

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**IN THE MATTER OF CONTINUED)
COSTING AND PRICING OF) DOCKET NO. UT-003013
UNBUNDLED NETWORK ELEMENTS,)
TRANSPORT, TERMINATION, AND)
RESALE)**

REBUTTAL TESTIMONY PART A

DIRECT TESTIMONY PART B

OF

JOSEPH GILLAN

ON BEHALF OF

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.

AT&T EXHIBIT JG-2T

AUGUST 4, 2000

1 **I. INTRODUCTION AND WITNESS QUALIFICATION**

2 **Q. PLEASE STATE YOUR NAME.**

3 A. My name is Joseph Gillan. I am filing testimony on behalf of AT&T
4 Communications of the Pacific Northwest, Inc. (“AT&T”). I previously filed direct
5 testimony on behalf of this same party in Part A of this proceeding.

6 **Q. PLEASE EXPLAIN THE PROCEDURAL POSTURE OF YOUR**
7 **TESTIMONY.**

8 A. Although the principal focus of my testimony is the rebuttal of Verizon in Part A
9 of the proceeding, I am also filing the testimony as direct testimony in Part B. As I
10 explained in my direct testimony (Part A), while the bifurcation of the proceeding in this
11 manner may accommodate the Commission’s resources more efficiently, the issues
12 themselves are more difficult to segment in this way. I am particularly concerned that
13 one issue – establishing the appropriate nonrecurring charge (“NRC”) for the UNE-P
14 combination – has not been adequately addressed by the ILECs. As I explain in the final
15 section of my testimony, this NRC would seem to have been appropriate for Part A under
16 the initial procedural schedule. In any event, to avoid any procedural debate as to *where*
17 this important NRC should be established, I am raising it both here (as an element of my
18 Part A rebuttal) and as my direct testimony in Part B.¹

19 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

¹ Although I disagree with Mr. Tanimura that the remaining issues I raised in my direct testimony are irrelevant to Part A, I also ask that the Commission consider in Part B any portion of my Part A direct testimony that concerns issues to be addressed in Part B.

1 A. The principal focus of my testimony has been on creating conditions for mass-
2 market competition. Although Verizon would like to characterize my testimony as
3 irrelevant, it is significant to note that Verizon did attempt to substantively respond to my
4 key points. In the testimony that follows, however, I will show that:

5 * Verizon's characterization that the Washington local
6 market is experiencing significant local competition is unsupported
7 by any statistical measure;

8 * Verizon's refusal to accommodate line sharing by UNE-P
9 based providers is discriminatory and unreasonable; and

10 * Staff's conclusion that OSS development costs are already
11 recovered by the ILECs through their existing retail rates should
12 mean that there is no need for an OSS Startup charge to be
13 assessed on CLEC transactions.

14 Finally, as I noted above, my testimony addresses the fact that Verizon and Qwest did not
15 file any non-recurring cost studies that reflect the dramatically lower costs to migrate
16 UNE-P lines, typically less than \$1.00 order. Much like the dog that did not bark in
17 Sherlock Holmes story, it is the absence of these cost studies that presents a serious
18 problem. Whether this is a topic for Part A or Part B is far less important than making
19 sure that between the two phases, this important NRC is established.

1

2 **II. LOCAL COMPETITION IN WASHINGTON**

3 **Q. IN YOUR DIRECT TESTIMONY (PART A), YOU EXPLAINED THAT**
4 **UNE-BASED COMPETITION IS NOT MATERIALIZING IN WASHINGTON.**
5 **DID**
6 **THE ILECS RESPOND TO THIS VIEW?**

7 A. No, not really. To begin, it is useful to note that the ILECs in this proceeding
8 have both undergone transformations since my direct testimony was filed. U S WEST
9 has become Qwest, while GTE is now Verizon. This development is noteworthy because
10 it exposes the sad truth that the only successful “entry strategy” to the local market thus
11 far has been by acquiring the incumbent. While these companies may claim the local
12 market is competitive, when it came time for Qwest and Bell Atlantic to enter, they each
13 concluded the better strategy was to *be* an incumbent than *fight* one.

