

Qwest Competitive Classification
Docket No. UT-030614
Rebuttal Testimony of Susan Baldwin
Exhibit ____ (SMB-21RT)

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**QWEST PETITION FOR COMPETITIVE CLASSIFICATION
OF BUSINESS SERVICES**

DOCKET No. UT-030614

REBUTTAL TESTIMONY OF SUSAN BALDWIN (SMB-21RT)

ON BEHALF OF

PUBLIC COUNSEL

AUGUST 29, 2003

1 **I. INTRODUCTION**

2 **Q: Please state your name.**

3 A: My name is Susan M. Baldwin.

4 **Q: Are you the same Susan Baldwin who filed testimony on August 13, 2003?**

5 A: Yes.

6 **Q: What is the purpose of your testimony at this time?**

7 A: The Washington Attorney General Public Counsel Section (“Public Counsel”) asked me to
8 reply to the direct testimony filed on August 13, 2003 by other parties in this proceeding.

9 **Q: After reviewing the direct testimony filed by others in this proceeding, do you continue**
10 **to recommend that the Washington Utilities and Transportation Commission (“WUTC”**
11 **or “Commission”) deny Qwest’s petition to classify its business exchange services in**
12 **Washington as competitive?**

13 A: Yes. Staff is the only party that supports Qwest’s petition. As I demonstrate below, although
14 Staff contends that effective competition exists for the services that Qwest’s petition
15 encompasses,¹ Staff fails to provide any convincing evidence in support of this general
16 assertion.

17

¹ Direct Testimony of Thomas L. Wilson, Jr. (Staff), at 2.

1 **Staff’s analysis lacks a detailed examination of the relevant geographic and product markets.**

2 **Q: What is your understanding of Staff’s definition of the relevant market for this**
3 **proceeding?**

4 A: Mr. Wilson states that:

5
6 The relevant market is Qwest’s statewide service territory, defined at the
7 exchange level. It is the market for small, medium, and large-sized basic
8 business exchange telecommunications services, including private branch
9 exchange (PBX) and certain centrex-type services.²

10

11 Although Mr. Wilson refers to the exchange level, he indicates that the relevant market is
12 Qwest’s statewide service territory, which I understand to mean that he concurs with Qwest
13 that the entire state constitutes a single geographic market. I disagree with Staff’s excessively
14 broad definition of the relevant market which blends diverse geographic and product markets
15 into a single market. Furthermore, as I discuss below, Staff’s analysis fails to include a detailed
16 examination of the relevant geographic and product markets. Instead, Staff and Qwest define
17 their market by default to encompass all business local exchange services that have not yet been
18 competitively classified.

19 **Q: Why do you disagree with the definition of a single statewide geographic market?**

20 A: As I demonstrate in detail in my direct testimony, and as shown by other evidence in this
21 proceeding, the diversity of suppliers and the level of competition vary substantially throughout
22 the state.³ I will explain further by way of two contrasting examples of products that firms may

² *Id.*, at 15.

³ See, for example, Baldwin Direct (Public Counsel) at 37-39, exhibits SMB-2C, SMB-3C, SMB-4C, SMB-10C, SMB-13C, SMB-14C, SMB-15C, SMB-16C; Exhibit DLT-5C. There are not any CLECs offering service in Elk. Wilson Direct (Staff), at 4. In five exchanges, there is only a single CLEC; in two exchanges, there are only two CLECs offering service; and in three exchanges, there are only three CLECs present. Staff response to PC –10.

1 use to operate their businesses. Businesses in Castle Rock and Spokane, although located in
2 two very different communities, have comparable access to certain basic items such as personal
3 computers, telephone equipment, and ink cartridges because the geographic market for these
4 products is broad. In sharp contrast, a business in Castle Rock cannot access the same variety
5 and quantity of suppliers of local telecommunications services as can those businesses that are
6 located in Spokane. As Exhibit DLT-5C shows, the number of CLECs offering service in
7 Castle Rock is significantly less than the number of CLECs offering service in Spokane. Other
8 than closing down one's shop in Castle Rock and relocating to Spokane, one cannot substitute
9 the supply of local telecommunications services from outside of the "home" exchange. Because
10 a business cannot substitute the local service that is offered elsewhere in the state for Qwest's
11 service, it is inappropriate to define Qwest's entire statewide service territory as a single
12 geographic market.

13 **Q: Does Staff justify its proposed definition of a product market?**

14 A: No. As the previous quote from Mr. Wilson's testimony shows, Staff supports Qwest's
15 merging of the business line, Centrex, and PBX services as a single product, but Staff does not
16 provide any analysis in support of this excessively broad product market. Staff also does not
17 address the impact of Qwest's petition on small businesses, which are most captive and thus
18 most vulnerable to the consequences of approving Qwest's petition.

