

March 26, 2009

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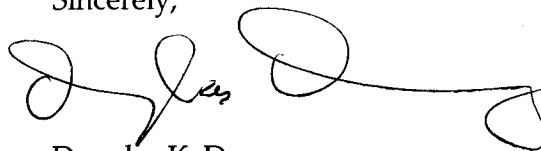
Darrell Nitschke
Director of Administration/Executive Secretary
Public Service Commission
600 East Blvd., Department 408
Bismarck, North Dakota 58505

Re: Public Service Commission Qwest Performance Assurance
Plan Investigation
Case No. PU-08-920

Dear Mr. Nitschke:

Enclosed for filing is an original and seven copies of the Comments of Integra Telecom of North Dakota, Inc. Regarding Qwest's Performance Assurance Plan Review and the Petition to Intervene of Integra Telecom of North Dakota, Inc. in connection with the above-referenced matter.

Sincerely,



Douglas K. Denney
Director, Costs & Policy
763-745-8462 (Direct)
763-745-8459 (Fax)
dkdenney@integratelecom.com

Enclosures

14 **PU-08-920** Filed: 3/27/2009 Pages: 77
**Petition to Intervene & Comments re. QPAP
Investigation**

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

Public Service Commission
Qwest Performance Assurance Plan
Investigation

Case No. PU-08-920

**PETITION TO INTERVENE OF
INTEGRA TELECOM OF NORTH DAKOTA, INC.**

Integra Telecom of North Dakota, Inc. submits this Petition to Intervene, in the above-captioned proceeding. This Petition to Intervene is filed in accordance with North Dakota Administrative Code, Article 69-02-02-05.

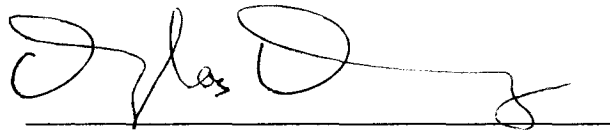
Integra Telecom of North Dakota, Inc. has a legal interest which may be substantially affected by the proceeding and intervention would not unduly broaden the issues or delay the proceeding.

Integra Telecom of North Dakota, Inc. offers intrastate telecommunications services within North Dakota, including local exchange service and intrastate long distance service. In addition, Integra opted into Qwest Corporation's (Qwest), Performance Indicators/ Performance Assurance Plan and benefits from the wholesale service quality protections offered by the plan. Integra Telecom, Inc. and its affiliates, including Integra Telecom of North Dakota, Inc., are participating in the multistate review referenced in the Commission's Notice and would be impacted by changes to Qwest's Performance Assurance Plan.

Integra Telecom of North Dakota, Inc. therefore submits this Petition to Intervene because it is materially interested in, and will be affected by, Qwest's Performance Indicators/Performance Assurance Plan.

The undersigned requests that all pleadings, notices, or other material filed at the Commission or otherwise served upon any party to this docket, such as discovery requests and discovery responses, be sent to the address and e-mail address provided below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Douglas Denney", written over a horizontal line.

Dated March 26, 2009.

Douglas Denney
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Company Representative, Integra

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission)	
Qwest Performance Assurance)	Case No. PU-08-920
Plan Investigation)	

Comments of Integra Telecom of North Dakota, Inc.

Regarding Qwest's Performance Assurance Plan Review

March 27, 2009

Integra Telecom of North Dakota, Inc. respectfully submits these comments and accompanying petition to intervene, in response to the Commission's Notice of Opportunity for Comment¹ regarding Qwest's performance assurance plan.

Introduction

Integra Telecom of North Dakota, Inc. is a CLEC doing business in eastern North Dakota in the Fargo, Fargo West and Grand Forks area and sells telecommunications services, such as local dial tone, DSL, voice mail, long distance,² to primarily small and medium size business customers. Integra Telecom, Inc. ("Integra"), the parent company, is made up of a number of affiliates,³ including Integra Telecom of North Dakota, Inc., doing business throughout the Qwest region. Integra and its affiliates have done business with Qwest since the 1996 Telecom Act and have been involved in Qwest's Performance Indicators ("PIDs") and Performance Assurance Plans ("PAPs") across the Qwest region including the recent stipulation that resulted in a number of significant changes to Qwest's PID and PAP.⁴

¹ *Notice of Qwest Performance Assurance Plan Review and Notice of Opportunity for Comment* ("Notice for Comment"), Public Service Commission Qwest Performance Assurance Plan Investigation, Case No. PU-08-920, February 11, 2009.

² See Integra's website for more detail regarding the services provided by Integra (<http://www.integratelecom.com/services/>).

³ Please see Attachment A, Integra's Supplemental Response to Liberty Consulting First Set of Input Questions Regarding Qwest Performance Assurance Plan Experiences ("Integra Responses"), Question 1, for a list of the various Integra Telecom, Inc. affiliates.

⁴ See Attachment A, *Integra Responses*, Question 12, for details regarding the history and contents of the stipulation. See also the Application filed in 07-726 on October 11, 2007, which amended the Qwest / Integra Interconnection Agreement to include the PAP that resulted from the stipulation between Qwest and a number of CLECs.

The Commission requested comments address a number of issues.⁵ These issues are addressed below, with references to the *Integra Responses* to Liberty Consulting Input Questions, because they address the very issues also addressed by the Commission's request. These responses are attached to this document as Attachment A. The *Integra Responses*, reference a number of documents which are also attached to these comments as A1 through A5.

Commission Issues

1. Trends in Qwest performance results in providing interconnection, unbundled network elements, ancillary services, and resale services.

The PAP was designed to provide Qwest incentives to meet wholesale performance standards. One measure of the success of the plan can be determined by whether Qwest's wholesale performance has improved over time. If the plan provides for proper incentives to avoid poor service quality, then Qwest will avoid making payments under the Plan by maintaining good performance once achieved and, in areas where improvement is needed, improving its service relative to the standard it is being measured against (either a benchmark or Qwest retail parity). If Qwest finds that the benefits to Qwest of poor wholesale service quality are greater than the cost of meeting its performance standards, then we would expect to see no improvement in those areas or a worsening in Qwest's performance over time. A successful PAP does not mean that it is ripe for elimination, but rather that the automatic mechanisms built into the PAP are working as intended.

While Qwest has improved performance in some areas, others have not improved over time. The following table is a high level view comparing Qwest's regional aggregate CLEC performance for three time periods⁶ for a few crucial measures. The first time period is the year following Qwest's 271 approval to sell in-region, interLATA services in North Dakota.⁷ The second time period is from June 2004 to May 2005 and the final time period is the most recent data available, as of the writing of these comments, from Qwest's PID website.⁸

⁵ Notice for Comment, pp. 1-2.

⁶ Ideally, we could graph Qwest's historical performance and also look at North Dakota specific data. Aggregate results for the three time periods were used because we do not have a complete set of Qwest's performance data.

⁷ See http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/.

⁸ See <http://www.qwest.com/wholesale/results/roc.html>.

Table 1: Snapshot of Qwest's Performance for Selected PIDs

Measure	Time Period		
	Oct-02 to Sep-03	Jun-04 to May-05	Feb-08 to Jan-09
OP-3D & E Installation Commitments Met			
Unbundled Loop Analog	98.7%	97.9%	97.1%
Unbundled Loop 2 Wire Non-Loaded	99.3%	97.9%	97.5%
Unbundled Loop DS1 Capable	94.5%	92.7%	95.0%
EELs -- DS1 Capable	90.1%	91.9%	96.8%
OP-5 New Service Installation Quality			
Unbundled Loop Analog	98.1%	98.1%	97.7%
Unbundled Loop 2 Wire Non-Loaded	97.2%	97.0%	96.5%
Unbundled Loop DS1 Capable	92.7%	93.6%	95.2%
EELs -- DS1 Capable	93.6%	93.4%	94.8%
MR-6D & E Mean Time to Restore			
Unbundled Loop Analog	5:21	10:19	7:51
Unbundled Loop 2 Wire Non-Loaded	3:15	4:06	4:16
Unbundled Loop DS1 Capable	3:41	4:32	5:14
EELs -- DS1 Capable	2:52	3:30	4:45
MR-8 Trouble Rate			
Unbundled Loop Analog	0.69%	0.62%	0.48%
Unbundled Loop 2 Wire Non-Loaded	0.54%	0.64%	0.52%
Unbundled Loop DS1 Capable	3.02%	2.78%	2.30%
EELs -- DS1 Capable	4.28%	3.30%	2.44%

As can be seen from the table above, Qwest's performance for installation commitments met and new service installation quality has declined for two-wire loops,⁹ but improved for DS1 loops.¹⁰ Mean time to restore has generally become longer for both two-wire loops and DS1 loops,¹¹ while trouble rates have generally declined. Where Qwest's performance has deteriorated over time a closer look at the PAP and associated PIDs may be warranted to determine if the PAP's automatic mechanism should be strengthened to better incent performance.¹²

⁹ The two-wire loop categories in table 1 include unbundled loop analog and unbundled loop 2 wire non-loaded. There are additional two-wire loop categories in Qwest's performance measures such as ADSL, xDSLi, and ISDN capable. The two categories included in table 1 are the two most common accounting for more than 95 percent of two-wire loops.

¹⁰ The DS1 loop categories in table 1 include unbundled loop DS1 capable and EELs – DS1 capable.

¹¹ The recent stipulation made changes to the mean time to restore measure which may account, in part, for some of the increase in times from 2004/2005 to present. This would need to be examined in detail before any conclusions were made with respect to MR-6.

¹² In many cases, the automatic mechanisms in the PAP are based on parity measures, comparison to Qwest's retail performance, rather than a benchmark measure. A closer look at the data would compare not only Qwest's CLEC performance over time, but also Qwest's retail performance. For example,

Attachment A -- *Integra Responses* to input questions 7 and 12 contain additional details related to this question.

2. *The structural components of the QPAP and the performance measures, and whether there exists an omission or failure of existing performance measures to capture intended performance.*

Integra has identified a number of areas where Qwest's PAP and PIDs can be improved. These changes are summarized below and details can be found in Attachment A -- *Integra Responses* to input question 10. Additional information is found in *Integra Responses* to input questions 8 and 9.

UNE Facility Assignment and Related Issues – A measure should be developed to help ensure appropriate and nondiscriminatory assignment of facilities for the products ordered by CLECs. A key problem that exists today is that Qwest is not meeting its long-standing obligations with respect to unbundled loops and in particular xDSL capable loops. For CLECs, Qwest's facilities assignment process does not select/assign the best (most qualified) loop available *for the type of loop ordered* by the CLEC while, for Qwest retail, Qwest automatically assigns the best (most qualified) loop available for the type of loop ordered by Qwest retail. (See Attachment A -- *Integra Responses* to input question 10. In addition, see Attachments A2, A3 A4 and B. Attachment B¹³ is Integra's most recent escalation, a broader CR, dealing with this issue.)

Expedited Ordering – In the Qwest-Eschelon interconnection agreement ("ICA") Section 252 arbitration in Arizona,¹⁴ the Arizona Staff recommends that a "performance measurement for expedites of Unbundled Loops be developed through CMP."¹⁵ Without the kind of data and analysis described by Arizona Staff, there is no PID to measure performance over time or from which to conclude whether there is a pattern and practice of discrimination regarding expedites. If a PID is developed for expedites that kind of determination could then be made. (See Attachment A -- *Integra Responses* to input question 10.)

Chronic Troubles: There exists no PID to measure chronic troubles. Chronic troubles would be trouble reports greater than a second report for the same service to the same customer within a fixed time frame. (See Attachment A -- *Integra Responses* to input question 10.)

declining CLEC performance may not show up in PAP payments if Qwest's retail performance also declines. Likewise, if Qwest improves its performance for its retail customers at a faster rate than it improves performance for wholesale customers, further investigation may also be warranted.

¹³ Attachment B -- Integra and its affiliated entities ("Integra") March 20, 2009 escalation in the Change Management Process (CMP) of Qwest's March 13, 2009 denial of Integra's Change Request (CR) #PC082808-1IGX, entitled "Design, Provision, Test and Repair Unbundled Loops to the Requirements requested by CLEC, including NCI/SECNCI Code Industry Standards" [Integra's "Provision Loops Per Request CR"].

¹⁴ *In re. Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b)*, Docket No. T-03406A-06-0572; T-01051B-06-0572. The citations to the record in the following footnotes in this response are to the record in this case.

¹⁵ Hrg. Ex. S-1, Staff Conclusion #7, Staff Executive Summary.

MR-6: Recent adjustments to MR-6 (Mean Time to Restore) removed No Trouble Found (“NTF”) and Test Okay (“TOK”) trouble reports when the ticket’s duration is one hour or less. This removed a bias in the measure that worked against Qwest. However, a bias still exists in the measure that works against CLECs. This is a parity measure and it fails to account for the repair interval time savings that results from CLECs providing test results up front to Qwest before Qwest begins the repair process on a CLEC facility. Because the CLEC provides testing before calling in the trouble to Qwest and the CLEC provides these test results to Qwest, the amount of time it should take Qwest to repair a CLEC circuit should be less than the comparable retail circuit. This bias in the MR-6 measure needs to be corrected. (See Attachment 1 Integra Responses to input question 10.)

EDI/XML: In a number of states Qwest agreed to changes that consisted of updating the PID to address the retirement of the Electronic Data Interchange (EDI) interface and its replacement with the Extensible Mark-up Language (XML) interface and making such other related PID and PAP changes. These changes should be implemented in the remaining Qwest states. (See Attachment A -- *Integra Responses* to input question 10 and Attachment A5.)

3. Stakeholder recommendations and experiences.

Integra prides itself on its customer relationships and its ability to offer customers reliable and diverse voice and data network. Because Integra relies, in part, upon network facilities leased from Qwest, the quality of service received from Qwest is an important component of Integra’s ability to serve customers well. There are no generally available, last mile wholesale substitutes available to Integra to serve end user customers across Qwest’s region. As a result, Qwest’s behavior can have a significant impact on Integra’s customer relationships. Since Qwest is Integra’s predominant supplier of connections to end user customers¹⁶ and Qwest is also Integra’s largest competitor, Qwest has the incentives and the ability to limit Integra’s success in the market through poor wholesale service. This is why the PAP, its continued operation and strict enforcement are essential for the preservation of competitive markets across Qwest’s region.

Integra recommends that the PAP and associated PIDs continue and that individual PIDs, such as those identified in response to Commission issue 2 above, be added and improved over time. Integra would prefer to work cooperatively with Qwest, Commissions and their Staff, in forums such as the multistate review currently underway in which North Dakota is a participant, or the recent stipulation that was a result of discussions and negotiations between parties to improve the PAP and associated PIDs. (See also Attachment A – *Integra Responses*.)

4. The competitive environment.

As discussed above, there are no generally available, last mile wholesale substitutes available to Integra to serve end user customers across Qwest’s region including North Dakota. As a result,

¹⁶ In some markets, Integra has its own facilities to a limited number of customers. However, overall, Integra relies upon Qwest’s last mile facilities to access nearly all of its customers in every market across Qwest’s region.

Integra relies heavily upon network facilities leased from Qwest. While retail competition is growing,¹⁷ competition in the wholesale market does not exist.

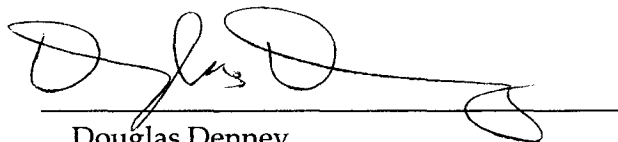
ILECs (including Qwest's predecessor companies) built their networks in North Dakota over the past 100 years, much of the time under rate of return regulation. CLECs, on the other hand, have had no guarantees with respect to return and owe their existence to the Telecommunications Act of 1996, which puts any buildout almost 90 years behind in the network infrastructure race. While CLECs are investing in North Dakota, they still almost exclusively rely upon Qwest for last mile access to customers. Thus, wholesale service quality provided by Qwest is essential to the success and growth of competition in North Dakota.

Competition sufficient to act in place of regulation as a constraint on any carrier's behavior in the market place does not exist in the wholesale facilities that CLECs purchase from Qwest. Lack of quality access at reasonable prices to these facilities could quickly drive most of Qwest's competitors out of business in North Dakota.

Conclusion

The end user customer's experience is with its retail service provider regardless of who is providing the underlying network components. The end user customer rarely has the patience to take sides when its service no longer works or when its order is not filled on time -- the customer simply demands reliable service. Thus, Qwest's PAP and corresponding PIDs are crucial to protect wholesale service quality and further competition in North Dakota.

Respectfully submitted,



Dated March 26, 2009.

Douglas Denney
Director, Costs & Policy
Integra Telecom of North Dakota, Inc.
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Golden Valley, Minnesota 55416
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763-745-8459 (Department Fax)
dkdenney@integratelecom.com

Company Representative, Integra

¹⁷ CLEC's share of End-User switched access lines in North Dakota was 22% as of December 2007. See *Local Telephone Competition: Status as of December 31, 2007*, Wireline Competition Bureau, September 2008, Table 8, (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-285509A1.pdf).

INTEGRA SUPPLEMENTAL RESPONSES TO LIBERTY CONSULTING FIRST SET OF INPUT QUESTIONS REGARDING QWEST PERFORMANCE ASSURANCE PLAN EXPERIENCES

On approximately February 10, 2009, Liberty Consulting submitted its first set of input questions to CLECs regarding Qwest Performance Assurance Plan (“QPAP”) experiences. Integra and its affiliates (“Integra”),¹ submits the following objections and responses to Liberty Consulting’s First set of input questions:

GENERAL OBJECTIONS TO ALL DATA REQUESTS

1. Integra objects to the Questions to the extent they are vague, over-broad and/or unduly burdensome.
2. Integra objects to the Questions to the extent they seek information subject to the attorney-client privilege, work product doctrine, or any other privilege information that is trade secret, confidential, sensitive, competitive in nature or proprietary.
3. Integra objects Questions to the extent that they seek information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence.
4. Integra objects to the Questions to the extent that they seek a legal conclusion.

RESPONSES

Subject to, and without waiving, the foregoing objections, Integra provides the following Responses.

¹ See the response to Question 1 for a list of Integra’s affiliates.

Attachment A

1. In which states of the 14-state Qwest operating territory do you do business? For which affiliates and legal entities and under what names do you do business in those states?

Response:

Integra and its affiliates are listed below.

- Arizona: Electric Lightwave, LLC (“ELI”) dba Integra Telecom
Eschelon Telecom of Arizona, Inc. dba Integra Telecom
Mountain Telecommunications of Arizona, Inc. dba Integra Telecom
- Colorado: Eschelon Telecom of Colorado, Inc. dba Integra Telecom
- Idaho: Electric Lightwave, LLC (“ELI”) dba Integra Telecom
Eschelon Telecom of Idaho, Inc. dba Integra Telecom
Integra Telecom of Idaho, Inc. – dba Integra Telecom
- Iowa: Integra Telecom of Iowa, Inc.
- Minnesota: Eschelon Telecom of Minnesota, Inc. dba Integra Telecom
InfoTel Communications (now Integra Telecom of Minnesota, Inc.)
- Montana: One Eighty Communications, Inc. dba Integra Telecom
- Nebraska: Integra Telecom of Nebraska, Inc.
- New Mexico: Integra Telecom of New Mexico, Inc.
- North Dakota: InfoTel Communications (now Integra of North Dakota, Inc.)
- Oregon: Electric Lightwave, LLC (“ELI”)
Eschelon Telecom or Oregon, Inc. dba Integra Telecom
Advanced TelCom, Inc. dba Integra Telecom
Integra Telecom of Oregon, Inc.
Shared Communications Services, Inc.
Oregon Telecom, Inc.
United Communications, Inc. dba UNICOM
- Utah: Electric Lightwave, LLC (“ELI”) dba Integra Telecom
Eschelon Telecom of Utah, Inc. dba Integra Telecom

Attachment A

Integra Telecom of Utah, Inc. – dba Integra Telecom

Washington: Electric Lightwave, LLC (“ELI”) dba Integra Telecom
Eschelon Telecom of Washington, Inc. dba Integra Telecom
Advanced TelCom, Inc. dba Integra Telecom
OGC Telecomm Limited, dba Integra Telecom of Washington
Shared Communications Services, Inc.
Oregon Telecom Inc. dba Washington Telecom
United Communications, Inc. dba UNICOM

Respondent: Douglas Denney

Attachment A

2. What Qwest wholesale services (*e.g.*, resold services, specific unbundled network elements, Local Number Porting) do you currently use? What Qwest wholesale services have you used in the past but no longer use? For which states in the Qwest operating region do you use these services?

Response:

Resale; Interconnection; Collocation; UNEs; Access to Poles, Conduits and Rights of Way in the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, Utah, Washington.

Integra continues to use the wholesale services it has used in the past, though emphasis on various services have changed over time as prices, wholesale availability and business plans have changed (*e.g.* UNE-P).

