

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**In the Matter of the Investigation Into)
U S WEST Communications, Inc.'s)
Compliance With Section 271 of the)
Telecommunications Act of 1996)
_____)** **Docket No. UT-003022**

REBUTTAL TESTIMONY OF

LORI A. SIMPSON

for

QWEST CORPORATION

RE: CHECKLIST ITEM 2 – UNBUNDLED NETWORK ELEMENTS – PLATFORM

JUNE 21, 2001

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1 **I. IDENTIFICATION OF AFFIANT**

2 **Q. PLEASE STATE YOUR NAME, POSITION, EMPLOYER, AND**
3 **BUSINESS ADDRESS.**

4 A. My name is Lori A. Simpson. I am a Director in the Qwest Corporation in the
5 Wholesale Markets organization. My office is located at 301 West 65th
6 Street, Minneapolis, Minnesota.

7 **Q. HAVE YOU PROVIDED WRITTEN AND ORAL TESTIMONY IN THIS**
8 **PROCEEDING PREVIOUSLY?**

9 A. Yes, I have provided both written and oral testimony concerning checklist
10 items 2 (UNE Platform); and 6 (UNE Switching); 7(II) (Directory Assistance
11 Service); 7(III) (Operator Services); 8 (White Pages Directory Listings); and 14
12 (Resale).

13 **II. PURPOSE OF REBUTTAL TESTIMONY**

14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY.**

15 A. The purpose of my rebuttal testimony is to respond to the issues raised in the
16 testimony of Jared Reimer of Sense Networking, and of Matthew J. Miller of
17 Worldlink, Inc., both filed on behalf of the Washington Association of Internet
18 Service Providers (WAISP).

19 **III. EXECUTIVE SUMMARY**

20 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

21 A. WAISP claims and complains that Qwest engages in the practices of

1 slamming, unhooking, and delay regarding connections of Qwest's Digital
2 Subscriber Line (DSL) service to independent Internet service provider's
3 (ISP's) Internet access services. My rebuttal testimony establishes that Qwest
4 does not engage in those practices, and shows that WAISP assumes
5 malicious intent on Qwest's part where none exists. Furthermore, WAISP
6 leaps to erroneous conclusions based on flimsy or no evidence.

7 As I describe below in detail, Qwest's current internal retail training and
8 reference materials concerning Qwest's DSL service clearly provide for
9 nondiscriminatory access by ISPs to Qwest's DSL service. Qwest also has
10 multiple processes, including a "safe harbor" process, available that allow ISPs
11 and end user customers to order DSL service and to designate connection to
12 an independent ISP without the necessity of having any contact with Qwest's
13 retail operations.

14 WAISP makes an additional claim concerning Qwest's obligations in providing
15 DSL service and in offering Qwest's or another ISP's Internet access service.
16 WAISP is simply wrong when it claims that Qwest should be required to
17 market all ISPs Internet access service to Qwest' DSL end user customers.
18 Qwest does not have, and should not have, any such obligation. Qwest's
19 obligation is to provide DSL service on a nondiscriminatory basis to all end
20 users, regardless of which ISP an end user has selected. This
21 nondiscriminatory performance provides all ISPs, including Qwest, the same
22 opportunity to offer and provide Internet access service in fair competition with
23 each other.

1 **IV. QWEST’S RESPONSE TO THE TESTIMONY OF WAISP**

2 **Q. PLEASE RESPOND TO WAISP’S TESTIMONY CONCERNING**
3 **ALLEGATIONS OF “SLAMMING,” “UNHOOKING,” AND DELAY.**

4 A. WAISP makes very serious allegations that Qwest engages in the practices of
5 “slamming” of Qwest DSL end user customers to Qwest’s Internet access
6 service, of “unhooking,” and of delay in redirecting DSL service to independent
7 ISPs.¹ For the reasons enumerated and described in my testimony below,
8 Qwest denies that it engages in these practices.

