

**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

RESPONSE TESTIMONY OF

MARK S. REYNOLDS

ON BEHALF OF

QWEST CORPORATION

FEBRUARY 2, 2004

1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND**
2 **EMPLOYMENT.**

3 A. My name is Mark S. Reynolds and my business address is 1600 7th Ave., Room
4 3206, Seattle, Washington, 98191. I am employed by Qwest Services
5 Corporation (“QSC”) as the Senior Director of Washington Regulatory Affairs for
6 Qwest Corporation (“QC”) and other Qwest companies.

7 **Q. HAVE YOU PREVIOUSLY FILED INFORMATION REGARDING YOUR**
8 **EDUCATION, EMPLOYMENT BACKGROUND AND PREVIOUS**
9 **EXPERIENCE TESTIFYING BEFORE THIS COMMISSION?**

10 A. Yes. That information is on pages 1 to 3 of my Direct Testimony in this docket
11 (Exhibit No. MSR-1T), filed on December 22, 2003.

12 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 A. The primary purpose of my testimony is to respond to AT&T witness John F.
14 Finnegan (Exhibit No. JFF-1T) and MCI witness Richard Cabe (Exhibit No. not
15 provided) on the issue of whether the Commission should consider cable
16 telephony providers in its analysis. While Mr. Finnegan never quite comes out
17 and says it, he suggests that the Commission completely ignore cable telephony
18 providers in this docket.¹ Mr. Cabe, on the other hand, is explicit in concluding
19 that cable telephony is not a “close enough” substitute for an ILEC’s local service

¹ Direct Testimony of John F. Finnegan (Exhibit No. JFF-1T), December 22, 2003 at pages 132-134.

1 and recommending that it should be ignored.² Their positions are inconsistent
2 with the TRO. While citing various portions of the TRO, both witnesses choose
3 to completely ignore the operative portion of the TRO - the rules that implement
4 the order - that make it clear that cable telephony should be counted for purposes
5 of the self-provisioned switch analysis. Thus, in my testimony, I will correct
6 some misconceptions created by Mr. Finnegan's and Mr. Cabe's testimony
7 regarding the TRO requirements for the use of cable providers as trigger
8 candidates in the impairment analysis. I also review the extent to which Qwest
9 has used cable providers as evidence of CLECs self-providing switching to mass
10 market customers in its direct case and explain how this is consistent with TRO
11 requirements.

12 **Q. PLEASE DESCRIBE HOW MESSRS. FINNEGAN AND CABE**
13 **APPROACH THE ISSUE.**

14 A. Both witnesses take a variety of quotations from the TRO, many from sections of
15 the order that have nothing to do with switching, and bundle them together to
16 create the misleading impression that the FCC has dismissed cable from the state
17 commissions' consideration of switching impairment. For example, Mr.
18 Finnegan quotes the TRO for the proposition that the FCC did "not find the
19 presence of intermodal alternative dispositive in our impairment analysis."³ That

² Direct Testimony of Richard Cabe (Exhibit No. not provided), December 22, 2003 at pages 62-64.

³ Finnegan at page 132, quoting TRO ¶ 274.

1 is a true statement - the FCC did not find intermodal competition to be dispositive
2 of the impairment issue. Had it done so, the current case would not exist. But
3 stating that the FCC found intermodal competition to be less than dispositive is
4 different than saying, as Messrs. Finnegan and Cabe suggest, that it is irrelevant
5 and should be ignored. The more pertinent question, however, is the role that
6 should be played by cable in **this** case. On that point, the FCC was clear that
7 intermodal competitive entry is a major factor that must be weighed and that its
8 existence must be given significant weight.

9 **Q. YOU STATED THAT THE AT&T AND MCI WITNESSES HAD**
10 **IGNORED THE OPERATIVE PART OF THE ORDER. PLEASE**
11 **EXPLAIN.**

12 A. Both witnesses rely on a statement in footnote 1549 of the TRO for the
13 proposition that the state commissions, in their trigger analysis, “should consider
14 to what extent services provided over those intermodal alternatives are
15 comparable in cost, quality, and maturity to incumbent LRC services.”⁴
16 However, they ignore the fact that the example cited immediately thereafter to
17 illustrate the FCC’s concern had nothing to do with cable. Instead, the example
18 related to

⁴ TRO ¶499, footnote 1549.