14 In light of this fundamental conclusion by each company’s management, it is not
15 surprising that the “response” to my analysis of market conditions is so weak. Qwest, for
16 its part, silently admits to the nascent competition that I documented, while Verizon
17 simply notes that there are forms of competition that do not require ILEC compliance for
18 success, and that data on these competitive forms is difficult to develop:

19 Mr. Gillan’s statistics do not present a complete picture of the competitive
20 local market in Washington because they only include resale and UNE
21 loops... ILECs are today also facing facilities-based competition in the
22 form of competitive fiber rings, wireless services, and cable modems. The
23 extent to which these forms of competition are occurring is difficult to

1 quantify since Verizon NW does not have the information available to it.²

2 **Q. ARE THESE FORMS OF COMPETITION EVEN *RELEVANT TO THE***
3 **POINTS YOU WERE MAKING?**

4 A. No. Competitive fiber rings are fundamentally useful only to serve customers that
5 are digital. That is, that either the customer has incurred the expense to convert its
6 service to digital format (for instance, by using a PBX) or it is sufficiently large to justify
7 the CLEC making the customer-specific investment to convert and concentrate the
8 customer's voice service. Because of this technological reality, the principal competitive
9 focus of carriers deploying competitive fiber rings has been (and, for the foreseeable
10 future, will continue to be) customers with DS-1 needs (or greater).

11 In contrast, the focus of my testimony concerns creating the conditions for mass-
12 market customers with conventional analog phone instruments and traffic volumes that
13 cannot justify higher speed digital connections. *Whatever* the degree of competition is in
14 the market for large business customers served by "competitive fiber rings," its existence
15 means little for the development of mass-market local services to residential and smaller
16 business customers with fundamentally different technological needs.

17 Similarly, wireless technology serves a different market segment than the one my
18 testimony addresses. Although there are wireless-based local exchange services
19 beginning to emerge in isolated circumstances (for instance, Western Wireless is
20 beginning to offer wireless service in certain rural markets), the technology remains

1 ² Tanimura Responsive Direct (Part A), page 4.

1 focused on mobility or, like the competitive fiber rings noted above, larger accounts.
2 Certainly nobody would seriously suggest that wireless service provides a viable mass-
3 market substitute for wireline local service in today's market.

4 Finally, cable modem services are more focused on high-speed data applications
5 than voice service. Even Verizon admits that there are only 3.1 million cable modem
6 subscribers in all of the United States and Canada.³ By comparison, the major ILECs
7 serve more than 167 million lines in the United States alone.⁴

8 **Q. ARE THERE ANY PUBLICLY AVAILABLE STATISTICS THAT**
9 **PROVIDE INSIGHT TO THE DEGREE OF FACILITIES-BASED**
10 **COMPETITION?**

11 A. Yes. One rough measure of facilities-based competition is the number of minutes
12 that originate on a CLEC's network that are terminated with the ILEC. Although there
13 are likely some minutes that remain on the CLEC network (and, therefore, this measure
14 may slightly understate competitive activity), the relative minutes originating with CLEC
15 customers provides a useful approximation of their local market share. While Qwest did
16 not report these statistics to the FCC, Verizon's data for the State of Washington indicates
17 a CLEC share of less than 4.5% for *both* facilities-based and UNE-based entrants,⁵ and

1 ³ Tanimura Responsive Direct (Part A), page 4.

1 ⁴ See Table 2, Gillan Direct Testimony (Part A), page 6.

1 ⁵ Minutes that originate on a CLEC network would include minutes originated on the CLEC's
2 fiber network as well as any minutes originated by a customer served with an unbundled loop
3 connected to the CLEC's switch. Consequently, this statistic overstates the level of pure
4 facilities-based competition.

1 Sprint reported that it had *no* minutes exchanged with CLECs.⁶

2 Furthermore, the FCC also produces a state-by-state estimate of total revenues
3 developed from, among other sources, carrier reports to the Universal Service
4 Administrator. That data shows, for the State of Washington, that CLECs (using *all*
5 forms of entry) serve approximately 3.2% of the market.⁷ No matter how you measure it,
6 the level of local competition in Washington is negligible.

