

**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

DAVID L. TEITZEL

ON BEHALF OF

QWEST CORPORATION

FEBRUARY 20, 2004

HIGHLY CONFIDENTIAL
PURSUANT TO THE PROTECTIVE ORDER IN DOCKET NO. UT-033044

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

3 A. My name is David L. Teitzel. I am employed by Qwest Corporation ("Qwest") as Staff
4 Director-Public Policy. My business address is 1600 7th Avenue, Room 3214, Seattle,
5 Washington, 98191.

6 **Q. PLEASE DESCRIBE YOUR EDUCATION, EMPLOYMENT**
7 **BACKGROUND AND PREVIOUS EXPERIENCE TESTIFYING BEFORE**
8 **THIS COMMISSION.**

9 A. I received a Bachelor of Science degree from Washington State University in 1974.
10 Since then, I have been continuously employed by Qwest and its predecessor
11 companies. I have held a number of management positions in various departments,
12 including Regulatory Affairs, Network, and Marketing. As a Marketing Product
13 Manager, I was responsible for product management of Basic Exchange, Centrex, and
14 IntraLATA Long Distance services. I have also served as a Market Manager for Qwest
15 Dex. I was named to the Staff Director-Public Policy position in March 1998.

16 I have testified before this Commission on several occasions. In 1998, I provided
17 testimony in Docket No. UT-980311(a) regarding Universal Service. In 1999, I
18 appeared before the Commission in support of Qwest's Competitive Response

1 program. In 2000, I testified before the Commission in Docket No. UT-000883 in
2 support of Qwest's Petition for Competitive Classification of Business Services in
3 Specified Wire Centers. In 2002, I testified on behalf of Qwest in Docket Nos. UT-
4 003022/UT-003040, Qwest's petition for reentry into the interLATA long distance
5 market. In 2003, I testified in Docket No. UT-030614 regarding Qwest's application
6 for statewide competitive classification for analog business services. In addition, I
7 have served as an expert witness in various dockets in Arizona, Colorado, Idaho,
8 Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South
9 Dakota, Utah and Wyoming.

10 **Q. ARE YOU ADOPTING ANOTHER WITNESS' TESTIMONY?**

11 A. Yes, I am adopting the previously-filed testimony of Mark S. Reynolds. That includes:
12 his Direct Testimony (Exhibit No. MSR-1T); Exhibit Nos. MSR-2C, 3C, 4C, 5C,
13 6HC, 7HC, 8, 9C, 10, 11, 12 and 13; his Response Testimony (Exhibit No. MSR-
14 14T); and Exhibit Nos. MSR-15 and 16.

15 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

16 A. The purpose of my rebuttal testimony is to respond to the response testimony of AT&T
17 witnesses John Finnegan and William Lehr/Lee Selwyn, and MCI witness Richard
18 Cabe regarding CLEC-specific issues they raise about Qwest's mass market switching

1 trigger analysis. Specifically, I will rebut their criticisms of the use by Qwest of
2 Allegiance Telecom, SBC Telecom, Comcast, and Rainier Connect as qualifying
3 CLECs in its mass market trigger analysis. Qwest witness Harry Shooshan will address
4 more general issues raised by these witnesses regarding their contentions that the
5 Triennial Review Order (“TRO”) requires certain ‘qualifying’ criteria in order to include
6 a CLEC in the mass market trigger analysis. Specifically, Mr. Shooshan will rebut their
7 contentions that the TRO requires ‘mass market trigger qualifying’ CLECs to have a
8 minimum market share, to be actively serving every part of the relevant geographic
9 market, and to be serving both residential and business mass market customers. Mr.
10 Shooshan also addresses issues related to Qwest’s use of MSAs as relevant markets
11 for its trigger analyses.

