EXHIBIT MLS-3T

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of: QWEST CORPORATION To Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order.	Docket No. UT-033044

REBUTTAL TESTIMONY OF

MARK L. STACY

Operational Impairment

ON BEHALF OF

WORLDCOM, INC. (MCI)

February 2, 2004

REDACTED

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND ADDRESS.

A. My name is Mark L. Stacy. My business address is 229 Stetson Drive, Cheyenne, Wyoming, 82009.

Q. ARE YOU THE SAME MARK STACY WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes, I am. I prepared direct testimony on behalf of WorldCom, Inc. (hereinafter "MCI").

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to the direct testimony filed by Qwest witnesses Dennis Pappas, Joseph Weber, and Rachel Torrence. In my direct testimony, I asserted that a move to unbundled loops ("UNE-L") as a mass market delivery method cannot occur until Qwest's processes can support the seamless and reliable provisioning of loops to multiple carriers at commercial volumes on a day-to-day basis, consistent with the manner in which they currently accommodate CLEC orders via UNE-P. Further, I recommended that the Washington Utilities and Transportation Commission (the "Commission") maintain the national finding of impairment throughout all telecommunications markets in Washington State until such time as UNE-L can realistically replace UNE-P as a tool for serving mass market customers. Such a move would require resolution of the many operational issues (addressed in my direct testimony) that may give rise to impairment. Specifically, these issues include loop provisioning, collocation, and CLEC-to-CLEC cross connects.

In this rebuttal testimony, I demonstrate that Qwest has not addressed the concerns raised in my direct testimony as noted above. In addition, I demonstrate that, in the absence of CLEC access to Unbundled Local Switching ("ULS"), the local telecommunications market in Washington will be burdened with operational barriers that will prevent a seamless and transparent[1] migration of customers from carrier-to-carrier. Today, such seamlessness can be achieved only through CLEC access to ULS. Absent access to ULS, CLECs can be assured seamless customer migration only through true loop portability. Until this goal is realized, CLECs will be impaired in Washington without access to ULS.

Q. PLEASE PROVIDE THE COMMISSION WITH AN OVERVIEW OF QWEST'S DIRECT CASE IN THIS DOCKET.

A. Qwest proposes to eliminate ULS from at least 60 of the 126 wire centers in Washington. Qwest's proposal would encompass, at minimum, seventy-five percent of all of the UNE-P lines in Qwest's territory. Further, it impacts, at minimum, seventy-five percent of MCI's UNE-P based end user lines. Qwest's proposal, therefore, impacts tens of thousands of Washington customers who are currently served by CLECs that utilize ULS. Should those CLECs be unable to serve existing and future customers with the same seamlessness and transparency as they do currently with access to ULS, Washington consumers would obviously suffer, and CLECs' ability to continue to offer competitive services would be greatly decreased. Therefore, absent the elimination of operational impairments to CLECs discussed in my direct testimony and here in my rebuttal testimony,

[1] By "transparent," I mean a migration process so seamless that the customer is actually unaware that it is occurring.

the competitive market in Washington will be in jeopardy. Qwest has failed to provide any evidence that operational barriers will not exist in an environment in which CLECs do not have access to ULS. Therefore, it has failed to demonstrate lack of impairment in the absence of UNE-P. A finding by the Commission of "no impairment" would require tens of thousands of UNE-P lines to be migrated to UNE-L, and, given the operational impairment that exists in Washington, such a finding would jeopardize the service of tens of thousands of telecommunications consumers and would put the UNE-P-based mass market competition that has begun to develop in the state at risk.

Q. HOW HAS QWEST ADDRESSED ISSUES RELATED TO OPERATIONAL IMPAIRMENT IN ITS TESTIMONY?

A. The FCC explicitly identifies three areas in which state commissions may find that CLECs are impaired, even if an acceptable hot cut process were developed and implemented. Those three areas are loop provisioning, collocation, and CLEC-to-CLEC connections.

In general, Qwest's testimony regarding loop provisioning appears to emphasize the finding by the FCC that impairment can/could be caused due to the lack of a sufficient cutover process. While this is certainly an important consideration, the hot cut process is far from the only factor that should be considered in determining impairment from a loop provisioning perspective. As noted in my direct testimony in this proceeding, there are numerous other critical considerations that Qwest has failed to address regarding loop-provisioning related impairment. As I will discuss further, the FCC explicitly recognized that other barriers may exist with respect to loop provisioning that may result in impairment.[2]

[2] TRO ¶ 512.

Qwest has also failed to prove that collocation does not and will not result in impairment absent CLEC access to UNE-P. Qwest has provided this Commission with information regarding the current availability of collocation space and Qwest's performance in providing collocation in the past – in an environment in which CLECs have access to ULS. However, with respect to addressing the only issue of interest in this case – impairment in the absence of UNE-P – Qwest has provided no relevant evidence.

Regarding CLEC-to-CLEC connections, Qwest's testimony is subject to much the same criticism. Qwest's evidence consists entirely of data that was gathered when demand for CLEC-to-CLEC connection activities was very low and when achieving success in that area was relatively easy. However, Qwest's evidence shows nothing with respect to its capabilities of providing CLEC-to-CLEC cross connects in a seamless and transparent manner in the absence of CLEC access to ULS.

II. IMPACT OF QWEST PROPOSAL

Q. HAVE YOU ANALYZED THE IMPACT OF REMOVING UNBUNDLED LOCAL SWITCHING IN THE GEOGRAPHIC AREAS QWEST PROPOSES?

A. Yes. As noted in my direct testimony, unless and until MCI has access to customers with the seamlessness and transparency that is associated with UNE-P provisioning, it will not be practical or even possible for MCI to provide the service to which its customers have become accustomed. If that benchmark is not attained, the competitive market will falter, Washington consumers will be denied competitive options, and MCI, as well as other CLECs in Washington, will be impaired in the mass market.

Q. WHAT IS THE MAGNITUDE OF QWEST'S PROPOSAL?

A. Qwest alleges that requesting carriers are not impaired without access to ULS when attempting to serve the mass market in at least six of the ten MSAs, or 60 of the 126 wire centers in Washington. Qwest claims that ULS should be removed from three of these MSAs based upon the alleged presence of "triggering" carriers, and that ULS should be removed in three additional MSAs based upon a business case analysis that Qwest claims demonstrates that there is potential for competition to occur in these areas. Qwest additionally testifies that, should the Commission determine that an area other than the MSA is the appropriate geographic market, then additional wire centers should also be considered for non-impairment.[3] Denying CLECs access to ULS in the resulting 73 wire centers would affect practically all of the UNE-P lines in Qwest service territory in Washington. For example, more than **BEGIN HIGHLY CONFIDENTIAL** ***[redacted]*** (or approximately 86 percent of MCI's UNE-P lines) **END HIGHLY CONFIDENTIAL** alone are in wire centers within the areas where Qwest claims there is no impairment. Considering other CLEC UNE-P providers, the areas Qwest has identified include nearly **BEGIN HIGHLY CONFIDENTIAL** ***[redacted]*** **END HIGHLY CONFIDENTIAL** lines in Washington State.[4]

[3] *See, e.g.,* Direct Testimony of Peter B. Copeland at 3.

[4] Direct Testimony of William R. Easton, Confidential Exhibit WRE-2C (MSAs included are: Seattle, Tacoma, Bremerton, Olympia, Bellingham, Vancouver/Portland, and Spokane).

