, shortly after I joined the Commission, I heard Tom give a speech where he laid out the concept of "new rules for new wires."

I believe that the Commission should freeze the service capacity level that must be made available on new or upgraded facilities to the service capacity level provided by the ILEC prior to the new investment in a hybrid facility. For example, under this approach competitors receiving access capacity at 1.54 mbs per second using pre-existing ILEC facilities would be able to continue to receive such access capacity at the same bit rate under newly deployed hybrid facilities.

I believe that incumbents should be given the proper incentives to push fiber deeper into their networks and closer to the American consumer. And such an approach actually facilitates the deployment of electronic loop provisioning which would solve many provisioning problems.

At the end of the day, ILECs should receive the benefits of making investments in new infrastructure deployment, but competitors should maintain the ability to receive access to end user customers at the service capacity levels that they currently receive.

Priority II: Minimize Further Questions and Uncertainty

These are turbulent economic times for the telecom industry and the economy as a whole. In such times, the Commission should be particularly cognizant of the impact of its decisions and that it can contribute to market stability by establishing a more stable and reliable regulatory environment. Broad proceedings that remain pending for extended periods can contribute to uncertainty. Protracted uncertainty can prolong financial difficulties. Regulatory uncertainty and delay can function as entry barriers in and of themselves, limiting investment and impeding deployment of new services.

Particularly given the current financial conditions, we should act quickly on our major pending rulemakings, particularly as they relate to new investment. Prompt decision making will provide greater certainty and stability to the marketplace.

We should work to be faster and be more reliable in our decision making. Prolonged proceedings with shifting rules ultimately serve no one's interest, regardless of the substantive outcome. It is time for the Commission to take action not only on the UNE Triennial, but also on performance measures and the broadband proceedings.

Much of the buzz that I hear from others on the potential outcome for the Broadband proceeding is centered on deregulation of the retail offering of broadband service. My sense, however, is that the question that most parties want answered is how we will ultimately decide the wholesale or input question. In other words, I think most people already assume that we are going to treat Internet access as an information service. The question that matters is the regulatory treatment of DSL and cable modem transmission.

I recognize that the Commission itself may have contributed to the continuing confusion on this issue as a result of our ambiguous and somewhat contradictory statements in the Wireline Broadband Proceeding and the Cable Modem Proceeding. In both of these items we attempted to address the appropriate regulatory framework for broadband services.

In the Cable Modem Proceeding,

(1) we determined that cable modem high speed Internet access is an information service;

(2) we decided that the Commission's Computer II unbundling obligations did not automatically apply to cable modem service; and

(3) we sought comment on whether some form of access obligations should ultimately be imposed on Cable Modem service.

In other words, in the Cable Modem Proceeding we addressed the definitional issue **and** left open the issue of whether we would impose discretionary unbundling obligations.

In the Wireline Broadband Proceeding, the Commission tentatively concluded that DSL high speed Internet access is an information service, and we asked about the implications of the Computer Inquiry II obligations and other unbundling obligations.

Some in and around the Commission have suggested that the Commission should use the same process we set forth in the Cable Modem proceeding in the Wireline Broadband proceeding.

In other words, they advocate that the Commission should address only the definitional issues and leave undecided – until some time later next year – whether and to what extent the unbundling obligations apply in the Wireline context.

I'm very concerned about – and at this stage I would not support – such an approach. We should be cognizant and clear on what the implications of that suggested approach would be.

In the Cable Modem proceeding, inaction resulted in no regulation being applied.

In the case of DSL, however, the impact of the current presumption under the Commission's decision is that unbundling obligations do apply.

Inaction by the Commission therefore leaves all of the unbundling regulations firmly in place – and only applies them to one of the two competitors.

Therefore, I see three potential courses of action:

We could treat DSL services similar to cable modem service.

In doing so, we would need to change our Computer II rules so that incumbent providers would no longer be required to provide underlying transmission services as retail service offerings. Providers nevertheless would have the incentive to provide broadband transport to unaffiliated ISPs on reasonable terms, because only by doing so could they maximize the value of their investments. Such offerings would be made available on a private carriage basis and not as unbundled tariffed offerings.

The Commission could, on an interim basis, guarantee ISPs access to broadband transmission services in a nondiscriminatory manner. Specifically, ILECs would be required to offer unaffiliated ISPs the same transmission services that the ILEC offers to its own affiliates through private carriage agreements. This nondiscrimination requirement could be put in place for two or three years, but then sunset unless the FCC extends it to all broadband providers.

Second, we could treat cable modem services similar to DSL services. Under this alternative, the Commission could leave the Computer Inquiry rules in place and apply them to all broadband providers with common carrier status. In effect, the FCC would impose the same regulatory framework on cable modem service that currently applies to wireline DSL service.

As for the third option, I believe the only other logical alternative is to classify wireline broadband as a telecommunications service, with the accompanying nondiscrimination requirements, and to acknowledge that the Commission was wrong when it declared cable modem service to be an information service. Instead, the Commission could determine that cable modem service is a cable service subject to the panoply of Title VI regulations currently applicable to cable service providers, such as local franchise obligations and service regulations.

At this stage, of the three options I have just outlined, I believe the first option – treating DSL service similar to cable modem service – is the better choice. I recognize, however, that there are merits to all three – I fail to see any merits, however, in refusing to answer the underlying question.

Priority III: Responding to the Courts

As you know, the U.S. Court of Appeals for the DC Circuit has remanded the Commission's *UNE Remand Order* – the Commission's most recent effort to set out a list of network elements that incumbent local exchange carriers must make available on an unbundled basis to competing carriers.

The Court criticized the FCC's unbundling requirement as being overly broad. The Court found the FCC had failed to take into account the competitive nature of particular geographic and customer markets. At the end of the day, we need to develop an unbundling framework that can be implemented at a more granular level and takes into account the unique issues found in rural and underserved areas.

Provisioning Issues

First, as I have stated previously, in responding to the court, the Commission cannot ignore and must address provisioning and "Hot Cut" problems that new entrants have highlighted in the record in order to ensure that impairment does not exist and to allow for access to the residential market.

Switching

I believe the Commission can adopt a relatively simple and straightforward test with regard to whether "unbundled local switching" is necessary for the provision of competitive services to consumers.

If other alternative facilities based providers exist in a market and the impairment associated with provisioning problems is addressed then switching would not need to be provided.

In other words, (1) alternative facilities providers would be required to use their own facilities, and (2) if a sufficient number of alternative providers are present, the Commission would assume that a wholesale market for switching is viable.

The unbundling obligations that reside in the Act, however, still remain viable and serve a pro-competitive purpose. In my view, the unbundling obligations are necessary and need to stay in place in those rural and underserved areas that lack alternative facilities based service providers.

At the end of the day, however, we need to recognize that if we fix existing provisioning problems that will allow competitors to easily migrate customers from the ILEC to their own facilities, then we cannot continue to require unbundling in markets where such competitive facilities exists.

Any shifts in regulatory direction, however, should be cushioned by transitional measures

and safeguards.

Several states have requested that they become more involved in our impairment analysis.

In my view, much of the current talk about state preemption is premature. I believe that the States are best positioned to make those highly fact intensive and local determinations.

During my stay at the Commission, I have witnessed first hand the role that the States have played in being helpful partners in our mutual goal to implement the Act.

I believe that the States should be implementing our standard by making the factual determination regarding the existence of alternative facilities based providers and whether, and to what extent, impairment exists with respect to the ability of new entrants to access the market.

Line Sharing

Besides addressing our unbundling framework, the DC Circuit's USTA decision also vacated the Commission's Line Sharing Rules.

The Court stated that we failed to adequately take into account alternative facility providers, specifically cable and satellite. No one denies that Cable is the dominant provider of residential high speed Internet access services.

In my view, the Commission has no choice but to recognize this fact as it decides whether incumbent DSL providers should be treated as dominant carriers when they provide high speed Internet access services.

Therefore, I'm in favor of declaring the incumbents non-dominant in the residential high-speed Internet Access market and not re-imposing our Line Sharing obligations where a cable competitor exists for residential high speed services.

III. Conclusion

In sharing with you this afternoon my vision of how the Commission should proceed and what the future landscape should look like, I have covered a lot of ground. I'd like to leave you with some parting thoughts.

In today's marketplace, many residential consumers do have competitive, facilities-based choices for broadband services. Where a competing provider, such as cable, offers broadband service, our regulations need to recognize this reality.

In the residential narrowband, or voice-centric world, however, less facilities-based

competition exists. And our regulations also need to reflect that reality. That is why it is critical that we establish a framework, working with the States, that evaluates the true extent of facilities-based competition in markets throughout the country. We must not leave behind American consumers that live in rural and underserved areas.

I am optimistic that if the Commission follows the steps I have just outlined, we could develop a framework to encourage investment in new infrastructure and that would ensure the availability of next generation network technology for all consumers through out the nation.

By taking these steps, the Commission can establish a framework that would result in an effective tiered capacity approach agnostic to the nature of the service provider or the technology it is using, while still ensuring access to competitive providers for consumers. This framework puts cable operators and telephony providers on similar footing.

Both types of providers would have basic service obligations that remain regulated. Cable operators would be required to continue to offer basic cable; they would be subject to must carry obligations and basic tier pricing. Incumbent local exchange carriers would continue to be subject to unbundling and state supervision.

Access to capacity above that level, however, would be constrained primarily by market forces. Both types of service providers would be similarly situated with regard to how they provide broadband service. Both would be free to innovate, deploy additional capacity, and offer service in a completely unregulated tier.

As I have said, the Commission at some point must move from deliberation to decision-making. I believe we are now at the crossroads where the tough choices must be made. I recognize that I envision a very different world that exists today. The proposal I have set forth is provocative, and one with which everyone will not agree. Indeed, I will not be surprised if there are aspects with which you agree, but you do so silently, and points with which you disagree, and you do so loudly. But in the end, if the Commission is to move forward, we must engage more directly and specifically. I therefore welcome your reaction, criticism, and suggestions. Your move.

Thank you for your time.

SEPARATE STATEMENT OF COMMISSIONER JONATHAN S. ADELSTEIN APPROVING IN PART, CONCURRING IN PART, DISSENTING IN PART

Re: Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket 01-338).

As reflected by my vote on this Order – approving in part, concurring in part, and dissenting in part – this proceeding presented complex and difficult choices. Ultimately, I support much of this item because it is faithful to the Act, employs an instrumental partnership with our state commission colleagues, and preserves the burgeoning competition that so many inside and outside of this Commission have worked so hard to promote. Indeed, as we release this Order, most residential consumers are only now experiencing their first taste of competition for voice services, so I am pleased that the Order will allow consumers to continue enjoying these benefits. I write separately to explain further my support for much of this item and my significant concerns about other aspects.

As I said at the time we adopted this Order, our first and foremost role is to implement the law as written by Congress. We accomplish this goal by underpinning this Order with a vigorous "impairment standard" – the limiting principle which Congress set out to restrict the availability of unbundled elements. By applying this vigorous standard to the evidence before us, we respond to the concerns of our reviewing courts and ensure that our local competitions rules will be implemented as Congress intended.[1] On balance, I believe that most of the item applies this standard correctly, in accordance with the law and to the benefit of incumbents, competitors, and ultimately consumers.

Much of this item also appropriately balances the goals of promoting competition and creating the proper incentives for both incumbents and competitors to deploy their own facilities. Most notably, the switching and transport sections establish a framework that will allow nascent competition to continue to grow. At the same time, these sections provide a pathway for the elimination of unbundling obligations where carriers can either self-deploy facilities or obtain them from alternative sources, including other technology platforms.

With respect to the broadband portions of this Order, I have supported the item where possible but have significant concerns that the Order may raise significant barriers to both competition and the deployment of advanced services to residential and small business consumers. The deployment of broadband is crucial; it has the ability to bring unique benefits to the public and, indeed, to transform communities. So I support the Order's attempts to limit unbundling obligations in those cases where competitors and incumbents stand on equal footing. I must, however, dissent from other portions of the broadband section, in particular the so-called hybrid loops section. The Order's conclusions here are inconsistent with our stated goal of

[1] *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 388 (1998).

promoting facilities-based competition and may pose a real danger of denying consumers the benefits of competition for advanced services.

Switching Decision Preserves Voice Competition, Benefits Consumers, and is Faithful to the Act

In this Order, we have adopted rules to address the availability of local switching in a manner that is consistent with the Act and that preserves the benefits of competition for millions of American consumers. Despite considerable pressure from the voices of dissent, we cannot ignore the reality of how difficult it is for competitors to build out and connect their networks to residential and small business consumers.

Our framework will allow competition to continue to blossom in the voice market for residential and small business customers, in those circumstances where competitors have conclusively demonstrated that they are impaired without access to unbundled local switching.[2] The reality is that competition for residential customers has relied almost completely on the availability of unbundled local switching.[3] Our state commission colleagues have labored mightily to open markets to competition by ironing out performance issues, establishing incentive plans to ensure performance going-forward, and setting prices for network elements in accordance with this Commission's pricing rules. I am pleased that they will continue to play a role in developing local competition under our Order. Many of our own Section 271 approvals granting Bell Companies authorization to provide long distance service rely on the existence of UNE-Platform competition to meet the Track A requirements for facilities-based competition.[4] The service provided using incumbent's switching has brought the clearest and most direct benefits of competition to American consumers in the form of lower prices and innovative services. As many consumer advocates told us, quite simply, it has brought the benefit of choice.[5]

Bringing the benefit of choice has been good for the American people and for American

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[2] Opponents of our decision invariably point to the current deployment switches by competitors. This argument, however, ignores critical differences in the mechanics and economics of providing service to residential and small business customers, as opposed to larger business customers.

[3] *Triennial Review Order*, para. 440 (noting that "much of the deployment relied upon by the BOCs in fact provides no evidence that competitors have successfully deployed switches as a means to access the incumbent's loops").

[4] *See* Letter from Brad E. Mutschelknaus, Counsel for Broadview Networks, to Marlene H. Dortch, Secretary, FCC (Jan. 21, 2003) (describing how all four RBOCs have relied upon the presence of UNE-P to advance their bids for section 271 authority).

[5] *See, e.g.* Letter from Robert S. Tongren, President, National Association of State Utility Consumer Advocates to Michael Powell, Chairman, FCC (Dec. 16, 2002); Letter from James Bradford Ramsey, General Counsel, NARUC, to Office of the Secretary, FCC (Feb. 14, 2003); Letter from Consumers Federation of America and Consumers Union to Michael Powell, Chairman, FCC (Feb. 13, 2003).

businesses. Companies are forging partnerships to offer bundled services that are attractive to consumers and can spur demand. Recently, AT&T Corporation announced that it had worked out a resale deal with its former subsidiary, AT&T Wireless Service, Inc., in which the two companies created an alliance to bring a wireline/wireless service offering. The availability of unbundled switching has allowed the nation's long distance carriers to provide bundled long distance and local services. The Bell Companies are following suit. They have begun rolling out programs that allow customers in some states to make unlimited local and national calls for one flat monthly rate. There is growth in these businesses, and it is made possible by technology and changing consumer habits. The companies providing these bundled packages are seeing them as a way to secure market share. I do not believe that these plans would have become so readily available if we had not preserved access to the UNE-Platform where competitors are unable to deploy their own facilities.

The switching rules adopted in this Order are solidly grounded in the Act and address the concerns of the reviewing courts, most notably the U.S. Court of Appeals for the District of Columbia in *USTA v. FCC*.[6] In response to that decision, our Order employs a more granular analysis that examines particular customer classes and geographic areas. Using this analytical framework, unbundling will only be required in those areas where competitors are impaired. In addition, the Order applies an impairment standard that takes into account not only actual competitive deployment but the ability of competitors to self-deploy or obtain elements from alternative sources. The Order also takes into account the incentives created by unbundling rules. Indeed, we apply the same impairment standard that is endorsed by all five members of the Commission. Moreover, where we ask state commissions to analyze geographic and market-specific factors, we enumerate specific national triggers and criteria that are functionally identical to those endorsed by the full Commission in the transport section.

Finally, we have taken additional proactive steps to limit unbundling of the switching element. Where we determine there to be impairment without access to switching, we adopt mechanisms designed to mitigate impairment and thereby reduce the overall amount of unbundling.[7] For example, we include a baseline rolling use of unbundled switching for customer acquisition purposes. We have concluded that impairment in a given market can be mitigated by granting competitive carriers access to unbundled circuit switching for a temporary period during which it could accumulate customers and later migrate them through a batch hot-cut process to their own switching facilities. This temporary, rolling access can help address certain barriers to entry associated with the switching element. It can also help address high

[6] *USTA v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

[7] First, we ask our state commission colleagues to evaluate whether competitors could rely on their own switches if they had access to a "batch hot cut" process that would enable them to transfer larger numbers of their customers over to their own switches. Such a process would minimize the costs and operational difficulties for competitors. Second, we ask our state commission colleagues to consider whether the use of unbundled switching on a "rolling" basis would cure whatever additional economic and operation barriers they determine to exist in discrete geographic markets.

customer churn, which some carriers say is as high as 50% for new customers during the first three months of service. This "rolling" availability of switching can aid competitors in their efforts to build up an adequate customer base and then cut over to the use of their own switches, facilitating the transition to facilities-based competitive service. This is about enhancing competitive entry and subsequent opportunity, and not hamstringing it before it is ripe. Indeed, the switching majority's decision takes critical steps to ensure that competitors do not rely on the UNE-Platform in perpetuity.

Overall, I am confident that this decision sets up a framework that responds to the D.C. Circuit and that will allow consumers to see lasting benefits of competition.

Broadband Decision Provides Inconsistent Incentives for Providers

As I have said before, speeding the deployment of broadband to all Americans is one of the most critical tasks before us. That is our clear mandate from Congress. So I support portions of the Unbundled Local Loops section of this Order that create appropriate incentives for competitors and incumbents to build out next generation facilities. I find, however, that the Order takes an uneven approach to creating incentives for broadband deployment and, accordingly, I must dissent from significant portions of the section.

I approve this Order's finding that incumbents and competitors stand on roughly equal footing when making new fiber-to-the-home deployments (*i.e.*, "greenfield" construction projects). Where barriers to deployment are equivalent, we should give providers every incentive to invest in and roll-out next generation facilities that will bring the benefit of advanced services to American consumers. Indeed, requiring unbundling in such circumstances would be the sort of overbroad approach for which this Commission has been rebuked in the past. By eliminating unbundling for greenfield fiber-to-the-home projects, we will speed the deployment of these large information pipes, which have the greatest potential to deliver a wealth of innovative and beneficial services to consumers.

A more difficult choice was presented in the decision to eliminate the high frequency portion of the loop. Were I to look at this question without the overlay of existing judicial precedent, I would likely have reached a different outcome. Availability of this element has made a positive contribution to the competitive landscape by enabling competitors to provide advanced services through "line sharing" arrangements. Nevertheless, I concur in this section out of recognition that the *USTA* court has directly spoken to this issue[8] and with my expectation, which is being borne out in the current marketplace, that the ability of competitors to access whole loops will enable them to continue to roll-out broadband services to residential and small business consumers. Given the necessity of this action, I am pleased that we are able to provide a sufficient transition that will not disrupt service to the many consumers who currently receive

[8] *USTA v. FCC*, 290 F.3d at 428-430.

broadband services *via* line sharing arrangements and that will allow competitors an opportunity to adjust their business plans to our new unbundling rules.

Regrettably, I cannot join the Order in other broadband findings. Portions of the Order disregard Congress' touchstone, the impairment standard. This is particularly so in those cases where incumbents are deploying fiber as part of their existing networks in the form of "hybrid loops," which combine copper and fiber plant. In these cases, I find the Order's conclusion that Section 706 of the Act outweighs the impairment standard of Section 251 to be unfounded. The decision to limit competitors' access to unbundled local loops, long recognized by this Commission and reviewing courts as the ultimate bottleneck facility,[9] strikes me as wholly inconsistent with the Commission's roundly-supported efforts to promote loop-based competition. More broadly, I fear that this decision may not only undermine competition but also drastically limit consumer choices for broadband, in many cases to one provider. Functionally, the Order forces many residential and small business consumers to choose narrowband, dial-up service in order to reap the benefits of competition.

Conclusion

While many, including me, would have preferred this Order to have been released on the day of adoption, the complex issues, the divergent viewpoints expressed, and the fact that significant portions of the drafting were not begun in earnest until after the vote prevented a simultaneous release. We have strived to finalize this Order as quickly as possible. In so doing, we faced the daunting task of addressing two court remands and the more than three thousand comments filed in this proceeding – many of which included sophisticated, and often contradictory, economic studies and analyses. The result is a five hundred page order that incorporates the views of different majorities to reach conclusions about particular elements. The complexity of the issues and the diversity of views may have slowed the process of finalizing the Order, but we have worked hard in fleshing out the final details of the Order to address many of the concerns raised by those in dissent. Of course, I would have preferred that this be a unanimous decision and I worked with both sides to try to find common ground. However, in the final tally, all five Commissioners agreed on an impairment standard that satisfies the statute and the courts; we simply disagreed on how it is applied to the evidence for particular elements.

Throughout this process, we have been fortunate to have been aided by the exceptionally-talented and enormously-dedicated staff here at the Federal Communications Commission and to have had the benefit of a well-developed record reflecting the views of all types of service providers, equipment manufacturers, state utility commissioners, and, most importantly, consumer interests. While there are few who support every outcome in this item, I express my

[9] *See Triennial Review Order*, para. 205 (noting that "[c]onstructing loop plant is both costly and time consuming, regardless of the type of loop being deployed"); Verizon v. FCC, 535 U.S. 467 at n.27 (acknowledging that loop facilities are "very expensive to duplicate").

thanks to all of my colleagues, the dedicated staff, and the members of the communications industry and the public who contributed to this item.

FEB 13 2004

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION	)	**Case No. PU-439-03-295**
	)	**MCI'S SECOND SET OF DISCOVERY REQUESTS TO QWEST CORPORATION**

YOU WILL PLEASE TAKE NOTICE that MCImetro Access Transmission Services LLC ("MCImetro") and MCI WorldCom Communications, Inc. ("MCIWCOM"), (hereinafter collectively, "MCI") requests that Qwest Corporation ("Qwest" or "QWEST") answer the following Discovery Requests in accordance with the North Dakota Public Service Commission's Rules of Procedure and the North Dakota Rules of Civil Procedure. In accordance with those rules, proper responses to these discovery requests must be served on theundersigned counsel no more than 33 days of service upon you by mail.

INSTRUCTIONS

Please answer each question separately and in the order that it is asked. The numbers of the answers should correspond to the numbers of the Information Requests being answered. Please copy each Request immediately before the answer. Following each answer, please identify the person or persons responsible for the answer and indicate what person or witness provided responsive information or documents, and where applicable, what witness will sponsor each answer in testimony.

In response to Information Requests seeking the production of documents, please produce all responsive documents for inspection and copying unaltered and/or unredacted

as they are kept in the usual course of business and organize and label them to correspond to the categories in this request. If the requested documents are kept in an electronic format, you shall produce the requested document in such format. If any part of a document is responsive to any request, the whole document is to be produced. If there has been any alteration, modification or addition to a document (whether in paper form or electronic), including any marginal notes, handwritten notes, underlining, date stamps, received stamps, attachments, distribution lists, drafts, revisions or redlines, each such alteration, modification or addition is to be considered as a separate document and it must be produced.

In response to Information Requests requesting you to identify documents or other items, information or materials for disclosure, please identify the document(s) or other item(s), information or material(s) in sufficient detail so that they can be produced in response to a separate Request for Production. Such identification shall contain the number (and subpart, if applicable) of the Request requesting the identification and the page count or description of the document or item. Additionally, to the extent known, the listing shall include the author, publisher, title, date, and any "Bates" or other sequential production numbering for the document or item. For each document or other item, please identify by number (including subpart, if any) the Information Request which caused the "identification for disclosure".

Please produce the requested information at the most granular level you possess. If a data request seeks information at a level more granular than you possess, please do not object or decline to answer or produce on that basis, but rather state that you do not possess information at that level and produce the information requested at the most

granular level that you possess. MCI is not asking for the creation of new data, but is seeking all available data for the specific categories and sub-categories described.

Please produce all information requested on any table by filling in the table provided in these data requests. If additional explanation is required, please copy the question and provide your response below.

If you are unable to respond fully and completely to an Information Request, explain the reasons why you are unable to do so. The terms defined herein and the individual Information Requests should be construed broadly to the fullest extent of their meaning, in a good faith effort to comply with all applicable rules, including without limitation the Rules of Practice and Procedure of the North Dakota Public Service Commission.

This request is directed to all documents and information in your possession, custody or control. A document is deemed to be in your possession, custody or control if you have possession of the document, have the right to secure such document or communication from another person having possession thereof, or the document or communication is reasonably available to you (including those documents or communications in the custody or control of your company's present employees, attorneys, agents, or other persons acting on its behalf and its affiliates. In response to requests for production of documents contained in these data requests, you shall produce the documents, including all appendices, exhibits, schedules, and attachments, that are most relevant to the request.

If you are unable to produce a document or information based on a claim that the document is not in your possession, custody or control, state the whereabouts of such

document or information when it was last in your possession, custody or control, and provide a detailed description of the reason the document is no longer in your possession, custody or control, and the manner in which it was removed from your possession, custody or control.

These Information Requests are continuing in nature, and should there be a change in circumstances which would modify or change an answer you have supplied, then in such case, you should change or modify such answer and submit such changes answer as a supplement to the original answer. Further, should a subsequent version(s) of a document be created or exist after the date of this data requests, such version(s) must be produced. Where prior versions or drafts of documents exist, please produce all such documents in your possession, custody or control.

If you claim a privilege, or otherwise decline to produce or provide, any document or information responsive to one or more data requests, then in addition to, and not in lieu of, any procedure that you must follow under law to preserve your objection(s) and/or privilege(s), the attorney asserting the privilege shall:

a. identify in the objection to the request for information, or sub-part thereof, detailed reasons for your claim of privilege or other basis for protecting the document or information from disclosure; and the nature of the privilege (including work product) that is being claimed; and

b. provide the following information in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:

(i) for documents: (1) the type of document; (2) subject matter of the document; (3) the date of the document; (4) the number of pages in the document; (5) the location or custodian of the document; (6) such other information as is sufficient to identify the document for a subpoena *duces tecum*, including, where available, the names(s), address(es) and telephone number of the author(s) of the document and all recipient(s), and, where not apparent, the relationship of the author and addressee to each other;

(ii) for oral communications: (1) the name(s), address(es) and phone number(s) of the person making the communication and the name(s), address(es) and phone number(s) of the persons present while the communication was made; (2) the relationship of the person(s) present to the person(s) making the communication; (3) the date and place of each communication; (4) the general subject matter of the communication.

If you believe that information responsive to any of the following Requests has already been provided by you in response to Requests received from any other party, you may respond by identify the Request and Response where you believe the responsive information has been provided.

DEFINITIONS

1. The terms "and" and "or" as used herein shall be construed as both conjunctive and disjunctive.

2. The term "any" shall be construed to include "all," and "all" shall be construed to include "any."

3. The terms "batch cut" and "batch hot cut" refer to a process by which the incumbent LEC simultaneously migrates two or more loops from one carrier's local circuit switch to another carrier's local circuit switch.

4. The term "communication" includes, without limitation of its generality, correspondence, email, statements, agreements, contracts, reports, white papers, users guides, job aids, discussions, conversations, speeches, meetings, remarks, questions, answers, panel discussions and symposia, whether written or oral. The term includes, without limitation of its generality, both communications and statements which are face-to-face and those which are transmitted by documents or by media such as intercoms, telephones, television, radio, electronic mail or the Internet.

5. The terms "cost study," "cost studies," "cost model" and "cost analyses" means the detailed development of a rate element or of rate elements through a methodology based upon engineering, operational, economic, accounting, or financial inputs, plus support for the sources of the inputs or support for the derivations of the inputs, that enables a person using the study, studies, model or analyses to start with the support for each input and to then trace the support to the input, and to then be able to trace the input through the methodology to the resulting cost and then to the resulting rate element.

6. The term "document," as used herein, shall have the same meaning and scope as contained in Rule 34 of the Federal Rules of Civil Procedure, and shall include, without limitation, all written, reported, recorded, magnetic, graphic, photographic matter, however produced or reproduced, which is now, or was at any time, in the possession, custody, or control of your company and its affiliates including, but not limited to, all reports, memoranda, notes (including reports, memoranda, notes of telephone, email or oral conversations and conferences), financial reports, data records, letters, envelopes, telegrams, messages, electronic mail (e-mail), studies, analyses, books, articles, magazines, newspapers, booklets, circulars, bulletins, notices, instructions, accounts, pamphlets, pictures, films, maps, work papers, arithmetical computations, minutes of all communications of any type (including inter- and intra-office communications), purchase orders, invoices, statements of account, questionnaires, surveys, graphs, recordings, video or audio tapes, punch cards, magnetic tapes, discs, data cells, drums, printouts, records of any sort of meeting, invoices, diaries, and other data compilations from which information can be obtained, including drafts of the foregoing items and copies or reproductions of the foregoing upon which notations and writings have been made which do not appear on the originals.

7. The term "hot cut" refers to an individual coordinated simultaneous transfer of a DS-0/voice grade loop with live customers' service transferred.

8. The term "identify" or "identifying" means:

(a) When used in reference to <u>natural persons</u>: (1) full name; (2) last known address and telephone number; (3) whether the person is currently employed by, associated or affiliated with Qwest; (4) that person's current or former position; and (5) dates of employment, association or affiliation.

(b) When used in reference to a document: (1) its author; (2) actual or intended recipient(s); (3) date of creation; and (4) brief description of its contents.
(c) When used in reference to a communication: (1) whether the communication was oral or written; (2) the identity of the communicator; (3) the person receiving the communication; and (4) the location of the communicator and the person receiving the information, if the communication was oral.

9. The term "Qwest" refers to an incumbent local exchange carrier, and includes the Qwest's parent or any subsidiary or affiliate, and all current or former officers, directors, employees, agents, representatives, contractors or consultants of Qwest, as well as any persons or other entities who have acted or purported to act on its behalf.

10. The past tense includes the present tense and vice-versa.

11. "Relate, mention, reference, or pertain" shall be used to mean documents or communications containing, showing, relating, mentioning, referring or pertaining in any way, directly, or indirectly to, or in legal, logical or factual way connection with, a document request, and includes documents underlying, supporting, now or previously attached or appended to, or used in the preparation of any document called for by such request.

12. The singular form of a word shall be interpreted to include the plural, and the plural form of a word shall be interpreted to include the singular whenever appropriate.

13. The term "you," "your," "yours," or "your company" refers to Qwest Corporation and its predecessors, parents, successors, subsidiaries, divisions and related or affiliated organizations.

DATA REQUESTS

QWEST'S PROPOSED COSTS AND RATES FOR ITS BATCH HOT CUT PROCESS

MCI2-1: At page 6, lines 4-6 of Ms. Million's testimony it states, "The assumptions, methods, and procedures used in Qwest's nonrecurring cost study are designed to yield the actual forward-looking nonrecurring costs that Qwest is likely to incur in provisioning unbundled loops using the BHC process." Is it Qwest's position that the TELRIC costs should reflect Qwest's "actual" costs incurred in provisioning unbundled loops using the BHC process ?

MCI2-2: If the answer to Question MCI2-1 above is "yes", please provide all factual support for Qwest's position that TELRIC costs should reflect "actual" costs that Qwest would incur in provisioning unbundled loops using the BHC process.

MCI2-3: If the answer to Question MCI2-1 above is "no", please explain what Qwest means when it refers to the "actual forward-looking nonrecurring costs that Qwest is likely to incur".

MCI2-4: At page 6, lines 11-12 of Ms. Million's testimony it states, "Only technologies that are commercially available and currently being used in the industry are included in the studies." Is it Qwest's position that Automatic Distribution Frames are not currently "being used in the industry"?

MCI2-5: If the answer to Question MCI2-4 is "no", please explain whether Qwest has included ADF or other automatic technologies in its cost studies?

MCI2-6: If Qwest has included ADF or other automatic technologies in its cost studies, please identify where it has done so by exhibit number, page number and line item.

MCI2-7: If Qwest has not included ADF or other automatic technologies in its cost studies, please explain Qwest has failed to do so.

MCI2-8: At page 7, beginning on line 10 of Ms. Million's testimony, common costs are discussed. Please identify the magnitude of the "allocation of forward-looking common overhead costs" in Qwest's cost studies for its BHC process by identifying the total amount of common overhead costs included in the cost studies and precisely how those amounts were calculated and included in the studies.

MCI2-9: At page 10, lines 21-22 of Ms. Million's testimony it states, "Qwest's TELRIC plus common cost for the currently proposed BHC process has increased to $45.96 per loop. This cost is still considerably lower than Qwest's cost for the basic loop installation that is available today." Please provide Qwest's estimated TELRIC costs for the "basic loop installation that is available today" that supports his assertion.

MCI2-10: At page 11, lines 17-18 of Ms. Million's testimony it states, "The cost analyst, working with a team of experts, identified the one-time activities necessary to perform a BHC installation." Please explain in detail how the cost analyst and working with a team of experts identified the one-time activities. Also please identify by name, business address, and title and job description, the cost analyst and the members of the team of experts with which the cost analyst worked.

MCI2-11: At page 12, lines 8-10 of Ms. Million's testimony, it states, "Based on input from subject matter experts ("SMEs"), the cost analyst estimated the *work time* associated with each of these manual activities, and the *probability* that

each activity will occur." Please explain in detail how the "work times associated with each of these manual activities" were "estimated".

MCI2-12: If Qwest performed time and motion studies to develop the work time estimates discussed on page 12, lines 8-10 of Ms. Million's testimony, please provide copies of such studies? Please identify the person(s) who conducted the time and motion studies.

MCI2-13: If Qwest did not perform time and motion studies to develop the work time estimates discussed on page 12, lines 8-10 of Ms. Million's testimony, please explain the process used to develop the work time estimates, and provide copies of any studies, workpapers, or other material used by Qwest to develop the work time estimates in lieu of time and motion studies. Please identify the person(s) who conducted any such studies or prepared such workpapers or other material.

MCI2-14: At page 12, lines 8-10 of Ms. Million's testimony, it states, "Based on input from subject matter experts ("SMEs"), the cost analyst estimated the *work time* associated with each of these manual activities, and the *probability* that each activity will occur." Please explain in detail how the "probability that each activity will occur" was "estimated".

MCI2-15: When estimating the "probability that each activity will occur" as referenced in Question MCI3-14, did Qwest perform actual studies based on hot cut conversions?

MCI2-16: Please explain the process used to estimate the "probability that each activity will occur" as referenced in Question MCI2-14.

MCI2-17: At page 12, lines 16-17 of Ms. Million's testimony, it states, "The cost analyst then determined, based on current labor data, the appropriate labor rate for the personnel performing each work activity." Does the reference to "current" labor data mean that the current labor rates charged to Qwest under a union contract currently in effect or some other labor rates charged to Qwest by sub-contractors, for example; or some other labor rates?

MCI2-18: Please explain and identify the actual labor rates used in the study.

MCI2-19: Were the equivalent of the "basic" labor rates, "overtime" labor rates, or "premium" labor rates as those terms were used in Qwest's North Dakota SGAT dated May 30, 2002, Section 4 under "Miscellaneous charges" and as found on Exhibit A to Qwest's SGAT, dated May 30, 2002, under section 9.20 included? If included, how were these varying rates weighted in to cost study?

MCI2-20: At page 13, lines 6-13 of Ms. Million's testimony it refers to the annual charge factors used in the study. Please provide a list of the annual charge factors and please specifically identify any changes in those annual charge factors (indicating the previous factor as compared to the factor used in this proceeding) that may have occurred since Qwest filed its most current cost studies in North Dakota.

MCI2-21: At page 14, footnote 10 of Ms. Million's testimony, it indicates that Qwest assumes 85% of orders will flow through. Please provide the basis and all support for the 85% factor. What is the flow-through rate today for each of Qwest's hot cut offerings? To establish its current flow through rate, Qwest may identify the results of any relevant performance indicator definition ("PID") that measures Qwest's flow-through rate for each of Qwest's hot cut offerings?

MCI2-22: At page 15, lines 8-19 of Ms. Million's testimony, Qwest discusses the need for COTs to travel to central offices in certain circumstances. The cost of that travel is evidently included in the cost study. Please explain in detail the assumptions used by Qwest to establish the travel time for the COTS, and how those costs are included in the BHC cost study. In answering this question, please explain how often the COTs must travel, the assumptions associated with travel (time, cost of travel, frequency, etc.) and how those additional costs are then added to the BHC cost estimate.

MCI2-23: What percentage of Qwest central offices in North Dakota are unmanned?

MCI2-24: At page 16, lines 5-7 of Ms. Million's testimony, Qwest discusses the "new steps that are proposed in the BHC process" and the need to estimate costs for those steps. Please identify the "new" steps in the BHC process.

MCI2-25: At page 17, line 18 of Ms. Million's testimony Qwest, refers to "The nonrecurring costs include the cost to install and disconnect service." Do Qwest's current hot cut nonrecurring costs ("NRCs") include the cost to disconnect service?

MCI2-26: If the answer to Question MCI2-25 is "yes", please explain why the cost to disconnect service should be included in the BHC process.

MCI2-27: At page 18, line 21 of Ms. Million's testimony, Qwest states that it has recently updated its factors methodology. Please describe the changes in detail that comprise the update and its likely impact on the factors. Please also explain why Qwest believes that annual cost factors for Washington are a good proxy for North Dakota.

MCI2-28: At page 27, lines 15-16 of Ms. Million's testimony, Qwest states that there is a 5% probability that an order will be handled manually in the LPC. Please provide all assumptions and support for the 5% probability.

MCI2-29: At pages 16 and 17 of Ms. Million's testimony, Qwest refers to the testimony and report of Hitachi Consulting authored by Lorraine Barrick. Please provide a listing and description of all work conducted for Qwest in the last five years by Hitachi Consulting and/or Ms. Barrick.

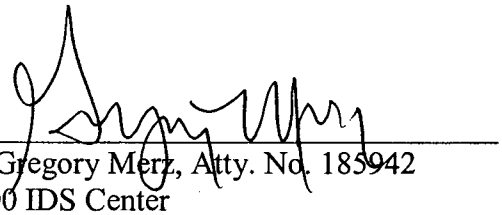
MCI2-30: Please provide copies of all correspondence and contracts between Qwest and Hitachi Consulting and/or Ms. Barrick that pertain to the review and testing of Qwest's processes and procedures pertaining to the Batch Hot Cut process.

MCI2-31: At page 33, lines 20-21 of Ms. Million's testimony Qwest states, "... the BHC process eliminates many of the activities that the QCCC performs for standard hot cuts." Please identify all of the activities eliminated by the BHC process that would be done today by the QCCC for standard hot cuts, and the cost savings that result from such elimination.

MCI2-32: In the testimony sections on state specific rate issues and volume data, there is discussion of spreading the conversions across the FCC-specified time period. Nowhere in the testimony is the transition planning discussed. Please provide Qwest's understanding of carrier responsibilities (Qwest and individual CLECs) with respect to transition planning.

Dated: February 11, 2004.

GRAY, PLANT, MOOTY, MOOTY
& BENNETT, P.A.

By 

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Attorneys for MCIMETRO ACCESS TRANSMISSION SERVICES LLC and MCI WORLDCOM COMMUNICATIONS, INC. ("MCI")

GP:1550625 v1

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Joyce Pedersen, being first duly sworn, deposes and says on oath that on the 11th day of February, 2003, she served the attached:

MCI's Second Set of Discovery Requests to Qwest Corporation

upon the following:

See Attached Service List

by arranging for the deposit of a true and correct copy thereof in a sealed envelope duly addressed to the above, postage prepaid, in the United States mails at Minneapolis, Minnesota.

Joyce Pedersen

Subscribed and sworn to before me
this 11th day of February, 2004.

Notary Public

GP:1550702 v1

JUDITH M. ANDREW
Notary Public
Minnesota
My Commission Expires Jan. 31, 2005

State of North Dakota
Public Service Commission
Public Service Commission Local Competition Investigation
Case No.: PU-439-03-295
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FEB - 5 2004

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION	)	Case No. PU-439-03-295
LOCAL COMPETITION	)	
INVESTIGATION	)	

MIDCONTINENT COMMUNICATIONS RESPONSES TO MCI'S FIRST DISCOVERY REQUEST TO CLECS

COMES NOW Midcontinent Communications and for its responses to MCI's First Discovery Request to CLECS, states as follows:

REQUEST NO. 1: Please provide, a) on a statewide bases, b) on a CLEC switch CLLI-code-specific basis, and c) on a ILEC 8-digit (wire center) CLLI-code-specific basis, monthly data for each month since July 1, 2003 for your retail customer "churn" (*i.e.*, customer change from one carrier to another) on all of the following bases. If you provide local service via both UNE-P and UNE loops, please provide the requested information separately for each of these serving modes if available. If you provide local service via only one of these serving modes, please state which one.

(a) number of customers changing carriers, and percentage of then-current customer changing carriers, by customer type (*e.g.*, residential, business with one to three DS-0/voice grade lines to a single customer premises; business with more than three DS-0/voice grade lines to a single customer premises);

(b) number of customers changing carriers, and percentage of then-current customers changing carriers, by service type (*i.e.*, local exchange voice service only; long distance voice service only; bundled local exchange and DSL; and bundled local exchange, long distance and DSL services);

(c) number of customers changing carriers, and percentage of then-current customers changing carriers, by customer type,(*e.g.*, residential, business with one to three DS-0/voice grade lines to a single customer premises; business with more than three DS-0/voice grade lines to a single customer premises) by the following

customer ages: 1) churn within the first three months after the customer's serviced is provisioned, and 2) churn with in the first six months after the customer's service is provisioned.

RESPONSE TO REQUEST NO. 1: Midcontinent does not track churn.

REQUEST NO. 2: Please provide, a) on a statewide basis, b) on a CLEC switch CLLI-code specific basis, and c) on an ILEC 8-digit (wire center) CLLI-code specific basis, monthly data for each month since July 1, 2001 for your retail customer "churn" (*i.e.*, the number of customers changing from one carrier to another) for residential local exchange customers between each of the following service configurations: 1) ILEC voice only, 2) ILEC voice plus DSL; 3) ILEC DSL only; 4) CLEC UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC line splitting; 8) CLEC DSL only [e.g., ILEC voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only].

RESPONSE TO REQUEST NO. 2: Midcontinent does not track churn.

REQUEST NO. 3: Please provide, a) on a statewide basis, b)on a CLEC switch CLLO-code-specific basis, and c) on a ILEC 8 digit (wirecenter) CLLI-code-specific basis, monthly data since July 1,2001 on the number of UNE loops that ILEC has migrated for you through hot cuts (i.e., individual coordinated simultaneous transfer of DS-0/voice grade loops with live customers' service transferred) that involved manual frame (MDF and/or IDF) jumper work.

RESPONSE TO REQUEST NO. 3: Midcontinent has not utilized the hot cut process.

REQUEST NO. 4: Please provide, a) on a statewide basis, b) on a CLEC switch CLLI-code-specific basis, and c) on a ILEC 8-digit (wire center) CLLI-code-specific basis,

monthly data for each month since July 1,2001 on the number of UNE loops that ILEC has migrated for you through hot cuts (i.e., individual coordinated simultaneous transfer of DS-0/voice grade loops with live customers' service transferred) that involved manual frame (MDF and/or IDF) jumper work.

RESPONSE TO REQUEST NO. 4: Midcontinent has not utilized the hot cut process.

REQUEST NO. 5: With respect to the hot cuts identified in response to 0, please provide a detailed description of the work efforts your personnel had to perform as part of the hot cut process, the costs you incurred (including non-recurring charges imposed by ILEC), and the maximum daily number of hot cuts that ILEC has accomplished for you per ILEC 8-digit (wire center) CLLI code since July 1, 2001.

RESPONSE TO REQUEST NO. 5: Midcontinent has not utilized the hot cut process.

REQUEST NO. 6: With respect to your response to 0,please state whether the existing customer loop was used for each of the migrations identified. If the loop was not re-used, please provide a detailed explanation of the reasons why it was not re-used, and any consequence of not being able to reuse the loop (i.e., delayed installation interval, loss of customer telephone number, need for rewiring at customer NID, etc.).

RESPONSE TO REQUEST NO. 6: Midcontinent does not use UNE Loops in North Dakota.

REQUEST NO. 7: Please explain whether you currently have in place electronic systems that can accomplish, on an automated, flow-through basis (i.e., no manual intervention is required for completion of the migration), migrations between each of the following service configurations: 1) ILEC voice only 2) ILEC voice plus DSL; 3) ILEC DSL only; 4) CLEC

UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC splitting; 8) CLEC DSL only [e.g., ILEC voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only].

RESPONSE TO REQUEST NO. 7: No. None are completely automated.

REQUEST NO. 8: With respect to your response to 7, please indicate whether your electronic systems can accomplish each migration type on each of the following bases: (a) automated flow-through batch cuts [please indicate the maximum number of simultaneous loop migrations that you can support]; (b) automated flow-through individual loop hot cuts; (c) manual batch cuts [please indicate the maximum number of simultaneous loop migrations that you can support] (d) manual individual loop hot cuts.

RESPONSE TO REQUEST NO. 8: N/A.

REQUEST NO. 9: Please provide, a) on a statewide basis, and b) on a ILEC 8-digit (wire center) CLLI-code-specific basis, the number of your UNE-P orders in North Dakota that were fulfilled each month since July 1, 2001.

RESPONSE TO REQUEST NO. 9: Midcontinent objects to this interrogatory on the basis that it calls for confidential, proprietary, trade secret information and responding to the interrogatory would be unduly burdensome.

REQUEST NO. 10: Please explain whether you have always been able to obtain a customer service record ("CSR") from ILEC and/or other CLECs for the provision of 1) local exchange voice service on UNE-P; 2) local exchange voice service on UNE loop. If not, please provide a detailed explanation of the reason(s) you did not obtain the CSR.

RESPONSE TO REQUEST NO. 10: Midcontinent can receive a CSR from the ILEC. We cannot get a CSR from most other CLECs unless they resell through the ILEC. If the CLEC is a facilities based company we don't have a way to receive the CSR from them.

REQUEST NO. 11: Please explain whether you currently use an electronic automated (i.e., not requiring any manual intervention prior to completion of task) method to interface with ILEC to send or receive each of the following: a) pre-order inquiries; b) orders (including placing the order, firm order confirmations, jeopardy notices, etc); c) provisioning (including the exchange of information for changes to 911, local number portability, and other databases); d) maintenance and repair; e) billing.

RESPONSE TO REQUEST NO. 11: None are completely automated.

REQUEST NO. 12: Please provide a detailed explanation of the electronic method (e.g. EDI, CORBA, etc.) that you currently use to send to or receive from ILECs and/or CLECs each of the following: a) pre-order inquiries; b) orders (including placing the order, firm order confirmations, jeopardy notices, etc.); c) provisioning (including the exchange of information for changes to 911, local number portability, and other databases); d) maintenance and repair; e) billing.

RESPONSE TO REQUEST NO. 12: N/A.

REQUEST NO. 13: Please explain whether you currently have in place and use electronic automated systems to process orders placed by customers whose service will be provisioned using your own switches. If your ordering systems are only partially electronic and automated, please identify specifically which portions are electronic and which are manual, and

provide a detailed explanation of the limitations created by the manual portions when processing customer orders.

RESPONSE TO REQUEST NO. 13: Midcontinent does not have a switch(es) in North Dakota.

REQUEST NO. 14: Please explain whether you currently have in place and use electronic automated systems to provision service for customers using your own switches. If your provisioning systems are only partially electronic and automated, please identify specifically which portions are electronic and which are manual, and provide a detailed explanation of the limitations created by the manual portions when provisioning customer orders.

RESPONSE TO REQUEST NO. 14: Midcontinent does not have a switch(es) in North Dakota.

