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May 21, 2003

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

Re: Qwest Petition for Competitive Classification, Docket No. UT-030614

Dear Ms. Washburn:

Allegiance Telecom of Washington, Inc., AT&T Communications of the Pacific Northwest, Inc., Eschelon Telecom, Inc., Focal Communications Corporation of Washington, Integra Telecom of Washington, Inc., Pac-West Telecom, Inc., Time Warner Telecom of Washington, LLC, WorldCom, Inc., and XO Washington, Inc. (collectively "Joint CLECs") oppose the latest Petition of Qwest Corporation ("Qwest") Requesting Competitive Classification of Basic Business Exchange Telecommunications Services ("Qwest Petition"). The Commission should not approve this petition at an Open Meeting but should suspend the effective date of the filing and require further investigation in a fully litigated proceeding.

The issues raised by the Qwest Petition cannot be fully and fairly considered at a Commission Open Meeting. As an initial matter, the vast majority of evidence that Qwest has filed in support of its petition has been submitted as confidential information to which the Joint CLECs do not have access. The Joint CLECs or other interested parties (other than Commission Staff) thus cannot review, investigate, or otherwise verify the accuracy of that information, much of which is likely derived from data that Qwest has obtained through its provision of the services and facilities to these same parties. The Commission, consistent with fundamental due process, cannot approve the Qwest Petition when affected parties have not had access to, and thus the effective opportunity to comment on, the evidence provided in ostensible support of that petition.

The Qwest Petition also raises issues of first impression that should be fully investigated before the Commission renders a decision. The Commission has reviewed Qwest's previous petitions for competitive classification on a wire center or exchange specific basis. *See* Docket

Nos. UT-000883 & UT-990022. Indeed, the Commission rejected a portion of Qwest's last petition for competitive classification with respect to certain wire centers where Qwest had not demonstrated that effective competition existed. Qwest, however, asks the Commission to consider the Qwest Petition on a statewide basis, without consideration of the extent to which customers in each wire center or exchange "have reasonably available alternatives" or represent "a significant captive customer base."

Qwest has not submitted sufficient evidence to support its proposed departure from the Commission's past practice. Instead, Qwest relies on price lists filed by competing local exchange companies ("CLECs") pursuant to Commission competitive classification of those companies on a statewide basis. Qwest Petition at 4. CLECs, unlike Qwest, face effective competition from the incumbent local exchange carriers ("ILECs") in every service territory in the state. Qwest cannot even arguably make the same claim with respect to geographic areas in which Qwest is the ILEC. Indeed, even Qwest concedes that no competition exists in at least five of its exchanges. Qwest Petition at 11. Statewide competitive classification of Qwest's business services thus would leave at least some customers without any alternatives to Qwest service. At a minimum, the Commission should require development of a more complete factual record before departing from its prior practice of reviewing effective competition for Qwest's business services on a wire center or exchange basis.

Another issue requiring factual development is Qwest's reliance on the availability of resale to provide "reasonably available alternatives." Qwest Petition at 5. The Commission has never concluded that resold business exchange services represent such an alternative. A reseller obtains Qwest retail service under the same rates, terms and conditions that Qwest offers that service to end user customers, less only a 14.74% discount. Resellers cannot exert any competitive pressure on Qwest under those circumstances and thus resold service is not a "reasonably available alternative" to Qwest service. Indeed, were that not the case, Qwest or any other ILEC could claim that any retail service it offers is subject to effective competition as long as the service is available for resale.

Qwest also relies on the availability of unbundled network elements ("UNEs"), including the combination of UNEs known as the UNE Platform or UNE-P. As Qwest observes, however, the continuing availability of unbundled local switching – a critical component of UNE-P – will be at issue in the wake of the FCC's Triennial Review Order. The Commission cannot rely on UNE-P to provide a "reasonably available alternative" to Qwest's basic business exchange service until that issue has been determined. Indeed, the uncertainty surrounding the future availability of UNE-P cannot help but have a negative impact on competitors' and potential competitors' reliance on UNE-P as a means of providing competing local service until that uncertainty is resolved.

