Exhibit 274-T (GB-274T)
Docket No. UT-991358
Witness: Glenn Blackmon

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application of U S WEST, INC., and QWEST COMMUNICATIONS INTERNATIONAL, INC. **For an Order Disclaiming Jurisdiction, or in the Alternative, Approving the U S WEST, INC. – QWEST COMMUNICATIONS INTERNATIONAL, INC., Merger.**	**DOCKET NO. UT-991358**

TESTIMONY OF

GLENN BLACKMON, Ph.D.

STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

February 22, 2002

Q. Are you the same Glenn Blackmon that testified earlier in this proceeding?

A. Yes.

Q. Please describe the issues that are before the WUTC at this hearing.

A. Qwest has asked the WUTC to relieve it of obligations relating to service quality performance that it undertook as a condition of securing approval for its acquisition of U S WEST in 2000. Qwest has actually has made two separate requests, both relating to the performance measure requiring Qwest to restore out-of-service conditions within two working days:

1. To be excused from paying $666,667 of $1,000,000 in credits to customers for eight of the twelve months in which it failed to meet the agreed-to performance benchmark on restoration of out-of-service conditions.

2. To revise the out-of-service repair benchmark itself on a going-forward basis by lowering the standard that Qwest must meet to avoid making a payment and redefining "failure" so as to exclude many of the trouble tickets that Qwest does not restore on time.

In addition, although it is not stated in Qwest's petition, the company apparently is also proposing to conduct a selective review of the reported data in order to reduce the reported number of failures.

Q. What is Staff's recommendation regarding these proposals?

A. Staff opposes the proposals. In no respect is Qwest's request for relief appropriate. The performance mechanism is working exactly as was expected when the WUTC approved it. However, Staff also believes that the mechanism could be improved and offers alternatives to revise the benchmark on a going-forward basis.

<u>Request for Mitigation</u>

Q. Please explain why Qwest should not be excused from paying $666,667 of the $1,000,000 in credits relating to the restoration of out-of-service conditions.

A. Qwest does not qualify for mitigation, because its reasons do not meet the standards in the merger order. These standards contemplate mitigation where there are "unusual or exceptional circumstances," in which case the WUTC would consider whether Qwest's "level of preparedness and response was reasonable." *See Appendix A to the Ninth Supp. Order in this docket, at Section II(B)(5)*

In its petition, Qwest argues that its level of preparedness and response was reasonable. However, that argument misses a necessary condition to mitigation, which is that there must be unusual or exceptional circumstances. As the Commission stated in its Order adopting the settlement agreement and granting Qwest's merger application, credits due to customers under the Service Quality Performance Program are only "subject to a petition for mitigation based on demonstrable 'unusual or exceptional circumstances' that USWC will have the burden to show." *Ninth Supp. Order in this docket, at 11* The circumstances in 2001 were not unusual or exceptional, so Qwest's level of preparedness and response is irrelevant.

Q. If there were no unusual circumstances relating to out-of-service repairs, then why is Qwest facing a customer credit of $1 million?

A. The performance benchmark that Qwest supported in the merger case and agreed to comply with calls for it to give a credit to customers in any month in which it fails to restore, with some exceptions, all out-of-service conditions within two working days. The exceptions are:

> These credits shall not apply to trouble reports relating to operation of customer premises equipment, nor shall it apply to extraordinary or abnormal conditions of operation, such as those resulting from emergency or catastrophe or disruptions of service caused by persons or entities other than the local exchange company. *See Attachment B to Appendix A to the Ninth Supp. Order in this docket, at Section (5)*

Apart from these exceptions, Qwest entered the merger with a promise to its customers that it would pay a credit if it did not restore all out-of-service reports within two working days. There is absolutely nothing in Qwest's petition that suggests that Qwest executives misapprehended the challenge that they set for themselves. While they ensured that the promise was subject to a broad range of exclusions, Qwest executives may nonetheless have believed at the time that the company would pay the credit most months. Even if restoring all outages was unachievable, there is nothing wrong with the company's new owners setting that as their goal.

Q. The petition (at page 5, line 24) characterizes the payments by Qwest as a penalty. Do you agree with that characterization?

A. No, I do not. By calling the payments a penalty, Qwest is suggesting that this is an enforcement action for violation of a rule, law, or order. These payments are not penalties; they are credits that Qwest offered to its customers in order to obtain merger approval and is now trying to evade. It is not a penalty to require a company to keep a commitment that it voluntarily made.

