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September 9, 2005

By Federal Express

Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol St NE #215
Salem OR 97301

Re: Docket UX 29

Enclosed for filing in the above-referenced docket, please find the original and one copy of:

(1) Response Testimony of Rex Knowles on Behalf of XO Communications Services, Inc., Time Warner Telecom of Oregon, LLC, and Integra Telecom of Oregon, Inc.; and

(2) Certificate of Service.

If you have any questions regarding this filing, please give me a call. Thank you for your assistance.

Sincerely yours,

Davis Wright Tremaine LLP

Melissa K. Geraghty

Melissa K. Geraghty
Assistant to Gregory J. Kopta

Enclosures
cc: Service List

SEA 1689427v1 38936-1119
Seattle

Exhibit XO/1

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

In the Matter of the Petition of	)	
Qwest Corporation to Exempt	)	**DOCKET NO. UX 29**
From Regulation Qwest's	)	
Switched Business Services	)	

RESPONSE TESTIMONY

OF

REX KNOWLES

On Behalf of

XO Communications Services, Inc.,

Time Warner Telecom of Oregon, LLC, and

Integra Telecom of Oregon, Inc.

September 9, 2005

Q. PLEASE STATE YOUR NAME, EMPLOYER, AND BUSINESS ADDRESS.

A. My name is Rex Knowles. I am a Regional Vice President of Regulatory and External Affairs for XO Communications, Inc., 111 East Broadway, Suite 1000, Salt Lake City, Utah 84111.

Q. PLEASE IDENTIFY AND DESCRIBE THE PARTIES ON WHOSE BEHALF YOU ARE TESTIFYING.

A. I am testifying on behalf of XO Communications Services, Inc. ("XO"), a competitive local exchange company ("CLEC") that provides facilities-based local and long distance telecommunications services in Oregon in competition with Qwest Corporation ("Qwest"). With respect to facts that are not specific to XO, I am also testifying on behalf of Time Warner Telecom of Oregon, LLC ("TWTC"), and Integra Telecom of Oregon, Inc. ("Integra"), both of which are also facilities-based CLECs that compete with Qwest in Oregon. I refer to the companies collectively as "Joint CLECs."

Q. WHAT ARE YOUR RESPONSIBILITIES?

A. I am responsible for all regulatory, legislative, municipal, and incumbent local exchange carrier ("ILEC") initiatives on behalf of XO and other affiliates in several western states, including Oregon.

Q. WHAT IS YOUR BUSINESS AND EDUCATION BACKGROUND?

A. I graduated from Portland State University in Portland, Oregon, with a degree in Business Administration/Finance Law in 1989. I was employed by United Telephone of the Northwest from 1989 to 1993 as a regulatory staff assistant and product manager responsible for incremental cost studies and creation and implementation of extended area service ("EAS") and 911. From 1993 to 1996, I was employed by Central Telephone of Nevada as manager of revenue planning and research and was responsible for supervising cost study preparation and developing and implementing regulatory reform, including opening the local exchange market to competition and alternative forms of regulation for ILECs. I joined the XO organization in the Spring of 1996.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN OTHER REGULATORY PROCEEDINGS?

A. I have not previously testified before this Commission, but I have testified on a variety of telecommunications regulatory issues before several state commissions, including the Arizona Corporation Commission, the Colorado Public Utilities Commission, the Utah Public Service Commission, and the Washington Utilities and Transportation Commission.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to describe and explain the Joint CLECs' position on Qwest's request for deregulation of its switched business services in Oregon. The Joint CLECs generally do not take a position on the regulatory treatment for Qwest's retail services, but they maintain that neutrality only so long as they have access to necessary Qwest wholesale facilities, particularly high capacity loops and interoffice transport, at reasonable rates, terms, and conditions. Implementation of the Federal Communications Commission's ("FCC's") Triennial Review Remand Order ("TRRO") and recent merger activity, threatens to hamper such access significantly. Accordingly, the Joint CLECs recommend that the Commission either deny Qwest's Petition, or condition any grant of that Petition, in whole or in part, on Qwest providing wholesale intrastate special access or private line ("Special Access") facilities at cost-based rates comparable to the unbundled network element ("UNE") rates the Commission has established.

Q. HOW DOES XO PROVISION LOCAL EXCHANGE SERVICE TO ITS CUSTOMERS IN OREGON?

A. XO has installed a switch and constructed its own fiber optic network in Oregon, primarily in the greater Portland area. XO, however, can only serve a fraction of its customers using exclusively its own facilities. XO relies on obtaining facilities from Qwest to be able to offer service to medium and large businesses throughout XO's network footprint. I understand the same is true for TWTC and Integra.

Q. WHY DO CLECS RELY ON QWEST FACILITIES TO PROVIDE COMPETING LOCAL SERVICE?

A. There are at least two reasons. First, no company has the resources to duplicate the network that Qwest has constructed over dozens of years as a monopoly provider enjoying a virtually guaranteed rate of return. There is, and likely always will be, a very large number of customer locations to which Qwest alone has constructed facilities. CLECs generally will not build facilities into a particular building unless they can expect sufficient revenues from providing service to customers in that building to justify the costs of such construction. Where economic constraints preclude CLECs from constructing their own facilities to particular buildings, CLECs must lease Qwest facilities to serve customers in those locations.

Second, building access restrictions constrain CLECs' ability to construct the facilities necessary to connect customer locations to their networks. Qwest has access to virtually every building, if not every building, within its local exchange service territory, and my understanding is that Qwest is not required to compensate the building owner for such access. CLECs do not enjoy that same luxury. Many building owners deny CLECs access to their buildings or make such access uneconomic by imposing high fees and onerous conditions. Again, CLECs cannot offer services to customers in those locations without leasing Qwest facilities.

Q. HOW DOES XO OBTAIN FACILITIES FROM QWEST?

A. XO obtains DS1 and DS3 circuits from Qwest either as UNEs or Special Access services. Most of these circuits are "last mile" facilities, *i.e.*, are between a Qwest central office and a customer location, although XO also obtains high capacity and dark fiber dedicated transport between Qwest central offices. XO prefers to obtain the facilities it needs from Qwest as UNEs, to the extent that UNEs are available.

