

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**IN THE MATTER OF THE PETITION OF)
QWEST CORPORATION FOR)
COMPETITIVE CLASSIFICATION)
OF BASIC EXCHANGE)
TELECOMMUNICATIONS SERVICES)**

Docket No. UT-030614

**REBUTTAL TESTIMONY OF
DAVID L. TEITZEL
ON BEHALF OF
QWEST CORPORATION**

AUGUST 29, 2003

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, POSITION, EMPLOYER, AND BUSINESS ADDRESS.

A. My name is David L. Teitzel. I am a Director in the Qwest Public Policy organization with advocacy responsibilities for retail markets issues and am located at 1600 7th Ave., Seattle, Washington, 98191.

Q. ARE YOU THE SAME DAVID L. TEITZEL THAT FILED DIRECT TESTIMONY IN THIS PROCEEDING ON JULY 1, 2003?

A. Yes.

II. SUMMARY OF REBUTTAL TESTIMONY

Q. COULD YOU SUMMARIZE YOUR REBUTTAL TESTIMONY?

A. In my rebuttal testimony, I respond to issues raised in the testimonies of witnesses for AT&T, MCI, and Public Counsel. Because there is overlap in the issues raised by the various witnesses, I have organized my rebuttal testimony by major issue. I explain why, contrary to contentions by AT&T, MCI, and Public Counsel, findings by this Commission, the federal Department of Justice (DOJ) and the FCC that Qwest has satisfied Section 271 requirements in Washington are relevant to this proceeding. Second, I clarify the nature of FCC data regarding CLEC competition in Washington and show how use of this data by Public Counsel is inaccurate. Next, I address misleading references by the

1 three parties to Qwest's evidence in this docket. Finally, I respond to the
2 Intervenor witness' contentions that alternative telecommunications
3 technologies, such as wireless and Voice over Internet Protocol (VoIP) services,
4 should not be considered actual competition for Qwest's business local
5 exchange services.

6 **III. IMPLICATIONS OF SECTION 271 APPROVAL IN**
7 **WASHINGTON**

8 **Q. WHAT BEARING DOES THE APPROVAL OF QWEST'S SECTION 271**
9 **APPLICATION TO REENTER THE INTERLATA LONG DISTANCE**
10 **MARKET HAVE ON THIS PROCEEDING?**

11 A. In considering Qwest's Section 271 application for Washington, this
12 Commission, the DOJ, and the FCC extensively considered evidence
13 concerning the openness of Qwest local exchange markets to competition,
14 Qwest's compliance with Section 271(c)(1)(A) (Track A) requirements,
15 compliance with the 14-point checklist requirements, compliance with Section
16 272 separate subsidiary requirements, and public interest requirements
17 (including assurances of future compliance with Section 271 guidelines). In
18 finding that Qwest had met all requirements, all three agencies found that Qwest
19 had fully opened its markets to local competition. This review process was
20 extraordinarily rigorous, and, as it remarked in its favorable recommendation to
21 the FCC, this Commission "held over 45 days of workshops and hearings, heard

1 extensive testimony, admitted over 1,800 exhibits and allowed parties to file
2 numerous briefs and comments, and to present argument concerning Qwest's
3 compliance."¹ Clearly, the three reviewing agencies all found that Qwest's
4 markets are fully and irreversibly open, sufficient competition (including
5 facilities-based competition) exists to satisfy Track A requirements, and strong
6 mechanisms are in place to ensure future compliance by Qwest with all Section
7 271 obligations.

8 **Q. WERE BOTH AT&T AND MCI/WORLDCOM PARTIES TO THESE**
9 **WASHINGTON SECTION 271 PROCEEDINGS?**

10 A. Yes. AT&T and MCI/WorldCom both actively participated as parties in the
11 state proceedings and actively commented in the federal proceedings.

12 **Q. DO THE INTERVENORS OFFER ANY BASIS TO CONCLUDE THAT**
13 **THE FCC ERRED IN FINDING QWEST TO BE COMPLIANT WITH**
14 **ALL SECTION 271 REQUIREMENTS?**

15 A. No. This Commission, the DOJ, and the FCC all extensively reviewed the
16 evidence supporting Qwest's Section 271 application, and all three entities
17 found that the evidence clearly showed that Qwest had met the requirement to
18 fully open its local markets to competition. The FCC's Order² speaks for itself.

¹ WC Docket No. 02-189, WUTC Order released July 26, 2002, P. 2.

² WC Docket No. 02-314, released December 23, 2002.

1 **Q. DO YOU MAINTAIN, AS PUBLIC COUNSEL WITNESS BALDWIN**
2 **AND MCI WITNESS STACY STATE YOU DO,³ THAT A FINDING**
3 **THAT QWEST HAS MET TRACK A REQUIREMENTS PER SE**
4 **TRANSLATES TO A FINDING THAT EFFECTIVE COMPETITION**
5 **EXISTS THROUGHOUT WASHINGTON?**

6 A. No, nor did I suggest in my direct testimony that Track A approval is
7 tantamount to a finding of effective competition statewide. However, the
8 Section 271 findings are germane to this proceeding. Clearly, Qwest's
9 compliance with Section 271 requirements means that all Qwest local exchange
10 markets are now fully open to competition, and CLECs have availed themselves
11 of those open markets to the point that CLECs are now providing competitive
12 local exchange business services in virtually all Qwest wire centers in
13 Washington.⁴ Again, contrary to the assertions of Ms. Baldwin, Mr. Stacy and
14 Mr. Gates, Qwest has presented evidence of *real* competition in the business
15 local exchange market that has been enabled by market openness. This
16 evidence has been independently substantiated by Staff's findings as a result of
17 gathering competitive information directly from the CLECs operating in
18 Washington (see Direct Testimony of Staff witnesses Mr. Wilson and Mr.