REQUEST NO. 15: Please explain whether you currently have in place and use electronic automated systems to maintain and repair service for customers whose service is provisioned using your own switches. If your maintenance and repair systems are only partially electronic, please identify specifically which portions are electronic and which are manual, and provide a detailed explanation of the limitations created by the manual portions for maintenance and repair of customer services.

RESPONSE TO REQUEST NO. 15: Midcontinent does not have a switch(es) in North Dakota.

REQUEST NO. 16: Please explain whether you have adequate access to ILEC facilities to conduct trouble isolation and repair for customer services provisioned via your own switches

using UNE loops. If your response is anything other than an unequivocal yes, please explain in detail the reason that you do not have such access.

RESPONSE TO REQUEST NO. 16: Midcontinent does not have a switch(es) in North Dakota.

REQUEST NO. 17: Please explain whether you have adequate access to ILEC facilities to conduct testing for customer services provisioned via your own switches using UNE loops.

RESPONSE TO REQUEST NO. 17: Midcontinent does not have a switch(es) in North Dakota.

REQUEST NO. 18: Please explain whether you currently have in place and use electronic automated systems to bill customers whose services are provisioned using your own switches. If your billing systems are only partially electronic, please identify specifically which portions are electronic, and which are manual, and provide a detailed explanation of the limitations created by the manual portions when billing customers.

RESPONSE TO REQUEST NO. 18: Midcontinent does not have a switch(es) in North Dakota.

CLEC MASS MARKET UNE SWITCHING TRIGGER ISSUES

REQUEST NO. 19: For each switch you use to provide local exchange service to North Dakota customers, please provide the following information for the switch and/or the switch location:

(a) switch manufacturer, model, and date of installation;
(b) currently loaded version of switch software;
(c) currently equipped line side capacity in (1) DS-0/voice grade circuits and (2) DS-l circuits;

(d) currently utilized line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;
(e) current switch processor capacity in CCS;
(f) busy hour and busy season utilized switch processor capacity in CCS.
(g) any ILEC wire center subtending areas currently served by your switch for which you are currently considering discontinuing service for any reason within the next 12 months.

RESPONSE TO REQUEST NO. 19: Midcontinent does not have a switch(es) in North Dakota.

REQUEST NO. 20: For each switch identified in your response to MCIC DISCOVERY REQUEST NO. 19, please provide the information requested in TABLE 1:

TABLE 1

CLEC Switch CLLI	**Number of Loops Per End-User Customer Premises**	**Number of Local Service End-User Customers**	**Type of End-User Customer**	**Number of Voice Only End User Customers[1]**	**Number of DSL Only End User Customers**	**Number of Line Share/Line Split DSL End User Customers[2]**
ABC	1	e.g. 10,155	Residential	e.g. 10,000	e.g. 5	e.g. 100
	1	e.g. 5,300	Business	e.g. 5,000	3.g.100	e.g.100
	2		Residential			
	2		Business			
	3		Residential			
	3		Business			
	. . .(continue pattern as above					
	18		Residential			
	18		Business			
	19-24		Residential			

[1]This category includes loops used for fax and/or modem-only taffic.

[2]This category includes voice and DSL on the same wire pair (i.e., line sharing and line splitting).

	19-24		Business			
	one DS-1		Residential			
	one DS-1		Business			
	more than one DS-1		Business			

RESPONSE TO REQUEST NO. 20: Midcontinent does not have a switch(es) in North Dakota.

REQUEST NO. 21: For each switch identified in your response to MCIC DISCOVERY REQUEST NO. 19 other than circuit switches, please provide the following for each switch:

(a) any differences in quality of service compared to local exchange service provided on circuit switches (e.g., reliability, throughput, ubiquity, outages, mean time to repair, availability ofE911 service, lack of line-powered local telephone service);
(b) the date(s) on which you installed the switch and began providing local exchange service on the switch;
(c) the geographic area served by the switch compared to the geographic area served by any circuit switches you use to provide local exchange service;
(d) any differences in the technical or operational requirements for the customer to obtain local exchange service from the switch, including customer premises equipment or software (e.g., specialized phone set; availability of computer, cable modem, set top box, need for customer premises battery backup for telephone service), access method (e.g., DSL, cable television, satellite service), provisioning interval;
(e) any ILEC central office or wire center subtending areas currently served by your switch for which you are considering discontinuing service for any reason within the next 12 months.

RESPONSE TO REQUEST NO. 21: Midcontinent does not have a switch(es) in North Dakota.

REQUEST NO. 22: For each switch identified in your response to MCIC DISCOVERY REQUEST NO.19, please state whether you own the switch, or instead whether you have leased

the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis (including wholesale and/or resale). If you do not own the switch,

(a) state whether the entity owning the switch is an affiliate of yours;
(b) identify the entity owning the switch, and (if different) the entity with which you entered into an arrangement to obtain switching capacity;
(c) identify the nature of the arrangement through which you obtained switching capacity;
(d) provide a copy of the agreement (e.g. Interconnection Agreement, contract, lease, etc.) specifying the rates, terms and conditions through which you are currently obtaining switching capacity.

RESPONSE TO REQUEST NO. 22: Midcontinent does not have a switch(es) in North Dakota.

REQUEST NO. 23: For each switch you own or control and from which you offer or provide wholesale local switching capacity (wholesale local switching capacity on a standalone basis, or combined with loops and/or transport) to carriers that are not affiliated with you, to use to serve North Dakota customers, please provide the following information for the switch and/or the switch location:

(a) the 8-digit common language location identifier ("CLLI") code as it appears in the Local Exchange Routing Guide ("LERG");
(b) V &H coordinates;
(c) currently equipped line side capacity in (I) DS-0/voice grade circuits and (2) DS-1 circuits;
(d) currently utilized line side capacity in (I) DS-O/voice grade circuits and (2) DS-1 circuits;
(e) current switch processor capacity in CCS;
(f) a copy of the methods and procedures document, or other documents or information, detailing the technical specifications for the provision of wholesale switching, including interface requirements, signaling capabilities, service quality parameters (including procedures to minimize service degradation, delay, echo return, and/or loss attenuation), and service procedures;

(g) any ILEC central office or wire center subtending areas currently served by your switch for which you are considering discontinuing service for any reason within the next 12 months.

RESPONSE TO REQUEST NO. 23: Midcontinent does not have a switch(es) in North Dakota.

REQUEST NO. 24: For each switch identified in your response to MCIC DISCOVERY REQUEST NO. 23, please provide the information requested in TABLE 2:

TABLE 2

CLEC Switch CLLI	**Number of Loops Per End-User Customer Premises**	**Number of Local Service End-User Customers**	**Type of End-User Customer**	**Number of Voice Only End User Customers[3]**	**Number of DSL Only End User Customers**	**Number of Line Share/Line Split DSL End User Customers[4]**
ABC	1	e.g. 10,155	Residential	e.g. 10,000	e.g. 5	e.g. 100
	1	e.g. 5,300	Business	e.g. 5,000	e.g.100	e.g.100
	2		Residential			
	2		Business			
	3		Residential			
	3		Business			
	. . .(continue pattern as above					
	18		Residential			
	18		Business			
	19-24		Residential			
	19-24		Business			
	one DS-1		Residential			
	one DS-1		Business			

[3]This category includes loops used for fax and/or modem-only traffic.

[4]This category includes voice and DSL on the same wire pair (i.e., line sharing and line splitting).

	more than one DS-1		Business			

RESPONSE TO REQUEST NO. 24: Midcontinent does not have a switch(es) in North Dakota

REQUEST NO. 25: For each switch identified in your response to MCIC DISCOVERY REQUEST NO. 23, please provide the following information:

(a) whether you are willing to expand your switch capacity to meet increased demand for wholesale switching from other CLECs;
(b) your existing plans and/or procedures for ordering and implementing software upgrades for the switch;
(c) terms and conditions (including forecasts) you require or expect to require from other CLECs in order to expand the capacity of your switch for the provision of wholesale switching;
(d) rates, deposits or other financial information you require or expect to require from other CLECs in order to expand the capacity of your switch for the provision of wholesale switching;
(e) whether you now have, or intend to implement, a process or procedure to ensure that your switch can provide the same features and functions as those available from ILEC switches.

RESPONSE TO REQUEST NO. 25: Midcontinent does not have a switch(es) in North Dakota.

REQUEST NO. 26: For each collocation arrangement in each ILEC central office or wire center in North Dakota, please provide the following information, reported by ILEC 8-digit (wire center) CLLI code and street address:

(a) size of collocation arrangement;
(b) amount of power (including both "A" and "B" DC feeds and AC power) supplied to the collocation arrangement;
(c) amount of unused space in the collocation arrangement that could be used for placing additional equipment;

(d) if the collocation arrangement is connected via transport to any switch used by CLEC to offer local service in North Dakota, the CLLI code, city, street address, zip code, V &H coordinates, and owner of that switch;
(e) all non-recurring and monthly recurring charges for the collocation arrangement;
(f) name(s) of other collocating carrier(s) to which this collocation arrangement is connected in this ILEC central office or wire center;
(g) name(s) of other collocating carrier(s) that are sharing this collocation arrangement (if collocation sharing is permitted by ILEC).

RESPONSE TO REQUEST NO. 26: Midcontinent does not collocate with the ILEC in North Dakota.

REQUEST NO. 27: With regard to all CLEC-to-CLEC cross connections you have purchased, please identify the following, reported by ILEC central office or wire center:

(a) number of such cross connections that you have had provisioned;
(b) the identity of the other CLEC with whom you provisioned the cross connect
(c) the type of collocation arrangement of both CLECs;
(d) the minimum, maximum and average provisioning time for CLEC-to-CLEC cross connections;
(e) the identity of the entity or personnel who performs the cross connect (e.g., ILEC central office technician, certified CLEC technician, etc.)

RESPONSE TO REQUEST NO. 27: Midcontinent has not CLEC-to-CLEC cross connections at the ILEC's CO or wire center in North Dakota.

REQUEST NO. 28: For each collocation arrangement identified in your response to MCIC DISCOVERY REQUEST NO. 26, please provide the information in TABLE 3.

TABLE 3

CLEC Switch CLLI	Number of Loops Per End-User Customer Premises	Number of Local Service End-User Customers	Type of End-User Customer	Number of Voice Only End User Customers[5]	Number of DSL Only End User Customers	Number of Line Share/Line Split DSL End User Customers[6]
ABC	1	e.g. 1,017	Residential	e.g. 1,000	e.g. 2	e.g. 10
	1	e.g. 540	Business	e.g. 500	e.g.10	e.g.10
	2		Residential			
	2		Business			
	3		Residential			
	3		Business			
	. . .(continue pattern as above					
	18		Residential			
	18		Business			
	19-24		Residential			
	19-24		Business			
	one DS-1		Residential			
	one DS-1		Business			
	more than one DS-1		Business			

RESPONSE TO REQUEST NO. 28: Midcontinent does not collocate with the ILEC in North Dakota.

[5]This category includes loops used for fax and/or modem-only traffic.

[6]This category includes voice and DSL on the same wire pair (i.e., line sharing and line splitting).

REQUEST NO. 29: For each of the collocation arrangements identified in your response to MCIC DISCOVERY REQUEST NO. 26 that is connected via EELs to a switch you use to provide local service in North Dakota, please provide the following information:

(a) the CLLI code, street address, zip code, V &H coordinates, and owner of the switch to which the collocation arrangement is connected;
(b) number of such EELs that comprise DS-0/voice grade transport connected to DS-0/voice grade loops;
(c) number of such EELs that comprise DS-1 transport connected to multiplexed DS-0/voice grade loops;
(d) number of such EELs that comprise DS-1 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(e) number of such EELs that comprise DS-3 transport connected to multiplexed DS-0/voice grade loops;
(f) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(g) number of such EELs that comprise DS-1 transport connected to DS-1 loops;
(h) number of such EELs that comprise DS-3 transport connected to multiplexed DS-1 loops;
(i) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-1 loops, and the loop-to-transport concentration ratio.

RESPONSE TO REQUEST NO. 29: Midcontinent does not collocate with the ILEC in North Dakota.

REQUEST NO. 30: Do you use EELs that comprise loops and transport without using collocation arrangements? If the answer is affirmative, please provide the following information:

(a) the CLLI code, street address, zip code, V &H coordinates, and owner of the central office or other location where the loop and transport are connected to form an EEL;
(b) number of such EELs that comprise DS-0/voice grade transport connected to DS-0/voice grade loops;
(c) number of such EELs that comprise DS-1 transport connected to multiplexed DS-0/voice grade loops;

(d) number of such EELs that comprise DS-1 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(e) number of such EELs that comprise DS-3 transport connected to multiplexed DS-0/voice grade loops;
(f) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(g) number of such EELs that comprise DS-1 transport connected to DS-1 loops;
(h) number of such EELs that comprise DS-3 transport connected to multiplexed DS-loops;
(i) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-loops, and the loop-to-transport concentration ratio.

RESPONSE TO REQUEST NO. 30: Midcontinent does not use EELs in North Dakota.

REQUEST NO. 31: For each collocation arrangement in a non-ILEC central office or wire center in North Dakota (e.g., carrier hotels), please provide the following information:

(a) size of collocation arrangement;
(b) if the collocation arrangement is connected via transport to any switch you use to offer local service in North Dakota, the CLLI code, street address, zip code, V &H coordinates, and owner of that switch;
(c) call non-recurring and recurring charges for the collocation arrangement;
(d) name(s) of other collocating carrier(s) to which this collocation arrangement is connected in this central office or wire center;
(e) name(s) of other collocating carrier(s) that are sharing this collocation arrangement (if collocation sharing is permitted by owner).

RESPONSE TO REQUEST NO. 31: Midcontinent does not collocate with any carrier in North Dakota

REQUEST NO. 32: For each ILEC central office or wire center subtending area in North Dakota that you do not serve with your own switch, please provide a detailed explanation of the reason you do not serve that area (e.g., too few customers to achieve economies of scale; high chum rates that preclude recovery of non-recurring costs and charges, etc.).

RESPONSE TO REQUEST NO. 32: Midcontinent does not have a switch(es) in North Dakota.

REQUEST NO. 33: Please provide a detailed explanation of each task you would have to undertake to provide local exchange service to mass market customers via UNE loops using your own switches, rather than via UNE-P, including but not limited to the following: implement new or modify business and operational plans to use UNE loops; hire and train loop provisioning technicians; hire and train switch technicians; establish collocation arrangements in ILEC central offices or wire centers; purchase and install equipment in collocation arrangement; hire and train new, or increase existing, customer service personnel; hire and train new, or increase existing, trouble maintenance personnel; add new or revise OSS for preordering, ordering, provisioning, repair and/or billing; develop capabilities for E911 service; develop capabilities for number portability. Please provide an estimate of the time and cost for each task identified.

RESPONSE TO REQUEST NO. 33: Midcontinent does not have a switch(es) in North Dakota.

REQUEST NO. 34: Please provide the definition you use internally for business purposes for the following terms: (1) "mass market customer" and (2) "enterprise customer," in terms of type of customer (e.g., residential vs. business), number of lines per customer, use of DS-0/voice grade loop facilities vs. DS-ls, or any other basis you use to distinguish these terms.

RESPONSE TO REQUEST NO. 34: Midcontinent only defines types of customers by Residential or Business.

REQUEST NO. 35: Please provide your calculation, estimate, or view of the economic crossover point, in terms of number of DS-0/voice grade lines to a single customer premises, at

which you offer service at a DS-l level rather than using a number of analog lines, and provide the basis for that crossover point (e.g., equivalency point of analog service rates and DS-1 service rates, consideration of whether the customer premises equipment can accept a DS-1 interface, etc.).

RESPONSE TO REQUEST NO. 35: 18 lines is the level at which MIdcontinent recommends DS1 service to a customer.

REQUEST NO. 36: With respect to each of the two customer categories identified in your response to 0, please provide the following information:

(a) what switching arrangement you use to serve the customer category (e.g., self-provisioned CLEC switch, ILEC switch, purchase wholesale switching from another CLEC, purchase switching from a third party other than a CLEC);

(b) the number of customers in each customer category, reported by ILEC central office or wire center for each month since July 1, 2001;

(g) the percentage of your total customer base in North Dakota in each of the two categories;

(h) whether you target your business plans, sales or marketing to ! particular subsets of customers within each of the two customer categories.

RESPONSE TO REQUEST NO. 36:

(a) Midcontinent would use UNE-P or resold where UNE-P is not an option

(b) N/A

(g) 35% residential 65% business

(h) Midcontinent has no subset of customer types beyond residential or business.

REQUEST NO. 37: If you do not currently offer service to residential customers in North Dakota, please list and describe your reasons for not doing so.

RESPONSE TO REQUEST NO. 37: Midcontinent objects to this interrogatory on the basis that it calls for the disclosure of confidential, proprietary, trade secret information.

REQUEST NO. 38: If you do not currently offer service to business customers in North Dakota below the DS-1 level (i.e., DS-0/voice grade loops), please list and describe your reasons for not doing so.

RESPONSE TO REQUEST NO. 38: Midcontinent objects to this interrogatory on the basis that it calls for the disclosure of confidential, proprietary, trade secret information.

REQUEST NO. 39: If you current offer service to business customer in North Dakota below the DS-1 level (i.e., DS-0/voice grade loops), but do not offer and/or market services to such customers unless they have or need a minimum number of loops to their premises, please state that minimum number, and list and describe your reasons for not offering and/or marketing service below that level.

RESPONSE TO REQUEST NO. 39: Midcontinent objects to this interrogatory on the basis that it calls for the disclosure of confidential, proprietary, trade secret information.

REQUEST NO. 40: Please provide your current average monthly revenues per line per customer in North Dakota, stated separately for (1) residential customers served via UNE-P; (2) residential customers served via UNE loops; (3) business customers served via UNE-P; (4) business customers served via DS-0/voice grade UNE loops; and (5) business customers served via DS-1 UNE loops. Please provide the requested information at the most granular level

available (e.g., per-ILEC-8-digit-CLLI serving area, per-CLEC-switch serving area, statewide, etc.). Please identify the source of the reported revenues by service and/or feature type (i.e., local voice only, local voice plus vertical features, long distance only, DSL only, bundles of any of the above, and/or other services or features). If you do not track revenues differentially for UNE-P vs. UNE loop configurations for residential and/or business customers, please so state, and provide combined numbers. For all revenues provided, exclude taxes, regulatory assessments and surcharges, and other payments made to governmental units. If it is not possible to exclude such payments, please so state.

RESPONSE TO REQUEST NO. 40: Midcontinent objects to this interrogatory on the basis that it calls for the disclosure of confidential, proprietary, trade secret information and responding to the interrogatory would be unduly burdensome.

REQUEST NO. 41: If you currently offer service to residential customers, please provide your variable costs per residential customer.

RESPONSE TO REQUEST NO. 41: Midcontinent objects to this interrogatory on the basis that it calls for the disclosure of confidential, proprietary, trade secret information and responding to the interrogatory would be unduly burdensome.

REQUEST NO. 42: Do you currently have access to external sources of capital for the purpose of expanding your operations by making new capital investments? If so, please list and describe all such sources, and state the quoted or estimated interest rate for each such source.

RESPONSE TO REQUEST NO. 42: Midcontinent objects to this interrogatory on the basis that it calls for the disclosure of confidential, proprietary, trade secret information..

REQUEST NO. 43: Please provide a copy of all business cases, business analysis, cost studies, or other analyses or evaluations concerning whether entry into the mass market is economically feasible without access to ILEC's switches, including but not limited to those analyses and studies that were submitted to the FCC, performed but not submitted to the FCC, and performed since February 22, 2003. Provide all supporting documentation and work papers, in electronic format if available.

RESPONSE TO REQUEST NO. 43: N/A.

Dated this 5th day of February, 2004.

MIDCONTINENT COMMUNICATIONS

W. Tom Simmons
Vice President, Public Policy

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF Minnehaha)

W. Tom Simmons, Vice President of Public Policy, Midcontinent Communications, being first duly sworn, upon oath, deposes and says that he has read the foregoing document, knows the contents thereof and that the same is true to the best of his knowledge.

Notary Public

My commission expires: 1/24/2010

Dated this 5th day of February, 2004.

MIDCONTINENT COMMUNICATIONS

W. Tom Simmons
Vice President, Public Policy

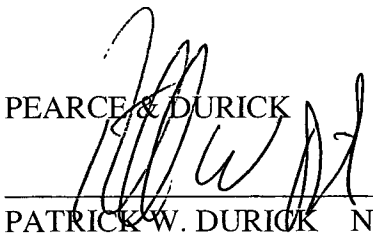
STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF Minnehaha)

W. Tom Simmons, Vice President of Public Policy, Midcontinent Communications, being first duly sworn, upon oath, deposes and says that he has read the foregoing document, knows the contents thereof and that the same is true to the best of his knowledge.

Notary Public

My commission expires: 1/24/2010

PEARCE & DURICK



PATRICK W. DURICK ND #03141
P. O. Box 400
314 E. Thayer Avenue
Bismarck, ND 58502-0400
(701) 223-2890

Attorney for Midcontinent Communications

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Qwest Corporation
Local Competition
Investigation

Case No. PU-439-03-295

CERTIFICATE OF SERVICE BY MAIL

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Sara Carr hereby certifies that on February 5, 2004, she served a copy of the attached MIDCONTINENT COMMUNICATIONS RESPONSES TO MCI'S FIRST DISCOVERY REQUEST TO CLECS by placing a true and correct copy thereof in an envelope and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota. addressed to the following:

Marilyn Foss
P. O. Box 2216
Bismarck, ND 58502-2216

Mary B. Tribby
AT&T Law Department
1875 Lawrence Street, Suite 1675
Denver, CO 80202

Gary B. Witt
AT&T Law Department
1875 Lawrence Street, Suite 1675
Denver, CO 80202

Walter F. Eggers III
Holland & Hart LLP
2515 Warren Ave., Suite 450
Cheyenne, WY 82001-3162

Tim Goodwin
Qwest Corporation
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Denver, CO 80202

Daniel S. Kuntz
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19545 NW VonNeumann Dr., Suite 200
Beverton, OR 97006-6902

Richard Thronsen
Missouri Valley Communications
P. O. Box 600
Scobey, MT 59623-0600

Sara Carr

Subscribed and sworn to before me this 5 day of February, 2004.

Notary Public

My commission expires:

JEANNE A. FEIST
Notary Public State of North Dakota
My Commission Expires MARCH 7, 2007

RECEIVED
FEB - 3 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

RESPONSE OF DAKTEL COMMUNICATIONS, L.L.C.,
TO MCI'S DISCOVERY REQUESTS TO CLECS

Daktel Communications, L.L.C., responds to MCI's discovery requests to CLECs as follows:

CLEC HOT CUT/CUSTOMER MIGRATION ISSUES

MCIC DISCOVERY REQUEST NO. 1. Please provide, a) on a statewide basis, b) on a CLEC switch CLLI-code-specific basis, and c) on a ILEC 8-digit (wire center) CLLI-code-specific basis, monthly data for each month since July 1, 2001 for your retail customer "churn" (*i.e.*, customer change from one carrier to another) on all of the following bases. If you provide local service via both UNE-P and UNE loops, please provide the requested information separately for each of these serving modes if available. If you provide local service via only one of these serving modes, please state which one.

(a) number of customers changing carriers, and percentage of then-current customers changing carriers, by customer type (*e.g.*, residential, business with one to three DS-0/voice grade lines to a single customer premises; business with more than three DS-0/voice grade lines to a single customer premises);

(b) number of customers changing carriers, and percentage of then-current customers changing carriers, by service type (*i.e.*, local exchange voice service only; long distance voice service only; bundled local exchange and long distance voice services; bundled local exchange and DSL; and bundled local exchange, long distance, and DSL services);

(c) number of customers changing carriers, and percentage of then-current customers changing carriers, by customer type (*e.g.*, residential, business with one to three DS-0/voice grade lines to a single customer premises; business with more than three DS-0/voice grade lines to a single customer premises) by the following customer ages: 1) churn within the first three months after the customer's service is provisioned, and 2) churn within the first six months after the customer's service is provisioned.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 2. Please provide, a) on a statewide basis, b) on a CLEC switch CLLI-code-specific basis, and c) on an ILEC 8-digit (wire center) CLLI-code-specific basis, monthly data for each month since July 1, 2001 for your retail customer "churn" (*i.e.*, the number of customers changing from one carrier to another) for residential local exchange customers between each of the following service configurations: 1) ILEC voice only; 2) ILEC voice plus DSL; 3) ILEC DSL only; 4) CLEC UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC line splitting; 8) CLEC DSL only [e.g., ILEC voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only].

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

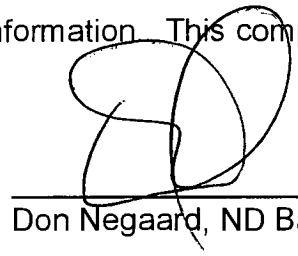
MCIC DISCOVERY REQUEST NO. 3. Please provide, a) on a statewide basis, b) on a CLEC switch CLLO-code-specific basis, and c) on a ILEC 8 digit (wire center) CLLI-code-specific basis, monthly data since July 1, 2001 on the number of UNE loops that ILEC has migrated for you through hot cuts (i.e., individual coordinated simultaneous transfer of DS-O/voice grade loops with live customers' service transferred) that involved manual frame (MDF and/or IDF) jumper work.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 4. Please provide, a) on a statewide basis, b) on a CLEC switch CLLI-code-specific basis, and c) on a ILEC 8-digit (wire center) CLLI-code-specific basis, monthly data for each month since July 1, 2001 on the number of UNE loops that ILEC has migrated for you through hot cuts (i.e., individual coordinated simultaneous transfer of DS-0/voice grade loops with live customers' service transferred) that involved manual frame (MDF and/or IDF) jumper work.

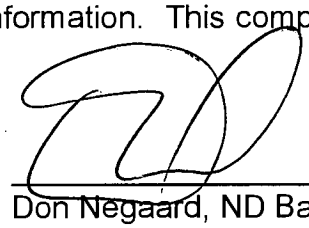
RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.



Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 5. With respect to the hot cuts identified in response to 0, please provide a detailed description of the work efforts your personnel had to perform as part of the hot cut process, the costs you incurred (including non-recurring charges imposed by ILEC), and the maximum daily number of hot cuts that ILEC has accomplished for you per ILEC 8-digit (wire center) CLLI code since July 1, 2001.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.



Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 6. With respect to your response to 0, please state whether the existing customer loop was used for each of the migrations identified. If the loop was not re-used, please provide a detailed explanation of the reasons why it was not re-used, and any consequence of not being able to reuse the loop (i.e., delayed installation interval, loss of customer telephone number, need for rewiring at customer NID, etc.).

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 7. Please explain whether you currently have in place electronic systems that can accomplish, on an automated, flow-through basis (i.e., no manual intervention is required for completion of the migration), migrations between each of the following service configurations: 1) ILEC voice only; 2) ILEC voice plus DSL; 3) ILEC DSL only; 4) CLEC UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC line splitting; 8) CLEC DSL only [e.g., ILEC voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only].

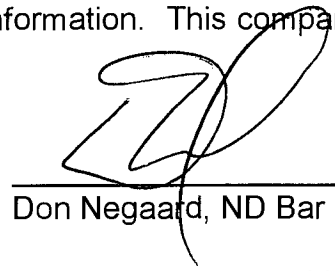
RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 8. With respect to your response to 0, please indicate whether your electronic systems can accomplish each migration type on each of the following bases:

(a) automated flow-through batch cuts [please indicate the maximum number of simultaneous loop migrations that you can support];
(b) automated flow-through individual loop hot cuts;
(c) manual batch cuts [please indicate the maximum number of simultaneous loop migrations that you can support]
(d) manual individual loop hot cuts.

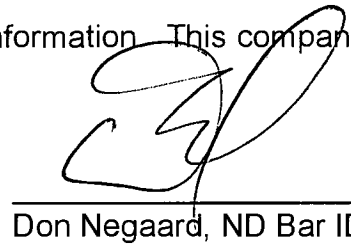
RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.



Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 9. Please provide, a) on a statewide basis, and b) on a ILEC 8-digit (wire center) CLLI-code-specific basis, the number of your UNE-P orders in North Dakota that were fulfilled each month since July 1, 2001.

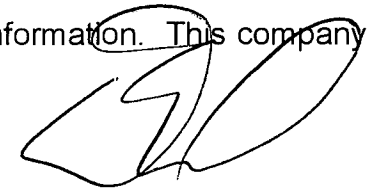
RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.



Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 10. Please explain whether you have always been able to obtain a customer service record ("CSR") from ILEC and/or other CLECs for the provision of 1) local exchange voice service on UNE-P; 2) local exchange voice service on UNE loop. If not, please provide a detailed explanation of the reason(s) you did not obtain the CSR.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.



Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 11. Please explain whether you currently use an electronic automated (i.e., not requiring any manual intervention prior to completion of task) method to interface with ILEC to send or receive each of the following: a) pre-order inquiries; b) orders (including placing the order, firm order confirmations, jeopardy notices, etc); c) provisioning (including the exchange of information for changes to 911, local number portability, and other databases); d) maintenance and repair; e) billing.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 12. Please provide a detailed explanation of the electronic method (e.g. EDI, CORBA, etc.) that you currently use to send to or receive from ILECs and/or CLECs each of the following: a) pre-order inquiries; b) orders (including placing the order, firm order confirmations, jeopardy notices, etc.); c) provisioning (including the exchange of information for changes to 911, local number portability, and other databases); d) maintenance and repair; e) billing.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 13. Please explain whether you currently have in place and use electronic automated systems to process orders placed by customers whose service will be provisioned using your own switches. If your ordering systems are only partially electronic and automated, please identify specifically which portions are electronic and which are manual, and provide a detailed explanation of the limitations created by the manual portions when processing customer orders.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 14. Please explain whether you currently have in place and use electronic automated systems to provision service for customers using your own switches. If your provisioning systems are only partially electronic and automated, please identify specifically which portions are electronic and which are manual, and provide a detailed explanation of the limitations created by the manual portions when provisioning customer orders.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 15. Please explain whether you currently have in place and use electronic automated systems to maintain and repair service for customers whose service is provisioned using your own switches. If your maintenance and repair systems are only partially electronic, please identify specifically which portions are electronic and which are manual, and provide a detailed explanation of the limitations created by the manual portions for maintenance and repair of customer services.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 16. Please explain whether you have adequate access to ILEC facilities to conduct trouble isolation and repair for customer services provisioned via your own switches using UNE loops. If your response is anything other than an unequivocal yes, please explain in detail the reason that you do not have such access.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 17. Please explain whether you have adequate access to ILEC facilities to conduct testing for customer services provisioned via your own switches using UNE loops.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 18. Please explain whether you currently have in place and use electronic automated systems to bill customers whose services are provisioned using your own switches. If your billing systems are only partially electronic, please identify specifically which portions are electronic, and which are manual, and provide a detailed explanation of the limitations created by the manual portions when billing customers.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

This question is not applicable.

CLEC MASS MARKET UNE SWITCHING TRIGGER ISSUES

MCIC DISCOVERY REQUEST N0. 19. For each switch you use to provide local exchange service to North Dakota customers, please provide the following information for the switch and/or the switch location:

(a) switch manufacturer, model, and date of installation;
(b) currently loaded version of switch software;
(c) currently equipped line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;
(d) currently utilized line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;
(e) current switch processor capacity in CCS;
(f) busy hour and busy season utilized switch processor capacity in CCS;

(g) any ILEC wire center subtending areas currently served by your switch for which you are currently considering discontinuing service for any reason within the next 12 months.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 20. For each switch identified in your response to MCIC DISCOVERY REQUEST NO. 19, please provide the information requested in TABLE 1:

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TABLE 1

CLEC Switch CLLI	Number Of Loops Per End-User Customer Premises	Number of Local Service End-User Customers	Type of End-User Customer	Number of Voice Only End User Customers[1]	Number of DSL Only End User Customers	Number of Line Shared/Line Split DSL End User Customers[2]
ABC	1	e.g. 10,155	Residential	e.g. 10,000	e.g. 5	e.g. 100
	1	e.g.5,300	Business	e.g. 5,000	e.g. 100	e.g. 100
	2		Residential			
	2		Business			
	3		Residential			
	3		Business			
	. . (continue pattern as above)					
	18		Residential			
	18		Business			
	19-24		Residential			
	19-24		Business			
	one DS-1		Residential			
	one DS-1		Business			
	more than one DS-1		Business			

[1]This category includes loops used for fax and/or modem-only traffic.

[2]This category includes voice and DSL on the same wire pair (i.e., line sharing and line splitting.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 21. For each switch identified in your response to MCIC DISCOVERY REQUEST NO. 19 other than circuit switches, please provide the following for each switch:

(a) any differences in quality of service compared to local exchange service provided on circuit switches (e.g., reliability, throughput, ubiquity, outages, mean time to repair, availability of E911 service, lack of line-powered local telephone service);

(b) the date(s) on which you installed the switch and began providing local exchange service on the switch;

(c) the geographic area served by the switch compared to the geographic area served by any circuit switches you use to provide local exchange service;

(d) any differences in the technical or operational requirements for the customer to obtain local exchange service from the switch, including customer premises equipment or software (e.g., specialized phone set; availability of computer, cable modem, set top box, need for customer premises battery backup for telephone service), access method (e.g., DSL, cable television, satellite service), provisioning interval;

(e) any ILEC central office or wire center subtending areas currently served by your switch for which you are considering discontinuing service for any reason within the next 12 months.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 22. For each switch identified in your response to MCIC DISCOVERY REQUEST NO.19 , please state whether you own the switch, or instead whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis (including wholesale and/or resale). If you do not own the switch,

(a) state whether the entity owning the switch is an affiliate of yours;

(b) identify the entity owning the switch, and (if different) the entity with which you entered into an arrangement to obtain switching capacity;

(c) identify the nature of the arrangement through which you obtained switching capacity;

(d) provide a copy of the agreement (e.g. Interconnection Agreement, contract, lease, etc.) specifying the rates, terms and conditions through which you are currently obtaining switching capacity.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 23. For each switch you own or control and from which you offer or provide wholesale local switching capacity (wholesale local switching capacity on a standalone basis, or combined with loops and/or transport) to carriers that are not affiliated with you, to use to serve North Dakota customers, please provide the following information for the switch and/or the switch location:

(a) the 8-digit common language location identifier ("CLLI") code as it appears in the Local Exchange Routing Guide ("LERG");

(b) V&H coordinates;

(c) currently equipped line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;

(d) currently utilized line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;

(e) current switch processor capacity in CCS;

(f) a copy of the methods and procedures document, or other documents or information, detailing the technical specifications for the provision of wholesale switching, including interface requirements, signaling capabilities, service quality parameters (including procedures to minimize service degradation, delay, echo return, and/or loss attenuation), and service procedures;

(g) any ILEC central office or wire center subtending areas currently served by your switch for which you are considering discontinuing service for any reason within the next 12 months.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 24. For each switch identified in your response to MCIC DISCOVERY REQUEST NO. 23, please provide the information requested in TABLE 2:

TABLE 2

CLEC Switch CLLI	Number Of Loops Per End-User Customer Premises	Number of Local Service End-User Customers	Type of End-User Customer	Number of Voice Only End-User Customers[3]	Number of DSL Only End-User Customers	Number of Line Shared/Line Split DSL End User Customers[4]
ABC	1	e.g.10,155	Residential	e.g. 10,000	e.g. 5	e.g. 100
	1	e.g.5,300	Business	e.g.5,000	e.g. 100	e.g. 100
	2		Residential			
	2		Business			
	3		Residential			
	3		Business			
	. . (continue pattern as above)					
	18		Residential			
	18		Business			
	19-24		Residential			
	19-24		Business			
	one DS-1		Residential			
	one DS-1		Business			
	more than one DS- I		Business			

[3]This category includes loops used for fax and/or modem-only traffic.

[4]This category includes voice and DSL on the same wire pair (i.e., line sharing and line splitting.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 25. For each switch identified in your response to MCIC DISCOVERY REQUEST NO. 23, please provide the following information:

(a) whether you are willing to expand your switch capacity to meet increased demand for wholesale switching from other CLECs;

(b) your existing plans and/or procedures for ordering and implementing software upgrades for the switch;

(c) terms and conditions (including forecasts) you require or expect to require from other CLECs in order to expand the capacity of your switch for the provision of wholesale switching;

(d) rates, deposits or other financial information you require or expect to require from other CLECs in order to expand the capacity of your switch for the provision of wholesale switching;

(e) whether you now have, or intend to implement, a process or procedure to ensure that your switch can provide the same features and functions as those available from ILEC switches.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. The question calls for a hypothetical answer and is objected to on that basis.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 26. For each collocation arrangement in each ILEC central office or wire center in North Dakota, please provide the following information, reported by ILEC 8-digit (wire center) CLLI code and street address:

(a) size of collocation arrangement;

(b) amount of power (including both "A" and "B" DC feeds and AC power) supplied to the collocation arrangement;

(c) amount of unused space in the collocation arrangement that could be used for placing additional equipment;

(d) if the collocation arrangement is connected via transport to any switch used by CLEC to offer local service in North Dakota, the CLLI code, city, street address, zip code, V&H coordinates, and owner of that switch;

(e) all non-recurring and monthly recurring charges for the collocation arrangement;
(f) name(s) of other collocating carrier(s) to which this collocation arrangement is connected in this ILEC central office or wire center;
(g) name(s) of other collocating carrier(s) that are sharing this collocation arrangement (if collocation sharing is permitted by ILEC).

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 27. With regard to all CLEC-to-CLEC cross connections you have purchased, please identify the following, reported by ILEC central office or wire center:
(a) number of such cross connections that you have had provisioned;
(b) the identity of the other CLEC with whom you provisioned the cross connect
(c) the type of collocation arrangement of both CLECs;
(d) the minimum, maximum and average provisioning time for CLECto-CLEC cross connections;
(e) the identity of the entity or personnel who performs the cross connect (e.g., ILEC central office technician, certified CLEC technician, etc.)

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 28. For each collocation arrangement identified in your response to MCIC DISCOVERY REQUEST NO. 26, please provide the information in TABLE 3.

TABLE 3

ILEC 8-Digit Wire Center CLLI	Number Of Loops Per End-User Customer Premises	Number of Local Service End-User Customers	Type of End-User Customer	Number of Voice Only End-User Customers[5]	Number of DSL Only End-User Customers	Number of Line Shared/Line Split DSL End User Customers[6]
ABC	1	e.g.1,017	Residential	e.g.1,000	e. .2	e.g. 10
	1	e.g. 540	Business	e.g. 500	e.g. 10	e.g. 10
	2		Residential			
	2		Business			
	3		Residential			
	3		Business			
	. . . (continue pattern as above)					
	18		Residential			
	18		Business			
	19-24		Residential			
	19-24		Business			
	one DS-1		Residential			
	one DS-1		Business			
	more than one DS-1-		Business			

[5]This category includes loops used for fax and/or modem-only traffic.

[6]This category includes voice and DSL on the same wire pair (i.e., line sharing and line splitting.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 29. For each of the collocation arrangements identified in your response to MCIC DISCOVERY REQUEST NO. 26 that is connected via EELs to a switch you use to provide local service in North Dakota, please provide the following information:

(a) the CLLI code, street address, zip code, V&H coordinates, and owner of the switch to which the collocation arrangement is connected;
(b) number of such EELs that comprise DS-0/voice grade transport connected to DS-0/voice grade loops;
(c) number of such EELs that comprise DS-1 transport connected to multiplexed DS-0/voice grade loops;
(d) number of such EELs that comprise DS-1 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(e) number of such EELs that comprise DS-3 transport connected to multiplexed DS-0/voice grade loops;
(f) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(g) number of such EELs that comprise DS-1 transport connected to DS-1 loops;
(h) number of such EELs that comprise DS-3 transport connected to multiplexed DS- I loops;
(i) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-1 loops, and the loop-to-transport concentration ratio.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 30. Do you use EELs that comprise loops and transport without using collocation arrangements? If the answer is affirmative, please provide the following information:

(a) the CLLI code, street address, zip code, V&H coordinates, and owner of the central office or other location where the loop and transport are connected to form an EEL;
(b) number of such EELs that comprise DS-0/voice grade transport connected to DS-0/voice grade loops;
(c) number of such EELs that comprise DS-1 transport connected to multiplexed DS-0/voice grade loops;
(d) number of such EELs that comprise DS-1 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(e) number of such EELs that comprise DS-3 transport connected to multiplexed DS-0/voice grade loops;
(f) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(g) number of such EELs that comprise DS-1 transport connected to DS-1 loops;
(h) number of such EELs that comprise DS-3 transport connected to multiplexed DS-1 loops;
(i) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-1 loops, and the loop-to-transport concentration ratio.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 31. For each collocation arrangement in a non-ILEC central office or wire center in North Dakota (e.g., carrier hotels), please provide the following information:
(a) size of collocation arrangement;
(b) if the collocation arrangement is connected via transport to any switch you use to offer local service in North Dakota, the CLLI code, street address, zip code, V&H coordinates, and owner of that switch;
(c) call non-recurring and recurring charges for the collocation arrangement;
(d) name(s) of other collocating carrier(s) to which this collocation arrangement is connected in this central office or wire center;
(e) name(s) of other collocating carrier(s) that are sharing this collocation arrangement (if collocation sharing is permitted by owner).

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 32. For each ILEC central office or wire center subtending area in North Dakota that you do not serve with your own switch, please provide a detailed explanation of the reason you do not serve that area (e.g., too few customers to achieve economies of scale; high churn rates that preclude recovery of non-recurring costs and charges, etc.).

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 33. Please provide a detailed explanation of each task you would have to undertake to provide local exchange service to mass market customers via UNE loops using your own switches, rather than via UNE-P, including but not limited to the following: implement new or modify business and operational plans to use UNE loops; hire and train loop provisioning technicians; hire and train switch technicians; establish collocation arrangements in ILEC central offices or wire centers; purchase and install equipment in collocation arrangement; hire and train new, or increase existing, customer service personnel; hire and train new, or increase existing, trouble maintenance personnel; add new or revise OSS for preordering, ordering, provisioning, repair and/or billing; develop capabilities for E911 service; develop capabilities for number portability. Please provide an estimate of the time and cost for each task identified.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

This question is not applicable.

MCIC DISCOVERY REQUEST NO. 34. Please provide the definition you use internally for business purposes for the following terms: (1) "mass market customer" and (2) "enterprise

customer," in terms of type of customer (e.g., residential vs. business), number of lines per customer, use of DS-0/voice grade loop facilities vs. DS-1s, or any other basis you use to distinguish these terms.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. The information is not kept by this company.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 35. Please provide your calculation, estimate, or view of the economic crossover point, in terms of number of DSO/voice grade lines to a single customer premises, at which you offer service at a DS-1 level rather than using a number of analog lines, and provide the basis for that crossover point (e.g., equivalency point of analog service rates and DS-1 service rates, consideration of whether the customer premises equipment can accept a DS-1 interface, etc.).

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 36. With respect to each of the two customer categories identified in your response to 0, please provide the following information:

(a) what switching arrangement you use to serve the customer category (e.g., self-provisioned CLEC switch, ILEC switch, purchase wholesale switching from another CLEC, purchase switching from a third party other than a CLEC);

(f) the number of customers in each customer category, reported by ILEC central office or wire center for each month since July 1, 2001;

(g) the percentage of your total customer base in North Dakota in each of the two categories;

(h) whether you target your business plans, sales or marketing to particular subsets of customers within each of the two customer categories.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 37. If you do not currently offer service to residential customers in North Dakota, please list and describe your reasons for not doing so.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

Not applicable.

MCIC DISCOVERY REQUEST NO. 38. If you do not currently offer service to business customers in North Dakota below the DS-1 level (i.e., DS-0/voice grade loops), please list and describe your reasons for not doing so.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

Not applicable.

MCIC DISCOVERY REQUEST NO. 39. If you currently offer service to business customer in North Dakota below the DS-1 level (i.e., DS-0/voice grade loops), but do not offer and/or market service to such customers unless they have or need a certain minimum number of loops to their premises, please state that minimum number, and list and describe your reasons for not offering and/or marketing service below that level.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 40. Please provide your current average monthly revenues per line per customer in North Dakota, stated separately for (1) residential customers served via UNE-P; (2) residential customers served via UNE loops; (3) business customers served via UNE-P; (4) business customers served via DS-0/voice grade UNE loops; and (5) business customers served via DS-1 UNE loops. Please provide the requested information at the most granular level available (e.g., per-ILEC-8-digit-CLLI serving area, per-CLEC-switch serving area, statewide, etc.). Please identify the source of the reported revenues by service and/or feature type (i.e., local voice only, local voice plus vertical features, long distance only, DSL only, bundles of any of the above, and/or other services or features). If you do not track revenues differentially for UNE-P vs. UNE loop configurations for residential and/or business customers, please so state, and provide combined numbers. For all revenues provided, exclude taxes, regulatory assessments and surcharges, and other payments made to governmental units. If it is not possible to exclude such payments, please so state.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

It is not possible to segregate this information.

MCIC DISCOVERY REQUEST NO. 41. If you currently offer service to residential customers, please provide your variable costs per residential customer.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 42. Do you currently have access to external sources of capital for the purpose of expanding your operations by making new capital investments?

If so, please list and describe all such sources, and state the quoted or estimated interest rate for each such source.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 43. Please provide a copy of all business cases, business analysis, cost studies, or other analyses or evaluations concerning whether entry into the mass market is economically feasible without access to ILEC's switches, including but not limited to those analyses and studies that were submitted to the FCC, performed but not submitted to the FCC, and performed since February 22, 2003. Provide all supporting documentation and work papers, in electronic format if available.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

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Dated this 2nd day of February, 2004.

DAKTEL COMMUNICAITONS, L.L.C.

_____

By: Keith A. Larson, Manager
630 5th Street North
Carrington, ND 58421

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Response of Daktel Communications, L.L.C., to MCI's Discovery Requests to CLECs was served by mail on the following:

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Attorney for MCI
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Denver, CO 80202-3979

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PRINGLE & HERIGSTAD, P.C.

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FEB - 3 2004

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

RESPONSE OF POLAR TELECOM, INC.
TO MCI'S DISCOVERY REQUESTS TO CLECS

Polar Telecom, Inc., responds to MCI's discovery requests to CLECs as follows:

CLEC HOT CUT/CUSTOMER MIGRATION ISSUES

MCIC DISCOVERY REQUEST NO. 1. Please provide, a) on a statewide basis, b) on a CLEC switch CLLI-code-specific basis, and c) on a ILEC 8-digit (wire center) CLLI-code-specific basis, monthly data for each month since July 1, 2001 for your retail customer "churn" (*i.e.*, customer change from one carrier to another) on all of the following bases. If you provide local service via both UNE-P and UNE loops, please provide the requested information separately for each of these serving modes if available. If you provide local service via only one of these serving modes, please state which one.

(a) number of customers changing carriers, and percentage of then-current customers changing carriers, by customer type (*e.g.*, residential, business with one to three DS-0/voice grade lines to a single customer premises; business with more than three DS-0/voice grade lines to a single customer premises);

(b) number of customers changing carriers, and percentage of then-current customers changing carriers, by service type (*i.e.*, local exchange voice service only; long distance voice service only; bundled local exchange and long distance voice services; bundled local exchange and DSL; and bundled local exchange, long distance, and DSL services);

(c) number of customers changing carriers, and percentage of then-current customers changing carriers, by customer type (*e.g.*, residential, business with one to three DS-0/voice grade lines to a single customer premises; business with more than three DS-0/voice grade lines to a single customer premises) by the following customer ages: 1) churn within the first three months after the customer's service is provisioned, and 2) churn within the first six months after the customer's service is provisioned.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 2. Please provide, a) on a statewide basis, b) on a CLEC switch CLLI-code-specific basis, and c) on an ILEC 8-digit (wire center) CLLI-code-specific basis, monthly data for each month since July 1, 2001 for your retail customer "churn" (*i.e.*, the number of customers changing from one carrier to another) for residential local exchange customers between each of the following service configurations: 1) ILEC voice only; 2) ILEC voice plus DSL; 3) ILEC DSL only; 4) CLEC UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC line splitting; 8) CLEC DSL only [e.g., ILEC voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only].

