

**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)	

REBUTTAL TESTIMONY OF

JOHN P. LYNOTT

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")**

REGARDING DEDICATED TRANSPORT

February 20, 2004

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1 **I. INTRODUCTION OF WITNESS AND PURPOSE OF TESTIMONY**

2 **Q. PLEASE STATE YOUR FULL NAME, TITLE AND BUSINESS**
3 **ADDRESS.**

4 A. My name is John P. Lynott. I am an independent consultant providing analysis of
5 regulatory issues and testimony for telecommunications companies. My business
6 address is 16837 E. Crestline Place, Centennial, CO 80015.

7 **Q. WHAT IS YOUR RELEVANT EDUCATIONAL BACKGROUND AND**
8 **PROFESSIONAL EXPERIENCE?**

9 A. I graduated from Regis University in Denver Colorado in 1991 with a Bachelor of
10 Science Degree in Technical Management (Emphasis on Electrical Engineering
11 Technology [EET]), and a Minor in Economics. I received a Masters Certificate
12 in General Business from the Wharton School of Business at the University of
13 Pennsylvania. I have worked in the telecommunications industry for the past 24
14 years, and I have extensive experience in the design, implementation,
15 maintenance, and operation of telecommunications networks.

16 During my career, I have worked in the network systems, engineering, and
17 operations groups for Mountain Bell Telephone, Qwest, Lucent Technologies, and
18 AT&T. My responsibilities included providing the effective and timely
19 provisioning, maintenance, testing, growth, and service restoration of DS0, DS1,
20 and DS3 Transport Facilities. I managed teams who installed, tested, monitored,

1 augmented, and maintained Switched (POTS) and Private Line (DS0, DS1 and
2 DS3) services in a Central Office (LSO) Environment. I also conducted technical
3 analysis, acceptance, and interoperability of SONET Transport and GR-303 IDLC
4 Network Elements. I have been a member of the Institute of Electrical and
5 Electronic Engineers (IEEE) for the past 15 years, and I have previously testified
6 in many other regulatory hearings. A copy of my resume is attached at **Exhibit**
7 **JPL-2.**

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

9 A. The purpose of my testimony is to reply to the response testimony of Rachel
10 Torrence, provide additional testimony on Ms. Torrence's Replacement Exhibit
11 RT-9HC, and update AT&T's rebuttal testimony based on late responses to
12 subpoenas and AT&T's data requests to competitive local exchange carriers
13 ("CLECs").

14 **Q. ARE YOU ADOPTING THE DIRECT AND RESPONSE TESTIMONY OF**
15 **ANTHONY J. GIOVANNUCCI?**

16 A. Yes.

1 **II. RESPONSIVE TESTIMONY OF RACHEL TORRENCE**

2 **Q. MS. TORRENCE ARGUES THAT AT&T’S PROPOSED NINE-MONTH**
3 **TRANSITION PERIOD CONTRADICTS THE LANGUAGE AND**
4 **INTENT OF THE *TRO*. DO YOU AGREE?**

5 A. No. Ms. Torrence focuses exclusively on paragraph 703 of the *Triennial Review*
6 *Order* (“*TRO*”). There appears to be some disagreement between AT&T and
7 Qwest over the meaning of the nine-month period referred to in paragraph 703.
8 However, Ms. Torrence makes no reference to paragraph 417 of the *TRO* which is
9 cited in AT&T’s direct testimony.¹ Paragraph 417 of the *TRO* is explicit: “We
10 expect that states will require an appropriate period for competitive LECs to
11 transition from any unbundled transport that the state finds should no longer be
12 unbundled.” The Federal Communications Commission (“FCC”) could not be
13 any clearer that the states should adopt a transition period. The transition period
14 runs from the date of the finding by this Commission, not from the effective date
15 of the *TRO*, because the CLECs are entitled to obtain dedicated transport from
16 Qwest until the date of any finding by this Commission that the CLECs are not
17 impaired on any specific route.
18 The FCC also gives the states wide discretion. “Further we note that this
19 Commission voted unanimously to give the states unlimited discretion to
20 determine the appropriate transition period for migrating customers off of

¹ Direct Testimony of Anthony J. Giovannucci at 39, n. 72.

1 enterprise loops and transport UNEs where they find no impairment for these
2 facilities. *See e.g., supra* para. 338 (stating expectation that states will give
3 competitors an “appropriate period” to transition from unbundled loops).² The
4 nine-month transition period proposed by AT&T is an “appropriate period.”

