

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

In the Matter of the Petition of
QWEST CORPORATION

For Competitive Classification of Basic
Business Exchange Telecommunications
Services

Docket No. UT-030614

REBUTTAL TESTIMONY

OF

MARK S. REYNOLDS

QWEST CORPORATION

AUGUST 29, 2003

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EXHIBITS TO TESTIMONY

Exhibit MSR-8: Information Pages from Qwest Dex Spokane Directory,
Use Through September 2003

1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND**
3 **EMPLOYMENT.**

4 A. My name is Mark S. Reynolds and my business address is 1600 7th Avenue,
5 Room 3206, Seattle, Washington, 98191. I am employed by Qwest Services
6 Corporation (“QSC”) as the Senior Director of Washington Regulatory Affairs for
7 Qwest Corporation (“QC”) and other Qwest companies.

8 **Q. HAVE YOU PREVIOUSLY FILED INFORMATION REGARDING YOUR**
9 **EDUCATION, EMPLOYMENT BACKGROUND AND PREVIOUS**
10 **EXPERIENCE TESTIFYING BEFORE THIS COMMISSION?**

11 A. Yes. That information is on pages 1 and 2 of my Direct Testimony in this docket,
12 filed on July 1, 2003.

13 **II. PURPOSE OF TESTIMONY**

14 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**

15 A. The purpose of my rebuttal testimony is to respond to certain issues raised in the

1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND**
3 **EMPLOYMENT.**

4 A. My name is Mark S. Reynolds and my business address is 1600 7th Avenue,
5 Room 3206, Seattle, Washington, 98191. I am employed by Qwest Services

1 sponsored by Public Counsel, AT&T, MCI, and Integra that relates to competitive
2 classification policy issues. Finally, I will clarify certain issues.

3 My rebuttal testimony will also introduce Qwest's other rebuttal witnesses and the
4 subject matter of their rebuttal testimony. These witness are David L. Teitzel and
5 Harry M. (Chip) Shooshan III.

6 Qwest's testimony will not attempt to respond to every allegation made by
7 opposing party witnesses, as many of the claims do not address the substantive
8 issues in this case. Large portions of the opposing parties' testimony conjure up
9 "what if" scenarios in an attempt to shift the Commission's focus from the
10 appropriate statutory analysis – i.e., whether there is effective competition today
11 for Qwest's basic business exchange services – to more speculative concerns
12 about what might happen in the future should Qwest be granted pricing flexibility.
13 One pervasive tactic is the Intervenors' repeated call that this case be delayed
14 pending future decisions in other cases such as the UNE cost docket and the
15 Triennial Review. Qwest submits that there will always be cost dockets and FCC
16 rulings to consider, but that the statutory requirements for competitive
17 classification require the Commission to primarily consider the here and now.
18 Similarly, Public Counsel witness Baldwin complains that this case is premature
19 because "there is relatively little experience with Qwest's post-271 behavior."²
20 Qwest believes that there is ample protection built into RCW 80.36.330 and other
21 statutory provisions and that the Commission has authority to deal with future
22 changes in circumstances.

² See Direct Testimony of Susan Baldwin, dated August 13, 2003 ("Baldwin"), page 11, lines 14-15.

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III. INTRODUCTION OF OTHER QWEST WITNESSES

**Q. WHO ARE THE OTHER QWEST WITNESSES IN THIS PROCEEDING
AND WHAT IS THE PURPOSE OF THEIR TESTIMONY?**

A. David L. Teitzel is a Director in Qwest's Public Policy organization with advocacy responsibilities for retail market issues. Mr. Teitzel's rebuttal testimony will address issues raised by CLEC and Public Counsel witnesses regarding the relevance of the approval of Qwest's 271 Application to its Petition in this docket. Mr. Teitzel will also rebut Public Counsel witness Baldwin's misleading use of FCC data and all opposing party witnesses' misleading references to Qwest's competitive evidence supporting its Petition. Finally, Mr. Teitzel will respond to MCI witness Gates' testimony regarding competition from alternative communication technologies such as wireless and Voice Over Internet Protocol (VoIP).

