Qwest Spirit of Service

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October 7, 2005

Frances Nichols Anglin
Oregon Public Utility Commission
550 Capitol St., NE
Suite 215
Salem, OR 97301

Re: UX-29

Dear Ms. Nichols Anglin:

Enclosed for filing in the above entitled matter please find an original and (5) copies of Qwest Corporation's Rebuttal Testimony of Robert H. Brigham and William Fitzsimmons, along with a certificate of service.

If you have any questions, please do not hesitate to give me a call.

Sincerely,

Carla

Carla M. Butler

CMB:
Enclosures

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DOCKET NO. UX 29

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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	**)**	

REBUTTAL TESTIMONY OF

ROBERT H. BRIGHAM

FOR

QWEST CORPORATION

October 7, 2005

PUBLIC VERSION

DIRECT TESTIMONY OF ROBERT H. BRIGHAM

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I. IDENTIFICATION OF WITNESS

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

A. My name is Robert H. Brigham. My business address is 1801 California Street, Denver, Colorado, and I am currently employed as a Staff Director in the Public Policy department. I am testifying on behalf of Qwest Corporation ("Qwest").

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes. On August 5, 2005, I filed direct testimony in this proceeding.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to the testimonies of Mr. Steve Chriss and Mr. David Sloan filed on behalf of the Commission Staff, the testimony of Dr. Richard Cabe filed on behalf of the Telecommunications Ratepayers Association for Cost-based and Equitable Rates ("TRACER"), the testimony of Mr. Doug Denney filed on behalf of Eschelon Telecom, and the testimony of Mr. Rex Knowles filed on behalf of XO Communications Services ("XO"), Time Warner Telecom ("TWTC") and Integra Telecom of Oregon ("Integra").

Staff proposes to deregulate 800 and ATM services statewide, and basic business services in all Portland rate centers. This limited deregulation is based on Staff's belief that there is not sufficient quantitative data to support deregulation for other services and geographic areas. My testimony provides a significant level of evidence that there is in fact competition throughout Oregon for all switched business services, and that the conditions of ORS 759.030(4) have been met.

The other parties in the case recommend that the Commission retain regulation of all Qwest switched business services at this time. The CLECs would like to keep in place the regulatory shackles that apply only to Qwest—in order to maintain their competitive advantage. There is no basis for their advocacy, and I will demonstrate that they significantly understate the level of competition in the Oregon telecommunications market today.

Finally, I will address Staff's apparent concerns that deregulation of Qwest's switched business services might somehow lead to retail price increases in rural areas. Qwest believes those concerns can be put to rest because, as I explain in more detail in my testimony, if the Commission approves Qwest's petition, Qwest would be willing to commit to "capping" any increase in the rural rates for basic business service (1FB) to the level of an increase that might occur in urban areas such as Portland.

III. ANALYSIS OF COMPETITION

A. The Commission Survey

Q. DOES STAFF AGREE THAT THE COMMISSION'S SURVEY RESULTS ARE INCOMPLETE?

A. Yes. Mr. Chriss acknowledges the CLEC line counts in the Staff's Survey Report could be low, in part because not all market participants responded to the survey. However, Mr. Chriss does not believe that this limits the usefulness of the data.[1]

Q. DO YOU HAVE ANY CONCERNS REGARDING THE COMPLETENESS OF THE SURVEY DATA?

A. In general, I believe the survey results are useful. However, it must be emphasized that since several CLECs (including one major CLEC) did not respond to the survey, it understates the level of competition in Oregon. Fortunately, as I mentioned in my direct testimony, Qwest has data from its billing records that accurately represent the wholesale services (UNE-L, UNE-P, QPP, resale) Qwest provides to CLECs, and these quantities are reflected in Confidential Exhibits Qwest/8 and Qwest/40. Qwest does not, however, have such data for CLEC lines provisioned solely over CLEC facilities, and Qwest must rely on the Commission Survey Report for this data. The missing survey responses no doubt lead to an understatement of the quantity of CLEC full facilities-based lines.

In addition, the survey results do not provide detail by rate center for many services, since lines for services in rate centers with less than four CLECs are not reported. While these lines are included in the totals for all services and rate centers (Attachment 3 of the Survey Report), Qwest is still unable to perform an analysis of full facilities-based lines for most services in most rate centers.

Q. DOES THE LACK OF SPECIFIC WIRE CENTER DATA IMPAIR QWEST'S ANALYSIS?

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[1] Staff/100, Chriss/13.

A. Yes. Mr. Chriss states that this lack of detail is not a problem "given that Qwest's definition of the relevant market for business services in their petition is all services in the entire state of Oregon."[2] However, while Qwest seeks exemption from regulation in "all exchanges in Qwest's ILEC service territory in Oregon,"[3] Qwest is *not* arguing that the entire state is one geographic market. In addition, Staff has proposed deregulation on a limited geographic scope (i.e., the deregulation of basic business services in the Portland rate centers). Without specific full facilities-based line data in other rate or wire centers, it is difficult for Qwest to show how the level of full facilities-based lines in other areas compares with Portland. Nonetheless, the lack of full facilities-based data in these other rate centers does not refute the clear evidence that CLECs are competing with Qwest in each of its Oregon rate centers.

B. The Relevant Market

Q. WHY IS THE "RELEVANT MARKET" IMPORTANT?

A. The "relevant market" is important because under the standards for exempting a service from deregulation under ORS 759.030(4), the Commission must consider "[t]he extent to which services are available from alternative providers in the *relevant market*."

2 Staff/100, Chriss/12.

3 See Petition, p. 1.

1. The Relevant Product Market

a. Substitutability and Defining the Relevant Market

Q. DO THE PARTIES AGREE THAT THE DEFINITION OF THE "RELEVANT MARKET" SHOULD CONSIDER WHETHER SERVICES REPRESENT SUBSTITUTES FOR ONE ANOTHER?

A. Yes. For example, Dr. Cabe relies on the market definition contained in the Horizontal Merger Guidelines ("HMG"), which represents a method for determining whether a service has close substitutes.[4] If a service does have close substitutes the relevant product market should include those substitutes. According to Mr. Chriss, "Relevant products are those directly comparable as well as reasonable substitutes that are available to a consumer."[5] Mr. Chriss acknowledges that a service does not have to represent a "perfect substitute" for another service in order to provide competition, and states that the analysis could "include (imperfect substitutes) in the definition of the relevant market but consider price as well as additional factors such as extra time, capital expenses, and location."[6]

While both Dr. Cabe and Staff agree that the definition of the "relevant" product market should be based on whether services represent substitutes for one another, they do not apply the substitutability criteria properly and define the "relevant market" in too narrow a fashion, as I demonstrate below.

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4 Dr. Cabe (TRACER/100, Cabe/18) argues that a market definition must consider "whether a hypothetical company that has succeeded in monopolizing a service, with no regulation, would find it profitable to impose at least a small price increase." If the answer is "no," it means that there are close substitutes to the service, and the market definition should be broadened, until the answer to the question is "yes."

5 Staff/100, Chriss/17.

6 Staff/100, Chriss/18-19.

Q. HOW DOES STAFF DEFINE THE RELEVANT MARKET IN TERMS OF PRODUCTS AND SERVICES?

A. Staff concludes that each service listed in the Commission's Survey of Competition—basic business service, analog PBX, digital PBX, 800/OutWATS, analog Centrex, ISDN-BRI, ISDN-PRI, Frame Relay and ATM—should each be treated as a separate market, and thus, a competitive analysis should be performed individually for each of these "product groups."

b. Extensive Quantitative Data is not Needed to Define the "Relevant Market"

Q. WHAT IS THE BASIS FOR STAFF'S PRODUCT MARKET DEFINITION?

A. As noted above, Staff acknowledges that the relevant product market should include services that serve as substitutes for each other. However, Mr. Chriss and Mr. Sloan argue that Qwest has not provided enough "quantitative" evidence that the petition services are substitutes. Mr. Chriss states that Qwest has only provided "anecdotal" evidence and "has not performed cross-price elasticity of demand studies for the petition services."[7] Mr. Chriss concludes that the various switched business services in Qwest's petition are not *proven* to be substitutable, and therefore the relevant market should be defined separately for each specific service. In similar fashion, Mr. Sloan opines that some services may be substitutes for other services, but there are "no study results from which to draw such a conclusion."[8] He continues that "The company's contention – that the business services for which it requests exemption are substitutable for each other – should be supported by results from a survey of its Oregon customers."[9]

7 Staff/100, Chriss/23.
8 Staff/200, Sloan/6.
9 Staff/200, Sloan/7.

In sum, Staff concludes that "quantitative" evidence—namely, elaborate and costly cross-price elasticity studies and a survey of Oregon customers—is required in order to determine if two services are substitutes, and whether the services can be considered to reside in the same "market." In the absence of these studies—no matter what other evidence is provided—Staff apparently cannot acknowledge that two services may even be imperfect substitutes, and be part of the same "market."

Q. DOES DR. CABE ALSO ARGUE THAT MORE QUANTITATIVE DATA IS NEEDED TO PROVE SUBSTITUTABILITY?

A. Yes. Dr. Cabe does not define the services that could comprise a "relevant market," he simply states that Qwest's definition is overly inclusive, because Qwest has not conducted the "conventional (HMG) market definition analysis for any of its petition services."[10] In essence, Dr. Cabe recommends the rejection of Qwest's market definition because Qwest has not conducted an extensive quantitative "study" based on the HMG.

Q. IS THE POSITION STAFF AND DR. CABE ADVOCATE REASONABLE?

A. No. Staff and Dr. Cabe argue that Qwest must perform extensive and costly quantitative studies to prove that services are substitutes, and that only then can services be deemed to reside in the same "relevant market." This is unreasonable, since exhaustive cross-elasticity studies and/or an expensive survey of Oregon customers are not necessary to determine that one service is an effective substitute for another service. For example, an exhaustive cross-price elasticity study or a formal survey of Oregon customers is not required to *prove* that customers

[10] TRACER/100, Cabe/19.

substitute digital PBX for analog PBX and ISDN-PRI for digital PBX, or that PBX and Centrex services are substitutes. Anyone involved in the telecommunications industry knows that PBX and Centrex are now, and always have been, seen as competitive substitutes by many customers, and these services have been marketed as such. It is not necessary or appropriate to spend large sums of time and money to perform quantitative studies and analyses to prove what is obvious from day-to-day experience, non-quantitative operational evidence, or other information.

Cross-price elasticity studies are difficult and expensive to perform, as they require empirical data regarding the change in quantity of Product A that would result from a change in the price of Product B. As Dr. Fitzsimmons explains, good data is often not available to perform these studies. Conducting cross elasticity studies is "far from an exact science," and "would not provide certainty about levels of substitution." Dr. Fitzsimmons also explains that cross-price elasticity studies are static studies that normally rely on historical data that may not reflect today's dynamic and changing marketplace.

Q. DOES QWEST, IN ITS NORMAL COURSE OF BUSINESS, PERFORM EXTENSIVE QUANTITATIVE CROSS-PRICE ELASTICITY STUDIES?

A. No. While Qwest personnel often review demand data to see the impact of price changes, etc., Qwest does not in its normal course of doing business perform unnecessary cross-elasticity studies. Neither Qwest—nor any other firm in a competitive market—would maintain elaborate "regulatory ready" cross-price elasticity studies for all of its products. In the era of monopoly telephone service and rate of return regulation, Qwest's predecessors were required by regulators to perform demand and price elasticity studies for rate case proceedings. The "demand analysis" group would perform studies to evaluate the change in demand that would result from a price change, so that the impact on the revenue requirement of the price changes could be determined. Of course, in this "rate case" world, the personnel performing these studies were included in the "rate base," and the high cost of performing these complicated quantitative studies was recovered in Qwest's predecessors' regulated rates. Today, the "rate case" world no longer exists and Qwest does not have a "demand analysis" group to perform "regulatory-ready" elasticity studies for all of its services, nor should it.

Q. SUBSEQUENT TO THE FILING OF HIS DIRECT TESTIMONY, HAS MR. CHRISS CONCEDED THAT A FORMAL CROSS-ELASTICITY STUDY IS NOT NECESSARY IN ORDER TO DEMONSTRATE THAT ONE SERVICE IS A SUBSTITUTE FOR ANOTHER SERVICE?

A. Yes. In response to Qwest data request no. 01-03, which is provided as Exhibit Qwest/26, Mr. Chriss acknowledges that a formal cross-elasticity study is not necessary to demonstrate the substitutability of one service for another, and admits that other information is "perhaps" relevant in determining the substitutability of services. When asked what data would be required to demonstrate that one service is a substitute for another service, Mr. Chriss simply replied that "Qwest should submit data that are sufficiently robust, in the opinion of decision-makers, to meet the burden in this docket." Although he repeatedly used the phrase "sufficiently robust" in response to Qwest data requests, Mr. Chriss did not define what he meant by that term, despite being asked to respond as to the level of data that Staff would consider sufficient.

Q. HAS QWEST PROVIDED EVIDENCE IN THIS PROCEEDING THAT MEETS THIS STANDARD?

A. Yes. The evidence provided in my direct and rebuttal testimonies provides a "robust" demonstration that switched business services represent substitutes for other switched business services, and that these services should be considered as part of the same "relevant" product market.

c. The Relevant Market Includes All Switched Business Services

Q. SHOULD THE COMMISSION CONSIDER ALL SWITCHED BUSINESS SERVICES TO BE PART OF THE SAME "RELEVANT MARKET"?

A. Yes. The "relevant" product market should be defined to include all switched business services, as defined in the Qwest Petition. As I will demonstrate below, there is significant overlap between various switched business services and service packages, and customers often substitute one switched business service for another. The lines between switched business service offerings are blurred, and various services, combinations of services and packages can be—and are—purchased to meet similar customer needs.

Business customers in Oregon do not view the market in terms of specific services; they view the market in terms of what solutions can meet their telecommunications needs. For example, a business with 200 employees in an office building would seek a service solution that would meet its needs for access to the network, and for various features and functionalities. The customer could meet very similar needs by purchasing an analog PBX (with analog PBX trunks), a digital PBX (with DSS trunks or ISDN-PRI circuits), by ordering a central-office based solution such as Centrex Prime,[11] or VoIP-based PBX service. These services are certainly not in

[11] Centrex Plus would also meet similar needs; however, as of September 1, 2004, this service has been grandfathered, and thus it not available to new customers.

different markets from the business customer's perspective, but they represent effective substitutes for each other. An extensive cross-price elasticity study or a formal customer survey is not needed to understand this. The customer will evaluate the costs and benefits of these service options, and will thereafter choose the best service match, based on the relative price, reliability, quality, feature availability and/or other criteria. As I explained in my direct testimony, and as Dr. Fitzsimmons explains in his rebuttal testimony, services do not need to be identical to serve as effective substitutes for each other. To argue that these services are in a "different market" is like arguing that satellite TV is not in the same market as cable TV, even though I as a consumer would view these services as close substitutes, and my purchase decision would be based on the relative value proposition offered by each option.

Q. IN ORDER FOR ALL SWITCHED BUSINESS SERVICES TO BE CONSIDERED AS PART OF ONE "RELEVANT MARKET," IS IT NECESSARY THAT *ALL* CUSTOMERS VIEW *ALL* SERVICES AS SUBSTITUTES FOR EACH OTHER?

A. No. As Dr. Fitzsimmons demonstrates, a market cannot be defined in such a narrow manner. In order for services to be substitutes, they do not need to be considered substitutes by all customers in the market.

Mr. Chriss argues that an effective substitute for a service must be "substitutable for customers of all sizes."[12] Thus, he would apparently argue that *all* customers—large and small—would have to view a service as an alternative in order for the service to be included in the same "relevant market." This restriction in the

[12] Staff/100, Chriss/23.

definition of a relevant market is not meaningful or appropriate. For example, a very small single-line customer is not likely to view a Centrex Prime system as a substitute for 1FB service. However, a somewhat larger business would in most cases view PBX and Centrex services as substitutes for 1FB lines. It is not appropriate to conclude that 1FB and PBX are not in the same "relevant market" simply because some small businesses would not view the services as substitutes. For many customers, these services are substitutes, and therefore, they should be included in the same relevant market.

In evaluating the substitutability of services, it is helpful to look at the services on a continuum, from those that serve small businesses to those that serve medium and large businesses. There is a significant level of overlap as to what services small, medium and large business customers can purchase to meet their needs, and virtually every business customer has several switched service alternatives. While every business service may not provide a practical substitute for every business customer, it is clear that every business customer does have competitive service alternatives—even if the customer limits its purchase to Qwest services. Of course, any of these customers might also choose service from a CLEC, or opt for a VoIP-based solution to meet their local exchange telecommunications needs.

The point is that each customer needing access to the local exchange network will choose among several service offerings from Qwest and its competitors, and will choose the appropriate option based on an evaluation of the value proposition offered by each service. The customer will also look at the relative benefits of a package or bundle of services, such as Qwest Choice Business, or a package provided by a competitor. The services may not represent "perfect substitutes," but they are effective substitutes nonetheless. In fact, Mr. Chriss admits that "imperfect" substitutes can provide a competitive alternative that could constrain prices. The issue is whether the services are good enough substitutes so that they are viewed to provide a reasonable alternative for at least a subset of customers. If there are enough customers that would respond to a price increase in one service (or a change in features and functionality) by migrating to the other service, the services are clearly effective substitutes.

d. Evidence that Switched Business Services are Substitutes for Each Other

Q. CAN YOU PROVIDE SOME EXAMPLES DEMONSTRATING THAT QWEST SWITCHED BUSINESS ARE SUBSTITUTABLE WITH OTHER QWEST SWITCHED BUSINESS SERVICES?

A. Yes. I will provide several examples demonstrating that there are multiple service alternatives for small, medium and large Qwest business customers. The data I will provide does not represent formal "cross-price elasticity" studies or formal "customer surveys," but nonetheless demonstrates that the entire switched business services market should be defined as one "relevant" product market.

Q. WHAT SERVICES CAN A SMALL BUSINESS UTILIZE TO MEET ITS LOCAL EXCHANGE TELEPHONE NEEDS?

A. A small business may opt to purchase one or several 1FBs, or could purchase Centrex 21, ISDN-BRI, PBX trunks or VoIP-based services to meet its local exchange needs.[13] Centrex 21—a recently grandfathered service—is geared towards businesses with two to fifty lines, is similar to basic 1FB service, but adds

[13] A small business customer may also opt for wireless services.

additional features and functionality.[14] For 1FB customers who wish to purchase a package of features, Centrex 21 has proven to be a very reasonable substitute for 1FB customers, especially those who purchase the Qwest Choice Business package, which combines a 1FB with features. In fact, a significant number of customers have migrated from 1FB to Centrex 21 over the past several years, as Centrex 21 lines increased from less than 10,000 in 1997 to more than 40,000 in 2000. Since that time, Centrex 21 lines have declined somewhat due to competition, but at a slower pace than the decline in 1FB lines. Responding to the rapidly changing market and customer needs, Qwest recently grandfathered Centrex 21 service and is now focusing on marketing service packages such as Qwest Choice Business to customers that would have previously purchased Centrex 21.

Q. COULD A SMALL BUSINESS ALSO PURCHASE ISDN-BRI AS A SUBSTITUTE FOR 1FB SERVICE?

A. Yes. An ISDN-BRI line is often purchased as an alternative to 1FB service, especially for a customer who may utilize a second 1FB line for data purposes. For example, a small business customer with two 1FB lines and data needs may decide to purchase an ISDN-BRI line, which includes two voice channels and one data channel (2B+D), to better meet his or her needs. These services are clearly not identical, but are substitutes nonetheless.

As noted in the Qwest Product Catalogue ("PCAT") for ISDN Single Line Service (included as Exhibit Qwest/27):[15] "Unlike standard phone lines, [ISDN-BRI] allows communications to travel simultaneously on a single line," and the service "replaces

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[14] As of April, 2005, Centrex 21 is classified as an obsolete service and is included in Section 109.1.17 of Tariff No. 29.

[15] See http://www.qwest.com/pcat/large_business/product/1,1016,42_4_2,00.html

multiple voice, fax, and modem lines supporting data, voice, video, audio and image applications." Thus, ISDN-BRI is marketed as a substitute for 1FB service. Customers will evaluate whether the benefits of ISDN justify the price, and will make a purchase decision based on the relative benefits of 1FB service versus ISDN-BRI service. It is wrong to suggest that ISDN-BRI is somehow in a different "market" than 1FB, simply because it is not an identical offering, or because a formal cross-price elasticity study or formal customer survey has not been performed to *prove* it is a substitute. If Qwest were to raise the price of 1FB relative to ISDN-BRI, there is little doubt that some customers would be incented to migrate to ISDN-BRI. Likewise, if the price of ISDN-BRI were to increase relative to the price of 1FB, some customers would no doubt migrate back to 1FB. These services are effective substitutes.

Q. DOES PBX SERVICE REPRESENT AN EFFECTIVE SUBSTITUTE FOR 1FB SERVICE?

A. For many customers, yes. While a small business customer who only needs one line would not likely view a PBX system as a substitute for 1FB service, a business customer with several 1FB lines would certainly view a PBX as a viable substitute for 1FB service. There are numerous customers over the past few years that have migrated between 1FB service, Centrex 21 and PBX service, indicating that for these customers, the services represent effective substitutes. The PCAT for PBX Analog Trunks is included as Exhibit Qwest/28.

Q. SHOULD ANALOG PBX, DIGITAL PBX, CENTREX AND ISDN-PRI BE DEFINED AS PART OF THE SAME "RELEVANT MARKET"?

A. Yes. It represents a basic misunderstanding of the telecommunications business to argue that analog PBX, digital PBX, Centrex and ISDN-PRI are not in the same "relevant market." It is well known that these services are ordered by all but the smallest businesses to provide similar, if not identical, functionality. In fact, there has been a migration from "old" technology to "new" technology, which is what one would expect in the local exchange market. Customers have migrated from analog PBX, to digital PBX, to ISDN-PRI, and from analog Centrex (e.g., Centrex Plus) to digital Centrex (e.g., Centrex Prime), as well as between Centrex and PBX.

Q. DOES DR. CABE ACCEPT THE LIKELIHOOD THAT THESE SERVICES ARE SUBSTITUTES FOR EACH OTHER?

A. Yes. Dr. Cabe admits that "Centrex service was designed to compete with the combination of a customer premise PBX and PBX trunks to the ILEC central office."[16] Dr. Cabe does not include ISDN-PRI within this group, seemingly arguing it is not a possible substitute for PBX or Centrex services. However, as I demonstrate below, ISDN-PRI *is* a clear substitute for PBX service.

Dr. Cabe also appears to argue that PBX trunks are different from Centrex and 1FB lines because they represent "trunks" that are concentrated. It is true that a PBX trunk includes concentration possibilities, while a Centrex line does not. However, there is no question that the combination of a PBX with trunks directly competes with Centrex from a customer needs perspective, even if it is provisioned in a different manner.

Q. PLEASE COMPARE CENTREX SERVICE WITH PBX SERVICE.

A. Competition between Centrex and PBX services has been robust for many years, as PBX equipment providers have marketed customer premise equipment-based

[16] TRACER/100, Cabe/20.

solutions to meet customer needs while carriers like Qwest have marketed central office-based solutions such as Centrex. These services clearly provide similar functionality (e.g., access, DID, intercom calling, features, etc.); the real difference is that Centrex features and functionalities are provided from the central office switch, while PBX features and functionalities are provided from the PBX—which is a small switch at the customer premise.

Qwest has always marketed Centrex as a substitute for PBX systems, and has focused on the fact that a Centrex system may be updated or upgraded from the central office, without the need to purchase new PBX equipment. I have included a description of the Qwest description of Centrex Plus from the Qwest PCAT as Exhibit Qwest/29. As noted in this description, "[Centrex Plus] service offers over 100 standard and optional features which makes Centrex Plus service comparable to PBX systems."[17]

Q. DO QWEST'S COMPETITORS ALSO POSITION PBX SYSTEMS AND CENTREX SERVICES AS SUBSTITUTES?

A. Yes. For example, consider the description of Centrex service contained on XO's website, which I have included as Exhibit Qwest/30. XO states that its Centrex offering "delivers PBX-like features with both internal and Public Switched Telephone Network (PSTN) access to individual desks." XO lists benefits such as "cost savings with our competitive pricing and also because you no longer need to support an internal PBX or Key System." XO also states that "unlike what happens when you purchase a PBX or Key System, XO Centrex can easily scale to grow as your business grows—locally, regionally and nationally—all without an additional

[17] See: http://pcat.qwest.com/pcat/productDetail.do?salesChannel=SmallBusiness&offerId=6417

up-front investment."[18] It is clear that XO sees Centrex and PBX services as substitutes.

There can be little question that telecommunications providers and customers alike view Centrex and PBX services—both analog and digital—as substitutes. There is no need for a formal cross-price elasticity study to prove this point.

Q. DOES IT MAKE ANY SENSE TO ARGUE THAT SERVICES CONNECTING A PBX TO THE NETWORK ARE IN SEPARATE MARKETS?

A. No. I am surprised Staff would argue that analog PBX, digital PBX and ISDN-PRI are each in a different market, and that these services are not substitutes for each other. Clearly, these services meet similar customer needs, and customers are migrating from the analog PBX alternative to the digital PBX alternative—much like customers are migrating from analog cable TV to digital TV, or analog wireless services to digital wireless services. It is wrong to argue that these services are not substitutes.

It is important to understand that each of these services connects a PBX to the Qwest central office. Analog PBX trunks connect an analog PBX with the Qwest central office, and Digital Switched Services ("DSS") circuits and ISDN-PRI circuits connect a digital PBX with the central office. The service descriptions included in the Qwest Product Catalogue ("PCAT") make it clear that these services are substitutes for each other. I have included the Analog PBX description as

[18] See: http://www.xo.com/products/smallgrowing/voice/local/centrex/index.html

Exhibit Qwest/28,[19] the Digital PBX (DSS) description as Exhibit Qwest/31,[20] and the ISDN-PRI description as Exhibit Qwest/32.[21]

Q. WHAT DO YOU CONCLUDE FROM THESE DESCRIPTIONS?

A. These descriptions make it clear that analog PBX (with analog PBX trunks) and digital PBX (with DSS trunks or ISDN-PRI circuits) are substitutes. Several years ago, all PBXs were served via analog trunks. As digital technology has evolved, DSS circuits—which are essentially provisioned over a DS1—were developed to serve the digital PBXs that were replacing analog PBXs (much like digital switching had replaced analog switching). The latest technology that is now replacing DSS circuits is ISDN-PRI, which is also offered over a DS1 facility.

Over time, there has been a migration from analog PBX, to DSS, to ISDN-PRI. In December 1997, Qwest provided more analog PBX trunks than digital PBX trunks, and more digital PBX trunks than ISDN-PRI trunks, in Oregon. Digital PBX trunks first eclipsed analog PBX trunks in 1999, and today Qwest provides significantly more digital PBX trunks than analog PBX trunks. In 2000, ISDN-PRI channels (DS0 equivalent) eclipsed both analog and digital PBX. Today, there are more ISDN-PRI channels than digital PBX trunks, and more digital PBX trunks than analog PBX trunks:

[**Confidential-**	**Dec. 1997**	**Dec. 2002**	**June 2005**
Analog PBX Trunks	**XXXXX**	**XXXXX**	**XXXXX**
DSS Trunks	**XXXXX**	**XXXXX**	**XXXXX**
ISDN-PRI (DS0)	**XXXXX**	**XXXXX**	**XXXXX**]

19 See http://pcat.qwest.com/pcat/productDetail.do?salesChannel=SmallBusiness&offerId=6452
20 See http://www.qwest.com/pcat/large_business/product/1,1016,143_4_25,00.html
21 See http://www.qwest.com/pcat/large_business/product/1,1016,45_4_2,00.html

Clearly, Qwest customers have migrated from analog PBX to digital PBX (DSS), and have more recently migrated from digital PBX (DSS) to ISDN-PRI. Customers have also migrated to the competitive offerings of other providers. These services must be considered as part of the same "relevant market."

Q. GIVEN THIS EVOLUTION OF PBX TECHNOLOGY, DOES STAFF'S EVALUATION OF COMPETITION MAKE SENSE?

A. No. The unreasonableness of Staff's position is illustrated in Mr. Chriss' discussion of the survey results for analog PBX. Mr. Chriss states:

> The CLEC survey results paint a bleak picture for competition in the provision of analog PBX services. Even using the most generous market definition – statewide, all provisions—there are only five responding CLECs who have analog PBX lines in service, and even then the five CLECs only have slightly more than four percent of the market. Unless the non-responding CLECs are significantly large providers of analog PBX services, there does not appear to be much potential competition for the provision of these services.[22]

The problem is that Mr. Chriss has improperly defined the market. He fails to acknowledge that digital PBX and ISDN-PRI are replacing analog PBX, and that these services are all part of the same "relevant market." CLECs are marketing digital solutions, not old analog solutions, and thus it is not surprising that there are not large quantities of competitor analog PBX lines. This is like saying that floppy diskettes and compact discs are in separate markets, and therefore, because floppy diskettes are not being sold in huge quantities, there must be no competition in the floppy diskette market.

[22] Staff/100, Chriss/38.

Q. HAS THE SAME MIGRATORY TREND BEEN OBSERVED IN THE CENTREX MARKET?

A. Yes. Analog Centrex services, such as Centrex-Plus have been declining, as these services are replaced with digital Centrex services and other advanced offerings. In fact, Qwest Centrex Plus lines as a whole have declined significantly over the past few years in Oregon (from [**Confidential- XXXXX**] in December 1997 to [**Confidential- XXXX**] in June 2005). Some of these customers have migrated to Qwest Centrex Prime[23] (which increased from [**Confidential- XXX**] lines in December 1997 to [**Confidential- XXXX**] lines in June 2005). However, it is clear that customers are substituting not only Qwest digital Centrex offerings, but also Qwest ISDN-PRI and competitive Centrex, digital PBX and VoIP offerings. Therefore, Centrex and PBX services must be considered to be part of the same market. Basic business lines and ISDN-BRI must also be included in the same market, because customers often migrate to ISDN, PBX or Centrex services from 1FB service, as I described above.

Q. SHOULD VOIP SERVICES BE CONSIDERED AS PART OF THE SWITCHED BUSINESS SERVICES MARKET?

A. Yes. Later in my testimony, I will explain why VoIP-based services should be included in the "relevant market" for switched business services. As I will demonstrate, VoIP-based services serve as a close substitute for switched business services.

Q. YOU HAVE ADDRESSED THE VARIOUS POSSIBILITIES FOR SUBSTITUTING 1FB, ANALOG AND DIGITAL PBX, CENTREX, AND

23 The PCAT for Centrex Prime is included as Exhibit Qwest/33.

ISDN-BRI AND ISDN-PRI SERVICES FOR ONE ANOTHER, BUT WOULD IT NOT BE REASONABLE TO CONSIDER ATM AND FRAME RELAY TO BE UNIQUE SERVICES THAT MUST BE TREATED AS INDIVIDUAL "MARKETS"?

A. No. Any lines drawn around these two services, separating them from each other, and from other business services in the portfolio of services offered by Qwest and by other providers, are equally as blurry as any lines intended to compartmentalize 1FB, PBX, Centrex and ISDN services into separate and distinct markets. Consider, for example, that Qwest's list of products and services under the heading of "Data Solutions" in its PCAT includes, among many other products and services, ATM Service, Frame Relay Service, ISDN Primary Rate Service, and ISDN Single Line Service.[24]

Frame Relay is described in Qwest's PCAT as a "proven high-speed data packet data service" that "allows your geographically dispersed locations to exchange Internet, data, image and voice communications."[25] Qwest's description of its ATM service begins with the following invitation: "Carry all your data, video, voice and Internet communications on a single network – ATM, your virtual private network." ATM is further described as providing "high speed, reliability and security" for the customer's communications needs.[26] In its PCAT, Qwest describes its Primary Rate ISDN Service as "the digital network architecture that allows you to transmit voice, data, video, and image, separately or simultaneously – either over standard telephone lines or fiber optic circuits via a standard interface."[27] Further, Qwest advertises its ISDN Single Line Service as using

24 http://www.qwest.com/pcat/productList?market_type=large_business&category=Data
25 http://www.qwest.com/pcat/large_business/product/1,1016,783_4_2,00.html
26 http://www.qwest.com/pcat/large_business/product/1,1016,767_4_2,00.html
27 http://www.qwest.com/pcat/large_business/product/1,1016,45_4_2,00.html

"advanced digital technology to move data at significantly higher speeds than standard phone lines."[28] Clearly, there are many ways to carry data, be it Frame Relay service, ATM service, Primary Rate ISDN service or ISDN Single Line service. Frame Relay and ATM services are simply two more points on the continuum of growth and technology that I described earlier in my testimony.

Q. HOW DO OTHER PROVIDERS DESCRIBE AND MARKET THEIR FRAME RELAY AND ATM SERVICES?

A. Like Qwest, MCI lists a number of alternatives on its website for customers seeking data transport solutions.[29] MCI makes the following promise to prospective customers: "Selecting from our complete menu of global solutions, MCI can customize a plan for you that will help you realize better economies of scale and improve the efficiency of your IT networks." Included on MCI's "menu" are the following services, among others: ATM, Frame Relay, VPNs (i.e., Virtual Private Networks and MCI Advantage--MCI's VoIP-based service). Exhibit Qwest/34 contains a description of each of these MCI services. MCI is offering comprehensive voice and data solutions via these offerings, illustrating that services provided to business customers cannot be compartmentalized into separate markets. The "relevant market" is the market for switched business services.

AT&T describes its ATM and Frame Relay services in a similar fashion, and goes on to tout its AT&T Business Network as a "comprehensive, end-to-end solution that combines *all* your services into a single, powerful network." ATM and Frame Relay are among the services included under the AT&T Business Network umbrella.

[28] http://www.qwest.com/pcat/large_business/product/1,1016,42_4_2,00.html
[29] http://global.mci.com/us/enterprise/data/ (visited September 27, 2005).

Q. WOULD IT MAKE SENSE TO SEPARATE VOICE AND DATA INTO TWO SEPARATE MARKETS?

A. No. While Frame Relay and ATM, along with ISDN-PRI and ISDN-BRI, are often viewed as data services, all four of these services also can carry voice traffic. Given today's digital technology, it is not possible to define voice and data as being in separate markets, as voice is now transmitted in data packets, just as data is. For example, is ISDN-BRI a voice or data product? It is both, since it provides two voice channels and a data channel to a customer. As another example, note that the description of Frame Relay quoted above from the Qwest PCAT states that Frame Relay is a "proven high-speed data packet data service" that "allows your geographically dispersed locations to exchange Internet, *data, image and voice communications*." VoIP provides another example, as voice traffic is transmitted over the Internet or a private network via Internet Protocol. Of course, some customers use a voice grade 1FB for data purposes—to access the Internet. The distinction between voice and data has become blurred—there is no longer a separately definable data and voice market.