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 3. Please provide, a) on a statewide basis, b) on a CLEC switch CLLO-code-specific basis, and c) on a ILEC 8 digit (wire center) CLLI-code-specific basis, monthly data since July 1, 2001 on the number of UNE loops that ILEC has migrated for you through hot cuts (i.e., individual coordinated simultaneous transfer of DS-O/voice grade loops with live customers' service transferred) that involved manual frame (MDF and/or IDF) jumper work.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 4. Please provide, a) on a statewide basis, b) on a CLEC switch CLLI-code-specific basis, and c) on a ILEC 8-digit (wire center) CLLI-code-specific basis, monthly data for each month since July 1, 2001 on the number of UNE loops that ILEC has migrated for you through hot cuts (i.e., individual coordinated simultaneous transfer of DS-0/voice grade loops with live customers' service transferred) that involved manual frame (MDF and/or IDF) jumper work.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 5. With respect to the hot cuts identified in response to 0, please provide a detailed description of the work efforts your personnel had to perform as part of the hot cut process, the costs you incurred (including non-recurring charges imposed by ILEC), and the maximum daily number of hot cuts that ILEC has accomplished for you per ILEC 8-digit (wire center) CLLI code since July 1, 2001.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 6. With respect to your response to 0, please state whether the existing customer loop was used for each of the migrations identified. If the loop was not re-used, please provide a detailed explanation of the reasons why it was not re-used, and any consequence of not being able to reuse the loop (i.e., delayed installation interval, loss of customer telephone number, need for rewiring at customer NID, etc.).

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 7. Please explain whether you currently have in place electronic systems that can accomplish, on an automated, flow-through basis (i.e., no manual intervention is required for completion of the migration), migrations between each of the following service configurations: 1) ILEC voice only; 2) ILEC voice plus DSL; 3) ILEC DSL only; 4) CLEC UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC line splitting; 8) CLEC DSL only [e.g., ILEC voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only].

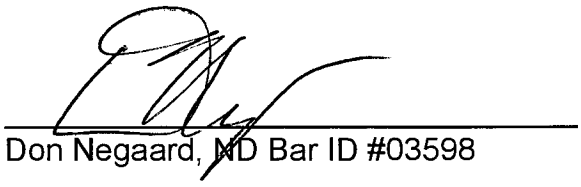
RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 8. With respect to your response to 0, please indicate whether your electronic systems can accomplish each migration type on each of the following bases:

(a) automated flow-through batch cuts [please indicate the maximum number of simultaneous loop migrations that you can support];
(b) automated flow-through individual loop hot cuts;
(c) manual batch cuts [please indicate the maximum number of simultaneous loop migrations that you can support]
(d) manual individual loop hot cuts.

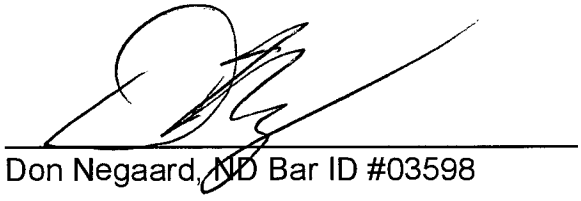
RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.



Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 9. Please provide, a) on a statewide basis, and b) on a ILEC 8-digit (wire center) CLLI-code-specific basis, the number of your UNE-P orders in North Dakota that were fulfilled each month since July 1, 2001.

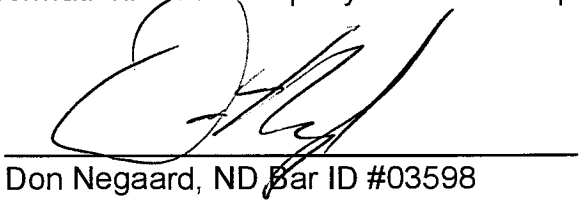
RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.



Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 10. Please explain whether you have always been able to obtain a customer service record ("CSR") from ILEC and/or other CLECs for the provision of 1) local exchange voice service on UNE-P; 2) local exchange voice service on UNE loop. If not, please provide a detailed explanation of the reason(s) you did not obtain the CSR.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.



Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 11. Please explain whether you currently use an electronic automated (i.e., not requiring any manual intervention prior to completion of task) method to interface with ILEC to send or receive each of the following: a) pre-order inquiries; b) orders (including placing the order, firm order confirmations, jeopardy notices, etc); c) provisioning (including the exchange of information for changes to 911, local number portability, and other databases); d) maintenance and repair; e) billing.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 12. Please provide a detailed explanation of the electronic method (e.g. EDI, CORBA, etc.) that you currently use to send to or receive from ILECs and/or CLECs each of the following: a) pre-order inquiries; b) orders (including placing the order, firm order confirmations, jeopardy notices, etc.); c) provisioning (including the exchange of information for changes to 911, local number portability, and other databases); d) maintenance and repair; e) billing.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 13. Please explain whether you currently have in place and use electronic automated systems to process orders placed by customers whose service will be provisioned using your own switches. If your ordering systems are only partially electronic and automated, please identify specifically which portions are electronic and which are manual, and provide a detailed explanation of the limitations created by the manual portions when processing customer orders.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 14. Please explain whether you currently have in place and use electronic automated systems to provision service for customers using your own switches. If your provisioning systems are only partially electronic and automated, please identify specifically which portions are electronic and which are manual, and provide a detailed explanation of the limitations created by the manual portions when provisioning customer orders.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. This company does not keep records on the statistics requested.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 15. Please explain whether you currently have in place and use electronic automated systems to maintain and repair service for customers whose service is provisioned using your own switches. If your maintenance and repair systems are only partially electronic, please identify specifically which portions are electronic and which are manual, and provide a detailed explanation of the limitations created by the manual portions for maintenance and repair of customer services.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 16. Please explain whether you have adequate access to ILEC facilities to conduct trouble isolation and repair for customer services provisioned via your own switches using UNE loops. If your response is anything other than an unequivocal yes, please explain in detail the reason that you do not have such access.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 17. Please explain whether you have adequate access to ILEC facilities to conduct testing for customer services provisioned via your own switches using UNE loops.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 18. Please explain whether you currently have in place and use electronic automated systems to bill customers whose services are provisioned using your own switches. If your billing systems are only partially electronic, please identify specifically which portions are electronic, and which are manual, and provide a detailed explanation of the limitations created by the manual portions when billing customers.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

This question is not applicable.

CLEC MASS MARKET UNE SWITCHING TRIGGER ISSUES

MCIC DISCOVERY REQUEST N0. 19. For each switch you use to provide local exchange service to North Dakota customers, please provide the following information for the switch and/or the switch location:

(a) switch manufacturer, model, and date of installation;
(b) currently loaded version of switch software;
(c) currently equipped line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;
(d) currently utilized line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;
(e) current switch processor capacity in CCS;
(f) busy hour and busy season utilized switch processor capacity in CCS;

(g) any ILEC wire center subtending areas currently served by your switch for which you are currently considering discontinuing service for any reason within the next 12 months.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 20. For each switch identified in your response to MCIC DISCOVERY REQUEST NO. 19, please provide the information requested in TABLE 1:

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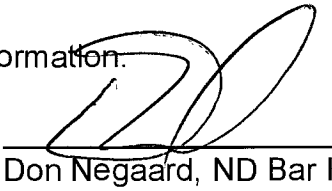
TABLE 1

CLEC Switch CLLI	Number Of Loops Per End-User Customer Premises	Number of Local Service End-User Customers	Type of End-User Customer	Number of Voice Only End User Customers[1]	Number of DSL Only End User Customers	Number of Line Shared/Line Split DSL End User Customers[2]
ABC	1	e.g. 10,155	Residential	e.g. 10,000	e.g. 5	e.g. 100
	1	e.g.5,300	Business	e.g. 5,000	e.g. 100	e.g. 100
	2		Residential			
	2		Business			
	3		Residential			
	3		Business			
	. . (continue pattern as above)					
	18		Residential			
	18		Business			
	19-24		Residential			
	19-24		Business			
	one DS-1		Residential			
	one DS-1		Business			
	more than one DS-1		Business			

[1]This category includes loops used for fax and/or modem-only traffic.

[2]This category includes voice and DSL on the same wire pair (i.e., line sharing and line splitting.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.



Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 21. For each switch identified in your response to MCIC DISCOVERY REQUEST NO. 19 other than circuit switches, please provide the following for each switch:

(a) any differences in quality of service compared to local exchange service provided on circuit switches (e.g., reliability, throughput, ubiquity, outages, mean time to repair, availability of E911 service, lack of line-powered local telephone service);

(b) the date(s) on which you installed the switch and began providing local exchange service on the switch;

(c) the geographic area served by the switch compared to the geographic area served by any circuit switches you use to provide local exchange service;

(d) any differences in the technical or operational requirements for the customer to obtain local exchange service from the switch, including customer premises equipment or software (e.g., specialized phone set; availability of computer, cable modem, set top box, need for customer premises battery backup for telephone service), access method (e.g., DSL, cable television, satellite service), provisioning interval;

(e) any ILEC central office or wire center subtending areas currently served by your switch for which you are considering discontinuing service for any reason within the next 12 months.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.



Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 22. For each switch identified in your response to MCIC DISCOVERY REQUEST NO.19 , please state whether you own the switch, or instead whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis (including wholesale and/or resale). If you do not own the switch,

(a) state whether the entity owning the switch is an affiliate of yours;

(b) identify the entity owning the switch, and (if different) the entity with which you entered into an arrangement to obtain switching capacity;

(c) identify the nature of the arrangement through which you obtained switching capacity;

(d) provide a copy of the agreement (e.g. Interconnection Agreement, contract, lease, etc.) specifying the rates, terms and conditions through which you are currently obtaining switching capacity.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 23. For each switch you own or control and from which you offer or provide wholesale local switching capacity (wholesale local switching capacity on a standalone basis, or combined with loops and/or transport) to carriers that are not affiliated with you, to use to serve North Dakota customers, please provide the following information for the switch and/or the switch location:

(a) the 8-digit common language location identifier ("CLLI") code as it appears in the Local Exchange Routing Guide ("LERG");

(b) V&H coordinates;

(c) currently equipped line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;

(d) currently utilized line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;

(e) current switch processor capacity in CCS;

(f) a copy of the methods and procedures document, or other documents or information, detailing the technical specifications for the provision of wholesale switching, including interface requirements, signaling capabilities, service quality parameters (including procedures to minimize service degradation, delay, echo return, and/or loss attenuation), and service procedures;

(g) any ILEC central office or wire center subtending areas currently served by your switch for which you are considering discontinuing service for any reason within the next 12 months.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 24. For each switch identified in your response to MCIC DISCOVERY REQUEST NO. 23, please provide the information requested in TABLE 2:

TABLE 2

CLEC Switch CLLI	Number Of Loops Per End-User Customer Premises	Number of Local Service End-User Customers	Type of End-User Customer	Number of Voice Only End-User Customers[3]	Number of DSL Only End-User Customers	Number of Line Shared/Line Split DSL End User Customers[4]
ABC	1	e.g.10,155	Residential	e.g. 10,000	e.g. 5	e.g. 100
	1	e.g.5,300	Business	e.g.5,000	e.g. 100	e.g. 100
	2		Residential			
	2		Business			
	3		Residential			
	3		Business			
	. . (continue pattern as above)					
	18		Residential			
	18		Business			
	19-24		Residential			
	19-24		Business			
	one DS-1		Residential			
	one DS-1		Business			
	more than one DS- I		Business			

[3]This category includes loops used for fax and/or modem-only traffic.

[4]This category includes voice and DSL on the same wire pair (i.e., line sharing and line splitting.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 25. For each switch identified in your response to MCIC DISCOVERY REQUEST NO. 23, please provide the following information:

(a) whether you are willing to expand your switch capacity to meet increased demand for wholesale switching from other CLECs;
(b) your existing plans and/or procedures for ordering and implementing software upgrades for the switch;
(c) terms and conditions (including forecasts) you require or expect to require from other CLECs in order to expand the capacity of your switch for the provision of wholesale switching;
(d) rates, deposits or other financial information you require or expect to require from other CLECs in order to expand the capacity of your switch for the provision of wholesale switching;
(e) whether you now have, or intend to implement, a process or procedure to ensure that your switch can provide the same features and functions as those available from ILEC switches.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. The question calls for a hypothetical answer and is objected to on that basis.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 26. For each collocation arrangement in each ILEC central office or wire center in North Dakota, please provide the following information, reported by ILEC 8-digit (wire center) CLLI code and street address:

(a) size of collocation arrangement;
(b) amount of power (including both "A" and "B" DC feeds and AC power) supplied to the collocation arrangement;
(c) amount of unused space in the collocation arrangement that could be used for placing additional equipment;
(d) if the collocation arrangement is connected via transport to any switch used by CLEC to offer local service in North Dakota, the CLLI code, city, street address, zip code, V&H coordinates, and owner of that switch;

(e) all non-recurring and monthly recurring charges for the collocation arrangement;
(f) name(s) of other collocating carrier(s) to which this collocation arrangement is connected in this ILEC central office or wire center;
(g) name(s) of other collocating carrier(s) that are sharing this collocation arrangement (if collocation sharing is permitted by ILEC).

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 27. With regard to all CLEC-to-CLEC cross connections you have purchased, please identify the following, reported by ILEC central office or wire center:
(a) number of such cross connections that you have had provisioned;
(b) the identity of the other CLEC with whom you provisioned the cross connect
(c) the type of collocation arrangement of both CLECs;
(d) the minimum, maximum and average provisioning time for CLECto-CLEC cross connections;
(e) the identity of the entity or personnel who performs the cross connect (e.g., ILEC central office technician, certified CLEC technician, etc.)

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 28. For each collocation arrangement identified in your response to MCIC DISCOVERY REQUEST NO. 26, please provide the information in TABLE 3.

TABLE 3

ILEC 8-Digit Wire Center CLLI	Number Of Loops Per End-User Customer Premises	Number of Local Service End-User Customers	Type of End-User Customer	Number of Voice Only End-User Customers[5]	Number of DSL Only End-User Customers	Number of Line Shared/Line Split DSL End User Customers[6]
ABC	1	e.g.1,017	Residential	e.g.1,000	e. .2	e.g. 10
	1	e.g. 540	Business	e.g. 500	e.g. 10	e.g. 10
	2		Residential			
	2		Business			
	3		Residential			
	3		Business			
	. . . (continue pattern as above)					
	18		Residential			
	18		Business			
	19-24		Residential			
	19-24		Business			
	one DS-1		Residential			
	one DS-1		Business			
	more than one DS-1-		Business			

[5]This category includes loops used for fax and/or modem-only traffic.

[6]This category includes voice and DSL on the same wire pair (i.e., line sharing and line splitting.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 29. For each of the collocation arrangements identified in your response to MCIC DISCOVERY REQUEST NO. 26 that is connected via EELs to a switch you use to provide local service in North Dakota, please provide the following information:

(a) the CLLI code, street address, zip code, V&H coordinates, and owner of the switch to which the collocation arrangement is connected;
(b) number of such EELs that comprise DS-0/voice grade transport connected to DS-0/voice grade loops;
(c) number of such EELs that comprise DS-1 transport connected to multiplexed DS-0/voice grade loops;
(d) number of such EELs that comprise DS-1 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(e) number of such EELs that comprise DS-3 transport connected to multiplexed DS-0/voice grade loops;
(f) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(g) number of such EELs that comprise DS-1 transport connected to DS-1 loops;
(h) number of such EELs that comprise DS-3 transport connected to multiplexed DS- I loops;
(i) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-1 loops, and the loop-to-transport concentration ratio.

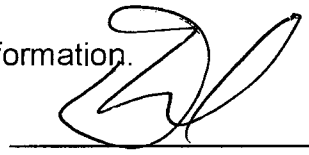
RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 30. Do you use EELs that comprise loops and transport without using collocation arrangements? If the answer is affirmative, please provide the following information:

(a) the CLLI code, street address, zip code, V&H coordinates, and owner of the central office or other location where the loop and transport are connected to form an EEL;
(b) number of such EELs that comprise DS-0/voice grade transport connected to DS-0/voice grade loops;
(c) number of such EELs that comprise DS-1 transport connected to multiplexed DS-0/voice grade loops;
(d) number of such EELs that comprise DS-1 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(e) number of such EELs that comprise DS-3 transport connected to multiplexed DS-0/voice grade loops;
(f) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(g) number of such EELs that comprise DS-1 transport connected to DS-1 loops;
(h) number of such EELs that comprise DS-3 transport connected to multiplexed DS-1 loops;
(i) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-1 loops, and the loop-to-transport concentration ratio.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.



Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 31. For each collocation arrangement in a non-ILEC central office or wire center in North Dakota (e.g., carrier hotels), please provide the following information:
(a) size of collocation arrangement;
(b) if the collocation arrangement is connected via transport to any switch you use to offer local service in North Dakota, the CLLI code, street address, zip code, V&H coordinates, and owner of that switch;
(c) call non-recurring and recurring charges for the collocation arrangement;
(d) name(s) of other collocating carrier(s) to which this collocation arrangement is connected in this central office or wire center;
(e) name(s) of other collocating carrier(s) that are sharing this collocation arrangement (if collocation sharing is permitted by owner).

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 32. For each ILEC central office or wire center subtending area in North Dakota that you do not serve with your own switch, please provide a detailed explanation of the reason you do not serve that area (e.g., too few customers to achieve economies of scale; high churn rates that preclude recovery of non-recurring costs and charges, etc.).

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 33. Please provide a detailed explanation of each task you would have to undertake to provide local exchange service to mass market customers via UNE loops using your own switches, rather than via UNE-P, including but not limited to the following: implement new or modify business and operational plans to use UNE loops; hire and train loop provisioning technicians; hire and train switch technicians; establish collocation arrangements in ILEC central offices or wire centers; purchase and install equipment in collocation arrangement; hire and train new, or increase existing, customer service personnel; hire and train new, or increase existing, trouble maintenance personnel; add new or revise OSS for preordering, ordering, provisioning, repair and/or billing; develop capabilities for E911 service; develop capabilities for number portability. Please provide an estimate of the time and cost for each task identified.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

This question is not applicable.

MCIC DISCOVERY REQUEST NO. 34. Please provide the definition you use internally for business purposes for the following terms: (1) "mass market customer" and (2) "enterprise

customer," in terms of type of customer (e.g., residential vs. business), number of lines per customer, use of DS-0/voice grade loop facilities vs. DS-1s, or any other basis you use to distinguish these terms.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. The information is not kept by this company.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 35. Please provide your calculation, estimate, or view of the economic crossover point, in terms of number of DSO/voice grade lines to a single customer premises, at which you offer service at a DS-1 level rather than using a number of analog lines, and provide the basis for that crossover point (e.g., equivalency point of analog service rates and DS-1 service rates, consideration of whether the customer premises equipment can accept a DS-1 interface, etc.).

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 36. With respect to each of the two customer categories identified in your response to 0, please provide the following information:

(a) what switching arrangement you use to serve the customer category (e.g., self-provisioned CLEC switch, ILEC switch, purchase wholesale switching from another CLEC, purchase switching from a third party other than a CLEC);

(f) the number of customers in each customer category, reported by ILEC central office or wire center for each month since July 1, 2001;

(g) the percentage of your total customer base in North Dakota in each of the two categories;

(h) whether you target your business plans, sales or marketing to particular subsets of customers within each of the two customer categories.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 37. If you do not currently offer service to residential customers in North Dakota, please list and describe your reasons for not doing so.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

Not applicable.

MCIC DISCOVERY REQUEST NO. 38. If you do not currently offer service to business customers in North Dakota below the DS-1 level (i.e., DS-0/voice grade loops), please list and describe your reasons for not doing so.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

Not applicable.

MCIC DISCOVERY REQUEST NO. 39. If you currently offer service to business customer in North Dakota below the DS-1 level (i.e., DS-0/voice grade loops), but do not offer and/or market service to such customers unless they have or need a certain minimum number of loops to their premises, please state that minimum number, and list and describe your reasons for not offering and/or marketing service below that level.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 40. Please provide your current average monthly revenues per line per customer in North Dakota, stated separately for (1) residential customers served via UNE-P; (2) residential customers served via UNE loops; (3) business customers served via UNE-P; (4) business customers served via DS-0/voice grade UNE loops; and (5) business customers served via DS-1 UNE loops. Please provide the requested information at the most granular level available (e.g., per-ILEC-8-digit-CLLI serving area, per-CLEC-switch serving area, statewide, etc.). Please identify the source of the reported revenues by service and/or feature type (i.e., local voice only, local voice plus vertical features, long distance only, DSL only, bundles of any of the above, and/or other services or features). If you do not track revenues differentially for UNE-P vs. UNE loop configurations for residential and/or business customers, please so state, and provide combined numbers. For all revenues provided, exclude taxes, regulatory assessments and surcharges, and other payments made to governmental units. If it is not possible to exclude such payments, please so state.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

It is not possible to segregate this information.

MCIC DISCOVERY REQUEST NO. 41. If you currently offer service to residential customers, please provide your variable costs per residential customer.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 42. Do you currently have access to external sources of capital for the purpose of expanding your operations by making new capital investments?

If so, please list and describe all such sources, and state the quoted or estimated interest rate for each such source.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

MCIC DISCOVERY REQUEST NO. 43. Please provide a copy of all business cases, business analysis, cost studies, or other analyses or evaluations concerning whether entry into the mass market is economically feasible without access to ILEC's switches, including but not limited to those analyses and studies that were submitted to the FCC, performed but not submitted to the FCC, and performed since February 22, 2003. Provide all supporting documentation and work papers, in electronic format if available.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard, ND Bar ID #03598

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Dated this 2nd day of February, 2004.

POLAR TELECOM, INC.

_____

By: David L. Dunning
Executive Vice President
110 4th Street East
Park River, ND 58270

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Response of Polar Telecom, Inc.,to MCI's Discovery Requests to CLECs was served by mail on the following:

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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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JAN 26 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

IDEAONE TELECOM GROUP, LLC'S RESPONSES TO PRELIMINARY DISCOVERY REQUESTS QWEST ROC STATE TRO PROCEEDINGS (Public Copy)

A. Requests for information submitted to CLECs in response to petitioning ILEC

Switching:

Request No. 1: Provide a list of all switches that you currently use to provide a qualifying service (as defined in 47 C.F.R. 51.5, as that section will be amended by the Final Rules issued by the FCC pursuant to the Triennial Review Order) anywhere in the state, regardless of whether the switch itself is located in the state. Do not include ILEC switches utilized by you on an unbundled basis in the ILEC's service territory or through the resale of the incumbent's services at wholesale rates.

Response to No. 1: IdeaOne Telecom has a Siemens EWSD switch that serves the communities of Fargo, West Fargo, and Moorhead, located at 3239 39th St. SW, Fargo, ND 58104.

Request No. 2: Identify each ILEC wire center district (i.e. the territory served by a wire center of the ILEC) in which you provide qualifying service to any end user customers utilizing any of the switches identified in your response to Question 1. Wire centers should be identified by providing their name, address, and CLLI code.

Response to No. 2: Fargo Rate Center. Qwest Co-Location located at 409 1st Ave. N. Fargo, ND 58102. CLLI code: FARGNDBC.

Request No. 3: For each ILEC wire center identified in response to Question 2, identify the total number of voice-grade equivalent lines you are providing to customers in that wire center from your switch(es) identified in response to Question 1. For purposes of this question, "voice-grade equivalent lines" should be defined consistent with the FCC's use of the term.

Response to No. 3: [Trade Secret Protection]

Request No. 4: For each switch identified in response to Question 1, identify the approximate capacity of the switch-that is, the maximum number of voice-grade equivalent lines it is capable of serving-based on that switch's existing configuration and component parts.

Response to No. 4: The maximum capacity of our Siemens EWSD switch is 100,000 lines. We are equipped for 10,000 lines.

Request No. 5: With respect to the voice-grade equivalent lines identified in response to Question 3, separately indicate the number being provided to (a) residential customers; (b) business customers to whom you provide only voice-grade or DS0 lines.

Response to No. 5: [Trade Secret Protection]

Request No. 6: For each of the switches identified in your response to Question 1, state whether the switch is owned by you, or whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis. If the facility is not owned by you, identify the entity owning the switch and (if different) the entity with which you entered into the lease or other arrangement, identify the nature of the arrangement, and state whether such entity or entities are affiliates of yours, in the sense defined in 408, footnote 1263 of the Triennial Review

Order.

Response to No. 6: IdeaOne Telecom owns the switch described in the response to Request No. 1.

B. Questions for Petitioning ILECs

N/A.

C. Questions to both CLECs and ILEC - Switching

Request No. 1: With respect to the voice-grade equivalent lines being provided to (a) residential customers; (b) business customers to whom you provide between 1-3 voice-grade equivalent lines at one location; (c) business customers to whom you provide between 4-24 voice grade equivalent lines at one location; and (d) business customers to whom you provide 24 or more voice-grade equivalent lines (in one location), state the current average total monthly revenues earned per line served in the state by LATA and by MSA and specify the source of those revenues by service type.

Response to No. 1: IdeaOne's existing billing system does not have the capability to provide revenue breakdowns on a per line and service type basis. Nor does IdeaOne Telecom have the in-house human resources to assemble this data and supply a detailed answer to this request.

Request No. 2: For each switch (e.g. circuit, packet, soft switch, etc.) currently used, or those that have been used, or that could be used to provide local service in the state (this would include switches located in other states that provide or have the ability to provide local exchange service in the state), state the initial cost of that switch, including installation and engineering costs, and the number of initial equipped lines.

Response to No. 2: [Trade Secret Protection]

Request No. 3: Describe in detail any instances in which your company is using, through a wholesale, lease, or resale arrangement, the switch of any entity other than and unaffiliated with an ILEC (e.g., another competitive local exchange carrier) to provide local exchange service to end users in the state. Include in your response the rates, terms, and conditions under which you are obtaining switching on a wholesale, lease, or resale basis.

Response to No. 3: Not applicable.

Request No. 4: State whether your company is providing, or plans to provide, through a wholesale, lease or resale arrangement, capacity on any switches you own or operate in the state, or that own or operate in another state and that you use to provide local service in the state, to an unaffiliated entity. For any such instances, identify the rates, terms, and conditions under which you are making that switch capacity available. For each switch on which you are currently leasing or selling capacity to an unaffiliated entity, identify:

a. the make, model, age, and current software upgrades of each switch;

b. the geographic location of the switch;

c. the footprint or geographic area served by the switch, including a list of each exchange served by the switch; the features and functions (including software upgrades) available in the switch;

d. provide the capacity of each switch, including:

(i) percentage of switch capacity in use;
(ii) percentage of switch capacity reserved for your company's own use and future use; and

(iii) percentage of current and future capacity of each switch that will be made available for CLEC use.

c. For each switch identified, please state in detail:

(i) the anticipated service life of the switch; and

(ii) whether your company intends to utilize the identified switch for the full-anticipated service life.

Response to No. 4: IdeaOne Telecom does not provide, and has no plans to provide in the future, switching agreements with any unaffiliated entities.

REQUESTS FOR INFORMATION REGARDING THE DEVELOPMENT OF AN EFFICIENT LOOP MIGRATIONS PROCESS

B. Questions for Other Participants:

Request No. 1: Describe the hot cut process currently used to transfer lines from the ILEC switch to the CLEC facilities.

Response to No. 1: IdeaOne Telecom has worked with Qwest as necessary to coordinate cutovers in a manner that is transparent to the customer. It has not engaged in "batch hot cuts" involving numerous lines. A service order is generated that includes the name of an employee from Qwest to contact locally should problems arise in the transfer. The Company has followed this process throughout its operating history.

Request No. 2: List each task that is part of the current process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the source of the data; i.e. time/motion studies, SME analysis, etc.

Response to No. 2: See response to Request No. 1. IdeaOne does not have additional data or information available to respond to this request.

Request No. 3: Describe a batch hot cut process that you would implement to meet the FCC requirement to establish a batch hot cut process. Include an estimate of the maximum number of lines per batch.

Response to No. 3: Consistent with its response to Request No. 1, IdeaOne has not had the need to develop a "batch hot cut process" with Qwest during its 4 years of business.

Request No. 4: List each task that is part of the batch hot cut process described in the answer to the preceding question. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate.

Response to No. 4: A batch hot cut process does not apply to IdeaOne under its present mode of operation.

Request No. 5: If UNE-P is no longer available, what monthly volumes of hot cuts would be required: (a) to migrate existing UNE-P customers to another form of service and (b) to connect new customers in the ordinary course of business. Provide supporting documentation for these volume estimates.

Response to No. 5: IdeaOne Telecom does not use UNE-P services from Qwest.

Request No. 6: For each Qwest wire center in (state) in which CLEC provides retail switched local exchange service, please report the number of switched voice-grade equivalent lines in service per customer location that CLEC serves. Please provide this information in the following format: WIRE CENTER, Quantity of VGE(1-24), Customer Location; Residence and Business.

Response to No. 6: IdeaOne Telecom's data systems do not provide this breakdown. IdeaOne does not have the in-house human resources to attempt to provide a breakdown in response

to this request.

Request No. 7: For each switch CLEC owns, operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity within(state), please state whether the local switching capacity of the switch can be expanded through modular software and hardware additions. If you assert any obstacles to expansion, please identify and explain all such obstacles.

Response to No. 7: IdeaOne's EWSD switch is expandable up to 100,000 lines and/or trunks. The only obstacle to expanding to this level would be the associated cost.

Request No. 8: Does CLEC believe that there are costs associated with converting or otherwise using a switch currently serving only enterprise customers to also serve mass market customers? If CLEC believes that there are such switching costs, please identify all such costs and explain why it would be necessary to incur them to begin serving mass market customers. Produce any documents or data that support your response.

Response to No. 8: IdeaOne's switch serves both enterprise and mass market customers. Therefore, it does not foresee additional costs associated with such a conversion.

Request No. 9: Please provide, a) on a statewide basis, and b) on a central office-specific basis, monthly data for the past two years on customer "churn" (i.e., percentage of your customers lost to another carrier) on all of the following bases: (a) number of customers by customer type (e.g., residential, business with one to three lines; business with more than three lines); (b) percentage of churn by customer type (i.e., residential, business with one to three lines, business with more than three lines); (c) number of customers by service type (i.e., local exchange voice service only, long distance voice service only, bundled local exchange and long distance voice services, and bundled local exchange, long distance, and DSL services); (d) percentage of churn by service type (i.e., local

exchange voice service only, long distance voice services, and bundled local exchange, long distance, and DSL services).

Response to No. 9: IdeaOne Telecom does not have the data compilation capabilities or human resources to respond to this request.

Dated this 21st day of January, 2004.

VOGEL LAW FIRM

By _____

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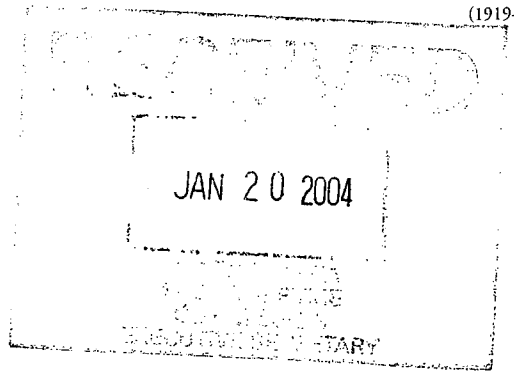
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January 19, 2004

Jon Mielke, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION
CASE NO. PU-439-03-295

On behalf of the Rural Telephone Company Group, we ask the Public Service Commission to limit the discovery questions from MCI dated December 31, 2003, and from Qwest dated January 13, 2004, copies of which are attached hereto, so that the only rural ILECs that are required to answer these questions are the rural ILECs providing "Qualified Services," to be consistent with the Commission's Order of January 14, 2004.

Don Negaard

jt

Enclosures

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Letter re discovery questions from MCI & Qwest
by Rural Telephone Company Group

01/20/2004 CC: Comm Legal PUD (3) ALJ

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	)))	Case No. PU-439-03-295

JAN 20 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF WARD)

Jo Thompson, being first duly sworn, deposes and says:

She is a citizen of the United States of America, of legal age and not a party to nor interested in the above-entitled action; on the 19th day of January, 2004, this affiant deposited in the mailing department of the United States Post Office at Minot, North Dakota, sealed envelopes with postage thereon duly prepaid, containing a true and correct copy of the following:

LETTER REQUEST ON BEHALF OF RURAL TELEPHONE COMPANY GROUP
TO PUBLIC SERVICE COMMISSION REGARDING
DISCOVERY REQUESTS OF MCI AND QWEST

Said envelopes were addressed to the following at their known addresses as follows:

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P.O. Box 2027
Minot, ND 58702-2027

Jo Thompson

Subscribed and sworn to before me this 19th day of January, 2004.

Don Negaard, Notary Public
For the State of North Dakota
My commission expires: 09/04/09

DON NEGAARD
Notary Public
State of North Dakota
My Commission Expires Sept. 4, 2009

JAN 20 2004

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION LOCAL COMPETITION INVESTIGATION	)	**Case No. PU-439-03-295**
	)	**MCI'S FIRST DISCOVERY REQUEST TO CLECS**

YOU WILL PLEASE TAKE NOTICE that MCImetro Access Transmission Services LLC ("MCImetro") and MCI WorldCom Communications, Inc. ("MCIWCOM"), (hereinafter collectively, "MCI"), requests that AT&T, MidContinent Communications, Missouri Valley Communications, Inc., IdeaOne, McLeod USA Telecommunication Services, Inc., US Link, Inc., Integra and the members of the Rural Telephone Group answer the following Discovery Requests in accordance with the North Dakota Public Service Commission's Procedural Rules and North Dakota Rules of Civil Procedure. In accordance with those rules, proper responses to these discovery requests must be served on the undersigned counsel not later than 33 days of service upon you by mail.

INSTRUCTIONS

Please answer each question separately and in the order that it is asked. The numbers of the answers should correspond to the numbers of the data requests

being answered. Please copy each question immediately before the answer. Following each answer, please identify the person or persons responsible for the answer and indicate what person or witness provided responsive information or documents, and where applicable, what witness will sponsor each answer in testimony.

In response to data requests seeking the production of documents, please produce all responsive documents for inspection and copying unaltered and not redacted as they are kept in the usual course of business and organize and label them to correspond to the categories in this request. If the requested documents are kept in an electronic format, you shall produce the requested document in such format. If any part of a document is responsive to any request, the whole document is to be produced. If there has been any alteration, modification or addition to a document (whether in paper form or electronic), including any marginal notes, handwritten notes, underlining, date stamps, received stamps, attachments, distribution lists, drafts, revisions or redlines, each such alteration, modification or addition is to be considered as a separate document and it must be produced.

In response to Interrogatories requesting you to identify documents or other items, information or materials for disclosure, please identify the document(s) or other item(s), information or material(s) in sufficient detail so that they can be

produced in response to a separate Request for Production. Such identification shall contain the number (and subpart, if applicable) of the Interrogatory requesting the identification and the page count or description of the document or item. Additionally, to the extent known, the listing shall include the author, publisher, title, date, and any "Bates" or other sequential production numbering for the document or item. When responding to the Request for Production, please produce copies of all documents, other items, information or materials that were identified in response to a request or directive to "identify for disclosure" in MCI's Interrogatories. For each document or other item, please identify by number (including subpart, if any) the interrogatory which caused the "identification for disclosure".

Please produce the requested information at the most granular level you possess. If a data request seeks information at a level more granular than you possess, please do not object or decline to answer or produce on that basis, but rather state that you do not possess information at that level and produce the information requested at the most granular level that you possess. MCI is not asking for the creation of new data, but is seeking all available data for the specific categories and sub-categories described.

Please produce all information requested on any table by filling in the table provided in these data requests. If additional explanation is required, please copy the question and provide your response below.

If you are unable to respond fully and completely to a document request, explain the reasons why you are unable to do so. The terms defined herein and the individual data requests should be construed broadly to the fullest extent of their meaning, in a good faith effort to comply with all applicable rules, including without limitation the Procedural Rules of the North Dakota Public Service Commission.

This request is directed to all documents and information in your possession, custody or control. A document is deemed to be in your possession, custody or control if you have possession of the document, have the right to secure such document or communication from another person having possession thereof, or the document or communication is reasonably available to you (including those documents or communications in the custody or control of your company's present employees, attorneys, agents, or other persons acting on its behalf and its affiliates. In response to requests for production of documents contained in these data requests, you shall produce the documents, including all appendices, exhibits, schedules, and attachments, that are most relevant to the request.

If you are unable to produce a document or information based on a claim that the document is not in your possession, custody or control, state the whereabouts of such document or information when it was last in your possession, custody or control, and provide a detailed description of the reason the document is no longer in your possession, custody or control, and the manner in which it was removed from your possession, custody or control.

These data requests are continuing in nature, and should there be a change in circumstances which would modify or change an answer you have supplied, then in such case, you should change or modify such answer and submit such changes answer as a supplement to the original answer. Further, should a subsequent version(s) of a document be created or exist after the date of this data requests, such version(s) must be produced. Where prior versions or drafts of documents exist, please produce all such documents in your possession, custody or control.

MCI requests that you answer these data requests under oath or stipulate in writing that your data requests responses can be treated exactly as if they were filed under oath.

If you claim a privilege, or otherwise decline to produce or provide, any document or information responsive to one or more data requests, then in addition to, and not in lieu of, any procedure that you must follow under law to preserve your objection(s) and/or privilege(s), the attorney asserting the privilege shall:

a. identify in the objection to the request for information, or sub-part thereof, detailed reasons for your claim of privilege or other basis for protecting the document or information from disclosure; and the nature of the privilege (including work product) that is being claimed; and provide the following information in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:

(i) for documents: (1) the type of document; (2) subject matter of the document; (3) the date of the document; (4) the number of pages in the document; (5) the location or custodian of the document; (6) such other information as is sufficient to identify the document for a subpoena *duces tecum*, including, where available, the names(s), address(es) and telephone number of the author(s) of the document and all recipient(s), and, where not apparent, the relationship of the author and addressee to each other;

(ii) for oral communications: (1) the name(s), address(es) and phone number(s) of the person making the communication and the name(s), address(es) and phone number(s) of the persons present while the communication was made; (2) the relationship of the person(s) present to the person(s) making the communication; (3) the date and place of each communication; (4) the general subject matter of the communication.

In the event that any requested information is considered by you to be privileged from disclosure or otherwise confidential, the attorney asserting such status shall inform MCI of this designation as soon as he or she becomes aware of it, but in any event, prior to the time the responses to the data requests are due to discuss or attempt to negotiate a compromise. However, the confidential documents should be produced pursuant to protective order(s) and/or non-disclosure agreement(s) executed in this proceeding.

DEFINITIONS

1. The term "analog" refers to electrical signals representing sound or data which are transmitted in a linear, non-digital format.

2. The terms "and" and "or" as used herein shall be construed as both conjunctive and disjunctive.

3. The term "any" shall be construed to include "all," and "all" shall be construed to include "any."

4. The terms "batch cut" and "batch hot cut" refer to a process by which the incumbent LEC simultaneously migrates two or more loops from one carrier's local circuit switch to another carrier's local circuit switch.

5. The term "bundled service" refers to a package offering to an end user customer that includes at least two different services for a single, often discounted price, whether flat-rate or charged on a per-unit basis. An example would be the offering of local and long distance service to an end user customer for a price that is less than the standard retail charges that would be assessed for each service individually.

6. The term "business end user" refers to an end user customer entity that purchases voice or data services, typically supported on multiple loops, to support a commercial enterprise. To the extent that your own tariff and/or business practices define this term differently, please use this definition in your response.

7. The acronym "CLEC" refers to competitive local exchange carriers.

8. The acronym "CLLI" refers to common language location identifier, a multi-character code generally composed of numerals and letters that provides a unique identifier for circuit switches used by incumbent local exchange carriers ("ILECs") and CLECs.

9. The acronym "CO" refers to central office, the single physical ILEC building that houses one or more Class 5/end office ILEC switch(es), and in which end user customers' loops are cross connected to ILEC switching equipment or CLEC collocation arrangements.

10. The term "communication" includes, without limitation of its generality, correspondence, email, statements, agreements, contracts, reports, white papers, users guides, job aids, discussions, conversations, speeches, meetings, remarks, questions, answers, panel discussions and symposia, whether written or oral. The term includes, without limitation of its generality, both communications and statements which are face-to-face and those which are transmitted by documents or by media such as intercoms, telephones, television, radio, electronic mail or the Internet.

11. The terms "cost study," "cost studies," "cost model" and "cost analyses" means the detailed development of a rate element or of rate elements through a methodology based upon engineering, operational, economic, accounting, or financial inputs, plus support for the sources of the inputs or support for the derivations of the inputs, that enables a person using the study, studies, model or analyses to start with the support for each input and to then trace the support to the input, and to then be able to trace the input through the methodology to the resulting cost and then to the resulting rate element.

12. The term "cross connect/jumper" refers to a copper pair that connects at the vertical and horizontal sides of the ILEC MDF.

13. The term "customer location" refers to a building or set of connected, contiguous, or adjacent buildings in a common area, used by residential, commercial, and/or governmental customers that share a primary street address or group of street addresses. It includes multi-unit residential, commercial, and/or governmental premises.

14. The term "customer premises" refers to the physical point at which the end user customer assumes responsibility for telecommunications wiring (i.e., the network interface device ("NID") for single unit dwellings, and the individual point of demarcation at the end user customer's unit for multi-unit buildings such as office buildings and apartment buildings).

15. The term "digital" refers to electrical or optical signals representing sound or data which are transmitted in a binary, discontinuous, non-linear format.

16. The term "DLC" refers to Digital Loop Carrier and includes UDLC, IDLC, and NGLDC.

17. The term "document," as used herein, shall have the same meaning and scope as contained in Rule 34 of the North Dakota Rules of Civil Procedure, and shall include, without limitation, all written, reported, recorded, magnetic, graphic, photographic matter, however produced or reproduced, which is now, or was at any time, in the possession, custody, or control of your company and its affiliates including, but not limited to, all reports, memoranda, notes (including reports, memoranda, notes of telephone, email or oral conversations and conferences), financial reports, data records, letters, envelopes, telegrams, messages, electronic mail (e-mail), studies, analyses, books, articles, magazines, newspapers, booklets, circulars, bulletins, notices, instructions, accounts, pamphlets, pictures, films, maps, work papers, arithmetical computations, minutes of all communications of any type (including inter- and intra-office communications), purchase orders, invoices, statements of account, questionnaires, surveys, graphs, recordings, video or audio tapes, punch cards, magnetic tapes, discs, data cells, drums, printouts, records of any sort of meeting, invoices, diaries, and other data compilations from which information can be obtained, including drafts of the foregoing items and copies or reproductions of the foregoing upon which notations and writings have been made which do not appear on the originals.

18. The term "DS-0" refers to a loop or circuit operating at Digital Signal Level Zero, and capable of transmitting information at 64 kilobits per second.

19. The term "DS-0/voice grade" includes all loops or circuits normally used for the provision of a service to transmit human voice alone. In particular, it includes analog circuits and digital circuits capable of transmitting at levels greater than 2400 baud, up to and including 64 kilobits per second.

20. The term "DS-1" refers to Digital Signal Level 1, which has a transport speed of 1.544Mbps, and can be either unchannelized or channelized into 24 voice grade channels.

21. The term "hot cut" refers to an individual coordinated simultaneous transfer of a DS-voice grade loop with live customers' service transferred.

22. The term "identify" or "identifying" means:
(a) When used in reference to natural persons: (1) full name; (2) last known address and telephone number; (3) whether the person is currently employed by, associated or affiliated with CLECs; (4) that person's current or former position; and (5) dates of employment, association or affiliation.
(b) When used in reference to a document: (1) its author; (2) actual or intended recipient(s); (3) date of creation; and (4) brief description of its contents.
(c) When used in reference to a communication: (1) whether the communication was oral or written; (2) the identity of the communicator; (3) the person receiving the communication; and (4) the location of the communicator and the person receiving the information, if the communication was oral.

23. The acronym "IDF" refers to an intermediate distribution frame, a physical frame located between an MDF and (1) an ILEC switch in a central office or wire center over which end user customer loops are transited for connection to the ILEC switch, or (2) a CLEC collocation arrangement.

24. The term "ILEC" refers to an incumbent local exchange carrier, and includes the ILEC's parent or any subsidiary or affiliate, and all current or former officers, directors, employees, agents, representatives, contractors or consultants of ILEC, as well as any persons or other entities who have acted or purported to act on its behalf.

25. The term "LATA" means "Local Access and Transport Area" as that term is defined in the *Modification of Final Judgment, United States v. Western Elec. Co.*, 552F. Supp. 131 (D.D.C. 1982), *aff'd sub nom., Maryland v. United States,* 460 U.S. 1001 (1983).

26. The term "MSA" refers to a Metropolitan Statistical Area as defined by the US Census Bureau and the Office of Management and Budget.

27. The term "qualifying service" refers to all telecommunications services, whether voice or data, and whether analog or digital, that have ever been offered or provided by an ILEC pursuant to tariff or an interconnection agreement.

28. The acronym "MDF" refers to main distribution frame, a physical frame located in a central office or wire center that connects loops coming from an end user customer premises to (1) an ILEC switch located in the central office or wire center, and (2) facilities leading to a CLEC collocation arrangement.

29. The past tense includes the present tense and vice-versa.

30. "Relate, mention, reference, or pertain" shall be used to mean documents or communications containing, showing, relating, mentioning, referring or pertaining in any way, directly, or indirectly to, or in legal, logical or factual way connection with, a document request, and includes documents underlying, supporting, now or previously attached or appended to, or used in the preparation of any document called for by such request.

31. The singular form of a word shall be interpreted to include the plural, and the plural form of a word shall be interpreted to include the singular whenever appropriate.

32. The term "residential end user" refers to an end user customer, typically an individual or family, who purchases voice or data services at his, her or their place of residence, or household. To the extent that your own tariff and/or business practices define this term differently, please use this definition in your response.

33. The term "Telcordia" refers to Telcordia Technologies, Inc. and its parent(s), current and former affiliates or subsidiaries, and all current or former officers, directors, employees, agents, representatives, contractors or consultants, as well as any persons or other entities who have acted or purported to act on its behalf.

34. The term "wire center" is synonymous with the term "central office," and refers to the single physical building that houses one or more Class 5/end office ILEC switch(es) and in which end user customer's loops are cross connected to the Class 5/end office ILEC switch(es).

1. The term "you," "your," "yours," or "your company" refers to each CLEC and its predecessors, parents, successors, subsidiaries, divisions and related or affiliated organizations.

CLEC HOT CUT/CUSTOMER MIGRATION ISSUES

MCIC DISCOVERY REQUEST NO. 1. Please provide, a) on a statewide basis, b) on a CLEC switch CLLI-code-specific basis, and c) on a ILEC 8-digit (wire center) CLLI-code-specific basis, monthly data for each month since July 1, 2001 for your retail customer "churn" (*i.e.*, customer change from one carrier to another) on all of the following bases. If you provide local service via both UNE-P and UNE loops, please provide the requested information separately for each of these serving modes if available. If you provide local service via only one of these serving modes, please state which one.

(a) number of customers changing carriers, and percentage of then-current customers changing carriers, by customer type (*e.g.*, residential, business with one to three DS-0/voice grade lines to a single customer premises; business with more than three DS-0/voice grade lines to a single customer premises);

(b) number of customers changing carriers, and percentage of then-current customers changing carriers, by service type (*i.e.*, local exchange voice service only; long distance voice service only; bundled local exchange and long distance voice services; bundled local exchange and DSL; and bundled local exchange, long distance, and DSL services);

(c) number of customers changing carriers, and percentage of then-current customers changing carriers, by customer type (*e.g.*, residential, business with one to three DS-0/voice grade lines to a single customer premises; business with more than three DS-0/voice grade lines to a single customer premises) by the following customer ages: 1) churn within the first three months after the customer's service is provisioned, and 2) churn within the first six months after the customer's service is provisioned.