1 wireless competition. The FCC stated: “For example, we note that CMRS does
2 not yet equal traditional incumbent LEC services in quality, its ability to handle
3 data traffic, its ubiquity, and its ability to provide broadband services to the mass
4 market.”⁵ In light of that, the FCC stated that “we do not expect state
5 commissions to consider CMRS providers in their application of the triggers.”⁶
6 It is highly significant that there is no similar statement in the TRO suggesting
7 that cable be excluded from the application of the triggers.

8 An examination of the rules implementing the self-provisioning trigger explains
9 why the FCC did not suggest that cable be excluded from the Commission’s
10 trigger analysis. Under the rule, the FCC clearly intended that cable count toward
11 fulfillment of the self-provisioning trigger. The FCC rule states:

12 Local Switching self-provisioning trigger. To satisfy this trigger, a state
13 commission must find that three or more competing providers not affiliated
14 with each other or the incumbent LEC, **including intermodal providers of**
15 **service comparable in quality to that of the incumbent LEC**, each are
16 serving mass market customers in the particular market with the use of
17 their own local circuit switches.⁷ (*emphasis added*)

18 The rule could not be more clear. The FCC mandates that any intermodal
19 provider of service to mass market customers must be counted toward the trigger

⁵ *Id.*

⁶ *Id.* While Qwest believes that wireless competition is a relevant aspect of the Commission’s overall analysis (see my Direct Testimony (Exhibit No. MSR-1T) at pages 39 to 54 and Mr. Shooshan’s Direct Testimony (Exhibit No. HMS-1T) at pages 40 to 46), I have not included wireless switches for purposes of a trigger analysis.

1 if its service is “comparable in quality” to the service offered by the ILEC. That
2 is the legal standard in this case. As I demonstrate in this testimony, cable
3 providers in Washington clearly meet that test and must be counted.⁸

4 **Q. DO OTHER PORTIONS OF THE TRO SUPPORT THE VIEW THAT THE**
5 **STATE COMMISSIONS SHOULD GIVE SERIOUS CONSIDERATION**
6 **TO THE EXISTENCE OF INTERMODAL COMPETITORS?**

7 A. Yes. In paragraph 97, the FCC made several general observations about the
8 importance of intermodal competitive alternatives. For example, on the general
9 question of the relevance of intermodal alternatives, the FCC stated:

10 In appropriate instances, evidence of the deployment of intermodal
11 alternatives informs our judgment on the “impair” factors described above,
12 and in those circumstances we will give weight to deployment of
13 intermodal alternatives in our analysis. Specifically, we consider whether
14 these intermodal alternatives permit a requesting carrier to serve the
15 market, either through self-provisioning or by obtaining capacity on a
16 wholesale basis.⁹

17 As noted above, the rule implementing the self-provisioning trigger makes it clear

⁷ 47 C.F.R. § 51.319(d)(2)(iii)(A)(1) (contained in the Rules appendix to the TRO, at 21).

⁸ As I will discuss later, cable meets the broader “cost, quality, and maturity” test of footnote 1549 as well, even though that is not the test articulated by the FCC in the rule implementing the order.

⁹ TRO ¶ 97.

1 that where the quality of the service is comparable, intermodal alternatives must
2 be considered.

3 The FCC likewise made it clear that “the Act expresses no preference for the
4 technology that carriers should use to compete with the incumbent LECs” and
5 that “the presence of intermodal alternatives can be just as probative of a lack of
6 impairment as the presence of traditional wireline ‘telephone’ deployment. The
7 fact that an entrant has deployed its own facilities – regardless of the technology
8 chosen – may provide evidence that any barriers to entry can be overcome.”¹⁰

9 It is clear from the FCC rules and from the TRO that evidence associated with
10 intermodal competition should be given far greater weight than suggested by
11 Messrs. Finnegan and Cabe.

