

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)
) **DOCKET NO. UT-033044**
QWEST CORPORATION)
)
To Initiate a Mass-Market Switching)
And Dedicated Transport Case)
Pursuant to the Triennial Review)
Order)

RESPONSE TESTIMONY

OF

JOHN F. FINNEGAN

ON BEHALF OF

**AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.,
AT&T LOCAL SERVICES ON BEHALF OF TCG SEATTLE, AND TCG
OREGON (COLLECTIVELY "AT&T")**

TRIGGER NOMINEE ANALYSIS

February 20, 2004

**REDACTED VERSION
HIGHLY CONFIDENTIAL INFORMATION HAS
BEEN REDACTED**

REDACTED

1 **Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS?**

2 A. My name is John F. Finnegan. My business address is 1875 Lawrence Street, Room
3 1525, Denver, Colorado 80202.

4 **Q. HAVE YOU ALREADY FILED TESTIMONY IN THIS PROCEEDING?**

5 A. Yes. I have previously filed both direct and response testimony and exhibits.

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

7 A. My rebuttal testimony focuses on three areas. First, I update my previous
8 analyses based on the recent announcement that XO Communications, not Qwest,
9 will acquire Allegiance Telecom. Second, I explain the errors and omissions that
10 lead to Staff witness Spinks' mistaken belief that the self-provisioning trigger is
11 met in Washington if small business customers are treated as a separate market.
12 Finally, I respond to Mr. Shooshan's criticisms of UNE-P, pointing out that Mr.
13 Shooshan has not always had such a low opinion of UNE-P competition. Indeed,
14 he has previously testified before this Commission about the significance and
15 importance of UNE-P competition in Washington.

16 **Q. PLEASE START BY PROVIDING AN UPDATE ON THE STATUS OF**
17 **ALLEGIANCE TELECOM.**

18 A. At the time I filed direct testimony, Qwest had made a bid for certain of
19 Allegiance's assets.¹ However, since that time, XO Communications was

¹ Finnegan Direct Testimony, pp. 11 – 14.

1 selected as the winning bidder for Allegiance's assets.² XO and Allegiance
2 submitted the agreement to the bankruptcy court for approval on February 19,
3 2004 and the bankruptcy court issued an order approving of XO's acquisition.³

4 **Q. HOW DOES XO'S ACQUISITION OF CERTAIN OF THE ASSETS OF**
5 **ALLEGIANCE CHANGE YOUR TRIGGER ANALYSIS?**

6 A. In my direct testimony, I pointed out that Qwest's purchase of Allegiance would
7 result in Allegiance being affiliated with Qwest. As an affiliate of Qwest,
8 Allegiance could not be considered a mass market switching self-provider.⁴ It
9 now appears that, subject to applicable state and federal regulatory approvals,
10 XO and Allegiance will be affiliated with each other. Consequently, they should
11 be considered as one trigger nominee.

12 **Q. DID YOU REVISE ANY OF YOUR ANALYSES TO REFLECT XO AND**
13 **ALLEGIANCE AS A COMBINED TRIGGER NOMINEE?**

14 A. Yes. In Exhibit **JFF-13HC** I revised Exhibit JFF-10HC from my response
15 testimony to show the market share results by wire center for XO and Allegiance
16 as a combined trigger nominee for LATAs 672 and 674 (AT&T's recommended
17 market definition) and the Seattle, Tacoma and Vancouver MSAs (Qwest's
18 recommended market definition). I also performed a similar market share

² Please see **Exhibit JFF-12** describing the agreement.

³ Please see Exhibit JFF-12 which also includes XO Communication's press release describing the bankruptcy court's approval of the acquisition.

⁴ See TRO, ¶ 499, "In both cases, the competitive switch providers that the state commission relies upon in finding either trigger to be satisfied must be unaffiliated with the incumbent LEC and with each other." (footnotes omitted.)