Q. WHY?

A. Two reasons, both of which involve the rates for Special Access services. First, Qwest's Special Access pricing vastly exceeds the costs that the Commission previously has determined that Qwest incurs to provide high capacity circuits. For example, Qwest's current cost-based DS1 unbundled loop rate in Oregon is \$87.37, approximately half of Qwest's current interstate special access line rate of \$165 in the highest density zone.

The other problem with Qwest's Special Access service pricing is that Qwest has a single rate for all customers. Qwest charges competitors the same prices for Special Access services that Qwest charges to its end user customers. A CLEC obviously is limited in its ability to serve customers using Qwest's Special Access circuits when the CLEC's costs to obtain the circuits to provide a competing service (without considering a CLEC's other costs) are the same or comparable to Qwest's retail rate, even after considering any applicable discounts.

Q. ARE HIGH CAPACITY UNES AND SPECIAL ACCESS SERVICES EQUALLY AVAILABLE?

A. No, they are not. While DS1 and DS3 Special Access services are generally available throughout Qwest's service territory, the TRRO significantly limits the high capacity and dark fiber loops and dedicated transport circuits that CLECs can obtain from Qwest. As of March 12, 2006, Qwest will no longer be required to provide DS1 loops, for example, in the area served by a wire center that serves 60,000 or more business lines and in which there are at least four fiber-based collocators. Even where Qwest must continue to provide these loops, a CLEC may not obtain more than 10 DS1 loops and 1 DS3 loop to any one particular building. Dark fiber loops will no longer be available at all after September 11, 2006.

Q. WHAT WILL BE THE IMPACT FROM THE DECREASED AVAILABILITY OF HIGH CAPACITY AND DARK FIBER UNES IN OREGON?

A. A substantial number of high capacity UNEs that Qwest currently provides today in Oregon will be discontinued in less than six months. Indeed, XO is no longer ordering new high capacity UNEs from Qwest where Qwest has indicated such UNEs will be discontinued. These UNEs will need to be disconnected or converted to Special Access services at significantly higher prices. The amount of "UNE-L" – the lines CLECs serve using their own switching and Qwest loops – in the Staff Report and in Mr. Brigham's testimony thus should be considered overstated for the wire centers in which Qwest will be discontinuing a significant number of high capacity UNEs.

Q. AREN'T THESE UNES BEING DISCONTINUED IN AREAS WHERE CLECS ARE NOT IMPAIRED WITHOUT ACCESS TO THEM?

A. That was the FCC's conclusion, but it is not necessarily true as a practical matter. The FCC assumes that if a wire center is big enough and has enough collocated carriers with fiber facilities, competitors must have deployed sufficient facilities to eliminate the need for ILEC high capacity UNEs. CLECs, however, collocate in Qwest central offices, in large part, to be able to access Qwest loop and transport circuits, not because they have no need of Qwest facilities. The number of collocators or the size of the wire center thus is a poor indicator of the level of competition or the extent to which CLECs continue to need to obtain facilities from Qwest. Indeed, the FCC used the same type of criteria to give Qwest pricing flexibility for its interstate Special Access services. Rather than lower its prices in response to the existence of alleged competition, Qwest has *raised* its Special Access rates *three* times in the last three years. The existence of fiber-based collocators in large Qwest wire centers thus has provided no constraints on Qwest's Special Access service pricing.

The Commission should not expect any different results in Portland, where most of the UNEs Qwest will discontinue are located. According to Mr. Brigham's testimony, several competitors have constructed fiber optic networks in the greater Portland area, but significantly missing from his discussion is the extent to which buildings are connected to those networks. By way of analogy, the existence of a four-lane highway passing by a town does not mean the town's residents have access to it. Qwest's (and the FCC's) reasoning is based on the flawed assumption that it is simple and inexpensive to connect buildings to a CLEC's network. As I previously discussed, it is anything but simple or inexpensive, and CLECs have few, if any, alternatives to paying higher prices for Special Access services when UNEs are no longer available.

Q. DO OTHER CARRIERS PROVIDE A VIABLE ALTERNATIVE TO USING QWEST FACILITIES?

A. Only to a very limited degree. Other carriers – particularly AT&T and MCI – offer wholesale services in some areas, but those services generally provide transport, rather than "last mile," functionality. Again, no carrier or combination of carriers comes close to duplicating the extent to which Qwest has facilities into every building in its service territory. But even that limited option may be disappearing.

SBC is seeking to acquire AT&T, while Verizon has agreed to purchase MCI. If the FCC and state commissions approve those transactions, there is little reason to expect that AT&T or MCI – if they even survive as separate entities – will continue to maintain their existing wholesale service offerings, at least at prices that vary significantly from

SBC's and Verizon's excessive Special Access rates. Perhaps more ominously, the removal of AT&T and MCI as aggressive competitors would reduce or eliminate an important check on Qwest's Special Access pricing, resulting in even higher prices for the facilities on which XO and other CLECs depend to provide service to their customers.

Qwest's affiliate has been making this very point in state commission proceedings reviewing the SBC/AT&T and Verizon/MCI proposed mergers. The Qwest affiliate observes that AT&T and MCI apply pressure on ILEC Special Access pricing both directly and indirectly:

> First, AT&T and MCI exert pressure on [the ILEC's] pricing of special access where they have alternative facilities that allow a carrier to bypass [the ILEC's] facilities. . . . It is important to stress that this direct competitive pressure exists only where providers have alternative facilities in the required locations. AT&T and MCI typically have constructed the most extensive alternative facilities, which is why they are best-positioned as competitive alternatives.
>
> [Second,] AT&T and MCI are uniquely positioned to apply pressure on [the ILEC's] special access pricing by virtue of their high volumes of traffic and their ability to expand their existing facilities as an alternative to purchasing special access from [the ILEC]. . . . The unique pressure that AT&T and MCI bring to bear allows them to extract concessions from [the ILEC] when negotiating special access arrangements under [the ILEC's] tariff term plans. These concessions then become available to other carriers such a Qwest because these tariffed term plans are offerings of general applicability and are filed as part of [the ILEC's] general tariff offering. . . . If the AT&T and MCI term and pricing pressure vanishes, Qwest believes that the discounts currently available in these tariffed term plans also will disappear –

> perhaps not all at once, but certainly over time – because AT&T and MCI will not be there to drive these discounts.[1]

Qwest has already shown that without effective constraints, it will continue to increase its Special Access rates. The elimination of AT&T and MCI as viable competitors will reduce CLECs' already severely limited options for obtaining facilities and will afford Qwest yet another opportunity to take advantage of that situation to raise its prices for the only facilities that are available. The bottom line is that without access to Qwest facilities at cost-based rates, the Commission should have little confidence in the ability of facilities-based CLECs to constrain Qwest's retail pricing for business services.

