BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In The Matter of the Petition of QWEST CORPORATION for Competitive Classification of Business service in Specified Wire Centers	))))))))))	DOCKET NO. UT-000883 SEVENTH SUPPLEMENTAL ORDER DENYING PETITION AND ACCEPTING STAFF'S PROPOSAL

I. SYNOPSIS

1 This Order grants Qwest competitive classification in four of the nine exchanges (23 of the 31 wire centers) for which competitive classification is requested and further limits the services classified as competitive to those business customers served on DS-1 or larger capacity circuits. These exchanges are located in the Seattle, Bellevue, Spokane and Vancouver areas. The petition is otherwise denied.

II. MEMORANDUM

2 **Parties:** Lisa Anderl and Douglas N. Owens, attorneys, Seattle, Washington, represent Qwest. Sally G. Johnston, Assistant Attorney General, Olympia, Washington, represents Commission Staff. Simon J. ffitch, and Robert Cromwell, Assistant Attorneys General, Seattle, Washington, represent Public Counsel. Lisa F. Rackner, attorney, Ater Wynne, LLP, Portland, Oregon represents the Telecommunications Ratepayers Association for Cost-based and Equitable Rates (TRACER). Gregory J. Kopta, attorney, Davis, Wright, Tremaine, LLP, Seattle, Washington, represents X O Washington, Inc., f/k/a Nextlink Washington, Inc., Electric Lightwave, Inc., McLeodUSA Telecommunications Services, Inc., Focal Communications Corporation, Global Crossing Telemanagement, and Global Crossing Local Services, Inc. (Joint CLECs). Brooks Harlow, attorney, MillerNash LLP, Seattle, Washington, represents MetroNet Services Corporation (MetroNet), and Advanced Telcom Group (ATG). Steven Weigler, attorney, Denver, Colorado, represents AT&T Communications of the Pacific Northwest, Inc. (AT&T), TCG Seattle, and TCG Oregon. Dennis Ahlers, attorney, Minneapolis, Minnesota, represents Eschelon Telecom of Washington.

B. Background and Procedural History

3 On June 7, 2000, Qwest filed with the Commission a request for competitive classification of business services in thirty-one specified wire centers in Washington. The petition covers the geographical areas serviced by the following wire centers: Bellevue Glencourt, Bellevue Sherwood, Issaquah, Kent O'Brien, Auburn, Renton, Seattle Atwater. Seattle Campus, Seattle Cherry, Seattle Duwamish, Seattle East, Seattle Elliott, Seattle Emerson, Seattle Lakeview, Seattle Main, Seattle Sunset, Seattle West, Spokane Chestnut, Spokane Fairfax, Spokane Hudson, Spokane Keystone, Spokane Moran, Spokane Riverside, Spokane Walnut, Spokane Whitworth, Tacoma Fawcett, Tacoma Greenfield, Tacoma Juniper, Tacoma Waverley, Vancouver Orchards, and Vancouver Oxford. The services included in the petition include Basic Business Local Exchange Service, Centrex Services, Private Branch Exchange Trunks, and Basic Business Features.

4 On June 22, 2000, pursuant to RCW 80.36.330 (4), the Commission issued a letter requiring that each local exchange company providing services in the areas covered by the petition supply information on its services in these markets. The petition came before the Commission at its regularly scheduled open public meeting on July 12, 2000. The Commission, by Order entered July 14, 2000, set the Petition for hearing.

5 On July 21, 2000, and continuing on July 28, 2000, the Commission held a prehearing conference before Administrative Law Judge Karen M. Caillé. Commission Staff requested that the Commission enter an Order mandating that various competitive local exchange companies (CLECs) comply with the Commission letter dated June 22, 2000. The Commission entered an Order Requiring Disclosure of Information on July 27, 2000. Several parties requested that the Commission enter a protective order patterned off the amendment to the protective order in Docket No. UT-990022, in order to protect market-sensitive data that individual CLECs might provide to Commission Staff to aggregate. On July 31, 2000, the Commission entered the Second Supplemental Order – Protective Order.

6 On October 30, 2000, through November 2, 2000, the Commission held an evidentiary hearing before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner William R. Gillis and Administrative Law Judge Karen Caillé. The Commission received into evidence the testimony and exhibits previously filed in this docket by the parties and previously marked for identification. The Commission heard testimony from witnesses on behalf of Qwest, Commission Staff, Public Counsel/TRACER, MetroNet/ATG, and Eschelon.

7 Public hearings were conducted on October 12, 2000, in Vancouver, and November 1, 2000, in Olympia, before the Commissioners and the presiding administrative law judge, to receive into the record comments from Qwest's business customers and

other members of the public who expressed an interest in the outcome of this proceeding.

C. Applicable Statute and Rules

8 The applicable statute and rules, RCW 80.36.330, WAC 480-120-022, and WAC 480-120-023, are set forth as Attachment A to this Order.

9 RCW 80.36.330 authorizes the Commission to "classify a telecommunications service provided by a telecommunications company as a competitive telecommunications service" if it finds that the service is "subject to effective competition." The statute defines "effective competition" to mean "that customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base." RCW 80.36.330(1) enumerates four factors that the Commission "shall consider" in determining whether it will exercise its discretion to classify a telecommunications service as "competitive":

(a) The number and size of alternative providers of services;
(b) The extent to which services are available from alternative providers in the relevant market;
(c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates terms, and conditions; and
(d) Other indicators of market power, which may include market share, growth in market share, ease of entry and the affiliation of providers of services.

10 *RCW 80. 36. 330 (1)*. These four factors are not exclusive, and there may be other factors that bear on the Commission's determination in individual cases. Moreover, it is within the Commission's authority to define the relevant market for analysis for the factors specified above. *In re Electric Lightwave, 123 Wn 2d 530, 547 (1994)*.[1] It is also appropriate for the Commission to rely on, in addition to testimony in the case, its own "institutional knowledge" of factors pertinent to the statutory standards. *Id. at 549.*

11 The burden lies with Qwest to demonstrate that it faces effective competition in the relevant market. *Id. at 547, WAC 480-120-022 (7).* Specifically, Qwest must convince the Commission that the record, considered as a whole, supports a determination that the services for which it seeks competitive classification are subject to "effective competition," that is, that "customers of the service have

[1] The Washington Supreme Court examined the definition of "effective competition" in RCW 80.36.320 (1), which applies to competitive classification of *companies*. The definition of "effective competition" is identical in RCW 80.36.320 and RCW 80.36.330, as are the four factors the Commission must consider in classifying companies or services as competitive.

reasonably available alternatives and that the service is not provided to a significant captive customer base." Then, according to RCW 80.36.330(1), "[t]he Commission *may* classify a telecommunications service . . . as a competitive telecommunications service . . ."