Q. DO CLECS IN WASHINGTON HAVE REASONABLE CAPABILITY TO ACCESS CUSTOMERS WITHOUT ULS?

A. No. Even setting aside questions regarding the economic practicality of serving residential and smaller business mass market customers via UNE loops in Washington (an issue addressed by MCI witness Dr. Cabe), and issues surrounding the process for migrating tens of thousands of loops from UNE-P to UNE-L (addressed by the Direct Testimony of Sherry Lichtenberg and Tim Gates on Behalf of MCI), CLECs cannot reasonably reach their current customer base throughout most of the state without access to ULS. MCI's local customers, for example, are spread throughout wire centers across the entire state. However, MCI has collocations in a relatively small number of those areas. Without collocation or some other method of physically accessing customer loops, coupled with a seamless hot cut process capable of handling large volumes of both inbound and outbound customer movement, MCI cannot offer services to most of its embedded base of customers without access to ULS. In short, CLECs, including MCI, are currently dependent on ULS to serve the mass market in Washington because of these operational barriers. In response to Qwest's direct testimony, I will discuss these barriers which contribute to CLEC impairment in the remainder of this rebuttal testimony.

III. LOOP PROVISIONING ISSUES

Q. HOW DOES QWEST ADDRESS THE ISSUE OF LOOP PROVISIONING IN ITS DIRECT TESTIMONY IN THIS PROCEEDING?

A. Qwest witness Dennis Pappas appears to be the witness charged with focusing on loop provisioning issues for Qwest. However, in his direct testimony, other than noting that the CLECs and Qwest are participating in the Batch Hot Cut Process ("BHCP") forum,

Mr. Pappas disregards several loop provisioning issues that would directly impact the CLEC ability to continue to serve retail customers in Washington. In fact, in its direct testimony, Qwest completely avoids these critical loop provisioning issues by giving the Commission the false impression that the entirety of these issues will be addressed in the context of the BHCP forums. Moreover, the batch hot cut process is but one form of hot cut processes relevant to loop installation.[5] Qwest inappropriately limits the scope of loop provisioning to the issues addressed in the batch hot cut forum, and ignores the FCC's recognition in its *Triennial Review Order* ("TRO")[6] that other barriers may exist with respect to loop provisioning that may result in impairment, even if an effective cutover process could be developed.[7]

Q. BEFORE YOU DISCUSS THE LOOP PROVISIONING ISSUES THAT QWEST HAS FAILED TO ADDRESS IN THIS PROCEEDING, CAN YOU COMMENT ON THE BATCH HOT CUT ISSUE AS IT RELATES TO OPERATIONAL IMPAIRMENT?

A. Yes. Qwest and the CLEC community in this region have elected to address the issue of batch hot cuts (more specifically, the transitional process that is to be implemented in

[5] Under Section 9.2.2.9 of Qwest's Washington SGAT, dated June 25, 2002, entitled Provisioning Options, a CLEC can obtain basic installation, basic installation with performance testing, coordinated installation with or without cooperative testing, basic installation with cooperative testing, and project coordinated installation.

[6] *See* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carrier*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 03-36, ¶ 495 (rel. Aug. 21, 2003)("TRO").

[7] TRO ¶ 512.

order to accommodate the cutting over of CLEC UNE-P lines to CLEC UNE-L lines) within the context of the BHCP forum. Even so, it is critical for this Commission to recognize in the context of this proceeding that this migration of lines constitutes a significant operational risk to CLECs, like MCI, that rely almost exclusively on UNE-P to serve their mass market customers. Should the transitional hot cut process be inadequate to migrate UNE-P customers to UNE-L seamlessly, as noted above, nearly all of the CLECs' share of the mass market would be jeopardized. This fact is of even greater concern given that Qwest has never demonstrated that it can successfully accomplish this task at the higher volumes anticipated should CLECs no longer have access to ULS.

Q. CAN YOU PROVIDE A RECOMMENDATION TO THE COMMISSION REGARDING WAYS TO MITIGATE THE POTENTIALLY DEVASTATING RESULTS IF THE TRANSITIONAL HOT CUT PROCESS IS NOT ADEQUATE?

A. Yes. Qwest's hot cut processes are intensely manual. The cumulative effect of managing a mass migration of the embedded UNE-P base of customers to UNE-L, and simultaneously coping with substantially increased volumes day in and day out, month in and month out ("churn"), could potentially overwhelm the untested system (which is not yet even in place) – a system that is not as effective as the process used to support mass market customers via UNE-P. Removing CLEC access to ULS without first testing and implementing the transitional hot cut process at expected commercial volumes would be nothing less than experimenting with the majority of the CLEC customer base and the competitive market in Washington. Should that experiment fail, CLECs stand to lose nearly

everything, while Qwest would only gain.[8] Therefore (and in addition to the other operational barriers that give rise to impairment that addressed below), before the Commission makes a finding of non-impairment in the absence of ULS, the transitional hot cut process should not only be identified and documented, but actually tested and implemented. Further, should the hot cut process be determined to be inadequate, this Commission should mandate that CLECs continue to have access to ULS until such time as any and all associated problems are resolved.

Q. SETTING ASIDE THE BATCH HOT CUT PROCESS, PLEASE BRIEFLY DISCUSS THE OTHER LOOP PROVISIONING ISSUES THAT QWEST HAS FAILED TO ADDRESS IN THIS CASE.

A. Because I have discussed these issues at length in my direct testimony, I will not again provide the Commission with a detailed description of each issue here in my rebuttal testimony. However, the following highlights the issues discussed in my direct testimony related to loop provisioning issues, which Qwest has entirely ignored in its case.

a) Qwest has failed to address the extent to which it will successfully implement a *Mass Market Migration Hot Cut* process that will be necessary to address the increasing daily migration and churn related volumes, which will no doubt exist in a dynamic competitive market where UNE-L is used to serve the mass market. Loop provisioning issues, even from a hot cut perspective, go well beyond the problem of developing and implementing a workable process for

[8] Problems arising from the hot cut process would likely be viewed by CLEC customers as CLEC-caused. The resulting dissatisfaction with CLEC providers would likely result in current CLEC customers returning to Qwest.

dealing with a mass transition from UNE-P to UNE-L, which is the sole purpose of the Batch Hot Cut Process Forum. The Mass Market Migration Hot Cut process is discussed in detail in my direct testimony and differs from the Batch Hot Cut process in that it would allow CLECs to be able to compete effectively for mass-market customers on an ongoing, day-to-day basis after the initial *en masse* transitional hot cuts have been complete, assuming that this is possible. To the extent that ILECs are unable to implement *Transitional Batch Hot Cut Processes*, the initial mass transitioning of the embedded base of customers from UNE-P to UNE-L will not be manageable. Moreover, if an effective, permanent mass market process is not established, CLECs will remain impaired in their ability to address the mass market for all of the reasons cited in the TRO. Issues related to untested provisioning processes operating at dramatically increased volumes on a day-to-day basis, not only for "batch" cuts but for future provisioning requirements, the increased reliability issues associated with substantial manual intervention in the provisioning process when compared to UNE-P which is largely automated, and the need to manage multiple provisioning scenarios (*e.g.*, CLEC-to-CLEC, UNE-L to Line Splitting) are also worth noting. Solutions to all of these issues must be in place and tested for proper performance before UNE-L can exist as a viable mass market delivery platform.

b) Qwest has failed to discuss the critical loop provisioning concerns discussed in my direct testimony related to CLEC access to IDLC loops in the absence

of the UNE platform. It has been MCI's experience that IDLC technology is used to provide services to a very high percentage (up to **BEGIN HIGHLY CONFIDENTIAL ***** [redacted] ***** END HIGHLY CONFIDENTIAL**) of residential and small business customers in some exchanges in Washington.[9] As a result, absent some resolution of the problems identified in my direct testimony, a significant percentage of end users would likely experience decreased service quality if they switch to a CLEC's service accommodated by UNE-L (because their loop will be changed to a less efficient technology). In addition, they could experience significant delays in service availability from the CLEC as Qwest "works around" the IDLC technology to provide an alternative facility. In many cases, customers will experience both problems when purchasing service from a CLEC in this manner. However, the same end users would experience none of those problems if served by Qwest. In either circumstance, the CLEC will be required to wait longer and pay more to serve its customer when IDLC is present, absent the unbundling options described at length in my direct testimony. Moreover, specific concerns exist regarding the ability of CLECs that employ UNE-L to provision xDSL services or dial up services at comparable levels of quality as Qwest is able to provide. As such, the CLEC's ability to offer adequately "bundled" packages of services, increasingly demanded by customers, is threatened.

