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**Before the**  
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of )  
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The Continued Costing and Pricing of Unbundled Network Elements and Transport and Termination ) **PART A**  
)  
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**REBUTTAL TESTIMONY OF**  
**RICHARD CABE**  
**ON BEHALF OF**  
**RHYTHMS LINKS INC. AND**  
**COVAD COMMUNICATIONS COMPANY**

**August 4, 2000**

**I. INTRODUCTION**

**Q. Please state your name and business address.**

A. My name is Richard Cabe. My business address is 219 I Street, Salida, Colorado.

**Q. Are you the same Richard Cabe who submitted Direct and Response Testimony in this proceeding?**

A. Yes I am.

**Q. What is the purpose of your reply testimony?**

A. This testimony replies to the response testimony of QWEST witnesses regarding QWEST's proposals for a change for access to line sharing arrangements and a charge to recover costs claimed to be related to OSS improvements to accommodate line sharing.

**II. ALLOCATION OF LOOP COST TO LINE SHARED ACCESS**

**Q. At page 9 of his Response Testimony, Dr. Fitzsimmons states as follows: "In the case of the high-frequency spectrum UNE, leasing the UNE to a competitor removes the ability of QWEST to provide XDSL service over the high-frequency portion of the loop. In a competitive market, it is highly unlikely that any rational provider would give up its ability to provide service using the high frequency spectrum on its loops without requiring compensation from the competitor that will use the spectrum." What do you make of this statement?**

A. This statement makes it clear that Dr. Fitzsimmons believes that QWEST should be compensated for the revenue it would have received from the sale of xDSL services, but for the fact of the customer choosing to purchase xDSL service from a competitor. Dr.

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3 Fitzsimmons also refers to the high frequency portion of the loop as an asset<sup>1</sup>. In  
4 economics, an asset is anything that has the capacity to generate future net revenue.  
5 Assets are typically valued at the present value of the future net revenue that control of  
6 the asset can create. Since line shared access to the loop creates no loop cost, Dr.  
7 Fitzsimmons focuses on the asset value of that access, and in so doing, proposes a charge  
8 to replace the revenue that QWEST could have generated with that asset, were it not for  
9 the requirement to allow competitive access. This is really the only explanation for  
10 QWEST's line charge that makes sense. Recovery of loop cost provides no basis for the  
11 charge because loop costs are fully recovered elsewhere, and line sharing clearly doesn't  
12 cause any loop cost. The essence of this opportunity cost argument is that providing  
13 access to a competitor will cause QWEST a loss of revenue from end users, and this loss  
14 of revenue amounts to a cost of providing access - an opportunity cost. The FCC,  
15 however, after extensive comment and analysis, specifically rejected opportunity cost  
16 pricing for UNEs at paragraphs 708 and 709 of the Local Competition Order.<sup>2</sup> In  
17 addition, as discussed in my direct and response testimony, QWEST's proposal would  
18 have the effect of preserving the margin that QWEST now enjoys in providing xDSL  
19 services over line sharing arrangements - even when the end user chooses to take service  
20 from another xDSL provider. There is no cost basis for the charge, except the  
21 opportunity cost which arises when a customer chooses a CLEC instead of QWEST.  
22 This opportunity cost notion is the basis for Dr. Fitzsimmons contention that competitive  
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26 <sup>1</sup> Response Testimony of William Fitzsimmons at Page 9.  
<sup>2</sup> *First Report and Order In the Matter of Implementation of Local Competition Provisions in the  
Telecommunications Act of 1996*, CC Docket No. 96-98 (Rel. Aug. 8, 1996)( hereinafter referred to as  
“Local Competition Order”).

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3 markets would place a positive price on line sharing arrangements,<sup>3</sup> and it is really the  
4 only support offered for QWEST's proposed line sharing charge.