Harry M. (Chip) Shooshan III, a principal in the consulting firm Strategic Policy Research, Inc., will address issues raised in the Intervenor's testimony relating to the use of wholesale services, such as UNEs and resale, as evidence of effective competition. Mr. Shooshan's testimony also addresses the relevance of concentration ratios, as used by Ms. Baldwin, in evaluating market power. Finally, Mr. Shooshan rebuts the notion raised in Intervenor testimony that the

1 Commission should delay a decision in this case until implications of the FCC's
2 Triennial Review Order can be determined.

3 **IV. RESPONSES TO COMMISSION DATA REQUEST**

4 **Q. RESULTS OF THE COMMISSION'S DATA REQUEST TO CLECS**
5 **REGARING CLEC QUANTITIES OF FACILITIES USED TO PROVIDE**
6 **COMPETITIVE BUSINESS EXCHANGE SERVICES WERE FILED IN**
7 **THE DIRECT TESTIMONY OF THOMAS L. WILSON ON AUGUST 13,**
8 **2003. DO THE RESULTS OF THIS SURVEY PROVIDE MORE**
9 **EVIDENCE THAT QWEST'S BASIC BUSINESS SERVICES ARE**
10 **SUBJECT TO EFFECTIVE COMPETITION?**

11 **A.** Yes. In its Order No. 06 in this Docket, the Commission sought information from
12 CLECs regarding the facilities they use to provision business services that
13 compete with Qwest's basic business exchange services for which its is seeking
14 competitive classification. The information from the CLEC responses to the data
15 request includes new information about CLEC-owned facilities that was not
16 included in the data Qwest filed in its Petition and verifications by the CLECs
17 regarding the wholesale services they purchase from Qwest. Staff compiled and
18 summarized the data in a table contained in Mr. Wilson's direct testimony dated
19 August 13, 2003 on page 11, lines 9-12. According to Staff's numbers, Qwest's
20 statewide market share for the services at issue in this proceeding is actually

1 69.35% as opposed to the market share of 83% estimated in Qwest's Petition.³ As
2 Qwest indicated in its Petition and direct testimony, the CLEC market share
3 percentage cited in the Petition was a minimum market share number because it
4 did not include CLEC-owned facilities. While Staff has now partially filled in
5 this gap with CLEC data regarding CLEC-owned facilities, Staff's updated
6 market share percentage still does not include the effects of intermodal
7 competition such as wireless or VoIP. It also does not include CLEC-owned
8 facility line counts from every CLEC, as only 24 CLECs responded to the
9 Commission's data request. Thus, it seems likely that even the 69.35% market
10 share figure is overstated.

11 **Q. PUBLIC COUNSEL WITNESS BALDWIN ATTEMPTS TO SUMMARIZE**
12 **THE DATA PRESENTED BY QWEST AND STAFF IN THIS**
13 **PROCEEDING IN HER EXHIBIT SMB-6C.⁴ DO YOU AGREE WITH**
14 **HER ANALYSIS?**

15 A. No. Ms. Baldwin's analysis incorrectly summarizes different types of data.
16 Although she correctly cites the totals for the Resale, UNE Loop, and UNE-P
17 from Qwest's Petition, she inexplicably uses a total business line count from Mr.
18 Teitzel's testimony rather than the retail line count included in the Petition.

³ It should be noted that Qwest found an error in the data summarized on page 11, lines 9-12 of Mr. Wilson's testimony. Under Qwest's data column, Mr. Wilson added PBX lines and Centrex lines to Qwest's basic business line total of 520,635 to yield a total of 708,887 lines. This summary is incorrect because Qwest's PBX and Centrex line counts are already included in the 520,635 total. When this is corrected, the total lines for Qwest, including PBX and Centrex, total 520,635, resulting in a Qwest market share of 69.35% rather than the 75.50% currently presented in the table. Qwest notified Staff of the error and understands that Staff intends to correct the testimony.

⁴ Exhibit SMB-6C – CLECs' Entry into the Washington Local Business Market, Statewide Averages. This exhibit is discussed on page 30, lines 1-10 of Ms. Baldwin's Direct Testimony.

