EXHIBIT DLT-9T

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF THE INVESTIGATION INTO QWEST CORPORATION'S COMPLIANCE WITH § 271 (C) OF THE TELECOMMUNICATIONS ACT OF 1996	**)**	**DOCKET NO. UT-003022**

REBUTTAL AFFIDAVIT

OF

DAVID L. TEITZEL

ON BEHALF OF

QWEST CORPORATION

RE: PUBLIC INTEREST AND TRACK A

JUNE 21, 2001

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I. IDENTIFICATION OF WITNESS

My name is David L. Teitzel. I am employed by Qwest Corporation ("Qwest"), formerly known as U S WEST Communications, Inc., as Director-Product and Market Issues. My business address is 1600 7th Avenue, Room 2904, Seattle, Washington, 98191. I filed direct testimony in this proceeding on May 16, 2001.

II. OVERVIEW OF TESTIMONY

My rebuttal testimony addresses issues raised in this proceeding through the direct testimonies of Ms. Mary Jane Rasher on behalf of AT&T, Mr. Don Price on behalf of WorldCom, Inc., Dr. Mark Cooper on behalf of the Washington State Attorney General's Office, Mr. Rex Knowles on behalf of XO Washington, Inc. (XO), and Mr. Timothy Peters on behalf of Electric Lightwave, Inc. (ELI). In my testimony, I discuss why the current state of local exchange competition in Washington is sufficient to meet Section 271 Track A requirements, contrary to the positions taken by the above-named witnesses, and why Qwest's reentry into the interLATA long distance market continues to be in the public interest. Finally, I discuss why many of the issues and concerns raised by intervenors in this proceeding are well outside the scope of Track A and Public Interest requirements, and indeed, well outside the scope of the Section 271 proceeding entirely.

III. MS. MARY JANE RASHER

a. General Overview

Ms. Rasher's testimony is organized around three general complaints: 1) that Qwest has not opened its local markets to competition and has provided no assurances that those markets will remain open; 2) that "remonopolization" will occur if Qwest is granted reentry into the interLATA long distance market; and 3) that a structural separation of Qwest into distinct wholesale and retail entities must occur to open local markets in Washington. Ms. Rasher presents a broad array of complaints in her testimony, many of which are well beyond the scope of this proceeding and are apparently intended to distract focus from the scope of my direct testimony regarding the presence of competition in local markets and the public interest benefits of Qwest's reentry into the interLATA market. In addition, many of her arguments concern standards AT&T suggests Qwest must meet that have not been required of other BOCs in states for which the FCC has granted petitions for interLATA entry. I urge the Commission, in considering Qwest's application, to focus on the public interest evidence that is relevant to the Section 271 process as has been defined by the FCC in prior proceedings in determining whether Qwest has satisfied the requirements for interLATA reentry.

b. Washington Local Exchange Markets Are Open

In Ms. Rasher's first complaint, at page 2, she alleges Qwest has not opened its local markets to competition, and has provided no assurances that local markets, once opened, will remain so. This complaint has been the subject of extensive discussion in workshops conducted thus far, which have addressed Qwest's compliance with the competitive checklist. The evidence presented in the previous workshops, coupled with the evidence in my direct testimony, shows that Qwest's local markets are open to competition and that competition is present. In fact, the Commission, in its December 2000 order in Qwest's Competitive Zones docket (UT-000883), found that sufficient competition for business local exchange service now exists in 23 wire centers in the Seattle, Bellevue, Spokane and Vancouver areas to determine that business services for customers served via DS-1 or larger capacity circuits should be classified as competitive. It is Qwest's expectation that the Commission will consider all evidence before it in this proceeding, including checklist compliance, evidence of competitive presence in this and other dockets, assurance of future compliance with Section 271 requirements and precedent from FCC decisions regarding Section 271 applications in other states in determining whether Qwest's Washington application is in the public interest. Additionally, the Performance Assurance Plan (PAP) has been addressed in the Post Entry Performance Plan (PEPP) workshops, in which AT&T has been an active participant, and is designed to ensure Qwest's continued compliance with Section 271 guidelines. A PAP will be presented to the Commission by the end of June, and will build on the discussions between parties in the PEPP workshops. At pages 23 through

27, Ms. Rasher argues that the PAP has yet to be filed and therefore cannot be considered as a factor in ensuring that markets remain open. I disagree. As stated at page 47 of my direct testimony, the PAP will be one of three assurances of continued market openness the Commission will consider, and I fully expect the Commission to assess the protections outlined in the PAP in assessing whether Qwest's application is in the public interest. Finally, the FCC has found that its ongoing enforcement authority under Section 271(d)(6) and the risk of liability from anti-trust or other private causes of action provide additional assurances of future compliance. Consequently, Ms. Rasher's complaints should be dismissed.

