

Exhibit T-__ (TLW-T-1)
Docket No. UT-030614
Witness: Thomas L. Wilson, Jr.

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

In the Matter of the Petition of

DOCKET NO. UT-030614

QWEST CORPORATION

**For Competitive Classification of Basic
Business Exchange
Telecommunications Services.**

DIRECT TESTIMONY OF

Thomas L. Wilson, Jr.

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

August 13, 2003

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

2 A. My name is Thomas L. Wilson, Jr., and my business address is 1300 South
3 Evergreen Park Drive Southwest, P.O. Box 47250, Olympia, Washington, 98504.
4 My business e-mail address is tomw@wutc.wa.gov.

5
6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by the Washington Utilities and Transportation Commission
8 (Commission) as a telecommunications analyst.

9
10 **Q. Please state your qualifications to provide testimony in this proceeding.**

11 A. Please see Exhibit No. ___ (TLW-2).

12
13 **Q. What is the purpose of your testimony?**

14 A. The purpose of my testimony is to analyze the petition for competitive
15 classification petition filed by Qwest Corporation in Docket No. UT-030614, and
16 to provide background information and Staff's recommendations to the
17 Commission regarding the petition.

18

1 **Q. What is Staff's recommendation?**

2 A. Staff recommends that the petition be approved because the services listed are
3 subject to effective competition. Also, Staff understands that Qwest will not
4 abandon service in the exchange areas it currently serves regarding services
5 listed in its Petition. Staff understands that Qwest intends this condition to be
6 effective until November 7, 2009, and not to affect Qwest's ability to grandfather
7 the services listed in its petition or to sell any or all of its business in the service
8 areas where it currently offers such services. Qwest's obligation to serve under
9 other statutes and rules would not be altered by this condition. Staff would not
10 object to such a proposal.

11
12 **Q. Please provide your perspective on how the Commission should view the**
13 **petition within the context of the Regulatory Flexibility Act of 1985?**

14 A. This case represents a milestone in the implementation of ESHB-3305, known as
15 the Regulatory Flexibility Act of 1985, or Chapter 450, Laws of 1985. The
16 legislation provided guidance for regulatory oversight of competition, and
17 Section 5 is codified with particular relevance to this case in RCW 80.36.330. In
18 the 1987 second annual report to the Legislature on status of the industry and
19 implementation of the new law, the Commission reported that there were 24
20 historical incumbent local exchange companies, de minimus competition for local

1 services, and emerging competition by MCI, Sprint, and American Sharecom
2 against AT&T for long distance service.¹ Shortly, active implementation of the
3 Regulatory Flexibility Act of 1985 as competition grew resulted in numerous
4 long distance resellers and even AT&T becoming classified as competitive,
5 indicating the long distance market was competitive. However, the local
6 exchange was commonly held to be the last bastion of monopoly, with the local
7 loop representing the final bottleneck.

8 The Regulatory Flexibility Act of 1985 gave the Commission the statutory
9 vehicle to relax oversight and rules where competition was occurring and still
10 protect ratepayers who were captive customers of monopolies. This gradual
11 relaxation of regulatory oversight over those aspects of the market for services
12 that could be shown subject to effective competition can be analogized to peeling
13 off the layers of an onion. In the late 1980s, the outer layers of the onion,
14 represented by long distance and customer premise equipment, were
15 competitive, but local exchange – at the center of the onion – remained a
16 monopoly.

17 As advances in technology, declining costs, and burgeoning demand for
18 innovative new services grew in the late 1980s, competitors began to penetrate

¹ The Annual Report on the Status of the Telecommunications Industry, presented to the Washington

1 toward the local exchange monopoly (for example, centrex resale, private
2 systems and shared tenant services). For effective local competition to take
3 place, a number of prerequisites had to be satisfied. By 1990, competitive access
4 providers like Electric Lightwave and Digital Direct of Seattle (later known as
5 TCG of Seattle, now owned by AT&T) began to challenge incumbent dominance
6 in the market for large volume access and data services with fiber optic rings,
7 and new digital technologies deployed initially where profits and economies of
8 scale were greatest. This type of competition came to “tier one” US cities like
9 New York City, Los Angeles, and Chicago, shortly after the divestiture of the Bell
10 System. Competition followed economies of scale, and eventually came to
11 business centers of “tier two” cities, such as Seattle, and eventually even “tier
12 three” cities like Tacoma, Spokane, and Vancouver. Today at least one to three
13 CLECs offer basic business service in every Qwest exchange in Washington
14 except Elk², and at least 27 offer service in Seattle. This includes small towns that
15 are outside of urban-dominated markets where providers currently compete to
16 provide even just a few services to just a few locations.³ It is worth noting that

State Legislature, by the Washington Utilities and Transportation Commission, January 12, 1987, page 50.

² Qwest’s wholesale data indicated five exchanges were empty of CLECs. *See* Petition at 11. The CLEC responses to the Commission data request revealed additional information about competition in smaller exchanges. Now, the most current data reveals only Elk lacks CLEC presence.