9 **Q. HAS QWEST TRAINED ITS BUSINESS OFFICE REPRESENTATIVES ON**
10 **ITS POLICIES REGARDING CONNECTIONS OF QWEST’S DSL SERVICE**
11 **TO ISPS OTHER THAN QWEST, AND ITS POLICIES AGAINST**
12 **“SLAMMING” AND “UNHOOKING”?**

13 A. Yes, Qwest’s internal training and reference materials for Qwest DSL service
14 instruct Qwest’s business office representatives that end user customers that
15 order Qwest’s DSL service must also choose an ISP. Qwest’s representatives
16 are instructed to ask each end user to which ISP they choose to have their
17 DSL service connected. The training and reference materials, the relevant
18 portion of which is attached as Confidential Exhibit LAS-26C, make it clear

19

¹ Testimony of Jared Reimer on behalf of WAISP and Testimony of Matthew J. Miller on behalf of WAISP, dated June 7, 2001.

1 that end user customers must be asked to choose an ISP. The training and
2 reference materials also instruct Qwest's representatives that they must
3 make an affirmative statement advising the end user that Qwest will provide
4 the same quality of DSL service to the end user regardless of the end user's
5 choice of ISP.

6 Should Qwest ever find that an employee has violated its policies, such an
7 employee would be subject to disciplinary action, up to and including
8 dismissal.

9 **Q. HAS QWEST IMPLEMENTED AVENUES OTHER THAN CALLING**
10 **QWEST'S RETAIL BUSINESS OFFICE FOR USE BY AN ISP OR AN END**
11 **USER WISHING TO ORDER QWEST DSL SERVICE AND CONNECTION**
12 **TO AN ISP'S INTERNET ACCESS SERVICE?**

13 A. Yes. Qwest has established four avenues for ordering Qwest DSL service and
14 advising Qwest of the end user's choice of ISP. These avenues, which are
15 described below, are available to end user customers or ISPs that may wish to
16 place orders by a method other than calling Qwest's retail business office.

17 First, Qwest has a public web site, called "Mega WOT" (Web Ordering Tool),
18 which may be used by end user customers to place orders for Qwest DSL
19 service and to advise Qwest to which ISP the end user wants its DSL service
20 directed or connected. The address for this site is

21 <https://orderdsl.qwest.com/order/welcome.asp>.

22 Also, an alphabetical list of Qwest DSL Host ISPs that wish to be listed is

1 available to end user customers at the Qwest web site at
2 <http://www.qwest.com/dsl/learn/isplist.html>.

3 Second, for those end user customers and ISPs that may wish to speak to
4 someone “live” other than Qwest’s retail business office to order Qwest DSL
5 service and to select an ISP, Qwest provides access to a professional call
6 center that is unaffiliated with Qwest. This center is known as a “safe harbor”
7 for ISPs and end user customers. It is reached at the toll free number 1 877-
8 MEGA-FAS.

9 Third, Qwest provides a web site known as “Mega Order” for ISPs where they
10 may place orders for Qwest DSL service on behalf of end users and may also
11 select themselves as the ISP to provide Internet access service for the end
12 user. ISPs may also use this site to perform loop qualification for DSL service,
13 and they may see their end user’s accounts via this web site.

14 Fourth, Qwest provides a web site where ISPs may place orders for “bulk”
15 DSL service. This is primarily used by larger ISPs that may order large
16 volumes of DSL service.

17 **Q. HOW WOULD ISPS AND END USERS KNOW ABOUT THESE METHODS**
18 **OF ORDERING QWEST DSL SERVICE AND SELECTION OF AN ISP?**

19 A. For end users, Qwest makes its public web site addresses known by a variety
20 of methods – in advertisements, in phone books, and on telephone bills, for
21 example. Any end user accessing the Qwest web site would be readily able to
22 see where and how to order Qwest DSL service and to select an ISP for

1 Internet access service.

2 For ISPs, Qwest provides an additional web site that provides DSL and related
3 information, including DSL product and service descriptions, information about
4 ISP host connections to Qwest DSL service, contact names and numbers for
5 Qwest personnel, other web addresses, web access information for ordering
6 DSL service, and more.