7 More to the point, however, is the fact that my analysis focused on those forms of
8 entry that were intended to be the *core* reforms of the Telecommunications Act, and
9 which were expected to promote the development of *widespread* local competition.
10 While Verizon may claim that local competition is “poised to rapidly expand,”⁸ the fact
11 remains that widespread competition requires *useful* access to UNEs – which, as the
12 evidence continues to show, means access to UNE combinations.

13 **III. LINE SHARING IN A UNE-P ENVIRONMENT**

14 **Q. PLEASE SUMMARIZE YOUR TESTIMONY WITH RESPECT TO “LINE** 15 **SHARING” IN A UNE-P ENVIRONMENT.**

16 A. As I explained in my direct testimony, it is as important that UNE-P lines be able

1 ⁶ Relative share calculated as the ratio of minutes originating on CLEC networks that terminate
2 with the ILEC divided by total minutes originating with ILEC customers. Source: ILEC
3 Response to the FCC’s 5th Survey on Local Competition (data as of 6/30/99).

1 ⁷ Source: *State-by-State Telephone Revenue and Universal Service Data*, Industry Analysis
2 Division, Federal Communications Commission, January, 2000. Market share compares CLEC
3 revenues (interstate and intrastate, Tables 2.16 and 2.18) to ILEC revenues for Intrastate Local
4 (Table 2.16), ILEC intrastate toll (Table 2.13), and ILEC interstate local, SLC, and access (Table
5 2.18).

1 ⁸ Tanimura Responsive Direct (Part A), page 5.

1 to offer high-frequency spectrum to advanced service providers (sometimes called “Data
2 CLECs” or “DLECs”) as it is for the ILEC. The goal should be robust competition in the
3 *integrated* services market, with multiple providers offering consumers packages that
4 support voice/data services on a single line. Verizon’s response to my testimony
5 demonstrates, however, that without clear leadership from the Commission, such an
6 outcome will not occur.

7 **Q. HOW DID VERIZON EXPLAIN ITS REFUSAL TO SUPPORT UNE-P**
8 **LINES IN THE MANNER THAT YOU RECOMMENDED?**

9 A. To begin, Verizon fundamentally mischaracterizes UNE-P and the
10 recommendation of my testimony. Verizon’s description of UNE-P completely ignores
11 the basic definition of a network element – and thus a network element combination -- as
12 a *generic* functionality, unrestricted in the services that it can be used to offer. According
13 to Verizon:

14 The form of UNE-P service provision that is relevant here is UNE-P
15 provision of *voice* service, in which the CLEC acquires the unbundled
16 loop, network interface device (“NID”), switching, and other elements
17 necessary for local *voice* service.⁹

18 Contrast this perspective, however, with the definition of a network element:

19 The term ‘network element’ means a facility or equipment used in the
20 provision of a telecommunications service. Such term also includes
21 features, functions, and capabilities that are provided by means of such
22 facility or equipment¹⁰

23 There is no silent limitation in this definition that restricts UNEs – including,

1 ⁹ Boshier Responsive Direct Testimony (Part A), page 4, emphasis added.

1 ¹⁰ 47 U.S.C. § 3(a)(29).

1 importantly, UNE-P – to the provision of voice services. Certainly, UNE-P is critical to
2 voice competition, but that fact only makes it more important that UNE-P lines be able to
3 support line sharing in the same manner as ILEC lines.

1 **Q. VERIZON FURTHER CLAIMS THAT THE FCC HAS EXEMPTED**
2 **ILECS FROM PROVIDING “LINE SHARING” ON UNE-P LINES.¹¹ HOW DO**
3 **YOU RESPOND?**

4 A. Again, Verizon misunderstands my recommendation. I am not asking for the
5 ILEC to *offer* “line sharing” on UNE-P lines, I am recommending that the ILEC be
6 required to *support* UNE-P lines in the same manner as they support their own lines so
7 that the UNE-P provider can offer “line sharing.” Said differently, I recommend that the
8 ILEC provide “line splitting” on UNE-P lines so that UNE-P providers can “line share”
9 with other advanced service providers in the most efficient manner possible.