³ See Exhibit No. ___ (TLW-3) and Exhibit No. C-___(TLW-C-5).

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Exhibit T-___ (TLW-T-1)

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1 just nine years ago, CLEC market shares were zero in every exchange in
2 Washington.

3 Firms considering entry into telecommunications markets need to be able
4 to rely on the business proposition being legal, technically feasible, and
5 (eventually) economically successful. In Washington, the first test was attempted
6 by Electric Lightwave, which requested legal authority to provide competitive
7 access services within the local exchange in 1990. Until that time, the local
8 exchange had been considered an exclusive franchise. After four years of
9 litigation, the Washington State Supreme Court held in 1994, that the law did not
10 authorize exclusive local exchange territories. At the same time, competitive
11 access providers began to exploit new technology and economies of scale
12 encouraged by burgeoning demand in the metropolitan business centers. The
13 technical feasibility test has really come to fruition through the Commission's
14 work on interconnection, in particular, Qwest's 271 case. The test for economic
15 success is, of course, subject to the individual firm's ability to compete, demand,
16 and policy conditions, among many other factors. However, the Commission
17 has also been involved in addressing that field through various dockets,
18 including but not limited to the generic cost of service cases.

1 Q. Please describe the Commission's experience with determining the
2 prerequisites for effective local competition?

3 A. The Commission recognized a list of eleven prerequisites for effective local
4 competition in 1995:

- 5 1. central office interconnection arrangements
- 6 2. connections to unbundled network elements
- 7 3. seamless integration into local exchange company interoffice networks
- 8 4. seamless integration into local exchange company signaling networks
- 9 5. equal status in/control of network databases,
- 10 6. local number portability
- 11 7. reciprocal inter-carrier compensation arrangements
- 12 8. equal rights to/control over number resources,
- 13 9. cooperative practices and procedures
- 14 10. economically efficient pricing signals, and
- 15 11. intraLATA equal access.⁴

16 This list was a common theme once again in Staff's approach to generic
17 interconnection in Docket No. UT-941464 (preceding the Telecommunications
18 Act of 1996). Also, with regard to the prerequisites for local competition, Dr. Lee
19 Selwyn of Economics and Technology, Inc., and Hatfield Associates, Inc., wrote a
20 book in 1994 entitled The Enduring Local Bottleneck – Monopoly Power and the
21 Local exchange Carriers. The authors described the local exchange bottleneck
22 and the prerequisites for local competition and predicted the local bottleneck

⁴,In the Matter of the Petition of Electric Lightwave, Inc., for an Order Granting Competitive Telecommunications Company Classification, Docket No. UT-940403, Order Granting Petition at 4 (January 11, 1995).

1 would endure for five to ten years. They listed the following prerequisites,
2 among other discussion: full local exchange company interconnection, local
3 number portability, control of numbering, control of distribution, control of
4 switching, and control of transport. As I will explain later in my testimony, these
5 prerequisites were all measured and met by Qwest in the 271 case. Along with
6 the evidence of actual competition, the structural framework of the 271-
7 mandated provisions and safeguards being place is critical to Staff's analysis and
8 conclusions.

9
10 **Q. Please discuss the Commission's experience with relevant competitive**
11 **classification cases.**

12 A This Commission has substantial experience gauging and regulating effective
13 local competition. In U-86-34 et al., the Commission classified centrex-type
14 services of Pacific Northwest Bell as competitive, not including the local loop.
15 One of the major issues in that case was measuring the cost of service to address
16 concerns about cross-subsidization. In 1987, the Commission classified AT&T as

1 a competitive telecommunications company in a case involving a historically
2 dominant carrier. At that time, AT&T retained a 75 percent market share.⁵

3 Until Docket No. UT-990022 (Qwest petition for competitive classification
4 of DS3 service), the Commission had not received petitions for competitive
5 classification of a service for less than the entire operating territory of a company
6 in Washington. In UT-990022, the Commission relied on the phrase "relevant
7 market" and approved competitive classification of U S WEST DS3 services in
8 certain wire centers. Although the Commission noted that competitors did not
9 have physical plant in service at every single location in the affected wire centers,
10 the Commission found that entry into the market was occurring.

11 "We find that because competitors have the ability to construct their own
12 facilities or to lease unbundled network elements at cost-based rates or
13 resell existing facilities pursuant to the Telecommunications Act of 1996,
14 U S West lacks the ability to sustain prices substantially above cost in these
15 two areas without losing market share."⁶
16

17 The Commission found that the services were subject to effective competition in
18 some Seattle wire centers and a portion of Spokane.

⁵ *In the Matter of the Petition of AT&T Communications of the Pacific Northwest, Inc., for Classification as a Competitive Telecommunications Company*, Docket No. U-86-113, Fourth Supplemental Order at 11 (June 5, 1987).

