

**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

ROBERT V. FALCONE

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")**

HOT CUT AND BATCH MIGRATION PROCESSES

February 20, 2004

1 **Q. PLEASE STATE YOUR NAME FOR THE RECORD.**

2 A. My name is Robert V. Falcone

3 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

4 A. I am a self-employed telecommunications and management consultant retained by
5 AT&T to assist with its efforts on the Triennial Review Order (“TRO”) hearings
6 in the states.

7 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN CONNECTION**
8 **WITH THIS PROCEEDING?**

9 A. Yes. On December 19, 2004, I filed direct testimony on the hot cut process in
10 general and on network architecture. On January 23, 2004, I filed direct
11 testimony on Qwest’s hot cut and batch migration process. On February 17,
12 2004, I filed rebuttal testimony on the hot cut and batch migration process, and on
13 network and operational impairment.

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

15 A. My testimony responds to the response testimony filed by Qwest witness
16 William R. Easton on February 2, 2004.

1 **Q. WILL YOU BE ADDRESSING ALL ASPECTS OF THE RESPONSE**
2 **TESTIMONY OF MR. EASTON?**

3 A. No. I will only be replying to the portion of Mr. Easton's response testimony that
4 addresses rolling access. I have filed a separate piece of surrebuttal testimony that
5 responds to the other issues raised by Mr. Easton in his response testimony.

6 **Q. MR. EASTON STATES THAT IF THE COMMISSION FINDS THAT THE**
7 **BATCH PROCESS WOULD ELIMINATE ALL IMPAIRMENT, THERE**
8 **WOULD BE NO IMPAIRMENT LEFT TO MITIGATE, THEREFORE,**
9 **ROLLING ACCESS TO UNBUNDLED SWITCHING IS NOT**
10 **REQUIRED.¹ DO YOU AGREE?**

11 A. No. The FCC set forth a detailed analysis which states must perform on a more
12 granular basis, to identify where competing carriers may not be impaired without
13 access to unbundled switching. First, a state must determine if the self-
14 provisioning trigger is met.² Second, it must determine if the wholesale trigger is
15 met. Third, if neither trigger is met, the Commission must determine "whether a
16 market *allows* self-provisioning of switching, notwithstanding the absence of
17 three actual independent self-provisioning carriers. In conducting this inquiry,
18 states must consider evidence of actual competitive deployment of local circuit
19 switches, operational barriers to competitive entry, and economic carriers to
20 competitive entry."³

¹ William R. Easton Response Testimony at 9.

² *TRO* ¶ 462.

³ *Id.*, ¶ 463 (emphasis in original).

1 If the states cannot make a finding of no impairment based on the potential
2 deployment analysis, the states were directed “to consider whether, in a given
3 market, requesting carriers’ impairment without access to local circuit switching
4 would be cured by a more limited unbundling rule – specifically, “rolling access”
5 to unbundled local circuit switching for a period of 90 days or more.”⁴ The FCC
6 stated that rolling access must “cure all relevant sources of impairment” before a
7 Commission could make a finding of no impairment based on rolling access
8 alone.⁵

9 “Where such “rolling” access would cure all relevant sources of
10 impairment – for example, by allowing competitive LECs to
11 aggregate customers in preparation for a batch cut over and avoid
12 certain non-recurring costs associated with end users who might
13 discontinue service during the first few months after becoming
14 customers of the competitive LEC – we direct states to implement
15 such rolling access to unbundled local circuit switching instead of
16 a broader unbundling rule.”⁶

17 The FCC clearly recognized that rolling access, or rolling UNE-P, will be
18 necessary for the Commission to mitigate some of the operational impairment
19 created by Qwest’s batch process.⁷

20 Mr. Easton claims that if the Commission finds that the batch process eliminates
21 all impairment, “there would not be any impairment left to mitigate and,
22 therefore, rolling access cannot be ordered by the state commission.”⁸ However,
23 this is in direct conflict with the FCC’s statements. The FCC said that only when

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ No batch process, even with rolling access, will ever remove all the operational barriers the CLECs face.