1 Qwest's Petition does not address digital services. Thus, digital line counts have
2 been removed from both the retail and the wholesale data included in Qwest's
3 Petition. Because Mr. Teitzel's testimony is addressing the trend for all business
4 services, his retail line count includes digital services and it is inappropriate to use
5 this line count data in a comparison with wholesale services for which digital line
6 counts have been removed. Also, Ms. Baldwin's summary does not include the
7 total amount of CLEC-owned lines from Staff's analysis. A correct analysis of
8 the data Ms. Baldwin seeks to summarize is included in Mr. Wilson's testimony
9 on page 11.⁵ Based on the CLEC's responses to the Commission's data request,
10 Staff's analysis indicates that Qwest's market share is 69.35% rather than the 81%
11 indicated in Exhibit SMB-6C.⁶

12 **Q. MS. BALDWIN ALSO ASSERTS THAT "IT IS ENTIRELY POSSIBLE**
13 **THAT THE FACILITIES-BASED QUANTITIES ENCOMPASSED BY**
14 **STAFF'S AGGREGATION OF CLEC-PROVIDED DATA INCLUDE**
15 **DIGITAL SERVICES, THUS YIELDING NUMBERS THAT ARE NOT**
16 **DIRECTLY COMPARABLE TO THOSE THAT QWEST PROVIDES IN**
17 **THIS PROCEEDING."**⁷ **WOULDN'T THIS CREATE A DATA**
18 **MISMATCH AND CAST DOUBT ON STAFF'S ANALYSIS?**

⁵ See footnote 3.

⁶ *Id.*

⁷ See Baldwin, page 34, lines 3-7.

1 A. It would if it were true. Mr. Wilson, however, clearly addresses this issue in his
2 testimony at page 10, lines 4-6:

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

5 A. Yes.

6 Furthermore, Qwest had clearly pointed out in its Petition and testimony that it is
7 seeking competitive classification only for its analog business basic exchange
8 services.⁸

9 **Q. WHAT IS STAFF'S CONCLUSION REGARDING THEIR REVIEW OF**
10 **THE AVAILABLE INFORMATION IN THIS DOCKET?**

11 A. On page 1, lines 20-21, of his testimony, Mr. Wilson states that "Staff
12 recommends that the [P]etition be approved because the services listed are subject
13 to effective competition." Staff's testimony indicates that it formed its conclusion
14 after a thorough review of past Commission decisions regarding competitive
15 classification, Qwest's data in support of its Petition, data provided by CLECs in
16 response to the Commission's data request, CLEC access to Qwest operations
17 support systems and other market-opening activities associated with Qwest's 271
18 approval, the availability of competitive services, intermodal forms of competitive
19 services available to customers such as wireless services and VoIP, and other
20 statutory factors the Commission should consider in its deliberations.⁹

⁸ See Direct Testimony of Mark S. Reynolds, dated July 1, 2003, page 5, lines 16-22.

⁹ See Wilson, pages 7, 8, 10, 11, and 12.

1 **Q. STAFF WITNESS WILSON STATES HIS UNDERSTANDING THAT**
2 **QWEST WILL NOT ABANDON SERVICE IN THE EXCHANGE AREAS**
3 **IT CURRENTLY SERVES REGARDING SERVICES LISTED IN ITS**
4 **PETITION.¹⁰ IS THIS TRUE?**

5 A. Yes. In discussions with Staff, Qwest has committed that, should the
6 Commission grant Qwest's Petition, Qwest will not abandon service in the
7 exchange areas it currently serves for the services listed in its Petition, consistent
8 with the conditions stated in Staff's testimony.¹¹

9 **IV. POLICY ISSUES / ISSUE CLARIFICATION**

10 **Q. THE INTERVENOR WITNESSES COMPLAIN THAT IF GRANTED**
11 **COMPETITIVE CLASSIFICATION FOR ITS BASIC BUSINESS**
12 **SERVICES, QWEST WILL HAVE THE ABILITY TO ENGAGE IN ANTI-**
13 **COMPETITIVE BEHAVIOR.¹² WHAT SAFEGUARDS ARE IN PLACE**
14 **THAT PREVENT ANTI-COMPETITIVE BEHAVIOR BY QWEST?**

15 A. The safeguards are inherent in the statutory authority of the Commission to
16 regulate the price floor (i.e., cost coverage) for all Qwest's services that it

¹⁰ See Wilson, page 1, lines 20-23, and page 2, lines 1-4.