MCIC DISCOVERY REQUEST NO. 2. Please provide, a) on a statewide basis, b) on a CLEC switch CLLI-code-specific basis, and c) on an ILEC 8-digit (wire center) CLLI-code-specific basis, monthly data for each month since July 1, 2001 for your retail customer "churn" (*i.e.*, the number of customers changing from one carrier to another) for residential local exchange customers between each of the following service configurations: 1) ILEC voice only 2) ILEC voice plus DSL; 3) ILEC DSL only; 4) CLEC UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC line splitting; 8) CLEC DSL only [e.g., ILEC

voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only].

MCIC DISCOVERY REQUEST NO. 3. Please provide, a) on a statewide basis, b) on a CLEC switch CLLO-code-specific basis, and c) on a ILEC 8 digit (wire center) CLLI-code-specific basis, monthly data since July 1, 2001 on the number of UNE loops that ILEC has migrated for you through hot cuts (i.e., individual coordinated simultaneous transfer of DS-O/voice grade loops with live customers' service transferred) that involved manual frame (MDF and/or IDF) jumper work.

MCIC DISCOVERY REQUEST NO. 4. Please provide, a) on a statewide basis, b) on a CLEC switch CLLI-code-specific basis, and c) on a ILEC 8-digit (wire center) CLLI-code-specific basis, monthly data for each month since July 1, 2001 on the number of UNE loops that ILEC has migrated for you through hot cuts (i.e., individual coordinated simultaneous transfer of DS-0/voice grade loops with live customers' service transferred) that involved manual frame (MDF and/or IDF) jumper work.

MCIC DISCOVERY REQUEST NO. 5. With respect to the hot cuts identified in response to 0, please provide a detailed description of the work efforts your personnel had to perform as part of the hot cut process, the costs you incurred (including non-recurring charges imposed by ILEC), and the maximum daily number of hot cuts that ILEC has accomplished for you per ILEC 8-digit (wire center) CLLI code since July 1, 2001.

MCIC DISCOVERY REQUEST NO. 6. With respect to your response to 0, please state whether the existing customer loop was used for each of the migrations identified. If the loop was not re-used, please provide a detailed explanation of the reasons why it was not re-used, and any consequence of not being able to reuse the loop (i.e., delayed installation interval, loss of customer telephone number, need for rewiring at customer NID, etc.).

MCIC DISCOVERY REQUEST NO. 7. Please explain whether you currently have in place electronic systems that can accomplish, on an automated, flow-through basis (i.e., no manual intervention is required for completion of the migration), migrations between each of the following service configurations: 1) ILEC voice only 2) ILEC voice plus DSL; 3) ILEC DSL only; 4) CLEC UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC line

splitting; 8) CLEC DSL only [e.g., ILEC voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only].

MCIC DISCOVERY REQUEST NO. 8. With respect to your response to 0, please indicate whether your electronic systems can accomplish each migration type on each of the following bases:

(a) automated flow-through batch cuts [please indicate the maximum number of simultaneous loop migrations that you can support];
(b) automated flow-through individual loop hot cuts;
(c) manual batch cuts [please indicate the maximum number of simultaneous loop migrations that you can support]
(d) manual individual loop hot cuts.

MCIC DISCOVERY REQUEST NO. 9. Please provide, a) on a statewide basis, and b) on a ILEC 8-digit (wire center) CLLI-code-specific basis, the number of your UNE-P orders in North Dakota that were fulfilled each month since July 1, 2001.

MCIC DISCOVERY REQUEST NO. 10. Please explain whether you have always been able to obtain a customer service record ("CSR") from ILEC and/or other CLECs for the provision of 1) local exchange voice service on UNE-P; 2) local exchange voice service on UNE loop. If not, please provide a detailed explanation of the reason(s) you did not obtain the CSR.

MCIC DISCOVERY REQUEST NO. 11. Please explain whether you currently use an electronic automated (i.e., not requiring any manual intervention prior to completion of task) method to interface with ILEC to send or receive each of the following: a) pre-order inquiries; b) orders (including placing the order, firm order confirmations, jeopardy notices, etc); c) provisioning (including the exchange of information for changes to 911, local number portability, and other databases); d) maintenance and repair; e) billing.

MCIC DISCOVERY REQUEST NO. 12. Please provide a detailed explanation of the electronic method (e.g. EDI, CORBA, etc.) that you currently use to send to or receive from ILECs and/or CLECs each of the following: a) pre-order inquiries; b) orders (including placing the order, firm order confirmations, jeopardy notices, etc.); c) provisioning (including the exchange of information for changes to 911, local number portability, and other databases); d) maintenance and repair; e) billing.

MCIC DISCOVERY REQUEST NO. 13. Please explain whether you currently have in place and use electronic automated systems to process orders placed by customers whose service will be provisioned using your own switches. If your ordering systems are only partially electronic and automated, please identify specifically which portions are electronic and which are manual, and provide a detailed explanation of the limitations created by the manual portions when processing customer orders.

MCIC DISCOVERY REQUEST NO. 14 Please explain whether you currently have in place and use electronic automated systems to provision service for customers using your own switches. If your provisioning systems are only partially electronic and automated, please identify specifically which portions are electronic and which are manual, and provide a detailed explanation of the limitations created by the manual portions when provisioning customer orders.

MCIC DISCOVERY REQUEST NO. 15. Please explain whether you currently have in place and use electronic automated systems to maintain and repair service for customers whose service is provisioned using your own switches. If your maintenance and repair systems are only partially electronic, please identify specifically which portions are electronic and which are manual, and provide a detailed explanation of the limitations created by the manual portions for maintenance and repair of customer services.

MCIC DISCOVERY REQUEST NO. 16. Please explain whether you have adequate access to ILEC facilities to conduct trouble isolation and repair for customer services provisioned via your own switches using UNE loops. If your response is anything other than an unequivocal yes, please explain in detail the reason that you do not have such access.

MCIC DISCOVERY REQUEST NO. 17. Please explain whether you have adequate access to ILEC facilities to conduct testing for customer services provisioned via your own switches using UNE loops.

MCIC DISCOVERY REQUEST NO. 18. Please explain whether you currently have in place and use electronic automated systems to bill customers whose services are provisioned using your own switches. If your billing systems are only partially electronic, please identify specifically which portions are electronic, and

which are manual, and provide a detailed explanation of the limitations created by the manual portions when billing customers.

CLEC MASS MARKET UNE SWITCHING TRIGGER ISSUES

MCIC DISCOVERY REQUEST NO. 19. For each switch you use to provide local exchange service to North Dakota customers, please provide the following information for the switch and/or the switch location:

(a) switch manufacturer, model, and date of installation;
(b) currently loaded version of switch software;
(c) currently equipped line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;
(d) currently utilized line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;
(e) current switch processor capacity in CCS;
(f) busy hour and busy season utilized switch processor capacity in CCS;
(g) any ILEC wire center subtending areas currently served by your switch for which you are currently considering discontinuing service for any reason within the next 12 months.

[THIS SPACE INTENTIONALLY LEFT BLANK.]

MCIC DISCOVERY REQUEST NO. 20. For each switch identified in your response to MCIC DISCOVERY REQUEST NO. 19, please provide the information requested in TABLE 1:

TABLE 1

CLEC Switch CLLI	Number Of Loops Per End-User Customer Premises	Number of Local Service End-User Customers	Type of End-User Customer	Number of Voice Only End User Customers[1]	Number of DSL Only End User Customers	Number of Line Shared/Line Split DSL End User Customers[2]
ABC	1	e.g. 10,155	Residential	e.g. 10,000	e.g. 5	e.g. 100
	1	e.g. 5,300	Business	e.g. 5,000	e.g. 100	e.g. 100
	2		Residential			
	2		Business			
	3		Residential			
	3		Business			
	. . . (continue pattern as above)					
	18		Residential			
	18		Business			
	19-24		Residential			
	19-24		Business			
	one DS-1		Residential			
	one DS-1		Business			
	more than one DS-1		Business			

[1] This category includes loops used for fax and/or modem-only traffic.

[2] This category includes voice and DSL on the same wire pair (i.e., line sharing and line splitting).

MCIC DISCOVERY REQUEST NO. 21. For each switch identified in your response to MCIC DISCOVERY REQUEST NO. 19 other than circuit switches, please provide the following for each switch:

(a) any differences in quality of service compared to local exchange service provided on circuit switches (e.g., reliability, throughput, ubiquity, outages, mean time to repair, availability of E911 service, lack of line-powered local telephone service);

(b) the date(s) on which you installed the switch and began providing local exchange service on the switch;

(c) the geographic area served by the switch compared to the geographic area served by any circuit switches you use to provide local exchange service;

(d) any differences in the technical or operational requirements for the customer to obtain local exchange service from the switch, including customer premises equipment or software (e.g., specialized phone set; availability of computer, cable modem, set top box, need for customer premises battery backup for telephone service), access method (e.g., DSL, cable television, satellite service), provisioning interval;

(e) any ILEC central office or wire center subtending areas currently served by your switch for which you are considering discontinuing service for any reason within the next 12 months.

MCIC DISCOVERY REQUEST NO. 22. For each switch identified in your response to MCIC DISCOVERY REQUEST NO.19 , please state whether you own the switch, or instead whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis (including wholesale and/or resale). If you do not own the switch,

(a) state whether the entity owning the switch is an affiliate of yours;

(b) identify the entity owning the switch, and (if different) the entity with which you entered into an arrangement to obtain switching capacity;

(c) identify the nature of the arrangement through which you obtained switching capacity;

(d) provide a copy of the agreement (e.g. Interconnection Agreement, contract, lease, etc.) specifying the rates, terms and conditions through which you are currently obtaining switching capacity.

MCIC DISCOVERY REQUEST NO. 23. For each switch you own or control and from which you offer or provide wholesale local switching capacity (wholesale local switching capacity on a standalone basis, or combined with loops and/or transport) to carriers that are not affiliated with you, to use to serve North Dakota customers, please provide the following information for the switch and/or the switch location:

(a) the 8-digit common language location identifier ("CLLI") code as it appears in the Local Exchange Routing Guide ("LERG");
(b) V&H coordinates;
(c) currently equipped line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;
(d) currently utilized line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;
(e) current switch processor capacity in CCS;
(f) a copy of the methods and procedures document, or other documents or information, detailing the technical specifications for the provision of wholesale switching, including interface requirements, signaling capabilities, service quality parameters (including procedures to minimize service degradation, delay, echo return, and/or loss attenuation), and service procedures;
(g) any ILEC central office or wire center subtending areas currently served by your switch for which you are considering discontinuing service for any reason within the next 12 months.

[THIS SPACE INTENTIONALLY LEFT BLANK.]

MCIC DISCOVERY REQUEST NO. 24: For each switch identified in your response to MCIC DISCOVERY REQUEST NO. 23, please provide the information requested in TABLE 2:

TABLE 2

CLEC Switch CLLI	Number Of Loops Per End-User Customer Premises	Number of Local Service End-User Customers	Type of End-User Customer	Number of Voice Only End-User Customers[3]	Number of DSL Only End-User Customers	Number of Line Shared/Line Split DSL End User Customers[4]
ABC	1	e.g. 10,155	Residential	e.g. 10,000	e.g. 5	e.g. 100
	1	e.g. 5,300	Business	e.g. 5,000	e.g. 100	e.g. 100
	2		Residential			
	2		Business			
	3		Residential			
	3		Business			
	. . . (continue pattern as above)					
	18		Residential			
	18		Business			
	19-24		Residential			
	19-24		Business			
	one DS-1		Residential			
	one DS-1		Business			
	more than one DS-1		Business			

[3] This category includes loops used for fax and/or modem-only traffic.

[4] This category includes voice and DSL on the same wire pair (i.e., line sharing and line splitting).

MCIC DISCOVERY REQUEST NO. 25. For each switch identified in your response to MCIC DISCOVERY REQUEST NO. 23, please provide the following information:

(a) whether you are willing to expand your switch capacity to meet increased demand for wholesale switching from other CLECs;
(b) your existing plans and/or procedures for ordering and implementing software upgrades for the switch;
(c) terms and conditions (including forecasts) you require or expect to require from other CLECs in order to expand the capacity of your switch for the provision of wholesale switching;
(d) rates, deposits or other financial information you require or expect to require from other CLECs in order to expand the capacity of your switch for the provision of wholesale switching;
(e) whether you now have, or intend to implement, a process or procedure to ensure that your switch can provide the same features and functions as those available from ILEC switches.

MCIC DISCOVERY REQUEST NO. 26. For each collocation arrangement in each ILEC central office or wire center in North Dakota, please provide the following information, reported by ILEC 8-digit (wire center) CLLI code and street address:

(a) size of collocation arrangement;
(b) amount of power (including both "A" and "B" DC feeds and AC power) supplied to the collocation arrangement;
(c) amount of unused space in the collocation arrangement that could be used for placing additional equipment;
(d) if the collocation arrangement is connected via transport to any switch used by CLEC to offer local service in North Dakota, the CLLI code, city, street address, zip code, V&H coordinates, and owner of that switch;
(e) all non-recurring and monthly recurring charges for the collocation arrangement;
(f) name(s) of other collocating carrier(s) to which this collocation arrangement is connected in this ILEC central office or wire center;
(g) name(s) of other collocating carrier(s) that are sharing this collocation arrangement (if collocation sharing is permitted by ILEC).

MCIC DISCOVERY REQUEST NO. 27. With regard to all CLEC-to-CLEC cross connections you have purchased, please identify the following, reported by ILEC central office or wire center:

(a) number of such cross connections that you have had provisioned;
(b) the identity of the other CLEC with whom you provisioned the cross connect
(c) the type of collocation arrangement of both CLECs;
(d) the minimum, maximum and average provisioning time for CLEC-to-CLEC cross connections;
(e) the identity of the entity or personnel who performs the cross connect (e.g., ILEC central office technician, certified CLEC technician, etc.)

MCIC DISCOVERY REQUEST NO. 28. For each collocation arrangement identified in your response to MCIC DISCOVERY REQUEST NO. 26, please provide the information in TABLE 3.

TABLE 3

ILEC 8-Digit Wire Center CLLI	**Number Of Loops Per End-User Customer Premises**	**Number of Local Service End-User Customers**	**Type of End-User Customer**	**Number of Voice Only End-User Customers[5]**	**Number of DSL Only End-User Customers**	**Number of Line Shared/Line Split DSL End User Customers[6]**
ABC	1	e.g. 1,017	Residential	e.g. 1,000	e.g. 2	e.g. 10
	1	e.g. 540	Business	e.g. 500	e.g. 10	e.g. 10
	2		Residential			
	2		Business			
	3		Residential			
	3		Business			
	. . . (continue pattern as above)					
	18		Residential			
	18		Business			
	19-24		Residential			
	19-24		Business			
	one DS-1		Residential			
	one DS-1		Business			
	more than one DS-1		Business			

[5] This category includes loops used for fax and/or modem-only traffic.
[6] This category includes voice and DSL on the same wire pair (i.e., line sharing and line splitting).

MCIC DISCOVERY REQUEST NO. 29. For each of the collocation arrangements identified in your response to MCIC DISCOVERY REQUEST NO. 26 that is connected via EELs to a switch you use to provide local service in North Dakota, please provide the following information:

(a) the CLLI code, street address, zip code, V&H coordinates, and owner of the switch to which the collocation arrangement is connected;
(b) number of such EELs that comprise DS-0/voice grade transport connected to DS-0/voice grade loops;
(c) number of such EELs that comprise DS-1 transport connected to multiplexed DS-0/voice grade loops;
(d) number of such EELs that comprise DS-1 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(e) number of such EELs that comprise DS-3 transport connected to multiplexed DS-0/voice grade loops;
(f) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(g) number of such EELs that comprise DS-1 transport connected to DS-1 loops;
(h) number of such EELs that comprise DS-3 transport connected to multiplexed DS-1 loops;
(i) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-1 loops, and the loop-to-transport concentration ratio.

MCIC DISCOVERY REQUEST NO. 30. Do you use EELs that comprise loops and transport without using collocation arrangements? If the answer is affirmative, please provide the following information:

(a) the CLLI code, street address, zip code, V&H coordinates, and owner of the central office or other location where the loop and transport are connected to form an EEL;
(b) number of such EELs that comprise DS-0/voice grade transport connected to DS-0/voice grade loops;
(c) number of such EELs that comprise DS-1 transport connected to multiplexed DS-0/voice grade loops;

(d) number of such EELs that comprise DS-1 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(e) number of such EELs that comprise DS-3 transport connected to multiplexed DS-0/voice grade loops;
(f) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(g) number of such EELs that comprise DS-1 transport connected to DS-1 loops;
(h) number of such EELs that comprise DS-3 transport connected to multiplexed DS-1 loops;
(i) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-1 loops, and the loop-to-transport concentration ratio.

MCIC DISCOVERY REQUEST NO. 31. For each collocation arrangement in a non-ILEC central office or wire center in North Dakota (e.g., carrier hotels), please provide the following information:

(a) size of collocation arrangement;
(b) if the collocation arrangement is connected via transport to any switch you use to offer local service in North Dakota, the CLLI code, street address, zip code, V&H coordinates, and owner of that switch;
(c) call non-recurring and recurring charges for the collocation arrangement;
(d) name(s) of other collocating carrier(s) to which this collocation arrangement is connected in this central office or wire center;
(e) name(s) of other collocating carrier(s) that are sharing this collocation arrangement (if collocation sharing is permitted by owner).

MCIC DISCOVERY REQUEST NO. 32. For each ILEC central office or wire center subtending area in North Dakota that you do not serve with your own switch, please provide a detailed explanation of the reason you do not serve that area (e.g., too few customers to achieve economies of scale; high churn rates that preclude recovery of non-recurring costs and charges, etc.).

MCIC DISCOVERY REQUEST NO. 33. Please provide a detailed explanation of each task you would have to undertake to provide local exchange service to mass market customers via UNE loops using your own switches, rather than via UNE-P, including but not limited to the following: implement new or modify business and operational plans to use UNE loops; hire and train loop provisioning technicians; hire and train switch technicians; establish collocation arrangements in ILEC central offices or wire centers; purchase and install equipment in collocation arrangement; hire and train new, or increase existing, customer service personnel; hire and train new, or increase existing, trouble maintenance personnel; add new or revise OSS for preordering, ordering, provisioning, repair and/or billing; develop capabilities for E911 service; develop capabilities for number portability. Please provide an estimate of the time and cost for each task identified.

MCIC DISCOVERY REQUEST NO. 34. Please provide the definition you use internally for business purposes for the following terms: (1) "mass market customer" and (2) "enterprise customer," in terms of type of customer (e.g., residential vs. business), number of lines per customer, use of DS-0/voice grade loop facilities vs. DS-1s, or any other basis you use to distinguish these terms.

MCIC DISCOVERY REQUEST NO. 35. Please provide your calculation, estimate, or view of the economic crossover point , in terms of number of DS-0/voice grade lines to a single customer premises, at which you offer service at a DS-1 level rather than using a number of analog lines, and provide the basis for that crossover point (e.g., equivalency point of analog service rates and DS-1 service rates, consideration of whether the customer premises equipment can accept a DS-1 interface, etc.).

MCIC DISCOVERY REQUEST NO. 36. With respect to each of the two customer categories identified in your response to 0, please provide the following information:

(a) what switching arrangement you use to serve the customer category (e.g., self-provisioned CLEC switch, ILEC switch, purchase wholesale switching from another CLEC, purchase switching from a third party other than a CLEC);

(f) the number of customers in each customer category, reported by ILEC central office or wire center for each month since July 1, 2001;

(g) the percentage of your total customer base in North Dakota in each of the two categories;

(h) whether you target your business plans, sales or marketing to particular subsets of customers within each of the two customer categories.

MCIC DISCOVERY REQUEST NO. 37. If you do not currently offer service to residential customers in North Dakota, please list and describe your reasons for not doing so.

MCIC DISCOVERY REQUEST NO. 38. If you do not currently offer service to business customers in North Dakota below the DS-1 level (i.e., DS-0/voice grade loops), please list and describe your reasons for not doing so.

MCIC DISCOVERY REQUEST NO. 39. If you currently offer service to business customer in North Dakota below the DS-1 level (i.e., DS-0/voice grade loops), but do not offer and/or market service to such customers unless they have or need a certain minimum number of loops to their premises, please state that minimum number, and list and describe your reasons for not offering and/or marketing service below that level.

MCIC DISCOVERY REQUEST NO. 40. Please provide your current average monthly revenues per line per customer in North Dakota, stated separately for (1) residential customers served via UNE-P; (2) residential customers served via UNE loops; (3) business customers served via UNE-P; (4) business customers served via DS-0/voice grade UNE loops; and (5) business customers served via DS-1 UNE loops. Please provide the requested information at the most granular level available (e.g., per-ILEC-8-digit-CLLI serving area, per-CLEC-switch serving area, statewide, etc.). Please identify the source of the reported revenues by service and/or feature type (i.e., local voice only, local voice plus vertical features, long distance only, DSL only, bundles of any of the above, and/or other services or features). If you do not track revenues differentially for UNE-P vs. UNE loop configurations for residential and/or business customers, please so state, and provide combined numbers. For all revenues provided, exclude taxes, regulatory assessments and surcharges, and other payments made to governmental units. If it is not possible to exclude such payments, please so state.

MCIC DISCOVERY REQUEST NO. 41. If you currently offer service to residential customers, please provide your variable costs per residential customer.

MCIC DISCOVERY REQUEST NO. 42. Do you currently have access to external sources of capital for the purpose of expanding your operations by making new capital investments? If so, please list and describe all such sources, and state the quoted or estimated interest rate for each such source.

MCIC DISCOVERY REQUEST NO. 43. Please provide a copy of all business cases, business analysis, cost studies, or other analyses or evaluations concerning whether entry into the mass market is economically feasible without access to ILEC's switches, including but not limited to those analyses and studies that were submitted to the FCC, performed but not submitted to the FCC, and performed since February 22, 2003. Provide all supporting documentation and work papers, in electronic format if available.

Dated December 31, 2003.

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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	Case No. PU-439-03-295

QWEST CORPORATION'S INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO EACH MEMBER OF THE RURAL TELEPHONE COMPANY GROUP

Qwest Corporation ("Qwest") submits the following Interrogatories and Requests for Production of Documents pursuant to N.D.C.C. § 28-32-33 on Each Member of the Rural Telephone Company Group and their attorney Don Negaard. Qwest Corporation hereby requests that you respond under oath to the interrogatories within thirty (30) days of service hereof and requests that the documents be produced by you for inspection and copying at the offices of Zuger Kirmis & Smith, 316 North 5th Street, Bismarck, thirty (30) days after service of this request. You are reminded that your answers and responses must include all information available not only to you, but also available to your agents, attorneys, or others who have information available to you upon your inquiry to them. In all cases, in lieu of Identification, Inspection or Production of a document, you may instead submit a legible copy of such document with your response or answer.

INSTRUCTIONS

Please answer each interrogatory separately and in the order that it is asked. The numbers of the answers should correspond to the numbers of the interrogatories being answered. Please copy each question immediately before the answer. Following

each answer, please identify the person or persons responsible for the answer and indicate what person or witness provided responsive information or documents, and where applicable, what witness will sponsor each answer in testimony.

In response to requests seeking the production of documents, please produce all responsive documents for inspection and copying unaltered and/or unredacted as they are kept in the usual course of business and organize and label them to correspond to the categories in this request. If the requested documents are kept in an electronic format, you shall produce the requested document in such format. If any part of a document is responsive to any request, the whole document is to be produced. If there has been any alteration, modification or addition to a document (whether in paper form or electronic), including any marginal notes, handwritten notes, underlining, date stamps, received stamps, attachments, distribution lists, drafts, revisions or redlines, each such alteration, modification or addition is to be considered as a separate document and it must be produced.

In response to Interrogatories requesting you to identify documents or other items, information or materials for disclosure, please identify the document(s) or other item(s), information or material(s) in sufficient detail so that they can be produced in response to a separate Request for Production. Such identification shall contain the number (and subpart, if applicable) of the Interrogatory requesting the identification and the page count or description of the document or item. Additionally, to the extent known, the listing shall include the author, publisher, title, date, and any "Bates" or other sequential production numbering for the document or item. When responding to the Requests for Production, please produce copies of all documents, other items,

ormation or materials that were identified in response to a request in Qwest's Interrogatories.

Please produce the requested information at the most granular level you possess. If a request seeks information at a level more granular than you possess, please do not object or decline to answer or produce on that basis, but rather state that you do not possess information at that level and produce the information requested at the most granular level that you possess. Qwest is not asking for the creation of new data, but is seeking all available data for the specific categories and sub-categories described.

Please produce all information requested on any table by filling in the table provided in the request. If additional explanation is required, please copy the question and provide your response below.

If you are unable to respond fully and completely to a document request, explain the reasons why you are unable to do so. The terms defined herein and the individual requests should be construed broadly to the fullest extent of their meaning, in a good faith effort to comply with all applicable statutes and rules.

The requests are directed to all documents and information in your possession, custody or control. A document is deemed to be in your possession, custody or control if you have possession of the document, have the right to secure such document or communication from another person having possession thereof, or the document or communication is reasonably available to you including those documents or communications in the custody or control of your company's present employees, attorneys, agents, or other persons acting on its behalf and its affiliates. In response to

quests for production of documents, you shall produce the documents, including all appendices, exhibits, schedules, and attachments, that are most relevant to the request.

If you are unable to produce a document or information based on a claim that the document is not in your possession, custody or control, state the whereabouts of such document or information when it was last in your possession, custody or control, and provide a detailed description of the reason the document is no longer in your possession, custody or control, and the manner in which it was removed from your possession, custody or control.

These discovery requests are continuing in nature, and should there be a change in circumstances which would modify or change an answer you have supplied, then in such case, you should change or modify such answer and submit such changed answer as a supplement to the original answer. Further, should a subsequent version(s) of a document be created or exist after the date of this data requests, such version(s) must be produced. Where prior versions or drafts of documents exist, please produce all such documents in your possession, custody or control.

If you claim a privilege, or otherwise decline to produce or provide, any document or information responsive to one or more discovery requests, then in addition to, and not in lieu of, any procedure that you must follow under law to preserve your objection(s) and/or privilege(s), the attorney asserting the privilege shall:

a. identify in the objection to the request for information, or sub-part thereof, detailed reasons for your claim of privilege or other basis for protecting the document or information from disclosure; and the nature of the privilege

(including work product) that is being claimed; and

b. provide the following information in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:

(i) for documents: (1) the type of document; (2) subject matter of the document; (3) the date of the document; (4) the number of pages in the document; (5) the location or custodian of the document; (6) such other information as is sufficient to identify the document for a subpoena *duces tecum*, including, where available, the names(s), address(es) and telephone number of the author(s) of the document and all recipient(s), and, where not apparent, the relationship of the author and addressee to each other;

(ii) for oral communications: (1) the name(s), address(es) and phone number(s) of the person making the communication and the name(s), address(es) and phone number(s) of the persons present while the communication was made; (2) the relationship of the person(s) present to the person(s) making the communication; (3) the date and place of each communication; (4) the general subject matter of the communication.

Confidential documents should be produced pursuant to any trade secret order(s) and/or confidentiality agreement(s) executed in this proceeding.

DEFINITIONS

1. The terms "and" and "or" as used herein shall be construed as both conjunctive and disjunctive.

2. The term "any" shall be construed to include "all," and "all" shall be construed to include "any."

3. The acronym "CLEC" refers to competitive local exchange carriers.

4. The acronym "CLLI" refers to common language location identifier, a multi-character code generally composed of numerals and letters that provides a unique identifier for circuit switches used by incumbent local exchange carriers ("ILECs") and CLECs.

5. The term "customer location" refers to a building or set of connected, contiguous, or adjacent buildings in a common area, used by residential, commercial, and/or governmental customers that share a primary street address or group of street addresses. It includes multi-unit residential, commercial, and/or governmental premises.

6. The term "digital" refers to electrical or optical signals representing sound or data which are transmitted in a binary, discontinuous, non-linear format.

7. The term "DLC" refers to Digital Loop Carrier and includes UDLC, IDLC, and NGLDC.

8. The term "DS-0" refers to a loop or circuit operating at Digital Signal Level Zero, and capable of transmitting information at 64 kilobits per second.

9. The term "DS-0/voice grade" includes all loops or circuits normally used for the provision of a service to transmit human voice alone. In particular, it includes analog circuits and digital circuits capable of transmitting at levels greater than 2400 baud, up to and including 64 kilobits per second.

10. The term "DS-1" refers to Digital Signal Level 1, which has a transport speed of 1.544Mbps, and can be either unchannelized or channelized into 24 voice grade channels.

11. The term "hot cut" refers to an individual coordinated simultaneous transfer of a DS-0/voice grade loop with live customers' service transferred.

12. The term "LATA" means "Local Access and Transport Area" as that term is defined in the *Modification of Final Judgment, United States v. Western Elec. Co.*, 552F. Supp. 131 (D.D.C. 1982), *aff'd sub nom., Maryland v. United States,* 460 U.S. 1001 (1983).

13. The past tense includes the present tense and vice-versa.

14. The singular form of a word shall be interpreted to include the plural, and the plural form of a word shall be interpreted to include the singular whenever appropriate.

15. The term "wire center" is synonymous with the term "central office," and refers to the single physical building that houses one or more Class 5/end office switch(es) and in which end user customer's loops are cross connected to the Class 5/end office switch(es).

16. The terms "you," "your," "yours," "your company," and "AT&T" refer to and include AT&T Telecommunications of the Mountain States and its predecessors, parents, successors, subsidiaries, divisions and related or affiliated organizations, and all current or former officers, directors, employees, agents, representatives, contractors or consultants of each such organization, as well as any persons or other entities who have acted or purported to act on its behalf.

INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Please identify all switches owned or controlled by you that are being used to provide service to CLEC customers in North Dakota served by facilities at or above the DS-1 level. For each switch that you identify, please identify the type (e.g., 5ESS and 4ESS) and describe the "footprint" of the switch, meaning the geographic area that the switch is capable of reaching. Separately, provide the same information for customers served by DS-0 loop facilities.

2. Please state whether the information in the LERG is current and accurate for the switches that you own, operate, control, or maintain, or from which you lease dial tone or trunking functionality/capacity to serve customers in North Dakota. If any of the information is not accurate, please identify the inaccurate information and provide corrected information, including any additions, deletions or changes. As part of your review of the information in the LERG, please state whether the CLLI code is accurate for each switch that you own, operate, control, maintain, or from which you lease dial tone or trunking functionality/capacity. In addition, please state whether the LERG definition of the function of each switch (i.e., tandem, end office, etc.) is accurate.

3. For each switch that you operate, control, or maintain, or from which you lease dial tone or trunking functionality/capacity, that is used to serve CLEC customers in North Dakota, please report (in Excel spreadsheet format) whether the switch

is currently providing switching for local voice grade services, tandem switching[1] for voice calls, or both.

4. For each switch that you own or control that is used to provide CELC services to end-user customers in North Dakota served with DS-1 facilities and above, please provide the following in Excel spreadsheet format:

   a. state the manner in which the traffic carried over the DS-1 facilities is transported to the switch (i.e., transport purchased from a provider other than Qwest, transport purchased from Qwest, EELs, or transport via facilities owned by you); and

   b. if the end-user CLEC customers are served using DS-1 and above facilities in one LATA in North Dakota using a switch located in a different LATA (including a LATA in another state), please identify the state in which the switch is located and describe the means by which you transport traffic from the second LATA to the switch.

5. Please report (in Excel spreadsheet format) the number of DS0 level CLEC business lines in North Dakota served by unbundled loops for which you provide switching dial tone functionality. In responding to this request, please separate loop facilities by the categories set forth in the following table:

Sample Response Form							
State	Wire Center	Residential			Business		
		# DS0-1 lines served via your facilities	# DS0 lines served via Qwest leased facilities	# DS0 lines served via facilities leased from third party	# DS0 lines served via your facilities	# DS0 lines served via Qwest leased facilities	# DS0 lines served via facilities leased from third party

6. Please list each North Dakota LATA and each wire center within each LATA in which you provide CLEC local telecommunications services. In addition, please identify each LATA and wire center in North Dakota where you do not currently provide CLEC local telecommunications services but intend or plan to do so within the next 12 months.

[1] Tandem switching is defined as switching of telephone traffic between two subtending end offices.

For each LATA and wire center identified in response to request 12, please identify the number of in-service lines that are:

a. UNE-P Business;

b. UNE-P Residence;

c. UNE-L Business;

d. UNE-L Residence;

e. CLEC business lines provided using your own loop facilities and another party's dial tone (switching);

f. CLEC business lines provided using your own loop facilities and your own dial tone;

g. CLEC business lines using a third party's loop facilities and your own dial tone;

h. CLEC residential lines provided using your own loop facilities and another party's dial tone;

i. CLEC residential lines provided using your own loop facilities and your own dial tone;

j. CLEC residential lines using a third party's loop facilities and your own dial tone;

k. For any CLEC residential and business lines served in any manner not listed above, in what manner are those lines served?

8. Please list all areas in North Dakota in which you are certified or registered to provide local exchange service.

9. Of the CLEC lines that you serve in North Dakota using UNE-Ls, please state the percentage of these lines that are connected to DLCs in collocation space.

10. For each switch that you own, operate, control, or maintain, or from which you lease dial tone or trunking functionality/capacity, please state (in Excel spreadsheet format) if the switch is providing originating voice grade services for CLEC residential end-user customers and/or CLEC small business customers (defined for this question as businesses with four DS-0 lines or fewer). If so, please:

a. Identify the switch (by CLLI) and the LATA(s) served by each switch (the LATA in which the switch providing the originating dial tone is physically located);

b. Identify the geographic area over which CLEC residential end-user customers and/or CLEC small business customers are served with the switch;

c. State the number of CLEC business and residential retail customers served by the switch;

d. Provide the volume of such CLEC traffic (expressed in minutes of use) handled by the switch for the most recent 12-month period;

e. Identify the rate centers you are serving for originating traffic;

f. State the manner by which such traffic is transported to the switch (i.e., transport purchased from a provider other than Qwest, transport purchased from Qwest, EELs or transport via facilities owned by you); and

g. If CLEC customers are served (as defined above) in one LATA in North Dakota using a switch located in another LATA (including a LATA in another state), please identify the LATA and state in which LATA the switch is located and describe the means by which traffic is transported from the second LATA to the switch.

11. Please state whether you are using extended enhanced links ("EELs") to serve CLEC customers in North Dakota. If so, identify each EEL, and for each such facility, explain or state (1) the services being provided over the EEL, (2) the number of CLEC customers served by the EEL, (3) whether the facility is being used in lieu of collocation, (4) the number of loops connected to the EEL, a descriptions of the type of loop facilities so connected, and the final demarcation point of each loop, and (5) whether the facility is being used as a functional private line.

12. Please provide the average total revenue per line that you received from your CLEC residential customers within North Dakota in 2001 and 2002. The average revenue per line should include revenues associated with the basic retail price charged to residential customers, vertical features, universal service payments, interstate access charges, intrastate access charges, subscriber line charges, toll, long distance, local number portability, and line revenues derived from any other sources. Please provide both the total average revenue per line and a breakdown of the amount of revenue for each category of revenue that comprises the total. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

Please provide the average total revenue per line that you received from your CLEC business customers within North Dakota in 2001 and 2002. The average revenue per line should include revenues associated with the basic retail price charged to business customers, vertical features, universal service payments, interstate access charges, intrastate access charges, subscriber line charges, toll, long distance, local number portability, and line revenues derived from any other sources. Please provide both the total average revenue per line and a breakdown of the amount of revenue for each category of revenue that comprises the total. If revenues differ depending on the type of business customer (small vs. large), please provide the total revenues and the breakdown of revenues by type of business customer. Please provide the information by POTS, DS0, DS1, DS3, OC-3, OC-12, OC-48, and any other relevant categories. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

14. Please explain how you define your CLEC business customer segments and provide any documents that reflect this definition or the criteria you use to segment or classify business customers into distinct customer groups. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

15. Please provide the average total cost per line that you incurred in 2001 and 2002 for lines used to serve CLEC residential customers within North Dakota. These costs should include costs associated with switching; loops; collocation; transport; hot cuts; operational support systems ("OSS"); signaling; customer acquisitions; backhauling traffic to your switches; maintenance, operations, and other administrative activities; and capital costs. If available, please provide a breakdown of this information for the following categories: (1) service provided by UNE-P, (2) service provided by UNE-L, and (3) service provided using your own facilities. In addition, please provide any available breakdowns of each cost component that is part of the average total cost per line, identifying the type and amount of each cost. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

16. Please provide the average total cost per line that you incurred in 2001 and 2002 for lines used to serve CLEC business customers within North Dakota. These costs should include costs associated with switching, loops, collocation, transport, hot cuts, OSS, signaling, customer acquisitions, backhauling traffic to your switches, maintenance, operations, and other administrative activities, and capital costs. In addition to a total average cost, please provide separate averages for service provided through UNE-P, UNE-L, and with your own facilities. Please provide a breakdown of each cost component that is part of the average total cost per line, identifying the type and amount of each cost. If costs differ depending on the type of business customer (small vs. large), please provide the total cost and the breakdown of costs by type of business customer.

Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

17. For each switch identified in response to Request No. 1, please provide: (1) the initial price paid for the switch; (2) the date the switch was purchased; (3) the EF&I (engineering, furnish, and install) costs of the switch (if separate from the initial price paid); (4) a description of any additions to the switch, along with the cost of each such addition.

18. Please provide complete copies of your switching vendor contracts, including amendments, pricing lists, discount schedules, etc. If any redactions are required, please explain why and identify the type of information redacted.

19. Please list the total collocation costs that you incurred in North Dakota in 2001 and 2002 and provide a breakdown for each year of the different categories of collocation costs that you have incurred. In addition, please produce all documents and data that support or relate to your response.

20. Please identify any categories of OSS costs that you contend should be included in the revenue/cost business case analysis discussed in the FCC's Triennial Review Order (*e.g.*, ¶ 520). For each such category, please list the total costs that you actually incurred in North Dakota in 2001 and 2002, and, if available, state these total costs separately for residential and business customers. Please produce all documents that reflect any of the costs you list in your response to this request.

21. Please provide all documents that summarize or otherwise reflect the financial results of your CLEC operations in North Dakota in 2001 and 2002.

22. Please provide copies of any current contracts you have with vendors for DLC equipment used in North Dakota, including all pricing schedules, discounts, and amendments.

23. If you offer intrastate switched access service to other carriers, please report your current switched access prices in North Dakota or identify tariffs that list these prices.

24. Please state whether you allege that Qwest has performed deficiently in providing you with hot cuts, collocation, provisioning of loops, provisioning of transport, CLEC-to-ILEC cross connects, or CLEC-to-CLEC cross-connects in North Dakota at any time since June 2001. For any such allegations, please provide a complete description of all facts that you rely upon, and produce all documents that relate in any way to the allegation.

Please provide the number of UNE-P orders that you expect to place with any local exchange carrier in North Dakota in the next 12 months. Please produce all documents that reflect or relate to these forecasts.

26. Please provide the number of UNE-L orders that you expect to place with any local exchange carrier in North Dakota in the next 12 months. Please produce all documents that reflect or relate to these forecasts.

27. Describe all activities you must perform on your side of the network to complete an ILEC to CLEC hot cut, and identify all costs associated with these activities. Produce all data and documents that support your response. To the extent your response would differ based on whether you performed a basic or a coordinated hot cut, please provide an itemization of the cost differences.

Dated this 13th day of January, 2004.

Respectfully submitted,

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JAN 16 2004

PRELIMINARY DISCOVERY REQUESTS
NORTH DAKOTA TRO PROCEEDING
December 3, 2003

Case No. PU-439-03-295:	)	**AT&T Communications of the**
Local Competition Investigation	)	**Midwest, Inc.'s Responses to**
	)	**the Commission's Preliminary**
	)	**Discovery Requests**

AT&T Communications of the Midwest, Inc. ("AT&T") hereby responds to the Commission's Preliminary Discovery Requests as follows:

GENERAL OBJECTIONS

1. AT&T objects to each and every Discovery Request as unduly burdensome to the extent it requests information in a form or of a nature not retained by AT&T in the ordinary course of business and, therefore, requests information that cannot be provided without completing a special study or analysis.

2. AT&T further objects to each and every Discovery Request to the extent it seeks information that is protected by the attorney-client privilege or any other valid privilege existing within the State of North Dakota.

A. Requests to CLECs in response to petitioning ILEC

Switching

A-1. Provide a list of all switches that you currently use to provide a qualifying service (as defined in 47 C.F.R. § 51.5, as that section will be amended by the Final Rules issued by the FCC pursuant to the *Triennial Review Order*) anywhere in the state, regardless of whether the switch itself is located in the state. Do not include ILEC switches utilized by you on an unbundled basis in the ILEC's service territory or through the resale of the incumbent's services at wholesale rates.

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request A-1 to the extent it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of relevant or admissible evidence.

RESPONSE: **[Confidential Information Redacted.]**

A-2. Identify each ILEC wire center district (*i.e.*, the territory served by a wire center of the ILEC) in which you provide qualifying service to any end user customers utilizing any of the switches identified in your response to Question 1. Wire centers should be identified by providing their name, address, and CLLI code.

OBJECTIONS: In addition to the General Objections set forth above, AT&T further objects to Request A-2 as vague and ambiguous to the extent it uses a term or terms that could be interpreted in multiple ways and the request does not clearly define such term or terms.

RESPONSE: Reserving and without waiving these objections, see electronically attached Excel spreadsheet AT&T ND HIGHLY CONFIDENTIAL ADL CUSTOMER LINES.

A-3. For each ILEC wire center identified in response to Question 2, identify the total number of voice-grade equivalent lines[1] you are providing to customers in that wire center from your switch(es) identified in response to Question 1. For purposes of this question, "voice-grade equivalent lines" should be defined consistent with the FCC's use of the term.

OBJECTIONS: AT&T objects to Request A-3 as set forth in the General Objections above.

RESPONSE: Reserving and without waiving these objections, see electronically attached Excel spreadsheet AT&T ND HIGHLY CONFIDENTIAL ADL CUSTOMER LINES.

[1] Voice-grade equivalent lines would include DS0 lines and, by the definition in FCC Form 477, *Instructions for the Local Competition and Broadband Reporting From* include traditional analog POTS lines, Centrex-CO extensions and Centrex-CE trunks. Line counts are based on how they are charged to the customer rather than how they are physically provisioned (e.g. 2-wire copper, VoIP, fiber).

A-4. For each switch identified in response to Question 1, identify the approximate capacity of the switch – that is, the maximum number of voice-grade equivalent lines it is capable of serving – based on that switch's existing configuration and component parts.

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request A-4 as vague and ambiguous to the extent it uses a term or terms that could be interpreted in multiple ways and the request does not clearly define such term or terms.

RESPONSE: Reserving and without waiving these objections, see electronically attached Excel spreadsheet AT&T ND CONFIDENTIAL SWITCHES.

A-5. With respect to the voice-grade equivalent lines identified in response to Question 3, separately indicate the number being provided to (a) residential customers; (b) business customers to whom you provide only voice-grade or DS0 lines.

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request A-5 to the extent it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of relevant or admissible evidence.

RESPONSE: Reserving and without waiving these objections, AT&T states that it has no residential customers in North Dakota. With regard to business customers, AT&T states that it does not regularly keep records that distinguish customers that use only voice-grade or DS0 lines from customers that use DS0 services and DS1 services in combination.

A-6. For each of the switches identified in your response to Question 1, state whether the switch is owned by you, or whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis. If the facility is not owned by you, identify the entity owning the switch and (if different) the entity with which you entered into the lease or other arrangement, identify the nature of the arrangement, and state whether such entity or entities are affiliates of yours, in the sense defined in ¶ 408, footnote 1263 of the *Triennial Review Order*.

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request A-6 to the extent it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of relevant or admissible evidence.

RESPONSE: Reserving and without waiving these objections, see electronically attached Excel spreadsheet AT&T ND CONFIDENTIAL SWITCHES.

C. Questions to both CLECs and ILEC – Switching

C-1. With respect to the voice-grade equivalent lines being provided to (a) residential customers; (b) business customers to whom you provide between 1-3 voice-grade equivalent lines at one location; (c) business customers to whom you provide between 4-24 voice grade equivalent lines at one location; and (d) business customers to whom you provide 24 or more voice-grade equivalent lines (in one location), state the current average total monthly revenues earned per line served in the state by LATA and by MSA and specify the source of those revenues by service type.

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request C-1 to the extent it requests information that is not reasonably calculated to lead to the discovery of relevant and admissible evidence. Without limitation, Request C-1 is designed to elicit information about AT&T's specific revenues. This information may not be relevant to this proceeding because the FCC ordered the state commissions to base their impairment analysis on the forward-looking revenues of a hypothetical, efficient competitive provider, not the historic or estimated revenues of any one particular actual competitive provider. *See e.g.* TRO Order ¶ 517. Given the FCC's Order, to the extent possible, generally applicable and publicly available information should be used in the Commission's analysis.

RESPONSE: Reserving and without waiving these objections, AT&T states that it has no residential customers in North Dakota. With regard to (b)-(d), AT&T stands on its objections set forth above.

C-2. For each switch (e.g. circuit, packet, soft switch, etc.) currently used, or those that have been used, or that could be used to provide local service in the state (this would include switches located in other states that provide or have the ability to provide local exchange service in the state), state the initial cost of that switch, including installation and engineering costs, and the number of initial equipped lines.

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request C-2 to the extent it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of relevant or admissible evidence. Without limitation, Request C-2 is designed to elicit information about AT&T's costs. This information may not be relevant to this proceeding because the FCC ordered the state commissions to base their impairment analysis on the forward-looking costs of a hypothetical, efficient competitive provider, not the historic or estimated costs of any one particular actual competitive provider. *See e.g.* TRO Order ¶ 517. Given the FCC's Order, to the extent possible, generally applicable and publicly available information should be used in the Commission's analysis. AT&T further objects to Request C-2 as unduly burdensome to the extent it is vague and ambiguous and calls for speculation about switches that "could be used to provide local service in the state."

RESPONSE: Reserving and without waiving these objections, AT&T states that it has not used and does not currently use switches that could provide local service in North Dakota. See AT&T's response to Request A-1.

C-3. Describe in detail any instances in which your company is using, through a wholesale, lease, or resale arrangement, the switch of any entity other than and unaffiliated with an ILEC (e.g., another competitive local exchange carrier) to provide local exchange service to end users in the state. Include in your response the rates, terms, and conditions under which you are obtaining switching on a wholesale, lease, or resale basis.

RESPONSE: AT&T states that there are no such instances in North Dakota.

C-4.a. State whether your company is providing, or plans to provide, through a wholesale, lease or resale arrangement, capacity on any switches you own or operate in the state, or that own or operate in another state and that you use to provide local service in the state, to an unaffiliated entity. For any such instances, identify the rates, terms, and conditions under which you are making that switch capacity available. For each switch on which you are currently leasing or selling capacity to an unaffiliated entity, identify:

a. the make, model, age, and current software upgrades of each switch;

RESPONSE: AT&T states that it currently is not providing and does not plan to provide wholesale switching to any unaffiliated entity in North Dakota.

C-4.b

b. the geographic location of the switch;

RESPONSE: Not Applicable

C-4.c

c. the footprint or geographic area served by the switch, including a list of each exchange served by the switch; the features and functions (including software upgrades) available in the switch;

RESPONSE: Not Applicable

C-4.d

d. provide the capacity of each switch, including:
   (i) percentage of switch capacity in use;
   (ii) percentage of switch capacity reserved for your company's own use and future use; and
   (iii) percentage of current and future capacity of each switch that will be made available for CLEC use.

RESPONSE: Not Applicable

C-4.e

e. For each switch identified, please state in detail:
   (i) the anticipated service life of the switch; and
   (ii) whether your company intends to utilize the identified switch for the full anticipated service life.