19 **Q: Does the Federal Communications Commission ("FCC"), in its recent Triennial
20 Review Order, provide any guidance on the definition of markets?**

21 A: Yes. Among other things, the FCC rejected the use of the entire state as a geographic market,
22 stating:

1 State commissions have discretion to
2 determine the contours of each market,
3 but they may not define the market as
4 encompassing the entire state. Rather,
5 state commissions must define each market
6 on a granular level, and in doing so
7 they must take into consideration the
8 locations of
9 customers actually being served (if any)
10 by competitors,¹⁵³⁷ the variation in
11 factors affecting competitors' ability to
12 serve each group of customers,¹⁵³⁸ and
13 competitors' ability to target¹⁵³⁹ and serve
14 specific markets economically and
15 efficiently using currently available
16 technologies.⁴

17 The FCC also addressed product market definition in the Triennial Review Order:

18
19 124. Based on the record before us,
20 it is reasonable to distinguish these
21 three classes of customers - mass market,
22 small and medium enterprise, and large
23 enterprise - for several reasons. These
24 classes can differ significantly based on
25 the services purchased, the costs of
26 providing service, and the revenues
27 generated. Because of these differences,
28 for certain network elements the
29 determination whether impairment exists may
30 differ depending upon the customer class a
31 competing carrier seeks to serve.
32

⁴ In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Notice of Proposed Rulemaking, *Report and Order on Remand and Further Notice of Proposed Rulemaking*, FCC 03-36, CC Docket No. 01-338, released August 21, 2003 ("FCC Triennial Review Order"), ¶ 495, footnotes omitted.

1 127. Mass market customers consist of
2 residential customers and very small
3 business customers. ⁴³² Mass market customers
4 typically purchase ordinary switched voice
5 service (Plain Old Telephone Service or
6 POTS) and a few vertical features. Some
7 customers also purchase additional lines
8 and/or high speed data services.
9 Although the cost of serving each
10 customer is low relative to the other
11 customer classes, the low levels of
12 revenue that customers tend to generate
13 create tight profit margins in serving
14 them. The tight profit margins, and the
15 price sensitivity of these customers,
16 force service providers to keep per
17 customer costs at a minimum. Profits in
18 serving these customers are very sensitive
19 to administrative, marketing, advertising,
20 and customer care costs. These customers
21 usually resist signing term contracts.

22
23 128. Small and medium enterprises are
24 willing to pay higher prices for
25 telecommunications services than the mass
26 market. Indeed, they are often required
27 to do so under business tariffs. Because
28 their ability to do business may depend
29 on their telecommunications networks, they
30 are typically very sensitive to reliability
31 and quality of service issues. These
32 customers buy larger packages of services
33 than do mass market customers,
34 and are willing to sign term contracts.
35 These packages may include POTS, data,
36 call routing, and customized billing,
37 among other services. Although serving

1 these customers is more costly than mass
2 market customers, the facts that
3 enterprise customers generate higher
4 revenues, and
5 are more sensitive to the quality of
6 service, generally allow for higher profit
7 margins. The higher profit margins and
8 greater emphasis on quality of service can
9 provide a greater incentive to competing
10 carriers to provision their own
11 facilities, and the higher revenues make
12 it easier to
13 cover the fixed costs of installing such
14 facilities.

15
16 129. Large enterprises demand
17 extensive, sophisticated packages of
18 services. Reliability of service is
19 essential to these customers, and they
20 often expect guarantees of service
21 quality. The services they might purchase
22 include an internal voice and data
23 network, local, long
24 distance, and international POTS service
25 to one or multiple locations, provisioning
26 and maintenance of a data network such as
27 ATM frame relay or X.25, and
28 customized billing. The large revenues
29 these customers generate, and their need
30 for reliable service and specialized
31 equipment to serve them, provide a large
32 incentive to suppliers to build their own
33 facilities where possible, and carry these
34 customers' traffic over their own
35 networks.

36 **Q:** Why do the FCC's definition and discussion of markets have any applicability to this

1 **proceeding?**

2 A: There is substantial overlap between the analysis of Qwest’s petition to classify certain local
3 services as competitive and the analysis of whether CLECs are impaired in their provision of
4 local services if they lack access to certain unbundled network elements. In the upcoming
5 impairment proceeding, the Commission will examine the local market structure based on the
6 FCC’s detailed guidance. In this proceeding, Qwest and Staff suggest that the Commission
7 forego the type of careful, detailed analysis of the local market that the FCC’s recent order
8 requires and instead rely on general assertions that effective competition exists in ill-defined
9 markets. The Commission should take into account the rigorous roadmap that the FCC
10 recently set forth rather than accept Qwest’s superficially supported petition.

11
12 Finally, this proceeding and the imminent impairment proceeding will occur during overlapping
13 time frames. Unless the Commission applies an analysis to Qwest’s petition that is of similar
14 detail to that required in the impairment proceeding, the Commission will risk ending up with
15 factually inconsistent findings in the two related proceedings.