⁶ *In the Matter of the Petition of US WEST Communications, Inc., for Competitive Classification of its High Capacity Circuits in Selected Geographical Locations*, Docket No. UT-990022, Eighth Supplemental Order at 14 (December 21, 1999).

1 In the most recent competitive classification case with Qwest, the
2 innermost layer of the onion – the local exchange -- has begun to be unpeeled
3 slightly and revealed to the core. In Docket No. UT-000883, the Commission
4 classified local business services provided over DS1 as competitive in certain
5 wire centers.

6
7 **Q. Has Qwest opened its local market to competition?**

8 A. Yes, according to the recent approval recommendations by the Commission⁷ and
9 the U.S. Department of Justice for authority to provide in-region long distance
10 pursuant to Section 271 of the Telecommunications Act of 1996, Qwest has met
11 the 14-point competitive checklist. Qwest has accordingly received 271 approval
12 in Washington from the Federal Communications Commission (FCC) with
13 findings of provisioning parity, deployment of operations support systems, and
14 changed management processes. Qwest has filed and received approval of a
15 Statement of Generally Available Terms, and the Company is subject to
16 provisions for performance assurance, reporting, monitoring, and compliance.

1 In addition, Qwest has, for purposes of this case, opened up the local market to
2 competition.

3 A substantial portion of the evidence in this case relates to the availability
4 of UNE-P. It is Staff's understanding that the long-term availability of UNE-P
5 will be subject to the pending full-text release of the FCC Triennial Review
6 decision and, most likely, a Commission review process. UNE-P based
7 competition represents only about a quarter of the CLEC loops in the relevant
8 market as shown in Exhibit No. C-___(TLW-C-5).

9
10 **Q. Please describe the approach used by Staff in developing a recommendation in**
11 **this proceeding.**

12 A. Staff reviewed in detail the evidence submitted by Qwest in support of its
13 petition. Staff reviewed responses to a Commission data request made pursuant
14 to RCW 80.36.350(5), which was sent to over 200 registered competitive local
15 exchange companies regarding actual activity in the relevant market. Staff
16 reviewed whether competitors have access to Qwest operations support systems

⁷ "Qwest has developed an adequate performance assurance plan to protect local competition once the company enters the long-distance business, and an extensive test of Qwest's operating systems, as well as its actual commercial performance, demonstrates compliance with the federal law's 14-point competitive checklist. *In the Matter of the Investigation Into US WEST Communications, Inc.'s Compliance With Section 271 and SGAT Pursuant to Section 252(f) of the Telecommunications Act of 1996*, Docket Nos. UT-003022/UT-

1 (OSS) to determine whether such access is provided at parity with the level of
2 service Qwest provides its own retail customers. Staff reviewed the availability
3 of competitive services. Staff analyzed the petition in terms of the statutory
4 factors the Commission should consider in determining whether the services
5 included in the petition are subject to effective competition.

6
7 **Q. Qwest only filed wholesale data. Did Staff attempt to augment the data for**
8 **analysis?**

9 A. Yes, Staff made data requests to Qwest for detailed information about revenues
10 per line for all of the services listed in the petition to enable analysis of the costs
11 and revenues to support consideration of whether competitive alternatives are
12 reasonably available. Staff also asked Qwest to provide line data for PBX and
13 Centrex, and for data to determine the number of customer locations served in
14 each wire center. Staff also asked the Commission to issue an order to
15 competitive local exchange companies (CLECs) requiring CLECs to provide
16 information pertinent to this proceeding. Significantly, although Qwest claimed
17 inability to gain information about facilities-based competition, the Commission
18 request to the CLEC industry required data on facilities-based competition.

003040, 39th Supplemental Order; Commission Order Approving SGAT and QPAP, and Addressing Data

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Q. How many CLECs responded to the Commission’s data request, and how many responses were useable?

A. There were 24 responses and several carriers also verified the Qwest wholesale data. I was able to aggregate responses from 17 of the carriers and provide detailed notes along with the aggregated data report, so that other analysts can combine the response data from the Commission’s CLEC request together with the Qwest wholesale data. Some carriers only provided new information concerning lines provided via facilities owned by the CLEC. In some cases, CLECs providing facilities-based data also verified Qwest wholesale data. My notes provide guidance to avoid double-counting in the analysis, and explain that due to minor differences in reporting methods, some figures are more accurate estimates and more reliable than others. Highly confidential actual responses have only been reviewed by me. Exhibit No. ___ (TLW-3) contains my detailed notes about the responses and Staff’s aggregation of the data without revealing confidential information.

Verification, Performance Data, OSS Testing, Change Management, and Public Interest at 1 (July 1, 2002).

