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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Request for Competitive Classification  
of Basic Business Exchange  
Telecommunications Services

Docket No. UT-030614

QWEST’S RESPONSE TO JOINT  
MOTION REGARDING REVISED  
CLEC RESPONSES

**I. INTRODUCTION**

On October 7, 2003, WeBTEC, ATG, Integra and MCI (“Joint Parties”) filed a Joint Motion that requests Commission Staff and Public Counsel to re-survey CLECs and recompile the data that twenty-seven CLECs submitted in response to Commission Orders Nos. 6 and 8 in this matter. By notice dated October 8, 2003, the Commission requested responses from the parties to the Joint Motion. Qwest Corporation (“Qwest”), by and through its undersigned attorneys, responds in opposition to the Joint Motion as follows.

The Commission should deny the motion. The moving parties have shown no compelling reason to resurvey the responding CLECs and recompile the data. Although the moving parties claim that they did not submit data correctly in the first instance, they have purportedly corrected those errors now. There is no evidence showing that other CLECs were similarly afflicted with an inability to correctly separate analog and digital services, and there is evidence from Staff that the CLECs were contacted, and correct reporting of their data was validated. It is notable that AT&T, a large CLEC and a major party in this case, has not joined

1 the motion or revised its data. Thus, one may conclude that not all CLECs performed the data  
2 submission incorrectly.

3 In addition, the Joint Motion mischaracterizes the issue regarding analog and digital  
4 services, and when that issue was first raised. The Joint Motion is simply a request to delay  
5 this proceeding for two or three additional months for data gathering, testimony, and hearings  
6 on issues that have been present since the beginning of the case and that should have been  
7 addressed by these Parties long ago. Thus, both the timing and the substance of the Joint  
8 Motion are highly suspect – not only would it result in an unacceptable delay in this case, but it  
9 is unclear whether the “corrected” data submitted by the Joint Parties has been correctly  
10 compiled.

11 Qwest therefore requests that the Commission investigate the recently-filed revisions to  
12 CLEC responses to Order No. 6 and evaluate whether such revised responses should be  
13 accepted or rejected. Because Qwest has no access to the original or revised CLEC responses,  
14 Qwest believes it is of critical importance that the Commission require the CLECs who  
15 submitted revised responses to fully explain the criteria they applied in responding to Order  
16 No. 6 in the first instance and in revising their submittals at this very late date.

## 17 **II. BACKGROUND**

18 On May 1, 2003, Qwest filed the petition for competitive classification that initiated  
19 this docket. Qwest made clear in both the petition (see page 8, ln. 23) and Attachment A to the  
20 petition that the services for which it is seeking competitive classification and the data on  
21 which it relies exclude digital services. To ensure that the Commission had appropriate data  
22 before it to base its evaluation of the competitive landscape for the relevant business services,  
23 Qwest was very careful to exclude digital services from the CLEC wholesale (resale, UNE-P,  
24 UNE loops) line count data it provided in the Petition.<sup>1</sup>

25 <sup>1</sup> *Tr. 116, 118-119, 174.*

1 On June 30, 2003, the Commission entered Order No. 6, which required all CLECs  
2 providing business service in Washington to report to the Commission on a highly-confidential  
3 basis the following information: (1) a description of each business service offered and the  
4 geographic area in which it is offered; (2) the number of lines for each such service by Qwest  
5 wire center as of December 31, 2002; and (3) the total number of business locations served as  
6 of December 31, 2002.<sup>2</sup> The Commission also ordered CLECs to verify the wholesale data  
7 presented by Qwest.<sup>3</sup> In a subsequent order on July 22, the Commission directed Commission  
8 Staff to contact reporting CLECs “to ascertain that CLEC line counts [reported pursuant to  
9 Order No. 6] are accurate [and] that they exclude digital services.”<sup>4</sup> CLEC responses to Order  
10 No. 6 were due on July 18 (CLEC owned-facilities information) and July 31 (verification of  
11 Qwest wholesale data).<sup>5</sup>

12 Twenty-seven (27) CLECs submitted data in response to Order No. 6.<sup>6</sup> Staff  
13 aggregated, analyzed and provided (on an aggregated basis) the CLEC data in connection with  
14 Mr. Wilson’s direct and response testimony filings on August 13 and August 29, respectively.<sup>7</sup>  
15 In his prefiled testimony and upon cross examination, Staff witness Tom Wilson explained that  
16 he verified to the best of his ability that all the data displayed in his Exhibit TLW-C-4 (Ex.  
17 204-C) represents analog services, not digital services.<sup>8</sup>