[9] *See* Qwest's Response to WUTC Bench Request 1-010.

MCI and other CLECs will be impaired absent Qwest eliminating these problems. Qwest has failed to acknowledge that these issues even exist, and in so doing, has inappropriately attempted to ignore and diminish their significance in terms of potential impairment. I urge the Commission to reject Qwest's attempt to ignore these issues and to find that without resolution of the issues, CLECs in Washington are impaired absent access to ULS.

Q. ARE THERE OTHER ISSUES RELATIVE TO LOOP PROVISIONING THAT COULD GIVE RISE TO OPERATIONAL IMPAIRMENT THAT ARE NOT ADDRESSED IN THE BATCH HOT CUT PROCESS FORUM?

A. Yes. To date, Qwest has refused to address multiple loop provisioning scenarios for batch hot cuts. Such scenarios include CLEC-to-CLEC migrations, migrations involving line splitting, and EEL migrations.[10] Without the ability to provision loops under these scenarios in a seamless, transparent manner, and in accordance with the FCC's TRO[11], MCI would be at a significant disadvantage to Qwest. Solutions to all of these issues must be in place and tested before UNE-L can be a viable mass market delivery system.

Q. IS IT APPROPRIATE FOR THIS COMMISSION TO CONSIDER THE ADDITIONAL LOOP PROVISIONING ISSUES YOU HAVE RAISED IN THIS PROCEEDING IN ADDITION TO THE TRANSITIONAL HOT CUT ISSUE?

A. Absolutely. The FCC recognized that even if an acceptable transitional hot cut process was implemented, CLECs may face barriers with respect to loop provisioning that

[10] *See* Direct Testimony of Cedric Cox, Exhibits CC-1 through CC-8 for various provisioning scenarios.

[11] *See, e.g.,* TRO ¶ 476.

may result in impairment.[12] It is for that reason that the FCC directed state commissions to evaluate additional issues, such as those identified herein.

IV. COLLOCATION ISSUES

Q. HAS QWEST ADEQUATELY ADDRESSED THE ISSUE OF COLLOCATION IN ITS TESTIMONY IN THIS PROCEEDING?

A. No. Qwest has failed to show that in the absence of ULS, CLEC access to collocation space and Qwest's ability to accommodate collocation requests would be sufficient to achieve the goal of loop portability. In short, Qwest has failed to provide information or evidence to this Commission that would support a Commission finding of "no impairment" in this area.

Q. PLEASE BE MORE SPECIFIC.

A. In his testimony, Mr. Pappas properly notes that the FCC found in the TRO that collocation availability and ILEC performance in making collocation available are two significant factors to consider in addressing the issue of operational impairment.[13] Indeed, the FCC makes these collocation-related findings, and explicitly directs state commissions to consider, "assuming that access to unbundled switching were curtailed," whether competitive entry would be inhibited due to the exhaustion of available collocation space in the ILEC's central offices.[14] While Qwest has provided information regarding the current situation in Washington relative to collocation space availability, it has provided no information whatsoever regarding this critical situation assuming that access to unbundled local switching

[12] TRO ¶ 512.

[13] Direct Testimony of Dennis L. Pappas at 4-5.

is curtailed in the state. This omission of evidence by Qwest is significant because without such evidence, the Commission cannot overcome the finding of impairment with respect to collocation issues in the absence of local switching – the sole purpose of this proceeding.

Q. WHY IS IT IMPORTANT FOR THE COMMISSION TO CONSIDER WHETHER COLLOCATION SPACE AVAILABILITY AND QWEST'S COLLOCATION PERFORMANCE WOULD BE AN ISSUE, ASSUMING THAT ACCESS TO ULS IS CURTAILED?

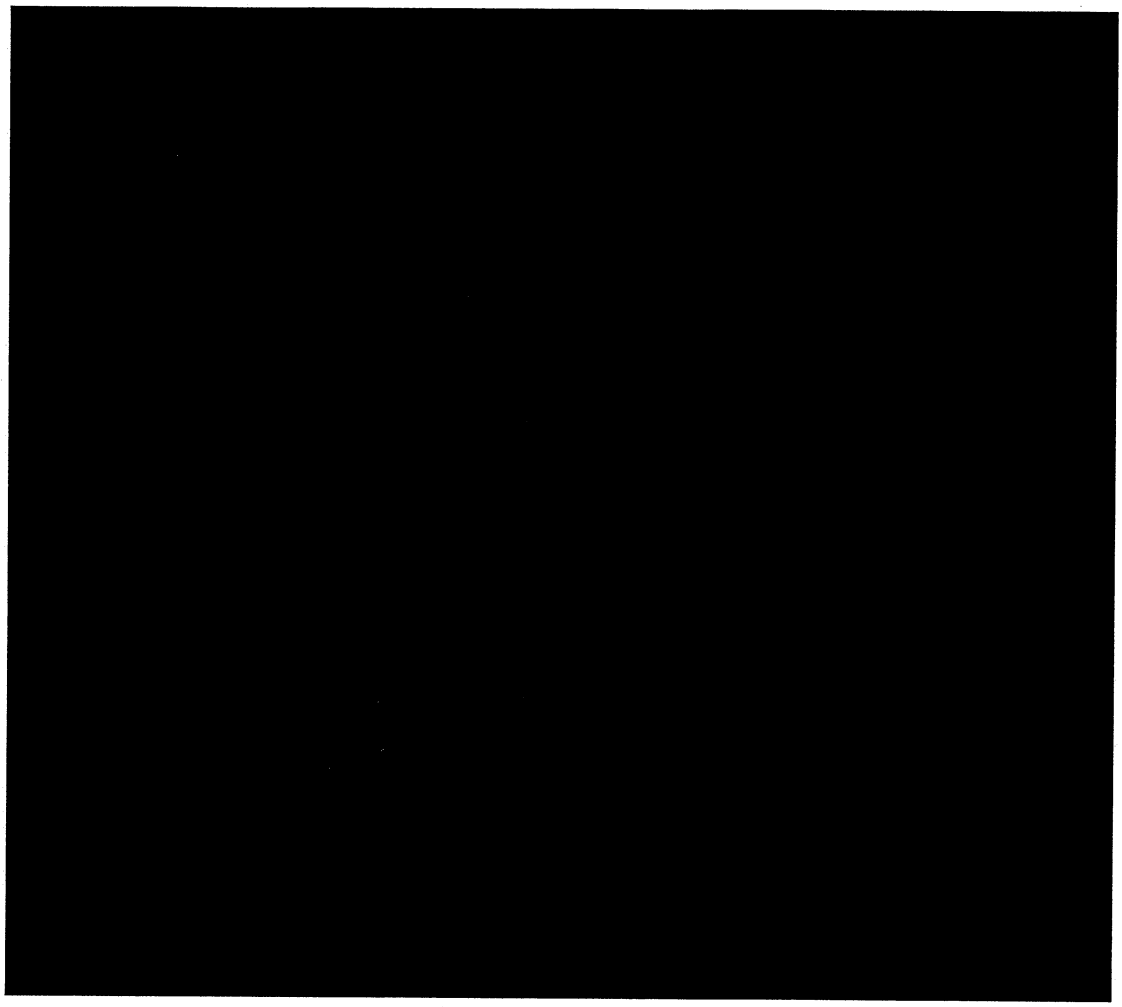
A. It is critical to consider this issue under this assumption because, in the absence of ULS, CLEC demand for collocation would be significantly different than it is today when access to ULS is available. As noted in my direct testimony, CLECs in Washington have relied heavily in recent years on the ability to serve customers via UNE-P to make inroads into the telecommunications market. CLECs that opt for this platform are not required to collocate in Qwest central offices to provide retail offerings. Therefore, while ULS and UNE-P are available to CLECs, the demand for collocation can be expected to be relatively low. Indeed, this fact is at least partially responsible for the fact that, as Mr. Pappas repeatedly asserts throughout his testimony, collocation space is not constrained, *currently*. However, should UNE-P and ULS no longer be available to CLECs, competing carriers would be required to collocate in Qwest central offices to continue to offer retail service to existing customers, and to expand their competitive presence. Under those circumstances, CLEC demand for collocation is expected to increase. In fact, the demand for collocation would increase to the extent that collocation availability today, before this increased demand

[14] TRO ¶ 513.

is realized, is of little relevance on the issue of the availability of collocation space if ULS is no longer available to CLECs.