RESPONSE: Not Applicable

B. Questions for Other Participants

B-1. Describe the hot cut process currently used to transfer lines from the ILEC switch to the CLEC facilities.

OBJECTIONS: AT&T objects to Request B-1 as set forth in the General Objections above.

RESPONSE: Reserving and without waiving these objections, see attached Adobe Acrobat file AT&T ND HOT CUT PROCESS DIAGRAM AND TASK LIST. Further, AT&T states that it is continuing to analyze this issue and AT&T's position is under development. To the extent responsive information is discovered or developed, AT&T will supplement this response or provide such responsive information in its prefiled testimony and exhibits in due course in accordance with the procedural schedule in the proceeding. However, AT&T is not in a position to provide further responsive information at this time.

B-2. List each task that is part of the current process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the source of the data; i.e. time/motion studies, SME analysis, etc.

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request B-2 to the extent it requests information that is not reasonably calculated to lead to the discovery of relevant and admissible evidence. Without limitation, Request B-2 is designed in part to elicit information about AT&T's specific costs. This information may not be relevant to this proceeding because the FCC ordered the state commissions to base their impairment analysis on the forward-looking costs of a hypothetical, efficient competitive provider, not the historic or estimated costs of any one particular actual competitive provider. *See e.g.* TRO Order ¶ 517. Given the FCC's Order, to the extent possible, generally applicable and publicly available information should be used in the Commission's analysis.

RESPONSE: See AT&T's response to Request B-1.

B-3. Describe a batch hot cut process that you would implement to meet the FCC's requirement to establish a batch hot cut process. Include an estimate of the maximum number of lines per batch.

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request B-3 to the extent it calls for a legal conclusion as to whether a batch hot cut process would meet the FCC's requirement.

RESPONSE: Reserving and without waiving these objections, see the electronically attached Adobe Acrobat File AT&T ND BATCH HOT CUT COMMENTS. Further, AT&T states that it is continuing to analyze these issues and AT&T's position is under development. To the extent additional responsive information is discovered or developed, AT&T will supplement this response or provide such responsive information in its prefiled testimony and exhibits in due course in accordance with the procedural schedule in the proceeding. However, AT&T is not in a position to provide further responsive information at this time.

B-4. List each task that is part of the batch hot cut process described in the answer to the preceding question. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate.

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request B-4 to the extent it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of relevant or admissible evidence. Without limitation, Request B-4 is designed in part to elicit information about AT&T's specific costs. This information may not be relevant to this proceeding because the FCC ordered the state commissions to base their impairment analysis on the forward-looking costs of a hypothetical, efficient competitive provider, not the historic or estimated costs of any one particular actual competitive provider. *See e.g.* TRO Order ¶ 517. Given the FCC's Order, to the extent possible, generally applicable and publicly available information should be used to estimate the costs of an efficient CLEC.

RESPONSE: See AT&T's response to Request B-3.

B-5. If UNE-P is no longer available, what monthly volumes of hot cuts would be required: (a) to migrate existing UNE-P customers to another form of service and (b) to connect new customers in the ordinary course of business. Provide supporting documentation for these volume estimates.

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request B-5 as unduly burdensome to the extent it calls for speculation regarding events that may or may not occur in the future and the implications and ramifications of such events.

RESPONSE: Reserving and without waiving these objections, AT&T states that it is continuing to analyze these issues and AT&T's position is under development. To the extent additional responsive information is discovered or developed, AT&T will supplement this response or provide such responsive information in its prefiled testimony and exhibits in due course in accordance with the procedural schedule in the proceeding. However, AT&T is not in a position to provide further responsive information at this time.

B-6 For each Qwest wire center in [state] in which CLEC provides retail switched local exchange service, please report the number of switched voice-grade equivalent lines in service per customer location that CLEC serves. Please provide this information in the following format:

WIRE CENTER:_____

	Customer Location	
Quantity of VGE	Residence	Business
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		

OBJECTIONS: AT&T objects to Request B-6 as set forth in the General Objections above.

RESPONSE: Reserving and without waiving these objections, AT&T states that it does not offer retail switched local exchange service in North Dakota.

B-7 For each switch CLEC owns, operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity within [state], please state whether the local switching capacity of the switch can be expanded through modular software and hardware additions. If you assert any obstacles to expansion, please identify and explain all such obstacles.

OBJECTIONS: AT&T objects to Request B-7 as set forth in the General Objections above.

RESPONSE: **[Confidential Information Redacted]**

B-8 Does CLEC believe that there are costs associated with converting or otherwise using a switch currently serving only enterprise customers to also serve mass market customers? If CLEC believes that there are such switching costs, please identify all such costs and explain why it would be necessary to incur them to begin serving mass market customers. Produce any documents or data that support your response.

OBJECTIONS: AT&T objects to Request B-8 as set forth in the General Objections above.

RESPONSE: See AT&T's response to B-7.

B-9.a Please provide, a) on a statewide basis, and b) on a central office-specific basis, monthly data for the past two years on customer "churn" (*i.e.*, percentage of your customers lost to another carrier) on all of the following bases:

(a) number of customers by customer type (*e.g.*, residential, business with one to three lines; business with more than three lines);

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request B-9.a to the extent it requests information that is not reasonably calculated to lead to the discovery of relevant and admissible evidence. Without limitation, Request B-9.a is designed to elicit information about AT&T's specific customer churn rates. This information may not be relevant to this proceeding because the FCC ordered the state commissions to base their impairment analysis on the forward-looking customer churn rates of a hypothetical, efficient competitive provider, not the historic or estimated customer churn rates of any one particular actual competitive provider. *See e.g.* TRO Order ¶ 517. Given the FCC's Order, to the extent possible, generally applicable and publicly available information should be used in the Commission's analysis.

RESPONSE: Reserving and without waiving these objections, AT&T states that it has no residential customers in North Dakota and does not keep records for its ADL services that would allow it to respond further to Request B-9.a.

B-9.b

(b) percentage of churn by customer type (*e.g.*, residential, business with one to three lines, business with more than three lines);

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request B-9.b to the extent it requests information that is not reasonably calculated to lead to the discovery of relevant and admissible evidence. Without limitation, Request B-9.b is designed to elicit information about AT&T's specific customer churn rates. This information may not be relevant to this proceeding because the FCC ordered the state commissions to base their impairment analysis on the forward-looking customer churn rates of a hypothetical, efficient competitive provider, not the historic or estimated customer churn rates of any one particular actual competitive provider. *See e.g.* TRO Order ¶ 517. Given the FCC's Order, to the extent possible, generally applicable and publicly available information should be used in the Commission's analysis.

RESPONSE: See AT&T's response to Request B-9.a.

B-9.c

(c) number of customers by service type (*i.e.*, local exchange voice service only, long distance voice service only, bundled local exchange and long distance voice services, and bundled local exchange, long distance, and DSL services);

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request B-9.c to the extent it requests information that is not reasonably calculated to lead to the discovery of relevant and admissible evidence. Without limitation, Request B-9.c is designed to elicit information about AT&T's specific customer churn rates. This information may not be relevant to this proceeding because the FCC ordered the state commissions to base their impairment analysis on the forward-looking customer churn rates of a hypothetical, efficient competitive provider, not the historic or estimated customer churn rates of any one particular actual competitive provider. *See e.g.* TRO Order ¶ 517. Given the FCC's Order, to the extent possible, generally applicable and publicly available information should be used in the Commission's analysis.

RESPONSE: See AT&T's response to Request B-9.a.

B-9.d

(d) percentage of churn by service type (*i.e.*, local exchange voice service only, long distance voice service only, bundled local exchange and long distance voice services, and bundled local exchange, long distance, and DSL services).

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request B-9.d to the extent it requests information that is not reasonably calculated to lead to the discovery of relevant and admissible evidence. Without limitation, Request B-9.d is designed to elicit information about AT&T's specific customer churn rates. This information may not be relevant to this proceeding because the FCC ordered the state commissions to base their impairment analysis on the forward-looking customer churn rates of a hypothetical, efficient competitive provider, not the historic or estimated customer churn rates of any one particular actual competitive provider. *See e.g.* TRO Order ¶ 517. Given the FCC's Order, to the extent possible, generally applicable and publicly available information should be used in the Commission's analysis.

RESPONSE: Reserving and without waiving these objections, AT&T states that it does not offer local exchange service in North Dakota. AT&T does not keep records for its ADL services that would allow it to respond further to Request B-9.d.

ECONOMIC ISSUES

B-10 For customers that purchase up to 24 voice grade equivalent lines please identify the types or categories of customer acquisition costs CLEC incurred in [state] in 2001 and 2002 to attract new customers, set up their accounts, and establish service to them. In addition, please provide the per line costs CLEC incurred in 2001 and 2002 for both business and residential customers for each of the types or categories of customer acquisition costs.

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request B-10 to the extent it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of relevant or admissible evidence. Without limitation, Request B-10 is designed to elicit information about AT&T's specific costs. This information may not be relevant to this proceeding because the FCC ordered the state commissions to base their impairment analysis on the forward-looking costs of a hypothetical, efficient competitive provider, not the historic or estimated costs of any one particular actual competitive provider. *See e.g.* TRO Order ¶ 517. Given the FCC's Order, to the extent possible, generally applicable and publicly available information should be used in the Commission's analysis.

RESPONSE: Reserving and without waiving these objections, AT&T states that it has no residential customers in North Dakota and does not keep records for its ADL services that would allow it to respond further to Request B-10.

B-11 For customers that purchase up to 24 voice grade equivalent lines please identify the monthly churn rate CLEC has experienced for local exchange customers in each month in which it has provided local exchange service in the [state] market. In answering this request, calculate the churn rate based upon the number of lines lost each year divided by the average number of lines in service that year. In calculating churn, do not include customers who move but stay with the company. Please produce all documents that refer or relate to the information you provide in response to this request.

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request B-11 to the extent it requests information that is not reasonably calculated to lead to the discovery of relevant and admissible evidence. Without limitation, Request B-11 is designed to elicit information about AT&T's specific customer churn rates. This information may not be relevant to this proceeding because the FCC ordered the state commissions to base their impairment analysis on the forward-looking customer churn rates of a hypothetical, efficient competitive provider, not the historic or estimated customer churn rates of any one particular actual competitive provider. *See e.g.* TRO Order ¶ 517. Given the FCC's Order, to the extent possible, generally applicable and publicly available information should be used in the Commission's analysis.

RESPONSE: Reserving and without waiving these objections, AT&T states that it does not offer local exchange service in North Dakota.

B-12 Please identify the percentage of customers that have left within one month of signing up for service, within two months of signing up for service, within three months of signing up for service, and within six months of signing up for service. Please provide this information in connection with CLECs churn rates in [state] for the most recent 24 months that are available for local exchange customers that purchase up to 24 voice grade equivalent lines. Please produce all documents that refer or relate to the information you provide in response to this request.

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request B-12 to the extent it requests information that is not reasonably calculated to lead to the discovery of relevant and admissible evidence. Without limitation, Request B-12 is designed to elicit information about AT&T's specific customer churn rates. This information may not be relevant to this proceeding because the FCC ordered the state commissions to base their impairment analysis on the forward-looking customer churn rates of a hypothetical, efficient competitive provider, not the historic or estimated customer churn rates of any one particular actual competitive provider. *See e.g.* TRO Order ¶ 517. Given the FCC's Order, to the extent possible, generally applicable and publicly available information should be used in the Commission's analysis.

RESPONSE: Reserving and without waiving these objections, AT&T states that it does not offer local exchange service in North Dakota.

B-13 For customers that purchase up to 24 voice grade equivalent lines please identify each rate plan that CLEC offers to local exchange customers in [state]. In addition, please identify the percentage of CLECs total local exchange customers in [state] that subscribe to each plan that you identify. Please produce all documents that reflect, refer or relate to the information you provide in response to this request.

OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request B-13 to the extent it requests information that is not reasonably calculated to lead to the discovery of relevant and admissible evidence. AT&T further objects to Request B-13 as unduly burdensome to the extent it requests information that is publicly available, such as tariffed rates.

RESPONSE: Reserving and without waiving these objections, AT&T states that it does not offer local exchange service in North Dakota. AT&T's rate plans in North Dakota are available at http://serviceguide.att.com/servicelibrary/business/ext/state_tariff_buss.cfm.

B-14 For rate plans identified in B.13. that include a per minute of use component, please provide the average long-distance per minute usage in [state] of CLECs local exchange customers who subscribe to such plans for the most recent 24 months available. Please produce all documents that reflect, refer, or relate to the information you provide in response to this request.

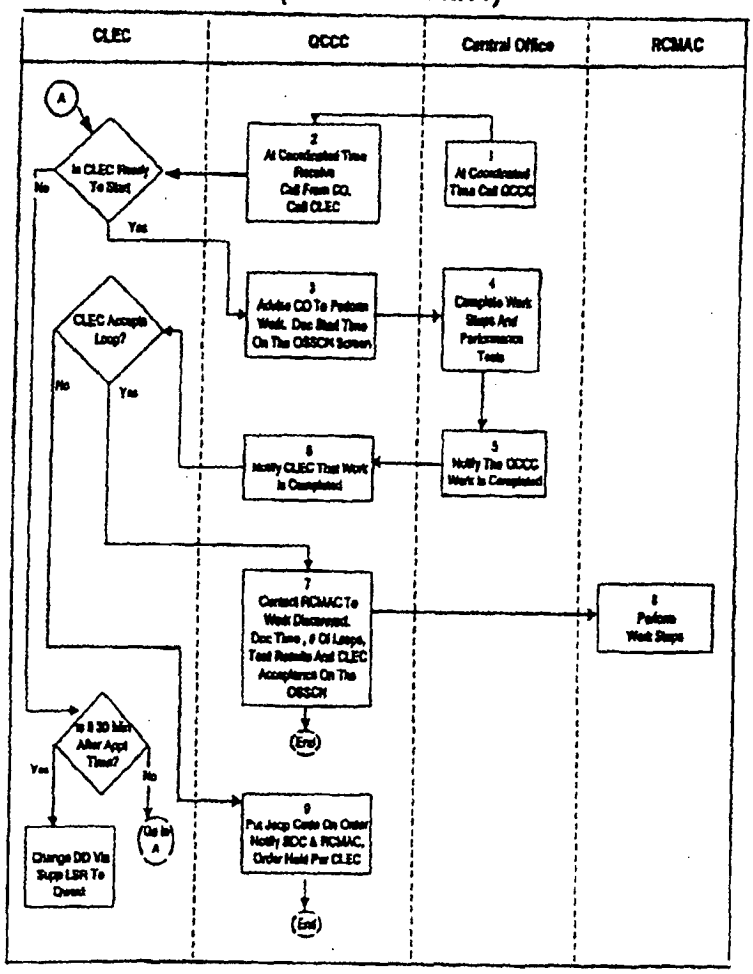
OBJECTIONS: In addition to the General Objections set forth above, AT&T objects to Request B-14 to the extent it requests information that is not reasonably calculated to lead to the discovery of relevant and admissible evidence. Without limitation, Request B-14 is designed to elicit information about AT&T's specific minutes of use. This information may not be relevant to this proceeding because the FCC ordered the state commissions to base their impairment analysis on a hypothetical, efficient competitive provider, not the actual experience of any one particular actual competitive provider. *See e.g.* TRO Order ¶ 517. Given the FCC's Order, to the extent possible, generally applicable and publicly available information should be used in the Commission's analysis.

RESPONSE: AT&T stands on its objections stated above.

B-15 For customers that purchase up to 24 voice grade equivalent lines how many CLEC-to-CLEC cross-connects has CLEC performed in [state] since June 2001? How many CLEC-to-CLEC cross-connects does CLEC maintain in [state] at present?

RESPONSE: AT&T states that it does not maintain any CLEC-to-CLEC cross-connects in North Dakota at present.

Coordinated "Hot Cut"
(reuse of facilities)



Coordinated Hot Cut Reuse Process Task List

Task #	Activity
1	At the requested appointment time the Qwest central office technician (COT) contacts the Qwest CLEC Coordination Center (QCCC) to indicate readiness to start the cut.
2	The QCCC contacts the CLEC to determine readiness.
3	QCCC advises the COT to start the cut and document the start time of the cut.
4	The COT performs the central office wiring and appropriate tests. The COT documents the start time of the "lift" and the end of the "lay" process
5	The COT notifies the QCCC that the work is complete and provides the QCCC with: the "lift" and "lay" time and the test results.
6	The QCCC documents the stop time of the cut and phones the CLEC that the work is complete providing test results. If the CLEC has purchased Cooperative or Performance Testing, the test results are also forwarded to the CLEC via email within two business days of order completion. .
7	Once CLEC accepts the loop, QCCC contacts RCMAC and documents the cut information manually on the form and electronically on the OSS-CN screen in WFA
8	RCMAC completes any necessary work.
9	CLEC does not accept the loop, the QCCC enters a jeopardy code on the order and notifies the Service Delivery Coordinator (SDC) and the RCMAC that the order will not be completed due to customer reasons.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition Investigation **Case No. PU-439-03-295**

AT&T'S COMMENTS AND COUNTER PROPOSALS ON QWEST'S REGION-WIDE BATCH LOOP CONVERSION PROCESS

AT&T Communications of the Midwest, Inc. ("AT&T") submits the following comments and counter proposals to Qwest's batch hot cut proposal.

I. INTRODUCTION

Fundamentally, every time a hot cut is performed, an incumbent local exchange carrier ("ILEC") technician must physically disconnect the customer's loop from the current carrier's switch and reconnect it to the new provider's network. Those same manual, loop-by-loop activities must be performed whether they are done for one customer or for a batch of customers. Qwest's proposal does nothing to change those fundamental facts. Instead, Qwest's proposal reinforces why the FCC found the hot cut process was a source of operational impairment and why the Federal Communications Commission ("FCC"): concluded that ILECs must offer competitive local exchange carriers ("CLECs") access to mass market switching.

That is not to say that AT&T is uninterested in having Qwest improve its current hot cut process. Any proposal that seeks to improve the efficiency, capacity, quality and cost of the current individual hot cut process is a welcome step in the right direction. However, based on AT&T's review, Qwest's proposal is but a very small step in what may prove to be a long journey to get agreement on a batch hot cut process that the

Commissions and the CLECs can support and meets the FCC's requirements. AT&T believes Qwest's proposal falls far short of curing the operational and economic impairments that exist with the current hot cut process.

AT&T finds Qwest's proposal to be either short on essential details or outright deficient in a number of critical areas such as cost, quality of service to the end user, scalability and functionality. As an initial matter, there are certain key principles that must be followed during the batch hot cut collaborative. The first key principle is that any process changes must consider the impact on Qwest, the CLEC(s)[1] and the CLEC's customer. For example, a process change that reduces Qwest's cost by $1.00 but increases a CLEC's cost by $2.00 is a change that should not be made. Qwest should not be the only party considered in the batch hot cut process design. A second key principle is that any process changes must consider the effect on all of the critical hot cut characteristics. For example, a change that reduces a cost but also increases the frequency of customer outages should not be made. Changes should not be viewed in isolation but should be viewed as part of the overall process. Unfortunately, many of Qwest's proposed changes fail to consider all of the affected parties or suboptimize one element at the expense of another. The following describes AT&T's primary concerns with each of these key areas. As AT&T better understands Qwest's proposal, it reserves the right to raise other concerns.

[1] Multiple CLECs will be involved for the migration of an unbundled loop from one CLEC's switch to another.

II. AT&T's CONCERNS

A. Cost of a Hot Cut

On page 3 of its proposal Qwest admits that it has not yet completed its detailed cost studies; however, they state "it appears that in **virtually every instance** these efficiencies will reduce Qwest's cost of performing a batch hot cut." Emphasis added. Qwest goes on to state on page 15 that "the batch conversion process that Qwest proposes above will yield significant additional efficiencies and in **most** states the CLEC community can expect to experience a significantly reduced rate." Emphasis added. The Commissions and the CLECs cannot rely on vague statements such as these to get a sense of whether Qwest's batch hot cut rates will even begin to address the economic impairment concerns expressed by the FCC in the Triennial Review Order ("TRO"). Before the Commission considers this proposal Qwest should be required to specifically state what its batch hot cut cost structure will be and provide the cost studies it conducted to support its proposed rates.

With respect to its current loop hot cut non-recurring costs, Qwest congratulates itself on page 15 of its proposal by stating, "As an initial matter, Qwest notes it is starting from a better position than many other incumbent LECs in this regard. The FCC found in the *Triennial Review Order* that currently hot cuts are '*often* priced at rates that prohibit facilities based competition for the mass market,' citing ILEC non-recurring charges exceeding $100 and as high as $185. But Qwest's hot cut charges across its region are not nearly this high. In virtually every state Qwest's current non-recurring charges for a basic hot cut range between $29.10 and $65.00." Footnotes omitted. What Qwest has failed to point out is that its coordinated installation with Cooperative Testing loop

installation option is as high as $171.87 per loop for the first installation. That rate would place Qwest at the upper end of the range discussed by the FCC. Even assuming a Qwest hot cut rate of $60[2] there remains much room for improvement to remedy the economic impairment experienced by the CLECs when trying to serve the mass market with unbundled loops. In contrast to the much less than $1.00 non-recurring charge the CLECs pay Qwest to migrate a customer to UNE-P, Qwest needs to make significant reductions in its hot cut non-recurring rates to make UNE-L a viable alternative for serving the mass market from a non-recurring charge perspective.[3]

B. Quality of Service

Using the current hot cut process, which requires a physical disconnection of the customer's line from its existing local service provider's switch and reconnecting it to the new service provider's switch, a service outage is unavoidable. When each of the steps of the process is done correctly this service outage can be measured in seconds. However, because of the manual nature of the process and all of the human touch points involved, there is a tremendous opportunity for human error and a resulting service outage. When performing an individual hot cut from retail to UNE-L these outages are a concern for the CLEC because it is the customer's first experience with the CLEC and the CLEC does not want it to be a negative experience. However, when this does happen, at least the CLEC can explain to its new customer that something went awry during the migration process. On UNE-P (or resale) to UNE-L conversions, where the

[2] The approved rate for a coordinated installation without cooperative testing is $59.81 in ten of the Qwest states.

[3] Of course there are other economic impairment issues that the CLECs will face when trying to serve the mass market with UNE-L such as the collocation and backhaul costs. These comments are only related to the economic impairment issues associated with the hot cut non-recurring charges.

batch hot cut process will most likely be used 100% of the time (see functionality section below), these service outages become even more of a concern for the CLEC. In these cases the customer already has his/her service with the CLEC and may have been doing business with that CLEC for an extended period of time. When a hot cut is performed on these customer's lines and an outage occurs, the customer can only think that the CLEC has a maintenance issue. Because the customer impacted by the outage did not request to have his/her service modified, any outage is viewed as poor performance on the part of the CLEC, even though it most likely would have been caused by Qwest. As far as this customer is concerned Qwest is not even in the picture. Therefore, it is of critical importance that hot cut migrations of existing CLEC UNE-P customers be as seamless and go as flawlessly as possible. It should also be noted that Qwest is not above taking advantage of quality problems experienced by CLEC customers that it may have created. Qwest has recently been running radio and television advertisements where it describes how a competitor "dropped the ball" with a customer and how Qwest saved the day.

Qwest's current batch hot cut proposal leaves much to be desired in the area of service assurance and quality. Fundamentally, Qwest's proposal sacrifices service assurance and quality for a reduction of a few process steps. There are many pitfalls Qwest's proposed process that put the CLEC's customers in jeopardy of an extended service outage. Some of the service quality concerns that AT&T has with Qwest's proposal include the following:

1. Batch Hot Cuts Limited to Basic Installation Only

One of the requirements of Qwest's proposed batch hot cut process is "basic installation only on batch conversions."[4] Qwest further underscores the unavailability of coordinated conversions when it states, "Coordinated and/or basic installation is still offered for business as usual activities – for example – requests not identified as part of the conversion or a part of a project managed hot cut."[5] Qwest's proposal to limit batch hot cuts to basic installation only significantly and negatively impacts the CLEC customer in two areas. The first area is that performance testing is not done with basic installation for existing customers. Qwest's SGAT states:

> 9.2.2.9.1.1 For an existing End User, the Basic Installation option is a "lift and lay" procedure. The Central Office Technician (COT) "lifts" the Loop from its current termination and "lays" it on a new termination connecting to CLEC. *There is no associated circuit testing performed.*[6]

Qwest identified the following testing activities as part of performance testing:

2-Wire and 4-Wire Analog Loops

- No Opens, Grounds, Shorts, or Foreign Volts
- Insertion Loss = 0 to -8.5 dB at 1004 Hz
- Automatic Number Identification (ANI) when dial-tone is present[7]

While Qwest does propose to check for dial tone and ANI, its proposal does not include the other types of performance testing. Qwest's proposal of only basic installation for batch hot cuts is nothing more than reducing the amount and level of testing that it typically does for hot cuts. Qwest's proposal to reduce testing will potentially result in negative impacts on CLEC customers.

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[4] Qwest BHCP – Exhibit 7, p. 1.
[5] *Id.*
[6] Colorado SGAT, March 4, 2003 (emphasis added).
[7] Colorado SGAT, March 4, 2003, § 9.2.2.9.6.

The second major problem with the basic installation only option is that it extends the period of time a customer cannot receive incoming calls. With a coordinated installation option, Qwest contacts the CLEC after the "lift and lay" procedure is completed. Once the CLEC is notified, the CLEC can complete the number portability activities. In contrast, with Qwest's new proposal, the CLEC will be notified only when every line in the batch has been completed.

Page 12 of Qwest's proposal states; "Upon completion of the orders identified on the batch spreadsheet, Qwest will notify the CLEC via email that it has completed the conversion. It remains the responsibility of the CLEC to ensure that each line is triggered for number porting upon completion of the order." This is totally unacceptable from a quality of customer service standpoint. From the moment that Qwest migrates the customer's line on the MDF to the time that the CLEC issues the trigger to port the customer's number, the customer cannot receive phone calls. Considering that Qwest has indicated that a batch project can be as many as 100 lines and Qwest has its technicians performing all of the work (e.g. pre-wiring, dial tone checks, telephone number verifications, and actual "lift and lay" cutover) to migrate these lines on the day of the cut it could literally take hours between the time the first lines are cut over to the CLEC and the CLEC is informed via email of the completion of the cutover. Leaving a customer without the ability to receive calls for this length of time is totally unacceptable. Qwest must revisit its position regarding the timing of the CLEC notification to make this proposal acceptable in this area.

Qwest's proposal of basic installation only clearly sacrifices the CLEC's customer's experience for some yet unquantified benefit.

2. Pre-wiring of the circuit

For individual hot cut orders, Qwest currently performs the Main Distribution frame ("MDF") pre-wiring of the CLEC's Connecting Facility Assignment ("CFA") to the loop two days prior to the cutover. This lead time gives the Qwest frame technician ample time to ensure all of the wiring work has been performed correctly, and is connected to the proper CFA assignment for CLEC's collocated equipment and to the proper cable and pair assignment for the customer's line. However, when this pre-wiring is performed on the day of the cutover, as proposed by Qwest's batch process, there is no margin for error on the part of the Qwest or the CLEC. Considering Qwest's frame technicians work on activities other than batch hot cuts, including individual hot cut orders, new line installs for both retail and wholesale customers, disconnect orders and trouble shooting of maintenance and repair trouble tickets, many times these technicians may be stressed to the limit to complete all of their work for that day. This is especially true in cases where the batch job approaches the Qwest proposed 100 line limit. AT&T feels that to help ensure continuity of customer service, this pre-wiring function must continue to have at least a one day lead time from the batch project due date. Qwest's proposal to eliminate the pre-wiring step sacrifices service quality and the customer's experience solely for Qwest's own efficiency.

3. Qwest's proposed spreadsheet

Qwest is short on details regarding how this spreadsheet is to be prepared and how it is going to be used. AT&T supports the use of an electronically prepared spreadsheet developed by Qwest's OSS's based on the information supplied on the

batch project LSRs. However, if it is Qwest's intention to develop these spreadsheets manually, this adds yet another human touch point to a process that is already very manual. Human errors on this spreadsheet will create confusion and possibly delay the project. They can also result in hot cuts being missed or service outages. Qwest must be required to provide additional details on how this spreadsheet is to be created, how it will be distributed to the stakeholders, what each stakeholder will use the spreadsheet for, how the spreadsheet will be synchronized with the CLEC's LSRs and Qwest's service orders and how errors found on the spreadsheet will be corrected. In addition, creation of a spreadsheet appears on Qwest's proposed process as a new step. It is likely that the spreadsheet creation step is going to put upward pressure on Qwest's already uneconomic hot cut costs.

4. Dial tone checks

Qwest's current hot cut process requires the central office frame technician to check for dial tone and verify the line for the proper telephone number two days prior to the scheduled cutover date. Whereas, Qwest's batch hot cut proposal has its technicians performing these verifications on the day of the cutover just prior to performing the conversion. If a problem is discovered with the CLEC dial tone, Qwest's proposal gives the CLEC one hour to remedy the problem. If the problem cannot be resolved, the affected line is removed from the project.

As was the case for the pre-wiring (item #2 above), AT&T is concerned that performing this quality check on the day of the cut leaves no margin for error for either Qwest or the CLEC. In cases where the no dial tone problem must be resolved by the CLEC, often times one hour is not going to be sufficient, especially in

instances where the CLEC must dispatch a technician to its collocated equipment. When the CLEC cannot quickly resolve these problems, the customer's line must be removed from the batch project. When this happens for multi-line customers, the CLEC must be assured that all lines for that customer are also removed from the project to insure continuity of features such as hunting arrangements. Considering the Qwest frame technicians will be working from either the individual internal service orders that are created for each line that is included in the project or from the proposed spreadsheet, it is not clear how the frame technician will be able to relate the orders to make the determination that the line with no dial tone is associated with a multi-line customer. It is also unclear how the technician will be able to determine the other lines that need to be removed from the project even though they are not experiencing the same no dial tone issues. Additionally, Qwest's proposal is silent on what occurs if the technician discovers a no dial tone condition or an incorrect telephone number on the customer's cable and pair on the line side of the frame.[8] This would be a problem that Qwest would need to correct. AT&T can only assume that these lines will also be removed from the project. If so, the same issue involving multi-line customers is of a concern. AT&T believes that without further details on how the dial tone checks will be performed and how the CLECs can be assured that the right lines are being removed from the project the proposal as written is too risky.

In addition, a Qwest decision to remove one or more lines from the project must be accompanied by a step to assure that Qwest does not disconnect the customer's service under the assumption that the cut would have been completed. In very short

[8] These problems can occur as a result of inaccurate cable and pair inventory records.

order, Qwest technicians must be able to communicate to Qwest's back office systems that an order has been removed from a project and to ensure that no associated disconnect orders are inadvertently completed.

5. CLEC notification

In addition to the previously mentioned problems with the timeliness of the notification, AT&T has a concern with regard to the quality of Qwest's notification process. Qwest's statement indicates that this notification will be based "upon completion of the orders identified on the batch spreadsheet" yet; as discussed in item 4 above, some line may have to be removed from the project even in cases where they did not have a no dial tone problem. Qwest has not indicated how the CLEC will know exactly which of the orders identified on the spreadsheet were cut over and which were not. Unless the CLEC has absolutely accurate information regarding the exact identification of the lines that were cut, the CLEC may port numbers that it should not be porting, thereby adversely impacting customer service.

C. Scalability

As an initial matter, Qwest claims that it provisions "1,000 hot cuts per day on average."[9] The most recent results that Qwest published for the OP-7 Coordinated "hot cut" interval – Unbundled loops – Analog measurement belie that claim. In September of 2003, Qwest completed 9,488 hot cuts in the entire 14-state region. Assuming a twenty day work month, Qwest averaged about 475 hot cuts a day in September of 2003 – nearly half of Qwest's claimed rate. Over the last year, Qwest's OP-7 results show that Qwest averaged about 400 analog loop hot cuts a day in its entire 14-state region. This

[9] Qwest Proposal, p. 7.

represents an average of 28 per workday per state. Qwest's current average daily volume of hot cuts in a state would barely make what Qwest identifies as a minimum batch for its proposed batch hot cut process. Either Qwest's claim of 1,000 hot cuts per day is erroneous, or Qwest is excluding significant volumes of hot cuts from the OP-7 results. Qwest needs to explain the incongruity between its claim of 1,000 hot cuts per day and its OP-7 results for analog loops.

The only specifics that can be found in Qwest's proposal regarding the scalability of the process is that an individual CLEC must have at least 25 and no more than 100 lines in a given CO to qualify for a batch project.[10] Qwest also, on page 14 of its proposal, makes the premature assumption of a finding of non-impairment and therefore lays out the timetable with vague and inaccurate formulas for determining how many hot cuts will be required to convert the embedded base of UNE-P customers. AT&T believes that the Commission should not take Qwest's assumption of a non-impairment finding seriously. Notwithstanding Qwest indulging itself with a little wishful thinking, Qwest needs to provide specific information in the following areas with respect to its ability to handle significantly larger numbers of hot cuts.

1. Limitations imposed on the process

Other than the stated limit of one project consisting of no more than 100 lines per day per CLEC, what other limits does Qwest impose on its process? Some examples of questions that Qwest needs to address are:

- Will Qwest work with multiple CLECs in the same central office on the same day if the sum of the CLECs' batch projects does not exceed 100 lines (e.g. four different CLECs where each CLEC had a bulk project of 25 lines)?

[10] One can assume that CLEC's who have more than 100 lines may break them up into individual batches of less than 100, however, that is not specified in the Qwest proposal.

- Does Qwest impose any limits on the number of CLECs that can migrate 100 lines in a central office in a day?
- Will Qwest allow a CLEC that had two different collocation arrangements in the same CO to include facilities in each of the arrangements on the same project?[11]
- Are there any limitations on the number of simultaneous batch projects Qwest is capable of working within a given geographic area?
- Are these projects limited to central offices that Qwest has staffed on a full time basis or can a project be performed in any central office?

2. Potential Hot Cut Volumes

Qwest's formulas for estimating the potential hot cut volumes it will be faced with in a mass market environment do not provide any specifics with respect to the number of actual hot cuts Qwest estimates it will have to perform during the 27 month transition period. Instead Qwest states, "To calculate the expected monthly volumes in each state, the state commissions should apply the following formulas based on the volumes of UNE-P lines and UNE-L lines in each individual state." Rather than ask the state commissions to estimate the hot cut volumes based on a formula that is neither clear nor accurate (e.g., the formula does not account for the significant hot cut activity that will be required by customer churn and Qwest win-backs), Qwest should come forward on a state by state basis with its estimate of how many hot cuts will be required each month. Qwest must also provide the details on how it came up with this estimate.

3. Additional Qwest Personnel

Assuming that Qwest's work centers, field technicians and central office frame technicians are currently working at optimal capacity, Qwest needs to disclose how many additional people it will need to add to its staff to meet the hot cut demand

[11] CLECs will sometimes have multiple collocation arrangements in the same central office as a result of an acquisition of another CLEC.

estimated in item #2 above. Qwest also needs to specify how it arrived at this estimate and how it plans on recruiting, hiring and training these people to ensure that they are qualified to perform the work that will be required of them without impacting customer service. Additionally, Qwest needs to reveal how the hiring of these additional people will impact the CLEC's hot cut costs.

D. Functionality of the proposed process

The Qwest proposal is extremely short on many of the details needed to determine whether its proposed batch hot cut process will be functional. Additionally, in other areas where Qwest did provide specific information it is clear that there is much room for improvement to make the process of value. Following are some of the specific areas of concern for AT&T with respect to the functionality of the process.

1. Project Intervals

Qwest must clearly state what its interval is between the time the CLEC initiates a request for a batch hot cut project and the due date for the project. In a robust market with many CLECs requesting batch projects these intervals cannot be individually negotiated on a project-by-project basis. Qwest must publish its standard interval for these jobs and be measured on its performance in meeting these intervals. This is particularly critical if a CLEC wants to use this process for a migration from Qwest retail to UNE-L, a migration that Qwest states is supported by its bulk process. Unless the CLEC can give its prospective customer a date certain of when the migration will occur this process can never be used for the migration of retail customers to a CLEC.[12]

[12] It is critical to note that even with standard intervals, unless the interval is reasonable (e.g. 6 business days or less), this process will be virtually useless for migrating retail customers to UNE-L.

Additionally, the introduction of a standard interval for requesting a batch hot cut project will eliminate the time/resource consuming step of conducting the initial batch hot cut project coordination meeting required by the Qwest proposal. With a standard interval a CLEC can initiate a project via a simplified email notification to Qwest of its intent to engage in a batch project. This email would supply Qwest with the details it will need, such as the central office location, the desired project date and time and the number of customer accounts and lines involved with the project. Qwest can respond to this email with the project code and a confirmation of the date which would trigger the CLEC to issue its LSRs. While Qwest's proposal is not entirely clear, it appears that unique Qwest-supplied project codes would be required on the individual LSRs that a CLEC submits as part of the batch. Qwest needs to clarify whether unique project codes are required on an LSR; and, if so, how those project codes are obtained.

2. The process must be voluntary

Qwest's proposal indicates on page 11 that at the initiation of a project request "a CLEC will perform pre-order functions including an initial batch coordination meeting with Qwest." The initiation of a batch project must be at the option of the CLEC and cannot be dictated by Qwest. There are many factors that would prevent a CLEC from wanting to perform a batch hot cut job in a specific central office, even in cases where the CLEC may have the requisite quantity of lines to qualify for a batch project. These factors include, but are not limited to, not having a collocation arrangement in the central office, not having sufficient spare capacity on the collocated equipment that the CLEC has in the central office and a temporary

congestion problem that the CLEC may be experiencing on its network. There should be no mistake that the batch hot cut process that the parties will be creating is voluntary on the part of the CLEC. A CLEC may conclude that Qwest has not reduced the economic or operational impairments of hot cuts sufficiently to justify converting a UNE-P customer to UNE-L. The true measure of the worth of Qwest's batch hot cut process will be seen when CLECs voluntarily choose to exercise that process.

3. Limits on loop types

Qwest's proposal limits the loop types that qualify for a batch project to analog POTS loops and further underscores the operational impairment involved with hot cuts. On page 9 of its proposal Qwest states, "A batch conversion process is possible for these analog DS0 loops, which constitute the vast majority of Qwest's outside plant. But it is not feasible to gain these efficiencies when the underlying facility uses integrated digital loop carrier systems ('IDLC')." AT&T agrees that when the Qwest network is viewed as a whole, the analog DS0 loops do constitute the majority of the loops. However, the batch job is not performed on a network-wide basis; it is performed at a central office level.

When viewed at a central office level, the IDLC restriction becomes a bit more problematic. Qwest has many large central offices with over 30,000 lines that have 30% or more IDLC lines. This is particularly true in states such as Arizona, Washington and Colorado that have experienced a high degree of growth over the past 10 years. In these states, as well as in some of the other states, there are many central offices that would have a large proportion of the loops that terminate in the

office precluded from the batch hot cut process under the current Qwest proposal. In fact there are a number of offices that have more than 50% of their lines on IDLC facilities.[13]

To make this process functional in a mass market environment, Qwest needs to revisit its removal of IDLC lines from the process. In addition, Qwest needs to disclose to the commission and the CLECs what its capacity is for migrating these lines in the high density offices to non-IDLC facilities as required for a hot cut. In wire centers with a high number of hot cuts, Qwest may be limited in the amount of spare copper/UDLC facilities it can use to overcome the IDLC problem. Qwest needs to explain how it will ensure the necessary inventory of spare non-IDLC facilities.

In addition to the restriction of IDLC loops, Qwest's proposal restricts the migration of line splitting loops. Qwest's rational for this is two-fold. First, Qwest states, "The FCC expressly defined its batch-cut requirements in terms of developing a process to migrate loops "from one carrier's local circuit switch to another carrier's *local circuit switch*." The FCC's definition of a 'batch cut process' thus does not include conversions including loop-splitting arrangements that also connect an unbundled loop to a third carrier's *packet* switch." Footnote omitted; emphasis added. Qwest goes on to state, "conversions from UNE-P directly to loop-splitting arrangements cannot be consolidated into a batch because each loop must be individually checked to ensure it is capable of carrying DSL signals and, if not,

[13] Per Qwest's ICONN database. See www.qwest.com/iconn.

conditioned."[14] It seems that on both of these points Qwest seems to have misstated the facts.

To the first point, when cutting over a loop to a CLEC using a line splitting arrangement, the voice frequency portion of the loop does not go to the CLEC's packet switch. After the loop is connected to the CLEC's splitter, the voice frequency is connected to the CLEC's circuit switch. Therefore, the line is being connected "from one carrier's local circuit switch to another carrier's local circuit switch" just as the FCC had envisioned. Secondly, it is highly unlikely that a customer who is receiving standalone POTS service via UNE-P is going to need to be migrated to a DSL capable loop as described by Qwest. However, it is very likely that a customer who is currently on a line splitting arrangement today where the voice service is provided via UNE-P will need to be converted to line splitting when the CLEC is using Qwest's loop and connecting the voice frequency to a CLEC's switch. In these cases there is no need to determine whether the loop requires conditioning for the DSL service because the customer is already receiving DSL service on a loop that is already meeting the requirements for a DSL service. Qwest's rational for restricting line splitting loops from the batch process is without merit. AT&T believes that Qwest should remove this restriction from its proposed process.

4. CLEC-to-CLEC migrations

Qwest's proposal indicates that its batch process will support CLEC-to-CLEC of migrations. However, Qwest is silent on how it plans to include these migrations into the ordering flow for a batch hot cut. Given the current lack of industry procedures

[14] See Qwest's proposal on pages 9 and 10.

on CLEC-to-CLEC migrations, AT&T believes that Qwest needs to provide specific details on how it plans to incorporate these types of migrations into a batch project.

5. Project cutover times

Qwest's proposal on page 13 states; "The CLEC must make resources readily available to clear all loops identified on the batch spreadsheet in a timely manner between the hours of 3:00PM CST and 11:00PM CST." For any of us who have sat around waiting for the telephone installer or repair person who is supposed to show up between the hours of 8 AM and 5 PM, we know how inefficient a use of time this is for the person kept waiting. In addition to providing the CLEC more timely notice on the status of the project as described in the "Quality of Service" section of this document, Qwest needs to be more specific as to what time the project is going to start and what time it anticipates it will end to allow the CLEC to properly plan the workload for its staff members. Additionally, there are going to be times when, because of the nature of the customers being cutover, a CLEC may not wish to have the migrations performed between the hours of 3:00PM and 11:00 PM. In these cases the Batch process should be flexible enough to allow the CLEC to request a batch hot cut project at any time of the day and on any day of the week.

6. Pending orders

The Qwest process has the CLEC issuing LSRs for the lines involved in the project. However, as stated in #1 above, without knowing what the interval is for these LSRs,they may be waiting a considerable amount of time in Qwest's systems as pending orders before the due date of the batch project. Considering that these orders will most likely be exclusively for existing CLEC customers, it is not clear what

happens to that order should the CLEC needs to issue an interim order to make a change on the existing customer's account (e.g. a feature change to a UNE-P customer). Additionally, Qwest needs to clarify what the process is for ensuring that the customer's line does not get migrated as part of the batch process in cases where the customer churned over to another carrier in the time between when the batch order was issued and the due date of the batch project.

7. Service outages

Qwest needs to make clear what the process is for the CLEC to quickly resolve service outages discovered after the CLEC receives the project completion notification. Specifically, will there be a process in place for a "throw-back" of the affected customer's line to its original state to quickly restore the customer's service, or will the CLEC have to go through the normal trouble reporting process? AT&T believes that Qwest needs to have a process in place that will allow Qwest and the CLEC to work cooperatively to restore the customer's service in an expedited time frame.

8. Testing the process

Qwest's proposal is also silent on how it proposes to test its batch hot cut proposal to make sure it is operational. Because the industry has absolutely no experience with operating in a mass market environment using a manual hot cut process, any process being proposed must be thoroughly tested to guarantee its operational readiness. Because of the incentive that Qwest has to make such a test appear that its proposed process is flawless, AT&T believes that this testing should be closely monitored by the Commissions and an independent third-party tester. Additionally, AT&T believes

that this test should not impact any CLEC customer's service and, therefore, should be conducted by having Qwest using its proposed process to migrate a significant number of its own retail customers from a direct connection of the customer's line from the existing Qwest switch over to another Qwest switch connected via collocated equipment located in the original central office. Testing should include independent third-party monitoring of the conversion activities and monthly monitoring of performance results for the converted customers.

III. CONCLUSION

AT&T is encouraged by the fact that Qwest has taken the initial step to propose a batch hot cut process. However, as indicated by these comments, AT&T has many serious concerns about the cost, customer impact, scalability and functionality of the process that was outlined by Qwest in its batch hot cut proposal. Additionally, AT&T is also concerned about the necessary details that were *not* addressed by Qwest.

AT&T looks forward to working collaboratively with Qwest and the other industry participants to work through the Qwest proposal to resolve these initial issues identified by AT&T and issues that are raised by other participants. This collaborative should also determine what other improvements need to be made to improve upon the Qwest proposal and make the batch hot cut process one that is beneficial to Qwest, the CLECs and, most importantly, to the end-user consumer.

Respectfully submitted on November 18, 2003.

AT&T COMMUNICATIONS
OF THE MIDWEST, INC.

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PUBLIC SERVICE COMMIISSION OF NORTH DAKOTA

IN RE:	)	
	)	**Docket No. PU-439-03-295**
Local Competition Investigation	)	

RESPONSES OF INTEGRA TELECOM OF NORTH DAKOTA, INC.
TO PRELIMINARY DISCOVERY REQUESTS DATED DECEMBER 3, 2003

PUBLIC VERSION

A. Requests to CLECs in responses to petitioning ILEC

Switching

1. Provide a list of all switches that you currently use to provide a qualifying service (as defined in 47 CFR sec. 51.5, as that section will be amended by the Final Rules issued by the FCC pursuant to the *Triennial Review Order)* anywhere in the state, regardless of whether the switch itself is located in the state. Do not include ILEC switches utilized by you on an unbundled basis in the ILEC's service territory or through the resale of the incumbent's services at wholesale rates.

RESPONSE: Switch located in St. Cloud, MN
CLLI: STCDMNES

2. Identify each ILEC wire center district (*i.e.* the territory served by a wire center of the ILEC) in which you provide qualifying service to any end user customers utilizing any of the switches identified in your response to Question 1. Wire centers should be identified by providing their name, address, and CLLI code.

RESPONSE:

Name:	Fargo/ Moorhead	West Fargo	Grand Forks/EGF
Address:			
CLLI:	FARGNDBC	WFRDNDBC	GDFRNBC

3. For each ILEC wire center identified in response to Question 2, identify the total number of voice-grade equivalent lines you are providing to customers in that wire center from your switch(es) identified in response to Question 1. For purposes of this question, "voice-grade equivalent lines" should be defined consistent with the FCC's use of the term.

RESPONSE: The information in response to Request No. A - 3 qualifies as Trade Secret data under NDAC Ch. 69-02-09 1 (b) because it reflects information relating to Integra Telecom of North Dakota, Inc.'s services and customers and location of such services and customers. Such information has independent economic value, is not generally known to, and not readily ascertainable by, competitors which could obtain economic value from the disclosure of this information. Integra is a privately-held company and does not share this information with third parties. Integra maintains this information as trade secret and requests that it be treated as nonpublic, trade secret data.

4. For each switch identified in response to Question 1, identify the approximate capacity of the switch – that is, the maximum number of voice-grade equivalent lines it is capable of serving – based on that switch's existing configuration and component parts.

RESPONSE: The information in response to Request No. A - 4 qualifies as Trade Secret data under NDAC Ch. 69-02-09 1 (b) because it reflects information relating to the capacity of Integra Telecom of North Dakota, Inc.'s switch. Such information has independent economic value, is not generally known to, and not readily ascertainable by, competitors which could obtain economic value from the disclosure of this information. Integra is a privately-held company and does not share this information with third parties. Integra maintains this information as trade secret and requests that it be treated as nonpublic, trade secret data.