D. Issue Before the Commission

12 The fundamental issue the Commission must decide is whether Qwest has demonstrated that the services Qwest has selected for competitive classification are subject to effective competition. Qwest must show that customers of the service in the thirty-one wire centers have "reasonably available alternatives." Qwest must also demonstrate that the service is not provided to a significant captive customer base.

E. Positions of the Parties

1. Qwest

13 Qwest submits that based on the evidence, the Commission should grant Qwest's petition for competitive classification of the business services listed in Attachment A to the petition, for the thirty-one wire centers cited on page one of the petition. *Ex. 12C, Attachment A, Id. at 1.* In the alternative, if the Commission determines not to grant the relief requested in the petition as filed, Qwest requests that the Commission grant the petition for the thirty-one wire centers but subject to the conditions in Dr. Blackmon's testimony, with the conditions terminating when Qwest files for WUTC-approved Section 271[2] relief from the FCC.

14 *Reasonably available alternatives.* Qwest contends that is has demonstrated that customers have reasonably available alternatives. Qwest asserts that Exhibit 12C, Attachment D shows that there are generally available alternatives to Qwest's services. Attachment D includes price lists filed with the Commission by several competitors which, Qwest claims, constitute public offerings to provide the services listed at the prices stated. Qwest asserts that it has shown through Exhibit 12C, Attachments B and C, that the alternatives offered by competitors have reasonably similar features, quality, and reliability to Qwest's services because they are provided on the same types of switches using the same software releases. *Ex. 76T, p. 17.*

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[2] 47 U.S.C.§271(c)(2)(B) sets forth a 14-point checklist, the satisfaction of which will enable the regional Bell Operating Companies to begin offering interLATA long-distance service to their customers.

15 Qwest argues that in the Eighth Supplemental Order in Docket No.UT-990022,[3] the Commission held that because competitors had the *ability* to construct their own facilities or to lease unbundled network elements at cost-based rates or resell existing facilities pursuant to the Telecom Act of 1996, U S WEST lacked the ability to sustain prices substantially above cost in the two areas without losing market share. The Commission considered, in deciding whether Qwest could exercise market power, the *ability* of competitors to respond by building facilities, leasing UNEs or reselling.

16 *Significant captive customer base.* Qwest submits that it has shown that it does not have a significant captive customer base for the services at issue in the thirty-one wire centers. Qwest points to Exhibit 12C and its attachments, and to Exhibits 2C, 3C, 4C, 5C, 6, 8C, and 10C to demonstrate that multiple providers operate in these wire centers, utilizing a combination of owned and leased facilities. Exhibit 12C, Attachment D, shows that multiple very large, well funded competitors such as AT&T, WorldCom, XO, and ELI hold themselves out to provide the same services that Qwest seeks to have classified as competitive, and Staff has shown that they in fact operate in the wire centers at issue. *Ex. 904HC.* Exhibit 2C shows that in each of the wire centers at issue, there are no fewer than four competitors, and in most there are more than ten competitors to Qwest, excluding carriers that are pure Data CLECs (DLECs).[4]

17 Qwest contends that a comparison of Exhibit 2C with Exhibit 10C shows that the number of unbundled loops in use in the thirty-one wire centers increased in two months from over eleven thousand to almost fourteen thousand. Exhibit 8C shows that there has been a significant growth in the counts of ported telephone numbers in the thirty-one wire centers between June 1999 and June 2000. (A ported telephone number is one that has followed a customer as the customer transfers from one provider to another). Exhibit 6 shows that competitors such as XO and ELI earn almost half of their revenues through the provision of switched local services found in these carriers' price lists in Exhibit 12C, Attachment D. Exhibit 902 shows that Qwest has lost to competitors a number of Billed Telephone Numbers (BTNs) which corresponds roughly to the same number of lost customers, in both the large and small business categories in all of the wire centers at issue. Exhibit 8C shows 64% growth in resale competition in the thirty-one wire centers during the one-year period from June 1999 to June 2000.

18 *Ease of entry.* Qwest contends that entry into the local exchange markets at issue here is not difficult. Qwest references the accelerating use of unbundled loops, ported numbers, collocation, investment in switching capacity, and resale. *Ex. 2C, 3C and*

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[3] *In the Matter of the Petition of U S WEST for Competitive Classification of its High Capacity Circuits in Selected Geographical Locations (High Capacity Order),* Docket No. UT-990022, Eighth Supplemental Order, pp.13-14.
[4] Companies that deliver high-speed access to the Internet, and not voice.

8C. The structure of the market is such that entry by competitors is easy and has been expanding. Supporting this contention is evidence that the number of unbundled loops in service has increased by 300% in one year, ported numbers have increased by 700% and resale has expanded by 50%. Competitors can either provide services through their own facilities or by purchasing discounted or cost-based Qwest services.

19 Qwest maintains that the Commission found in the *High Capacity Order* that Qwest had met its burden based on just such evidence as presented here.

20 *Cost standard.* Qwest submits that there is no need for the Commission to make a determination at this juncture on the appropriate cost standard to be used in determining whether Qwest's prices for competitive services cover cost. Qwest has on file with the Commission cost studies for each of the services listed in Attachment A to the Petition. *Ex.12C, p. 19; Ex. 78T, p. 7.* If the Commission does determine that it needs to decide the appropriate cost standard for a price floor, Qwest submits that the evidence of record supports a finding the standard should be Total Service Long Run Incremental Cost (TSLRIC).

21 *View of Staff's recommendations.* According to Qwest, Staff's recommendation to limit the products classified as competitive to those that are provided over DS-1 or larger capacity circuits unless Staff's conditions are imposed was based on Staff's conclusion that Qwest has no significant captive customer base of large business customers. *Ex. 201TC, p. 10.* Qwest contends that it has demonstrated that competitors are advertising to small business customers, and that Qwest has lost significant numbers and percentages of small business customers to competitors in the wire centers at issue *Exs. 79-83 and 902C.* Staff's proposed restriction of relief to the Seattle, Bellevue, Spokane, and Vancouver area wire centers is based exclusively on the HHI market concentration data. *Ex. 201TC, p. 18.* Qwest argues that it has shown that these data are inappropriate for use in this case. Rather, the appropriate measure, capacity, shows that Qwest cannot exercise market power.