Q. CAN YOU PROVIDE EVIDENCE WITH RESPECT TO THIS INCREASED DEMAND FOR COLLOCATION SPACE IN THE ABSENCE OF UNBUNDLED LOCAL SWITCHING?

A. I can. MCI currently serves customers throughout Washington State. As the map below illustrates, MCI's footprint literally covers the four corners of the state. However, even though MCI serves customers from **BEGIN HIGHLY CONFIDENTIAL** ***[redacted]*** **END HIGHLY CONFIDENTIAL** central offices in Washington, MCI is collocated in only **BEGIN HIGHLY CONFIDENTIAL** ***[redacted]*** **END HIGHLY CONFIDENTIAL** of those central offices. In other words, if MCI chose to continue to provide local service to mass market customers in the absence of UNE-P, collocation demand would increase (over the FCC's transition period) to the tune of **BEGIN HIGHLY CONFIDENTIAL** ***[redacted]*** **END HIGHLY CONFIDENTIAL** additional central office collocations in Washington for MCI alone. **BEGIN HIGHLY CONFIDENTIAL** ***



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Q. CAN YOU BE EVEN MORE SPECIFIC WITH RESPECT TO THE EVIDENCE SHOWING INCREASED DEMAND ABSENT CLEC ACCESS TO UNBUNDLED LOCAL SWITCHING?

A. Yes. Assuming that this Commission issues an order which discontinues CLEC access to ULS effective in August 2004, and assuming that the transition from UNE-P to UNE-L must be complete by April 2007, Qwest would have to perform an average of **BEGIN HIGHLY CONFIDENTIAL ***** [redacted] ***** END HIGHLY CONFIDENTIAL** collocations per 12-month period during that time frame for MCI alone. Contrasted with the

fact that during 2003, when MCI had access to ULS, MCI requested only **BEGIN HIGHLY CONFIDENTIAL** ***[redacted]*** **END HIGHLY CONFIDENTIAL** collocations in Washington, collocation space availability and ability of Qwest to accommodate such requests is highly impacted by the availability of ULS. Should ULS not be available to MCI, its potential demand for collocation would increase on an annual basis by over 1000%.[15] Other CLECs active in Washington would likely experience similar increased demand. This is precisely why the FCC directed state commissions to consider collocation issues on a "going forward" basis, accounting for "expected growth or decline, if any, of requesting carriers' collocation space needs."[16] Considering the expected growth of CLEC needs should access to ULS be curtailed, Qwest's collocation performance and collocation space availability are likely to be impacted, and this impact would result in CLEC impairment. As discussed below, this impairment may be mitigated if Qwest would work with the CLECs to deploy concentrated EELs (as discussed in my direct testimony). The availability of concentrated EELs would obviate the immediate need for new collocations and allow CLECs to invest in collocations in a determinable and more manageable manner. As discussed below, with adequate CLEC access to them, concentrated EELs could allow CLECs to serve their existing and future customers with the same seamlessness, timeliness, and transparency that is currently available through UNE-P.

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[15] This assumes of course that MCI has the capital required to invest in the collocation spaces and to pay for the nonrecurring charges associated with those collocations. One of the benefits of UNE-P is the ability to serve areas where collocation investments would not yet be economic.

[16] TRO ¶ 513.

Q. DOES THE FACT THAT QWEST OFFERS MANY COLLOCATION OPTIONS AND HAS TOOLS TO EVALUATE COLLOCATION AVAILABILITY ALLEVIATE YOUR CONCERNS?

A. It does not. Mr. Pappas discusses these topics in his testimony, relying heavily on related arguments to attempt to show that CLECs are not impaired. However, his arguments fall short of demonstrating lack of impairment. Regardless of how many collocation options are available to CLECs, if collocation space is still constrained and if Qwest's performance is sub-par, none of Mr. Pappas' options could prevent impairment, especially considering a potential curtailment of CLEC access to ULS and the corresponding increase for collocation discussed above. Additionally, the tools discussed by Mr. Pappas at page 6 of his testimony may be useful to evaluate collocation space availability, but do nothing to provide additional space when high demand related to the lack of ULS exhausts space. Qwest's testimony is not relevant to the issue of whether CLEC impairment would exist absent ULS.

Q. AT PAGES 8-10 OF HIS TESTIMONY, MR. PAPPAS DISCUSSES ICDF COLLOCATION. DOES THE EXISTENCE OF THIS OPTION RESOLVE COLLOCATION PROBLEMS THAT GIVE RISE TO IMPAIRMENT IN WASHINGTON?

A. No. ICDF collocation utilizes the *intermediate* distribution frame. The ICDF is located between the main distribution frame and the CLEC collocation. Therefore, to establish connectivity with the ILEC, an additional jumper is required. This extra step can be problematic because costs and the probability for customer service issues increase. Most importantly, ICDF collocation does not relieve the CLEC or Qwest from the need to establish some additional type of collocation within Qwest's central office. These problems may have contributed to the fact that according to Qwest's response to Commission Bench Request No. 68, Highly Confidential Attachment A, the number of ICDF collocations in Washington

(BEGIN HIGHLY CONFIDENTIAL * *** END HIGHLY CONFIDENTIAL)** is dwarfed by the number of cageless and physical collocations in the state (**BEGIN HIGHLY CONFIDENTIAL *** *** END HIGHLY CONFIDENTIAL** respectively). In short, this option is unattractive to CLECs and does not alleviate collocation impairment.

Q. CAN YOU CONTRAST THE EVIDENCE YOU HAVE PROVIDED WITH RESPECT TO COLLOCATION AND CLEC-TO-CLEC CONNECTION-RELATED IMPAIRMENT TO THE EVIDENCE PROVIDED BY QWEST IN THIS PROCEEDING?

A. Yes. At paragraph 493 of the TRO, the FCC authorizes state commissions to play a fact-finding role to identify where competing carriers are not impaired without access to local circuit switching. Qwest's presentation in this proceeding with respect to collocation-related impairment does not allow this Commission to engage in such a role, primarily because the information provided by Qwest is limited to identifying where competing carriers are not impaired *with* access to local circuit switching. In short, the evidence Qwest has presented in this proceeding is, for the most part, irrelevant to the issues to be resolved by this Commission. For this Commission to conduct its fact-finding role, it must go beyond evaluating conditions that exist now, while CLECs have access to ULS, and make a determination as to whether impairment would occur should that availability be curtailed. Qwest has provided its view and identified wire centers where it believes ULS should no longer be available. This Commission must evaluate how Qwest's proposal would impact CLECs if all or any subset of those wire centers are approved. The circumstances would be quite different when considering this FCC-mandated assumption. Qwest has not shown any ability to cope with the increased demands if its proposal is adopted. Absent that showing,

the Commission must find that the FCC's national finding of impairment absent CLEC access to ULS will stand in Washington.