¹¹ The conditions that accompany Qwest's commitment, as referenced in Mr. Wilson's testimony, are that the commitment is effective until November 7, 2009, and will not affect Qwest's ability to grandfather the services listed in the Petition or to sell any or all of its business in the service areas where it currently offers such services. Qwest's obligation to serve under other statutes and rules would not be altered by this condition.

¹² See Direct Testimony of Mark L. Stacy, dated August 13, 2003, pages 18-25; and Baldwin, page 16, lines 19 to page 17, line 8 and page 57, lines 1-11.

1 regulates, whether competitively classified or not, and the authority to regulate the
2 prices, terms and conditions for Qwest's wholesale services.

3 Also, RCW 80.36.330 requires, in part, that:

4 (3) Prices or rates charged for competitive telecommunications services
5 shall cover their cost. The commission shall determine proper cost
6 standards to implement this section, provided that in making any
7 assignment of cost or allocating any revenue requirement, the commission
8 shall act to preserve affordable universal telecommunications service.

9
10 (4) The commission may investigate prices for competitive
11 telecommunications services upon complaint. In any complaint
12 proceeding initiated by the commission, the telecommunications company
13 providing the service shall bear the burden of proving that the prices
14 charged cover cost, and are fair, just, and reasonable.

15 * * *

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18 (6) No losses incurred by a telecommunications company in the provision
19 of competitive services may be recovered through rates for
20 noncompetitive services. The commission may order refunds or credits to
21 any class of subscribers to a noncompetitive telecommunications service
22 which has paid excessive rates because of below cost pricing of
23 competitive telecommunications services.

24
25 (7) The commission may reclassify any competitive telecommunications
26 service if reclassification would protect the public interest.

27 Consequently, even though a service may be competitively classified, the
28 Commission retains a great deal of authority to ensure that Qwest does not engage
29 in anti-competitive behavior by virtue of its pricing flexibility. Furthermore,
30 because the Commission regulates virtually all aspects of Qwest's wholesale
31 services,¹³ CLECs are guaranteed an open forum for having their concerns
32 reviewed regarding the services they may be purchasing from Qwest. Also, if

¹³ Costs, prices, interconnection agreements, SGAT, 271 performance, etc.

1 Qwest does engage in anti-competitive behavior, there are also ample state and
2 federal laws regarding such matters under which the CLECs can bring legal
3 action. Finally, it should be noted that Qwest is not seeking any rate changes for
4 its services in this proceeding, and thus has not filed any cost analysis.¹⁴

5 **Q. MCI WITNESS STACEY STATES THAT IF THE COMMISSION**
6 **DECIDES TO GRANT SOME LEVEL OF REGULATORY FREEDOM TO**
7 **QWEST, IT SHOULD REQUIRE THAT QWEST USE SOME FORM OF**
8 **UNE IMPUTATION AS A PRICE FLOOR, BELOW WHICH IT COULD**
9 **NOT PRICE ITS RETAIL BASIS BUSINESS EXCHANGE SERVICES.¹⁵**
10 **WHAT IS YOUR RESPONSE TO THIS?**

11 A. My response to the prior question is applicable here as well. The commission
12 does not need to establish a price floor as it has all the authority it requires to
13 ensure that Qwest is not pricing its services in an anti-competitive manner.
14 Furthermore, an imputation requirement fails to acknowledge that there is
15 significant facility-based competition in which the CLECs purchase no wholesale
16 services from Qwest. Because Qwest must receive Commission approval for both
17 its wholesale and retail costs, the Commission is in an adequate position to ensure
18 that Qwest's retail prices reflect the proper costs to avoid anti-competitive
19 behavior.