12 **Q. IN HIS RESPONSE TESTIMONY,¹ MR. FINNEGAN CLAIMS THAT DUE TO AN AGREEMENT**
13 **FOR QWEST TO PURCHASE ALLEGIANCE TELECOM, ALLEGIANCE NO LONGER**
14 **QUALIFIES AS A TRIGGER NOMINEE BECAUSE, POST SALE, IT WOULD NO LONGER BE**
15 **UNAFFILIATED WITH QWEST.² WHAT IS THE STATUS OF QWEST’S BID TO PURCHASE**
16 **ALLEGIANCE TELECOM’S ASSETS AS OF THE DATE OF THIS TESTIMONY?**

17

¹ Response Testimony of John F. Finnegan dated February 2, 2004 (Exhibit No. JFF-7T) (“Finnegan”), pages 11 to 15.

² Response Testimony of William H. Lehr and Lee L. Selwyn dated February 2, 2004 (Exhibit No. WHL-4T) (“Lehr/Selwyn”), page 31, relies on Mr. Finnegan’s Response Testimony regarding Allegiance to remove the CLEC from an analysis it uses to evaluate Qwest’s trigger analysis.

1 A. On Friday, February, 13, 2004, XO Communications emerged from the bankruptcy
2 auction for the Allegiance Telecom assets as the winning bidder. Because Mr.
3 Finnegan's testimony on this point was premised on Allegiance being purchased by
4 Qwest, this development renders his testimony on this subject irrelevant.

5 **Q. DOES THIS DEVELOPMENT POTENTIALLY AFFECT QWEST'S TRIGGER ANALYSIS IN**
6 **ANY OTHER WAY?**

7 A. Yes. Because both Allegiance Telecom and XO Communications are used in Qwest's
8 trigger analysis in [HIGHLY CONFIDENTIAL] REDACTED [HIGHLY
9 CONFIDENTIAL], a merger of the two companies would result in their consolidation
10 for purposes of evaluating them as trigger candidates. Qwest has re-examined its
11 trigger analysis in light of this development, and has concluded that such a consolidation
12 does not change its conclusion that it satisfies the mass market trigger in [HIGHLY
13 CONFIDENTIAL] REDACTED [HIGHLY CONFIDENTIAL]. I am not updating
14 Exhibit No. MSR-6HC at this time, however, because the transaction is not yet final
15 and, as can be seen from the change in Qwest's involvement in this transaction, changes
16 could still occur.

17 **Q. DO THE INTERVENORS SEEK TO DISQUALIFY ANY OTHER CLECS**
18 **FROM BEING INCLUDED IN QWEST'S MASS MARKET TRIGGER**
19 **ANALYSIS?**

1 A. Yes. Both Mr. Finnegan and Dr. Cabe state that SBC should not count as a qualifying
2 mass market CLEC in a trigger analysis in Washington. At page 7 of his rebuttal
3 testimony, Dr. Cabe suggests that SBC's presence as a CLEC in Washington is only
4 "under the requirements of a quid pro quo for its parent company's merger, and
5 provides no evidence of an independent CLEC evaluation of market entry conditions."³
6 Similarly, at page 15 of his response testimony, Mr. Finnegan states that SBC's
7 presence in Washington "has everything to do with the Merger Agreement in the
8 SBC/Ameritech merger and nothing to do with an effort to actively provide voice
9 service to mass market customers using its own switch."⁴ At page 17, he goes on to
10 assert that SBC "would logically be willing to sustain losses due to impairment that no
11 normal for-profit enterprise would be willing to sustain."⁵

12 **Q. ARE MR. FINNEGAN'S AND DR. CABE'S ASSUMPTION ABOUT SBC'S MOTIVATION,**
13 **EVEN IF ACCURATE, RELEVANT TO THE COMMISSION'S TRIGGER ANALYSIS?**

14 A. Not at all. As the FCC explained, the triggers provide bright-line, objective tests.⁶ The
15 TRO does not require or permit this Commission to assess *why* a competitor is serving

³ Rebuttal Testimony of Richard Cabe on behalf of WorldCom, Inc. (MCI) dated February 2, 2004 (Exhibit No. RC-5T) ("Cabe"), page 7.