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6 **Q. Has this commission previously considered proposals to include "opportunity cost"  
in pricing UNEs?**

7 A. Yes, and these proposals have been rejected. In its 17th Supplemental Order in Docket  
8 Nos. UT-960369, et al., the Commission noted that "GTE contends that it "must" be  
9 compensated for any reduction in its earnings that results from competitive entry."<sup>4</sup> The  
10 Commission found, to the contrary, that such "opportunity costs" shall not be considered  
11 in calculating forward-looking costs.<sup>5</sup> The Commission relied on the FCC's rules at 47  
12 C.F.R. § 51.505(d). This section of the FCC's rules was not vacated by the Eighth  
13 Circuit's recent ruling.<sup>6</sup>

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15 **Q. Dr. Fitzsimmons states that you are in agreement that "the cost of the loop is jointly  
caused, or shared, by the two dedicated connections that the loop provides."<sup>7</sup> Do  
16 you agree ?**

17 A. No. The recommendation in my direct testimony was based on a view of the two  
18 portions of the loop as joint products. Under this view, neither portion of the loop can  
19 be said to cause loop costs, and the principle of cost causation provides no guidance for  
20 pricing access to the two portions of the loop. My recommendation agreed with the  
21 FCC's determination of a price of zero for line sharing on the basis of several

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23 <sup>3</sup> Pricing in the counterfactual situation of a competitive market is discussed below. Dr. Fitzsimmons'  
analysis uses the word "competitive" but his conclusion doesn't follow if the market is actually competitive.  
Apparently Dr. Fitzsimmons confuses "competitive" and "unregulated."

24 <sup>4</sup> See 17<sup>th</sup> Supplemental Order at ¶125.

25 <sup>5</sup> See *id* at ¶168 - 171.

26 <sup>6</sup> See *Iowa Utilities Board v. Federal Communications Commission*, No. 96-3321, Slip. Op. (8<sup>th</sup> Cir. July 18,  
2000).

<sup>7</sup> Response Testimony of William Fitzsimmons at page 5, July 21, 2000.

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3 considerations other than incremental cost. In particular, I have discussed the fact that  
4 a non-zero charge would allow double recovery, would be discriminatory, would  
5 discourage adoption of this advanced telecommunications service, and would distort the  
6 market's choice among alternative technologies for delivery of high speed data. I still  
7 believe that a price of zero for line sharing is justified by those considerations, even  
8 regarding the two portions of the loop's spectrum as joint products, in which case we  
9 must proceed without the guidance of the principle of cost causation.

10  
11 However, in the course of considering Dr. Fitzsimmons' example of chicken breasts and  
12 wings, I reached the conclusion that I was mistaken in my earlier view of the analog  
13 voice portion and the high bandwidth portion of the local loop as joint products.

14  
15 **Q. Why did you conclude that the two portions of the loop cannot properly be  
regarded as joint products?**

16 A. As I discussed in my Response Testimony, there are several reasons that it is  
17 inappropriate to apply the conventional analysis of joint product pricing to the two  
18 connections that result from providing analog voice service and xDSL service over a  
19 single loop using a line sharing arrangement. In analyzing Dr. Fitzsimmons' analogy I  
20 realized that I had not re-examined my notion of the two connections as joint products  
21 since the FCC reached a precise definition of what line sharing is. I had not given full  
22 effect to the FCC's determination that a CLEC cannot order line sharing on a "dry" loop -  
23 one which is not currently in use for analog voice service - nor can a CLEC maintain an  
24 existing line sharing arrangement after analog voice service is terminated on a particular  
25 loop. These two conditions - which do not apply to chicken breasts and wings, or mutton  
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3 and wool, or cotton and cottonseed oil, or any of the other standard examples of joint  
4 products - imply a very different relationship between the products and cost than is  
5 implied by ordinary joint products. The FCC's determination that a line sharing  
6 arrangement is only available as an adjunct to a loop that is also in use for the provision  
7 of analog voice service implies that one cannot cause an ILEC to incur loop costs by  
8 requesting line sharing, nor can loop costs be avoided in the long run by discontinuing  
9 a line sharing arrangement. Therefore, the two portions of the loop are not joint products  
10 in the traditional sense. Instead, unlike the case of traditional joint products, the cost of  
11 the loop can only be caused by the voice portion of the loop, and the cost of the loop is  
12 in no sense incremental to a line sharing arrangement. If QWEST were to agree to offer  
13 only the high bandwidth portion of the loop without the loop being in use for analog  
14 voice service, the appropriate analysis would be more similar to the usual case of joint  
15 products, although my Response Testimony notes important differences that would  
16 remain.