22 Qwest further argues that the "broader" Staff recommendation also understates the areas for which Qwest should receive classification as subject to effective competition. However, should the Commission determine to limit relief to the 23 wire centers at issue located in the Bellevue, Seattle, Spokane, and Vancouver areas, Qwest accepts the imposition of the conditions proposed by the Staff.

2. Commission Staff

23 Commission Staff submits that Qwest has partially satisfied its burden to establish effective competition. Staff recommends that competitive classification be granted to Qwest in the wire centers of four of the nine exchanges (23 of the 31 wire centers), Seattle, Bellevue, Spokane, and Vancouver. Staff further recommends that the requested pricing flexibility be limited to those customers served on DS-1 or larger circuits in each of the four exchanges. In the alternative, Staff recommends that if the Commission decides to classify as competitive *all* of the business services set forth in Attachment A to the petition, in each of the four exchanges, the Commission should then impose conditions to protect small business customers as outlined below. Staff suggests that the alternative approach better reflects the specific characteristics of the small and large business markets while addressing the variations in degree of competition within this broader product market. *Tr. 699, ll.17-20.* Staff recommends denial of the petition as to the remaining exchanges and wire centers. *Ex. 201TC, p. 10.* Staff observes that Qwest has other tools available to compete with other providers of local exchange service. Qwest can use banded rate tariffs, offer business services through a competitive affiliate, offer promotions, offer winback incentives, and lower prices in response to competition. *Ex. 210TC, pp. 5-6.*

24 *Market analysis.* Staff analyzed the market at the exchange level rather than the wire center level because competitors define the market more broadly than by individual wire center. Exchanges are parts of Qwest's network that are made up of one or more wire centers. Staff's decision to analyze the market at the exchange level was driven not only by judgments about how services are actually bought and sold in the market, but also by how competitors define the market for their own internal purposes. The competitors identified by Qwest in its petition maintain and analyze information about output only on an exchange level.

25 Once Staff decided to define the market at an exchange level, market concentration and market structure analyses were performed on the aggregated wire centers. Staff used the Herfindahl Hirschman Index (HHI) to measure market concentration. Staff explained that it performed the HHI analysis because it provided an easy way to gauge the market concentration from available evidence of the relative output of firms in a given market. Staff sought data from each of the competitors identified in Qwest's petition pursuant to the Commission's authority under RCW 80.36.330(5). *Ex. 191T, p. 3; Tr. 677; see Ex. 12C, Attachment F.*

26 The HHI may range from zero in a perfectly competitive market to 10,000 in a perfect monopoly market. Staff chose a threshold of 5,000 for this particular market structure and acknowledged that different levels of market concentration would be acceptable with different market structures. An HHI of 5,000 reflects the index that would be produced when there are two firms of equal size in the market. *Ex. 191T, p. 7, Tr. 706.* Staff used the number of access lines in performing its HHI analysis. This was due in part to the difficulty of obtaining other meaningful measurements for use in the market concentration calculation, namely revenues. Staff's request for data resulted in Exhibit 193. That exhibit indicates that in four of the nine exchanges in which Qwest is seeking competitive classification, the market concentration figure falls below 5,000.[5] Stated in another way, Staff chose to limit its recommendation to approve pricing flexibility only for those exchanges in which "in the range of 30 to 40% of lines had either moved to competitors or new business had sprung up and just gone straight to the competitors."[6] *Tr. 697, ll. 17-22.* Five of the nine exchanges

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[5] They are as follows: Bellevue (4561), Seattle (4458), Spokane (4167), and Vancouver (4534).

[6] The data supplied by the CLECs in response to the Commission's request for completion of the form (Ex. 192) did not include the number of resold lines. Tr. 676. As Dr. Blackmon explained:

exceeded the 5,000 threshold of the HHI. After review of the market structure in these exchanges, it was determined that the five exchanges should not be considered for competitive classification.

27 Staff prefers market structure data as the most compelling evidence for analyzing effective competition. *Tr. 696.* The question revolves around whether it is practical for competitors to enter the market and offer service on an equal footing with Qwest. *Id*. Staff then combines its market structure analysis with various reality checks, including market concentration data. *Tr. 696-697.* Staff gave more weight to market share in its analysis in this case because the structural analysis did not give Staff as much reason for confidence as in prior cases. *Tr. 697.* In Staff's view, the weightiest indicators of market share or increasing market share were not the loss of customer numbers, but rather, a combination of loss of lines and the loss of customers. *Tr. 696.*

28 Ease of entry for competitors can, in part, be seen through the amount of loss incurred by the incumbent. Loss of lines due to resale reflects the number of business lines formerly belonging to Qwest that are now used by competitors. The purchase of lines from Qwest indicates that competitors are vying to serve customers in specific Qwest exchanges and that competitors are implementing market entry. ("[I]t's a legitimate form of competition to use the facilities of the incumbent to provide the retail service"). *Tr. 710 – 711, ll. 13-15, 21-25, 1-4 (Blackmon).*

29 Exhibit 12C, Attachments G and H help provide a picture of the magnitude of line loss Qwest has experienced in each of its thirty-one wire centers. Staff aggregated the line loss information as of February 1, 2000, and June 30, 2000, into the four exchange areas and produced two charts on pages 30 and 31 of its brief. Staff performed a similar exercise using billed telephone numbers to approximate the number of customers Qwest has lost between January 1, 1999 and December 31, 1999, and produced a chart on page 32 of its brief.

30 According to Staff, across the four exchange areas Qwest loses an average of thirty-four customers a month and resells five percent of its access lines. Along with the evidence found in Exhibit 193, which indicates market share line losses to competitors of 30 – 40 percent due to new customers and former Qwest customers, many end-users elect to receive service from competitors. Staff maintains that its analysis of both the market share/concentration and market structure data support a finding of effective competition in the four exchanges.

In terms of, for instance, market concentration or looking at whether there are services that are readily available that are good substitutes for Qwest service, resold service ought not count, in my opinion, because it's priced to the reseller on a percentage basis. Any time it [Qwest] raises its retail price, the price that the resellers pay will go up exactly the same percentage amount." Tr. 709-710.

