

**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**

**HARRY M. SHOOSHAN III**

**ON BEHALF OF**

**QWEST CORPORATION**

**FEBRUARY 20, 2004**

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1           **1. INTRODUCTION AND PURPOSE OF REBUTTAL TESTIMONY**

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2   **Q.     ARE YOU THE SAME HARRY M. SHOOSHAN III WHO PROVIDED DIRECT AND**  
3           **RESPONSE TESTIMONY ON BEHALF OF THE QWEST CORPORATION (“QWEST”)**  
4           **IN THIS PROCEEDING?**

5   **A.     Yes.**

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

7   **A.     The purpose of my rebuttal testimony is to rebut the February 2, 2004 response**  
8           **testimonies of: AT&T witnesses Mr. John F. Finnegan and Drs. William Lehr/Lee**  
9           **Selwyn (“Lehr/Selwyn”); MCI witness Dr. Richard Cabe; and WUTC Staff witness Mr.**  
10          **Thomas L. Spinks. I also offer some general comments on the response testimonies of**  
11          **AT&T witnesses Mr. Michael R. Baranowski, Ms. Catherine M. Montfort, and Ms.**  
12          **Arleen Starr.**

13 **Q.     PLEASE SUMMARIZE THE MAIN POINTS OF YOUR REBUTTAL TESTIMONY.**

14 **A.     The main points in my testimony are:**

- 15           **■ There continues to be no evidence on the record to justify overruling the**  
16           **FCC’s presumption that a customer with four or more DS0 loops is an**  
17           **enterprise customer.**
- 18           **■ Contrary to the recommendations of Dr. Cabe and Mr. Spinks, specifying**  
19           **separate markets for residential and small business customers is inappropriate**  
20           **and contrary to the *TRO*.**
- 21           **■ Several witnesses, in their response testimony, introduce new arguments for**  
22           **expanding the triggers analysis beyond what the *TRO* states and what the FCC**  
23           **intended. I also refute those arguments.**

- 1 ■ Mr. Baranowski proposes alternative input values in the CPRO Model of  
2 potential deployment. While Mr. Copeland responds to his specific criticisms  
3 of the CPRO Model, I explain why Mr. Baranowski's choices of some input  
4 values reflect an analytical approach that is contrary to the *TRO*.  
5 Additionally, his analysis of revenue trends is self-contradictory.
- 6 ■ I explain why the response testimony of Ms. Montfort is irrelevant to this  
7 proceeding.

8 Finally, I present revisions of Figures 1 to 6 in my direct testimony to reflect information  
9 obtained through discovery. The changes do not affect my conclusions regarding the  
10 non-impairment of competition.

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## 11 2. MARKET SPECIFICATION AND THE *TRO*

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12 Q. WHAT MARKET SPECIFICATION DOES THE *TRO* ASK THE STATES TO DO?

13 A. In the *TRO*, the FCC discusses two types of markets: product and geographic. The FCC,  
14 itself, determined that in any given geographic market there are exactly two relevant  
15 product markets for purposes of applying the *TRO*; namely, the enterprise market and the  
16 mass market. The FCC asked the states to determine the boundary between the enterprise  
17 market and the mass market, in terms of number of DS0 loops. It also asked the states to  
18 specify the relevant geographic markets. The FCC decidedly did *not* ask—nor does the  
19 *TRO* permit—the states to make any additional determinations with regard to relevant  
20 markets. It certainly did *not* permit the states to specify product markets other than the  
21 enterprise market and the mass market.

22 In the *TRO*, the FCC repeatedly refers to “the mass market.” The very language indicates  
23 that the FCC regards the mass market as a single market—not a collection of markets.

1 The mass market is limited by the DS0/DS1 cut-off and the extent of the geographic  
2 market.

3 The language of the *TRO* is clear. Its directions (at ¶ 495) are: “State commissions must  
4 first define the markets in which they will evaluate impairment by determining the  
5 relevant geographic area to include in each market.” The paragraphs that elaborate on  
6 this instruction (¶¶ 495-497) contain no mention of product markets, apart from the  
7 DS0/DS1 cut-off. Similarly, the rules (47 C.F.R. §51.319(d)(2)(i)) mention only the  
8 geographic area to include in the market specification.

9 Paragraph 495 directs the states to consider “the variation in factors affecting  
10 competitors’ ability to serve each group of customers and competitors’ abilities to target  
11 and serve specific markets economically and efficiently using currently available  
12 technologies.” Footnotes 1538 and 1539 to paragraph 495 make plain that the groups of  
13 customers and specific markets referred to are *geographic*:

14 For example, if UNE loop rates vary substantially across a state, and this  
15 variation is likely to lead to a different finding concerning the existence of  
16 impairment in different parts of the state, the state commission should consider  
17 separating zones with high and low UNE loop rates for purposes of assessing  
18 impairment.