1 analysis for the Seattle, Tacoma and Vancouver markets as defined and
2 recommended by Mr. Spinks. This new analysis can be seen in **Exhibit JFF-**
3 **14HC.**

4 **Q. WHAT DO THE REVISED ANALYSES SHOW?**

5 A. The revised analyses show that even with a combination of XO and Allegiance,
6 the mass market loop activity by the combined entity in the LATAs, MSAs, and
7 Staff's market areas are still de minimis. Specifically, a combined XO and
8 Allegiance trigger nominee has the following shares of mass market loops in the
9 various markets: *** **BEGIN HIGHLY CONFIDENTIAL**

10 **Table 1**

The table consists of 2 columns and 10 rows. The top-left cell contains a small black redaction box. The top-right cell contains a large black redaction box. The bottom-left cell contains a large black redaction box. The bottom-right cell contains a large black redaction box. All other cells in the table are redacted with black boxes of varying sizes, obscuring the data.

11
12 [Redacted line]
13 [Redacted line]
14 [Redacted line]
15 [Redacted line]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED] **END**

4

HIGHLY CONFIDENTIAL ***

5

Q. MOVING TO YOUR NEXT TOPIC, DO YOU HAVE CONCERNS WITH

6

THE TRACK ONE TRIGGER ANALYSIS CONDUCTED BY STAFF

7

WITNESS SPINKS?

8

A. Yes. I believe that Mr. Spinks relied on an incorrect data set to reach his

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conclusions and made critical methodological mistakes. Correcting these errors

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paints a much different, and much more accurate, picture of the limited amount

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of UNE-L competition even in the small business market.

12

Q. PLEASE EXPLAIN WHY MR. SPINKS USED AN INCORRECT DATA SET

13

IN HIS ANALYSIS.

14

A. While Mr. Spinks calculated market shares achieved by CLECs in the small

15

business market in Washington, it is not entirely clear from Mr. Spinks'

16

testimony how or to what extent he used that analysis to support his conclusion

17

that the trigger test is met in certain markets.⁵ Nevertheless, his analysis relies

18

on data provided in Qwest's response to AT&T discovery request 01-034 to

19

calculate the number of Qwest small business lines in each wire center.

20

However, that data grossly understates the number of Qwest mass market lines

⁵ Spinks Exhibit TLS-3-HC.

1 and therefore, Mr. Spinks' analysis grossly overstates CLEC market shares. The
2 reason for this is that Qwest's response to AT&T's data request 01-034 did not
3 include all loop types used by Qwest to provide voice-grade service to its
4 customers using DS0 loops.

5 **Q. IS THERE A MORE INCLUSIVE DATA SOURCE AVAILABLE TO**
6 **CALCULATE THE NUMBER OF QWEST SMALL BUSINESS LINES IN**
7 **WASHINGTON?**

8 A. Yes. In its response to MCI data request 01-099, Qwest provided similar
9 information for all loop types. The impact of correcting this error is substantial.

10 ***** BEGIN HIGHLY CONFIDENTIAL** [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED] **END HIGHLY CONFIDENTIAL** *** Thus, Mr. Spinks' conclusions

17 about the CLEC market share in that and every other wire center is way off.⁶

⁶ Mr. Spinks' analysis also understates Qwest lines because he mistakenly uses the number of customer locations rather than the number of customer lines from the Qwest response to AT&T 034. In other words, where Qwest indicated the presence of a two-line business customer, Mr. Spinks counted that as one "line" instead of two lines.

1 **Q. ARE THERE OTHER ERRORS IN MR. SPINKS' ANALYSIS THAT ALSO**
2 **OVERSTATE CLEC MARKET SHARES?**

3 A. Yes. The relevant inquiry in this case is the CLEC market share where the
4 CLECs use their own switching. Conversely, the CLEC market share of resold
5 or UNE-P lines is not relevant. Thus, to properly calculate the relevant market
6 share one should divide the number of lines where the CLEC provides their own
7 switching (UNE-L) by the sum of the Qwest lines (as provided in response to the
8 MCI data request), plus the CLEC lines where Qwest provides switching (resale
9 and UNE-P), plus the CLEC lines where the CLEC provides switching (UNE-L).
10 However, Mr. Spinks does not do this. Rather, in the three worksheets "Sea.
11 MSA," "Tac. MSA," and "Vanc. MSA" attached as Exhibit TLS-3-HC, his
12 denominator is correct but his numerator is wrong because he adds the resale and
13 UNE-P line counts with the UNE-L line counts for both 1 – 3 line and more than
14 3 line customers. In other words, he divides all CLEC lines by the total lines in
15 the market to calculate what he characterizes as the "DS-0 mkt share." Thus, his
16 analysis reveals CLEC market shares for resale, UNE-P and UNE-L competition.
17 While this may be relevant to a general analysis of competition, it is not relevant
18 in this case. Indeed, it would be tragically ironic to rely on CLEC market shares
19 including UNE-P competition as a basis for concluding that there is sufficient
20 competition to eliminate UNE-P.