5. With respect to the voice-grade equivalent identified in response to Question 3, separately indicate the number being provided to (a) residential customers; (b) business customers to whom you provide only voice-grade or DS0 lines.

RESPONSE: The information in response to Request No. A - 5 qualifies as Trade Secret data under NDAC Ch. 69-02-09 1 (b) because it reflects information relating to Integra Telecom of North Dakota, Inc.'s customers and types of service. Such information has independent economic value, is not generally known to, and not readily ascertainable by, competitors which could obtain economic value from the disclosure of this information. Integra is a privately-held company and does not share this information with third parties. Integra maintains this information as trade secret and requests that it be treated as nonpublic, trade secret data.

6. For each of the switches identified in your response to Question 1, state whether the switch is owned by you, or whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis. If the facility is not owned by you, identify the entity owning the switch and (if different) the entity with which you entered into the lease or other arrangement, identify the nature of the arrangement, and state whether such entity or entities are affiliates of yours, in the sense defined in Para. 408, footnote 1263 of the *Triennial Review Order*.

RESPONSE: Switch is owned by the Integra Telecom companies.

B. Questions for Petitioning ILECs

RESPONSE: n/a

C. Questions to both CLECs and ILECs – Switching

1. With respect to the voice-grade equivalent lines being provided to (a) residential customers; (b) business customers to whom you provide between 1-3 voice-grade equivalent lines at one location; (c) business customers to whom you provide between 4-24 voice-grade equivalent lines at one location; and (d) business customers to whom you provide 24 or more voice-grade equivalent lines (in one location), state the current average total monthly revenues earned per line served in the state by LATA and by MSA and specify the source of those revenues by service type.

RESPONSE: Integra Telecom of North Dakota, Inc. objects to Information Request No. C - 1 as information about average revenue per line is beyond the scope of the above entitled docket; the information request is unduly burdensome, and the information requested is not readily nor reasonably available to Integra in the form requested.

2. For each switch (e.g. circuit, packet, soft switch, etc.) currently used, or those that have been used, or that could be used to provide local service in the state (this would include switches located in other states that provide or have the ability to provide local exchange service in the state), state the initial cost of that switch, including installation and engineering costs, and the number of initial equipped lines.

RESPONSE: The information in response to Request No. C - 2 qualifies as Trade Secret data under NDAC Ch. 69-02-09 1 (b) because it reflects information relating to Integra Telecom of North Dakota, Inc.'s investment in its switch. Such information has independent economic value, is not generally known to, and not readily ascertainable by, competitors which could obtain economic value from the disclosure of this information. Integra is a privately-held company and does not share this information with third parties. Integra maintains this information as trade secret and requests that it be treated as nonpublic, trade secret data.

3. Describe in detail any instances in which your company is using, through a wholesale, lease, or resale arrangement, the switch of any entity other than and unaffiliated with an ILEC (e.g., another competitive local exchange carrier) to provide local exchange service to end users in the state. Include in your response the rates, terms, and conditions under which you are obtaining switching on a wholesale, lease, or resale basis.

RESPONSE: Integra Telecom of North Dakota, Inc. is not using any switch other than its own or Qwest's to provide service in North Dakota.

4. State whether your company is providing, or plans to provide, through a wholesale, lease, or resale arrangement, capacity on any switches you own or operate in the state, or that own or operate in another state and that you use to provide local service in the state, to an unaffiliated entity. For any such instances, identify the rates, terms and conditions under which you are making that switch capacity available. For each switch on which you are currently leasing or selling capacity to an unaffiliated entity, identify:

   a. the make, model, age, and current software upgrades of each switch;
   b. the geographic location of the switch;
   c. the footprint or geographic area served by the switch, including a list of each exchange served by the switch; the features and functions (including software upgrades) available in the switch;
   d. provide the capacity of each switch, including:
      (i) percentage of switch capacity in use;
      (ii) percentage of switch capacity reserved for your company's own use and future use; and
      (iii) percentage of current and future capacity of each switch that will be made available for CLEC use.
   e. For each switch identified, please state in detail:
      (i) the anticipated service life of the switch; and
      (ii) whether your company intends to utilize the identified switch for the full anticipated service life.

RESPONSE: Integra Telecom of North Dakota, Inc. is not providing any switching capacity in North Dakota and, at the present time, has no plans to do so.

REQUESTS FOR INFORMATION REGARDING THE DEVELOPMENT OF AN EFFICIENT LOOP MIGRATION PROCESS

A. Questions for Qwest

RESPONSE: n/a

B. Questions for Other Participants

1. Describe the hot cut process currently used to transfer lines from the ILEC switch to the CLEC facilities.

RESPONSE: Integra Telecom of North Dakota, Inc. is not currently using a hot cut process in North Dakota.

2. List each task that is part of the current process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the source of the data; i.e. time/motion studies, SME analysis, etc.

RESPONSE: Integra Telecom of North Dakota, Inc. is not currently using a hot cut process in North Dakota.

3. Describer a batch hot cut process that you would implement to meet the FCC's requirement to establish a batch hot cut process. Include an estimate of the maximum number of lines per batch.

RESPONSE: Integra does not foresee utilization of UNE-P as a significant part of its growth strategy, and therefore would not look to implement a batch hot cut process.

4. List each task that is part of the batch hot cut process described in the answer to the preceding question. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate.

RESPONSE: Integra does not foresee utilization of UNE-P as a significant part of its growth strategy, and therefore would not look to implement a batch hot cut process.

5. If UNE-P is no longer available, what monthly volumes of hot cuts would be required: (a) to migrate existing UNE-P customers to another form of service and (b) to connect new customers in the ordinary course of business. Provide supporting documentation for these volume estimates.

RESPONSE: Integra does not foresee utilization of UNE-P as a significant part of its growth strategy, and therefore would not look to implement a batch hot cut process.

6. For each Qwest wire center in North Dakota in which CLEC provides retail switched local exchange service, please report the number of switched voice-grade equivalent lines in service per customer location that CLEC serves. Please provide this information in the following format:

WIRE CENTER: _____

Quantity of VGE	Customer Location	
	Residence	Business
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		

RESPONSE: The information in response to Request No. B - 6 qualifies as Trade Secret data under NDAC Ch. 69-02-09 1 (b) because it reflects information relating to Integra Telecom of North Dakota, Inc.'s customers, locations, types and levels of service. Such information has independent economic value, is not generally known to, and not readily ascertainable by, competitors which could obtain economic value from the disclosure of this information. Integra is a privately-held company and does not share this information with third parties. Integra maintains this information as trade secret and requests that it be treated as nonpublic, trade secret data.

7. For each switch CLEC owns, operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity within North Dakota, please state whether the local switching capacity of the switch can be expanded through modular software and hardware additions. If you assert any obstacles to expansion, please identify and explain all such obstacles.

RESPONSE: Yes, Integra is able to expand the functionality/capacity of the switch through modular software and hardware additions. The only obstacles that Integra Telecom of North Dakota, Inc. can envision at the present time are: space and potential right of way, easement or property issues at the current location of the switch, labor issues and software/hardware supply issues.

8. Does CLEC believe that there are costs associated with converting or otherwise using a switch currently serving only enterprise customers to also serve mass market customers? If CLEC believes that there are such switching costs, please identify all such costs and explain why it would be necessary to incur them to begin serving mass market customers. Produce any documents or data that support your response.

RESPONSE: Unknown.

9. Please provide, a) on a statewide basis, and b) on a central office-specific basis, monthly data for the past two years on customer "churn" (i.e., percentage of your customers lost to another carrier) on all of the following bases:

(a) number of customers by customer type (e.g., residential, business with one to three lines; business with more than three lines);
(b) percentage of churn by customer type (e.g., residential, business with one to three lines; business with more than three lines);
(c) number of customers by service type (i.e. local exchange voice service only, long distance voice service only, bundled local exchange and long distance voice services, and bundled local exchange, long distance and DSL);
(d) percentage of churn by service type (i.e. local exchange voice service only, long distance voice service only, bundled local exchange and long distance voice services, and bundled local exchange, long distance and DSL).

RESPONSE: Integra Telecom of North Dakota, Inc. objects to Information Request No. B - 9 as information about customer churn as beyond the scope of the above entitled docket; the information request is unduly burdensome, and the information requested is not readily nor reasonably available to Integra in the form requested.

In addition, the information in response to Request No. B - 9 qualifies as Trade Secret data under NDAC Ch. 69-02-09 1 (b) because it reflects information relating to Integra Telecom of North Dakota, Inc.'s customer churn. Such information has independent economic value, is not generally known to, and not readily ascertainable by, competitors which could obtain economic value from the disclosure of this information. Integra is a privately-held company and does not share this information with third parties. Integra maintains this information as trade secret and requests that it be treated as nonpublic, trade secret data.

ECONOMIC ISSUES – FOR ALL PARTIES

10. For customers that purchase up to 24 voice grade equivalent lines please identify the types or categories of customer acquisition costs CLEC incurred in North Dakota in 2001 and 2002 to attract new customers, set up their accounts, and establish service to them. In addition, please provide the per line costs CLEC incurred in 2001 and 2002 for both business and residential customers for each of the types or categories of customer acquisition costs.

RESPONSE: Integra Telecom of North Dakota, Inc. objects to Information Request No. 10 as information about customer acquisition as beyond the scope of the above entitled docket; the information request is unduly burdensome, and the information requested is not readily nor reasonably available to Integra in the form requested.

In addition, the information in response to Request No. B - 10 qualifies as Trade Secret data under NDAC Ch. 69-02-09 1 (b) because it reflects information relating to Integra Telecom of North Dakota, Inc.'s customer churn. Such information has independent economic value, is not generally known to, and not readily ascertainable by, competitors which could obtain economic value from the disclosure of this information. Integra is a privately-held company and does not share this information with third parties. Integra maintains this information as trade secret and requests that it be treated as nonpublic, trade secret data.

11. For customers that purchase up to 24 voice grade equivalent lines please identify the monthly churn rate CLEC has experienced for local exchange customers in each month in which it has provided local exchange service in the North Dakota market. In answering this request, calculate the churn rate based upon the number of lines lost each year divided by the average number of lines in service that year. In calculating churn, do not include customers who move but stay with the company. Please produce all documents that refer or relate to the information you provide in response to this request.

RESPONSE: Integra Telecom of North Dakota, Inc. objects to Information Request No. B - 11 as information about customer churn as beyond the scope of the above entitled docket; the information request is unduly burdensome, and the information requested is not readily nor reasonably available to Integra in the form requested.

In addition, the information in response to Request No. B - 11 qualifies as Trade Secret data under NDAC Ch. 69-02-09 1 (b) because it reflects information relating to Integra Telecom of North Dakota, Inc.'s customer churn. Such information has independent economic value, is not generally known to, and not readily ascertainable by, competitors which could obtain economic value from the disclosure of this information. Integra is a privately-held company and does not share this information

with third parties. Integra maintains this information as trade secret and requests that it be treated as nonpublic, trade secret data.

12. Please identify the percentage of customers that have left within one month of signing up for service, within two months of signing up for service, within three months of signing up for service, and within six months of signing up for service. Please provide this information in connection with CLECs churn rates in North Dakota for the most recent 24 months that are available for local exchange customers that purchase up to 24 voice grade equivalent lines. Please produce all documents that refer or relate to the information you provide in response to this request.

RESPONSE: Integra Telecom of North Dakota, Inc. objects to Information Request No. B - 12 as information about customer churn as beyond the scope of the above entitled docket; the information request is unduly burdensome, and the information requested is not readily nor reasonably available to Integra in the form requested.

In addition, the information in response to Request No. B - 12 qualifies as Trade Secret data under NDAC Ch. 69-02-09 1 (b) because it reflects information relating to Integra Telecom of North Dakota, Inc.'s customer churn. Such information has independent economic value, is not generally known to, and not readily ascertainable by, competitors which could obtain economic value from the disclosure of this information. Integra is a privately-held company and does not share this information with third parties. Integra maintains this information as trade secret and requests that it be treated as nonpublic, trade secret data.

13. For customers that purchase up to 24 voice grade equivalent lines please identify each rate plan that CLEC offers to local exchange customers in North Dakota. In addition, please identify the percentage of CLECs total local exchange customers in North Dakota that subscribe to each plan that you identify. Please produce all documents that reflect, refer or relate to the information you provide in response to this request.

RESPONSE: All rate plans are set forth in Integra Telecom of North Dakota, Inc. 's tariff on file with the North Dakota Public Service Commission. Integra will soon be filing a revised tariff in accordance with the rules and regulations.

14. For rate plans identified in B.13 that include a per minute of use component, please provide the average long-distance per minute usage in North Dakota of CLECs local exchange customers who subscribe to such plans for the most recent 24 months available. Please produce all documents that reflect, refer, or relate to the information you provide in response to this request.

RESPONSE: All rate plans are set forth in Integra Telecom of North Dakota, Inc. 's tariff on file with the North Dakota Public Service Commission. Integra will soon be filing a revised tariff in accordance with the rules and regulations.

15. For customers that purchase up to 24 voice-grade equivalent lines how many CLEC-to-CLEC cross-connects has CLEC performed in North Dakota since June 2001? How many CLEC-to-CLEC cross-connects does CLEC maintain in North Dakota at present?

RESPONSE: Integra Telecom of North Dakota, Inc. has not performed any cross-connects since June 2001 and does not maintain any cross-connects at the present time.

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STATE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

RESPONSE OF POLAR TELECOM, INC.
TO PRELIMINARY DISCOVERY REQUESTS
NORTH DAKOTA TRO PROCEEDING

A. Requests to CLECs in response to petitioning ILEC

Switching

1. Provide a list of all switches that you currently use to provide a qualifying service (as defined in 47 C.F.R. § 51.5, as that section will be amended by the Final Rules issued by the FCC pursuant to the *Triennial Review Order*) anywhere in the state, regardless of whether the switch itself is located in the state. Do not include ILEC switches utilized by you on an unbundled basis in the ILEC's service territory or through the resale of the incumbent's services at wholesale rates.

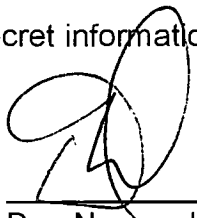
   RESPONSE: Polar Telecom, Inc., (herein Polar CLEC) is a CLEC providing competitive local exchange services in the Mayville-Portland Qwest local exchange. It utilizes a Siemens EWSV switch located in Park River, North Dakota.

2. Identify each ILEC wire center district (*i.e.*, the territory served by a wire center of the ILEC) in which you provide qualifying service to any end user customers utilizing any of the switches identified in your response to Question 1. Wire centers should be identified by providing their name, address, and CLLI code.

   RESPONSE: Mayville-Portland, North Dakota, MYVLNDO1, 703 Main Street West, Mayville, North Dakota 58257.

3. For each ILEC wire center identified in response to Question 2, identify the total number of voice-grade equivalent lines you are providing to customers in that wire center from your switch(es) identified in response to Question 1. For purposes of this question, "voice-grade equivalent lines" should be defined consistent with the FCC's use of the term.

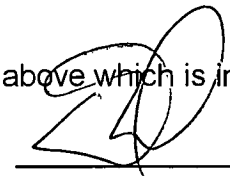
RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. The information will be provided if this concern is met.



Don Negaard

4. For each switch identified in response to Question 1, identify the approximate capacity of the switch – that is, the maximum number of voice-grade equivalent lines it is capable of serving – based on that switch's existing configuration and component parts.

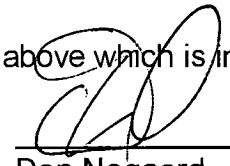
RESPONSE: See response to number 3 above which is incorporated by reference.



Don Negaard

5. With respect to the voice-grade equivalent lines identified in response to Question 3, separately indicate the number being provided to (a) residential customers; (b) business customers to whom you provide only voice-grade or DS0 lines.

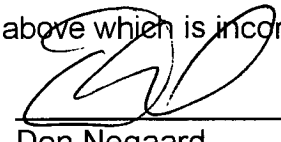
RESPONSE: See response to number 3 above which is incorporated by reference.



Don Negaard

6. For each of the switches identified in your response to Question 1, state whether the switch is owned by you, or whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis. If the facility is not owned by you, identify the entity owning the switch and (if different) the entity with which you entered into the lease or other arrangement, identify the nature of the arrangement, and state whether such entity or entities are affiliates of yours, in the sense defined in ¶ 408, footnote 1263 of the *Triennial Review Order.*

RESPONSE: See response to number 3 above which is incorporated by reference.



Don Negaard

Without waiving any objections, the switch is leased from Polar Communications.

C. Questions to both CLECs and ILEC – Switching

1. With respect to the voice-grade equivalent lines being provided to (a) residential customers; (b) business customers to whom you provide between 1-3 voice-grade equivalent lines at one location; (c) business customers to whom you provide between 4-24 voice grade equivalent lines at one location; and (d) business customers to whom you provide 24 or more voice-grade equivalent lines (in one location), state the current average total monthly revenues earned per line served in the state by LATA and by MSA and specify the source of those revenues by service type.

   RESPONSE: This CLEC does now own a switch so this question is deemed not applicable. If it is deemed applicable, this question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

   Don Negaard

2. For each switch (e.g. circuit, packet, soft switch, etc.) currently used, or those that have been used, or that could be used to provide local service in the state (this would include switches located in other states that provide or have the ability to provide local exchange service in the state), state the initial cost of that switch, including installation and engineering costs, and the number of initial equipped lines.

   RESPONSE: See response to number C(1) above.

   Don Negaard

   Without waiving the above objection, this CLEC would advise that it is using its own voice grade lines without any impairment in its ability to compete at this time.

3. Describe in detail any instances in which your company is using, through a wholesale, lease, or resale arrangement, the switch of any entity other than and unaffiliated with an ILEC (e.g., another competitive local exchange carrier) to provide local exchange service to end users in the state. Include in your response the rates, terms, and conditions under which you are obtaining switching on a wholesale, lease, or resale basis.

RESPONSE: See response to number C(1) above.

Don Negaard

4. State whether your company is providing, or plans to provide, through a wholesale, lease or resale arrangement, capacity on any switches you own or operate in the state, or that own or operate in another state and that you use to provide local service in the state, to an unaffiliated entity. For any such instances, identify the rates, terms, and conditions under which you are making that switch capacity available. For each switch on which you are currently leasing or selling capacity to an unaffiliated entity, identify:

   a. the make, model, age, and current software upgrades of each switch;
   b. the geographic location of the switch;
   c. the footprint or geographic area served by the switch, including a list of each exchange served by the switch; the features and functions (including software upgrades) available in the switch;
   d. provide the capacity of each switch, including:
      (i) percentage of switch capacity in use;
      (ii) percentage of switch capacity reserved for your company's own use and future use; and
      (iii) percentage of current and future capacity of each switch that will be made available for CLEC use.
   e. For each switch identified, please state in detail:
      (i) the anticipated service life of the switch; and
      (ii) whether your company intends to utilize the identified switch for the full anticipated service life.

RESPONSE: See response to number C(1) above.

Don Negaard

B. Questions for Other Participants

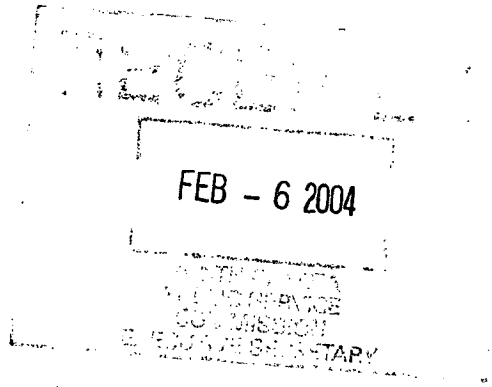
Polar does not deem itself an "Other Participant." In the event it is determined that this party is an "Other Participant," Polar wishes to avail itself of the objections set forth in number A(3) above.

Don Negaard

Dated this 2nd day of February, 2004.

POLAR TELECOM, INC.

By: David L. Dunning
Executive Vice President
110 4th Street East
Park River, ND 58270



Dated this 15th day of January, 2004.

POLAR TELECOM, INC.

_____

By: David L. Dunning, Manager
110 4th Street East
Park River, ND 58270
Attorneys for Rural Telephone Company Group
Second Floor, Bremer Bank Building
20 1st Street SW
P.O. Box 1000
Minot, ND 58702-1000
(701) 852-0381

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Local Competition
Investigation

Case No. PU-439-03-295

RESPONSE OF DAKTEL COMMUNICATIONS, L.L.C.
TO PRELIMINARY DISCOVERY REQUESTS
NORTH DAKOTA TRO PROCEEDING

RECEIVED
JAN 16 2004

A. Requests to CLECs in response to petitioning ILEC

Switching

1. Provide a list of all switches that you currently use to provide a qualifying service (as defined in 47 C.F.R. § 51.5, as that section will be amended by the Final Rules issued by the FCC pursuant to the *Triennial Review Order*) anywhere in the state, regardless of whether the switch itself is located in the state. Do not include ILEC switches utilized by you on an unbundled basis in the ILEC's service territory or through the resale of the incumbent's services at wholesale rates.

   RESPONSE: Daktel Communications, L.L.C., (herein DC CLEC) is a CLEC providing competitive local exchange services in the Jamestown Qwest local exchange. It utilizes a Nortel DMS-10 switch located in Carrington, North Dakota.

2. Identify each ILEC wire center district (*i.e.*, the territory served by a wire center of the ILEC) in which you provide qualifying service to any end user customers utilizing any of the switches identified in your response to Question 1. Wire centers should be identified by providing their name, address, and CLLI code.

   RESPONSE: Jamestown, North Dakota, JMTWNDBC25G, 312 1st Avenue North, Jamestown, North Dakota 58401.

3. For each ILEC wire center identified in response to Question 2, identify the total number of voice-grade equivalent lines you are providing to customers in that wire center from your switch(es) identified in response to Question 1. For purposes of this question, "voice-grade equivalent lines" should be defined consistent with the FCC's use of the term.

RESPONSE: This question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information. The information will be provided if this concern is met.

Don Negaard

4. For each switch identified in response to Question 1, identify the approximate capacity of the switch – that is, the maximum number of voice-grade equivalent lines it is capable of serving – based on that switch's existing configuration and component parts.

RESPONSE: See response to number 3 above which is incorporated by reference.

Don Negaard

5. With respect to the voice-grade equivalent lines identified in response to Question 3, separately indicate the number being provided to (a) residential customers; (b) business customers to whom you provide only voice-grade or DS0 lines.

RESPONSE: See response to number 3 above which is incorporated by reference.

Don Negaard

6. For each of the switches identified in your response to Question 1, state whether the switch is owned by you, or whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis. If the facility is not owned by you, identify the entity owning the switch and (if different) the entity with which you entered into the lease or other arrangement, identify the nature of the arrangement, and state whether such entity or entities are affiliates of yours, in the sense defined in ¶ 408, footnote 1263 of the *Triennial Review Order*.

RESPONSE: See response to number 3 above which is incorporated by reference.

Don Negaard

Without waiving any objections, the switch is leased from Dakota Central Telecommunications Cooperative.

C. Questions to both CLECs and ILEC – Switching

1. With respect to the voice-grade equivalent lines being provided to (a) residential customers; (b) business customers to whom you provide between 1-3 voice-grade equivalent lines at one location; (c) business customers to whom you provide between 4-24 voice grade equivalent lines at one location; and (d) business customers to whom you provide 24 or more voice-grade equivalent lines (in one location), state the current average total monthly revenues earned per line served in the state by LATA and by MSA and specify the source of those revenues by service type.

RESPONSE: This CLEC does now own a switch so this question is deemed not applicable. If it is deemed applicable, this question is objected to on the basis that it calls for disclosure of proprietary and highly sensitive trade secret information.

Don Negaard

2. For each switch (e.g. circuit, packet, soft switch, etc.) currently used, or those that have been used, or that could be used to provide local service in the state (this would include switches located in other states that provide or have the ability to provide local exchange service in the state), state the initial cost of that switch, including installation and engineering costs, and the number of initial equipped lines.

RESPONSE: See response to number C(1) above.

Don Negaard

Without waiving the above objection, this CLEC would advise that it is using its own voice grade lines without any impairment in its ability to compete at this time.

3. Describe in detail any instances in which your company is using, through a wholesale, lease, or resale arrangement, the switch of any entity other than and unaffiliated with an ILEC (e.g., another competitive local exchange carrier) to

provide local exchange service to end users in the state. Include in your response the rates, terms, and conditions under which you are obtaining switching on a wholesale, lease, or resale basis.

RESPONSE: See response to number C(1) above.

Don Negaard

4. State whether your company is providing, or plans to provide, through a wholesale, lease or resale arrangement, capacity on any switches you own or operate in the state, or that own or operate in another state and that you use to provide local service in the state, to an unaffiliated entity. For any such instances, identify the rates, terms, and conditions under which you are making that switch capacity available. For each switch on which you are currently leasing or selling capacity to an unaffiliated entity, identify:

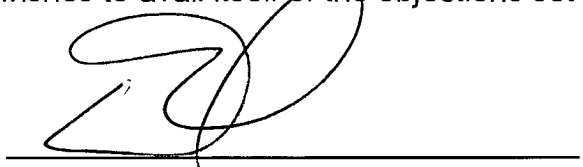
   a. the make, model, age, and current software upgrades of each switch;
   b. the geographic location of the switch;
   c. the footprint or geographic area served by the switch, including a list of each exchange served by the switch; the features and functions (including software upgrades) available in the switch;
   d. provide the capacity of each switch, including:
      (i) percentage of switch capacity in use;
      (ii) percentage of switch capacity reserved for your company's own use and future use; and
      (iii) percentage of current and future capacity of each switch that will be made available for CLEC use.
   e. For each switch identified, please state in detail:
      (i) the anticipated service life of the switch; and
      (ii) whether your company intends to utilize the identified switch for the full anticipated service life.

RESPONSE: See response to number C(1) above.

Don Negaard

B. Questions for Other Participants

Daktel does not deem itself an "Other Participant." In the event it is determined that this party is an "Other Participant," Daktel wishes to avail itself of the objections set forth in number A(3) above.



Don Negaard

Dated this 2nd day of February, 2004.

FEB – 6 2004

DAKTEL COMMUNICATIONS, L.L.C.

Keith A Larson

By: Keith A. Larson, Manager
630 5th Street North
Carrington, ND 58421

857-1361

Dated this 15th day of January, 2004.

DAKTEL COMMUNICATIONS, L.L.C.

By: Keith A. Larson, Manager
630 5th Street North
Carrington, ND 58421

RECEIVED
JAN 15 2004

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Qwest Corporation
Local Competition
Investigation

Case No. PU-439-03-295

MIDCONTINENT COMMUNICATIONS RESPONSES TO PRELIMINARY DISCOVERY REQUESTS QWEST ROC STATE TRO PROCEEDINGS
October 31, 2003

A. Requests for information submitted to CLECs in response to petitioning ILEC

Switching

Request No. 1: Provide a list of all switches that you currently use to provide a qualifying service (as defined in 47 C.F.R. § 51.5, as that section will be amended by the Final Rules issued by the FCC pursuant to the Triennial Review Order) anywhere in the state, regardless of whether the switch itself is located in the state. Do not include ILEC switches utilized by you on an unbundled basis in the ILEC's service territory or through the resale of the incumbent's services at wholesale rates.

Response to No. 1: None

Request No. 2: Identify each ILEC wire center district (i.e., the territory served by a wire center of the ILEC) in which you provide qualifying service to any end user customers utilizing any of the switches identified in your response to Question 1. Wire centers should be identified by providing their name, address, and CLLI code.

Response to No. 2: N/A

Request No. 3: For each ILEC wire center identified in response to Question 2, identify

the total number of voice-grade equivalent lines[1] you are providing to customers in that wire center from your switch(es) identified in response to Question 1. For purposes of this question, "voice-grade equivalent lines" should be defined consistent with the FCC's use of the term.

Response to No. 3: N/A

Request No. 4: For each switch identified in response to Question 1, identify the approximate capacity of the switch – that is, the maximum number of voice-grade equivalent lines it is capable fo serving – based on that switch's existing configuration and component parts.

Response to No. 4: N/A

Request No. 5: With respect to the voice-grade equivalent lines identified in response to Question 3, separately indicate the number being provided to (a) residential customers; (b) business customers to whom you provide only voice-grade lines.

Response to No. 5: N/A

Request No. 6: For each of the switches identified in your response to Question 1, state whether the switch is owned by you, or whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis. If the facility is not owned by you, identify the entity owning the switch and (if different) the entity with which you entered into the lease or other arrangement, identify the nature of the arrangement, and state

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[1] [1] Voice-grade equivalent lines would include DS0 lines and , by the definition in FCC Form 477, Instructions for the Local Competition and Broadband Reporting Form include traditional analog POTS lines, Centrex-CO extensions and Centrex-CE trunks. Line counts are based on how they are charged to the customer rather than how they are physically provisioned (e.g. 2-wire copper, VoIP, fiber).

whether such entity or entities are affiliates of yours, in the sense defined in ¶ 408, footnote 1263 of the *Triennial Review Order.*

Response to No. 6: N/A

B. Questions for Petitioning ILECs

N/A.

C. Questions to both CLECs and ILEC – Switching

Request No. 1: With respect to the voice-grade equivalent lines being provided to (a) residential customers; (b) business customers to whom you provide between 1-3 voice-grade equivalent lines at one location; (c) business customers to whom you provide between 4-24 voice grade equivalent lines at one location; and (d) business customers to whom you provide 24 or more voice-grade equivalent lines (in one location), state the current average total monthly revenue earned per line served in the state by LATA and by MSA and specify the source of those revenues by service type.

Response to No. 1: Under separate application – **HIGHLY CONFIDENTIAL DATA.**

Request No. 2: For each switch (e.g. circuit, packet, soft switch, etc.) currently used, or those that have been used, or that could be used to provide local service in the state (this would include switches located in other states that provide or have the ability to provide local exchange service in the state), state the initial cost of that switch, including installation and engineering costs, and the number of initial equipped lines.

Response to No. 2: Under separate application – **HIGHLY CONFIDENTIAL DATA.**

Request No. 3: Describe in detail any instances in which your company is using, through a wholesale, lease, or resale arrangement, the switch of any entity other than and

unaffiliated with an ILEC (.e.g, another competitive local exchange carrier) to provide local exchange service to end users in the state. Include in your response the rates, terms, and conditions under which you are obtaining switching on a wholesale, lease, or resale basis.

Response to No. 3: N/A.

Request 4: State whether your company is providing, or plans to provide, through a wholesale, lease or resale arrangement, capacity on any switches you own or operate in the state, or that own or operate in another state and that you use to provide local service in the state, to an unaffiliated entity. For any such instances, identify the rates, terms, and conditions under which you are making that switch capacity available. For each switch on which you are currently leasing or selling capacity to an unaffiliated entity, identify:

a. the make, model, age, and current software upgrades of each switch;

b. the geographic location of the switch;

c. the footprint or geographic area served by the switch, including a list of each exchange served by the switch; the features and functions 9including software upgrades) available in the switch;

d. provide the capacity of each switch, including:

(i) percentage of switch capacity in use;

(ii) percentage of switch capacity reserved for your company's own use and future use; and

(iii) percentage of current and future capacity of each switch that will be made available for CLEC use.

c. For each switch identified, please state in detail:

(i) the anticipated service life of the switch; and

(ii) whether your company intends to utilize the identified switch for the full anticipated service life.

Response to No. 4: N/A.

REQUESTS FOR INFORMATION REGARDING THE DEVELOPMENT OF AN EFFICEINT LOOP MIGRATION PROCESS

A. Questions for Qwest

N/A.

B. Questions for Other Participants

Request No. 1: Describe the hot cut process currently used to transfer lines from the ILEC switch to the CLEC facilities.

Response to No. 1: Midcontinent does not provide UNE service in ND.

Request No. 2: List each task that is part of the current process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process; the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the source of the data; i.e. time/motion studies, SME analysis, etc.

Response to No. 2: Information not available.

Request No. 3: Describe a batch hot cut process that you would implement to meet the FCC's requirement to establish a batch hot cut process. Include an estimate of the maximum number of lines per batch.

Response to No. 3: It's very difficult to describe a hot cut process. Midcontinent agrees with AT&T and MCI, that Qwest has a good start on what the Batch Hot Cut process should be but the details still need to be worked out. For example: intervals, how many per day can Qwest process in a given area, how will CLEC to CLEC migrations be handled.

Request No. 4: List each task that is part of the batch hot cut process described in the answer to the preceding question. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate.

Response to No. 4: See above.

Request No. 5: If UNE-P is no longer available, what monthly volumes of hot cuts would be required: (a) to migrate existing UNE-P customers to another form of service and (b) to connect new customers in the ordinary course of business. Provide supporting documentation for these volume estimates.

Response to No. 5: UNE-P to resold is a billing change and not a technical change. Since Midcontinent does not have a switch in ND, we do not know about migration requirements for other services.

Request No. 6: For each Qwest wire center in (state) in which CLEC provides retail switched local exchange service, please report the number of switched voice-grade equivalent lines in service per customer location that CLEC serves. Please provide this information in the following format:

WIRE CENTER:

	Customer Location	
Quantity of VGE	Residence	Business
1		
2		
3		
4		
5		
6		
7		
8		

Response to No. 6: Under separate application – CONFIDENTIAL DATA.

Request No. 7: For each switch CLEC owns, operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity with (state), please state whether the local switching capacity of the switch can be expanded through modular software and hardware additions. If you assert any obstacles to expansion, please identify and explain all such obstacles.

Response to No. 7: N/A

Request No. 8: Does CLEC believe that there are costs associated with converting or otherwise using a switch currently serving only enterprise customers to also serve mass market customers? If CLEC believes that there are such switching costs, please identify all such costs and explain why it would be necessary to incur them to begin serving mass market customers. Produce any documents or data that support your response.

Response to No. 8: N/A. We would use a switch that serves both.

Request No. 9: Please provide, a) on a statewide basis, and b) on a central office-

specific basis, monthly data for the past two years on customer "churn" (i.e., percentage of your customers lost to another carrier) on all of the following bases:

(a) number of customers by customer type (e.g., residential, business with one to three lines; business with more than three lines);

(b) percentage of churn by customer type (e.g., residential business with one to three lines, business with more than three lines);

(c) number of customers by service type (i.e., local exchange voice service only, long distance voice service only, bundled local exchange and long distance voice services, and bundled local exchange, long distance, and DSL services);

(d) percentage of churn by service type (i.e., local exchange voice service only, long distance voice service only, bundled local exchange and long distance voice services, and bundled local exchange, long distance, and DSL service).

Response to No. 9: Not Available.

ECONOMIC ISSUES:

Request No. 10: For customer that purchase up to 24 voice grade equivalent lines please identify the types or categories of customer acquisition costs CLEC incurred in (state) in 2001 and 2002 to attract new customers, set up their accounts, and establish service to them. In addition, please provide the per line costs CLEC incurred in 2001 and 2002 for both business and residential customers for each of the types or categories of customer acquisition costs.

Response to No. 10: None.

Request No. 11: For customers that purchase up to 24 voice grade equivalent lines please identify the monthly churn rate CLEC has experienced for local exchange customers in each month in which it has provided local exchange customers in each month in which it has provided local exchange service in the (state) market. In answering this request, calculate the churn rate based upon the number of lines lost each year divided by the average number of lines in service that year. In calculating churn, do not include customers who move but stay with the company. Please produce all documents that refer or relate to the information you provide in response to this request.

Response to No. 11: N/A.

Request No. 12: Please identify the percentage of customers that have left within one month of signing up for service, within two months of signing up for service, within three months of signing up for service, and within six months of signing up for service. Please provide this information in connection with CLECs churn rates in (state) for the most recent 24 months that are available for local exchange customers that purchase up to 24 voice grade equivalent lines. Please produce all documents that refer or relate to the information you provide in response to this request.

Response to No. 12: Not tracked.

Request No. 13: For customers that purchase up to 24 voice grade equivalent lines please identify each rate plan that CLEC offers to local exchange customers in (state). In addition, please identify the percentage of CLECs total local exchange customers in (state) that subscribe to each plan that you identify. Please produce all documents that reflect, refer or relate to the information you provide in response to this request.

Response to No. 13: N/A.

Request No. 14: For rate plans identified in B.13. that include a per minute of use component, please provide the average long-distance per minute usage in (state) of CLECs local exchange customers who subscribe to such plans for the most recent 24 months available. Please produce all documents that reflect, refer, or relate to the information you provide in response to this request.

Response to No. 14: N/A.

Request No. 15: For customers that purchase up to 24 voice grade equivalent lines how many CLEC-to-CLEC cross-connects does CLEC maintain in (state) since June 2001? How many CLEC-to-CLEC cross-connects does CLEC maintain in (state) at present?

Response to No. 15: N/A

Dated this 15th day of January, 2004.

MIDCONTINENT COMMUNICATIONS

W. Tom Simmons
Vice President, Public Policy

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF Minnehaha)

W. Tom Simmons, Vice President of Public Policy, Midcontinent Communications, being first duly sworn, upon oath, deposes and says that he has read the foregoing document, knows the contents thereof and that the same is true to the best of his knowledge.

Nancy A. Vogt
Notary Public

My commission expires:
1/24/2004

PEARCE & DURICK

PATRICK W. DURICK *ND #03141*
P. O. Box 400
314 E. Thayer Avenue
Bismarck, ND 58502-0400
(701) 223-2890

Attorney for Midcontinent Communications

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Qwest Corporation
Local Competition
Investigation

Case No. PU-439-03-295

CERTIFICATE OF SERVICE BY MAIL

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Sara Carr hereby certifies that on January 15, 2004, she served a copy of the attached MIDCONTINENT COMMUNICATION'S RESPONSES TO PRELIMINARY DISCOVERY REQUESTS - QWEST ROC STATE TRO PROCEEDINGS by placing a true and correct copy thereof in an envelope, and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota. addressed to the following:

Marilyn Foss
P. O. Box 2216
Bismarck, ND 58502-2216

Mary B. Tribby
AT&T Law Department
1875 Lawrence Street, Suite 1675
Denver, CO 80202

Gary B. Witt
AT&T Law Department
1875 Lawrence Street, Suite 1675
Denver, CO 80202

Walter F. Eggers III
Holland & Hart LLP
2515 Warren Ave., Suite 450
Cheyenne, WY 82001-3162

Tim Goodwin
Qwest Corporation
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Sara Carr

Subscribed and sworn to before me this *15* day of January, 2004.

Notary Public

My commission expires:

JEANNE A. FEIST
Notary Public State of North Dakota
My Commission Expires MARCH 7, 2007

JAN 15 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission	)	**Case No. PU-439-03-295**
Local Competition Investigation	)	

MCI's RESPONSES TO THE PUBLIC SERVICE COMMISSION'S PRELIMINARY DISCOVERY REQUESTS

MCI WorldCom Communications Inc. and MCImetro Access Transmission Services LLC (collectively "MCI") respectively submit its Responses to the Preliminary Discovery Requests (hereinafter "Requests") of the Staff of the North Dakota Public Service Commission (hereinafter "Commission") that were served on MCI on December 8, 2003, and states as follows:

I. GENERAL OBJECTIONS

1. MCI has interpreted the Requests to apply to MCI's regulated intrastate operations in North Dakota and will limit its responses accordingly. To the extent that any Request is intended to apply to matters that take place outside the state of North Dakota and which are not related to North Dakota intrastate operations subject to the jurisdiction of the Commission, MCI objects to such Request as irrelevant, overly broad, unduly burdensome, and oppressive.

2. MCI objects to the Requests to the extent that such Requests call for information that is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or other applicable privilege.

3. MCI objects to the Requests to the extent such Requests are vague, ambiguous, overly broad, imprecise, or utilize terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these requests.

4. MCI objects to the Requests to the extent the Requests are not reasonably calculated to lead to the discovery of admissible evidence and are not relevant to the subject matter of the action.

5. MCI objects to the Requests to the extent they seek information or documents, or seek to impose obligations on MCI that exceed the requirements of the FCC's Triennial Review Order (hereinafter "TRO"), the North Dakota Rules of Civil Procedure, North Dakota law, the Commission's Rules of Practice and Procedure, or any other applicable laws, rules, or procedures.

6. MCI objects to providing information to the extent that such information is already in the public record before the Commission or which is already in the possession, custody, or control of the Commission.

7. MCI objects to the Requests to the extent that such Requests are overly broad, unduly burdensome, expensive, oppressive, or excessively time consuming as written.

8. MCI objects to each and every Request to the extent that the information requested constitutes confidential "trade secrets", or proprietary, commercial, and financial information that are privileged from disclosure pursuant to the North Dakota Uniform Trade Secrets Act, N.D. C.C. 47-25.1-01 et seq., N.D.C.C. 44-04-18.4, and Rule 507, N.D.R.Evid. MCI will make such information available to the parties only pursuant to written agreement between MCI and the party desiring the information or otherwise in accordance with the order of the Commission upon MCI's Application for Trade Secret Protection, which is being filed concurrent with this Response.

9. MCI is a large corporation with employees located in many different locations in North Dakota and in other states. In the course of its business, MCI creates

countless documents that are not subject to record retention requirements of the Commission or the Federal Communications Commission ("FCC"). These documents are kept in numerous locations and are frequently moved from site to site as employees change jobs or as the business is reorganized. Therefore, it is possible that not every document has been identified in response to these Requests. MCI will conduct a reasonable and diligent search of those files that are reasonably expected to contain the requested information. To the extent that the Requests purport to require more, MCI objects on the grounds that compliance would impose an undue burden or expense.

10. MCI objects to the Requests that seek to obtain "all," "each," or "every" document, item, customer, or other such piece of information to the extent that such discovery is overly broad and unduly burdensome.

11. MCI objects to the Requests to the extent such Requests seek to have MCI create documents not in existence at the time of the Request.

12. MCI objects to the Requests to the extent that such Requests are not limited to any stated period of time or a stated period of time that is longer than is relevant for purposes of the issues in this docket, as such discovery is overly broad and unduly burdensome.

13. In light of the short period of time MCI has been afforded to respond to the Requests, the development of MCI's positions and potentially responsive information to the Requests is necessarily ongoing and continuing. MCI expressly reserves the right to supplement or modify its discovery responses based on its ongoing inquiry.

14. MCI objects to each and every Request that seeks information regarding non-switched services (e.g., services that do not depend on Class 5 switches) except for non-switched services (e.g., DSL) provided on loops that are also used to provide switched services,

as such discovery is irrelevant for purposes of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

15. MCI objects to the Requests to the extent the Requests seek information regarding so-called "voice-grade equivalent lines" ("VGEs") as this term is not used by MCI in the course of its business, and MCI does not maintain information regarding "voice-grade equivalent lines" in the ordinary course of business. Given MCI's business records, MCI will answer such discovery by providing information regarding MCI's DS0s.

16. MCI objects to each and every Request that seeks information, to the extent such is requested, regarding MCI's projections regarding future services, revenues, marketing, strategies, equipment deployments, or other such future business plans as such requests are trade secrets, or proprietary, commercial and financial information, and, for purposes of this proceeding, would be highly speculative and irrelevant to the issues to be decided in this docket. Moreover, MCI's future plans are irrelevant because the TRO concerns a hypothetical CLEC.

17. MCI objects to the Requests to the extent they seek information not within MCI's possession, custody, or control.

18. MCI objects to the Requests to the extent the Requests ask MCI to provide information that MCI does not maintain in the ordinary course of business. This objection includes, but is not limited to, requests for information on "voice-grade equivalent lines." MCI does not maintain data on "voice-grade equivalent lines" in the ordinary course of business. (See General Objection 15.)

19. MCI objects to the definitions for "qualifying service" and "non-qualifying service," and each and every Request that includes such terms, as MCI does not use

such terms in the ordinary course of business, does not maintain information regarding "qualifying service" and "non-qualifying service" in the ordinary course of business, and answering in these terms would require MCI to provide a legal interpretation of the FCC's terms. With the exception of the specific services the FCC has designated as qualifying or non-qualifying, the term is not clearly defined by the FCC or by the Commission's discovery. For example, as the FCC stated in footnote 466 of the TRO (FCC 03-36, released August 21, 2003), "Our list is intended to identify general categories of services that would qualify as eligible services. It is not intended to be an exhaustive list or to identify services in a more particular manner." Thus, such discovery is vague.

A. MCI's Responses to the Commission's Requests to CLECs in Response to Petitioning ILEC

Switching

1. Provide a list of all switches that you currently use to provide a qualifying service (as defined in 47 C.F.R. § 51.5, as that section will be amended by the Final Rules issued by the FCC pursuant to the *Triennial Review Order)* anywhere in the state, regardless of whether the switch itself is located in the state. Do not include ILEC switches utilized by you on an unbundled basis in the ILEC's service territory or through the resale of the incumbent's services at wholesale rates.

MCI's RESPONSE: MCI incorporates its General Objections as if fully set forth herein. Subject to and without waiving these objections, MCI states that all of the switches MCI currently uses to provide local telecommunications services in North Dakota are leased from an ILEC.

2. Identify each ILEC wire center district *(i.e.,* the territory served by a wire center of the IlEC) in which you provide qualifying service to any end user customers utilizing any of the switches identified in your response to Question 1. Wire centers should be identified by providing their name, address, and CLLI code.

MCI's RESPONSE: MCI respectfully refers the Commission to MCI's Response to Request 1.

3. For each ILEC wire center identified in response to Question 2, identify the total number of voice-grade equivalent lines[1] you are providing to customers in that wire center from your switch(es) identified in response to Question 1. For purposes of this question, "voice-grade equivalent lines" should be defined consistent with the FCC's use of the term.

MCI's RESPONSE: MCI respectfully refers the Commission to MCI's Response to Requests 1 and 2.

[1] Voice-grade equivalent lines would include DS0 lines and, by the definition in FCC Form 477, *Instructions for the Local Competition and Broadband Reporting From* include traditional analog POTS lines, Centrex-CO extensions and Centrex-CE trunks. Line counts are based on how they are charged to the customer rather than how they are physically provisioned (e.g. 2-wire copper, VoIP, fiber).

4. For each switch identified in response to Question 1, identify the approximate capacity of the switch—that is, the maximum number of voice-grade equivalent lines it is capable of serving—based on that switch's existing configuration and component parts.

MCI's RESPONSE: MCI respectfully refers the Commission to MCI's Response to Request 1.

5. With respect to the voice-grade equivalent lines identified in response to Question 3, separately indicate the number being provided to (a) residential customers; (b) business customers to whom you provide only voice-grade or DS0 lines.

MCI's RESPONSE: MCI respectfully refers the Commission to MCI's Response to Requests 1 and 3.

6. For each of the switches identified in your response to Question 1, state whether the switch is owned by you, or whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis. If the facility is not owned by you, identify the entity owning the switch and (if different) the entity with which you entered into the lease or other arrangement, identify the nature of the arrangement, and state whether such entity or entities are affiliates of yours, in the sense defined in ¶ 408, footnote 1263 of the *Triennial Review Order*.

MCI's RESPONSE: MCI respectfully refers the Commission to MCI's Response to Request 1.

C. MCI's Responses to the Commission's Requests to both CLECs and ILECs - Switching

1. With respect to the voice-grade equivalent lines being provided to (a) residential customers; (b) business customers to whom you provide between 1-3 voice-grade equivalent lines at one location; (c) business customers to whom you provide between 4-24 voice grade equivalent lines at one location; and (d) business customers to whom you provide 24 or more voice-grade equivalent lines (in one location), state the current average total monthly revenues earned per line served in the state by LATA and by MSA and specify the source of those revenues by service type.

MCI's RESPONSE: MCI incorporates its General Objections as if fully set forth herein. Subject to and without waiving these objections, MCI states that of the facilities MCI currently uses to provide local telecommunications services in North Dakota are leased from an ILEC. Further answering, MCI respectfully refers the Commission to the attached spreadsheet in response to this request that contains highly confidential information regarding average total monthly revenues per line. MCI does not maintain the requested information regarding business customers.