19 For example, competitors often are able to target particular sets of customers, or  
20 customers in particular wire centers or rate zones.

21 These paragraphs and footnotes further confirm that the states are supposed to specify  
22 only geographic markets (in addition to the DS0/DS1 cut-off).

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**3. DS0/DS1 CUT-OFF**

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1  
2 **Q. DID CLEC WITNESSES SUBMIT ANY NEW EMPIRICAL EVIDENCE REGARDING**  
3 **THE DS0/DS1 CUT-OFF?**

4 A. No. Ms. Starr submitted testimony on this issue, but it consists entirely of argumentation  
5 with no new empirical evidence. Consequently, the CLECs continue to fail to offer  
6 “significant evidence to the contrary,” as required by the *TRO* (§ 497) to overturn the 4-  
7 line presumption. As I pointed out in my response testimony (Exhibit No. HMS-2T at  
8 page 19), the analysis in Mr. Finnegan’s direct testimony is a cost study that disregards  
9 revenues. It is *not* an economic study, as required by the *TRO*. The response testimony  
10 of Mr. Copeland likewise identifies deficiencies in Mr. Finnegan’s study.

11 **Q. DOES THE FCC’S PRESUMPTION APPLY TO ALL MSAs?**

12 A. Strictly speaking, it applies only to the top 50 MSAs. Nevertheless, the economics imply  
13 that the cut-off would, if anything, be lower outside these MSAs. The reason is that the  
14 use of DS1s involves substituting electronics for copper; i.e., the electronics allow a  
15 single loop to have the capacity of 24. The longer the loop, the more copper that is  
16 saved; thus, the trade-off becomes more favorable. Loops are, on average, longer outside  
17 the top 50 MSAs. For that reason, I would recommend that this Commission apply the  
18 FCC’s presumption in all MSAs.

19 **Q. HOW WOULD A HIGHER DS0/DS1 CUT-OFF AFFECT OTHER PARTS OF THIS**  
20 **PROCEEDING?**

21 A. A higher cut-off would have the effect of strengthening Qwest’s triggers evidence - a  
22 factor that would have to be taken into account by the Commission. More business

1 customers would (in my view, wrongly) be placed in the mass market, and the data would  
2 then indicate that CLECs serve more mass-market customers with their own switches.

3 This point is explicitly acknowledged by the FCC (*TRO* ¶497, n. 1546):

4 If, on the other hand, a state finds based on record evidence that a cut-  
5 off of more than four lines is appropriate, more multi-line customers  
6 will be treated as mass market customers....Such widespread  
7 deployment of competitive switches would be considered under our  
8 mass market triggers. In such markets, then, it is more likely that there  
9 will be a finding of no impairment for the entire market, leading to  
10 significantly less unbundled switching than was available under the  
11 previous four-line carve-out.

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#### 12 **4. SEPARATE MARKETS FOR RESIDENCE AND SMALL BUSINESS**

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13 **Q. PLEASE STATE AND EXPLAIN YOUR OPINION OF THE RECOMMENDATION OF**  
14 **MR. CABE<sup>1</sup> AND MR. SPINKS<sup>2</sup> TO SPECIFY SEPARATE MARKETS FOR RESIDENCE**  
15 **AND SMALL BUSINESS.**

16 **A.** I strongly disagree with that recommendation. As I noted before, that recommended  
17 approach goes directly counter to the *TRO*. Residence and small business are not  
18 geographic markets. The two groups are often commingled in the same geographic area.  
19 There is no geographic distinction whatever for CLECs that use UNE-L, because both  
20 groups of customers are served from the same ILEC wire centers. As I stated previously,  
21 state commissions are directed to specify *only* the DS0/DS1 cut-off and the geographic  
22 markets and not to specify any other markets.

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<sup>1</sup> Direct Testimony of Richard Cabe dated December 20, 2003 (Exhibit No. RC-5T) (“Cabe”) at pages 53 to 55.

<sup>2</sup> Response Testimony of Thomas L. Spinks dated February 2, 2004 (Exhibit No. TLS-1T) (“Spinks”) at pages 16 to 18.

1 The paragraph that I previously quoted from footnote 1546 of the *TRO* provides further  
2 confirmation of the FCC's view in this matter. The FCC states that a higher DS0/DS1  
3 cut-off makes a finding of impairment more likely "for the entire market." In context, the  
4 only market referred to is the mass market. If impairment is less likely in the whole mass  
5 market, it must be that the impairment analysis treats residence and small business as  
6 being in the same relevant market. If residence and small business were considered to be  
7 separate relevant markets, the cut-off would affect the triggers in only the small business  
8 portion of the market.