⁴ Cabe, at page 15.

⁵ Cabe, at page 17.

⁶ TRO, at ¶¶ 498 and 500. At ¶ 500, the FCC was perfectly clear that for purposes of the triggers, "the states shall not evaluate any other factors" such as the financial stability or well-being of the competitive switch providers. The only appropriate consideration for the state commissions is whether SBC is currently offering and is able to provide service, and is likely to continue to do so.

1 mass market customers via its own switch. Because the CLEC's motivation is simply
2 irrelevant under the TRO, it is no wonder that neither Mr. Finnegan nor Dr. Cabe cite to
3 the TRO to support their criticism. Their argument is, simply, a red herring.

4 **Q. ASIDE FROM BEING IRRELEVANT, WHAT OTHER OBSERVATIONS**
5 **DO YOU HAVE REGARDING THE CRITICISMS OF MR. FINNEGAN**
6 **AND DR. CABE?**

7 A. Both witnesses ignore that SBC's merger requirements are no longer in effect. While
8 I am not an expert on the SBC/Ameritech merger legal requirements, it is my
9 understanding that SBC has satisfied the conditions of the merger and that it is no
10 longer required to remain in its "out of Region" markets as a CLEC.⁷ That SBC
11 remains active in Washington as a CLEC in serving mass market customers, despite
12 the expiration of its merger-related obligations, is significant. It shows that any
13 argument by AT&T and MCI that SBC is not a real competitor, or is soon to depart
14 Washington, is unfounded.

15

⁷ The Memorandum Opinion and Order requires that all of the conditions adopted in the Order remain effective and enforceable for 36 months from the effective date of the Order or from the effective date of the condition. The FCC's order required SBC to enter the Seattle market within 12 months after the merger closing, which occurred on October 8, 1999. *CC Docket No. 98-141, Memorandum Opinion and Order (rel. Oct. 8, 2002), at n.6*. Even assuming a 48 month window (i.e., that SBC did not enter the Seattle market until October 8, 2000), it would appear that SBC's obligation to provide local service in Seattle expired last year.

1 **Q. WHAT EVIDENCE IS THERE THAT SBC CONTINUES TO BE ACTIVE IN**
2 **SERVING MASS MARKET CUSTOMERS IN WASHINGTON?**

3 A. As stated at page 36 of Mr. Reynolds' direct testimony (Exhibit No. MSR-1T), SBC's
4 current Price List No. 2 shows that SBC's local exchange services are available in
5 Qwest service territory in Clark and King Counties as well as in independent telephone
6 company territory in Island and Snohomish Counties. There is no restriction in SBC's
7 price list as to the availability of SBC's local exchange services. Additionally, Exhibit
8 No. DLT-2 is an excerpt from SBC's current web site showing the 30 top metropolitan
9 markets in which it currently offers local telephone services. SBC highlights the "Seattle
10 Service Area" in its website as encompassing Auburn, Bellevue, Bellingham, Burien,
11 Everett, Halls Lake, Kirkland, Oak Harbor, Renton and Seattle. In addition, SBC
12 spent \$41,000 in television advertising in the Seattle area in 2003.⁸ While, like Mr.
13 Finnegan and Dr. Cabe, I am not privy to SBC's business strategies, the evidence I
14 have reviewed does not suggest that SBC is merely a reluctant participant in the local
15 exchange market in this area.

16 **Q. BOTH MR. FINNEGAN⁹ AND DRS. LEHR/SELWIN¹⁰ ONCE AGAIN ADVISE AGAINT**

⁸ Competitrack - December 2003 Telecommunications Advertising Report, p. 394. By way of comparison, national CLEC MCI spent only \$17,000 more than SBC in Seattle in 2003 (*Id. at 360*), and (according to the same report) CLECs ATG, Allegiance, Eschelon, Integra, McLeod and XO spent no money on television advertising in 2003.