12 **Q. DID QWEST INCLUDE ANY INTERMODAL COMPETITORS IN ITS**
13 **MASS MARKET SWITCHING TRIGGER ANALYSIS?**

14 A. Yes. As I explain in my direct testimony,¹¹ Qwest has included two cable
15 telephony providers (Comcast and Rainier) that are certified as CLECs in
16 Washington. The two providers have tariffs and price lists in effect and are
17 operating as local exchange providers that provide switched local

¹⁰ *Id.*

¹¹ Direct Testimony of Mark S. Reynolds (Exhibit No. MSR-1T), page 28, line 14 to page 29, line 6.

1 exchange telephone service to mass market customers via CLEC-owned switches
2 and CLEC-owned loop facilities. Qwest did not include any CMRS or VOIP
3 providers in its mass market switching trigger analysis.

4 **Q. CONSISTENT WITH THE FCC'S CRITERIA FOR EVALUATION OF**
5 **INTERMODAL COMPETITION, CAN QWEST PROVIDE ANY**
6 **EVIDENCE THAT THE SERVICES PROVIDED BY THE CABLE**
7 **PROVIDERS INCLUDED IN ITS MASS MARKET SWITCHING**
8 **TRIGGER ANALYSIS ARE COMPARABLE IN COST, QUALITY, AND**
9 **MATURITY TO INCUMBENT LEC SERVICES?**

10 A. As noted, the rule requires only that the intermodal alternative provide service of
11 a similar quality. However, it is likewise clear that cost and maturity are not
12 problems either. The FCC does not clearly define what it meant in regard to cost,
13 quality and maturity; nevertheless, under any reasonable definition of those terms,
14 the services of the cable providers included in the trigger analysis are comparable
15 in every respect to similar services offered by Qwest. Table 1, below, provides a
16 comparison between the price and service attributes for mass market exchange
17 services offered by the cable telephony providers and similar services offered by
18 Qwest. The table shows that similar mass market basic exchange services,
19 vertical features and complementary services are being offered by all three
20 providers at similar prices. Both Comcast and Rainier offer prices for residential
21 local service at approximately \$12.50 per month. While Comcast does not

1 currently offer service to business customers, Rainier provides basic business
2 local exchange service at approximately \$25.00 per month. Ultimately, both
3 providers offer local services on month-to-month terms at prices that are very
4 competitive with Qwest's local exchange service rates. Consequently, it is clear
5 that these CLECs represent real and viable pressures on Qwest's prices and terms
6 for mass market services.

7 Table 1

Service	Qwest	Comcast¹²	Rainier^{13, 14}
Basic Residence line – unlimited local calling	\$12.50	\$12.25 first line; \$11.00 additional	\$12.50
Basic Business line – unlimited local calling	\$26.89	no	\$25.00
Internet Access – Res	yes	yes	Yes
Internet Access – Bus	yes	yes ¹⁵	yes
Custom Calling Features	basic & adv.	basic & adv. ¹⁶	basic & adv. ¹⁷
Subscriber Line Charge	yes	yes	Yes
Listings	yes	yes	yes
Directory Assistance	yes	yes	yes

¹² “Comcast” refers to Comcast Phone of Washington, LLC. d/b/a Comcast Digital Phone. Service and rate information based on Comcast’s Telecommunications Services Price List, effective July 1, 2003, unless noted otherwise.

¹³ “Rainier” refers The Rainier Group, which was formed in 1995 when Mashell Telecom (which has been an independent telephone company service the Eatonville area since 1912 and is now also operating as a CLEC in Qwest service territory in Pierce County) combined with Rainier Connect. See www.rainierconnect.com/history.asp

¹⁴ Service and rate information based on Rainier’s Price List No. 4, effective January 8, 2004.

¹⁵ Per Comcast’s website www.comcast.com 1/16/2004.

¹⁶ Comcast and Rainier offer a wide array of Basic and Advanced Custom Calling Features that are competitively priced with similar services by Qwest, including, but not limited to: Call Forwarding Services (e.g. CF Basic, CF Busy, CF Don’t Answer, Remote CF); Call Waiting; Custom Ringing; Speed Calling; 3-way Calling; Anonymous Call Rejection; Call Blocking; Call Trace; Caller ID Services; and Call Return.