³ Direct Testimony of Susan Baldwin dated August 13, 2003, p. 42; Direct Testimony of Mark L. Stacy, p. 12.

⁴ The lone exception is the Elk, Washington wire center, a small exchange with approximately 180 local exchange business lines. See Direct Testimony of Thomas L. Wilson dated August 13, 2003, p. 16.

1 Williamson).

2 **Q. MS. BALDWIN (AT PAGE 42), MR. COWAN (AT PAGE 18) AND MR.**
3 **STACY (AT PAGE 13) ALL CONTEND THAT THE QWEST**
4 **PERFORMANCE ASSURANCE PLAN (QPAP) DOES NOT TRULY**
5 **PROVIDE ASSURANCE THAT LOCAL MARKETS WILL REMAIN**
6 **OPEN, AND THAT AN INSUFFICIENT AMOUNT OF TIME HAS**
7 **ELAPSED SINCE QWEST'S SECTION 271 APPROVAL IN**
8 **WASHINGTON TO GAUGE THE EFFECTIVENESS OF THE QPAP.**
9 **WOULD YOU COMMENT?**

10 A. Yes. In finding that Qwest had met its public interest requirements in
11 Washington with regard to Section 271, the Commission and the FCC found
12 that the Qwest QPAP was fully sufficient to ensure post-entry compliance. In
13 fact, the Washington QPAP contains self-executing penalties that place 36% of
14 Qwest's net returns in the state at risk if Qwest fails to maintain compliance.⁵
15 As a condition of approval, Qwest is required to report on a monthly basis its
16 performance metrics to demonstrate ongoing compliance. Further, the FCC
17 stated at paragraph 456 of its order in WC Docket No. 02-314:

18 As the Commission has stated in prior order, the PAP is not the only
19 means of ensuring that a BOC continues to provide nondiscriminatory
20 service to competing carriers. In addition to the monetary payments at
21 stake under each plan, we believe Qwest faces other consequences if it
22 fails to sustain an acceptable level of service to competing carriers,

⁵ WC Docket No. 02-314, p. 251, fn. 1655.

1 including enforcement provisions in interconnection agreements, federal
2 enforcement action pursuant to section 271(d)(6), and remedies
3 associated with antitrust and other legal actions.

4 Clearly, mechanisms are in place to ensure Qwest's continued section 271
5 compliance, up to and including revocation of Qwest's authority to offer
6 interLATA long distance service under section 271(d)(6) of the
7 Telecommunications Act. The Intervenors' claims to the contrary should be
8 disregarded.

9 **Q. AT PAGE 28, MS. BALDWIN ASSERTS THAT CLEC CUSTOMERS**
10 **ARE "VULNERABLE TO THE RE-CAPTURE BY QWEST AS QWEST**
11 **RE-ENTERS THE HOME-REGION INTERLATA MARKET." WOULD**
12 **YOU COMMENT?**

13 A. Qwest fully intends to offer packages of services, incorporating interLATA long
14 distance service, to directly compete with similar offerings of MCI, AT&T,
15 McLeod, Vonage, and others. In competitive markets, such as the Washington
16 business local exchange markets, competitors deploy offerings in which
17 potential customers perceive strong value. Qwest's new ability to offer
18 interLATA service enables Qwest to compete on par with the offerings of its
19 competitors, and we fully intend to attempt to recapture customers lost to
20 competition. At the same time, Qwest fully expects CLECs to continue to
21 aggressively work to win customers from Qwest. This effect is nothing more

1 than an indicator of effective competition and will result in innovative services
2 and packages that will be attractive to the business customer in Washington.

3 **Q. MR. COWAN, AT PAGE 4, STATES THAT "QWEST ALREADY HAS A**
4 **TREMENDOUS ADVANTAGE OVER ALL ITS COMPETITORS BY**
5 **BEING THE DOMINANT PROVIDER AS WELL AS THE SOLE**
6 **PROVIDER OF WHOLESALE SERVICES." IS HIS CONTENTION**
7 **ACCURATE?**

8 A. No. Mr. Cowan mischaracterizes Qwest's "advantage." In fact, as demonstrated
9 in section 271 state and federal proceedings, Qwest's local markets are fully and
10 irreversibly open. In this docket, Qwest has demonstrated (as has been
11 corroborated by Staff's independent analysis) that business local exchange
12 service is competitive virtually throughout Qwest's service territory. The fact
13 that CLECs can use Qwest's network on a wholesale basis is actually an
14 advantage for the CLECs: they can quickly and with minimal capital investment
15 enter Washington markets, build a customer base, then migrate that base to their
16 own switching and/or loop facilities according to their individual business plans.
17 Also, the costs and prices for Qwest's wholesale local service elements are fully
18 regulated by the Commission and are established through open Commission
19 dockets in which a number of CLECs, including AT&T and MCI, actively
20 participate.

1 The CLECs are free to target specific markets, and price, package, and promote
2 their services, with much greater flexibility than is available to Qwest under
3 current regulatory requirements. In a fully competitive market, such as the
4 business local exchange market, all competitors should have parity in marketing
5 their services. However, Qwest is in a sharply declining market share position,
6 and needs competitive flexibility to stem significant additional losses.

