BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DOCKET UX __

In the Matter of the Petition of Qwest Corporation to Exempt from Regulation Qwest's Switched Business Services	QWEST'S PETITION TO EXEMPT FROM REGULATION QWEST'S SWITCHED BUSINESS SERVICES

Pursuant to ORS 759.030(2) through (4) and OAR 860-032-0025, Qwest Corporation ("Qwest") respectfully petitions the Commission to exempt from regulation all terms, conditions and rates for certain of Qwest's switched business telecommunications services ("switched business services"), as described herein. The geographic area for which Qwest seeks exemption from regulation consists of all exchanges in Qwest's ILEC service territory in the state of Oregon.[1]

The switched business services for which Qwest requests exemption from regulation fall into three categories. The first category consists of those services that provide access to the network, such as flat-rated and measured lines, private branch exchange (PBX) trunks and Centrex services, including feature packages. The second category consists of discretionary business features which are software enhancements available as access line or trunk options. The third category consists of Frame Relay and Asynchronous Transfer Mode (ATM) services (packet-switched services in Qwest's Advanced Communications Services Tariff).

Providers competing in the business market offer their own spectrum of business services. Their business services are designed to meet the needs of business customers, and fully substitute for a full range of services also offered by Qwest. Their services are offered in direct

[1] The Commission previously found that Qwest's intrastate DS3 service is exempt from regulation. See Order No. 00-003 (January 3, 2000), docket UX 21. The Commission also previously found that Qwest's Centrex Prime services are exempt from regulation. See Order No. 00-228 (April 28, 2000), docket UX 23. Finally, more recently, the Commission found that Qwest's intraLATA toll and 800 ServiceLine Option services are exempt from regulation with certain conditions. Order No. 03-609 (October 21, 2003), docket UX 28.

competition with and as a complete alternative to those of Qwest and other providers in the market. A list of the switched business services and features for which Qwest is seeking exemption from regulation in this petition is found on Exhibit A.

Pursuant to OAR 860-032-0025(4), Qwest submits the following information:

BACKGROUND

A. Name and address of petitioner

Qwest Corporation
421 SW Oak Street
Portland, OR 97204

The following persons should be placed on the service list:

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B. Petitioner's certificate of authority

Qwest's Certificate of Authority is on file with the Commission.

C. Services proposed to be exempted from regulation

Qwest proposes to exempt its switched business telecommunications services, as described in its Exchange and Network Services Tariff, PUC Oregon No. 29, sections 5, 7, 9, 10, 14, 15, 105, 107, 109 and 115, Qwest's Exchange and Network Services Price list, sections 5 and 105, and Qwest's Advanced Communications Services Tariff, PUC Oregon No. 27, sections 5 and 107, on file with the Commission. Copies of the relevant portions of the tariffs and price list, as well as an index of the sections for these services, are attached as Exhibit B.

Specifically, the switched business services and features for which Qwest seeks exemption from regulation are found in the list of services on Exhibit A.

D. Documentation demonstrating petition meets requirements of ORS 759.030 and <u>OAR 860-032-0025</u>

See analysis below, which addresses the factors the Commission should consider in evaluating petitions filed under ORS 759.030 and OAR 860-032-0025.

E. <u>Information pertaining to revenues, costs and allocations</u>

Effective December 30, 1999, Qwest opted into "price cap" regulation under ORS 759.405 – 759.410. As of this date, and in accordance with ORS 759.410, Qwest is no longer subject to "rate-of-return" regulation requirements.[2] The OAR 860-032-0025(4)(e) provisions that pertain to revenues earned from the services impacted by this petition, or the allocation of expenses between regulated and unregulated activities "for future rate-making treatment," are related to future "rate-of-return" regulation, and thus would no longer be required of a "price cap" company in support of its service deregulation filings.

F. <u>Statement from each joint provider of the service that it agrees to the exemption</u>

Not applicable.

<u>ANALYSIS AND APPLICABLE STANDARDS</u>

Pursuant to ORS 759.030(3) and OAR 860-032-0025(1), the Commission *shall*, upon the petition of a telecommunications utility, exempt from regulation Qwest's services if price and service competition exists. Further, pursuant to ORS 759.030(2) and OAR 860-032-0025(2), upon a petition from any interested party or person, including a telecommunications utility like Qwest, the Commission *may* exempt from regulation Qwest's services if one of the three following conditions are met: (1) price and service competition exist; (2) the service is subject to competition; or (3) the public interest no longer requires full regulation of the service.

[2] Qwest's election of price cap regulation under ORS 759.405 et seq. does not limit its ability to seek deregulation of telecommunications services under ORS 759.030. ORS 759.410(7).

Under either of the two approaches described in the paragraph above, ORS 759.030(4) and OAR 860-032-0025(3) set forth the factors the Commission must consider in deciding whether there exists price and/or service competition for Qwest's switched business services, or whether these services are subject to competition, or whether the public interest no longer requires full regulation of such services. These factors are as follows:

1. the extent to which the services are available from alternative providers in the relevant market;

2. the extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;

3. existing economic or regulatory barriers to entry; and

4. any other factors deemed relevant by the Commission.