¹⁷ See footnote 16.

Operator Services	yes	yes	yes
Access to toll	yes	yes	yes
Voice Mail	yes	yes ¹⁸	yes
911 Emergency Service	yes	yes	yes

1

2 **Q. HOW DO COMCAST AND RAINIER MARKET THEIR LOCAL**
3 **TELEPHONE SERVICES TO THEIR TARGET CUSTOMER BASE?**

4 A. In addition to the web sites for both CLECs referenced earlier in my testimony,
5 Comcast actively uses direct mailings to customers in communities to which it
6 provides local telephone services. For example, Exhibit No. MSR-15 is a
7 Comcast direct mail piece received by a Qwest employee in Vancouver,
8 Washington. This mailer promotes the availability of the new "Comcast
9 Connections Any Distance" calling package, which includes unlimited local calls,
10 80 hours of domestic long distance calling, Voice Mail, Caller I.D., Call Waiting,
11 Call Return and Long Distance Alert features.

12 Rainier has advertised the availability of its local service in newspapers serving
13 its target market. For example, Exhibit MSR-16 is a Rainier ad appearing in the
14 Pierce County Business Examiner on November 10, 2003. In the ad, which is
15 targeted to business local exchange customers, Rainier emphasizes that it is a
16 single source for multiple communications needs, including local telephone

¹⁸ See footnote 16.

1 service, long distance service, internet access, broadband data services, video
2 conferencing and telephone systems.

3 **Q. DOES THIS COMMISSION HAVE RETAIL SERVICE QUALITY RULES**
4 **THAT APPLY EQUALLY TO QWEST AND THE CABLE TELEPHONY**
5 **PROVIDERS?**

6 A. Yes. Although some of the Commission's retail service quality rules are waived
7 for competitively classified companies,¹⁹ most of the rules apply to all local
8 service providers.²⁰

9 **Q. DID THIS COMMISSION RECENTLY ORDER THAT WAC 480-120-439,**
10 **WHICH ADDRESSES A LOCAL EXCHANGE COMPANY'S**
11 **OBLIGATION TO FILE SERVICE QUALITY REPORTS, APPLIES TO**
12 **ALL LOCAL EXCHANGE COMPANIES?**

13 A. Yes. In a case that involved Comcast,²¹ the Commission ruled that "[t]he plain
14 language of these provisions [WACs 480-120-021 and 480-120-439]
15 unambiguously establishes that all local exchange companies are within the

¹⁹ Sections (1)(a) and (b) of WAC 480-120-105, which addresses the installation or activation of access lines, do not apply to LECs that are competitively classified under RCW 80.36.320 and do not offer local exchange service by tariff.

²⁰ WAC 480-120-438, trouble report standard, WAC 480-120-401, network performance standards, WAC 480-12-402, safety, WAC 480-120-411, network maintenance, WAC 480-120-440, repair standards, WAC 480-120-133, and business and repair office access standards apply to all LECs providing local exchange services.

²¹ Docket Nos. UT-031459 and UT-031626 (consolidated), *In the Matter of Comcast Phone of Washington, LLC*.

1 definitions and subject to the reporting or records retention requirements without
2 regard to their status as ILEC or CLEC.²² Qwest believes such a ruling removes
3 any doubt as to whether the Commission rules regarding service quality apply to
4 all local service providers. In any event, irrespective of the application of the
5 rules, I am unaware of any serious suggestion that cable telephony is not
6 comparable in quality to the service provided by other ILECs and CLECs.

7 **Q. DO YOU HAVE ANY OTHER INFORMATION ABOUT THESE CABLE**
8 **TELEPHONY PROVIDERS REGARDING THE FCC'S EVALUATION**
9 **CRITERIA?**

10 A. Yes. Both Comcast and Rainier are well established as local service providers. In
11 fact, Rainier states in its current web site that it "has been delivering high quality
12 local telephone service, right here in Pierce County, for over 90 years."²³ Comcast
13 acquired the local exchange telephony customer base from AT&T Broadband in
14 November 2002 and provides cable telephony, broadband internet access and
15 cable television in many areas of Western Washington.²⁴ On its web site,
16 Comcast emphasizes the benefits of its Digital Phone service, which provides:

- 17 • The ability to retain the same number when customers shift from the
18 incumbent to Comcast.