Q. AS TECHNOLOGY EVOLVES, ARE THERE OTHER SERVICES THAT SERVE AS A REPLACEMENT FOR FRAME RELAY?

A. Yes. As long ago as 1997, when Frame Relay was still considered to be a relatively new service, DataComm for Business Inc. advised potential customers of the service in an overview available on the Internet that, "frame relay should be considered just one of many alternate ways of providing network services," adding that customers should "[e]valuate frame relay on an equal basis along side dial up, private line, DSS, T1, ISDN and similar services."[30]

More recently, an August 29, 2005 ComputerWorld article bore the headline, "VPNs gain with users; frame relay declines."[31] The article explained that virtual private networks "provide better security than dial-up systems and many other current approaches", and went on to state that "[n]early all the major network service providers are marketing IP VPN offerings as a replacement for frame relay."

What is clear from these two articles, written eight years apart, as well as from the recent marketing strategies of Qwest and other providers, is that Frame Relay service has always experienced competition from services such as ISDN, and is now even more vulnerable to replacement – to the point of possible near-term obsolescence – by IP-based services. For the Staff to view Qwest's Frame Relay service as its own market, insulated from competitive pressures, is inappropriate.

Q. MR. CHRISS ARGUES THAT THE PETITION SERVICES MAY BE COMPLEMENTS, RATHER THAN SUBSTITUTES. DOES THE DATA IN STAFF/107 SUPPORT HIS CLAIM?

A. No. Mr. Chriss claims that Exhibit Staff/107 "shows that Qwest has a number of customer addresses served by two or more of the petition services," and that this shows that "for a number of Qwest customers, the services are not necessarily replacements for one another."[32] However, the data in Exhibit Staff/107, which

30 http://www.dcbnet.com/notes/framerly.html (visited September 28, 2005).

31 http://www.computerworld.com/networkingtopics/networking/vpn/story/0,10801,104213,00.html (visited September 27, 2005).

32 Staff/100, Chriss/24.

represents Qwest's response to a Staff data request, actually shows that 93% of business customers only have one local exchange access service, and only 7% purchase more than one local exchange access service. This data does not provide evidence that these services are complements. In fact, even if the number of customers with more than one service was much greater, this would not provide evidence that the services are complements. Customers with multiple access line services (usually larger businesses) often substitute one service for another over time.

Q. IS THERE ANOTHER PROBLEM WITH MR. CHRISS' DEFINITION OF THE RELEVANT PRODUCT MARKET?

A. Yes. Mr. Chriss addresses the issue of substitutability from an "access service" perspective. For example, he tries to define the market solely in terms of basic business lines, PBX trunks, ISDN circuits, etc. He fails to address the fact that many retail business customers purchase features and packages of services. For example, a 1FB customer may purchase the Qwest Choice Business package, which includes an access line, plus additional features. This service would be a closer substitute to ISDN-BRI or Centrex 21. Similarly, with the equivalent features, a PBX or Centrex service can offer nearly identical functionality. This represents a major omission in Mr. Chriss' analysis. I will discuss package pricing later in my rebuttal testimony.

2. The Relevant Geographic Market

Q. ACCORDING TO MR. CHRISS AND DR. CABE, HOW SHOULD THE APPROPRIATE GEOGRAPHIC MARKET BE DEFINED?

A. Both Mr. Chriss and Dr. Cabe argue that the relevant market should not be defined as the entire Qwest serving area in Oregon.[33] While Dr. Cabe does not specify how the appropriate geographic market should be defined, it appears that Staff views the relevant market for consideration in this case to be each Qwest rate center in Oregon.

Q. WHAT HAS QWEST PROPOSED IN THIS CASE?

A. In its petition, Qwest stated that "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."[34] While Qwest seeks deregulation in all of Qwest's exchanges (or rate centers) in Oregon, Qwest does not argue that the competitive data cannot be evaluated at a more granular level. In fact, Qwest has provided competitive data (e.g., Confidential Exhibit Qwest/8) at the regional, rate center and wire center level. There is no "masking" of data as Mr. Chriss implies.

When the competitive evidence is analyzed at the regional, rate center or wire center level, it becomes clear that there is local exchange competition in all of Qwest's regions, rate centers and wire centers. Confidential Exhibit Qwest/8 demonstrates that, while the level of competitive entry varies by location, CLECs are competing with Qwest in each and every wire center in Oregon. In addition, as I demonstrated in my direct testimony, wireless and VoIP providers are also competing with Qwest in virtually every Oregon wire center. Thus, whether the "relevant market" is defined at the state, regional, rate center or wire center level, there is a strong basis for the deregulation of Qwest switched business services in all of Qwest's Oregon exchanges.

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33 Staff/100, Chriss/21; TRACER/100, Cabe/22.

34 See Petition, p. 1.

Q. IS REAL COMPETITION LIMITED TO THE PORTLAND AREA?

A. No. Confidential Exhibit Qwest/8 demonstrates that there is significant competition today in numerous other Oregon communities. There is not a single rate center in Oregon without CLEC-based competition, and in many smaller communities, the competition is quite robust. For example, Confidential Exhibit Qwest/8 shows that in Hermiston and Roseburg—hardly large urban communities—Qwest has lost [**Confidential- xxxxxxxxx**] of the business wireline market; and Confidential Exhibit Qwest/8 does not even include the impact of wireless and VoIP providers.

Q. ARE MULTIPLE CLECS OFFERING SERVICES TODAY IN NEARLY ALL OREGON COMMUNITIES?

A. Yes. Nearly all wire centers are experiencing competitive inroads from multiple CLECs. In addition, as I demonstrated in my direct testimony, three specific CLECs currently serve business customers in at least 70 of Qwest's 77 Oregon wire centers, and seven specific CLECs currently serve business customers in at least 60 of Qwest's 77 Oregon wire centers. Furthermore, it is clear that several CLECs are marketing and offering services in nearly all Oregon wire centers. Highly Confidential Exhibit Qwest/35 includes the Qwest response to Staff data request no. 23-083, which demonstrates that three specific CLECs are currently offering switched business services in all but a select few wire centers.

Q. ARE THERE BARRIERS TO ENTRY IN ANY OF QWEST'S OREGON WIRE CENTERS?

A. No. CLECs are free to construct their own facilities in any of Qwest's wire centers, and unbundled loops are available in all Qwest wire centers. In addition, a CLEC that does not wish to construct any of its own facilities may purchase Qwest retail services at the resale discount or purchase services via a QPP agreement. I will further discuss barriers to entry later in my testimony.

C. Types of Competition

Q. ACCORDING TO THE OTHER PARTIES IN THIS CASE, WHICH TYPES OF COMPETITION SHOULD BE CONSIDERED IN THIS PROCEEDING?

A. Mr. Chriss states that "the Commission should consider CLEC business services provided only by UNE-L and facilities-based provisions" and "resale-based competition."[35] He argues that the Commission should not consider business service provisioned via UNE-P, QPP, DS1 or DS3, since these services allegedly represent "competition at Qwest's discretion."[36] He also discounts the importance of intermodal competition from VoIP and wireless providers.

Mr. Denney argues that "only lines purchased via unbundled loops or lines fully provisioned by the CLEC should be considered in this type of analysis of competition."[37] Mr. Denney also discounts the relevance of intermodal competition. Dr. Cabe does not clearly define which types of competition should be considered, but he argues that QPP-based competition should *not* be considered.

Q. IS IT APPROPRIATE TO IGNORE COMPETITION BASED ON UNE-P, QPP, DS1 AND DS3 SERVICES?

[35] Staff/100, Chriss/31.
[36] Staff/100, Chriss/31.
[37] Eschelon/1, Denney/15.

A. No. As I demonstrated in my direct testimony, competition based on UNE-P, QPP, DS1 and DS3 services is real competition that must be considered in any meaningful evaluation of competition in Oregon.

1. DS1 and DS3 UNEs

Q. ARE DS1 AND DS3 LOOPS PROVIDED AT QWEST'S DISCRETION, AS MR. CHRISS CLAIMS?

A. No. Based on the FCC's TRRO, Qwest must offer DS1 and DS3 unbundled loops as UNEs at Total Element Long Run Incremental Cost ("TELRIC")-based prices in all Oregon wire centers, with the exception of Portland Capitol, and must offer DS1 and DS3 transport as UNEs at TELRIC-based prices in all but a few wire centers in Oregon. The TELRIC-based rates for these UNEs are set by this Commission. In addition, even where the FCC has determined that Qwest is not required to offer DS1 or DS3 service as a UNE because CLECs are not impaired, Qwest still must offer DS1 and DS3 circuits to CLECs at "just and reasonable" rates, albeit not at TELRIC-based rates.[38] Thus, Mr. Chriss' testimony regarding DS1 and DS3 is in error.

2. UNE-P and QPP-based Competition

Q. WILL QWEST BE REQUIRED TO PROVIDE UNE-P IN THE FUTURE?

A. No. As I described in my direct testimony, pursuant to the TRRO, Qwest will no longer be required to provide UNE-P after March 11, 2006. However, as I

[38] In non-impaired areas, CLECs would be able to purchase DS1 and DS3 services at special access rates.

described in detail in my direct testimony, Qwest is offering its QPP service as a substitute for UNE-P.

Q. MR. CHRISS ARGUES THAT QPP SHOULD NOT BE CONSIDERED IN THE COMMISSION'S EVALUATION OF COMPETITION BECAUSE QWEST IS NOT "REQUIRED" TO PROVIDE THE SERVICE. PLEASE COMMENT.

A. Mr. Chriss believes that since QPP is "discretionary," it should be "excluded from the analysis." It is true that Qwest is not *required* to provide QPP in the future, since the FCC determined in the TRRO that CLECs are *not impaired* without access to the switching UNE.[39]

Mr. Chriss appears to believe that if Qwest were to discontinue its QPP offering, CLECs would be *impaired*, and its QPP customers would need to return to Qwest for service. Of course, the FCC determined that CLECs are *not impaired* without access to Qwest switching because they have alternatives to Qwest switching (and QPP). Thus, even if Qwest were to discontinue its QPP offering, CLECs would have other options to provision service. There is no basis to assume that if QPP service were discontinued, "the majority of the lines would return to Qwest"[40] as Mr. Chriss claims.

Q. IS QWEST COMMITTED TO PROVIDING QPP SERVICE TO CLECS?

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39 Thus, the FCC determined that CLECs did not need UNE-P in order to compete with Qwest since they have other options, including self-supplying switching or purchasing switching from another carrier, which could be combined with the purchase of UNE-L. Of course, the CLEC could also self provision all facilities.

40 Staff/100, Chriss/37.

A. Yes. As I described in my direct testimony, Qwest is committed to offering QPP service as an option for CLECs. Qwest *is* offering QPP service today, and has 36 QPP contracts in place in Oregon that expire on June 30, 2008, which is nearly three years from now. Mr. Chriss, along with Mr. Denney and Dr. Cabe, would like the Commission to believe that on that date, Qwest is likely to simply "pull the plug" on its QPP offering, or raise rates in a manner that is non-economic for CLECs. I agree with Mr. Chriss on one point, "Qwest would presumably act to maximize profits." However, discontinuing QPP, or making it uneconomic for CLECs to purchase QPP, does not equate to maximizing profits. It is very unlikely that Qwest would simply eliminate QPP-like options for CLECs when it is in Qwest's interest to offer a wholesale option if it can be provided at a price that is compensatory.

The growth in QPP service, as described in my direct testimony, indicates that CLECs are making QPP purchases a key part of their business plans, and that they are making money offering service in this manner. Today's QPP contracts do not expire for nearly three years, at which time QPP contracts will be revisited. The Commission should not eliminate QPP-based competition from its competitive evaluation based on hypothetical future events.

Q. DOES QWEST DICTATE THE TERMS OF ITS QPP AGREEMENTS AS MR. DENNEY AND DR. CABE CLAIM?[41]

A. No. Qwest signed its first QPP agreement with MCI, after months of give and take negotiations. Qwest did not dictate the terms and conditions, but spent months negotiating with MCI over many issues, including prices and discounts, availability

41 Eschelon/1, Denney/18 and TRACER/100, Cabe/29.

and the “batch hot cut” process.[42] Qwest and MCI reached an agreement that was in both firms’ interests. Qwest subsequently made the terms and conditions of the MCI agreement available to other providers. CLECs could opt-in to the MCI agreement or negotiate a separate agreement, as several CLECs did. Prior to the expiration of the contracts in 2008, I would anticipate the same give and take negotiations between CLECs and Qwest to commence.

Q. DO THE QPP AGREEMENTS REFLECT A 350% PRICE INCREASE AS MR. DENNEY ALLEGES?

A. No. Mr. Denney’s testimony is deceptive at best. A review of the Eschelon QPP contracts reveals that the port rate for business customers does increase—from $1.14 to $5.32—over the life of the contract. However, the structure of the QPP agreement is such that all of the increase in price is loaded on to the switch port; the rates for all other components of QPP—including the unbundled loop, shared transport and switching usage—remain at the current UNE rates:

Element	UNE Rate ($)	QPP Rate ($)
Unbundled Loop (Zone 1)	13.95	13.95
Shared Transport, per MOU	.00104	.00104
Switching Usage, per MOU	.00133	.00133
Switch Port	1.14	1.14 to 5. 32

Thus, when all of the QPP element rates are added together, the price increase is nowhere near 350%. Even if we consider the loop and port alone, the increase is 28% over four years. When one adds in the estimated monthly charge for Shared Transport and Switching Usage, based on a conservative estimate of 929 and 1,307 minutes of use, respectively, the total increase over four years is reduced to 23.5%:

[42] Batch Hot Cuts are performed to migrate UNE-P loops to UNE-L loops on a “batch” mode.

Element	UNE Rate ($)	QPP Rate ($)
Unbundled Loop (Zone 1)	13.95	13.95
Shared Transport, per month	0.97	0.97
Switching Usage, per month	1.74	1.74
Switch Port, per month	1.14	1.14 to 5.32
Monthly Total	17.80	17.80 to 21.98

While claiming a 350% rate increase may be an effective attention-getting device, the port rate increase needs to be viewed in the overall context of the total QPP package, which in reality is closer to a 6% increase per year, over four years. Mr. Denney's testimony on this point is extremely misleading and thus the Commission should disregard it.

Q. DO YOU AGREE WITH DR. CABE'S ARGUMENT THAT WHEN CLECS PURCHASE QPP, THEY ARE SIMPLY ACTING AS "DISTRIBUTION CHANNELS" FOR QWEST?[43]

A. No. In his testimony, Dr. Fitzsimmons demonstrates that CLECs purchasing QPP are not simply acting as distribution channels for Qwest. There are several CLECs in Oregon that are major purchasers of QPP—including Oregon Telecom, AT&T, Unicom, McLeod, Eschelon and MCI. I do not believe that these CLECs would view themselves merely as distribution channels for Qwest services.

Q. ACCORDING TO DR. CABE, THE QPP CONTRACTS CONTEMPLATE THAT THE ARRANGEMENT MAY BE RESTRICTED OR UNAVAILABLE IN THE FUTURE. PLEASE COMMENT.

43 TRACER/100, Cabe/28.

A. First, Dr. Cabe quotes Service Exhibit 1, Section 3.3 of the QPP agreement between Ionex and Qwest. He takes a portion of this section out of context, and attempts to show that Qwest might make QPP unavailable to Ionex in certain areas as of October 1, 2005. This, of course, is not the case. The section that Dr. Cabe quotes involves the calculation of volume discounts in the contract, where Ionex would receive a 10% discount off the port rate if its number of QPP lines exceeds 150,000 regionwide. The full sentence, including portions that Dr. Cabe left out, states:

> For purposes of this section, the number of QPP lines in service shall be calculated on a region-wide basis that includes all states in which this Agreement is in effect, and, if necessary, the 150,000 threshold will be adjusted accordingly, should QPP not be available as of October 1, 2005 in the same areas where QPP was available on the Effective Date of this Agreement.

Q. WHY WAS THIS LANGUAGE INCLUDED IN THE QPP CONTRACT?

A. This language was included in the contract because CLECs wanted to be sure that their discount would not be negatively impacted if Qwest were to sell exchange access lines to another party. Thus, language was added to the QPP stating that if Qwest were to sell some exchange access lines prior to October 1, 2005, the 150,000-line threshold required to obtain the discount would be reduced to reflect the asset sale. The October 1, 2005 date has already passed, and no access line sales have occurred. Thus, Dr. Cabe's implication that this language is intended to restrict the availability of QPP in the future is simply erroneous. Qwest is obligated to provide QPP service to Ionex, and any other CLEC that has signed an agreement, throughout the length of the contract. Qwest cannot arbitrarily decide to cease offering QPP in certain areas.

Q. DR. CABE FINDS IT "ODD" THAT QWEST WOULD NEGOTIATE QPP AGREEMENTS THAT ALL EXPIRE ON THE SAME DAY—JULY 31, 2008. PLEASE COMMENT.

A. Dr. Cabe theorizes that this common expiration date would allow Qwest to cutoff QPP availability on July 31, 2008.[44] However, for both Qwest and CLECs, it makes sense to have the QPP agreements expire on the same day, as this will make the negotiation of new agreements much more efficient. The market is changing rapidly, and neither Qwest nor the CLECs can predict what the market will look like, and what the needs of CLECs will be in 2008. With a common expiration date, Qwest can work with CLECs to structure agreements that meet the needs of both parties, and can do it in a resource-effective manner. Staggered contract expiration dates, with staggered negotiations, would entail much greater administrative costs than a common expiration date, with concurrent Qwest-CLEC negotiations. The common expiration date is not—as Dr. Cabe claims—a mechanism to "cutoff" QPP.

Q. DR. CABE CLAIMS THAT THE QPP CONTRACT "ESSENTIALLY TAKES UNE LOOP PRICING OUT OF STATE COMMISSION HANDS."[45] DO YOU AGREE?

A. No. First, the QPP contract must adhere to the FCC's standards of a just and reasonable rate, so regulatory oversight continues with these contracts, albeit not by this Commission. It is true that the QPP contract adjusts the port rate to compensate for any change in the Commission-ordered unbundled loop rate. If the loop rate is decreased, the port rate would increase by the same amount, and if the loop rate is increased, the port rate would be decreased by the same amount. This provision

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44 TRACER/100, Cabe/30.

45 TRACER/100, Cabe/30.

was placed in the QPP agreements in order to protect both parties from price uncertainty over the life of the contract. For example, assume this Commission were to raise the UNE-L rate $2.00 in a cost docket. Without this QPP provision, a loop rate increase would result in an immediate $2.00 increase in the effective QPP rate to CLECs. This would represent a rate increase that could dramatically impact the business plans of CLECs that rely on QPP.

Of course, the QPP agreement has no impact on the loop rate charges to CLECs that purchase UNE-L. For these customers, the QPP certainly does not "take UNE pricing out of state commission hands."

3. Resale

Q. ACCORDING TO THE OTHER PARTIES, SHOULD THE COMMISSION CONSIDER RESALE-BASED COMPETITION?

A. Mr. Chriss states that "the Commission should also consider resale-based competition."[46] However, both Mr. Denney and Dr. Cabe argue that resale-based competition should not be considered.

Q. WHAT IS MR. DENNEY'S AND DR. CABE'S RATIONALE FOR THE EXCLUSION OF RESALE FROM CONSIDERATION?

A. Mr. Denney argues that resale should not be considered because Qwest is "financially indifferent," and that "the profit is the same whether Qwest services the customer or the customer is served by a CLEC using the resale discount." Thus, Mr. Denney argues that resale does not provide "discipline with respect to prices."[47]

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[46] Staff/100, Chriss/31.
[47] Eschelon/1, Denney/19.

Dr. Cabe argues that resale provides very limited competitive discipline because "a resale competitor can only compete with Qwest if it can provide retailing functions better than Qwest can."[48]

Q. ARE THE POSITIONS OF MR. DENNEY AND DR. CABE VALID?

A. No. In reality, CLECs that purchase Qwest retail services at a discount *do* impose pricing discipline on Qwest. A simple example makes this clear. Assume that Qwest currently provides a retail service at $20 per month. Given the 17% resale discount in Oregon, Qwest would provide the service to CLECs for resale at a price of $16.60. If we assume that the CLEC incurs $2.50 in sales and other expense to sell the service, its total cost would be $19.10. If it resold the service to its retail customers at the Qwest retail price, the margin would be $0.90 ($20.00 - $19.10 = $0.90). Now, assume that Qwest were to raise the retail price of the service to $25.00. At a 17% discount, Qwest would now provide the service to CLECs for resale at a price of $20.75. The new total cost for the CLEC to offer the service would be $20.75, plus the $2.50 in sales and other expense (these expenses would not change), for a total cost of $23.25. If the CLEC were to resell the service at the new $25.00 Qwest retail price, the CLEC's margin would be$1.75 ($25.00 - $23.25 = $1.75), rather than $0.90. Thus, an increase in Qwest prices would actually increase the margin available for CLECs. Of course, in order to be more competitive, the CLEC could decide to undercut Qwest's $25.00 retail price by lowering its price to $24.15 and still maintain the original $0.90 margin, or it could increase its margin and still undercut Qwest's price. For example, the CLEC could price the service at $24.50 and thereby gain a margin of $1.25 ($24.50 - $23.25 = $1.25).

[48] Staff/100, Chriss/31.

This demonstrates that a Qwest retail price increase would provide additional opportunities for a reseller to undercut Qwest prices, thereby putting downward pressure on Qwest's prices. Resale *does* impose market discipline with respect to prices, and therefore, resale should be considered in the Commission's evaluation of competition.

4. Intermodal Competition

a. Voice Over Internet Protocol ("VoIP")

Q. PLEASE SUMMARIZE STAFF'S AND TRACER'S ADVOCACY REGARDING THE CONSIDERATION OF VOIP AS A FORM OF SWITCHED BUSINESS SERVICES COMPETITION.

A. Mr. Chriss opines that "VoIP could be competitive with some of the petition services at some future date, but good quantitative data, regarding switching or cross-price elasticity, to prove or disprove the notion is unavailable at this time."[49] Dr. Cabe admits that "VoIP is functionally similar to basic telephone service" and "can serve as an acceptable alternative to (some of) Qwest's petition services" where "sufficiently fast broadband internet connections" exist.[50] However, Dr. Cabe argues that Qwest "offered no survey of customers or similar evidence" to prove that VoIP is viewed by customers as a substitute for Qwest services. Thus, he recommends that the Commission "not attach great weight to the general information about VoIP" in my testimony

Q. ARE THESE "EVIDENTIARY" CONCERNS REASONABLE?

49 Staff/100, Chriss/57.

50 TRACER/100, Cabe/43.

A. No. Mr. Chriss and Dr. Cabe, while seemingly admitting that VoIP-based services represent reasonable substitutes for switched business services, fall back on the "lack of data" argument to reject consideration of VoIP. Mr. Chriss would like hard data—such as a cross-price elasticity study—to *prove* that VoIP-based services compete as substitutes for traditional switched business services. Dr. Cabe states that a "survey of customers" is required. The fact is that neither a formal cross-price elasticity study nor a formal survey is necessary to prove that VoIP- based services are substitutes for traditional voice services. All one has to do is pay attention to the actions of competitors like XO, MCI or AT&T to see that VoIP-based services represent substitutes for traditional voice services *today*. I provide significant evidence in my direct testimony, and in this testimony below, that VoIP-based services are competitive with, and substitutable for, switched business services. The Commission should reject Staff's and TRACER's unrealistic demands for additional and unnecessary quantitative data.[51]

Q. SHOULD VOIP SERVICES BE CONSIDERED AS PART OF THE SWITCHED BUSINESS SERVICES MARKET?

A. Yes. As I demonstrated in my direct testimony, CLECs are actively marketing VoIP-based services to their business customers as substitutes for traditional phone services. XO—a major participant in the Oregon market and a participant in this proceeding—actively markets its XOptions Flex offering to business customers in Oregon. Exhibit Qwest/36 contains the XOptions Flex brochure, which clearly

[51] Staff and TRACER merely use the "lack of hard data" argument as an excuse to ignore VoIP, knowing that in competitive markets, where regulators do not require carriers to supply subscriber data, it is difficult to derive the "good quantitative data" that they appear to view as necessary. XO and others are under no obligation to tell Qwest how many customers have substituted its VoIP-based services for Qwest services.

positions XOptions Flex as a substitute for 1FB, PBX and Centrex services. The brochure states that:

> XO simplifies the purchase of local, long distance, internet and web hosting services . . . . XOptions Flex expands basic phone functionality to make existing services—such as hunting and call forwarding—simple to use, and new services easier to deploy for one office or one hundred. And XOptions Flex works with your existing analog phones or Key systems, so there's no new equipment to purchase.

XO could not be more clear that it views its XOptions Flex product as a replacement for traditional 1FB, PBX and Centrex services. XO states that the service "expands basic phone functionality to make existing services . . . simple to use," and that the service "works with your existing analog phones or Key systems." It is clear that these sorts of VoIP-based services must be included in the definition of the "relevant market." This VoIP offering—along with VoIP offerings from other providers—must be considered as a substitute for 1FB, ISDN, PBX and Centrex services.

Q. IS THE XO VOIP OFFERING EXPANDING RAPIDLY?

A. Yes. Recently, XO announced that it has just signed its 1,500th customer of XOptions Flex, its VoIP services bundle for businesses. According to XO, "all new customers to XO, the 1,500 XOptions Flex customers have been signed just five months after launching the service nationwide, demonstrating the strong demand by small and medium-sized businesses for VoIP solutions."[52]

Q. DO YOU KNOW HOW MANY VOIP CUSTOMERS XO HAS SIGNED IN OREGON?

[52] See September 20, 2005 XO press release included as Exhibit Qwest/37.

A. No, and Qwest has no way of gathering this information. Since fewer than four CLECs responded to the Commission's survey with VoIP data, no VoIP data was included in the Staff's report. Of course, XO is under no obligation to announce this information publicly. We can only reasonably assume that due to XO's large presence in Oregon, it is serving some Oregon business customers with its VoIP offering.

Q. ARE OTHER CARRIERS MARKETING VOIP-BASED SERVICES TO SWITCHED BUSINESS SERVICES CUSTOMERS IN OREGON?

A. Yes. In my direct testimony, I described several of these carriers, including AT&T, Vonage, Packet8, Covad, MCI, XO, McLeod and Unicom.

Q. DOES MR. DENNEY DISCOUNT THE IMPORTANCE OF VOIP?

A. Yes. Mr. Denney appears to argue that since VoIP-based services require "last mile access," the impact of VoIP-based competition is already reflected in the unbundled loop data.

Q. DOES THIS ARGUMENT MAKE SENSE?

A. No. VoIP-based services do require a last mile broadband connection. However, to argue that the impact of VoIP is already reflected in the unbundled loop data provided by Qwest is simply wrong. First, the Qwest unbundled loop data does not even include unbundled loops ordered by Data LECs ("DLECs") such as Covad and New Edge. Second, the unbundled loop data does not include any broadband facilities that are self-provisioned or provided by a carrier other than Qwest. According to the Staff Competition Survey Report, there are ten reporting full facilities-based providers in Oregon, and this number does not include non-respondents, one of whom is a large carrier believed to have its own facilities.

Cable companies are also increasingly offering broadband services, as are wireless carriers. In addition, as I will describe later in my testimony, Confidential Exhibit Qwest/8 defines each DS1 and DS3 unbundled loop as one loop, rather than counting these loops in terms of "voice grade equivalents." For example, a DS1 loop is counted as one loop, not 24 "voice grade equivalent" loops. Thus, Mr. Denney's claim that the impact of VoIP is already reflected in Qwest data is simply incorrect.

Q. DOES MR. DENNEY ALSO CLAIM THAT QWEST'S DECLINE IN ACCESS LINES ARE MADE UP FOR BY INCREASES IN DSL LINES AND HIGH CAPACITY LINES?

A. Yes. However, this analysis is very misleading. Mr. Denney cites FCC ARMIS data showing that "voice grade equivalent lines" are increasing; thus, according to Mr. Denney, Qwest's claims of competition and eroding Qwest access lines must be false.

While Mr. Denney fails to provide the exact source of the data in the chart on page 27 of his testimony, it is apparent that his "business voice grade equivalents" include private line and special access circuits, since some ARMIS reports show these on a voice grade equivalent basis. In such a report, each DS1 private line channel termination provided by Qwest would result in 24 voice grade equivalents and each DS3 would result in 672 voice grade equivalents. An OC3 would result in 2,016 voice grade equivalents.

There are several aspects of this data that render Mr. Denney's analysis essentially meaningless. First, this analysis includes private line and special access services, which do not represent Qwest switched business services. Even more importantly, Mr. Denney's numbers apparently include special access channel terminations provided to CLECs and other carriers. Thus, if a CLEC were to purchase a DS3 special access circuit to serve customers in competition with Qwest, Mr. Denney would include this circuit as 672 "business voice grade equivalents" leading one to believe that these are Qwest retail access lines, even though these circuits are used to serve *CLEC* customers. Since Mr. Denney is showing competitor-provided lines masquerading as Qwest retail lines, this data in no way indicates that competition in the retail switched business service market is waning. In reality, the increase in voice grade equivalents is due to increases in competition via special access, since CLECs can use special access channel terminations to provide switched business services to their customers.

b. Wireless Competition

Q. SHOULD WIRELESS ALTERNATIVES BE VIEWED AS A SUBSTITUTE FOR MOST SWITCHED BUSINESS SERVICES?

A. Yes. Mr. Chriss concedes that Qwest has provided "evidence that wireless service may be substitutable for basic business service,"[53] and Dr. Cabe allows that wireless service "may be a reasonable substitute for a restricted set of business services or customers."[54] However, both witnesses err in concluding that wireless service is only substitutable for a narrow subset of the broader local services business market.

Q. IS THERE EVIDENCE THAT WIRELESS SERVICE PROVIDERS ARE OFFERING SERVICES TO REPLACE MORE THAN JUST BASIC BUSINESS WIRELINE SERVICE?

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[53] Staff/100, Chriss/56.

[54] TRACER/100, Cabe/41-42.

A. Yes. A visit to the websites of the major wireless carriers, all of whom are providing business wireless services in Oregon, yields substantial evidence that wireless service providers are offering services that are designed to compete with more than just 1FB service. Following are just a few examples from recent press releases issued by Cingular Wireless, Sprint, T-Mobile and Verizon Wireless:

- "Cingular's Wireless WAN Connectivity Service, which provides a truly diverse and secure backup ***or alternative to wireline data connections***, was the first commercially available solution of its kind when launched in February 2005 . . . Since its launch, Cingular has concentrated on selling the service to large companies via its direct sales team. The expansion of Wireless WAN Connectivity Service to Cingular's indirect channel will enable the company to effectively tap into the medium and small business markets with a high-value, advanced wireless data service."[55] (Emphasis added.)

- "Further erasing the imaginary line between wireless and wireline communications technologies, Sprint today announced enhancements to Sprint PCS Data Link that allow customers to replace or back-up existing wireline data access for business locations or leverage new remote-access features for their mobile workforce. Wireless data access for office locations is an exciting new offer at Sprint, ***enabling business customers to leverage the low cost and flexibility of wireless as a true wireline data access replacement technology***."[56] (Emphasis added.)

- "Business customers look to T-Mobile for innovation and commercialized product leadership. 'Our customers get the products and services that meet their needs today,' said Cole Brodman, senior vice president and chief development officer for T-Mobile USA, Inc. 'Customers are seeking new and better ways to communicate and we are enabling this ***by offering integrated voice and data communications services utilizing our GSM and Wi-Fi networks***.'"[57] (Emphasis added.)

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[55] Cingular press release issued September 6, 2005: *Cingular Wireless WAN Connectivity Service Now Available to Companies of all Sizes; Global Wireless Data and Trio Teknologies Offer Cingular's EDGE-Based Wireless Backup and Primary Connectivity Service to Medium, Small Businesses.* See: http://www.cingular.mediaroom.com/index.php?s=press_releases&item=1270

[56] Sprint press release issued July 18, 2005: *Sprint Enhances Sprint PCS Data Link Capabilities to Enable Wireless Replacement of Wireline Data Access for Business Locations.* See: http://www2.sprint.com/mr/news_dtl.do?id=7440

[57] T-Mobile press release issued May 4, 2005: *T-Mobile USA Tops Wireless Carriers for Overall Business Satisfaction*. See: http://www.t-mobile.com/company/pressroom/pressrelease133.asp

- "With the recent expansion of Verizon Wireless' EV-DO (Evolution-Data Optimized) wireless broadband network, millions of businesses from coast to coast can now enjoy the freedom of speed, mobility, productivity and simplicity wrapped into one service . . . BroadbandAccess, the company's premier service for businesses, gives enterprise customers a fast, reliable resource to help them be productive and in touch with the office and customers when they are traveling, enabling them to tap into applications and tasks with their laptops that are more suited to broadband data speeds . . . ***BroadbandAccess gives businesses of all sizes the freedom of wireless data access*** to help them boost productivity."[58] (Emphasis added.)

- "Sprint and Avaya, Inc. have announced a joint agreement for development and delivery of hosted Voice over Internet Protocol (VoIP) telephony wireline and wireless services for the North American marketplace. The agreement allows the companies to jointly develop, market and support new and differentiated VoIP services to business customers as ***a full-suite portfolio ranging from customer-premise solutions to network-based solutions***."[59] (Emphasis added.)

Clearly, the wireless service providers are leaving no stone unturned when it comes to meeting the voice, data and networking needs of the business community with intermodal solutions. While it is true that not *every* business customer will be convinced that wireless is the answer, there is no denying that wireless services *can* be used in place of the full array of business local switched services, and *are* being used today by many business customers.

Q. MR. DENNEY CLAIMS THAT GROWTH RATES FOR WIRELESS AND WIRELINE SERVICES ARE TRACKING TOGETHER. DO YOU AGREE?

A. No. Without sharing any of the underlying quantities of wireline access lines or wireless subscribers, Mr. Denney includes a graph in his testimony that purports to

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58 Verizon Wireless press release issued June 28, 2005: *BroadbandAccess From Verizon Wireless Gives Business Customers The Advantage*. See: http://www.vzw.com/news/2005/06/pr2005-06-28b.html

59 Sprint press release issued September 20, 2005: *Sprint and Avaya Link for VoIP and Wireless Solutions for Businesses*. See: http://www2.sprint.com/mr/news_dtl.do?id=8320

represent the nationwide wireless subscriber growth compared with Qwest business access line growth in Oregon over the past twelve years. From this chart, he draws the erroneous conclusion that wireless and Qwest business wireline growth rates are tracking together.[60] The reality *in Oregon* is that from December 2000 to December 2004:

- The number of wireless subscribers *increased* from 1,201,207 to 2,029,224 – a rate of *growth* of 69% over four years.[61]
- The number of Qwest retail business access lines decreased from [**Confidential- XXXXXX**] to [**Confidential- XXXXXX**] – a rate of *decline* of [**Confidential-XX%**] over this same four-year period.