17 **Q. What is the implication of this conclusion for pricing line sharing arrangements?**

18 A. Since line sharing cannot be ordered on a dry loop and the line sharing arrangement must  
19 terminate if a loop were no longer used for analog voice service, cost causation  
20 corroborates the conclusion reached by the FCC and the recommendation of my direct  
21 testimony: the UNE causes no incremental cost and should be priced at \$0.  
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3 **Q. Dr. Fitzsimmons protests that a competitive market would place a positive price on**  
4 **a product such as access to line sharing arrangements.<sup>8</sup>**

5 A. No. I have no doubt that QWEST would place a positive price on access to line sharing  
6 if it were not constrained from doing so by the FCC and this Commission. This fact  
7 merely provides evidence that markets for services provided over local loops are not  
8 competitive; it proves nothing about what might occur in a competitive market because  
9 QWEST faces nothing resembling the discipline of a competitive market on the vast  
10 majority of its loops.

11  
12 Nevertheless, one can ask what the prices would be if there were a competitive market  
13 for analog voice service and for line shared access to the loops used to provide that  
14 analog voice service. If such competitive markets were in place they would cause the  
15 price of analog voice service to cover the cost of the loop and the price of line sharing  
16 arrangements to include none of the costs of the loop. This result is established by the  
17 following reasoning: First, in competitive markets, no firm could survive in the long run  
18 offering analog voice service and line sharing at prices that recover more or less than the  
19 total cost of the loop;<sup>9</sup> at lower prices the firm could not attract capital, and at higher  
20 prices the resulting abnormal profit would attract new entry, increase supply and reduce  
21 price. This is the fundamental rule that competitive markets do not abide a return greater  
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25 <sup>8</sup> Response Testimony of William Fitzsimmons at page 9, July 21, 2000.  
26 <sup>9</sup> For the sake of exposition, this discussion neglects costs other than the loop that may be incremental to  
either analog voice services or data provided over a line sharing arrangement. Obviously, these costs would  
have to be recovered in a cost causative manner.

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3 or less than a normal economic profit, in the long run.<sup>10</sup> Second, if a firm sought to  
4 recover its loop cost from a price for voice service which failed to cover the entire cost  
5 of the loop, and a price for line sharing arrangements that recovered the shortfall of loop  
6 costs,<sup>11</sup> it would encounter the following difficulty. This firm would be most attractive  
7 to customers who want analog voice service, but do not want data service through a line  
8 sharing arrangement.<sup>12</sup> Thus, the firm seeking to recover less than the full cost of the  
9 loop from analog voice services would fail to recover its costs, would earn less than a  
10 normal profit and would not be able to attract capital. The only competitive market  
11 outcome in the long run would be for each firm to recover its loop costs from its analog  
12 voice customer and make line sharing arrangements available without trying to assess  
13 loop costs where none have been caused.

14  
15 **Q. Are you suggesting that unregulated trade in a "productive asset that is in limited  
supply"<sup>13</sup> is likely to result in a price of zero?**

16  
17 B. Not as a rule, however, the assumption of "limited supply" is a peculiar one in this  
18 context, and is inconsistent with "competitive" supply. If the question is what would  
19 happen in a competitive market, the only limitation on supply is cost, and the cost of  
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22 <sup>10</sup> Of course, QWEST's proposal violates this most basic rule of competitive markets by trying to recover  
100% of loop cost from analog voice service and an additional 50% of loop cost from users of line sharing  
arrangements.

23 <sup>11</sup> Again, note that this is different from QWEST's proposal to recover **more** than 100% of loop cost. That  
24 proposal obviously makes sense only in an environment in which QWEST exercises monopoly power - not  
a competitive market.

