

Exhibit TC-___ (TLW-TC-10)
Docket No. UT-030614
Witness: Thomas L. Wilson, Jr.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Petition of

DOCKET NO. UT-030614

QWEST CORPORATION

For Competitive Classification of Basic
Business Exchange
Telecommunications Services.

REBUTTAL TESTIMONY OF

Thomas L. Wilson, Jr.

REDACTED

STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

August 29, 2003

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

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

5 **Q. Have you prepared testimony previously in this docket?**

6 A. Yes, I submitted testimony and exhibits (Exhibit Nos. ___ (TLW-1-T) to ___
7 (TLW-C9)) in this docket on August 13, 2003.

8 **Q. Please explain your understanding regarding the consequences of approving**
9 **the petition.**

10 A. Some of the parties seem to imply that Qwest will receive a wide variety of
11 freedoms it does not currently possess if the Commission grants Qwest's
12 petition. However, Qwest already has considerable pricing flexibility.
13 Currently, Qwest can change a tariff rate for the services covered by this Petition
14 with nearly as much pricing flexibility as it would have under competitive
15 classification price list authority. Qwest currently is not constrained from "using
16 other tools to compete with other providers of local exchange services. Qwest
17 can use banded rate tariffs, offer business services through a competitive affiliate,
18 offer promotions, offer winback incentives, and lower prices in response to

1 competition.”¹ What Qwest will gain if its Petition is granted is simply the ability
2 to make price changes more quickly.

3 Although illegal discrimination and undue preferences statutes and rules would
4 no longer apply, Qwest would still be required to comply with all statutes and
5 rules other than those related to pricing authority. For example, Qwest would
6 continue to operate under a Service Quality Performance Program created as
7 part of the US West/Qwest merger, plus the service quality reporting required of
8 all Class A phone companies. The earliest Qwest can petition to end the Service
9 Quality Performance Program is this fall, for an end date after December 31,
10 2003. Otherwise, the Service Quality Program ends December 31, 2005. Qwest
11 must still comply with WAC 480-120-439 (service quality program reports)
12 because Class A status applies to number of access lines, not regulatory (or
13 competitive) status.

14 Competitive classification is granted when effective competition exists in the
15 relevant market, allowing the requesting company to have pricing freedom. The
16 data in this case indicate that the relevant market is subject to effective
17 competition. That effective competition, coupled with Washington’s consumer
18 protection laws, ensures that customers will be protected from predatory pricing.

¹ *In the Matter of the Petition of Qwest Corporation for Competitive Classification of Business Services in Specified*

1 Customers benefit when all service providers of a service subject to effective
2 competition abide by the same rules. Applying the same rules to all providers in
3 this situation allows the providers to compete on an equal footing.

4 **Q. Some of the parties express concerns that Qwest will be able to price services**
5 **below cost if the Petition is approved. Should this be a concern for the**
6 **Commission in this proceeding?**

7 A. No. Qwest's initial price list filing should mirror the current tariff rates.

8 Thereafter, any rate change must continue to cover related costs. Denying
9 below-cost pricing and cross-subsidy is a key provision of the competitive

10 classification process.² The price floor for determining whether Qwest's prices

11 will cover its costs is well known and was established in the generic cost dockets;

12 Qwest should not be permitted to price below TELRIC.

13 It is Staff's understanding that the current rates for Qwest's listed services are, on

14 average, above cost. This is because they were supported by cost studies

15 demonstrating that the rates were above cost at the time they were originally

16 filed. Since then, generic cost study dockets have established TELRIC estimates

17 for unbundled network elements for Qwest. TELRIC estimates would suffice as

18 a price floor for future pricing of listed services if the Petition is approved.

Wire Centers, Docket No. UT-000883, Seventh Supplemental Order at Par. 70 (December 18, 2000) Par. 70.

REBUTTAL TESTIMONY OF

Thomas L. Wilson, Jr.