7 **IV. MISLEADING USE OF FCC DATA BY INTERVENORS**

8 **Q. AT PAGE 26, MS. BALDWIN ASSERTS THAT "INCUMBENT**
9 **CARRIERS CONTINUE TO DOMINATE 90 PERCENT OF THE**
10 **LOCAL MARKET IN WASHINGTON." WHAT SHOULD THE**
11 **COMMISSION KNOW ABOUT HER USE OF THIS PERCENTAGE?**

12 **A.** Caution must be exercised in attempting to correlate competitive data obtained
13 from the FCC's bi-annual Local Telephone Competition report to state-specific
14 proceedings, such as this docket. First, in Ms. Baldwin's statement, she shows
15 in footnote 35 that her claim is based on data found in Table 7 of the FCC's June
16 12, 2003 Local Telephone Competition report. It is important to note that the
17 FCC's access line counts reflect statewide data and include counts for Qwest,
18 the Independents, and the CLECs operating in the state. Since the
19 preponderance of CLEC activity is focused in Qwest exchanges, the "share"
20 percentages from the FCC's report will understate CLEC market share in Qwest
21 service territory in Washington. The incumbent share percentage cited by Ms.

1 Baldwin is an aggregate value that reflects the combined "share" of Qwest and
2 the Independents operating in Washington.

3 **Q. DO YOU HAVE OTHER CONCERNS WITH THE FCC'S DATA AS**
4 **USED BY MS. BALDWIN IN HER TESTIMONY?**

5 A. Yes. Table 7 of the FCC's report, to which Ms. Baldwin cites, contains a
6 footnote which states "Carriers with under 10,000 lines in a state were not
7 required to report." The "incumbents' share" percentage used by Ms. Baldwin
8 was not derived from data for any CLECs currently serving fewer than 10,000
9 lines. This exclusion can have a significant effect on CLEC access line counts.
10 For example, if five CLECs are each serving 9,000 lines in Washington, the
11 FCC's numbers would be understated by 45,000 lines. Additionally, the FCC's
12 data does not reflect any access lines served via VoIP or wireless service
13 providers. Since the FCC's data does not provide a complete picture of
14 competition in Washington, and is not specific to Qwest service territory, Ms.
15 Baldwin's attempt to inject a lower CLEC market share than the share values
16 introduced by Qwest and Staff in this proceeding should be dismissed.

17 **Q. IF THE FCC'S QUANTIFICATION OF CLEC ACCESS LINES IN**
18 **SERVICE CANNOT BE CORRELATED DIRECTLY TO QWEST**
19 **SERVICE TERRITORY, WHAT QUANTIFICATION IS AVAILABLE**
20 **TO THE COMMISSION TO GAIN AN ACCURATE VIEW OF THE**

1 **LEVEL OF CLEC COMPETITION FOR BUSINESS LOCAL**
2 **EXCHANGE SERVICE IN QWEST TERRITORY?**

3 A. In Confidential Exhibits DLT-3C, DLT-4C, and DLT-5C to my direct
4 testimony, I supplied comprehensive data showing wholesale services being
5 used by CLECs to provide business local exchange services in Qwest service
6 territory. In addition, Mr. Wilson for Staff presents in his testimony
7 (specifically in Confidential Exhibits TLW-C4 and TLW-C5) the Staff's
8 independent findings, by wire center, of CLEC access lines served via resale,
9 Unbundled Network Elements, and CLEC-owned facilities. The Staff's data
10 was obtained directly from the CLECs serving business customers in the state.
11 Qwest's data, coupled with the Staff's independent findings, provide the
12 Commission with a more accurate view of the level of CLEC competition for
13 business local exchange services within Qwest service territory. It should also
14 be noted, to the extent business customers are now electing to use VoIP and
15 wireless services as alternatives to Qwest business local exchange service,
16 neither Qwest's nor Staff's data reflect those quantities.

17 **Q. AT PAGE 34, MS. BALDWIN CLAIMS THAT E911 RECORD DATA IS**
18 **UNRELIABLE AS A MEASURE OF FACILITIES-BASED CLEC**
19 **COMPETITION IN WASHINGTON. WOULD YOU COMMENT?**

1 A. In discussing E911 data as contained in the Intrado⁶ database, it is important to
2 note that facilities-based CLECs (those serving customers via CLEC-owned
3 loops or via stand-alone UNE loops purchased from Qwest) report customer
4 data directly to Intrado. Any CLEC lines served via resale or UNE-P service are
5 reported by Qwest to Intrado (since those lines remain resident within Qwest
6 switching equipment), and are marked for tracking purposes by Intrado as
7 Qwest lines. In other words, the customer records in the Intrado database shown
8 as CLEC lines are exclusively CLEC facilities-based lines. Both the DOJ and
9 the FCC have relied upon E911 data in each section 271 petition they have
10 reviewed and approved to date as a measure of facilities-based CLEC presence.
11 Since the E911 data is CLEC self-reported data, and since all CLECs are
12 required to report active customer record data to Intrado, this data provides a
13 means of gauging the approximate number of facilities-based CLEC lines in
14 service. As discussed earlier in my testimony, the FCC's CLEC access line data,
15 by definition, reflects only a subset of total CLEC lines in service in the state.

16 **Q. HOW DO YOU EXPLAIN THE DIFFERENCE BETWEEN YOUR**
17 **ESTIMATE OF BUSINESS FACILITIES-BASED CLEC LINES IN**
18 **SERVICE BASED ON THE INTRADO E911 DATA AND THE NUMBER**

⁶ Intrado is the third party administrator of E911 information for all local service providers within Qwest service territory. All local service providers are required to report customer record data associated with customers being actively served to Intrado to ensure accuracy of customer contact information in the event of an emergency requiring a call to 911 for assistance.

1 **OF FACILITIES-BASED CLEC LINES IDENTIFIED IN MR.**

2 **WILSON'S TESTIMONY?**

3 A. The reference to Business CLEC E911 records at page 11 of my Direct
4 Testimony was provided as evidence that Qwest's CLEC business access line
5 quantities identified in Confidential Exhibits DLT-3C, DLT-4C, and DLT-5C
6 (which only reflected CLEC business lines served via wholesale facilities
7 purchased from Qwest) were conservative. Staff's independent solicitation of
8 access line data directly from the CLECs quantified CLEC lines served via
9 resale, unbundled network elements and CLEC-owned facilities. This data
10 confirms that the CLEC line quantities identified by Qwest are conservative.

