

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

2 A. My name is Joseph Gillan. I am a consulting economist with a practice that
3 specializes on the effect of government policy on competitive opportunity in the
4 telecommunications industry. My business address is P.O. Box 541038, Orlando,
5 Florida.

6

7 **Q. Please briefly outline your educational background and related experience.**

8 A. I am a graduate of the University of Wyoming where I received B.A. and M.A.
9 degrees in economics. From 1980 to 1985, I was on the staff of the Illinois
10 Commerce Commission where I had responsibility for the policy analysis of
11 issues created by the emergence of competition in regulated markets, in particular
12 the telecommunications industry. While at the Commission, I served on the staff
13 subcommittee for the NARUC Communications Committee and was appointed to
14 the Research Advisory Council overseeing NARUC's research arm, the National
15 Regulatory Research Institute.

16

17 In 1985, I left the Commission to join U.S. Switch, a venture firm organized to
18 develop interexchange access networks in partnership with independent local
19 telephone companies. At the end of 1986, I resigned my position of Vice President-
20 Marketing/Strategic Planning to begin a consulting practice. Over the past decade, I
21 have provided testimony before more than 25 state commissions, four state
22 legislatures, the Commerce Committee of the United States Senate, and the

1 Federal/State Joint Board on Separations Reform. I currently serve on the Advisory
2 Council to New Mexico State University's Center for Regulation.

3

4 **Q. On whose behalf are you appearing?**

5 A. I am filing rebuttal testimony on behalf of AT&T Communications of the Pacific
6 Northwest, Inc. (“AT&T.” I previously filed testimony on behalf of this same
7 party in Part A of this proceeding, as well as direct testimony in Part B on the
8 issue of defining the line splitter offering.

9

10 **Q. What is the purpose of your rebuttal testimony?.**

11 A. The purpose of my rebuttal testimony is to address a variety of policy issues
12 relating to: (a) the availability of network element combinations, and (b) dark
13 fiber. As with prior testimony, the focus of my rebuttal testimony concerns how
14 best to bring broad competition to the Washington marketplace. How these
15 ILECs practically make available network elements, alone and in combination,
16 directly impacts the ability of competing carriers to introduce new services, to
17 innovate, and to offer lower prices.

18

19 *New Element Combinations*

20 **Q. Please summarize the ILECs’ obligation concerning network element
21 combinations.**

22 A. As I understand the ILECs’ obligations in the State of Washington, ILECs are
23 required to fully support network element combinations. Existing FCC rules

1 unambiguously require the ILECs to migrate existing combinations without
2 disruption. In addition, a Ninth Circuit decision has found that “...requiring U S
3 WEST to combine unbundled network elements is not inconsistent with the Act.”¹
4 In Washington, therefore, ILECs are required to offer both existing combinations
5 and so called “new combinations”.

6
7 Importantly, this view that the ILEC is required to comprehensively support
8 network element combinations is shared by Qwest,² but contradicted by Verizon.
9 In order that sustainable local competition develop broadly, it is important that the
10 Commission eliminate any uncertainty concerning how entrants may access
11 network element combinations, now and in the future. To do so, the Commission
12 should require, under its independent authority, that Qwest and Verizon (a)
13 migrate existing combinations without disruption, as well as (b) combine
14 elements for entrants that the ILEC ordinarily combines for itself.

15
16 **Q. What is Verizon’s position with respect to network element combinations?**

17 A. Verizon has adopted the basic position that it is not required to provide “new”
18 combinations of unbundled elements. Moreover, Verizon seems to define the
19 term “new” to apply to network element combinations that are already connected,
20 but which may not currently be providing service.

21

¹ *U.S. Communications v. MFS Intelencet*, 193 F. 3d 1112 (9th Cir. 1999).

² *See* Direct Testimony of Perry Hooks (page 10) acknowledging that ILECs are required to combine network elements at the request of CLECs

1 **Q. Why does Verizon claim that it is excused from combining elements for**
2 **entrants in the same manner that it combines elements for itself?**

3 A. To begin, Verizon adopts a very narrow reading of its obligation to provide
4 entrants access to network element combinations. Verizon’s threshold position
5 appears to stem from its interpretation of Rule § 315(b), which states:

6 Except upon request, an incumbent LEC shall not separate
7 requested network elements that the ILEC currently combines.