Docket No. UT-030614

REDACTED

Exhibit TC-___ (TLW-TC-1)

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Q. AT&T alleges that Qwest may engage in, “poor wholesale quality, delayed service provisioning, and myriad other acts aimed at destroying the competition” if the petition is granted.³ How does Staff respond to this concern?

A. While AT&T raises legitimate concerns, these are not concerns that would be affected by competitive classification. Qwest would still be required to comply with regulatory requirements concerning wholesale quality, including service provisioning, if the petition is approved. Competitive classification will not change how Qwest’s wholesale and retail products are regulated other than to permit price list changes to take effect more quickly. Should Qwest attempt to do the things AT&T alleges, Qwest would likely lose its competitive classification and might be subject to other regulatory or civil consequences.

Q. Does the competitive classification petition apply only to Qwest’s exchanges in its operating territory in Washington or to the entire state?

A. Staff believes that Qwest is subject to effective competition statewide, both in areas in Qwest’s current operating territory, and in areas in the state served by other incumbent local exchange companies. It is unlikely that Qwest is able to

² RCW 80.36.330 (3) – (6)

1 exercise market power for basic business service, PBX, or centrex, either inside or
2 outside of its current operating territory in Washington.

3 There are competitors in all but less than one percent of Qwest operating
4 territory. The fact that a substantial number of lines are being provided on
5 competitors' networks demonstrates that barriers to entry, while they
6 undoubtedly exist, are not so high as to completely forestall entry. Outside of
7 current Qwest exchanges, Qwest is a new entrant with zero customer base.
8 Therefore, Qwest is subject to effective competition everywhere in the state.

9 **Q. Please discuss CLEC presence in Qwest's operating territory.**

10 A. By various measures, there are about thirty CLECs operating very actively in
11 Qwest's operating territory, with hundreds of thousands of lines in service across
12 all but one exchange. There is no magic number of CLECs that creates effective
13 competition. One successful CLEC could create a big dent in Qwest's market
14 share. This is especially true in small, rural communities. Competitive
15 classification does not require perfect competition; it requires effective
16 competition, i.e., the presence of reasonably available alternatives and the
17 absence of a significant captive customer base. In addition, the Commission
18 should consider that the competitive classification is not total deregulation and

³ Exhibit No. ___ (RNC-1TC) at 5.

1 that customers will still have some protections if the petition is granted. For
2 example, Qwest will be required to price the services above cost. The
3 Commission could still investigate prices for these services and require that
4 Qwest demonstrate that the prices are fair, just, reasonable, and sufficient. Even
5 if classified as competitive, the state's Consumer Protection Act applies. Also,
6 the Commission could remove the competitive classification of these services if
7 doing so would protect the public interest.

8 **Q. Is the evidence of competition in the record exhaustive as to the total amount**
9 **of competition that exists?**

10 A. Probably not. In addition to considering Qwest's wholesale data and responses
11 from CLECs to Order No. 06, the Commission should consider the limitations of
12 the information received. For example, it is not clear that all carriers operating in
13 the relevant market responded to Order No. 06, or that the Commission has
14 received a complete inventory of the areas CLECs currently serve. Twenty-seven
15 CLECs responded to Order No. 06, and Qwest provided evidence about 34
16 carriers in its Petition. Many of the 27 CLECs who responded to Order No. 06
17 were included in the 34 CLECs about which Qwest provided information. This
18 indicates that there may be some carriers reported by Qwest as having purchased
19 wholesale lines, who did not respond to Order No. 06, leaving some information

1 unaccounted for. Furthermore, there may be other forms of unregulated
2 competition that are not included in either Qwest's wholesale figures or
3 responses to Order No. 06.