2. For each switch (e.g. circuit, packet, soft switch, etc.) currently used, or those that have been used, or that could be used to provide local service in the state (this would include switches located in other states that provide or have the ability to provide local exchange service in the state), state the initial cost of that switch, including installation and engineering costs, and the number of initial equipped lines.

MCI's RESPONSE: MCI incorporates its General Objections as if fully set forth herein. Subject to and without waiving these objections, MCI states that all of the switches MCI currently uses to provide local telecommunications services in North Dakota are leased from an ILEC and that the ILEC is in the best position to provide the requested information.

3. Describe in detail any instances in which your company is using, through a wholesale, lease, or resale arrangement, the switch of any entity other than and unaffiliated with an ILEC (e.g., another competitive local exchange carrier) to provide local exchange service to end users in the state. Include in your response the rates, terms, and conditions under which you are obtaining switching on a wholesale, lease, or resale basis.

MCI's RESPONSE: MCI incorporates its General Objections as if fully set forth herein. Subject to and without waiving these objections, MCI states that there are no instances in which MCI uses, through a wholesale, lease, or resale arrangement, the switch of any entity other than and unaffiliated with an ILEC to provide local exchange service to end users in North Dakota.

4. State whether your company is providing, or plans to provide, through a wholesale, lease or resale arrangement, capacity on any switches you own or operate in the state, or that own or operate in another state and that you use to provide local service in the state, to an unaffiliated entity. For any such instances, identify the rates, terms, and conditions under which you are making that switch capacity available. For each switch on which you are currently leasing or selling capacity to an unaffiliated entity, identify:

   a. the make, model, age, and current software upgrades of each switch;

   b. the geographic location of the switch;

   c. the footprint or geographic area served by the switch, including a list of each exchange served by the switch; the features and functions (including software upgrades) available in the switch;

   d. provide the capacity of each switch, including:

      (i) percentage of switch capacity in use;

      (ii) percentage of switch capacity reserved for your company's own use and future use; and

      (iii) percentage of current and future capacity of each switch that will be made available for CLEC use.

   e. For each switch identified, please state in detail:

      (i) the anticipated service life of the switch; and

      (ii) whether your company intends to utilize the identified switch for the full anticipated service life.

MCI's RESPONSE: MCI incorporates its General Objections as if fully set forth herein. Subject to and without waiving these objections, MCI states that it does not own or operate any switches used to provide services in North Dakota.

B. MCI's Responses to the Commission's Questions for Other Participants Regarding the Development of an Efficient Loop Migration Process

1. Describe the hot cut process currently used to transfer lines from the ILEC switch to the CLEC facilities.

MCI's RESPONSE: MCI incorporates its General Objections as if fully set forth herein. Subject to and without waiving these objections, MCI states that it does not own or operate any switches used to provide services in North Dakota, and therefore there is no hot cut process currently used to transfer lines from the ILEC switch to MCI's facilities.

2. List each task that is part of the current process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the source of the data; i.e. time/motion studies, SME analysis, etc.

MCI's RESPONSE: MCI respectfully refers the Commission to MCI's Response to Request 1.

3. Describe a batch hot cut process that you would implement to meet the FCC's requirement to establish a batch hot cut process. Include an estimate of the maximum number of lines per batch.

MCI's RESPONSE: MCI respectfully refers the Commission to MCI's Response to Request 1.

4. List each task that is part of the batch hot cut process described in the answer to the preceding question. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate.

MCI's RESPONSE: MCI respectfully refers the Commission to MCI's Response to Request 1.

5. If UNE-P is no longer available, what monthly volumes of hot cuts would be required: (a) to migrate existing UNE-P customers to another form of service and (b) to connect new customers in the ordinary course of business. Provide supporting documentation for these volume estimates.

MCI's RESPONSE: MCI respectfully refers the Commission to MCI's Response to Request 1.

6. For each Qwest wire center in [state] in which CLEC provides retail switched local exchange service, please report the number of switched voice-grade equivalent lines in service per customer location that CLEC serves. Please provide this information in the following format:

WIRE CENTER: _____

	Customer Location	
Quantity of VGE	**Residence**	**Business**
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		

	Customer Location	
Quantity of VGE	**Residence**	**Business**
20		
21		
22		
23		
24		

MCI's RESPONSE: MCI incorporates its General Objections as if fully set forth herein. Subject to and without waiving these objections, MCI respectfully refers the Commission to the attached spreadsheet in response to this request that contains highly confidential information regarding number of residential lines. MCI states that it does not maintain the information requested regarding business customers.

7. For each switch CLEC owns, operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity within [state], please state whether the local switching capacity of the switch can be expanded through modular software and hardware additions. If you assert any obstacles to expansion, please identify and explain all such obstacles.

MCI's RESPONSE: MCI incorporates its General Objections as if fully set forth herein. Subject to and without waiving these objections, MCI states that it does not own, operate, control, maintain, or lease dial tone or trunking functionality/capacity within North Dakota. Further answering, MCI states that all of the switches MCI currently uses to provide local telecommunications services in North Dakota are leased from an ILEC and that MCI therefore is not in the best position to provide the requested information.

8. Does CLEC believe that there are costs associated with converting or otherwise using a switch currently serving only enterprise customers to also serve mass market customers? If CLEC believes that there are such switching costs, please identify all such costs and explain why it would be necessary to incur them to begin serving mass market customers. Produce any documents or data that support your response.

MCI's RESPONSE: MCI respectfully refers the Commission to MCI's Response to Request 7.

9. Please provide, a) on a statewide basis, and b) on a central office-specific basis, monthly data for the past two years on customer "churn" *(i.e.,* percentage of your customers lost to another carrier) on all of the following bases:

(a) number of customers by customer type *(e.g.,* residential, business with one to three lines; business with more than three lines);

(b) percentage of churn by customer type *(e.g.,* residential, business with one to three lines, business with more than three lines);

(c) number of customers by service type *(i.e.,* local exchange voice service only, long distance voice service only, bundled local exchange and long distance voice services, and bundled local exchange, long distance, and DSL services);

(d) percentage of churn by service type *(i.e.,* local exchange voice service only, long distance voice service only, bundled local exchange and long distance voice services, and bundled local exchange, long distance, and DSL services).

MCI's RESPONSE: MCI incorporates its General Objections as if fully set forth herein. Subject to and without waiving these objections, MCI states that it does not track or maintain this information in the manner requested. Further answering, MCI states that it is attaching a spreadsheet in response to this request that contains highly confidential information regarding churn rates for residential customers. To the extent this Request seeks breakdown of churn rates in other ways, MCI does not maintain that information. Further answering, MCI states that it does not maintain the information requested regarding business customers.

10. For customers that purchase up to 24 voice grade equivalent lines please identify the types or categories of customer acquisition costs CLEC incurred in [state] in 2001 and 2002 to attract new customers, set up their accounts, and establish service to them. In addition, please provide the per line costs CLEC incurred in 2001 and 2002 for both business and residential customers for each of the types or categories of customer acquisition costs.

MCI's RESPONSE: MCI incorporates its General Objections as if fully set forth herein. Subject to and without waiving these objections, MCI respectfully refers the Commission to the attached spreadsheet in response to this request that contains highly confidential information regarding residential acquisition costs. To the extent this Request seeks other types of customer acquisition costs, MCI does not maintain that information. Further answering, MCI states that it does not maintain the information requested regarding business customers.

11. For customers that purchase up to 24 voice grade equivalent lines please identify the monthly churn rate CLEC has experienced for local exchange customers in each month in which it has provided local exchange service in the [state] market. In answering this request, calculate the churn rate based upon the number of lines lost each year divided by the average number of lines in service that year. In calculating churn, do not include customers who move but stay with the company. Please produce all documents that refer or relate to the information you provide in response to this request.

MCI's RESPONSE: MCI incorporates its General Objections as if fully set forth herein. Subject to and without waiving these objections, MCI states that it is attaching a spreadsheet in response to this request that contains highly confidential information regarding churn rates.

12. Please identify the percentage of customers that have left within one month of signing up for service, within two months of signing up for service, within three months of signing up for service, and within six months of signing up for service. Please provide this information in connection with CLECs churn rates in [state] for the most recent 24 months that are available for local exchange customers that purchase up to 24 voice grade equivalent lines. Please produce all documents that refer or relate to the information you provide in response to this request.

MCI's RESPONSE: MCI incorporates its General Objections as if fully set forth herein. Subject to and without waiving these objections, MCI respectfully refers the Commission to the attached spreadsheet in response to this request that contains highly confidential information regarding churn rates.

13. For customers that purchase up to 24 voice grade equivalent lines please identify each rate plan that CLEC offers to local exchange customers in [state]. In addition, please identify the percentage of CLECs total local exchange customers in [state] that subscribe to each plan that you identify. Please produce all documents that reflect, refer or relate to the information you provide in response to this request.

MCI's RESPONSE: MCI incorporates its General Objections as if fully set forth herein. Subject to and without waiving these objections, MCI respectfully refers the Commission to the attached spreadsheet in response to this request that contains highly confidential information regarding rate plans.

14. For rate plans identified in B.13. that include a per minute of use component, please provide the average long-distance per minute usage in [state] of CLECs local exchange customers who subscribe to such plans for the most recent 24 months available. Please produce all documents that reflect, refer, or relate to the information you provide in response to this request.

MCI's RESPONSE: MCI incorporates its General Objections as if fully set forth herein. Subject to and without waiving these objections, MCI respectfully refers the Commission to the attached spreadsheet in response to this request that contains highly confidential information regarding long distance per minute usage plans.

15. For customers that purchase up to 24 voice grade equivalent lines how many CLEC-to-CLEC cross-connects has CLEC performed in [state] since June 2001? How many CLEC-to-CLEC cross-connects does CLEC maintain in [state] at present?

MCI's RESPONSE: MCI incorporates its General Objections as if fully set forth herein. Subject to and without waiving these objections, MCI states it has not performed any CLEC-to-CLEC cross-connects in North Dakota since June 2001 and that it does not presently maintain any CLEC-to-CLEC cross-connects in North Dakota.

AS TO THE FOREGOING, MCI'S RESPONSES TO THE PUBLIC SERVICE COMMISSION'S PRELIMINARY DISCOVERY REQUESTS:

MCI WorldCom Communications Inc. and
MCImetro Access Transmission Services LLC (collectively, "MCI")

By: Don Price 1-14-04
Don Price (Date)

Its: Sr. Manager - Competition Policy

Subscribed and sworn to before me this 14 day of January, 2004.

Rachael Uranga
Notary Public
State of Texas
Travis County
My Commission Expires: 10-8-04

RACHAEL URANGA
Notary Public, State of Texas
My Commission Expires
October 08, 2004

AS TO THE OBJECTIONS MADE IN MCI'S RESPONSES TO THE PUBLIC SERVICE COMMISSION'S PRELIMINARY DISCOVERY REQUESTS dated 1/14/04:

Marilyn Foss
Marilyn Foss, Counsel for MCI

RECEIVED
JAN 15 2004

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission Local Competition Investigation	Case No. PU-439-03-295

QWEST CORPORATION'S RESPONSES TO COMMISSION'S PRELIMINARY DISCOVERY REQUESTS

Qwest Corporation ("Qwest") responds to the preliminary set of discovery requests from the North Dakota Public Service Commission ("Commission" or "PSC") as set forth below. Qwest has only responded to those requests propounded to it, and includes no response to the other sections of the preliminary discovery requests. Certain information referenced in some responses is confidential and is not attached hereto, but is attached to Qwest's Application for Trade Secret Protection, which is filed contemporaneously herewith.

SWITCHING

A. Requests to CLECs in response to petitioning ILEC

These requests are not directed to Qwest; therefore, no response is provided.

B. Questions for Petitioning ILECs

1. (Qwest 1) For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that you directly serve.

QWEST RESPONSE:

Qwest is in the process of gathering the data and will supplement this response when the data becomes available.

Respondent: Deborah Guest, Qwest Manager

2. (Qwest 2) For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that CLECs are serving through resale.

QWEST RESPONSE:

Qwest has compiled the North Dakota data in its possession that is responsive to this request. However, this request seeks CLEC\carrier specific information that may be protected under 47 U.S.C. 222(a) ("Privacy of Customer Information") and/or other privacy laws. Qwest will provide the requested CLEC information upon receiving either: (1) a Commission Order requiring production of the information, or (2) permission by one or more CLECs to release the requested information.

Respondent: Qwest Legal Department

3. (Qwest 3) For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that CLECs are serving through UNE-P.

QWEST RESPONSE:

Qwest has compiled the North Dakota data in its possession that is responsive to this request. However, this request seeks CLEC\carrier specific information that may be protected under 47 U.S.C. 222(a) ("Privacy of Customer Information") and/or other privacy laws. Qwest will provide the requested CLEC information upon receiving either: (1) a Commission Order requiring production of the information, or (2) permission by one or more CLECs to release the requested information.

Respondent: Qwest Legal Department

4. (Qwest 4) For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that CLECs are serving through the CLECs own facilities.

QWEST RESPONSE:

Information regarding quantities of customers, by type of service, being served by CLECs via CLEC-owned facilities is highly confidential information that is proprietary to the CLECs. Qwest does not have access to these line counts.

Respondent: Elaine Garley, Qwest Manager

5. (Qwest 5) For each wire center in your territory in the state, please provide the number of residential voice-grade equivalent lines that you directly serve.

QWEST RESPONSE:

Qwest is in the process of gathering the data and will supplement this response when the data becomes available.

Respondent: Deborah Guest, Qwest Manager

6. (Qwest 6) For each wire center in your territory in the state, please provide the number of residential voice-grade equivalent lines that CLECs are serving through resale.

QWEST RESPONSE:

Qwest has compiled the North Dakota data in its possession that is responsive to this request. However, this request seeks CLEC\carrier specific information that may be protected under 47 U.S.C. 222(a) ("Privacy of Customer Information") and/or other privacy laws. Qwest will provide the requested CLEC information upon receiving either: (1) a Commission Order requiring production of the information, or (2) permission by one or more CLECs to release the requested information.

Respondent: Qwest Legal Department

7. (Qwest 7) For each wire center in your territory in the state, please provide the number of residential voice-grade equivalent lines that CLECs are serving through UNE-P.

QWEST RESPONSE:

Qwest has compiled the North Dakota data in its possession that is responsive to

this request. However, this request seeks CLEC\carrier specific information that may be protected under 47 U.S.C. 222(a) ("Privacy of Customer Information") and/or other privacy laws. Qwest will provide the requested CLEC information upon receiving either: (1) a Commission Order requiring production of the information, or (2) permission by one or more CLECs to release the requested information.

Respondent: Qwest Legal Department

8. (Qwest 8) For each wire center in your territory in the state, please provide the estimated number of residential lines that CLECs are serving through their own facilities (complete bypass).

QWEST RESPONSE:

Information regarding quantities of customers, by type of service, being served by CLECs via CLEC-owned facilities is highly confidential information that is proprietary to the CLECs. Qwest does not have access to these line counts.

Respondent: Elaine Garley, Qwest Manager

9. (Qwest 9) For each wire center in your territory in the state, please provide the number of in-service collocation arrangements that you have, and for each collocation arrangement, please indicate the type of collocation that you are providing.

QWEST RESPONSE:

Qwest has compiled the North Dakota data in its possession that is responsive to this request. However, this request seeks CLEC\carrier specific information that may be protected under 47 U.S.C. 222(a) ("Privacy of Customer Information") and/or other privacy laws. Qwest will provide the requested CLEC information upon receiving either: (1) a Commission Order requiring production of the information, or (2) permission by one or more CLECs to release the requested information.

Respondent: Qwest Legal Department

10. (Qwest 10) For each wire center in your territory in the state, please provide the number of provisioned collocation arrangements that you have in place that have yet to be activated, and for each collocation arrangement, please indicate the type of collocation.

QWEST RESPONSE:

Qwest does not monitor when a CLEC activates their facilities to provide services to their customers and so Qwest has no knowledge regarding the information sought in this request.

Respondent: Deborah Guest, Qwest Manager

11. (Qwest 11) For each wire center in your territory in the state, please provide the number of pending collocation arrangements that you have, and for each collocation arrangement, please indicate the type of collocation.

QWEST RESPONSE:

Qwest has compiled the North Dakota data in its possession that is responsive to this request. However, this request seeks CLEC\carrier specific information that may be protected under 47 U.S.C. 222(a) ("Privacy of Customer Information") and/or other privacy laws. Qwest will provide the requested CLEC information upon receiving either: (1) a Commission Order requiring production of the information, or (2) permission by one or more CLECs to release the requested information.

Respondent: Qwest Legal Department

12. (Qwest 12) For each wire center in your territory in the state, please provide a list of restrictions on equipment, cross-connects between CLEC collocation cages, or other restrictions or limitations that you place on a CLECs use of collocation space.

QWEST RESPONSE:

The following language from applicable SGAT sections defines the type of equipment that can be placed in collocation space:

> 8.2.1.2 Collocation of Switching Equipment. CLEC may collocate any equipment that is necessary for Interconnection or access to Unbundled Network Elements.
>
> 8.2.1.2.1 Digital Subscriber Line Access Multiplexers (DSLAMS) always meet this legal standard.
>
> 8.2.1.2.2 Asynchronous Transfer Mode (ATM) or Packet Switching also

meets this legal standard when used for Interconnection or access to Unbundled Network Elements for purposes of providing Advanced Services such as xDSL. Equipment used predominantly to support DSLAMs and ATMs, such as routers and concentrators, as well as testing and network management equipment also meet this legal standard. Before any equipment that includes switching functionality is installed, CLEC must provide a written inventory to Qwest of all switching equipment and how it will be used for Interconnection or access to Unbundled Network Elements. Once CLEC establishes that it will use a certain type of equipment for Interconnection or access to Unbundled Network Elements, Qwest will allow future Collocations of similar equipment without requesting a written justification unless and until Qwest can establish to the state Commission that such equipment is not intended for Interconnection or access to Unbundled Network Elements. However, Qwest will complete the Collocation within the appropriate interval unless granted relief by the Commission.

8.2.1.2.3 Remote Switching Units (RSUs) also meet this legal standard when used for Interconnection or access to Unbundled Network Elements for purposes of providing Local Exchange Service.

8.2.1.2.4 Except as provided for above, CLEC may not collocate equipment that is not necessary for Interconnection or access to Unbundled Network Elements.

8.2.1.8 All equipment shall meet and be installed in accordance with Network Equipment Building System (NEBS) Level 1 safety standards. Qwest shall provide standard Premises alarming pursuant to Qwest Technical Publication 77385. Qwest shall not impose safety or engineering requirements on CLEC that are more stringent than the safety or engineering requirements Qwest imposes on its own equipment located on its Premises.

Also, Qwest Technical Publication 77386 addresses the type of equipment that can be placed in collocation space. This document also can be found at the following url: http://www.qwest.com/techpub/.

Respondent: Deborah Guest, Qwest Manager

13. (Qwest 13) For each wire center in your territory in the state, please identify whether or not collocation space is currently available to CLECs. For each wire center where collocation space is currently not available to CLECs, please include an explanation of why space is not available in those wire centers.

QWEST RESPONSE:

Currently, no Qwest North Dakota central offices have been identified as central offices in which collocation space has been exhausted. The Space Exhaust report can be found at the following url: http://www.qwest.com/wholesale/notices/collo/spaceAvail.html.

Respondent: Deborah Guest, Qwest Manager

C. Questions to both CLECs and ILEC – Switching

1. (Qwest 14) With respect to the voice-grade equivalent lines being provided to (a) residential customers; (b) business customers to whom you provide between 1-3 voice-grade equivalent lines at one location; (c) business customers to whom you provide between 4-24 voice grade equivalent lines at one location; and (d) business customers to whom you provide 24 or more voice-grade equivalent lines (in one location), state the current average total monthly revenues earned per line served in the state by LATA and by MSA and specify the source of those revenues by service type.

QWEST RESPONSE:

Qwest Corporation's accounting system does not provide the information at the requested level of detail. The information requested would require a special study. CONFIDENTIAL ATTACHMENT "A" (which is filed under seal with Qwest's Application for Trade Secret Protection) provides, to the extent possible, the requested information on a state wide average basis as recorded in Qwest Corporation's accounting system for business and residence customers. Please note that the requested information for the switched access charge category is not recorded in Qwest's system by class of service and is not included as a category.

Respondent: Jim Phillips, Sr. Financial Analyst

2. (Qwest 15) For each switch (e.g. circuit, packet, soft switch, etc.) currently used, or those that have been used, or that could be used to provide local service in the state (this would include switches located in other states that provide or have the ability to provide local exchange service in the state), state the initial cost of that switch, including installation and engineering costs, and the number of initial equipped lines.

QWEST RESPONSE:

Please see Highly Confidential Attachment "A" (which is filed under seal with Qwest's Application for Trade Secret Protection) which contains the Engineer, Furnish, and Install cost for switches purchased in 1999 to present and the initial line counts for these switches. A special study would be required to provide information for those switches purchased prior to 1999.

Respondent: Deborah Guest, Qwest Manager

3. (Qwest 16) Describe in detail any instances in which your company is using, through a wholesale, lease, or resale arrangement, the switch of any entity other than and unaffiliated with an ILEC (e.g., another competitive local exchange carrier) to provide local exchange service to end users in the state. Include in your response the rates, terms, and conditions under which you are obtaining switching on a wholesale, lease, or resale basis.

QWEST RESPONSE:

Qwest is not using, through a wholesale, lease, or resale arrangement, the switch of any entity unaffiliated with Qwest (e.g., another competitive local exchange carrier) to provide local exchange service to end users in North Dakota.

Respondent: Deborah Guest, Qwest Manager

4. (Qwest 17) State whether your company is providing, or plans to provide, through a wholesale, lease or resale arrangement, capacity on any switches you own or operate in the state, or that own or operate in another state and that you use to provide local service in the state, to an unaffiliated entity. For any such instances, identify the rates, terms, and conditions under which you are making that switch capacity available. For each switch on which you are currently leasing or selling capacity to an unaffiliated entity, identify:

   a. the make, model, age, and current software upgrades of each switch;
   b. the geographic location of the switch;
   c. the footprint or geographic area served by the switch, including a list of each exchange served by the switch; the features and functions (including software upgrades) available in the switch;
   d. provide the capacity of each switch, including:
      (i) percentage of switch capacity in use;
      (ii) percentage of switch capacity reserved for your company's

own use and future use; and

(iii) percentage of current and future capacity of each switch that will be made available for CLEC use.

e. For each switch identified, please state in detail:

(i) the anticipated service life of the switch; and

(ii) whether your company intends to utilize the identified switch for the full anticipated service life.

QWEST RESPONSE:

Qwest provides access to its facilities, including switches in accordance with all state and federal statutes and to all entities as required by law. Rates and terms for interconnection are specified in the North Dakota SGAT. The SGAT will be modified, as appropriate, pursuant to the Triennial Review Order.

(a) See Highly Confidential Attachment "A" (which is filed under seal with Qwest's Application for Trade Secret Protection).

(b) Please see response to (a).

(c) Please see response to (a).

(d) i) Please see response to (a).

ii), iii) Qwest does not reserve capacity on its switches; it is offered on a first come, first served basis.

(e) i) The actual service life of any individual switch depends on external factors such as demand for capacity, ability to upgrade, and changing technology. Therefore, it is impossible to predict the anticipated service life of an individual switch.

ii) Qwest has no plans to replace Lucent and Nortel switches. Qwest anticipates eventual replacement of the Ericsson switches. Also see Qwest's Response to subpart (e-i) above.

Respondent: Deborah Guest, Qwest Manager

REQUESTS FOR INFORMATION REGARDING THE DEVELOPMENT OF AN EFFICIENT LOOP MIGRATION PROCESS

A. Questions for Qwest

1. (Qwest 18) Provide, in an electronic format, on a monthly basis, the number of UNE-P lines at the beginning of the month, added during the month, disconnected during the month and at the end of the month. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

QWEST RESPONSE:

Qwest has not compiled region-wide data, nor has it compiled the requested data for all of the states in its 14-state region. Region-wide data is not relevant to the mass market switching case in the nine-month proceeding, nor does Qwest believe that region-wide data is necessary for the Commission's participation in the Batch Hot Cut forum. Qwest is in the process of collecting this data and when the data becomes available Qwest will supplement this response.

Respondent: Deborah Guest, Qwest Manager

2. (Qwest 19) Provide, in an electronic format, on a monthly basis for every wire center, the number of UNE-L lines at the beginning of the month, added during the month, disconnected during the month and at the end of the month. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

QWEST RESPONSE:

Qwest has not compiled region-wide data, nor has it compiled the requested data for all of the states in its 14-state region. Region-wide data is not relevant to the mass market switching case in the nine-month proceeding, nor does Qwest believe that region-wide data is necessary for the Commission's participation in the Batch Hot Cut forum.

Qwest is in the process of collecting this data and when the data becomes available Qwest will supplement this response.

Respondent: Deborah Guest, Qwest Manager

3. (Qwest 20) Describe the hot cut process currently used to transfer lines from the ILEC switch to the CLEC facilities.

QWEST RESPONSE:

Please see Attachment "A", which contains documentation for both the basic and coordinated hot cut processes Qwest currently uses to transfer lines from Qwest switches to CLEC facilities.

Respondent: Deborah Guest, Qwest Manager

4. (Qwest 21) List each task that is part of the current process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the sources of the data; i.e., time/motion studies, SME analysis, etc.

QWEST RESPONSE:

Attachment "A" contains the information requested. A hot cut is a request for an unbundled loop of an existing customer. Attachment A contains the tasks for a "basic" hot cut, with no performance or cooperative testing and no coordination. The time frames and probabilities included in this response do not consider "batch" or "bulk" hot cut processes.

Respondent: Deborah Guest, Qwest Manager

5. (Qwest 22) Describe a batch hot cut process that Qwest would implement to meet the FCC's requirement to establish a hatch hot cut process. Include an estimate of number of lines per batch.

QWEST RESPONSE:

Qwest prepared a detailed overview of the new Batch Hot Cut Process ("BHCP") in anticipation of a collaborative meeting with the CLECs. The overview was provided to the Commission Staff and the parties on November 12th, with the forum meetings taking place in December, 2003. The information provided at that time, as well as the information that will be developed during the forum process, will address the issues raised in this data request.

In recent meetings with the CLECs conducted during the Batch Hot Cut Forum in Denver, December 1-3, 2003, Qwest indicated that it would be capable of performing a maximum for batch hot cuts of 100 lines per central office, per day. Batch hot cuts must be submitted in minimum batches of 25 lines. Qwest also indicated that there was no specific limitation on the number of additional hot cuts that could be performed under Qwest's other five installation options in a given central office on a given day.

Respondent: Deborah Guest, Qwest Manager

6. (Qwest 23) List each task that is part of the batch hot cut process described in the answer to the above question regarding a batch process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the source of the data; i.e., time/motion studies, SME analysis, etc.

QWEST RESPONSE:

Qwest prepared a detailed overview of the new Batch Hot Cut Process ("BHCP") in anticipation of a collaborative meeting with the CLECs. The overview was provided to the Commission Staff and the parties on November 12th, with the forum meetings taking place in December, 2003. The information provided at that time, as well as the information that will be developed during the forum process, addresses the issues raised in this data request.

Respondent: Deborah Guest, Qwest Manager

7. (Qwest 24) List each task that is part of the batch hot cut process that is not included in the current hot cut process.

QWEST RESPONSE:

Qwest prepared a detailed overview of the new Batch Hot Cut Process ("BHCP") in anticipation of a collaborative meeting with the CLECs. The overview was provided to the Commission Staff and the parties on November 12th, with the forum meetings taking place in December, 2003. The information provided at that time, as well as the information that will be developed during the forum process, will address the issues raised in this data request.

Exhibit 6 provided with the November 12th filing contains the proposed Batch Hot Cut Process provisioning tasks. Tasks in the proposed batch hot cut process that are not part of Qwest's current hot cut process include, but are not limited to, the following:

a. The QCCC (Qwest Customer Care Center) project manager will create the batch hot cut spreadsheet. The spreadsheet will include: PON #, order #, TN, DT validation, order completion validation.

b. The COT (Central Office Technician) does Bulk completion, voice mails the QCCC, and emails the Batch spreadsheet to QCCC.

Respondent: Deborah Guest, Qwest Manager

8. (Qwest 25) List each task that is part of the current hot cut process that is not included in the batch hot cut process.

QWEST RESPONSE:

Qwest prepared a detailed overview of the new Batch Hot Cut Process ("BHCP") in anticipation of a collaborative meeting with the CLECs. The overview was provided to the Commission Staff and the parties on November 12th, with the forum meetings taking place in December, 2003. The information provided at that time, as well as the information that will be developed during the forum process, addresses the issues raised in this data request.

However, tasks in Qwest's current hot cut process but not in Qwest's proposed batch hot cut process include, but are not limited to, the following:

a. The Central Office Technician (COT) performs the central office wiring and appropriate tests on Design, Verify, and Assign date. The COT documents the start time of the "lift" and the end of the "lay" process;

b. The COT notifies the Qwest Customer Care Center (QCCC) that the work is complete and provides, the QCCC with: the "lift" and "lay" time and the test results;

c. The QCCC documents the stop time of the cut and phones the CLEC that the work is complete providing test results. If the CLEC has purchased Cooperative or Performance Testing, the test results are also forwarded to the CLEC via email within two business days of order completion; and

d. CLEC does not accept the loop, the QCCC enters a jeopardy code on the order and notifies the Service Delivery Coordinator (SDC) and the RCMAC that the order will not be completed due to customer reasons.

Respondent: Deborah Guest, Qwest Manager

9. (Qwest 26) On a monthly basis, provide the total number of residential lines served and the number of residential lines served using integrated digital line carriers. Provide separately for every wire center the number of Qwest retail residential lines, UNE served residential lines, and Wholesale served residential lines. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state.

Provide the information on a region-wide basis in addition to the state specific data.

QWEST RESPONSE:

Qwest has compiled the North Dakota data in its possession that is responsive to this request. However, this request seeks CLEC\carrier specific information that may be protected under 47 U.S.C. 222(a) ("Privacy of Customer Information") and/or other privacy laws. Qwest will provide the requested CLEC information upon receiving either: (1) a Commission Order requiring production of the information, or (2) permission by one or more CLECs to release the requested information.

Qwest has not compiled region-wide data, nor has it compiled the requested data for all of the states in its 14-state region. Region-wide data is not relevant to the mass market switching case in the nine-month proceeding, nor does Qwest believe that region-wide data is necessary for the Commission's participation in the Batch Hot Cut forum.

Without waiving these objections, Qwest states:

Regarding residential lines and lines served by IDLC, Qwest is in the process of gathering this data and will supplement this response when the data becomes available.

Respondent: Deborah Guest, Qwest Manager

10. (Qwest 27) For each wire center, on a monthly basis, provide the total number of business mass-market lines served and the number of business mass-market lines served using integrated digital line carriers. Provide separately for every wire center the number of Qwest retail business mass-market lines, UNE served business mass-market lines, and Wholesale served business mass-market lines. Explain how Qwest determined which business lines were mass-market lines and which are enterprise lines. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

QWEST RESPONSE:

Qwest has compiled the North Dakota data in its possession that is responsive to this request. However, this request seeks CLEC\carrier specific information that may be protected under 47 U.S.C. 222(a) ("Privacy of Customer Information") and/or other privacy laws. Qwest will provide the requested CLEC information

upon receiving either: (1) a Commission Order requiring production of the information, or (2) permission by one or more CLECs to release the requested information.

Qwest has not compiled region-wide data, nor has it compiled the requested data for all of the states in its 14-state region. Region-wide data is not relevant to the mass market switching case in the nine-month proceeding, nor does Qwest believe that region-wide data is necessary for the Commission's participation in the Batch Hot Cut forum.

Without waiving these objections, Qwest states:

Regarding business access lines served on a DS0 level in each wire center in North Dakota, and the percent of these business lines served using integrated digital carrier, Qwest is in the process of gathering this data and will supplement this response when the data becomes available.

Respondent: Deborah Guest, Qwest Manager

11. (Qwest 28) If the tasks related to the hot cut process for lines served using integrated digital line carriers differs from the process used for other lines, discuss how the process is different and list the tasks that must be added specifically for the lines served using integrated digital line carriers. Include the time required to accomplish those tasks.

QWEST RESPONSE:

If a UNE-P loop is currently provided over IDLC and the CLEC requests conversion to an Unbundled Loop, Qwest will first look for an alternative which could include, but is not limited to, metallic facilities (copper pair) or a Universal Pair Gain. If neither of these alternatives is available as a temporary solution, Qwest will hairpin the circuit and issue a job to provision a Central Office Terminal (COT) and will convert the hairpin onto the COT when it becomes available. Hairpins are dedicated time slots between two DS0 ports in the same Integrated Digital Carrier Unit (IDCU).

If a UNE-P line provided over IDLC is converted to a UNE-Loop using a hot cut process, a new jumper must be run on the DSO distributing frames where the OSP pair appears. The OSP pair is connected by jumpers to the CLEC switching equipment. It may be necessary to place voltage protection coils or continuity coils at the OSP pair appearance or UDLC pair appearance. The IDLC channel formerly used is modified by translations and then becomes available for reuse. The time needed to accomplish these tasks will vary, based on the size of the office (number of floors, etc.) and the number and location of distributing frames involved.

Respondent: Deborah Guest, Qwest Manager

12. (Qwest 29) On a monthly basis, provide the average time a customer's service was disconnected due to the hot cut process. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

QWEST RESPONSE:

Qwest has not compiled region-wide data, nor has it compiled the requested data for all of the states in its 14-state region. Region-wide data is not relevant to the mass market switching case in the nine-month proceeding, nor does Qwest believe that region-wide data is necessary for the Commission's participation in the Batch Hot Cut forum.

Qwest does not track the exact data point identified in this request. However, Qwest does track "the time actually involved in disconnecting the loop from Qwest network and connecting/testing the loop." See Purpose of Measure OP-7 available at the following URL: http:\\www.qwest.com\wholesale\results\roc.html. The audited data under PID OP-7 shows that the amount of out of service time plus testing time is approximately three minutes. However, the amount of time a customer is out of service is only the time it takes Qwest to disconnect the loop from its frame and reconnect it to the CLEC. While testing occurs thereafter, the customer is almost always in service during the testing phase. While Qwest does not track the true out of service time, Qwest estimates that this time is almost always less than 30 seconds, and would average approximately 15 seconds.

Respondent: Deborah Guest, Qwest Manager

13. (Qwest 30) On a monthly basis, provide the number of technicians during each month who have transferred a line from an ILEC switch to the CLEC facility as part of the hot cut process. Count only those employees who perform the manual process. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

QWEST RESPONSE:

Qwest does not track this information.

Respondent: Deborah Guest, Qwest Manager

14. (Qwest 31) On a monthly basis, provide the number of technicians trained and capable of transferring a line from an ILEC switch to the CLEC facility as part of the hot cut process. Count only those employees who can perform the manual process. Do not include management of supervisory personnel who can perform these tasks but do not do so as part of their regular work effort. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

QWEST RESPONSE:

Qwest has not compiled region-wide data, nor has it compiled the requested data for all of the states in its 14-state region. Region-wide data is not relevant to the mass market switching case in the nine-month proceeding, nor does Qwest believe that region-wide data is necessary for the Commission's participation in the Batch Hot Cut forum. See Highly Confidential Attachment "A" (which is filed under seal with Qwest's Application for Trade Secret Protection).

Respondent: Deborah Guest, Qwest Manager

15. (Qwest 32) On a monthly basis for every wire center, provide, in an electronic format, the number of hot cuts performed. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

QWEST RESPONSE:

Qwest has compiled the North Dakota data in its possession that is responsive to this request. However, this request seeks CLEC\carrier specific information that may be protected under 47 U.S.C. 222(a) ("Privacy of Customer Information") and/or other privacy laws. Qwest will provide the requested CLEC information upon receiving either: (1) a Commission Order requiring production of the information, or (2) permission by one or more CLECs to release the requested information.

Qwest has not compiled region-wide data, nor has it compiled the requested data for all of the states in its 14-state region. Region-wide data is not relevant to the mass market switching case in the nine-month proceeding, nor does Qwest believe that region-wide data is necessary for the Commission's participation in the Batch Hot Cut forum.

Respondent: Qwest Legal Department

16. (Qwest 33) Provide a list of all carriers with which Qwest has an interconnection agreement for the provision of local service in the state.

QWEST RESPONSE:

See Attachment "A" for a list of all carriers with which Qwest has an interconnection agreement for the provision of local service in North Dakota.

Respondent: Susan Van Putten, Qwest Manager
Sam Radetsky, Qwest Manager

17. (Qwest 34) Provide a list of all carriers to which Qwest has sold collocation services in the state. For each carrier, list the wire centers where the carrier is collocated.

QWEST RESPONSE:

Qwest has compiled the North Dakota data in its possession that is responsive to this request. However, this request seeks CLEC\carrier specific information that may be protected under 47 U.S.C. 222(a) ("Privacy of Customer Information") and/or other privacy laws. Qwest will provide the requested CLEC information upon receiving either: (1) a Commission Order requiring production of the information, or (2) permission by one or more CLECs to release the requested information.

Respondent: Qwest Legal Department

18. (Qwest 35) Provide a list of Qwest wire centers with indicators that identify whether the office is unstaffed, has a technician on duty but the technician can not perform hot cuts, or has a technician on duty and the technician can perform hot cuts. For unstaffed offices and offices where the technician can not perform hot cuts, specify the number of miles that the technician must drive and driving time to reach that office from the closest office where a technician who can perform hot cuts is normally on duty.

QWEST RESPONSE:

Qwest wire center staffing arrangements for North Dakota wire centers are shown in Highly Confidential Attachment "A" (which is filed under seal with Qwest's Application for Trade Secret Protection).

This attachment also provides the dispatching central office locations from which roving technicians would be sent, which should enable staff to ascertain approximate drive times. Drive time, per se, is not estimated due to variable road conditions (weather, time of day, etc.) and variable street route choices available.

Respondent: Deborah Guest, Qwest Manager

19. (Qwest 36) If a batch cut process is developed, does that make it more or less likely that an electronic loop provisioning process will be implemented?

QWEST RESPONSE:

Qwest does not intend to implement an electronic loop provisioning ("ELP") process.

The FCC recognized in the Triennial Review Order that an electronic loop provisioning proposal would cost by one estimate "more than 100 billion dollars", TRO at paragraph 491.

Respondent: Deborah Guest, Qwest Manager

20. (Qwest 37) For each technician identified as trained in the hot cut process, when did that training occur?

QWEST RESPONSE:

On the job training was conducted in advance of the first live hot cut and continues today in the form of weekly audits conducted by management employees.

Respondent: Deborah Guest, Qwest Manager

21. (Qwest 38) For each technician identified as trained in the hot cut process, is that training documented or posted? If so, where is that training documented or posted?

QWEST RESPONSE:

The training is not documented or posted.

Respondent: Deborah Guest, Qwest Manager

22. (Qwest 39) For each technician identified as trained in the hot cut process, how often does that technician get trained in the hot cut process?

QWEST RESPONSE:

See Qwest's Responses to PSC Set 2, Data Request Nos.37 and 40.

Respondent: Deborah Guest, Qwest Manager

23. (Qwest 40) For each technician identified as trained in the hot cut process, is there a refresher course for that technician? If so, how often is the refresher course offered?

QWEST RESPONSE:

Hot cut training is provided as on the job training using Qwest Central Office Job Aids. Qwest management employees audit non-management employees on a weekly basis to ensure compliance to processes. Coaching sessions are provided to bring employees back into compliance, if necessary. Training is an ongoing process.

Respondent: Deborah Guest, Qwest Manager

24. (Qwest 41) For each technician identified as trained in the hot cut process, is the technician required to take the refresher course if one is offered?

QWEST RESPONSE:

Training is an ongoing process. The audit process creates the opportunity to offer refresher training.

Respondent: Deborah Guest, Qwest Manager

25. (Qwest 42) Does Qwest's UNE-L loop always provide CLECs with DS0 capacity?

QWEST RESPONSE:

Yes, all of the facilities that Qwest installs would allow a CLEC to put Voice Grade Capability over the circuit.

Respondent: Pat Finley, Qwest Manager
Deb Smith, Qwest Manager

26. (Qwest 43) If Qwest's UNE-L loop does not always provide CLECs with DS0 capacity, identify by customer and wire center all instances where it does not provide DS0 capacity.

QWEST RESPONSE:

See Qwest's Response to PSC Set 2, Data Request No. 42.

Respondent: Pat Finley, Qwest Manager
Deb Smith, Qwest Manager

27. (Qwest 44) For each Qwest central office or wire center at which loops and transport are connected at collocation arrangements to form EELs, please provide the following information:

(a) the CLLI code, street address, and V&H coordinates of the Qwest central office or wire center where such EELs are created;
(b) the CLLI code, street address, V&H coordinates, and owner(s) of the switch(es) to which such EELs are connected;
(c) number of such EELs that comprise DS-0/voice grade transport connected to DS-0/voice grade loops;
(d) number of such EELs that comprise DS-1 transport connected to multiplexed DS-0/voice grade loops;
(e) number of such EELs that comprise DS-1 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(f) number of such EELs that comprise DS-3 transport connected to multiplexed DS-0/voice grade loops;
(g) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(h) number of such EELs that comprise DS-1 transport connected to DS-1 loops;
(i) number of such EELs that comprise DS-3 transport connected to multiplexed DS-1 loops;
(j) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-1 loops, and the loop-to-transport concentration ratio.

QWEST RESPONSE:

Qwest has compiled the North Dakota data in its possession that is responsive to this request. However, this request seeks CLEC\carrier specific information that may be protected under 47 U.S.C. 222(a) ("Privacy of Customer Information") and/or other privacy laws. Qwest will provide the requested CLEC information upon receiving either: (1) a Commission Order requiring production of the information, or (2) permission by one or more CLECs to release the requested information.

Respondent: Qwest Legal Department

28. (Qwest 45) For each Qwest central office or wire center at which loops and transport
are connected to form EELs *without* using collocation, please provide the following information

(a) the CLLI code, street address, and V&H coordinates of the Qwest central office or wire center where such EELs are created;
(b) the CLLI code, street address, V&H coordinates, and owner(s) of the switch(es) to which such EELs are connected;
(c) number of such EELs that comprise DS-0/voice grade transport connected to DS-0/voice grade loops;
(d) number of such EELs that comprise DS-1 transport connected to multiplexed DS-0/voice grade loops;
(e) number of such EELs that comprise DS-1 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(f) number of such EELs that comprise DS-3 transport connected to multiplexed DS-0/voice grade loops;
(g) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(h) number of such EELs that comprise DS-1 transport connected to DS-1 loops;
(i) number of such EELs that comprise DS-3 transport connected to multiplexed DS-1 loops;
(j) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-1 loops, and the loop-to-transport concentration ratio.

QWEST RESPONSE:

Qwest does not track if EELs used by CLECs are used with or without collocations. Please see Qwest's Response to PSC Set 2, Data Request No. 044.

Respondent: Elaine Garley, Qwest Manager

29. (Qwest 46) [F]or each CLEC and other carrier collocation arrangement in each Qwest central office or wire center in (state), please provide the following information, reported by CLLI code and street address:
(a) name of CLEC or other carrier;
(b) type of collocation arrangement (e.g. caged, cageless, virtual, etc.);
(c) size of collocation arrangement;
(d) amount of power (including both "A" and "B" DC feeds and AC power) supplied to the collocation arrangement;
(e) number of 2-wire cross connects currently provisioned from the MDF to the collocation arrangement;
(f) number of 4-wire cross connects currently provisioned from the MDF to the collocation arrangement;
(g) all equipment installed in the collocation arrangement, including make, model, and total installed capacity for each piece of equipment;
(h) type(s) of Qwest transport connected to the collocation arrangement (e.g., special access, UNE transport, etc.);
(i) capacity(ies) of Qwest transport connected to the collocation arrangement (e.g., DS-1, DS-3, OC-3, etc., and number of circuits at each level of capacity);
(j) all non-recurring and recurring charges for the collocation arrangement;
(k) name(s) of other collocating carrier(s) to which this collocation arrangement is connected in this central office or wire center.

QWEST RESPONSE:

Qwest has compiled the North Dakota data in its possession that is responsive to this request. However, this request seeks CLEC\carrier specific information that may be protected under 47 U.S.C. 222(a) ("Privacy of Customer Information") and/or other privacy laws. Qwest will provide the requested CLEC information upon receiving either: (1) a Commission Order requiring production of the information, or (2) permission by one or more CLECs to release the requested information.

Respondent: Qwest Legal Department

30. (Qwest 47) For each Qwest central office or wire center in (state), please identify the amount of available unused collocation space, in terms of total square feet of space and type(s) of collocation for which available space can be used. Please identify each central office in which collocation

space has been exhausted, or for which collocation space exhaustion is anticipated in the next 3 years, including the date of exhaust or expected exhaust.

QWEST RESPONSE:

Qwest does not track the total amount of available unused collocation space for each central office. The Available Space report which can be found at the following url: http://www.qwest.com/wholesale/collocation_space.html. This information is posted for a 90 day period and is unverified.

Currently, no North Dakota offices are identified as having collocation space that has been exhausted. The Space Exhaust report can be found at the following url: http://www.qwest.com/wholesale/notices/collo/spaceAvail.html.

Qwest cannot anticipate if collocation space may become unavailable, since that is a matter of CLEC demand and timing.

Respondent: Deborah Guest, Qwest Manager

31. (Qwest 48) Please explain whether you currently have in place electronic systems that can accomplish each of the following migration types on a automated, flow-through basis (i.e., no human or other manual intervention is required for completion of the migration):
(a) from UNE-P voice only, or UNE-P voice plus data, to CLEC switch-based voice only;
(b) from UNE-P voice only, or UNE-P voice plus data, to Qwest voice only;
(c) from UNE-P voice only, or UNE-P voice plus data, to Qwest voice plus data;
(d) from UNE-P voice only, or UNE-P voice plus data, to one CLEC line splitting;
(e) from UNE-P voice only, or UNE-P voice plus data, to two CLEC line splitting;
(f) from UNE-P, or UNE-P voice plus data, to CLEC line sharing with CLEC splitter;
(g) from UNE-P, or UNE-P voice plus data, to CLEC line sharing with Qwest splitter;
(h) from CLEC switch-based voice to any of the above;
(i) from one and two CLEC line splitting to any of the above;
(j) from one and two CLEC line sharing to any of the above.

QWEST RESPONSE:

This question covers over 40 transition permutations. As a result, Qwest prepared the table in ATTACHMENT "A". For each line in the table, Qwest

defines "End-to-End Automation" as completion of all necessary steps to transition the customer from the existing scenario to the proposed scenario (including, but not limited to, process and system activities).

Respondent: Robert Weinstein, Qwest Manager

B. Questions for Other Participants

These requests are not directed to Qwest; therefore, no response is provided.

Dated this 15th day of January, 2004.

Respectfully submitted,

Daniel S. Kuntz (ID #03490)
ZUGER KIRMIS & SMITH
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(701)223-2711

Thomas Dethlefs
Tim Goodwin
QWEST SERVICES CORPORATION
1801 California Street, Suite 4900
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303-672-5823

ATTORNEYS FOR QWEST CORPORATION

The foregoing objections were interposed by the undersigned counsel for Qwest Corporation.

Daniel S. Kuntz (ID #03490)
ZUGER KIRMIS & SMITH
P.O. Box 1695
Bismarck, ND 58502-1695
(701)223-2711

Current Unbundled Loop Basic Hot Cut Process Task List

1. CLEC performs per-order loop functions. The results will assist the CLEC in determining the best loop to purchase that will meet their specific needs.

2. Local Service Request (LSR) form submitted to Qwest by means of IMA, EDI, or faxing.

3.,4. If faxed, Service Delivery Coordinator (SDC) reviews LSR and associated forms for completeness. Verification includes, checking: CLEC certification, Letter of Authorization (LOA), Summary Bill Number, CLEC Termination Point, Network Channel (NC), Network Channel Interface (NCI) codes, CLEC Due Date Interval and facilities. If sent via IMA or EDI, the LSR is converted to one or more service orders and sent to the Service Order Processor (SOP).