31 *Ease of entry*. Staff asserts that competitors now have access to many alternatives for entering the market. *Ex. 201TC, p. 9.* "[Competitors] have the opportunity to resell existing Qwest services, to buy UNE loops, to build their own facilities and deploy those facilities, to use facilities of other providers as well as new technology, such as fixed wireless service. In Docket UT-990022, the Commission found that there was no barrier to existing businesses to reach new locations." *Tr. 145, ll.3-10, (Jensen).*

32 Staff points out that pending changes in the structure of the market likely will make it easier for firms to enter the market for small business customers. One such change is the recent direction from the FCC that Qwest and other incumbent local exchange companies must offer the unbundled network element platform (UNE-P). Another is Qwest's effort to obtain approval for long-distance services by demonstrating its compliance with the competitive checklist set forth in 47 U.S.C. Section 271. *See Ex. 201TC, pp. 13-14*. Still another is Qwest's commitment to lower the prohibitive nonrecurring charges that competitive local exchange carriers (CLECs) must pay for unbundled network elements (UNEs) when they obtain a new customer. *Tr. 700.*

33 Qwest defined the relevant product market as business services. Staff recognizes that this includes several distinct services, but most are "add-ons" to three basic types of service – PBX, Centrex, and basic business exchange services. Staff notes that while one might in theory, separately examine PBX, Centrex, and basic business exchange services, this separation is neither possible nor desirable here. The competitors do not operate as if these were separate markets and thus were unable to report volume and revenue amounts separately. Moreover, each of the three types of services can be a substitute for the other two, at least in some circumstances.

34 *Staff's broader alternative.* The more difficult question, in Staff's view, is whether, within any geographic market, there exist separate product markets for business exchange service provided to different types of customers. Is it all one business exchange market, or are there separate markets for service to large customers and small customers? Staff recommends that the Commission define the relevant product market as being all business services, but impose the following conditions to ensure that small business customers are no worse off than they would have been had their service remained under tariff. These conditions are:

(1) Qwest may not revise the terms under which it offers service within the wire centers within the four exchanges;

(2) Qwest must continue to offer all customers the customer service guarantees offered under its consumer bill of rights tariff; and

(3) Qwest may not increase prices or reduce availability, relative to the levels currently in its tariff, of any business local exchange service within these wire centers. Staff's proposed conditions would expire,

and Qwest would have unconditioned pricing flexibility of its business local exchange service in these wire centers, upon approval by the FCC of Qwest's application to provide long-distance service under Section 271.

35 *Staff's narrower alternative.* In the alternative, Staff suggests that the Commission define the relevant product market to be only those services offered to large business customers served by DS-1 or larger circuits. Staff's recommendation that the pricing flexibility requested by Qwest be limited to those customers served by DS-1 or larger circuits in each of the four exchanges is based on the telecommunications services that competitors are actually offering in each of the four exchanges. The evidence in the record demonstrates that competitors make their service offerings from the DS-1 or larger circuits. This, too, is consistent with what competitors are ordering from Qwest. They are ordering DS-1 or T-1 circuits from Qwest, in part, because those circuits provide a reliable method of gaining access to the network, whereas individual unbundled loops from Qwest do not. *Tr. 723.*

36 Staff further supports the DS-1 or larger circuit benchmark with the highly confidential business plans submitted to Staff in response to Staff's Data Request No. 3, in which Staff asked the CLECs to "provide all documents that describe, report, or analyze each of your client's efforts to acquire and retain customers for business exchange service, including all documents relating to each company's objectives for the geographic location, size, or type of customers for business exchange service." *Exs. 296HC – 305HC.* Finally, in addition to investigating the competitors' business plans, Staff examined their actual business practices. Staff's findings further bolster its recommendation regarding both the DS-1 benchmark and the need to protect the small business customer. *Ex. 201TC, pp. 20-21.*

37 *Cost Standard.* Staff disagrees with the MetroNet/ATG contention that the Commission must determine the proper cost standard before approving any aspect of Qwest's petition, particularly since Qwest is not proposing any rate changes in this proceeding. In the past, the Commission has relied on the cost studies on file with the Commission that support current rates.

3. Public Counsel/TRACER

38 Public Counsel/TRACER jointly recommend that the Commission deny Qwest's petition in its entirety because Qwest has not met its burden of proof to demonstrate effective competition exists in the thirty-one wire centers. Should the Commission decide to grant Qwest's petition in whole or part, Public Counsel/TRACER request that the Commission not waive the application of RCW 80.36.170 and 80.36.180.

39 *Reasonably available alternatives.* Public Counsel/TRACER argue that Qwest has not demonstrated that reasonably available alternatives to its business services exist

today in all thirty-one wire centers. They contend that Qwest has relied solely upon the "presence" of competitors "capable" of serving business customers in each of its wire centers to fulfill this statutory requirement, and has made no effort at qualitative or quantitative analysis of this statutory element.

40 Qualitatively, Public Counsel/TRACER maintain that Qwest has made little effort to study and determine if reasonably available alternatives to each of the business services it listed in Attachment A to its petition are being offered by competitors in the thirty-one wire centers. *Ex. 12C, Attachment A.* The only vaguely qualitative analysis Qwest conducted was a checklist of features CLECs offer, shown in table format. *Ex. 12C, Attachment B.* Public Counsel/TRACER argue that this analysis is patently inadequate because the table does no more than compare price-listed features of competitors to Qwest. The table does not identify which of the listed services are subject to the petition. Qwest also failed to ascertain whether the features and services it identifies as CLEC's existing or potential capabilities are *in fact* offered in the thirty-one wire centers. According to Public Counsel/TRACER, what a CLEC "could supply" is not a sufficient basis for finding that an alternative to Qwest business services is in fact available today.

41 Quantitatively, Public Counsel/TRACER assert that Qwest has failed to study and determine whether each of the reasonably available alternatives it should have identified for each of its business services listed in Attachment A to the petition are *in fact* offered by competitors in each of the thirty-one wire centers. Public Counsel/TRACER note that Ms. Jensen admitted that Qwest has a number of data systems that possess relevant data but that the company made no effort to coordinate that information and provide it in support of their petition. *Tr. 174, l. 12 – 175, l. 9.* Ms. Jensen also testified that a complex analysis was made in support of the high capacity petition but was not performed here, presumably due to difficulty or expense. *Tr. 177, l.24 - 179, l. 3; see also Tr. 353, ll. 3-16.*

42 *Significant captive customer base.* Public Counsel/TRACER argue that Qwest has not demonstrated that it does not possess a significant captive customer base. They point out that Qwest has performed no analysis or study to determine the size and significance of its existing captive customer base. Given Qwest's historical monopoly status where it possessed 100% of the market, a presumption exists that it possesses a significant captive customer base. It is Qwest's burden under the statute to demonstrate that as a matter of *fact* it does not possess a significant captive customer base. Further, Qwest's burden as the incumbent monopolist in this proceeding is to rebut the presumption that it still possesses its historical, significant captive customer base.