7 Additionally, Qwest sends, free of charge, a large three inch binder of
8 information called "Make an Impact - Information for Qwest DSL Hosts" to any
9 ISP that has ordered ISP host access to Qwest's DSL service. Multiple copies
10 are available to an ISP. This binder is updated regularly, and in fact, Qwest
11 recently and on an unsolicited basis sent a new version of this binder to all ISP
12 DSL hosts because portions of the materials had been significantly modified.
13 Qwest has provided this binder to approximately 430 ISPs, and this is the
14 number of ISPs Qwest has on its current lists as active DSL hosts.

15

1 **Q. DOES QWEST HAVE A RELATIONSHIP WITH ISPS WHEREIN QWEST**
2 **PROVIDES INCENTIVES TO THE ISPS TO SELL QWEST DSL SERVICE**
3 **TO THE ISP'S END USERS?**

4 A. Yes. Under Qwest's DSL Marketing Program for DSL host ISPs, Qwest
5 provides incentive payments or account credits to DSL host ISPs based on the
6 number of the ISP's Internet access service customers to which Qwest
7 provides DSL service. The theory behind these payments is that Qwest
8 wishes to have ISPs sign up their Internet access end users for Qwest's DSL
9 service, and providing incentive payments to the ISPs encourages the ISPs to
10 do so. These relationships with ISPs are clearly relationships Qwest wishes to
11 foster, and this belies the accusation that Qwest would slam or unhook an
12 ISP's end users from the ISP's Internet access service.

13 **Q. PLEASE RESPOND TO THE SPECIFIC ALLEGED INSTANCES OF**
14 **SLAMMING PROVIDED IN WAISP'S TESTIMONY.**

15 A. WAISP lists four purported examples of slamming in the body of its testimony,
16 as well as several other examples in a letter dated November 1, 2000, and
17 attached as an exhibit to its testimony.² Slamming is a practice that requires
18 an intention to change end users from one service provider to another without
19 the end user's consent, and is a practice in which Qwest does not engage.

20

² Testimony of Jared Reimer on behalf of WAISP dated June 7, 2001 at pages 3 to 5, and Exhibit JR-3 at pages 2 to 4.

1 Specifically, WAISP states in these documents that since 1998, several end
2 user customers ordered Qwest DSL service and also ordered connection to
3 Sense Networking's Internet access service, or to another ISP's Internet
4 access service, but that these end user customers were allegedly connected
5 to Qwest's Internet access service instead.³

6 In its proprietary exhibits, WAISP provides the names of the several end user
7 customers that were allegedly slammed (in at least one instance, WAISP
8 provides only the last name of the end user customer), but as WAISP knows,
9 Qwest does not track or access end user customer records by name. Rather,
10 records are kept by billing account number. The names of the end users is
11 not sufficient information for Qwest to conduct an investigation into the specific
12 situations described by WAISP.

13 Attached to WAISP's testimony as an exhibit is a letter dated November 1,
14 2000, wherein WAISP made a number of allegations of slamming. In
15 response to this letter, Qwest set up a meeting with Mr. Richard Busch, the
16 author of the WAISP letter, and Mr. Gary Gardner, WAISP executive director.
17 This meeting was held on November 15, 2000, and was attended by Mr. Kirk
18 Nelson and Mr. Jim Schmit for Qwest. While the letter from Mr. Busch
19 generally did not provide Qwest with enough information to allow investigation
20 of the allegations made therein, Qwest obtained additional information during
21 or after the meeting about two of the allegations. Mr. Busch and Mr. Gardner

³ Id.

1 would not or could not supply the information necessary for Qwest to
2 investigate every instance cited in its letter, however.

3 In the single allegation of slamming where WAISP supplied Qwest with
4 sufficient information to allow for an investigation, Qwest did so. Qwest
5 investigated example JR-3-2 from the November 1, 2000 letter, and Qwest
6 found no indication in its records that the end user ordered DSL service with
7 Northwest Link rather than Qwest.net. There is simply no evidence this was
8 an instance of slamming.

9 WAISP also alleges in its testimony that there may be many more examples of
10 Qwest slamming, but WAISP states that it cannot determine this with certainty
11 "because customers don't always tell us the reason why they terminate their
12 service with us."⁴

13 This allegation is particularly troublesome. It is inappropriate to suggest,
14 without any evidence whatsoever, that any end user that happens to
15 disconnect its service with WAISP members does so because of improper
16 behavior on Qwest's part. This is simply spurious speculation. There can be
17 nothing improper in an end user customer disconnecting its service with one
18 provider because the end user has selected another provider, presumably
19 offering something the end user customer is not receiving from its current
20 provider. This is desirable behavior and is the essence of competition.