I would hardly describe these two trends as "tracking together."

Q. MR. CHRISS, DR. CABE AND MR. DENNEY ALL QUESTION WHETHER THE EXISTENCE OF WIRELESS ALTERNATIVES ACTS AS A CONSTRAINT ON QWEST'S BUSINESS SERVICE PRICES.[62] HOW DO YOU RESPOND?

A. The major wireless service providers in Oregon are experiencing phenomenal growth in Oregon, and are clearly engaged in a full-court press to meet the *complete* telecommunications needs of business customers and are continually finding new and creative ways to reach *all* business customer classes. Wireless services do exert competitive pressure on Qwest's wireline switched business services, and Qwest

[60] Eschelon/1, Denney/22-23.

[61] See *Local Telephone Competition: Status as of December 2004*, FCC Industry Analysis and Technology Division, Wireline Competition Bureau, released July 8, 2005, Table 13.

[62] Staff/100, Chriss/57; TRACER/100, Cabe 41; and Eschelon/1, Denney/24.

must view the competitive threat from wireless substitution when considering an increase in its business service prices.

Q. IS THERE ANY EVIDENCE TO SUPPORT YOUR VIEW THAT THE THREAT OF WIRELESS SUBSTITUTION CONSTRAINS QWEST'S ABILITY TO RAISE BUSINESS SERVICE PRICES?

A. Yes. The Competitive Enterprise Institute ("CEI"), a non-profit public policy organization headquartered in Washington, D.C., has recently studied this very issue.[63] Specifically, they examined "the evidence on the degree to which wireless services are replacing wireline services" and they estimated "the extent to which increases in wireline prices would affect wireless demand." Following is the summary statement of findings included in the Executive Summary of CEI's report:

> In summary, this paper finds convincing empirical evidence that wireless services are strong substitutes for wireline services. This fact has significant implications on competitive and regulatory policies. For example, if wireline service providers cannot raise prices without causing significant line loss to wireless providers, then it can be concluded that wireline service providers are unable to exert market power. Furthermore, as wireless prices continue to fall, wireline providers will be under increasing market pressure to follow suit, in order to stem market share losses. That conclusion means that the nature of competition has changed, and it also means that price and service regulation is largely unneeded, since market forces are sufficient to hold prices in check.

Not surprisingly, CEI also found "evidence that small businesses are beginning to use wireless services ***to replace traditional wireline services***." (Executive Summary, p. 1 (emphasis added).)

[63] See *Wireless Substitution and Competition: Different Technology but Similar Service – Redefining the Role of Telecommunications Regulation*, Competitive Enterprise Institute Issue Analysis, December 2004.

In some sense, this empirical evidence supports the obvious. With wireless subscribership growing at incredible rates, with new wireless products and technologies being announced on an almost daily basis, and with wireless providers aggressively pursuing every class of business customer, wireline providers are clearly in no position to exert market power.

D. Analysis of Competitive Data

1. Identification of Services Provided via UNEs

Q. ACCORDING TO MR. CHRISS, IS THE USEFULNESS OF QWEST WHOLESALE LINE DATA LIMITED?

A.. Yes. Mr. Chriss argues that the competitive wholesale UNE-P, QPP and UNE-L data that Qwest provides are not useful because these data do not show the specific retail services provided by the CLEC via these provisioning methods.[64]

Q. DOES QWEST KNOW THE SPECIFIC RETAIL SERVICES THAT ARE PROVIDED BY A CLEC OVER UNE-L CIRCUITS PURCHASED FROM QWEST?

A. No. When Qwest provides UNE-L to a CLEC, the CLEC is under no obligation to advise Qwest how it will use the circuit. However, as I mentioned in my direct testimony, the majority of the UNE-L lines purchased in Oregon are purchased by CLECs that market only to business customers. Therefore, it may be reasonably assumed that nearly all UNE-L lines are used to offer retail switched business services.

[64] Staff/100, Chriss/33.

Q. IS IT IMPORTANT TO KNOW THE SPECIFIC BUSINESS SERVICES A CLEC PROVIDES TO AN END USER WHEN IT PURCHASES A UNE-L CIRCUIT FROM QWEST?

A. No. As I demonstrated earlier in my testimony, it is not critical to know the specific retail business services offered by a CLEC when it purchases a particular wholesale element from Qwest, because all switched business services should be considered to be part of the same "relevant market." For example, it is not important whether a UNE-L line is used to provide basic service or a PBX trunk.

Q. IS IT POSSIBLE THAT SOME UNE-L CIRCUITS ARE USED TO PROVIDE PRIVATE LINE SERVICES?

A. Yes. Dr. Cabe argues that "the assumption that all UNE loops are used to provide switched services is a substantial error."[65] However, this "error" is grossly overstated. First, it is hard to imagine why any carrier would purchase a basic 2 or 4-wire voice grade loop to provide basic analog private line service to a customer. It is reasonable to assume that nearly all basic voice grade loops are used to provide switched services. Second, it is possible that a CLEC would purchase a DS1 or DS3 loop in order to provide a DS1 or DS3 private line service to a customer; but it is far more likely that the CLEC would instead provide multiple switched voice channels to end users.

Q. ARE DS1 AND DS3 LOOPS INCLUDED IN THE UNE-L LINE COUNTS IN CONFIDENTIAL EXHIBIT QWEST/8?

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[65] TRACER/100, Cabe/46.

A. Yes. However, each DS1 and DS3 loop is counted as only one loop. Of the [**Confidential- XXXXX**] UNE-L loops in Confidential Exhibit Qwest/8, only [**Confidential- XXXX**] are DS1 loops and [**Confidential- xxx**] are DS3 loops. Thus, even if some of the DS1 and DS3 loops were used to offer private line services, this would have a small impact on the loop counts in Confidential Exhibit Qwest/8.

Q. DOES QWEST KNOW WHAT SPECIFIC RETAIL SERVICES ARE PROVIDED BY A CLEC WHEN IT PURCHASES QPP FROM QWEST?

A. Yes. Qwest provides several different "flavors" of QPP, and Qwest does know which "flavor" is provided to the CLEC. As of May 2005, CLECs purchased the following quantities of QPP in Oregon:

[**Confidential-**

QPP Basic Business	**XXXXX**
QPP Centrex	**XXXX**
QPP ISDN-BRI	**XX**
QPP Public Access Line	**XXXX**
QPP PBX	**XXX**
TOTAL	**XXXXX**][66]

I have included these quantities by wire center in Confidential Exhibit Qwest/38. While this data is available, and I have provided the detail, I must emphasize that this service-specific data is not required in order to assess the level of switched business competition, since all of these services should be included as part of the same "relevant market."

66 The total business QPP line count of [**Confidential- XXXXX**] shown in Confidential Exhibit Qwest/8 included 239 lines that were "in transition" from UNE-P, pursuant to the QPP contract ([**Confidential- XXXXX**] – [**Confidential- XXX**] = [**Confidential- XXXXX**]). Qwest did not have a service-specific breakdown for these [**Confidential- XXX**] lines, which represent [**Confidential- xxxxx percent**] of the total QPP lines.

2. Market Share Data

Q. WILL YOU ADDRESS THE CLAIMS OF OTHER PARTIES REGARDING THE "PROPER" CALCULATION OF SWITCHED BUSINESS SERVICES MARKET SHARE?

A. Yes. However, as a prelude, it is important to re-emphasize that the Commission should not render its deregulation decision in this proceeding solely based on the level of market share or based on other indicia, such as the HHI or market concentration ratios.

As I stated in my direct testimony, the criteria in ORS 759.030(4) do not define any "minimum market share" or "level of concentration" thresholds for competition that Qwest must meet as a precondition to approval of Qwest's petition. ORS 759.030(4) provides that the Commission should consider "the extent to which services are available from alternative providers in the relevant market." This requirement does not mean that a specific level of market share or market concentration is necessary in order for the Commission to determine that "price and service competition exist" or that the services are "subject to competition."

Further, any discussion of market share in the switched business services market must not focus solely on wireline market share, as VoIP-based and wireless services must also be considered. The market share calculations in Confidential Exhibit Qwest/8, and the data outlined below—as well as the data in the Commission's Survey—do not include VoIP-based or wireless lines.

In this proceeding, the Commission should focus on whether there is sufficient competition to constrain Qwest's ability to raise prices for its services in the market.

In reality, Qwest may be constrained even when CLECs have a relatively low market share, because even under these conditions, business customers may have readily available competitive alternatives, and would be likely to move to another provider if Qwest were to raise its prices.

Q. MR. DENNEY ARGUES THAT CLEC MARKET SHARE IS "INDICATIVE THAT THE LOCAL MARKET FOR SWITCHED BUSINESS SERVICES ACROSS OREGON IS NOT A COMPETITIVE MARKET."[67] DO YOU AGREE?

A. No. Before I address the errors in Mr. Denney's market share calculations, it is important to briefly address Mr. Denney's erroneous conclusion that the level of CLEC market share shows that the "markets are not open" and that "serious barriers to entry do exist."[68] There is no basis to conclude, based on any particular level of market share, that there are "barriers to entry," especially given that many competitors are already in the market and are competing vigorously. It is simply wrong to tie market share to barriers of entry, and in fact, Mr. Denney acknowledged in response to a data request from Qwest that "a barrier to entry is defined independent of market shares." [69] A specific level of competitor market share is *not* necessary in order for it to be determined that there are no barriers to entry. I will further discuss barriers to entry later in my testimony.

Q. WITH REGARDS TO UNE-L QUANTITIES PROVIDED IN CONFIDENTIAL EXHIBIT QWEST/8, ARE THESE QUANTITIES UNDERSTATED?

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[67] Eschelon/1, Denney/6.
[68] Eschelon/1, Denney/6.
[69] See Eschelon response to Qwest data request no. 3, included as Exhibit Qwest/39.

A. Yes. Since completing Confidential Exhibit Qwest/8, it has come to my attention that the UNE-L quantities identified in this exhibit do not include Enhanced Extended Loops ("EELs") and Loop Mux Combination ("LMC") loops. These represent unbundled loop facilities that are provided to CLECs by Qwest to serve end users, and should be included in the loop quantities. A CLEC would purchase EEL transport to connect its collocation in another office to the end user customer's serving office, and an EEL loop (EEL-Link) to connect the serving office to the customer.

Q. HAVE YOU CORRECTED CONFIDENTIAL EXHIBIT QWEST/8 TO INCLUDE THE NUMBER OF EEL AND LMC LOOPS IN OREGON BY WIRE CENTER?

A. Yes. Confidential Exhibit Qwest/40 provides an update to Confidential Exhibit Qwest/8, and includes EEL and LMC loops. It should be noted that statewide, as of May 2005, there were [**Confidential- XXXX**] EEL and LMC loops. Properly including these loops increases the calculated wireline CLEC market share only slightly—to just over 42% statewide.

Q. HAVE YOU UPDATED THE MARKET SHARE TABLES IN YOUR DIRECT TESTIMONY TO REFLECT THESE LOOPS?

A. Yes. Confidential Exhibit Qwest/41 includes updates to Tables A-E from my direct testimony. It may be observed that in most cases, the addition of the EEL and LMC loops has a minor impact on the market share calculations.

Q. EARLIER YOU MENTIONED THAT THE LOOP COUNTS IN CONFIDENTIAL EXHIBIT QWEST/8 (AND ALSO CONFIDENTIAL EXHIBIT QWEST/40) COUNT EACH DS1 AND DS3 LOOPS AS ONE

LOOP. IS IT LIKELY THAT THESE LOOP COUNTS UNDERSTATE THE LEVEL OF CLEC SWITCHED BUSINESS SERVICES COMPETITION?

A. Yes. As I discussed above, when a CLEC purchases a DS1 or DS3 loop, it is not required to tell Qwest how it will utilize the loop. A CLEC could purchase a DS1 or DS3 loop in order to provide a DS1 or DS3 private line circuit to a customer, or it could use the DS1 or DS3 loop to provide voice grade service—such as basic business service, ISDN or PBX trunks—to end users. Thus, a DS1 could provide up to 24 voice grade equivalents, and a DS3 could provide up to 672 voice grade equivalents. It is also likely that all DS1 and DS3 loops serve business customers.

Q. IF THE DS1 AND DS3 LOOPS ARE CONVERTED TO VOICE GRADE EQUIVALENTS, WHAT IS THE NUMBER OF "EQUIVALENT VOICE GRADE LINES"?

A. Confidential Exhibit Qwest/42 provides a breakdown of the UNE-L, EEL and LMC loops from Confidential Exhibit Qwest/40 by bandwidth (Basic/DS0, DS1 and DS3). It can be seen that there are [**Confidential- XXXX**] DS1 loops and [**Confidential- XX**] DS3 loops statewide. Confidential Exhibit Qwest/43 provides an update to Confidential Exhibit Qwest/40 assuming that each DS1 loop is equivalent to 24 voice grade lines, and that each DS3 loop is equivalent to 672 voice grade lines. It may be observed that when viewed in terms of voice grade equivalents, the number of CLEC lines explodes, and the CLEC market share estimate statewide becomes [**Confidential- XX%**].

Q. DOES THIS CALCULATION ACCURATELY REFLECT THE CLEC SWITCHED BUSINESS SERVICE MARKET SHARE?

A. I believe that this methodology overstates the likely number of switched business services lines offered to end users by CLECs in Oregon, since some high capacity loops may not be used to provide voice grade equivalent service, and even when such a circuit is used to provide voice grade equivalent service, it may not provide 24 channels with a DS1, or 672 channels with a DS3. However, it is likely that a large number of high capacity loops purchased from Qwest are used to provision DS0 or voice grade equivalent services. Therefore, I would characterize the market share calculations in Confidential Exhibit Qwest/40 as representing a conservative "minimum" CLEC market share, and the calculations in Confidential Exhibit Qwest/43 as representing the "maximum" CLEC market share.

Q. IF VOICE GRADE EQUIVALENT LINES ARE CALCULATED BASED ON DS1 AND DS3 UNE LOOPS PROVIDED TO CLECS, WOULDN'T IT BE APPROPRIATE TO CONSIDER ALL QWEST RETAIL PRIVATE LINE AND SPECIAL ACCESS CIRCUITS AS "QWEST" VOICE GRADE EQUIVALENTS?

A. No. When Qwest provides a private line circuit to a retail end-user customer, it is not used to provide switched services. When Qwest provides a special access circuit to a CLEC, the CLEC may use it to offer private line services or to provide switched business services to its customers. In either case, these circuits are not used to provide retail Qwest switched business services, and thus should not be included as Qwest retail switched access lines.

Q. DOES CONFIDENTIAL EXHIBIT QWEST/8 INCLUDE "DATA LOOPS" AS MR. DENNEY CLAIMS?

A. No. As I mentioned earlier, Confidential Exhibit Qwest/8 and Confidential Exhibit Qwest/40 do not include UNE-L lines purchased by providers that are known to be DLECs, such as Covad and New Edge.

Q. MR. DENNEY NOTES THAT THE COMPETITIVE SURVEY IDENTIFIED MORE CLEC FULL FACILITIES-BASED LINES THAN THE FCC'S LOCAL COMPETITION REPORT. DOES THIS INDICATE A "DATA PROBLEM?"

A. No. Mr. Denney notes that the 41,403 CLEC full facilities-based lines reported to the FCC for December 31, 2004 is less than the [**Confidential- XXXXX**] CLEC full facilities-based lines identified in the Commission's Survey. He argues that this difference raises questions about the accuracy of the data. Once again, however, Mr. Denney is providing a comparison that is misleading, since the FCC data includes only CLECs that are required to report data, and that excludes all CLECs with fewer than 10,000 lines in Oregon. Thus, since there are many CLECs that do not report their line data to the FCC, it is not surprising that the FCC data would show fewer full facilities-based lines than the Commission Survey.

Q. HAS STAFF PROVIDED A CLEC MARKET SHARE ESTIMATE FOR THE STATE AS A WHOLE?

A. Yes. Table 4.1 (page 36) of Mr. Chriss' testimony provides a market share estimate that includes only CLEC lines that are provisioned via UNE-L or are full facilities-based. He calculates a [**Confidential- XX%**] CLEC market share statewide.

Q. IS THIS CLEC MARKET SHARE UNDERSTATED?

A. Yes. As I demonstrated earlier in my testimony, a proper competitive analysis would include all CLEC lines, including those provisioned via UNE-P, QPP and resale. Exhibit Qwest/40 calculates the proper CLEC market share for the state and for each wire center in Oregon.

Q. DOES MR. DENNEY ALSO MAKE A CALCULATION THAT PURPORTS TO REPRESENT CLEC MARKET SHARE IN OREGON?

A. Yes. On page 21 of his testimony, Mr. Denney provides a recalculation of the market share tables in my direct testimony. He opines that the CLEC market share in Oregon is really only [**Confidential- XX%**].

Q. ARE MR. DENNEY'S CALCULATIONS MEANINGFUL?

A. No. Mr. Denney's calculation of CLEC market share is erroneous in several respects. First, like Mr. Chriss, Mr. Denney excludes all UNE-P, QPP and resale lines from the quantity of CLEC lines. However, Mr. Denney does not stop there. Not only does he remove all UNE-P, QPP and resale lines from the CLEC market share, but he also includes them in the Qwest market share. This is a serious error that renders Mr. Denney's calculation entirely meaningless. I wonder how Oregon Telecom would react to the news that all of its QPP lines are not Oregon Telecom lines, but are really "Qwest lines." Using Mr. Denney's logic, Qwest could lose 95% of a market to UNE-P, QPP and resale providers, and still have a 100% market share.

3. Other Market Indicators

Q. SHOULD THE COMMISSION UTILIZE CR4 AND HHI TO EVALUATE COMPETITION IN THE OREGON SWITCHED BUSINESS SERVICES MARKET?

A. No. Staff, TRACER and Eschelon all tout the use of market concentration indicators, such as the HHI and CR4 ratio, as important measures of market power. However, Dr. Fitzsimmons demonstrates in his testimony that the CR4 and HHI indicators are not useful in evaluating whether meaningful competition exists, and thus should not be considered in the decision as to whether services should be deregulated. Of course, it is also meaningless to calculate a CR4 or HHI (or market share) for a specific business service, since all switched business services should be considered as part of the same market.

Q. HAVE YOU PREPARED AN EXAMPLE THAT DEMONSTRATES THE SHORTCOMINGS OF THE HHI AS A MEASURE OF MARKET POWER IN THE OREGON TELECOMMUNICATIONS MARKET?

A. Yes. The shortcomings of the HHI (and CR4) in determining whether Qwest enjoys a high level of market power are illustrated by an analysis of the Hermiston market.[70] According to Confidential Exhibit Qwest/40, Qwest has [**Confidential- XX%**] of the business local exchange market in Hermiston, and according to Attachment 2 of the UX 29 Survey Results Report, Qwest retains [**Confidential- XX%**] of the total Hermiston market. According to Confidential Exhibit Qwest/40, [**Confidential- XXXX**] of the [**Confidential- XXXX**] CLEC lines in Hermiston are UNE-L lines, and these lines alone exceed the [**Confidential- XXXX**] retail business lines provided by Qwest. While Attachment 2 of the Staff Report calculates an overall HHI of [**Confidential- XXXX**] for Hermiston, the Staff Report did not calculate an HHI for Hermiston based exclusively on facilities-based lines, since there are fewer than four facilities-based competitors.

Using Qwest wholesale data from Confidential Exhibit Qwest/40, I have calculated the HHI for Hermiston, if one only considers facilities-based competition, as Staff recommends. In Hermiston, all of the UNE-L lines are purchased by

70 An analysis of Roseburg provides a similar example.

[**Confidential- xxxxxxxx**]. Thus, the HHI (the sum of the squares of market share) would be calculated as follows:

[**Confidential-**	**Lines**	**Market Share**	**HHI**
Competitor A facilities-based	**XXXX**	**XX%**	**XXXX**
Qwest business lines	**XXXX**	**XX%**	**XXXX**
Total	**XXXX**		**XXXX]**

Thus, the HHI for Hermiston, when considering facilities-based competition, would be [**Confidential- XXXX**]. Based on their testimonies, I assume that Staff, Dr. Cabe and Mr. Denney would consider this to be a high HHI, indicative of excessive Qwest market power, and not indicative of a competitive market. However, this conclusion is clearly wrong, since Qwest has already lost [**Confidential- xxxxxxx**] of the Hermiston market. Because the facilities-based competition is from [**Confidential- xxxxxxxx**], the HHI and the level of market concentration is high. However, this clearly does not translate into market power for Qwest. In fact, if Qwest lost 95% of the market, the HHI would be even higher, despite Qwest's obvious lack of market power. The business market in Hermiston is very competitive, and the criteria for deregulation in ORS 759.030(4)(b) have been met, despite a high HHI calculation.

This example amply illustrates that the HHI is not a meaningful tool for estimating market power. The fact is that the market for business local exchange services can be very competitive with one, two or several competitors. The HHI obscures this fact.

E. Pricing of Competitive Services

Q. HAS MR. CHRISS PERFORMED AN ANALYSIS OF CLEC SWITCHED BUSINESS SERVICE PRICING?

A. Mr. Chriss has performed an analysis of CLEC switched business service pricing that is limited to basic exchange service (1FB). Exhibit Staff/112 provides a comparison of Qwest business basic exchange rates with CLEC business basic exchange service rates as derived from Competitive Survey responses. Mr. Chriss concludes that “Qwest has not acted like a firm in a competitive market would” because Qwest has not reacted to competition by lowering 1FB prices.

Q. DO YOU AGREE WITH MR. CHRISS’ ANALYSIS?

A. No. The price analysis that Mr. Chriss performed provides an incomplete analysis of price competition in the local exchange market. Mr. Chriss focuses exclusively on 1FB service, and ignores the fact that there are many services offered by Qwest and CLECs that provide substitutes for 1FB service, as demonstrated earlier. In addition, he fails to acknowledge that Qwest and CLECs are focused on providing service packages and bundles, not simply stand-alone 1FB service.

Q. CAN ANY MEANINGFUL ANALYSIS OF BASIC BUSINESS SERVICE PRICING BE PERFORMED WITHOUT CONSIDERING ADD-ON SERVICES, PACKAGES AND BUNDLES?

A. No. The fact that Mr. Chriss has ignored add-on services (such as features), service packages and bundles represents a serious defect in Mr. Chriss’ analysis. In today’s marketplace, few competitors are solely focused on providing service to stand-alone 1FB customers who do not order any add-on services. The real competitive battleground—even for 1FB customers—involves offering competitively priced add-ons, service packages and bundles. For example, in its 2004 survey of small and medium-sized businesses, the Yankee Group found that 75% of these businesses purchase a bundle of services, which was up from 63% in 2003.[71] It is well known that the margins on features and additional functionalities can be greater than the margins on the basic line, and competitors seek customers who will provide that contribution. Packages and bundles are also used as a means to retain customers.

Q. WHAT PERCENTAGE OF QWEST 1FB CUSTOMERS ORDER A BASIC LINE WITH NO FEATURES OR SERVICE PACKAGES?

A. Only [**Confidential- XX%**] of Qwest 1FB lines in Oregon are provisioned on a stand-alone basis, with no additional features and not as part of a service package. Moreover, [**Confidential- XX%**] of 1FB lines are provisioned as part of a package offering, such as Qwest Choice Business, and [**Confidential- XX%**] of 1FB lines are provisioned with one or more features, but not as part of a package. While I do not have similar data for CLECs, I would assume that the percentage of stand-alone customers would be no greater than [**Confidential- XX%**], since CLECs often focus on the marketing of packages and non-basic services. A perusal of CLEC websites for business local service offerings reveals that prospective business customers are steered toward packages and bundles of services. AT&T and MCI, for example, both list their bundled packages of local and long distance services and/or VoIP solutions on the first page accessed after selecting local service voice products for small business from their home pages.[72] McLeod focuses its

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[71] See *2004 SMB Bundled Communications Survey*, Yankee Group, September 2004, p. 1.

[72] See http://businessesales.att.com/common/smbccommonhome.jhtml?lid=atnmlpml&salescode=atnmlpml; and see http://business.mci.com/index.htm (visited October 3, 2005).

marketing efforts on offering the potential small business customer (1) a choice of four local service packages that include the access line and varying numbers of features (without long distance included); (2) an integrated access solution that combines voice and data on one high-speed connection; or (3) a VoIP product.[73]

This evidence demonstrates that the competitive battleground is *not* the stand-alone 1FB market that Mr. Chriss has evaluated. Since he has ignored the importance of add-on features and packages, his pricing analysis does not really show how Qwest and CLECs compete, and how Qwest prices compare with CLEC prices for the services that most business customers are buying.

Q. WHAT PRICE DOES QWEST CHARGE FOR ITS QWEST CHOICE BUSINESS PACKAGES IN OREGON?

A. The Qwest Choice Business packages are contained in Section 5.9 of the Qwest Oregon Exchange and Network Services Price List, and are described in Exhibit Qwest/44. As an example, the Qwest Choice Business package includes a basic line and a choice of three features for $39.99 per month.[74]

Q. DOES QWEST ALSO OFFER SERVICE "BUNDLES?"

A. Yes. If a business customer also orders an additional "non-basic" service from Qwest, he or she will receive a "bundle" discount. For example, if a customer orders Qwest Choice Business, Qwest Choice DSL Deluxe with Internet Prime and Unlimited Long Distance, he or she will receive an additional savings of $18.01.

[73] See http://www.mcleodusa.com/ProductCategory.do?com.mcleodusa.req.PRODUCT_TYPE=&com.mcleodusa (visited October 3, 2005).

[74] See http://www.qwest.com/smallbusiness/products/qcb/compare/

Please see Exhibit Qwest/45 for an excerpt from the Qwest website that describes these "bundle" savings.[75]

Q. ARE QWEST'S COMPETITORS OFFERING PACKAGES AND BUNDLES THAT DIRECTLY COMPETE WITH QWEST?

A. Yes. Exhibit Qwest/9 provides examples of packages and bundles provided by Qwest's competitors. An evaluation of this data demonstrates that CLECs are offering comparable packages at comparable rates. A sampling of some of the packages and bundles available from Qwest's competitors for business local services in Oregon, as seen in Exhibit Qwest/9, are included below:

- AT&T offers: 1) AT&T All In One Plus, including unlimited local calling and discounted long distance rates for $28.60 per month; and 2) AT&T All In One Advantage, including unlimited local and long distance calling for $58.95 per month.

- MCI offers: 1) MCI Business Complete Value, including unlimited local calling, six features, and discounted long distance rates for $34.99; 2) MCI Business Complete 200, including unlimited local calling, six features, and 200 minutes of long distance for $42.99; and 3) MCI Business Complete Unlimited, including unlimited local and long distance calling and six features for $59.99.

- McLeodUSA offers: 1) One Line Preferred Package, including unlimited local calling, as well as federal access, EAS and LNP charges, for $34.95

[75] See http://pcat.qwest.com/pcat/bundlesMain.do?salesChannel=sbus

to $42.95, depending on location; 2) Simple Preferred Package, including unlimited local calling and up to three features, as well as federal access, EAS and LNP charges, for $39.95 to $47.95; 3) Value Preferred Package, including unlimited local calling and up to seven features, as well as federal access, EAS and LNP charges, for $48.95 to $54.95; and 4) Premium Preferred Package, including unlimited local calling and up to nine features, as well as federal access, EAS and LNP charges, for $55.95 to $59.95.

Thus, comparisons of stand-alone 1FB prices do not paint a true picture of the competitive landscape. It makes no sense to argue—as Staff does—that there is little basic business price competition, when Qwest and other carriers are competing vigorously via packages and bundles. As demonstrated above, Qwest and other providers offer price discounts based on the services ordered by business customers.

Q. ARE COMPETITORS OFFERING SERVICES THAT ARE "FUNCTIONALLY EQUIVALENT OR SUBSTITUTABLE AT COMPARABLE RATES TERMS AND CONDITIONS," AS REQUIRED IN ORS 759.030(4)(b)?

A. Clearly yes. First, CLECs are offering stand-alone 1FB rates that are very competitive with Qwest rates, as Staff has demonstrated. It is clear from Exhibit Staff/112 that Oregon business customers throughout Oregon can purchase stand-alone 1FB service at rates that in many cases are below Qwest's rates. While Mr. Chriss seems to argue that this is indicative that there is no price competition, in reality this demonstrates that there is a great deal of price competition in every rate center in Oregon, even for stand-alone 1FB service. For stand-alone 1FB service, the requirements of ORS 759.030(4)(b) have been met, as customers have competitively-priced options to Qwest service.

Second, as I have demonstrated, Qwest and CLECs are competing vigorously via packages and bundles. The discounts provided by Qwest and its competitors are the hallmark of a competitive market. While Mr. Chriss argues that Qwest "has not reduced prices on most petition services in order to stave off the loss of lines and ultimately market share,"[76] he is clearly in error. The fact that Qwest has not reduced its basic 1FB rate misses the point entirely. In reality, Qwest has been offering discounted packages and bundles to attract and retain business customers. Qwest is reducing rates in many cases, and does this because it realizes it is in a competitive dogfight. This provides compelling evidence that requirements of ORS 759.030(4)(b) have been met.

Q. HAS QWEST FILED A COMPETITIVE RESPONSE TARIFF WITH THE COMMISSION?

A. Yes. Qwest filed a competitive response tariff that is included in Section 5.2.11 of Qwest's Local Exchange Tariff (PUC No. 29). This tariff, which I have included as Exhibit Qwest/46, outlines actions that Qwest may take to retain existing customers or obtain new customers. For example, the tariff outlines incentives that may be offered to *business* customers, including:

- A waiver of an amount up to 100% of the current business nonrecurring charges;
- A waiver of up to three months of the recurring rate(s); and
- A waiver of an amount up to 100% of the current business nonrecurring charge(s) and up to three months of recurring rate(s)

[76] Staff/100, Chriss/46.

Qwest filed this tariff in order to better compete in the competitive local exchange marketplace. Qwest, like its competitors, seeks to attract and retain customers by offering competitively-priced services, and may offer discounts when appropriate. This is clearly a form of price competition.

Q. HAS QWEST OFFERED NUMEROUS PROMOTIONS AND DISCOUNTS OVER THE PAST FEW YEARS IN ORDER TO RETAIN AND ATTRACT CUSTOMERS?

A. Yes. In response to a Staff data request, Qwest compiled a list of the various promotions it has offered in Oregon in order to curb business line losses. I have included this response, which reflects the competitive business environment, as Exhibit Qwest/47.

Q. MR. CHRISS ARGUES THAT THE DATA IN EXHIBIT QWEST/9 IS OF LIMITED USE BECAUSE IT QUOTES PRICES FROM "QWEST TERRITORIAL AREAS OUTSIDE OF OREGON."[77] IS IT REASONABLE TO CONSIDER CLEC PRICING DATA FROM OTHER STATES?

A. Yes. CLECs are not required to file tariffs in Oregon, so price data can be hard to obtain, unless it is publicly disclosed by CLECs. While many of the prices on Exhibit Qwest/9 are advertised prices for Oregon business customers, there are some service rates (particularly for large business customers) that CLECs do not publish unless they are required to. Nonetheless, it is reasonable to assume that the rates charged by a CLEC in Oregon would be very similar to the rates charged in other states where the CLEC competes against Qwest. Exhibit Qwest/9 provides a very useful comparison of Qwest and CLEC services and prices.

[77] Staff/100, Chriss/44.

Unfortunately, prior to the filing of its testimony, Staff had not released any of the pricing data it gathered from the CLEC survey responses. In fact, Qwest did not see any of this data until it was provided in Mr. Chriss' testimony in Exhibit Staff/112. Later, Qwest did receive some limited additional data regarding DID Trunks and ISDN-PRI, but did not receive any information on other services.

Q. MR. CHRISS ARGUES THAT PERHAPS QWEST HAS NOT REDUCED 1FB RATES BECAUSE IT "HAS DETERMINED THAT THE OREGON OPERATIONS CAN SUSTAIN A CERTAIN AMOUNT OF LOSSES AND STILL REMAIN PROFITABLE."[78] PLEASE COMMENT.

A. There is no basis for this assumption, as the loss of business customers is not an activity that increases profits for Qwest.[79] This is why Qwest is working hard to stem market losses through customer retention activities, including package discounts and "special savings offers" as described above.

Q. DOES MR. CHRISS PROVIDE ANOTHER POSSIBLE REASON WHY QWEST HAS NOT REDUCED 1FB RATES?

A. Yes. Mr. Chriss states:

> The final possible reason is that, if Qwest is successful in deregulating the petition services in this docket, Qwest will pursue a path of lowering prices in order to regain market share. If so, once sufficient market share is garnered, and a number of CLECs have exited the market, Qwest could raise its rates and operate as an unregulated monopoly.[80]

[78] Staff/100, Chriss/48.

[79] The incumbent wireline business is characterized by high percentages of fixed costs that are not reduced as revenue is lost to competition. Profits cannot be increased as revenue declines.

[80] Staff/100, Chriss/48.

I should note that, in similar fashion, Mr. Denney alleges that without regulatory oversight, Qwest could "target its pricing towards driving competitors from the market."[81]

Q. COULD QWEST ACT IN THIS MANNER?

A. No. Qwest would not, and could not, act in this manner. Mr. Chriss has described the textbook anticompetitive market behavior of a monopolist—which Qwest is not. The telephone market is no longer a monopoly, and Qwest does not have the market power to act in this manner even if it wanted to, which it does not. It would be theoretically possible for Qwest to make an attempt at carrying out step one—the reduction of rates to gain market share—but it would make no sense to do so. If Qwest were to lower rates, it could certainly not eliminate all competitors, many of whom are strong national players with vast resources that are financially better off than Qwest. In order to carry out "step one" of the hypothesized behavior Qwest would have to be strong enough financially to endure a loss of profits for some time period, with the hope they could be regained later. Qwest, which is not turning a profit today, certainly does not have the "deep pockets" to engage in such behavior even if it wanted to—which again, it doesn't. Qwest also has no ability to pull off step two—the raising of rates later in order to gain monopoly profits, since there is no monopoly. A subsequent attempt to raise rates would simply result in the loss of customers to existing competitors, and to new competitors who would enter the market due to the fact that there are no barriers to market entry. It is wrong to think that Qwest would or could raise prices excessively as a "monopolist" given the competition from CLECs—many of whom are well-heeled and are not going

[81] Eschelon/1, Denney/13.

away—and from intermodal technologies such as cable, wireless and VoIP. Dr. Fitzsimmons discusses this issue further in his testimony.