Q. WHAT SHOULD THE COMMISSION DO IN THIS PROCEEDING?

A. The most obvious course the Commission could take would be to deny Qwest's Petition for failure to demonstrate that the marketplace, without Commission oversight, will ensure that Qwest's rates will be fair, just, and reasonable. A more constructive alternative, however, would be to take steps to foster a more competitive market. Accordingly, the Joint CLECs propose that the Commission condition any grant of the Petition on Qwest's agreement to establish wholesale intrastate Special Access rates at cost-based levels. Such action would help to ensure that CLECs have access to the high capacity facilities they need to be able to provide viable choices to consumers for

[1] *In re Joint Application of SBC Communications Inc. and AT&T Corporation for Consent and Approval of a Change in Control*, PUC of Ohio Case No. 05-269-TP-ACO, Testimony of Pam Stegora Axberg on Behalf of Qwest Communications Corporation (July 8, 2005) (a copy of which is attached as Exhibit XO/2).

business telecommunications services.

Q. DOES THE TRRO PRECLUDE SUCH COMMISSION ACTION?

A. I am not an attorney and do not offer a legal opinion, but based on my understanding it does not. The Commission regulates the intrastate services that Qwest provides in Oregon, including DS1 and DS3 Special Access services that existed long before passage of the Telecommunications Act of 1996. The Commission would not be creating any new unbundling obligation but simply would be establishing rates for services that have long been within subject to Commission authority. Indeed, accepting the Joint CLECs' proposal would permit the Commission to begin decreasing its increasingly shaky reliance on the FCC and Congress for the development of local exchange competition in Oregon. This Commission, rather than the federal government, can and should take the steps necessary to encourage local exchange competition in this state by establishing reasonable, cost-based rates for the high capacity circuits that facilities-based CLECs need to offer an effective alternative to Qwest's local exchange services.

Q. WHAT DO THE JOINT CLECS RECOMMEND?

A. The Joint CLECs recommend that the Commission either deny Qwest's Petition, or preferably condition any grant of the Petition on Qwest establishing wholesale prices for DS1 and DS3 Special Access services at levels comparable to those the Commission has established for DS1 and DS3 UNE loops and transport.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

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XO/2
Knowles/1

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of SBC Communications Inc. and AT&T Corporation for Consent and Approval of a Change in Control.	)	**Case No. 05-269-TP-ACO**

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TESTIMONY OF

PAM STEGORA AXBERG

ON BEHALF OF

QWEST COMMUNICATIONS CORPORATION

July 8, 2005

TABLE OF CONTENTS

I. INTRODUCTION

Q.1 PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH QWEST.

A.1 My name is Pam Stegora Axberg. I am the Senior Vice President for Wholesale Customer Services and Operations. My business address is 1801 California Street, Suite 2400, Denver, Colorado. In my current position, I am responsible for wholesale service order entry, service management, and billing and collections. My previous job responsibilities included leading a national and international network organization. In this capacity, I was responsible for, among other things, carrier management and access planning.

Q.2 WHAT IS YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE?

A.2 I have over 20 years of experience as a telecommunications engineer and manager. A more detailed description of my educational background and professional experience can be found in Exhibit PSA-2.

Q.3 HAVE YOU PREVIOUSLY APPEARED BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO?

A.3 No.

XO/2
Knowles/4

II. PURPOSE AND SUMMARY OF TESTIMONY

Q.4 WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A.4 My testimony is designed to provide the Commission with an understanding of Qwest Communications Corporation's ("Qwest's") business, the services it provides in Ohio, and how the provisioning of that service depends on the separate and independent existence of SBC, AT&T, and other providers such as Verizon Communications, Inc. ("Verizon"), and MCI Inc. ("MCI"). I address the numerous concerns Qwest has with the proposed merger and explain that the Commission should deny the merger or impose conditions to mitigate the harm to competition in Ohio that will result from the merger.

Q.5 PLEASE PROVIDE A SUMMARY OF YOUR TESTIMONY.

A.5 As I explain more fully below, Qwest is authorized to provide, and today offers, a number of telecommunications products and related services to customers throughout Ohio. In doing so, Qwest largely is dependent on the facilities of SBC to reach end user customers. Currently, AT&T (and MCI) are uniquely positioned in the telecommunications marketplace, and their independent presence in Ohio has a positive net effect on competition because of the pressure they are able to exert on SBC's rates, terms and conditions for various services, including special access services. The acquisition by SBC of AT&T (and by Verizon of MCI) will reduce – if not eliminate entirely – this competitive pressure, and, thus, adversely affect competition in the marketplace for telecommunications and related services in the state. For this reason, the proposed merger of SBC and AT&T should be denied as currently structured, and should not be approved pursuant to Ohio Revised Code Section 4905.402 unless and until SBC and AT&T agree: (1) to divest their overlapping facilities and customers in the state; (2) to offer, post-merger, interstate and intrastate special access, private line or its equivalent to other carriers at the lowest rates currently offered by either SBC or AT&T; (3) to not favor, post-merger, the acquired AT&T affiliate, any other affiliate, or Verizon/MCI with respect to the terms and conditions under which the post-merger entity provides special access services or any other services; (4) to offer competitors in Ohio any services and facilities that the post-merger entity purchases from other ILECs out-of-region, and at the same rates, terms and conditions that it obtains them from those other ILECs out-of-region; (5) to give existing SBC wholesale customers a "fresh look" right to terminate their contracts following the merger without any termination liability; and (6) to provide stand-alone DSL service on reasonable terms. The Commission also should, together with these conditions, establish specific reporting and enforcement mechanisms to ensure that the post-merger entity adheres to these conditions.