11 **Q. AT PAGE 35, MS. BALDWIN SUGGESTS THAT WASHINGTON DOES**
12 **NOT RANK NEAR THE TOP OF THE FCC'S LIST OF STATES IN**
13 **TERMS OF CLEC MARKET SHARE. IS THIS RELEVANT TO THIS**
14 **DOCKET?**

15 A. No. As stated earlier in my testimony, the FCC's "share" values do not reflect
16 data for all CLECs operating in a state and are influenced directly by the
17 proportion of Independent territory in each state. It is not surprising that states
18 with Independents serving significant, largely rural, areas within a state will
19 have a lower statewide CLEC market share value than more densely populated,
20 largely urban states. With respect to this proceeding, focusing on the level of

1 business local exchange competition in Qwest's service territory in Washington,
2 the FCC's CLEC "share" comparisons among states are not relevant.

3 **V. MISLEADING REFERENCES TO QWEST EVIDENCE BY**
4 **INTERVENORS**

5 **Q. MS. BALDWIN, AT PAGES 26 AND 27 OF HER TESTIMONY,**
6 **SUGGESTS THAT THE ONE YEAR CLEC LINE GROWTH OF 32%**
7 **IDENTIFIED BY MR. REYNOLDS IN HIS DIRECT TESTIMONY IS**
8 **NOT SIGNIFICANT, WHEN CONTRASTED AGAINST QWEST'S**
9 **"DOMINANT" MARKET SHARE IN WASHINGTON. IS HER**
10 **ARGUMENT MISLEADING?**

11 A. Yes. First, it is important to note that Mr. Reynolds' quantification of CLEC data
12 focuses only on Business resold lines, Business UNE-Platform lines, and stand-
13 alone unbundled loops, and identifies the percentage change in these quantities
14 from December 31, 2001 to December 31, 2002.⁷ This data specifically excludes
15 any business lines served via CLEC-owned facilities, and therefore understates the
16 actual scope of CLEC competition in the local exchange business market.
17 Similarly, the CLEC "share" of 17% identified by Mr. Reynolds excludes any
18 business lines served via CLEC-owned facilities. Ms. Baldwin's strong statement
19 that "Qwest dominates 83% of business lines on a statewide average basis" is

⁷ Direct Testimony of Mark S. Reynolds, dated July 1, 2003, p. 13.

1 simply not factual, represents only a subset of the CLEC competitive landscape in
2 Washington and completely ignores CLEC-owned facilities and other forms of
3 competition, such as VoIP and wireless, that now exist in the state.

4 **Q. DOES STAFF'S INDEPENDENT ANALYSIS PROVIDE A MORE**
5 **COMPREHENSIVE VIEW OF THE LEVEL OF CLEC COMPETITION**
6 **IN THE BUSINESS LOCAL EXCHANGE MARKET IN WASHINGTON?**

7 A. Yes. In his direct testimony, Mr. Wilson presents his findings regarding the
8 number and composition of CLEC access lines in service in each wire center in
9 the state. Since the data presented by Staff was supplied directly to Staff by the
10 CLECs, it is the most direct and complete measure of CLEC-based competition
11 available for the Commission's consideration in this proceeding. Not only did
12 Staff find that the CLEC share of the local exchange business market in Qwest's
13 territory in Washington is substantially greater than 17%, it found that CLECs are
14 now serving customers in all but one of Qwest's 112 wire centers in the state.

15 **Q. AT&T WITNESS COWAN (AT PAGE 6) AND MCI WITNESS GATES**
16 **(AT PAGE 9) BOTH MAINTAIN THAT QWEST HAS NOT IDENTIFIED**
17 **WHERE IT ACTUALLY FACES EFFECTIVE COMPETITION. ARE**
18 **THEY CORRECT?**

19 A. Absolutely not. Confidential Exhibits DLT-3C, DLT-4C, and DLT-5C show, at a
20 granular geographic level, the wholesale-based CLEC competition present in
21 Washington as of December 31, 2002. This data excludes any CLEC business

1 local exchange lines served via network facilities owned by the CLECs. In
2 addition, Mr. Reynolds presents tariff and price list information showing that
3 CLECs are representing their business local exchange services as being available
4 in any exchange in Qwest's territory. This information, coupled with the Staff's
5 independent findings, clearly shows that there is competition for Qwest's business
6 local exchange services throughout Qwest's service territory.

7 **Q. AT PAGE 15, MR. COWAN ASSERTS "CLEARLY, STAFF**
8 **RECOGNIZES THAT EFFECTIVE COMPETITION SHOULD BE**
9 **JUDGED ON A WIRE CENTER BY WIRE CENTER OR EXCHANGE BY**
10 **EXCHANGE BASIS, AND NOT STATEWIDE, AS QWEST DOES." IS**
11 **MR. COWAN ACCURATELY CAPTURING STAFF'S POSITION IN**
12 **THIS PROCEEDING?**

13 A. I don't presume to speak for Staff, but the plain reading of Staff's testimony shows
14 that Mr. Cowan has mischaracterized Staff's position as contrasted with that of
15 Qwest. At page 1 of his testimony on behalf of Staff, Mr. Wilson states:

16 Staff recommends that the petition be approved because the services listed
17 are subject to effective competition.

18 Further, at page 3, Mr. Wilson states:

19 Today, at least one to three CLECs offer basic business service in every
20 Qwest exchange in Washington except Elk.

21 Like Qwest, Mr. Wilson carefully examined the extent of CLEC competition for
22 business local exchange service in each Qwest exchange and wire center and

1 concluded that effective competition was present in every wire center, with the
2 sole exception of the Elk wire center. In actuality, both Qwest and Mr. Wilson
3 independently examined the level of competition in the business local exchange
4 market at a granular, wire center-specific basis in arriving at the conclusion that
5 effective competition is present throughout Qwest's service territory in
6 Washington.