As described below, regardless whether analyzed under ORS 759.030(3) and OAR 860-032-0025(1), or under ORS 759.030(2) and OAR 860-032-0025(2), Qwest's switched business services are subject to competition from alternative providers, and these alternative providers provide functionally equivalent or substitutable services at comparable rates, terms and conditions. In addition, Qwest shows that there are no economic or regulatory barriers, and that the public interest no longer requires full regulation of Qwest's switched business services. As such, Qwest meets the requirements of ORS 759.030 and OAR 860-032-0025.

ARGUMENT

I. There is price and service competition for Qwest's switched business services, as required by ORS 759.030 and OAR 860-032-0025

A. There is service competition for Qwest's switched business services

As noted, ORS 759.030 and OAR 860-032-0025 provide for exemption from regulation when one can demonstrate that a telecommunications service is subject to competition, or that there exists price and service competition. For the reasons set forth below, and more fully in discussing the statutory and administrative factors required to show price and service competition or that services are subject to competition, Qwest's switched business services are subject to price and service competition and/or are subject to competition.

1. Description and summary of alternative providers' services

As demonstrated in more detail in section II, *infra*, there are at least **192** telecommunications providers certified to provide local service (both wireline and wireless) to large and small business customers in Oregon today, based on Qwest's own research and the Commission's website. These competitors include large telecommunications carriers, such as AT&T, WorldCom (MCI), Sprint and SBC, as well as smaller and medium-sized carriers, such as Integra, ELI, XO and Allegiance (soon expected to be part of XO),[3] Oregon Telecom, Rio, Eschelon, Time Warner, Pac-West, McLeod, and Advanced TelCom Group. These business providers also include prominent wireless carriers like Cingular, Verizon Wireless, Sprint PCS, T-Mobile, Nextel and U.S. Cellular, as well as smaller ones like Edge Wireless, Cricket (in Eugene and Salem), Litchfield County Cellular (dba Ramcell) (in Grants Pass and Roseburg) and RCC Holdings.[4] These business providers also include Voice over Internet Protocol (VoIP) and other IP-enabled services, such as Vonage, pulver.com, Packet8, Broadvoice and Zipglobal.

[3] These two entities are currently separate CLECs, but are working through the regulatory and legal process to complete XO's purchase of the assets of Allegiance.

[4] Both RCC and U.S. Cellular have sought Eligible Telecommunications Carrier (ETC) status throughout the state, including in rural areas. See dockets UM 1083, UM 1084. Both of these wireless carriers have

This is only part of the story, however. Many competitors have placed fiber facilities that allow them to serve customers directly, thus completely bypassing Qwest's network. (See e.g., Confidential Exhibit C (map of competitors' fiber facilities in the Portland/Vancouver MSA).) These fiber routes demonstrate that several of Qwest's competitors can offer high-bandwidth access to their own switches, and the switches of Qwest's competitors, thus completely bypassing Qwest's network. VoIP and IP-enabled service providers (those that provide true IP-enabled services, as opposed to those that still use the public switched telephone network for their "VoIP" calls) also do not use Qwest's public switched network to provide unregulated services to Oregon business customers.[5]

Finally, in addition to bypass through means of owned or leased facilities, companies also avoid the Qwest switched network through the purchase of high-capacity private lines from Qwest and other providers. Competitors also use their own switching facilities to serve customers.[6] End users and providers may also utilize wireless and Internet facilities. To be completely accurate, services flowing through these facilities should be considered when

represented to the Commission that they actively serve customers throughout the state, both in rural and non-rural areas.

[5] For example, the Commission's Order No. 01-607, on July 26, 2001, granted AT&T Broadband's (now Comcast) application to provide telecommunications service in Oregon as a competitive provider. The Commission noted that, in addition to seeking to provide toll service in Qwest's Portland local exchange, as well as Verizon's exchanges, AT&T Broadband would also provide local exchange and intraexchange private line service as a facilities-based provider, a reseller, or through the purchase of unbundled network elements. See Order No. 01-607, pp. 1-2. In ruling on AT&T Broadband's application, the Commission found that "the incumbent telecommunications utilities Qwest and Verizon provide the same or similar local exchange services in the local service area requested by Applicant. . . . . Subscribers to Applicant's services can buy comparable services at comparable rates from other vendors. Economic and regulatory barriers to entry are relatively low." *Id*., pp. 4-5. See also Order No. 00-257, entered May 16, 2000, granting SBC's application for a certificate of authority to provide telecommunications services as a competitive provider.

[6] For example, late last Fall, during the TRO proceeding in docket UM 1100, the record showed, through the use of information in the Local Exchange Routing Guide (LERG), that a total number of 21 CLECs were using a total of 34 switches to serve Oregon customers in Qwest's service territory. Although CLEC switch information does not indicate any specific data about the number of customers that such CLECs may have, the number of CLEC-owned or operated switches is further evidence that CLECs are using their own facilities to compete, and it stands to reason they would not invest in their own switches unless they believed there was a competitive market for customers.

calculating market share. Unfortunately, because Qwest's competitors have in the past deemed these usage figures to be proprietary, these figures are unavailable to Qwest.[7] Accordingly, Qwest's switched business services market share data as depicted on Confidential Exhibit D can only be seen as a percentage of a larger total of the switched business services market in Oregon.