5. The SDC issues the service order into the Qwest SOP. Then the service order is sent to the appropriate work groups including the Design Services Center.

6. The SDC issues the Firm Order Commitment (FOC) and sends it to the CLEC, if LSR was faxed.. IMA or EDI will send the FOC to the CLEC when the LSR is processed electronically.

7. CLEC receives FOC.

8. If facilities cannot be reused, the Loop Provisioning Center (LPC) must investigate alternate facilities.

9. On the Record Issue Date (RID), the circuit design is created based on the service request. The Word Document provides the central office and field technicians with the information necessary to wire the circuit.

10. Implementer verifies order and performs pre-tests (I.E. line verification).

10a. If circuit fails pre-tests, implementer issues hand off ticket for dispatch to resolve.

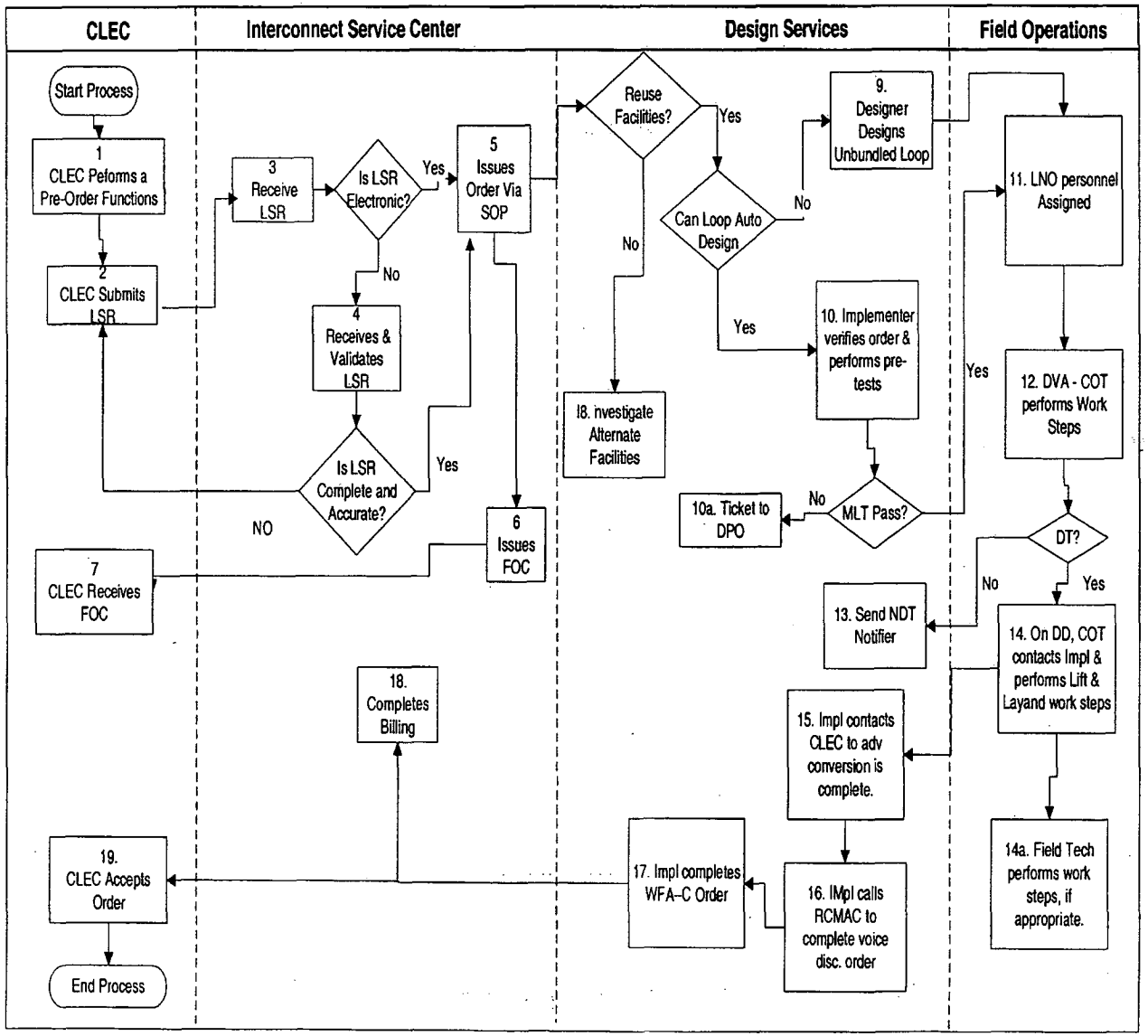
11. Provisioning work request received in Local Network Operations (LNO). Scheduler loads appropriate LNO personnel.

12. On the Design Verify and Assign (DV A) the central office technician (COT) wires the circuit according to the Word Document specifications, and performs Dial Tone (DT) check.

Current Unbundled Loop Basic Hot Cut Process Task List

13. If no DT, the implementer emails to the CLEC the no DT notifier.
14. On Due Date (DD) the COT contacts the implementer and performs 'lift and lay' and other work steps.
14a. If applicable, the field technician performs work steps associated with a dispatch out.
15. The implementer contacts the CLEC to advise conversion is complete.
16. The implementer calls RCMAC to complete voice disconnect order.
17. The implementer completes the order in WF A-C, billing information flows to the SOP.
18. The billing is completed in the SOP.
19. CLEC accepts the order.

CURRENT UNBUNDLED LOOP PROVISIONING FLOW

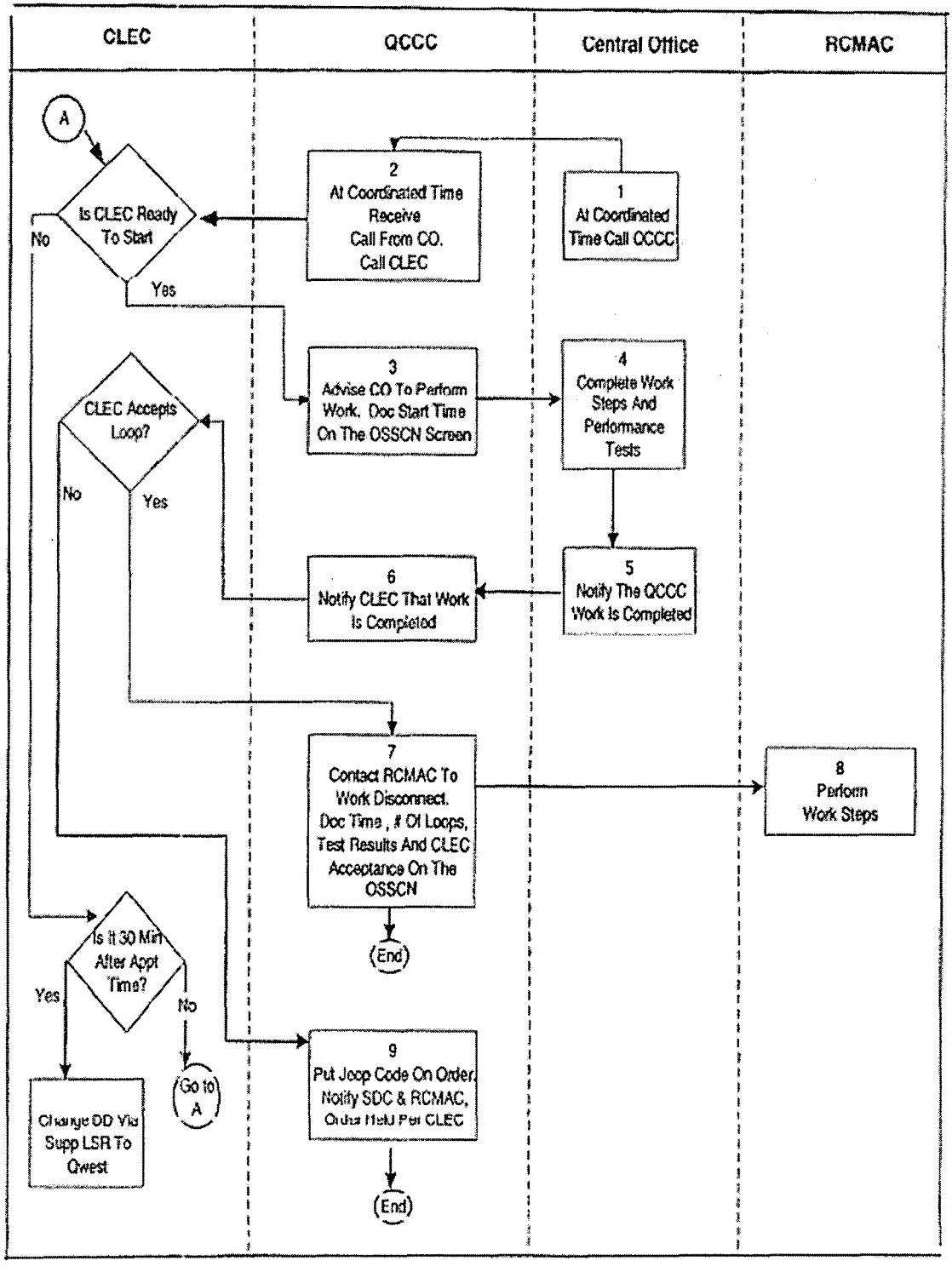


Confidential - Share with Employees with a need to know

Coordinated Hot Cut Reuse Process Task List

Task #	Activity
1	At the requested appointment time the Qwest central office technician (COT) contacts the Qwest CLEC Coordination Center (QCCC) to indicate readiness to start the cut.
2	The QCCC contacts the CLEC to determine readiness.
3	QCCC advises the COT to start the cut and document the start time of the cut.
4	The COT performs the central office wiring and appropriate tests. The COT documents the start time of the "lift" and the end of the "lay" process
5	The COT notifies the QCCC that the work is complete and provides the QCCC with: the "lift" and "lay" time and the test results.
6	The QCCC documents the stop time of the cut and phones the CLEC that the work is complete providing test results. If the CLEC has purchased Cooperative or Performance Testing, the test results are also forwarded to the CLEC via email within two business days of order completion. .
7	Once CLEC accepts the loop, QCCC contacts RCMAC and documents the cut information manually on the form and electronically on the OSS-CN screen in WFA
8	RCMAC completes a':!Y necessary work.
9	CLEC does not accept the loop, the QCCC enters a jeopardy code on the order and notifies the Service Delivery Coordinator (SDC) and the RCMAC that the order will not be completed due to customer reasons.

Coordinated "Hot Cut" (reuse of facilities)



Line Type	Line Description
HEADER	**LOOP BASIC INSTALL**
ADD	
GROUP	**INTERCONNECT SERVICE CENTER (ISC)**
COMMENT	.05, .5, .6, .08 probabilities is percent of time this activity will occur.
COMMENT	Prob (.15) is percent orders that will fall out of IMA for manual handling.
WORKITEM	Review LSR for completeness and accuracy, contractual entries
WORKITEM	Verify Connecting Facility Assignment (CFA) for facility/circuit availability
WORKITEM	Exchange info, obtain CO, name, address, office type. Access Telephone Address Guide to obtain CO address and validate end user address.
WORKITEM	CPPD look-up billing USOC's for co-provider
WORKITEM	
WORKITEM	Analyze request to determine co-provider, type of order, and installation option
WORKITEM	Determine critical dates
WORKITEM	If directory advertising or retail contract or both, issue order to remove information from account
WORKITEM	Populate required fields
WORKITEM	Type, review and submit to customer the Firm Order Confirmation (FOC)
WORKITEM	Input order into service order processor. Type and format order for billing and provisioning
WORKITEM	Ensure order is successfully distributed to the systems and is ready for provisioning
WORKITEM	Handle calls from other departments working the order
WORKITEM	Handle issues including conditioning, facility, cable&pair
GROUP	**LOOP PROVISIONING CENTER (LPC)**
COMMENT	Probability is % manual work required.
WORKITEM	Clear RMA (Request for manual assistance)
GROUP	**DESIGN**
COMMENT	Probabilities are % manual work required.
WORKITEM	Order handling/screening
WORKITEM	GOC (Generic Order Control) order log
WORKITEM	Enter WA (Work Authorization) mask
WORKITEM	Prepare loop input/DRI (Design Related Information)
WORKITEM	Circuit design
WORKITEM	Distribute WORD (Work Order Record Detail) document
GROUP	**CENTRAL OFFICE FRAMES**
COMMENT	2 probability is for cross-connects placed at Main Distributing Frame and Interconnect D
COMMENT	0.06 probability represents forward-looking estimate of new loop orders.
COMMENT	0.94 probability represents forward-looking estimate of re-use (existing) loop orders.
WORKITEM	Analyze order
WORKITEM	Complete cross-connect
WORKITEM	Pre-service Connecting Facility Arrangement (CFA) Dial tone check
WORKITEM	Complete loop qualification
WORKITEM	Record Designed, Verified, Assigned (DVA) test results
WORKITEM	Post DVA work complete is WFA-DI (Work Force Administration - Dispatch In Module)
WORKITEM	Analyze Due Date WFADI work request
WORKITEM	Due Date pre-service CFA dial tone check
GROUP	**PROJECT COORDINATOR**
COMMENT	0.06 probability represents forward-looking estimate of new loop orders.
WORKITEM	Screen WFA (Work Force Administration) for order accuracy
WORKITEM	Verify LNO (Local Network Operation) completion
WORKITEM	Complete performance/conformance testing
WORKITEM	Document test results
WORKITEM	Notify customer/co-provider of work completion

WORKITEM	Post order complete in WFA/C (Work Force Administration - Control Module)
DISCONNECT	
GROUP	**INTERCONNECT SERVICE CENTER (ISC)**
COMMENT	Prob (.15) is percent orders that will fall out of IMA for manual handling.
COMMENT	DISCOUNT = PV(0.1125,2.5, , 1) = .77
WORKITEM	Review LSR for completeness and accuracy, contractual entries
WORKITEM	Verify existing account (access CSR in BOSS/CARS) and obtain closing bill address.
WORKITEM	Type, review and submit to customer the Firm Order Confirmation (FOC)
WORKITEM	Input order into service order processor. Type and format order for billing and provisioning
WORKITEM	Populate required fields
WORKITEM	Ensure order is successfully distributed to the systems and is ready for provisioning
GROUP	**LOOP PROVISIONING CENTER (LPC)**
COMMENT	Probability is % manual work required.
COMMENT	DISCOUNT = PV(0.1125,2.5, , 1) = .77
WORKITEM	Clear RMA (Request for manual assistance)
GROUP	**DESIGN**
COMMENT	Probabilities are % manual work required.
COMMENT	DISCOUNT = PV(0.1125,2.5, , 1) = .77
WORKITEM	Order handling/screening
WORKITEM	GOC (Generic Order Control) order log
WORKITEM	Enter WA (Work Authorization) mask
WORKITEM	Disconnect circuit
WORKITEM	Distribute WORD (Work Order Record Detail) document
GROUP	**CENTRAL OFFICE FRAMES**
COMMENT	2 probability is for cross-connects removed at Main Distributing Frame and Interconnect
COMMENT	DISCOUNT = PV(0.1125,2.5, , 1) = .77
WORKITEM	Analyze order
WORKITEM	Remove cross-connect
WORKITEM	Complete work request in WFA-DI (Work Force Administration - Dispatch In Module)
GROUP	**PROJECT COORDINATOR**
COMMENT	DISCOUNT = PV(0.1125,2.5, , 1) = .77
WORKITEM	Screen WFA (Work Force Administration) for circuit
WORKITEM	Contact customer
WORKITEM	Complete circuit in WFA/C (Work Force Administration - Control Module)

Time Estimate	Prob #1	Prob #2	Labor Rate
3	1	0.15	42.45
1	0.05	0.15	42.45
4	1	0.15	42.45
2	1	0.15	42.45
2	1	0.15	42.45
2.5	1	0.15	42.45
1	1	0.15	42.45
3	0.5	0.15	42.45
3	1	0.15	42.45
3	1	0.15	42.45
10	1	0.15	42.45
3	1	0.15	42.45
5	0.6	0.15	42.45
5	0.08	0.15	42.45
11.25	0.15	0	41.82
5	0.2	0	44.25
6	0.2	0	44.25
5	0.1	0	44.25
10	0.2	0	44.25
20	0.1	0	44.25
2	0.05	0	44.25

[istribution Frame.

5	1	0	46.78
4	2	0	46.78
4	1	0	46.78
2	1	0.06	46.78
2	1	0.06	46.78
2	1	0	46.78
2	1	0.94	46.78
4	1	0	46.78
4	1	0	46.78
2	1	0	46.78
15	1	0.06	46.78
3	1	0	46.78
4	1	0	46.78

3	1	0	46.78
3	0.15	0.77	42.45
2	0.15	0.77	42.45
2	0.15	0.77	42.45
10	0.15	0.77	42.45
3	0.15	0.77	42.45
3	0.15	0.77	42.45
11.25	0.15	0.77	41.82
5	0.1	0.77	44.25
6	0.1	0.77	44.25
5	0.1	0.77	44.25
5	0.1	0.77	44.25
2	0.05	0.77	44.25

t Distribution Frame.

5	1	0.77	46.78
2.3	2	0.77	46.78
2	1	0.77	46.78
2	1	0.77	46.78
4	1	0.77	46.78
3	1	0.77	46.78

Cost Factors

	2001ND01E
Cost of Money:	11.25%
Release Date:	2-Nov
	ND
Marketing	
Product Management Expense	0.024742
Sales Expense	0.014501
Product Advertising Expense	0
Marketing Total	
Direct Cost + Marketing	
Support Asset and Expenses	
Network Support Assets	0.015413
General Support Assets	0.057255
General Purpose Computers	0.039469
Business Fees (Other Operating Taxes)	0.026004
Uncollectible	0.001989
Intangibles	0
Support Asset and Expenses Total	
TELRIC	
Indirect & Common	
Executive Expense	0.001805
Planning Expense	0.000291
Accounting & Finance Expense	0.0051
External Relations Expense	0.009493
Human Resources Expense	0.004201
Information Management Expense	0.067553
Legal Expense	0.00658
Other Procurement Expense	0.001601
Research & Development Expense	0.000039
Other General and Admin Expense	0.014796
Indirect & Common Costs Total	
TELRIC + Indirect & Common Costs	
Commission Factor 1	0
Commission Factor 2	0

NORTH DAKOTA CLEC'S
PagingT1
Arch Wireless Holdings Inc (fka Arch Paging Inc. and Mobile Communications Corporation of
Community Paging Corporation
PagingT2
Arch Wireless Holdings Inc (fka Arch Paging Inc. and Mobile Communications Corporation of
Resale
AltiComm Inc.
Choctaw Communications Inc. dba Smoke Signal Communications
CI2 Inc.
Comm South Companies Inc.
Continental F.S. Communications
Digital Telecommunications Inc.
essential.com
Flatel Inc.
HJN Telecom Inc.
Houlton Enterprises Inc. dba Guaranteed Phone Service
Ignus Incorporated
QuantumShift Communications Inc.
ServiSense.com Inc.
WirelessT2
Midwest Wireless Communications L.L.C. and Switch 2000 L.L.C.
Minnesota PCS L.P. dba Wireless North L.L.C.
NPCR Inc. dba Nextel Partners
Rural Cellular Corporation
Sprint Spectrum L.P.
TW Wireless LLC
Verizon fka CommNet Cellular, Inc.
Verizon fka U S WEST NewVector Inc. - North Dakota RSA No. 3
WWC Holding Co. Inc.
Wireline
1-800-Reconex Inc.
360networks (USA) inc.
AT&T Corp.
Avix Technologies Inc (fka USA Digital, Inc.)
BridgeBand Communications Inc.
CCCND Inc. dba Connect!
Ciera Network Systems Inc.
Consolidated Communications Networks Inc.
Daktel Communications LLC
DSLnet Communications LLC
Essex Communications Inc. dba eLEC Communications
Excel Telecommunications Inc.
HTC Services Inc.
IdeaOne Telecom Group L.L.C.
Integra Telecom of North Dakota Inc. f/k/a InfoTel Communications
Intrado Communications Inc.
ionex Communications North Inc. (fka Advanced Communications Group and Firstel Inc.)
KMC Telecom V Inc.
Level 3 Communications LLC
MAXCESS Inc.
MCImetro Access Transmission Services LLC

McLeodUSA Telecommunications Services Inc.
Mid-Rivers Telephone Cooperative,
MidContinent Communications Inc.
New Access Communications LLC
New Edge Network Inc. dba New Edge Networks
NewPath Holdings Inc.
NOS Communications Inc.
NOW Communications Inc.
OrbitCom Inc (fka VP Telecom)
Pilgrim Telephone Inc.
Polar Telcom
Preferred Carrier Services Inc.
Premiere Network Services Inc.
Skyland technologies Inc.
Sprint Communications Company L.P.
Telephone Company of Central Florida Inc.
U.S. Link, Inc.
Val-Ed Joint Venture L.L.P.
VarTec Telecom Inc.
Western CLEC Corporation (fka Business Services by Cellular One fka Eclipse Communication
WTC Competitive Services Inc.
Z-Tel Communications Inc.

North Dakota Public Service Commission; Local Competition Investigation; Case NU: PU-439-03-295; Set 2; Request 48

		Assumed Transition		End-to-end Automation? (See Assumption 5 below)	Conversion Notes
		From:	To		
a1	from UNE-P voice only to CLEC switch-based voice only;	UNE-P	UNE-L	N	
a2	from UNE-P voice plus data to CLEC switch-based voice only;	UNE-P LINE SPLITTING	UNE-L	N	
b1	from UNE-P voice only to Qwest voice only;	UNE-P	RETAIL VOICE	Y	
b2	from UNE-P voice plus data, to Qwest voice only;	UNE-P LINE SPLITTING	RETAIL VOICE	N	
c1	from UNE-P voice only to Qwest voice plus data;	UNE-P	RETAIL VOICE AND DSL	N	
c2	from UNE-P voice plus data, to Qwest voice plus data;	UNE-P LINE SPLITTING	RETAIL VOICE AND DSL	N	
d1	from UNE-P voice only to one CLEC line splitting;	UNE-P	UNE-P LINE SPLITTING	N	
d2	from UNE-P voice plus data, to one CLEC line splitting;	UNE-P LINE SPLITTING	UNE-P LINE SPLITTING (CLEC ONLY)	N/A	This is not a transition.
e1	from UNE-P voice only to two CLEC line splitting;	UNE-P	UNE-P LINE SPLITTING (CLEC AND DLEC)	N	
	from UNE-P voice plus data, to two CLEC line splitting;	UNE-P LINE SPLITTING	UNE-P LINE SPLITTING (CLEC AND DLEC)	N	
f1	from UNE-P to CLEC line sharing with CLEC splitter;	UNE-P	N/A	N/A	Line Sharing implies Qwest voice and CLEC data. There is no product designated "CLEC Line Sharing." In addition, Qwest only provides Qwest Resale DSL over Qwest Splitters
f2	from UNE-P voice plus data, to CLEC line sharing with CLEC splitter;	UNE-P LINE SPLITTING	N/A	N/A	Line Sharing implies Qwest voice and CLEC data. There is no product designated "CLEC Line Sharing"
g1	from UNE-P to CLEC line sharing with Qwest splitter;	UNE-P	N/A	N/A	Qwest only provides Qwest Resale DSL over Qwest Splitters. Only applies to a line with RETAIL VOICE Voice and Qwest Resale DSL
g2	from UNE-P voice plus data, to CLEC line sharing with Qwest splitter;	UNE-P LINE SPLITTING	N/A	N/A	Line Sharing implies Qwest voice and CLEC data. There is no product designated "CLEC Line Sharing." In addition, Qwest only provides Qwest Resale DSL over Qwest Splitters
h1	from CLEC switch-based voice to CLEC switch-based voice only;	UNE-L	UNE-L	N/A	This is not a transition.
h2	from CLEC switch-based voice to Qwest voice only;	UNE-L	RETAIL VOICE	N	
h3	from CLEC switch-based voice to Qwest voice plus data;	UNE-L	RETAIL VOICE AND DSL	N	
h4	from CLEC switch-based voice to one CLEC line splitting;	UNE-L	UNE-L LINE SPLITTING (CLEC ONLY)	N	
h5	from CLEC switch-based voice to two CLEC line splitting;	UNE-L	UNE-L LINE PLITTING (CLEC AND DLEC)	N	
h6	from CLEC switch-based voice to CLEC line sharing with CLEC splitter;	UNE-L	RETAIL VOICE AND CLEC DSL	N	
h7	from CLEC switch-based voice to CLEC line sharing with Qwest splitter;	UNE-L	N/A	N/A	Line Sharing implies Qwest voice and CLEC data. There is no product designated "CLEC Line Sharing." In addition, Qwest only provides Qwest Resale DSL over Qwest Splitters
i1	from one CLEC line splitting to CLEC switch-based voice only;	UNE-P LINE SPLITTING	UNE-L	N	
i2	from one CLEC line splitting to Qwest voice only;	UNE-P LINE SPLITTING	RETAIL VOICE	N	
i3	from one CLEC line splitting to Qwest voice plus data;	UNE-P LINE SPLITTING	RETAIL VOICE AND DSL	N	
i4	from one CLEC line splitting to one CLEC line splitting;	UNE-P LINE SPLITTING	UNE-P LINE SPLITTING	N/A	This is not a transition.
i5	from one CLEC line splitting to two CLEC line splitting;	UNE-P LINE SPLITTING	UNE-P LINE SPLITTING (CLEC AND DLEC)	N	
i6	from one CLEC line splitting to CLEC line sharing with CLEC splitter;	UNE-P LINE SPLITTING	RETAIL VOICE WITH CLEC DSL	N	
i7	from one CLEC line splitting to CLEC line sharing with Qwest splitter;	UNE-P LINE SPLITTING	N/A	N/A	Line Sharing implies Qwest voice and CLEC data. There is no product designated "CLEC Line Sharing." In addition, Qwest only provides Qwest Resale DSL over Qwest Splitters
j1	from two CLEC line splitting to CLEC switch-based voice only;	UNE-P LINE SPLITTING (CLEC AND DLEC)	UNE-L	N	
j2	from two CLEC line splitting to Qwest voice only;	UNE-P LINE SPLITTING (CLEC AND DLEC)	RETAIL VOICE	N	
j3	from two CLEC line splitting to Qwest voice plus data;	UNE-P LINE SPLITTING (CLEC AND DLEC)	RETAIL VOICE AND DSL	N	
j4	from two CLEC line splitting to one CLEC line splitting;	UNE-P LINE SPLITTING (CLEC AND DLEC)	UNE-L LINE SPLITTING (CLEC ONLY)	N	
j5	from two CLEC line splitting to two CLEC line splitting;	UNE-P LINE SPLITTING (CLEC AND DLEC)	UNE-P LINE SPLITTING (CLEC AND DLEC)	N/A	This is not a transition.
j6	from two CLEC line splitting to CLEC line sharing with CLEC splitter;	UNE-P LINE SPLITTING (CLEC AND DLEC)	RETAIL VOICE WITH CLEC DSL	N	
j7	from two CLEC line splitting to CLEC line sharing with Qwest splitter;	UNE-P LINE SPLITTING (CLEC AND DLEC)	N/A	N/A	Line Sharing implies Qwest voice and CLEC data. There is no product designated "CLEC Line Sharing." In addition, Qwest only provides Qwest Resale DSL over Qwest Splitters
k1	from one CLEC line sharing to CLEC switch-based voice only;	RETAIL VOICE WITH CLEC DSL	UNE-L	N	Unbundled Loop
k2	from one CLEC line sharing to Qwest voice only;	RETAIL VOICE WITH CLEC DSL	RETAIL VOICE	N	
k3	from one CLEC line sharing to Qwest voice plus data;	RETAIL VOICE WITH CLEC DSL	RETAIL VOICE AND DSL	N	
k4	from one CLEC line sharing to one CLEC line splitting;	RETAIL VOICE WITH CLEC DSL	UNE-L LINE SPLITTING (CLEC ONLY)	N	
k5	from one CLEC line sharing to two CLEC line splitting;	RETAIL VOICE WITH CLEC DSL	UNE-P LINE SPLITTING (CLEC AND DLEC)	N	
k6	from one CLEC line sharing to CLEC line sharing with CLEC splitter;	RETAIL VOICE WITH CLEC DSL	RETAIL VOICE WITH CLEC DSL	N/A	This is not a transition.
k7	from one CLEC line sharing to CLEC line sharing with Qwest splitter;	RETAIL VOICE WITH CLEC DSL	N/A	N/A	Line Sharing implies Qwest voice and CLEC data. There is no product designated "CLEC Line Sharing." In addition, Qwest only provides Qwest Resale DSL over Qwest Splitters

Assumptions:

1. Single Line Accounts
2. POTS only for Voice scenarios
3. By definition, line sharing is Qwest voice and CLEC data on the same line. When a CLEC is the underlying voice provider on an unbundled loop, and another CLEC provides the data on that loop, the product is considered loop splitting.
4. Qwest defines "End-to-End Automation" as completion of all necessary steps to transition the customer from the existing scenario to the proposed (including, but not limited to, process and system activities).

Public Service Commission
State of North Dakota

COMMISSIONERS

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December 3, 2003

RE: Case No. PU-439-03-295: Local Competition Investigation

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order (TRO) and adopted new rules concerning incumbent local exchange carrier (ILEC) obligations to unbundle certain elements of their networks. The rules became effective on October 2, 2003.

Qwest Corporation (Qwest) intends to rebut the FCC's national finding that CLECs are impaired without access to switching network elements in mass markets in North Dakota. See TRO at ¶¶ 423, 460 and 488 (batch hot cut process), 497 (DS0 crossover point), and 527 (mass market switching), and notes 1376 (DS0 crossover point) and 1612 (batch hot cut process), see also 47 C.F.R. §§51.319(d)(5)(i) (mass market switching). The FCC requires that state commissions complete their analyses and reviews within nine months from the effective date of the TRO.

The Commission has agreed to distribute the attached Discovery Requests to the intervenors in this proceeding. The Discover Requests require responses from incumbent local exchange carriers and competitive local exchange carriers. Responses are required within 30 days.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	Tony Clark	Kevin Cramer
Commissioner	President	Commissioner

PRELIMINARY DISCOVERY REQUESTS
NORTH DAKOTA TRO PROCEEDING
December 3, 2003

A. Requests to CLECs in response to petitioning ILEC

Switching

1. Provide a list of all switches that you currently use to provide a qualifying service (as defined in 47 C.F.R. § 51.5, as that section will be amended by the Final Rules issued by the FCC pursuant to the *Triennial Review Order*) anywhere in the state, regardless of whether the switch itself is located in the state. Do not include ILEC switches utilized by you on an unbundled basis in the ILEC's service territory or through the resale of the incumbent's services at wholesale rates.

2. Identify each ILEC wire center district (*i.e.*, the territory served by a wire center of the ILEC) in which you provide qualifying service to any end user customers utilizing any of the switches identified in your response to Question 1. Wire centers should be identified by providing their name, address, and CLLI code.

3. For each ILEC wire center identified in response to Question 2, identify the total number of voice-grade equivalent lines[1] you are providing to customers in that wire center from your switch(es) identified in response to Question 1. For purposes of this question, "voice-grade equivalent lines" should be defined consistent with the FCC's use of the term.

4. For each switch identified in response to Question 1, identify the approximate capacity of the switch – that is, the maximum number of voice-grade equivalent lines it is capable of serving – based on that switch's existing configuration and component parts.

5. With respect to the voice-grade equivalent lines identified in response to Question 3, separately indicate the number being provided to (a) residential customers; (b) business customers to whom you provide only voice-grade or DS0 lines.

6. For each of the switches identified in your response to Question 1, state

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[1] Voice-grade equivalent lines would include DS0 lines and, by the definition in FCC Form 477, *Instructions for the Local Competition and Broadband Reporting From* include traditional analog POTS lines, Centrex-CO extensions and Centrex-CE trunks. Line counts are based on how they are charged to the customer rather than how they are physically provisioned (e.g. 2-wire copper, VoIP, fiber).

whether the switch is owned by you, or whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis. If the facility is not owned by you, identify the entity owning the switch and (if different) the entity with which you entered into the lease or other arrangement, identify the nature of the arrangement, and state whether such entity or entities are affiliates of yours, in the sense defined in ¶ 408, footnote 1263 of the *Triennial Review Order*.

B. Questions for Petitioning ILECs

1. For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that you directly serve.

2. For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that CLECs are serving through resale.

3. For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that CLECs are serving through UNE-P.

4. For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that CLECs are serving through the CLECs own facilities.

5. For each wire center in your territory in the state, please provide the number of residential voice-grade equivalent lines that you directly serve.

6. For each wire center in your territory in the state, please provide the number of residential voice-grade equivalent lines that CLECs are serving through resale.

7. For each wire center in your territory in the state, please provide the number of residential voice-grade equivalent lines that CLECs are serving through UNE-P.

8. For each wire center in your territory in the state, please provide the estimated number of residential lines that CLECs are serving through their own facilities (complete bypass).

9. For each wire center in your territory in the state, please provide the number of in-service collocation arrangements that you have, and for each collocation arrangement, please indicate the type of collocation that you are providing.

10. For each wire center in your territory in the state, please provide the number of provisioned collocation arrangements that you have in place that have yet to be activated, and for each collocation arrangement, please indicate the type of collocation.

11. For each wire center in your territory in the state, please provide the number of pending collocation arrangements that you have, and for each collocation arrangement, please indicate the type of collocation.

12. For each wire center in your territory in the state, please provide a list of restrictions on equipment, cross-connects between CLEC collocation cages, or other restrictions or limitations that you place on a CLECs use of collocation space.

13. For each wire center in your territory in the state, please identify whether or not collocation space is currently available to CLECs. For each wire center where collocation space is currently not available to CLECs, please include an explanation of why space is not available in those wire centers.

C. Questions to both CLECs and ILEC – Switching

1. With respect to the voice-grade equivalent lines being provided to (a) residential customers; (b) business customers to whom you provide between 1-3 voice-grade equivalent lines at one location; (c) business customers to whom you provide between 4-24 voice grade equivalent lines at one location; and (d) business customers to whom you provide 24 or more voice-grade equivalent lines (in one location), state the current average total monthly revenues earned per line served in the state by LATA and by MSA and specify the source of those revenues by service type.

2. For each switch (e.g. circuit, packet, soft switch, etc.) currently used, or those that have been used, or that could be used to provide local service in the state (this would include switches located in other states that provide or have the ability to provide local exchange service in the state), state the initial cost of that switch, including installation and engineering costs, and the number of initial equipped lines.

3. Describe in detail any instances in which your company is using, through a wholesale, lease, or resale arrangement, the switch of any entity other than and unaffiliated with an ILEC (e.g., another competitive local exchange carrier) to provide local exchange service to end users in the state. Include in your response the rates, terms, and conditions under which you are obtaining switching on a wholesale, lease, or resale basis.

4. State whether your company is providing, or plans to provide, through a wholesale, lease or resale arrangement, capacity on any switches you own or operate in the state, or that own or operate in another state and that you use to provide local service in the state, to an unaffiliated entity. For any such instances, identify the rates, terms, and conditions under which you are making that switch capacity available. For each switch on which you are currently leasing or selling capacity to an unaffiliated entity, identify:

   a. the make, model, age, and current software upgrades of each switch;
   b. the geographic location of the switch;
   c. the footprint or geographic area served by the switch, including a list of each exchange served by the switch; the features and functions (including software upgrades) available in the switch;
   d. provide the capacity of each switch, including:
      (i) percentage of switch capacity in use;
      (ii) percentage of switch capacity reserved for your company's own use and future use; and
      (iii) percentage of current and future capacity of each switch that will be made available for CLEC use.
   e. For each switch identified, please state in detail:
      (i) the anticipated service life of the switch; and
      (ii) whether your company intends to utilize the identified switch for the full anticipated service life.

REQUESTS FOR INFORMATION REGARDING THE DEVELOPMENT OF AN EFFICIENT LOOP MIGRATION PROCESS

A. Questions for Qwest

1. Provide, in an electronic format, on a monthly basis, the number of UNE-P lines at the beginning of the month, added during the month, disconnected during the month and at the end of the month. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

2. Provide, in an electronic format, on a monthly basis for every wire center, the number of UNE-L lines at the beginning of the month, added during the month, disconnected during the month and at the end of the month. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

3. Describe the hot cut process currently used to transfer lines from the ILEC switch to the CLEC facilities.

4. List each task that is part of the current process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the sources of the data; i.e., time/motion studies, SME analysis, etc.

5. Describe a batch hot cut process that Qwest would implement to meet the FCC's requirement to establish a hatch hot cut process. Include an estimate of number of lines per batch.

6. List each task that is part of the batch hot cut process described in the answer to the above question regarding a batch process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the source of the data; i.e., time/motion studies, SME analysis, etc.

7. List each task that is part of the batch hot cut process that is not included in the current hot cut process.

8. List each task that is part of the current hot cut process that is not included in the batch hot cut process.

9. On a monthly basis, provide the total number of residential lines served and the number of residential lines served using integrated digital line carriers. Provide separately for every wire center the number of Qwest retail residential lines, UNE served residential lines, and Wholesale served residential lines. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

10. For each wire center, on a monthly basis, provide the total number of business mass-market lines served and the number of business mass-market lines served using integrated digital line carriers. Provide separately for every wire center the number of Qwest retail business mass-market lines, UNE served business mass-market lines, and Wholesale served business mass-market lines. Explain how Qwest determined which business lines were mass-market lines and which are enterprise lines. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

11. If the tasks related to the hot cut process for lines served using integrated digital line carriers differs from the process used for other lines, discuss how the process is different and list the tasks that must be added specifically for the lines served using integrated digital line carriers. Include the time required to accomplish those tasks.

12. On a monthly basis, provide the average time a customer's service was disconnected due to the hot cut process. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

13. On a monthly basis, provide the number of technicians during each month who have transferred a line from an ILEC switch to the CLEC facility as part of the hot cut process. Count only those employees who perform the manual process. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

14. On a monthly basis, provide the number of technicians trained and capable of transferring a line from an ILEC switch to the CLEC facility as part of the hot cut process. Count only those employees who can perform the manual process. Do not include management of supervisory personnel who can perform these tasks but do not do so as part of their

regular work effort. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

15. On a monthly basis for every wire center, provide, in an electronic format, the number of hot cuts performed. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

16. Provide a list of all carriers with which Qwest has an interconnection agreement for the provision of local service in the state.

17. Provide a list of all carriers to which Qwest has sold collocation services in the state. For each carrier, list the wire centers where the carrier is collocated.

18. Provide a list of Qwest wire centers with indicators that identify whether the office is unstaffed, has a technician on duty but the technician can not perform hot cuts, or has a technician on duty and the technician can perform hot cuts. For unstaffed offices and offices where the technician can not perform hot cuts, specify the number of miles that the technician must drive and driving time to reach that office from the closest office where a technician who can perform hot cuts is normally on duty.

19. If a batch cut process is developed, does that make it more or less likely that an electronic loop provisioning process will be implemented?

20. For each technician identified as trained in the hot cut process, when did that training occur?

21. For each technician identified as trained in the hot cut process, is that training documented or posted? If so, where is that training documented or posted?

22. For each technician identified as trained in the hot cut process, how often does that technician get trained in the hot cut process?

23. For each technician identified as trained in the hot cut process, is there a refresher course for that technician? If so, how often is the refresher course offered?

24. For each technician identified as trained in the hot cut process, is the technician required to take the refresher course if one is offered?

25. Does Qwest's UNE-L loop always provide CLECs with DS0 capacity?

26. If Qwest's UNE-L loop does not always provide CLECs with DS0 capacity, identify by customer and wire center all instances where it does not provide DS0 capacity.

27. For each Qwest central office or wire center at which loops and transport are connected at collocation arrangements to form EELs, please provide the following information:

(a) the CLLI code, street address, and V&H coordinates of the Qwest central office or wire center where such EELs are created;
(b) the CLLI code, street address, V&H coordinates, and owner(s) of the switch(es) to which such EELs are connected;
(c) number of such EELs that comprise DS-0/voice grade transport connected to DS-0/voice grade loops;
(d) number of such EELs that comprise DS-1 transport connected to multiplexed DS-0/voice grade loops;
(e) number of such EELs that comprise DS-1 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(f) number of such EELs that comprise DS-3 transport connected to multiplexed DS-0/voice grade loops;
(g) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(h) number of such EELs that comprise DS-1 transport connected to DS-1 loops;
(i) number of such EELs that comprise DS-3 transport connected to multiplexed DS-1 loops;
(j) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-1 loops, and the loop-to-transport concentration ratio.

28 For each Qwest central office or wire center at which loops and transport are connected to form EELs *without* using collocation, please provide the following information

(a) the CLLI code, street address, and V&H coordinates of the Qwest central office or wire center where such EELs are created;
(b) the CLLI code, street address, V&H coordinates, and owner(s) of the switch(es) to which such EELs are connected;
(c) number of such EELs that comprise DS-0/voice grade transport connected to DS-0/voice grade loops;
(d) number of such EELs that comprise DS-1 transport connected to multiplexed DS-0/voice grade loops;
(e) number of such EELs that comprise DS-1 transport connected

to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(f) number of such EELs that comprise DS-3 transport connected to multiplexed DS-0/voice grade loops;
(g) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
(h) number of such EELs that comprise DS-1 transport connected to DS-1 loops;
(i) number of such EELs that comprise DS-3 transport connected to multiplexed DS-1 loops;
(j) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-1 loops, and the loop-to-transport concentration ratio.

29 or each CLEC and other carrier collocation arrangement in each Qwest central office or wire center in (state), please provide the following information, reported by CLLI code and street address:
(a) name of CLEC or other carrier;
(b) type of collocation arrangement (e.g. caged, cageless, virtual, etc.);
(c) size of collocation arrangement;
(d) amount of power (including both "A" and "B" DC feeds and AC power) supplied to the collocation arrangement;
(e) number of 2-wire cross connects currently provisioned from the MDF to the collocation arrangement;
(f) number of 4-wire cross connects currently provisioned from the MDF to the collocation arrangement;
(g) all equipment installed in the collocation arrangement, including make, model, and total installed capacity for each piece of equipment;
(h) type(s) of Qwest transport connected to the collocation arrangement (e.g., special access, UNE transport, etc.);
(i) capacity(ies) of Qwest transport connected to the collocation arrangement (e.g., DS-1, DS-3, OC-3, etc., and number of circuits at each level of capacity);
(j) all non-recurring and recurring charges for the collocation arrangement;
(k) name(s) of other collocating carrier(s) to which this collocation arrangement is connected in this central office or wire center.

30 For each Qwest central office or wire center in (state), please identify the amount of available unused collocation space, in terms of total square feet of space and type(s) of collocation for which available space can be used. Please identify each central office in which collocation space has been exhausted, or for which collocation space exhaustion is anticipated in the

next 3 years, including the date of exhaust or expected exhaust.

31 Please explain whether you currently have in place electronic systems that can accomplish each of the following migration types on a automated, flow-through basis (i.e., no human or other manual intervention is required for completion of the migration):
(a) from UNE-P voice only, or UNE-P voice plus data, to CLEC switch-based voice only;
(b) from UNE-P voice only, or UNE-P voice plus data, to Qwest voice only;
(c) from UNE-P voice only, or UNE-P voice plus data, to Qwest voice plus data;
(d) from UNE-P voice only, or UNE-P voice plus data, to one CLEC line splitting;
(e) from UNE-P voice only, or UNE-P voice plus data, to two CLEC line splitting;
(f) from UNE-P, or UNE-P voice plus data, to CLEC line sharing with CLEC splitter;
(g) from UNE-P, or UNE-P voice plus data, to CLEC line sharing with Qwest splitter;
(h) from CLEC switch-based voice to any of the above;
(i) from one and two CLEC line splitting to any of the above;
(j) from one and two CLEC line sharing to any of the above.

B. Questions for Other Participants

1. Describe the hot cut process currently used to transfer lines from the ILEC switch to the CLEC facilities.

2. List each task that is part of the current process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the source of the data; i.e. time/motion studies, SME analysis, etc.

3. Describe a batch hot cut process that you would implement to meet the FCC's requirement to establish a batch hot cut process. Include an estimate of the maximum number of lines per batch.

4. List each task that is part of the batch hot cut process described in the answer to the preceding question. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate.

5. If UNE-P is no longer available, what monthly volumes of hot cuts would be required: (a) to migrate existing UNE-P customers to another form of service and (b) to connect new customers in the ordinary course of business. Provide supporting documentation for these volume estimates.

6. For each Qwest wire center in [state] in which CLEC provides retail switched local exchange service, please report the number of switched voice-grade equivalent lines in service per customer location that CLEC serves. Please provide this information in the following format:

WIRE CENTER:_____

	Customer Location	
Quantity of VGE	Residence	Business
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		

7. For each switch CLEC owns, operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity within [state], please state whether the local switching capacity of the switch can be expanded through modular software and hardware additions. If you assert any obstacles to expansion, please identify and explain all such obstacles.

8. Does CLEC believe that there are costs associated with converting or otherwise using a switch currently serving only enterprise customers to also serve mass market customers? If CLEC believes that there are such switching costs, please identify all such costs and explain why it would be necessary to incur them to begin serving mass market customers. Produce any documents or data that support your response.

9. Please provide, a) on a statewide basis, and b) on a central office-specific basis, monthly data for the past two years on customer "churn" (*i.e.*, percentage of your customers lost to another carrier) on all of the following bases:

(a) number of customers by customer type (*e.g.*, residential, business with one to three lines; business with more than three lines);

(b) percentage of churn by customer type (*e.g.*, residential, business with one to three lines, business with more than three lines);

(c) number of customers by service type (*i.e.*, local exchange voice service only, long distance voice service only, bundled local exchange and long distance voice services, and bundled local exchange, long distance, and DSL services);

(d) percentage of churn by service type (*i.e.*, local exchange voice service only, long distance voice service only, bundled local exchange and long distance voice services, and bundled local exchange, long distance, and DSL services).

ECONOMIC ISSUES

10. For customers that purchase up to 24 voice grade equivalent lines please identify the types or categories of customer acquisition costs CLEC incurred in [state] in 2001 and 2002 to attract new customers, set up their accounts, and establish service to them. In addition, please provide the per line costs CLEC incurred in 2001 and 2002 for both business and residential customers for each of the types or categories of customer acquisition costs.

11. For customers that purchase up to 24 voice grade equivalent lines please identify the monthly churn rate CLEC has experienced for local exchange customers in each month in which it has provided local exchange service in the [state] market. In answering this request, calculate the churn rate based upon the number of lines lost each year divided by the average number of lines in service that year. In calculating churn, do not include customers who move but stay with the company. Please produce all documents that refer or relate to the information you provide in response to this request.

12. Please identify the percentage of customers that have left within one month of signing up for service, within two months of signing up for service, within three months of signing up for service, and within six months of signing up for service. Please provide this information in connection with CLECs churn rates in [state] for the most recent 24 months that are available for local exchange customers that purchase up to 24 voice grade equivalent lines. Please produce all documents that refer or relate to the information you provide in response to this request.

13. For customers that purchase up to 24 voice grade equivalent lines please identify each rate plan that CLEC offers to local exchange customers in [state]. In addition, please identify the percentage of CLECs total local exchange customers in [state] that subscribe to each plan that you identify. Please produce all documents that reflect, refer or relate to the information you provide in response to this request.

14. For rate plans identified in B.13. that include a per minute of use component, please provide the average long-distance per minute usage in [state] of CLECs local exchange customers who subscribe to such plans for the most recent 24 months available. Please produce all documents that reflect, refer, or relate to the information you provide in response to this request.

15. For customers that purchase up to 24 voice grade equivalent lines how many CLEC-to-CLEC cross-connects has CLEC performed in [state] since June 2001? How many CLEC-to-CLEC cross-connects does CLEC maintain in [state] at present?