16 **Staff’s analysis of Qwest’s market share does not support a finding of effective competition.**

17 **Q: Mr. Wilson provides a table with data that purport to demonstrate that Qwest has a**
18 **75.5 percent market share. Please comment.**

19 A: It appears that Mr. Wilson double-counts Qwest’s PBX and Centrex lines. His table shows a
20 total of 708,887 Qwest lines, which consist of 520,635 lines for “basic business” and an
21 implied total of 188,252 for Centrex and PBX lines (i.e., the difference between 708,887 lines
22 and 520,635 lines).⁵ Confidential Exhibit SMB-11C provides the subtotals of business

⁵ Wilson Direct (Staff), at 14.

1 exchange access lines, PBX flat rate trunks, and PBX measured trunks, which, when summed
2 with the total Qwest lines associated with Centrex services yield a total number of 520,635.⁶ In
3 other words, Qwest seeks the classification of a total of 520,635 business lines as competitive.⁷

4 By contrast, Mr. Wilson's table implies that Qwest seeks the reclassification of 708,887 lines.

5 **Q: What is the consequence of this apparent double-counting by Staff?**

6 A: Were Staff to eliminate the apparent double-counting, Qwest's market share, as computed by
7 Staff, would decline to 69 percent.⁸ However, correcting Staff's apparent mathematical
8 mistake does not correct the fundamental flaw in Staff's overly simplistic depiction of the local
9 telecommunications market. By relying on statewide *average* estimates of the incumbent's
10 market share, Staff does not prove the existence of effective competition in relevant geographic
11 and product markets. As I demonstrated earlier, the state is not the relevant geographic
12 market, and therefore statewide average estimates are ultimately meaningless in an assessment
13 of Qwest's market power. Furthermore, as I discuss in more detail below, the inconsistencies
14 and ambiguities in the Staff-aggregated data suggest that Staff's calculation may incorporate
15 unreliable data. If the data upon which Staff relies are incorrect, Staff's market share calculation
16 will be incorrect as well.

17 **Q: What estimate of CLEC-served lines does Mr. Wilson provide?**

18 A: Mr. Wilson estimates that CLECs serve 230,049 retail lines in Qwest's serving territory in

⁶ Qwest response to PC 8-39, confidential attachment B.

⁷ In confidential attachment A to the response to PC 8-39, Qwest provides the numbers of lines associated with each separate category of business services (e.g., flat business line, business utility line, business custom choice, etc. Confidential attachment B to the response to PC 8-39 provides subtotals for the following three product categories: basic business exchange; Centrex services; and PBX trunks.

⁸ Staff contends that there are 230,049 CLEC-served lines. Using this assumption, the total number of lines statewide would be 750,684 (i.e., the sum of 230,049 CLEC retail lines and 520,635 Qwest retail lines). 520,635 divided by 750,684 equals 69 percent.

1 Washington.⁹

2 **Q: Are you able to verify Staff's market share estimate?**

3 A: No. It is impossible for me to verify Staff's estimate because only Staff was permitted access to
4 the underlying source data that CLECs provided. As I discuss below, in its aggregation, Staff
5 may have double-counted CLEC lines. Mr. Wilson's estimate apparently relies on his
6 aggregation of data provided by CLECs. Inconsistencies in the data suggest some inaccuracies
7 or ambiguities.¹⁰

8 **Q: Please describe your understanding of the CLEC data shown in exhibit TLW C-4, page**
9 **1 and the data shown in exhibit TLW C-5, and why these data may differ.**

10 A: The data shown in TLW-C4 corresponds with the data provided on August 10 that represents
11 the "cleaned up" version of the business line data that Staff originally provided on August 6.
12 However, in the summary table on page 14 of his testimony, Mr. Wilson relies on the data
13 included in exhibit TLW-C5, which include substantially higher numbers for CLEC-served lines.
14 One apparent cause of the difference between the two different sets of numbers is that some
15 CLECs did not report at the wire center level, but rather only reported at the exchange level.
16 Although Staff relies on exhibit TLW-C5, Staff does not explain fully the causes of the
17 differences, nor its methodology for "rolling up" to the exchange level.

18 **Q: Are there examples of the types of discrepancies that you identified in Staff's data?**

19 A: Yes. Compare, for example, the very different CLEC totals shown in exhibit TLW-C4 and
20 TLW-C5 for Aberdeen and Seattle, which I shown in Confidential Exhibit SMB-22RC. In

⁹ Wilson Direct (Staff), at 14.

¹⁰ See, for example, the aggregated business report shown in TLW C-4, page 1 and compare the "computed" total with the reported total for Auburn, Bellevue, Des Moines Total, Kent Total, Renton, and Seattle Total where the "computed" total is the sum of the numbers shown for resale, UNE-P, UNE-L and CLEC-owned.