2. Available market share data shows there is service competition

In addition, although market share is also not a required factor in ORS 759.030 or OAR 860-032-0025, available market share data clearly shows there is service competition. For example, as of March 31, 2004, **40** CLECs were purchasing a total of **128,096** wholesale lines from Qwest used to provide business services in Oregon. These lines include 4,981 resold switched business lines, 59,903 unbundled loops,[8] and 63,212 UNE-P lines. As illustrated in the following table, CLECs are purchasing these services to provision retail business services to end users throughout all areas of Oregon.[9]

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[7] For example, in UX 22, UX 27 and UX 28, previous Qwest deregulation petitions, Qwest submitted data requests and served subpoenas to some of its competitors, and many of them objected to the requests and subpoenas and thus refused to provide information.

[8] Qwest has no means of identifying whether UNE loops are used by CLECs for residential or business purposes. However, CLEC residential services are predominantly provided through resale, UNE-Platform or through CLEC-owned facilities. For purposes of this petition, Qwest assumes 100% of UNE loops in service are being utilized by CLECs to provide switched business services.

[9] Qwest's intent in displaying data on a geographic basis is only to portray the prevalence of competition throughout all areas of the state. As noted in the following graph, Qwest used the geographic areas that the Commission uses for its annual report on regulation and competition in the telecom industry in Oregon, with the exception of Salem and Eugene, which are part of the Commission's Willamette Valley area designation, but which Qwest sets forth separately, since it has specific data for these two cities. Thus, although the Commission's annual report includes Salem and Eugene within the Willamette Valley, Qwest's data for the Willamette Valley does not include these cities. See Confidential Exhibit D for a more detailed breakdown of the wire centers in each area.

Table A [CONFIDENTIAL]:[10]

GEOGRAPHIC AREA	RESOLD BUSINESS LINES	BUSINESS UNBUNDLED LOOPS	BUSINESS UNE-P[11]	TOTAL CLEC RESALE, UNE LOOP, UNE-P BUSINESS LINES
Portland Metro	XXXX	XXXXX	XXXX X	XXXXX
Eugene	XXX	XXXX	XXXX	XXXXX
Salem	XXX	XXXX	XXXX	XXXXX
Willamette Valley	XXX	XXXX	XXXX	XXXXX
Central Oregon	XXX	XXXX	XXXX	XXXXX
Coastal Region	XXX	XXXX	XXXX	XXXXX
Eastern Oregon	XXX	XXXX	XXXX	XXXXX
Southwest Interior	XXX	XXXX	XXXX	XXXXX
TOTAL	**4,981**	**59,903**	**63,212**	**128,096**

A comparison of the CLEC purchased business lines as shown in Table A to Qwest's retail exchange lines provides an indicator of the *minimum CLEC market share*. Total market share would also include business services lines which CLECs provision over their own facilities, as well as telecommunication services provided to business subscribers through wireless and VoIP platforms. Because Qwest does not have access to CLEC data, Qwest's analysis estimates only the *minimum CLEC market share.* The following table identifies the minimum CLEC market share on a geographic and statewide basis:

[10] Qwest's petition includes several confidential charts and exhibits, including information confidential to CLECs, with a request the Commission treat this material as confidential, and subject to a protective order, which Qwest seeks concurrently with this petition. Although there is necessarily no protective order in place yet for this petition, Qwest respectfully requests the Commission treat this material confidentially as if there were already a protective order in place.

[11] Business UNE-P lines were derived from total UNE-P lines based by deducting white pages residential directory listings associated with CLEC UNE-P lines in service from total UNE-P lines in service.

Table B [CONFIDENTIAL]:

GEOGRAPHIC AREA	TOTAL CLEC RESALE, UNE LOOP, UNE-P BUSINESS LINES (Table A)	QWEST BUSINESS ACCESS LINES*	TOTAL ACCESS LINES IN DEFINED MARKET**	% CLEC *MINIMUM* MARKET SHARE	% QWEST *MAXIMUM* MARKET SHARE
	A	B	A+B=C	A/C	B/C
Portland Metro	XXXXX	XXXXXX	XXXXXX	XX%	XX%
Eugene	XXXXX	XXXXX	XXXXX	XX%	XX%
Salem	XXXXX	XXXXX	XXXXX	XX%	XX%
Willamette Valley	XXXX	XXXXX	XXXXX	XX%	XX%
Central Oregon	XXXXX	XXXXX	XXXXX	XX%	XX%
Coastal Region	XXXX	XXXX	XXXXX	XX%	XX%
Eastern Oregon	XXXX	XXXX	XXXXX	XX%	XX%
Southwest Interior	XXXXX	XXXXX	XXXXX	XX%	XX%
TOTAL	**128,096**	**272,397**	**400,493**	**32%**	**68%**

* Includes switched business exchange services listed in Attachment A; excludes payphone access lines, 911 services, and Qwest Official Company Services (QCS) lines used for internal Qwest business purposes.