18 On September 30, 2003, counsel for Integra filed and served notice that Integra was  
19 revising its earlier data based on the following:

20 <sup>2</sup> *Order No. 6, at ¶ 5.*

21 <sup>3</sup> *Id.*

22 <sup>4</sup> *Order No. 8, ¶¶ 27, 29.* The genesis of the directive to Commission Staff was the July 10 petition by  
23 WeBTEC, one of the Joint Parties, which specifically identified the analog-digital distinction and requested the  
24 Commission to ensure that CLECs would properly exclude digital services from the line counts they reported in  
25 response Order No. 6. *WeBTEC’s Petition for Interlocutory Review of Orders 05, 06 and 07 and Response to  
26 Public Counsel’s Petition for Review, at p. 4.* In that petition, WeBTEC acknowledged that Qwest had purported  
“to exclude digital services from the scope of its petition.”

24 <sup>5</sup> *Order No. 6, at ¶ 5; Notice of Extension of Filing Date (July 28, 2003).*

25 <sup>6</sup> *Ex. 201-T (Wilson Direct), at 9.*

25 <sup>7</sup> *Exs. 204-C, 205-C.*

26 <sup>8</sup> *Ex. 210-TC (Wilson Rebuttal), at 6, 11-12; Ex. 203, at 2 (lns. 85, 131); Tr. 615-619.*

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2 Subsequent to the hearings held in this matter on September 16 –  
3 18, 2003, Integra reviewed the information that it previously had  
4 submitted in response to the data request and certification of  
5 information from Qwest and realized that it had overstated its  
6 responses. The data Integra submitted and the information that  
7 Qwest delivered and Integra certified included both analog and  
8 digital data. Until the testimony brought forth in the hearing,  
9 Integra was not aware that it was to provide only information on  
10 analog services. Neither the questions below nor the worksheets  
11 provided by Staff indicated to Integra that it should make the  
12 analog-digital distinction, and Qwest’s information included all  
13 services that Integra purchases.<sup>9</sup>

14 During the October 1, 2003 hearing, MCI witness Mr. Stacy testified that MCI, AT&T and  
15 ATG were also revising (or had already revised) their data submission based on revelations that  
16 MCI and AT&T had earlier submitted both digital and analog line information.<sup>10</sup> MCI witness  
17 Mr. Gates supported Mr. Stacy’s testimony and went on to testify that MCI had only revised its  
18 “CLEC-owned” line count. Mr. Gates later stated that MCI had revised UNE-P and UNE-L  
19 line counts as well.<sup>11</sup>

### 20 III. DISCUSSION

21 There has been no showing in the Joint Motion or otherwise that should lead the  
22 Commission to conclude that the data gathered by Staff is unreliable or that there is otherwise a  
23 need to resurvey or recompile the data. Indeed, as will be discussed below, the Joint Parties  
24 “corrected” data may in fact be incorrect and unreliable unless the Commission takes certain  
25 precautions with regard to verifying and validating their efforts at making the “corrections.”

26 It should be noted that the Joint Parties who now claim that they did not know or  
understand that digital services should be excluded are in fact parties to this case who received

<sup>9</sup> *Supplemental Response to Order No. 06-Order Requiring Disclosure of Information and Certification of Information Supplied by Qwest Corporation, September 30, 2003.*

<sup>10</sup> *Tr.1114 (claiming that, e.g., MCI overstated its line counts by 80%). See also TR. 1137-1139. It is unclear how Mr. Stacy could testify on behalf of AT&T and ATG, and it appears as though at least as to AT&T, his representations were mistaken.*

<sup>11</sup> *Tr 1139, 1243.*

1 the Commission's Order No. 8. It is simply unbelievable that those parties can now claim that  
2 they did not know they should exclude digital services, and were not able to figure that out  
3 until after the hearings in September, more than six weeks after the order was released and  
4 more than three months after the petition was filed.<sup>12</sup>

5 As detailed above, there was ample notice to the parties to this proceeding that only  
6 analog services were at issue. All the parties received the petition, the Commission's orders,  
7 Qwest's testimony, Staff's testimony and WeBTEC's July 10 petition for interlocutory  
8 review,<sup>13</sup> all of which made clear that digital services were not at issue and should be excluded.  
9 Thus, all parties should have been able to accurately report their analog business services. To  
10 ensure that non-parties had the same information and were similarly able to provide accurate  
11 reports, the Commission directed Staff to ensure that digital services were excluded. Staff  
12 provided testimony affirming that it had done so. Thus, the allegations in the Joint Motion do  
13 not cast any doubt on the data submitted by any CLECs other than the Joint Parties.