1 exhibit TLW-5C, Staff notes that the data include the basic business data “rolled up” to the
2 exchange level. Apparently, where carriers may not have reported data at the wire center level,
3 these numbers perhaps are omitted from exhibit TLW-4C and are included in exhibit TLW-C5,
4 which may explain, in part, the large discrepancy between the exchange-specific totals shown in
5 these two exhibits. However, in the instance of Aberdeen, which has a single wire center, it is
6 not clear why the number of CLEC loops almost doubled between exhibit TLW-C4 and exhibit
7 TLW-C5. Furthermore, it is impossible for me to determine whether Staff over-adjusted when
8 it “rolled up” exchanges.

9 **Q: Please elaborate on your concerns about the “rolling up” process.**

10 A: By way of example, as Confidential Exhibit SMB-22RC shows, within exhibit TLC-4C, the
11 reported total for Seattle exceeds the “computed” total by 25 percent. In other words, the total
12 CLEC lines shown for the Seattle exchange in this Staff exhibit exceeds by 25 percent the sum
13 of the lines shown separately for resale, UNE-P, UNE-L and CLEC-owned. Because this
14 exhibit also includes wire center numbers, the difference between the reported and computed
15 total may be attributable to the fact that some CLECs only reported at the exchange level.

16 **Q: Is the total number of CLEC lines for Seattle in TLW-C5 identical to the total number**
17 **reported in TLW-C4?**

18 A: No. As Confidential Exhibit SMB-22RC shows, the gap between the various CLEC totals
19 shown for Seattle increases further within exhibit TLW-C5. The total reported CLEC lines
20 shown in exhibit TLW-C5 for the Seattle exchange exceed the total reported CLEC lines
21 shown in TLW-C4 by 47 percent. Other than indicating that Staff “rolled up” exchanges, Staff
22 does not explain this substantial differences. Finally, if one compares the reported total of
23 CLEC lines for the Seattle exchange, as shown in exhibit TLW-C5 with the computed total of

1 CLEC lines for Seattle based on the data shown in TLW-C4, the Staff's final number for
2 Seattle is *twice* the original computed total. Because these two numbers differ by such a
3 substantial amount, Staff may have over-adjusted when it "rolled up" to the exchange level, i.e.,
4 it may have adjusted once within its calculations in TLW-C4 and then again within its
5 calculations in TLW-5C.

6 **Q: Have you compared the different representations of the total numbers of CLEC lines**
7 **for other exchanges?**

8 A: Yes. I compare four different categories of representations of total CLEC lines within each
9 exchange in Confidential Exhibit SMB-22RC: (1) computed CLEC total based on the data
10 included in TLW-4C; (2) reported CLEC total as shown in TLW-4C; (3) computed CLEC
11 total based on the data included in TLW-5C; and (4) reported CLEC total as shown in TLW-
12 4C. In this exhibit, I identify those exchanges where the numbers differ by several thousand
13 lines or by at least 200 percent between the highest total shown for an exchange and the lowest
14 total shown for an exchange.

15 **Q: How do you compute an estimate of total CLEC lines?**

16 A: Unlike Staff, I am not relying on Staff's aggregated report as the source of information for
17 CLEC-served lines that are based on the use of resale, UNE-P, and UNE-L because: (1)
18 Staff's methodology for "cleaning up" the data and "rolling up" to the exchange level is
19 ambiguous; and (2) I have assumed that because Qwest bills its wholesale customers for the use
20 of its facilities, Qwest has correctly reported its wholesale data in this proceeding. Qwest
21 indicates that CLECs serve 104,019 lines, using Qwest's wholesale facilities.¹¹
22

¹¹Reynolds Direct (revised) (Qwest), at 13.

1 Because CLECs are the only source of information about the lines that they provide over their
2 own facilities, I rely on Staff's aggregation of CLEC-reported, CLEC-owned lines. Adding the
3 number of CLEC-owned lines provided by Staff to the 104,019 wholesale-based CLEC lines
4 yields a total number of CLEC-served lines that is substantially less than the 230,049 lines that
5 Mr. Wilson estimates, as Exhibit SMB-23RC shows.

6 **Q: In your direct testimony, you compute Qwest's market share, using Qwest's number of**
7 **615,000 for all business lines, which include digital lines. Have you computed any**
8 **other estimates of Qwest's retail market share?**

9 A: Yes. In Confidential Exhibit SMB-23RC, I compute Qwest's retail market share using two
10 different assumptions about the relevant number for Qwest's retail lines and based on two
11 different sources of information for CLEC-owned lines. The four different calculations
12 correspond with the following: (1) 615,000 Qwest retail lines and Staff's August 6th report; (2)
13 615,000 Qwest retail lines and Staff's August 10th report; (3) 520,635 Qwest retail lines and
14 Staff's August 6th report; and (4) 520,635 Qwest retail lines and Staff's August 10th report. In
15 all four instances, the source for the Qwest-served retail lines and for the CLEC-served
16 wholesale-based lines are Qwest testimony and exhibits. The higher Qwest retail number of
17 615,000 includes digital lines and the lower Qwest retail number of 520,635 excludes digital
18 lines. In its petition, Qwest excludes digital switched business service.¹² However, the numbers
19 that Staff reports for CLEC-owned lines may include digital lines. For this reason, I "bound"
20 my market estimates by using the two different Qwest estimates of its retail lines.