III. QWEST'S ROLE IN OHIO

Q.6 PLEASE BRIEFLY DESCRIBE QWEST'S PRESENCE IN OHIO.

A.6 Qwest is authorized to provide local and interexchange services in Ohio. Qwest has been operating in Ohio under various entity names since approximately 1985. Since that time, Qwest has expanded its service offerings in the state, so that today Qwest offers a number of products and services to customers throughout Ohio. A map, attached as Exhibit PSA-3, demonstrates some of Qwest's significant investment in fiber facilities in the state. In addition to what is shown on the map, Qwest has a collocation presence in **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** across Ohio.

Qwest also has built or acquired metropolitan fiber in several cities in the state in addition to the fiber shown on PSA-3.

To provide these services, Qwest, in addition to using its own network, purchases special access services (interoffice transport, high capacity loops, and other network services) from SBC and AT&T, as well as from Verizon, MCI and other CLECs. Different carriers call these special access services different things, but the concept is the same – they are the dedicated connections between Qwest POP locations and Qwest customers. Because Qwest also is an interexchange carrier, it also pays local exchange carriers, including SBC, switched access to originate and terminate long distance calls to Ohio residents and businesses.

Q.7 PLEASE DESCRIBE IN FURTHER DETAIL THE SERVICES QWEST PROVIDES TO ITS END USER CUSTOMERS IN OHIO.

A.7 Qwest offers voice and data services in Ohio and serves customers of all sizes, from residential consumers to large, enterprise and wholesale businesses. Qwest offers three general categories of services in Ohio: (1) long distance voice services; (2) advanced data services, and (3) Voice over Internet Protocol ("VoIP") services. I discuss each below.

(1) Long distance voice services: Qwest provides intraLATA, interLATA and international long distance services to Ohio consumers and businesses. These plans vary significantly to accommodate the different needs of Qwest's customers. A full list of

Qwest's long distance offerings can be found in Qwest's tariffs and Rates and Services Schedule.

(2) Advanced data services: A major emphasis for Qwest's Ohio operations is providing large businesses with advanced data applications and services. Qwest's data offerings include several types of services, including Asynchronous Transfer Mode ("ATM"), Frame Relay, domestic private line, Qwest Metro Private Line ("QMPL"), remote access, and web hosting (Dedicated Internet Access). These services are described further in Exhibit PSA-4.

(3) VoIP services: Qwest offers multiple distinct VoIP packages, plus additional premium features to Ohio businesses. Each of the packages can be tailored to the specific needs and desires of the Qwest customer.

Q.8 PLEASE EXPLAIN HOW QWEST SERVES ITS END USER CUSTOMERS IN OHIO.

A.8 Qwest serves Ohio customers using several different methods. For traditional retail long distance voice services, Qwest uses the simplest method, switched access. When purchasing switched access, Qwest pays a per-minute fee to the LEC to originate and terminate long-distance calls to and from the LEC's local subscribers to the Qwest long distance switch. For private line-type services, Qwest either purchases a dedicated service from the LEC, or uses a "combination" approach which mixes Qwest's own facilities, third party CLEC facilities, and/or LEC facilities to provide a dedicated connection from the customer premises to Qwest's network.

The combination employed to provide private line-type services depends on where the customer is located and the services the customer is purchasing. Diagram 1 below provides a pictorial representation of the various network components of a typical dedicated service and the ways in which Qwest serves its customers.

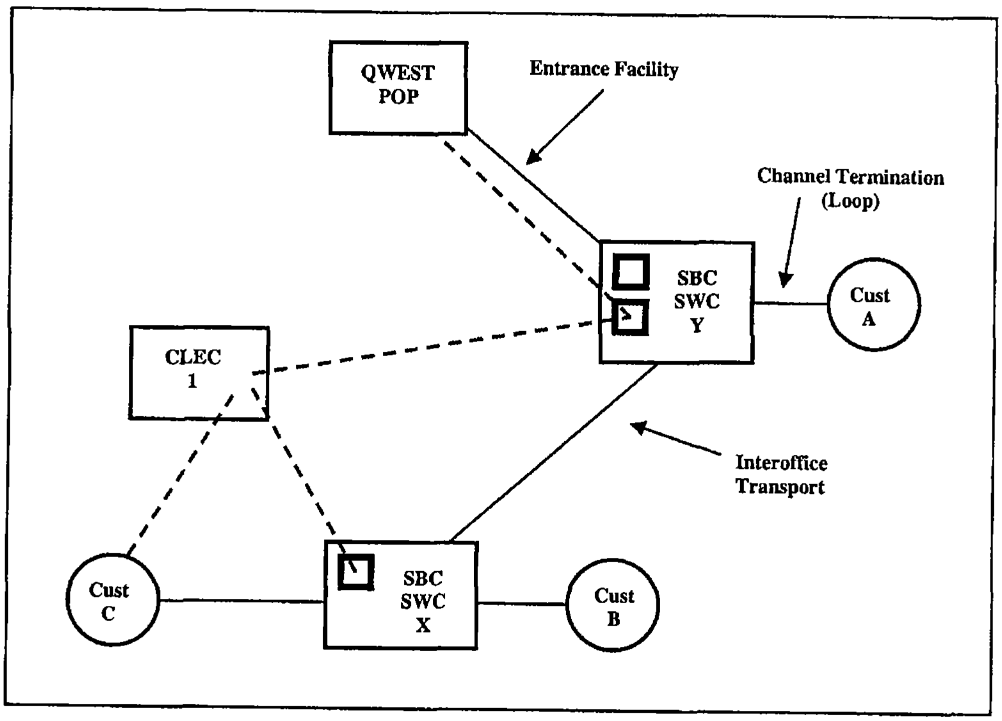

Diagram 1

Q.9 PLEASE DESCRIBE THE PROVISIONING ALTERNATIVES DEPICTED IN DIAGRAM 1.