Respondent: Douglas Denney

Attachment A

3. Have you "opted in" to the QPAP (or CPAP) for any of the states in the Qwest operating territory in which you do business? That is, have you adopted the QPAP or CPAP as part of your interconnection agreement with Qwest? If so, in which states?

Response:

Yes. Integra has opted into the QPAP (or CPAP) in the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, Utah, Washington.

Respondent: Douglas Denney

Attachment A

4. If you are not currently "opted in" to the QPAP or CPAP, have you done so in the past? If so, in which states and for what time periods?

Response:

Integra has currently "opted in" to the QPAP and CPAP.

Respondent: Douglas Denney

Attachment A

5. If you have "opted in" to a QPAP (CPAP), have you ever received "Tier 1" payments from Qwest?

Response:

Yes.

Respondent: Douglas Denney

Attachment A

6. If you have never "opted in" to a QPAP (CPAP), what experience with or knowledge do you have of these plans?

Response:

Integra has currently "opted in" to the QPAP and CPAP.

Respondent: Douglas Denney

7. Please specify which QPAPs (CPAP) components (*e.g.*, the sizes of the payments, how payments are assessed, focus on individual CLEC vs. aggregate CLEC results) you believe are working well and those you believe are not working well. If relevant, please also include in this response your opinions about the specific PID measures, products tracked, standards (benchmark and parity), and reporting levels (*e.g.*, state, MSA, Zone Type) in the measures.

Response:

Integra is working on this response.

Respondent: Douglas Denney

Supplemental Response (03/06/09):

Integra incorporates its responses to the other input questions here. In particular, Integra's response to input question number 12 describes recent work that was completed to address what was working well and what was not, and Integra's response to input question number 10 describes additional work needed to describe what is not working well. Regarding PAP components that are working well, it is helpful to review the history and purposes of the PAP, as the reasons it was put in place and mechanisms built into the PAP to further those interests, are aspects of the PAP that are working well (*e.g.*, structure of the plan; self-executing nature of remedies in the plan; data validation and audit procedures in the plan; and accounting requirements) and need to be maintained.

The PAP, by providing clear wholesale service quality standards, is essential to telecommunications competition in the Qwest region. In fact, many of the standards in the PAP are parity with Qwest's retail performance. As Qwest obtains greater deregulation in its retail markets, the importance of Qwest's PAP grows in order to ensure Qwest is not able to leverage its dichotomous role as the predominate provider of both wholesale and retail services. While competition has been slowly growing in the Qwest region,² elimination or meaningful reductions in wholesale service quality standards (PIDs) and the automatic enforcement mechanism associated with these standards (PAP) would certainly weaken competition across Qwest's region and introduce a serious risk of back-sliding after the 271 incentive is long gone.

The PAP and associated PIDs are particularly essential because the expense of filing a Commission complaint for each individual service quality problem would greatly exceed the cost of the particular individual problem, while the cumulative significant adverse affect of poor service quality would be harmful to CLECs and competition. Therefore, the expense of litigating individual issues deters a CLEC's ability to obtain a remedy for those Qwest service quality problems. The self-executing nature of remedies in the plan

² Local Telephone Competition: Status as of June 30, 2007, Table 8.

Attachment A

was one factor that the FCC relied upon to address this problem and ensure an open local market (as described in the next paragraph).³ The PAP was designed to address service quality issues; protect CLEC customers; provide mechanisms protecting Qwest's interests while recognizing the benefit to Qwest of gaining 271 authority; and save time and resources of all parties, including the Commission and Commission staff. It continues to serve its intended wholesale service quality role today. If its protections are reduced beyond the modifications recently made,⁴ however, its ability to continue to serve these purposes and prevent back-sliding may be significantly limited.

The PIDs and PAP were put into place in conjunction with the FCC's 271 Approval Order to "provide assurance that the local market will remain open after Qwest receives section 271 authorization..."⁵ The FCC found that the plans were "likely to provide incentives that are sufficient to foster post-entry checklist compliance;"⁶ and based this conclusion on "total liability at risk in the plan; performance measurement standards and definitions; structure of the plan; self-executing nature of remedies in the plan; data validation and audit procedures in the plan; and accounting requirements."⁷

Integra prides itself on its customer relationships and its ability to offer customers reliable and diverse voice and data network. Because Integra relies, in part, upon network facilities leased from Qwest, the quality of service received from Qwest is an important component of Integra's ability to serve customers well. There are no generally available, last mile wholesale substitutes available to Integra to serve end user customers across Qwest's region. As a result, Qwest's behavior can have a significant impact on Integra's customer relationships. Since Qwest is Integra's predominant supplier of connections to end user customers⁸ and Qwest is also Integra's largest competitor, Qwest has the incentives and the ability to limit Integra's success in the market through poor wholesale service. This is why the PAP, its continued operation and strict enforcement are essential for the preservation of competitive markets across Qwest's region. This is also why it is essential that the PIDs be calculated and the PAP implemented for individual CLECs rather than aggregate CLEC results. Integra interfaces with its customers as Integra and needs to be able to provide reliable service as Integra.

The FCC views "the existence of a satisfactory performance monitoring and enforcement mechanism... as probative evidence that the BOC will continue to meet its section 271 obligations after a grant of such authority."⁹ Further, the FCC concluded that the PAP

³ FCC 271 Approval Order, ¶ 442.

⁴ See the response to input question 12.

⁵ FCC 271 Approval Order, ¶ 440.

⁶ FCC 271 Approval Order, ¶ 440.

⁷ FCC 271 Approval Order, ¶ 442.

⁸ In some markets Integra does have its own facilities to a limited number of customers. However, overall, Integra relies upon Qwest's last mile facilities to access nearly all of its customers in every market across Qwest's region.

⁹ *Memorandum Opinion and Order*, In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado,

provides "assurance that the local market will remain open after Qwest receives section 271 authorization..."¹⁰

The Colorado Commission also recognized the importance and significance of the CPAP, stating: "The COPUC has imposed -- and Qwest has acceded to -- what we believe is the most potent and meaningful performance assurance plan (PAP) yet required of a BOC. The COPUC paid particular attention to implementing a rigorous PAP. Indeed, we regard the CPAP, or Colorado Performance Assurance Plan, **as the single most important innovation of this § 271 process**. On a going-forward basis, the CPAP provides meaningful incentives for Qwest to meet its wholesale unbundling obligations, compensates CLECs for harm suffered, and provides flexibility to adapt to changing market conditions."¹¹ [emphasis added]

The Colorado Commission continued to note that "the CPAP is the **most vital element** in Qwest's application on a going-forward basis" and that "the regulatory regime it established will remain **a crucial legacy** of the § 271 process."¹² [emphasis added]

The PAP was designed to provide Qwest incentives to meet wholesale performance standards. One measure of the success of the plan (*i.e.*, "what works") can be determined by whether Qwest's wholesale performance has improved over time. If the plan provides for proper incentives to avoid poor service quality, then Qwest will avoid making payments under the Plan by improving its service relative to the standard it is being measured against (either a benchmark or Qwest retail parity). The Plan should not be modified in any way that allows Qwest to avoid liability under the PAP by modifying a PID instead of correcting a performance problem that is properly causing Qwest to pay PAP payments. If Qwest finds that the benefits to Qwest of poor wholesale service quality are greater than the cost of meeting its performance standards, then we would expect to see no improvement or a worsening in Qwest's performance over time.

Qwest's gain from poor wholesale service performance translates directly to harm to CLECs and competition. The gains to Qwest are wins in the marketplace and a potentially tarnished CLEC reputation. By offering poor wholesale service quality despite performance payments, Qwest is placing a lower bound on the gains it receives, which are the harms suffered by the CLEC.

The end user customer demands reliable service and values met commitments. The end user customer rarely has the patience to take sides when its service no longer works or

Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming, WC Docket No. 02 - 314, Adopted December 20, 2002, ¶ 440.

¹⁰ *Id.* ¶ 440

¹¹ *Evaluation of the Colorado Public Utilities Commission*, In the Matter of Application by Qwest Communications International, Inc., for Provision Of In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota, WC Docket No. 02 - 148, p. 3.

¹² *Id.* p. 54.

Attachment A

when its order is not filled on time -- the customer simply demands reliable service. The end user customer's experience is with its retail service provider regardless of who is providing the underlying network components. Thus, poor wholesale performance by Qwest necessarily negatively impacts the CLEC utilizing these facilities.

If Qwest's performance is not improving relative to the benchmark or parity standard, then increases in the payments Qwest makes are warranted to ensure that performance standards are met. Qwest can not be allowed the opportunity of making business decisions to provide poor wholesale service to CLECs. The only way to eliminate this option is to increase the consequences for poor performance in the areas in which Qwest has failed to improve on its wholesale performance.

It should be noted that PAP payments are within Qwest's control and can be eliminated in their entirety by meeting performance standards.

While a plan as complex as Qwest's PIP and PAP can certainly be improved upon, and Integra has offered some ideas for improvement, any additional reduced protections need to be made with caution and with the goals of assuring future performance and protecting end user customers well in mind. Those situations when Qwest has performed satisfactorily in the past may be strong evidence that the PAP is working as intended and no changes are necessary, while consistent poor performance and unmeasured performance in problem areas indicate that further investigation and PID/PAP development is necessary. Consistent poor performance likely indicates that the automatic incentives built into the PAP are not sufficient to incent Qwest's performance and thus need to be updated.

Respondent: Douglas Denney

Attachment A

8. If there were to be changes in the QPAPs (CPAP) in the future, which current components or PID measures (including products tracked, standards, and reporting levels) do you believe are necessary to preserve and/or are particularly important for your company? To the extent that this response might vary by state, please indicate how.

Response:

Integra is working on this response.

Respondent: Douglas Denney

Supplemental Response (03/06/09):

Integra does not believe than any current components of the remaining PIDs, including products, are unnecessary. All of them should be preserved. See also the responses to input question 9 and input question 12.

The question of what PID measures “are particularly important” is a difficult question to answer. On a day-to-day basis, certainly, the PIDs surrounding “ordering and provisioning” (the OP PIDs) as well as “maintenance and repair” (the MR PIDs) are most crucial. However, this does not mean that other OP and MR PIDs such as gateway availability (the GA PIDs), pre-order/orderings (the PO PIDs), and billing (the BI PIDs) are not also crucial for a CLEC to be able to effectively compete over time. Recent review and revision of the PIDs focused on the particularly important PID measures and already allowed reduced protections when they appeared to be not of particular importance.¹³

Competition, although slowly developing, is working a fundamental transformation in local exchange markets. When present, the ability of customers to choose among service providers allows customers to punish poor service providers by leaving them and reward good service providers with their business. Qwest’s recent signature phrase, “Spirit of Service,” recognizes this transformation. Companies compete for customers on the basis of the service they provide. A CLEC’s ability to provide good service depends enormously on the service the CLEC obtains from Qwest. Unlike end-user customers who may have a choice in their service provider, CLECs have virtually no choice in their provider of essential loop and transport facilities. In the absence of market forces, only the PAP provides Qwest with the incentive to provide CLECs with good service, thereby allowing CLECs to compete with Qwest in the retail market.

There is value in the PIDs and PAP as a whole. For example, if you cannot expand to new markets in a timely fashion; access Qwest’s gateway for ordering, perform pre-order

¹³ See response to input question 12.

Attachment A

and ordering steps; and verify billing, the CLEC's ability to effectively enter the market and obtain customers would be eliminated. On the other hand, the ability to enter markets and obtain customers is worth very little if you can not install and provide quality service to the customer. Individual PIDs should not be looked at in isolation but rather considered with respect to the entire set of PIDs and the PAP. CLECs recently undertook this evaluation as reflected in the Joint Stipulation process and resulting agreement.¹⁴ As part of the process leading to the Joint Stipulation, both PIDs and products were reviewed to determine what changes, if any, could be made to the PIDs and PAP. Substantial changes were made through the creating of the reinstatement/removal process and the elimination of a number of product disaggregations.

Respondent: Douglas Denney

¹⁴ See the response to input question 12 for more details about the Joint Stipulation.

9. What QPAP (CPAP) components or PID measures (including products tracked, standards, and reporting levels) do you believe are unnecessary and can be dropped? To the extent that this response might vary by state, please indicate how.

Response:

Integra is working on this response.

Respondent: Douglas Denney

Supplemental Response (03/06/09):

Integra does not believe than any current components of the remaining PAP components, including products, are unnecessary or should be dropped. All of them should be preserved. See also the responses to input question 8 and input question 12.

The FCC's decisions in its triennial review of section 251 unbundling obligations have eliminated obligations of Qwest and other RBOCs to provide certain wholesale services to CLECs at forward-looking economic cost.¹⁵ These reduced obligations include high capacity loops in some Qwest central offices along with certain dedicated transport routes between Qwest offices. Where a CLEC can no longer purchase or access unbundled facilities from Qwest, Qwest has taken the position that the protections of the PAP surrounding these facilities no longer apply.¹⁶ In addition, after the FCC's *TRRO order* eliminated the availability of UNE-P effective March 11, 2006, many CLECs have opted into Qwest's commercial UNE-P replacement offering, currently called QLSP. Qwest only makes its replacement UNE-P agreements available under terms that specifically call for the elimination of protections provided to CLECs – and the payments paid by Qwest – under the PAP relating to UNE-P like services.¹⁷ Though the PAP continues to offer certain protections, the plan – and associated incentives – has clearly weakened in

¹⁵ See *Report and Order and Order on Remand and Futher Notice of Proposed Rulemaking*, 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 No. 01-338, 96-98 and 98-147, released August 21, 2003 ("*TRO order*") and, *Order on Remand*, In the Matter of Unbundled Access to Network Elements; and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313 and CC Docket No. 01-338, released February 4, 2005 ("*TRRO order*").

¹⁶ The exception is in Washington, where Qwest agreed to expand the PAP to UNE alternatives as part of Qwest's AFOR docket. See *In the Matter of the Petition of QWEST CORPORATION For an Alternative Form of Regulation Pursuant to RCW 80.36.135*, Docket No. UT-061625, Order No. 8, September 6, 2007 (<http://www.wutc.wa.gov/rms2.nsf/177d98baa5918c7388256a550064a61e/b43f23f167c695138825734e00793f01!OpenDocument>).

¹⁷ See Qwest's Master Services Agreement for QLSP section 4.6, (<http://www.qwest.com/wholesale/clecs/commercialagreements.html>).

Attachment A

the light of regulatory changes surrounding the *TRO and TRRO orders* by the FCC, as implemented by Qwest. The changes as a result of the *TRRO order* didn't stop with the release of that order, but continue as Qwest identifies a greater number of facilities which meet the FCC's non-impairment test.

This, in combination with regulatory relief on many Qwest retail services across the region, increases Qwest's incentives to exploit its position as the primary wholesale provider to its competitors in order to gain advantage in the market place. This increased incentive to behave in a competitively unfair manner is a key reason why the PAP is even more crucial today than it ever has been.

Qwest's focus on the deregulatory purposes of the Act to the virtual exclusion of the other purposes of the Act to promote competition and protect consumers could lead to the erroneous conclusion that all facilities have been deregulated or those other purposes no longer play a role. Where a CLEC can continue to purchase or access unbundled facilities from Qwest, however, it is because the FCC has found that CLECs are "impaired" without access to those facilities.¹⁸ In other words, the FCC has found that lack of access to these unbundled facilities "*poses a barrier or barriers to entry . . . that are likely to make entry into a market uneconomic*" for a reasonably efficient competitor. (TRRO ¶22; emphasis added.) The PAP is particularly necessary to provide protections in the face of these recognized barriers to entry that Qwest would have the commissions ignore.

Respondent: Douglas Denney

¹⁸ For example, the FCC has found that CLECs are "impaired" without access to unbundled "xDSL-capable stand-alone copper loops." (TRO ¶642.) See response to input question no. 10.

10. What QPAP (CPAP) components or PID measures (including products tracked, standards, and reporting levels) do you believe should be added? Would you recommend changing any PID measures that are now diagnostic (without standards) to ones with standards and including them in the QPAPs (CPAP), or vice versa? To the extent that this response might vary by state, please indicate how.

Response:

Integra is working on this response.

Respondent: Douglas Denney

Supplemental Response (03/06/09):

Integra recommends discussion and evaluation of adding at least the following¹⁹ PID/PAP measures/components:

UNE Facility Assignment and Related Issues – A measure should be developed to help ensure appropriate and nondiscriminatory assignment of facilities for the products ordered by CLECs. Regarding unbundled loops (and, specifically, “digital Loops”), Qwest’s Statements of Generally Available Terms (SGATs), as well as certain CLEC ICAs and Qwest’s own ICA negotiations template proposal, in Section 9.2.2.3 state:

Qwest will provision digital Loops in a non-discriminatory manner, *using the same facilities assignment processes that Qwest uses for itself to provide the requisite service.* (emphasis added)

A key problem that exists today, however, is that Qwest is not meeting this long-standing obligation. For CLECs, Qwest’s facilities assignment process does not select/assign the best (most qualified) loop available *for the type of loop ordered* by the CLEC. Instead, it is just as likely, or more likely, to assign a voice grade loop to fill a CLEC request for a digital capable loop. In contrast, for Qwest retail, Qwest automatically assigns the best (most qualified) loop available for the type of loop ordered by Qwest retail. Integra has raised this issue in Qwest’s Change Management Process (“CMP”). Qwest, however, has recently denied an Integra’s Change Request (“CR”) (#PC020409-1EX), entitled “Qwest will implement the USOC to correct the facility assignment for HDSL,” to request implementation of a Universal Service Ordering Code (“USOC”) for HDSL (2 and 4 wire non loaded loops) to correct assignment of facilities (“Integra’s Facilities Assignment USOC CR”). Integra has escalated the denial of its CR in CMP. If Qwest implements the USOC, it should help Qwest in achieving better performance. Even assuming Qwest reverses its position and implements the USOC, however, performance measurement may be needed to evaluate the problem and measure the extent to which USOC implementation addresses the problem and whether additional steps are necessary.

¹⁹ See also the response to input question 12 regarding escalation.

Attachment A

Enclosed with these Responses are copies of Integra's CMP Escalation related to its Facilities Assignment USOC CR (#PC020409-1EX), along with another, broader Integra CMP CR (#PC082808-1IGX) entitled "Design, Provision, Test, and Repair Unbundled Loops to the requirements requested by CLEC, including NCI/SECNCI Code Industry Standards." Integra will also provide copies of the documents cited in these enclosures, if requested. There should be discussion of how the issues raised in these CRs may be addressed in PIDs/PAPs.

Also enclosed is a copy of CMP Document Section 2.6, entitled "CMP Relationship with Management of Performance Indicator Definitions (PIDs)." The CMP Document governs the scope and operation of Qwest's CMP.²⁰ Section 2.6 states that any party to CMP may take an issue from CMP that relates to the PIDs "to the PID Administration Group for discussion and resolution as appropriate." The "PID Administration Group" is defined as an industry group separate from CMP. Pursuant to Section 2.6, Integra has provided a copy of the portion of this Response relating to UNE Facilities Assignment to Qwest. There is no provision in the CMP Document allowing Qwest to delay the CRs because these issues are also being discussed in the context of the PIDs/PAPs. For example, the implementation of UNEs was not delayed until after there was a means to measure them. Measurement is important but should not delay nondiscriminatory access to digital capable loops (particularly as such access should have been available all along per the Act and the interconnection agreements).

Expedited Ordering – In the Qwest-Eschelon interconnection agreement ("ICA") Section 252 arbitration in Arizona,²¹ the Arizona Staff concludes that:

[T]here are no current requirements in the Qwest Performance Assurance Plan that specifically address the expedite process. Therefore, there are no performance measurements or benchmarks. The Qwest Performance Assurance Plan ("PAP") incorporates performance measurements that ensure Qwest's service performance to competitors can be measured and monitored so that any degradation of the agreed upon level of service is detected and corrected. Performance measurements were developed in the 271 collaborative workshops. Each of the measurements have been given a precise definition, called a Performance Indicator Definition ("PID"), that includes specification of the unit of measure, the data to be utilized in the measurement, and the standard. The

²⁰ The "scope" provision, CMP Document (§1.0), states: "CMP provides a means to address changes that support or affect pre-ordering, ordering/provisioning, maintenance/repair and billing capabilities and associated documentation and production support issues for local services (local exchange services) provided by Competitive Local Exchange Carriers (CLECs) to their end users."

²¹ *In re. Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b)*, Docket No. T-03406A-06-0572; T-01051B-06-0572. The citations to the record in the following footnotes in this response are to the record in this case.

standard may be a parity comparison of CLEC service performance with the Qwest retail analogue. When no retail analogue exists the standard is a benchmark.²²

Staff recommended that a “performance measurement for expedites of Unbundled Loops be developed through CMP.”²³ Without the kind of data and analysis described by Staff, there is no PID to measure performance over time or from which to conclude whether there is a pattern and practice of discrimination. If a PID is developed for expedites per the Staff’s recommendation, that kind of determination could then be made.