25 <sup>12</sup> Note, importantly, that the option of taking line shared xDSL service without analog voice service on the  
loop is not a possibility.

26 <sup>13</sup> Response Testimony of William Fitzsimmons at page 9, July 21, 2000.



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3 allowing line shared access to the high bandwidth portion of the loop is zero.<sup>14</sup> That is  
4 to say, every time a loop is installed to provide analog voice service, the high bandwidth  
5 portion of that loop is available, without limitation and at zero cost, to be used in a line  
6 sharing arrangement. If the market for analog voice service were competitive, no  
7 provider would be able to impose artificial limitations on line shared access to the high  
8 bandwidth portion of the loop; to do so would make that provider's analog voice service  
9 less attractive than competitors' offerings. Thus, while Dr. Fitzsimmons refers to a  
10 competitive market, he fails to impose the most rudimentary constraints of competition.

11 **Q. Dr. Fitzsimmons asserts that you do not propose a proper tool for protecting**  
12 **efficient competitors.<sup>15</sup> Do you agree?**

13 A. No. QWEST's concern for protecting efficient competitors through an imputation test  
14 is misplaced - and would distract this Commission from the much more fundamental  
15 requirement that the price be non-discriminatory. As I discuss in my Response  
16 Testimony,<sup>16</sup> there is no need for an imputation test if the commission requires the only  
17 possible line sharing charge that is non-discriminatory; a charge of zero.

18 **Q. Mr. Thompson refers to your characterization of discrimination and states that**  
19 **your concern about discrimination is "ill founded."<sup>17</sup>**

20 A. Mr. Thompson seems to believe that the absence of a price squeeze implies that prices  
21 are non-discriminatory. This is utterly false. To see the falsehood of this proposition,  
22 suppose hypothetically, that an ILEC charges competitors a discriminatory price for an  
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24 <sup>14</sup> Opportunity cost, discussed above, is clearly not a pertinent part of this discussion.  
25 <sup>15</sup> Response Testimony of William Fitzsimmons at page 2, July 21, 2000.  
26 <sup>16</sup> See Response Testimony of Richard Cabe at page 6, July 21, 2000.  
<sup>17</sup> See Response Testimony of Jerold Thompson unnumbered page 4, July 21, 2000.

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3 unbundled network element. Then set the price of the ILEC's retail service constructed  
4 from the discriminatorily priced unbundled network element high enough that an  
5 imputation test is satisfied. By Mr. Thompson's test, the original UNE price could not  
6 have been discriminatory. Since it is always possible to set the retail price high enough  
7 that an imputation test is satisfied, Mr. Thompson's test implies that it is impossible to  
8 have a UNE price be discriminatory.  
9

10 My testimony regarding discrimination is based on the economic sense of the word as it  
11 applies to ILEC provision of UNEs: an ILEC's price for a UNE is discriminatory if it  
12 makes the UNE available to CLECs only at a higher cost than the cost the ILEC incurs  
13 to make the UNE available to its own retail operations. This sense of discrimination is  
14 based on the standard economic notion of price discrimination and the FCC's  
15 interpretation that the Act's requirement of non-discriminatory interconnection and access  
16 to UNEs requires non-discrimination as between CLECs, and also non-discrimination  
17 as between CLECs and the ILEC's own retail operations.<sup>18</sup> Since the high bandwidth  
18 portion of the loop is available to QWEST at a cost of zero, imposition of any higher cost  
19 on CLECs for access to the same high bandwidth portion of the loop would be  
20 discriminatory. The freedom to set QWEST's retail prices for services which rely on line  
21 shared access to the high bandwidth portion of the loop high enough to satisfy an  
22 imputation test does not alter the fact that the line sharing charge is discriminatory  
23 against CLECs.  
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26 <sup>18</sup> *Local Competition Order*, ¶¶218 and 312.