43 According to Public Counsel/TRACER, the hard data Quest has provided is limited to the wire-center-specific totals of ported numbers, resold lines, and provisioned loops. While this data may reflect some competitive presence in the relevant wire centers, it says nothing about the nature of the services being provisioned or whether they are in fact reasonable equivalents for the Qwest services listed on Attachment A. *Exs. 2C, 3C, 4C, 5C, 8C, and 10C; Ex. 12C, Attachments G, H, and I.* This data provides no assistance to the Commission regarding the size or significance of Qwest's existing captive customer base. Other than the data on ported numbers, resold lines, and provisioned loops, Qwest has provided only anecdotal and circumstantial evidence regarding the competitive presence in each of the thirty-one wire centers.

44 *Ease of entry.* Public Counsel/TRACER assert that numerous factors indicate a market structure that is difficult for competitors to enter and that leaves Qwest with significant market power. The real issue is not the ease of entry, but barriers to effective entry. The real issue comes down to whether competitors incur larger costs of entry than those faced by Qwest. Public Counsel argues that poor wholesale service by Qwest represents significant cost to CLECs that Qwest does not face. In essence, for the market structure to be considered to provide parity for CLECs, Qwest would have to provide exactly the same service quality to competitors as it provides to itself. Evidence in the record suggests a lack of parity, as reflected in held orders and trouble tickets for CLEC orders. Finally, Qwest does have market power. The market share analysis in this case produces a pattern where a group of CLECs have small shares of the market while Qwest retains the lion's share of the market. Attachment G to Qwest's petition shows a small number of resellers share a tiny fraction of the total market, and the same is true for ported numbers as well as unbundled loops.

45 *Cost standard.* In the event that the Commission grants pricing flexibility in this docket, Public Counsel/TRACER concur with MetroNet witness Wood's testimony that the existing pricing floor framework creates problems and Public Counsel/TRACER support Mr. Wood's recommendations.

46 *View of Staff's recommendations.* Public Counsel/TRACER oppose Staff's recommendation to competitively classify services over DS-1 or larger circuits for the following reasons. Staff's DS-1 "breakpoint" is arbitrary and contrary to proper market definition analysis. Other than Dr. Blackmon's own testimony, there is no evidence in the record to support Staff's selection of DS-1 or larger as a *defacto* definition of large customers. Additionally, DS-1 is inapplicable to the proper market definition analysis this Commission should engage in. DS-1 service is a measure of capacity of a circuit a customer or group of customers require for the functional services they are seeking. Qwest has not petitioned for competitive classification of services based on the capacity of the "pipe." This case is about the competitive classification of a group of functional services and not the degree of capacity required for the services. The Commission should also note that small and large business customers may both be served by DS-1 or larger capacity circuits.

47 Public Counsel/TRACER contend that Staff's selection of the four exchanges is not supported by the evidence. Staff bases its geographic recommendation on the existing market structure and the market share analysis performed on an exchange-by-exchange basis. Staff has not engaged in the proper geographic market definition analysis, and its selection of exchanges as the proper geographic market definition should be rejected on that basis.

48 Public Counsel/TRACER object as well to Staff's broader recommendation to competitively classify all business services in the four exchanges and only with certain conditions. According to Public Counsel/Tracer, the Commission must first find effective competition before it may legally classify a service as competitive, and *before* it may impose conditions on that classification. Public Counsel/Tracer note that Dr. Blackmon conceded during cross-examination that it is difficult to reconcile his recommendation of conditions with the requirements of the statute. *Tr. 739, l. 1-7*. Dr. Blackmon also conceded that there was not yet effective competition for small business customers. *Tr. 692, l. 7-14*. Finally, Dr. Blackmon conceded that his conditions do not eliminate the captive small business customers. *Tr. 692-693.*

4. MetroNet/ATG

49 MetroNet/ATG recommend that Qwest's petition be denied because Qwest has failed to demonstrate that its customers have reasonable alternatives to its services and that it has no significant captive customer base. Moreover, Qwest has failed to establish how it will ensure that it would continue to price above an appropriate cost floor. If the Commission decides to grant a portion of Qwest's petition, then MetroNet/ATG recommend that restrictions be imposed as follows: (1) competitive classification should be granted only for those wire centers within which Qwest faces significant facilities-based competition; (2) all competitive offerings made to a business customer served by a wire center must be made to all customers served by that wire center; (3) Qwest's ability to deaverage its prices must be limited to the ability of a competitor using UNEs to deaverage; and (4) requirements should be applied to ensure that resale remains available as a source of competitive alternatives for consumers and as an entry vehicle for competitors. *Ex. 241TC, pp.38-40.*

50 *Reasonably available alternatives.* MetroNet/ATG argue that Qwest's evidence that CLECS offer available service alternatives is pure conjecture. They contend that the petition lacks any information about whether CLECS really do offer reasonably available alternatives to Qwest's business services that are the subject of this petition. As an indication of Qwest's superficial approach to defining the market and measuring competition, MetroNet/ATG note that Qwest determined what services are available from CLECs by "comparing its list of its services to services or features available from the various switch manufacturers utilized by its competitors. If the

switch manufacturer utilized by the CLEC offered the feature or service, Qwest included the product in its list of competitive services." *Ex. 76T, p. 18, ll. 15-18 ,*

Teitzel. MetroNet/ATG maintain that the technical capability of a switch does not indicate what CLECs actually can or will provide, nor does it indicate the existence of price-constraining competition.

51 According to MetroNet/ATG, UNEs and resale do not offer effective competition because they rely too heavily on Qwest's quality control, features, and prices. Attachment H to the Petition shows that Qwest provides very few UNE loops to competitors. The conclusion that can be drawn from this observation is that most of the competition within the wire centers is being provided with the CLECs own facilities, and to a lesser extent resale. Qwest witness Mr. Teitzel agreed that "there certainly are fewer unbundled loops shown on this report than there would be resale or other forms of competition." *Tr. 464, ll.19-22.* If that is the case, then the bulk of the competition must be occurring only where CLECS have facilities, not throughout the thirty-one wire centers.