¹⁴ See Stacy, pages 26-27, lines 677-693. Mr. Stacy seems to intimate that Qwest should file a cost analysis with its Petition. As stated above, Qwest seeks no rate changes at this time and thus a cost analysis is not necessary because Qwest's business service rates were last established by Commission Order and are presumed to be lawful.

¹⁵ *Id.*, pages 7-8, lines 191-213. Integra witness Slater also addresses this subject on page 6, lines 2-7 of his direct testimony.

1 **Q. MR. STACY AND MS. BALDWIN BOTH INTIMATE THAT QWEST HAS**
2 **THE ABILITY TO EFFECTIVELY COMPETE WITH OTHER**
3 **PROVIDERS FOR ITS BASIC BUSINESS EXCHANGE SERVICES**
4 **ABSENT COMPETITIVE CLASSIFICATION AND QUESTION**
5 **QWEST'S NEED FOR THE ADDITIONAL FREEDOMS THAT COME**
6 **WITH COMPETITIVE CLASSIFICATION.¹⁶ HOW DO YOU RESPOND?**

7 A. First, RCW 80.36.330 does not require Qwest to prove its need for competitive
8 classification. Rather, the statute requires the Commission to assess the market
9 for the services in question and determine if it is effectively competitive.
10 Notwithstanding the lack of any requirement to prove need, Qwest obviously
11 seeks competitive classification in order to be able to compete on equal terms and
12 conditions with its competitors. Competitors are not limited to statewide average
13 pricing restrictions. To the extent that Qwest's competitors are able to price their
14 basic business exchange services in accordance with specific market conditions,
15 Qwest seeks the same capability in an effectively competitive market.

16 **Q. INTEGRA WITNESS SLATER SUGGESTS THAT AS LONG AS QWEST**
17 **HAS MONOPOLY CONTROL OVER THE LAST MILE IT SHOULD BE**
18 **DENIED COMPETITIVE CLASSIFICATION FOR LOOP-BASED**
19 **SERVICES.¹⁷ HOW DO YOU RESPOND?**

¹⁶ *Id.*, pages 28-29, lines 723-734; and Baldwin, page 55, lines 7-16.

¹⁷ *See* Direct Testimony of Dudley Slater, dated August 13, 2003, pages 5-7.

1 A. Although Mr. Shooshan addresses the viability of wholesale services as evidence
2 of competition, I will address the inaccuracy of Mr. Slater's statement and the
3 inconsistency of his position in relation to the competitive classification statute.
4 First, as is evidenced by Staff's testimony, Qwest does not have a monopoly over
5 the "last mile." Staff's data indicates that nearly 9% of the analog business
6 exchange service loops in the state are owned by CLECs. Notwithstanding
7 Staff's evidence, nothing in RCW 80.36.330 requires the mode of competitive
8 entry to be competitor-owned. Rather, the statute defines effective competition as
9 meaning that customers have reasonably available alternatives and that the service
10 is not provided to a significant captive customer base.

11 **Q. MR. GATES MAINTAINS THAT QWEST SHOULD NOT BE GRANTED**
12 **COMPETITIVE CLASSIFICATION UNTIL IT LOWERS ITS**
13 **SWITCHED ACCESS CHARGES. SHOULD RATE LEVELS FOR**
14 **QWEST'S INTRASTATE SWITCHED ACCESS SERVICE HAVE A**
15 **BEARING ON THE COMMISSION GRANTING QWEST'S PETITION?¹⁸**

16 A. No. RCW 80.36.330(6) clearly addresses MCI's concern about the possibility of
17 implicit subsidization from intrastate switched access charges:

18 (6) No losses incurred by a telecommunications company in the provision
19 of competitive services may be recovered through rates for
20 noncompetitive services. The commission may order refunds or credits to
21 any class of subscribers to a noncompetitive telecommunications service
22 which has paid excessive rates because of below cost pricing of
23 competitive telecommunications services.

¹⁸ *Id.*, page 54, lines 1378-1387.

