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**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	
QWEST CORPORATION)	Docket No. UT - 030614
)	
For Competitive Classification of)	
Basic Business Exchange)	
Telecommunications Services)	

REPLY BRIEF
OF
INTEGRA TELECOM OF WASHINGTON, INC.

November 7, 2003

1 Integra Telecom of Washington, Inc. (“Integra”) supports the arguments of AT&T, MCI,
2 ATG, Webtec, Department of Defense and Public Counsel as set forth in the Post Hearing Briefs
3 of each of the said parties and, in addition, respectfully submits the following Reply Brief in the
4 above-entitled docket:

5 **ARGUMENT**

6 Qwest has failed to meet the burden of proof and failed to satisfy the statutory
7 requirements necessary to establish entitlement to competitive classification. Therefore, the
8 Commission has no choice but to deny Qwest’s Petition for Competitive Classification of its
9 Basic Business Services.

10 The Washington Regulatory Flexibility Act codified in relevant part in RCW 80.36.330
11 (1) requires that four non-exclusive factors must be met in determining whether a service is
12 competitive:

- 13 (a) The number and size of alternative providers of services;
- 14 (b) The extent to which services are available from alternative providers in the
15 relevant market;
- 16 (c) The ability of alternative providers to make functionally equivalent or substitute
17 services readily available at competitive rates, terms and conditions; and
- 18 (d) Other indicators of market power, which may include market share, growth in
19 market share, ease of market entry and the affiliation of providers of service.

20 Qwest argues that all of these factors have been satisfied and purportedly submitted evidence on
21 each of the above factors except (c). Qwest assumes that proof of (b) proves (c) and states on
22 page 12 of its Opening Brief,
23

24 For instance, the ability of alternate providers to make functionally equivalent or
25 substitute services available (RCW 80.36.330 (1)(c) is inextricably linked to the
preceding factor-the extent to which services are available from alternate
providers in the relevant market (RCW 80.36.330(1)(b)). Evidence that such
services are available and being provided by alternate carriers in the relevant

1 market makes obvious the fact that alternative providers are able to provide such
2 services.

3 *Qwest Opening Brief in Docket No. UT-030614, dated October 28, 2003, page 12.*

4 The Washington legislature set forth four different factors, each and every one which is
5 required to be satisfied in order to grant competitive classification status. To assume that
6 evidence for one factor automatically satisfies the other factor appears to make the factor
7 contained in RCW 80.36.330(1)(c) of no separate import and therefore to assume that the
8 legislature engaged in a meaningless act by setting forth four very separate and required factors.
9 It is axiomatic law that the legislature is presumed to not have engaged in a meaningless or
10 useless act. See, State v. McCullum, 98 Wn.2d 484, 493, 656 P.2d 1064 (1983); State v. Forest,
11 85 Wn. App. 62, 65-6, 930 P.2d 941 (1997). Every word of a statute must be given effect and
12 the statute must be construed as a whole. See, Donovan v. Seattle-First National Bank, 111
13 Wn.2d 413, 415, 757 P.2d 1378 (1988). The Commission is required to give complete and total
14 consideration to RCW 80.36.330 (1)(c) in conjunction with the evidence set forth on the record.

15 Moreover, Qwest's self assessment of RCW 80.36.330 (1) (d) conveniently fails to
16 answer why its monopoly control of the local loop and wholesale market does not constitute
17 substantial "other market power", which violates this factor.

18 There was no evidence presented to demonstrate that CLECs have an alternative to the
19 local loop, the last mile for 'basic business', "analog" or "small business service" markets across
20 the State of Washington. . As the monopoly supplier of the local loop, the last mile, Qwest
21 totally controls this entire telecommunications market. Again, as stated by Mr. Slater,

22 A CLEC, such as Integra, is totally reliant upon and subject to the monopoly position
23 Qwest enjoys in its ownership of the last mile. The health of the competitive market
24 intimately depends on the relationship between Qwest's UNE prices for the last mile and
25 Qwest's underlying cost structure. Historically, the WUTC has consistently set Qwest's
retail service prices using a methodology that also relies on Qwest's underlying cost
structure. This common linkage of utilizing Qwest's underlying cost structure to set both
UNE and retail rates has created an important and intimate relationship between Qwest's
'wholesale' (UNE) and 'retail' rates that competitive entrants like Integra have relied

1 upon. To sever and break apart this relationship would seriously and negatively impair
2 the competitive forces the WUTC and the Telecommunications Act of 1996 have
3 attempted to foster . . . Presently, the WUTC has regulatory oversight for both the Qwest
4 wholesale UNE offerings and the Qwest retail offerings that directly compete against
5 Integra and all other CLECs. This WUTC oversight ensures both the wholesale and
6 retail operations of Qwest are not anti-competitive, are in accordance with laws, are not
7 being cross-subsidized, and together foster competition. As long as the last mile remains
8 under monopoly control by any single competitor it is vital that the WUTC continue to
9 exercise its responsibility insuring the above relationship is not abused for the
10 competitive advantage to any single competitor.

11 *Exhibit 751T @ p. 5, ln. 22 through p. 6, ln. 22, Slater.* “The last mile is economically and
12 practically impossible for a CLEC to duplicate and leaves the CLEC totally reliant upon Qwest,
13 its number one competitor.” *Exhibit 751T @ p. 7, ln. 15-16, Slater.*

14 Qwest’s monopoly power over the wholesale services upon which the competitive
15 industry relies provides Qwest with the ability to exert monopolistic practices over the market,
16 including price squeezes between retail and wholesale rates, poor wholesale service quality,
17 delayed provisioning, and other opportunities to adversely impact and destroy the competitive
18 market by exercising its monopoly advantages. This monopoly power prohibits Qwest from
19 meeting the factors required in RCW 80.36.330 (1)(c) and RCW 80.36.330 (1)(d).

20 CONCLUSION

21 For all the reasons set forth above and in Integra’s Post Hearing Brief and the Post
22 Hearing Briefs of AT&T, MCI, ATG, Webtec, Department of Defense and Public Counsel, the
23 Commission must deny Qwest Corporation’s Petition Competitive Classification of Basic
24 Business Exchange Telecommunications Services.

25 Respectfully submitted,

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