** Defined Market includes CLEC resold, unbundled loop and UNE-P business lines, plus Qwest business access lines as defined above. (Does not include CLEC business access lines provisioned over CLEC provided facilities.)

On a statewide aggregate basis, the minimum market share for CLEC switched business services is **32%**. When viewed geographically, CLEC minimum market share ranges from **25% to 43%**. A display of the underlying data supporting the tables above is provided on Confidential Exhibit D.

An estimate of the impact on CLEC market share of customer lines served through CLEC-owned loop facilities can be made by examining the quantity of facilities-based CLEC white pages directory listings[12] in the Qwest listings database. On a regional 14-state basis, the proportion of Qwest retail business lines that are listed in the white pages is 35%. As of March 2004, there were a total of 31,728 facilities-based CLEC access lines listed in the white pages database in Oregon. Dividing that quantity by the percentage of Qwest retail business lines listed in the white pages yields an estimate of total facilities-based CLEC lines in service in

[12] Qwest routinely tracks, at the statewide level, the number of white pages listings associated with facilities-based and resold CLEC access lines. Listings associated with CLEC lines service through resale or the Unbundled Network Element-Platform (UNE-P) are tracked as "resale" listings. The remainder are tracked as "facilities-based" listings, and include CLEC lines served through stand-alone UNE loops and through CLEC-owned loops.

Oregon as of March 2004, as follows: 31,728 / .35 = 90,651. Using the total facilities-based CLEC lines estimate in lieu of CLEC unbundled loops in calculating CLEC market share in Oregon increases CLEC market share in Qwest's service territory in Oregon from 32% to 37%, as shown below:

Table C

	TOTAL CLEC RESALE, UNE-P, FACILITIES-BASED CLEC BUSINESS LINES	QWEST BUSINESS ACCESS LINES*	TOTAL ACCESS LINES IN DEFINED MARKET**	% CLEC *MINIMUM* MARKET SHARE	% QWEST *MAXIMUM* MARKET SHARE
	A	B	A+B=C	A/C	B/C
Total	**158,844**	**272,397**	**431,241**	**37%**	**63%**

Again, it is important to note that the CLEC "share" value above is understated since no effects of intermodal competition, such as from wireless services and Voice over Internet Protocol (VoIP), are factored into the equation.

Further, although growth in market share is also not a required factor to show price or service competition in ORS 759.030 or OAR 860-032-0025, the comparison below of year-end 2002 and March 2004 data demonstrates a significant overall positive growth trend in CLEC market share in Oregon. (Further detail may be found on Confidential Exhibit E.)

Table D

Service	12/31/02	3/31/04	% Change
Business UNE-P	31,423	63,212	101%
Business Resale	6,349	4,981	(22)%
Subtotal	37,772	68,193	81%
Unbundled Loops	51,923	59,903	15%
TOTAL	**89,695**	**128,096**	**43%**

A transition from resale to unbundled wholesale services is reflected in the 22% decrease in resold services, and in the 101% increase in UNE-P business services, and an increase of 15% in stand-alone unbundled loops. This trend is indicative of increased facilities based competition, which is confirmed by the data presented in the following table. Other data are also indicative of increased facilities-based competition:

Table E

Service	12/31/02	3/01/04	% Change
Interconnection Trunks[13]	109,302	121,648	11%
Exchanged Traffic*	815,253,560	895,248,243	10%

* Local and EAS minutes of use exchanged over interconnection trunks.

Qwest routinely tracks business access lines lost to competition, which is done through entry of a “competitive loss” indicator on the customer’s account when Qwest is informed that the customer is leaving Qwest for a competitor. However, in many instances, the customer does not inform Qwest as to the reason for disconnection of Qwest service, and thus this access line loss tracking process understates the actual number of lines lost to competition. With this caveat, the number of business lines Qwest has tracked as being lost to competitors in Oregon between February 2003 and March 2004[14] is nearly 36,000 in the following general business service categories: flat access, measured access, Centrex 21, analog private line, Centrex Plus, Digital Switched Service (DSS), ISDN, PBX trunks, Standby Line, UAS Trunks and Centrex Prime. As shown on Confidential Exhibit D, CLECs are now serving business customers in every Qwest wire center in Oregon.

Accordingly, it is abundantly clear there is service competition for switched business services in Oregon today such that the Commission should exempt such services from regulation.

[13] Interconnection trunks are used by facilities based CLECs to connect their local switch to Qwest’s switch for the purpose of exchanging local calling traffic between the CLEC’s end users and Qwest subscribers.

B. There is price competition for Qwest's switched business services

Additionally, there exists price competition in the Oregon switched business services market. Attached as Exhibit F is an analysis of the various switched business services offerings of Qwest and numerous alternative providers, including AT&T, MCI, Sprint, SBC, Integra, ELI, XO/Allegiance, Oregon Telecom, Rio, Eschelon, Time Warner, Pac-West, McLeod, and Advanced TelCom Group. Because competitive providers are not required to file tariffs as Qwest is, a comprehensive analysis of competitors' offerings is very difficult to compile. Nevertheless, through a variety of methods, Qwest has compiled a list of alternative switched business services price offerings in Oregon. However, these exhibits demonstrate only a part of a very competitive market.