4 **Q. Does Staff's recommendation rely on whether the number of interconnection**
5 **agreements is increasing or on the data regarding the number of local service**
6 **requests?**

7 A. No. The primary evidence Staff relies on is the existence of CLECs serving lines
8 everywhere in Qwest territory, except Elk, yielding significant data of effective
9 competition. Staff's market share analyses indicate that Qwest's market share
10 has significantly eroded. The fact that the structural framework for the local
11 exchange market is open to entry and fosters competition is also extremely
12 important. Staff did not discount the number of interconnection agreements and
13 local service requests as a measure of CLEC market share growth, but neither is
14 this information the sole basis for Staff's recommendation to approve Qwest's
15 petition.

16 **Q. How will Qwest's obligations to provide unbundled network elements be**
17 **affected by approving Qwest's petition?**

18 A. Competitive classification does not relieve Qwest of its obligations under the
19 Telecommunications Act of 1996. Qwest's Statement of Generally Available

1 Terms for interconnection, access to interconnection, access to unbundled
2 network elements, and resale (SGAT) and the interconnection agreements
3 entered into with every CLEC in Washington all contain provisions for a
4 performance assurance plan. Every Commission order approving amended
5 agreements adding a performance assurance plan notes that the agreements were
6 negotiated voluntarily between the parties. Since 271 approval, Staff is unaware
7 of any pending formal CLEC complaint concerning lack of parity in the
8 wholesale market regarding the services for which Qwest seeks competitive
9 classification.

10 Because market share can be an imperfect indicator of market power, Staff
11 advocates that the Commission look beyond market share numbers and also
12 consider the structure of the market itself. Taking into account market structure,
13 Staff's analysis leads to a recommendation for approval.

14 **Q. Please discuss the role of price in the analysis of whether effective competition**
15 **exists.**

16 A. Although price is an important determinant of consumer demand, it is not the
17 only factor motivating the customer. AT&T provides an analysis of the reasons
18 customers disconnect from Qwest's service. Exhibit No. ___ (RNC-1TC) at 15.
19 Focusing only on the [] percent of disconnects from Qwest due to price alone

1 could severely understate the effect of price on consumer demand. After all, []
2 percent of disconnects were due to competition. Reasons for switching due to
3 competition could also include switching due to price. Other factors in the
4 overall service package offered by CLECs could also play a role in customer
5 choice. If the line rate was the only factor, presumably customers would always
6 choose the carrier with the lowest rate. However, customers choose carriers,
7 including CLECs, with rates higher than the lowest rate. For example, AT&T's
8 rate for a main business line is \$24.00, Integra charges \$35.00, and MCI
9 Worldcom charges \$36.20, compared to a basic business line from Qwest at
10 \$26.89 plus a subscriber line charge. Without more information, it is false to
11 assume that the [] percent of disconnects due to competition were not at least in
12 part price related.

13 **Q. With regard to concerns that UNE-P's availability is crucial to competition, is**
14 **this a concern that is relevant to all of the listed services?**

15 A. No. UNE-P is not used by CLECs at all for the provision of PBX lines, and the
16 data indicates PBX is one of the most competitive segments of the relevant
17 market. The table below compares CLECs reported reliance on UNE-P versus
18 owned loops. PBX is heavily dominated by competition from owned-loops, and
19 overall, there are more owned loops in the competitive market than UNE-P.

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	Percent UNE-P	Percent Owned
Basic	[]% ([] lines)	[]% ([] lines)
PBX	[]	[]% ([] lines)
Centrex	<u>[]% ([] lines)</u>	<u>[]% ([] lines)</u>
Total	[] lines	[] lines

If UNE-P lines were not counted, Qwest market share would still only be about 74 percent. The Commission need not wait for a Triennial Review process to resolve UNE-P issues before deciding this case. It appears that there is already substantial competition even without UNE-P. Staff is not endorsing either abolishing or continuing UNE-P at this time as that will be the subject of another proceeding, but rather Staff simply observes the data as it exists today.

Q. Please comment on the QSI Consulting Report on Decline in CLEC Market Capitalization provided by MCI concerning the issue of whether the CLEC industry is likely to remain competitive.