Chronic Troubles: MR-8 reports the trouble rate by evaluating “the overall rate of trouble reports as a percentage of the total installed base of the service or element.”²⁴ MR-7 reports repeated troubles by evaluating “focusing on the number of repeated trouble reports received for the same line/circuit within a specified period (30 calendar days).”²⁵ A repeated trouble report is defined as: “Any trouble report that is a second (or greater) report on the same telephone number/circuit ID and at the same premises address within 30 days. The original report can be any category, including excluded reports, and can carry any disposition code.”²⁶ What is missing from the PIDs, and is of serious customer impacting concern to Integra, is a measure of chronic troubles. Chronic troubles would be trouble reports greater than a second report for the same service to the same customer within a fixed time frame. For chronic troubles, the time frame should not be limited to 30 days as the situation can exist over extended periods of time.

While repeat troubles are an important issue, chronic troubles consistently adversely impact customers over a more extended period of time and can cause extensive harm to a CLEC’s reputation.

MR-6: MR-6 (Mean Time to Restore) was modified as part of the Joint Stipulation²⁷ to remove No Trouble Found (“NTF”) and Test Okay (“TOK”) trouble reports when the ticket’s duration is one hour or less. This PID was modified to account for the fact that repair on Qwest’s retail circuits had a greater percentage of NTF and TOK results than CLEC circuits. Since NTF and TOK trouble tickets are generally resolved fairly quickly, the result was more downward pressure on Qwest’s retail mean time to restore measure than the comparative CLEC mean time to restore measure.²⁸ The speculation on why this is the case is that CLECs are required to test their own circuits before submitting a trouble report to Qwest and as a result are eliminating many of the NTF and TOK circuits. In order to be certain that Qwest did not have an incentive to improperly

²² Hrg. Ex. S-1 (Staff Testimony), p. 32, line 23 – p. 33, line 10.

²³ Hrg. Ex. S-1, Staff Conclusion #7, Staff Executive Summary.

²⁴ Arizona PID document for MR-8.

²⁵ Arizona PID document for MR-7.

²⁶ Arizona PID document for MR-7.

²⁷ See response to input question 12.

²⁸ Note that this PID is a parity measure.

Attachment A

classify repairs as NTF and TOK, only those short duration, one hour or less, NTF and TOK repairs are excluded from the results.

In retrospect, the adjusted measure failed to account for the repair interval time savings that results from CLECs providing test results up front to Qwest before Qwest begins the repair process on a CLEC facility. Qwest requires CLEC to provide test results before submitting a trouble ticket to Qwest. These test results should provide Qwest with information regarding the trouble and facilitate repair. When a Qwest retail customer calls in a trouble on the line, Qwest performs the initial test itself. From the customer perspective, the repair clock starts ticking when it reports a trouble to either the CLEC or Qwest. However, for MR-6 the restoral time starts when the trouble is reported to Qwest (by either the CLEC or Qwest's retail customer). Because the CLEC provides testing before calling in the trouble to Qwest and the CLEC provides these test results to Qwest, the amount of time it should take Qwest to repair a CLEC circuit should be less than the comparable retail circuit. This means that the current MR-6 parity measure is biased against CLECs. This bias needs to be corrected.

While Integra believes that removing short duration TOK and NTF circuits was an appropriate approach that eliminated one potential source of bias in the measure that worked against Qwest, it is equally essential that the measure be altered to account for the time saving impact upon restoral time of CLEC provided test results.

EDI/XML: In Colorado, Utah and Washington, Qwest agreed to changes that consisted of updating the PID to address the retirement of the Electronic Data Interchange (EDI) interface and its replacement with the Extensible Mark-up Language (XML) interface and making such other related PID and PAP changes. The attached document, "60201 Qwest Letter, Re Agreed-Upon EDI-XML Changes.doc," which was filed by Qwest in Utah²⁹ describes these changes in detail. These changes should be implemented in the remaining Qwest states.

Respondent: Douglas Denney

²⁹ *In the Matter of Qwest Corporation's Petition to Open a Six-Month Review Under Section 16.1 of the Utah Performance Assurance Plan*, Docket No. 08-049-50, December 17, 2008. (<http://www.psc.state.ut.us/utilities/telecom/telecomindx/0804950indx.html>).

Attachment A

11. Please specify the interface used by your company (*i.e.*, IMA-GUI or IMA-XML) for submitting LSRs and ASRs to Qwest. If you use both interfaces, please provide an estimate of your percent usage for each (*e.g.*, GUI – 35%, XML – 65%).

Response:

Integra uses both the IMA-GUI and IMA-XML to submit LSRs. ASRs are submitted to Qwest using either the UOM Gateway or the QORA GUI. Integra submits 100% of our ASRs via the QORA GUI.

Estimate of interface percent usage for the month of January 2009

Company	% GUI usage	% XML usage
Integra Telecom, Inc.	100%	0%
Electric Lightwave LLC	100%	0%
Eschelon Telecom, Inc.	25%	75%
Advanced TelCom, Inc.	30%	70%
Mountain Telecommunications, Inc.	100%	0%
Oregon Telecom, Inc.	80%	20%
United Communications, Inc. dba UNICOM	90%	10%

Respondent: Douglas Denney

12. Please provide any other comments and input that you believe Liberty and the Commission Staffs should have in conducting this review and analysis.

Response:

Integra is working on this response.

Respondent: Douglas Denney

Supplemental Response (3/6/09):

On May 3, 2006, Qwest sent an email to CLECs inviting them to participate in region-wide discussions regarding PID and PAP issues. A number of CLECs responded to Qwest's request and the result was a stipulation, dated June 12, 2007, among Qwest, Eschelon, Covad, TDS Metrocom and McLeod.³⁰ This stipulation was the result of more than a year of negotiations which included: frequent telephone conferences; detailed discussions of potential changes to the PIDs and PAP; hundreds of emails among the parties; and an exchange of data surrounding PID and PAP changes examining various solutions to the issues raised. The result was a stipulation ("Joint Stipulation") that significantly changed Qwest's PIDs and PAPs across the Qwest region. The Joint Stipulation has been approved across the region fairly recently.³¹ A key CLEC interest in negotiating the Joint Stipulation was to maintain the protection mechanisms built into the PAP and associated PIDs, but allow for changes to the PID and PAP, as requested by Qwest, that would not result in a deterioration of service.

This collaborative process is consistent with the FCC's observation "that competitive LECs have been involved in the development of these plans, and we anticipate that they will provide input in those forums which will review the plans in the future."³²

Many of the changes that were extensively discussed as part of the Joint Stipulation directly address issues raised in these input questions.³³ These changes allowed for the removal of PIDs from the PAP payment mechanisms, elimination of certain product disaggregations, changes to PIDs in an attempt to improve accuracy in what it is intended to measure and changes to PAP payment mechanisms that would better align the PAP with Qwest's incentives to meet the standards. All of those changes related to existing PIDs.

³⁰ A copy of the stipulation or any other referenced document is available upon request.

³¹ For example, Idaho approved the stipulation at the end of 2007. Order No. 30641, In the Matter of Qwest Corporation's Revisions to the Idaho Qwest Performance Assurance Plan (QPAP), Docket No. QWE-T-03-23, November 8, 2007.

³² FCC 271 Approval Order, ¶ 445.

³³ Specifically, *e.g.*, question 8 relates to what PID measures are important and question 9 asks what PIDs are unnecessary.

Attachment A

The Joint Stipulation changes included (note, this is not an exhaustive list):

(1) Creation of a reinstatement/removal process that allowed Qwest to remove certain PIDs from being subject to PAP payments, but allowed for the PID to be reinstated to be subject to PAP payments if Qwest's performance for those PIDs deteriorated to a certain level. PIDs subject to this process are GA-3, GA-4, GA-7, PO-2B, PO-3, PO-5D, PO-7, PO-8, PO-16, OP-7, OP-17, MR-11, BI-4, NI-1, NP-1 and CP-3. These PIDs, along with the entire PID and PAP, are important to protect CLECs, their customers, and competition. However, CLECs recognized that, for certain measures, Qwest's performance had been fairly good over an extended period of time and while preserving the PID, allowed the PID to be removed at least temporarily from PAP payment obligations. Mechanisms were built into this process so that, if Qwest's performance began to deteriorate, the PID would be reintroduced into the PAP payment mechanisms.

In retrospect, the reinstatement provisions created too high a hurdle, such that it is unlikely these measures would ever be reinstated even if Qwest's performance deteriorated consistently over an extended period of time. The reinstatement process (see section 3.3 of the PAP) requires Qwest's performance to fail to meet the standard, at the aggregate CLEC level, for three consecutive months. This means that Qwest could consistently fail the standard for a number of CLECs, as long as they met the measure for CLECs as a whole. This means Qwest could consistently miss the standard for a particular CLEC without the automatic incentive mechanisms built into the PAP to rectify the problem. The three consecutive month standard in the PID context also means that Qwest could fail to meet the standard up to eight times a year and not have the measure reinstated into the payment mechanism of the PAP.

To the best of Integra's knowledge, this has not been an issue for the particular measures selected for this process, but would be particularly troublesome if this process were expanded.

(2) Modified MR-6 (Mean Time to Restore) to remove No Trouble Found ("NTF") and Test Okay ("TOK") trouble reports when the ticket's duration is one hour or less. Please see the response to input question 10, regarding MR-6, for details describing the Joint Stipulation changes to this measure and further changes required to remove biases from this PID.

(3) Modified BI-3A (billing accuracy) to change the standard to a benchmark and change the payment calculation. Inaccurate bills pose a large financial cost upon CLECs and impacts CLEC customers, as billing affects the overall rates that CLECs charge and diverts resources to review, verify and if necessary dispute inaccurate billing. Despite this, stipulating CLECs agreed to changes in the BI-3A measure that would assure Qwest continued to have incentives to bill

Attachment A

accurately, but would also provide Qwest with greater opportunity to avoid PAP payments as a result of billing inaccuracies. First, this measure was changed from parity to a benchmark. This provided Qwest with a clear target that it needed to meet that was not subject to retail billing accuracy fluctuations. While for many measures parity is a crucial standard to avoid discrimination, the similarities between Qwest's wholesale billing performance and retail billing performance is less clear. Second, the payment mechanisms were changed for this measure, in effect to lessen the payment impact for small misses in the benchmark and increase the impact for large misses in the benchmark.

(4) Modified PAP to allow for one allowable miss for benchmark and non-interval parity measures. In situations when volumes are low, there are cases when the only chance that Qwest has to meet its performance standard is to have perfect performance for a CLEC for a particular measure. For example, assume a benchmark of 90%, but a CLEC volume of 5. A single miss would result in 80% performance, which fails the standard. While this single miss is most likely customer impacting for the CLEC whose performance was missed, Qwest was provided no margin of error. There are a substantial number of product disaggregations in the PIDs and PAP that are crucial products, but have low enough monthly order volumes that perfect performance became the standard. The result is that stipulating CLECs agreed to a one allowable miss in cases when perfect performance would otherwise be required. In order to assure that Qwest's incentives to meet its standards remain, Qwest must first meet the benchmark or non-interval standard at the aggregate CLEC level before the one allowable miss provision can be applied. This assurance was built in for cases to protect CLECs from the case when Qwest was performing poorly for the CLEC community as a whole, but would otherwise be exempted from incentive payments because of the one allowable miss standard.

(5) Elimination of product disaggregations from the PAP. Certain product disaggregations, with low volumes, were removed from OP and MR PAP payment obligations, though Qwest would continue to report on these PIDs.

(6) Modify escalation provisions. Escalation provisions in the PAP are intended to provide additional incentives to Qwest to correct failed performance. When Qwest fails in its performance for multiple months, payments for missed occurrences increase to incent Qwest to fix chronic problems. Modifications to this provision were made to make it consistent across states, Arizona excluded. In all states, except Arizona, the escalation payment continues to increase each month, as Qwest fails to meet its performance standards. In Arizona, the amount of escalation payment is capped after six months.

The escalation provision is crucial in providing incentives for Qwest to fix ongoing issues, but the provision suffers from two problems. First, there is no

Attachment A

reason to exclude Arizona from the mechanism that is used for all other Qwest states. Qwest's performance in Arizona tends to consistently be the worst among the Qwest states, thus the need for effective escalation provisions are even more important in Arizona. Second, the escalation incentive payments begin to level off after the third month of failing to meet performance standards, increasing by only \$100 per month beginning in month four. See the table below copied from the Oregon PAP. By the time Qwest fails to meet a performance standard for four consecutive months, serious issues exist, which demand immediate attention. At this point, the performance incentives should not begin to level off, but should continue to increase in order to incent immediate resolution.

TIER 1 PAYMENTS TO CLEC

Per Occurrence							
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Each following month after Month 6 add
High	\$150	\$250	\$500	\$600	\$700	\$800	\$100
Medium	\$ 75	\$150	\$300	\$400	\$500	\$600	\$100
Low	\$ 25	\$ 50	\$100	\$200	\$300	\$400	\$100

The changes discussed above, as well as the additional PID and PAP changes as a result of the Joint Stipulation, were the result of a comprehensive review of the existing PID and PAPs and addressed many of the issues raised through these input requests. The PID and the PAP were altered, changed, and certain provisions eliminated in a manner that provided Qwest with a significant opportunity to reduce the payments it makes under the PAP, while attempting to protect CLECs and customers by continuing to provide incentives for Qwest to perform on the most crucial PID measures. While a plan as complex as Qwest's PIP and PAP can certainly be improved upon, and Integra has offered some ideas for improvement, any additional reduced protections need to be made with caution and with the goals of assuring future performance and protecting end user customers well in mind. Those situations when Qwest has performed satisfactorily in the past may be strong evidence that the PAP is working as intended and no changes are necessary, while consistent poor performance and unmeasured performance in problem areas indicate that further investigation and PID/PAP development is necessary. Consistent poor performance likely indicates that the automatic incentives built into the PAP are not sufficient to incent Qwest's performance and thus need to be updated.

Respondent: Douglas Denney



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March 6, 2009

VIA OVERNIGHT DELIVERY

Director – Interconnection Compliance &
Qwest Legal Department
Qwest Corporation
1801 California, Room 2410
Denver, CO 80202

RE: Written notice – ICA §§12.1.6, 9.1.2, 9.1.9, 9.2.2.1.1, 9.2.2.1.2, 9.2.2.3 (and OR
Integra ICA, Att. 3, §2.1 and subparts) & CMP Document Section 2.6; CMP CR
PC020409-1EX and PC082808-1IGX

Dear Sir or Madam:

Enclosed is a copy of correspondence (in the form of a response to input questions) by Integra and its affiliated entities (“Integra”) to Liberty Consulting Group on behalf of certain state commissions within the Regional Oversight Committee (“ROC”). The latter is an industry group, separate from the Change Management Process (CMP), that is currently responsible for recommending changes to the Performance Indicator Definitions (“PIDs”). Section 2.6 of CMP Document¹ states:

The parties recognize that if an issue results from CMP that relates to the PIDs (e.g., Qwest denies a CR with reference to PIDs, discussion of PID administration is needed in order to implement a CR, etc.), any party to this CMP may take the issue to the PID Administration Group for discussion and resolution as appropriate under the procedures for that Group. At the time any party brings such an issue to the PID Administration Group, such party shall notify Qwest and Qwest will distribute an e-mail notification to the CMP body. Qwest shall also distribute to the CMP body all correspondence with the PID Administration Group relating to the issue at the time such correspondence is exchanged with the PID Administration Group (if Qwest is not copied on such correspondence, the involved CLEC will forward such correspondence to Qwest for distribution to the CMP body).

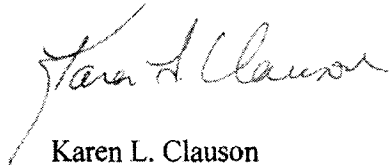
Consistent with Section 2.6, please distribute an e-mail notification to the CMP Body with a copy of this letter and enclosure. Section 2.6 anticipates potential “joint meetings, on an as needed basis, of the PID Administration Group and the CMP body to address issues that affect both groups.”

¹http://www.qwest.com/wholesale/downloads/2007/070719/QwestWholesaleChangeManagementDocument_07_20_07.doc

Director – Interconnect
Legal Department
March 6, 2009
Page 2 of 2

It is important to emphasize that there is no provision in the CMP Document allowing Qwest to delay Change Requests (CRs) because the issues are also being discussed in the context of the PIDs. For example, the implementation of UNEs was not delayed until after there was a means to measure them. Measurement is important but should not delay nondiscriminatory access to digital capable loops (particularly as such access should have been available all along per the Act and the interconnection agreements). Qwest must proceed with CR Numbers PC020409-1EX and PC082808-1IGX without delay.

Sincerely,



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“10. What QPAP (CPAP) components or PID measures (including products tracked, standards, and reporting levels) do you believe should be added? Would you recommend changing any PID measures that are now diagnostic (without standards) to ones with standards and including them in the QPAPs (CPAP), or vice versa? To the extent that this response might vary by state, please indicate how.

...

UNE Facility Assignment and Related Issues – A measure should be developed to help ensure appropriate and nondiscriminatory assignment of facilities for the products ordered by CLECs. Regarding unbundled loops (and, specifically, “digital Loops”), Qwest’s Statements of Generally Available Terms (SGATs), as well as certain CLEC ICAs and Qwest’s own ICA negotiations template proposal, in Section 9.2.2.3 state:

Qwest will provision digital Loops in a non-discriminatory manner, *using the same facilities assignment processes that Qwest uses for itself to provide the requisite service.* (emphasis added)

A key problem that exists today, however, is that Qwest is not meeting this long-standing obligation. For CLECs, Qwest’s facilities assignment process does not select/assign the best (most qualified) loop available *for the type of loop ordered* by the CLEC. Instead, it is just as likely, or more likely, to assign a voice grade loop to fill a CLEC request for a digital capable loop. In contrast, for Qwest retail, Qwest automatically assigns the best (most qualified) loop available for the type of loop ordered by Qwest retail. Integra has raised this issue in Qwest’s Change Management Process (“CMP”). Qwest, however, has recently denied an Integra’s Change Request (“CR”) (#PC020409-1EX), entitled “Qwest will implement the USOC to correct the facility assignment for HDSL,” to request implementation of a Universal Service Ordering Code (“USOC”) for HDSL (2 and 4 wire non loaded loops) to correct assignment of facilities (“Integra’s Facilities Assignment USOC CR”). Integra has escalated the denial of its CR in CMP. If Qwest implements the USOC, it should help Qwest in achieving better performance. Even assuming Qwest reverses its position and implements the USOC, however, performance measurement may be needed to evaluate the problem and measure the extent to which USOC implementation addresses the problem and whether additional steps are necessary.

Enclosed with these Responses are copies of Integra’s CMP Escalation related to its Facilities Assignment USOC CR (#PC020409-1EX), along with another, broader Integra CMP CR (#PC082808-1IGX) entitled “Design, Provision, Test, and Repair Unbundled Loops to the requirements requested by CLEC, including NCI/SECNCI Code Industry Standards.” Integra will also provide copies of the documents cited in these enclosures, if requested. There should be discussion of how the issues raised in these CRs may be addressed in PIDs/PAPs.

Also enclosed is a copy of CMP Document Section 2.6, entitled “CMP Relationship with Management of Performance Indicator Definitions (PIDs).” The CMP Document

governs the scope and operation of Qwest's CMP.² Section 2.6 states that any party to CMP may take an issue from CMP that relates to the PIDs "to the PID Administration Group for discussion and resolution as appropriate." The "PID Administration Group" is defined as an industry group separate from CMP. Pursuant to Section 2.6, Integra has provided a copy of the portion of this Response relating to UNE Facilities Assignment to Qwest. There is no provision in the CMP Document allowing Qwest to delay the CRs because these issues are also being discussed in the context of the PIDs/PAPs. For example, the implementation of UNEs was not delayed until after there was a means to measure them. Measurement is important but should not delay nondiscriminatory access to digital capable loops (particularly as such access should have been available all along per the Act and the interconnection agreements).

...

² The "scope" provision, CMP Document (§1.0), states: "CMP provides a means to address changes that support or affect pre-ordering, ordering/provisioning, maintenance/repair and billing capabilities and associated documentation and production support issues for local services (local exchange services) provided by Competitive Local Exchange Carriers (CLECs) to their end users."

ATTACHMENT A2

2.6 CMP Relationship with Management of Performance Indicator Definitions (PIDs)

Qwest Performance Indicator Definitions (PIDs) have been established through collaboration among Qwest, CLECs and state public utilities commissions in a forum known as the Regional Oversight Committee Technical Advisory Group (ROC TAG). This activity was performed in order to test Qwest's performance in connection with Qwest's application to obtain approval under Section 271 of the Telecommunications Act of 1996. The parties anticipate that the ROC TAG (or similar industry group separate from the CMP body) will continue in some form after approval of Qwest's Section 271 application. The parties expect that this industry group will be responsible for change management of the Qwest PIDs (the "PID Administration Group").