⁴ Testimony of Jared Reimer on behalf of WAISP dated June 7, 2001 at page 5.

1 **Q. PLEASE RESPOND TO WAISP'S TESTIMONY CONCERNING**
2 **ALLEGATIONS OF "UNHOOKING."**

3 A. WAISP also makes the allegation that Qwest engages in unhooking. Qwest
4 denies that it engages in unhooking. Furthermore, a conclusion that Qwest
5 engages in unhooking cannot be made based on the flimsy and limited
6 information supplied by WAISP in its testimony.

7 WAISP alleges in its testimony that "Qwest's customer service representatives
8 and Qwest's field installation technicians have the practice of attempting to
9 convince the customers of independent Internet service providers to terminate
10 their service with the independent ISP and sign up for qwest.net service,"⁵ a
11 practice known as "unhooking." It provides a single example of alleged
12 unhooking in its November 1, 2000, letter.⁶ In this example, the account
13 number of the end user involved is not supplied, so I cannot investigate the
14 specific situation. However, the letter states that a Qwest representative told
15 the end user that a particular ISP, Cutting Edge Communications, was not
16 "compatible" with Qwest's DSL service. WAISP's letter says this was an error,
17 and that this ISP was at that time available as a host ISP for Qwest's DSL
18 service.

19 Assuming for the sake of argument that these facts are correct, and that this
20 ISP was a Qwest DSL host at the time the end user was speaking with
21 Qwest's representative, to accuse Qwest's representative of having engaged

⁵ Testimony of Jared Reimer on behalf of WAISP dated June 7, 2001 at page 8.

1 in unhooking behavior is to suggest the representative was intentionally
2 misleading the end user. Such a leap is without foundation, and stretches
3 believability. The more reasonable and believable explanation is that the
4 representative made a mistake, or that, in fact, Qwest's records did not
5 indicate that Cutting Edge Communications was a Qwest DSL host at the time
6 of this end user contact with Qwest. While Qwest regrets any instance when
7 such a mistake might be made, Qwest cannot guarantee that honest mistakes
8 will not be made. Such mistakes cannot reasonably lead to a conclusion that
9 unhooking has taken place. Furthermore, Qwest has taken all reasonable
10 steps to inform its representatives of and to supply them with timely and
11 accurate information. Finally, Qwest will issue an order to change an end
12 user's ISP at any time, and will waive the nonrecurring charge to do so if
13 Qwest finds it has made an error.

14 The only additional example of this alleged behavior provided by WAISP is
15 contained in the testimony Matthew J. Miller. Mr. Miller states that he
16 overheard, by telephone, a Qwest technician describing Qwest's Internet
17 access service to an end user who had signed up for Worldlink's Internet
18 access service.⁷

19 Qwest has investigated this allegation. Mr. Miller's testimony refers to a Qwest
20 "field" technician and implies that this was a situation where a Qwest

⁶ Exhibit JR-3 at page 4.

⁷ Testimony of Matthew J. Miller on behalf of WAISP dated June 7, 2001 at pages 1 to 2.

1 technician was present at an end user's home. However, Qwest can find no
2 record of a dispatch of a Qwest technician to the end user's premises in this
3 case. A repair ticket was prepared by Qwest for this end user's DSL service,
4 however. It is possible that Mr. Miller was called by the Qwest technician from
5 Qwest's offices as a result of the problems experienced by the end user. But
6 it is unfair to conclude, based on a recounting of one side of an overheard
7 conversation, that this is an instance of unhooking. It is possible, for example,
8 that the end user asked about Qwest's Internet access service. And it is even
9 more unfair to conclude, based on this testimony, that Qwest has a practice of
10 unhooking. Qwest does not engage in unhooking behavior. As described
11 above and in Confidential Exhibit LAS-26C, Qwest's policies and practices
12 concerning interactions with end users require Qwest's representatives to give
13 end users the opportunity to identify their choice of ISP. When an end user
14 makes its choice for an ISP other than Qwest, Qwest honors that request.