21 **Q: Mr. Williamson contends that Qwest may be "understating its competitors' market**
22 **share in basic business exchange services by excluding unbundled loops typically**

¹² Reynolds Direct (Qwest), at 4.

1 **associated with digital services."**¹³ **Do you agree?**

2 A: No. As I understand his testimony, a customer that presently subscribes to Qwest's analog
3 service and then migrates to a CLEC's digital service is substituting the CLEC's digital service
4 for Qwest's analog offering. Mr. Williamson's assertion is apparently that wholesale-based
5 digital services are substitutes for analog services. I disagree with his analysis. Customers that
6 migrate from an analog service to a digital service select from among the CLEC's digital
7 offerings *and* Qwest's digital offerings. Therefore, it would be inappropriate to *include* CLEC's
8 unbundled loops associated with digital services and at the same to *exclude* Qwest's digital
9 loops.

10 **Q: Have you compared the product totals for CLEC-owned lines, as provided by Staff in**
11 **the two versions of its report?**

12 A: Yes. I include a table in Confidential Exhibit SMB-23RC that compares Staff's estimates
13 separately for business line, PBX trunk, and Centrex, based on the two different Staff reports.
14 The August 10th estimate of PBX trunks differs significantly from that provided in the August 6th
15 report.

16 **Q: Please comment on the results of your calculations.**

17 A: All four of my estimates of Qwest's market share, as shown in Confidential Exhibit SMB-
18 23RC, demonstrate that Qwest dominates the local market, even when viewed on a statewide
19 average basis. The level of competitive activity varies among the exchanges.

20 **Q: Please explain how Confidential Exhibit SMB-23RC compares with Confidential**
21 **Exhibit SMB-6C, which you included in your direct testimony.**

¹³ Direct Testimony of Robert T. Williamson (Staff), at 7.

1 A: The calculation in my earlier exhibit relies on the Qwest retail total that includes digital lines and
2 also relies on Staff's August 6 report for an estimate of CLEC-owned lines. However, in
3 expanding my analysis for Confidential Exhibit SMB-23RC, and in incorporating the Staff's
4 more recent version of its aggregation of CLEC-provided data, it has come to my attention that
5 the number of CLEC-owned lines shown in Confidential Exhibit SMB-6C may be incorrect.
6 Staff's spreadsheet files include entries for wire centers and also for exchanges. In many
7 instances, the totals shown for the exchanges do not equal the sum of the wire center subtotals.
8 In seeking to avoid doublecounting, I believe that I inadvertently miscalculated the total of
9 CLEC-owned loops in Confidential Exhibit SMB-6C. For this reason, I recommend that the
10 Commission rely on the calculations in Confidential Exhibit SMB-23RC for estimates of
11 Qwest's statewide average retail market share rather than on the calculations in Confidential
12 Exhibit SMB-6C.¹⁴

13 **Q: What is your understanding of Staff's position regarding the role of an HHI analysis in**
14 **this proceeding?**

15 A: Staff conducted an HHI analysis based on wholesale data, and found "high market
16 concentration." However, Staff also stated that "the results of the HHI analysis do not provide
17 the best representation of the market" because Staff's analysis excludes CLEC-owned lines and
18 because, according to Staff, the HHI is a "static measure."¹⁵ Staff contends that because
19 "evidence suggests that market shares are changing, an HHI analysis quickly becomes stale."¹⁶
20 Staff also indicates that its HHI results are higher than they would be if CLEC-owned lines were

¹⁴ Based on my review of the Staff's report, the statewide total of CLEC-owned lines that appears in Confidential Exhibit SMB-4C correctly represents the data as presented in the Staff's August 6th version of its report.

¹⁵ Wilson Direct (Staff), at 24-25.

¹⁶ *Id.*, at 25.

1 included.¹⁷

2 **Q: Do you agree with Staff that an HHI analysis is of limited use in this proceeding?**

3 A: No. There is simply no evidence to suggest that market shares are changing so rapidly as to
4 lead to HHI results other than the highly concentrated levels that now exist. In Exhibit SMB-
5 4C, I include CLEC-owned lines, and the results of my HHI analysis demonstrate that, even
6 including these lines, the local market is highly concentrated. Furthermore, as I discuss later in
7 this testimony, I have provided another HHI analysis in Confidential Exhibit SMB-24RC, based
8 on the “cleaned up” August 10th data on CLEC-owned lines.¹⁸ These analyses, which include
9 CLEC-owned lines, yield HHI values that, contrary to Mr. Wilson’s assertion, are relevant to
10 this proceeding. There is simply no evidence to demonstrate that the highly concentrated
11 characteristic of the local markets will change materially in the near future, or that the inclusion of
12 CLEC-owned lines yields HHI results that correspond with either a moderately concentrated or
13 unconcentrated local market.