1 **Q. Did Staff verify that the data in Exhibit No. C-___(TLW-C-4) represents analog,**
2 **not digital services?**

3 A. Yes. Some responses came in that were unusable because they were information
4 about digital services such as xDSL and line sharing arrangements. Whenever
5 verifications were received indicating adjustments to Qwest wholesale data were
6 necessary, I have noted them in Exhibit No. ___ (TLW-3). In some instances,
7 Qwest wholesale data contained information about lines CLECs were using for
8 internal administrative purposes, so I have recommended that those lines be
9 deleted from the Qwest wholesale data for purposes of using it to calculate
10 market share estimates.

11
12 **Q. Please summarize the additional information gleaned from the Commission's**
13 **CLEC data request and aggregated in Exhibit No. C-___(TLW-C-4) and Exhibit**
14 **No. C-___(TLW-C-5)?**

15 A. The most important thing about the response to the Commission's CLEC data
16 request was that it produced information about facilities-based competition that
17 was not available from Qwest. The facilities-based data, plus more accurate
18 verified reports from CLECs cause the calculations for Qwest market share to be
19 substantially lower than initially reported by Qwest. The highly confidential

1 data from the CLECs was aggregated by Staff to protect confidentiality and is
 2 only available in confidential format. The confidential data is aggregated to at
 3 least the exchange level to protect confidentiality.

4 Qwest reported in its petition that as of December 31, 2002, competitors
 5 purchased a total of 104,019 basic business access lines from Qwest. At that time,
 6 this gave Qwest a statewide average 83 percent market share. The reported
 7 number of competitors lines included 7,275 resold basic business lines, 51,576
 8 unbundled loops, and 45,168 UNE-P lines. With the update from the CLECs,
 9 new figures are summarized below.

				Qwest
	CLECs	Qwest	Total	Market Share
11 Basic Business (minus D and W)	194,015 ⁸	520,635 ⁹	714,650	72.85%
12 PBX	Conf. ¹⁰	Conf. ¹¹	Conf.	Conf.
13 Centrex	<u>Conf.¹²</u>	<u>Conf.¹³</u>	<u>Conf.</u>	<u>Conf.</u>
14 Total	230,049	708,887	938,936	75.50%

⁸ Exhibit No. C- ___ (TLW-C-5), Column E, line 45.

⁹ Qwest Confidential Exhibit F1, Column E, Grand Total.

¹⁰ Exhibit No. C-___(TLW-C-4) page 3 of 4.

¹¹ Exhibit No. C-___(TLW-C-6) page 2 of 2.

¹² Exhibit No. C-___(TLW-C-4) page 4 of 4.

¹³ Exhibit No. C-___ (TLW-C-7) page 2 of 2.

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Docket No. UT-030614

Exhibit T-___ (TLW-T-1)

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Q. What is the relevant market for purposes of evaluating the petition?

A. The relevant market is Qwest’s statewide service territory, defined at the exchange level. It is the market for small, medium, and large-sized basic business exchange telecommunications services, including private branch exchange (PBX) and certain centrex-type services. It is the so-called market for “last-mile” services to small, medium, and large-sized business customers, providing basic connectivity to the public network for switched, voice-grade communications. While Qwest has limited the petition to analog services, competitors offer a plethora of analog and digital services in direct competition. Please refer Staff witness Robert Williamson’s testimony for technical issues concerning analog and digital technology.

When customers consider one service as a substitute for the other, those services are in the same relevant market. For example, to the extent that cellular, Wi Fi, voice over internet protocol (VOIP), and wireless networking solutions are seen as functional equivalents to a basic business exchange, PBX or centrex service from Qwest, they are in the same relevant market. Mr. Williamson provides testimony on alternative technologies and functional equivalence to the services listed by Qwest in this petition. Some customers may choose to fill their

1 needs with several (plain old telephone service) basic business exchange lines
2 from Qwest, or they may choose to network the lines through customer premise
3 equipment with various applications including voice, data or fax. Some
4 customers choose to upgrade voice systems when they look at digital substitutes,
5 getting more for their dollar, or satisfying other tastes and preferences, or specific
6 or unique needs. Qwest basic business exchange, PBX, and centrex services face
7 increasing competition from numerous alternative technologies and solutions.

8
9 **Q. Please provide Staff's analysis of the number and size of alternative providers**
10 **of services?**

11 A. The Commission has a variety of data available that indicates there are numerous
12 alternative providers. There are approximately 150 carriers with interconnection
13 agreements with Qwest. Some of these carriers are among the largest
14 corporations in the world. Many have affiliations with very large companies.
15 Over 30 carriers are represented in Qwest wholesale data, and several more
16 responded to the Commission's data request with additional information,
17 notably providing information about the quantities of facilities-based
18 competition.

1 The Qwest petition is limited to analog services, constraining the analysis.
2 The Commission’s ability to collect data on competitive alternatives is also
3 limited in other ways, but the Commission has faced the problem of data
4 collection for market share analysis several times before.