A.9 With respect to the scenarios depicted in Diagram 1, the simplest configuration is where Qwest's customer is served out of the wire center that is directly connected to Qwest's

POP (QWEST POP). Starting with Customer A, Qwest purchases a special access Channel Termination, commonly referred to as a "loop," from SBC. The Channel Termination runs from Customer A's premises to the SBC Serving Wire Center (SBC SWC Y), where in this example Qwest is collocated. at the Serving Wire Center, the Channel Termination is connected to the Entrance Facility that runs to Qwest's POP. At Qwest's POP, Qwest connects the circuit to whatever facility is necessary provide the rest of the service to the customer.

With respect to Customer B, Qwest again purchases the special access Channel Termination, or a loop, from SBC. The Channel Termination connects the customer's premises to the SBC Serving Wire Center (SBC SWC X). Because in this example Qwest is not collocated at the SBC Serving Wire Center (SBC SWC X), Qwest also purchases Interoffice Transport (also called Channel Mileage or Interoffice Mileage) from SBC back to the intermediate Serving Wire Center where the circuit (Channel Termination combined with Interoffice Mileage) is connected to the Entrance Facility. At the Qwest POP, the circuit riding on the Entrance Facility is then connected to facilities that allow completion of the customer's service.

With respect to Customer C, Qwest could purchase the Channel Termination, or the loop, and Interoffice Transport from SBC, as it did for Customer B. However, in this case, CLEC 1 also has facilities in the area that may offer an alternative. In some cases, Qwest may be able to purchase either the Interoffice Transport or the loop, or both, from an alternative CLEC supplier such as AT&T or MCI. If available, the CLEC is usually a less expensive alternative to SBC. The loop portion of the serving arrangement depicted for Customer C, however, is not available in most cases. Qwest almost always requires SBC facilities, in whole or in part, to reach the customer.

Q.10 WHAT ARRANGEMENTS FOR SPECIAL ACCESS DOES QWEST CURRENTLY HAVE IN OHIO?

A.10 Qwest purchases the majority of its special access circuits either from SBC or Verizon, the two largest ILECs in Ohio, primarily from their FCC tariffs. Qwest purchases a total of **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**. SBC, like other ILECs, sells special access either through (1) month-to-month tariffs, (2) tariffed generic term plans or contracts, and/or (3) carrier-specific contracts. Qwest most often purchases special access through **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**. As a general matter, these plans or contracts enable Qwest to obtain discounts today that vary depending on the terms and products purchased.

Q.11 WHY DOES QWEST PURCHASE SUCH A LARGE AMOUNT OF ITS SPECIAL ACCESS FROM SBC RATHER THAN ALTERNATIVE PROVIDERS?

A.11 Simply put, in most instances Qwest has no alternative other than SBC. As I previously described, Qwest's long-haul facilities terminate at a POP in the various MSAs in which Qwest provides services. From there, Qwest must find a way to move customer traffic, inbound and outbound, between the Qwest POP and the numerous customer premises it needs to reach. Only SBC has nearly ubiquitous local facilities to the customer locations in its serving territory. Alternate local access providers do not have nearly the same coverage as SBC, particularly with respect to local loop facilities that provide "last mile" connectivity to the customer.

Qwest certainly considers alternatives where they are available to serve the location(s) that it needs to reach. For instance, where an alternative provider has built fiber facilities into a building – we typically refer to that as a "lit building" – Qwest considers using the alternative provider to access that building. But, critically, this lit building alternative exists only for a handful of the commercial buildings that providers like Qwest seek to serve. Most of the time, Qwest has no option but to use SBC for the last mile loops it needs to reach customers.

Q.12 ARE THERE OTHER TECHNOLOGICAL METHODS BY WHICH QWEST CAN REACH ITS CUSTOMERS OTHER THAN THE WIRELINE ACCESS QWEST LEASES FROM THESE CARRIERS?

A.12 Not currently. While it is true that cable and wireless companies are playing a greater competitive role in the retail market, I am not aware of any such competitors in Ohio or elsewhere that can or do provide wholesale high capacity access to telecommunications carriers. I understand that SBC and AT&T's expert witness, Debra Aron, confirmed that she, too, is not aware of any such cable or wireless carriers providing these services to carriers.[1] I also understand that SBC does not use wireless alternatives, assuming any

[1] Deposition of Debra Aron, p. 59-61. Copies of the relevant pages from Ms. Aron's testimony, as well as copies of relevant discovery responses and information, are attached hereto as Group Exhibit PSA-5.

exist, when SBC needs access outside its incumbent territory.[2] So while it is possible that alternate technologies are in development, it appears undisputed that none have been deployed on a wide-scale, wholesale basis, in Ohio or elsewhere.

IV. EFFECTS OF THE MERGER

Q.13 PLEASE EXPLAIN THE EFFECT THE MERGER WILL HAVE ON SBC'S SPECIAL ACCESS PRICING.

A.13 The removal of AT&T and MCI (as a result of the Verizon acquisition) as competitive alternatives will remove a critical check on SBC's special access pricing. Post-merger, Qwest and other competitive providers will have fewer alternatives to SBC's special access. The loss of this check on SBC's special access pricing will almost certainly lead to increases in SBC's special access rates.

Q.14 SBC IS ONLY ACQUIRING AT&T, NOT MCI, SO WHY DOES YOUR TESTIMONY FOCUS ON THE IMPACT THAT MCI HAS ON SBC PRICING?

A.14 This Commission needs to consider the SBC/AT&T merger in the context of the simultaneous Verizon/MCI merger. I am not aware that any meaningful competition occurred between SBC and Verizon prior to the announcement of these two mergers, or that any has occurred since that time. In fact, I am aware that as part of the SBC/Ameritech merger in Ohio (Case No. 98-1082-TP-AMT), SBC voluntarily agreed to provide local service to residential and business customers in the following four markets in which Ameritech did not operate as an ILEC: Cincinnati, Delaware-Cheshire Center,

[2] SBC response to Qwest Second Set of Data Requests, No. 4. See Group Exhibit PSA-5.