7 **Q. BOTH MR. COWAN (AT PAGE 9) AND MR. GATES (AT PAGE 10)**
8 **ALLEGE THAT QWEST HAS ATTEMPTED TO MISLEAD THE**
9 **COMMISSION BY REPORTING THE NUMBER OF CLECS THAT**
10 **HAVE REGISTERED WITH THE WUTC AS LOCAL EXCHANGE**
11 **PROVIDERS. ARE THEIR ALLEGATIONS CORRECT?**

12 A. No. In fact, in Confidential Exhibit DLT-5C, I showed in detail the CLECs that
13 are active in each Qwest wire center, as defined by those CLECs actively
14 purchasing wholesale services from Qwest for purposes of providing local
15 exchange business service. Qwest also reported that 161 CLECs had publicly
16 registered with the WUTC as local service providers in Washington. In fact, some
17 of these 161 CLECs may never begin offering local services in the state.
18 Likewise, some of these CLECs provision services via their own facilities and are
19 thus not listed in Confidential Exhibit DLT-5C. Qwest merely reported this
20 information as a barometer of CLEC interest in the state and did not suggest in
21 any way that there are 161 CLECs active in Washington.

1 **Q. INTERVENOR WITNESSES COWAN AND STACY BOTH MAINTAIN**
2 **THAT THE BUSINESS LOCAL EXCHANGE MARKET IN**
3 **WASHINGTON HAS NOT YET REACHED THE POINT AT WHICH IT**
4 **CAN BE CONSIDERED "FULLY COMPETITIVE."⁸ WOULD YOU**
5 **COMMENT?**

6 **A.** Both Mr. Cowan and Mr. Stacy apparently base their conclusion on their personal
7 interpretations of the requirements of RCW 80.36.330(1), which states:

8 The commission may classify a telecommunications service provided by a
9 telecommunications company as a competitive telecommunications
10 service if the service is subject to effective competition. Effective
11 competition means that customers of the service have reasonably
12 available alternatives and that the service is not provided to a significant
13 captive customer base.

14 Clearly, Qwest's evidence in this case, coupled with the CLEC self-reported
15 evidence presented by Staff, shows that local exchange business services are
16 subject to effective competition in Washington and that business customers now
17 have a choice from at least one to three alternative carriers throughout Qwest
18 service territory. There is no "captive" local exchange business customer base in
19 Washington. Only by attempting to raise the evidentiary bar Qwest must meet
20 beyond the requirements of Washington statutes and rules relevant to this
21 proceeding can Mr. Cowan and Mr. Stacy create a foundation for their position.

⁸ Direct Testimony of Neil Cowan dated August 13, 2003, page 10; Direct Testimony of Mark L. Stacy dated August 13, 2003, page 6.

1 **Q. AT PAGE 60, MS. BALDWIN ASSERTS THAT THE INCREASING**
2 **DEMAND FOR THE FEATURES INCLUDED IN QWEST'S PRICING**
3 **FLEXIBILITY APPLICATION SHOWS THAT THESE FEATURES ARE**
4 **NOT DISCRETIONARY AND SHOULD THEREFORE NOT BE**
5 **CLASSIFIED AS EFFECTIVELY COMPETITIVE. IS HER POSITION**
6 **CORRECT?**

7 A. No. In fact, CLECs competing with Qwest in Washington provide a full menu of
8 services, including local exchange service, features, long distance service and
9 many other services. To the extent the Commission concurs with Qwest and Staff
10 that business local exchange services are competitive virtually throughout Qwest's
11 service territory, the associated features should be similarly found to be
12 competitive, since virtually all features are provided by the local switch serving
13 the access line (whether the switch is owned by the CLEC or is used on a
14 wholesale basis by the CLEC in providing the access line). In other words, when
15 a Qwest business customer which subscribes to Call Waiting migrates to the local
16 exchange service of a CLEC, the customer will almost certainly subscribe to Call
17 Waiting from the CLEC. In this instance, Qwest has not only loses the access line
18 to competition, but it also loses the associated feature to the same competitor.

19 **VI. ALTERNATIVE COMMUNICATION TECHNOLOGIES**

20 **Q. WHAT ALTERNATIVE COMMUNICATION TECHNOLOGIES**
21 **SHOULD THE COMMISSION CONSIDER IN ITS EVALUTATION OF**

1 **THE SCOPE OF COMPETITION IN THE LOCAL EXCHANGE**
2 **BUSINESS MARKET IN WASHINGTON?**

3 A. In addition to traditional CLEC competition, wireless and VoIP services have
4 become viable options for many business customers in the state. To the extent
5 business customers are opting to use these technologies in lieu of Qwest local
6 exchange business services, Qwest's and Staff's competitive evidence understate
7 the current level of competition in the state.

8 **Q. DO YOU SUGGEST THAT THE COMMISSION SHOULD RELY ON**
9 **EVIDENCE OF VOIP AND WIRELESS COMPETITION IN**
10 **WASHINGTON IN DETERMINING WHETHER QWEST'S BUSINESS**
11 **SERVICES SHOULD BE COMPETITIVELY CLASSIFIED?**

12 A. No. Qwest believes that the detailed evidence presented by both Qwest and
13 Staff showing that effective CLEC competition exists virtually throughout
14 Qwest's service territory is sufficient to enable the Commission to find that
15 Qwest's business services should be competitively classified. However, it is
16 important to note that a segment of the Washington business customer base
17 views VoIP and wireless services as effective substitutes for Qwest service.
18 Both VoIP and wireless service are now parts of the local exchange competitive
19 landscape in Washington and represent service choices beyond traditional
20 CLEC landline alternatives to Qwest.