REDACTED

1 **Q. HAVE YOU DONE AN ANALYSIS CORRECTING THESE VARIOUS**
2 **ERRORS?**

3 A. Yes. **Exhibit JFF-15HC** provides a corrected analysis for CLEC market shares
4 of the 1-3 line residential and small business customers for each LATA, Qwest
5 MSA, and Staff market; and CLEC market shares for the 1-3 line small business
6 customers in each LATA, Qwest MSA, and staff market.⁷ This corrected
7 analysis demonstrates that there are no markets where any CLEC trigger nominee
8 achieves more than a de minimis market share of the 1-3 line residential and
9 small business market. It also demonstrates that even considering the small
10 business market on a stand-alone basis (which AT&T does not recommend) there
11 are no CLECs with more than a de minimis share in the Seattle and Tacoma
12 markets and only one in the Vancouver market or LATA 672.

13 **Q. DO YOU HAVE ANY OTHER CONCERNS WITH MR. SPINKS'**
14 **ANALYSIS AND CONCLUSIONS?**

15 A. Yes. In concluding that the trigger requirements are met in the one to three line
16 small business market in Seattle, Tacoma, and Vancouver market areas, Mr.
17 Spinks appears to rely solely on a simple count of CLECs serving mass market
18 customers in the wire center. Thus his analysis and conclusion do not properly

⁷ The results for the Qwest retail customer line counts were obtained from Qwest's response to MCI Discovery Request 01-099. The results for the CLEC UNE-P and resale line counts were obtained from Qwest's response to Bench Requests 64 and 65.

1 incorporate the FCC's "actively providing service to mass market customers"
2 standard.⁸

3 **Q. HOW SHOULD THE COMMISSION DETERMINE WHETHER OR NOT A**
4 **CLEC IS "ACTIVELY PROVIDING VOICE SERVICE TO MASS**
5 **MARKET CUSTOMERS?"**

6 A. As I discussed in my direct and response testimony, I view the quantification of
7 the "actively providing voice service to mass market customers" standard in two
8 ways. The first way is a comparison of the quantity of mass market UNE-loops a
9 CLEC is using in a market area compared to the total number of loops in the
10 market. I call this the market share analysis. In my response testimony, I stated
11 that the standard for the market share analysis should be a CLEC should have
12 obtained at least a 3-5% share of the market using mass market loops.⁹ I also
13 provided exhibits that showed that the 3-5% standard was not met by a CLEC in
14 any market.¹⁰ As I discuss above, I expand on that analysis in this testimony by
15 calculating market shares for the staff proposed markets, a 1-3 line residential
16 and small business market in isolation, and a 1-3 line small business market in
17 isolation.

⁸ TRO, ¶ 499.

⁹ Finnegan Response Testimony, p. 21.

¹⁰ Finnegan Response Testimony, Exhibit JFF-10HC.

1 **Q. WHAT IS THE SECOND WAY TO EXAMINE THE “ACTIVELY**
2 **PROVIDING” STANDARD?**

3 A. The second way is to examine the growth in a CLEC’s use of mass market loops
4 over a period of time. In my response testimony I discuss and analyze this issue
5 on a policy basis using CLEC press releases and other public statements. In this
6 testimony, I further rebut Mr. Spinks’ conclusions using a numerical and
7 dynamic mass market loop growth analysis. In combination, the market share
8 and mass market loop growth analyses can determine whether a CLEC is actively
9 providing voice service to mass market customers.

10 **Q. WHAT STANDARD SHOULD THE COMMISSION USE TO JUDGE**
11 **WHETHER THE ACTUAL GROWTH IN MASS MARKET UNE LOOPS**
12 **REPRESENTS ACTIVE PROVISIONING?**

13 A. I recommend that the Commission consider a CLEC to be actively providing
14 service using their own switching if the CLEC has achieved at least a 3-5%
15 market share, as I discuss above, and if the CLEC market share using UNE-loops
16 is growing at 1% yearly growth rate. This later recommendation is based upon
17 Qwest’s suggestion that, over a year, an efficient CLEC should obtain an
18 additional 1% share of the lines in a wire center to serve mass market

1 customers.¹¹ Indeed, in its profitability analysis Qwest assumes a CLEC should
2 gain an additional 1% of the lines in a wire center for each of five years.

