BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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| In the Matter of the Petition of Qwest Corporation for Competitive Classification of Business Services in Specified Wire Centers | ) ) ) ) ) ) | DOCKET NO. UT-000883<br><br>RESPONSE OF QWEST CORPORATION TO JOINT CLECS' ANSWER |

Qwest Corporation ("Qwest") hereby responds to Section B of the Joint CLECs' Answer to Reconsideration Petitions filed January 22, 2001.

The Joint CLECs argue that ordering paragraph 93 of the Seventh Supplemental Order in this proceeding is ambiguous. The Joint CLECs ask the Commission for a ruling that would prohibit Qwest from obtaining pricing flexibility for service to business customers who are served on DS-1 or larger circuits, if their individual demands would not use the entire capacity of a DS-1 or larger circuit. The Joint CLECs' position should be rejected.

## 1. The Joint CLECs Misinterpret The Commission's Order.

The Joint CLECs argue at p. 3, ¶ 4 of the answer that the Commission's use of the phrase "a customer" in ¶ 72 of the order means that the Commission intended that the test be whether the volume of service demanded by "each customer" justified the use of a DS-1 or larger circuit.



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This takes the phrase “a customer” completely out of context. In the sentence on which the Joint CLECs rely, the Commission was analyzing and rejecting the concept of a business size discriminator for use in defining the relevant market. The Commission did not indicate that it was concerned with anything but the question of telecommunications demand as a stimulus for CLECs to provide alternatives to Qwest’s service, compared to other measurements of the relevant market such as business size.

The Seventh Supplemental Order is consistent with the requirements of RCW 80.36.330. The Joint CLECs’ and Public Counsel’s concern that Qwest would be able to enjoy pricing flexibility for customers whose aggregate demand justified use of a DS-1 or larger facility begs the question of whether the record shows that these customers are a significant captive customer base. Clearly, because of the substitutability of services between copper loops and DS-1 and higher capacity circuits, (Tr. 751) the answer is that they are not. CLECs are making offerings from DS-1 circuits, (Seventh Supplemental Order, ¶ 74) and carriers can maximize the use of DS-1 and higher capacity circuits by adding discrete channels representing separate voice grade equivalent lines, even if they are connected to separate customers who are located closely together. This reinforces the conclusion that these customers are not a substantial captive customer base.

The Joint CLECs posit a CLEC who desires to compete for a single, single line business customer who is served via a DS-1, and complain that the record does not indicate that competitors may use a single channel on a Qwest DS-1 as an unbundled element. The Joint CLECs’ argument does not withstand scrutiny. There is no business rationale to support the CLEC arguments that if a business location were served by a DS-1, the CLECs would not



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compete for all of the telecommunications business that Qwest or anyone else offered over that facility. This is no less true if there were several individual customers served over that DS-1, whose single demands were less than the full capacity of the facility. The Commission used the DS-1 as the demarcation point because it found that the DS-1, according to the evidence, was a reliable way for CLECs to gain access to the network. Order, ¶ 74.

CLECs do not have to price their services based on each customer being required to fill up a DS-1 or larger circuit. (Ex. 7-T, p. 7). In fact, the CLECs price their local exchange services on a (single voice grade) circuit, by circuit basis, just as does Qwest. (Ex. 12-C, Att. D.). Some CLECs, according to this exhibit, offer credits for individual customers who can fill up a DS-1 circuit. Nothing, however, prevents CLECs from marketing to multiple individual business customers who are located closely together, for example in a single building, so as to be served on a common DS-1 circuit but who individually could not supply enough telecommunications demand to fill such a circuit. In fact that is the economically efficient way to run a network. If the aggregate demand of business customers who are located closely together enough to be served by a common DS-1 is large enough to fill such a circuit, those customers would have the same access to alternatives to Qwest services, as do customers whose individual demands are large enough to fill the circuit. When read in context, the Commission's finding on the proper relevant market in ¶ 72 of the Seventh Supplemental Order is consistent with this principle. There is no lawful or logical reason to deprive such customers of the benefit of Qwest's pricing flexibility.



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**2. <u>The Joint CLECs' Citation of Dr. Blackmon's Testimony is Misleading</u>.**

The Joint CLECs at p. 4 , ¶ 5 of the answer misleadingly cite Ex. 201TC p. 19 as evidence that competitors cannot economically and practically reach small business customers. This is misleading for two reasons. First, the Commission specifically eschewed a relevant market definition of small versus large business. Second, the testimony to which the Joint CLECs referred at p. 19 of Ex. 201TC was Dr. Blackmon's conclusion about the use of unbundled elements by CLECs to gain access to the network. The relevant market that the Commission defined in its order does not depend on unbundled elements for access. If individual customers can, together with others, justify a DS-1 or higher capacity circuit, then they have the same access to alternatives to Qwest's service as those customers who have individual demands that are large enough to fill such a circuit.