Hudson-Twinsburg-Northfield, and Lebanon-Mason. Since that time, SBC reports in its responses to discovery requests in this case that it has provided service to: **[BEGIN CONFIDENTIAL]**.[3] **[END CONFIDENTIAL]** SBC asserted in its discovery responses that its sole marketing and advertising of services in these territories has consisted of a listing for available service in the phone book.[4] In response to discovery questions, I understand that AT&T revealed **[BEGIN CONFIDENTIAL]**[5] **[END CONFIDENTIAL]**

If this behavior continues, it is likely that Qwest will see both AT&T's and MCI's presence and pricing pressure diminish significantly (for the same reasons) in SBC's and Verizon's respective serving territories in Ohio and elsewhere. I leave for others to debate whether this "détente," which seems to be present today, will persist after these mergers are completed. But this Commission needs to consider the impact on competition if, in fact, this occurs.

Q.15 WHY WOULD THE REMOVAL OF AT&T AND MCI FROM THE MARKET LIKELY LEAD TO INCREASES IN SBC'S SPECIAL ACCESS RATES?

A.15 The removal of AT&T and MCI from the market will likely lead to increases in SBC's special access rates because their removal will diminish, and in some cases possibly remove altogether, the pricing pressure they exert on SBC's special access rates. AT&T and MCI apply pressure on SBC's special access pricing in two ways. First, AT&T and

[3] Confidential SBC Response to Qwest Data Request 61. (See Group Exhibit PSA-5).
[4] SBC Response to Qwest Data Request 60. (See Group Exhibit PSA-5).
[5] Confidential AT&T Response to Qwest Data Request No. 16. (See Group Exhibit PSA-5).

MCI exert pressure on SBC's pricing of special access where they have alternative facilities that allow a carrier to bypass SBC's facilities. For example, Qwest has had some limited success in obtaining from SBC "carrier-specific contracts" – which provide more deeply discounted prices for special access – based on the availability of competitive bids. It is important to stress that this direct competitive pressure exists only where providers have alternative facilities in the required locations. AT&T and MCI typically have constructed the most extensive alternative facilities, which is why they are best-positioned as competitive alternatives.

Q.16 WHAT IS THE SECOND WAY IN WHICH AT&T AND MCI ASSERT PRESSURE ON SBC'S SPECIAL ACCESS PRICING?

A.16 AT&T and MCI are uniquely positioned to apply pressure on SBC's special access pricing by virtue of their high volumes of traffic and their ability to expand their existing facilities as an alternative to purchasing special access from SBC.[6] It certainly makes sense that SBC would respond to that perceived threat from AT&T. If, faced with too-high a price for special access from SBC, AT&T decides to construct additional bypass facilities, this would decrease SBC's special access revenue from AT&T. It also would place at risk special access revenues from other companies that might migrate to the newly-constructed AT&T facilities. Finally, it would place SBC retail revenue at risk, because, having constructed facilities into these additional buildings, AT&T could then compete more effectively for customers located in those buildings.

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[6] Based on SBC's discovery responses, Qwest understands that AT&T and MCI together are responsible for approximately **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**. See Confidential SBC Response to Qwest Data Request No. (See Group Ex. PSA-5).

The unique pressure that AT&T and MCI bring to bear allows them to extract concessions from SBC when negotiating special access arrangements under SBC's tariffed term plans. These concessions then become available to other carriers such as Qwest because these tariffed term plans are offerings of general applicability and are filed as part SBC's general tariff offering. They provide a discount on SBC's month-to-month tariff rates in exchange for long term and/or volume commitments. Qwest, for its part, typically has no role in establishing SBC's term contract tariff offerings in Ohio. Therefore, the concessions that AT&T and MCI negotiate from SBC in these term plans are critical to Qwest because we purchase the vast majority of our special access under them. If the AT&T and MCI term and pricing pressure vanishes, Qwest believes that the discounts currently available in these tariffed term plans also will disappear – perhaps not all at once, but certainly over time – because AT&T and MCI will not be there to drive these discounts.

Q.17 WHAT ARE YOUR CONCERNS WITH RESPECT TO SPECIAL ACCESS RATES IF THE MERGER IS APPROVED AS REQUESTED?

A.17 If the SBC/AT&T and Verizon/MCI mergers go forward, Qwest's special access alternatives – already few – will decrease even further, and our special access expenses would be highly likely to increase as well. SBC has an obvious incentive to increase the prices for special access. Post merger, any such increases in SBC's special access pricing will not impact AT&T, because AT&T's "payments" to SBC will be paper accounting transactions between affiliates. Conversely, Qwest and other competitors in the market will have to pay the post-merger entity additional actual dollars as a result of increased special access prices. As a result, it will be more difficult for providers such as Qwest to compete in the market against the combined company. SBC does not have to increase the standard tariff month-to-month rates to create an impact on carriers. It simply can reduce the level and availability of discounts under its term plans.

Qwest believes that this Commission cannot afford to adopt a "wait-and-see" stance with respect to this issue before acting. Waiting for SBC's special access prices to increase before taking corrective action will guarantee that competition will be harmed. As I discuss later in my testimony, the Commission either should reject this merger outright or, at minimum, require SBC and AT&T to accept certain conditions sufficient to protect competition and, in particular, to prevent SBC from increasing its special access rates.

Q.18 HOW DO YOU RESPOND TO TESTIMONY FROM SBC AND AT&T WITNESSES THAT THE MERGER WILL ACTUALLY ENHANCE COMPETITION?

A.18 I disagree. The merger certainly will not enhance competition in the wholesale market. As discussed above, the loss of AT&T (and MCI) as both a supplier and a carrier that acts as a key constraint on SBC's special access pricing will only harm competition for access. And I do not understand that SBC and AT&T witnesses have testified any differently. I understand that their expert witness, Debra Aron, was not retained to conduct, and so has not conducted, any analysis as to the merger's impact on the wholesale market.[7] I also understand that SBC's witness Ken Raley, who presented testimony on the general benefits of the proposed merger, similarly had no opinion on the merger's impact to the wholesale market.[8] I further understand that SBC's service quality witness, Michael Schaedler, testified that he, too, had not analyzed the merger's impact to interval standards for the wholesale special access market.[9] The absence of such testimony stands to reason. Elimination of AT&T (and MCI) clearly will not enhance competition in the wholesale special access market. And if competition is limited in the wholesale market, thereby driving up prices, it only stands to reason that customers in the retail market will have fewer options as existing carriers can no longer afford to compete profitably.