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3 **Q. Would harm to competition result if QWEST were allowed to impose a line charge**  
4 **greater than zero but within the bounds of an imputation test?**

5 A. Yes, potentially in several ways. The concern for a price squeeze is a real possibility  
6 whenever UNE prices are discriminatory, and this concern can never be entirely removed  
7 by imposition of an imputation test. An imputation test is an administrative process, and  
8 is subject to all the potential shortcomings associated with such processes. But a price  
9 squeeze is by no means the only potential harm to competition that flows from price  
10 discrimination against new entrants. As discussed in my earlier testimony, QWEST's  
11 substitution of an imputation test for the Act's requirement of non-discrimination would  
12 result in an artificial price floor below which CLECs could not compete. This would  
13 slow the rate at which xDSL services are adopted by Washington customers. Aside from  
14 the direct harm to Washington consumers, this would harm competition. This is so  
15 because new entrants invariably incur fixed costs of entry and will consider the rate of  
16 growth of the market when deciding whether to enter or not. If new entrants correctly  
17 anticipate the reduced rate of growth likely in Washington caused by the discriminatory  
18 line charge they may choose not to enter. If they fail to anticipate this reduced rate of  
19 growth and enter the market, they will not realize financial projections and operate under  
20 a handicap in efforts to attract capital. Aside from the "stunted" growth of the  
21 Washington xDSL market due to the artificial price floor created by a non-zero line  
22 charge, this form of discriminatory pricing would provide the incumbent with a source  
23 of internal financing that is not available to new entrants. This "internal capital market"  
24 can be an especially important advantage where a new product is concerned because  
25 "external capital markets" do not have access to internal information and cannot evaluate  
26 projects as efficiently as the "internal capital market." The sort of projects which could

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3 be financed through this internal source include a wide variety of “investments in entry  
4 deterrence.” Raising rivals costs through, for example, protracted litigation is one  
5 example. If the Commission were to substitute an imputation test for the Act's  
6 requirement of non-discrimination, alleged violations of the imputation test could  
7 provide opportunities for such protracted litigation.

8  
9 **Q. Dr. Fitzsimmons states that you advocate addressing imbalances between wholesale  
and retail rates. Is this correct?**

10 A. No. I advocate a price for line shared access to local loops that would not result in  
11 double recovery for QWEST and therefore would not implicate a reduction in rates for  
12 some analog voice services. Dr. Fitzsimmons goes on to discuss implicit subsidies and  
13 rate re-balancing, but I am at a loss to understand Dr. Fitzsimmons complaints about  
14 implicit subsidies (*e.g.*, Response Testimony of William Fitzsimmons at page 12).  
15 QWEST’s proposal would create a new source of revenue in excess of cost, which Dr.  
16 Fitzsimmons would probably characterize as an additional implicit subsidy in support of  
17 local exchange customers. Dr. Fitzsimmons and I clearly have very different views about  
18 implicit subsidies. At page 3 of his Response Testimony, Dr. Fitzsimmons refers to  
19 "subsidies from business customers and high margin services, that were once earmarked  
20 to help fund below cost residential service." I am aware of no such "earmarking" of  
21 funds from high margin services. In my view, such "earmarking" and associated  
22 reporting on the sources and uses of the subsidy would constitute an **explicit** subsidy.  
23 In the present situation, without such earmarking and associated reporting, all that is in  
24 evidence is prices sufficient to allow "high margins," and the funds generated from these  
25 services are as likely to go to excess profit as to subsidize other services. I recommend  
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3 that the Commission should **not** include any allocation of loop cost to prices for line  
4 sharing arrangements and therefore avoid creating a source of funds which could either  
5 be characterized a source of an implicit subsidy or a source of excess profit. I note that  
6 one of several undesirable consequences of creating such a source of revenue in excess  
7 of cost would be double recovery and a consequent windfall for QWEST, to the  
8 immediate detriment of Washington ratepayers and contrary to the public interest in  
9 development of competitive markets for telecommunications services.