1 **Q. FROM PAGES 19 TO 36 OF HIS TESTIMONY, MR. GATES SUBMITS**
2 **A LENGTHY RECITATION OF REASONS OF WHY, IN HIS OPINION,**
3 **WIRELESS SERVICE CANNOT BE CONSIDERED TO BE**
4 **FUNCTIONALLY EQUIVALENT WITH QWEST BUSINESS**
5 **LANDLINE SERVICE, AND THEREFORE, WHY WIRELESS**
6 **SERVICE SHOULD NOT BE CONSIDERED IN THIS PROCEEDING.**
7 **WOULD YOU COMMENT?**

8 A. Mr. Gates portrays his list of wireless "shortcomings" in a way that appears to
9 be an attempt to convince the reader that no customer would ever even consider
10 substituting wireless service for Qwest wireline service. That is clearly absurd.
11 Customers are now using wireless service not only as a complement to, but also
12 as a substitute for, wireline service in many applications. Examples of business
13 applications in which wireless service can substitute for landline service include
14 landscaping, real estate, traveling sales, and limousine service. It is obviously
15 not Qwest's contention that wireless service can fully and easily substitute for
16 landline service in every business application. However, in given applications,
17 wireless service is a substitute for Qwest landline service and should be
18 considered to be within the relevant market.

19 **Q. ARE ALL OF MR. GATES' CHARACTERIZATIONS OF THE**
20 **"SHORTCOMINGS" OF WIRELESS SERVICE ACCURATE?**

1 A. No. While I will not rebut each of Mr. Gates' alleged "shortcomings" of
2 wireless services, since many customers view wireless service to be a substitute
3 for landline service irrespective of functional differences between the services, I
4 am compelled to address those items on Mr. Gates' list that are simply incorrect.

5 **Q. WOULD YOU SUMMARIZE THE ELEMENTS OF MR. GATES' LIST**
6 **OF WIRELESS "SHORTCOMINGS" THAT ARE IN ERROR, AND**
7 **EXPLAIN WHY THEY ARE IN ERROR?**

8 A. Yes. My summary is as follows:

- 9 • Mr. Gates contends at page 20 that "it would be difficult or impossible
10 for a business to replace its dial-up internet connection on the landline
11 with a wireless counterpart." He is incorrect. Wireless internet access
12 has become a standard offering for many wireless providers. For
13 example, AT&T Wireless offers a range of options with its Mobile
14 Internet rate plans. Mobile workers with an AT&T Wireless Voice plan
15 can add internet access capabilities for as low as \$7.99 per month.
16 AT&T Wireless also offers stand-alone plans for mobile workers who
17 use laptops or PDAs to send or receive data frequently. With these
18 plans, an AT&T Wireless Voice plan is not required.⁹ Verizon Wireless
19 also allows users to access "corporate intranet applications, the internet,

⁹ www.attws.com/mobileinternet/bus_plan.jhtml, visited August 21, 2003.

1 or e mail and attachments virtually anywhere, anytime with its Remote
2 Access offerings for small and medium businesses.¹⁰

- 3 • At page 23, Mr. Gates states "wireless phones do not have the capability
4 of multiple line service," and says that multiple wireless phones cannot
5 share the same telephone number (as can landline extension phones).
6 This is incorrect. In fact, Radio Shack now sells a product called the
7 VoxLink, which is a cellular base station that plugs into a standard
8 modular jack at the customer's premises. Any extension phone at the
9 premises can originate or receive calls via the wireless base station
10 arrangement, exactly as can a wireline subscriber with extension phones.
11 A similar device, called CellSocket, is now being marketed on line.¹¹

- 12 • At page 24, Mr. Gates suggests that wireless E911 service is generally
13 unavailable. This is misleading. All Public Safety Answering Points
14 (PSAPs) in Washington have now implemented Phase 1 Wireless E911
15 capability and King and Clallam Counties have implemented Phase 2
16 E911, which provides precise automatic location of the caller based on X
17 and Y coordinates. In fact, Washington was the first state within
18 Qwest's 14 state territory in which wireless Phase 2 E911 was

¹⁰www.verizonwireless.com/b2c/businessSolutions/smallMediumbusiness/remotAcc..., visited August 21, 2003.

¹¹For example, the CellSocket is available at www.virtuvoice.com and www.cellsocket.com.

1 implemented. Eleven wireless carriers are in the final stages of
2 completing a statewide E911 project. AT&T Wireless, Cingular
3 Wireless, Qwest Wireless, Sprint PCS, and T-Mobile are currently
4 providing Phase 2 E911 coverage in King and Clallam counties.¹²

- 5 • At page 24, Mr. Gates suggests that wireless Local Number Portability
6 (LNP) is not available and may not be available soon. He is incorrect.
7 The FCC mandated that the wireless industry must implement wireless
8 LNP by November 24, 2003, and has refused to extend this
9 implementation date. Verizon Wireless has publicly committed to
10 meeting this implementation date. Also, Qwest has already made the
11 necessary modifications to its switches to accommodate wireless LNP.
12 It is important, in the context of this proceeding, to note that wireless
13 LNP does not only mean that wireless customers may retain a telephone
14 number when moving from one wireless provider to another; it also
15 means that Qwest landline customers may elect to retain their
16 preexisting Qwest telephone number when disconnecting Qwest service
17 in favor of wireless service. Implementation of wireless LNP will cause
18 substitution of wireless for landline service to be an even more attractive
19 option to an expanding base of customers, since landline customers will

¹² Washington Military Department Emergency Management Division State Enhanced 911 Program,
Press Release, July 2, 2003.