The parties acknowledge that the operation of PIDs may be impacted by changes to Qwest OSS Interfaces, products or processes that are within the scope of CMP. Conversely, Qwest OSS Interfaces, products or processes may be impacted by changes to, or the operation of, PIDs that are within the scope of the PID Administration Group. As a result, efficient operation of this CMP requires communication and coordination, including the establishment of processes, between the PID Administration Group and the CMP body.

The parties recognize that if an issue results from CMP that relates to the PIDs (e.g., Qwest denies a CR with reference to PIDs, discussion of PID administration is needed in order to implement a CR, etc.), any party to this CMP may take the issue to the PID Administration Group for discussion and resolution as appropriate under the procedures for that Group. At the time any party brings such an issue to the PID Administration Group, such party shall notify Qwest and Qwest will distribute an e-mail notification to the CMP body. Qwest shall also distribute to the CMP body all correspondence with the PID Administration Group relating to the issue at the time such correspondence is exchanged with the PID Administration Group (if Qwest is not copied on such correspondence, the involved CLEC will forward such correspondence to Qwest for distribution to the CMP body). Qwest or an interested CLEC will bring any resolution or recommendation from the PID Administration Group relating to such issues to the CMP body for consideration in resolving related CMP issues.

It is possible that the PID Administration Group will identify issues that relate to CMP. In that case, the CMP body would expect the PID Administration Group (or a party from that group) to bring such issues to the CMP body for resolution or a recommendation. Such issues may be raised in the form of a CR, but may be raised in a different manner if appropriate. Qwest or an interested CLEC will return to the PID Administration Group any resolution or recommendation from the CMP body on such issues. Qwest and CLECs participating in the PID Administration Group agree that they will propose, develop, and adopt processes for the PID Administration Group that will enable the coordination called for in this Section. One such process may include joint meetings, on an as needed basis, of the PID Administration Group and the CMP body to address issues that affect both groups.

From

http://www.qwest.com/wholesale/downloads/2007/070719/QwestWholesaleChangeManagementDocument_07_20_07.doc

EXHIBIT A3

- Description of item being escalated

Integra and its affiliated entities (“Integra”) escalate Qwest’s denial of Integra’s Change Request (CR) PC020409-1EX. In addition, Integra escalates its request to proceed on an exception basis, as the exception request gained more than the requisite two-thirds majority vote needed under CMP Document 16.4, but Qwest did not proceed on an exception basis and instead denied the CR.

- History of item

On February 4, 2009, Integra submitted CR PC020409-1EX, entitled “Qwest will implement the USOC to correct the facility assignment for HDSL,” to request implementation of a Universal Service Ordering Code (“USOC”) for HDSL (2 and 4 wire non loaded loops) to correct assignment of facilities (“Integra’s Facilities Assignment USOC CR”). Qwest has an obligation to provide digital Loops in a non-discriminatory manner, using the same facilities assignment processes that Qwest uses for itself to provide the requisite service. Qwest, however, is not meeting this obligation, to the detriment of CLECs, competition, and end user customers. Integra indicated in its CR that Qwest had said that there is a USOC already recognized by Telcordia/industry standards that would help ensure that facilities assigned to CLECs meet the parameters and industry standards applicable to the specific HDSL product ordered by the CLEC but Qwest has not yet implemented its use for CLECs, and Integra requested that Qwest implement the USOC expeditiously. Integra’s request and the basis for its request are further described below. On February 17, 2009, during a CMP ad hoc call, a vote was held on Integra’s request for an exception to the CMP processes to recognize that some CMP process steps were not necessary due to Qwest work already done on USOC implementation. All participating CLECs (9 CLECs) voted in favor of the exception request, and only Qwest voted against the exception, so the CMP criteria were met to proceed with the CR on an exception basis. Qwest, however, said on the ad hoc call that it was denying the CR, which Qwest indicated rendered the exception vote moot. On February 18, 2009, during the monthly CMP meeting, Integra asked whether, separate from the exception request, Qwest would provide its written response to the substance of the CR per the established CMP procedures which provide for a written Qwest response to the CR. Qwest agreed to provide a written response, which it sent by email to Integra on February 18, 2009 (though the enclosed Qwest Response is erroneously dated February 17, 2009).

- Reason for Escalation

A key reason for this escalation is the importance of this issue and its impact on CLECs, competition, and end user customers. Qwest’s denial of Integra’s Facilities Assignment USOC CR (#PC020409-1EX) violates Qwest’s obligations under the Act, including Qwest’s nondiscrimination obligations, as well as its obligations under CLEC ICAs and the SGATs. As a result, CLECs, competition, and end user customers are harmed. Qwest needs to reverse its denial and promptly implement this CR.

EXHIBIT A3

As discussed below, “Loops” include xDSL capable services, including HDSL capable loops. Regarding Loops (and, specifically, “digital Loops,”), Qwest’s Statements of Generally Available Terms (SGATs), as well as certain CLEC ICAs and Qwest’s own ICA negotiations template proposal, in Section 9.2.2.3 state:

Qwest will provision digital Loops in a non-discriminatory manner, *using the same facilities assignment processes that Qwest uses for itself to provide the requisite service.* (emphasis added)

A key problem that exists today, however, is that Qwest is not meeting this long-standing obligation. For CLECs, Qwest’s facilities assignment process does not select/assign the best (most qualified) loop available *for the type of loop ordered* by the CLEC. Instead, it is just as likely, or more likely, to assign a voice grade loop to fill a CLEC request for a digital capable loop. In contrast, for Qwest retail, Qwest automatically assigns the best (most qualified) loop available for the type of loop ordered by Qwest retail. (See, e.g., minutes from 12/17/08 & 1/21/09 CMP meetings.) Every day that this situation continues is another day of discrimination, and so Qwest should make every effort to accelerate resolution of this problem. Given that Qwest had already indicated that it could implement the requested USOC by mid-April 2009, there is no reason to delay this step toward helping to remedy this discriminatory situation. It is no answer to a discriminatory situation to say that Qwest will resolve all aspects of the problem or none at all. Moreover, implementing the USOC for HDSL now will providing additional information, experience, and learning that can be applied when addressing the issues as to other products. Implementing the requested USOC will help address the issue for HDSL, and any delay in implementing the USOC constitutes intentional violation of the Act, as Qwest is choosing to continue a discriminatory situation instead of trying to remedy it expeditiously.

Erroneous, discriminatory assignment of facilities causes harm. For example:

When a CLEC orders a HDSL capable loop and Qwest instead assigns a voice grade loop, Qwest does not tell the CLEC that it is assigning a loop different from the one ordered by the CLEC. The CLEC does not discover that, even though it ordered a digital capable loop, the loop Qwest assigned is not capable of carrying data until after the CLEC accepts the loop. When CLEC attempts to turn-up service for its customer, CLEC then learns that the loop assigned and delivered by Qwest is not the one ordered by the CLEC. The CLEC is then forced to expend time and resources to open a repair ticket and work through resolution of the repair, if Qwest will even work with the CLEC to resolve the issue. More often, Qwest refuses to fix the problem, claiming that it the HDSL capable loop need only meet voice transmission parameters. The FCC rules, however, provide that Qwest “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.*” [47 CFR §51.319(a)(1)(iii)(C); emphasis added.] Qwest’s refusal forces the CLEC into a situation in which it must place another order, either for the same product (gambling that, this time, chance might assign an appropriate loop) or, more likely due to the need to limit delay, for a more expensive product – to

EXHIBIT A3

Qwest's financial benefit and CLECs' detriment. In the meantime, the entire process causes delay to the end user customer, which either does not get cutover until the type of loop actually ordered by CLEC is assigned and provisioned or the new more expensive service is ordered and delivered. This situation creates a competitive advantage for Qwest, as its own customers do not experience the same delay, to the detriment of competition and consumers.

Despite Integra's having explained these problems in CMP, Qwest provides very little information in its written Response denying the CR. Integra will reply to each of Qwest's brief assertions in the order in which they appear in Qwest's one-paragraph response:

First, Qwest states that Integra's Facilities Assignment USOC CR "requires a business discussion." Integra remains willing to engage in business discussions with Qwest and other CLECs. Qwest, however, has precluded discussion with its denial of this CR.

Second, Qwest suggests that it has no "obligation to provide an HDSL Capable Loop." Qwest cites no authority and provides no basis for its assertion that it has no obligation to provide an HDSL Capable Loop. Qwest also provided no citations or basis for that position in CMP communications regarding this issue; in fact, Qwest appeared to recognize in CMP its obligation to provide HDSL capable loops to CLECs. If Qwest's response was unclear and, in fact, Qwest agrees with CLECs on this point, then Qwest needs to clarify its response and expressly state that it recognizes that Qwest has an obligation to provide HDSL Capable Loops to CLECs. If, however, Qwest maintains that it has no obligation to provide HDSL Capable Loops to CLECs, Qwest needs to both provide specific citations to authority for its position and respond to the authority cited by Integra. Authority and documentation that Qwest has an obligation to provide HDSL Capable Loops to CLECs include the following:

- The FCC specifically found that ILECs, such as Qwest, must unbundle xDSL capable loops. (TRO ¶23; see also 47 CFR §51.319.) The term "xDSL" refers to digital subscriber line (DSL) "as a general technology" that is not limited to, but includes, specific types of DSL such as High Speed Digital Subscriber Line (HDSL). (TRO fn 661 to ¶215; see also UNE Remand Order fn 299 to ¶166.) Note that "xDSL" is *not* limited to particular Qwest products (*e.g.*, xDSL-I) and, if Qwest's products or processes are inconsistent with the law, the law controls and any flaws in Qwest's products or processes need to be brought into compliance with the law. ILECs must "condition loops for the provision of digital subscriber line (xDSL) services." (TRO, p. 14, 2nd bullet; see also TRRO ¶12.) The local loop element that Qwest is required to unbundle includes "two and four-wire loops conditioned to transmit the digital signals needed to provide xDSL service." (TRO ¶249; see also UNE Remand Order ¶ 166; First Report and Order, ¶380.) The First Report and Order was released on August 8, 1996, the UNE Remand Order was released on November 5, 1999, and the TRO was released on August 21, 2003. As indicated in the examples below, in the

EXHIBIT A3

meantime, SGATs and ICAs also have reflected Qwest's obligation to provide xDSL service to CLECs. Qwest cannot reasonably argue that it is not required to assign and provision, when requested, two and four-wire loops conditioned to transmit the digital signals needed to provide xDSL service (including HDSL) to CLECs. Qwest also cannot assert – after all of these years of having this obligation – any legitimate basis for its current facilities assignment, processes and procedures not taking into account this long-standing obligation, if that is Qwest's claim.

- The SGATs (including CLEC ICAs based on the SGATs, such as that of Qwest's affiliate Qwest Communications Corporation in AZ), like the recent Qwest-Eschelon Arizona, Minnesota, Oregon and Utah interconnection agreements ("ICAs") (§9.2.2.3), define 2/4 wire non-loaded loops as "digital capable" loops. The SGATs and the recent Qwest-Eschelon ICAs (§9.2.2.1.1 & 9.2.2.1.2) provide that use of the words "capable" and "compatible" to describe Loops means that Qwest assures that the Loop meets the technical standards associated with the specified Network Channel/Network Channel Interface codes, as contained in the relevant technical publications and industry standards. Qwest's position that its current facilities assignment process for CLECs recognizes only the "Network Channel" code but not the "Network Channel Interface" is inconsistent with this long-established principle.
- The Qwest-Integra Oregon ICA has been in place since 2000 (for Integra as well as other CLECs, as it is based on the Qwest-AT&T ICA). That ICA (Att. 3, §2.1 and subparts) defines an unbundled loop to include loops that transmit digital signals and provides that CLEC may order special copper loops unfettered by any intervening equipment and which do not contain any bridged taps, so that CLEC may use the loops for a variety of services by attaching appropriate equipment. For example, when a CLEC orders an HDSL2 capable loop (identified on the LSR by using the NC code of LX-N with the NCI code of 02QB9.00H and a SEC code of NCI 02DU9.00H), Qwest should assign and provision a loop unfettered by intervening equipment so that CLEC may provide working HDSL2 service over the HDSL2 capable loop by attaching appropriate equipment.
- The SGATs and recent Qwest-Eschelon ICAs (§9.1.9) provide that network maintenance and modernization activities will result in UNE transmission parameters that are within transmission limits of the UNE **ordered by CLEC**. This confirms that Qwest must initially assign xDSL capable loops based on the transmission parameters for the type of loop ordered by the CLEC. This means, among other things, that Qwest's assignment process needs to recognize and assign the type of loop ordered by CLEC (e.g., the NC and NCI codes).
- Qwest's ICA negotiations template proposal in Section 9.2.2.2 addresses "Analog (Voice Grade) Unbundled Loops" and in Section 9.2.2.3 addresses "Digital Capable Loops – DS1 and DS3 Capable Loops, Basic Rate (BRI) ISDN Capable Loops, 2/4 Wire Non-Loaded Loops and xDSL-I Capable Loops." Section

EXHIBIT A3

9.2.2.3 provides that *digital capable* loops, including “2/4 Wire Non-Loaded Loops,” are “capable of carrying specifically formatted and line coded digital signals.” That means that, when Qwest provides this loop, it must assign and deliver a loop capable of providing data to the CLEC to have met its obligation to provide the digital capable loop ordered by the CLEC. ***There is no exception in 9.2.2.3 (in Qwest’s template offering or in the SGATs and ICAs) for providing a loop that is not digital capable and then later, after imposing extra work and delays upon CLEC and its customer, providing a different loop that is digital capable.***

Integra reserves its rights under its ICAs and the law. At the same time, in an effort to resolve this issue and at the request of Qwest to bring issues to CMP, Integra requests that Qwest reverse its denial and implement this CR.

Third, Qwest indicates that “the decision to implement this . . . CR becomes a financial decision.” Qwest considers only its own alleged costs, however, without recognizing the very real costs to CLECs of Qwest’s denial of this CR. Costs that Qwest incurs only because it has implemented a discriminatory process that it now needs to correct should not be considered, as Qwest should have implemented nondiscriminatory facilities assignment to begin with. Being discriminated against, as well as not receiving the HDSL product ordered in violation of ICAs and the law, imposes a financial burden on CLECs. The FCC has found that CLECs are “impaired” without access to unbundled “xDSL-capable stand-alone copper loops.” (TRO ¶642.) In other words, the FCC has already found that lack of access to unbundled xDSL capable loops “***poses a barrier or barriers to entry*** . . . that are likely to make entry into a market uneconomic” for a reasonably efficient competitor. (TRRO ¶22; emphasis added.) Integra believes that Qwest is the cost-causer in this situation. If Qwest disagrees and believes that it has unrecovered costs for which it should be compensated, then the solution is ***not*** to deny CLECs their rights under the law and the ICAs. Rather, Qwest must request cost recovery from the state commissions and establish its right to receive such compensation.

Fourth, Qwest withholds any potential willingness to proceed with implementation of the USOC to improve facilities assignment as a means to force CLECs into an unnecessary “agreement to perform cooperative testing.” Testing comes later (at installation), however, and is separate from assignment of facilities (e.g., a loop) ***before*** the loop is installed and tested. Improving the appropriateness of the loop assigned, so that it is of the type ordered by the CLEC, will help ensure fewer problems when the testing stage is reached. Failed testing due to the assignment of a voice grade loop when a digital capable loop was ordered will be eliminated once the assignment process is improved to ensure assignment of a digital capable loop. Thus, those testing issues will never be reached to the extent implementation of the USOC results in assignment of the best (most qualified) loop available for the type of loop ordered by the CLEC. There is simply no reason to tie implementation of the USOC at the facilities assignment stage to capitulation to Qwest’s position regarding later testing. This is particularly true because Qwest admitted that, for comparable types of service, Qwest does not perform or require its staff to perform the work it seeks to require CLECs to perform. Qwest said:

EXHIBIT A3

Jamal Boudhaouia - He said that we will check to see if the bridge tap is interfering with it. ***He said that Qwest does not do HDLS [sic] test in the CO because we are not equipped to do that and the equipment is very expensive.*** (12/30/08 Comments to minutes received from Integra) When we hook to the HDSL mux we test remotely - ***it works or doesn't work*** - we don't have the ability to test the raw loop, ***we look for open shorts, bridge tap, or Load Coils that we missed.*** (minutes from 12/17/08 CMP meeting; emphasis added)

In other words, Qwest “does not do HDSL2 tests in the CO” for every installation for itself, but Qwest is attempting to force HDSL2 tests in the CO upon CLECs by requiring joint cooperative testing in the case of every loop installation. This is inefficient and creates unnecessary work, delay, and expense for CLECs. For example, if a CLEC that has 50 collocations throughout a city has ordered loops with the same due date for 3 installations in 3 unmanned collocations spread far apart in that city, Qwest would require CLEC to dispatch technicians all over town that day to jointly test for problems, even though the loops may in fact work when delivered (***and should work, if proper facilities are assigned, as is more likely if the USOC is implemented as requested.***) For CLECs, Qwest proposes to require joint testing 100% of the time.

In contrast, Integra’s position is much more efficient, because it isolates joint testing to those limited circumstances when joint testing is truly required. Per Integra’s position, when Qwest assigns a loop capable of carrying data consistent with the law and industry guidelines, in most cases the loop should work as intended. Therefore, no joint testing is required. Even assuming the loop does not work upon delivery, CLEC will be able to perform tests once it hooks up its equipment. Qwest’s existing processes require CLEC to perform trouble isolation before reporting trouble to Qwest and to submit its test results with its trouble report. (See Qwest’s ICA negotiations template Sections 12.3.3.5 & 12.3.4.) As with any other basic loop installation after which the loop does not work, the companies may agree on the cause of the problem and the solution. If the CLEC reports that its tests indicate, for example, that excessive bridged taps are interfering with its HDSL2 service and Qwest agrees, no joint meet is required. (This assumes that Qwest is not enforcing a policy of testing only to voice grade parameters even when the CLEC informs Qwest that its service is supposed to be capable of carrying data.) Only in the sub-set of installations for which the loop does not work and the companies do not agree on trouble isolation may joint testing be required. This is a far more efficient than Qwest’s proposal to require joint testing for 100% of installations.

As discussed above, a key problem that Integra’s CR is attempting to address is that, when Qwest provides a digital loop with a basic installation to CLECs, the facilities assignment process should take care of as many problems in advance of loop delivery as the facilities assignment process for Qwest retail. For example, if a Qwest retail customer that orders a digital service is unlikely to be assigned an analog facility with excessive bridged taps, a CLEC that orders a digital service should also be just as unlikely to be assigned an analog facility with excessive bridged taps. Once Qwest’s facilities assignment process is nondiscriminatory, the need for CLECs to request repairs

EXHIBIT A3

after a basic installation should be reduced accordingly. In other words, repairs following installations that are caused by Qwest delivering a voice grade loop when in fact a digital loop was ordered should be substantially reduced, if not eliminated.

Qwest needs to bring its facilities assignment process into compliance and make it nondiscriminatory. If implementing the USOC for CLECs is a means by which Qwest may start to do that, Qwest should have done it by now given its obligations but certainly should not delay it any longer by attaching inappropriate pre-conditions to implementing the USOC. Integra has a right to the installation option provisions in its ICAs, including basic installation. Qwest needs to ensure that, before delivering a loop, Qwest is first assigning a loop that meets the industry standards for that type of loop. Qwest cannot cure its failure to appropriately assign a loop on a nondiscriminatory basis by shifting the burden to CLECs to perform work that would not be necessary if the assignment process worked as it should. Once it works as it should, there may be little or no need for cooperative/joint testing or repair, because the delivered loop will work as intended for the service ordered.

Finally, Qwest states that without tying implementation of the USOC to its additional demand for cooperative testing in every case, the USOC implementation “becomes a financial liability to Qwest” and is “economically not feasible.” Requiring cooperative testing for every HDSL Capable Loop installation, however, becomes a financial liability to CLECs and is not economically feasible (for the reasons discussed above regarding Qwest’s fourth point). Also, Qwest’s proposal to require cooperative testing would deny CLECs the installation option currently available to them under their ICAs to request, for HDSL capable loops, a basic installation (which in most, if not all, Qwest states is available to CLECs at a commission-approved rate). Instead, Qwest would require CLECs to order the more expensive cooperative testing installation option in every case. Even more importantly, Qwest’s proposal would impose expenses and resource burdens on CLECs (such as those described in the example provided above involving unmanned collocations) that Qwest itself does not incur because it does not perform this type of testing itself, as discussed above. Integra asked Qwest about this aspect of Qwest’s response in CMP, as reflected in the February 18, 2009 meeting minutes:

“Doug Denney-Integra said that Qwest’s denial on the exception CR states that there is a financial risk and asked what Qwest was referring to.