⁸ Easton Response Testimony at 9.

1 rolling access would cure all relevant sources of impairment could a finding on
2 non-impairment be made. One source of impairment the FCC recognized is the
3 inability of CLECs to aggregate customers in preparation for a batch. Stated
4 differently, the Commission cannot reach the initial finding of no impairment
5 based on a batch process unless the batch process provides rolling access to
6 aggregate customers.

7 **Q. CAN THE COMMISSION MAKE A FINDING OF NO IMPAIRMENT IF**
8 **QWEST'S PROPOSED BATCH PROCESS IS ADOPTED ALONG WITH**
9 **ROLLING ACCESS?**

10 No. The addition of rolling UNE-P will mitigate to some extent the problems
11 create by a 7-day standard interval and the 25 line minimum for a batch; however,
12 rolling access does not remove the *fundamental* problems with hot cuts and the
13 batch process.

14 The batch process is too manual of a process, and the barriers identified by the
15 FCC⁹ will not be removed simply by “adopting” a batch process without evidence
16 that it will actually remove the operational and economic barriers CLECs face in
17 attempting to serve the mass market using non-ILEC switching. Although the
18 Commission must adopt a batch process within nine months, even the FCC
19 recognized that any batch process may not remove the impairments the CLECs
20 face¹⁰ and may create *additional* barriers to mass market entry.

⁹ TRO, ¶ 422.

¹⁰ TRO, ¶¶ 502 & 512.

1 Before the Commission can make a finding of no impairment, it must find that
2 either one of the triggers has been met or there are no operational or economic
3 barriers to self-deployment.¹¹ The Commission cannot determine if all
4 operational and economic barriers have been removed until the batch process is
5 implemented and actual experience demonstrates that the process is seamless, low
6 cost and migrates loops in a timely manner.¹² Before that could happen, the
7 process must be tested under real-world conditions and be subject to performance
8 measurements and standards that show the hot cut process will allow customers to
9 be transferred as easily and quickly as with UNE-P. Moreover, the effects of the
10 batch cut process on CLECs' economic impairment cannot be known until the
11 price for such cutovers is established and factored into the overall economic
12 impairment analysis.¹³ Without rolling UNE-P, the CLECs will unquestionably
13 remain operationally impaired because of the inherent flaws in the proposal as it
14 relates to acquisition of new customers. And in all events, even assuming Qwest
15 could develop and implement a seamless, low cost and timely process,¹⁴ access to
16 rolling UNE-P will be absolutely necessary if the batch hot cut process is to have
17 any ongoing utility for the CLECs.

¹¹ *TRO*, ¶ 463.

¹² *TRO*, ¶¶ 424 & 489

¹³ Qwest's proposed rate for the batch process is only \$2.81 cheaper than an additional basic hot cut. AT&T has proposed a number of adjustments that would increase any savings from using the batch process. *See* Responsive Testimony of Arleen Starr.

¹⁴ This is a very optimistic assumption considering all of the flaws with Qwest's current batch hot cut proposal described in my Hot Cut and Batch Migration Process Rebuttal testimony filed on February 17, 2004.

1 **Q. MR. EASTON STATES THAT THE BATCH HOT CUT CONVERSION**
2 **PROCESS WILL BE AVAILABLE TO CLECS FOR THE CONVERSION**
3 **OF QWEST RETAIL TO UNE-L AND FOR CLEC-TO-CLEC UNE-L**
4 **CONVERSIONS.¹⁵ DO YOU AGREE WITH HIM?**

5 A. In theory Mr. Easton is correct. However, the batch process being proposed by
6 Qwest is workable only for migrating existing CLEC UNE-P lines. It is not
7 practical for use in acquiring Qwest retail customers or to move a customer from
8 one UNE-L CLEC to another. Both types of conversions are crucial if CLECs are
9 forced to operate in an environment without UNE-P and must be adequately
10 addressed by a batch processes.