52 MetroNet/ATG argue that resale is even less capable than UNEs of providing customers with a "reasonably available" alternative. In addition to having to rely on Qwest's quality control, resellers cannot offer features and functions beyond those already offered by Qwest. Resellers also cannot constrain Qwest's prices. As MetroNet/ATG witness Mr. Wood explained, "[b]ecause a reseller's cost of providing service is tied directly to the retail price of the incumbent, the reseller can exert no price discipline in the market to prevent Qwest from charging excessive prices to customers." *Ex. 241TC, p. 17, ll. 16-18.* Qwest's resellers are also particularly vulnerable to a price squeeze. Mr. Wood illustrated this point using the example of Centrex Plus resale. *Ex. 241TC, p. 19, ll. 17-22.*

53 *Significant captive customer base.* MetroNet/ATG contend that Qwest has presented virtually no evidence regarding Qwest's captive customers. They maintain that Attachments G, H, K, and M to the petition, on which Qwest relies to show that it has no significant captive customer base, do not even make a *prima facie* case for no significant captive customers. All these attachments show is that every wire center has competitive activity. What these exhibits fail to show is whether or not the competitors provide ubiquitous service, to all customer types and sizes, and for all the services listed in the petition. MetroNet/ATG acknowledge that the record in this docket shows significant competition by facilities-based competitors. The shortcoming of Qwest's petition, however, is well illustrated by the system maps at Attachments K and M to the petition. The maps show very limited deployment relative to Qwest's network, which is truly geographically ubiquitous. *Tr.141, ll.19-21.* According to MetroNet/ATG, Staff provided the most probative evidence in the docket on the issue of captive customers. Staff found that smaller business customers really do not have any alternatives. *Ex. 202.*

54 *Ease of entry.* According to MetroNet/ATG, the issue is not barriers to entry but barriers to *effective* entry. Qwest's use of its market power to curtail Centrex resale

illustrates that Qwest itself has raised barriers to entry by resellers. Another barrier to entry is Qwest's access to its competitors' proprietary information and market strategy as well as being able to develop new products that cannot be effectively resold.

55 *Cost Standard.* MetroNet/ATG urge the Commission, if it grants the petition, to require Qwest to price no lower than the sum of the prices of all the UNEs it uses in the service(s). Since Qwest only attempted to show that certain services are competitive, the record contains no basis to find that any of the underlying UNEs are effectively competitive. Thus, all UNEs should have a Qwest-imputed cost, and TSLRIC should not be relied upon for any part of the determination of the appropriate price floor. MetroNet/ATG contend that it would be extremely anticompetitive to allow Qwest to price below UNE rates to TSLRIC. Mr. Teitzel admitted, "UNE rates would always be above TSLRIC." *Tr. 476, ll.4-7*. So, companies using UNEs would pay more than Qwest for the same services and thus could not offer a competitive alternative. MetroNet/ATG note that it would be particularly inappropriate to require a cost floor below UNE rates in this docket when a key component of Qwest's purported "proof" of effective competition is CLECs' ability to use UNEs to compete. Under these circumstances, pricing at TSLRIC would be a *per se* price squeeze of UNE-P competitors.

56 *View of Staff's recommendations.* MetroNet/ATG oppose Staff's recommendation for competitive classification of the four exchanges with services provided via DS-1 or larger circuits. First, even if the Commission looks at the market as being a single market, the fact that smaller customers within that market do not have access to competitive alternatives means that Qwest has a significant captive customer base, i.e., the smaller customers. Viewed in the light of the applicable law, the basis for Dr. Blackmon's recommendation is unclear. The Commission cannot grant competitive classification where there is no effective competition. Second, while Staff's research clearly indicated that small business customers do not have competitive choices, it did not show that large customers *do* have choices throughout the entire geographic and product markets Qwest selected for its petition.

57 MetroNet/ATG suggest that even though Dr. Blackmon believes that Qwest's "captive customer base" is "less substantial" with the conditions in place, *Tr. 692, l. 23 to 693, l. 6,* conditions are not a substitute for effective competition as a matter of law. Additionally the conditions will not protect small business customers. Qwest could still a) engage in a price squeeze of resellers by offering a discount to a customer that is greater than the resale discount, b) offer discounts to customers who currently have competitive alternatives, while denying those discounts to customers

in the same wire center area without existing alternatives, c) discourage competitive entry through geographically limited price reductions, and d) effectively "redline" the geographic area in these exchanges by freezing in place the number and location of customers who have competitive alternatives and those who do not.

5. Joint CLECs

58 **Joint CLECs** urge the Commission to deny the petition because effective competition for business exchange services does not exist anywhere in Washington. Further effective competition will not exist until competitors have access to critical Qwest bottleneck facilities on the same terms and conditions that Qwest provides those facilities to itself.

59 *Reasonably available alternatives.* Joint CLECs argue that customers do not have reasonably available alternatives to any of the services for which Qwest seeks competitive classification throughout any of the thirty-one wire centers. They contend that most consumers can obtain service from a CLEC only to the extent that CLECs can obtain the necessary facilities from Qwest, either to connect the customer location with the CLEC's network (*i.e.*, through a platform of unbundled network elements, including high capacity circuits) or to provide the entire functionality of the service (*i.e.*, through a platform of unbundled network elements or resale). Under these circumstances, Joint CLECs assert that Qwest cannot demonstrate that customers have access to reasonably available alternatives unless Qwest affirmatively proves that competitors have access to Qwest facilities at rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

60 Joint CLECS maintain that UNEs are not a viable source of price constraining competition for Qwest's business exchange service. *Ex. 201TC, pp. 13-15.* Provision and repair data demonstrates that Qwest consistently discriminates against CLECS. *Id., Ex.203C, Ex. 157C-159C.* Moreover, CLECs cannot provide reasonably available alternatives to Qwest services on a basis of price. CLECs face a substantial increase in the recurring and nonrecurring rates they pay to Qwest for unbundled loops. *Ex. 281T , p. 9.*

61 *Significant captive customer base.* Joint CLECs argue that Qwest has a significant captive customer base for all of the services for which it seeks competitive classification. They contend that competitors cannot provide customers with reasonably available alternatives to Qwest services in any location in which those competitors have not installed their own facilities, and CLECs have not installed their own facilities in the majority of the geographic areas in each Qwest wire center territory. Qwest customers without reasonably available alternatives are "captive," and when the majority of Qwest customers in a geographic area are captive, the only reasonable conclusion is that Qwest has a significant captive customer base.

62 *Ease of entry*. Joint CLECs argue that legally, the market structure is easy to enter. Practically, there are significant barriers for competitors to offer reasonably available service to customers. Competitors do not have structural parity in providing business

services in the market. They either can build their own network to serve customers (incurring capital costs that they are unlikely to be able to afford) or they must provide service to customers that are dependent on the reliability and quality of Qwest's network. The ability to offer an effectively competitive service is even more in question if it is provided through resale. Competitors providing service through resale have no real ability to constrain Qwest's price increase and can only offer the underlying service quality that Qwest permits. *See Ex. 241TC, p. 28.*

63 *Cost standard.* If the Commission competitively classifies any Qwest business exchange service, the Commission should reaffirm its requirement that Qwest's retail price(s) for that service must exceed (1) the rates charged to competitors for bottleneck facilities, including the recurring and nonrecurring charges for all component unbundled network elements, plus (2) the TSLRIC of all other facilities and services used to provide that service, including retailing costs. Such a requirement is critical to the ability of competitors to provide "reasonably available" alternatives to Qwest retail service, as well as a check on the accuracy and reasonableness of both Qwest's retail and wholesale pricing.