Bob Mohr-Qwest said that the financial liability is associated with the cost of equipping and training the technicians to perform the test at this level.

Doug Denney-Integra said that the other CR doesn’t ask Qwest to do this and that they only want the USOC implemented. He said he was not sure how that fits into the rejection of the CR.

Bob Mohr-Qwest said that the CR would be a half solution without testing and would shift additional liability to the repair process and Qwest is not willing to implement a partial solution.”

EXHIBIT A3

Qwest, however, is not shifting liability to repair by implementing the USOC to allow Qwest's facility assignment system to assign a HDSL qualified facility capable of supporting the service (instead of erroneously assigning a voice grade loop when a digital loop was requested). Repairs caused at installation by Qwest's erroneous facilities assignment would be minimized or eliminated. Qwest's response is incongruous particularly given that, by assigning the wrong loop type, Qwest is currently creating liability for CLECs by forcing them into the repair process at the time of installation instead of properly assigning the correct loop type. When the wrong loop type is assigned, CLECs have to go through the repair process and then, if Qwest wrongly restricts testing to voice transmission only, also have to endure additional ordering and installation processes, including the added expense and delay associated with ordering a more expensive product. As discussed above, the liability that Qwest's faulty facilities assignment process imposes upon CLECs is the result of discrimination and violation of Qwest's obligation to assign and provision xDSL capable loops. The consequences of that conduct belong with Qwest, not CLECs. Regarding a partial solution, as discussed above, a partial solution to a discriminatory and unlawful situation is at least a start and better than no solution at all, and the learning gained from implementation of the USOC for this product may shed light on how to proceed for other products.

- Business need and impact

Qwest said that the implementation of a new USOC will allow Qwest's facility assignment system (known as LFACS) to assign a HDSL qualified facility capable of supporting the service when a CLEC orders a HDSL capable non loaded loop from Qwest. (See 12/17/08 CMP meeting minutes.) During the January 21, 2009 monthly CMP call, Qwest said it could implement the USOC in mid-April 2009. Qwest admits its processes/systems currently do not assign a facility capable of supporting the service a CLEC orders when a CLEC requests an HDSL qualified non loaded loop from Qwest. Assigning a facility capable of supporting the requested service, however, would reduce problems at installation and reduce the number of needed repairs to make the service work as intended.

For Qwest retail, in the December 17, 2008 CMP meeting, Qwest (Jamal) told CLECs that "Qwest HDSL2 goes through the CSA guidelines." In other words, Qwest admits that Qwest assigns the appropriate facility for its own retail services. In contrast, for CLECs, Qwest said that its policy is that Qwest will only test and repair the loop to voice transmission parameters, because Qwest cannot differentiate a HDSL qualified non loaded loop from a voice grade loop using its current processes (notwithstanding its long-established legal obligations to make that distinction and to not restrict testing to voice transmission only). Qwest indicated that, for HDSL, implementing the requested USOC would allow Qwest to finally make that distinction for CLECs. Therefore, a key CLEC business need is for Qwest to implement the USOC without delay to correct this problem. Once Qwest's processes/systems can differentiate a HDSL qualified non loaded loop from a voice grade loop, Qwest will then assign a HDSL qualified non loaded loop when CLEC orders a HDSL qualified non loaded loop, eliminating the existing problems associated with Qwest erroneously assigning a voice grade loop in these circumstances.

EXHIBIT A3

Regarding the significant impact upon CLECs, see the discussion above.

- Desired CLEC resolution

Qwest will reverse the denied status of Integra's CR and implement the USOC in mid-April 2009. Qwest will implement the exception request to expeditiously implement the USOC. If Qwest's refusal to recognize the work already done and its own projected completion date by voting against the exception request, combined with Qwest's denial of the CR, results in a delay in the implementation date, then Qwest should implement the USOC at the earliest possible date after mid-April 2009.

In addition, Qwest will promptly provide the requested additional information about Qwest retail facility assignment to CLECs. In its CR, Integra said: "Qwest has not yet indicated whether it uses this USOC for Qwest retail or, if not, how assignment of facilities is physically performed for Qwest retail. Qwest should provide this information."

Also, if Qwest's response was unclear and, in fact, Qwest agrees with CLECs, then Qwest will clarify its response and expressly state that it recognizes that Qwest has an obligation to provide HDSL Capable Loops to CLECs. If, however, Qwest maintains that it has no obligation to provide HDSL Capable Loops to CLECs, Qwest will both provide specific citations to authority for its position and respond to the authority cited by Integra.

CHANGE REQUEST FORM

CR # _____ Status: _____
Originated By: Bonnie Johnson Date Submitted: _____
 Company: Integra Telecom, Inc. and affiliates Internal Ref# _____
 Originator: Bonnie Johnson , Director Carrier Relations, bjohnson@integratelecom.com / 612-436-6218
Name, Title, and email/phone#

Area of Change Request: Please click appropriate box(es) and fill out the section(s) below.

Product/Process System

Exception Process Requested: Please click appropriate boxes

Yes No

(Exception Process Requests will be considered at the next monthly CMP meeting unless Exception call/meeting requested)

Exception call/meeting requested

Qwest SME(s) requested at Pre-Meeting (list if required) _____

Available Dates/Time for Clarification/Exception Pre-Meeting
1.
2.
3.
4.
5.

Regulatory or Industry Guideline CR: Please click appropriate box if you would like the CR to be considered as a Regulatory or Industry Guideline change.

Regulatory

Industry Guideline; Indicate industry forum: ANSI

Title of Change:

Design, Provision, Test, and Repair Unbundled Loops to the requirements requested by CLEC, including NCI/SECNCI Code Industry Standards

Description of Change/Exception:

In October 2007, Integra notified its Qwest service management team that Integra was experiencing issues with Qwest's provisioning and repair of xDSL circuits (provisioned on Non-Loaded Loops). Integra and its related entities ("Integra") have continued to work with its Qwest service management team to address these issues. For example, in May of 2008, Integra provided an example to its Qwest service management team in which HDSL2 service was working fine for Integra's end user customer; Qwest made a Qwest-initiated change to its network which disrupted the customer's HDSL2 service; Integra opened a trouble ticket to restore service; and Qwest repair told Integra that Qwest would test and repair only to voice grade parameters, which meant that the end user customer's HDSL2 service no longer worked (i.e., was permanently disrupted).

Integra communicates the type of service it intends to provide on 2/4 Wire Non-Loaded Loops by using the appropriate NCI/SECNCI codes on the Local Service Request (LSR). However, Qwest has indicated that it now designs, provisions and repairs the circuits to voice grade parameters measured at 1004 Hz, regardless of the NCI/SECNCI code requested on the LSR. The Network Code NC: LX-N indicates that a CLEC is ordering within the Non-Loaded Loop family. As discussed below, it supports a number of digital services depending upon the NCI/SECNCI codes provided on the LSR (e.g., Digital DS0 Level, Advanced Digital Transport, ADSL, Basic Rate ISDN, HDSL2 ...). Therefore, an order of LX-N with the NCI code of 02QB9.00H and a secondary NCI code ("SEC") of NCI 02DU9.00H tells Qwest that it needs to provision, test, and repair for HDSL2 capable service. For example, Qwest needs to ensure that the loop meets the appropriate performance parameters. Each digital service has its own parameters, such as:

- Voice grade analog circuit with Loss at 0 to -8.5 dB at 1004 Hz
- ISDN service Loss at less than 40 dB at 40 kHz
- ADSL service Loss at less than 41 dB at 196 kHz
- HDSL2 service Loss at less than 28 dB at 196 kHz.

When Integra raised the issue of Qwest limiting digital services to voice grade parameters with its Qwest Service Management team, Qwest responded by indicating that "Qwest does not provision requests to meet a specific facility or technology, but rather provisions a class of service, based on the NC codes the CLEC orders." Integra continues to believe that its current Interconnection Agreements ("ICAs") require Qwest to provide unbundled loops that transmit digital signals in addition to voice-grade service, etc. Integra reserves its rights under its ICAs. At the same time, in an effort to resolve this issue and at the

request of Qwest, Integra is requesting in CMP that Qwest develop and maintain the process and procedures needed to design, provision, test and repair Unbundled Loops so that the circuit will conform to the requirements requested by CLEC, including compliance with the industry standards for the NCI/SECNCI code provided on the LSR. On 7/23/08, Qwest proposed that Integra submit a change request in CMP, including asking Qwest to design, provision, test and repair services in way that takes into account NCI/SECNCI codes standards instead of just the NC codes. Integra includes that request in this CR.

Qwest's Technical Publication 77384 indicates that a number of advanced digital services are provisioned on Non-Loaded Loops (NC: LX-N), using a variety of NCI/SECNCI codes (for example: Advanced Digital Transport in a variety of spectrum classes, Basic ISDN – NCI: 02QC5.OOS, HDSL - NCI: 02QB9.00H). Qwest's Technical Publications indicate that the NCI/SECNCI codes conform to the various ANSI standards for the specific digital service. However, as noted earlier, the Qwest service management team confirmed that it is Qwest's current practice to design, provision, test and repair these digital services delivered on Unbundled Loops based on the NC code which delivers voice grade parameters measured at 1004Hz, even though each digital service has its own parameters for optimum performance. Integra is requesting that Qwest use the industry standards for NCI/SECNCI codes provided on the LSR when designing, provisioning, testing and repairing Unbundled Loops. For example, an Unbundled Loop ordered on the LSR with the Basic ISDN NCI: 02QC5.OOS should be designed, provisioned, tested and repaired per industry standards using a loss based on 40 kHz, not the voice grade 1004 Hz. Additionally, an Unbundled Loop ordered on an LSR with HDSL NCI 02QB9.00H should be provisioned using loss based on 196 kHz. When Qwest grandparented the ADSL compatible loop (only for CLECs without any ADSL compatible loop terms in their ICAs), Qwest pointed to the 2 Wire Non-Loaded Loop as an alternative to the ADSL compatible loop. However, per Qwest's current stated position regarding designing, provisioning, testing and repairing to the NC code only, the 2 Wire Non-Loaded Loop would not be a reliable or serviceable alternative to an ADSL compatible loop. For a 2 Wire Non-Loaded loop to be a viable alternative to an ADSL compatible loop, Qwest should design, provision, test and repair digital capable Non-Loaded loops (such as HDSL capable or ADSL compatible loops) based on the NCI code as well.

While Qwest has said that it does not provision requests to meet a specific facility or technology, it should provision requests in compliance with industry standards and as ordered by CLEC, including providing working digital capability/compatibility when that capability is ordered. The SGATs, like the recent Qwest-Eschelon Minnesota and Arizona ICAs (§9.2.2.3), define 2/4 wire non-loaded loops as "digital capable" loops. The SGATs and the recent Qwest-Eschelon ICAs (§9.2.2.1.1 & 9.2.2.1.2) provide that use of the words "capable" and "compatible" to describe Loops means that Qwest assures that the Loop meets the technical standards associated with the specified Network Channel/**Network Channel Interface** codes, as contained in the relevant technical publications and industry standards. Qwest's stated position that its current process recognizes only the "Network Channel" code but not the "Network Channel Interface" is inconsistent with this long-established principle. Similarly, the Qwest-Integra Oregon ICA has been in place since 2000 (for Integra as well as other CLECs, as it is based on the Qwest-AT&T ICA). That ICA (Att. 3, §2.1 and subparts) defines an unbundled loop to include loops that transmit digital signals and provides that CLEC may order special copper loops unfettered by any intervening equipment and which do not contain any bridged taps, so that CLEC may use the loops for a variety of services by attaching appropriate equipment. For example, when a CLEC orders an HDSL2 capable loop (identified on the LSR by using the NC code of LX-N with the NCI code of 02QB9.00H and a SEC code of NCI 02DU9.00H), the CLEC should receive a loop unfettered by intervening equipment so that CLEC may provide working HDSL2 service over the HDSL2 capable loop by attaching appropriate equipment. Regarding repair after a Qwest maintenance or modernization event, the SGATs and recent Qwest-Eschelon ICAs (§9.1.9) provide that network maintenance and modernization activities will result in UNE transmission parameters that are within transmission limits of the UNE **ordered by CLEC**. If CLEC orders a 2/4 wire non-loaded loop that is digital capable (such as ADSL compatible or HDSL2 capable), then the loop must be restored to the appropriate digital capable level after a Qwest maintenance or modernization event. In short, if a loop qualifies for a digital service, the circuit should work (and continue working) for that digital service.

Expected Deliverables/Proposed Implementation Date (if applicable):

Qwest will design, provision, test and repair Unbundled Loops to the requirements ordered by CLEC, including industry standards for the NCI/SECNCI codes provided on the LSR. Qwest should take into

account NCI/SECNCI code standards, and not just the NC codes. When a CLEC orders a 2/4 wire non-loaded loop for providing a digital service (e.g., as identified using the applicable NCI/SECNCI code on the LSR), Qwest will not limit the design, provisioning or repair of 2/4 wire non-loaded loops to voice grade parameters (e.g., measured at 1004 Hz). After repairs and Qwest network maintenance and modernization changes, the end user customer's service should work for the service ordered by CLEC.

OPTIONAL – COMPLETE THE SECTIONS BELOW WHERE APPLICABLE

Products Impacted: Please Click all appropriate boxes & also list specific products within product group, if applicable.

- | | |
|--|---|
| <input type="checkbox"/> Ancillary _____
<input type="checkbox"/> LIDB _____
<input type="checkbox"/> 8XX _____
<input type="checkbox"/> 911 _____
<input type="checkbox"/> Calling Name _____
<input type="checkbox"/> SS7 _____
<input type="checkbox"/> AIN _____
<input type="checkbox"/> DA _____
<input type="checkbox"/> Operation Services _____
<input type="checkbox"/> INP _____
<input type="checkbox"/> Centrex _____
<input type="checkbox"/> Collocation _____
<input type="checkbox"/> Physical _____
<input type="checkbox"/> Virtual _____
<input type="checkbox"/> Adjacent _____
<input type="checkbox"/> ICDF Collocation _____
<input type="checkbox"/> Other _____
<input type="checkbox"/> Enterprise Data Source _____
<input type="checkbox"/> Other _____
<input type="checkbox"/> Local Switching _____ | <input type="checkbox"/> LNP _____
<input type="checkbox"/> Private Line _____
<input type="checkbox"/> Resale _____
<input type="checkbox"/> Switched Service _____
<input type="checkbox"/> UDIT _____
<input type="checkbox"/> Unbundled Loop _____
<input type="checkbox"/> UNE _____
<input type="checkbox"/> Switching _____
<input type="checkbox"/> Transport (Include EUDIT) _____
<input type="checkbox"/> X Loop _____
<input type="checkbox"/> UNE-P _____
<input type="checkbox"/> EEL (UNE-C) _____
<input type="checkbox"/> Other _____
<input type="checkbox"/> Wireless _____
<input type="checkbox"/> LIS / Interconnect _____
<input type="checkbox"/> EICT _____
<input type="checkbox"/> Tandem Trans. / TST _____
<input type="checkbox"/> DTT / Dedicated Transport _____
<input type="checkbox"/> Tandem Switching _____ |
|--|---|

Area Impacted: Please click appropriate box.

- X Pre-Ordering X Provisioning
- X Ordering
- X Billing
- X Maintenance / Repair X Other _____

Form/Transaction/Process Impacted (IMA only): Please click all appropriate boxes.

- | | | | |
|---|---|---|---|
| Order | | | |
| <input type="checkbox"/> LSR | <input type="checkbox"/> End User (EU) | <input type="checkbox"/> Resale (RS) | <input type="checkbox"/> Resale Split (RSS) |
| <input type="checkbox"/> Centrex (CRS) | <input type="checkbox"/> Resale Pvt. Line (RPL) | <input type="checkbox"/> Hunt Group (HGI) | <input type="checkbox"/> Loop Service (LS) |
| <input type="checkbox"/> Centrex Split (CRSS) | <input type="checkbox"/> Port Service (PS) | <input type="checkbox"/> Number Port (NP) | <input type="checkbox"/> Loop Service w/NP (LSNP) |
| <input type="checkbox"/> Frame Relay (RFR) | <input type="checkbox"/> DID Resale (DRS) | | <input type="checkbox"/> Directory Listings (DL) |
| <input type="checkbox"/> Other _____ | | | |

LSR Activity

- | | | | |
|--|-------------------------------------|---|---|
| <input type="checkbox"/> N - New | <input type="checkbox"/> C - Change | <input type="checkbox"/> D - Disconnect | <input type="checkbox"/> T - Outside Move |
| <input type="checkbox"/> M - Inside Move | <input type="checkbox"/> Y - Deny | <input type="checkbox"/> L - Seasonal Suspend | <input type="checkbox"/> W - Conversion As Is |
| <input type="checkbox"/> B - Restore | <input type="checkbox"/> R - Record | <input type="checkbox"/> Z - Conv as Spec/No DL | <input type="checkbox"/> V - Conversion As Spec |
| <input type="checkbox"/> Other _____ | | | |

Pre-Order

- | | | | |
|---|---|---|---|
| <input type="checkbox"/> Address Validation | <input type="checkbox"/> CSR | <input type="checkbox"/> TN Reservation | <input type="checkbox"/> Loop Qual |
| <input type="checkbox"/> Facility Avail. | <input type="checkbox"/> Service Avail. | <input type="checkbox"/> CFA Validation | <input type="checkbox"/> Appointment Scheduler |
| <input type="checkbox"/> Raw Loop Data | <input type="checkbox"/> DLR | <input type="checkbox"/> Meet Point | <input type="checkbox"/> Listing Reconciliation |
| <input type="checkbox"/> Cancel | | | |
| <input type="checkbox"/> Other _____ | | | |

Post-Order

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> Local Response | <input type="checkbox"/> Completion | <input type="checkbox"/> PSON | <input type="checkbox"/> Billing Completion |
| <input type="checkbox"/> Status Updates. | <input type="checkbox"/> Status Inquiry | <input type="checkbox"/> LSR Notice Inquiry | <input type="checkbox"/> LSR Status Inquiry |
| <input type="checkbox"/> DSRED | <input type="checkbox"/> Batch Hot Cut | <input type="checkbox"/> Provider Notification | <input type="checkbox"/> Other _____ |

OSS Interfaces Impacted: Please click all appropriate boxes.

- | | | | |
|--|---|----------------------------------|--|
| <input type="checkbox"/> CEMR | <input type="checkbox"/> IMA
Application-to-
Application
interface | <input type="checkbox"/> MEDIACC | <input type="checkbox"/> QORA |
| <input type="checkbox"/> EXACT | <input type="checkbox"/> IMA GUI | | <input type="checkbox"/> Wholesale Billing Interface |
| <input type="checkbox"/> Directory Listing | <input type="checkbox"/> SATE | | <input type="checkbox"/> Other _____ |

Change Request Form Instructions

The Change Request (CR) Form is the written documentation for submitting a CR for a Product, Process or OSS interface (Systems) change. The CR should be reviewed and submitted by the individual, which was selected to act as a single point of contact for the management of CRs to Qwest. Electronic version of the CR Form can be downloaded from the Qwest Wholesale WEB Page at <http://www.qwest.com/wholesale/cmp/changerequest.html>.

Product/Process and System CRs may be submitted to Qwest via e-mail at: cmpr@qwest.com

To input data to the form, use the Tab Key to navigate between each field. The following fields on the CR Form must be completed as a minimum, unless noted otherwise:

Submitted By

- Enter the date the CR is being submitted to the Qwest CMP Manager.
- Enter Company's name and Submitter's name, title, and email/Phone #.
- Optional – identify potential available dates Submitter is available for a Clarification Meeting.
- Optional – enter a Company Internal Reference No. to be identified.

Area of Change Request

- Select the type of CR that is being submitted (Product, Process, or Systems).

Exception Process Requested

- Originator should indicate if they wish to have the request handled on an exception basis.
- Exception requests will be considered at the next monthly CMP meeting, unless the Originator requests an emergency call/meeting.
- Optional - Select Emergency call/meeting requested, if an emergency call/meeting is required.
- Optional - Originator may request a pre-meeting with Qwest by selecting the Pre-meeting with Qwest requested box.
- Optional - Originator may identify certain Qwest SME(s) to attend the Pre-meeting by selecting the Qwest SME(s) requested at Pre-Meeting box and listing the SME(s).

Regulatory or Industry Guideline CR

- Select either Regulatory or Industry Guideline if you would like the CR to be considered as a Regulatory or Industry Guideline change

Title of Change

- Enter a title for this CR. This should concisely describe the CR.

Description of Change/Exception

- Describe the Functional needs of the change being requested. To the extent practical, please provide examples to support the functional need and the names of Qwest personnel with whom the originator has been working to resolve the request. Also include the business benefit of this request.
- If Exception Process requested, provide reason for seeking an exception.