Q. But is there not also a service quality rule that has the same substantive requirement as the out-of-service performance measure that Qwest included in the merger case?

A. Yes. WAC 480-120-520(8) requires restoration of "all reported interruptions of telecommunications services" within two working days. It provides for some exceptions, though they are narrower than the exceptions in the merger performance measure.

However, the $1,000,000 that Qwest owes its customers for this merger performance measure is not due to violation of WAC 480-120-520(8). The WUTC could well decide to assess penalties in the millions of dollars for the many failures to restore service within the interval required by the rule. Rather, Qwest owes this amount because it offered to pay it in certain circumstances in order to obtain merger approval, and those circumstances have come to pass.

Q. Are you saying that Qwest should pay the full amount because that was what it offered to do at the time of the merger?

A. Yes. Even if it were unrealistic to think that Qwest could ever actually restore all interruptions in two working days, Qwest said it would give customers a credit should it fail to do so. It was perfectly reasonable for Qwest to make that offer, and the offer was accepted by the WUTC on behalf of Qwest's customers. Qwest should not now be asking to be relieved of its merger commitments when there simply are no exceptional circumstances involved.

<u>Revision of the Out-of-Service Repair Measure</u>

Q. Why does Staff oppose Qwest's proposal to revise the out-of-service repair measure that was approved by the WUTC as part of the merger?

A. Staff opposes the proposal because it benefits no party other than Qwest. Qwest's proposed revisions go beyond even what it is asking to mitigate for 2001. Even though Qwest is not contesting $333,333 of the 2001 credit amount, it is proposing revisions going forward that would eliminate the credit entirely with no change in Qwest's actual performance. Qwest agreed to this performance measure in its effort to secure approval to merge with U S WEST. In effect, Qwest is trying to revise that deal now to its exclusive advantage.

Q. Are there any elements of the merger order that Staff would like to revise?

A. Yes. Qwest would have the WUTC focus on the out-of-service restoration measure, which has reasonably tight standards, but there are other performance measures where the standard is loose. The two most prominent examples are the measure for trouble reports per hundred access lines and the measure for dial tone, both of which are well below the standards in the WUTC's service quality rules. Another good example is the entire set of competitive conditions, which have turned out to have virtually no effect on the company's behavior or incentives. However, in the absence of some clear error – or the agreement of the parties – Staff is prepared to live with the conditions that were negotiated at the time and approved by the WUTC.

Q. Do you agree with Qwest that the current out-of-service repair measure provides little incentive to the company?

A. Yes. The measure is useful, in that its existence demonstrates to Qwest workers and managers that a high priority is placed on restoring service quickly and complying with the corresponding service quality rule. However, as structured, the measure does not provide an incentive to restore any particular customer quickly.

Q. Does Qwest's proposal to move the threshold from all reports to 99.5% of reports improve the incentive?

A. No. The weakness of this measure, as an incentive mechanism, is that the payment does not vary as performance varies. Merely moving the trigger point does not alter that weakness. All it does is tolerate below-standard performance and let Qwest reduce the credits it gives customers.

Q. Qwest is also proposing to broaden the exclusions for this measure. Please explain why Staff opposes these changes.

A. The performance measure already excludes outages due to many different circumstances, and this list of circumstances is sufficient to protect the company's interests. Moreover, the new exclusions that Qwest would include are ill-defined and open-ended, giving the company and its employees an unreasonable opportunity to define its own excuses. Incidents that Qwest does not report to the WUTC as a major outage and that generate as few as one trouble ticket apparently would nonetheless be defined by Qwest as a "major" cable outage. Allowing the proposed exclusion of "customer reasons" would create an incentive for Qwest to make unreasonable demands for access and creates the potential for the company to record customer problems that did not actually cause the delay.

However, while Staff opposes the specific changes that Qwest is proposing, we also recognize that better incentives will result if the performance measure can be narrowly targeted to the situations in which Qwest's performance actually affects the outcome. A measure that is narrowly applied and has a high per-occurrence payment is generally better than a measure that is widely applied and has a low per-occurrence payment.