9 The FCC assuredly considered the possibility of specifying separate markets for  
10 residence and small business but ultimately rejected it. Had it intended to specify  
11 separate markets, surely it would have said so. Yet, in the 480 pages of the *TRO*, I found  
12 no reference to that as a possibility, let alone anything to suggest that the FCC intended  
13 such a result.

14 I believe that the FCC rejected it because residence and small business are problematic as  
15 separate product markets. Products within a single market are supposed to be close  
16 substitutes for one another. They are not supposed to be close substitutes for products  
17 that are outside the relevant market.

18 From a technical perspective, however, the telecommunications services consumed by  
19 residents are generally quite similar to the services consumed by small business. This  
20 similarity can be seen by comparing MCI's Neighborhood and Business Complete plans.

21 The services in the two plans are technically very similar, often identical. This confirms



1 the FCC's view of the similarities in products offered to—and demanded by—residence  
2 and very small business customers (*see*, for example, discussion at *TRO* ¶ 127).

3 The prices of the Neighborhood and Business Complete plans do, however, differ  
4 significantly. These price differences have nothing to do with demand characteristics and  
5 everything to do with the fact that, for decades, regulators have mandated that many  
6 ILEC residential services be priced lower than similar or identical business services.

7 The Court decision in the *USTA* case, to which the *TRO* responds, addresses this very  
8 issue. It states: “[The FCC] never explains why the record supports a finding of material  
9 impairment where the element in question—though not literally ubiquitous—is  
10 significantly deployed on a competitive basis in those markets where there is no reason to  
11 suppose that rates are artificially low.”<sup>3</sup>

12 The Court is saying that one *cannot* find impairment solely because CLECs do not, or  
13 cannot profitably, serve residence customers - given that regulatory policies require that  
14 residential services be priced artificially low. Any finding of impairment must be based  
15 on a finding that competitors do not, or could not, profitably serve customers where the  
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<sup>3</sup> *United States Telecom Association v. FCC*, 290 F.3d 415, 425 (D.C. Cir. 2002).

1 rates are not artificially low.

2 I believe that it is precisely for this reason that the FCC rejected the idea of separate  
3 product markets for residence and small business. In any event, state commissions  
4 should follow the *TRO* and not attempt to subdivide markets in a way not contemplated  
5 by the *TRO*.

6 **Q. WHAT JUSTIFICATIONS DO DR. CABE AND MR. SPINKS OFFER FOR THEIR**  
7 **RECOMMENDATIONS OF SEPARATE MARKETS FOR RESIDENCE AND SMALL**  
8 **BUSINESS AND WHAT IS YOUR OPINION OF THOSE JUSTIFICATIONS?**

9 A. Dr. Cabe refers to the FCC's discussion (at ¶ 495) of targeting. As I previously showed,  
10 that FCC discussion applies only to geographic markets. He also refers to price  
11 discrimination, though the FCC does not discuss price discrimination in its directions to  
12 the states regarding the specification of relevant markets. As I also previously showed,  
13 the USTA Court decision does not allow a finding of impairment to be based on the  
14 effects of regulatorily enforced price discrimination.

15 Mr. Spinks states that there are separate markets for low- and high-revenue customers.<sup>4</sup>  
16 He recommends specifying separate markets for residence and small business as proxies  
17 for the low- and high-revenue markets, respectively.

18 This recommendation is faulty in several respects:

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<sup>4</sup> Spinks, at page 16.

- 1           1. Low- and high-revenue customers are not geographic markets. As I explained  
2           previously, the FCC asked the states to specify *only* geographic markets and the  
3           DS0/DS1 cut-off.
  
- 4           2. The distinction between residence and small business is a poor proxy for low- and  
5           high-revenue customers. For example, the average monthly revenues of Z-Tel,  
6           which serves primarily residential customers, were over \$60 per line in 2002.<sup>5</sup> At  
7           the same time, the minimum monthly charges under MCI's Business Complete  
8           Advantage plan are only \$31.99.
  
- 9           3. Specifying separate markets for residence and small business will not have the  
10          effects that Mr. Spinks apparently intends. Today, CLECs do not serve low-  
11          revenue customers, even with UNE-P available. For example, the minimum  
12          monthly charges under MCI's Neighborhood Plan are \$23.99. This can be  
13          compared to Qwest's minimum monthly charge in Washington of \$12.50. That  
14          CLEC practice will not change simply because the WUTC specifies separate  
15          markets. The real consequence will be to enable CLECs to continue using UNE-P  
16          to serve high-revenue residential customers, even where they would be  
17          economically viable using self-provided switching.