For example, as shown on Exhibit J, at least 16 unaffiliated CLECs are now offering competitive alternatives to Qwest's basic flat rated business access line at prices ranging from $20.00 to $34.99 per month. Multiple CLECs are also offering other analog and digital switched business services, including such services as analog PBX trunks, digital PBX trunks, ISDN service, Frame Relay service, Asynchronous Transfer Mode (ATM) service, etc., at rates that are very competitive. CLECs offering analog and digital switched business services also provide features and ancillary products associated with the core analog and digital services that are alternatives to the range of the Qwest switched business services listed on Exhibit A.

Further, in several other states, Qwest has been granted deregulation or pricing flexibility for switched business services in recognition of the competitive environment in those states. In certain states, such as Nebraska, South Dakota and Washington, Qwest now has statewide flexibility to increase or reduce rates, and in others, such as Southern Idaho and Utah, Qwest has

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[14] The competitive loss product quantities shown do not reflect any lines lost to CLEC competition prior to

the flexibility to adjust business rates in a subset of Qwest exchanges in those states. Since competition is a good substitute for regulation in ensuring prices are appropriate, it is useful to consider how Qwest's switched business service rates have changed since the point in time at which Qwest was granted pricing flexibility in each state. Exhibit G shows the scope of pricing flexibility in these states, when the flexibility was granted, the Qwest flat business line rates prior to the grant of flexibility, and the current rate for the Qwest flat business line. In general, these rates have declined or have remained essentially unchanged. Clearly, competition is taking the place of regulation in these states in ensuring that switched business rates remain reasonable.

In short, it is abundantly clear there is price competition for switched business services in Oregon today such that the Commission should exempt such services from regulation. The switched business services market in Oregon is extremely competitive, is growing more competitive daily, and will continue to grow even more competitive in the future. Clearly, Qwest meets the requirements of ORS 759.030(2) through (4).

II. Qwest's switched business services are competitive under criteria in ORS 759.030(4) and OAR 860-032-0025(3)

In addition to the competition requirements in ORS 759.030, the Commission's rules specify four criteria to determine whether a service should be exempt from regulation. See OAR 860-320025(3). Qwest's switched business services meet each of these competitive criteria.

A. Switched business services are available from numerous alternative providers in the relevant market

February 2003.

According to its records, the Commission has certified more than 192 carriers to provide telecommunications services in Oregon as of June 3, 2004.[15] Attached as Confidential Exhibit H is a list of active business providers available to Oregon business customers today.

These companies range from large, international companies, such as AT&T, MCI (formerly WorldCom), Sprint and SBC, to small and medium-sized competitors like Portland-based Integra, Eugene-based Rio, Bend-based Unicom, Salem-based Oregon Telecom, Vancouver, Washington-based ELI, Eschelon, McLeod, XO/Allegiance, Time Warner, Pac-West, and Advanced TelCom Group. The number of interconnection agreements between Qwest and CLECs in Oregon is another indicator of the number of alternative providers. As of June 4, 2004, the Commission had approved 122 interconnection agreements for wireline, wireless and resale services between Qwest and a competitive provider.

Qwest's competitive evidence supporting this petition is substantially based on the quantities of wholesale services purchased by alternative providers to compete with Qwest's retail switched business services. A list of competitors that purchased unbundled loops, unbundled network element platforms (UNE-P), and resold business services may be found on Confidential Exhibit I.

With 192 registered CLECs in Oregon, 122 of which have interconnection agreements with Qwest, business customers have available alternative switched services throughout the state. The competitive nature of business services is shown by the evidence that Qwest has presented on Exhibits C, D, E, F, H, I and J, as well as a search of numerous CLEC websites for on-line price information and product offerings. A comparative sample of Qwest's tariffed switched business services and publicly-available CLEC business services is provided on Exhibit

[15] See Commission website, www.puc.state.or.us, visited on June 2, 2004.

J. These services, available from alternative providers, clearly demonstrate that Oregon business customers have available functionally equivalent alternatives.

Historically, ILECs such as Qwest have defined their market for services at the exchange or statewide level. CLEC markets are generally broadly defined statewide as evidenced by CLEC offerings of services throughout Oregon regardless of geographic location. Qwest believes that the market for business services should be appropriately defined as statewide. Qwest's analyses show that effective competition exists statewide, within exchanges, and within the key geographic areas that the Commission uses (i.e., Portland metro area, Willamette Valley (including Salem and Eugene), Central Oregon, Coast, Southwest Interior, and Eastern Oregon). (See Confidential Exhibits C (fiber map) and D (market share, by wire centers).)

B. The alternative providers' services are functionally equivalent to Qwest's

Alternative providers have a variety of methods available to offer services to business customers. They can build their own facilities, purchase unbundled network elements from Qwest and/or resell Qwest's retail business services. Qwest's analyses will focus on the ability of CLECs to provision services through unbundled network elements and resold services purchased from Qwest.

Qwest's switched business services are available to resellers at wholesale discounts ranging from 17% to about 22% from the retail rates for such services. The Commission established these discounts in various interconnection arbitrations and its generic wholesale discount investigation (docket UM 962).[16] By reselling Qwest's retail services, CLECs have the ability to reach every single business customer that Qwest now serves. When resellers state that

[16] See e.g., Order No. 02-281 (November 20, 2002), in docket UM 962.

their services are available "where facilities are available,"[17] they mean that their services are available *wherever Qwest facilities are available*.