10  
11 **Q. Does QWEST complain that its retail rates may not be sufficient to recover costs?**

12 A. Dr. Fitzsimmons complains that "QWEST is not even assured that it will "single recover"  
13 the costs of its loop network."<sup>19</sup> Mr. Thompson is concerned that I have made an  
14 erroneous assumption about the relationship of QWEST's revenues to its embedded  
15 costs.<sup>20</sup> My caution to the Commission regarding double recovery is based on the  
16 presumption that existing rates approved by the Commission were calculated to recover  
17 the entirety of loop costs, and this presumption has not been contested. Indeed, staff  
18 witness Thomas L. Spinks provides an analysis<sup>21</sup> suggesting that QWEST's existing rates  
19 have been very successful in recovering all costs of owning and operating the local  
20 exchange network. Mr. Thompson suggests that this may change in the future as a result  
21 of line sharing. While I doubt this claim, I agree with Dr. Fitzsimmons that this  
22 proceeding is not the proper place to consider retail prices, including any complaint that  
23 QWEST might have about its ability to "single recover" loop costs from existing rates.

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25 <sup>19</sup> Response Testimony of William Fitzsimmons at page 3, July 21, 2000.  
26 <sup>20</sup> See Response Testimony of Jerold Thompson at page 2, July 21, 2000.  
<sup>21</sup> See Response Testimony of Thomas L. Spinks, page 9, July 21, 2000.

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**Q. Dr. Fitzsimmons expresses a concern that an excessively low price for line sharing arrangements could have a damaging impact on alternative sources of broadband internet access competition. Do you agree?**

A. No, quite to the contrary. If the Commission were to impose a charge on line sharing arrangements in excess of the cost of the arrangement, it would distort developing competition among alternative technologies for provision of broadband data services. As I explained in my Response Testimony at page 7, providers of the alternative technologies must be free to reduce price to cost for their favored technology in order for the market to choose the right winner. With a non-zero line charge imposed on line sharing arrangements it will be imposed for CLECs to compete against alternative technologies based on the true cost of the line sharing arrangement on which their technology relies. QWEST presumably could reduce retail xDSL prices toward cost (after satisfying whatever process is involved in its proposed imputation mechanism) but this arrangement leaves QWEST in charge and making all the decisions regarding competition among alternative technologies.

**III. OSS TRANSITION COSTS**

**Q. Do you have a reply to the Response Testimony of Barbara J. Brohl?**

A. Yes. QWEST's position appears to be that the bulk of the charge supported through the testimony of Ms. Brohl is justified by two considerations: in a line sharing arrangement "there are two local service providers for the same end-user - QWEST and the data CLEC" and "there are two customers for the same product - the end user and the data

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3 CLEC."<sup>22</sup> The first of these considerations suggests that any OSS transition cost  
4 recovered should come from QWEST customers as well as from CLEC customers, and  
5 the second consideration suggests that certain of the claimed OSS improvements are not  
6 necessary.

7  
8 **Q. Please discuss the first consideration: the existence of two local service providers  
for the same end-user.**

9 A. Ms. Brohl attaches great importance to her assertion that, in providing MegaBit service,  
10 QWEST does not line share with itself. The first consideration that Ms. Brohl raises to  
11 justify QWEST's OSS transition charge for line sharing hangs entirely on this  
12 proposition. That is, she claims that the OSS transition cost is caused by the need to  
13 accommodate other providers in the line sharing arrangement. According to Ms. Brohl's  
14 argument, QWEST (DSL provider) and QWEST (local exchange company) are not  
15 separate entities in the provision of MegaBit service. Thus, according to Ms. Brohl,  
16 QWEST does not line share with itself. Therefore, she goes on to argue, the cost of OSS  
17 improvement to accommodate line sharing are caused exclusively by CLECs unaffiliated  
18 with QWEST, and MegaBit subscribers should not be considered in designing a recovery  
19 mechanism for OSS transition costs.