18   **Q.     HAVE OTHER STATE COMMISSIONS RULED ON WHETHER TO SPECIFY**  
19   **SEPARATE MARKETS FOR RESIDENCE AND SMALL BUSINESS?**

20   **A.     Yes. As I explained in my response testimony (Exhibit No. HMS-2T at page 22), the**  
21   **Public Utilities Commission of Ohio ("PUCO") specifically rejected arguments to**  
22   **separate the two markets. It concluded that there is a single mass market in each relevant**

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<sup>5</sup> Z-Tel reported end of year Z-LineHOME and Z-LineBUSINESS lines for 2002 of 253,000 and 2002 revenues of \$187.6 million. Z-Tel states: "For both 2002 and 2001 our Z-LineBUSINESS revenues are immaterial," Z-Tel 10K, 2002, at 31.

1 geographic market.<sup>6</sup> On rehearing earlier this month, the PUCO reaffirmed that ruling:  
2 “Rather than reaching a tentative conclusion, the FCC has definitively stated, without  
3 distinction, that residential and small business customers are to be considered mass  
4 market customers for the purpose of performing a mass market analysis. *Id.* at ¶ 497.  
5 Therefore, the parties will not be subsequently afforded the opportunity to present  
6 alternative market scenarios based on a distinction between residential and small business  
7 customers.”<sup>7</sup>

8 **Q. DO OTHER WITNESSES MAKE RELATED ARGUMENTS?**

9 A. Yes. Mr. Finnegan<sup>8</sup> recommends that firms should not count toward the triggers  
10 conditions unless they serve both residential and small business customers. As I  
11 explained in my response testimony (Exhibit No. HMS-2T at pages 21 to 22), this  
12 recommendation goes beyond and is contrary to the *TRO*. The PUCO rejected the  
13 approach recommended by Mr. Finnegan, as well as the approach of specifying separate  
14 markets for residence and small business.

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15 **5. EXPANSION OF THE CONDITIONS REQUIRED TO SATISFY THE**  
16 **TRIGGERS**

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17 **Q. WHAT CONDITIONS DOES THE *TRO* SPECIFY FOR SATISFACTION OF**  
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<sup>6</sup> Public Utilities Commission of Ohio (“PUCO”), *In the Matter of the Implementation of the Federal Communications Commission’s Case No. 03-2040-TP-COI, Triennial Review Regarding Local Circuit Switching in the Mass Market*, (January 14, 2004) at 34, *aff’d*, Entry on Rehearing, (February 4, 2004)

<sup>7</sup> *Id.* (Rehearing Order) at pages 4 to 5.

<sup>8</sup> Response Testimony of John F. Finnegan dated February 2, 2004 (Exhibit No. JFF-7T) (“Finnegan”), at pages 34 to 38.

1           **THE TRIGGERS?**

2    A.     According to the rules (at 47 C.F.R. §51.319(d)(3)(A)(1)), the triggers are satisfied in a  
3           particular geographic market if “three or more competing providers not affiliated with  
4           each other or the incumbent LEC, each are serving mass market customers in the  
5           particular market with the use of their own local circuit switches.”

6    **Q.     IN GENERAL TERMS, WHAT DO CLEC WITNESSES ARGUE WITH REGARD TO**  
7           **THE TRIGGERS CONDITIONS?**

8    A.     They argue that the trigger conditions should be vastly expanded - far beyond the plain  
9           language of the *TRO*. As I explained in my response testimony (Exhibit No. HMS-2T at  
10          page 4), “. . . the FCC attempted to fashion a framework that would yield acceptably  
11          accurate determinations with regard to impairment, while not involving unnecessary  
12          administrative burdens. It also attempted, by use of the objective triggers analysis, to  
13          minimize arbitrary variations among states.” I believe that the states should follow the  
14          *TRO* in this regard and not thwart these constructive FCC policies.

15   **Q.     DO THE CLEC WITNESSES MAKE ANY NEW ARGUMENTS IN THEIR RESPONSE**  
16          **TESTIMONY WITH REGARD TO EXPANDING THE TRIGGERS CONDITIONS?**

17   A.     Yes. New arguments were made by Dr. Cabe, Mr. Finnegan, and Drs. Lehr/Selwyn.

18   **Q.     PLEASE DESCRIBE THESE NEW ARGUMENTS AND YOUR REBUTTAL THEREOF.**

19   A.     Drs. Lehr/Selwyn<sup>9</sup> attempt to refute the straightforward interpretation of the triggers by  
20          arguing as follows: Suppose that CLECs operate in only one wire center of 30 in a  
21          particular MSA. They argue that hypothesized condition cannot justify a finding of non-

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<sup>9</sup> Lehr/Selwyn, at page 23 to 24.