Q. HAS QWEST ENGAGED IN ANTICOMPETITIVE BEHAVIOR IN STATES WHERE SERVICES HAVE BEEN DEREGULATED?

A. No. Furthermore, in response to a data request from Qwest, Mr. Chriss admitted that, despite the fact that Qwest services have been deregulated to one extent or another in many other states over the course of the past several years,[82] he is not aware of *any* instances where Qwest has acted in this manner after its services were deregulated.

F. Barriers to Entry

Q. ARE THERE BARRIERS TO ENTRY IN THE SWITCHED BUSINESS SERVICES MARKET?

A. No. As I described in my direct testimony, there are no legal, regulatory, economic or technological barriers to entry in the local exchange telecommunications market in Oregon.

Q. PLEASE ADDRESS THE THREE ALLEGED POTENTIAL ENTRY BARRIERS THAT STAFF DESCRIBED.

A. Yes. First, Mr. Chriss states that the cost of building facilities may represent a barrier to entry.[83] As I described in my direct testimony, this is not a legitimate barrier to entry:

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[82] See Staff's responses to Qwest data request nos. 2-09 and 2-10, both included as Exhibit Qwest/48.

[83] According to the TELRIC study used to determine Qwest's loop rate in Oregon, the average capital expenditure per loop is $658.

> Some parties may argue that there are barriers to market entry because of the high capital expenditures that may be required for a CLEC to build its own facilities. However, as demonstrated above, a CLEC need not build its own facilities to compete with Qwest; it can compete via the purchase of UNEs, QPP or resale. Nonetheless, even if a CLEC decides to build its own facilities, the capital outlay that may be required to "overbuild" facilities (*i.e.*, build a new telephone network) does not represent a barrier to entry into the local exchange market (as evidenced by the substantial number of CLEC full facilities lines reported in the UX 29 Survey Results Report). Both Qwest and its competitors require capital to finance investment; and thus, the cost of constructing telephone plant is not a barrier to entry for competitors because both incumbents and competitors face similar capital outlays and investment carrying charges for investments in their networks. Although capital outlays needed to "overbuild" a traditional telephone network may be significant, there is a well-functioning capital market that can provide financing for such projects for companies with solid business plans.

The best evidence that there are no barriers to facilities-based entry in the switched business market in Oregon is the fact that there already *is* a significant level of facilities-based competitive entry in Oregon. Certainly, no entry barriers impeded these competitors.

Q. IS STAFF CONCERNED ABOUT CLECS BUILDING FACILITIES IN HIGH COST RURAL AREAS?

A. Yes. Staff argues that CLECs might not want to build facilities in high-cost areas, because the capital outlay would be higher than Qwest's average outlay. It is true that CLECs may be more likely to build facilities in low-cost areas, but this is due in large part to the fact that in high cost areas CLECs can simply purchase Qwest facilities to serve a customer at a lower cost. For example, in Rate Group 3, which includes rural areas, a CLEC could purchase 1FB service for resale at $30.50, less the 17% discount.[84]

[84] The unbundled loop rate in Zone 3 is $56.21.

Of course, unlike Qwest, CLECs can pick and choose which areas and which customers they will serve. Thus, CLECs will focus their efforts on the most profitable customers in the most profitable locations.

Q. CAN CLECS MAKE A PROFIT IN RURAL HIGH-COST AREAS EVEN IF THEY BUILD THEIR OWN FACILITIES?

A. Yes. A CLEC can make a profit in rural high-cost areas even if it builds its own facilities. When a CLEC serves a customer in a high-cost area (or any other area), it is not limited to providing basic local service with the associated 1FB revenue. A CLEC also can receive feature revenues, package revenues, toll revenues, access revenues and high-cost fund support. This revenue can be quite substantial, and can make building facilities profitable in virtually any location, especially for a business customer.

Q. MR. CHRISS CLAIMS THAT CERTAIN OF QWEST'S SERVICES ARE PRICED BELOW THEIR IMPUTED COST IN RATE GROUPS 2 AND 3.[85] DO YOU AGREE?

A. No. Mr. Chriss apparently did not consider Qwest's response to Staff Data Request No. 111, in which Qwest provided clear evidence that all services identified in the petition generate sufficient revenues to cover the price floor, with the exception of certain grandfathered Centrex Plus station line offerings. A copy of Qwest's response to Staff data request no. 111 is provided as Exhibit Qwest/49. Mr. Chriss' testimony on this point is simply wrong.

[85] Staff/100, Chriss/25.

In addition, from a competitive standpoint, it is not meaningful to limit the discussion to whether the basic rate is below the imputed floor. Even if the basic rate were below the imputed price floor (which it is not), this would not mean that competitors would avoid these areas. As I noted above, a CLEC would consider features, toll and other add-on service revenues when determining if it could profitably compete in a particular area.

Q. WHAT IS THE SECOND ALLEGED BARRIER TO ENTRY THAT STAFF MENTIONS?

A. Staff states that it is possible that CLECs will not be able to obtain access to buildings. This concern is also voiced by the other parties in this proceeding, including Mr. Knowles of XO. I will discuss this issue later in my testimony.

Q. WHAT IS THE THIRD ALLEGED BARRIER TO ENTRY THAT STAFF RAISES?

A. Staff argues that there is a potential difference in the franchise fees that Oregon cities charge to CLECs and to Qwest.

Q. DO YOU AGREE WITH THE BASIS UPON WHICH MR. CHRISS CONCLUDES THAT FRANCHISE FEES ARE A BARRIER TO ENTRY?

A. No, I do not. Exhibit Staff/116, which is represented as Qwest's franchise fee arrangement with the City of Portland, is actually the franchise agreement for Qwest Communications Corporation (QCC), Qwest's long distance affiliate. Qwest Corporation (QC), the regulated local telephone company who is the petitioner here, pays 7% of its local exchange revenue to the City of Portland. In addition, Mr. Chriss fails to note that other types of competitors, such as wireless and VOIP providers, pay no franchise fees to the City for the provision of their services within the City.

Q. PLEASE ADDRESS MR. DENNEY'S CLAIM THAT THERE ARE BARRIERS TO ENTRY.

A. Mr. Denney incorrectly attempts to tie barriers to entry with a certain level of market share. He states that "there can be only one reason that we do not see a greater degree of competition – substantial barriers to entry must exist in the market."[86] However, even if CLEC market share were fairly low (which, at [**Confidential- XX%**] statewide, it is not), this would not indicate that there were necessarily barriers to entry. As I described earlier, Mr. Denney admitted in response to a Qwest data request that "a barrier to entry is defined independent of market shares."[87]

Q. DOES MR. DENNEY CLAIM THAT THE RATES THAT QWEST CHARGES CLECS DEMONSTRATES THAT BARRIERS TO ENTRY EXIST?

A. Yes. Mr. Denney argues: "If Qwest faced meaningful competition from facilities-based CLECs, then Qwest's commercial offering for unbundled switching should be close to the forward-looking economic cost of switching—in other words the TELRIC for switching."[88] He then argues that "the fact that Qwest proposes to charge almost five times the TELRIC rate for the local switch port demonstrates that Qwest believes significant barriers to entry exist."[89]

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[86] Eschelon/1, Denney/27.

[87] Eschelon response to Qwest Data Request No. 3, included as Exhibit Qwest/39.

[88] Eschelon/1, Denney/28-29.

[89] Eschelon/1, Denney/29.

Q. IS THIS A VALID OR REASONABLE ARGUMENT?

A. No. First of all, as mentioned earlier in my testimony, the FCC specifically found that barriers to entry do not exist in the local switching market, and thus determined that CLECs were not impaired without access to Qwest switching. Thus, to argue that barriers for local switching *do* exist is in direct conflict with the FCC findings. In addition, as I mentioned in my direct testimony, there are at least 57 CLEC switches serving wireline local exchange customers in Qwest's Oregon territory. In fact, Eschelon has its own switch in Oregon, and can offer switching capacity in competition with Qwest. With all of the competitive switching capacity that exists in Oregon today, it makes no sense to argue that there are "barriers to entry" for switching. Apparently, Eschelon and the other CLECs with switches in Oregon were able to overcome these alleged "barriers to entry" rather easily.

Second, as I demonstrated earlier in my testimony, it is entirely misleading for Mr. Denney to claim that Qwest's switching rate has increased by "five times." The actual increase in QPP is approximately 6% per year, as I described earlier.

Finally, there is no basis to assume that in a competitive market, the switch rate would reflect the current TELRIC-based switch port rate in Oregon.

IV. THE XO SPECIAL ACCESS PROPOSAL

Q. PLEASE DESCRIBE THE MAJOR THRUST OF MR. KNOWLES' TESTIMONY ON BEHALF OF XO, TWTC AND INTEGRA.

A. Mr. Knowles takes no position on the regulatory treatment of Qwest's switched business services. However, he recommends 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."[90] Essentially, XO, TWTC and Integra would like to be able to purchase intrastate Special Access DS1 and DS3 loops and transport at the Unbundled Network Element ("UNE") rates that this Commission established.

Q. DO YOU AGREE WITH MR. KNOWLES' RECOMMENDATION?

A. No. First of all, this proceeding was established to determine whether Qwest's petition for deregulation of *retail* switched business services should be granted, and not to reconsider the intrastate special access rates that Qwest charges in Oregon. Thus, Mr. Knowles' recommendations are not relevant to this docket and the Commission should reject it. However, even if the XO-TWTC-Integra proposal were relevant to this case, there is no basis for this Commission to set Qwest's special access channel termination and transport rates equal to the price that Qwest charges for high capacity DS1 and DS3 unbundled loops ("UNE-Ls) and unbundled dedicated interoffice transport ("UDIT") in Oregon. As I demonstrate below, such an action would be antithetical to the FCC's Triennial Review Remand Order ("TRRO").

A. The TRRO

Q. WHY DO XO, TWTC AND INTEGRA RECOMMEND THAT THE COMMISSION SET OREGON INTRASTATE SPECIAL ACCESS RATES EQUAL TO THE "UNE" RATES FOR DS1 AND DS3 LOOPS AND TRANSPORT?

90 XO/1, Knowles/10.

A. Mr. Knowles states that "the TRRO significantly limits the high capacity and dark fiber loops and dedicated transport circuits that CLECs can obtain from Qwest."[91] Mr. Knowles appears to be most concerned about DS1 loops, and points out that based on the FCC's TRRO, Qwest will no longer need to provide DS1 loops in wire centers that serve more than 60,000 business lines and in which there are at least four fiber-based collocators. Qwest will also no longer have to provide a CLEC with more than ten DS1 loops in any one building. Similarly, based on the TRRO Qwest will not be required to unbundle DS3 loops in any building served by a wire center with at least 38,000 business lines and four fiber-based collocators, and would no longer have to provide more than one DS3 per building.[92] Thus, XO, TWTC and Integra are apparently concerned that in wire centers that meet the FCC's criteria, they would no longer be able to purchase DS1 loops from Qwest at TELRIC-based UNE prices.

Q. WOULD CLECS STILL BE ABLE TO PURCHASE HIGH CAPACITY DS1 AND DS3 CIRCUITS FROM QWEST IN WIRE CENTERS THAT MEET THE FCC'S CRITERIA?

A. Yes. In wire centers that meet the FCC's criteria, Qwest would still be required to offer DS1 and DS3 loop and transport services at just and reasonable rates pursuant to Section 271 of the Telecommunications Act, but would no longer be required to offer these services to CLECs as UNEs—at TELRIC-based rates. Thus, the practical impact on XO, TWTC and Integra is that in wire centers that meet the FCC's criteria, any DS1 and DS3 loops and transport these carriers chose to obtain

[91] Id., p. 5.

[92] TRRO, ¶ 5; Similarly, the FCC determined that "Competing carriers are impaired without access to DS1 transport except on routes connecting a pair of wire centers, where both wire centers contain at least four fiber-based collocators or at least 38,000 business access lines. Competing carriers are impaired without access to DS3 or dark fiber transport except on routes connecting a pair of wire centers, each of which contains at least three fiber-based collocators or at least 24,000 business lines."

from Qwest would only be available at special access rates, rather than at UNE rates. The CLECs' proposal in this case is based on the fact that they do not want to pay these higher rates in wire centers that meet the FCC's criteria.

Q. SHOULD THE COMMISSION SET INTRASTATE SPECIAL ACCESS RATES EQUAL TO THE TELRIC-BASED DS1 AND DS3 UNE RATES?

A. No. First, Mr. Knowles' proposal is in direct conflict with the FCC's TRRO. In essence, he argues that CLECs *are* impaired without access to UNEs in wire centers where the FCC has specifically determined that CLECs are *not* impaired without access to these UNEs. He states that "There is, and likely always will be, a very large number of customer locations to which Qwest alone has constructed facilities," and that "where economic constraints preclude CLECs from constructing their own facilities to particular buildings, CLECs must lease Qwest facilities to serve customers in those locations."[93] This logic flies in the face of the TRRO. The FCC lifted Qwest's unbundling requirements for DS1 and DS3 UNEs in the wire centers that meet the FCC's criteria specifically because CLECs are *not* impaired in those wire centers. The FCC stated:

> By using our section 251 unbundling authority in a more targeted manner, this Order imposes unbundling obligations only in those situations where we find that carriers genuinely are impaired without access to particular network elements and where unbundling does not frustrate sustainable, facilities-based competition.[94]

Mr. Knowles is now asking this Commission to ignore the FCC's findings, and to impose TELRIC-based rates on Qwest in these wire centers. Adopting this

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[93] XO/1, Knowles/3.
[94] TRRO, ¶ 2.

recommendation would have the effect of nullifying the FCC's TRRO, and would contravene the whole purpose of the FCC's order.

In essence, Mr. Knowles would like this Commission to make an "end run" around the TRRO, and reinstate the unbundling requirements that the FCC rescinded. I am not a lawyer, but it appears to me that if this Commission were to order special access to be priced at TELRIC-based UNE rates, it would in reality be imposing new unbundling obligations on Qwest that would conflict with the unbundling rules that the FCC adopted in the Triennial Review Order ("TRO") and the Triennial Review Remand Order ("TRRO"). Pursuant to Section 251(d)(2) of the Telecommunications Act, as interpreted by the D.C. Circuit Court, it is the FCC that has authority to determine what network elements should be unbundled. Such unbundling can only be required where the FCC finds that the impairment standard has been satisfied.

Q. DOES MR. KNOWLES ARGUE THAT THE FCC'S TRRO IS IN ERROR?

A. Yes. Mr. Knowles states that the FCC's conclusions and the impairment analysis in the TRRO are "not necessarily true as a practical matter."[95] He criticizes the FCC's impairment methodology, stating that "the number of collocators or the size of the wire centers . . . is a poor indicator of the level of competition or the extent to which CLECs continue to need to obtain facilities from Qwest."[96] Since he does not agree with the FCC's TRRO, he apparently would like to reargue the merits of the Order before this Commission. This is clearly not appropriate, and the Commission should reject this overture.

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95 XO/1, Knowles/6.

96 XO/1, Knowles/6.

In this proceeding, Mr. Knowles is making the same arguments that the FCC rejected in the TRRO proceeding. For example, Mr. Knowles argues that, even in a wire center that meets the FCC's criteria, CLECs may be impaired without access to certain buildings. Thus, he appears to be looking at impairment on a building-by-building basis. In the TRRO, several CLECs argued that the FCC's impairment analysis should be performed at the "building" level, rather than at the "wire center" level. The FCC specifically rejected this proposal, and adopted a wire center standard:

> Our first task in the impairment analysis is to define the appropriate level of geographic granularity at which to evaluate impairment. Consistent with the position of several incumbent LECs, including Verizon and SBC, *we find that the area served by a wire center is the appropriate geographic market. Parties have advocated a wide array of options, ranging from building-specific tests to MSA-wide determinations to national findings of impairment or lack thereof.* We recognize that some imperfections are inherent in any approach we might adopt, and conclude that the other proposed geographic tests have greater defects than the one we select. For example, a properly designed building-specific test could assess variations in impairment far more subtly than could a wire center or MSA-based approach, but would entail steep (and indeed, as we conclude below, insurmountable) hurdles with regard to administrability. In contrast, an MSA-wide approach relying on objective, readily available data would alleviate dramatically any concerns regarding administrability, but (as we also describe below) would require an inappropriate level of abstraction, lumping together areas in which the prospects for competitive entry are widely disparate. Thus, we are faced with the difficult task of adopting a test that balances these concerns, recognizing impairment where it exists but denying unbundling where competitive deployment is economic – and doing so in an administrable manner that is not excessively over- or under-inclusive. *As explained below, we adopt a wire center-based test, finding that requesting carriers are not impaired within the service areas of wire centers that contain significant competitive fiber deployment, as evidenced by collocation, and exhibit substantial revenue opportunities, as evidenced by the number of business lines served by the particular wire center. Although we recognize that such a test may in some cases be under-inclusive (denying unbundling in specific buildings where competitive entry is not in fact economic) or over-inclusive (requiring unbundling in specific buildings where competitive entry is in fact economic), we conclude that this approach strikes the appropriate balance and responds*

> *to the concerns expressed by the court in USTA II.*[97] (Footnotes omitted; emphasis added.)

The FCC determined that CLECs are not impaired without access to Qwest's DS1 and DS3 facilities in wire centers that meet the FCC's criteria. There is no reason to reargue the impairment case in this proceeding, and there is no basis for the Commission to effectively nullify the FCC's TRRO by reducing intrastate special access rates to the UNE rates in such wire centers.

Q. IF XO, TWTC AND INTEGRA ARE UNHAPPY WITH THE FCC'S TRRO, IS THIS THE PROPER FORUM FOR THEIR GRIEVANCES?

A. No. There are other much more appropriate avenues for CLECs to express their concerns. In fact, several CLECs have filed an appeal of the FCC's TRRO that is currently pending before the D.C. Circuit Court, and the CLECs have also filed petitions for reconsideration of the TRRO and a petition for forbearance. The arguments found in these pleadings are very similar to the arguments found in Mr. Knowles' testimony. The proper forum for these arguments is the D.C. Court of Appeals, not this Commission.

B. Nonimpaired Wire Centers in Oregon

Q. HOW MANY WIRE CENTERS IN OREGON MEET THE FCC'S NONIMPAIRMENT CRITERIA FOR DS1 AND DS3 LOOPS?

A. While the reader of Mr. Knowles' testimony might be led to believe that DS1 and DS3 loops will now *not* be available in many Oregon locations due to the TRRO, the fact is that only one Qwest wire center in Oregon—Portland Capitol—currently

[97] TRRO, ¶ 155.

meets the FCC's non-impairment criteria for DS1 and DS3 loops. Thus, in Portland-Capitol, CLECs would purchase DS1 and DS3 loops at special access rates, not UNE rates. However, CLECs will still be able to purchase DS1 and DS3 loops at UNE prices in all of the remaining 76 Qwest wire centers in Oregon. Of course, Qwest is still required to provide basic (DS0) loops to CLECs in *all* of its wire centers.

Q. HOW MANY WIRE CENTERS IN OREGON MEET THE FCC'S NONIMPAIRMENT CRITERIA FOR DS1 AND DS3 TRANSPORT?

A. Currently, there are five Qwest wire centers in Oregon that meet the "unimpaired" criteria that the FCC established for DS1 and DS3 transport facilities: Eugene 10th Avenue; Medford; Portland-Belmont; Portland-Capitol; Salem-State (Main). The FCC determined that CLECs are not impaired without access to Qwest DS1 or DS3 facilities running between these "Tier 1" wire centers. Additionally, there are two Qwest wire centers in Oregon that meet the "unimpaired" criteria that the FCC established for DS3 transport facilities: Bend and Portland-Alpine. The FCC determined that CLECs are not impaired without access to Qwest DS3 facilities running between these two "Tier 2" wire centers, or between those offices and a Tier 1 office. Thus, Qwest will still be required to offer DS1 and DS3 Unbundled Dedicated Unbundled Transport ("UDIT") at TELRIC-based UNE prices on the vast majority of transport routes in Oregon.

C. Special Access Pricing

Q. WHY WOULD XO "PREFER" TO OBTAIN THE HIGH CAPACITY FACILITIES IT "NEEDS" FROM QWEST AS UNES?

A. XO, TWTC and Integra would like to purchase high capacity loops at TELRIC-based UNE prices because they are lower than <u>inter</u>state special access prices. Mr. Knowles argues that "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."[98]

Of course, this Commission has no jurisdiction over the <u>inter</u>state special access rates contained in FCC Tariff No. 1, and therefore, the Commission cannot lower the $165 monthly DS1 rate that Mr. Knowles quotes. However, Mr. Knowles argues that since the <u>inter</u>state DS1 special access rate is "too high," the Commission should lower its <u>intra</u>state DS1 special access rate. Presumably, XO, TWTC and Integra would then order DS1 special access out of the <u>intra</u>state special access tariff.[99]

Q. WHAT DOES THE $165 DS1 SPECIAL ACCESS RATE THAT MR. KNOWLES QUOTES REPRESENT?

A. The $165 rate represents the "Zone 1" monthly <u>inter</u>state "channel termination," (loop) rate from the Qwest "Pricing Flexibility" tariff (FCC Tariff No. 1, Section 17.2, page 17-91). This rate does not include transport. The FCC tariff also contains lower DS1 channel termination rates for carriers signing three and five year contracts. For example, the 36-month contract rate for "Zone 1" is $130.

Q. WHAT ARE QWEST'S CURRENT <u>INTRA</u>STATE DS1 SPECIAL ACCESS CHANNEL TERMINATION RATES IN OREGON?

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98 XO/1, Knowles/4.

99 I assume these CLECs would claim that the interstate traffic on these special access circuits would be less than 10%, since they would be required to purchase interstate special access if the traffic on the circuit is more than 10% for interstate.

A. The Oregon intrastate "month-to–month" DS1 Special Access Channel Termination rate is $140, pursuant to P.U.C. Tariff No. 28, Section 5.3.7 (3rd Revised Sheet 129). For the sixth circuit and above, the rate is $135. The rates are lower for one- to five-year contracts:

Contract Length	1-5 Circuits	6+ Circuits
One Year:	$135	$130
Two Year	$130	$125
Three Year	$125	$120
Four Year	$120	$115
Five Year	$110	$100

Thus, it may be observed that the current intrastate DS1 channel termination rates in Oregon are significantly lower than the equivalent interstate rates that Mr. Knowles quotes. Thus, if CLECs purchase special access channel terminations from the intrastate tariff—in the one non-impaired wire center in Oregon—the DS1 rate would increase from $87.37 to between $100 and $135. These rates are significantly lower than the $165 rate that Mr. Knowles quotes; thus the "rate increase" in the unimpaired wire center would be much less than Mr. Knowles implies.[100]

Q. HOW DO THE DS1 INTERSTATE AND INTRASTATE SPECIAL ACCESS TRANSPORT RATES COMPARE?

A. The Oregon intrastate special access transport rates are also lower than the interstate rates. For example, the fixed month-to-month interstate DS1 transport rate for a 0-8 mile circuit is $92.00, and the per mile rate is $16.00.[101] The equivalent Oregon

[100] It is also worth noting that in the currently suspended Oregon docket UM 1025, *In the Matter of the Investigation to Review Costs and Establish Prices for Certain Unbundled Network Elements Provided by Qwest Corporation*, Qwest has filed cost studies supporting a revised TELRIC-based DS1 price of $105.88.

[101] Qwest FCC Tariff No. 1, Section 17.2.11, p. 17-98 (Pricing Flexibility Tariff).

intrastate transport special access rates are $65.00 fixed and $8.00 per mile, although the prices for other mileage bands are somewhat higher. Thus, the DS1 intrastate transport special access rates—like the channel termination rates—are lower than the interstate rates.

Q. HOW DO QWEST'S INTRASTATE DS1 SPECIAL ACCESS CHANNEL TERMINATION AND TRANSPORT RATES COMPARE WITH THE RATES IN OTHER QWEST STATES?

A. Not only are Qwest's Oregon DS1 intrastate special access rates lower than the interstate special access rates, but they are also lower than the typical DS1 intrastate special access channel termination and transport rates in other Qwest states.

Q. PLEASE SUMMARIZE THE DS1 "RATE" IMPACT OF THE TRRO ON XO AND OTHER CLECS.

A. The bottom line is that until such time as the Commission determines a new TELRIC rate for the DS1 loop, XO and other CLECs will continue to be able to purchase DS1s at the UNE rate of $87.37 in all Oregon wire centers, with the exception of Portland-Capitol, where CLECs may purchase DS1 channel terminations at a rate of $100 to $135. For nearly all transport routes in Oregon, CLECs would continue to purchase UDIT at the TELRIC-based UNE rates, while CLECs would pay the DS1 special access transport rates on routes between the five wire centers identified above. When the CLECs purchase intrastate special access, the DS1 rates are significantly lower than the interstate rates that Mr. Knowles quotes.

Q. IS THERE ANOTHER REASON THAT MR. KNOWLES WOULD LIKE CLECS TO BE ABLE TO PURCHASE DS1 SPECIAL ACCESS AT UNE RATES?

A. Yes. Mr. Knowles argues that since the DS1 private line rate charged to retail end users is the same as the special access DS1 rate charged to CLECs, they cannot compete effectively in the DS1 market.[102]

Q. IS THIS A REASONABLE ARGUMENT?

A. No. There are at least two fallacies in Mr. Knowles' argument. First, Mr. Knowles implies that when XO and other CLECs purchase special access from Qwest, they simply resell it as a private line service to the retail end user customer with no margin.[103] This is a hollow argument because when CLECs purchase DS1 or DS3 special access, they often use the DS1 special access circuit to aggregate local and toll traffic, or to offer voice grade (DS0) services. Unless XO simply resells the DS1 to a customer, the "margin" between wholesale DS1 special access and retail DS1 private line is really not an issue.

Second, Mr. Knowles' "margin" argument makes no sense *because* the same DS1 special access/private rate applies to CLECs and retail customers. If special access/private line rates are reduced, both CLECs and end-users would be able to purchase a DS1 circuit at the new lower price. Thus, the CLEC would still not be able to achieve a "margin" if it resold the circuit to a retail customer—who would still be able to purchase the circuit from Qwest at the same price.

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[102] XO/1, Knowles/5.

[103] Special Access service may be resold, but there is no wholesale discount.

Q. MR. KNOWLES ALLEGES THAT QWEST HAS RAISED ITS SPECIAL ACCESS RATES THREE TIMES IN THE LAST THREE YEARS. HAS QWEST RAISED ITS INTRASTATE SPECIAL ACCESS RATES IN OREGON IN THE LAST THREE YEARS?

A. No. Qwest has not raised either its regulated DS1 special access rates or its deregulated DS3 special access rates in Oregon in the last three years.

D. Access to Buildings

Q. MR. KNOWLES ARGUES THAT MANY BUILDING OWNERS DENY CLECS ACCESS TO THEIR BUILDINGS OR MAKE SUCH ACCESS UNECONOMIC. PLEASE RESPOND.

A. First, as a wholesale provider, Qwest permits CLECs to access any facilities it owns in commercial buildings under the terms of its Statement of Generally Available Terms and Conditions ("SGAT") or the Special Access Tariff. CLECs may obtain access to basic (DS0) unbundled loops in all buildings served by Qwest, and can obtain DS1 and DS3 unbundled loops in all Qwest-served buildings, except in the Portland Capitol wire center. In the Portland Capitol wire center, where there is significant facilities-based competition, CLECs can access Qwest DS1 and DS3 facilities via the Special Access Tariff. Thus, even if a building owner were to deny access to a CLEC, it can still access Qwest facilities in any building served by Qwest.

Second, telecommunications carriers, including Qwest, are prohibited under FCC requirements from entering into exclusive contracts with building owners.[104] To the extent facilities are owned and controlled by the building owner, Qwest faces the same impediments as XO and other CLECs do. Because this Commission has no jurisdiction over building owners, there is no recourse to force building owners to permit access other than to attempt to negotiate appropriate terms and conditions for entry with the building owner.

Q. HAS XO PROVIDED ANY EXAMPLES OF BUILDINGS TO WHICH IT HAS ALLEGEDLY BEEN DENIED ACCESS?

A. No. In response to a Qwest data request to identify each instance where building access was denied to XO, or onerous conditions were imposed on XO by building owners, XO responded that "XO does not maintain records of the requested information and therefore does not have any information that is responsive to this request". This data response is included as Exhibit Qwest/50.

E. Impact of Mergers

Q. MR. KNOWLES ALSO ARGUES THAT THE AT&T-SBC AND MCI-VERIZON MERGERS WILL HAVE A NEGATIVE IMPACT ON COMPETITION IN OREGON. DO YOU AGREE?

A. No. If applied to the local exchange markets currently served by SBC and Verizon, Mr. Knowles' argument that the mergers will reduce competition in the special

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[104] See: *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, adopted October 12, 2000, ¶¶ 25-40.

access market would have merit. There is a very real concern that, in the areas where SBC or Verizon are the dominant special access providers, the removal of AT&T and MCI as competitive special access providers will have a negative impact on competition for special access. For example, in Ohio, the merger of AT&T and SBC will eliminate AT&T as a separate provider of special access competing with SBC. The elimination of a primary special access competitor could negatively impact special access competition, as Qwest's long distance affiliate pointed out in its Ohio merger proceeding testimony, which Mr. Knowles has attached to his testimony.

However, the competitive impacts of the AT&T-SBC and MCI-Verizon mergers are much different in Oregon. In Ohio, the AT&T-SBC merger is eliminating a special access provider that directly competes with SBC in its serving territory. However, in Oregon, the AT&T-SBC and MCI-Verizon mergers do not effectively remove a competitive special access provider from the market. Since *Qwest* is not merging with AT&T or MCI, all of the AT&T and MCI facilities in Oregon would remain outside of Qwest's control, and will still provide a competitive special access alternative to Qwest. For example, AT&T's facilities in Portland, if the AT&T-SBC merger is approved, would be owned and operated by SBC. Thus, SBC, rather than AT&T, will be providing facilities and services in competition with Qwest. In similar fashion, if the MCI-Verizon merger is approved, MCI's facilities in Portland would be owned and operated by Verizon. Verizon—already a major player in Oregon—would then be providing services in competition with Qwest in Qwest's serving territory. Thus, in Portland and elsewhere in Oregon, the loss of AT&T and MCI would *not* "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," as Mr.

Knowles claims. The mergers simply change the face of Qwest's competitors—and will likely make them more formidable. There is no basis to assume, as Mr. Knowles does, that the elimination of AT&T and MCI as viable competitors will reduce XO and other CLECs' options for obtaining facilities.

V. PROPOSALS FROM THE PARTIES

A. XO, Integra and TWTC

Q. ACCORDING TO MR. KNOWLES, WHAT ACTION SHOULD THE COMMISSION TAKE IN THIS PROCEEDING?

A. Mr. Knowles recommends that Qwest's application be rejected, unless Qwest agrees to price its intrastate special access rates for DS1 and DS3 at the current DS1 and DS3 TELRIC-based UNE prices.

Q. SHOULD THE COMMISSION ACCEPT THIS PROPOSAL?

A. No. Mr. Knowles' recommendations are not relevant to this docket, which was established to determine whether Qwest's petition for deregulation of *retail* switched business services should be granted—not to reconsider the intrastate special access rates that Qwest charges in Oregon. If XO, TWTC and Integra have a concern about the level of Qwest's intrastate special access rates, this proceeding is not the proper forum to raise these concerns. Thus, the Commission should reject the XO, TWTC and Integra proposal.

B. Eschelon and TRACER

Q. ACCORDING TO MR. DENNEY AND DR. CABE WHAT ACTION SHOULD THE COMMISSION TAKE IN THIS PROCEEDING?

A. Both Mr. Denney and Dr. Cabe recommend that the Commission reject Qwest's petition in its entirety.

Q. DO YOU AGREE WITH THIS RECOMMENDATION?

A. Obviously, I do not. Dr. Fitzsimmons and I have demonstrated that, contrary Mr. Denney's and Dr. Cabe's claims, there is significant competition in the Oregon switched business services market, and the criteria established in ORS 759.030(4) have been met for all switched business services in all Oregon exchanges that Qwest serves.

C. Staff's Proposal

Q. PLEASE SUMMARIZE STAFF'S PROPOSAL IN THIS PROCEEDING.

A. Staff proposes to deregulate:

- Basic business services for all Portland rate centers
- 800 and ATM services in all of Qwest's service territory

Staff also proposes several "conditions" that should apply if these services are deregulated.

Q. DOES QWEST AGREE WITH STAFF'S RECOMMENDATION?

A. No. As I have demonstrated in my direct testimony and in this testimony, there is ample evidence to justify the deregulation of all switched business services in all exchanges in Qwest's serving territory in Oregon. Dr. Fitzsimmons and I have demonstrated that Qwest has met the criteria in ORS 759.030(4) for all petition services, and each of these services should be deregulated.

Q. DOES THERE APPEAR TO BE A CONCERN FROM STAFF THAT DEREGULATION OF SWITCHED BUSINESS SERVICES IN AREAS OUTSIDE OF PORTLAND—PARTICULARLY IN RURAL AREAS—WOULD RESULT IN INCREASES IN RURAL BUSINESS RATES?

A. Yes. While my testimony has demonstrated that switched business service competition exists throughout Oregon, it appears that Staff believes that deregulation in rural areas would somehow lead to retail price increases in those areas, since there may be fewer competitors serving those areas.

In order to address the Staff's concerns regarding rural Oregon business customers, if the Commission approves Qwest's petition, Qwest would be willing to commit to "capping" any increase in the rural rates for basic business service (1FB) to the level of an increase that might occur in urban areas such as Portland. Specifically, if all Qwest switched business services are deregulated, Qwest would agree that any increase in the 1FB rate in a rural area would be no greater than a 1FB rate increase in urban areas such as Portland. For example, if Qwest were to raise the 1FB rate in Portland from $26.00 to $27.00—a one-dollar increase, Qwest would agree not to raise the 1FB rate in a Rate Group 3 rate center by more than $1.00—from $30.50 to $31.50.

Please note that this proposal *does not* mean that Qwest has definitive plans to raise the 1FB rate anywhere in Oregon; it is simply designed to alleviate Staff's concerns about the price of switched business services in rural areas.

Q. MR. CHRISS IDENTIFIES SEVERAL CONDITIONS THAT STAFF BELIEVES SHOULD APPLY IF THE COMMISSION ACCEPTS ITS MODEST DEREGULATION PROPOSAL. DOES QWEST AGREE WITH THESE CONDITIONS?

A. As an initial matter, as I discussed above, Qwest believes that the Staff proposal is too restrictive, and that all switched business services should be deregulated throughout Oregon. However, should the Commission deregulate Qwest in any fashion, it should not impose the conditions that Staff has proposed, as I discuss below.

Q. PLEASE ADDRESS THE FIRST CONDITION.

A. First, Staff would like Qwest to agree to continue offering basic business service on a stand-alone basis. Qwest is not troubled by this condition, as it has no plans to discontinue stand-alone 1FB service.