V. CLEC-TO-CLEC CROSS CONNECTIONS

Q. HAS QWEST ADEQUATELY ADDRESSED THE ISSUES REGARDING CLECS' ABILITY TO OBTAIN CROSS CONNECTS IN AN INCUMBENT'S WIRE CENTER, SHOULD ACCESS TO UNBUNDLED LOCAL SWITCHING BE CURTAILED?

A. No. Mr. Pappas correctly notes that the FCC directed state commissions to consider the CLECs' ability to obtain cross connects in an ILEC's wire center in their evaluation of impairment, and that the ILEC's performance in this area may lead to CLEC impairment. However, Qwest has failed to demonstrate in its direct testimony that CLECs are not impaired with respect to CLEC cross connects.

Q. HOW HAS QWEST CHARACTERIZED THIS OPERATIONAL FACTOR?

A. Mr. Pappas has described a scenario to illustrate CLEC-to-CLEC cross connects wherein a CLEC and a Data LEC share a loop to provide both data and voice service to an end-user. While this arrangement is one application for CLEC-to-CLEC cross connects, the FCC, in its findings with respect to impairment in this area, focuses on the migration to and from the facilities of competing carriers as well as to and from the facilities of the incumbent.[17] CLEC-to-CLEC cross connects are critical for competition in that Qwest must provide such connections on a timely basis in order for CLECs to have the ability to compete with one another and for consumers to have a choice among CLECs rather than only between Qwest and a CLEC.

Q. DOES QWEST HAVE SUFFICIENT EXPERIENCE IN THIS AREA TO CLAIM THAT IN THE ABSENCE OF UNBUNDLED LOCAL SWITCHING, IT HAS THE ABILITY TO PERFORM CLEC-TO-CLEC CONNECTIONS IN A WAY THAT WOULD ALLOW COMPETITION TO CONTINUE IN WASHINGTON?

A. No. According to Mr. Pappas, it appears that Qwest has only performed 42 CLEC-to-CLEC cross connections to date.[18] This number is low, at least partially due to the fact that when an end user switches service from one CLEC to another CLEC and both CLECs provide service via UNE-P (which is the most likely scenario), a CLEC-to-CLEC connection is not required. Therefore, the vast majority of CLEC-to-CLEC mass market customer migrations to date have not required a CLEC-to-CLEC connection. Rather, such migrations have required relatively simple changes involving no manual intervention at Qwest's central office. Should CLEC access to UNE-P be eliminated in Washington, the demand for such migrations would increase sharply. Unless and until Qwest has the ability to accommodate this increased demand and provide connections between the facilities of CLECs on a timely basis, as required by the FCC, this Commission should find that CLECs are impaired absent access to ULS.

Q. IS QWEST RELIEVED OF ITS FCC-IMPOSED OBLIGATIONS REGARDING CLEC-TO-CLEC CROSS CONNECTS IF CLECS CAN PERFORM THESE ACTIVITIES THEMSELVES?

A. Absolutely not. Before I explain why, I would like to address Mr. Pappas's erroneous implication that CLECs are not impaired because CLECs could rely on their own technicians to facilitate CLEC-to-CLEC cross connects. While this may be technically true, it is not

[17] TRO ¶ 478.

nearly that simple, and it is a solution to CLEC impairment. Any cross connect between two carriers requires coordination and planning, including allowing one carrier's technicians to have access to another carrier's facilities. These issues are difficult to resolve. MCI witness Cedric Cox discusses some of the issues surrounding the development of CLEC-to-CLEC migration procedures in his direct testimony beginning at page 43. Considering the problems identified by Mr. Cox, it is obvious that significant issues must be resolved before a workable solution is reached in this area.

With respect to Qwest's obligations under the TRO, *even if CLECs could resolve all of the issues* with respect to CLEC-to-CLEC connections, the FCC is clear in its finding that Qwest is ultimately responsible for providing such connections. As stated in paragraph 478 of the TRO:

> 478. *Incumbent LEC Provisioning of Competitive LEC-to-Competitive LEC Cross-Connects.* We further find that *an incumbent LEC's failure to provide cross-connections between the facilities of two competitive LECs on a timely basis can also result in impairment.* Competition in the absence of unbundled local circuit switching requires seamless and timely migration not only to and from the incumbent's facilities, but also to and from the facilities of other competitive carriers. *Such interconnection requires that the incumbent LEC place cross connections between the competitive carriers' facilities in its central office on a timely basis. The incumbent's failure to do so will tend to delay competitors' entry, and thus to increase competitors' costs.* We conclude that in some cases, such failure can give rise to impairment in the absence of unbundled local circuit switching.

(Emphasis added.)

Thus, the ability of CLECs to perform their own CLEC-to-CLEC cross connections, even if this was a workable solution, is irrelevant to the issue of impairment. Accordingly, Qwest's testimony regarding this issue should be given no weight.

[18] Direct Testimony of Dennis Pappas at 14.

VI. ADDITIONAL REBUTTAL TO QWEST OPERATION IMPAIRMENT TESTIMONY

Q. DOES THE FACT THAT QWEST – THROUGH THE WASHINGTON SGAT – OFFERS INTERCONNECTION SERVICES MITIGATE THE CONCERNS YOU HAVE REGARDING OPERATIONAL IMPAIRMENT?

A. No, it does not. The repeated references in Qwest's testimony to its Statement of Generally Available Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services and Resale of Telecommunications Services ("SGAT"), which was developed as a result of the recent Section 271 proceeding in Washington, are of little relevance to an impairment analysis. In the Section 271 proceeding, SGATs were developed to achieve 271 goals, *i.e.*, to ensure that the market is *open* to competition. The TRO demands a different standard be applied and new issues be addressed. Not only should the market be open to competition, but CLECs must also have the ability to access their customers in the absence of ULS with the same seamlessness and transparency as that provided by access to ULS. The section 271 proceeding did not address this standard, and the SGAT does not reflect it. Thus, the existence of offerings in the SGAT is necessary, but not sufficient to mitigate impairment. Significant issues remain, which result in MCI's impairment in Washington. The SGAT offerings and the corresponding performance standards referenced by Qwest do not address the extent to which CLECs can access customers under the conditions of the TRO. Moreover, Qwest is already proposing amendments to its SGAT to address the TRO.

Q. PLEASE COMMENT ON THE TESTIMONY GIVEN BY MR. WEBER REGARDING CLEC ACCESS TO SWITCHES IN WASHINGTON.

A. The stated purpose of Joseph H. Weber's direct testimony ("Weber Testimony") is "to show that CLECs can utilize modern telecommunications transmission and switching technologies to provide service to mass market customers without recourse to unbundled switching."[19] Mr. Weber's testimony falls well short of making a showing that CLECs are not impaired in Washington absent access to ULS. This is because Mr. Weber's testimony either diminishes the importance of or completely ignores other economic and operational issues relative to CLEC access to their own switches, which may cause impairment.

Q. WHY DOES MR. WEBER'S TESTIMONY FALL SHORT IN THIS AREA?

A. The testimony given by Mr. Weber in this area is, by and large, irrelevant. MCI does not dispute that it has options with respect to investing in facilities which would allow it to provide service to the mass market in the long term through UNE-L. The barriers discussed in my direct testimony and above with respect to loop provisioning, collocation, availability of concentrated EELS at reasonable rates and through a commercially viable hot cut process, and CLEC-to-CLEC cross connects, would exist even if MCI could immediately (1) obtain all the switches it wanted (even at no cost), and (2) reconfigure and reprogram its existing switches so that they would be suitable for serving mass market customers.[20] It is those barriers, much more so than the availability of switching facilities, that prevent MCI and

[19] *See*, Weber Testimony at p. 1.