6. AT&T and Eschelon

64 AT&T and Eschelon also recommend that the Commission deny Qwest's petition.

F. Commission Discussion and Decision

65 The standard of review for a request for competitive classification of services is set forth in RCW 80.36.330(1). The statute plainly authorizes the Commission to grant competitive classification only if the services are subject to effective competition. The statute defines effective competition to mean that customers *have* reasonably available alternatives, and that the service *is* not provided to a significant captive customer base. By this definition, which uses verbs in the present tense, effective competition does not exist unless end-use customers currently have viable alternatives to the services provided by the incumbent provider in the relevant geographic market, and there is currently no significant captive customer base. Also, the focus of the statute, and necessarily our focus, is on the end-user, rather than other carriers, an interpretation that was upheld by the Court of Appeals.[5]

66 Qwest asks us to apply a more relaxed standard for determining effective competition. Qwest asserts that the statute is met if competitors exist in the market who are *capable* of providing ("can" provide) alternative services. We are unable to accept this standard. In our view, we must also have confidence that competitors *are* offering and *will* offer competitive services. This determination turns on the presence

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[5] *U S WEST v. WUTC*, 86 Wn. App. 719, 727-30 (1977) (in the context of competitively classified companies under RCW 80.36.320).

of competitors, their actual current availability to customers, and a judgment, from their current behavior and the current market structure, that they do, can, and will provide alternative service to end-users.

67 Applying the correct legal standard, we can not grant Qwest's petition as filed. Qwest has failed to carry its burden to prove that effective competition exists for the business exchange services in the specified thirty-one wire centers. While Qwest has cited to many exhibits in its petition and accompanying the testimony of its witnesses, the content of those exhibits fails to adequately demonstrate the existence of effective competition in the thirty-one wire centers.

68 For example, Qwest relies on the percentage of *lines* being served by competitors as evidence of effective competition. *Ex. 193.* However, this data does not reveal how many *customers* purchase those lines. A small minority of business customers may purchase a majority of the lines. With a skewed distribution of lines across customers, competitors could easily achieve an overall 40 percent market share of lines share in an exchange even if it had few or no small business customers. While this may be one indicator of the presence of competition, it is not sufficient in and of itself to show effective competition. Moreover, there is evidence in the record that a significant captive customer base remains. *Ex. 201TC, p. 19-24, Tr. 692-693.*

69 Similarly, Qwest refers to the presence of switches, price lists filed with the Commission, and advertising by CLECs to show that CLECS are capable of providing or hold themselves out to provide services comparable to Qwest's business services. None of these exhibits show that competitors *in fact* are offering comparable services in the relevant geographic market. Ex. 12C, Attachment C, D, and J. Qwest's reliance on Attachment H to Exhibit 12C is also of little weight. Attachment H shows, at most, competitive presence in the thirty-one wire centers. It does not establish that those competitors are providing reasonable alternatives to Qwest's business services. Consequently, we cannot make a finding that the services in the thirty-one wire centers for which Qwest has sought competitive classification are in fact subject to effective competition at this time.

70 Our decision to deny Qwest's petition as filed does not constrain the company from using other tools to compete with other providers of local exchange services. Qwest can use banded rate tariffs, offer business services through a competitive affiliate, offer promotions, offer winback incentives, and lower prices in response to competition. *Ex. 201TC, pp.5-6.*

71 Turning now to Staff's broader alternative proposal (all business services in four areas, with conditions), we are unable to reconcile that proposal with the requirements of RCW 80.36.330. On cross-examination, Dr. Blackmon explained that Staff's proposed conditions themselves do not eliminate the existence of captive customers. Rather, with the conditions in place (in particular, a price cap for small business customers set at current rates), the captive customer base is less substantial. *Tr. 692-693, ll.23-6*. Dr. Blackmon acknowledged that without the imposition of conditions, there is not effective competition for small business customers in the requested areas. *Tr. 693, ll. 12-19*. Staff's broader proposal would have us impose conditions to protect small customers in order to satisfy the statute's requirement that the service not be provided to a significant captive customer base. But before we can classify a service as competitive or impose conditions on the provision of that service, the statute requires us first to find that the services "is not" provided to a significant customer base. Reasonable though the concept may be, we do not believe the statute permits us to impose future conditions to eliminate the significance of what currently is a significant captive customer base.

72 Turning now to Staff's narrower alternative, we find that the record developed in this proceeding demonstrates that effective competition exists for those customers served on DS-1 or larger circuits in the Seattle, Bellevue, Spokane, and Vancouver exchanges. The record supports a conclusion that the customers served on DS-1 or larger circuits in the four exchanges have reasonably available alternatives and there is no significant captive customer base. While both small and large business customers may be served by DS-1 or larger circuits, the volume of telecommunications service demanded by a customer is more critical to the determination of reasonably available alternatives than is the size of the business.

73 Our finding of effective competition in the four exchanges for those customers served on DS-1 or larger circuits is not based on a precise recipe. It is based on our consideration of the totality of the evidence presented, including the line-based market concentration, competitors' presence as evidenced by the confidential business plans and actual behavior of competitors, market structure, ease of entry, line loss data, and customer (BTN) loss data, all in the context of our definition of the market. The weight we give to these factors will vary from case to case. For example, in the competitive classification of the local toll services of GTE (Docket No. UT-970767), and U S WEST (Docket No. UT-990021) the market concentration index values would have been substantially above 5,000 in each case, but the structural factors strongly suggested that it was easy for firms to enter and leave the market and for customers to switch among companies. The structure of the market was sufficiently pro-competitive that even the very high market concentration index values did not disqualify the services from competitive classification.

74 The evidence in the record here demonstrates that competitors make their service offerings from the DS-1 or larger circuits. DS-1 service offerings are consistent with what competitors are ordering from Qwest. Competitors are ordering DS-1 or T-1 circuits from Qwest, in part, because those circuits provide a reliable method of gaining access to the network. *Exs. 296HC – 305HC; Ex. 201TC, pp.20-21, Ex. 202, Tr. 722-724*. The prominence of DS-1 service offerings is also consistent with the position of the CLECs that most competition is facilities-based.