⁹ Finnegan, at pages 7 to 9.

¹⁰ Lehr/Selwyn, at pages 20 to 21.

1 **INCLUSION OF CABLE COMPANIES AS TRIGGER CLECS IN THEIR RESPONSE**
2 **TESTIMONY. DO THEY RAISE ANY NEW ISSUES THAT YOU HAVE NOT ALREADY**
3 **ADDRESSED IN YOUR RESPONSE TESTIMONY?**

4 A. No. However, it is important to note that Mr. Finnegan finally concedes that the TRO
5 does not preclude cable companies from being considered as trigger nominees.¹¹ As I
6 stated in Mr. Reynolds' response testimony (Exhibit No. MSR-14T), it is clear that the
7 FCC directed the states to include intermodal providers of services of comparable
8 quality to that of the incumbent LEC in the trigger analysis.¹² The two cable-based
9 CLECs addressed in Mr. Reynolds' direct and response testimony (Exhibit Nos. MSR-
10 1T and 14T), Comcast and the Rainier Group, both provide services that are
11 comparable in "cost, quality and maturity" to residential local exchange services
12 provided by Qwest and should be included in the analysis.

13 **Q. IN HIS RESPONSE TESTIMONY, DR. CABE STATES THAT "RAINIER**
14 **CONNECT PROVIDES QUALIFYING SERVICES TO END USERS IN**
15 **ONLY A SINGLE WIRE CENTER."¹³ IS HE CORRECT?**

16 A. No. On February 5, 2004, the Rainier Group filed a supplemental response to Bench
17 Request No. 43 stating that Rainier now serves "an area that overlaps three different

¹¹ Finnegan, at page 7, lines 9 to 10.

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

¹³ Cabe, at page 36.

1 Qwest wire centers." I will revise Exhibit No. MSR-6HC to reflect the wire centers in
2 which Rainier now reports to be serving mass market customers.¹⁴

3 **Q. ARE YOU MAKING ANY OTHER CHANGES TO EXHIBIT NO. MSR-6HC?**

4 **A.** Yes. I am making additional revisions to Exhibit No. MSR-6HC based on recently
5 received information from Comcast regarding its serving areas. In response to a
6 previous data request, Comcast has recently provided the rate centers in Washington in
7 which it provides services and its access line counts for those rate centers.
8 Unfortunately, because the data is provided on a rate center rather than wire center
9 basis, I will still not be able to provide Comcast's access line counts by wire center. In
10 order to accurately represent the wire centers in which Comcast operates for purposes
11 of the trigger analysis and inclusion on Exhibit No. MSR-6HC, I compared the
12 information provided by Comcast in its revised discovery response to maps created
13 internally for the greater Seattle and Portland areas to identify wire centers in which
14 Comcast is providing local exchange service. Qwest developed these maps by using
15 the publicly accessible service availability tool on the Comcast (and previously the
16 AT&T Broadband) web site. Since the on-line service availability tool was substantially
17 modified after the Comcast acquisition of AT&T Broadband, the maps may not reflect
18 the full scope of areas in which Comcast now offers cable television, cable modem and

¹⁴ The revised Exhibit No. MSR-6HC will be Highly Confidential Exhibit No. DLT-3HC. In Exhibit No. DLT-3HC, I have also corrected the CLLI code for the Issaquah wire center.

1 telephone service (called the "triple play" on the attached maps). However, the maps
2 do allow me to attribute Comcast to the serving areas of Qwest wire centers in which
3 Qwest has confirmed Comcast to be offering local exchange service based on the
4 Comcast web site service locator tool. These maps are attached to my testimony as
5 Exhibit No. DLT-4.

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

7 **A. Yes, it does.**

INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Title</u>
DLT-2	SBC Web Page – Service Territories for Local, Voice, and Data Services.
DLT-3HC	Revised Exhibit MSR-6HC to reflect changes in serving areas of certain CLECs
DLT-4	Comcast Cable Telephony Service Serving Area Maps