11 **Q. PLEASE EXPLAIN WHY THE QWEST BATCH HOT CUT PROCESS**
12 **CANNOT BE USED FOR CONVERSIONS OTHER THAN FROM**
13 **EXISTING UNE-P?**

14 A. The best way to describe the problem is by using the same example I provided in
15 my batch hot cut rebuttal testimony. In this example, assume a CLEC service
16 representative is on the phone with a prospective customer who wants to switch
17 her service over to that CLEC. During this contact, the representative must be in
18 a position to tell the customer exactly when the migration to the new service
19 provider will occur. Today, with UNE-P, the CLEC's representative can
20 generally inform the customer that her service will be migrated over to the CLEC
21 by the next day. Using the current UNE-L hot cut process the representative can

¹⁵ Easton Response Testimony at 10.

1 give the customer a service date that is 5 business days from the customer contact.
2 However, because the CLEC requires a minimum of 25 lines **per central office** to
3 qualify for the proposed batch hot cut process, all the CLEC's representative will
4 be able to tell the customer is that she will be put in a queue and that when a
5 sufficient quantity of other customers in her central office sign-up with the CLEC,
6 the CLEC will be able to migrate the customer's service. Since there is no way of
7 predicting when the CLEC will be able to reach the 25 line central office
8 minimum, when asked by the customer how long it will take to install the
9 competitive service, the representative will be able to tell the customer only that it
10 *could be* as "quick" as seven business days¹⁶ from the date of the contact but that
11 the actual date can't be predicted, since it depends on the level of activity in that
12 customer's central office for the CLEC. Obviously, the CLEC will not win many
13 new customers under such an absurd scenario. This is why, rolling UNE-P must
14 be available to allow the CLEC to quickly obtain the customer's account and to
15 allow time for the CLEC to build up a sufficient quantity of customer lines in any
16 given central office to qualify for the batch process.

¹⁶ Seven business days is Qwest's proposed interval for a batch hot cut order. This is far too long to switch a new customer that has decided to switch to a new carrier.

1 **Q. MR. EASTON STATES THAT IN THOSE MARKETS WHERE**
2 **IMPAIRMENT IS FOUND TO EXIST QWEST PROPOSES TO MAKE**
3 **ROLLING UNE-P AVAILABLE FOR A 90-DAY TIME PERIOD.¹⁷ IS**
4 **THIS 90-DAY PERIOD SUFFICIENT?**

5 A. No, not from the batch process perspective. In some cases access to rolling UNE-
6 P for 90 days may be sufficient to address the customer acquisition problems, and
7 in other cases it may not.

8 **Q. PLEASE EXPLAIN WHY THIS IS SO.**

9 A. Once again, the best way to illustrate this is by using the same real-world example
10 I provided in my Batch Hot Cut Rebuttal testimony. A large CLEC (CLEC A)
11 competing in a large central office is likely to attract enough new customers so
12 that it can qualify for the BHC process to move those customers off of rolling
13 UNE-P and onto its own network within the 90-day window. However, a smaller
14 CLEC (CLEC B) competing in the same central office may require an extended
15 rolling UNE-P period before it is able to attract a sufficient quantity of customers
16 to qualify for the BHC process. Secondly, even “large” CLEC A may need an
17 extended rolling UNE-P period to serve customers in a small central office, and it
18 goes without saying that CLEC B will take an even longer time to attract the BHC
19 critical mass in these smaller offices. Finally, assuming Qwest does not lift its
20 restriction on integrated digital loop carrier (“IDLC”) lines from being included in
21 a batch, both CLEC A and CLEC B will need a longer amount of time in those

¹⁷ Easton Response Testimony at 5.

1 central offices where there is a high penetration of IDLC to build up the base of
2 customers to qualify for the 25 line limit. The bottom-line is, unless Qwest's
3 rolling UNE-P offer is flexible enough to account for the differences that exist
4 between competitors and the differences within Qwest's own network, its one size
5 fits all policy will be a problem. Without the ability to use the batch process for
6 new customers, the CLECs will be forced to use the existing hot cut procedures
7 that the FCC found to be the basis of impairment in the first place.

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

9 A. Yes, it does.