3 **Q. HAVE YOU PERFORMED A MASS MARKET LOOP GROWTH**
4 **ANALYSIS?**

5 A. Yes. I have performed that analysis and it can be seen in **Exhibit JFF-16HC**.

6 **Q. PLEASE DESCRIBE THE ANALYSIS.**

7 A. In response to AT&T data request 04-385, Qwest provided for each trigger
8 nominee the quantities of mass market loops that were installed in each wire
9 center for the nine months from January 2003 to September 2003. These
10 quantities only included new installations.¹² Using these results, I calculated the
11 monthly average number of mass market loops that were installed. Then, using
12 the number of loops in service in a wire center, I calculated the quantity of lines
13 a CLEC would have to obtain to gain 1% of all of the loops in a wire center. I
14 then divided the 1% share value by twelve to determine, on average, how many
15 mass market loops a CLEC would need to have installed in a month to gain 1%
16 share at the end of a year. A summary of the trigger nominee-specific results can
17 be seen in the below table: *** **BEGIN HIGHLY CONFIDENTIAL**

¹¹ See Copeland Direct Testimony, Confidential ExhibitPBC-4C, p. 3.

¹² The analogous data for disconnections of unbundled loops was not available for the analysis.

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2

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

3 **END HIGHLY CONFIDENTIAL *****

4 As can be seen in Table 2 and in more detail in the associated exhibit, no CLEC even
5 comes close to adding enough mass market loops to meet Qwest's 1% market share
6 standard. It should be noted, that if mass market loop disconnects were factored into the
7 analysis, it would show that CLECs are even further away from achieving the growth that
8 Qwest believes can be achieved.

9 While trigger nominee-specific information on mass market loop installation and
10 disconnection activities was not available, it was available for all CLECs for all
11 types of unbundled loops. As can be seen in **Exhibit JFF-17HC**, if the analysis
12 included customer locations with more than three DS0 loops at a location in the
13 analysis, an average CLEC would still fall far short of achieving a growth rate

1 sufficient to gain an additional 1% of the lines in a wire center in a year.¹³ In
2 fact, in eight of the wire centers, the total loops in service **declined** over the
3 eight-month period.

4 **Q. USING A CORRECT MARKET SHARE ANALYSIS AND MASS MARKET**
5 **LOOP GROWTH ANALYSIS, SHOULD THE COMMISSION ACCEPT**
6 **MR. SPINKS' RECOMMENDATIONS?**

7 A. No. Mr. Spinks' recommendations are based on an erroneous and incomplete
8 analysis. A correct analysis reveals that the track one trigger test is not met in
9 any LATA, MSA, or Staff market area in Washington.

10 **Q. FINALLY, MR. SHOOSHAN GENERALLY DISPARAGES UNE-P IN HIS**
11 **RESPONSE TESTIMONY AND IMPLIES THAT UNE-P IS**
12 **COMPETITION THAT IS "COMPLETELY SYNTHETIC."¹⁴ HAS MR.**
13 **SHOOSHAN ALWAYS HAD SUCH A NEGATIVE OPINION OF UNE-P?**

14 A. No. In the recent competitive classification proceeding in this state, Mr.
15 Shooshan was, properly, quite enamored with UNE-P. Specifically, he stated,
16 "Since competition is for customers and not for lines, I argue that **UNE-based**
17 **and resale competition is effective competition.**"¹⁵ Mr. Shooshan also stated:

¹³ The analysis uses the markets areas proposed by Staff Witness Spinks.

¹⁴ Shooshan Response Testimony, p. 28.

¹⁵ Before the Washington State Utilities and Transportation Commission, In the Matter of the Petition of Qwest Corporation For Competitive Classification of Basic Business Exchange Telecommunications Services, Docket No. UT-030614, Rebuttal Testimony of Harry M. Shooshan III on Behalf of Qwest Corporation, August 29, 2003, p. 2 (emphasis added).