Qwest asserts that the impact of the FCC's Triennial Review Order is irrelevant because either UNE-P will continue to be available or the Commission will find that "the product is not required to sustain competition." Qwest Petition at 7. Until the FCC Triennial Review Order is released, however, the Commission cannot know the standards that the FCC will establish for determining when unbundled switching must continue to be provided (or the Commission's analysis and implementation of those standards), much less equate those standards with the requirements in RCW 80.36.330(1). The Commission thus has no factual or legal basis on which it could simply assume that a finding in a Triennial Review proceeding that competitors would not be "impaired" without the availability of local switching necessarily means that end user customers would continue to have "reasonably available alternatives" to Qwest service.

In addition to UNE-P, Qwest relies on competitors' use of Qwest UNE loops to allege that CLECs are providing "reasonably available alternatives" to Qwest service. UNE loops, however, represent less than half of the total CLEC market share that Qwest has cited, and far less (in some cases 0%) in areas other than "Puget Sound," "Spokane," and other areas where Qwest has already obtained competitive classification for most business services. The publicly available information that Qwest has provided, moreover, does not identify the type or nature of the unbundled loops, which is critical to any use of that information. If most of those loops are high capacity loops, for example, the data would not support broad use or availability of analog loops to serve small business customers. Nor does Qwest specify the location of these loops. There may be a large number of loops in Qwest's Vancouver exchange, for example, but few or no loops in other exchanges lumped together in the "Southwestern" region that Qwest has identified. Indeed, such a scenario is all the more likely in light of the fact that unbundled loops in zone 5 (the least dense Qwest wire centers) cost over three times more than loops in zone 1 (the most dense wire centers).

Qwest also provides market share data, but even under Qwest's analysis, Qwest continues to enjoy a dominant market share in the business exchange service market in Washington. Qwest claims that alternative providers have a minimum of 17% of that market statewide and from 7% to 22% within particular geographic regions. Qwest Petition at 7-9. When adjusted to eliminate resale and UNE-P, however, those percentages drop significantly – to as little as 0% in the "Northeastern" and "Southeastern" geographic regions that Qwest has identified. Even using the 83% market share figure that Qwest provides, Qwest continues to serve a significant captive customer base of business local exchange customers in many parts of this state and thus has not demonstrated that it is not entitled to competitive classification of its business local exchange services on a statewide basis.

Qwest's data on alleged growth in CLEC market share is no more persuasive. Again, the Joint CLECs have not had access to Qwest's underlying data, but Qwest's description of the publicly available information is misleading. Assuming without conceding the accuracy of Qwest's figures, the number of lines CLECs serve using resale, UNE-P, and unbundled loops may have increased 32%, but that figure is not equivalent to a 32% growth in market share. That figure cannot be calculated without considering the growth in the total number of business lines – including Qwest's business lines, which Qwest does not provide. Qwest also cites the number of E911 records as an indicator of market share, but even Qwest acknowledges that such data is not equivalent to the number of access lines served. Qwest Petition at 11-12.

Finally, Qwest discusses ease of entry but focuses entirely on the basic non-recurring charges that Qwest imposes for resold service, UNE-P, and analog unbundled loops. The deficiencies of Qwest's reliance on these services and facilities to provide "reasonably available alternatives" to Qwest service discussed above are equally applicable in this context. In addition, Qwest substantially understates the costs associated with obtaining access to unbundled loops. CLECs usually need coordinated installation (i.e., "hot cuts") and testing when obtaining unbundled loops to convert existing Qwest customers to CLEC business service. The nonrecurring charges for these services are substantially higher – as high as $162.81 for the initial analog loop and $85.03 for each additional loop – than the $37.53 charge Qwest references. Qwest also omits any discussion of the costs CLECs incur to collocate in the Qwest central office in order to access unbundled loops, including charges for the cross connects between the CLEC's collocated equipment and the distribution frame(s) needed to physically connect the loop to the CLEC's network. Thus, the use of unbundled loops – particularly to serve small business customers in less densely populated areas – is far from easy and, in many cases, prohibitively expensive.

Qwest's Petition provides insufficient supporting evidence and raises far more issues than can be addressed at the Commission's Open Meeting. Accordingly, the Joint CLECs strongly urge the Commission to extend the effective date of Qwest's Petition and require further development of an appropriate factual record in a fully litigated proceeding.

Sincerely,

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