²² Docket Nos. UT-031459 and UT-031626 (consolidated), Order No. 3: Initial Order on Cross-Motions for Summary Determination.

²³ <http://www.rainierconnect.com/telephone/index.asp>, visited January 16, 2004.

²⁴ See confidential Comcast response to Bench Request No. 44 in this proceeding.

- 1 • Long distance and local calling packages on one bill.
- 2 • Attractive local service pricing.
- 3 • Unlimited local calling.
- 4 • Low long distance rates.
- 5 • Popular calling feature packages.
- 6 • Voice messaging.²⁵

7 Comcast is currently in negotiations with King County to extend its franchise
8 through 2010.²⁶ Clearly, both Rainier Cable and Comcast are entrenched as
9 local service providers and are committed to continuing to provide service into
10 the future. They themselves are mature companies that are well-established in
11 the marketplace. They provide their services over networks where the
12 underlying technologies are fully mature in their ability to provide quality
13 service that is comparable in every respect to the service provided by other
14 wireline carriers.

15 **Q. AT PAGE 35, MR. FINNEGAN ASSERTS THAT THE ILECS' ABILITY**
16 **TO OFFER LOCAL, LONG DISTANCE AND INTERNET ACCESS**
17 **SERVICES POSITIONS THEM "TO RECAPTURE THE POSITION**
18 **THEY HAD PRIOR TO DIVESTITURE WHEN THEY OPERATED AS**
19 **FULLY INTEGRATED MONOPOLIES." WITH RESPECT TO**

²⁵ www.comcast.com/products/telephony/localphoneservice (visited January 20, 2004).

²⁶ Seattle Times, Local/Regional, January 19, 2004.

1 **COMCAST AND RAINIER IN PARTICULAR, IS MR. FINNEGAN'S**
2 **CONCERN WELL FOUNDED?**

3 A. His statement is not well-founded in general, and it is completely illogical as it
4 relates to cable competitors of Qwest. As shown earlier in my testimony, both
5 Comcast and Rainier offer integrated telecommunications services to mass market
6 customers, and include local service, long distance and internet access in their
7 range of offerings. The availability of these services as alternatives to Qwest's
8 products is a clear indication that competition is robust and runs counter to Mr.
9 Finnegan's claim that the availability of integrated services from Qwest is a
10 prelude to remonopolization.

11 **Q. AT PAGE 133 OF HIS TESTIMONY, MR. FINNEGAN OPINES THAT**
12 **THE TRO DISCOUNTS CABLE TELEPHONY IN THE TRACK 1**
13 **TRIGGERS ANALYSIS BECAUSE THAT TECHNOLOGY "PROVIDES**
14 **NO EVIDENCE THAT COMPETITORS HAVE SUCCESSFULLY SELF-**
15 **DEPLOYED SWITCHES AS A MEANS TO ACCESS THE**
16 **INCUMBENTS' LOCAL LOOPS." DOES HE CORRECTLY INTERPRET**
17 **THE TRO IN THIS REGARD?**

18 A. No. The FCC clearly stated "[w]here a state commission determines that there are
19 three or more carriers, unaffiliated with the incumbent LEC or each other that are
20 serving mass market customers in a particular market using self-provisioned
21 switches, a state must find no impairment in that market unless it petitions this

1 Commission for a waiver of the trigger.²⁷ The language of the TRO is clear and
2 does not equivocate as to whether service is delivered to the mass market
3 customer via an unbundled loop or via a loop owned by the CLEC. Rather, the
4 Track 1 trigger analysis considers whether unaffiliated CLECs are using self-
5 provisioned switches to deliver mass market services in a particular market. The
6 rule implementing the TRO makes it clear that a switch should be counted if the
7 services provided to the mass market are comparable in quantity. There can be no
8 dispute that Comcast and Rainier meet that criterion.

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

10 A. Yes, it does

²⁷ TRO, ¶462.