Expected Deliverables/Proposed Implementation Date (if applicable)

- Enter the desired outcome required (e.g. revised process, clarification, improved communication, etc.) and the desired date for completion. The specific deliverables Qwest must produce in order to close the CR. The originator should provide as much detail as possible.

Products Impacted – Optional

- To the extent known, check the applicable products that are impacted by the CR.

Area Impacted – Optional

- To the extent known, check the applicable process areas that are impacted by the CR.

OSS Interfaces Impacted – Optional

- To the extent known, check the applicable systems that are impacted by the CR.

Qwest's CMP Manager will complete the remainder of the Form.

ATTACHMENT A5

Qwest

421 SW Oak Street
Room 810
Portland, OR 97204
Telephone: 503-242-5623
Facsimile: 503-242-8589
Alex.Duarte@qwest.com



Alex M. Duarte

Corporate Counsel- Oregon and Utah

December 15, 2008

Ms. Julie Orchard
Utah Public Service Commission
Heber M. Wells Building
160 East 300 South, 4* Floor
Salt Lake City, Utah 84111

Re: Docket 08-049-50- Qwest letter re agreed-upon EDI/XML changes

Dear Ms. Orchard:

This letter provides a description of the changes relative to “EDI/XML” (Electronic Data Interchange/Extensible Mark-up Language) that Qwest agreed to make during the technical conference held on December 3, 2008 pursuant to the Commission’s procedural order in this docket. During the technical conference, Qwest further agreed to make a filing representing that it has agreed to Integra’s request to make the EDI/XML changes. Qwest described the changes as being the same, in principle, to those it agreed to make as part of similar proceedings in Washington and Colorado. Accordingly, Qwest notes that the description provided in the Colorado Public Utilities Commission Staff’s Second-Year Report (associated with the second annual review of the Colorado PAP (CPAP), May 2008) is most descriptive of these changes and forms the basis for the descriptions provided in this letter.

The agreed-upon EDI/XML changes consist of updating the PID to address the retirement of the Electronic Data Interchange (EDI) interface and its replacement with the Extensible Mark-up Language (XML) interface and making such other related PID and PAP changes as were agreed upon in the Colorado 2007 Annual PAP review, as applicable to Utah. Overall, the telecommunications industry had moved from EDI as a set of standards for computer-to-computer intercommunication and has instead begun to use XML. Since certain PIDs measured or referenced EDI, the agreed-upon changes consist of replacing references to the EDI interface with references to XML or replacing measurements or sub-measurements that exclusively addressed EDI with measurements that address XML.

Specifically, the changes include the following:

- Add language to appropriate PIDs to provide for a “stabilization period” following implementation of EDI/XML-related changes in new or modified measurements. That language is as follows:

“Stabilization Period: For each of these new measures/sub-measures that include XML results there will be a 3-month measurement stabilization period. During this period, no payment applies if the payment is determined to have been caused by the development to include XML into the PID results and not due to an actual performance miss. In order to determine the cause of payments during the stabilization period, if any payments are identified, the payment’s due date will be extended for 30 days to provide Qwest the opportunity to perform root cause analysis and make the results readily available to the impacted parties. Until performance reporting includes XML results, the prior measures/sub-measures included in the PAP will apply. Further, should either the IMA-GUI or IMA-XML interfaces be replaced in the future, results from the replacement interfaces will be automatically incorporated into these measures and be included in the PAP (with a stabilization period) coincident with CLEC migration to the new interfaces subject to changes to the impacted measures including but not limited to modification due to operational differences with the replacement interfaces.”

- The GA-2 (Gateway Availability) was replaced by GA-8, that measures availability of IMA-XML and applies the same standard from GA-2 (subject to a stabilization period described above).
- GA-7 (Timely Outage Resolution following Software Releases) and PO-16 (Timely Release Notifications): replace IMA-EDI with IMA-XML in the description.
- PO-1 (Pre-Order Response Time):
 - ◆ Replace sub-measurement PO-1B with a new sub-measurement to capture IMA-XML using existing transactions, response targets, and standards.
 - ◆ Remove sub-measurements PO-1C and PO-1D.
- PO-2 (Electronic Flow-through): Remove interface-specific sub-measurements and create a new sub-measurement to capture both IMA-GUI and IMA-XML results combined, noting that PO-2B is included in the Reinstatement/Removal process, using existing standards in combination with that process.
- PO-3 (LSR Rejection Notice Intervals) and PO-7 (Billing Completion Notice Timeliness): Remove existing interface-specific sub-measurements and create new sub-measurements to capture IMA-GUI and IMA-XML results combined, for each of these two measurements, noting that PO-3 and PO-7 are included in the Reinstatement/Removal process, using existing standards in combination with that process. Remove PO-3B entirely.
- PO-5 (FOC Timeliness) and PO-6 (Work Completion Notice Timeliness): Remove existing interface-specific sub-measurements and create new sub-measurements to capture IMA-GUI and IMA-XML results combined, for each of these two measurements, using existing PID details. For PO-6, update PID language to reflect that all notices will be measured to the point in the notification process where they are made available to the interface, for both IMA-GUI and IMA-XML.

- PO-19 (SATE Accuracy): Qwest will continue to report PO-19 SATE results for XML with the elimination of mid-release testing, changing PID language to apply to XML instead of EDI.
- PO-20 (Manual Service Order Accuracy): Replace IMA-EDI with IMA-XML in the Description.
- Updates to PAP Section 7.4 and Attachment 1 to reflect the inclusion of the stabilization period language and to update references to measure/sub-measure numbering.

Qwest will implement these changes at the next practicable opportunity in its measurement systems following the effective date of the Commission's order in this docket.

If the Commission has any questions about this letter, or the subject of this letter, please feel free to contact me.

Very truly yours,



Alex M. Duarte
Qwest, Corporate Counsel- Utah
Attorney for Qwest Corporation

Escalation of CR #PC082808-1IGX by Integra and Affiliates

March 20, 2009

- Description of item being escalated

Integra and its affiliated entities (“Integra”) escalate Qwest’s March 13, 2009 denial of Integra’s Change Request (CR) #PC082808-1IGX, entitled “Design, Provision, Test and Repair Unbundled Loops to the Requirements requested by CLEC, including NCI/SECNCI Code Industry Standards” [Integra’s “Provision Loops Per Request CR”]. It seems self-evident that, if a CLEC orders a particular product, Qwest would provision that product. With respect to unbundled loops and in particular xDSL-capable loops, however, that has not turned out to be the case. Several types, or flavors, of xDSL-capable loops are supposed to be available to CLECs. For example, as discussed below, some interconnection agreements (ICAs) define xDSL-capable loops to include at least seven types (ADSL, HDSL, HDSL2, IDSL or ISDN DSL, RADSL, SDSL, and VDSL). These various types of xDSL-capable loops are separate from, and in addition to, DS1 capable loops, which Qwest must also provide to CLECs. There is a specific mechanism, set forth in the SGATs and ICAs, for the CLECs to identify and Qwest to provision the particular type of loop ordered by CLEC. The mechanism involves the use of “NC/NCI codes” (plural). Both the NC code and the NCI code are needed to identify the particular type of loop. Qwest, however, claims that it has no obligation to provide the product in the manner requested by CLEC. Qwest has taken the position that, when a CLEC requests a specific type of xDSL capable loop (*e.g.*, via the NC/NCI code identifying HDSL2 at 1.544 Mbps), Qwest may either (1) provide a different type of loop (*e.g.*, a loop at a voice grade parameter of 1004Hz) that does not meet the CLEC’s particular digital needs, or (2) require the CLEC to order a different, more expensive product (*e.g.*, a DS1 capable loop) to obtain the requested digital capability. Qwest should provide a loop that will actually support the service ordered by the CLEC. Instead, and despite a clear ICA requirement to comply with both the NC code **and the NCI code**, Qwest chooses to provision only to the NC code without regard to the NCI code. Therefore, when a CLEC receives the loop, it may for example have no load coils (per the NC code) but, when tested to the specification of 196 kHz consistent with the ANSI standard, it will not pass traffic at a rate of 1.544 Mbps (per the NCI code). If Qwest’s current processes (including its technical publications) do not allow a CLEC to order a product (*e.g.*, HDSL2) in the manner the product is defined as indicated by the full NC/NCI codes, then Qwest’s processes are out of compliance and need to be brought into compliance. CLECs need certainty in their business and operational planning, and they need to meet their end user customers’ expectations. Qwest needs to provide the particular product requested by CLEC.

To view this technical issue in another context may help in understanding the problem. Consider a customer who has a terrible allergy to onions. The customer specifically orders a pizza with no onions. The pizza is delivered. The customer believes that the pizza is the type ordered so eats a slice. The customer only learns there is a mistake when the customer with the onion allergy goes into anaphylactic shock. It turns out the pizza delivery person delivered a pizza with onions. When the customer calls to

Attachment B

complain, the pizza place says it met its obligation to the customer because “hey, we delivered a pizza.” It is a completely unsatisfactory result. The customer did not receive the product ordered and, as a result, the customer is harmed.

The CR and this Escalation are not limited to loop delivery/installation. Integra’s Provision Loops Per Request CR covers loop design, provision, test, and repair for loops (including all types of xDSL capable loops, only one of which is HDSL). In other words, by “providing” a digital capable loop to CLEC, Integra means all phases of providing that loop. In its CR, Integra provided a May 2008 repair example. Integra provided further discussion of “Repairs, Including Repairs Following Qwest Maintenance and Modernization Activities” in its February 4, 2009 written comments. Key aspects of the issue presented by this example were already arbitrated successfully by Eschelon as part of Issue 9-33 in the Qwest-Eschelon Section 252 ICA arbitrations (docket numbers provided below). The resulting Minnesota ICA went into effect, for example, on March 12, 2008 – more than a year ago – giving Qwest ample time to bring itself into compliance. Qwest’s Response completely ignores this significant aspect of Integra’s CR.

- History of item

On August 28, 2008, Integra submitted CR PC082808-1IGX. This CR addresses a business critical issue that Integra has been raising with Qwest since at least the Fall of 2007, when it was added to the service management issues log and Integra’s Senior Vice President of Engineering raised it with Brian Stading, then Qwest’s Vice President, Service Management and shortly afterward with Ken Beck, Qwest’s Regional Vice President. As indicated in Integra’s CR, Integra submitted its request to the Change Management Process (CMP) in response to Qwest’s request to take the issue to CMP, while Integra reserved its rights under the ICAs and the law. The CR was discussed in CMP. On the January 21, 2009 CMP call, Integra agreed to an action item to consider the comments that Qwest had made on that call and respond in writing. On February 4, 2009, Integra completed its action item by providing that written response to Qwest. During the February 18, 2009 CMP call, Qwest nonetheless indicated that Integra had not responded to its action item and, therefore, Qwest was not prepared to discuss it and had not circulated it as part of the CMP materials so other CLECs could be prepared to discuss it. Integra objected and, after the call, sent an email to Qwest, stating: “Enclosed . . . is our response from two weeks ago. The first paragraph both clearly identifies it as our response and requests that Qwest include it in the CMP CR detail, available to all CLECs. It says: ‘On the January 21, 2009 CMP call, Integra agreed to consider the comments that Qwest had made on that call and respond in writing. Integra provides this response to Qwest. Please ensure that this response is included in the detail for CR PC082808-1IGX.’” Because Qwest ignored this written response and the request to include it in the CR detail distributed to other CLECs, other CLECs were not given an opportunity to review the materials in advance or comment upon them during the CMP meeting. Qwest did not provide a reply either in writing or at the next CMP meeting. Qwest indicated it had already responded (even though previously it had said it was not prepared to respond), and Qwest did not address the many points raised in Integra’s

Attachment B

response. On March 13, 2009, Qwest denied Integra's CR. As discussed below, Qwest brief written denial is particularly non-responsive. On the same day (March 13, 2009) as Qwest denied this CR (#PC082808-1IGX), Qwest also denied Integra's CMP Escalation ("Escalation #44) relating to its CR PC020409-1EX ("Integra's Facilities Assignment USOC CR"). Unlike CR PC020409-1EX (which was limited to HDSL), this CR includes all types of xDSL-capable loops. Integra has provided a separate written reply to Qwest regarding its denial of that Escalation.

- Reason for Escalation

This issue is important, and it impacts CLECs, competition, and end user customers. As discussed in the above Description of the Item Being Escalated, CLECs need certainty in their business and operational planning, and they need to meet their end user customers' expectations. Qwest does not explain how CLECs can possibly achieve these goals when Qwest refuses to "provide the product in the manner requested by CLEC" (as stated in Qwest's Response). Because Qwest's Response hinges on whether it has any "obligation" in this regard, a discussion of Qwest's legal and contractual obligations is unavoidable in this Escalation. Although Qwest said in the March 18, 2009 CMP meeting that it did not respond regarding 47 CFR §51.319(a)(1)(iii)(C) because that is "legal," the argument Qwest is making about its alleged lack of any legal or contractual obligation is a legal argument. Omitting citations and not responding to them does not make the argument non-legal; it only makes it unsupported. It is important to note that Integra raised these issues in other contexts with Qwest, and Qwest insisted upon using CMP. As CMP is Qwest's choice of forum, Qwest needs to fully respond in CMP. Qwest's conduct reflected in its denial of Integra's CR (#PC082808-1IGX) violates Qwest's obligations under the Act, as well as its obligations under CLEC ICAs and the SGATs. As a result, CLECs, competition, and end user customers are harmed. Qwest needs to reverse its denial and promptly implement this CR.

In the discussions and written materials related to Integra's Change Request, Integra provided detailed information, including citations to the law, Statements of Generally Available Terms ("SGATs"), and ICAs, to Qwest. Qwest's brief Response is particularly non-responsive and inadequate. It becomes clear, upon reading it, that Qwest does not reply to a single one of these citations (and provides none of its own) because Qwest has no legitimate basis for its position. In this Escalation, Integra will reply to each of Qwest's assertions in the order in which they appear in Qwest's two-paragraph Response.

Productization

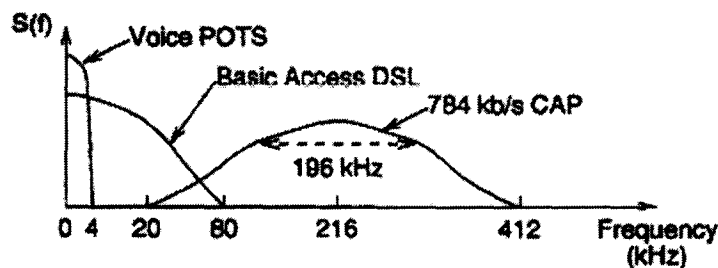
In the first line of Qwest's Response, Qwest refers to its "Unbundled Non Loaded Loop product" and how Qwest developed that product. As indicated in Integra's CMP Escalation relating to its Facilities Assignment USOC CR PC020409-1EX (which Qwest also denied), if Qwest's products or processes are inconsistent with the law, the law controls and any flaws in Qwest's products or processes need to be brought into compliance with the law. It is not an adequate response to any of the operational, legal and contractual issues raised by Integra to argue that Qwest did not choose to develop its "product" that way. Qwest cannot escape its obligations through productization. There

is no exception in the rules or FCC orders (e.g., TRO ¶23; 47 CFR §51.319) to the effect that Qwest must unbundle xDSL capable loops unless Qwest chooses to develop a different product. Also, as discussed below, the ICAs provide that their terms control vis-à-vis Qwest's product documentation. Qwest should have developed its products in compliance with the law and the ICAs and, if it did not, Qwest needs to promptly bring itself into compliance.

Qwest Technical Publication 77384 Vis-à-Vis Industry Standards

Qwest states in its Response that the “Unbundled Non Loaded Loop product was developed with various applications contained in Technical Publication 77384.” Qwest's Technical Publication 77384, however, provides on page 1-1 that an HDSL compatible loop conforms to the industry standard ANSI T1E1, Technical Report Number 28. That ANSI report states (with emphasis added) on page 1 that “this document is aimed only at high-bit-rate digital subscriber line (HDSL) systems that transport bi-directional *digital* signals at the nominal rate of *1.544Mb/s*,” and, in Section 2.1 on page 2, that a nominal rate of 1.544Mb/s is “*called Digital Signal 1 (DS1)*.” This is consistent with the definition of HDSL2 in both the SGAT/Eschelon ICA language and the Integra ICA language (both definitions quoted below).

The ICAs require compliance with “industry standards” (e.g., §§9.2.2.1.1 & 9.2.2.1.2 below). For example, xDSL capable loops must comply with “guidelines recommended by the Network Reliability and Interoperability Council (NRIC) to the FCC, such as guidelines set forth in T1-417” (§9.2.6.1 below). Regarding the interrelationship between industry standards and Qwest's Technical Publications, the Eschelon ICAs specifically state (§12.4.3.5 below, emphasis added): “Qwest Maintenance and Repair *and routine test parameters and levels* will be in compliance with Qwest's Technical Publications, *which will be consistent with* Telcordia's General Requirement Standards for Network Elements, Operations, Administration, Maintenance and Reliability and/or the applicable *ANSI standard*.” Regarding routine test parameters and levels, see the following chart, from Figure 6 on p. 37 (PDF p. 44) of *ANSI T1E1*, Technical Report Number 28 (cited in Qwest's technical publication):



(c) POTS Voice, ISDN DSL & CAP HDSL Spectra

(Amplitudes are not to scale. Shapes are approximations only.)

The *ANSI* Standard T1.418 Performance Testing Section states (on p. 86): “This section specifies performance tests for HDSL2 equipment. These out-of-service tests verify the performance of HDSL2 in impaired environments.” It proceeds to discuss measuring the insertion loss. On page 89, it indicates that insertion loss should be measured from a 20 kHz to 500 kHz range, which includes a measure at 196 kHz. Note the frequency line on the above Figure that goes from 20 kHz to 412 kHz and the reference above that line to “196 kHz.” ANSI Standard T1-417 (cited in §9.2.6.1 below and in Qwest technical publication 77384, p. 1-1), in footnote 9 on page 24, identifies ANSI T1.418 as the standard “for HDSL2 performance requirements.”

Because Qwest relies on the NC code but not the NCI code for CLEC orders, when a CLEC orders an HDSL2 loop using the NC/NCI code for HDSL2, the loop Qwest delivers may have no load coils (per the NC code) but, when tested at 196 kHz consistent with the above ANSI industry standard, it will not pass traffic at a rate of 1.544 Mbps (per the NCI code). Vendors, however, require use of the industry standard. One vendor – which Qwest itself uses for HDSL – is Adtran. Adtran’s publicly available vendor documentation confirms that Adtran uses the 196kHz test for HDSL: “The practice of using insertion loss (at 196 kHz) for loop qualification has continued throughout recent history for 2B1Q HDSL. Due to its ease of measurement, insertion loss is commonly used to characterize the loss of a loop and is usually taken at the Nyquist frequency ($\frac{1}{2}$ baud rate).” See

<http://www.adtran.com/adtranpx/Doc/0/K45854GQTRJ4D4FIH6AG6PN92D/61221HDSL11-10C.pdf>

In the Qwest (SVP Ken Beck) June 5, 2008 email to Integra, Qwest said (with emphasis added): “The Qwest Tech Pub 77384 and the Unbundled 2 and 4 Wire Non-Loaded PCAT both indicate that the CLEC needs to order the ADSL Capable Loop or a DS1 Capable Loop *to receive an HDSL Level of Transmission*. If the CLEC requests the LX-N 04QB9.00H 04DU9.00H NC/NCI code combination, Qwest will provision an Unbundled 4 Wire Non-Loaded Loop and *will test the circuit at 1004 HZ* as stated in Section 6.2.1 of Tech Pub 77384. *If Integra wishes to receive a signal that is tested at 196 kHz, you would need to request an ADSL service or a DS1 capable loop.* . . . I still boil it down to *optional for us* unless you order 4 wire loop.” Qwest is operating as though the Commission-approved ICAs were a mere suggestion, rather than a contractual obligation. Qwest’s position is inconsistent with industry standards establishing a different NCI code for HDSL from the NCI code for ADSL and establishing testing at 196 kHz for HDSL (see above). Because Qwest will only test HDSL at 1004 HZ (*i.e.*, voice parameters) and because Qwest’s technical publication and PCAT currently require a CLEC to order ADSL when the CLEC intends to place HDSL on the loop – as the CLEC is fully entitled to do under the Act, ICAs, and industry standards – then Qwest’s processes, technical publication, and PCAT need to be promptly revised.