20  
21 **Q. What do you think of the conclusions Ms. Brohl draws from her assertion that  
QWEST does not line share with itself?**

22  
23 A. I disagree entirely with the implication that Ms. Brohl draws from that purported  
24 distinction and with the lengths to which QWEST has taken the distinction. It should be

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26 <sup>22</sup> See Response Testimony of Barbara J. Brohl, July 21, 2000.

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3 noted that Ms. Brohl relies on an FCC "definition" of "line sharing" that was made in  
4 passing in an introductory paragraph:

5  
6 The provision of xDSL-based service by a competitive  
7 LEC and voiceband service by an incumbent LEC on the same  
8 loop is frequently called "line sharing."<sup>23</sup>

9  
10 Despite this so-called "definition," the FCC's usage throughout the substantive portion  
11 of the order refers to lines shared by xDSL and voice service without regard to whether  
12 the two services are provided by separate entities. For example, with specific relevance  
13 to OSS, Paragraph 96 of the *Line Sharing Order* states:

14  
15 Where incumbent LECs provide **shared-loop** xDSL  
16 services to their voice customers, either through their own  
17 subsidiaries or in cooperation with an unaffiliated ISP, the  
18 incumbent must resolve many of the same problems that they  
19 claim stand in the way of providing competitors with access to the  
20 high frequency portion of the loop. (Emphasis supplied,  
21 footnotes omitted)

22  
23 In Paragraph 99, the *Line Sharing Order* states:

24  
25 We conclude that the type of effort required for incumbent  
26 LECs to establish appropriate line sharing ordering practices is  
incremental in nature, and does not require a major development  
initiative. Incumbent LECs already accommodate orders for the  
advanced services, such as ADSL, that they deploy on **lines**  
**shared** with their own voice services. There are substantial  
operational similarities between the line sharing situation  
involving a competitive and an incumbent LEC, and the  
deployment of **shared line** xDSL provided by an incumbent LEC  
or an ISP." (Emphasis supplied, footnotes omitted)

Despite the casual nature of the FCC's "definition" of "line sharing" and the widespread  
usage in the same Order of "shared line" and similar phrases to refer to shared use of the

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<sup>23</sup> *Line Sharing Order* at paragraph 4.



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3 same line without regard to corporate identity or affiliation of providers, QWEST has  
4 elevated this "definition" to the status of dogma with implications for cost analysis which  
5 it apparently believes requires no further discussion. QWEST also relies on this  
6 definition as a justification for non-response to information requests. Rhythms Data  
7 Request 3-8 sought an explanation as to why certain OSS improvements "were not  
8 required in order for U S West to provide retail xDSL services over a shared line with  
9 its own retail basic exchange service."<sup>24</sup> QWEST's response was to point out that  
10 QWEST does not line share with itself and to reproduce a portion of the Supplemental  
11 Direct Testimony of Barbara J. Brohl, which is also reproduced in her Response  
12 Testimony, without providing the requested explanation.

13  
14 **Q. Without the requested explanation to rely on, what do you conclude regarding the  
OSS improvements associated with Ms. Brohl's first consideration?**

15 A. I conclude that if the Commission were to find that these are costs which should be  
16 recovered through a separate charge, the charge should be calculated so as to encompass  
17 QWEST's MegaBit subscribers in the same way that it encompasses xDSL customers  
18 served by CLECs. This recommendation is founded on two points. First, if QWEST  
19 were to provide xDSL service over shared lines through a separate subsidiary, its xDSL  
20 customers would be situated in exactly the same circumstance as customers served  
21 through a technologically identical line sharing arrangement by an unaffiliated CLEC.  
22 QWEST should not be able to determine the structure of this charge, which has  
23 substantial competitive implications, through its choice of corporate structure. Second,  
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25 <sup>24</sup> QWEST responses to Rhythms Data Request 3-8, Parts A and C, attached to the Response Testimony of  
26 Richard Cabe as Exhibit RC-11.