5 “The Commission, however, may not be able to discover and
6 develop fully in a given proceeding all data and information
7 relevant to the four factors, or other relevant factors, without broad
8 participation from the industry . . . The availability of data to
9 support a claim that the subject areas are subject to competition is
10 limited in this proceeding because significant data is held by
11 competitors who view the information as proprietary and sensitive.
12 With the evidence available regarding the status of the market for
13 the subject services, the Commission must consider whether the
14 quantum of evidence presented by U S West satisfies the standard
15 of substantial competent evidence necessary to carry the *prima facie*
16 case.”¹⁴
17

18 It also worth noting that the telecommunications industry is very dynamic
19 and unpredictable, complicating policy choices. However, business customers
20 simply choose the functionality they need, often with little regard to how the
21 service was provided. An emerging new group of services that utilize new
22 modes of transmission and technological approaches, such as VOIP and wireless
23 solutions, also merits serious attention.
24

¹⁴ *In the Matter of the Petition of U S WEST Communications, Inc., for Competitive Classification of its High Capacity Circuits in Selected Geographical Locations*, Docket No. UT-990022, Eighth Supplemental Order at 5 (December 21, 1999).

1 Q. Please give some examples of alternatives customers may choose from in the
2 relevant market.

3 A. The following websites make available alternatives for digital network access.

4 <http://www.odessaoffice.com/Info.htm>

5 <http://www.accima.com/>

6 <http://www.pocketinet.com>

7 <http://www.highspeed.com>

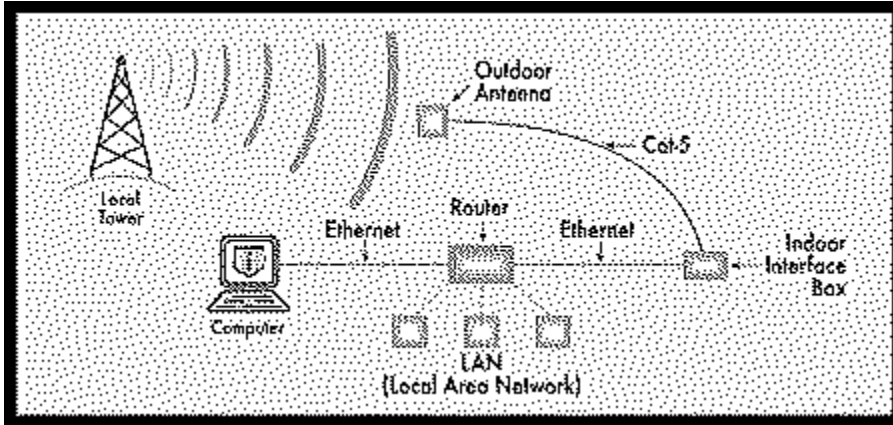
8 At least one of the providers listed above, High Speed.Com, is also registered as
9 a telecommunications company, with lines reported and accounted for in the
10 market share analyses I have referenced. In some cases, WiFi providers use
11 Qwest wholesale loops when line-of-sight WiFi is not available in certain pockets
12 of their market area, indicating substitution is occurring in the market place.
13 WiFi is not regulated. Other entities operating in the relevant market are also not
14 regulated, such as public utility districts which, like Qwest, offer network
15 infrastructure services at wholesale. A visit to the following websites will
16 illustrate how public utility districts are also making competitive alternatives
17 available.

18 <http://www.bentonrea.com/services/ppp.html>

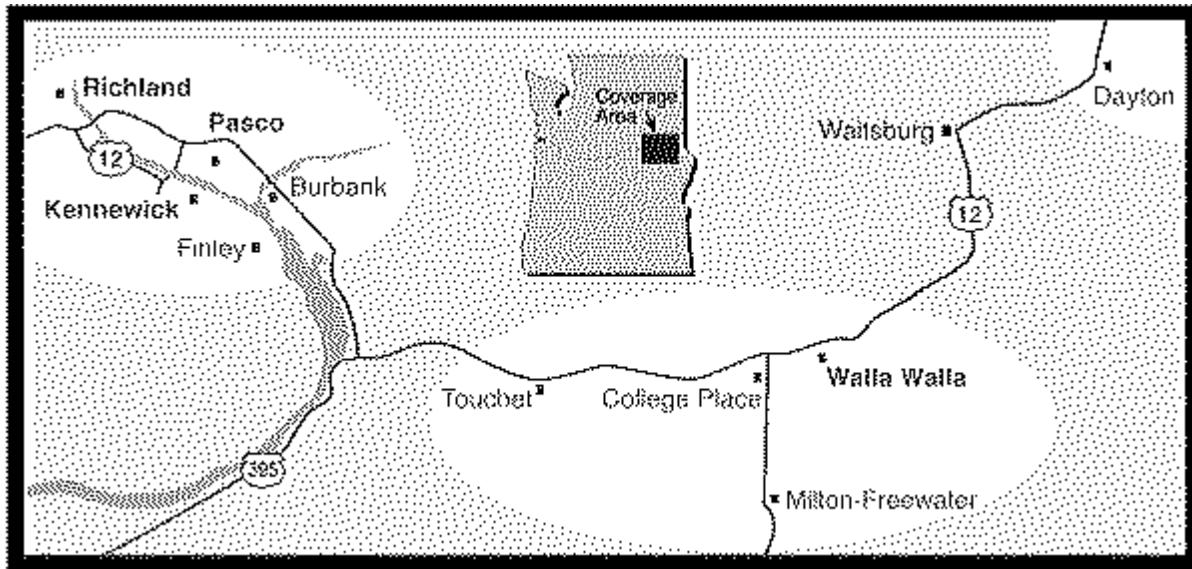
19 <http://www.gcpud.org/zipp/network.htm>