At page 3, Ms. Rasher states "checklist compliance alone does not establish that the local market is open to competition." At page 42 of my direct testimony, I discussed the FCC's conclusions that compliance with the 14-point checklist "is, itself, a strong indicator that long distance is consistent with the public interest"[1] and that checklist compliance means that "barriers to competitive entry in the local market have been removed and [that] the local exchange market today is open to competition."[2] I went on to say, at page 42, that all evidence presented in preceding workshops should be considered by the Commission in determining Qwest's checklist compliance. My testimony is clear: a variety of factors, including checklist compliance, should be considered by the state commissions in considering Qwest's Section 271 application.

[1] BANY Order at ¶422; SBC-Texas Order at ¶416.
[2] BANY Order at ¶426; SBC-Texas Order at ¶419.

At pages 4 through 7, Ms. Rasher complains that Unbundled Network Element prices preclude competitive entry. She is wrong. As illustrated in Confidential Exhibit DLT-4C submitted with my direct testimony, well over 58,000 unbundled loops are currently in service in Washington, in addition to competition in the form of resale and service provided via CLEC-owned facilities. CLECs are using unbundled loops to compete with Qwest in Washington. However, Ms. Rasher then narrows her complaint to a comparison of Qwest's residential local exchange rates and UNE-P rates, completely ignoring cable telephony entry strategies employed by CLECs such as AT&T, her employer, in Washington. Her analysis in Table A, in which she compares the monthly rate for the UNE-P analog to the 1FR price is an "apples and oranges" comparison. In fact, the UNE-P rate includes features that are purchased separately by the 1FR customer. A more direct comparison would be to Qwest's residential Custom Choice service, which is priced at $29.95 and consists of the 1FR plus a range of features. It is the atypical customer who subscribes only to a 1FR and uses absolutely no features, intraLATA long distance or other services that generate positive contribution. She neglects to draw a "Table A" comparison for business local exchange services, and ignores the fact that Qwest's retail residential and business services are fully available for resale at defined discounts in this state. It is a fact that CLECs are presently competing with Qwest in Washington via CLEC-owned facilities, resale and use of UNEs. Issues associated with UNE price levels are well beyond the scope of this proceeding and have been the subject of vigorous debates in numerous cost

dockets. This is an example of Ms. Rasher's attempt to dilute the Commission's focus on the extent to which the state of competition in Washington satisfies Section 271 requirements. In fact, the FCC has considered and specifically rejected arguments by AT&T and WorldCom regarding the pricing relationship between UNE-P and residential local exchange service rates. In its Kansas/Oklahoma Section 271 order, the FCC stated:

> Parties also assert that the Oklahoma promotional UNE rates are so high that no competitive LEC could afford to use the UNE platform to offer local residential service on a statewide basis. **Such an argument is irrelevant**. The Act requires that we review whether the rates are cost-based, not whether a competitor can make a profit by entering the market.[3] (emphasis added)

Further, in its Massachusetts Section 271 order, the FCC said:

> Finally, we do not accept WorldCom's assertion that competitors lack a sufficient profit margin between Verizon's retail and wholesale rates to allow local residential competition over the UNE-P, which indicates that the UNE rates are not TELRIC-based. WorldCom asserts that Verizon's UNE rates do not provide a "viable path to entry" because the rates do not provide a "gross margin" of profit that is "economically viable." In the SWBT Kansas/Oklahoma Order, the Commission held that this profitability argument is not part of the section 271 evaluation of whether an applicant's rates are TELRIC-based. The Act requires that we review whether the rates are cost-based, not whether a competitor can make a profit by entering the market.[4]

The FCC has spoken clearly on this subject. In Washington, Qwest's UNE prices have been found by the Commission to be cost-based in rigorous cost dockets spanning several years. To that extent, Qwest is compliant with the terms of the Act, and AT&T's attempt to draw issues of UNE pricing into this

[3] CC Docket No. 000-217, January 22, 2001, ¶92.
[4] CC Docket No. 01-9, April 16, 2001, ¶41 ("Verizon Massachusetts Order").

docket should be dismissed.

Next, beginning at page 7, Ms. Rasher argues that Qwest's intrastate switched access prices must be reduced to cost as a precondition to Qwest's reentry into the interLATA market.[5] This issue is completely beyond the scope of Track A and Public Interest guidelines. To the best of my knowledge, intrastate switched access charges have not been ordered to be priced at cost in other states in which the BOC has been granted interLATA relief. This simply is not a precondition to approval of Section 271 applications and has nothing to do with the public interest requirements associated with interLATA market entry as outlined by the FCC. Ms. Rasher's complaint should be dismissed as extraneous to this proceeding.

Beginning at page 11, and continuing through page 20, Ms. Rasher cites a series of alleged "evidence" that Qwest has not cooperated in opening its local markets. Her citations have nothing to do with this proceeding. In other proceedings, if a jurisdiction found that Qwest's (f/k/a U SWEST) actions were not in alignment with a particular rule, Qwest took rapid action to correct that situation. Ms. Rasher's complaints are yet another attempt to cloud the issues in this proceeding. In this docket, the Commission must decide whether local markets are open and whether post-entry protections are in place to ensure those markets remain open. Detailed cooperative workshops have been held in Washington to determine whether the local markets are open to competition.