1 impairment throughout the MSA.

2 Rebuttal: This point does not relate to the triggers conditions at all. It is rather a  
3 comment on the specification of the relevant geographic market. Given the conditions  
4 that Drs. Lehr/Selwyn hypothesize, the Commission might conceivably find the relevant  
5 market to be smaller than the MSA. In my response testimony (Exhibit No. HMS-2T at  
6 pages 16 to 18), I discussed the factors to consider in specifying how far the relevant  
7 geographic market extends beyond the wire centers that satisfy the triggers conditions.

8 Mr. Finnegan<sup>10</sup> argues, “I think it defies reality and economic facts to simply assume a  
9 provider who serves a handful of customers in a small number of wire centers could  
10 economically serve thousands of customers in dozens of wire centers.” (Dr. Cabe (at  
11 page 16) makes essentially the same point.)

12 Rebuttal: In contrast, the FCC thinks that it defies neither reality nor economic facts.  
13 The FCC’s reasoning is that a finding that three or more CLECs are using their own  
14 switches to serve the mass market demonstrates that doing so is feasible. Further, one  
15 can reasonably presume that it is economically viable, given that three or more  
16 independent CLECs have voluntarily chosen to do so. Because of economies of scale  
17 and scope, which are generally acknowledged in telecommunications, it would be even  
18 more profitable to serve additional customers at the same wire centers. Thus, the finding  
19 that competition is unimpaired in the absence of unbundled switching is a reasonable,  
20 indeed compelling, inference. There remains the issue of how far this inference can be

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<sup>10</sup> Finnegan, at pages 5 to 6.

1 extended beyond the wire centers that satisfy the triggers conditions. I discussed that  
2 issue in my response testimony (Exhibit No. HMS-2T at pages 16 to 18).

3 Mr. Finnegan<sup>11</sup> and Drs. Lehr/Selwyn<sup>12</sup> argue that CLECs must achieve a certain market  
4 share in order to satisfy the trigger conditions.

5 Rebuttal: The FCC assuredly considered this possibility but rejected it by specifying no  
6 such standard—or even alluding to such a standard—in the *TRO*. The reason is as I  
7 stated previously: A finding that three independent CLECs use their own switches to  
8 serve the mass market supports a finding of non-impairment, even if they do not serve  
9 many customers. The FCC understands full well that CLECs may find UNE-P more  
10 profitable than UNE-L, even where UNE-L is economically viable. Thus, one would not  
11 necessarily expect large-scale usage of UNE-L, even if it were economically viable. It is,  
12 I believe, precisely for that reason, that the FCC avoided the use of market thresholds  
13 specifying in the triggers conditions.

14 Dr. Cabe<sup>13</sup> continues to argue, “. . . a CLEC should not be counted for the trigger analysis  
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<sup>11</sup> Finnegan, at page 19.

<sup>12</sup> Lehr/Selwyn, at pages 25 to 26.

<sup>13</sup> Cabe, at page 12.

1 unless the nature of its market participation affords evidence that (1) it is capable of  
2 holding itself out to provide retail local exchange service to all, or virtually all, mass-  
3 market customers within the relevant market. . .”

4 Rebuttal: As I explained in my response testimony, the FCC, in its *Errata* concerning ¶  
5 499, explicitly removed this requirement from the self-provisioning triggers conditions.  
6 Nevertheless, Dr. Cabe continues to argue that the *TRO* does not say what it says.

7 Mr. Finnegan<sup>14</sup> argues that Allegiance should not be counted toward the triggers  
8 conditions because of its merger negotiations with Qwest.

9 Rebuttal: Recent developments suggest that Allegiance may merge with XO rather than  
10 Qwest. In any event, if a merger is actually consummated before the WUTC makes its  
11 decision in this matter, Allegiance’s affiliation with the other firm would have to be  
12 recognized. The *TRO* does not, however, permit the triggers analysis to include  
13 speculation about what mergers *might occur in the future*. Instead, states should follow  
14 the *TRO* and not speculate about future mergers. This issue is discussed in more detail in  
15 Mr. Teitzel’s rebuttal testimony (Exhibit DLT-1THC).

16 Dr. Cabe and Mr. Finnegan argue that SBC should not be counted toward the triggers  
17 because:

- 18 ■ Its motivation for entry is to satisfy its merger commitment;<sup>15</sup>

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<sup>14</sup> Finnegan, at pages 11 to 15.

<sup>15</sup> Cabe, at page 7.