5 **Q. WHY IS NINE MONTHS A REASONABLE TRANSITION PERIOD?**

6 A. As noted in AT&T’s direct testimony, CLECs need a period of time to self-
7 provision dedicated transport on any specific route where the Commission makes
8 a finding of non-impairment or they must acquire transport from a wholesaler, if
9 one is available. There may not be a wholesaler available if a finding of no
10 impairment was based on the self-provisioning trigger.

11 To self-provision transport, the CLEC may need to acquire, construct and
12 provision the transport facilities, collocation and attending equipment (assuming
13 collocation space is available), and the originating and terminating equipment.
14 This takes time. For example, Qwest’s SGAT states that unforecasted collocation
15 requests can take anywhere from 4 to 5 months,³ and possibly longer, to complete.
16 As pointed out in the prefiled testimony of Mr. Giovannucci, there are other
17 obstacles to building transport facilities, including the acquisition of needed
18 capital and rights-of-way.⁴ Under ideal conditions it can take 12 months to

² *TRO*, ¶ 532, n. 1629.

³ SGAT §§ 8.4.3.4.3 – 8.4.3.4.6.

⁴ Direct Testimony of Anthony J. Giovannucci at 12-15, 18-19.

1 become “revenue ready.”⁵ Based on my experience, a nine-month transition
2 period is more than reasonable and actually may be too short a period. Even if a
3 wholesale provider is available, the CLEC may face many of the same problems
4 and may need to acquire, construct and provision collocation and attending
5 equipment (assuming collocation space is available) and the necessary
6 connections. As I pointed out above, unforecasted collocation requests can take
7 from 4 to 5 months.

8 **Q. MS. TORRENCE ARGUES THAT MIGRATION IS STRICTLY A**
9 **BILLING CHANGE. DO YOU AGREE?**

10 A. Absolutely not. Ms. Torrence assumes that the CLEC will stay on Qwest’s
11 network if a finding of impairment is made on a specific route.⁶ However,
12 according to the FCC, a finding of non-impairment is suppose to mean either that
13 it is economic for the CLEC to self-provision on the route or that a non-ILEC
14 wholesale alternative is available. The purpose of the transition is to give CLECs
15 the time either to self-provision its own facilities or to find a wholesale alternative
16 if one exists. In its discussion regarding the need for a transition period for the
17 embedded UNE-P customer base, the FCC stated: “In instances when existing
18 network elements may potentially be eliminated pending a fact-intensive
19 investigation, we find that section 251(d)(2) gives us the authority to promulgate
20 reasonable transition rules to protect the public interest by preserving the state quo

⁵ *Id.*, at 15-16.

⁶ Response Testimony of Rachel Torrence at 12.

1 pending the outcome of the investigation *and by giving competitive carriers a*
2 *realistic opportunity to deploy their own facilities.*”⁷ This rationale is equally
3 applicable to a transition period for dedicated transport.

4 In the meantime, the CLECs have existing customer contracts they must continue
5 to honor. These contracts were entered into with the understanding dedicated
6 transport was available as a UNE. Simply making a “billing change” and
7 allowing Qwest to assess special access rates may well make such contracts
8 uneconomic. Thus, a flash cut with no transition would likely create economic
9 hardship for competitors and reduce CLECs’ incentives to continue to provide
10 even facilities-based service to enterprise customers. In addition, the FCC noted
11 that the purposes of a transition period include: (i) minimizing disruptions to
12 customers,⁸ (ii) promoting competitive investment and (iii) continuing customer
13 choice,⁹ none of which would be accomplished by a flash cut “billing change”
14 while competitors seek alternatives to special access. Thus, Qwest’s proposal is
15 anticompetitive and should be rejected.

⁷ *TRO*, ¶ 528 (emphasis added).

⁸ *Id.*, ¶ 266.

⁹ *Id.*, ¶ 531 & 532, n. 1629.

1 **Q. DOES AT&T CONTINUE TO RECOMMEND THAT THE COMMISSION**
2 **ADOPT A MINIMUM NINE-MONTH TRANSITION PERIOD FOR ALL**
3 **ROUTES FOR WHICH A FINDING OF NON-IMPAIRMENT IS MADE?**

4 A. Yes. CLECs should have a minimum of nine months to transition from existing
5 UNEs to other facilities, subject to a further grandfathering for customers with
6 longer term contracts. During the transition period CLECs should continue to pay
7 UNE rates for dedicated transport.