14 **Although the data differ from the original version, the August 10 version of the Staff’s**
15 **aggregation of the CLEC-provided data does not alter a finding of Qwest’s market power.**

16 **Q: Did you review the version of Staff’s aggregation of CLEC-provided data that Staff**
17 **completed on August 10, 2003?**

18 A: Yes. The data in the later report differ substantially from the original data. I have no way to
19 verify the accuracy of either set of data because I was not permitted access to the underlying
20 data. Furthermore, as Confidential Exhibit SMB-22RC shows, although Staff “cleaned up” the
21 data, there are still various instances where the totals of the numbers in the individual columns in

¹⁷ *Id.*

¹⁸ The assumptions and methodology that I use in Confidential Exhibit SMB-24RC are identical to those that I used in Confidential Exhibit SMB-4C.

1 the Staff's report do not sum to the total shown (e.g., the total CLEC lines shown in the Staff
2 report do not equal the sum of the amounts shown in the separate columns for resale, UNE-L,
3 UNE-P, and CLEC-owned).

4 **Q: How do the changes in the more recent version of the Staff's aggregation affect your**
5 **direct testimony and exhibits?**

6 A: The modified information in the more recent version of Staff's aggregation of CLEC-provided
7 data does not affect my conclusions or recommendations, but rather affects some of the
8 calculations and summaries provided in the following confidential exhibits, each of which rely in
9 part on the August 6, 2003 version of Staff's report: Confidential Exhibit SMB-4C;
10 Confidential Exhibit SMB-6C; Confidential Exhibit SMB-12C. I have prepared alternate
11 versions of each of these exhibits in my rebuttal testimony:

- 12 ● As I discussed earlier, Confidential Exhibit SMB-23RC provides revised and expanded
13 calculations of Qwest's retail market share, which should be relied on instead of the data
14 included in Confidential Exhibit SMB-6C.
- 15 ● Confidential Exhibit SMB-24RC provides another version of the HHI calculations that I
16 provided in Confidential Exhibit SMB-4C. The sole change between Confidential Exhibit
17 SMB-4C and Confidential Exhibit SMB-24RC is that the calculations in the latter exhibit
18 substitute the information on CLEC-owned lines provided in the August 10 Staff report in
19 place of the comparable data provided in the original August 6th report.
- 20 ● Confidential Exhibit SMB-25RC is another version of Confidential Exhibit SMB-12C,
21 which relies on the August 10th rather than the August 6th Staff report.

22 **Q: Have you provided any other exhibits based on your review of the Staff's report?**

1 A: Yes. As described earlier in my testimony, Confidential Exhibit SMB-22RC summarizes the
2 differences among the various CLEC totals reported by Staff in exhibits TLW-4C and TLW-
3 5C. Also, in Confidential Exhibit SMB-26RC, I provide a comprehensive summary on an
4 exchange-specific basis of the wholesale, retail, and CLEC-owned lines in the local markets.
5 Specifically, Confidential Exhibit SMB-26RC provides the number of lines by exchange for the
6 following categories: resale, UNE-P, UNE-L, CLEC-owned, Qwest retail, Qwest wholesale,
7 and total lines in the exchange. The source of the numbers for the resale, UNE-P, UNE-L, and
8 Qwest retail is Qwest exhibit DLT-4C. The exchange-specific lines shown for the CLEC-
9 owned category correspond with business lines. The exchange-specific CLEC-owned lines
10 exclude PBX and Centrex because these data, which are based on the Staff's August 10th
11 report, are unavailable on an exchange-specific basis. The numbers shown for Qwest
12 wholesale are simply the sum of resale, UNE-P, and UNE-L. The exchange-specific total lines
13 are the sum of the Qwest retail, Qwest wholesale, and CLEC-owned business lines.

14 **Q: Does Confidential Exhibit SMB-26RC also provide statewide totals?**

15 A: Yes, and unlike the exchange-specific data, the statewide totals include all of the CLEC-owned
16 lines (i.e., for business line, PBX trunks, and Centrex).