- 1 ■ It charges the same price to residential customers as to business customers,<sup>16</sup>
- 2 ■ It is not rapidly expanding its operations.<sup>17</sup>

3 Rebuttal: In reality, the *TRO* makes no provision for excluding CLECs for these reasons.  
4 State commissions are not supposed to speculate about the CLEC's motivation, pricing,  
5 or expansion plans. Furthermore, the factual basis of the witnesses' characterization of  
6 SBC is suspect, as shown in Mr. Teitzel's rebuttal testimony.

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7 **6. MR. BARANOWSKI'S RESPONSE TESTIMONY**

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8 **Q. WHAT IS YOUR OPINION OF MR. BARANOWSKI'S RESPONSE TESTIMONY?**

9 A. Mr. Baranowski made a run of the CPRO model, using his own choices of the user-  
10 specified model parameters. Mr. Copeland's rebuttal testimony discusses Mr.  
11 Baranowski's response testimony in detail. I do, however, have a few comments.

12 The most remarkable of his proposed inputs relate to revenues. He assumes that revenues  
13 will decline by 3 percent per year - with no associated declines in costs.

14 CPRO is a model of a CLEC operating in an environment in which unbundled switching  
15 is not available. Mr. Baranowski states that under these circumstances:

16 The business case model must take into account the increasingly  
17 competitive telecommunications environment. It is well understood not  
18 only by economists, but by competitors and consumers alike, that  
19 competition tends to lower prices. As competition for mass-market  
20 customers increases, one would expect to see significant declines in

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<sup>16</sup> Finnegan, at page 36.

<sup>17</sup> Finnegan, at pages 41 to 42.

1 prices for local telephone service, just as fierce competition in long  
2 distance has led to dramatic increases in per minute long distance  
3 rates.<sup>18</sup>

4 It would appear from this statement and from Mr. Baranowski's choice of assumptions  
5 that he believes that competition would *not* be impaired in the absence of unbundled  
6 switching. If it were, competition would *not* be expected to lower prices. One would *not*  
7 expect to see fierce competition, such as led to the dramatic declines in long-distance  
8 rates.

9 He cannot have it both ways. If he believes that competition would not be impaired in  
10 the absence of unbundled switching, he should retract all his testimony. If he believes  
11 otherwise, his CPRO runs should be consistent with his view.

12 In particular, if competition were really impaired, one would expect price margins to rise  
13 over time, as competitors exited the market. To have a consistent story, Mr. Baranowski  
14 would have to demonstrate that even under these conditions, an efficient entrant would  
15 not be viable. Non-viability is presumably (in this hypothetical scenario) what led to  
16 impairment in the first place.

17 As it is, Mr. Baranowski assumes that competition is impaired, where it suits him and  
18 unimpaired where that assumption suits him. The resulting hodgepodge of assumptions  
19 cannot reflect possibly reflect reality. Model results under such a set of assumptions  
20 should be given no weight in this (or any other) proceeding.

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<sup>18</sup> Response Testimony of Michael R. Baranowski dated February 2, 2004 (Exhibit No. MRB-2T) ("Baranowski"), at page 9.

1           Additionally:

- 2           ■ Mr. Baranowski assumes that the CLEC will use a separate switch to serve each  
3           MSA. This assumption makes no economic sense. A CLEC would obviously use the  
4           same switch to serve multiple MSAs - except possibly in the largest few MSAs in the  
5           country. Serving multiple MSAs is necessary in order to achieve scale economies.  
6           The FCC specifically acknowledged (*TRO* at ¶ 520, n. 1589) that the same equipment  
7           may be used to serve multiple geographic markets. I discussed this issue in my  
8           response testimony (Exhibit No. HMS-2T at pages 15 to 16).
- 9           ■ Mr. Baranowski similarly assumes that the OSS serves only 200,000 customers—  
10           somewhat higher than the number that are posited to be served in Washington. In  
11           reality, the CLEC would almost surely use the same OSS to serve customers  
12           nationwide. The FCC specifically acknowledges this point (*TRO* at ¶ 520, n. 1589).
- 13           ■ Mr. Baranowski assumes the use of special-access rates for transport on all routes.  
14           His justification is that Qwest has asked to be relieved of the requirement to provide  
15           UNE transport on some links. He asserts that the only way that CPRO can model  
16           special-access transport is to require it on all routes. This assertion is incorrect.  
17           CPRO can accommodate the use of special-access on any arbitrary set of user-  
18           specified routes. More importantly, the *TRO* specifically provides that the switching  
19           analysis should not be based on costs that are higher than UNE transport rates (*TRO* ¶  
20           517, n. 1581, fourth paragraph).