1 then be able to choose to retain their current telephone number when
2 opting to substitute wireless service for Qwest landline service.

- 3 • At page 25, Mr. Gates intimates that radio frequency (RF) radiation is a
4 health issue associated with wireless handsets. However, he points to no
5 scientific study demonstrating a link between cellular use and health.

6 The FCC recently denied a request by EMR Network to launch an
7 inquiry into revising RF emissions from wireless transmitters. In a
8 statement, Commissioner Michael Copps said the FCC had reaffirmed
9 its commitment to monitoring developments related to the biological
10 effects of RF energy and that if additional scientific evidence emerged,
11 parties should bring it to the FCC's attention.¹³ Clearly, the FCC has not
12 yet been presented with evidence that it believes warrants further action
13 in this regard.

- 14 • At pages 26 and 27, Mr. Gates offers a general discussion about his view
15 of "dependability and quality of service" problems with wireless
16 services. However, it is noteworthy that he offers no Washington-
17 specific facts to support his contentions. While I didn't contend in my
18 direct testimony that wireless service quality is identical to landline
19 service in all applications, it certainly is in many, and wireless providers

¹³ TR Daily, August 14, 2003.

1 are continually improving their networks. For example, Verizon's "Can
2 You Hear Me Now?" advertising campaign emphasizes the
3 improvements in digital wireless service quality they have made.
4 Verizon Wireless actually leads the industry in national network
5 investment, averaging \$4 billion a year for the last two years, and
6 expects to invest a similar amount in 2003, according to a recent
7 company press release.¹⁴ AT&T Wireless and T-Mobile, among others,
8 have deployed Global System for Mobile (GSM) digital network
9 technology to further enhance the quality of their wireless services.

10 According to T-Mobile's website, this technology provides customers
11 with:

12 Integrated voice, high speed data, paging and short message
13 service capabilities, as well as excellent sound quality and call
14 reliability. The well-developed network ensures that all calls and
15 messages are processed quickly and reliably, and T-Mobile's
16 100% digital network delivers better sound quality than other
17 wireless services, including crisper, clearer voice quality and less
18 static, fading and background noise. Independent laboratory and
19 field tests reports validate near parity with wire lines.¹⁵ (emphasis
20 added).

21 On August 21, 2003, Sprint issued a press release highlighting its \$2.1
22 billion capital spending program, which includes the addition of 1,700
23 cell sites to its PCS network as well as improved network capacity and

¹⁴<http://biz.yahooo.com>, visited April 7, 2003.

¹⁵ <http://www.t-mobile.com/company/about/technology.asp>

1 performance.¹⁶ In its release, Sprint goes on to state that is now has 2.1
2 million PCS Vision customers, which "includes services that allow
3 customers to take and receive pictures from select PCS phones; browse
4 the Internet at speeds faster than most dial-up connections; check
5 personal and corporate e-mail; watch clips and streaming audio for news
6 and music; download polyphonic, animated and voice ringers, and full
7 color, graphically-rich games and screen savers, all on the enhanced
8 Sprint Nationwide PCS Network."

9 Contrary to Mr. Gates' implications, wireless service quality and
10 reliability is generally good, and the wireless industry is continuing to
11 make quality, functionality and reliability improvements.

- 12 • At page 29, Mr. Gates offers his opinion that "consumers don't use *either*
13 wireless or landline service, they use *both*," and suggests to this
14 Commission that this is a "reality check." Contrary to this being a "fact,"
15 as Mr. Gates would have the reader believe, this is nothing more than
16 Mr. Gates' opinion. In contrast, at page 20 of my direct testimony, I
17 reported results from primary research Qwest conducted in Iowa and
18 Idaho in which 30% of business respondents reported that they could
19 rely solely on wireless service for the purpose of making and receiving

¹⁶ http://biz.yahoo.com/prnews/030821/dath020_1

1 telephone calls. While Qwest does not contend that all business
2 customers could rely solely on wireless service, primary research shows
3 that a significant subset of business customers now state they can do so.

- 4 • Finally, at page 30, Mr. Gates states that "wireless pricing is confusing
5 and anything but conventional," apparently in an attempt to support his
6 belief that no business customer can consider wireless to be a substitute
7 for Qwest landline service. He is wrong. In my direct testimony at page
8 18, I point out that wireless pricing packages typically contain local
9 usage, long distance usage, and a range of calling features. For the
10 unique business customer using the business line for only local calling
11 (using absolutely no long distance or calling features), the typical
12 wireless plan will not be attractive. However, most Qwest business
13 customers use long distance services and calling features. For these
14 customers, a comparison of their total landline service bill to the
15 available wireless plan prices shows that wireless services are priced
16 competitively. At pages 18 and 19 of my direct testimony, I provided an
17 illustrative sampling of current wireless calling plan prices from
18 Cingular, Nextel, Cricket, and AT&T Wireless ranging from \$39.99 to
19 \$45.99 per month. In comparison, Qwest's Business Custom Choice
20 package, which includes an access line and a range of calling features, is
21 currently priced at \$47.95 in Washington.

1 **Q. AT PAGE 34, MR. GATES CHALLENGES THE VALIDITY OF THE**
2 **PRIMARY RESEARCH CONDUCTED IN IDAHO AND IOWA**
3 **REGARDING THE PROPORTION OF LANDLINE BUSINESS**
4 **CUSTOMERS WHO MAINTAIN THEY COULD RELY SOLELY ON**
5 **WIRELESS SERVICE FOR THE PURPOSE OF MAKING AND**
6 **RECEIVING TELEPHONE CALLS. WOULD YOU COMMENT?**

7 A. Mr. Gates is wrong. Both studies were conducted by FrederickPolls, a
8 nationally recognized survey firm, and are statistically valid. These studies were
9 both conducted using standard telephone survey techniques, both clearly show
10 that a significant subset of Qwest business landline customers view wireless
11 service to be a substitute for traditional landline telephone service, and both
12 were based on a sample size sufficiently large to yield statistically reliable
13 results. Mr. Gates' unfounded challenges as to the accuracy of these surveys
14 should be dismissed.