Q. WHAT IS STAFF'S SECOND CONDITION?

A. Staff would like Qwest to agree not to engage in discriminatory pricing of the deregulated services. Thus, Qwest would continue to be subject to the complaint and investigation procedures of ORS 756.500, et seq., with respect to allegation of discriminatory pricing for the deregulated services.

Staff also provides the following conditions:

> Upon request, Qwest must also disclose to customers information regarding prices charged to customers of comparable size or requirements. As well, Qwest is required to notify its customers, of any change in rates, terms and conditions and of the customer right to request information relating to prices charged customers of comparable size and requirements and of the customer's right (to) file a complaint regarding discriminatory pricing with the Commission.[105]

Q. DOES QWEST AGREE WITH THIS CONDITION?

A. No. With regards to ORS 756.500, Qwest is subject to this law today, and it is my understanding that this statute would still apply to Qwest if its switched business services were deregulated. Stating this statute as a condition is not necessary, although Qwest would agree that ORS 756.500 applies to Qwest.

I am more troubled by the second portion of this "condition," which appears to impose onerous conditions on Qwest that do not apply to its competitors. There is no basis for requiring Qwest to "disclose to customers information regarding prices charged to customers of comparable size requirements" or to "notify its customers of . . . the right to request information relating to prices charged customers of comparable size and requirements and of the customer's right to file a complaint regarding discriminatory pricing with the Commission." Qwest will certainly include prices for most standard business services (e.g., 1FB, packages) on its website, and customers will be able to compare Qwest's rates with its competitors' rates—just like customers do in other competitive markets. However, to require Qwest to make a special effort to inform customers of prices charged to other customers is unduly burdensome, and would serve no purpose. The purpose of deregulation is to eliminate unnecessary regulation and to provide parity among providers. This "condition" certainly does not meet this goal. Further, when Qwest

[105] Staff/100, Chriss/62.

negotiates a contract with a large business customer, there is no basis for requiring Qwest to divulge the terms of that agreement to other customers so that they can see if another customer "got the same deal." In a competitive market, no firm is required to release the rates and terms of its contracts to its competitors or to its other retail customers. The Commission should reject this proposed condition.

Q. WHAT IS STAFF'S THIRD CONDITION?

A. If business services are deregulated, Staff would like Qwest to "functionally separate its employees responsible for sale of wholesale services from the employees responsible for sale of retail services" and to agree that it "will not share the data from the wholesale business function with its retail business function."[106]

Q. IS IT NECESSARY FOR THE COMMISSION TO IMPOSE THIS CONDITION?

A. No, it is not necessary. The condition that Mr. Chriss proposes is already codified under Section 222(b) of the Telecommunications Act. Additionally, Qwest's Statement of Generally Available Terms and conditions ("SGAT") and CLEC interconnection agreements contain conditions to protect carrier proprietary information; thus, this is not a new issue. Pursuant to these obligations, Qwest has had policies in place for years to prevent carrier-specific proprietary information from being used in retail marketing functions.

Each Qwest employee is already required to be knowledgeable on the matter of confidentiality of all customer proprietary information, including carrier specific information, as part of his or her annual "Code of Conduct" review. Moreover, all

[106] Staff/100, Chriss/62.

Qwest employees receive annual training on Section 222(b) of the Act. Thus, Staff's concerns have already been addressed; (i.e., existing law, policies and employee training already safeguard against the use of wholesale data for retail marketing purposes.) Misuse of this information is subject to disciplinary action up to and including dismissal.

Q. WHAT SPECIFIC PROPRIETARY INFORMATION PROTECTION SAFEGUARDS ARE PROVIDED BY QWEST'S MODEL INTERCONNECTION AGREEMENT ("SGAT") TO CLECS?

A. Yes. Section 5.16 of Qwest's Oregon SGAT addresses "nondisclosure" and subsections 5.16.3 and 5.26.5 cover the responsibilities of each party with respect to the protection of information.[107] Following are relevant excerpts from each of these subsections:

> ***Subsection 5.16.3***: Each Party shall keep all of the other Party's Proprietary Information confidential and will disclose it on a need to know basis only. In no case shall retail marketing, sales personnel, or strategic planning have access to such Proprietary Information. . . . Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing.
>
> ***Subsection 5.16.5***: . . . In addition either Party shall have the right to disclose Proprietary Information to any mediator, arbitrator, state or federal regulatory body, the Department of Justice or any court in the conduct of any proceeding arising under or relating in any way to this Agreement . . . The Parties agree to cooperate with each other in order to seek appropriate protection or treatment of such Proprietary Information pursuant to an appropriate protective order in any such proceeding.

While subsections 5.16.3 and 5.16.5 address the overall protection of carrier information, there are at least eleven additional references to the protection of specific carrier information that appear throughout the SGAT. These references can

[107] See Qwest Oregon SGAT (Eighteenth Revision), November 24, 2004.

be found in the following subsections: 7.2.2.8.7, 7.2.2.8.12.2, 7.6.1, 7.6.2, 8.4.1.4.1, 9.2.6.2.1, 9.2.6.2.2, 9.3.5.1.2, 9.23.5.6, 12.3.2.2, and 18.3.

Q. DOES THIS MEAN THAT NO CARRIER INFORMATION CAN BE DISCLOSED IN REGULATORY PROCEEDINGS, SUCH AS THIS ONE?

A. No. Carrier information can be disclosed under certain conditions, but specific steps must be taken to protect this information. For example, on a proprietary basis, Qwest personnel in this docket have access to and have presented aggregate CLEC data to demonstrate the presence of competition. Aggregate CLEC information does not disclose individual carrier-specific information.

Additionally, some Staff data requests directed to Qwest required a response containing carrier specific information. To support the premise that Qwest's existing policies are sufficient to protect carrier proprietary information, Qwest provided this information on a highly confidential basis to Staff only after Qwest issued a letter to all affected CLECs, advising them of the request and providing them with an opportunity to object to Qwest's provision of such data. In those instances where a carrier refused permission, Qwest did not provide the proprietary information in its response.

Q. IS THERE ANY BASIS FOR QWEST TO "FUNCTIONALLY SEPARATE ITS EMPLOYEES," AS STAFF RECOMMENDS?

A. No. While it is not clear precisely what Mr. Chriss means by a functional separation, Qwest clearly has protections in place that meet the requirements of the federal act and individual interconnection agreements including the SGAT. This Commission does not need to impose any further conditions, particularly when these requirements might differ or conflict with protections that have been successfully in place for years.

VI. CONCLUSION

Q. WHAT ACTION SHOULD THE COMMISSION TAKE IN THIS PROCEEDING?

A. The Commission should approve Qwest's Petition to exempt from regulation all switched business services in Qwest's Oregon service territory.

In my direct testimony and in this rebuttal testimony, I have provided a wealth of evidence demonstrating that Qwest is experiencing robust and increasing competition for all switched business services. Both traditional CLECs and intermodal providers (e.g., VoIP) are competing with Qwest throughout Oregon, and are placing extraordinary competitive pressure on Qwest. Between June 2001 and June 2005, Qwest switched business lines have declined from [**Confidential- XXXXXX**] to [**Confidential- XXXXXX**]—a [**Confidential- XX%**] decrease over a period of just four years. This decline has occurred even as overall demand for telecommunications services—including wireline, wireless and VoIP—has exploded. It is hard to see how Qwest switched business services require traditional regulation within the context of this market.

Other parties in this case have argued that competition should be evaluated on a service-by-service basis, allegedly because Qwest has not proven—via the cross-price elasticity studies and formal customer surveys—that all switched business services are substitutes for each other. As I have demonstrated, there is no need to perform complex quantitative analyses to prove that Oregon business customers are substituting various switched business services for each other. It would be a waste of money and resources to perform a complex quantitative study to prove, for example, that Centrex and PBX services are substitutes, when this can be convincingly demonstrated without such a study. I have provided significant and irrefutable evidence that all switched business services are marketed as substitutes for other services, and that the "relevant market" this Commission should consider is the entire switched business services market in Oregon.

Q. HAVE YOU DEMONSTRATED THAT THE CRITERIA IN ORS 759.030(4) HAVE BEEN MET?

A. Yes. My testimony has demonstrated that the switched business services market in Oregon is extremely competitive, and that the requirements of ORS 759.030(4) have been met.

I have also demonstrated that pursuant to ORS 759.030(4)(a), services are available from alternative providers in the "relevant market" (i.e., the switched business services market). This competition originates from both traditional CLECs and intermodal competitors who are operating throughout Oregon. Based on the evidence I have provided, there is no question that Oregon business customers now have multiple options to meet their telecommunications needs.

Pursuant to ORS 759.030(4)(b), I have provided a great deal of evidence demonstrating that both traditional wireline and intermodal competitive providers are offering services that are "functionally equivalent or substitutable (for Qwest services) at comparable rates, terms and conditions." I have demonstrated that CLECs are marketing services that are close substitutes to Qwest switched business services, at comparable prices. The provision of functionally equivalent or substitutable services at comparable rates by multiple competitors has the effect of constraining Qwest's ability to raise prices for its services. Thus competitive market forces, not regulation, should determine the appropriate prices for these competitive switched business services.

Pursuant to ORS 759.030(4)(c), I have demonstrated that there are no "existing economic or regulatory barriers to entry." The best evidence that there are no barriers to entry is the fact that there are CLECs serving business customers in all 77 Qwest Oregon wire centers, and in all but one of these wire centers there are multiple competitors serving business customers. The fact that there are at least 50 wireline providers actively competing with Qwest in Oregon, along with numerous wireless and VoIP providers, provides compelling evidence that entry barriers do not exist. Clearly, the public interest no longer requires regulation of Qwest switched business services. The Commission should therefore grant Qwest's petition for exemption from regulation.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

Docket UX 29

Staff Responses to Qwest's
First Set of Data Requests

1-03 Referring to Exhibit Staff/100, Chriss/23, is it Mr. Chriss' opinion that in order to demonstrate one service is a substitute for another service, it is necessary to conduct a formal cross-elasticity study?

a) If yes, please explain in detail why a formal price elasticity study is necessary.
b) If no, please explain in detail what data is required to demonstrate that one service is a substitute for another service.
c) Is "anecdotal" information relevant in determining the substitutability of services?
d) Please provide a reference to all telephone deregulation proceedings in the Qwest region or elsewhere in the United States of which Mr. Chriss is aware where formal cross elasticity studies have been performed.

Answer: No.

a) N/A.

b) Qwest should submit data that are sufficiently robust, in the opinion of the decision makers, to meet the burden in this docket. Staff retains the option to support or oppose the data presented.

c) Perhaps.

d) Mr. Chriss is not aware of any deregulation proceedings in which cross elasticity studies have been performed.

Respondent: Steve W. Chriss

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- FAQ
- Additional Information
- Technical Overview

ISDN Single Line Service

Qwest Single Line ISDN Service uses advanced digital technology to move data at significantly higher speeds than standard phone lines.

How is it different?
Unlike standard phone lines, it allows multiple communications to travel simultaneously on a single line. So the speed of your communications dramatically increases - up to 128 Kbps, making it faster and easier for you to do business. Faster throughput may be achieved with appropriate equipment and compression software.

Qwest Single Line ISDN Service represents a major advancement in the data communications capabilities available to business and residence users. This all-digital service, based on ISDN technology, offers fast, flexible, highly reliable, and digitally clear connections while offering the simplicity of dialing a telephone.

Qwest Single Line ISDN Service provides you with access to the powerful capabilities of today's public telephone network. Whether communicating across town or around the world, ISDN offers many fundamental improvements over conventional, wide-area analog communications.

Benefits

Efficiency
Qwest Single Line ISDN Service replaces multiple voice, fax, and modem lines supporting data, voice, video, audio, and image applications - individually or simultaneously. As many as eight devices may share a single ISDN line.

Connectivity
Network protocols and hardware standards agreed upon worldwide support border-free, global communications that enable you to share all kinds of information with anyone, anytime, anywhere.

Other Recommended Products and Services
- Network Desktops On Demand
- Qwest.net Internet Access
- Virus Protection On Demand

Availability
Qwest ISDN service is available in the states of AZ, CO, ID, IA, MN, MT, NE, NM, ND, OR, SD, UT, WA, and WY. Qwest Single Line ISDN Service functions on standard telephone lines and fiber optic circuits. The technology is both widely deployed and cost effective. The availability of ISDN service depends on distance from the Qwest Serving Office and technical telephone line qualifications.

Economy
Qwest Single Line ISDN is an excellent alternative to costly dedicated lines or multiple dial-up lines for voice, data, fax, and Internet access. Our ISDN Service is provided over the public switched network, which gives you flexible service on a dial-up basis. You get the functionality of two telephone lines at a comparable price. In addition, a single line may have multiple telephone numbers and ISDN comes with enhanced voice features such as Speed Calling, 3 Way Calling, Call Forwarding, and Calling Number ID at no additional charge.

Speed and Accuracy
Qwest Single Line ISDN Service runs four to eight times faster than a standard 28.8 Kbps modem with scalable speeds from 64 Kbps to 230 Kbps throughput using compression. The digital ISDN signal is pure and error-free with no line noise to slow or drop connections.

Signal Quality
Qwest Single Line ISDN Service digital transport supports near broadcast-quality video and CD-quality audio.

Qwest Single Line ISDN Service Applications

Internet Access
Qwest Single Line ISDN Service is a fast, accurate, economical conduit for all kinds of Internet-based information - including global email, file transfer, news groups, bulletin boards, and interactive applications. Emerging applications include e-commerce and low speed video and radio broadcasting. Net surfers may even cruise virtual malls to shop the world for goods and services in a convenient and secure sales environment.

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PBX Analog Trunks

A trunk is a point-to-point connection between a customer's PBX and a Qwest central office. A trunk can provide inbound-only, outbound-only, two-way, or toll service. You have the flexibility to choose the combination of trunks that match your needs.

Benefits

- Can be engineered for special features and restrictions, permitting a business to control the type of calling allowed to each customer.
- Ideal for a business that has a need for switched access services greater than a basic business line (1FB).

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Voice Solutions : Lines and Services

Centrex Plus

Qwest's Centrex Plus configures to your needs, and is maintained 24 hours a day for reliability. You get updates and enhancements, so you're always ahead. Centrex Plus fits seamlessly with your other telecom and data services. It also ties multiple locations together in one complete system.

Centrex Plus service is a business communications system furnished from a state-of-the-art Qwest digital central office using local network transport technologies. This service offers over 100 standard and optional features which makes Centrex Plus service comparable to PBX systems. You have a choice of access to the local exchange calling area via each Centrex Plus station line (non-blocked) or controlled access line (blocked) depending upon the number of Network Access Registers you choose to subscribe to.

Centrex Plus service is available on an intraLATA basis in the states of AZ, CO, IA, NM, ND, OR, SD, and WA.

Benefits

Qwest/30
Brigham/1

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XO® Centrex

Overview

Offered on a subscription basis, Centrex is a complete business telephone system that delivers PBX-like features with both internal and Public Switched Telephone Network (PSTN) access to individual desks. This turnkey, outsourced solution comes with all the features, functions and applications that our regional and national customers need to provide robust call abilities. Benefits of XO Centrex include:

- Cost savings with our competitive pricing and also because you no longer need to support an internal PBX or Key System - just think, no up-front capital costs and no maintenance charges
- Flexibility to connect multiple offices in the same city or region on one system and to do it without switching equipment at any of your office locations
- Improved service for your employees since each has their own line and DID number along with simultaneous access to dial tone and the PSTN.

All this and a system with unlimited growth potential. Unlike what happens when you purchase a PBX or Key System, XO Centrex can easily scale to grow as your business grows -- locally, regionally and nationally - all without an additional up-front investment.

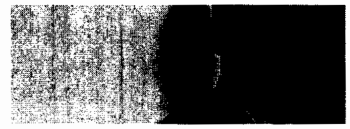
Features

- Touchtone Dialing
- Direct Inward Dialing/Direct Outward Dialing
- Caller ID Blocking
- Itemized Usage Billing by Extension
- Speed Calling
- Conference Calling
- Over 20 additional standard features
- Additional optional features for advanced functionality

Complete Specifications

Pricing and Availability

XO® Centrex is available in all XO Markets on a subscription basis. Call your XO Sales Representative today to put together a proposal based on the features, packages and length of contract your business needs.



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What's Hot

- Wire Maintenance Plans for Business Lines, Trunks & Centrex
- Volume Discounts available for Local Services
- Service installation obligations for Illinois

Qwest/30
Brigham/2

See Also

- XO® Voice Messaging
- Centrex User Guide (PDF)
- View XO® Local Service footprint

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Lines & Services

Digital Switched Service

DSS provides a DS1 facility between your PBX and the central office. This gives you 24 voice-grade channels and frees up space in your PBX.

Benefits

- Cost efficient. Helps reduce costs by providing greater trunking efficiency.
- Reliability. Improve dependability of dial-up data transmissions through the quality of digital transmission.
- Growth. Consolidate trunks onto a T1 interface to allow for expansion within the PBX. You may not need to add shelves to the system.
- Timing. Precision timing for call accounting software.
- Precision. Improved ability to do precise internal toll billing.
- High quality signal. Improved voice and data transmission with DSS. Consistently better quality transmission than regular analog.

Primary Rate-ISDN
PRI uses 23 channels on a T-1 for switched services. It has a D channel for out of band signaling, which DSS does not.

Analog Trunks
Each use a cable pair at your premise for connectivity. DSS uses 2 cable pairs and mixes the DS1 into 24 channels, providing a 56k channel.

Availability depends on your distance from the Qwest Serving Office and technical phone line qualifications. May require purchase of additional CPE and minimum term of commitment.

Features

Other Recommended Products and Services

- Uniform Access Solution (UAS)

- Competitive pricing
- Answer supervision
- Consolidation of service
- Home office solutions
- Internet access
- Integrated data, voice and video

Two-way data trunks offer video applications and 56 Kbps data transfer. Consolidate your service by using vacant channels on DSS to provide facilities for your PBX.

Qwest DSS Service is available only in region in the states of AZ, CO, IA, ID, MN, MT, ND, NE, NM, OR, SD, UT, WA and WY.

ABOUT QWEST CAREERS AT QWEST

Qwest/32
Brigham/1

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▸ FAQ

ISDN Primary Rate Service

Qwest Primary Rate ISDN Service offers you the power to create a seamless communications system that speeds and smoothes the flow of information without the expense of dedicated lines, modems, and special cabling.

Qwest Primary Rate ISDN Service links your PBX to our advanced central office systems to provide you with global, digital connectivity and the full functionality of Centrex service. Qwest Primary Rate ISDN Service is the digital network architecture that allows you to transmit voice, data, video, and image, separately or simultaneously - either over standard telephone lines or fiber optic circuits via a standard interface. A single ISDN channel is a fast and flexible information management tool, but Qwest Primary Rate ISDN Service is 24 times more powerful - bundling 24 ISDN channels for delivery to your premises.

The Qwest Primary Rate ISDN Service configuration is known as 23B+D: 23B channels for transport of voice, data, video, and image at 64 Kbps plus a single D channel for call setup and control. The 23B channels may be used as is or rearranged in a wide variety of ways to accommodate your highly specific needs.

Benefits

- Bandwidth on demand gives you exceptional flexibility and the functionality of multiple communication circuits at a comparable price
- Borderless communications enables you to share all kinds of information with virtually anyone, anytime, anywhere
- Functions on standard analog four-wire and fiber optic circuits - technology that is both widely deployed and cost effective
- Digital speed and accuracy
- Fast, reliable backup for lines and host computers
- Calling Name and Number provide added security

Qwest/32
Brigham/2

(Calling Name is an optional feature and is not available in all switches)

- Faster call setup occurs because the signaling information is over a separate D channel - speeding up the origination, termination, or any other changes, required to process your calls (also referred to as out-of-band signaling)

Qwest Primary Rate ISDN Service Applications

- LAN interconnection
- Video conferencing
- Virtual office
- Backbone LAN access
- Voice and data integration
- Image transfer
- Business continuation and disaster recovery
- PBX

Availability
Qwest ISDN service is available in the states of AZ, CO, ID, IA, MN, MT, NE, NM, ND, OR, SD, UT, WA, and WY. ISDN service available in most locations depending on distance from Qwest Serving office and technical phone line qualifications. Required equipment and Internet access costs additional. Minimum term of commitment.

ABOUT QWEST | CAREERS AT QWEST

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▸ User Guide

Centrex PRIME

Qwest's Centrex PRIME delivers integrated voice, video, image, and data services over our super-fast network. It's the best of the Centrex line, so when nothing else will do, this is what you need.

- Enhance customer service
- Integrate the latest technologies into your business
- No up front capital costs
- Standards-based open architecture

Plug it into digital or analog lines, and stay on top with our automatic upgrades.

Centrex PRIME includes analog or digital station lines that may be provided utilizing various technological designs. A group of station lines is translated for an individual customer group and is provided common access to a predetermined group of features. Optional features are also available. Customers select Centrex PRIME station lines based upon an analog or ISDN (digital) alternative. The standard set of features provided varies depending on the alternative selected and the available central office technology. Centrex PRIME provides enhanced features and functionality and is considered the latest in the evolution of the Centrex product family.

Centrex Prime service is available on an intraLATA basis only in the states of AZ, CO, IA, ID, MN, MT, NE, NM, ND, OR, SD, UT and WA.

Qwest/34
Brigham/1

- Security
- Managed Network Services
- Voice
- Internet
- Data
  - ATM
    - U.S.
    - Global
  - Digital Media Technologies
  - Frame Relay
  - Private Lines
  - Corporate Remote Access
  - VPNs
  - Secure Interworking Gateway Services
  - SkyTel Wireless Services
  - Data Center Services
  - MCI Advantage
- Satellite
- Government Services
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ATM

Supporting multiple applications - voice, data, multimedia, video - can be costly and complex. In the past, enterprises solved the problem in one of two ways: multiple legacy networks to handle different types of traffic, or excessive bandwidth to handle the load.

But with MCI ATM Service, you can support your applications through a single network that's available to you nationwide and across the globe.

How Can Enterprises Use ATM?

- Financial institutions use the stable connectivity of ATM to interconnect their business sites, enabling real-time stock quotes and Internet access
- Hospitals and other healthcare organizations use ATM's reliable network connections to exchange X rays and the latest medical techniques
- Universities use ATM to provide worldwide distance learning from their main campus by producing executive-quality video, voice, and data

Why MCI ATM?

- Highly redundant, high-speed global backbone providing both domestic and international service
- Ability to prioritize service to support multiple types of traffic
- Supports all five major service classes as defined by the ATM forum (Constant Bite Rate, Variable Bit Rate - Real Time, Variable Bit Rate - Non-Real Time, Available Bit Rate, Unspecified Bit Rate)
- Flexible bandwidth options you control from your desktop
- Standards-based technology means you're never locked in to a single vendor, so it's easy to integrate your network
- Local-to-global-to-local connectivity, which means you get one bill, one provider, and one contact
- Supports scalable access/port speeds from sub-DS1 (1.444 Mbps) up to OC12 (622 Mbps)

Which Applications Does ATM Support?

- LAN interconnection
- Voice transmission
- High-speed data transfer
- Private line circuit emulation
- High-resolution imaging

What is ATM?

Asynchronous Transfer Mode (ATM) is a network technology that decreases the number of access lines you need, greatly simplifying technology management.

ATM transfers data in fixed-size cells. Because the cells are always the same size, ATM can transmit various types of data - voice, video, and so on - without any one type blocking the line.

When transferring data, ATM creates a fixed channel between two points. (This is different from TCP/IP, which divides the data into packets, with each packet taking a different route to its destination.) ATM's fixed-channel method can reduce overall costs and make it easier to track data usage across the network.

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View example

- High-definition video transport
- Multimedia communications
- Host-to-host internetworking
- Interactive and concurrent engineering
- PBX interconnect

U.S. ATM
ATM is available in the U.S. from more than 700 points of presence throughout the contiguous 48 states. MCI's national ATM services offer a full range of connectivity and multiple service classes.

Tell me more

Global ATM
Seamless international ATM services are available in a number of countries via MCI's wholly-owned and managed facilities-based network. By providing end-to-end global connectivity to many locations worldwide, MCI offers an integrated global solution.

Tell me more

Qwest/34
Brigham/3

Frame Relay

Need to connect networks around the globe? Looking for a cost-effective method that doesn't force you to build your own network infrastructure?

Frame relay service is the world's premier high-speed packet data technology, supporting private business data communications on a public network.

MCI® provides one of the most comprehensive frame relay services through our seamless global connectivity and industry-leading advanced features, which are designed to reduce overall networking costs. With MCI, you benefit from true one-stop shopping for international and domestic frame relay service.

How Can Enterprises Use Frame Relay?

- Companies use frame relay as the base network technology behind their worldwide e-mail services.
- Businesses use frame relay to support corporate intranets, keeping employees connected by using facilities owned by a service provider.
- Many customers also use Frame Relay to support back office automation of routine functions such as payroll, benefits enrollment, etc. and reduce costs

Why MCI Frame Relay?

- Competitive, flexible pricing options and configurations that address budget and network requirements
- Seamless global connectivity, capable of standard access speeds from 56 Kbps up to 45 Mbps, with some of the industry's most comprehensive frame relay coverage providing robust networking for national and international data needs
- Unsurpassed reliability backed up by industry-leading service level agreements (SLAs) and disaster recovery services
- Support for a wide range of applications, such as legacy data applications including SNA, intranets, web and voice.
- Unified, integrated service and support with one contact, one contract, and one-call trouble resolution
- Access - anytime and anywhere - with an industry-leading choice of access options

How Reliable Is the MCI Frame Relay Network?

- Back-up power supply and duplicate network components with automatic switch-over in the event of failure
- Customer service and support with 24-hour network monitoring

What Is Frame Relay?

Frame relay is a cost-effective network technology that provides high-speed transfer rates and reliability.

Frame relay transfers data by dividing it into packets, with each packet taking the most efficient route to its destination. Packet switching is most appropriate for high-volume data that can withstand some transmission delay, such as e-mail or Web pages.

Frame relay can be used to connect local-area networks (LANs), wide-area networks (WANs) such as the Internet, systems network architecture, and voice applications.

- Complete and automatic disaster recovery facilities: interconnected SDH rings minimize the effect of network failures
- Remote diagnostic tools allow you to monitor network performance anywhere in the world
- Optional automatic dial back-up, which restores service in the event of leased line access failure
- Automatic rerouting together with built in redundancy provides a highly robust and resilient Frame Relay Service

Domestic Frame Relay Service
Whether your company does business within a small regional area or throughout the country, MCI Domestic Frame Relay Services can keep your critical data systems flowing.
Tell me more

International Frame Relay Service
Our worldwide frame relay service is available via MCI's wholly owned and managed facilities-based network. In addition, our reach is supplemented by network-to-network interface (NNI) relationships. As a result your company can exchange data with its international locations as if they were across the street.
Tell me more

Qwest/34
Brigham/5

Virtual Private Networks

Is your company looking for a cost-effective network solution that provides security without the expense of private lines?

MCI® virtual private networks (VPNs) combine the best of both public and private networks, offering increased connectivity, control, scalability, and security at the right price.

MCI's VPN services allow companies to share information more effectively and securely over an existing private network or the public Internet.

How Can Enterprises Use Virtual Private Networks?

- Businesses with multiple satellite offices can use VPNs to connect locations with dedicated lines for efficiency and the protection of confidential data.
- By using VPN technology, companies can expand their use of frame relay or ATM lines without paying the high costs of dedicated digital circuits.

Why MCI Virtual Private Networks?

- **Performance.** Increased bandwidth efficiency, greater network resilience, improved quality of service, award-winning customer service, and industry-leading service level agreements (SLAs).
- **Flexibility.** A variety of access methods (DSL, local ISPs, cable modems, and more), speeds ranging from 56 Kbps to OC-3 (115 Mbps), and multiple configuration options.
- **Security.** Privacy, encryption, and authentication (all based on industry standards) with nominal impact on the network's performance.
- **Scalability.** Simplified installation, configuration, and reconfiguration as your network grows.
- **Manageability.** Fully managed or customer-managed, logical data network, including proactive 24-hour management, reporting, and billing.
- **Simplicity.** Easy-to-use network configuration or design.
- **Cost-effectiveness.** Less expensive than leased private line options; also allows frame relay and ATM customers to design private solutions tailored to unique business needs.
- **Quality of Service (QoS).** Depending on the application and degree of QoS needed, MCI's VPN services can support a variety of QoS options. Applications like voice and video are easily supported for customers looking for convergence.
- **Global Reach.** Services are available around the globe.

What Are Virtual Private Networks?

A virtual private network (VPN) is a method to connect computer systems using public wires. VPNs include security features such as encryption to help ensure that access is granted only to authorized users and that data cannot be intercepted.

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View example

What Is the Best VPN Solution for Your Business?

To determine the best VPN solution for your business, it's important to consider your existing network infrastructure. Are you currently connected via frame relay or ATM networks? In either case, Private IP Service can leverage existing infrastructure to create a secure, network-based VPN solution more cost-effectively than building and operating a private VPN internally.

For organizations that rely on Internet infrastructure to conduct business, MCI IP VPNs extend the reach of business communications. MCI's IP VPN Dedicated Service is a fully managed, customer premise equipment-based solution.

IP VPN Dedicated Service
Global wide-area network (WAN) connectivity without the cost and resources associated with building and maintaining an enterprise network.
Tell me more

IP VPN Remote Service
Link remote or mobile users to your corporate network via the Internet and increase your reliability and security at the same time.
Tell me more

Private IP Service
Provide secure communication over a private IP backbone, giving you the reliability needed to build IP-based intranets and extranets.
Tell me more

Qwest/34
Brigham/7

Enterprise

MCI Advantage

Contact Us

The MCI Advantage portfolio of products uses Voice over IP (VoIP) technology to help customers manage their networks more efficiently, reduce costs, and leverage new, leading-edge business applications. All backed by competitive service level agreements (SLAs), which are standard with the U.S. MCI Advantage product portfolio.

Convergence helps reduce costs

- Optimize resources by consolidating voice and data onto one network
- Unlimited local, and domestic long distance calling and Internet access through one single network
- Web based tools can reduce expenses for moves, changes and user administration

Integrate seamlessly with your current infrastructure

- Keep your existing PBX or key system and phones, or use IP phones and IP PBXs
- You can also use a hybrid of equipment and products to meet your needs
- Monitor and manage Quality of Service (QoS) with tools imbedded in the network and through CPE

Benefit from advanced features and functionality

- Choose from over 50 user and advanced IP features
- Control features, manage call routing, and administer to any number of customer sites from any location

MCI Advantage products are scalable and interchangeable - allowing you to migrate to a total VoIP environment at your own pace:

IP Integrated Access
Works with existing Key or PBX systems - no need for additional infrastructure or desktop equipment.

Hosted IP Centrex
With the full suite of subscriber and administrative features residing in the MCI network, Hosted IP Centrex delivers PBX-like functionality without the large capital expense.

IP Trunking
Designed for enterprises that have already implemented an IP PBX with IP phones - eliminates the need to purchase a complex and costly TDM enterprise gateway.

Managed IP PBX
MCI provides VoIP services and top level implementation and operational management of IP PBX services while you retain control of change management.

Related Links

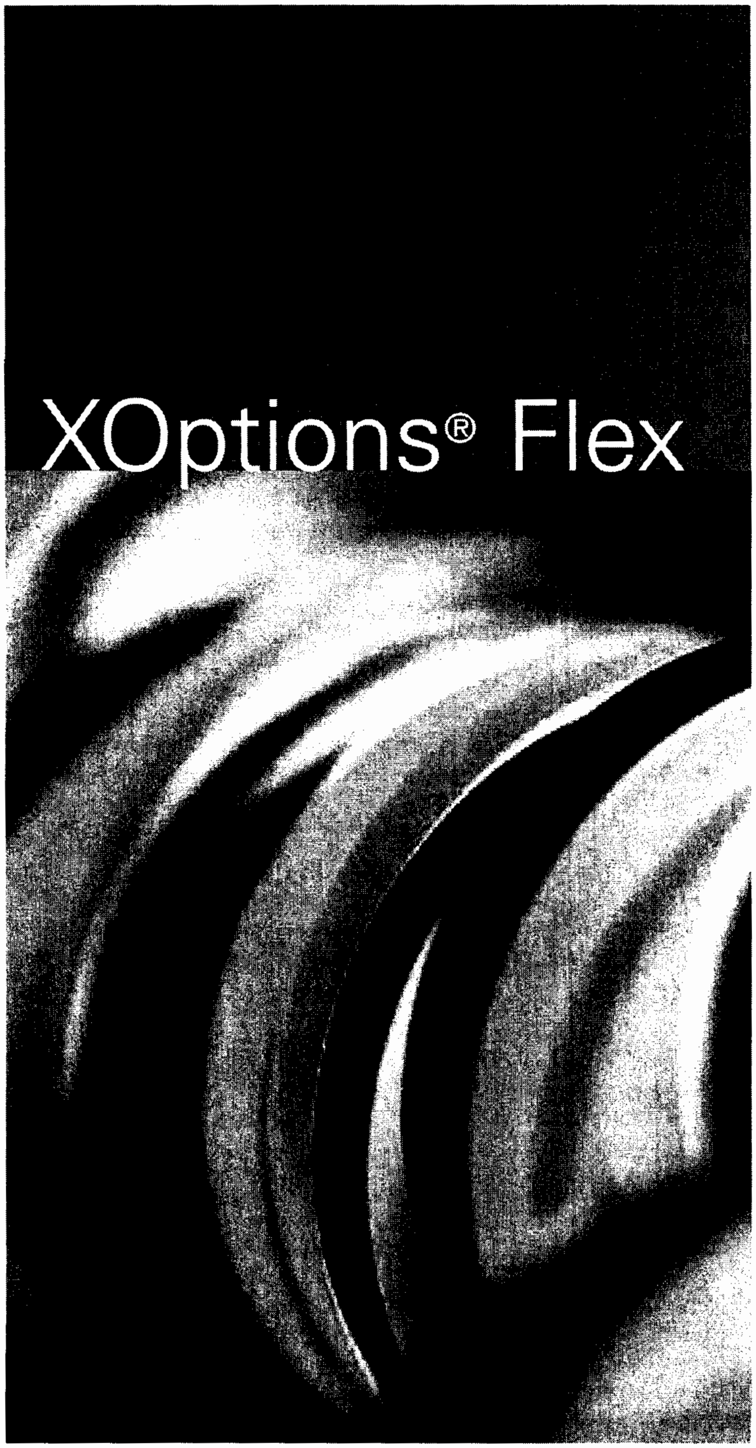
- Overview: IP Integrated Access
- Overview: Hosted IP Centrex
- Overview: IP Trunking
- Overview: Managed IP PBX
- Enhanced Features
- Technical Diagram
- What is SIP?
- SIP White Paper
- FAQs
- FCC Emergency 911 Service Update

Related Resources

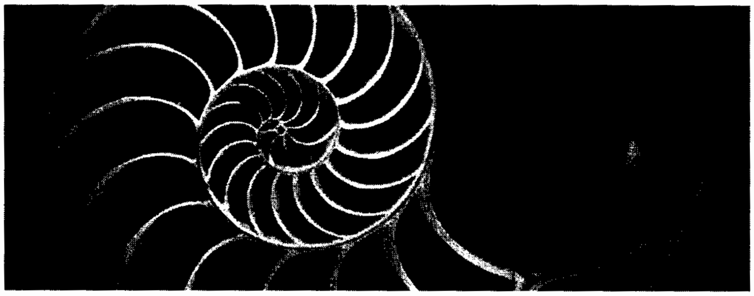
MCI Advantage
Virtual Tour

Not just talk.