15 **Q. PLEASE RESPOND TO WAISP'S TESTIMONY CONCERNING**
16 **ALLEGATIONS OF "DELAYED REDIRECTION" TO A DIFFERENT**
17 **INTERNET ACCESS SERVICE PROVIDER.**

18 A. WAISP states that when end user customers have been allegedly slammed to
19 Qwest's Internet access service, there are delays in redirecting the end user
20 customer's DSL service to the unaffiliated ISP's service.⁸

21 If an end user customer or an ISP advises Qwest that a DSL end user should
22 be connected to a different ISP than Qwest, it is Qwest's practice to process

1 an order to change the ISP. An order is necessary to correct Qwest's records
2 and to advise necessary departments to complete the work required to make
3 such a change. The standard due date for such an order type will be
4 assigned. If Qwest verifies that it has made an error and connected the end
5 user to the wrong ISP, Qwest will waive the nonrecurring charge normally
6 billed to the end user for making a change of ISP.

7 In the letter of November 1, 2000 that WAISP attached as an exhibit to its
8 testimony, it lists three situations where Qwest allegedly delayed redirecting
9 the end user's DSL service to the correct ISP.⁹ Qwest has investigated two of
10 these instances where WAISP provided sufficient detail to allow the
11 investigation, and finds no evidence of delay in redirecting the end users' DSL
12 service to a different ISP. In example JR-3-4, Qwest's records show that an
13 order was issued on October 23, 2000, the date the request was made, with a
14 due date of October 30, 2000, to change the end user's ISP to Northwest Link.
15 Qwest's records do not indicate any other contacts with the ISP or the end
16 user where a change in ISP was requested. In example JR-3-5, Qwest's
17 records indicate that Qwest was contacted by the end user customer on
18 February 12, 2001 to change the end user's ISP, and Qwest issued an order
19 that day with a due date of February 19, 2001 to do so. Qwest found no
20 evidence of delay in these two instances.

⁸ Testimony of Jared Reimer on behalf of WAISP dated June 7, 2001 at pages 7 to 8.

⁹ Exhibit JR-3 at page 3.

1 **Q. PLEASE RESPOND TO WAISP'S TESTIMONY CONCERNING THE**
2 **PROPOSED RELATIONSHIP BETWEEN QWEST AND MICROSOFT**
3 **CONCERNING CONSUMER INTERNET ACCESS SERVICES?**

4 A. WAISP alleges in its testimony that:

5 We believe that Qwest, as the monopoly local exchange service carrier,
6 should treat all providers of competitive Internet access services in a
7 nondiscriminatory manner. According to Qwest's director of marketing
8 for DSL service, Karen Puffet, Qwest will continue to refer its customers
9 for the monopoly local exchange service to a single, preferred Internet
10 access service provider. For residential customers, I understand that
11 Qwest will start referring potential Internet access customers to
12 Microsoft's MSN service. For business customers, I understand that
13 Qwest will continue to refer potential Internet access customers to
14 qwest.net service. WAISP believes that as a monopoly provider of local
15 exchange service, Qwest should treat all Internet access service
16 providers in a nondiscriminatory manner and refer potential customers
17 for Internet access service to a nondiscriminatory list of potential
18 providers of the service.¹⁰

19 In response to these comments, I note first that WAISP cites no FCC rule or
20 other legal or regulatory authority to support its suggestions. I also note that
21 WAISP is partly correct; Qwest does indeed have an obligation to "treat all
22 Internet access service providers in a nondiscriminatory manner." This
23 obligation is to provide nondiscriminatory DSL service to all ISPs' Internet
24 access service customers, whether the ISP competes or does not compete
25 with Qwest in offering and providing Internet access service. This obligation is
26 met where Qwest provides DSL service upon the same terms and conditions,
27 rates, service quality, service intervals, and repair intervals. Qwest meets this
28 obligation.

¹⁰ Testimony of Jared Reimer on behalf of WAISP dated June 7, 2001 at page 9.