[5] In Table B, Ms. Rasher erroneously quotes Qwest's Washington intrastate switched access prices, which are actually $0.012 for originating access and $0.027 for terminating access.

Significant penalties exist to ensure Qwest's continued compliance with Section 271 guidelines, including financial penalties and FCC authority to revoke Qwest's interLATA privilege. Ms. Rasher's complaints in this area are beyond the scope of this proceeding and should be dismissed.

Beginning at page 20, Ms. Rasher complains that some competitive providers are exiting the market, and this is evidence that local markets are not truly open in Washington. Ms. Rasher completely ignores significant market dynamics, totally unrelated to Qwest, such as corrections in the stock market, flawed and/or risky business plans, reductions in available venture capital, an overabundance of competitors in finite markets, etc., which have been very real factors in the current state of the telecommunications market. She also ignores the strong performance in Washington of such CLECs such as XO, Allegiance, AT&T, and others that run contrary to the trend she attempts to construct. In any competitive market, there will be successes and failures, and I suspect this will continue to be true in telecommunications markets. However, this dynamic does not mean that markets are any less competitive. Again, Ms. Rasher's complaints transcend the scope of this proceeding and have little bearing as to the degree to which Track A and Public Interest requirements have been met in Washington.

At page 23, Ms. Rasher challenges the market information regarding CLECs operating in Washington as "already dated." I recognize that the Washington telecommunications market is dynamic and that changes in the competitive mix will continue to occur over time. While as many as five CLECs

have exited the market or have filed for Chapter 11 protection, well over 60 remain active in the Washington market. Qwest will update the list of unaffiliated CLECs operating in Washington prior to the Track A/Public Interest workshop and will provide that information to all parties.

c. Remonopolization Will Not Occur

Beginning at page 27, Ms. Rasher argues that Qwest will somehow "remonopolize" the market if interLATA relief is granted. Ms. Rasher's arguments ring hollow. If Qwest is to "remonopolize" the market, it would need to do so through non-compliance with Section 271 checklist requirements and violations of the PAP. In this event, not only would Qwest invite severe financial penalties, it would trigger intervention by the FCC, resulting in likely revocation of Qwest's interLATA privilege. Consequently, Ms. Rasher's argument should be summarily dismissed.

d. Structural Separation of Qwest

In Ms. Rasher's final argument, beginning at page 29, she suggests that local markets in Washington cannot be truly opened without structurally separating Qwest into distinct wholesale and retail entities. Ms. Rasher devotes over ten pages of testimony to this argument, which echoes the arguments sponsored by AT&T in other states. Again, her argument runs well beyond the scope of this proceeding and is geared to cloud the Commission's consideration

of the evidence presented in this proceeding. It is important to note that state commissions have recommended approval to the FCC, and the FCC has granted such approval, for SBC and Verizon to enter the interLATA markets in New York, Texas, Oklahoma, Kansas and Massachusetts. In none of these states has the incumbent been required to structurally separate into distinct wholesale and retail entities as a precondition to entry into the interLATA market. Protections provided by Section 271 requirements, PAP mechanisms and Section 272 affiliate guidelines have been determined to be sufficient to ensure BOCs will continue to compete fairly as they are granted authority to enter the interLATA market.

In fact, contrary to Ms. Rasher's implication, structural separation has not been required of Verizon in the state of Pennsylvania. The Pennsylvania PUC, on a 5-0 vote, ordered a non-structural "functional separation" of Verizon's Pennsylvania operations, and ruled that structural separation was not necessary. By way of background, in a 1999 decision,[6] the Pennsylvania PUC required physical structural separation of Verizon's Pennsylvania wholesale and retail operations. In commenting on that order, Jeffrey A. Eisenach, Randolph J. May and Charles A. Eldering, of the Progress & Freedom Foundation, stated:

> If [the order] is not modified, it will have the effect of inhibiting the further development of local and long distance competition in Pennsylvania and stifling the incentives to invest that are necessary to the build-out of competing modern telecommunications infrastructures, particularly the upgrade of infrastructures

[6] See, Opinion and Order, Joint Petition of Nextlink Pennsylvania, Inc., Docket No. P-00991648, Sept. 30, 1999 (the "Global Order"), affirmed, Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission, 763 A.2d 440 (Pa. Commw. Ct. 2001).

supporting the transition to widespread delivery of broadband services.[7]

As noted earlier, on April 11, 2001, the Pennsylvania PUC reversed and modified its 1999 order, concluding that full physical structural separation of Verizon-Pennsylvania's retail and wholesale businesses was not required to achieve that State commission's goal of opening the local telecommunications market in Pennsylvania to competition. Rather, the Pennsylvania PUC has ordered Verizon-Pennsylvania to engage in the functional separation of its wholesale and retail units and to adhere to an interim Code of Conduct, pending

[7] Regulatory Overkill: Pennsylvania's Proposal to Break Up Bell Atlantic, December 16, 1999, page 5.

adoption of a permanent Code of Conduct in a later rule-making proceeding.[8] On April 20, 2001, Verizon Pennsylvania accepted the terms and conditions contained in the Pennsylvania PUC's Opinion and Order. Significantly, the decisions of the Pennsylvania PUC mandating functional separation have been clearly grounded in state statutory authority. *See,* 66 Pa.C.S. §3005(h).