10 The most efficient configuration is that splitters be installed and managed by the
11 ILEC so that the high-frequency portion of the local loop can be routed to the appropriate
12 DSLAM provider. If the ILEC managed the “splitter pool” in this way, then customers
13 would be able to more easily migrate between DLECs, thereby promoting a more
14 competitive environment.¹² Although Verizon prefers to impose on CLECs the obligation
15 to install splitters, it does appear to recognize the inherent weakness of this position and
16 has proposed an alternative to install splitters on a “port-at-a-time” basis.¹³

¹¹ Boshier Responsive Direct Testimony (Part A), page 4.

¹² This is not to say that a CLEC cannot provide its own splitter when it orders an unbundled loop. In a line-sharing environment, however, it is the ILEC that is obligated to provide access to the high-frequency spectrum, and to fulfill that obligation it should provide the splitter functionality.

¹³ See Bykerk Responsive Direct (Part A), page 3.

1 **Q. SHOULD VERIZON BE REQUIRED TO SUPPLY “PORT-AT-A-TIME”**
2 **SPLITTERS FOR UNE-P LINES?**

3 A. Yes. The ILEC should be required to install splitters on UNE-P lines just as they
4 would for the lines that they retain. This parallel obligation is needed to assure that the
5 ILEC treats both its lines and the lines of competitors in a nondiscriminatory fashion, and
6 would greatly facilitate local competition by offering DLECs other strategic alternatives
7 to the ILEC. The effect of such a policy would be to enable numerous carriers to offer
8 integrated voice/data packages to the residential and small business markets efficiently.

9 Verizon’s principal objections to this competition are that (a) the FCC hasn’t yet
10 required this and (b) the procedures are not yet developed.¹⁴ Neither of these “reasons,”
11 however, justifies the result – an ILEC positioned to dominate the integrated services
12 market by virtue of its voice dominance. Certainly, the Washington Commission has the
13 independent authority to require that the ILEC not discriminate against UNE-P lines,
14 while the mere fact that procedures for “line splitting” are not yet in place is a
15 consequence of – not a justification for – the ILECs refusal to support this ability.

16 **IV. OSS COST RECOVERY**

17 **Q. PLEASE SUMMARIZE THE STAFF’S RECOMMENDATION WITH**
18 **REGARD TO THE RECOVERY OF OSS DEVELOPMENT COSTS.**

19 A. As I understand Staff’s testimony, Staff recommends that the Commission adopt a
20 presumptively valid charge for the recovery of OSS startup costs of \$5.00 (or less) per

1 ¹⁴ See Boshier Responsive Direct Testimony (Part A), pages 4 and 5.

1 IMA order (and \$3.00 per EDI order).¹⁵ However, Staff also concludes that Qwest and
2 Verizon are already recovering OSS startup costs in retail rates and, as a result, imposing
3 OSS Startup charges would enable the ILECs to recover the startup costs twice. To avoid
4 this double recovery, Staff recommends that *other* OSS charges be reduced.¹⁶

5 **Q. DO YOU SUPPORT STAFF'S RECOMMENDATION?**

6 A. No, not entirely. Although I agree with its analysis that the ILECs are, in effect,
7 already recovering OSS startup costs in retail rates and that, therefore, imposing the
8 suggested OSS Startup Charges would result in double recovery, I believe there is a far
9 simpler solution than reducing *other* charges. The preferable approach would be to
10 reduce (i.e., eliminate) the OSS Startup charges themselves.

11 I recognize that the Staff based its recommendation, in part, on its belief that the
12 Commission has already decided that CLECs should pay for the development of these
13 OSS systems that the ILECs must implement to comply with the law. The Staff also
14 recognized correctly, however, that this policy would discourage CLECs from entering
15 the Washington market.¹⁷ These proposed charges would have a particularly chilling
16 affect on mass-market competition, which is characterized by a large number of relatively
17 low-value transactions. A \$5.00 charge may be modest where a carrier is ordering a DS-
18 1 unbundled loop to serve a medium-sized business customer, but it is large penalty to
19 pay to add call waiting to a residential line.