14 With regard to the "corrections" offered by the Joint Parties, Qwest respects and  
15 understands the need for parties to ensure that their discovery responses are accurate and  
16 updated. Thus, Qwest at this point does not have an objection to the revisions to data  
17 submitted by MCI, Integra, and ATG. However, the timing of these data changes, coupled  
18 with the unique circumstance that Qwest has no access to the CLECs' original or revised data  
19 submissions, causes Qwest great concern. As detailed above, the Commission was quite clear  
20 that the information being sought related to analog services only. Mr. Wilson's August 13  
21 testimony likewise made this clear. As a result, these CLECs' purported confusion about what  
22 was asked for and provided is itself confusing.

23 On that basis, Qwest believes it would be appropriate for the Commission, on shortened  
24 time, to require any CLEC revising its response to Order No. 6 to fully and specifically

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25 <sup>12</sup> Integra made this claim in its September 30, 2003 filing. The Joint Parties claim that the distinction was not  
revealed until Staff's oral testimony at the hearing. *Joint Motion at 2.*

26 <sup>13</sup> See footnote 4.

1 describe all criteria applied by that CLEC in originally replying to Order No. 6 and all criteria  
2 applied by that CLEC in recasting or revising its response. That should include a specific  
3 description of how (separately as to the original and revised submissions) the CLEC  
4 determined whether a particular wholesale or CLEC-owned access line is analog or digital (and  
5 thus whether it should be included in the analog access line count). It is entirely unclear from  
6 the submissions received to date what criteria were used to make a determination to exclude  
7 lines on the basis that they were “digital.” It may well be that the CLECs have employed a  
8 standard different from that employed by Qwest and Staff. For example, it is possible that the  
9 CLECs excluded lines provided over a DS1 circuit on the basis that it is a digital circuit, even if  
10 the service is delivered to the end-user’s analog CPE.

11 Qwest would request that the CLEC responses be shared (on a confidential basis) with  
12 all parties and that the Commission should then evaluate whether the revised submissions  
13 should be accepted or rejected. The timing and nature of these revised submissions obviously  
14 puts Qwest at a disadvantage, and the procedure suggested in this motion would be a step  
15 towards mitigating any prejudice to Qwest arising out of the CLECs’ unilateral actions so late  
16 in the process.

17 Further, Qwest believes that the Commission should view with great skepticism any  
18 revisions the CLECs have made to either UNE-P or UNE-L line counts. While Qwest  
19 understands that the CLECs alone have knowledge about CLEC-owned loops, and that those  
20 loops might be subject to legitimate revision, Qwest does not believe that the UNE-P or UNE-L  
21 lines are subject to such revision.

22 Qwest testified at length as to which loops it included in its UNE-P and UNE-L line  
23 counts – these are Qwest-owned loops, and the CLEC asks Qwest to provision them in a certain  
24 way.<sup>14</sup> Thus, Qwest knows whether they are analog or digital, and CLEC attempts to “revise”  
25 those line counts should be rejected. This is especially true for UNE-P. With UNE-P, the

26 <sup>14</sup> *Tr. 118-119.*

1 CLEC orders either UNE-P POTS, UNE-P Centrex, UNE-P ISDN, or some other form of UNE  
2 combination. The type of UNE-P service ordered by the CLEC controls whether the service is  
3 analog or digital. Qwest has direct knowledge of that, and testified that it only counted analog  
4 lines. For example, UNE-P POTS is always going to be an analog service.<sup>15</sup> The Commission  
5 should reject “corrected” data submitted by CLECs who revised UNE-P or UNE-L line counts  
6 without explanation.

#### 7 IV. CONCLUSION

8 The Commission should deny the Joint Motion. It is unnecessary to resurvey or  
9 recompile the data in this case. The Commission should carefully scrutinize the revised CLEC  
10 responses after requiring any such CLEC to explain in very clear terms how and why it  
11 changed its analysis.

12 Dated this 10th day of October, 2003.

13 Qwest Corporation

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20 <sup>15</sup> *Id.* For UNE-L, Qwest limited its line counts to only those categories that would typically be used to  
21 provision analog service.  
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