Qwest’s current practice stands in stark contrast to these standards. In the May 2008 example provided in Integra’s CR, the HDSL2 service was working fine for Integra’s end user customer; Qwest made a Qwest-initiated change to its network which disrupted the customer’s HDSL2 service; Integra opened a trouble ticket to restore service; and Qwest repair told Integra that Qwest would test and repair only to voice grade parameters, which

meant that the end user customer's HDSL2 service no longer worked (i.e., was permanently disrupted). Since then, Qwest has confirmed in CMP that it will only provide a non-loaded loop (per the NC code) but will not specifically provision HDSL2 (per the NCI code), so that per Qwest at installation HDSL2 service might work, and it might not, and even if it works initially, Qwest will not restore it to that level if it later fails. In Figure 6(c) above, there is a very small area on the frequency line where the line marked Basic Access DSL intersects with the line going from 20 kHz to 412 kHz. Apparently, it is a narrow situation such as this for which Qwest says a non-loaded loop "might" work, though Qwest will not agree to restore it if a later Qwest network modification takes it out of that area. Figure 6(c) suggests that the likelihood that it "might not" work is greatest. The FCC, the SGATs, and the ICAs do not refer to loops that "may or may not" be digital capable. They must be "digital capable." And, per the ICAs (quoted below), they must comply with industry standards using both the NC and NCI codes.

Qwest's position that it may restrict testing to *voice* transmission parameters is inconsistent with these industry standards (as well as 47 CFR §51.319(a)(1)(iii)(C), quoted below).

ICA Controls Vis-à-Vis Technical Publication/Qwest Documentation

Even assuming Qwest's suggestion that it is in compliance with its technical publication were correct, Qwest cannot avoid its legal and contractual obligations by narrowing them or writing itself out of them via its technical publications. This potential means of circumventing obligations was anticipated early, in the SGATs, which state (in Section 2.3, with emphasis added):

Unless otherwise specifically determined by the Commission, in cases of conflict between the SGAT and Qwest's Tariffs, *PCAT*, methods and procedures, ***technical publications***, policies, ***product notifications*** or other ***Qwest documentation*** relating to Qwest's or CLEC's rights or obligations under this SGAT, then the rates, terms and conditions of this SGAT shall prevail. To the extent another document abridges or expands the rights or obligations of either Party under this Agreement, ***the rates, terms and conditions of this Agreement shall prevail.***

The Qwest-Eschelon ICAs also contain this language in Section 2.3 as do, for example, the ICAs of CLECs that have opted into the SGAT or the Qwest-Eschelon ICA. Qwest's CMP Document provides in Section 1.0 ("Introduction and Scope"): "In cases of conflict between the changes implemented through this CMP and any CLEC interconnection agreement (whether based on the Qwest SGAT or not), the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such interconnection agreement. In addition, if changes implemented through this CMP do not necessarily present a direct conflict with a CLEC interconnection agreement, but would abridge or expand the rights of a party to such agreement, the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the

CLEC party to such agreement.” The body of the Eschelon ICAs (§12.1.6.1.4) also contain this language.

As discussed above, the Eschelon ICAs (§12.4.3.5) also require Qwest’s technical publications to be consistent with industry standards. To the extent that Qwest’s technical publications are inconsistent with industry standards, they should be revised. To the extent that Qwest’s technical publications are inconsistent with the ICAs, the ICAs control and Qwest must have processes available to CLECs to effectuate those ICA rights.

Qwest’s Obligation to Provide xDSL Capable Loops is Clear and Long-Standing

Qwest’s statement in its Response that its “product” was developed using applications in its technical publications omits the fact that unbundled loops were supposed to be developed in accordance with the Act and the ICAs. This includes xDSL capable loops. Qwest states (in its March 13, 2009 denial of Integra’s CMP Escalation re. CR PC020409-1EX), however, that: “Qwest disagrees with the claim that it has an obligation to provide an HDSL Capable Loop.” The long-standing obligation is so clearly set out in the SGATs, ICAs, and the law, however, that it is difficult to understand how Qwest could possibly make such a statement.

The various state SGATs; the Qwest-Eschelon Minnesota, Oregon, Utah, and Washington ICAs (as well as in closed language in the Arizona and Colorado ICAs which will become effective once approved) [the “Eschelon ICAs”]; other CLEC ICAs based on adoption of the SGAT or the Qwest-Eschelon ICA; and other CLEC ICAs that are based on the SGAT or Eschelon ICAs with modifications ***all contain the following provisions*** (with the same or substantially the same language):

Section 4.0 (Definitions) states: “‘Digital Subscriber Loop’ or ‘DSL’ refers to a set of service-enhancing copper technologies that are designed to provide digital communications services over copper Loops either in addition to or instead of normal analog voice service, sometimes referred to herein as xDSL, including, but not limited to, the following: . . .”

The “following” long-standing list in the 4.0 definition of DSL includes ADSL, HDSL, HDSL2, IDSL or ISDN DSL, RADSL, SDSL, and VDSL and specifically states:

“‘HDSL’ or ‘High-Data Rate Digital Subscriber Line’ is a synchronous baseband DSL technology operating over one or more copper pairs. HDSL can offer 784 Kbps circuits over a single copper pair, T1 service over 2 copper pairs, or future E1 service over 3 copper pairs.

‘HDSL2’” or “‘High-Data Rate Digital Subscriber Line 2’ is a synchronous baseband DSL technology operating over a single pair capable of transporting ***a bit rate of 1.544 Mbps.***” (emphasis added)

Attachment B

The seven types of xDSL listed in these agreements do *not* include DS1 Capable Loop, which is separately defined. The definition states: “Digital Signal Level 1’ or ‘DS1’ means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing. There are 28 DS1s in a DS3.” Regarding a “capable” loop, see Section 9.2.2.1.1 below. Under the SGATs and ICAs, CLECs are entitled to all unbundled loop types (including DS1 capable loops and xDSL capable loops), as shown below.

The term “xDSL-I” is not stated in the definition of DSL. The definition of DSL includes IDSL or ISDN DSL and also states that xDSL includes but is “not limited to” the seven types listed.

The Eschelon ICAs in Section 4.0 state: “‘Include’ or ‘including’ means to have as part of a whole. The terms ‘include’ and ‘including’ mean ‘includes but is not limited to’ and ‘without limitation,’ regardless of whether one or both of these phrases is used, and regardless of whether the term ‘include’ or ‘including’ are capitalized.”

Section 4.0 (Definitions) provides that “Unbundled Network Element” (UNE) is a Network Element that has been defined by the FCC or the Commission as a Network Element to which Qwest is obligated to provide unbundled access or for which unbundled access is provided under this Agreement.

In the TRO (¶23), the FCC confirmed Qwest’s long-standing obligation to unbundle both “high-capacity lines” and “xDSL-capable loops.” The FCC specifically said (in TRO fn 661 to ¶215) that the term “xDSL” refers to digital subscriber line (DSL) “as a general technology” that is not limited to, but includes, specific types of DSL such as “HDSL (high-speed digital subscriber line).”

Section 9.1.2 contains general terms applicable to all unbundled loops (analog and digital) and requires Qwest to provide non-discriminatory access to Unbundled Network Elements on rates, terms and conditions that are non-discriminatory, just and reasonable. In addition, Section 1.3 of the Eschelon ICAs provides: “Qwest shall provide such Interconnection, UNEs, Ancillary Services and telecommunications Services on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of this Agreement and the requirements of the Act and state law and the rules and regulations promulgated thereunder.”

The FCC has found that CLECs are “impaired” without access to unbundled “xDSL-capable stand-alone copper loops.” (TRO ¶642.) In other words, the FCC has already found that lack of access to unbundled xDSL capable loops “*poses a barrier or barriers to entry . . .* that are

Attachment B

likely to make entry into a market uneconomic” for a reasonably efficient competitor. (TRRO ¶22; emphasis added.)

Section 9.1.9 provides: “In order to maintain and modernize the network properly, Qwest may make necessary modifications and changes to the UNEs in its network on an as needed basis. Such changes may result in *minor* changes to transmission parameters. Network maintenance and modernization activities will result in UNE transmission parameters that are within transmission limits of the UNE *ordered by CLEC*” (emphasis added). Although the language in the Eschelon ICAs approved to date varies somewhat, each one contains additional language in Section 9.1.9 confirming that a “minor” change does not ultimately adversely affect the customer’s service and does not limit service to voice parameters. For example, in Minnesota, Section 9.1.9 of the Eschelon ICA (adopted by several other CLECs) states: “If such changes result in the CLEC’s End User Customer experiencing unacceptable changes in the transmission of voice *or data*, Qwest will assist the CLEC in determining the source and will take the necessary corrective action to *restore the transmission quality* to an acceptable level if it was caused by the network changes” (emphasis added).

Please review the testimony and arbitration orders relating to Issue 9-33 (Network Maintenance and Modernization) in the Qwest-Eschelon ICA Section 252 arbitrations. Minnesota Docket No. P-5340, 421/IC-06-768; Oregon Docket No. ARB 775; Utah Docket No. 07-2263-03; Arizona Docket No. T-03406A-06-0572; T-01051B-06-0572; Washington Docket UT-063061.

Section 9.2.2.1 also contains general terms applicable to all unbundled loops (analog and digital) and provides: “Qwest shall provide CLEC, on a non-discriminatory basis, Unbundled Loops of substantially the same quality as the Loop that Qwest uses to provide service to its own End User Customers. . . . Unbundled Loops shall be provisioned . . . with a minimum of service disruption.”

Section 9.2.2.1.1 provides: “Use of the word ‘capable’ to describe Loops in Section 9.2 means that *Qwest assures* that the Loop meets the technical standards associated with the specified Network Channel/*Network Channel Interface* codes, as contained in the relevant technical publications *and industry standards*.” (emphasis added)

ILECs must “condition loops for the provision of digital subscriber line (xDSL) services.” (TRO, p. 14, 2nd bullet; see also TRRO ¶12.) The local loop element that Qwest is required to unbundle includes “two and four-wire loops conditioned to transmit the digital signals needed to provide xDSL service.” (TRO ¶249; see also UNE Remand Order ¶ 166; First Report and Order, ¶380.) The First Report and Order was released on August 8, 1996, the UNE Remand Order was released on November 5, 1999, and the TRO was released on August 21, 2003. In light of this long-standing obligation, Qwest cannot reasonably argue that it is not required

to assign and provision, when requested, two and four-wire loops conditioned to transmit the digital signals needed to provide xDSL service (including HDSL and HDSL2 as defined in these contracts) to CLECs.

Qwest “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.**” [47 CFR §51.319(a)(1)(iii)(C); emphasis added.]

Section 9.2.2.1.2 provides: “Use of the word ‘compatible’ to describe Loops in Section 9.2 means the Unbundled Loop **complies with** technical parameters of the specified Network Channel/**Network Channel Interface** codes as specified in the relevant technical publications **and industry standards**. Qwest makes no assumptions as to the capabilities of CLEC’s Central Office equipment or the Customer Premises Equipment.” (emphasis added)

Section 9.2.2.3 provides “. . . Unbundled digital Loops are transmission paths capable of carrying specifically formatted and line coded digital signals. Unbundled digital Loops may be provided using a variety of transmission technologies including, but not limited to, metallic wire, metallic wire based Digital Loop Carrier, and fiber optic fed digital carrier systems. Qwest will provision digital Loops in a non-discriminatory manner, using the same facilities assignment processes that Qwest uses for itself to provide the requisite service. . . .” In fact, Qwest’s own ICA negotiations template proposal, in Section 9.2.2.3, also states:

“Qwest will provision digital Loops in a non-discriminatory manner, **using the same facilities assignment processes** that Qwest uses for itself to provide the requisite service.” (emphasis added)

Section 9.2.2.9.1 provides: “Basic Installation. Basic Installation may be ordered for new or existing Unbundled Loops. Upon completion, Qwest will call CLEC to notify CLEC that the Qwest work has been completed.” The basic installation option for loops is available to CLECs at commission-approved rates in most, if not all, Qwest states.

Under “Spectrum Management” (Section 9.2.6), Section 9.2.6.1 provides: “Qwest will provide 2/4 Wire non-loaded Loops, ADSL compatible Loops, ISDN capable Loops, xDSL-I capable Loops, DS1 capable Loops and DS3 capable Loops (collectively referred to in this Section 9.2.6 as “xDSL Loops”) in a non-discriminatory manner to permit CLEC to provide Advanced Services to its End User Customers. Such Loops are defined herein and are in compliance with FCC requirements and **guidelines recommended by the Network Reliability and Interoperability Council (NRIC) to the FCC, such as guidelines set forth in T1-417.**” Section 9.2.6.6 states: “When ordering xDSL Loops, CLEC will provide Qwest with appropriate information **using NC/NCI codes** to describe the Power Spectral Density Mask (PSD) for the type of technology CLEC will deploy. . . .” (emphasis added).

Section 12.1.6.1.4 of the Eschelon ICAs provides: “In cases of conflict between changes implemented through CMP and this Agreement, the rates, terms and conditions of this Agreement shall prevail as between Qwest and CLEC. In addition, if changes implemented through CMP do not necessarily present a direct conflict with this Agreement, but would abridge or expand the rights of a Party to this Agreement, the rates, terms and conditions of this Agreement shall prevail as between Qwest and CLEC.”

Regarding Maintenance and Repair, see also SGAT Section 12.3 and subparts and Eschelon ICAs Section 12.4 and subparts.

Section 12.4.3.5 of the Eschelon ICAs provides: “Qwest Maintenance and Repair and routine test parameters and levels will be in compliance with Qwest’s Technical Publications, which will be consistent with Telcordia’s General Requirement Standards for Network Elements, Operations, Administration, Maintenance and Reliability and/or the applicable ANSI standard.”

Qwest’s own negotiations template proposal and the Qwest-CLEC ICAs based on that template language contain many of these same provisions.

Other CLEC ICAs may not contain the same language but nonetheless require Qwest to provide unbundling as ordered by the FCC (which includes both “high-capacity lines” and “xDSL-capable loops,” TRO ¶23). They also confirm Qwest’s long-standing obligation to provide unbundled HDSL capable loops and specifically HDSL at a DS1-level signal (*i.e.*, not limited to voice grade parameters). For example, the Qwest-Integra ICAs in Arizona, Colorado, Idaho, Iowa, New Mexico in Section 3.20 contain the following definitions – *going back to the year 2000 through the present*:

Section 3.20: “‘HDSL’ or ‘High-Bit Rate Digital Subscriber Line’ means a *two-wire* or four-wire transmission technology which typically transmits *a DS1-level signal (or, higher level signals with certain technologies)*, using 2 Binary/1 Quaternary (‘2B1Q).” (emphasis added)

Section 3.48: “‘xDSL’ refers to a set of service enhancing copper technologies, including but not limited to Asymmetric Digital Subscriber Loop (ADSL), High Bit Rate, or Hybrid, Digital Subscriber Loop (HDSL) and Integrated Digital Subscriber Loop (IDSL), that are designed to provided digital communications services over copper Loops, either in addition to or instead of normal analog voice service. xDSL Loops means Loops that have been conditioned, if necessary and at the appropriate charge if any, by USWC to carry the appropriate xDSL signals.”

In a June 5, 2008 email, Qwest (SVP Ken Beck) told Integra that “HDSL2 is a newer technology for provisioning DS1 Capable service on a two-wire facility. Previously, DS1 service could only be provisioned on a four-wire facility.” The fact that the Qwest-

Integra ICA definition of HDSL *from the year 2000* includes two-wire transmission technology transmitting a DS1 level signal shows that Qwest has had ample time to put in place processes for two-wire loops. In addition, the Qwest retail information in RPD (which is discussed below and which was withdrawn from CLEC availability as of April 29, 2006 per Qwest notice, see Ex. BJJ-44 in UT-063061) supports this conclusion.

Qwest needs to explain its statement that “Qwest disagrees with the claim that it has an obligation to provide an HDSL Capable Loop” (Qwest March 13, 2009 denial of Integra’s CMP Escalation re. CR PC020409-1EX) specifically with respect to these provisions documenting Qwest’s obligation to provide CLECs with xDSL capable loops, including HDSL, using both the NC and NCI codes.

NCI Codes

The second sentence of Qwest’s Response refers specifically to the NCI codes. Whereas the “N” in the NC code LX-N indicates for example that the loop is non-loaded, the NCI code specifies which type of xDSL service the non-loaded loop needs to be capable of carrying. The Telcordia Common Language NC/NCI Dictionary provides the NCI codes to the industry, such as 02QB9.00A for ADSL, 02QB9.00H for HDSL, 02QB9.00E for HDSL2, etc. There is a separate chart of NC/NCI codes in the Dictionary for DS1 Capable Loops (e.g., NC HC and NCI 04QB9.11 04DU9.BN). Qwest asserts in its denial of Integra’s CMP Escalation re. CR PC020409-1EX that the NC/NCI codes for DS1 Capable Loops are the same for CLEC and Qwest retail orders. That just means that, if a CLEC desires a DS1 Capable Loop, it should use the correct NC/NCI codes and Qwest will comply with those codes. It sheds no light on why Qwest then refuses to comply with the NCI code for xDSL Capable Loops, as it is required to do by the ICAs and industry standards.

Qwest states: “For Unbundled Loop LX-N Network Channel (NC) codes, the NCI codes are informational only.” This statement, and the entire first paragraph of Qwest’s Response, are just another way of saying that Qwest does not provision to the full NC/NCI codes but instead only takes the “NC” code into account (as discussed above and in Integra’s CR). The SGATs and ICAs, however, require Qwest to comply with the full “NC/NCI codes” (plural). (See, e.g., §§ 9.2.2.1.1-9.2.2.1.2, quoted above.) They do not use the term “NC” without “NCI,” nor do they say that Qwest may comply with the NC code while ignoring the NCI code or treating it as informational.

Qwest goes on to say that Qwest’s technical publication states that the NCI codes are informational only (“as stated in”). That is incorrect. Qwest’s technical publication 77384 states on page 3-6 in Section 3.4.3 that the NCI codes are “informative to Qwest” and adds that the “customer specifies the NCIs to communicate to QWEST the character of the signals the customer is connecting to the network at each end-point of the metallic circuit.” Once informed of the customer’s specifications, Qwest must take them into account. Specifically, Qwest’s publication states on page 3-6 in Section 3.6 (with emphasis added) that an NCI code “tells a Qwest engineer and the circuit design system, of *specific technical, customer requirements* at a Network Interface.” Per the ICAs,

Attachment B

Qwest cannot ignore these customer requirements and must comply with them. In other words, Qwest must provide the product in the manner requested by CLEC.

The NCI codes “communicate to QWEST the character of the signals the customer is connecting to the network at each end-point of the metallic circuit” because – unlike with a DS1 Capable Loop when Qwest provides the equipment on each end – for xDSL capable loops, CLECs provide that equipment at the customer premises and in the central office. Therefore, CLECs use the NCI code to communicate this information to Qwest.

When CLECs order DS1 Capable Loops, Qwest sometimes provisions the loops using HDSL2, though Qwest charges the DS1 Capable Loop rate. Integra does not contest that practice in its CR, because that is a different situation. In that situation, Integra expects to pay the DS1 Capable Loop rate because Integra ordered a DS1 Capable Loop (via NC/NCI codes specific to DS1 Capable Loop). Significantly, in that situation, Qwest provides the HDSL2 equipment (and performs the work associated with doing so). Therefore, what Qwest describes (in its Denial of Integra’s Escalation of CR PC020409-1EX) as a “much more costly” process for DS1 Capable Loops is a process applicable when Qwest provides its own equipment, which Qwest maintains and, as needed, repairs and replaces. In contrast, the situation with xDSL capable loops is that the CLEC provides the equipment (*e.g.*, HDSL equipment) at both ends. By providing the equipment, the CLEC undertakes the maintenance, repair, and replacement of the equipment. As it is using its own equipment, the CLEC performs certain tasks for itself that it need not then pay Qwest to perform on its behalf. Similarly, the interval is and should be different because CLEC is performing this work for itself. Qwest needs to comply with the NCI codes to allow the process reflected in the ICAs and the industry standards to work as intended.

Qwest’s insistence on cooperative testing in every case (discussed below) ignores this key distinction between the two distinct products available to CLECs: (1) DS1 Capable Loops, for which Qwest provides the equipment; and (2) xDSL Capable Loops, for which CLECs provide the equipment at both ends. This is particularly clear in Qwest’s denial of Integra’s CMP Escalation re. CR PC020409-1EX when Qwest states: “Without testing the end-to-end service provided on the loop as it does for its own retail DS-1 customers, Qwest can not guarantee the loop would support any services.” The entire ICA and industry regime of defining different types of xDSL (*e.g.*, HDSL2 at 1.544 Mbps) and assigning the types of loops unique NC/NCI codes (*e.g.*, NC code of LX-N with NCI code of 02QB9.00H and SEC code of NCI 02DU9.00H for HDSL) is designed to address this concern and ensure that Qwest can provide the type of loop requested by CLEC. The problem is that Qwest has not implemented it, even though these terms have been in the SGATs and ICAs for many years and Qwest’s own technical publication 77384 recognizes that the industry NCI codes are designed “to communicate to QWEST the character of the signals the customer is connecting to the network at each end-point of the metallic circuit” and to tell “a Qwest engineer and the circuit design system, of specific technical, customer requirements.” Qwest can provide the type of loop needed to meet those specific technical customer requirements, if it complies with the ICAs and the NC/NCI code requirements.