Alternative providers can provision business services by combining Qwest's unbundled network elements (UNEs) (i.e., unbundled loops) with their own elements or those of a third party. CLECs may also provision retail business services solely from Qwest's wholesale services, utilizing UNE-P, which provides a complete retail service using Qwest's unbundled network elements. As with resale, using UNE-P, the alternative provider can reach every location to which Qwest has facilities. When CLECs utilizing UNE-P state that their services are available "where facilities are available," they mean that their services are available *wherever Qwest facilities are available*. Qwest's rates for UNEs have been established by the Commission in various cost dockets.[18] These rates are based on Qwest's costs and are independent of Qwest's retail rates.

Qwest's ordering procedures and installation and repair service intervals for UNEs and resale are documented in Qwest's SGAT and were reviewed by the Commission during Qwest's section 271 proceeding in docket UM 823. Although provisioning parity is not a requirement for exemption from regulation in Oregon, Qwest was recently required to demonstrate provisioning parity in conjunction with its 271 application. In that proceeding, the Commission found that Qwest had adopted all changes to the SGAT and its Qwest Performance Assurance Plan (QPAP) with respect to checklist item 2 (UNEs) the Commission required for its positive recommendation to the FCC.[19] Further, in its discussion about "public interest" factors, the Commission stated that

[17] Many reseller CLECs' websites make references similar to "service is available where facilities permit."

[18] See e.g., Order Nos. 98-444, 00-316, 03-209 in docket UT 138/139; Order Nos. 96-188, 96-283, 97-071 in UM 351; Order Nos. 97-145, 97-307, 02-603 in UM 773; and Order Nos. 96-284, 97-239, 97-405 in UM 844.

[19] Comments of the Public Utility Commission of Oregon to the Federal Communications Commission, *In the Matter of Application by Qwest Communications International, Inc., for Authorization to Provide In-Region, InterLATA Services in New Mexico, Oregon and South Dakota*, WC Docket No. 0311 (February 3, 2003), pp. 11-12.

to assure compliance with Act requirements after section 271 authority is granted, the Commission "considered numerous issues raised by intervening parties with respect to provisions in the QPAP and made findings and recommendations accordingly." Specifically, the Commission said:

> With the recommended modifications made by Qwest to a significant number of QPAP provisions, approval of the Qwest application [for 271 authority] was found to be in the public interest."[20]

Qwest has implemented OSS and change management processes for interconnection orders. UNEs, including unbundled loops and UNE-P, are readily available, and as evidenced by the data provided in this petition, competitors are purchasing them throughout the state.

Finally, in regard to UNE-P and recent FCC, D.C. Circuit Court and U. S. Supreme Court action taken regarding the FCC's Triennial Review Order, Qwest notes that there is uncertainty with respect to the availability of UNE-P as a service option. There is also uncertainty whether the FCC's delegation to state commissions for commission review processes to determine whether economic or operational impairment of competition would occur if the product is eliminated was lawful. See *U.S. Telecom Association v. FCC*, 359 F.3d 554 (D.C. Cir. 2004). Qwest, however, does not believe any such action in any way affects the validity of its petition. If it is ultimately determined impairment would occur if UNE-P is eliminated, UNE-P would continue to be offered. If it is ultimately determined there is no such impairment if UNE-P is discontinued, that determination proves that UNE-P is not required to sustain competition. However, it is important to note that Qwest has publicly announced its commitment to continue offering a replacement wholesale product form of UNE-P at market-based rates that will be attractive to CLECs not interested in immediately making capital investments in specific markets, but who are interested in providing local business service in those markets. In fact,

[20] *Id*., p. 16.

Qwest itself has recently announced a negotiated commercial agreement with MCI for a UNE-P alternative, and is continuing negotiations with any interested CLECs who desire to enter into commercial agreements in light of the D.C. Circuit's invalidation of the FCC's UNE-P rules.

C. <u>There are no regulatory or economic barriers for any of these services</u>

There are also no regulatory or economic barriers to entry into the switched business services markets, and thus no barriers impeding competition. Many of Qwest's competitors (e.g., AT&T, Verizon, WorldCom, Sprint) are some of the country's largest corporations, and others, although not as large, have been successful in the switched business services market in Oregon.

Further, these and other competitors have already laid down fiber facilities that allow them to offer switched business services, while also allowing them to bypass Qwest's network. (See Confidential Exhibit C.) There are simply no regulatory or economic barriers that have prevented – or that could prevent – the further growth of competition in these markets.

In short, by using Qwest's facilities, CLECs can enter the market with ease. As discussed above, the Commission has found Qwest's ordering procedures, installation and repair intervals to be in compliance with Qwest's wholesale obligations, and Qwest's wholesale rates have been approved by the Commission in cost dockets or are effective and subject to Commission review. Converting business customers from Qwest to a competitor utilizing Qwest's facilities is inexpensive and fast. The following examples illustrate the charges and timeframes for a CLEC to convert a Qwest retail POTS business customer to competitive CLEC service.[21]

<u>Qwest retail business customer converts to CLEC resold service</u>:

POTS Customer Transfer Charge (nonrecurring)

[21] These examples assume that the customer maintains service "as is" and the CLEC submits a mechanized LSR before Noon Mountain Time.