8 **III. REPLACEMENT EXHIBIT RT-9HC**

9 **Q. MS. TORRENCE FILED A REPLACEMENT EXHIBIT RT-9HC. HAVE**
10 **YOU HAD A CHANCE TO REVIEW THE EXHIBIT?**

11 A. Yes.

12 **Q. DO YOU HAVE ANY COMMENTS ON EXHIBIT RT-9HC?**

13 A. Yes. First, Qwest deleted and added a number of CLECs on RT-9HC that it
14 believes self-provision dedicated transport or provide dedicated transport to other
15 carriers at wholesale. Second, Qwest added 4 more routes, bringing the total
16 number of routes to 29.

17 AT&T asked Qwest a number of data requests in an attempt to determine if Qwest
18 had any information to support the addition of carriers and routes. Qwest did not

1 provide any information in its data responses¹⁰ beyond what is identified in the
2 pre-filed responsive testimony of Mr. Giovannucci or reflected in his attached
3 exhibits. There is no reason to alter Mr. Giovannucci's initial analysis based on
4 the additional discovery.

5 **Q. DO ANY OF THE FOUR ADDITIONAL ROUTES MEET THE TRIGGER**
6 **REQUIREMENTS?**

7 A. No. Based on the responses to discovery requests and answers to subpoenas,
8 none of the carriers identified on routes 26-29 are self-provisioning dedicated
9 transport or providing dedicated transport on a wholesale basis. Furthermore,
10 Qwest has failed to provide any evidence that CLECs are self-provisioning
11 dedicated transport or are operationally ready and willing to provide dedicated
12 transport on a widely-available wholesale basis to other carriers at specific
13 capacity levels on the 4 routes.¹¹ Therefore, none of the four newly identified
14 routes (routes 26-29) meet the trigger requirements.

¹⁰ AT&T 08-434 through AT&T 08-473. All of these responses refer to Qwest's response to AT&T 03-203 (a-i), which is attached to Mr. Giovannucci's Responsive Testimony as an exhibit.

¹¹ Also, several CLECs that may be identified on Exhibit RT-9HC should now be considered affiliated parties for purposes of the trigger analysis. *TRO*, ¶¶ 408 & 414. See **Exhibit JPL-3** attached to my rebuttal testimony.

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IV. SUPPLEMENTAL DISCOVERY

Q. IN HIS PRE-FILED RESPONSE TESTIMONY, MR. GIOVANNUCCI TESTIFIED THAT, BASED ON THE DISCOVERY HE HAD REVIEWED, ALL BUT 5 OF THE POTENTIAL ROUTES COULD BE ELIMINATED BASED ON CLEC DISCOVERY RESPONSES. HAVE YOU REVIEWED THE POTENTIAL 5 ROUTES TO DETERMINE IF ANY OF THE ROUTES QUALIFY BASED ON CLEC RESPONSES TO DISCOVERY?

A. Yes, although the correct number of potential routes is 4. The potential four routes that I further reviewed are routes 7, 8, 14 and 15. When I say potential routes, I mean routes identified by Qwest that were not eliminated because AT&T had not received CLEC responses to discovery or had an opportunity to review CLEC responses to subpoenas at the time the responsive testimony was filed. I want to make it clear that it is AT&T's position that *none* of the routes qualify because Qwest has failed to provide any information that the carriers identified in Exhibit RT-9HC actually self-provision dedicated transport or are operationally ready and willing to provide dedicated transport on a widely available basis to other carriers at wholesale at specific capacity levels between Qwest wire centers without going through a CLEC switch or hub. That being said, my review confirms that routes 7, 8, 14 and 15 do not qualify based on the latest discovery

1 responses from CLECs.¹² All of the carriers stated in response to discovery that
2 they either do not self-provision on the routes identified by Qwest on Exhibit RT-
3 9HC or do not provide dedicated transport at wholesale to other carriers on the
4 routes identified by Qwest. Even the few carriers that may have arguably
5 qualified their response, it is obvious the carriers believe that whatever transport
6 they may provide is not dedicated transport as defined by the FCC, and is obvious
7 that the carriers do not make whatever transport they do provide widely available.

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

9 **A. Yes.**

¹² The discovery responses from B2, D1, J1, P4, Y3 and Z4 are attached to my testimony as **Exhibit JPL-4HC**.