1 Furthermore, Qwest's retail business office procedures, a portion of which are
2 attached as Confidential Exhibit LAS-26C, clearly and specifically call for
3 Qwest retail business office representatives to seek from DSL end users, on a
4 neutral basis, the name of the ISP to which the end user wishes to have its
5 DSL service connected. Additionally, as described in detail above, Qwest has
6 established several ways, other than calling Qwest's retail business office, in
7 which end users and ISPs can order DSL service and have that service
8 connected to a competing ISP's Internet access service. Accordingly, Qwest
9 provides an equal opportunity for DSL end user customers to choose a
10 competitive ISP's Internet access service, and for ISPs to advise Qwest that a
11 DSL end user has selected it to provide that end user's Internet access
12 service.

13 Qwest does not, however, have a legal or regulatory obligation to market or
14 sell the competitive Internet access services of others (although, as described
15 above, Qwest does provide a list of available ISPs to end users). And Qwest
16 does have a right to engage in joint marketing of DSL and Internet access
17 services. Certain rules, known as "nonstructural safeguards," and
18 promulgated by the FCC in its *Computer III*¹¹ proceeding are instructive here.

¹¹ See *Amendment of Section 64.702 of the Commission's Rules and Regulations* ("Computer III"), Report and Order, CC Docket No. 85-229, Phase I, 104 FCC2d 958 (1986) ("*Phase I Order*"), recon., 2 FCC Rcd 3035 (1987) ("*Phase I Recon. Order*"), further recon., 3 FCC Rcd 1135 (1988) ("*Phase I Further Recon. Order*"), second further recon., 4 FCC Rcd 5927 (1989) ("*Phase I Second Further Recon.*"), *Phase I Order and Phase I Recon. Order*, vacated, *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) ("*California I*"); Phase II, 2 FCC Rcd 3072 (1987) ("*Phase II Order*"), recon., 3 FCC Rcd 1150 (1988) ("*Phase II Recon. Order*"), further recon., 4 FCC Rcd 5927 (1989) ("*Phase II Further Recon. Order*"), Phase II Order vacated, *California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceedings*, 5 FCC Rcd 7719 (1990) ("*ONA Remand Order*"), recon., 7 FCC Rcd 909

1 These nonstructural safeguards apply to the integrated offering of enhanced
2 services, such as Internet access service, by the regulated telephone
3 company. The FCC never prohibited a telephone company from offering its
4 own enhanced services without mention or referral to a competing provider.
5 Rather, these rules ensure that the regulated telephone services used to
6 provide enhanced services were equally available to competing enhanced
7 service providers, and that the costs of providing the enhanced services was
8 not borne by the regulated operation.

9 This model applies in the instant situation. Qwest provides the regulated DSL
10 service on equal terms and conditions for all ISPs, whether competitive or
11 noncompetitive with Qwest. Qwest allows and provides multiple ways for end
12 users to designate whatever ISP they may select as their Internet access
13 service provider. Qwest may also offer its own, or another selected ISP's,
14 Internet access service to DSL end user customers so long as the costs of
15 doing so are not borne by the regulated operation. There is no unlawful
16 discrimination in this.

17 **Q. WHAT ABOUT THE ALLEGATIONS CONTAINED IN THE 1998 LETTER**
18 **ATTACHED AS AN EXHIBIT TO WAISP'S TESTIMONY?**

19 A. WAISP also attached to its testimony a letter to Qwest dated October 30,

(1992), *pets. for review denied, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) ("California II"); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) ("BOC Safeguards Order"), *recon. dismissed in part*, Order, CC Docket Nos. 90-623 and 92-256, 11 FCC Rcd 12513 (1996); *BOC Safeguards Order vacated in part and remanded, California v. FCC*, 39 F.3d 919 (9th Cir. 1994) ("California III"), *cert. denied*, 115 S. Ct. 1427 (1995) (referred to collectively as the *Computer III* proceeding).

1 1998.¹² In its letter of November 1, 2000, WAISP acknowledged that the
2 claims made in the 1998 letter had been satisfied by Qwest,¹³ and so I am not
3 re-addressing the 1998 claims here.

4 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

5 A. Yes, it does.

¹² Exhibit JR-2.

¹³ Exhibit JR-3 at page 1.