The Commission should also consider the overall context of the Joint CLECs' answer. These companies will benefit financially from the denial of pricing flexibility to Qwest for business customers who can, by aggregating their demands, justify a DS-1 or higher capacity circuit. That is because if the circuit is in place to serve such customers, the CLECs can price to the customers just under Qwest's tariff umbrella, while enjoying the substantial cost savings (and boost in profits to them) that use of such a facility provides compared to the use of unbundled copper loops. The CLECs' profits go up as the usage of the facility is maximized.

The parties that will lose from the "clarification" that the Joint CLECs seek are the business customers who will be deprived of the ability to choose Qwest's service under pricing flexibility at a lower than tariffed price. Business customers whose individual demands would



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not justify a DS-1 but who could be served along with other similar customers whose aggregate demands would justify a DS-1, will enjoy the ability to select Qwest's price list, under the Commission's order. Qwest expects that its price list prices will generally be lower than the tariffed rates for the services in Ex. 12C, Att. A. If for some reason such a customer does not wish to have its service aggregated with other similar customers on a DS-1, where such aggregation is possible, the customer may order the service from the tariff.

### 3. <u>The Joint CLECs Raise A Red Herring in Claiming That The Order Covers All Business Services</u>.

The Joint CLECs raise a red herring at p. 5, ¶ 7 of their answer with the claim that Qwest seeks pricing flexibility for all business services because supposedly all business services are provisioned over Digital Loop Carrier or interoffice facilities that include DS-1 or higher capacity circuits, and Qwest has "likely" built DS-1 facilities to "most" business locations in the four exchanges.[1] The Joint CLECs' argument is unsupported by any record citation that supports the position that *local exchange service* is always provided by Qwest over interoffice facilities. The services in Ex. 12C, Att. A are basic business services. These would not, except for Market Expansion Line or Foreign Exchange Service, involve the use of a switch other than the local switch that provides dial tone for the business customer close to its location, and there is no reason why interoffice facilities would be involved.

There is also no record citation that Qwest always uses digital loop carrier to aggregate business customers' service, or that Qwest has built DS-1 facilities to most buildings that contain businesses in the four exchanges. Under RCW 34.05.461(4), findings must be based exclusively

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[1] This argument by the Joint CLECs is also contradictory of their previous argument that unbundled copper loops are not being provisioned to them as rapidly as they would like, and so supposedly Qwest discriminates against CLECs. If Qwest does not itself use copper loops to serve business customers (because it supposedly always uses



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on evidence and on matters officially noticed. The Joint CLECs had an opportunity to make a record on this issue, and they failed to do so. The dearth of evidence cannot be remedied by the Joint CLECs' suppositions in the eleventh hour answer to Public Counsel's request for clarification. The Joint CLECs ask the Commission to find that Qwest has built DS-1 facilities to "most" buildings that house businesses, even if this would not be economic under the circumstances. This is clearly an issue of fact on which there is no record evidence and on which Qwest has not had its opportunity to be heard.

The argument is a red herring first because the reliability of access by CLECs to the network does not depend on whether or not Qwest has built DS-1 or higher capacity facilities. The Commission has already found that there are competitive alternatives to Qwest's high capacity facilities. If, for example,Winstar serves a building with a wireless DS-1, that facility provides readily-available alternative DS-1 access to the local network for customers and/or other CLECs who may choose to purchase such service from Winstar, even if Qwest serves the same building with non-DS-1 copper loops. The argument also is a red herring because it cannot be reconciled with the Commission's rationale for selecting customers served over DS-1 and higher capacity circuits in the four exchanges as the relevant market definition in the order. Qwest's having interoffice facilities alone that are at a DS-1 or higher capacity level plainly would have no impact on the reliability of access to the network to CLECs who wanted to serve business customers. The same is true of the aggregation of business customers' traffic on Digital Loop Carrier facilities, i.e. such aggregation would not affect CLECs' reliability of access to the network. Yet it was the role of DS-1 and higher capacity circuits, provided by Qwest or others,

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digital loop carrier to serve such customers), then it is unclear how Qwest could be discriminating against CLECs by not speedily providing unbundled copper loops to them.



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to the business premises of customers, on which the Commission relied in finding that CLECs which used such circuits would have reliable access to the network and therefore that customers served by such circuits would have alternatives to Qwest's services. The Commission's order does not lend itself to the Joint CLECs' interpretation, and the Joint CLECs' argument that the order is ambiguous, is without merit.

**Conclusion**

Qwest submits that the arguments of the Joint CLECs have failed to show that the Seventh Supplemental Order should be modified by "clarification" as requested by the Joint CLECs and Public Counsel.

Respectfully submitted this 30th day of January, 2001.

QWEST CORPORATION

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