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21                                   **7. MS. MONTFORT’S RESPONSE TESTIMONY**

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22   Q.           **WHAT IS THE PURPOSE OF MS. MONTFORT’S RESPONSE TESTIMONY?**

23   A.           The purpose, as she states, is “to explain why UNE-L and AT&T’s Digital Link service  
24           (ADL) is not a viable means for serving mass-market customers (i.e., residential and

1 small business customers) and that without UNE-P, AT&T has no other viable way to  
2 serve a large number of mass-market customers in Washington.”<sup>19</sup>

3 **Q. IS THAT TESTIMONY RELEVANT TO THIS PROCEEDING?**

4 A. No. The *TRO* could not have been more specific that the business plans for particular  
5 CLECs are irrelevant to the findings that this commission must make. (*TRO* at ¶ 517)

6 **Q. DO YOU HAVE ANY ADDITIONAL COMMENTS REGARDING MS. MONTFORT’S**  
7 **TESTIMONY?**

8 A. Yes. I think that many of her arguments boil down to the fact that AT&T regards UNE-P  
9 as less costly than UNE-L. But that is also irrelevant to this case. What matters is not  
10 whether UNE-P is cheaper but whether an efficient CLEC would be economically viable  
11 in the absence of unbundled switching.

12 She additionally raises concerns about the hot-cut process but gives no specifics.

13 Obviously, the detailed evidence being gathered in the separate hot-cut proceeding should  
14 be given far greater weight than her unsupported assertion.

15 Finally, she argues that collocation is costly and would not be feasible at many wire  
16 centers. That point is certainly correct. It is precisely for that reason that Qwest has  
17 specified the relevant geographic markets *not* to include all wire centers. AT&T would  
18 continue to be able to use UNE-P at wire centers outside the relevant geographic markets.

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19 **8. REVISED FIGURES**

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<sup>19</sup> Response Testimony of Catherine M. Montfort dated February 2, 2004 (Exhibit No. CMM-1T) (“Montfort”), at page 2.

- 1 Q. HAS ADDITIONAL INFORMATION RELATING TO FIGURES 1 TO 6 IN YOUR  
2 DIRECT TESTIMONY BEEN RECEIVED?  
3 A. Yes. The following are revised figures, which take account of information that has been  
4 received through discovery.

**Revised Figure 1  
Evidence of No Impairment in the Seattle MSA**

	Wire Center	3+ CLECs with Switching for Mass Market (No. of CLECs)	Unaffiliated CLECs with Switching Capability	Positive Business Case	Qwest DS0 Lines
1	BELLEVUE SHERWOOD	8	8	X	60,283
2	SEATTLE MAIN	7	7	X	102,735
3	SEATTLE CHERRY	7	7	X	59,126
4	RENTON	6	6	X	70,487
5	SEATTLE EAST	5	5	X	61,662
6	SEATTLE LAKEVIEW	5	5	X	49,081
7	SEATTLE ATWATER	5	5	X	44,970
8	KENT O BRIEN	5	5	X	20,916
9	SEATTLE EMERSON	4	4	X	55,050
10	KENT ULRICH	4	4	X	36,579
11	SEATTLE DUWAMISH	4	4	X	26,392
12	SEATTLE CAMPUS	4	4	X	23,013
13	SEATTLE ELLIOTT	4	4	X	22,132
14	BELLEVUE GLENCOURT	3	3	X	60,077
15	SEATTLE SUNSET	3	3	X	43,649
16	AUBURN		2	X	46,521
17	SEATTLE WEST		2	X	36,444
18	ISSAQUAH		1	X	30,066
19	FEDERAL WAY		1	X	26,812
20	KENT MERIDIAN		1	X	25,527
21	DES MOINES		1	X	17,688
22	SEATTLE PARKWAY			X	29,255
23	MERCER ISLAND			X	15,344
24	MAPLE VALLEY				14,611
25	ENUMCLAW				11,780
26	BLACK DIAMOND				3,830
Qwest Lines		736,152	919,210	963,809	994,030
Percent of Qwest Lines in MSA		74%	92%	97%	100%
Net present value of business case for MSA (\$000)					\$12,654

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**Revised Figure 2  
Evidence of No Impairment in the Tacoma MSA**

	<b>Wire Center</b>	<b>3+ CLECs with Switching for Mass Market (No. of CLECs)</b>	<b>Unaffiliated CLECs with Switching Capability</b>	<b>Positive Business Case</b>	<b>Qwest DS0 Lines</b>
1	TACOMA FAWCETT	5	5	X	39,308
2	PUYALLUP	4	4	X	50,645
3	TACOMA JUNIPER	3	3	X	37,418
4	TACOMA GREENFIELD	3	3	X	31,124
5	TACOMA LENOX		2	X	40,526
6	TACOMA WAVERLY 2		2	X	12,316
7	GRAHAM		2		22,323
8	TACOMA WAVERLY 7		1	X	44,811
9	TACOMA LOGAN		1	X	22,061
10	TACOMA SKYLINE		1	X	20,305
11	SUMNER		1	X	16,479
12	TACOMA FT LEWIS			X	13,338
13	BONNEY LAKE			X	12,628
14	BUCKLEY				3,903
15	ROY				2,884
16	CRYSTAL MOUNTAIN				768
Qwest Lines		158,495	337,316	340,959	370,837
Percent of Qwest Lines in MSA		43%	91%	92%	100%
Net present value of business case for MSA (\$000)				\$2,402	