1 <http://www.click-network.com/>

2 The figure below illustrates how the 802.11 portion of the radio spectrum
3 is being used today in “WiFi” applications – wireless high speed data that
4 transmits on a line of sight basis.



5
6 These firms typically illustrate their coverage areas as shown below:¹⁵



7
8
¹⁵ See <http://www.pocketinet.com>.

1 Not all of the competitors in the relevant market are small entrepreneurs or
2 inexperienced but well-funded novices. Two of the carriers responding to the
3 CLEC data request with information about facilities-based competition in several
4 smaller exchanges are affiliates of ILECs competing against Qwest from
5 neighboring independent exchanges. One of the carriers responding to the
6 CLEC data request is an ILEC with neighboring exchanges. Many of these
7 carriers offer a full menu of services at least as attractive to customer as Qwest's
8 offerings.

9
10 **Q. To what extent are the services available from alternate providers in the**
11 **relevant market?**

12 A. Services are readily available at competitive rates from one to three alternative
13 providers in every exchange except Elk. One measure of competitors' ability to
14 compete effectively using resale, UNEs and UNE combinations such as UNE-P, is
15 whether Qwest provides these wholesale services to its competitors at parity
16 with the service quality level Qwest provides its own retail customers. Pursuant
17 to 271 authority, Qwest operations support systems (OSS) are monitored, and
18 reported to the Commission. On May 1, 2003, Qwest reported aggregate OSS

1 performance results for the period April 2002 – March 2003.¹⁶ The standard time
2 expected from the time an application is made by a CLEC until a UNE-P POTS
3 (plain old telephone service) order is completed is based upon parity with the
4 incumbent. In general, Qwest has been meeting, and often exceeding, the UNE-P
5 (POTS) parity requirement within metropolitan service areas (MSAs) with
6 dispatches, outside of MSAs with dispatches, and without dispatches. This is
7 also true for UNE-P centrex.

8 Basic business, PBX, and centrex customers have a wide variety of readily
9 available alternatives everywhere in the state. Exhibit F2 in Qwest's petition,
10 Exhibit No. C-___(TLW C-4), and Exhibit No. C-___ (TLW-C-5) show a very
11 broad dispersion of basic business alternatives everywhere except for the Elk
12 exchange, which represents a small percentage of the overall market. To the best
13 of Staff's knowledge, nothing prevents a CLEC from serving a customer in Elk.

14
15 **Q. Please discuss the ability of alternative providers to make functionally**
16 **equivalent or substitute services readily available at competitive rates, terms,**
17 **and conditions?**

¹⁶ Docket No. UT-030388.

1 A. Competitors have a choice of modes. They can purchase and resell Qwest
2 services at an overall discount, use UNE loops or UNE-P, or build their own
3 network facilities. The table below shows relative distribution of these choices
4 based upon Exhibit No. C-___(TLW-C-__ 5).

5	Resale	UNEL	UNEP	Owned
6	9.16%	38.58%	24.34%	17.93%
7				

8 Exhibit No. C-___(TLW-C-5) shows that there are at least one to three CLECs
9 offering service in every exchange except for Elk. CLECs are using combinations
10 of all four modes of entry.

11 Rates and terms for competitive services are summarized in the Qwest petition,
12 and additionally, the Commission received copies of numerous price lists in
13 response to Order No. 9 in this proceeding.

14

15 **Q. What are Staff’s findings with regard to the break-even analysis?**

16 A. Qwest revenue-per-line data provided to Staff via discovery is the support for
17 the break-even analysis by Qwest witness Mark Reynolds. The data reveals that
18 Qwest is able to achieve sufficient revenue in every wire center to pass an
19 imputation test. This means that a competitor can, too.

20

1 **Q. What is Staff's analysis of other indicators of market power, which may**
2 **include market share, growth in market share, ease of entry, and the affiliation**
3 **of providers of services? Please begin with discussing market power**
4 **generally.**

5 A. Market power is the ability to raise and maintain price above cost without losing
6 market share. Qwest's market share has been steadily declining from virtually
7 100 percent at the time of divestiture of the Bell system. Qwest has provided
8 evidence of changes in market share and competitive pressure over time. In the
9 overall statewide market for services listed in this case, Qwest has an estimated
10 75 percent market share in its operating territory, including tens of thousands of
11 facilities-based lines in almost every region of the state. Entry is very easy for
12 carriers. The requirements can be as little as having satisfied regulatory
13 registration requirements and adoption of an interconnection and resale
14 agreement. For a small fee, a CLEC can switch a customer from Qwest to its
15 service almost automatically. Qwest does not have any affiliations in adjacent or
16 input markets that give it any unique advantage over competitors.