8

9 **Q. Do you agree with Verizon’s interpretation of this rule?**

10 A. No. Although I am not an attorney, there are a number of points that I believe the
11 Commission should consider as it evaluates Verizon’s fundamental claim that it is
12 not required to combine network elements.

13

14 My first point is a non-legal observation. Even if Verizon’s position were
15 “legally accurate” – that is, that current FCC rules do not already require that it
16 combine elements that are not connected – Verizon’s testimony offers no
17 explanation as to *why* such an outcome would be reasonable policy. Whether
18 FCC rules *already* require Verizon to combine elements is relevant only if the
19 Washington Commission does not have independent authority to order this result.
20 To the extent that federal rules establish a national minimum – which is how I
21 understand they apply – the larger question is what *should* the Washington
22 Commission do, not what has the FCC already decided.

23

1 Moreover, I do not believe that Verizon properly characterizes even the FCC’s
2 rule. Although Verizon interprets the rule as though it is phrased in the past tense
3 – i.e., “currently combined” – an accurate reading must recognize its use of the
4 active term “currently combines.” Consequently, a reasonable interpretation of
5 the federal rule is that Verizon is obligated to provide and combine any set of
6 network elements that it ordinarily combines for itself.

7
8 **Q. Is it important that competitors are able to efficiently access new**
9 **combinations?**

10 A. Yes. The focus of Verizon’s restrictive “no new combinations” policy is to
11 impede an entrants’ ability to easily add lines or extend service to new locations.
12 These barriers apply to traditional services (such as adding a second analog line in
13 a home by combining a loop with a port), as well frustrating carriers attempting to
14 develop a broader competitive footprint by extending service to more distant
15 customer locations using the “enhanced extended link” or “EEL.”

16
17 It is important to appreciate, however, that access to new combinations is essential
18 for entrants seeking to serve markets that are growing. The Commission is well
19 aware of the emphasis that *all* providers place on offering additional lines to their
20 customers, including residential customers. America is mobile society – both
21 geographically (we frequently move) and economically (incomes are rising).
22 Both factors mean that residential marketplace is characterized by substantial

1 change. To serve the residential market on sustained basis means that entrants
2 must be able to meet these changing needs.

3
4 **Q. Would Verizon’s proposed policy on new combinations (if accepted) also**
5 **harm competition for the business customer?**

6 A. Yes. An ability to serve a business customer’s “new lines” is particularly
7 important to an entrant that has not yet established its reputation in the
8 marketplace. Frequently, a customer orders its “new” service from an entrant to
9 determine its reliability, before considering whether to migrate its entire service to
10 the new competitor. In this sense, “new” services provide the seed for
11 competition -- if foreclosed from serving growth, an entrant is precluded from
12 taking advantage of this critical opportunity to prove its worth.

13
14 In addition, Verizon’s policy on “new” combinations actually penalizes entrants
15 for their success. For businesses that are dependent upon communications
16 services, a successful entrant will *foster* growth by its customers. That is, a
17 successful partnership between the supplier and customer will cause the customer
18 to desire additional services as the customer itself becomes more successful. If
19 prevented from serving this growth efficiently, however, the entrant would be
20 penalized for helping its customer become more successful, thereby requiring
21 additional lines.

22

1 **Q. Are there other problems with Verizon’s positions with respect to UNE**
2 **combinations?**

3 A. Yes. To begin, Verizon characterizes network elements that are unquestionably
4 combined, but which are not yet providing service, as a “new” combination.³
5 Through this semantic slight-of-hand – i.e., relabeling an existing combination as
6 new – Verizon attempts to characterize its “offer” to provide access to such
7 combinations as a *concession* instead of the clear *obligation* under FCC’s rules
8 that it is. Even a narrow reading of § 315(b) makes clear that network elements
9 that are connected cannot be disturbed. There is no silent limitation on this rule
10 that also requires that the elements be currently used to provide service.
11 Consequently, Verizon’s “offer to combine” elements that are already combined
12 is nothing more than subterfuge.