1 ¹⁵ Direct Testimony of Thomas Spinks (Part A), page 7.

1 ¹⁶ Direct Testimony of Thomas Spinks (Part A), page 10.

1 ¹⁷ Direct Testimony of Thomas Spinks (Part A), page 7.

1 **Q. WHAT DO YOU RECOMMEND?**

2 A. There is simply no better solution than to recognize that these OSS Startup costs
3 were incurred by the ILEC to comply with a legal obligation – an obligation that is part
4 and parcel of an Act that provided its own countervailing benefits to Verizon and Qwest
5 in the form of interLATA authority (or, at the least, a *path* to interLATA authority).
6 Imposing these costs on entrants is both a barrier to entry and a drag on innovation.
7 Consequently, I recommend that, to avoid a double recovery, the Commission take the
8 simple step – which is also the most sound step – of eliminating the *cause* of the double
9 recovery, the OSS Startup charges themselves.

10 **V. NRCS FOR UNE-P**

11 **Q. WHY SHOULD UNE-P HAVE A UNIQUE NON-RECURRING CHARGE?**

12 A. When a carrier orders a UNE-P combination, there is generally no need for any manual
13 activity. The loop and the port are already connected, and the migration of these facilities
14 to the entrant is accomplished through the transfer of “feature control” of the port from
15 the ILEC to the CLEC and changes to the appropriate billing indicators. The principal
16 advantage of UNE-P – and one reason that it is needed for mass-market applications – is
17 that these steps can be achieved through software instruction instead of manual
18 intervention.

19 **Q. ARE SOFTWARE-CONTROLLED MIGRATIONS LESS COSTLY?**

20 A. Absolutely. Software-based migrations are effectively electronic from end to end and
21 should, therefore, require a very small nonrecurring charge to recover the appropriate

1 cost. BellSouth's migration charges for UNE-P are \$2.01 in Georgia and \$1.46 in
2 Florida, and more recent information suggests that even these rates are too high. For
3 instance, the Michigan Commission has ordered a charge of \$0.35,¹⁸ while BellSouth has
4 proposed an updated migration charge in Florida of \$0.198.¹⁹ Whether the best estimate
5 is \$2.00 or 20¢, however, is a less important point than the clear conclusion that the
6 nonrecurring cost to provision a UNE-P combination is a small *fraction* of the non-
7 recurring charges for each element individually.

8 **Q. IS THE ESTABLISHMENT OF A COST-BASED NRC FOR UNE-P A PART A**
9 **OR PART B ISSUE?**

10 A. Because NRCs were initially identified as an issue in Part A, the ILECs should have
11 (presumably) proposed UNE-P NRCs in that phase of the case. However, neither Qwest
12 nor Verizon proposed such a rate. As I indicated earlier, given the fact that *this* NRC
13 issue overlaps Parts A and B, my testimony is being filed in both Parts.

14 Irrespective of the procedural issue, however, is the more important point that a non-
15 recurring charge that is unique to the combination must be established by the conclusion
16 of this proceeding. Without a lower, cost-based charge for UNE-P migration, the promise
17 of mass-market competition will again be delayed.

1 ¹⁸ I should note that the application decision is not without dispute. SBC claims that the \$0.35
2 charge established by the Michigan Public Service Commission replaces line connection charges
3 but not the service order charges, while the proponent of the charge adopted by the Commission
4 (AT&T) interprets the charge as including both. This issue is currently before the PSC in Docket
5 U-11831, which is expected to be decided shortly.

1 ¹⁹ See Direct Testimony of Alphonso Varner on behalf of BellSouth, Docket No. 990649-TP,
2 filed May 1, 2000.

1 Q. WHAT DO YOU RECOMMEND?

2 A. I recommend that the Commission adopt a non-recurring charge for a UNE-P migration
3 of \$1.00 per line. This estimate is roughly the midpoint of the results from other states.
4 If the ILECs disagree that that is a reasonable estimate of the nonrecurring costs for an
5 electronic migration, then they can propose an alternative with cost support that can be
6 reviewed.

7 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

8 A. Yes.