XOptions® Flex



Simple



Introducing XOptions® Flex from XO...

The next-generation integrated services solution for businesses from the market leader in bundled services. XO® simplifies the purchase of local, long distance, Internet, and Web hosting services. Everything bundled together by one provider. Consolidated on one invoice. For a flat monthly rate.*

XOptions® Flex includes 23 standard voice features for each phone line, including voice messaging, call forwarding, three-way calling and hunt groups. XOptions Flex expands basic phone functionality to make existing services—such as hunting and call forwarding—simple to use, and new services easier to deploy for one office or one hundred. And XOptions Flex works with your existing analog phones or Key systems, so there's no new equipment to purchase.

> **Robust base package with 23 standard features — all for a flat monthly rate**
> **Works with your existing phone equipment**
> **Single bill and point of contact for voice & data**

Flexible

Everything you want. Exactly what you need.™

XOptions® Flex provides enhanced capabilities and flexibility for your business by leveraging the award-winning national XO IP network to deliver advanced IP-based voice and data services. Because data capacity needs continuously fluctuate, Dynamic Bandwidth Allocation allows XOptions Flex to adjust to heavy data demands by permitting full use of your circuit to support increased data traffic when voice lines are idle. So you can maximize the use of your bandwidth all for data or voice, or anything in between. (However, voice traffic will always take priority so businesses like yours get maximum utilization and flexibility from their integrated access circuit.)

Optional features and applications—including additional lines, bandwidth up to 3Mb, private voice network for intra-company dialing plans with increased security and performance across multiple office locations, and call center functionality—can be added on an *à la carte* basis to complement each existing XOptions Flex base package.

Valuable

Cost-efficient, productivity-enhancing solutions for long-term success.

With unlimited local and domestic long-distance inbound & outbound calling,* XOptions® Flex delivers solutions modeled to reduce your expenses and expand productivity. Plus, you'll receive a single, consistent flat-rate bill for accurate budgeting and planning. Perfect for your multiple location offices across the country, XOptions Flex utilizes our national local network—something the RBOCs can't offer.

For responding rapidly to changing business conditions—department restructurings, employee moves or altered employee responsibilities—the secure XOptions Flex web-based Administrative Portal allows you to self-administer functional changes in real-time to activate or deactivate features on existing phone lines. Save on administrative support calls as you gain the control required to tailor features to rapidly changing employee needs.

*Flat rates vary by market. 100,000-minute cap on voice usage for a single location. Overage charges apply

Benefits

Feature	Benefit
Unlimited nationwide calling with flat-rate pricing*	No need to worry about amount or type of local or long distance domestic calls being placed and the resulting charges. The scope of the XO® national local network can't be matched by the RBOCs.
Dynamic Bandwidth Allocation	Rather than assign fixed capacity for traditional voice and data traffic, XOptions® Flex adjusts to heavy data demands by permitting full use of the IP circuit to support increased data traffic when voice lines are idle.
Administrative Portal	The web-based Administrative Portal allows a group administrator to provision and configure resources for a group of end users. Functions that can be performed include: • Resetting voice mail passwords • Enabling / disabling voice features on existing phone lines • Configuring group services ▪ Call pick up groups ▪ Hunt groups
XO IP Network	XOptions Flex leverages the XO award-winning national IP network and softswitch technology to provide advanced IP-based voice and data services. For security, all voice calls travel over a dedicated IP connection rather than the public Internet.

Business Application

Architectural Firm: With only 10 employees but a steadily growing client list, data bandwidth was always at a premium when sending large architectural plans and files. XOptions Flex with the high-speed option of 3Mb of data has alleviated the need to send files at the end of the day when most employees were off the phones and on their way home. **Dynamic Bandwidth Allocation** allows XOptions Flex to adjust to heavy data demands, thus reducing the time needed to exchange critical files and helping to eliminate the purchase of additional bandwidth. **Now it's all business during all business hours.**

For more information logon to:

www.xo.com/flex

or call: 1-866-963-9696

Business Application

One Provider. Complete Solutions. XO.

XO Communications Signs 1,500th Business VoIP Services Customer

Contact XO

Corporate Headquarters
1.703.547.2000
Contact us online

September 20, 2005

Success of XOptions Flex Demonstrates Small and Medium-Sized Businesses' Demand for Simple and Flexible VoIP Solutions that Deliver Cost-Savings

BOSTON, MA - XO Communications, Inc. (OTCBB: XOCM.OB) today announced that it has signed its 1,500th customer of XOptions Flex, its industry-leading voice over Internet Protocol (VoIP) services bundle for businesses. All new customers to XO, the 1,500 XOptions Flex customers have been signed just five months after launching the service nationwide, demonstrating the strong demand by small and medium-sized businesses for VoIP solutions that are simple, flexible and cost-effective. XO made this announcement at the Fall 2005 VON (Voice on the Net) Conference and Expo being held this week in Boston.

The 1,500th XOptions Flex customer is Villa Financial Services, which specializes in providing mortgage services to the Hispanic market. Villa Financial Services is deploying the service at its Denver and Phoenix offices. "XOptions Flex provides us with capabilities to help us stay even more competitive in an increasingly competitive mortgage industry," said William Kerbs, vice president of Villa Financial Services. "With features like unlimited calling and dynamic bandwidth allocation, XOptions Flex allows us to take advantage of VoIP to give us more capabilities than before and a greater overall value for our telecommunications spend."

"We're very pleased with the success and adoption of XOptions Flex by businesses across the country," said Craig Collins, vice president of product management and marketing communications at XO Communications. "Businesses quickly see the advantages of XOptions Flex. With its features, flexibility and simplicity, XOptions Flex offers businesses the best value for voice, Internet and hosting needs all in one simple solution."

XOptions Flex is the industry's first VoIP services bundle for businesses that combines unlimited local and long distance calling, dedicated Internet access and web hosting for a flat monthly price. XOptions Flex leverages the latest in VoIP technology to provide customers with advanced capabilities such as unlimited voice calling, dynamic bandwidth allocation, voice virtual private networking (VPN), and a simple Administrative Web Portal. In addition, businesses can take full advantage of all of these IP-enabled capabilities and features without having to replace their existing analog phone systems.

With a broadband connection on the XO IP network, XOptions Flex utilizes the XO national IP network and softswitch technology to carry customers' voice calls more efficiently and cost-effectively than traditional services that rely on the public switched telephone network.

As a business-class VoIP solution, XOptions Flex provides customers with full access to E911 emergency services.

XOptions Flex Features
XOptions Flex includes more than twenty standard voice features for each phone line including call forward, three-way calling, and voice mail. Key features of the service include:
• Dedicated Internet Access up to 3 Mbps
• Dynamic bandwidth allocation
• Unlimited local calling
• Unlimited inbound and outbound domestic long distance calling
• An easy-to-use Administrative Web Portal for making real-time changes to services
• Web Hosting Package
• Additional voice lines, hosting and other applications can also be added on an a la carte basis.

XOptions Flex is available in major metropolitan areas across the United States, including Akron, Allentown, Atlanta, Austin, Baltimore, Boston, Chicago, Cleveland, Columbus, Dallas, Denver, Detroit, Fort Lauderdale, Fort Worth, Harrisburg, Houston, Jersey City, Las Vegas, Los Angeles, Miami, Memphis, Minneapolis, Nashville, New York, Newark, Oakland, Orange County, CA, Orlando, Philadelphia, Phoenix, Portland, Sacramento, St. Louis, St. Paul, St. Petersburg, Salt Lake City, San Antonio, San Diego, San Francisco, San Jose, Scranton, Seattle, Spokane, Tampa, Trenton, Washington, DC, West Palm Beach, and Wilmington, DE.

For more information about XOptions Flex visit www.xo.com/flex or contact an XO sales representative by calling (866) 963-9696.

About XO Communications
XO Communications is a leading provider of national and local telecommunications services to businesses, large enterprises and telecommunications companies. XO offers a complete portfolio of services, including local and long distance voice, dedicated Internet access, private networking, data transport, and Web hosting services as well as bundled voice and Internet solutions. XO provides these services over an advanced, national facilities-based IP network and serves more than 70 metropolitan markets across the United States. For more information, visit www.xo.com.

FOR MORE INFORMATION CONTACT:

CHAD COUSER / XO COMMUNICATIONS
703-547-2746
CHAD.COUSER@XO.COM

THE STATEMENTS CONTAINED IN THIS RELEASE THAT ARE NOT HISTORICAL FACTS ARE "FORWARD-LOOKING STATEMENTS" (AS SUCH TERM IS DEFINED IN THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995). THESE STATEMENTS INCLUDE THOSE DESCRIBING XO'S EXPECTED FUTURE BUSINESS AND NETWORK OPERATIONS AND RESULTS OF OPERATIONS, XO'S ABILITY TO CONTINUE TO ACHIEVE PROJECTED

SYNERGIES AND REVENUE FROM THE ACQUISITION OF ALLEGIANCE'S ASSETS, XO'S ABILITY TO INCREASE SALES, XO'S ABILITY TO CONTINUE TO IMPLEMENT EFFECTIVE COST CONTAINMENT MEASURES, AND XO'S ABILITY TO MITIGATE THE EFFECTS OF REGULATIONS RECENTLY ADOPTED BY THE FEDERAL COMMUNICATIONS COMMISSION. SUCH STATEMENTS ARE BASED ON CURRENT EXPECTATIONS BUT ARE SUBJECT TO A NUMBER OF BOTH KNOWN AND UNKNOWN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL RESULTS, PERFORMANCE, AND/OR ACHIEVEMENTS OF XO TO DIFFER MATERIALLY FROM ANY FUTURE RESULTS, PERFORMANCE, AND/OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY THE FORWARD-LOOKING STATEMENTS. MANAGEMENT CAUTIONS THE READER THAT THESE FORWARD-LOOKING STATEMENTS ARE ONLY PREDICTIONS AND ARE SUBJECT TO RISKS AND UNCERTAINTIES AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THOSE INDICATED IN THE FORWARD-LOOKING STATEMENTS AS A RESULT OF A NUMBER OF FACTORS. THESE FACTORS INCLUDE, WITHOUT LIMITATION, THOSE RISKS AND UNCERTAINTIES DESCRIBED FROM TIME TO TIME IN THE REPORTS FILED BY XO COMMUNICATIONS, INC. WITH THE SECURITIES AND EXCHANGE COMMISSION, INCLUDING ITS ANNUAL REPORT ON FORM 10-K FOR THE YEAR ENDED DECEMBER 31, 2004 AND ITS QUARTERLY REPORTS ON FORM 10-Q. XO UNDERTAKES NO OBLIGATION TO UPDATE ANY FORWARD-LOOKING STATEMENTS.

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UX 29

In the Matter of the Petition of Qwest Corporation to Exempt from Regulation Qwest's Business Basic Exchange Services	ESCHELON TELECOM, INC. RESPONSES TO QWEST CORPORATION'S FIRST SET OF DATA REQUESTS

DATA RESPONSES

3. Is it Mr. Denney's testimony that a specific level of competitor market share is necessary in order for it to be determined that there are no barriers to entry? Please specify the market share level that Mr. Denney believes Qwest would need to attain in order for there to be no barriers to entry.

Response: No, a barrier to entry is defined independent of market shares.

SMALL BUSINESS: Local Plans

Your State Is **OR**: Select Another

LOTS OF WAYS TO TALK. LOTS OF WAYS TO SAVE.

Check DSL Availability

- -

GO

» No matter how much or how little you call, Qwest has a local services plan to fit your needs.

Featured Local Products

Product	Calling Features	Number of Lines Included	Monthly Charges
Qwest Choice™ Business	Choose up to 3 options, including Voice Mail and Call Forwarding	Includes flat-rate business line	$39.99 ORDER
Qwest Choice™ Business Plus	Choose any or all of the options you need from a list of our most popular business calling features. Enjoy the flexibility to change them at any time, at no additional cost.	Includes flat-rate business line	$49.99 ORDER

Prices do not include taxes, surcharges and other fees.

Related Products

- Calling Features
- Telephones & Equipment

Customer Service

- Customer Service
- User Guides
- Frequently Asked Questions
- Manage Your Account

Calling Features

Pick what you want from a list of our most popular features and enjoy the flexibility to change them at no additional cost.

- Caller ID
- Business Voice Mail
- Call Forwarding
- Remote Access Forwarding
- 3-Way Calling
- Call Waiting
- Unistar Wire Maintenance
- Selective Call Waiting
- Call Waiting ID
- Call Transfer
- Last Call Return
- Dial Lock
- 411 Directory Assistance Call Allowance
- Custom Ringing
- Hunting

Quick Links

- Establish New Service
- Add or Modify Services
- Billing and Payments Help
- Sign up for Paperless Billing

Qwest/44
Brigham/2

Available only to Qwest local service customers for business use. Not available in N. Idaho and in some areas of OR. Listed rates do not include taxes, incremental charges and surcharges. Feature limitations exist, including but not limited to Directory Assistance, Caller ID, Unistar®, and Last Call Return. Some features not compatible with others, require special equipment at an additional charge, and may not be available in all areas. Subject to applicable tariffs and regulations. Prices/package components subject to change. Ask your Qwest Representative for details.

Qwest Choice™ Business Package: Choice of three features included in price. Additional features are available for extra fee. Three features chosen cannot be split between primary and the Qwest Choice Business Add-A-Line. Only hunting or call forwarding busy no answer available on Qwest Choice Business Add-A-Line at no additional charge. Up to two Qwest Choice Business Add-A-Lines can be purchased for each Qwest Choice Business package purchased.

Qwest Choice™ Business Plus Package: Price includes no limit on number of features selected (subject to feature limitations). Features chosen cannot be split between primary and the Qwest Choice Business Add-A-Line. Only hunting or call forwarding busy no answer available on Qwest Choice Add-A-Line at no additional charge. Up to two Qwest Choice Business Add-A-Lines can be purchased for each Qwest Choice Business Plus package purchased.

Qwest/45
Brigham/1

Qwest
Spirit of Service

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PRODUCTS & SERVICES | Customer Service | MANAGE MYACCOUNT

Overview | **Bundle Savings** | Local | Long-Distance | Wireless | Internet & DSL | VoIP

SMALL BUSINESS: Qwest Choice™ Bundles

DANI
Qwest Customer

NEED HELP?
Click for online chat

THE MORE YOU ADD, THE MORE IT ADDS UP.
GET UP TO $150 ON A VISA® GIFT CARD WITH QWEST!

Bundle and save when you combine your phone package with select services from Qwest. PLUS, FOR A LIMITED TIME, GET A VISA® GIFT CARD WORTH UP TO $150 WHEN YOU BUNDLE YOUR NEW SERVICES WITH QWEST.

Choose an option below to see how much you could save

○ Qwest Choice™ Business with Qwest Choice™ Unlimited Long Distance
1 line with up to 3 of our most popular calling features. Plus, get unlimited direct-dialed long-distance calling to anywhere in the United States.

Regular Price: $64.99 **Bundled Price: $59.99** **You Save: $5**

○ Qwest Choice™ Business with Qwest Choice™ DSL Deluxe w/Internet Prime
1 line with up to 3 of our most popular calling features. Plus, get unlimited Internet access at speeds up to 25 times faster than 56 Kbps dial-up.

Special Online Only Offer:

Save $96.12! Order Qwest Choice™ DSL Deluxe w/Internet Prime online and pay just $39.98/month for 12 months and FREE activation. Click here to read important offer details

Regular Price: $92.98 **Bundled Price: $79.97** **You Save: $13.01**

◉ Qwest Choice™ Business with Qwest Choice™ Unlimited Long Distance and Qwest Choice™ DSL Deluxe w/Internet Prime
1 line with up to 3 of our most popular calling features. Plus, get unlimited direct-dialed long-distance calling to anywhere in the United States. And, get unlimited Internet access at speeds up to 25 times faster than 56 Kbps dial-up.

Special Online Only Offer:

Save $96.12! Order Qwest Choice™ DSL Deluxe w/Internet Prime online and pay just $39.98/month for 12 months and FREE activation. Click here to read important offer details

Regular Price: $117.98 **Bundled Price: $99.97** **You Save: $18.01**

○ **Build your own bundle and save**
Build your savings while you bundle the products that fit your business needs.

BUNDLE AND SAVE

YOU PAY
$99.97
PER MONTH*

WE SUBTRACT UP TO
$216.12
PER YEAR

*Plus taxes, fees and surcharges

ORDER NOW

Qwest local business service customers only. Prices and package components subject to change and may vary by state. DSL and other services/features may not be available in all areas. Listed rates do not include taxes, surcharges, activation or other fees. Coverage, plan or feature limitations/restrictions may apply. Subject to credit approval. Limit one bundle per account. Additional equipment purchases or rental may apply. Subject to applicable tariffs and regulations. Discounted bundle price applies only to full months of billing. Bundles require subscription to a qualifying local package such as our **Qwest Choice™ Business** phone package, plus one or more of the following: **Qwest Choice™ Unlimited**: Not for dial-up internet access. Usage may be monitored and customer may be required to demonstrate plan compliance where usage exceeds 5000 minutes in any month. PIC Change Charge may apply for changing long distance carriers; **Qwest Choice™ DSL (Deluxe/Prime) with Internet Prime**: DSL download speeds up to 256 Kbps, 1.5 Mbps or 5Mbps (typically 3-5 Mbps) respectively. Actual DSL speed may vary depending on a variety of factors. Qwest does not guarantee the availability of domain names. Internet dial-up access feature may result in long distance charges if dial-in number is not a local calling number.; **Qwest Wireless® Cross Country Plan**: $200 early termination fee with fixed-term contracts (per-handset). Calls rounded up to next full minute; unused minutes do not carry forward. Roaming charges apply to off-network calls, even within the Home Coverage Area. $1.75 monthly cost recovery fees per wireless handset. Complete details in service agreement and coverage maps provided with handset and at www.qwestwireless.com; minimum 500 minute plan for bundle pricing, other plans available at an additional cost..

Qwest® Business Bundle Gift Card: For Qwest business customers with qualifying local service phone package purchasing new services. New service is service of a type customer has not subscribed to for at least 30 days. Offer period 7/10/05 through 10/08/05. Customers with qualifying local package purchasing new qualifying services are awarded $40 for 1 new service, $80 for 2 new services, or $150 for 3 new services. Qualifying services are Qwest Choice™ Unlimited Long-Distance for business; any Qwest business wireless plan of 500 min. or more; Qwest DSL with Internet Prime. Maximum value of cards issued under offer limited to $150. Card not available to customers who have received Gift Card from Qwest in connection with any other offer. Additional cards not available in connection with any other offer, unless expressly authorized in writing. Visa Gift Card issued by West Suburban Bank of Chicago IL pursuant to a license from Visa® USA Incorporated and is not an extension of credit by Qwest or West Suburban Bank. When extended for DSL services, card provided by ISP for purchase of ISP product. Card void if ordered service(s) cancelled within 30 days. Card valid until end of third full month from date of issuance and will be issued by mail within 30 days of receipt of completed redemption form. See redemption for important details. Use of card constitutes acceptance of the terms and conditions applicable to this card as in effect from time to time. Refer to terms and conditions for ways to protect balance if card is lost or stolen.

5. EXCHANGE SERVICES

5.2 LOCAL EXCHANGE SERVICE (CONT'D)

5.2.11 COMPETITIVE RESPONSE

A. Residence Customer Incentive Program (C)
(D)

1. Description (N)

The Customer Incentive Program is an offering for potential new residence local exchange customers and to existing residence customers to induce the retention or continuation of existing services by those customers.

2. Terms and Conditions

a. This competitive response offering may be offered to potential new Qwest residence local exchange customers. In addition, the Company may provide a retention benefit to any existing residence customer who has retained a service for some period of time.

b. For potential new residence customers, the Company may provide an incentive offer no more often than once in any two year period. In retention situations, the Company may provide an incentive no more often than once with respect to any particular service or feature.

c. To qualify for these offers, residence customers are required to have a satisfactory credit rating with the Company in accordance with 2.3.3.

d. The recipients of the customer incentive offer and the amount of the customer incentive offer shall be in the sole discretion of the Company, but the value of the retention benefit may not exceed the sum of 3.a., following.

e. The Company shall determine the particular details, including but not limited to periods and duration, class of customers, services, amounts, and geographic area, so long as each such offer to a particular residence customer is not inconsistent with the provisions of this Tariff and the amount does not exceed the maximum amount set forth in 3.a., following. The Company may prohibit use of this program in conjunction with another offer being marketed by the Company and/or a Company affiliate. (N)

5. EXCHANGE SERVICES

5.2 LOCAL EXCHANGE SERVICE

5.2.11 COMPETITIVE RESPONSE

A.2. (Cont'd) (T)

(D)

f. Offers may differ based on the following criteria or combinations of criteria below: (N)

(1) The sales channel through which the products are sold.

(2) A specific geographic area.

(3) Existing customers who request to have one or more products disconnected.

(4) Customers who identify a better competitive offer are available to them. Qwest representatives may present to these customers multiple offers up to the maximum value under this Tariff.

g. The Company reserves the right to discontinue this offer.

3. Rates and Charges

a. Customers may be offered one of the following, or the equivalent monetary value, on selected products as determined by the Company:

(1) A waiver of an amount up to 100% of the current residence nonrecurring charge(s), or

(2) A waiver of up to three months of the recurring rates, or

(3) A waiver of an amount up to 100% of the current residence nonrecurring charge(s) and up to three months of the recurring rate(s), or

(4) A benefit or consideration offered or provided that is not associated with a service or product offered by the Company such as CPE, merchandise, or discounts on merchandise offered by others, gift certificates, gift cards, or otherwise, in the discretion of the Company. In determining the value of non-cash offers or benefits, the actual cost incurred by the Company, not to exceed the sum of 3.a.(3) above, shall be used.

b. The waiver(s) will appear in the form of a credit(s) on the customer's bill. The waiver may be one-time, or spread over a period of up to 12 months in a fashion determined by the Company. (N)

5. EXCHANGE SERVICES

5.2 LOCAL EXCHANGE SERVICE
5.2.11 COMPETITIVE RESPONSE

A.3. (Cont'd) (T)

(D)

c. Waiver amounts are calculated on the first month's nonrecurring charge(s) and monthly rate(s). The total waived amount will not exceed the value of the total nonrecurring charge(s) plus three months service of the monthly rate(s). (N)

d. In all cases, resellers who use the Customer Incentive Program shall be provided the maximum monetary equivalent of the program as allowed by this Tariff and can distribute that value to their end user customers in any manner that they choose. Further, resellers are not required to match the Company's program offers or timing in order to take advantage of the program, and no further wholesale discount is provided to the maximum monetary equivalent. Resellers shall be provided monetary equivalents and they shall not be provided merchandise, coupon offers, or the like.

B. Business Customer Incentive Program

1. Description

The Customer Incentive Program is an offering for potential new business local exchange customers and to existing business customers to induce the retention or continuation of existing services by those customers.

2. Terms and Conditions

a. This competitive response offering may be offered to potential new Qwest business local exchange customers. In addition, the Company may provide a retention benefit to any existing business customer who has retained a service for some period of time.

b. For potential new business customers, the Company may provide an incentive offer no more often than once in any two year period. In retention situations, the Company may provide an incentive no more often than once with respect to any particular service or feature.

c. To qualify for these offers, business customers are required to have a satisfactory credit rating with the Company in accordance with 2.3.3. (N)

5. EXCHANGE SERVICES

5.2 LOCAL EXCHANGE SERVICE
5.2.11 COMPETITIVE RESPONSE (CONT'D)

B.2. (Cont'd) (T)
(D)

d. For potential new business customers, the Company will condition its offers upon a business customer remaining with the Company for a minimum of one year, or the duration of the contract which is otherwise required under this Tariff for such a service and which the business customer has agreed to, whichever is longer. Any minimum period of time shall be identified to the business customer as part of the offer. In such cases, if the customer terminates service early, they will be billed all of the nonrecurring charge(s) and monthly rate(s) waived under this program. (N)

e. The recipients of the customer incentive offer and the amount of the customer incentive offer shall be in the sole discretion of the Company, but the value of the retention benefit may not exceed the sum of 3.a., following.

f. The Company shall determine the particular details, including but not limited to periods and duration, class of customers, services, amounts, and geographic area, so long as each such offer to a particular business customer is not inconsistent with the provisions of this Tariff and the amount does not exceed the maximum amount set forth in 3.a., following. The Company may prohibit use of this program in conjunction with another offer being marketed by the Company and/or a Company affiliate.

g. Offers may differ based on the following criteria or combinations of criteria below:

(1) The sales channel through which the products are sold.

(2) A specific geographic area.

(3) Existing customers who request to have one or more products disconnected.

(4) Customers who identify a better competitive offer are available to them. Qwest representatives may present to these customers multiple offers up to the maximum value under this Tariff.

h. The Company reserves the right to discontinue this offer. (N)

5. EXCHANGE SERVICES

5.2 LOCAL EXCHANGE SERVICE
5.2.11 COMPETITIVE RESPONSE

B. Business Customer Incentive Program (Cont'd) (C)
(D)

3. Rates and Charges (N)

a. Customers may be offered one of the following, or the equivalent monetary value, on selected products as determined by the Company:

(1) A waiver of an amount up to 100% of the current business nonrecurring charge(s), or

(2) A waiver of up to three months of the recurring rate(s), or

(3) A waiver of an amount up to 100% of the current business nonrecurring charge(s) and up to three months of the recurring rate(s), or

(4) A benefit or consideration offered or provided that is not associated with a service or product offered by the Company such as CPE, merchandise, or discounts on merchandise offered by others, gift certificates, gift cards, or otherwise, in the discretion of the Company. In determining the value of non-cash offers or benefits, the actual cost incurred by the Company, not to exceed the sum of 3.a.(3), above, shall be used.

b. The waiver(s) will appear in the form of a credit(s) on the customer's bill. The waiver may be one-time, or spread over a period of up to 12 months in a fashion determined by the Company.

c. Waiver amounts are calculated on the first month's nonrecurring charge(s) and monthly rate(s). The total waived amount will not exceed the value of the total nonrecurring charge(s) plus three months service of the monthly rate(s).

d. In all cases, resellers who use the Customer Incentive Program shall be provided the maximum monetary equivalent of the program as allowed by this Tariff and can distribute that value to their end user customers in any manner that they choose. Further, resellers are not required to match the Company's program offers or timing in order to take advantage of the program, and no further wholesale discount is provided to the maximum monetary equivalent. Resellers shall be provided monetary equivalents and they shall not be provided merchandise, coupon offers, or the like. (N)

[1] This sheet cancels the following sheets: Original Sheets 58.5 through 58.7, (N)
3rd Revised Sheet 59,
2nd Revised Sheet 59.1. (N)

Advice Number	Year	Nature of Filing
1756 S4	2000	Eliminate Centrex Surcharge
2000-01-C	2000	Deregulation of DS3 Service
1828	2000	Business Competitive Response Promotion
1829	2000	Power Line Promotion
1832	2000	Power Strategy 2000 Promotion
2000-002-PL	2000	Business Customchoice
2004-004-PL	2000	Grandfather current Business Customchoice and Introduce Enhanced Replacement Package
1843	2000	Eliminate Nonrecurring Charge for Centrex 21
1846	2000	Additional Flat Business Line (1FB) and 1FB with CustomerChoice Promotion
OR00-01	2000	ISDN PRS Promotion
OR00-02	2000	Integrated T1 Promotion
OR00-08	2000	Digital Switched Services and Uniform Access Solution Promotion
OR00-09	2000	Power Line Promotion
OR00-10	2000	800 Serviceline Promotion
OR00-11	2000	BVMS and Call Forwarding Promotion
OR00-12	2000	ISDN PRS Migration Promotion
OR00-15	2000	Power Line Promotion for Centrex 21 & Business Customchoice
OR00-18	2000	Business Competitive Response Promotion
OR00-19	2000	Power Strategy 2000 Promotion
OR00-20	2000	Residence and Business CLASS Features Promotion
OR00-21	2000	Competitive Response Program Promotion
1855	2001	Small Business Oregon
1856	2001	Enhancements to ISDN Primary Rate Service in Oregon
1858	2001	Digital Switched Services and Uniform Access Solution Promotion
1863	2001	1FB and Centrex 21 Promotion
1866	2001	Business Competitive Response Promotion - OR
1867	2001	Digital Switched Service Basic Trunks Rate Stability Plan
1871	2001	Business Promotion - Oregon
1873	2001	Business Competitive Response Promotion - Oregon
1876	2001	Centrex 21 Promotion - Oregon
1880	2001	Digital Switched Services
1881	2001	Business Promotion - Oregon
1882	2001	ISDN PRS in Oregon
1884	2001	DSS, Revision Introduce 1 Year Contracts
1888	2001	Business Competitive Response Enhancement - Oregon
1890	2001	Qwest Business Line Plus
1891	2001	Business Promotions - Oregon
2001-002-PL	2001	Business CustomChoice Rate Change - Oregon

Advice Number	Year	Nature of Filing
2001-004-PL	2001	Qwest Utility Line Service
OR01-02	2001	VMS-BVMS Promotions – Oregon
OR01-03	2001	Oregon Centrex Prime Nonrecurring Charge Promotion
OR01-04	2001	Business Everywhere Line and Total Package for Business Deployment
OR01-05	2001	ISDN Single Line Service Promotion in Oregon
OR01-07	2001	Caller ID Promotion – Oregon - BUS
OR01-09	2001	CustomChoice Promo-OR-Businss
OR01-12	2001	BVMS Promotion - Oregon
OR01-13	2001	Stand-By Line Promotion - Oregon
OR01-15	2001	BVMS Promotion - Oregon
1893	2002	Business Caller ID Promotion - Oregon
1894	2002	Qwest Business Line Plus and Qwest Utility Line in RG3
1897	2002	DDS, ISDN PRS, UAS, Centrex PRIME
1902	2002	Business Market Expansion Line Promotion – Oregon
1907	2002	ISDN Single Line Service Promotion in Oregon
1910	2002	DSS, UAS, ISDN PRS, and Centrex PRIM Promotion - Oregon
1912	2002	Business Product Save Offer Promotion – Oregon
1913	2002	Business Caller ID Promotion – Oregon
1915	2002	Introduction of Rate Stabilized Business Line Plus
1919	2002	ISDN Single Line Service (SLS) Promotion – Oregon
1922	2002	Business Product Save Offer Promotion – Oregon
1923	2002	DSS, UAS, ISDN PRS Promotion – Oregon
1927	2002	Introduction of 3 Year Rate Stabilized Term for Qwest Business Line Plus
1929	2002	Business Product Save Offer Promotion
1930	2002	ISDN Single Line Service Promotion in Oregon
2002-006-PL	2002	Business Product Save Offer Promotion - Oregon
2002-008-PL	2002	Introduction of Rate Stabilized Business Line Plus
2002-009-PL	2002	Business Product Save Offer Promotion - Oregon
2002-012-PL	2002	Business Product Save Offer Promotion - Oregon
OR02-03	2002	BVMS Promotion – Oregon Business
1932	2003	Digital Switched Services, Uniform Access Solution, ISDN Primary Rate Service – Oregon
1935	2003	PAL (Public Access Lines) Decrease – Oregon
1938	2003	DSS, UAS, ISDN PRS
1939	2003	ISDN Single Line Service Spring Promotion
1940	2003	Business Product Save Offer Promotion
1943	2003	ISDN Single Line Service Summer Promotion
1945	2003	Introduction of Integrated T1 Option B
1946	2003	Introduction of Public Access Lines (PAL) Fraud Protection Recurring/Nonrecurring Rates - Oregon

Advice Number	Year	Nature of Filing
1951	2003	Residence and Business Product Save Offer Promotion – Oregon
1954	2003	Residence and Business Competitive Response (Winback) Tariff Change
1955	2003	DSS, UAS, and ISDN PRS Revision
1957	2003	DSS, UAS PRS Cancellation Charges Filing
1958	2003	ISDN Single Line Service (SLS)
1960	2003	Qwest Business Line Plus/CustomChoice for Business 20% Discount Promotion
1962	2003	Residence and Business Package Deployments (QwestChoice….)
1964	2003	Advanced DSS TLA Waiver Promotion
C1-2003	2003	Bank of America
C2-2003	2003	Kroger
C3-2003	2003	CSK Auto
C5-2003	2003	SOEN, Third Amendment
C6-2003	2003	Costco
C7-2003	2003	GSA (General Services Administration)
C8-2003	2003	Pacificorp
C9-2003	2003	Pacificorp – Amendment
C10-2003	2003	Weyerhaeuser
C11-2003	2003	USPS
C12-2003	2003	Sherwin Williams
C13-2003	2003	Costco
1967	2004	DSS, UAS, ISDN PRS, BDSS
1969	2004	Residence and Business Competitive Promotion (Winover) - Oregon
1970	2004	Residence and Business 1Q04 Product Save Offer Promotion - Oregon
1973	2004	Bulk Advance DSS Half Span Promotion for Oregon
1974	2004	Oregon Business Line Volume Purchasing Plan
1975	2004	Residence and Business Competitive Response Program Modifications
1976	2004	ISDN PRS Promotion
1977	2004	DID Trunk Revisions
1989	2004	PRS/DSS 4Q04 Promotion
2004-001-PL	2004	Residence and Business Competitive Promotion (Winover) - Oregon
2004-002-PL	2004	Residence and Business 1Q04 Product Save Offer Promotion - Oregon
C1-2004	2004	MCI WorldCom
C2-2004	2004	Kroger
C3-2004	2004	Aon Service
C5-2004	2004	Weyerhaeuser Site Agreement
C7-2004	2004	Washington Mutual
C8-2004	2004	Waster Management National Services, Inc.
C9-2004	2004	SCI Funeral & Cemetery

Advice Number	Year	Nature of Filing
C10-2004	2004	RBC Dain Rauscher
C11-2004	2004	First Tennessee National Corporation
C12-2004	2004	Discount Tire Company
C13-2004	2004	Weyerhaeuser - Amendment
C14-2004	2004	USPS – Amendment #2
C15-2004	2004	J R Simplot
C16-2004	2004	H&R Block
1994	2005	Introduce New Choice Business and Grandfather Business Services
1996	2005	Business and Residence Customer Incentive Program Introduction

Docket UX 29

Staff Responses to Qwest's
Second Set of Data Requests

2-09 As stated in Mr. Brigham's testimony, Qwest services have been deregulated to some extent in many other states. Referring to Staff/100, Chriss/48, lines 13-17, please provide all examples of the behavior described by Staff that it is aware of that has occurred in the Qwest region. Please provide all examples of the behavior described by Staff that Staff is aware of that has occurred in the telecommunications market anywhere in the United States since the passage of the Telecommunications Act in 1996.