Qwest believes that the rigorous and comprehensive workshop process in which it is engaged with CLECs and Commission Staff representatives permits CLECs and regulators to investigate and verify every aspect of Qwest's market-opening activities. Further, Qwest believes its proposed Performance Assurance Plan reinforces Qwest's continued compliance with requirements for interLATA market entry, and provides far more benefit for consumers than the extreme structural separation measures proposed by AT&T.

The current requirements of Section 271 and Section 272 provide the necessary framework to open local markets to competition. While AT&T has chosen to "compete by litigation," Qwest has been actively working to open its markets with CLECs truly interested in providing consumers with a choice for their local service. For example, as of March 2001, Qwest has negotiated over 1,000 interconnection agreements with competitive carriers across its 14-state territory. It has constructed over 430 collocations for competitors in Washington. In addition, competitors in Washington are providing local service through: (1)

[8] Re: Structural Separation of Bell Atlantic-Pennsylvania Inc. Retail and Wholesale Operations, Docket No. M-00001353, Opinion and Order, April 11, 2001. See also, *The Wall Street Journal*, March 23, 2001, page A3, "Regulators Stop Short of a Verizon Split: AT&T is Dealt a Setback in Pennsylvania's Order on Bell's Local Services," by Yochi J. Dreazen and Shawn Young.

over 173,000 resold lines; and, (2) over 58,000 unbundled loops. The level of competition continues to grow and demonstrates that the current requirements placed upon Qwest to open its markets are accomplishing their intended objective – choice for consumers.

The FCC has previously considered structural separation of Qwest, and dismissed the concept. With encouragement from AT&T, the FCC considered structural separation of Qwest as a precondition to its merger in 2000 with U S WEST, and found that this action was ”unnecessary and inappropriate” to protect competition in the traditional U S WEST region.[9] This has also been the FCC’s position generally on structural separation. Former FCC Chairman William Kennard stated “Congress had an opportunity to adopt a wholesale-retail distinction. [and chose not to]…that is not the way the Telecom Act (of 1996) was set up.” In its Report and Order 143,[10] *In the Matter of the Furnishing of Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies*, the FCC concluded that “…the inefficiencies and other costs to the public associated with…structural separation requirements substantially outweigh corresponding benefits.” Moreover, current FCC Chairman Michael Powell recently stated that he opposes structural separation and believes that Congress rejected it when the Act was passed.[11]

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[9] In the Matter of Qwest Communications International Inc. and U S WEST, Inc. Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License, CC Docket No. 99-272, Memorandum Opinion and Order, March 10, 2000, ¶46, page 24, and footnote 135.

[10] CC Docket No. 86-79, released January 12, 1987.

[11] *Communications Daily,* April 6, 2001, "Powell Says He's No Fan of Company-specific Merger Conditions.”

These observations by Messrs. Kennard and Powell strongly support the view that the FCC would not now be inclined to order involuntary structural separation of Qwest's retail business away from its network and wholesale businesses.

Structural separation is not necessary as a precondition to approval of Qwest's reentry into the interLATA long distance market. First, there are already extensive safeguards in place to ensure that the local service market is open to competition. To obtain a recommendation from the Commission to the FCC in favor of Qwest's Section 271 applications, and to ultimately obtain FCC approval, Qwest must demonstrate that local markets are fully open, that it is competing fairly and that the local markets will remain open. Qwest must also comply with Section 272 requirements in providing interLATA services. As discussed previously in this testimony, failure to comply with these requirements will result in severe financial penalties and potential revocation of Qwest's interLATA privilege. This provides assurance that local markets will remain open.

Second, structural separation is not only unnecessary, it will reduce Qwest's efficiencies and increase its costs, which is ultimately bad for customers. Qwest agrees with telecommunications analysts who have said structural separation would "constitute a setback to the clear vision of the Telecommunications Act of 1996 to achieve competition in all telecommunications markets, including the local service marketplace."[12]

[12] Letter from the Progress & Freedom Foundation, the Cato Institute, Competitive Enterprise Institute, The Commonwealth Foundation, Mercatus Center at George Mason University, CSE Foundation and the Independent Institute to Senators McCain, Tauzin, Dingell and Hollings dated 2/28/2001.