17 **Q: Does Staff's testimony provide any evidence that your exhibits may overstate CLECs'**
18 **presence in the local market?**

19 A: Yes. Mr. Wilson states that in "some instances, Qwest wholesale data contained information
20 about lines CLECs were using for internal administrative purposes" and he further recommends
21 "that these lines be deleted from the Qwest wholesale data for purposes of using it to calculate

1 market share estimates.”¹⁹

2 **Q: Please elaborate.**

3 A: I understand Mr. Wilson’s testimony to indicate that the wholesale data that Qwest provided in
4 exhibits DLT-3C and DLT-5C include some lines that CLECs use for internal administrative
5 purposes and *not* for providing service to businesses. Because my exhibits do not delete these
6 lines, they overstate CLECs’ market share.

7 **Staff oversimplifies the cost of entering the local market and fails to analyze the implications**
8 **of Qwest’s petition on businesses that rely on vertical services.**

9 **Q: Please address Staff’s analysis of the ease of entry in the local market.**

10 A: Mr. Wilson asserts that “[e]ntry is very easy for carriers,”²⁰ but provides little in the way of
11 explanation to justify this assertion. As I discuss in my direct testimony at pages 42 through 44,
12 entry in the local market entails costs, efforts, and risk. Furthermore, those carriers that depend
13 on Qwest’s wholesale facilities incur additional transaction costs associated with monitoring their
14 relationship with Qwest. CLECs’ depend critically on Qwest’s wholesale services so that the
15 CLECs are able to cultivate and sustain their relationship with their customers. In its recent
16 Triennial Review Order, the FCC concluded that the “**customers experiencing**
17 **service disruptions generally blame their provider,**
18 **even if the problem is caused by the incumbent.**”²¹

19
20 **Staff also ignores the volatility in the CLEC**

¹⁹ Wilson Direct (Staff) at 13.

²⁰ *Id.*, at 23.

²¹ *FCC Triennial Review Order*, ¶ 467.

1 **i**ndustry. One industry report observes that “growth in the CLEC industry has
2 flattened out considerably since the heady days of the late 1990s.”²²

3 **Q: Does Staff address the various possible causes of the decline in Qwest’s business line**
4 **services?**

5 A: Staff does not analyze the causes of disconnections of Qwest’s business service. Not only is
6 the economic downturn one factor causing this decline, but also, businesses that migrate from
7 Qwest’s local exchange to Qwest’s other more advanced telecommunications services
8 contribute to the decline in business lines.²³

9 **Q: Does Staff address the merits of Qwest’s petition to classify vertical services as**
10 **competitive?**

11 A: No. Neither Mr. Wilson nor Mr. Williamson consider the significance of the increasing demand
12 by businesses for Qwest’s vertical services, nor do they examine the price levels that Qwest has
13 been able to sustain for these purportedly “competitive” products. Staff neglects to address
14 small businesses’ increasing reliance on custom calling features, products that may well be
15 integral to their day-to-day operations. Staff’s failure to address the importance of these
16 features is further evidence of Staff’s excessively general analysis of Qwest’s petition. Staff fails
17 to address the major deficiency in Qwest’s petition, that is, that Qwest fails to define relevant
18 geographic and product markets.

19
20

²² “The State of Local Competition: Association for Local Telecommunications Services,” April 2003, p. 4.
www.alts.org.

²³ See Baldwin Direct (Public Counsel) at 30-32; exhibit SMB-7C; and Qwest’s supplemental response to PC 3-24S1, Confidential Attachments A and B, in which it provides Washington-specific information about the dramatically *increasing* number of voice-grade equivalent access lines provided to business customers. I have included this response as Confidential Exhibit SMB-27RC.

1 **Staff oversimplifies the critical relationship between this proceeding and other regulatory**
2 **proceedings.**

3 **Q: Does Staff recognize that this proceeding is related to other proceedings?**

4 A: Yes. Mr. Wilson states that:

5
6 The test for economic success is, of course, subject to the individual firm's
7 ability to compete, demand, and policy conditions, among many other factors.
8 However, the Commission has also been involved in addressing that field
9 through various dockets, including but not limited to the generic cost of service
10 cases.²⁴

11 **Q. Please comment.**

12 A: Although he recognizes the relationship of this proceeding to other dockets, Mr. Wilson neglects
13 to address the critical issue of timing, namely that the UNE cost proceeding is pending, and
14 that, therefore, as I discuss at page 61 of my direct testimony, it is premature to analyze whether
15 a price squeeze will exist between Qwest's soon-to-be-established wholesale prices and
16 Qwest's retail prices for local services.

17 **Q: Mr. Wilson presents data based on five zones.²⁵ Please comment.**

18 A: Mr. Wilson's apparent reliance on the five geographically deaveraged zones that now exist is
19 misplaced, because these zones are presently under scrutiny and subject to change by the
20 Commission.²⁶ Furthermore, neither Staff nor Qwest contend that these five zones are the
21 relevant geographic markets for assessing whether effective competition exists.

22

²⁴ Wilson Direct (Staff) at 5.

²⁵ *Id.*, at 25.