	Mechanized	Manual
First Line:	$0.71*	17.09*
Additional Line:	$0.14*	$2.85*
Conversion Completed:	Same business day	

*Rates shown in May 2004 SGAT, Exhibit A

Qwest retail business customer converts to CLEC UNE-P service

UNE-P POTS Conversion Charge (nonrecurring)

	Mechanized	Manual
First Line:	$0.71*	17.09*
Additional Line:	$0.14*	$2.85*
Conversion Completed:	Same business day	

*Rates shown in May 2004 SGAT, Exhibit A

Qwest retail business customer converts to CLEC facilities; CLEC purchases unbundled loop

Switched installation without testing (nonrecurring)

	Mechanized	Manual
First Loop	$10.75*	$47.75*
Additional Loops	$10.13*	$16.79*

Installation: Quick Loop (1-24 lines) - 3 business days Conversions As-Is, 3 days for Conversions as Specified (per SIG dated 06.01.04)- <http://www.qwest.com/wholesale/guides/sig/index.html>

*Rates shown in May 2004 SGAT, Exhibit A

Clearly, when competitors can switch Qwest's switched business customers located anywhere in the state to comparable business service for as little as $0.14 per line, and with same day service, competitive alternatives are available throughout Qwest's territory.

Finally, Qwest notes that CLECs are provisioning retail business switched services over Qwest's facilities in all Qwest exchanges. ORS 759.030(4) and OAR 860-032-0025(3) provide that competition means that the company's customers have "available" alternatives. Available alternatives do exist in all segments of these services, and because such alternatives can be implemented virtually instantaneously, they are price constraining to Qwest. As previously noted, as of March 2004, minimum CLEC business market share in Oregon is **32%**. CLECs can provide service today wherever Qwest provides service.

It is also important to note the availability to business customers of wireless services virtually throughout Qwest's service territory in Oregon. For many business customers, wireless services represent an alternative to traditional wireline telephone service - either as a complete replacement for wireline telephone service or as a substitute for a secondary line in a multi-line telephone system. With the advent of the FCC-mandated wireless number portability in November 2003, Qwest's wireline business customers now have the option of retaining their preexisting Qwest telephone numbers when opting to use wireless service in lieu of wireline service, which increases the attractiveness of wireless service as a functional substitute to Qwest's switched business services. Most wireless carriers in Oregon now use digital wireless technology, which has greatly improved the quality of wireless calls and enhanced the attractiveness of wireless service, and wireless carriers currently offer a full range of calling features that are functionally very similar to Qwest's calling features.

In addition, wireless plans are now priced very competitively with Qwest flat business rates in Oregon. On Exhibit K, a sampling of available plans from AT&T Wireless, Sprint PCS, T- Mobile, Verizon, Liberty Wireless and Nextel[22] are compared to Qwest flat and measured business line rates in the Portland, Eugene, Salem, Corvallis and Bend areas. Typically, the available wireless calling plans include a standard range of calling features, such as Caller ID, Voice Mail, Call Waiting, 3 Way Calling, etc., at no additional charge. When the rates for a comparable range of services are added to Qwest's business line rates, as shown on Exhibit K, it is noteworthy that the wireless plans are priced similarly to (and in some instances, substantially

[22] These wireless carriers were selected as a representative sample of Oregon wireless carriers for this illustrative comparison. This comparison does not reflect all wireless carriers serving Qwest service territory in Oregon.

lower than) Qwest's local business services. Clearly, wireless services represent yet another competitive alternative to Qwest's switched business services for Oregon businesses.

D. The public interest no longer requires full regulation of Qwest's switched business services in Oregon

As stated above, under ORS 759.030(2) and OAR 860-032-0025(2), one of the four alternative factors for deregulating a telecommunications service is that "the public interest no longer requires full regulation thereof." Thus, under these sections, Qwest does not even need to make such a showing for Qwest's switched business services if it shows that (1) price competition exists, or (2) service competition exists, or (3) Qwest or the Commission can demonstrate that these services are subject to competition. Further, Qwest also need not make such a showing under the alternative basis of deregulation under ORS 759.030(3) and OAR 860-032-0025(1), which requires deregulation if price and service competition exists for these services.[23] Nevertheless, although there is a question whether Qwest must make such a showing, Qwest's petition shows the public interest no longer requires full regulation of these services.

First, it is well-recognized that the primary roles of regulation should be (1) to protect consumers where providers clearly possess significant market power, (2) to facilitate change to a competitive environment in an efficient way, and (3) to turn these tasks over to the market and deregulate as competition unfolds. Given the federal Telecommunications Act of 1996, this Commission's pro-competitive policies and the current technological and market environment, regulation of these services, where competitive alternatives are present and increasing, is an

[23] However, the Commission, after notice and hearing, may determine that a service that was deregulated under this subsection should be reregulated if it determines that an essential finding on which the deregulation was based no longer prevails, and reregulation is necessary to protect the public interest. ORS 759.030(3)(b). Moreover, under both subsections (2) and (3) of ORS 759.030, the Commission may deem "other factors" to be relevant to its determination to deregulate a telecommunications service. ORS 759.030(4)(d).

unnecessary use of resources for both the Commission and Qwest. Thus, regulation should shift its focus to areas more likely to provide tangible benefits to consumers.