[20] Mr. Weber acknowledges that "a switch is only useful if customers can be connected to it." Weber Testimony at 7.

other CLECs from serving the mass market in the absence of access to ULS and therefore it is those barriers that cause impairment. And, as discussed throughout my testimony, the FCC has directed the state commissions to evaluate those barriers to determine whether CLECs would be impaired in Washington if they did not have access to unbundled local switching.

Q. AFTER ACKNOWLEDGING THAT CLEC SWITCHES ARE ONLY USEFUL IF THE CLEC HAS ACCESS TO THE SWITCH, MR. WEBER DISCUSSES SWITCH ACCESSIBILITY. CAN YOU COMMENT ON THAT TESTIMONY?

A. Yes. Mr. Weber discusses three principal configurations that would allow CLECs to serve customers in different central offices from a single switch. Those configurations involve the use of (1) Enhanced Extended Loops ("EELs"), (2) Digital Loop Carrier ("DLC"), and (3) Remote Switching Units ("RSU").

Q. ARE EACH OF THESE OPTIONS EQUALLY ATTRACTIVE TO CLECS FROM AN OPERATIONAL IMPAIRMENT PERSPECTIVE?

A. No, they are not. Setting aside economic impairment issues related to utilizing DLC or RSUs, the use of EELs, in many cases, represents the best option in terms of minimizing operational barriers that cause impairment. Should a CLEC elect to rely upon DLC or RSUs to serve customers at distant Qwest central offices from a single switch, collocation arrangements would have to be in place in each of the distant central offices. That is not the case, however, should the CLEC have the ability to access customers via EELs. Therefore, in addition to economic issues, the DLC and RSU network configuration options are inferior to EELs in that they are subject to all of the same criticisms discussed above relative to collocation, and all of the same barriers which cause impairment as discussed in the TRO.

Q. ARE YOU SAYING THAT IMPAIRMENT ISSUES ARE RESOLVED IF CLECS USE EELS TO SERVE CUSTOMERS FROM CENTRAL OFFICES IN WHICH THEY ARE NOT COLLOCATED?

A. No. As discussed in my direct testimony, CLEC access to EELs is a critical component of CLECs having the ability to access customers in the absence of ULS. Unfortunately, CLEC access to EELs presents its own set of problems. For example, Qwest has very little, if any, experience in providing EELs in applications that are consistent with CLEC requirements to serve the mass market. According to Qwest's response to data request MCI 01-109(c)-(j), **BEGIN HIGHLY CONFIDENTIAL ***** [redacted] ***** END HIGHLY CONFIDENTIAL.** Qwest's lack of experience in provisioning EELs is highly troubling, particularly since it is the first of three options discussed by Mr. Weber as a means of CLECs connecting to their customers. EELs can play an important role in overcoming certain impairment issues and making UNE-L a more attractive delivery mechanism *only* if EELs can be used effectively by CLECs to reach their existing and prospective customers. In light of this, my direct testimony recommends that the Commission work to ensure that Qwest include cuts from existing UNE loops to an EEL arrangement in its hot cut processes. This would help to ensure that CLECs could make use of EELs in a manner that would allow for the timely, seamless, and transparent access to their customers. Additionally, I recommend that the Commission explore arrangements related to concentrated EELs and order Qwest to provide them to mitigate the need for collocation (as discussed in my direct testimony). This would contribute to efficiencies and cost effectiveness of the EEL as a mechanism for CLECs to reach their customers. I continue to recommend that the Commission work to ensure that

this promising network configuration be implemented in such a way that it truly can be considered to be an alternative that ameliorates some impairment issues.

VII. TRANSPORT ISSUES

Q. WHAT DID THE FCC CONCLUDE WITH REGARD TO IMPAIRMENT FOR ACCESS TO DEDICATED TRANSPORT?

A. The FCC concluded that competing carriers are impaired on a national level without access to unbundled dedicated transport (DS1, DS3, up to twelve DS3s per route, and dark fiber), stating that it finds "on a national level that requesting carriers are impaired without access to unbundled dark fiber transport facilities ... [DS3 transport and DS1 transport]."[21] As a result, the FCC rules require that competing carriers have access to such unbundled transport everywhere unless a specific route is found to lack impairment.

Q. DID THE FCC'S IMPAIRMENT ANALYSIS DISTINGUISH BETWEEN DIFFERENT TYPES OF UNBUNDLED TRANSPORT?

A. Yes. The FCC segregated dedicated transport by capacity levels before performing its impairment analysis, stating that this would "be the most informative manner to review the economic barriers to entry that affect how a competing carrier is impaired without access to unbundled transport."[22] The FCC performed separate impairment analyses for OCn Transport, Dark Fiber Transport, DS3 Transport, and DS1 Transport.

[21] TRO ¶ 359.

[22] *Id.* ¶ 380.

Q. WHAT WAS THE FCC'S BASIS FOR FINDING THAT COMPETING CARRIERS ARE IMPAIRED WITHOUT ACCESS TO UNBUNDLED DEDICATED TRANSPORT AT THE DARK FIBER, DS3, AND DS1 CAPACITY LEVELS?

A. The FCC stated that its "impairment findings with respect to DS1, DS3, and dark fiber transport facilities recognize that competing carriers face substantial sunk costs and other barriers to self-deploy facilities and that competitive facilities are not available in a majority of locations, especially non-urban areas."[23] The FCC concluded that it would be extremely difficult to recover these costs and to be a viable competitor in the marketplace. Indeed, the FCC concluded that "[d]eploying transport facilities is an expensive and time-consuming process for competitors, requiring substantial fixed and sunk costs."[24] The FCC elaborated that the costs of self-provisioning include collocation costs, fiber costs, costs to physically deploy the fiber, and costs to light the fiber.[25]

Q. DID THE FCC ACKNOWLEDGE OTHER NON-ECONOMIC COSTS OF CONSTRUCTING DEDICATED TRANSPORT?

A. Yes. The FCC also noted that CLECs can encounter delays in constructing dedicated transport due to having to obtain rights-of-way and other permits.[26]

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[23] *Id.* ¶ 360 (citations omitted).

[24] *Id.* ¶ 371 (citations omitted).

[25] *Id.*

[26] *Id.*

Q. DID THE FCC FIND THAT THERE WAS ANY EVIDENCE OF NON-IMPAIRMENT FOR DEDICATED TRANSPORT AT THE DARK FIBER, DS3, AND DS1 LEVELS?

A. In making a national finding of impairment for transport, the FCC found that any evidence of non-impairment was minimal. For example, the FCC found that "alternative facilities are not available to competing carriers in a majority of areas."[27] Indeed, the FCC noted that, even relying on self-reported ILEC data, at most 13 percent of BOC wire centers have a single competing carrier collocated using non-ILEC transport facilities.[28]

Q. PLEASE EXPLAIN THE PURPOSE OF THE FCC'S SELF-PROVISIONING TRIGGER FOR TRANSPORT.

A. The self-provisioning trigger is intended to identify those transport routes where there has already been sufficient deployment of competitively owned facilities to demonstrate that competitors are not impaired without access to unbundled transport on those routes, even if the competitors that own those facilities do not make them available to other competitive providers.

Q. ARE ALL TRANSPORT CAPACITY LEVELS SUBJECT TO THE SELF-PROVISIONING TRIGGER SET FORTH IN THE TRO?

A. No. The self-provisioning trigger applies only to DS3 and dark fiber transport. DS1 transport is not included under this trigger because the FCC found there is effectively no likelihood that a competitor could economically construct its own DS1 facilities.[29]

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[27] *Id.* ¶ 387.

[28] *Id.* at n.1198.