Third, AT&T's proposed forced structural separation of Qwest's retail business away from its network and wholesale businesses is ***not*** competitively neutral. If the Commission were to mandate structural separation, the result will constitute disparate and discriminatory regulatory treatment for Qwest, as compared to the facilities-based CLECs. Physical structural separation of Qwest will not be a competitively neutral regulatory policy, because other facilities-based CLECs (or carriers generally) will not be bound by a similar regulatory burden. If the integrated provision of local exchange, long distance, and broadband services, particularly over an integrated network as with Qwest, is economically efficient, then restricting that business structure only to CLECs, and denying it to Qwest, will artificially raise the costs of only one competitor—Qwest. Forced structural separation of Qwest's retail business away from its network and wholesale businesses will undermine the most fundamental precept of efficient competition—that firms can vie for a stake in the marketplace based solely on their relative ability to satisfy consumer demand. Therefore, the likely result of forced structural separation will be a form of inefficient competition, in which competition based upon the merits of the rival firms will be replaced by a

regulatory scheme that determines outcomes in the marketplace. The Commission's laudable goals of promoting efficient local exchange competition will not be well served by this form of pseudo-competition proposed by AT&T.

Simply put, the provisions of Section 271 and 272 of the Act are more than sufficient to ensure fair and equitable competition. Ms. Rasher's structural separation suggestion is a ruse designed to distract regulators from the job at hand – bringing competition and choice to both the local and long distance marketplaces. Ms. Rasher's testimony on this issue should be dismissed.

IV. MR. DON PRICE

a. General Overview

Mr. Price echoes many of the complaints of AT&T concerning issues such as pricing of UNEs, pricing of switched access, alleged examples of Qwest non-compliance with Section 271 guidelines, Qwest's provisioning intervals for special access and UNE services, and the need for structural separation of Qwest as a precondition to reentry into the interLATA market. I have discussed Qwest's position on these issues previously in my rebuttal testimony, and I will not readdress these issues here. However, he also introduces concerns not expressed by other carriers around the state of wholesale service competition in Washington and the status of Operational Support Systems (OSS) as a means of ensuring that local markets are open. He also suggests that Qwest has "market power" to "control market prices" and exercises market power through

"control of local bottleneck facilities."[13] Finally, at page 10, he boldly states the public interest will be served "…by facilitating the development of competition in Washington's telecommunications markets even though Qwest's private business interest is diminished."

b. Public Interest Evidence

In regard to Mr. Price's contention that regulations should encourage competition in local and long distance markets to serve the public interest, I entirely agree. In fact, recent evidence from states in which Section 271 FCC approval has been granted clearly shows that interLATA market entry by the BOC has this precise effect. On May 21, 2001, the FCC produced its latest report on the status of competition, entitled "Local Telephone Competition: Status as of December 31, 2000." In this report, the FCC highlights competitive dynamics in New York and Texas, states in which the BOC has been granted interLATA relief. Following are three key conclusions from this report:

- CLECs captured 20% of the market in the State of New York – the most of any state. CLECs reported 2.8 million lines in New York, compared to 1.2 million lines the prior year – an increase of over 130%, from the time the FCC granted Verizon's long distance application in New York in December 1999 to December 2000.
- CLECs captured 12% of the market in Texas, gaining over half-a-million (644,980) end-user lines in the six months since the Commission authorized SBC's long distance application in Texas – an increase of over 60% in customer lines since June of 2000.
- CLEC market share in New York and Texas (the two states that

[13] Direct Testimony of Don Price, page 8, line 8-13.

> had 271 approval during the reporting period ending in December 2000) are over 135% and 45% higher than the national average, respectively.

Clearly, competitive intensity in the local exchange markets in these states has heightened since the BOCs serving these states were granted interLATA relief. In addition, as stated at page 46 of my direct testimony, New York consumers are enjoying the fruits of full competition in the long distance market. The September 6, 2000 TRAC study cited in my direct testimony showed that consumers shifting to Verizon's long distance service after Verizon was granted authority to enter the interLATA market saved between $46 million and $120 million annually.[14] This evidence shows that, after the BOC enters the interLATA long distance market, competition intensifies in both the local and long distance markets, and consumers are the direct beneficiaries of that increased competition.

c. Implications of Market Power

At page 8, Mr. Price makes the allegations that Qwest can currently control the market price for services and that it can inappropriately exercise control of its "local bottleneck facilities." In Washington, the Commission continues to retain authority over Qwest's prices for wholesale services, and in fact, has established Qwest's current Unbundled Network Element prices after vigorous cost docket review. Qwest certainly does not have "the ability to

[14] Direct Testimony of David L. Teitzel, page 56.

control price for those services" as stated by Mr. Price.

Second, Qwest's local markets are fully open. Qwest is obligated, under terms of the Act, to provide full and non-discriminatory access to its network via resale, interconnection and through sale of unbundled network elements. In addition, Qwest has supplied extensive evidence in previous Washington workshops demonstrating Qwest's compliance with Section 271 checklist requirements.

Third, nothing in the Act or in FCC rules interpreting the Act suggest that competition should be facilitated "even though Qwest's private business interest may be diminished" as suggested by Mr. Price. Indeed, as stated on page 4 of my direct testimony, Senator Pressler views the intent of the Act to "…get everybody into everybody else's business and let in new entrants." This is properly done through leveling the playing field for all competitors, not diminishing the business interests of one specific competitor. Mr. Price's arguments should be dismissed.