[7] Deposition testimony of Debra Aron, p. 57. See Gr. Ex. PSA-5.
[8] Deposition testimony of Ken Raley, pp. 52-53. See Gr. Ex. PSA-5.
[9] Deposition testimony of Michael Schaedler, pp. 50-51. See Gr. Ex. PSA-5.

Q.19 DOES QWEST HAVE OTHER COMPETITIVE CONCERNS REGARDING THE MERGER IN ADDITION TO SPECIAL ACCESS?

A.19 Yes. SBC has cited in its testimony the variety of forms of inter-modal competition it experiences, including telephony provided by cable television operators, wireless carriers, and VoIP providers. The Applicants claim that the merger will not harm competition because of the existence of VoIP as a substitute service. However, in light of SBC's current refusal to offer stand-alone DSL, it will be difficult for certain VoIP providers to compete with the post-merger SBC/AT&T entity where those VoIP providers' services require a telecommunications broadband connection to the Internet.

Q.20 WHAT IS STAND-ALONE DSL?

A.20 Stand-alone DSL is the provision of DSL (a form of high-speed Internet access) over a copper loop that runs from a central office or a remote DSLAM terminal to a customer premises without any analog voice service on the same loop – thus the "stand-alone" nature of the service. The DSL technology uses the high frequency portion of the local loop to provide high-speed Internet access. In a standard DSL offering, the retail customer purchases the traditional local voice service from the LEC. In subscribing to stand-alone DSL, the customer is not required to purchase the voice component of the service.

Q.21 HOW IS COMPETITION BY VOIP PROVIDERS AFFECTED BY THE MERGER?

A.21 A customer that wants to purchase VoIP first must have a broadband connection. Typically this will be DSL service or cable modem service. If stand-alone DSL is not offered, a LEC's DSL service can be purchased only in conjunction with the LEC's local voice product. In order for VoIP service provided by carriers other than SBC/AT&T to flourish as a form of inter-modal competition, there must be separation of the LEC broadband product from the local voice product. For this reason, and because of SBC's refusal to separate its DSL service from its local voice service, I recommend that the Commission not find the merger in the public interest unless SBC, in addition to other things, provides a stand-alone DSL service for those customers that wish to purchase broadband access without SBC's voice offering. Without accepting that obligation, SBC/AT&T's purported claim of inter-modal competition by VoIP providers is hollow.

V. RECOMMENDATIONS

Q.22 WHAT ARE QWEST'S RECOMMENDATIONS REGARDING THIS MERGER?

A.22 The Commission is appropriately focusing on the potential impact of this merger on consumers and businesses in Ohio. The merger raises many issues and problems given the remarkable circumstance of the largest ILEC in the state proposing to acquire its largest wholesale and retail competitor. Qwest will limit its recommendations here to certain key conditions that would reduce, but not eliminate, the harm to competition in Ohio arising from the consolidation of SBC and AT&T. Additional conditions may be appropriate as we learn more about the proposed SBC/AT&T combination in the course of this proceeding.

Q.23 WHAT SHOULD THIS COMMISSION REQUIRE OF THE APPLICANTS IN ORDER TO ADDRESS YOUR CONCERNS?

A.23 The Commission should deny the merger application as it currently is structured. If the Commission considers approving this merger, that approval should depend on a variety of conditions that protect both consumers and competitors from the negative impacts attributable to the proposed merger. Special care must be taken to ensure that these conditions are specific and enforceable. The enforcement must be structured in a way so that SBC and AT&T do not view the costs of failing to comply simply as a business expense.

It is essential that the Commission take action to ensure that the merger does not adversely impact competition. The Commission can do this by finding that merger does not meet the requirements of Ohio Revised Code Section 4905.402 unless and until the SBC and AT&T agree:

1. to divest the AT&T overlapping facilities and customers in the state;
2. that SBC will continue to offer intrastate and interstate special access, private line or its equivalent at the lowest rates currently offered by either SBC or AT&T;
3. that SBC will not favor AT&T or any other affiliate, or Verizon/MCI, with respect to the terms and conditions under which it provides special access or any other services, as compared to the terms and conditions under which it offers those services to other competitors;
4. that SBC will offer to competitors in Ohio any services or facilities that the post-merger entity purchases from other ILECs out-of-region, and at the same rates, terms and conditions that the post-merger entity obtains from those ILECs out-of-region;
5. that SBC will give its wholesale customers in Ohio a "fresh look" right to terminate their contracts with the Applicants without termination liability; and
6. that SBC will provide stand-alone DSL on reasonable terms.

The Commission also should, together with these requirements and conditions, establish enforcement protection to make certain that the Applicants comply with these (and any other) conditions. This would involve, at a minimum, compliance reporting done in sufficient detail and at a sufficient frequency so that the Commission can take corrective action if the post-merger entity is not abiding by the requirements.

Q.24 YOU MENTIONED THE DIVESTITURE OF OVERLAPPING ASSETS. IN QWEST'S PROPOSED MERGER WITH ALLEGIANCE, WHAT DID THE DEPARTMENT OF JUSTICE REQUIRE AS A CONDITION OF THAT MERGER?

A.24 Just eighteen months ago, Qwest's corporate parent, Qwest Communications International Inc. ("QCII"), proposed to acquire the assets of a small national CLEC, Allegiance Telecom. In many ways this was a "mini" version of SBC's acquisition of AT&T. In February 2004, the United States Department of Justice ("DOJ") was prepared to accept and file, if necessary, a consent decree providing that QCII's in-region subsidiary, Qwest Corporation ("QC"), divest substantially overlapping Allegiance facilities and customers within its region and provide the divested business with a number of ancillary services to facilitate divestiture. In that case, the bulk of Allegiance's operations were outside of QC's region, and the transaction was strategically aimed at strengthening QCII's ability to compete on a national basis with AT&T and others. Unfortunately, QCII was outbid at the bankruptcy court auction and was not able to close its deal to acquire Allegiance. For that reason the consent decree became moot.