A. The document reports a dramatic change in the relative financial strength of what it calls “key companies” from December 31, 1999, through January 17, 2003. This historical data does not have any implication for predicting the future of competition for listed services in this case. In fact, a report dated July 2, 2003, by the Association for Local Telecommunications Service, a CLEC industry association that lobbies on regulatory issues, indicates an uptick in stock values,

1 carriers' emergence from bankruptcies, and evidence of CLEC revival. See
2 Exhibit No. ____ (TLW-11). The spreadsheet on page 2 of Exhibit No. ____ (TLW-
3 11) indicates market capitalization for publicly traded CLECs more than doubled
4 their market value since the end of 2002, when the QSI study concluded.

5 **Q. Do you have any other indications of CLEC optimism concerning UNE-P or**
6 **future investment strategies reflecting an overall high level of investor**
7 **confidence in CLEC markets?**

8 A. Yes. On August 27, 2003, Sprint issued a press release indicating it will be
9 entering the local market nationally in direct response to the recent FCC order on
10 UNE-P, which Sprint says more clearly establish the parameters for new local
11 competition in mass markets and, in turn, brings more value to consumers. See
12 Exhibit No. ____ (TLW-12). This indicates that the dire predictions and warnings
13 about UNE-P, the Triennial Review, and CLEC investor confidence may not be
14 an accurate view of the current market. Rather, optimism is being expressed in
15 the public consciousness.

16 **Q. Public Counsel presented an HHI analysis. Please comment.**

17 A. First, Public Counsel incorrectly adjusted CLEC line counts downward by 50
18 percent across the board based on the assumption that half of the reported
19 CLEC-owned lines are digital. As I noted in Exhibit No. ____ (TLW-3) at line 131,

1 to the best of my knowledge, only analog lines are reported in the aggregated
2 data upon which Public Counsel relied. Furthermore, Carrier D reported
3 statewide figures of [] owned loops and [] special access loops that are not
4 accounted for by Public Counsel. See Exhibit No. ___ (TLW-3) at line 131. Also,
5 on August 25, 2003, Carrier BO clarified that it provides service on an additional
6 [] previously unaccounted lines using owned facilities in Qwest territory. This
7 information will be reflected on an update to Exhibit No. ___ (TLW-3) that Staff
8 will file in this proceeding. The update to Carrier BO's data will be located at
9 line 67 of Exhibit No. ___ (TLW-3).

10 Next, Public Counsel incorrectly assumed that the Chehalis exchange should be
11 excluded from the analysis. Public Counsel claimed that Chehalis was double
12 counted as a member of the aggregated grouping called "Western Towns, B-H."
13 However, Exhibit No. ___ (TLW-3) at lines 34-42 lists the exchanges included in
14 the group "Western Towns, B-H," and Chehalis is not in that group. Therefore,
15 Chehalis is not double-counted. Public Counsel has overstated the amount of
16 market concentration by removing least [] CLECs in the Chehalis exchange who
17 are providing service to approximately [] percent of the lines throughout the
18 exchange. The data indicate that some of the locations served by the CLECs in
19 the Chehalis exchange require only a few lines. Furthermore, these lines were

1 reported in very small, unincorporated towns such as Adna, Galvin, and
2 Napavine. It is important that the Commission not disregard this evidence of
3 competition because they represent competition in the outer fringes of
4 competitive markets.

5 Finally, Public Counsel applied a 64 percent factor to CLEC wholesale data based
6 on an assumption that 64 percent of wholesale lines are not PBX or Centrex.

7 According to the data, including new, late-received data, the percentage of
8 CLEC-reported lines that are not PBX or Centrex is closer to 75 percent. Thus, by
9 using a false assumption, Public Counsel has multiplied the error it made when
10 it assumed half of the CLEC-owned loops are digital, causing the amount of
11 market concentration to be further overstated.

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

13 **A. Yes.**