Loop Qualification Vis-à-Vis Facilities Assignment

Qwest concludes the first paragraph of its Response by stating: “The CLEC has responsibility to inspect the character of the facilities, e.g., gauge, length, etc. and determine that the facility is appropriate for their specific application.” This is an interesting statement, given Qwest’s position that CLECs cannot order a basic installation for an HDSL capable loop and retain responsibility for testing the loop, as described by Integra in its February 4, 2009 CMP comments on this CR and in its Escalation of CR PC020409-1EX. To the extent that Qwest is referring to loop qualification, the CLECs’ responsibilities in that regard are already addressed in the SGATs and ICAs (see, e.g., SGAT & Eschelon ICAs §9.2.2.8), and Integra’s CR does not change those responsibilities. Integra uses the loop qualification tools, so it has already done the work to know which qualified facilities are identified as available when Integra submits its request.

The loop qualification tools only provide information at a certain level for a subsection of the loops at an end user customer’s address (indicating that a loop exists that is within the desired length, for example), however, and do not provide detailed specific characteristics of the particular loop being delivered. Moreover, Qwest sent a notice to CLECs stating that Qwest would modify its documentation on March 13, 2009 to provide: “When performing Loop Qualification queries using the Resale (HSI) Loop Qualification and/or **ADSL Loop Qualification** tools, the following message may be returned: “*Because of Power Disparity, Interference may be present or may develop in the future, Central Office Based ADSL service may be degraded or may not work at all. **Qwest can not guarantee the feasibility CO Based ADSL.***” (See Qwest Notice PROS.03.13.09.F.06150.LoopQualCLECJobAid_V25, emphasis added.) Through the CR denial and Escalation Denial – both received on the same day (March 13th, 2009) – Qwest confirmed that if a CLEC wishes to receive HDSL with a signal that tests at 196 kHz, the CLEC needs to request an ADSL service or a DS1 capable loop. The timing of the three notices on the same day in particular suggests that Qwest’s objective is to force CLECs into foregoing their right to order HDSL and instead order Qwest’s more expensive DS1 Capable Loop product, because per Qwest the only other means of getting the desired HDSL (ADSL) had no certainty of even being a feasible product.

Regarding the particular loop being delivered, Qwest’s facilities assignment process does not select/assign the best (most qualified) loop available **for the type of loop ordered** by the CLEC. (See also Integra’s CR PC020409-1EX and Integra’s associated Escalation, which deal with a sub-set of the issues in this CR as to HDSL. Facilities assignment of all xDSL capable loops, including HDSL and HDSL2, are part of this CR.) Instead, it can just as easily assign a loop capable of only voice grade service to fill a CLEC request for a particular type of digital capable loop. In contrast, for Qwest retail, Qwest automatically assigns the best (most qualified) loop available for the type of loop ordered by Qwest retail. In the December 17, 2008 CMP meeting, Qwest (Jamal) told CLECs that, for Qwest retail, “Qwest HDSL2 goes through the CSA [Carrier Serving Area] guidelines.” In other words, Qwest admits that Qwest assigns the appropriate facility for its own retail services. In contrast, for CLECs, Qwest said that its policy is that Qwest

will only test and repair the loop to voice transmission parameters, because Qwest cannot differentiate a HDSL qualified non loaded loop from a voice grade loop using its current processes that ignore the NCI code for CLECs (notwithstanding its long-established legal obligations to make that distinction and to not restrict testing to voice transmission only). Since then, Qwest has confirmed (in its March 13, 2009 denial of Integra's CMP Escalation re. CR PC020409-1EX) that Qwest does not use CSA guidelines for CLEC xDSL capable loop orders, though it uses them for Qwest retail. The CSA guidelines relate to issues such as distances. Because xDSL capable loops are distance-sensitive products, distances are significant to delivering the appropriate loop. ANSI Standard T1-417 (cited in §9.2.6.1 above) states, on page 13 in Section 4.3.1.5, that "HDSL systems are designed to transport 784 kbps over Carrier Serving Area (CSA) distances on a single non-loaded twisted pair" and, in Section 4.3.1.6, that "HDSL2 is a second generation HDSL loop transmission system that is standardized. The system is designed to transport a 1.544 Mb/s payload on a single non-loaded twisted pair at CSA distances." Ironically, Qwest attempts to portray its failure to comply with the industry standard regarding CSA distances for CLECs as "advantageous to the CLECs" even though these products are distance-sensitive.

In Qwest's denial of Integra's Escalation re. CR PC020409-1EX, Qwest also admits that, even though the ICAs entitle CLECs to at least seven types of xDSL capable loops, Qwest's facility assignment process for CLECs is based on only one of those types (ADSL). Again, this reflects Qwest's failure to differentiate loop types based on the NCI code, even though Qwest is required to comply with the NCI code per the ICAs. Moreover, Qwest's choice of ADSL is significant, given that Qwest has grandparented ADSL for its own customers. When announcing the grandparenting of ADSL, Qwest pointed CLECs to its non-loaded loop product, even though Qwest will not comply with the HDSL NCI code to provide a non-loaded loop capable of carrying HDSL. (http://www.qwest.com/wholesale/cmp/archive/CR_PC121106-1.html) Worse yet, since then, Qwest notified CLECs that its loop qualification tool is unreliable for ADSL, which may not even be feasible at all (as discussed above).

As discussed above, in addition to its contractual obligations to unbundle xDSL capable loops and comply with the NC/NCI codes, Section 9.2.2.3 of the ICAs (as well as Qwest's own negotiations template proposal) requires Qwest to provision digital loops in a nondiscriminatory manner. Qwest has admitted the processes are different. In addition, Qwest has not provided the information that Integra requested in its CR and in its Escalation re. CR PC020409-1EX regarding Qwest's retail facilities assignment process. To determine whether the processes are nondiscriminatory, however, Qwest needs to be forthcoming about its retail process.

Qwest statements in CMP discussions of this CR led CLECs to believe that Qwest's retail facilities assignment process used an existing Universal Service Ordering Code (USOC) that, if used for CLEC HDSL orders, would allow Qwest to finally differentiate a HDSL qualified non loaded loop from another loop for CLECs. Qwest's denials since then have called Qwest's statements about the USOC into doubt. Therefore, Integra went to Qwest's Resale Product Database (RPD) to attempt to obtain additional information.

About this database, Qwest has said: “InfoBuddy is a system that contains all of Qwest's Methods, Practices and policies regarding ordering processes. In addition to that Qwest also has information within the system that is proprietary. In order to comply with the Telecommunications act of 1996 Qwest developed a redaction process which allows CLEC's access to the retail product methods and procedures contained in InfoBuddy that are available for Resale. That information is formatted into a WEB based application known as RPD. The redaction process removes only the proprietary information found in InfoBuddy that Qwest is not mandated via the Act to provide to CLEC's.” (Qwest email, Ex. BJJ-44 in UT-063061.)

Qwest's *retail* ordering processes in RPD state that the “PTW FID [Field Identifier] is an internal process that is used to provision a 4-wire loop facility as 2-wire using HDSL2 technology. This is transparent to the customer base because the facility is handed off as a 4-wire interface at the customer premises. In an effort to ensure all DSS facility orders carry the PTW FID, it will be added to the T-1 based products service orders via the MAGIC system (OR or WA only). For all other states, the process is manual.” In contrast to this Qwest retail documentation, in the Qwest (SVP Ken Beck) June 5, 2008 email to Integra, Qwest had said: “HDSL2 is not a service or product offering for Qwest customers.”

Regardless of whether the mechanism for complying with the full NC/NCI codes is implementation of a USOC, a FID, or some other process (manual or electronic), ample evidence exists that Qwest can and has assigned and provided HDSL2 technology over a 2-wire facility for itself and its customers.

Qwest's Withholding of CLEC's Existing ICA Right to Compliance with NC/NCI Standards Unless CLECs Forgo Existing ICA Right to Basic Installation

Despite all of the above, Qwest concludes erroneously in its Response that “Qwest is under no obligation to provide the product in the manner requested by CLEC” and it has “no obligation to provide Non-Loaded Loops in this manner.” Qwest states:

“Absent the CLEC community agreement to negotiate in good faith to perform cooperative testing, this request becomes economically not feasible for Qwest. Therefore, Qwest respectfully denies this request.”

Qwest's reference to “good faith” appears to be an attempt to suggest that CLECs are not negotiating in good faith unless they capitulate to Qwest's demand for cooperative testing for xDSL capable loop installations. The suggestion is wrong and unfair. CLECs have taken the time to provide extensive information and citations to Qwest, much of which Qwest leaves unanswered in its Response. CLECs have expressed flexibility in how a solution is implemented, whereas Qwest has expressed a take-it-or-leave-it position on cooperative testing. CLECs already have long-established rights under their existing ICAs (quoted above) to both (1) basic installation for xDSL capable loop installations at Commission approved rates, and (2) access to xDSL capable loops in compliance with industry standards. Qwest is withholding services to which CLECs are entitled to force CLECs to give up their existing right to basic installations. This is not an ICA

negotiation. Qwest is supposed to have implemented processes to effectuate these long-established ICA rights and, not having done so, needs to implement them now.

Ongoing Economic Consequences to CLECs

After dismissing without even acknowledging the many Integra-provided citations to the ICAs and FCC orders and rules as not obligating Qwest to provide the product in the manner requested by CLEC, Qwest states that the decision then “becomes one of economics.” Requiring cooperative testing for every xDSL Capable Loop installation, however, would be an additional financial cost to CLECs, in addition to the adverse economic consequences that exist today because of Qwest’s failure to comply to date.

As discussed above, Qwest withholds any potential willingness to proceed with implementation of the CR as a means to force CLECs into an unnecessary agreement “to perform cooperative testing.” Cooperative testing comes later (at installation), however, and is separate from assignment of facilities (*e.g.*, a loop) *before* the loop is installed and tested. Improving the appropriateness of the loop assigned, so that it is of the type ordered by the CLEC as identified via the NC/NCI codes, will help ensure fewer problems when the testing stage is reached. In CMP, Qwest admitted that, for comparable types of service, Qwest does not perform or require its staff to perform the work it seeks to require CLECs to perform:

Jamal Boudhaouia - He said that we will check to see if the bridge tap is interfering with it. *He said that Qwest does not do HDLS [sic] test in the CO because we are not equipped to do that and the equipment is very expensive.* (12/30/08 Comments to minutes received from Integra) When we hook to the HDSL mux we test remotely - *it works or doesn't work* - we don't have the ability to test the raw loop, *we look for open shorts, bridge tap, or Load Coils that we missed.* (minutes from 12/17/08 CMP meeting; emphasis added)

In other words, Qwest “does not do HDSL2 tests in the CO” for every installation for itself, but Qwest is attempting to force HDSL2 tests in the CO upon CLECs by requiring joint cooperative testing in the case of every loop installation. Qwest confirmed in its denial of Integra’s Change Request (CR) #PC082808-1IGX that Qwest does not perform this testing for its own retail customers. Qwest hooks up the facility, and it “works or doesn’t work.” When the loop is an xDSL Capable Loop, the CLEC is providing the equipment at both ends. Therefore, the CLEC should also be able to hook up its equipment, determine if it works or does not work, and proceed accordingly, just as Qwest does for itself and its customers.

Qwest’s insistence that CLEC be present and cooperatively test when Qwest delivers the loop is an attempt by Qwest to dictate CLEC’s use of its own resources. Qwest appears to wrongly assume that CLEC would be present at delivery anyway, which is incorrect. Though Integra hooks up its own equipment, Integra needs to control the timing of that activity to most efficiently use its own resources and, when necessary, to coordinate with others (*e.g.*, contractors, customers, vendors, etc.). Qwest’s proposal would impose costs on CLECs associated with Qwest dictating the timing and use of CLEC’s resources. In

contrast, Integra's approach does not impose those costs on Qwest. Qwest delivers the loop, as Qwest is already compensated to do per the Commissions' approved rates for basic installation. As discussed below, if Qwest assigns a loop per the NCI codes, in most cases the loop should work as intended. Therefore, no joint testing or repair at installation is required except in the minority of situations (which the ICAs already address). If for some reason a CLEC desires to dictate timing and use of Qwest's resources, the CLEC may choose the cooperative testing installation "option" and then Qwest is compensated for use of those resources with the Commission approved rates for cooperative testing.

Qwest's proposal to impose cooperative testing upon CLECs for every installation is inefficient and creates unnecessary work, delay, and expense for CLECs. For example, if a CLEC that has 50 collocations throughout a city has ordered loops with the same due date for 3 installations in 3 unmanned collocations spread far apart in that city, Integra would need to dispatch technicians all over town that day to jointly test for problems, even though the loops may in fact work when delivered (***and should work, if Qwest assigns proper facilities in the first place***). In its denial of Integra's CMP Escalation re. CR PC020409-1EX, Qwest complains of unspecified "additional work relating to provisioning and dispatch." Qwest's cooperative testing proposal, however, would clearly impose additional work relating to provisioning and dispatch upon CLEC in every one of these cases. And, even without Qwest's cooperative testing proposal, Qwest's current practices already impose additional work on CLECs every time Qwest delivers a loop that is not capable of supporting the requested service. Qwest refuses to abide by its obligation to assign a loop per the NC/NCI codes and then seeks to address any problems that result from its own failure to respect the NCI code by requiring CLECs to engage in and pay for joint testing 100% of the time.

In contrast, Integra's position is much more efficient, because it isolates joint testing to those limited circumstances when joint testing is truly required. Per Integra's position, when Qwest assigns a loop capable of carrying data consistent with the law and industry guidelines (including NCI code), in most cases the loop should work as intended. Therefore, no joint testing is required. Even assuming the loop does not work upon delivery, CLEC will be able to perform tests once it hooks up its equipment (just as Qwest, for its retail customers, performs tests once it hooks up its equipment, see above). Qwest's existing processes require CLEC to perform trouble isolation before reporting trouble to Qwest and to submit its test results with its trouble report. (See Qwest's ICA negotiations template Sections 12.3.3.5 & 12.3.4.) As with any other basic loop installation after which the loop does not work, the companies may agree on the cause of the problem and the solution. If the CLEC reports that its tests indicate, for example, that excessive bridged taps are interfering with its HDSL2 service and Qwest agrees, no joint meet is required. [This assumes that Qwest is not enforcing a policy in violation of 47 CFR §51.319(a)(1)(iii)(C) of testing only to voice grade parameters even when the CLEC informs Qwest that its service is supposed to be capable of carrying data.] Only in the sub-set of installations for which the loop does not work and the companies do not agree on trouble isolation may joint testing be required. This is a far more efficient and less costly than Qwest's proposal to require joint testing for 100% of installations.

Integra has a right to the installation option provisions in its ICAs, including basic installation. Qwest needs to ensure that, before delivering a loop, Qwest is first assigning a loop that meets the ICAs and industry standards for that type of loop. Qwest cannot cure its failure to appropriately assign a loop by shifting the burden to CLECs to perform work that would not be necessary if the assignment process worked as it should. Once it works as it should, there may be little or no need for cooperative/joint testing or repair, because the delivered loop will work as intended for the service ordered.

Qwest states that without tying implementation of the CR to its additional demand for cooperative testing in every case, CR implementation “economically not feasible for Qwest.” Requiring cooperative testing for every installation, however, becomes a financial liability to CLECs and is not economically feasible (for the reasons discussed above). Qwest’s proposal would impose unnecessary expenses and resource burdens on CLECs (such as those described in the example provided above involving unmanned collocations) that Qwest itself does not incur because it does not perform this type of testing itself, as discussed above. Integra asked Qwest about this aspect of Qwest’s response in CMP, as reflected in the February 18, 2009 meeting minutes:

“Doug Denney-Integra said that Qwest’s denial on the exception CR states that there is a financial risk and asked what Qwest was referring to.

Bob Mohr-Qwest said that the financial liability is associated with the cost of equipping and training the technicians to perform the test at this level.

Doug Denney-Integra said that the other CR doesn’t ask Qwest to do this and that they only want the USOC implemented. He said he was not sure how that fits into the rejection of the CR.

Bob Mohr-Qwest said that the CR would be a half solution without testing and would shift additional liability to the repair process and Qwest is not willing to implement a partial solution.”

Qwest, however, is not shifting liability to repair by implementing the CR to allow Qwest’s facility assignment system to assign a qualified facility capable of supporting the requested service (instead of, *e.g.*, erroneously assigning a voice grade loop when a digital loop was requested). Repairs caused at installation by Qwest’s erroneous facilities assignment would be minimized or eliminated. Qwest’s comments are particularly frustrating because Qwest is incorrectly saying CLECs may do to Qwest what Qwest has in fact already done to CLECs. By ignoring the NCI code and assigning the wrong loop type, Qwest is currently creating liability *for CLECs* by forcing them into the repair process at the time of installation instead of properly assigning the correct loop type. When the wrong loop type is assigned, CLECs have to go through the repair process and then, if Qwest wrongly restricts testing to voice transmission only, also have to endure additional ordering and installation processes, including the added expense and delay associated with ordering a more expensive product. As discussed above, the liability that Qwest’s faulty facilities assignment process imposes upon CLECs is the result of violation of Qwest’s obligation to assign and provision xDSL capable loops in

compliance with industry standards, including the NCI code. The consequences of that conduct belong with Qwest, not CLECs.

Qwest's tying of cooperative testing to moving forward at all with this CR also ignores the significant repair and network maintenance and modernization aspects of the CR. (See, e.g., the May 2008 repair example in the CR.) Existing customers are already on the service, so the issue of which installation option (e.g., basic or cooperative testing) was used back when the circuit was delivered is irrelevant for these customers. If Qwest modifies its network and impacts these customers, Qwest must restore their service to the previous data levels. (See, e.g., ICA §9.1.9; Qwest-Eschelon arbitration issue 9-33.) Qwest shall not (contrary to current practice) restrict testing to voice parameters. [See 47 CFR §51.319(a)(1)(iii)(C).]

- Business need and impact

Qwest admits that it complies only with the "NC" code and not the "NCI code." Qwest also admits its processes/systems currently do not assign a facility capable of supporting the type of xDSL service requested by a CLEC. Assigning a facility capable of supporting the requested service, however, would reduce problems at installation and reduce the number of needed repairs to make the service work as intended. Qwest also admits that it is seeking to impose upon CLECs testing that it does not perform for itself and its customers. CLECs' rights under the ICAs and the law are clear and long-standing. Integra has been raising this critical business issue with Qwest since at least the Fall of 2007. Qwest's current practices impose unnecessary expenses, delays, and uncertainties upon Integra and other CLECs. A solution is long overdue. A key CLEC business need is for Qwest to implement the CR without delay to correct these problems.

Regarding the significant impact upon CLECs, competition, and end user customers, see the discussion above.

- Desired CLEC resolution

Qwest will reverse the denied status of Integra's CR. Contrary to Qwest's claim in its denial of Integra's CR PC082808-1IGX that Integra is seeking "a guarantee that every xDSL loop can carry HDSL" and asking Qwest to "provide xDSL loops that are able to transmit each of those types of digital signals," Integra is simply asking that Qwest provide a loop that will actually support the service ordered by the CLEC, which can be accomplished by complying with the NC and NCI codes. Using those codes appropriately, the loop will not have to support every type of digital signal but only the one requested by the CLEC. As illustrated by the above example in which a pizza with no onions was requested by a customer with an onion allergy but a pizza with onions was delivered, customers – including CLEC customers of Qwest's – need to receive the product ordered and are harmed when the wrong product is delivered. The ICAs and industry standards already have a regime in place for CLECs to identify and Qwest to provision the particular type of loop ordered by CLEC by using the NC/NCI codes. If Qwest's current processes (including its technical publications) do not allow a CLEC to

Attachment B

order a product (e.g., HDSL2) in the manner the product is defined as indicated by the full NC/NCI code, then Qwest's processes are out of compliance and need to be brought into compliance. To the extent that Qwest's processes (including technical publications) are inconsistent with industry standards, they should be revised. To the extent that Qwest's processes (including technical publications) are inconsistent with the ICAs, the ICAs control and Qwest must have processes available to CLECs to effectuate those ICA rights.

Regardless of whether the mechanism for complying with the full NC/NCI codes is implementation of a USOC, a FID, or some other process (manual or electronic), ample evidence exists that Qwest can and has assigned and provided HDSL2 technology over a 2-wire facility for itself and its customers. Integra's CR focuses on achieving the desired result (providing the product requested by the CLEC), not a particular manner of implementation. For example, because Qwest has denied Integra's request for implementation of a USOC, then Qwest needs to implement another solution(s) to address these problems. Qwest should reverse its denial of this CR and work collaboratively and quickly toward that goal.