Finally, at page 13, Mr. Price suggests that my recommendation at page 43 of my direct testimony was that the Commission "should limit its deliberations to those elements considered in the FCC's public interest reviews." Mr. Price is wrong. Instead, my testimony states that the FCC views checklist compliance as clear evidence that local markets are open to competition. This is precisely correct, and my testimony did not presume to limit in any way the Commission's authority to consider factors it views as relevant to the public interest. In addition, at page 19, lines 1 and 2, Mr. Price attributes to my testimony the

conclusion that "the long distance markets in New York and Texas were not competitive until one more carrier entered the market." That conclusion, either direct or through inference, is nowhere to be found in my direct testimony. Rather, at page 46, I pointed to the consumer benefits identified in the TRAC study as attributable to Verizon's entry into the long distance market. At page 31, Mr. Price states "notwithstanding its activist stance in attempting to foreclose competitive entry by CLECs through the use of unbundled network elements, Qwest now shamelessly argues that CLECs' entry strategies are beyond its control," and cites to my rebuttal testimony in Arizona Docket T-0000B-97-238, page 4, as the source for this conclusion. Again, Mr. Price has it wrong. In fact, the source for this cite on page 4 of my Arizona testimony is the FCC itself in its SBC-Kansas/Oklahoma Order at ¶268, in which it stated:

> Given an affirmative showing that a market is open and the competitive checklist has been satisfied, low customer volumes in and of themselves do not undermine that showing. **Factors beyond a BOC's control, such as individual CLEC entry strategies for instance, might explain a low residential customer base.** We note that Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance, and we have no intention of establishing one here. (emphasis added)

Mr. Price's bald attempts to "spin" my testimony should be dismissed.

d. Structural Separation Implications

While I have addressed Qwest's position regarding the concept of structural separation at length in my rebuttal of Ms. Rasher, there is an aspect of

Mr. Price's structural separation recommendation that begs comment. At pages 72 and 73, he suggests that structural separation would lead to full deregulation of Qwest's retail operations. He states "by imposing an appropriate incentive structure on Qwest's wholesale operation, Qwest's ***retail*** operation could be freed of virtually all traditional regulations very quickly." This is an interesting concept. However, implicit in this concept is that Qwest's deregulated retail operation would be driven to quickly increase the basic residential service recurring rates to cost-recovery levels, creating rate shock on Washington consumers. While Qwest believes that competition will drive residential local exchange rates toward cost over time, Mr. Price's draconian recommendation has untenable near-term consequences for customers.

V. DR. MARK N. COOPER

a. General Overview

Dr. Cooper, at page 4, inaccurately suggests that my testimony "implies the FCC has prescribed what the WUTC can and can not do" regarding its consideration of Qwest's application for Section 271 relief. Rather, my direct testimony from pages 41 through 64 outlines a wide range of public interest considerations around Qwest's application, and does not seek to limit in any way the Commission's consideration of factors it deems to be relevant to the application. Dr. Cooper also suggests that Qwest is seeking a WUTC finding that Qwest's application is in the public interest absent a finding of checklist

compliance, satisfaction of Track A requirements, existence of a functional OSS process and assurance of future compliance with Section 271 guidelines. This is also inaccurate, as discussed in the following testimony. Finally, Dr. Cooper echoes the complaints of AT&T and WorldCom that UNE pricing should be revisited prior to a finding by the WUTC in favor of Qwest's application.

b. The Public Interest

At page 5, Dr. Cooper misrepresents my direct testimony as seeking to "reduce the public interest standard to simply evaluating the competitive checklist." Dr. Cooper is incorrect. In fact, my testimony states that checklist compliance provides clear evidence that local markets are open and that entry into the long distance market is in the public interest. However, that is only one factor among the wide range of public interest considerations outlined between pages 44 and 63 of my direct testimony. In fact, the FCC has provided stringent guidelines that BOCs must satisfy in achieving interLATA relief. I fully expect the WUTC to consider these guidelines, the full body of evidence presented by Qwest in this proceeding, findings from other states regarding Section 271 applications and subsequent market reactions, and finally, FCC rulings concerning the sufficiency of evidence presented by BOCs in support of their applications in considering whether Qwest's Washington application is in the public interest.

At page 9, Dr. Cooper suggests that Qwest's estimated market share of

approximately 98% in the residential market should somehow disqualify Qwest's Section 271 application. Dr. Cooper's suggestion runs contrary to state and FCC findings in states such as Oklahoma, Kansas and Texas, in which SBC's Section 271 applications were found to be in the public interest, even though SBC's residential market share in those states was in the range cited by Dr. Cooper when SBC filed its applications. As stated in my direct testimony, the FCC has specifically rejected market share and geographic penetration tests in considering openness of local markets. In fact, Qwest's local markets are open to competition and competitors are now serving approximately 200,000 access lines in Washington.