²⁶ See, e.g., Docket No. UT-023003, In the Matter of the Review of: Unbundled Loop and Switching Rates; the Deaveraged Zone Rate Structure; and Unbundled Network Elements, Transport, and Termination, Direct Testimony of Thomas L. Spinks (Staff), June 26, 2003, pages 14-17, in which Mr. Spinks describes a proposal to deaverage certain wire centers into "core" and "fringe" portions.

1 **Q: On August 21, 2003, the FCC released its long-awaited “Triennial Review Order.”**
2 **Does the release of the order alter in any way the discussion in your direct testimony**
3 **about the relationship of the Commission’s investigation of Qwest’s petition in this**
4 **proceeding to the Commission’s upcoming “impairment” proceeding?**

5 A: No. The FCC provided detailed guidance for state impairment proceedings, addressing such
6 economic and policy issues as market definition; operational and economic factors to consider;
7 and the transition of the embedded customer base.²⁷ The analytic and policy framework that
8 the FCC describes in detail in its Triennial Review Order bears directly on the Commission’s
9 investigation of Qwest’s petition in this proceeding. Qwest’s petition is flawed fundamentally
10 because Qwest failed to demonstrate that effective competition exists for the services for which
11 it seeks reclassification. Furthermore, the petition is premature, because the Commission soon
12 will be implementing the complex state proceeding pursuant to the FCC’s Triennial Review
13 Order.²⁸

14
15 **Q: Mr. Wilson refers to the possibility that customers may view cellular service as a**
16 **functional equivalent to Qwest’s business services.²⁹ Please comment.**

17 A: There are numerous reasons that cellular service is not a functional equivalent to Qwest’s
18 business services, which Mr. Gates discusses in detail.³⁰ Also, the major power outage that
19 occurred in large portions of the Midwest and Northeast earlier this month underscored another

²⁷ See, e.g., *FCC Triennial Review Order*, at ¶¶ 459-532, regarding local switching offered to the mass market.

²⁸ Docket No. UT-033025, Re: In the Matter of the Implementation of the Federal Communications Commission’s Triennial Review Order, Notice inviting comments concerning process for implementing FCC Triennial Review Order, August 22, 2003.

²⁹ Wilson Direct (Staff), at 15.

³⁰ Direct Testimony of Timothy J. Gates (MCI), at 18-37.

1 significant difference between landline and wireless telephones. As reported by one major
2 newspaper the day after the power outage began, “The regular public telephone network
3 generally kept working after the power went out in parts of six states yesterday afternoon, but
4 the cellular systems in affected areas were often unable to cope.”³¹ The inability of the cellular
5 network to handle traffic volumes caused by emergency situations is yet another feature
6 distinguishing wireless service from landline service.

7 **Q: In summary, does Staff demonstrate that Qwest lacks market power?**

8 A: No. Staff fails to demonstrate that Qwest lacks “the ability to alter profitably prices away from
9 competitive levels.”³² Staff provides a sweeping characterization of the local market structure
10 and omits any detailed analysis of the complexities of the relevant geographic and product
11 market.

12 **The review of Qwest’s access charge structure suggested by MCI witness Timothy Gates is**
13 **beyond the scope of this proceeding.**

14 **Q: Mr. Gates discusses the relationship of access charges to local competition. Please**
15 **summarize generally your understanding of his position.**

16 A: Mr. Gates states, among other things, that “Qwest, however, will be able to use the subsidies
17 inherent in access charges to subsidize its competitive offerings to the detriment of its
18 competitors” and furthermore that “[i]n effect, Qwest can subsidize its competitive offerings
19 with profits from its competitors.”³³ As I understand his testimony, Mr. Gates contends that

³¹ Matt Richtel and Simon Romero, “When Wireless Phones Failed, Callers Turned to Land Lines,” *New York Times*, August 15, 2003, page 18.

³² Andreu Mas-Colell, Michael D. Whinston, and Jerry R. Green, *Microeconomic Theory*, Oxford University Press, New York, (1995), at 383.

³³ Gates Direct (MCI), at 53.

1 access charge reform is required before Qwest obtains any pricing flexibility.³⁴

2 **Q: Please comment.**

3 A: In my opinion, the issue of access charge pricing is well beyond the scope of this proceeding.
4 Based simply on the evidence provided in this proceeding, the Commission has adequate
5 information to determine that Qwest has failed to meet its burden of proof for its ill-supported
6 petition. MCI's specific and detailed concerns about intrastate access charges seem to be a
7 distinct issue that should be addressed in a separate proceeding.

8 **Q: Nonetheless, have you analyzed Qwest's access charges, and whether they enable**
9 **Qwest to cross-subsidize its competitive services?**

10 A: No, I have not, as I believe that a detailed analysis of access charges is beyond the scope of this
11 proceeding.

12 **Q: Does this conclude your testimony?**

13 A: Yes.

³⁴ *Id.*, at 55.