17

18 **Q. Does Staff find that Qwest has market power in the relevant market?**

1 A. No. Qwest faces substantial competition statewide, and because consumers have
2 choices, Qwest cannot effectively exercise market power.

3

4 **Q. What overall information is available about Qwest market share in the**
5 **relevant market?**

6 A. There are two major sets of data: (1) Qwest resale, UNE loop and UNE-P data by
7 wire center, line counts and customer location data by wire center, and (2) CLEC
8 facilities-based data and data about wholesale purchases.

9 Based on the data, Qwest possesses estimated statewide minimum market
10 share of 72.85 percent for basic business exchange services, and 75.5 percent for
11 basic business, PBX, and Centrex together overall.

12 **Q. Has Staff analyzed market share concentration?**

13 A. Yes, Staff did an analysis of the Hirschman-Herfindahl Index (HHI) on the Qwest
14 wholesale data provided by Qwest in Attachment F2 of the Petition. Please see
15 Exhibit No. C-___(TLW-C-8) for a summary by UNE Zone of the Staff HHI wire
16 center level analysis. Exhibit No. C-___(TLW-9) contains the actual analysis.
17 HHI analysis indicates high market concentration. However, the results of the
18 HHI analysis do not provide the best representation of the market. The Qwest
19 wholesale data represents minimum CLEC market shares, and does not include

1 thousands of additional CLEC lines discovered in response to the Commission's
 2 CLEC data request. Thus, the HHI results are higher than they would be if all
 3 relevant data were included. Although Staff has not conducted a second HHI
 4 study to include the additional CLEC data, Staff is confident the results would
 5 indicate less concentration than shown in Exhibit No. C-___(TLW C-8) and
 6 Exhibit No. C-___(TLW-C-9). Additionally, HHI is a static measure of the
 7 market. Because evidence suggests that market shares are changing, an HHI
 8 analysis quickly becomes stale.

9
 10 **Q. What do HHI calculation figures represent?**

11 A. The HHI can range from zero in a perfectly competitive market to 10,000 in a
 12 perfect monopoly market. The HHI would equal 1,667 in a market with six firms
 13 of equal size, 2,000 in a market with five firms of equal size, 2,500 with four firms
 14 of equal size, 3,333 with three firms of equal size, and 5,000 with two firms of
 15 equal size. The HHI is calculated by summing the squares of the individual
 16 market shares of all of the firms in a given market. HHI wire center level
 17 estimates in Exhibit No. C-___ (TLW-C-8) are summarized below:

<u>Qwest HHI</u>	<u>Zone 1</u>	<u>Zone 2</u>	<u>Zone 3</u>	<u>Zone 4</u>	<u>Zone 5</u>
Maximum	7728	9870	7656	9008	10000
Minimum	6673	5997	5443	6349	5594

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Q. Are there any captive customers for the listed services? Please explain.

A. No. There are active competitors in all but the Elk exchange, which represents less than one percent of the total market in terms of number of lines.

Considering the diverse characteristics of municipalities and exchanges where there is evidence of actual competition, a CLEC could relatively easily enter Elk.

In UT-000883, Dr. Glenn Blackmon said, "Opening [Qwest's] local network to competition would also make it much easier for the WUTC to grant competitive classification of Qwest's business local exchange service."¹⁷

Through the structural framework of OSS and interconnection, competitors have the ability to make alternative service available. For a small incremental charge and in a very short time, competitors can compete head-to-head with Qwest. As Dr. Blackmon stated (before the Washington 271 process):

"If either unbundled loops or the UNE-P were readily available to competitors using proven ordering, provisioning, and repair systems – in the way, for example, that switched access service and the primary interexchange carrier change process is available to long-distance companies – then I believe the WUTC could safely classify all business exchange services as competitive."¹⁸

¹⁷ *In the Matter of Qwest Corp. for Competitive Classification of Business Services in Specified Wire Centers*, Docket No. UT-000883, Testimony of Glenn Blackmon, Exhibit 191-T, page 8 at lines 12- 14.

¹⁸ *Id.* at 14, lines 7-13.