Answer:

Staff is unaware of any cases of predatory pricing in the telecommunications market.

Respondent: Steve W. Chriss

Docket UX 29

Staff Responses to Qwest's
Second Set of Data Requests

2-10 Referring to Staff/100, Chriss/48, lines 13-17, please provide all examples of where Qwest services have been deregulated, followed by a Qwest price decrease, followed by the elimination of competitors, followed by an increase in Qwest prices in an "unregulated monopoly" setting.

Answer:

Staff is unaware of any such instances.

Respondent: Steve W. Chriss

OPUC Docket No. UX 29
XO Response to Qwest's First Data Requests
September 27, 2005

Data Request No. 2:

On page 4 of his testimony, Mr. Knowles states that building access restrictions constrain CLECs' ability to connect customer locations to their network, and that "many building owners deny CLECs access to their buildings or make such access uneconomic by imposing high fees and onerous conditions." Please identify each instance where building access was denied to XO or onerous conditions imposed on XO by building owners in Oregon. Please also provide the building address, the date of each instance, and provide all memos, letters or other documentation that demonstrates this behavior by building owners.

Response:

XO objects to this Request on the grounds that it is overbroad and unduly burdensome. Subject to, and without waiver of, these objections, XO does not maintain records of the requested information and therefore does not have information that is responsive to this Request.

Prepared by: Counsel (objections); Rex Knowles
Date: September 27, 2005

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of the Petition of QWEST CORPORATION To Exempt From Regulation Qwest's Switched Business Services	**)))))))**	**Docket No. UX 29**

REBUTTAL TESTIMONY OF

WILLIAM FITZSIMMONS

FOR

QWEST CORPORATION

October 7, 2005

PUBLIC VERSION

REBUTTAL TESTIMONY OF WILLIAM FITZSIMMONS

TABLE OF CONTENTS

I. INTRODUCTION AND PURPOSE OF TESTIMONY

Q. PLEASE STATE YOUR NAME AND POSITION.

A. My name is William Fitzsimmons. I am a Director at LECG, LLC; my business address is 2000 Powell Street, Suite 600, Emeryville, CA 94608.

Q. PLEASE DESCRIBE YOUR PROFESSIONAL QUALIFICATIONS.

A. I hold a Ph.D. in Resource Economics from the University of Massachusetts, Amherst. My industry experience prior to joining LECG in 1994 includes two years of modeling demand for private line services for AT&T in New Jersey and six years as a financial modeler for BellSouth in Atlanta. At LECG, my work is focused on the economic analysis and financial modeling of telecommunications issues. I have testified numerous times on cost models and economic issues. My curriculum vitae is attached as Exhibit Qwest/52.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to the testimonies of Mr. Denney on behalf of Eschelon Telecom, Inc. and Advanced Telecom, Inc.; Dr. Cabe on behalf of TRACER and Mr. Chriss of the Commission staff. In responding to them, I will:

1) provide the appropriate framework for analyzing competition in markets for switched telecommunications services for business customers in Oregon;

2) within this framework, discuss the evidence of competition as it relates to this proceeding; and

3) explain the implications of competition for evaluating pricing regulation.

II. ECONOMIC BACKDROP TO REGULATORY PRICING POLICY

Q. AS A BACKDROP FOR YOUR REBUTTAL COMMENTS, WOULD YOU PLEASE EXPLAIN THE ROLE OF COMPETITION IN TELECOMMUNICATIONS POLICY?

A. A central goal of telecommunications public policy is the promotion of the investment and innovation necessary to maintain a dynamic and modern network capable of providing high quality, ubiquitous services to customers at affordable prices.[1] Over the years, methods used by regulators to promote efficient innovation and investment have adapted to changes in technology and customer demand. For many years, government agencies pursued this goal with rate of return regulation of franchise monopolies. In the 1980s alternative forms of regulation began to surface, often referred to as incentive regulation. As the name implies, this form of regulation was a step toward the use of competitive market-type incentives to achieve public policy goals. Competition is now recognized by policymakers as the appropriate means of fostering ongoing investment and innovation in telecommunications. This recognition was codified in the Telecommunications Act of 1996 (Telecom Act or the Act), and it is clearly stated in the preamble of the Act:

> An Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.[2]

This preamble is a concise statement of the **means** and the **end** Congress had in mind when it passed the Act. The means are promoting competition and reducing regulation. The end is a competitive market, in which prices are driven toward the costs of efficient service providers, service quality meets customer

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[1] Federal Communications Commission, CC Docket No. 98-146, Released February 2, 1999, ¶ 1.

[2] Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat.56 (1996).

expectations, and continuing investment in infrastructure leads to high-quality, innovative services.

Q. WHY IS COMPETITION THE APPROPRIATE MEANS FOR ACHIEVING TELECOMMUNICATIONS POLICY GOALS TODAY?

A. The decision to adopt the competitive paradigm for local telecommunications markets makes sense for two reasons. First, dramatic growth in demand and accelerated technological change have rendered the regulated, franchise monopoly industry structure of the past obsolete. A monopoly requires barriers that succeed in excluding competitors. When competitors surmount the barriers and serve customers, as they are doing at an accelerated pace in local telecommunications, a monopoly no longer exists.

Second, by rewarding success, competitive markets encourage entrepreneurs and investors to brave failure and take the risks necessary for the robust investment and innovation required to deliver consumer benefits. Indeed, it is the balance of risks and rewards that accounts for much of the vibrancy in our competitive economy. A competitive industry structure is not as steady or predictable as a regulated, franchise monopoly structure, but given the changes in demand and technology, it is the most effective structure for delivering benefits from the telecommunications industry.

Q. WHAT IS THE RELATIONSHIP BETWEEN COMPETITION AND REGULATION?

A. Competition and reduced regulation are flip sides of the same coin. As the opening phrase of the Telecom Act states, the objective of the Act is to "promote competition and reduce regulation." This is a recognition that (1) there is an inherent tension between competition and regulation, and (2) as we move toward increasingly competitive markets, unnecessary regulation is not neutral to the process; it is harmful. At its heart, competition is a creative process, fueled by rewards and honed by risk. In a competitive market, rewards are reaped by the firms that are the most innovative and efficient in meeting consumer demands. Losses are realized for less efficient firms and those that do not meet consumer expectations of quality service.

One tension caused by regulations in competitive markets is that they cause cost, often in an unbalanced fashion, and divert creative energy away from seeking innovative and efficient ways of producing services toward seeking advantages within the regulatory process. For example, the availability of UNE-P provided transitory benefits to consumers in the form of lower prices. It did so, however, at the expense of incentives for investment and innovation that are crucial for the long-term benefits from this industry. Customers are best served when regulators heed the words of former FCC Chairman Powell that we must "[a]void the temptation to 'shape' the development of markets and instead let the market mechanism make those decisions."[3]

Q. DOES A SHIFT FROM REGULATION TO COMPETITION AS THE MEANS OF ACHIEVING POLICY GOALS REQUIRE A COMMITMENT TO THE PROCESS?

A. Yes. I witnessed the following exchange between Commissioner Boyer and Dr. Zenger, an economist for the Division of Public Utilities in Utah, while testifying in a proceeding related to deregulating Qwest services in 2003:

> Commissioner Boyer: Is it fair to say the federal government and Utah Legislature have set us upon a course of encouraging competitive markets in the telecommunication's industry?
>
> Dr. Zenger: Yes.
>
> Commissioner Boyer: Is it fair to say we're all participants in a grand convention [experiment] to see how that's going to work out?

[3] "The Great Digital Broadband Migration," Remarks of Michael K. Powell, Commissioner, Federal Communications Commission, Before the Progress & Freedom Foundation, (December 8, 2000).

> Dr. Zenger: Yes.
>
> Commissioner Boyer: How are we going to find out how they work if we place price caps?[4]

The appropriate answer is that if the Commission retains price controls, we will not find out. Reducing regulation, when competitors have made significant strides and the conditions for the continued development of competition are in place, is necessary for competition to develop fully. Indeed, the pattern of less regulation and more head-to-head competition among facilities-based firms is driving the rapid deployment of new technologies and shaping increasingly vibrant telecommunications markets.

III. PRODUCT AND GEOGRAPHIC MARKETS

A. PRODUCT MARKET

Q. IS THERE A NEED FOR A CLEAR LOOK AT THE RELEVANT PRODUCT MARKETS FOR THIS PROCEEDING?

A. Yes. Identifying product markets is an important step in a meaningful assessment of competition and competitive conditions, and this is more of a common sense exercise than is portrayed by a number of witnesses in this proceeding. A product market includes services that significant numbers of customers view as substitutes. Competition exists and thrives when multiple firms provide services that consumers view as substitutes and conditions are conducive to additional entry and expansion by efficient firms.

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[4] In the Matter of the Petition of Qwest Corporation for Pricing Flexibility for Residence Services in the Areas Served by 44 Central Offices, Before the Public Service Commission of Utah, Docket #03-049-49 and #03-049-50, Transcript of Proceedings, October 28, 2003, Volume II, p. 420, lines 13-32.

Q. IN EVALUATING COMPETITION, WHAT FACTORS SHOULD DETERMINE WHETHER SERVICES ARE IN THE SAME PRODUCT MARKET?

A. The final decision about whether services are in the same product (or service) market rests with customers. As Mr. Sloan states, "What is important is whether Qwest's business customers consider the services to be substitutable."[5] If, after considering the quality and prices of two services, significant numbers of consumers consider them to be reasonable substitutes, then the services are economic alternatives for each other. Additional evidence can come from examining if the services are marketed in the same channels, whether competitors market their services as substitutes, and whether providers are viewed as competitors. For example, Time Warner Telecom, which offers service in Portland, describes the competitive environment as follows:

> In most of the metropolitan areas in which we currently operate, at least one, and sometimes several other CLECs, offer substantially similar services at substantially similar, and in the case of some services, substantially lower prices than we offer. We also face competition from electric utilities, long distance carriers, wireless telephone system operators, private networks built by large end users using dark fiber providers, and cable television companies that presently, and may in the future, offer services similar to those we offer.[6]

Other CLECs operating in Oregon, including Eschelon, MCI and XO make similar statements about their competitors.[7]

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5 Staff/200, Sloan/7.

6 Time Warner Telecom, Inc., SEC Form 10K, December 31, 2004, p. 13.

7 Eschelon Telecom, Inc., SEC Form 10K, December 31, 2004, pp. 3-4, 7-8; MCI, Inc., SEC Form 10K, December 31, 2004, pp. 6, 12; XO Communications, Inc., SEC Form 10K, December 31, 2004, pp. 1, 17.

Q. FOR SERVICES TO BE IN THE SAME PRODUCT MARKET, IS IT NECESSARY FOR THEM TO BE IDENTICAL?

A. No. To be considered substitutes, services do not have to be identical, functionally equivalent, or even of equal quality. Parity is not necessary, or even usual, among products or services that are in the same market.[8] For example, one court has ruled that display advertisements in daily newspapers do not constitute their own product market, because "door-to-door delivery, direct mail and the weekly papers [are] viable substitutes."[9] There are numerous other examples of products that are not functionally identical or equivalent and yet have been found by the courts to be sufficiently substitutable to exert competitive pressure on one another. Descriptions of some of these follow.

Q. FOR SERVICES TO COMPETE, IS IT NECESSARY FOR ALL CUSTOMERS TO VIEW THE SERVICES AS REASONABLY INTERCHANGEABLE?

A. No. For determining which services are in the same market, it is not necessary for *all* customers to view the services as being reasonably interchangeable. What is critical in determining whether services are competitive substitutes is whether they "have the ability—actual or potential—to take significant amounts of business away from each other."[10]

When a significant number of consumers actively choose among reasonable alternatives, firms must compete with each other for these customers. In the

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[8] In the economics literature, goods are substitutes that satisfy similar wants. Air conditioning and fans are considered substitutes, though they are quite different in quality and technology employed. *See, for example*, Michael L. Katz and Harvey S. Rosen, *Microeconomics*, Third Ed. (Irwin-McGraw-Hill, Boston MA: 1998) at 60.

[9] *Drinkwine v. Federated Publications*, 780 F.2d 735, 738 n. .3 (9th Cir. 1985), *cert. denied*, 451 U.S. 911 (1981).

process of vying for customers, competitive firms seek advantages and respond to their competitors by driving prices toward the costs of efficient firms, improving service quality, or incorporating innovations in the production or delivery of services.

Q. WOULD YOU PLEASE PROVIDE SOME EXAMPLES OF SERVICES AND PRODUCTS THAT THE COURTS HAVE DETERMINED ARE IN THE SAME PRODUCT MARKETS?

A. Reviewing court decisions about product market definitions helps drive home the point that "substitutable" and "the same" are not synonymous standards. For example:

- "Premium" ice cream is not a market in itself, because all grades of ice cream compete for customer preference and for retailers' freezer space; in other words, lower-quality ice cream is a relevant substitute for premium ice cream.[11]
- Glass jars and metal cans are sufficiently interchangeable in use to be in the same product market.[12]
- "Passive visual entertainment," including cable television, satellite television, videocassette recordings, and free over-the-air television are all substitutable enough to be in the same product market.[13]

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[10] *SmithKline Corp. v. Eli Lilly & Co.*, 575 F.2d 1056, 1063 (3d Cir. 1978), *cert. denied*, 439 U.S. 838 (1978).

[11] *Super Premium Ice Cream Distrib. Antitrust Litig.*, 691 F. Supp. 1262 (N.D. Cal. 1988), *aff'd mem. sub nom. Haagen-Dazs Co. v. Double Rainbow Gourmet Ice Creams, Inc*., 895 F.2d 1417 (9th Cir. 1990).

[12] *United States v. Continental Can Co*., 378 U.S. 441, 453-57 (1964).

Note that products and services that consumers view as substitutable often have very different prices and quality. An important lesson from these examples is that consumers in competitive markets do not make decisions based solely on price. A recognized benefit of competitive markets is that consumers can choose among products and services based upon mixes of price and quality,[14] and consumers can change the mixes of price and quality they purchase and consume. This means that services with very different prices (including different mixes of non-recurring and recurring costs), such as basic cable television and satellite television, can take business away from each other. They compete in terms of price and quality, not price or quality. Looking at one dimension in isolation can lead to a mistaken conclusion that the services are not in the same market.

Consider, for example, wireless and wireline services. Although the prices of packages for wireline and wireless services are similar, the quality attributes of these services can be quite different. The sound quality of wireless in some locations remains inferior to wireline quality, but the mobility "quality" of wireless is clearly superior. As the prices of wireless services have declined, increasing numbers of customers are choosing wireless usage and "lines" over wireline usage and lines. This development reflects not just a pricing decrease, but also the conclusion of many consumers that the mobility and added functionality of wireless telephones provide a desirable quality advantage over wireline telephones.

Another example relates to packaged telecommunication services relative to stand-alone local service. The fact that these service offerings are different does not mean that they are in separate product markets. Customers can and do move from one pricing plan to another. The growth in popularity of packaged services

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[13] *Cable Holdings v. Home Video, Inc*., 825 F.2d 1559, 1563 (11th Cir. 1987). For more examples, see ABA Section of Antitrust Law, Antitrust Law Developments (4th ed. 1997), at 500-508.

[14] In this context, quality refers to non-price attributes of products and services.

is evidence that consumers consider stand-alone and packaged services to be substitutes. Business basic local service and packaged services are, therefore, in the same product market.

Q. IS THERE A DYNAMIC COMPONENT TO THE CONSIDERATION OF THE PRODUCT MARKET?

A. Yes. For most of the twentieth century, every business line was a distinct service. A business that needed telephones for 1,000 employees would purchase 1,000 separate lines. In the 1970's, advances in microelectronics enabled the development of computerized private branch exchanges (PBXs), which are essentially small central office switches. This enabled businesses to self-supply some of their local exchange service and established stiff competition between telephone companies and equipment vendors. ILECs responded to PBX competition with Centrex services to business customers. As part of the natural progression of competition, technological innovation, and the ever growing demand for services, in the 1990's ISDN Primary Rate (PRI) service began substituting for Qwest's Centrex service and PBX trunks. As customers change in size, so do the economics of their choices among these services. Just as Centrex and PBX services are not suitable substitutes for all basic business lines, ISDN Primary Rate service is not a suitable substitute for all Centrex and PBX customers. These services are seen as substitutes by significant numbers of customers, and they are therefore in the same product market.

Similarly, while mobile wireless and VoIP services are not substitutes for all Qwest business customers today, a significant percentage of customers do view them as substitutes, so they are in that product market. Mr. Brigham's direct and rebuttal testimonies provide evidence of the substitutability of these services. This is further supported by information from surveys of small businesses, presented below in Section V.

Q. ARE CROSS-ELASTICITY STUDIES THAT MR. CHRISS PROPOSES NECESSARY OR ADVISABLE FOR THIS PROCEEDING?

A. No. Mr. Chriss states:

> Mr. Brigham focuses on the sentiments of potential customers in Colorado…and does not provide any quantitative evidence of cross-price elasticity of demand for wireless and wireline services for business customers, so the level of substitutability is uncertain.[15]

There are two implications in this statement: (1) customer surveys about substitution do not provide suitable quantitative evidence and (2) requiring cross-price elasticity studies, presumably from econometric analysis, is advisable for this proceeding. Both of these implications are incorrect. First, in a dynamic environment such as telecommunications, historic data that are often used in elasticity studies do not fully reflect current relationships, and recent customer surveys are often the best source of accurate information. Second, econometrics is a form of statistical analysis that economists use to isolate and estimate relationships, including cross-price elasticities. This is far from an exact science; it would add little, if anything, to what we can conclude from more straight-forward considerations of substitutes; and it would not provide certainty regarding levels of substitution. What it would surely provide are highly contentious disputes among parties about model specifications, inputs, and the interpretation of the statistical results.

This conclusion is backed by years of experience with econometric analysis, including my two years of intensive analysis while working with more than one hundred economists in AT&T's Market Analysis and Forecasting group. Econometric analysis is a valuable tool for analyzing the components of demand

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[15] Staff/100, Chris/56.

for services, but, done correctly, it is not a simple process. Different skilled and experienced econometricians motivated by nothing but a search for the truth often arrive at significantly different conclusions, especially about the relative impacts on demand of variables, such as the strength of the economy, prices changes, change in prices for substitutes, and the changing proclivities of customers. Rather than provide certainty for this proceeding, putting forward cross-price elasticity estimates would do little other than create a round of debates about econometric models.

The emergence of competition that is closely tied to technological change would prove an additional source of difficulty and contention. As Dr. Taylor points out in his book on examining telecommunications demand:

> The situation is different now. Firms do not deal with a single telecommunications company but with several…Among other things, this means that when the focus is on demand as seen by a serving telephone company, the models to be estimated must be formulated with care.[16]

Specific to estimating of cross-elasticity, Dr. Taylor notes:

> Attempts, as at Bell Canada, to estimate separate time-series models for PBX trunks have not been particularly successful. The major problem in doing so is the deregulation in both the U. S. and Canada of the terminal equipment market and the general lack of price indices for terminal equipment that adequately account for technological change. The inability to date to account, in a time-series context[,] for substitution between PBX and Centrex is also a factor.[17]

This illustrates one of the many thorny issues related to econometric analysis that are likely to create more questions than answers if cross-elasticity analyses are submitted as evidence in this proceeding. Fortunately, it is not necessary to conduct an econometric analysis to determine that substantial numbers of customers view Centrex, PBX, and ISDN Primary Rate services as substitutes. It

[16] Taylor, Lester, Telecommunications Demand in Theory and Practice, p. 80.

only requires a modicum of common sense and industry experience. As Bob Dylan observed long ago, "You don't need a weatherman to know which way the wind blows."[18]

B. GEOGRAPHIC MARKETS

Q. DR. CABE ASSERTS THAT QWEST IS DEFINING ITS SERVICE TERRITORY IN OREGON AS ONE GEOGRAPHIC MARKET.[19] IS THIS YOUR UNDERSTANDING?

A. No. Mr. Brigham did not claim or suggest that Qwest's service territory in Oregon is one geographic market, nor is that how the evidence was presented in his testimony. The evidence was gathered and presented by rate centers and aggregated for presentation into geographic areas. Qwest's evidence establishes that competition is widespread throughout markets for business telecommunications services in Qwest's service area in Oregon. It does not establish that Oregon is one geographic market, nor was that its intent. In the interest of maintaining focus on the salient issues, there is no need for the Commission to consider whether or not the state comprises one market, because no party to this proceeding is making this claim.

Q. WHAT ECONOMIC PERSPECTIVE SHOULD GUIDE DECISIONS ABOUT GEOGRAPHIC MARKET DEFINITIONS FOR THE ANALYSIS OF COMPETITION?

A. There are two important perspectives that provide guidance for determining the scope of geographic markets for this proceeding, one economic and one practical. From a practical perspective, it is necessary to use geographic areas for which

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[17] Taylor, Lester, Telecommunications Demand in Theory and Practice, p. 194, fn. 2.

[18] Dylan, Bob, "Subterranean Homesick Blues," Bringing it All Back Home, 1965.

data are available. Individual wire centers or rate centers are generally too small to constitute markets because they are not large enough to allow CLECs to capture sufficient economies of scale. Wire centers or rate centers are, however, practical geographic units for collecting data. It is reasonable for CLECs to make decisions about areas for initial entry and subsequent expansion based on the revenue and cost characteristics of *groups* of wire centers or rate centers with similar attributes.

From the proper economic perspective, relevant geographic markets for purposes of competition analysis are areas where competitors have viable opportunities to provide service using their own facilities to business customers. These areas are determined by market and financial factors that vary by place and time. One key factor is the ability of efficient firms to achieve sufficient economies of scale. Firms enter and expand into areas when their analyses give rise to expectations that they can create value for themselves or the owners of the business. The key to determining appropriate geographic markets is the selection of a method for aggregating wire centers or rate centers. An aggregation of wire centers or rate centers that is based upon the ability of efficient competitors to provide service using their own facilities to business customers meets both the economic and practical requirements for defining an appropriate geographic market.

Q. IS THE LACK OF CLEC COMPETITION IN A GEOGRAPHIC AREA EVIDENCE THAT QWEST HAS SIGNIFICANT MARKET POWER IN THAT AREA, AS MR. DENNEY SUGGESTS?[20]

A. No. If there are areas where CLECs cannot serve business customers profitably,

[19] TRACER/100, Cabe/15.

[20] Eschelon/1, Denney/ 6.

even with access to unbundled loops at TELRIC-based prices, then Qwest is probably serving customers in these areas at prices lower than those that would prevail in a competitive market, and this is probably due to vestiges of regulatory pricing. Other service providers have the "power" to decide not to serve these areas, but Qwest does not. This is the opposite of the existence and exercise of market power by Qwest. Absent low regulated prices, there are no insurmountable barriers to entry for efficient competitors for switched business services in Oregon, and as observed correctly by Mr. Chriss, "in the event Qwest does raise prices, CLECs may choose to enter the market."[21]

IV. RESPONSE TO OTHER PARTIES' COMPETITIVE ASSESSMENTS

Q. DO YOU AGREE WITH MR. DENNEY AND DR. CABE[22] THAT COMPETITION IS INSUFFICIENT TO CONSTRAIN QWEST'S PRICES FOR SWITCHED BUSINESS SERVICES?

A. No. A defining characteristic of telecommunications markets nationwide and in Oregon over the last decade is growth. The volumes of communication, the methods of communicating, and the number of business served over non-ILEC facilities are all growing. In contrast to this pattern of growth, the demand for Qwest switched business services in Oregon has declined significantly since June 2001.[23] It strains credulity that a rational person can conclude, as does Mr. Denney, that Qwest does not face significant competition in Oregon.[24] When looking at the share of business lines served over Qwest's network, Mr. Denney observes further that "[a] single firm rarely has market shares of this level." This is hardly surprising, since it is difficult to find firms that emerged from franchise

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[21] Staff/100, Chriss/45.

[22] Eschelon/1, Denney/4; TRACER/100, Cabe/4-5.

[23] See generally, Exhibit Qwest/1 (Direct Testimony of Robert H. Brigham) and Exhibit Qwest/25 (Rebuttal Testimony of Robert H. Brigham).

monopolies. Qwest's competitive data show that competitors have won, and are continuing to win, substantial shares of switched business lines. Moreover, information from business surveys shows that businesses are increasingly substituting intermodal services for traditional switched services offered by Qwest.[25] With continuing changes in technology and customer demand, competition will grow even more intense in the coming years.

A. MARKET CONCENTRATION IS A MISLEADING MEASURE FOR THIS PROCEEDING

Q. WHY IS THE ANALYSIS OF COMPETITION FOR SWITCHED BUSINESS SERVICES DIFFERENT THAN THE ANALYSIS OF A MERGER?

A. The primary consideration in the analysis of a merger for antitrust purposes is the increase in market concentration and market power resulting from the combination of two firms. It focuses on the change in a market from a single event that increases concentration. In contrast, the concentration in business telecommunications markets in Oregon is decreasing, as an array of competitors continue to target and win shares of the most valuable customers.

Q. WHAT DO OTHER WITNESSES SAY ABOUT MARKET CONCENTRATION IN THE LOCAL TELECOMMUNICATIONS MARKET AND THE STATUS OF COMPETITION?

A. Mr. Denney and Dr. Cabe use the Herfindahl-Hirshman Index (HHI) and four-firm concentration ratio (CR4) calculations as the basis of their opinions that Qwest has substantial market power.

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[24] Eschelon/1, Denney/7.

[25] See Section V below.

- Mr. Denney states that "measures of concentration can be used as an indication of the degree of market power enjoyed by a dominant firm in an industry" and concludes that "…the Herfindahl-Hirshman Index ("HHI")…shows that the business market in Oregon is highly concentrated, implying that the dominant carrier, Qwest, has significant market power."[26]

- Dr. Cabe states that "every analysis performed by Staff yielded HHI values that the HMG would regard as highly concentrated" and concludes that "the Commission view this evidence of very high concentration as creating a presumption that competition is not sufficient to restrain Qwest's ability to exercise market power."[27]

The HHI and CR4 are poor measures of market power for several reasons. First, as Mr. Chriss observes, there is no necessary relationship between market concentration and market power or the exercise of market power.[28]

Second, the relationship between concentration and market power is tenuous, at best, in markets that are making a transition from a franchise monopoly structure to a competitive structure and exhibit rapid technological change, where new competitors and technologies can "leapfrog" current technologies. As observed years ago:

> One problem that all measures of concentration — including…the Herfindahl Index (HHI) — suffer from is that…changing conditions — e.g., technological innovation, availability of substitute products, reduced barriers to entry, etc. — may precipitate the deconcentration of the market.[29]

This is echoed in the Department of Justice *Horizontal Merger Guidelines*, where it states that "changes in the market may indicate that the current market share of a particular firm either understates or overstates the firm's future competitive

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[26] Eschelon/1, Denney/8, 10.

[27] TRACER/100, Cabe/12.

[28] Staff/100, Chriss/20.

[29] Weinstock, David S., "Using the Herfindahl Index to Measure Concentration," Antitrust Bulletin/Summer 1982, p. 287.

significance."[30] This is certainly true for Qwest, which has lost **[Confidential - XX percent]** of its switched business lines since June 2001.[31]

Because the HHI and CR4 ratios are static measures, they do not capture market dynamics that are clearly constraining Qwest's ability to exercise market power. Consider the information content of HHI estimates if they were calculated during the transition to competition that occurred in the intraLATA toll market. At one time, Qwest provided all of the intraLATA toll service in its serving territory in Oregon. Now competitors provide substantial shares of this usage. In the early stages of this transition, HHI estimates would have been quite high, perhaps even higher than the numbers cited by Mr. Chriss, Mr. Denney, and Dr. Cabe. These high HHI numbers, however, would have provided an inaccurate and misleading measure of the intensity of competition and the existence of market power by Qwest. Despite large HHI numbers, Qwest lacked market power in this market, and competitors now serve large shares of this market. HHI estimates during the transition to competitive markets for interLATA toll would have been equally misleading indicators of AT&T's market power at that time.

Third, HHI and CR4 calculations are based solely on information about ILEC and CLEC lines, ignoring competition from intermodal services such as mobile wireless, email and VoIP. Businesses are increasingly relying on these intermodal services to communicate.[32] Completely ignoring these forms of competition overstates market concentration substantially and further weakens any relationship between measures of concentration and market power.

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30 "1992 Horizontal Merger Guidelines," Section 1.521, Jointly Issued by the Department of Justice and the Federal Trade Commission.

31 See e.g., Exhibits Qwest/1 and Qwest/25.

32 Id.; see also, Section V below.

It is worth noting that the *Merger Guidelines*, which provide the methodology for the HHI and CR4 calculations, caution that the use of these calculations can lead to the wrong conclusions:

> Because the specific standards set forth in the Guidelines must be applied to a broad range of possible factual circumstances, mechanical application of those standards may provide misleading answers to the economic questions raised under the antitrust laws. Moreover, information is often incomplete and the picture of competitive conditions that develops from historical evidence may provide an incomplete answer to the forward-looking inquiry of the Guidelines.[33]

Mr. Denney and Dr. Cabe rely on a mechanical application of the HHI methodology without developing the complete picture of competitive conditions and come to the wrong conclusion.

Q. DOES DR. CABE RECOGNIZE THE LIMITATIONS OF CONCENTRATION CALCULATIONS BASED ON MARKET SHARE?

A. Yes. Although Dr. Cabe recommends that this Commission rely on HHI and CR4 calculations in evaluating competition, he recognizes that these calculations, based on static, historic data should not be determinative. He states, "The fact that the industry is in transition makes this a particularly poor time for the Commission to rely heavily on market share information based on historical patterns of entry that don't include the impact of the transition."[34] Nine years after the passage of the Telecom Act, competition for switched business services in Oregon is prevalent. The transition to even more facilities-based competition by CLECs, in combination with a continued shift of businesses away from traditional wireline to wireless and VoIP services, confirms that competition is increasing.

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[33] "1992 Horizontal Merger Guidelines," Section 0 - Purpose, Underlying Policy Assumptions and Overview.

[34] TRACER/100, Cabe/38.

Q. WOULD YOU PLEASE SUMMARIZE YOUR POSITION RELATED TO PROPOSALS TO USE THE HHI IN THIS PROCEEDING?

A. Other witnesses attach credibility for the use of HHI in this proceeding by this Commission because the Department of Justice and the Federal Trade Commission use this measure for considering mergers. This is, however, too much of a stretch, and the HHI provides very misleading information in today's telecommunications markets. This Commission is not considering a merger, or any other action that any party in this proceeding is claiming will result in an increase in market concentration. Even if Qwest were to increase certain prices as a result of this proceeding, the expected result would be to accelerate the pace at which Qwest is losing business. Qwest is not entering into a merger; it is trying to compete on an even basis with firms that are not subject to price regulation in markets where these competitors are already serving a large share of customers. The fact that the HHI is used to analyze mergers does not make it credible for use in for considering increased pricing flexibility in this proceeding.

B. UNE-P AND QPP

Q. IS MR. DENNEY CORRECT THAT THE SUBSTITUTION OF QPP FOR UNE-P WILL HAVE A NEGATIVE IMPACT ON THE DEVELOPMENT OF COMPETITION?[35]

A. No. Mr. Denney is not correct that substitution of QPP for UNE-P will have a negative impact on the development of competition. After having its Triennial Review Order remanded, the FCC determined that UNE-P was not necessary for CLECs to compete, and the removal of the regulatory advantages afforded CLECs

[35] Eschelon/1, Denney/17-18.

by UNE-P is strengthening facilities-based competition, to the benefit of Oregon telecommunications users and economy. Furthermore, Qwest has made QPP available to competitors as a functional substitute to UNE-P.

Q. WOULD YOU PLEASE PROVIDE THE PROPER FRAMEWORK FOR THE UNDERSTANDING OF UNE-P AND QPP?

A. From an economic and functional perspective, the debate about UNE-P was not about unbundling; it was about prices and conditions of resale. Unbundling refers to isolating and leasing one or more elements from the incumbent's network for use by a competitor to assemble its own service. UNE-P was unbundling in name only. It offered CLECs the ability to resell Qwest's finished services at prices determined by prices of UNEs. A competitor with none of its own network facilities could resell a Qwest finished service, and it could choose between two different prices, one based on an avoided cost discount from Qwest's retail price and the other based on the prices of the "unbundled" elements that "could be" rebundled to provide the service. In reality, no network elements were unbundled to provide this service. It was the same service that was provided by Qwest, and it was the same service that the CLEC could purchase based on a wholesale discount. When used in place of resale, UNE-P was primarily an opportunity for the CLEC to shop for the best price for a finished service. Without installing any facilities, a CLEC could choose between resale and UNE-P depending on which price was less. The only significant difference from Qwest's QPP service is price, and this difference is small. In its prospectus for issuing an initial public offering (IPO) of its common stock, Eschelon reports that the estimated increased costs in 2006 due to the elimination of UNE-P is $3.1 million, or approximately two percent of the company's 2004 network services revenue.[36]

It is important to note that UNE-P and QPP are not the same as resale at an avoided cost discount from retail prices. They are attractive entry strategies because they are not directly tied to Qwest's retail prices, and they afford some of the rewards of facilities-based competition (such as access to all of the capabilities of the switch needed to provide vertical features and the ability to collect contributions from switched access) without the commensurate risks associated with investing in plant and equipment. Furthermore, they are scalable to the exact number of customers served.

Q. PLEASE RESPOND TO DR. CABE'S ASSERTION THAT QPP MAKES CLECS MERELY A DISTRIBUTION CHANNEL FOR QWEST.

A. On page 28 of his direct testimony, Dr. Cabe states that "the relationship between Qwest and a QPP provider is analogous to the relationship between a manufacturer and a retailer of the manufacturer's products"[37] and that CLECs using QPP are merely a distribution channel for Qwest. This is simply incorrect and inconsistent with other statements by Dr. Cabe.