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3 without regard to QWEST's chosen corporate structure, the placing of QWEST  
4 customers and CLEC customers in the same circumstance relative to all charges and non-  
5 price terms and conditions is the sine qua non of non-discriminatory access.  
6

7 Providing access to line sharing arrangements under non-discriminatory prices, terms and  
8 conditions requires, at a minimum, that all end-user customers are similarly situated with  
9 respect to any OSS transition charge.  
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11 **Q. Please discuss the second consideration on which Ms. Brohl relies.**

12 A. The second consideration on which Ms. Brohl relies in discussing OSS improvement  
13 costs is that line sharing leads to "two customers for the same product - the end-user and  
14 the data CLEC."<sup>25</sup> Again, a detailed explanation was not provided as to why this does not  
15 apply when QWEST or an affiliate is the xDSL provider. Apparently the product for  
16 which there are two customers is the loop, and OSS improvements are required to allow  
17 the end-user to pay loop related local service charges and the CLEC providing xDSL  
18 service to the same end-user to pay an additional 50% of the loop UNE charge for the  
19 same loop. I have explained in detail why it is improper to impose such a loop related  
20 charge. If QWEST's contention that imposition of such a charge would create additional  
21 OSS transition costs were accepted, this would be another reason to deny QWEST's  
22 proposal for imposing such a charge - it would create costs for no useful purpose. This  
23 portion of the OSS transition charge would be a charge to recover administrative costs  
24 of imposing a line sharing charge, which I have argued should not be imposed. Even if  
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26 <sup>25</sup> Response Testimony of Barbara J. Brohl at page 8, July 21, 2000.

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3 such a charge were to be imposed, however, my Response Testimony shows that  
4 QWEST has failed to substantiate the magnitude of any such transition costs. Beyond  
5 the lack of substantiation of the total amount of OSS transition cost, which is discussed  
6 in my Response Testimony, note that QWEST claims no knowledge of the detailed basis  
7 for its cost estimates that would allow the Commission to ascertain the portion of the  
8 claimed costs associated with the second consideration on which Ms. Brohl relies.<sup>26</sup> In  
9 any case, if the Commission were to order a line sharing charge that would make CLECs  
10 second customers for a single line, and if the Commission determined that this  
11 circumstance required OSS modifications that were only beneficial to line sharing  
12 arrangements, and if the Commission determined that these costs were not being  
13 recovered elsewhere and should be recovered through a separate OSS transition charge,  
14 then the charge should be calculated in such a way as to encompass customers of  
15 QWEST xDSL services as well as customers of CLEC xDSL services. As noted in my  
16 Response Testimony, all xDSL customers benefit from competition enabled by OSS  
17 improvements and QWEST may very well use a separate affiliate to provide xDSL  
18 services, placing its own xDSL operations in the situation of a “second customer” on a  
19 single line. In no event should QWEST be allowed to determine the structure of a charge  
20 imposed on CLECs by choosing one corporate structure or another.  
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#### 23 **IV. SUMMARY AND CONCLUSION**

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25 <sup>26</sup> See QWEST responses to Rhythms Data Request 3-8, Parts A and C, attached to the Response Testimony  
26 of Richard Cabe as Exhibit RC-11.

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**Q. Please summarize your recommendations to the Commission.**

A. Any allocation of loop costs to line sharing arrangements is absolutely contrary to the public interest and serves no purpose other than to allow QWEST to recover more than the full cost of its operations while dominating the emerging market for an advanced telecommunications service. The only explanation that makes sense for QWEST's proposed charge on line sharing arrangements relies on the opportunity cost argument which this Commission and the FCC have soundly rejected. Regarding QWEST's proposal for an OSS transition cost recovery charge specifically for line sharing, QWEST hasn't carried the burden of showing the magnitude of cost or the extent to which any costs incurred benefit QWEST operations. Until such time as credible evidence is produced regarding the magnitude of transition cost, I propose that no charge is in order. If, at some time, the Commission finds that a transition cost mechanism is appropriate, I recommend a charge based on total volumes of xDSL over shared lines - including service provided by QWEST and I recommend that the charge be imposed only until the Commission determined amount of cost is recovered.

**Q. Does that conclude your testimony at this time?**

A. Yes, it does.