[29] *Id.* ¶ 409.

Q. WHAT MUST AN ILEC DEMONSTRATE TO PROVE THAT THE SELF-PROVISIONING TRIGGER IS SATISFIED FOR DEDICATED TRANSPORT BETWEEN TWO WIRE CENTERS?

A. For each of the three qualifying competitive providers, the ILEC must demonstrate that:

- It is not affiliated with any other qualifying provider or the ILEC;
- Each self-provisioned facility along the defined route is operationally ready to provide transport into and out of the ILEC central office at the terminus of the route; and
- Each self-provisioned facility terminates in a collocation arrangement.

Q. FOR THE SELF-PROVISIONING TRIGGER TO APPLY, MUST A CLEC SELF-PROVISION THE SPECIFIC CAPACITY LEVEL IN QUESTION?

A. Yes. The TRO contemplates that the self-provisioning trigger applies when a CLEC self-provisions the particular capacity level in question. For example, a CLEC that self-provisions at the OCn level will not be capable of providing service at lower capacity levels in a given wire center if it has not deployed the appropriate electronics to demultiplex the traffic at that wire center. Similarly, as discussed in more detail below, the presence of self-provisioned DS3 transport will not automatically imply the presence of self-provisioned dark fiber, and vice versa.

Q. WHAT ARE THE KEY CRITERIA FOR THE SELF-PROVISIONING TRIGGER THAT A STATE COMMISSION MUST APPLY TO ENSURE THAT AN ILEC HAS PROVIDED SUFFICIENT DATA TO DEMONSTRATE THE TRIGGER IS MET?

A. The first key criterion is to ensure that the ILEC has correctly determined the existence of transport routes in a manner consistent with the FCC's rules. The FCC defined a

transport route as "a connection between wire center or switch 'A' and wire center or switch 'Z'."[30] The FCC elaborated that:

> Even if, on the incumbent LEC's network, a transport circuit from "A" to "Z" passes through an intermediate wire center "X," the competitive providers must offer service connecting wire centers "A" and "Z," but do not have to mirror the network path of the incumbent LEC through wire center "X."[31]

Thus, the FCC requires that transport service must actually be offered between the two wire centers in question. In addition, as discussed above, the specific type of transport offered – DS3 or dark fiber – must be specifically evaluated.

Q. HAS QWEST CORRECTLY DETERMINED THE CHARACTERISTICS OF TRANSPORT ROUTES THAT MS. TORRENCE REFERS TO IN HER TESTIMONY?

A. No. In its filing, Qwest performs a simple exercise by using common data that is available to the public via CLEC websites showing where services are offered on a wide basis. Qwest also uses engineering firms and contract cable locate companies to locate specific fiber routes based on physical location. This approach is clearly insufficient under the FCC's requirements, because it provides no evidence that the CLEC in question is actually providing transport service between the two wire centers, let alone what level of transport the CLEC is providing.

In fact, because CLECs often use collocation arrangements to aggregate unbundled loops, there is a high probability that the equipment and fiber optics associated with a collocation arrangement are not used to provide transport between two wire centers. For

[30] *Id.* ¶ 401

[31] *Id.*

example, a CLEC may have deployed in its wire center collocation arrangement only digital loop carrier equipment that it uses to concentrate voice-grade loops for routing to a CLEC switch. In this instance, the fiber-optic facilities exiting the wire center would not be routed to another ILEC wire center, and thus would not meet the FCC's definition of dedicated transport. Alternatively, a CLEC may have installed a DSLAM in its wire center collocation for the purpose of providing DSL services connecting customers to their Internet service providers. Both of these examples demonstrate how a CLEC could have equipment in its collocation connected to fiber-optic facilities, but does not use the equipment to provide DS3 or dark fiber transport between ILEC wire centers.

Further, depending upon the CLEC, competitors' network architectures can be composed of multiple fiber rings, which have been completed or acquired at different times due to construction funding and capacity issues or, in some cases, business acquisitions. In these situations, a CLEC may serve two ILEC central offices that are not on the same fiber ring. Although it is theoretically possible to connect central offices on different fiber rings, transport routes linking the two central offices are not automatically provisioned in this instance. Thus, it is incorrect to assume that all of a CLEC's fiber-based collocations in a general area have transport facilities connecting them.

Q. WHAT ADDITIONAL EVIDENCE WOULD QWEST HAVE TO PROVIDE IN ORDER TO SUPPORT ITS CLAIM THAT THESE ROUTES MEET THE SELF-PROVISIONING TRIGGER?

A. To validly support its trigger claim in this proceeding, Qwest must produce evidence that shows that (i) each collocation arrangement it cites is in fact used as an endpoint for a transport route between two wire centers rather than for some other purpose, (ii) the specific

capacity level (DS3 or dark fiber) at which the CLEC offers transport service between the two wire centers, and (iii) the CLEC is "operationally ready" to provide a transport route at the specific capacity level between the two wire centers. As I will describe below, this requires evidence that the CLEC has the capability, based upon the equipment present in the collocations and the CLEC's network, of immediately provisioning a circuit between the identified pair of ILEC wire centers.

Q. WHAT IS THE APPROPRIATE EVIDENCE THAT QWEST SHOULD PROVIDE TO MEET THE FCC'S REQUIREMENT OF OPERATIONAL READINESS FOR THE SELF-PROVISIONING TRIGGER?

A. The only effective and practical way of demonstrating that a CLEC is operationally ready under the self-provisioning trigger is to produce evidence that the CLEC is actually providing service on the given transport route. This is consistent with the FCC's requirement that evidence be provided that CLECs offer service between two wire centers on a given transport route. While the existence of CLEC facilities (at the appropriate capacity level) is obviously a prerequisite to the provision of service, the mere existence of those facilities does not demonstrate they can actually be used to provide the service required to satisfy the trigger at the requisite capacity level. Nor does it demonstrate that the CLEC has performed the necessary engineering, provisioning, and administrative tasks to ensure that service can be provided.

Q. IF A CARRIER SATISFIES THE SELF-PROVISIONING TRIGGER, WILL IT AUTOMATICALLY QUALIFY AS AN ELIGIBLE PROVIDER UNDER THE COMPETITIVE WHOLESALE FACILITIES TRIGGER EXPLAINED IN THE TRO?

A. No. The FCC emphasized that the triggers are separate and distinct. The purpose of the self-provisioning trigger is to determine through actual experience whether similarly situated CLECs can feasibly overcome the nationally-identified impairments and deploy their own facilities on a particular route. In contrast, the Wholesale trigger examines whether a provider makes its facilities widely available to other carriers.

Q. PLEASE DESCRIBE THE PURPOSE OF THE FCC'S WHOLESALE TRIGGER FOR DEDICATED TRANSPORT?

A. The wholesale trigger provides an ILEC with the opportunity to demonstrate that there is no impairment for a specific route by identifying routes for which there are alternative providers offering wholesale transport services to CLECs. In addition to evidence provided under the self-provisioning trigger, the ILEC is also obliged to demonstrate that the alternative provider is actually offering wholesale service for the specific route at the claimed capacity level, which requires that carrier to equip its network to facilitate wholesale customers and to develop the appropriate systems and procedures to manage a wholesale business.

Q. WHAT CAPACITY LEVELS ARE SUBJECT TO THE WHOLESALE TRIGGER FOR HIGH CAPACITY TRANSPORT?

A. Dark fiber and transport at the DS1 and DS3 level are subject to the wholesale trigger. Each of these three services must be examined separately, and the determination of non-impairment must be service level specific. Thus, for example, the presence of DS-1

wholesale service on a particular route does not imply the availability of DS-3 wholesale service on that same route.

