

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**IN THE MATTER OF CONTINUED )  
COSTING AND PRICING OF ) DOCKET NO. UT-003013  
UNBUNDLED NETWORK ELEMENTS, ) Part B  
TRANSPORT, TERMINATION, AND )  
RESALE )**

**PART B**

**SUPPLEMENTAL REBUTTAL TESTIMONY OF**

**JOSEPH GILLAN**

**ON BEHALF OF**

**AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.**

**FEBRUARY 7, 2001**

1       **Q.     Please state your name and the party sponsoring your rebuttal testimony.**

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3       A.     My name is Joseph Gillan. My testimony is being sponsored by AT&T of the  
4             Pacific Northwest, Inc. (“AT&T). I previously filed supplemental direct  
5             testimony on behalf of AT&T in this proceeding.

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7       **Q.     What is the purpose of your supplemental rebuttal testimony.**

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9       A.     The purpose of my supplemental rebuttal testimony is to respond to the testimony  
10            of Verizon and Qwest regarding whether these incumbent local exchange carriers  
11            should be required to provide the passive filter (i.e., the splitter) that separates the  
12            “voice” and “data” frequency bands on an unbundled loop. As I explained in my  
13            supplemental direct testimony, treating the splitter a common resource most  
14            efficiently promotes competition. By deploying the splitter functionality *once* on  
15            a line, the functionality can then be reused by multiple providers, making it  
16            simpler for customers to shift between different data carriers and making it  
17            simpler for carriers to shift between different technologies (or strategic partners).

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19       **Q.     Did the incumbent local exchange carriers disagree with this basic**  
20            **assessment?**

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22       A.     No. By and large, Verizon and Qwest avoided the issue on the *merits*, choosing  
23            instead to simply argue that because the Federal Communications Commission

1 (FCC) has not (yet) required that the ILECs' manage the splitter in this way. Of  
2 course, this position is no position at all – after all, if the FCC *already* required  
3 that the ILEC offer the splitter, then there would be little need for testimony on  
4 the point.

5  
6 As I understand the purpose of this proceeding, its goal is not to debate what the  
7 FCC requires, but to determine what the Washington Commission should do. On  
8 this point, the ILEC testimony never responded to the conclusion that having the  
9 ILECs manage the splitter best meets the objectives that:

- 10
- 11 \* Line splitting be implemented with a minimal of disruption  
12 to the customer;
  - 13
  - 14 \* Customers be able to change data providers without  
15 disrupting their voice service;
  - 16
  - 17 \* Customers be able to change voice providers without  
18 disrupting their data service; and
  - 19
  - 20 \* Line-splitting efficiently use scarce central office space.

21  
22 While the ILEC's have limited their testimony to reciting -- more  
23 accurately, *interpreting* -- FCC actions, the focus of my testimony has been on

1 how the Washington Commission can promote more vigorous competition to the  
2 benefit of Washington consumers. If the only purpose of state regulation is to  
3 determine whether the FCC has already required something, then competition will  
4 never proceed any faster than the FCC's national minimums provide.

5  
6 **Q. The ILECs imply that the FCC has ruled *against* your recommendations**  
7 **here. Do you believe that such an interpretation of the FCC's orders is**  
8 **accurate?**

9  
10 A. No. It is true that the FCC has *deferred* the most significant line-splitting issues  
11 to later proceedings and/or decisions. For instance, the FCC is examining whether  
12 the splitter should be considered as part of the loop in the *New Networks*  
13 *Proceeding*,<sup>1</sup> while it has indicated it would address whether an ILEC is obligated  
14 to continue to offer data services to a customer where the customer has chosen a  
15 UNE-P provider for voice service in the context of an enforcement proceeding.<sup>2</sup>

16  
17 As I explained in my supplemental direct testimony, I recommend that the  
18 Commission determine that the ILECs have an affirmative obligation to install  
19 splitters upon CLEC request. I believe the Washington Commission should  
20 establish such a requirement in advance of an FCC finding because such action

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<sup>1</sup> See Fifth Further NPRM, CC Docket 96-98, FCC 00-297, released August 10, 2000.