13
14 **Q. What do you recommend?**

15 A. I recommend that the Commission establish an ILEC obligation to combine
16 elements that they ordinarily combine using its independent authority. Markets
17 need certainty to develop and the ability to efficiently obtain access to new
18 network element combinations is critical for local competition to grow.

19
20 It is useful to realize that Verizon’s proposals cannot ultimately prevent entrants
21 from gaining access to the combinations they seek, they can only impose costs
22 that are unnecessary. For instance, an entrant seeking to add a second line can

³ See Direct Testimony of R. Kirk Lee, pages 13 and 14.

1 order the line as a retail service (or resold service), and then migrate that
2 combination to UNEs the next day. Similarly, an entrant needing an EEL to serve
3 a distant customer can order the facility as a special access circuit and then
4 migrate it to UNEs as well.

5
6 The real point, however, is why *create* a system of incentives that doubles the
7 work for every party involved – ILEC, CLEC and, undoubtedly, the customer
8 itself? Every unnecessary step injects additional opportunity for failure, and a
9 cost that is a dead-weight loss to the economy. The Commission should clearly
10 impose a requirement that ILECs must combine elements that they ordinarily
11 combine for themselves.

12 ***Dark Fiber***

13
14 **Q. Have you reviewed the ILEC’s testimony as it relates to their offering of**
15 **“dark fiber?”**

16 A. Yes. Although the ILECs are required to offer dark fiber as a network element,
17 they appear to propose a number of restrictions and/or complex processes that
18 would deter carriers from using such facilities to offer services.

19
20 For instance, Verizon defines dark fiber as fiber that already terminates at a fiber
21 patch panel.⁴ It is unclear, however, whether Verizon routinely terminates unused
22 fiber at such a panel (which is, after all, by definition not in use). Verizon (and

⁴ Direct Testimony of R. Kirk Lee (Lee Direct), page 8.

1 Qwest) should disclose their standard engineering practices with respect to the
2 inventory of dark fiber to assure that their definition does not disqualify unused
3 fiber as a network element.

4
5 In addition, Verizon proposes to limit dark fiber leases to 25% of the available
6 fiber and proposes to reserve the right to revoke a carrier's lease of dark fiber on
7 12 months notice. As to the first restriction, whether this is reasonable or not
8 depends largely on the amount of available fiber. Unfortunately, Verizon has
9 offered no information as to what this restriction would translate to in practice.

10
11 As to its second restriction – i.e., its right to revoke a carrier's lease – this
12 provision would seriously curtail the usefulness of dark fiber. A carrier leasing
13 dark fiber would likely use it as integral part of its network and incur substantial
14 investment costs in optical/electronic equipment to activate it. In competitive
15 markets, dark fiber is typically provide under IRU lease agreements of 20 year or
16 more, reflecting its baseline function in a carrier's network. There is no reason
17 for the ILEC to treat dark fiber any differently here – if an ILEC requires more
18 capacity, then it should build accordingly, just like it would once it began to
19 approach full capacity under any other circumstance.

20
21 **Q. Do you have any other concerns with respect to Verizon's procedures for**
22 **dark fiber?**

1 A. Yes. Verizon’s basic procedure for dark fiber is similar to the child’s game
2 “Battleship.” Under Verizon’s procedure, entrants must “guess” where dark fiber
3 may be located, file a request, and only then find out if fiber exists in that
4 location.⁵ This process is unnecessarily complex and expensive.

5
6 Dark fiber is an especially beneficial network element because it represents an
7 idle resource that can be put to productive use. As such, the Commission should
8 promote its use, which requires that the ILEC let carriers *know* where the resource
9 is available, and not guess.

10

11 **Q. Does this conclude your rebuttal testimony?**

12 A. Yes.

13

⁵ Direct Testimony of Linda Casey, page 8.