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**Revised Figure 3  
Evidence of No Impairment in Vancouver Portion of the  
Portland-Vancouver MSA**

	<b>Wire Center</b>	<b>3+ CLECs with Switching for Mass Market (No. of CLECs)</b>	<b>Unaffiliated CLECs with Switching Capability</b>	<b>Positive Business Case</b>	<b>Qwest DS0 Lines</b>
1	VANCOUVER OXFORD	5	5	X	41,652
2	ORCHARDS	3	3	X	66,106
3	VANCOUVER NORTH	3	3		24,385
4	RIDGEFIELD			X	3,981
5	BATTLEGROUNDS				11,569
Qwest Lines		132,143	132,143	111,739	147,693
Percent of Qwest Lines in MSA		89%	89%	76%	100%
Net present value of business case for entire MSA (\$000)				\$3,526	

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**Revised Figure 4  
Evidence of No Impairment in the Olympia MSA**

	<b>Wire Center</b>	<b>CLEC Switching and Mass Market UNE-L (No. of CLECs)</b>	<b>Positive Business Case</b>	<b>Qwest DS0 Lines</b>
1	OLYMPIA WHITEHALL	2	X	60,974
2	OLYMPIA LACEY	1	X	50,003
3	OLYMPIA EVERGREEN			8,163
4	ROCHESTER			7,230
Qwest Lines		110,977	110,977	126,370
Percent of Qwest Lines in MSA		88%	88%	100%
Net present value of business case for MSA (\$000)			\$454	

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**Revised Figure 5  
Evidence of No Impairment in the Bremerton MSA**

	<b>Wire Center</b>	<b>CLEC Switching and Mass Market UNE-L (No. of CLECs)</b>	<b>Positive Business Case</b>	<b>Qwest DS0 Lines</b>
1	BREMERTON ESSEX	1	X	42,384
2	SILVERDALE		X	25,707
3	PORT ORCHARD			17,139
4	BAINBRIDGE ISLAND			16,066
5	COLBY			10,452
6	CROSBY			3,724
7	SUNNYSLOPE			977
Qwest Lines		42,384	68,091	116,449
Percent of Qwest Lines in MSA		36%	58%	100%
Net present value of business case for MSA (\$000)			\$454	

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**Revised Figure 6  
Evidence of No Impairment in the Bellingham MSA**

	<b>Wire Center</b>	<b>CLEC Switching and Mass Market UNE-L (No. of CLECs)</b>	<b>Positive Business Case</b>	<b>Qwest DS0 Lines</b>
1	BELLINGHAM REGENT	1	X	51,785
2	BELLINGHAM LUMMI			1,612
Qwest Lines		51,785	51,785	53,397
Percent of Qwest Lines in MSA		97%	97%	100%
Net present value of business case for MSA (\$000)			\$32	

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1 Q. DO THE REVISIONS TO THESE FIGURES CHANGE ANY OF YOUR CONCLUSIONS  
2 WITH REGARD TO THE NON-IMPAIRMENT OF COMPETITION?

3 A. No. The changes are relatively minor and do not change any of my conclusions with  
4 respect to the non-impairment of competition. These revisions are discussed more fully  
5 in Mr. Teitzel's rebuttal testimony.

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6 **9. CONCLUSIONS**

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7 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

8 A. I have four major conclusions. I recommend that the Commission:

- 9 1. Not specify markets other than the relevant geographic markets and the DS0/DS1 cut-  
10 off. Any further market specification would go beyond the *TRO*.
- 11 2. Follow the *TRO* with regard to the triggers conditions and not expand them. The  
12 FCC's reasoning on this point is sound; that of the CLEC witnesses is not.
- 13 3. Reject the findings of Mr. Baranowski with respect to potential deployment. His  
14 analytical approach is inconsistent with the *TRO* and his revenue estimates are self-  
15 contradictory.
- 16 4. Reject the findings of Ms. Montfort with respect to the feasibility of UNE-L  
17 competition. The *TRO* explicitly states that evidence, such as she presents, relating to  
18 the business plans of particular CLECs, is not relevant to this proceeding.

19 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

20 A. Yes, it does.