1 Competition should not be viewed in terms of which provider actually
2 owns the facilities. A CLEC that chooses to use resale, UNE loops or
3 UNE-P to reach a customer “owns” that customer just as it would if it
4 chose to serve the customer with its own facilities. Once the CLEC
5 obtains the customer, the CLEC has the opportunity to capture all of the
6 retail revenue associated with that customer (local, toll, vertical features,
7 etc.). The fact that Qwest owns the underlying *wholesale* facilities is not
8 relevant to the consideration of whether or not effective competition exists
9 in the *retail* market. Put another way, the question is not where the money
10 ultimately goes in the chain of production (one should calculate Nortel
11 and Lucent’s local exchange “market share” if that were the case) but
12 *where the revenues go at the level of the market being analyzed* (ie., the
13 retail level).¹⁶

14 Mr. Shooshan further testified that services like UNE-P, “constrain pricing by
15 the incumbent,” and “positively affect” the growth of the market for
16 telecommunications services.”¹⁷

17 **Q. RELYING IN PART ON MR. SHOOSHAN’S TESTIMONY, DID THIS**
18 **COMMISSION AGREE THAT UNE-P IS IMPORTANT FOR ROBUST**
19 **COMPETITION IN WASHINGTON?**

20 **A.** Yes. In deciding to grant Qwest competitive classification for analog business
21 exchange telecommunications services, the Commission stated:

22 An important feature of this structure is the availability to competitors of
23 UNE-P, which is the entire platform (loop, transport and switch included)
24 used by Qwest to serve a customer. The monthly wholesale price of UNE-
25 P to competitors is based on Qwest’s costs to provide it, and is fixed by
26 the Commission for five different cost zones. A competitor can transfer a
27 Qwest customer to the competitor’s own UNE-P-based service for a
28 payment to Qwest of a mere 27 cents (in addition to the monthly charge),
29 and the process can take one day. Thus, UNE-P is a fixed-price, cost-
30 based, and speedy way for competitors to acquire new customers.

¹⁶ *Id.* at pp. 8 – 9 (emphasis added).

¹⁷ *Id.* at p. 10.

1 Moreover, competitors can transfer their existing customers to UNE-P,
2 thereby reducing their costs to the more attractive UNE-P prices. These
3 advantages of UNE-P explain its popularity and rapid growth.
4 Competitors are providing UNE-P-based retail service in 61 of Qwest's 68
5 exchanges, and these exchanges cover 99.7% of Qwest's analog business
6 lines. UNE-P lines represent approximately 25% of all competitors'
7 analog business lines in Qwest's territory, and UNE-P lines increased 45%
8 in the period December 2001 to December 2002.¹⁸

9 The Commission also decided:

10 The ubiquitous availability of UNE-P to CLECs provides an effective
11 constraint against the ability of Qwest to exercise market power, that is, to
12 raise its retail prices above competitive levels on a sustained basis. UNE-
13 P is attractive to competitors, now. If Qwest were to raise its retail prices
14 above competitive levels, competitors could compete all the more
15 effectively by taking advantage of the greater margin between the UNE-P
16 wholesale price, which is fixed, and Qwest's new, increase retail price.
17 That dynamic will operate to constrain Qwest.¹⁹

18 **Q. DO YOU AGREE WITH QWEST AND THE COMMISSION AND BELIEVE**
19 **THAT UNE-P IS IMPORTANT FOR COMPETITION IN WASHINGTON?**

20 A. Absolutely. As I explain in my direct and response testimony, UNE-P brings
21 real competition to Washington customers who would otherwise not have
22 competitive choices. The benefits of this real competition are lower prices,
23 higher customer satisfaction, and improved customer service. If UNE-P is
24 abandoned, large numbers of Washington customers will lose some or all of
25 these benefits.

¹⁸ Before the Washington State Utilities and Transportation Commission, In the Matter of the Petition of Qwest Corporation For Competitive Classification of Basic Business Exchange Telecommunications Services, Docket No. UT-030614, Order No. 17, Order Granting Competitive Classification, Service Date December 22, 2003 ("Order No. 17"), ¶ 142.

¹⁹ *Id.* at ¶ 143.

1 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

2 A. Yes.

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