<sup>2</sup> See Third Report and Order on Reconsideration, CC Docket 98-147, released January 19, 2001, paragraphs 25-26.

1 would benefit Washington consumers. At a very minimum, however, the  
2 Commission should:

3  
4 (a) permit CLECs to *reuse* splitters (or their equivalent  
5 functionality) that an ILEC or its affiliate has installed to  
6 provide advanced data services, and

7  
8 (b) prohibit an ILEC from punitively terminating the provision  
9 of advance data service to a customer simply because that  
10 customer has chosen a different voice provider.

11  
12 **Q. Why is it particularly important to address situations where the ILEC is**  
13 **already the customer's advanced data provider?**

14  
15 A. Because the ILECs appear positioned to achieve a market dominance for  
16 advanced services that is comparable to the dominance they enjoy for  
17 conventional voice services. The following table contrasts the market  
18 penetrations achieved by the four RBOCs to the three most prominent data "Data  
19 CLECs" (DLECs): Covad, Rhythms and Northpoint.

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**DSL Market Penetration: DLEC and ILEC  
(4<sup>th</sup> Quarter 2000)<sup>3</sup>**

Carrier	DSL Lines	Quarterly Growth
Verizon	540,000	190,000
SBC	767,000	251,000
Qwest	255,000	42,000
BellSouth	215,000	80,625
Total ILEC	1,777,000	563,625
Covad	274,000	74,000
Rhythms	67,000	20,000
Northpoint <sup>4</sup>	87,300	Bankrupt
Total DLEC	428,300	94,000
ILEC Share	80.6%	85.7%
DLEC Share	19.4%	14.3%

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While the above statistics expose the ILECs' significant – and growing – share, they do not fully explain the very difficult position that competitive DLECs find themselves. For instance:

- \* Covad's line count includes 92,000 lines (nearly 1/3 of its total) for which it is receiving no revenue due to the late payment/bankruptcy of its ISP customers that sold these lines.

<sup>3</sup> Source: Individual Carrier Press Announcements.

<sup>4</sup> Northpoint's DSL statistics are from its 3<sup>rd</sup> Quarter, 2000 report.

1                   \*       Northpoint has declared bankruptcy and the stock prices for  
2                               both Rhythms and Covad have declined by more than 94%  
3                               from their 52-week highs.

4  
5                   \*       Rhythms has reduced its workforce by 23%, while Covad  
6                               has reduced its staff by 30%.

7  
8                   Remarkably, despite these clear facts, the ILECs maintain that "... the equipment  
9                               needed to deploy advanced data services is available on the open market, putting  
10                              the ILECs and DLECs on a relatively equal footing with respect to their abilities  
11                              to acquire and install that equipment."<sup>5</sup> Moreover, with respect to the relative  
12                              levels of *line-shared* DSL service – which is the relevant market here – the  
13                              DLEC’s comparative position is even worse than that shown above. While it is  
14                              likely that most of the lines reported by the ILECs reflect a line-sharing  
15                              arrangement, only 21,000 (less than 5%) of the DLEC lines fall in this category.<sup>6</sup>

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**Q.     Will both DLECs and UNE-P based providers be impaired without access to  
          the splitter?**

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<sup>5</sup> Supplemental Direct Testimony of Barbara Brohl, Exhibit BJB-21T, page 9.

<sup>6</sup> Source: Rhythms Reports 2000 Year-End Subscriber Growth and Evolving Business Model, January 16, 2001; and “The TSC Streetside Chat: Covad’s Chuck Martin,” The Street.com, January 27, 2001.

1       A.     Yes. I believe that the above statistics confirm that both DLECs and UNE-P  
2             providers will be impaired in their ability to offer voice/advanced services  
3             packages without access to splitter functionality. At the very least, splitter  
4             functionality that is already a part of the loop should remain available without  
5             disruption when a customer changes its voice provider. Furthermore, the  
6             Commission should clearly prohibit the ILECs from requiring customers to  
7             purchase voice service from the ILEC in order to obtain/retain data service from  
8             the ILEC. There is simply no rationale basis to permit the ILECs to impose such  
9             anticompetitive restrictions on the availability of their data services.

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

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13       A.     Yes.