

March 8, 2005

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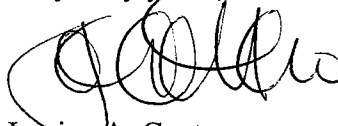
Filing Center
Oregon Public Utility Commission
550 Capitol Street NE #215
PO Box 2148
Salem, OR 97308-2148

**Re: UX 29 – JOINT COMMENTERS’ COMMENTS ON PROPOSED
COMPETITION SURVEY**

Dear Sir or Madam:

Enclosed for filing in the above-referenced docket is the original Joint Commenters’
Comments on Proposed Competition Survey. Please contact me with any questions.

Very truly yours,



Jessica A. Centeno

Enclosures

cc: UX 29 Service List (via U.S. Mail)
Gregory T. Diamond

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**
3 **UX 29**

4
5 In the Matter of the Petition of Qwest
6 Corporation to Exempt from Regulation
7 Qwest’s Business Basic Exchange Services

5 **JOINT COMMENTERS’ COMMENTS**
6 **ON PROPOSED COMPETITION**
7 **SURVEY**

8
9 AT&T Communications of the Pacific Northwest. Inc., Integra Telecom of Oregon, Inc.,
10 Oregon Telecom, Inc, Telecommunications Ratepayers Association for Cost-Based and
11 Equitable Rates, Time Warner Telecom of Oregon, LLC, NoaNet Oregon, Rio Communications,
12 Inc., and XO Oregon, Inc. (collectively, “Joint Commenters”) respectfully submit the following
13 comments on Qwest’s Proposed CLEC Survey.

14 Qwest has brought its Petition under ORS 759.030(2). That provision states as follows:

15 Upon petition by any interested party and following notice and
16 investigation, the commission *may* exempt in whole or in part from
17 regulation those telecommunications services for which the commission
18 finds that *price or service competition exists*, or that *such services can be*
19 *demonstrated by the petitioner or the commission to be subject to*
 competition, or that the public interest no longer requires full regulation
 thereof. The commission may attach reasonable conditions to such
 exemption and may amend or revoke any such order as provided in ORS
 756.568.

20 ORS 759.030(2) (emphasis added). Thus, the statutory provision directs the Commission to
21 determine the state of competition as it exists at the time of the investigation. If it finds that the
22 competition described by the statute exists, then it may, as opposed to must, exempt the relevant
23 service from regulation. Accordingly, in order to determine if deregulation is appropriate, the
24 Commission must look at the evidence of *current competition* and not speculate about some
25 future state of competition. Moreover, the Commission may examine the type and quality of
26

1 current competition. For example, the Commission may take into account whether current
2 competition is facilities-based or dependent on ILEC services.

3 That said, the statutory test should not be applied so blindly as to allow for an absurd
4 result. For instance, the Joint CLECs have correctly argued that given that UNE-P is *certain to*
5 *be eliminated*, the Commission should not consider current UNE-P competition in its analysis.
6 *See Joint Movants' Motion to Dismiss*, filed September 13, 2004.

7 For these reasons, the Joint Commenters object to Question 1 regarding UNE-P services
8 (including Attachment A), and Question 2(a) regarding QPP.

9 **Qwest Proposed Question 1: UNE-P**

10 Qwest's proposed Question 1 asks CLECs to report "the number of switched access lines
11 . . . you serve via UNE-Platform services purchased from Qwest." As discussed above, Qwest
12 will no longer be offering UNE-P after March 11, 2006. All parties agree that UNE-P will be
13 eliminated as a mode of competition as of that date. It would make no sense for the Commission
14 to rely on UNE-P as the basis for a decision to deregulate Qwest services. Therefore, there is no
15 reason for the Commission to require the CLECs to report the number of access lines providing
16 services via UNE-P.

17 Qwest argues that the Commission must be allowed to consider current UNE-P lines
18 because such lines may be converted into QPP lines. Qwest argues that "if that UNE-P data is
19 ignored a *potentially* large piece of CLEC line base will be ignored...." The problem with
20 Qwest's argument is that the UNE-P lines will only "potentially" be converted to QPP. Qwest is
21 suggesting they *will be*, but the fact is that they may not, and no one really knows. Therefore no
22 logical inference can be drawn from the fact that CLECs are currently competing with Qwest
23 using UNE-P lines—other than that they will not be competing using UNE-P lines much longer.

24 Qwest also argues that given that we are in a "transition period" between UNE-P and
25 QPP, the Commission must account for that fact in its analysis. In other words, Qwest is
26 suggesting that given that CLEC competition is in a transition period, the Commission is

1 somehow obligated to attempt to predict how the transition will evolve, and what percentage of
2 current UNE-P lines will convert to QPP. However, there is no basis for this argument in the
3 statute—which focuses on the state of current competition.

4 The Joint Commenters acknowledge that the state of CLEC competition is necessarily in
5 transition, given the removal of UNE-P. However, the transition is not necessarily one from
6 UNE-P to QPP. It may well be a transition of quite another sort, and the Commission should not
7 “guess” what will happen to the current UNE-P lines in the future. For these reasons, Question 1
8 should be eliminated from the CLEC survey.

9 **Question 2(a): Future Use of QPP**

10 In Question 2, Qwest proposes asking CLECs to report the number of switched access
11 lines “you serve using Qwest Platform Plus (“QPP”).” In Question 2(a) Qwest proposes that the
12 CLECs state whether they “accept requests from new business customers” using QPP.

13 The Joint Commenters appreciate that Qwest is asking the CLECs to respond to a
14 question regarding their current policies, as opposed to future policies. The problem with this
15 approach is that this information will tell the Commission nothing about current competition—
16 only the first part of the question regarding current use of QPP will do that. Instead, 2a will
17 invite the Commission to speculate as to what additional lines the CLECs may provide using
18 QPP in the future. As discussed above, this speculation should not be admissible in this
19 proceeding. Therefore the CLECs should not be required to provide this information.

20 Respectfully submitted,

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CERTIFICATE OF SERVICE
UX 29

I hereby certify that a true and correct copy of **JOINT COMMENTERS' COMMENTS ON PROPOSED COMPETITION SURVEY** was served via U.S. Mail on the following parties on March 08, 2005:

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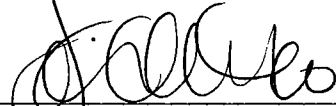
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