At page 10, Dr. Cooper states his belief that significant price competition can be encouraged through a strict standard for interLATA entry, including a firm commitment to OSS parity, strict system testing "at a commercial scale of operations," and a sufficient Performance Assurance Plan. Qwest fully intends to satisfy the Commission on each of these points through evidence supporting its petition and filing of a Performance Assurance Plan that meets the Commission's expectations by the end of June.

c. Local Markets Are Open

At page 11, Dr. Cooper cites the requirements of Sections 251 and 252 as requirements of the Act upon incumbent local exchange companies to open local telecommunications markets. Qwest is in compliance with each of these

sections, and competitors are actively availing themselves of wholesale services in Washington as defined in the Act. As shown in my direct testimony, approximately 200,000 end user access lines in Washington were being served by CLECs via a combination of unbundled loops, resale and CLEC-owned facilities in March 2001, and this total continues to increase. In addition, Sections 271 and 272 define stringent requirements the incumbent must meet before being granted interLATA relief, and Qwest believes the WUTC, after reviewing the entire body of evidence in this proceeding, will find that Qwest has fully met those requirements.

At page 16, Dr. Cooper cited the DOJ's conclusion regarding conditions around interLATA entry as defined by Congress to ensure, in part, that "the BOC entry into interLATA markets would not be held hostage indefinitely to the business decisions of the BOC's competitors." This citation highlights the insight of Congress and the DOJ around the role the incumbent's competitors can play in delaying approval of Section 271 applications by delaying entry into local markets or by electing to serve only targeted markets, and was given form in the FCC's specific finding that market share and geographic penetration should not be factors in determining whether Section 271 requirements have been met. In its May 21, 2001 report on the status of local telephone competition, the FCC concluded:

- CLECs captured 20% of the market in the State of New York – the most of any state. CLECs reported 2.8 million lines in New York, compared to 1.2 million lines the prior year – an increase of over 130%, from the time the FCC granted Verizon's long distance application in New York in December 1999 to

December 2000.

- CLECs captured 12% of the market in Texas, gaining over a half-a-million (644,980) end-user lines in the six months since the Commission authorized SBC's long distance application in Texas – an increase of over 60% in customer lines since June of 2000.[15]

Clearly, the FCC itself views interLATA market entry by a BOC to be a trigger event which accelerates competition in local exchange markets.

At page 26, Dr. Cooper attributes a statement to my direct testimony that "long distance entry should come first, to stimulate local competition." This statement is nowhere to be found in my direct testimony, either explicitly or implicitly, nor does Dr. Cooper offer a cite to support his attribution. In fact, Dr. Cooper plainly mischaracterizes my testimony. Instead, my direct testimony is that local markets are now irreversibly open, and competition in local and long distance markets will be heightened when Qwest reenters the interLATA long distance market, as has been documented in the New York and Texas markets.

At page 27, Dr. Cooper contends that my direct testimony suggests that competitors entered the New York local exchange market solely because they believed the New York Public Service Commission was going to approve entry. Again, Dr. Cooper is incorrect. My testimony was that the New York PSC and the FCC found that sufficient competition was present in the local exchange market to warrant approval of Verizon's Section 271 application, and that, as articulated in the TRAC study, competition in the local and long distance markets in New York markedly intensified immediately prior to and after Verizon entered

[15] Federal Communications Commission Releases Latest Data On Local Telephone Competition, May 21,

the interLATA market.

At pages 28 through 30, Dr. Cooper strives to compare the state of local exchange competition in Washington to that of New York, and draws the obvious conclusion that the level of competition between these states is substantially different. Unfortunately, Dr. Cooper neglects to draw comparisons between the state of competition in Washington and that of Texas, Kansas, Oklahoma or Massachusetts, which have all received state and federal Section 271 approval and also have competitive environments influenced by interLATA market entry by a BOC.

At page 30, Dr. Cooper states that Qwest "should also be required to have a fully developed performance assurance plan in place and to be in statistical compliance with that plan (i.e., no significant fines or violations) for one fiscal quarter (90 days)" before the Commission recommends to the FCC that Qwest's application should be approved. This step is not necessary. Qwest has made a commitment to work closely with the Commission to resolve any concerns around the OCC and PAP processes, and will continue to do so.

d. Forms of Local Competition

With absolutely no reference to the results of the four years of UNE cost and price dockets in this state, Dr. Cooper, at page 31, suggests the Commission follow Verizon's UNE pricing model in New York, but offers no

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2001, page 1.

details of what that model actually is. However, he does offer insights into MCI's pricing strategies in competition with Verizon in New York, which include increasing levels of discounts as subscribers purchase bundles of services, including long distance, from MCI. This is not at all surprising, and offers a glimpse into the manner in which CLECs can profitably serve residential local exchange customers, even if the UNE-P price exceeds the 1FR recurring price on a stand-alone basis. Typically, residential customers use profitable services, such as long distance and vertical features, in addition to the fundamental residential access line. To the extent packages of services are offered, which include high margin services, CLECs can profitably serve residential customers via unbundled elements. In addition, residential services can be resold at predefined wholesale discounts and customers can be served via CLEC-owned facilities.