1 **Q. Even though competitors may have the ability to readily make available**
2 **alternative services, are customers aware that they have a choice?**

3 A. Consumers are rational and quickly learn their choices. A total of 18,793 Internet
4 users offered opinions on their utility service quality in a survey conducted by
5 the National Regulatory Research Institute and BIGresearch between Jan. 9, 2003,
6 and Feb. 3, 2003.¹⁹ The purpose of the survey was to provide state public utility
7 commissions, utilities, and other stakeholders with insights regarding consumer
8 perceptions of utility service as well as the impact of competition on consumer
9 perceptions of utility service and prices. Ninety-three percent of U.S. households
10 live an area where there is a choice of alternative providers, however, only 36
11 percent of survey respondents said they were able to choose their phone
12 company. By dividing the states into two groups (those that granted 271
13 approval at least one year prior to the survey, and all others), the survey results
14 show that almost half, 49.6 percent, of survey respondents in “early” approval
15 states said they could choose their telephone company, compared to 36 percent
16 for the rest of the US.

17
18 **Q. Please discuss the relevant market.**

¹⁹ NRRI Networker, Spring 2003

1 A. Current theoretical discussion and case study of the communications sector, with
2 attention to the role of regulation when competition exists, indicates that non-
3 traditional, cross-industry, technology-neutral analysis based on functionality of
4 the relevant market may be appropriate.²⁰ Much more activity is occurring in
5 the relevant market than appears under Commission oversight. For example
6 intermodal offerings of analog and digital services via wire and non-wireline
7 transmission technologies are often presented as competitive alternatives in part
8 or in whole to what Qwest currently offers in the relevant market. The Qwest
9 data on wholesale, plus the CLEC verifications and facilities-based competition
10 still represent only a sub-set of all of the choices facing consumers in the relevant
11 market.

12
13 **Q. Please provide some examples of other types of competitive offerings besides**
14 **the type of services over which the Commission holds traditional oversight.**

15 A. Cable modems have historically served the residential market, but that
16 distinction will be blurring in the future. Companies will soon use the cable
17 networks to enhance work at home employees. "Comcast Corp.'s system in

²⁰ The Puzzle of Competition in the Communications Sector: Can Complex Systems be Regulated or Managed?, P. H. Longstaff, July 2003. Program on Information Resources Policy, Center for Information Policy Research, Harvard University. URL: <http://www.pirp.harvard.edu>, ISBN 1-879716-87-9 P-03-1.

1 Seattle scored big time ... [t]he system cut a deal with an undisclosed billion
2 dollar corporation in Seattle to provide high speed internet connections and a
3 virtual private network for it's employees so they can work from home.²¹

4 Comcast's market in the state includes the southern areas of Tacoma and Federal
5 Way ... [W]ashington state capitol Olympia; the eastern suburbs and the city of
6 Spokane; the downtown area and surrounding tech-savvy, high income suburbs
7 of Seattle; and northern Bellingham ...[C]omcast Seattle passes 1.6 million
8 homes."²² Comcast has stated that it will most likely begin offering VOIP service
9 in 2004. There is little doubt that they will offer VOIP centrex service to the work-
10 at-home employees along with high speed data service, reducing the need to
11 obtain business lines from Qwest.

12 There are a number of compelling reasons for businesses to begin the
13 convergence to VOIP for business services: integration of voice and data,
14 network efficiency, cost reduction, toll bypass, and physical portability of VOIP
15 lines. There are a number of VOIP providers offering service in this state spurred
16 by the small to medium size business market that is nimbler and moves to new
17 technologies sooner. "Small to medium-size business is definitely picking up the
18 banner" said Richard De Soto, vice president of Altigen Communications which

²¹ CableWorld 21 July 2003, pg 48

1 sells VOIP equipment almost exclusively to smaller businesses, “[s]maller
2 companies have older, analog based systems. That’s the customer migrating to
3 VOIP.” Level 3, a large wholesale network provider, recently announced that
4 they will sell VOIP this year.²³ “We’re particularly excited about voice [over IP]
5 given the very large size of that market,” said [James] Crowe (CEO of Level 3.²⁴

6 Vonage is rolling out services that will be available anywhere to connect
7 an existing telephone into a high-speed internet connection and disconnect from
8 the phone company entirely. For a \$30 one-time fee, plus \$40 a month, Vonage
9 will route phone calls via the internet.²⁵

10 Qwest business, PBX, and centrex customers have viable options to
11 purchase similar services through VOIP providers today. It seems certain that
12 there will be even more competition for Qwest services from high-powered
13 providers of VOIP services in the near future.

14 **Q. What relevance is there if special access facilities are used to provide the**
15 **service?**

16 **A.** My understanding is that, before 271, special access was sometimes used in lieu
17 of local interconnection services when ordering processes did not suffice.

²² Id. at 49.

²³ TELEPHONY.online.com

²⁴ Id.

²⁵ Forbes.com/manes, July 7, 2003.

1 Current alternatives do not make special access a very attractive entrance vehicle
2 to the market. Special access is for origination and termination of toll calls, and
3 this case relates to provision of local services. The extent to which competitors
4 utilize special access as a transport mechanism is not relevant to customers who
5 are only interested in functionality and satisfaction, with transmission and other
6 technology methods being transparent to the end user.

7

8 **Conclusion**

9 **Q. Does this conclude your testimony?**

10 **A. Yes.**

11