

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	DOCKET NO. UT-030614
	)	
QWEST CORPORATION	)	
	)	
	)	Joint Motion to Require Staff
	)	to Re-Survey and Recompile
For Competitive Classification of	)	CLEC Data, Or to Disregard
Business Basic Exchange	)	Results of Previous CLEC
Telecommunications Services	)	Survey and Data Compilation

A major failure of communications has occurred between Staff and the CLECs in connection with this docket, resulting in the Commission having before it a substantially inflated CLEC analog services line count. This apparently resulted from the omission from the questionnaire which Staff developed of any distinction between analog and digital services, and the absence of adequate clarifying communications between Staff and the CLECs which might have caused the CLECs to correct the information. The result is that the figures which have been provided to the Commission in this docket on CLEC analog lines in service apparently have been greatly, albeit inadvertently, inflated, resulting in error in the record of the case. This makes it impossible for the CLEC data as it presently exists to form a basis for decision in this matter.

Therefore WeBTEC, Advanced TelCom, Inc. (ATG), Integra Telecom of Washington, Inc. (Integra), and MCI Communications (MCI) (collectively "Joint Parties") hereby respectfully move the Commission to enter an order directing Staff, in cooperation with Public Counsel, to re-survey and recompile the CLEC data, which Staff previously collected and analyzed in this proceeding. In the alternative, the Joint Parties move that the Commission enter an order finding that the CLEC data is inherently unreliable and will not form a basis for decision in this case. The Commission may also

wish to strike those portions of the testimony and exhibits of the parties and cross-examination of witnesses which rely on this erroneous information.

As grounds for this Motion, the Joint Parties state that Staff's oral testimony at the hearing disclosed that Staff had created and applied a definition of the distinction between digital and analog services to the results of the survey of CLECs, which was not reflected in the survey questionnaire or instructions which Staff employed to survey CLECs. Indeed, the information available at this time suggests that for some or many CLECs, there was no request at all for a sorting out and removal of digital services from their responses to the survey which Staff conducted. Apparently this resulted from miscommunication or confusion by Staff as to what it was seeking. As a result, it appears that some or many of the CLECs which provide services over UNE loops and/or their own loops substantially over-reported their business lines, the result of including digital service lines in their survey report to Staff.<sup>1</sup> All three of the Joint Party CLECs report that there was no follow-up on this digital/analog distinction by Staff. See the attached declarations of ATG and MCI, and affidavit of Integra,<sup>2</sup> in support of this Motion.

Supplemental reports have now been submitted by the Joint Party CLECs which correct their own data. These are of course highly confidential, and cannot be discussed directly in this Joint Motion. *However, the Movants believe that, even for just the three moving CLECs, the amount of over-reporting of analog loops could alter the Staff's market share analysis significantly.* This of course can only be confirmed by Staff and Public Counsel, as only they have access to the data of the individual CLECs, including

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<sup>1</sup> The information sent out by Qwest for verification by CLECs also contained no distinction between UNE-L digital and analog functions provided by CLECs.

<sup>2</sup> An unexecuted copy of the Integra affidavit is attached. The executed affidavit will be filed directly by Integra following the filing of this motion.

the supplemental filings discussed here. And of course, the three Joint CLECs are a small fraction of the CLECs operating in the state who were surveyed by Staff. The results of an accurate, analog-only supplemental survey are likely to yield dramatically different results than those previously reported by Staff.

As a result of the problems described, the aggregated information supplied to the Commission and the parties to the case by Staff cannot be relied upon to determine the number or percentage of analog business lines provided by CLECs.

Therefore, the CLEC survey results are worthless for purposes of this docket, and any reliance on the results would work a fundamental miscarriage of justice under the Commission's statutory responsibilities in this proceeding. It is for this reason that the Joint Parties move the Commission to direct Staff, in cooperation with Public Counsel, to develop a supplemental survey questionnaire which clearly explains the nature of the digital/analog distinction which Staff is making, so that CLECs can revise or supplement their earlier responses with correct figures on the lines defined as analog by Staff and described in oral testimony at the hearing. Staff should then develop a supplemental report or testimony for presentation, cross-examination, and consideration by the Commission. In the alternative, the Commission should enter an order stating that the Staff CLEC survey data is inherently unreliable, and will not form a basis of decision in this proceeding. The Commission may also wish to consider striking all such information and testimony based thereon from the record of this proceeding.

The Joint Parties do not, by filing this Motion, concur in the isolation of analog business voice service as a distinct market from digital voice services. Indeed, the evidence in the case adduced to date makes it clear that a portion of Qwest's and the

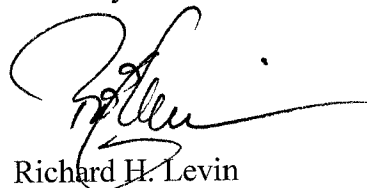
CLECs' digital services are part of the same voice services market as the analog services which are the subject of Qwest's petition here. Therefore, this case should include both Qwest's analog and digital voice services which are part of that market and the competitors' analog and digital voice services which are part of that market. However, to the extent that the Commission deems it relevant to examine the analog voice services separately, it is clear that only analog services must be included *for both Qwest and the CLECs*. The comparison of CLECs' analog and digital voice services with Qwest's analog only voice services is totally unreliable and useless for any purpose in this docket.

Respectfully submitted,

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BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	DOCKET NO. UT-030614
	)	
QWEST CORPORATION	)	
	)	Certificate of Service of
	)	Joint Motion to Require
For Competitive Classification of	)	Staff to Re-Survey and
Business Basic Exchange	)	Recompile CLEC Data
Telecommunications Services	)	

I hereby certify that, on behalf of the Joint Parties, I have this day served this document upon all parties of record on the attached list in this proceeding, by email, telefacsimile, and first class mail with postage prepaid.

Dated at Santa Rosa, California, this 7<sup>th</sup> day of October, 2003.



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