At page 35, Dr. Cooper reports that AT&T may be having difficulty implementing its business strategy of serving consumers via cable telephony, and goes on to boldly conclude that AT&T's decision to structurally separate into four separate business entities "signaled the failure of the federal Telecommunications Act of 1996 to deliver local phone competition." However, AT&T is a party in this proceeding, has filed direct testimony from its expert witness, and has offered no evidence that its strategy of offering cable telephony services in Washington is failing. On the contrary, Qwest's evidence is that AT&T is actively marketing its local exchange services in, at a minimum, Seattle, Issaquah, Tacoma and Vancouver and is continuing to expand its network.

Finally, at page 38, Dr. Cooper briefly discusses the financial standing of several of the list of over 60 CLECs certified in Washington, and concludes "the CLEC industry has suffered tremendously since last year." Interestingly, his own evidence suggests that at least some of the CLECs he discusses may not be suffering at all. At page 39, Dr. Cooper states "Allegiance announced a record first quarter in 2001 with revenues of $105.9 million. This represents an increase of 11% over the prior quarter and 124% from the same period a year ago." Regarding XO, he reports "XO reported first quarter 2001 revenues of $277.3 milliion, a 10% increase over the prior quarter, and a 162% increase over the first quarter of 2000." These are very handsome results, and suggest, even in the face of all the competitive hurdles Dr. Cooper alleges exist in Washington, CLECs are finding success. He then implies that the fact that these firms have reported a negative net income is indicative that they are struggling financially. This is very misleading and does not take into account investments these firms are making to support their growth strategies. Dr. Cooper has provided no evidence that he has examined the business models of any of the firms he discusses in his testimony, and instead draws his conclusions from investor publications. While the Washington telecommunications market is dynamic, Dr. Cooper shows that CLECs are experiencing successes and that local markets are open to competition.

VI. MR. REX KNOWLES AND MR. TIMOTHY PETERS

I address jointly the testimonies of Mr. Knowles and Mr. Peters in view of the fact that Mr. Peters simply concurs in the positions taken by Mr. Knowles regarding public interest and the PAP in his testimony. At page 20, Mr. Knowles states that XO's primary concern regarding public interest in this proceeding is that Qwest be required to comply with its legal obligations. As stated at page 47 of my direct testimony, three specific factors ensure that Qwest will comply with its legal obligations after approval of it Section 271 application. These are: 1) a sufficient Performance Assurance Plan (PAP); 2) the FCC's enforcement authority under Section 271(d)(6); and 3) liability risk through antitrust action.[16] Each of these elements is significant in ensuring continued compliance. Regarding the PAP, Mr. Knowles complains at page 21 that the ROC workshop process did not result in a "consensus performance assurance plan." Given the widely diverse interests of the ROC workshop participants, this is not unexpected. However, the fact is that the Commission will have the opportunity in this proceeding to review Qwest's PAP to determine if the protections defined in it are sufficient to ensure continued market openness, considering the disparate positions of all parties. Mr. Knowles discusses a range of concerns XO has with regard to the PAP, including level of financial penalties, capping of penalties, timing of PAP implementation and range of services to be covered by the PAP. Each of these issues has been addressed in the ROC workshops and will be left for the Commission to review when it receives Qwest's PAP plan at the end of June in developing its overall recommendation in this docket.

[16] BANY Order at ¶429-430; SBC-Texas Order at ¶420-421.

VII. CONCLUSION

In my rebuttal testimony, I have discussed how the evidence presented through my direct testimony in this proceeding is sufficient to support a finding by the Commission that Qwest's reentry into the interLATA long distance market is appropriate. Specifically, I discussed why Qwest's Performance Assurance Plan (PAP), coupled with the functional separation requirements of Section 272 and continued oversight by the FCC of Qwest's compliance with Section 271 requirements, will ensure that Qwest's local markets will remain fully open after Qwest is granted reentry into the interLATA markets. I discussed why the Commission should not dismiss Qwest's application on the grounds of market share for a particular market segment. The FCC, in approving SBC and Verizon Section 271 applications in Massachusetts, New York, Texas, Kansas and Oklahoma, specifically rejected "geographic penetration" or "market share loss" in considering whether Track A requirements are met. Finally, I discussed why the forced structural separation of Qwest's retail business away from its network and wholesale businesses is unnecessary as a precondition to Qwest's reentry into the interLATA market. This precondition has not been ordered by the FCC in approving Section 271 petitions to date, and is an issue extraneous to the Commission's consideration around Qwest's compliance with Track A and Public Interest requirements in this proceeding. Finally, many of the issues

raised in the testimonies of the witnesses addressed in my rebuttal testimony are well beyond the scope of Track A and Public Interest considerations, and have been debated at length in previous Section 271 workshops. These issues should be considered in their appropriate contexts.

I urge the Commission to dismiss the suggestions offered by the five parties contesting Qwest's Track A and Public Interest position and to issue a recommendation to the FCC for approval of Qwest's Section 271 petition on the strength of the full body of evidence presented in this proceeding.