Q. WHAT MUST AN ILEC DEMONSTRATE TO SATISFY THE WHOLESALE PROVISIONING TRIGGER FOR DEDICATED TRANSPORT?

A. Specifically, the trigger requires evidence that:

a) Two or more competing providers not affiliated with each other or with the ILEC are present on the route;

b) Each provider has deployed its own transport facilities "and is operationally ready to use those facilities to provide dedicated ... transport along the particular route";

c) Each provider "is willing immediately to provide, on a widely available basis," dedicated transport to other carriers on that route;

d) Each provider's "facilities terminate in a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises"; and

e) Requesting telecommunications carriers are able to obtain reasonable and nondiscriminatory access to the competing provider's facilities through a cross-connect to the competing provider's collocation arrangement at each end of the transport route;[32]

Q. CONSIDERING WHOLESALE TRIGGER, DOES A CLEC HAVE TO OFFER ON A WHOLESALE BASIS THE CAPACITY LEVEL IN QUESTION?

A. Yes. The TRO contemplates that the wholesale trigger applies when a CLEC offers for wholesale the particular capacity level in question. For example, a CLEC that is a wholesale provider of transport at the OCn capacity level would not necessarily offer DS1,

[32] *See* 47 C.F.R. § 51.319(e)(1)(ii) [DS1 transport], 51.319(e)(2)(i)(B) [DS3 transport], 51.319(e)(3)(i)(B) [dark fiber transport].

DS3, or dark fiber functionality on a "widely available" wholesale basis. Such evidence must be specifically provided.

Q. IN ADDITION TO THE ISSUES RAISED IN THE SELF-PROVISIONING TRIGGER ANALYSIS, ARE THERE OTHER CRITERIA QWEST MUST ADDRESS IN ORDER TO SATISFY THE WHOLESALE TRIGGER?

A. Yes. It is necessary to properly identify the relevant wholesale providers of high-capacity transport. For example, many carriers may provide some wholesale services, but may not choose, or be in a position, to offer the specific transport services necessary to satisfy the wholesale trigger. For example, a carrier may offer wholesale long distance voice services, and may also have established collocation arrangements for the self-provisioning of a data service for a specific retail customer. The fact that a carrier may provide an unrelated service at wholesale is not relevant to the trigger analysis if the carrier is not offering the specific DS-1, DS-3, or dark fiber wholesale service on the specific route for which Qwest is attempting to satisfy the wholesale trigger. Thus, it is essential to know which specific types/levels of service (if any) the proposed wholesaler actually offers on which route.

Q. WHAT AUTHORITY DO STATE COMMISSIONS HAVE IN DETERMINING IF TRIGGERS HAVE BEEN MET FOR DEDICATED TRANSPORT FACILITIES IN THEIR STATE?

A. To overcome this strong evidence of impairment at the national level, the FCC allowed the ILECs two main triggers to demonstrate non-impairment. On a route-specific basis, the ILEC can show that either (1) there are three or more CLECs providing dedicated transport on their own facilities (self-provisioning trigger), or (2) there are two or more CLECs offering wholesale dedicated transport (wholesale trigger). The FCC delegated to the state commissions the authority to determine whether either of these triggers has been met.

Q. DOES QWEST PROVIDE EVIDENCE THAT THE CLECS IT IDENTIFIES ARE PROVIDING DARK FIBER TRANSPORT ON THE SPECIFIED ROUTES?

A. No. Qwest assumes that the existence of fiber on a route necessarily implies the presence of dark fiber, because all fibers are placed with excess capacity in place. While it is true that no carrier would place only enough fiber capacity to serve its existing demand, it is not thereby true that the spare fiber capacity placed in the network would be offered at wholesale. That spare capacity may be reserved for some other service, or the CLEC may simply not want to provide that capacity on a wholesale basis. Without further evidence that the spare capacity that may be present on particular fiber routes is being sold as wholesale dark fiber, Qwest's assumption is nothing more than an assumption, and should be accorded no weight.

Q. HAS MCI PERFORMED AN ANALYSIS TO DETERMINE WHETHER MCI MEETS THE SELF-PROVISIONING OR WHOLESALE TRIGGERS IN REFERENCE TO THE WIRE A TO Z FIBER ROUTES THAT ARE MENTIONED IN MS. TORRENCE'S TESTIMONY?

A. Yes. MCI has researched the particular routes that are included in the Seattle area that Ms. Torrence mentions in her testimony and has found that MCI entities do not satisfy either the self-provisioning or wholesale triggers based on the TRO triggering descriptions.

Q. WOULD THIS ANALYSIS INCLUDE TRIGGERS FOR BOTH THE SELF-PROVISIONING AND WHOLESALE DESCRIPTIONS?

A. Yes. The analysis takes into consideration all trigger situations set forth in the TRO for both self-provisioning and wholesale triggers.

Q. HAS QWEST PROVIDED EVIDENCE THAT MCI IS A TRIGGERING COMPANY?

A. No. Qwest has failed to make such a showing. In Highly Confidential Exhibit MLS-4, I have provided evidence that shows that MCI does not meet the FCC triggers. The data from which this exhibit was developed was used by MCI as a tool to evaluate, on a route-specific basis, the characteristics of each particular route. Using that tool MCI was able to determine that, based on those characteristics, MCI is not a triggering carrier under either the FCC's self-provisioning or wholesale trigger criteria. In developing Exhibit MLS-4, each of the routes identified by Ms. Torrence was evaluated based on the triggers set forth by the FCC in the TRO. As a result of that evaluation, using MCI-specific data, I conclude that MCI entities are not triggering carriers on any of the routes identified by Qwest in Ms. Torrence's initial direct testimony.

Q. CAN YOU EXPLAIN HOW EXHIBIT MLS-4 SHOWS THAT MCI IS NOT A TRIGGERING CARRIER ON ANY OF THE ROUTES IDENTIFIED BY MS. TORRENCE?

A. Yes. A CLEC that self-provisions at the OCn level is not capable of providing transport served at lower capacities in a given wire center if it has not deployed the necessary electronics to demultiplex the traffic at that wire center. MCI's facilities on the routes identified by Ms. Torrence are all provisioned at the OCn level. The FCC requires that evidence show that CLECs offer service between two wire centers on a given transport route. Obviously, in order to offer service, facilities (at the appropriate capacity level) must exist. As shown in Highly Confidential Exhibit MLS-4, MCI does not provide DS1 or DS3 capacity facilities on any of the identified routes. Therefore, MCI cannot be considered a triggering carrier according to the FCC's self-provisioning trigger. Additionally, the fact that

MCI does not provide transport at the DS1 or DS3 level (as shown in Highly Confidential Exhibit MLS-4) precludes MCI from being considered a triggering carrier under the FCC's wholesale trigger.

Q. CAN MCI BE CONSIDERED A TRIGGERING CARRIER WITH RESPECT TO WHOLESALE DARK FIBER OFFERINGS?

A. No. As shown in Highly Confidential Exhibit MLS-4, MCI does not include dark fiber in its transport routes. In other words, MCI does not offer dark fiber to other carriers for dedicated transport.

Q. DOES YOUR ANALYSIS INCLUDE THE ADDITIONAL ROUTES THAT APPEAR TO BE IDENTIFIED BY MS. TORRENCE IN HER SUPPLEMENTAL DIRECT TESTIMONY?

A. No, it does not. I understand that Ms. Torrence has supplemented her testimony, with what appear to be additional routes where Qwest believes CLECs are not impaired without access to unbundled transport. I have not had sufficient time since Ms. Torrence's supplemental testimony was filed to perform the research necessary to determine whether MCI entities constitute a triggering carrier on what appear to be additional routes identified by Ms. Torrence. I understand that responding parties may have until February 20, 2004, to respond to Qwest's allegations relating to the supplemental testimony. I will attempt to complete my research of the additional information and file supplemental testimony at that time.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes, it does.

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