75 Staff's market concentration analysis, together with its market structure analysis, provides evidence that there is effective competition in the four exchange areas. Staff's market share analysis indicates market share losses of 30 – 40 percent in the four exchanges, due to the migration of some Qwest customers to other providers due to originating customers choosing other providers over Qwest. *Ex.193*. This measure of line-based market concentration captures the services provided by competitors over their own facilities or over the facilities of Qwest, whether the latter are unbundled network elements or special access circuits. *Tr. 721.* This measure (30-40 percent) does not include resale, and should not, because resale does not constrain prices. *Id*. Staff's market structure analysis, based on loss of lines due to resale and customer loss, indicates that across the four exchanges Qwest loses an average of thirty-four customers a month and resells five percent of its access lines. *Ex. 12C, Attachments G and H; see tables, Staff. Brief, pp. 30 – 32.* This line loss data and customer loss data indicate that competitors are vying to serve customers in specific Quest exchanges and that competitors are implementing market entry.

76 We deny the petition with respect to the remaining five exchanges. Staff's review of the market structure with respect to the remaining five exchanges revealed that the mechanisms for competitors to obtain network access and for customers to switch to those competitors are not proven. Consequently, we must consider how many customers have actually switched to a competitive provider. That evidence suggests that only in Seattle, Bellevue, Spokane, and Vancouver is market concentration low enough to warrant competitive classification of Qwest's services. *Ex. 201TC, p. 18-19.*

77 MetroNet/ATG request that we impose conditions on any grant of competitive classification. In addition, MetroNet/ATG ask us to determine the cost standard to be used to establish the price floor for competitive services. We decline to do either. The conditions proposed by MetroNet/ATG would go beyond the level of regulation that applies today to a noncompetitive service offered under tariff. In response to MetroNet/ATG's second request, we note that Qwest is not proposing any rate changes in this proceeding. The current rates for Qwest's basic business exchange service were supported by cost studies demonstrating rates were above the costs of providing the service. These rates, after investigation, were approved by the Commission. *Ex. 12C, p. 19; Ex. 78T, p.7*. As with the competitive classification of toll services, "the initial price lists filed pursuant to competitive classification of these services should mirror the current tariff rates. Thereafter, any rate change must continue to cover its related costs and pass the imputation test."[7]

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[7] *In the Matter of the Petition of U S WEST Communications, Inc. for competitive Classification of its IntraLATA Toll Service*, Order Granting Petition, Docket UT-990021 (Jan. 1999).

78 Finally, Public Counsel/TRACER ask that we not waive the application of RCW 80.36.170 and 80.36.180 to any competitively classified services. Public Counsel/TRACER offer no argument in support of their request. RCW 80.36.330(8) allows the Commission to waive the requirements of RCW 80.36.170 (undue preference) and 80.36.180 (rate discrimination) if the Commission finds that competition will serve the same purpose and protect the public interest. In an effectively competitive market, buyers can avoid the effects of any undue preference or discrimination by choosing another seller. In the four areas in which we have found effective competition for business services over DS-1 or larger circuits, competition will thus serve the purposes of RCW 80.36.170 and 80.36.180 and will serve the public interest. It is therefore appropriate to waive RCW 80.36.170 and 80.36.180.

III. FINDINGS OF FACT

79 Having discussed above all matters material to our decision, and having stated our findings and conclusions, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

80 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, accounts, securities, and transfers of public service companies, including telecommunications companies.

81 (2) Qwest Corporation is registered as a telecommunications company providing service within the state of Washington as a public service company.

(3) On June 7, 2000, Qwest filed a request, pursuant to RCW 80.36.330 and WAC 480-120-022 and 480-120-023, for competitive classification of business services in thirty-one specified wire centers in Washington.

82 (4) The record does not demonstrate that all of Qwest's business services are subject to effective competition in the geographic markets it has chosen.

83 (5) Commission Staff presented two alternative proposals to the Qwest petition. The narrower of the two proposals recommends competitive classification in four exchanges, Bellevue, Seattle, Spokane, and Vancouver, for customers serviced on DS-1 or larger circuits.

84 (6) The services covered under Staff's narrower alternative proposal are subject to effective competition.

85 (7) The five exchanges excluded from Staff's proposal do not qualify for competitive classification.

86 (8) Qwest's prices for the relevant services should be subject to the cost standard discussed in this Order until otherwise ordered by the Commission.

87 (9) Under Staff's narrower alternative proposal, competition will serve the same purpose and protect the public interest as the requirements of RCW 80.36.170 and RCW 80.36.180, and those requirements should be waived.

IV. CONCLUSIONS OF LAW

88 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

89 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and all parties to, these proceedings. Title 80 RCW.

90 (2) Qwest has failed to sustain its burden of proof to show effective competition under RCW 80.36.330. The Commission should deny the petition as filed.

91 (3) Staff's narrower alternative proposal, which recommends competitive classification in the exchanges of Bellevue, Seattle, Spokane, and Vancouver, for business customers served on DS-1 or larger circuits, meets of RCW 80.36.330. The Commission should grant competitive classification of the services defined by this proposal.

92 (4) Qwest should be permitted to offer the services defined in Staff's alternative proposal, in the specified four exchanges under a price list. RCW 80.36.330(2).

V. ORDER

THE COMMISSION ORDERS:

93 (1) Qwest's petition for competitive classification is granted only for the wire centers of the four exchanges of Bellevue, Seattle, Spokane, and Vancouver, and only for those business customers served on DS-1 or larger circuits.

94 (2) The remainder of the petition is denied.

95 (3) Qwest's prices for the relevant services are subject to the cost standard discussed in this Order until otherwise ordered by the Commission.

96 (4) The requirements of RCW 80.36.170 and RCW 80.36.180, with respect to the services here classified as competitive, are waived.

97 (5) Qwest is authorized to offer the competitively classified services under price list, the format of which is subject to prior approval by the Commission, to be effective after ten days' notice to the Commission and to customers. In the event of a price reduction or a change in terms or conditions which do not increase rates, personal notice to customers is not required. Although the Commission does not have authority to waive this notice requirement, petitioner does have the option to publish notice of price reductions by a display advertisement in a newspaper or newspapers geographically situated so as to be circulated over the company's service area.

DATED at Olympia, Washington, and effective this day of December, 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

NOTICE TO THE PARTIES: This is a final Order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this Order pursuant to RCW 34.05.470 and WAC 480-09-810 or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).