In his testimony, Dr. Cabe discusses "sunk costs that must be incurred by Qwest's <u>competitors</u>" and that "[a] <u>provider</u> that relies entirely on Qwest facilities – using resale, UNE-P (while it lasts) or QPP – must acquire operations support systems (OSS), train personnel, and advertise in order to enter a market."[38] In these statements, Dr. Cabe clearly recognizes that CLECs using QPP are competitors. In this statement, Dr. Cabe also recognizes that QPP and UNE-P are functionally similar.

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[36] Eschelon Telecom Inc. Prospectus, August 4, 2005, pp. 26, 68.

[37] TRACER/100, Cabe/28.

[38] TRACER/100, Cabe/25. (Emphasis added.)

Dr. Cabe's statement that QPP providers are Qwest retailers is also inconsistent with his previous testimony. In a proceeding in Washington state last year, Dr. Cabe stated, "This proceeding will determine an input that is crucial to the business case of UNE-P CLECs that invested in an entry strategy that relies on the availability of UNE-P."[39] In that testimony, Dr. Cabe considered UNE-P CLECs as competitors, not retailers of incumbent services. Given the functional similarity of UNE-P and QPP, it is inconsistent to now claim that QPP providers are not competitors. QPP is a valuable entry strategy for CLECs.

Q. WAS IT EVER LIKELY THAT UNBUNDLED SWITCHING AND UNE-P WOULD REMAIN AVAILABLE IN THE LONG TERM?

A. No. UNE-P relied upon unbundled switching, which faced almost immediate, and ultimately successful, challenges related to the impairment standard that is a central economic tenet necessary for the success of the Telecom Act. As early as 1999, the FCC removed this requirement in major metropolitan areas for businesses with four or more lines.[40] Although, it is understandable that many CLECs touted the advantages of this very attractive form of resale, it clearly was not a regulatory requirement that was designed to last. Even when CLECs were aggressively reselling Qwest's services using UNE-P pricing, CLECs should not have expected this form of resale to last indefinitely. Although Mr. Denney and Dr. Cabe lament the fact that QPP contracts will need to be renegotiated in 2008, it would have been highly surprising if UNE-P survived nearly that long.

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39 In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order, Before the Washington Utilities and Transportation Commission, Docket No. UT-033044, Exhibit RC-5T, Rebuttal Testimony of Richard Cabe, February 2, 2004, p. 52.

40 In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, FCC 99-238, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, Federal Communications Commission, Docket no. 96-98, November 5, 1999, p. 12.

Q. HOW ARE CLECS RESPONDING TO THE PHASE-OUT OF UNE-P?

A. The phase-out of UNE-P is causing many CLECs to turn to facilities-based alternatives. A report from the CLEC trade and advocacy association, Comptel/ALTS, states that "almost every facilities-based CLEC is deploying its own VOIP services."[41] For example, Unicom, which is based in Bend, is migrating to VoIP services.[42] This is not a sign of competitive failure, but rather a manifestation of a healthy competitive marketplace. The removal of the regulatory advantages afforded CLECs by UNE-P is strengthening facilities-based competition.

Q. DO CLECS RECOGNIZE THE BENEFIT OF FACILITIES-BASED COMPETITION?

A. Yes. CLECs understand the many benefits of facilities-based competition. For example, Eschelon states, "Owning and operating our own switches lowers our costs and gives us greater control over service quality…which we believe results in greater customer satisfaction and loyalty."[43] Similarly, XO states, "We are able to provide our services to our customers entirely over an integrated national network…This allows XO to offer our customers high quality of service and a high level of service."[44]

The benefits of facilities-based competition extend beyond individual competitors. As the CLEC association Comptel/ALTS so clearly explains:

> …facilities-based competition yields broader economic benefits to the communities CLECs serve, just as investments in 'traditional'

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[41] "State of Local Competition 2004," Association of Local Telecommunications Services, July 2004, p. 5.

[42] Carroll, Cathy, "High-Tech: Unicom," *The Bulletin*, August 3, 2004; "UNICOM Acquires OneEighty Networks' Central Oregon Operations," Unicom press release, June 1, 2005.

[43] Eschelon Telecom Inc., Prospectus, August 4, 2005, pp. 1-2.

[44] XO Communications, Inc., SEC Form 10K, December 31, 2004, p. 7.

> infrastructure – roads, bridges, airports – yield economic development in the communities in which they are built.[45]

Contrary to comments by Mr. Denney and Dr. Cabe, the elimination of UNE-P is fostering additional facilities-based competition, to the benefit of CLECs, telecommunications users and the economy.

Q. SHOULD THIS COMMISSION FOLLOW MR. DENNEY'S AND DR. CABE'S RECOMMENDATIONS TO EXCLUDE LINES SERVED BY CLECS USING RESALE AND QPP FROM ITS CONSIDERATION OF CLEC MARKET SHARES?[46]

A. No. Resale is a form of entry sanctioned by the Telecom Act which allows competitors to provide local services with very little initial investment and risk. That resale can be effective in establishing competitors and putting pricing pressure on the incumbent is demonstrated in Mr. Denney's Chart 1 which shows the growth of competitors' share of long distance services.[47] Mr. Denney points to the fairly rapid growth in competitive long distance share in the early years after the breakup of AT&T. In these years, AT&T was the only carrier with a network that served all customers in the country, and MCI and Sprint were dependent on resale from AT&T to provide service to many of their customers.

QPP prices provide a source of even greater price discipline than resale because they are not tied to Qwest's retail prices. Moreover, CLECs have QPP agreements with Qwest that do not require renegotiation until 2008, and contrary to claims by Mr. Denney and Dr. Cabe, this is a long time in the dynamic, rapidly changing telecommunications markets. There is much already underway that makes it a certainty that the competitive landscape will be quite different in 2008.

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[45] "State of Local Competition 2004," Association of Local Telecommunications Services, July 2004, p. 7.

[46] Eschelon/1, Denney/15; TRACER/100, Cabe/27, 31-32.

C. BARRIERS TO ENTRY

Q. IS DR. CABE CORRECT THAT THIS COMMISSION SHOULD CONCLUDE THAT THE DEVELOPMENT OF COMPETITION IS IMPEDED BY INSURMOUNTABLE BARRIERS TO ENTRY FOR CLECS?

A. No. In his lengthy discussion of barriers to entry, Dr. Cabe fails to distinguish between investments required to enter a business and insurmountable barriers to entry. Dr. Cabe cites the Triennial Review Order (TRO) in his discussion of barriers to entry and discusses barriers to entry in the same order as they are discussed in the TRO — economies of scale, sunk costs, and first-mover advantages,[48] but does not show how these are limiting entry by efficient competitors. In fact, they are not. In the TRO, the FCC evaluated these and other barriers to entry, and determined that CLECs are not impaired without the unbundled switching requirement. Given the economics of self-supplied switching, numerous CLECs already own substantial switching capacity; it is irrational to conclude that CLECs cannot do what they have already done. In addition, Qwest replaced UNE-P with QPP. Furthermore, as Dr. Cabe himself notes, VoIP providers “apparently face very low barriers to entry.”

Q. DID THE RAPID DEVELOPMENT OF UNE-P DISPEL THE NOTION THAT ACQUIRING CUSTOMERS IS A BARRIER TO ENTRY FOR CLECS?

A. Yes. The ability of CLECs to win millions of customers and put in place

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[47] Eschelon/1, Denney/9.

customer service and billing functions over relatively short periods of time makes it clear that customer acquisition is far from insurmountable.

Q. DOES IT APPEAR THAT PART OF MR. CHRISS' DISCUSSION OF BARRIERS TO ENTRY IS BASED ON A MISUNDERSTANDING OF QWEST'S UNBUNDLING OBLIGATIONS?

A. Yes. Mr. Chriss states:

> The first barrier to entry is the cost of building facilities. While not necessarily the cost per line for CLECs, the Commission has determined that the average capital outlay for Qwest to replace a loop is approximately $658. This loop cost alone…represents a potential entry cost...[49]

This statement is based on Mr. Chriss' apparent misunderstanding about Qwest's unbundling requirement for DS0 loops. In the Triennial Review Remand Order (TRRO), the FCC determined that efficient CLECs are not impaired in their abilities to compete without access to unbundled switching at TELRIC-base prices, but the unbundling requirement for DS0 loops remains unchanged. Although numerous CLECs have built loop networks, CLECs can also take full advantage of economies of scale in Qwest's loop network by leasing DS0 loops at TELRIC-based prices.

In the same vein, Mr. Denney states, "In order for facilities-based competition to be viable, a CLEC needs, among other things, a sufficient number of customers to justify building facilities." Certainly, it is true that a facilities-based CLEC needs to build facilities, and it will only do so when it makes financial sense. For example, a CLEC that uses a UNE-loop strategy needs to collocate at a Qwest

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[48] TRACER/100, Cabe/24-25; In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability, FCC 03-36, Report and Order and Order on Remand And Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, 98-147, August 21, 2003, ¶ 87-89.

wire center, and the vast majority of Qwest's lines are in wire centers with multiple collocated CLECs. To provide switched business services, a CLEC also needs to have a CLASS 5 switch, and there are many of these owned by CLECs operating in Oregon. A CLEC does not have to build DS0 loops, however, since it can lease these loops from Qwest at TELRIC-based prices. Compared with entrants into other markets, CLECs are afforded unprecedented opportunities to succeed in local telecommunications. They have the opportunity to find the most effective mix of building facilities, using UNE loops priced to include the economies of scale of the incumbent, and reselling incumbents' retail services.

D. EVIDENCE OF VIBRANT COMPETITION FOR BUSINESS WIRELINE SERVICES

Q. WHAT DO YOU CONCLUDE FROM THE CLEC SHARE DATA REPORTED BY MR. BRIGHAM?

A. Mr. Brigham's Confidential Exhibit 40 provides minimum CLEC shares of switched business services by rate center. The exhibit shows that the vast majority of switched business lines **[Confidential - XX percent]** are in rate centers with CLEC shares of 30 percent or more. Only **[Confidential – xx percent]** of switched business lines are in rate centers with CLEC share of less than 30 percent and **[Confidential - less than xx percent]** of lines are in rate centers with CLEC share of 10 percent or less. Contrary to the statements of Mr. Denney and Dr. Cabe, this is strong evidence that CLECs are highly successful in serving the vast majority of business customers in Qwest's service area, indicating that Qwest does not have market power.

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[49] Staff/100, Chriss/51.

Q. IS THERE ADDITIONAL EVIDENCE THAT BUSINESSES HAVE WIRELINE COMPETITIVE OPTIONS?

A. Yes. A recent national survey confirms that a large majority of small businesses (with less than 250 employees) have CLEC options. Seventy percent of small businesses surveyed identified at least two local service providers in the area in which they do business, implying that they were aware of at least one CLEC. Forty percent of small businesses shopped for a new provider of local service in the last three years, and of those who shopped, 71 percent switched providers. The primary reason that businesses did not shop for a new provider was satisfaction with their existing local service provider, not the lack of alternatives.[50] This information provides the context in which small businesses are making decisions about local and long distance services. It is entirely consistent with the CLEC share gains reported by Mr. Brigham, and it provides additional support that Qwest does not have market power for switched business services.

V. FORWARD LOOKING POLICES MUST RECOGNIZE ALL FORMS OF GROWTH IN COMPETITION

Q. IS COMPETITION FOR QWEST'S SWITCHED BUSINESS SERVICES LIMITED TO CLECS?

A. No. Qwest is applying for a reduction in regulation to better compete going forward, and this includes competing with aggressive providers of wireline, mobile wireless, VoIP, and fixed wireless services.

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[50] "National Small Business Poll: Telecommunications," National Federation of Independent Businesses, Volume 4, Issue 8, 2004, pp. 11-13. (Hereinafter "NFIB").

D. MOBILE WIRELESS

Q. MR. DENNEY AND DR. CABE ARGUE THAT MOBILE WIRELESS IS A POOR SUBSTITUTE FOR SWITCHED BUSINESS SERVICES.[51] DO YOU AGREE?

A. No. Cell phones are now commonplace, and a very high percentage of business customers already substitute wireless business calls for landline calls. A recent survey of telecommunications use by small businesses reveals that 78 percent of small business owners use mobile wireless services and that three-fourths of these consider mobile service to be "essential" or "important" to their business operations.[52] As the author of the report concludes, "Small-business owners strongly embrace the convenience and flexibility that cell phones provide in running their businesses. More and more, the demands of business owners are time sensitive and circumvent the traditional 9-5 business hours."[53] Another survey sponsored by the U.S. Small Business Administration shows that expenditures by small businesses for wireless services are approximately the same as for local service, and 25 percent of small businesses spend more on wireless than on local and long distance service wireline combined.[54] Mobile wireless services are a widely used, and increasingly important, competitive option for small businesses.

Mobile wireless service is used exclusively by some businesses. For example, mobile wireless is well-suited to businesses in the transportation, construction and maintenance industries because employees are highly mobile. Switching to wireless-only is not limited to small businesses. Ford Motor Company recently

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[51] Eschelon/1, Denney/23-24; TRACER/100, Cabe/41-42.

[52] NFIB, p. 13.

[53] NFIB, p. 4.

[54] Pociask, Stephen B., "A Survey of Small Businesses' Telecommunications Use and Spending," U. S. Small Business Administration, March 2004, pp. ii, 10, 44.

decided to replace the landline phones of its 8,000 person product development department with Sprint mobile service.[55] As mobile wireless coverage and service quality continue to improve, more businesses will likely consider this option. In any case, as explained previously, it is not necessary for mobile wireless to be a substitute for every customer in order to for it to constrain incumbent pricing.

B. VoIP

Q. DO YOU AGREE WITH MR. DENNEY AND DR. CABE THAT COMPETITION FROM VOIP SERVICES IS NOT RELEVANT TO THIS PROCEEDING?[56]

A. No, the opposite is true. While high quality VoIP service has been widely available for only a couple of years, it is rapidly transforming the face of wireline communications. First, because of the low cost and wide-ranging functionality of VoIP service, existing communications providers are switching from circuit-switched to IP telephony. In addition, deployment of "next gen" equipment that provides VoIP service has accelerated in the last year. A recent study, based on a survey of 44 communications carriers worldwide, including 25 carriers in North America, forecasts that by the end of 2006, an average of half of the respondent carriers' central offices will have next gen voice equipment. Spending on this equipment increased in North America by 50 percent in 2004, and worldwide spending is projected to increase three-fold by 2008.[57]

Second, in the last few years, many non-traditional companies began offering

[55] "Ford Selects Sprint to Replace Desk Phones with Mobile Devices and Mobilize Workforce," Sprint Press Release, January 24, 2005.

[56] Eschelon/1, Denney/22; TRACER/100, Cabe/43-44.

[57] "Carrier VoIP Investments Pick up Momentum," Infonetics Research Press Release, July 13, 2005; "Carrier VoIP gains momentum," Telephony Online, July 11, 2005.

VoIP. These firms range from stand-alone VoIP providers, such as Vonage and 8x8, who offer a full range of voice services, to Microsoft and Google, who are offering services that allow users to switch between emails, Instant Messaging (IM) and voice calls with the click of a mouse, to Ebay, which just purchased VoIP provider Skype. As Dr. Cabe observed, "The VoIP application can be provided by any one of a very large number of potential entrants, who apparently face very low barriers to entry."[58]

Third, VoIP is already used by a large number of businesses, and many more have plans to implement it. It is estimated that 43 percent of large enterprises and 34 percent of medium-sized businesses were using VoIP at the end of 2004,[59] and a survey reveals that more than 30 percent of all businesses, even those with less than 100 employees, are planning to adopt IP telephony solutions in 2005.[60] Another recent survey indicates that although many businesses have some concerns about voice quality, the majority are currently implementing or plan to implement VoIP services.[61] Thus, the drawbacks to VoIP service that Dr. Cabe mentioned are not preventing businesses from using the service. VoIP is already exerting competitive pressure on incumbents, and growing competitive pressure from VoIP is no longer speculation.

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[58] TRACER/100, Cabe/43.

[59] "In-Stat MDR: Business VoIP Use Rapidly Gaining Ground," *CommWeb*, December 7, 2004.

[60] "Businesses Likely to Embrace IP Telephony in 2005 – But Are Needs Being Met?" In-Stat Press Release, February 14, 2005.

[61] "Empirix Survey Finds that Two out of Three Enterprise Telecom Pros are Concerned about Putting a VoIP Phone on their CEO's Desk," Empirix Press Release, March 7, 2005. The survey of enterprise telecommunications managers revealed that although many have some concerns about voice quality and security, 52 percent of respondents were currently deploying some form of VoIP service, and 46 percent had deployment plans.

Q. DR. CABE STATES THAT BECAUSE VOIP SERVICES REQUIRE A BROADBAND CONNECTION, VOIP IS NOT A SUBSTITUTE FOR MANY BUSINESSES.[62] IS THIS TRUE?

A. No. A 2004 survey indicates that 58 percent of small businesses have a broadband connection. These businesses are using a range of technologies including DSL, cable modem, wireless, satellite and T1 lines. The survey also reveals that only 19 percent of small businesses without broadband service do not have the service because of a lack of availability, indicating that the large majority of small businesses have broadband options.[63] For customers with broadband, switching to VoIP services provides savings on monthly recurring charges. Businesses that do not have broadband now may consider getting it not only to obtain high-speed Internet access, but also to get the benefits of VoIP.

C. FIXED WIRELESS

Q. ARE FIXED WIRELESS SERVICES COMPETING FOR QWEST SWITCHED BUSINESS SERVICES?

A. Yes. Wi-Fi is used by Wireless Internet Service Providers (WISPs) to provide high-speed access to businesses that may not have wireline alternatives. There are many WISPs in Oregon, some serving urban areas, others serving suburban or rural areas. For example, Clearwire provides high-speed Internet service to businesses in Eugene, Oregon Trail provides services in Bend, Unwired Online provides services in Junction City, Cascade Networks provides services in several communities including Rainier and St. Helens, and FireServe provides services in

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[62] TRACER/100, Cabe/43.

[63] NFIB, pp. 17-18.

Klamath Falls.[64] At least one WISP, VeriLan, is currently offering VoIP services as well as broadband services to businesses over its wireless network.[65]

The deployment of WiMAX-compliant products in the coming months will introduce another network platform in competition with ILEC, cable and mobile networks. WiMAX has several advantages. First, it can compete directly with wireline offerings because it supports high-speed transmission, it can be configured over many miles, and it does not require line-of-sight.[66] Second, WiMAX is well positioned for rapid deployment and adoption because it is standards-based, its products will be certified for interoperability, and all major communications equipment vendors support it.[67] Third, many service providers, including mobile wireless providers, fixed wireless providers and ILECs, are currently testing its applicability for voice and data services in urban, suburban and rural areas.[68] The recent agreement between Vonage and TowerStream, which allows TowerStream to offer Vonage's VoIP service to its corporate customers, demonstrates that VoIP can run on wireless as well as wireline networks. It also highlights the speed with which WiMAX-based competitive services can come to market.[69]

Like mobile wireless and VoIP services, fixed wireless services are increasing competition for business telecommunications services.

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[64] Clearwire website at www.clearwire.com; Oregon Trail website at www.oregontrail.net/wireless/; Unwired Online website at www.unwiredonline.net; Cascade Networks at www.cni.net; FireServe web site at www.fireserve.net.

[65] Verilan website at http://www.verilan.com/telephony/business.shtml.

[66] "Frequently Asked Questions," WiMAX Forum Website, accessed 8/16/2005, available at http://www.wimaxforum.org/about/faq.

[67] "Member Roster," WiMax Forum website, accessed 10/7/2005, available at http://www.wimaxforum.org/about/roster/.

[68] "Big Steps Ahead for WiMAX," *Wireless Week*, August 1, 2005.

[69] "TowerStream and Vonage Form Alliance to Offer VoIP Over Fixed Wireless Broadband," Vonage Press Release, August 2, 2005.

VI. FINAL COMMENTS

Q. IS MR. CHRISS' TESTIMONY REGARDING QWEST'S CONSTANT PRICES INCOMPLETE AND MISLEADING?

A. Yes. Mr. Chriss' testimony about Qwest's constant prices in areas where it has pricing flexibility are incomplete and misleading.[70] His conclusion is that, where Qwest has not lowered its prices, there is only incidental competition. This is a bit like saying that the tenets of modern medicine would predict that a person who is ill would take a certain course of treatment, and then have a doctor conclude that a patient with a fever is not ill because she followed a different course of treatment, or decided on no treatment at all. This logic leads to counterfactual conclusions. Closer examination may even show that the person decided that the cure was worse than the disease.

The response to competition does not determine the existence of competition, and there can be many responses to intense competition other than a reduction in prices. These responses depend upon the situation and the strategy of the competitor. For example, in a situation where the prices of some services are already below cost and prices of others are above cost, a rational response to competition could be to do nothing, at least for some period of time.

Q. MR. CHRISS SUGGESTS THAT QWEST MAY USE PRICE DEREGULATION TO DRIVE COMPETITORS OUT OF THE MARKET AND REGAIN A MONOPOLY STATUS.[71] FROM AN ECONOMIC PERSPECTIVE, IS THIS A REASONABLE PROPOSITION?

A. No. What Mr. Chriss is describing is predatory pricing. Success of this strategy would require that Qwest could: (1) set prices so low that it would drive its

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[70] Staff/100, Chris/46-48.

[71] Staff/100, Chris/48.

competitors from the market, and (2) raise prices in the future high enough to recoup its losses but low enough not to attract responses from current or future competitors. First, there is a low probability that Qwest could achieve this, even if Qwest were outside of this Commission's oversight and reach of re-regulation. Given the cost structures and sunk investments of many of Qwest's competitors, it would take dramatic price reductions to cause these competitors to abandon their strategies and investments. Second, if a competitor were to fail, its assets could easily be acquired and redeployed by another competitor, strengthening competition. For example, in its recent acquisition of Allegiance assets, XO states, "The combination of our assets and services not only strengthens XO's ability to serve more business customers but significantly enhances our position as a provider of wholesale local access service to other telecommunications companies."[72]

Third, it is highly unlikely that CLECs, VoIP, and wireless competitors would be unable to respond to Qwest's attempts to charge supra-competitive prices in the future. Cost structures of Qwest's competitors, including VoIP (which, as Dr. Cabe points out, does not entail substantial sunk investments) render this possibility improbable. Fourth, the constant introduction of new services, based upon technological advances makes success of a predatory pricing strategy even more improbable.

Finally, deregulating Qwest's prices for switched business services will not remove Qwest from Commission oversight and re-regulation. Aside from the competitive realities facing Qwest, the specter of re-regulation is a significant deterrent to the pricing strategy described by Mr. Chriss.

[72] "XO Opens New Chapter for Local Competition Nationwide, Creates Leading National Local Exchange Carrier for Businesses; Progress on Achieving Synergies," XO Press Release, June 23, 2004.

Q. WOULD YOU PLEASE PROVIDE A PERSPECTIVE FOR CONSIDERING MR. CHRISS' CONCERN THAT CLECS FOCUS THEIR ENTRY IN DENSELY POPULATED MARKETS?

A. Mr. Chriss theorizes that "CLECs are going to enter markets where it is profitable to do so"[73] and suspects "that the CLECs may be targeting Qwest customers who may be less costly to serve."[74] Indeed, CLECs have focused their entry in densely populated markets because, as the infamous bank robber, Willie Sutton, was

[73] Staff/100, Chris/27.

[74] Staff/100, Chris/43.

purported to say when asked why he robbed banks, "[b]ecause that's where the money is." Unlike Willie Sutton, there is nothing wrong with CLECs focusing more on areas with high revenue, low cost customers.

Mr. Chriss is concerned that deregulating Qwest's prices for which there is a question about sufficient competition "could reduce the economic health of the state."[75] Acting as if Qwest is an economic entity that can provide below cost prices indefinitely, sustain significant competitive imbalance and continue its historic investment levels poses a much greater potential threat to the economic health of Oregon. As repeatedly pointed out by Mr. Denney and Dr. Cabe, a large share of the competitive activity in Oregon's local telecommunications markets relies to some extent on Qwest's network and its continued investment in that network. These methods of competition, including UNE-L and resale, are guaranteed by regulation, but regulation cannot guarantee that Qwest can maintain its investment levels while its average costs increase every month due to line losses and its ability to act as a competitor is hamstrung with regulatory costs that its competitors forego.

Q. WHAT IS YOUR FINAL POINT?

A. My final point is that this Commission needs to maintain a common sense approach to the facts. At this stage of competitive development, unnecessary regulation is not neutral to the process; it is harmful. Many decisions in this and other proceedings will depend upon a careful review of the existence of competition and the conditions for additional competition. Economics can assist in this process because it provides a clear and common sense framework for reviewing the facts. But economics can also derail the process when it is

[75] Staff/100, Chris/44.

shrouded in mystique and placed above common sense and the facts, as it is in the testimonies of Mr. Denney, Dr. Cabe and Mr. Chriss.

Most of the difficult decisions facing this Commission relate to pressures that real firms — ILECs, CLECs, wireless carriers, VoIP service providers, and others — are facing in a rapidly changing business environment. As the FCC maintained in the TRO, and as Yogi Berra said long ago, "you can observe a lot by watching." Along with using common sense to consider the conditions for entry, watching the behavior of customers and competitors can reveal more about competitive conditions in local telecommunications than often misused and miscalculated measures such as the HHI, elasticity, and market share.

I recommend that the Commission grant Qwest's petition for exemption from regulation of its switched business services in Oregon.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

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EDUCATION

Ph.D., Resource Economics, UNIVERSITY OF MASSACHUSETTS, Amherst, MA, 1986

Emphasis: econometrics, natural resource economics, microeconomics, project evaluation, and industrial organization

M.S., Resource Economics, UNIVERSITY OF MASSACHUSETTS, Amherst, MA, 1981

Emphasis: project evaluation, and economics of forestry

B.S., Economics, STATE UNIVERSITY OF NEW YORK AT STONY BROOK, NY, 1975

PRESENT POSITION

LECG, Emeryville, CA, December 1993 – present
Managing Director, Global Telecommunications Practice, July 2000 – present
Principal, January 1998 – June 2000
Senior Managing Economist, January 1997 – December 1997
Managing Economist, December 1993 – December 1996

- Construct financial simulation models for the analysis of telecommunications issues, including interconnection policies and competitive entry into the local exchange
- Analyze domestic and international telecommunications issues and provide expert witness testimony for regulatory proceedings and litigation
- Work with telecommunications clients to develop and improve cost models
- Assess impacts to telecommunications firms and competition from uneconomic or unlawful policies and practices
- Analyze and estimate costs related to use of the public rights of way by telecommunications firms

PROFESSIONAL EXPERIENCE

BELLSOUTH CORPORATION, Atlanta, GA, January 1988 - December 1993
Senior Economist, April 1992 - December 1993
Corporate Economist, January 1988 - April 1992

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- Applied the tools of economic, financial and quantitative analysis to the identification and solution of a broad range of business problems, and developed recommendations for use by senior management in making policy decisions

- Key role in building model of the telephone company that interconnects behavioral equations for capital spending, expenses, real revenues, regulation, and a production function
- Based on model output, formulated and presented policy recommendations and contingency plans to meet expected changes in BellSouth's business environment, such as more severe competition, alternative regulation, and investment in multimedia
- Assessment of potential impacts of wireless on traditional wireline and cellular services
- Analyzed corporate level impacts of prospective mergers and acquisitions
- Derived econometric model that is used to create capital spending targets for the Telco and explore network investment options
- Analyzed corporation's advertising and publishing business to assist with derivation of a new pricing strategy
- Estimated the financial impacts of proposed permutations of interstate price caps
- Provided financial modeling analysis for the tender and bid process for international investments

AT&T, Bedminster, New Jersey, June 1986 - January 1988
<u>Market Analysis and Forecasting</u>

- Developed econometric forecasting models for telecommunication services; identified direction and financial implications of customer migration among private line services; wrote principal components regression software; presented technical and theoretical papers and seminars

PAPERS AND REPORTS

"Comments on the Feasibility of the Utopia Project," provided to and the Utah Telecommunications Open Infrastructure Agency and local newspapers in advance of a press conference in Salt Lake City sponsored by Qwest and Comcast, June 8, 2004.

"Measuring Competition for Local Services in Ameritech Ohio Using the Diagnostic Method for Assessing Competition," with Lori Lent, invited paper, International Engineering Consortium, *Annual Review of Communications Volume 54,* June 2001.

"Competition Report Using the Diagnostic Method for Assessing Competition;" delivered to the Staff of the Public Utilities Commission of Ohio; performed analysis and drafted annual reports with Lori Lent, (January 6, 2000, April 2, 2001, and April 1, 2002, March 31, 2003).

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Paper prepared for Telecom New Zealand titled "Review of Network Costing Model Used in Todd Telecommunications Consortium Report," by George Barker, William L. Fitzsimmons, Kieran Murray & Graham Scott dated December 2, 1998.

"LECG Financial Simulation Model of Effects of FCC Policies on Large Local Exchange Carriers," by Dr. William Fitzsimmons, Dr. Robert Crandall, Professor Robert G. Harris, and Professor Leonard Waverman, Paper filed with FCC, August 1996.

PRESENTATIONS, REGULATORY AND LITIGATION PROCEEDINGS

Expert and reply declarations filed with the FCC in the matter of Special Access Rates for Price Cap Local Exchange Carriers (WC Docket No. 05-25); filed June 13, 2005 and July 29, 2005.

Written testimony submitted in state investigations into the FCC Triennial Review Order's presumptive findings.

Utah, January 2004 (Docket No. 03-999-04),

Minnesota, January 2004 (MPUC Docket No. P-999/CI-03-961, OAH Docket No. 12-2500-15571-2),

Minnesota, December 2003 (MPUC Docket No. P999/CI-03-960, OAH Docket No. 3-2500-15570-2)

Declaration in property tax litigation related to telecommunications competition.

Phoenix, AZ, January 2002 (Case No. TX 98-00716, 2002)

Declarations and reports in proceedings related to the municipal management of access to public rights-of-way.

Portland, OR, September 2005, (Case No. CV 04-1393-MO),

Tucson, AZ, July 2003, February 2003, November 2002 (Case No. CIV 01-2500 PHX-PGR, CIV 01-2500 PHX-JAT, 2002-2003),

California, June 2003 (Civil Action No. C-02-2500 MMC),

Berkeley, CA, November 2002, August 2002, January 2001 (Case No. C01-00663 SI, 2001-2002),

Charlotte, VT, November 2002 (Case No. 2:02-CV-261, 2002),

Seattle, WA, June 2002 (Case No. C02-0155P, 2002),

Portland, OR, November 2001 (Case No. 01-CV-1005-JE, 2001), and

Santa Fe, NM, October 2000 (Case No. CIV 00-795, 2000)

Expert written testimony and cross-examination in consolidated cost dockets in 1996-1998 and 2001-2003.

Utah (Docket No. 01-049-85, 2002-2003),

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Texas (Docket No. 25188, 2002),
New Mexico (Utility Case No. 3495, 2002),
Minnesota (Docket No. P-421/CI-01-1375 and 12-2500-14490-2, 2002),
Colorado (Docket No. 99A-577T, 2001),
Arizona (Docket No. T-00000A-00-0194, Phase II, 2001),
Utah (Docket No. 94-999-01, Phase III, Part C, 1998),
Minnesota (Docket Nos. P-442, 5321, 3167, 466, 421/CI-96-1540, 1998),
New Mexico (Docket Nos. 96-310-TC and 97-334-TC, 1998),
Iowa (Docket No. RPU-96-9, 1997), and
Arizona (Docket Nos. U-3021-96-448, 1996)

Expert written testimony and cross-examination in arbitration related to unbundled network elements in 2001.

Texas (Docket No. 24542, 2001)

Expert written testimony and cross-examination in line sharing price-setting proceedings in 2000-2001.

Iowa (Docket No. RPU-01-6, 2001),
Utah (Docket No. 00-049-105, 2001),
Washington (Docket No. UT-003013, Part A, 2000), and
Minnesota (Docket No. OAH 12-2500-12631-2 and MPUC P-421/CI-99-1665, 2000)

Expert written testimony and cross-examination in broadband and line sharing price-setting proceedings in 2000-2002.

Texas (Docket No. 22469, 2000, 2002),
California (Rulemaking 93-04-003 and Investigation 93-04-002, 2001),
Missouri (Docket No. TO-2001-440, 2001), and
Ohio (Docket No. 96-922-TP-UNC, 2000)

Presentation on “Status and Measurement of Competition,” National Association of Regulatory Utility Commissioners (NARUC) Staff Subcommittee on Telecommunications, 2000 Annual Convention, San Diego, California, November 11, 2000.

Ex Parte with the FCC to discuss LECG’s analysis of the FCC’s Synthesis Model and proposed input values, July 13, 1999.

Joint reply affidavit with Debra Aron and Robert G. Harris filed with the FCC in the matter of implementation of the local competition provisions in the Telecommunications Act of 1996 (CC Docket No. 96-98); filed June 10, 1999.

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Expert affidavit filed with the FCC in the matter of implementation of the local competition provisions in the Telecommunications Act of 1996 (CC Docket No. 96-98); filed May 26, 1999.

Expert written testimony and cross-examination in interconnection arbitration proceedings in 1997.

South Dakota (Docket No. TC96-184, 1997),
Montana (Docket No. D96.11.200, 1997),
Wyoming (Docket Nos. 72000-TS-96-95 and 70000-TS-96-319, 1997),
New Mexico (Docket No. 96-411-TC, 1997),
North Dakota (Docket No. PU-453-96-497, 1997),
Idaho (Docket Nos. USW-T-96-15 and ATT-T-96-2, 1997), and
Colorado (Docket No. 96S-331T, 1997)

Participated in cost workshops with the Utah Division of Public Utilities and Minnesota Commission in 1996, 1997, and 1998.

Expert testimony and cross-examination in universal service proceedings in 1997-1998.

Nebraska (Application No. C-1633, 1998),
Idaho (Case No. GNR-T-97-22, 1998),
Wyoming (General Order No. 81, 1998),
Minnesota (MPUC Docket No. P-999/M-97-909, 1997), and
New Mexico (Docket Nos. 96-310-TC, 97-334-TC, 1997)

Expert declarations in motions for summary judgment in Iowa (June 1997) and Washington (January 1998).

Presentation on “TELRIC Concepts and Applications,” Basics of Regulation Conference, New Mexico State University Center for Public Utilities and the National Association of Regulatory Commissioners, Albuquerque, New Mexico, September 18, 1996.

CERTIFICATE OF SERVICE

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I hereby certify that on the 7th day of October, 2005, I served the foregoing **QWEST CORPORATION'S REBUTTAL TESTIMONY OF ROBERT H. BRIGHAM AND WILLIAM FITZSIMMONS** in the above entitled docket on the following persons via U.S. Mail (or via e-mail if so indicated), by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

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DATED this 7th day of October, 2005.

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