Further, this Commission has been charged by the Legislature with streamlining regulatory burdens on telecommunications services and advancing pricing flexibility for competitive services. Specifically, Section 2, Chapter 589, Oregon Laws 1999 (see note following ORS 759.030), requires the Commission to submit, on an annual basis, a report to the Governor and Legislative Assembly regarding a variety of issues, including:

> (1) The status of competition in the telecommunications industry;
>
> (2) Significant changes that have occurred in the telecommunications industry during the preceding 12 months;
>
> (3) Statutes that inhibit or discourage competition in and deregulation of the telecommunications industry;
>
> *(4) Specific actions taken by the commission to reduce the regulatory burden imposed on the telecommunications industry, including telecommunications utilities and competitive telecommunications providers*;
>
> *(5) Specific actions taken by the commission to maximize the opportunities for telecommunications utilities and competitive telecommunications providers to achieve pricing flexibility, including rate rebalancing, exemption from regulation and streamlined regulations*;
>
> (6) Specific actions taken by the commission to:
>
> (a) Minimize implicit sources of support; and
>
> (b) Maximize explicit sources of support that are specific, sufficient, competitively neutral and technologically neutral and that support telecommunications services for customers of telecommunications providers in high-cost locations; and
>
> (7) Statutes that should be enacted, amended or repealed to enhance and respond to the competitive telecommunications environment or promote the orderly deregulation of the telecommunications industry. [1999 c. 589 §2] (Emphasis added.)

Thus, it is clear from this statute that the Governor and Legislature hold an expectation that as competitive markets develop, the Commission's role is to remove undue regulation and facilitate market-based pricing. The market for switched business services in Oregon is an area where the Commission can make significant inroads to furthering that goal.

Third, the wide array of alternative switched business service providers currently actively competing in the Oregon market, readily available to all Oregon business customers, obviates the need for regulation of similar services provided by Qwest. In view of the highly competitive nature of the markets for these services in Oregon, competitive forces will ensure prices are at the correct level. Ultimately, in a competitive market unhindered by regulation, business customers will benefit through attractive pricing and other features that such providers will offer as they vie for customers in the competitive marketplace. If a provider prices inappropriately in the competitive Oregon markets for these services, that provider can expect to experience a resultant shift of business customers away from its service to an alternative provider. Further still, Qwest is forced by the competitive marketplace to correctly price its services in order to retain and/or increase market share or revenues.

Fourth, virtually every switched business services provider that competes with Qwest in Oregon is not regulated by the Commission. No one, however, has ever shown that the public interest requires full regulation of these competitors' services. Thus, there is no reason to believe that Qwest's services, which are similar, substitutable and functionally equivalent, continue to require full regulation.

Finally, deregulation will allow all providers to respond creatively and effectively in meeting the needs of Oregon business customers in a competitive environment. A level playing field will ensure that one company is not inappropriately disadvantaged over another.

In short, deregulation will likely mean that business customers will directly benefit with the attractive and competitive pricing plans, simpler rate structures, and more innovative services that will be generated through unfettered and aggressive competition. As the Commission has previously noted (in a Commission website consumer bulletin regarding Operator Services): *Full regulation would increase the costs of services and impede competition*." (Emphasis added.)[24]

Accordingly, although likely not required to be shown, Qwest's petition clearly shows that the public interest no longer requires full regulation of Qwest's switched business services. As such, Qwest respectfully submits that the Commission should grant Qwest's petition to exempt from regulation such services.

CONCLUSION

WHEREFORE, Qwest respectfully requests the Commission grant its petition to exempt its switched business telecommunications services from regulation in its entirety.

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[24] See www.puc.state.or.us/consumer/operators.htm, March 19, 2002.

TABLE OF EXHIBITS

Exhibit A	Oregon Business Service and Tariff Reference
Exhibit B	Qwest Tariff sections (for services in petition) and Index
Exhibit C (Confidential)	Competitive Fiber Overview (Map)- Portland/Vancouver MSA
Exhibit D (Confidential)	Oregon Switched Business Access Line Market Share (by Wire Center)
Exhibit E (Confidential)	Qwest Oregon Wholesale Quantities
Exhibit F	Sample of Oregon Facilities-based CLEC Offerings
Exhibit G	Qwest Business Flat Rate Summary
Exhibit H (Confidential)	Oregon Active CLECs (March 2004)
Exhibit I (Confidential)	Oregon CLECs Purchasing Unbundled Loops, UNE-P or Resold Business lines (March 2004)
Exhibit J	Sample Comparison of Qwest and CLEC Business Services and Pricing
Exhibit K	Sample of Oregon Wireless Calling Plan Prices Compared to Qwest Oregon Business Wireline Rates