15 **Q. WHAT IMPORTANT FACTOR WOULD YOU HAVE THE**
16 **COMMISSION KEEP IN MIND, IN THE CONTEXT OF THIS**
17 **PROCEEDING, WHEN CONSIDERING WIRELESS SERVICE**
18 **COMPETITION IN WASIIINGTON?**

19 A. The overarching factor I would like the Commission to keep in mind is that
20 Qwest is not, in this proceeding, asking the Commission to rely solely on
21 evidence of the presence of wireless competition in determining whether or not

1 Qwest's business services are subject to effective competition. The evidence of
2 traditional CLEC-based competition presented by Qwest, coupled with the
3 evidence independently developed by Staff, shows that Qwest's business
4 services are subject to effective competition. To the extent that many of Qwest
5 business customers now view wireless service to be a substitute for Qwest
6 business service, the Commission can be assured that the actual level of
7 competition is even greater than that represented by Qwest's and Staff's evidence
8 concerning CLEC-based competition.

9 **Q. DOES MR. GATES CHALLENGE YOUR CONTENTION THAT VoIP**
10 **SERVICES REPRESENT ACTUAL COMPETITION FOR QWEST**
11 **BUSINESS SERVICES IN WASHINGTON?**

12 A. Yes. At page 35, he asserts that VoIP services are limited to "cable and internet
13 service providers who are trying to expand their service to include voice
14 telephony." Again, he is wrong. It is accurate that cable providers, such as
15 Comcast and Cox, are currently trialing VoIP applications to expand their reach
16 as telephony providers, and have both publicly announced plans to deploy VoIP
17 services on a broad scale in 2004.¹⁷ However, Mr. Gates neglects to recognize
18 the current, active presence in Washington of VoIP telephony providers such as
19 Vonage and Packet8, neither of which is affiliated with cable service providers.

¹⁷www.cox.com/PressRoom/supportdocuments/VOIDwhitepaper.pdf and
www.xchangemag.com/articles/361consumer1.html.

1 In my direct testimony, I included in Exhibit DLT-7 web site excerpts for these
2 providers, as well as AT&T and Five Star Telecom, which highlighted the
3 attributes of these providers' services.

4 **Q. HAS THE COMMISSION STAFF EXPRESSED AN OPINION AS TO**
5 **THE AVAILABILITY OF VoIP SERVICES IN WASHINGTON AS AN**
6 **ALTERNATIVE TO QWEST BUSINESS LOCAL EXCHANGE**
7 **SERVICES?**

8 A. Yes. At page 5, Staff witness Mr. Williamson states "most Qwest business
9 customers can purchase service that is functionally equivalent to Qwest basic
10 local exchange service through a number of VoIP providers." Mr. Williamson
11 also confirms that only two things are required to make VoIP calls from a home
12 or business in Washington: a broadband connection and an Analog Telephone
13 Adapter (ATA), which allows the user to use his or her analog telephone for
14 VoIP calls. In my direct testimony, I provided Exhibits DLT-7, DLT-8, and
15 DLT-9 illustrating that VoIP telephony is now a viable customer option in the
16 state.

17 **Q. DO YOU SUGGEST THAT THE COMMISSION SHOULD RELY**
18 **SOLELY ON THE EVIDENCE YOU HAVE PRESENTED, COUPLED**
19 **WITH THE EVIDENCE PRESENTED BY MR. WILLIAMSON, OF THE**
20 **AVAILABILITY OF VoIP SERVICE IN WASHINGTON TO SUPPORT**

1 **A FINDING OF EFFECTIVE COMPETITION FOR QWEST'S**
2 **BUSINESS SERVICES?**

3 A. No. As I stated earlier in my rebuttal testimony, Qwest's evidence of CLEC
4 competition, coupled with the evidence independently obtained from the CLECs
5 by Staff, is clearly sufficient to justify a finding by the Commission that Qwest's
6 business services are subject to effective competition. However, similar to the
7 presence of wireless service alternatives, the presence of VoIP services indicates
8 that alternatives to Qwest's local services, beyond the alternatives offered by
9 CLECs, now exist in Washington for at least a subset of business customers.

10 **VII. CONCLUSION**

11 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

12 A. In my testimony, I have explained why contentions by AT&T, MCI, and Public
13 Counsel are inaccurate, not supported by facts, or are misleading. I have
14 explained that findings by this Commission, the DOJ and the FCC regarding
15 Qwest's section 271 application in Washington show that Qwest has now fully
16 opened its local markets to competition and that mechanisms are in place to
17 ensure that these markets remain open. I have further shown that CLECs have
18 availed themselves of the openness of Qwest's markets and have now
19 established a competitive presence by serving business customers in all but one
20 small wire center in Qwest's service territory. Further, I have corrected
21 misleading and inaccurate references to FCC and Qwest data by witnesses for

1 intervening parties. Finally, I demonstrated that both wireless and VoIP
2 services now represent additional competitive options to business customers in
3 Washington, beyond the traditional CLEC landline alternatives identified in
4 both Qwest's and Staff's direct testimonies. Although the presence of virtually
5 ubiquitous CLEC competition in the Qwest business markets is sufficient to
6 support a finding by the Commission of effective competition for Qwest's
7 business services, the Commission may be assured that additional competitive
8 choices are now available to business customers in Washington.

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

10 A. Yes, it does.