Nevertheless, that experience is relevant to the Commission here. The consent decree followed six weeks of substantial discussions with the DOJ Antitrust Division regarding the overlap between Allegiance's and QC's in-region business. This was so despite the fact that Allegiance only served the business market in five MSAs in the QC 14-state region – five cities in which QC faced vigorous competition from AT&T, MCI and other CLECs. Post merger, the combined QCII/Allegiance still would have competed against its two biggest in-region competitors, AT&T and MCI (which, incidentally, is not the case with respect to the SBC/AT&T and Verizon/MCI mergers). Even so, the DOJ was prepared to require that QCII agree to divest substantially *all* Allegiance business operations in the QC region.

In this merger, SBC is buying its largest competitor throughout the state of Ohio. This Commission should follow the lead of the DOJ a year ago and condition its approval of the merger on the complete divestiture of AT&T "local" facilities that overlap with SBC's in-region business. This would ensure that the nationwide effects of the SBC/AT&T merger are not accompanied by severe concentration in the market for telecommunications and related services in this particular state. The Commission should require divestiture of assets including, but not limited to, fiber rings, collocation facilities, entrance facilities and building entrance loops.

In addition, the customers must be divested along with the facilities. A sale of empty assets would not address the competitive concerns. Transferring assets without some ability to produce a reasonable revenue stream to the purchaser of those assets would not address the negative impact the merger would have on local competition. There also must be assurances that the merged entity will not immediately seek to reacquire those customers. The Commission should mandate a period during which the post-merger SBC/AT&T entity may not market to the divested customers.

Q.25 IN ADDITION TO DIVESTITURES, YOU MENTIONED OTHER CONDITIONS THE COMMISSION SHOULD REQUIRE PRIOR TO APPROVING THE MERGER. WHAT ARE THOSE CONDITIONS?

A.25 The SBC/AT&T merger will allow SBC to eliminate one of its largest competitors. AT&T has been able to negotiate contracts for special access circuits, as well as other wholesale inputs, from a position of strength due to its high volume. AT&T also has served as a price-constraining force through its role as one of SBC's largest competitors. While neither AT&T nor MCI has a network scope that compares to that of SBC, they do have local networks that provide alternatives to the use of SBC's special access facilities. Both AT&T and MCI purchased competitive access providers (AT&T purchased TCG, and MCI purchased MFS) that created an alternative to the ILEC.

This Commission should withhold its approval until SBC agrees to offer special access services (or equivalent dedicated loop and transport services) in Ohio at the lowest rate currently available from either SBC or AT&T, and agrees to keep those prices in place for a fixed period of time. This would ensure stability for special access rates in the initial post-merger period. As a safeguard, the Commission also should withhold its approval until the merged SBC/AT&T agrees to offer special access and other services in Ohio at the same rates, terms and conditions that it receives when it purchases equivalent services outside the SBC region. This would allow the leverage exerted by the merged

SBC/AT&T in its out-of-region markets to serve as a proxy for the same or equivalent services in Ohio, where AT&T no longer would exert pressure to drive lower rates. Finally, the Commission should withhold its approval until SBC and Verizon agree to not enter into reciprocal arrangements to provide each other with more favorable access rates, whether based on "volume" or otherwise, that would facilitate two segregated telecom monopolies in the state.

Q.26 YOU HAVE ALSO SUGGESTED THAT THE COMMISSION PROVIDE CUSTOMERS WITH A "FRESH LOOK" OPPORTUNITY. PLEASE EXPLAIN.

A.26 This merger has profound implications for all SBC and AT&T customers, both retail and wholesale. As an important ancillary condition to requiring the divestiture of AT&T's overlapping facilities and customers, the Commission also should withhold its approval until SBC agrees to give its wholesale customers the option of terminating their existing contracts with it for service in Ohio without incurring termination penalties for a period of 12 months after the merger closes. Some customers may choose to not exercise this right. However, the company purchasing AT&T's divested facilities should have the opportunity to, in addition to serving AT&T's divested customers, maximize the utilization of those facilities by attracting wholesale customers currently served by SBC. This condition would have the added benefit of placing additional pressure on SBC to offer special access services under competitive rates, terms and conditions.[10]

[10] Based on SBC discovery responses, I understand that of the special access purchase plans in Ohio, **[Begin Confidential] [End Confidential]**. See confidential response to Qwest Data Request No. 39. (Group Ex. PSA-5).

Q.27 IN ADDITION TO THE CONDITIONS YOU HAVE MENTIONED, SHOULD THE COMMISSION REQUIRE SBC TO AGREE TO PROVIDE STAND-ALONE DSL PRIOR TO APPROVING THE MERGER?

A.27 Yes. In their Application, SBC and AT&T cite the technological changes in the telecommunications landscape as proof that the local network is irreversibly open to competition such as VOIP. While VoIP may serve as a substitute for traditional circuit-switched service, its substitutability is wholly dependent on the availability of a broadband connection. The Commission must ensure that VoIP providers can reach their competitive potential by requiring the post-merger company to agree to provide a stand-alone DSL product to consumers that is free of any use restrictions. If SBC continues to require customers to purchase its traditional wireline local voice product in order to also receive its broadband product, VoIP providers will be disadvantaged in the marketplace.

VoIP providers must have the ability to make their product a true substitute for wireline voice service. This means that they also should be guaranteed connectivity to the PSTN to route VoIP calls, be able to access the E-911 database/selective routers, and have the ability to port telephone numbers within the standard intervals for non-complex porting. Without these guarantees, SBC will be in a position to minimize the effectiveness of VoIP as a competitor in mass markets.

VI. CONCLUSION

Q.28 DOES THIS CONCLUDE YOUR TESTIMONY?

A.28 Yes, it does.

CERTIFICATE OF SERVICE
Docket UX 29

I hereby certify that on the date given below the original and one copy of (1) Response Testimony of Rex Knowles on Behalf of XO Communications Services, Inc., Time Warner Telecom of Oregon, LLC, and Integra Telecom of Oregon, Inc.; and (2) this Certificate of Service, in the above-referenced docket, were sent by Federal Express, overnight delivery, and by electronic filing to:

Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol St NE #215
Salem OR 97301
Email: PUC.FilingCenter@state.or.us

On the same date, a true and correct copy was sent by regular U.S. Mail, postage prepaid, and by email:

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DATED this 9th day of September, 2005.

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