Q. Does Staff have a view on Qwest's exclusion of trouble tickets that were held open due to clerical reasons?

A. Yes. Qwest has not explicitly proposed to exclude these trouble reports but instead is making this revision unilaterally. This is an inappropriate, one-sided procedure that should not occur. It might be reasonable for Qwest to scrub the data of all clerical errors, but it is instead grooming the data to improve its own apparent performance. Qwest is carefully examining the trouble tickets that show bad performance and is just as carefully ignoring the trouble tickets that erroneously show good performance. The trouble tickets being ignored are those where Qwest closed a trouble ticket in error, when the trouble was not actually cleared. According to statistics provided by Qwest, about 20 percent of all customers who report out-of-service conditions end up making a second trouble report to the company after the problem is supposedly fixed. Given the sheer numbers of trouble reports that are recorded as restored within two working days, it is clear that more tickets are *closed* in error than the few *left open* in error. Yet it is only the latter that Qwest is grooming out of the report.

Q. Does Staff have an alternative proposal for revising the out-of-service repair measure?

A. Yes. Staff has two proposals that could be considered alongside Qwest's proposal. Both Staff alternatives are structured to require a credit for each out-of-service trouble report that is not restored within an established interval. The result is a payment amount that decreases as the company's performance improves, so either would avoid the all-or-nothing feature that characterizes both the current mechanism and the Qwest alternative.

Staff's first alternative is simply to convert the current mechanism from all-or-nothing to per-occurrence. Using the same data reported today, Qwest would pay $500 per out-of-service trouble report not restored within two working days. There would be no change in the exclusions.

Staff's second alternative is to apply a per-occurrence credit amount to the retail component of a comparable performance measure that has been developed as part of Qwest's wholesale performance assurance plan. The performance assurance plan measure, MR-3, tracks Qwest's performance in restoring out-of-service conditions within 24 hours. It includes a set of exclusions that Qwest apparently finds acceptable. The definition of MR-3 and the most recent performance reports are presented in Exhibit 275 (GB-275). The MR-3 measure is used on the wholesale side to test the parity of Qwest's retail and wholesale service levels. The retail data – specifically the number of out-of-service reports not restored within 24 hours – could be used to calculate the credit amount for the retail performance measure that Qwest is asking the WUTC to revise. There are substantially more "misses" when the interval is 24 hours instead of two working days, so the per-occurrence amount should be smaller. Staff recommends an amount in the range of $25 to $30 per occurrence.

Under either alternative, the revised credit structure would benefit both Qwest and its customers, because it would improve the company's incentives and give the company an opportunity to lower its credit payments. Qwest would pay about 30% less in customer credits if it performs as well going forward as it did in 2001. Either alternative allows Qwest to reduce its payments even further if it improves its performance, even though under the current mechanism, improved performance does not generally result in lower payments.

Exhibit 276 (GB-276) shows the effect of applying each of the four alternatives – the current mechanism, Qwest's proposal, and Staff's two alternatives – to recent actual Qwest performance data.

Q. How is Staff's proposal better for customers, given that it results in a lower credit with no improvement in performance?

A. Customers are better off because the company's incentives to provide good service are stronger under Staff's proposal. First, the company will actually have a greater incentive to fix individual customer problems. Qwest's credit payments will vary directly with its performance in restoring outages, so it will have more incentive to perform well. Second, the company will face the prospect of larger credits if its performance deteriorates. Under the current mechanism, the company's payments will not increase if its performance gets worse. That would not be the case under the Staff proposal, because the overall amount would not be capped.

Q. Is Staff recommending that the WUTC adopt either of these alternatives?

A. Staff is offering these proposals for the Commission's consideration as superior alternatives to Qwest's proposal. Either would be superior to both the current mechanism and Qwest's proposal, because it would result in payment proportional to performance. In the absence of Qwest's petition, however, Staff would not be making a unilateral proposal of this nature. Staff is also quite willing to live with the current mechanism that it negotiated and supported at the time of the merger.

Q. Does this conclude your testimony?

A. Yes.

VERIFICATION

Glenn Blackmon, being first duly sworn, deposes and says that he is Assistant Director-Telecommunications for the WUTC, one of the many parties to this proceeding entitled above, that he has read the foregoing testimony and knows the contents thereof, that the same is true of his own knowledge, except as to matters which are stated on information and belief, and as to those matters as he believes them to be true.

Signed this 22nd day of February, 2002, at Olympia, Washington.

____

GLENN BLACKMON