1 It should also be noted that for their own business exchange services CLECs have
2 the ability to recover their filed switched access charges from inter-exchange
3 carriers at the rate levels they have price-listed with the Commission. Qwest has
4 found that a number of CLECs' intrastate switched access rates, including MCI's
5 and AT&T's, are equal to, or greater than, Qwest's intrastate switched access
6 rates. This clearly demonstrates that rate levels for Qwest's switched access
7 service elements should have no bearing on Qwest Petition in this docket.

8 **Q. MS. BALDWIN COMPLAINS THAT QWEST FAILED TO ANALYZE**
9 **THE DIFFERENT MARKETS FOR CENTREX, PBX, AND INDIVIDUAL**
10 **LINE SERVICE.¹⁹ WHY DIDN'T QWEST SEPARATE THESE**
11 **SERVICES IN ITS ANALYSES?**

12 A. Qwest didn't separate the services because Qwest does not always know what
13 retail service CLECs are provisioning from the underlying wholesale service.
14 That is, unbundled loops can be used to provision virtually any type of retail
15 business exchange service. Furthermore, all three services can provide
16 functionally equivalent exchange access and thus should be considered in concert.
17 That is, a CLEC may convince a Qwest multi-line or PBX business customer to
18 buy the CLEC's centrex service and vice versa. Because the services can
19 effectively compete with one another, they should be considered in unison.

¹⁹ See Baldwin, page 39, lines 14-20.

1 **Q. MS. BALDWIN ALSO CONTENDS THAT BUSINESSES THAT ARE**
2 **LOCATED IN THE FIVE (5) EXCHANGES WHERE QWEST HAS**
3 **PROVIDED NO EVIDENCE OF CLECS PURCHASING WHOLESALE**
4 **SERVICES “ . . . WOULD LIKELY BE SURPRISED TO LEARN THAT**
5 **THERE IS LOCAL TELECOMMUNICATIONS COMPETITION IN**
6 **THEIR COMMUNITIES.”²⁰ WHAT IS YOUR RESPONSE TO THIS?**

7 **A.** Although I don't know what type of marketing efforts CLECs have put forth in
8 the referenced exchanges, I do know that the “information pages” in the telephone
9 directories serving those communities include extensive details on competitive
10 providers. For example the Spokane directory, which provides directory listing
11 and services for 3 of the referenced exchanges (i.e., Elk, Greenbluff, and Liberty
12 Lake) lists the following providers for local telephone service:

- 13 - Qwest
- 14 - AT&T
- 15 - CenturyTel
- 16 - Electric Lightwave
- 17 - MCI
- 18 - McLeodUSA
- 19 - Midvale Telephone Exchange
- 20 - Northwest Telephone Inc.
- 21 - 1-800-RECONEX
- 22 - OneEighty
- 23 - Phone Solution Inc.
- 24 - Tel West Communications L.L.C.
- 25 - Telnet
- 26 - Time Warner Telecom
- 27 - Verizon
- 28 - XO

²⁰ See Baldwin, page 15, lines 11-14. Also, it should be noted that contrary to Ms. Baldwin's testimony on the same page that indicates that Qwest is the sole provider of basic business telecommunications in these five (5) exchanges, Staff witness Wilson has indicated in his direct testimony that Staff's analysis indicates that only in the Elk exchange is Qwest the only landline provider of basic business exchange services.

1 - Z-Tel

2 I have also attached as Exhibit MSR-8 the actual "information pages" from the
3 Spokane directory as they provide more detailed information regarding each
4 provider's contact information. Regarding the other two exchanges, Easton and
5 Northport, I found that the following competitive providers are listed in the
6 information pages for the directories serving those areas:

7 Easton

- 8 - Comm South Companies, Inc.
- 9 - Inland Telephone Company
- 10 - McLeodUSA
- 11 - 1-800-RECONEX
- 12 - Telnet
- 13 - Tel West Communications, L.L.C
- 14 - Z-Tel

15 . Northport

- 16 - McLeodUSA
- 17 - Tel West Communications, L.L.C.
- 18 - Z-Tel

19 Thus, any customers in these five exchanges who took even the minimal step of
20 looking in the phone book to investigate competitive alternatives would likely not be
21 "surprised" to hear of retail competition.

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

23 A. Yes, it does.