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Federal Communications Commission
Office of Secretary

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January 29, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, S.W.
Washington, DC 20554

Re: *In the Matter of Section 272 (f)(1) Sunset of the BOC Separate Affiliate and Related Requirements,* WC Docket No. 02-112; *2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules,* CC Docket No. 00-175

Dear Ms. Dortch:

In late December, 2003, Commission staff requested that Qwest and other large ILECs submit certain information in the above-captioned proceeding. Qwest's response to the Commission staff's information request is attached. Portions of the attachment are being redacted and designated as Confidential – Not for Public Disclosure. Pursuant to Sections 0.457(d) and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457(d) and 0.459, Qwest requests that the redacted information in the attachment be withheld from public inspection. The redacted portions of the attachment contain both Qwest's confidential information and the proprietary information of external research firms. Disclosure may cause substantial competitive harm to Qwest and these external research firms. Accordingly, the redacted information is appropriate for non-disclosure either under Sections 0.457(d) or 0.459 of the Commission's rules.

In accordance with Commission rules, Qwest is submitting this redacted version of the aforementioned attachment, to be available for public inspection in the above-captioned dockets. Acknowledgment and date of receipt of this submission are requested. An original, one copy and a duplicate copy of this request are provided. Please date-stamp the duplicate upon receipt and return it to the courier. If you have any questions regarding this filing, please contact the undersigned at the contact information reflected in the letterhead.

Sincerely,

/s/ Melissa E. Newman

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Attachments

FCC DATA REQUEST
Sunset Proceeding (WC 02-112)
Qwest Responses

I. Mass Market

1. Number of BOC Local Service Access Lines, monthly data, by state for the period of 1/03 – 12/03. Includes retail residence and small business local access lines.

2003 Qwest Communications Residence and Business Access Lines												
State	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**
AZ	2368613	2362077	2346078	2316498	2295549	2273532	2253318	2222185	2195956	2162814	2125873	2100075
CO	2210772	2204083	2194514	2182451	2172493	2162979	2149694	2141021	2135133	2128453	2118785	2113110
IA	827211	827019	825575	822555	819354	814589	808559	804797	803169	799995	796764	794764
ID	457182	456733	456421	455520	453807	451341	449704	447988	447477	446600	444928	443737
MN	1575638	1568462	1560883	1550393	1540119	1527190	1507669	1482645	1474123	1459770	1440930	1429072
MT	309020	307966	306850	305758	304730	302762	301647	300471	300441	299565	298377	297473
ND	142349	141780	139919	138042	136164	133913	132035	131021	130651	129885	129028	128567
NE	325409	321836	318011	313511	308448	303575	298114	292546	289290	285878	281071	278699
NM	751151	752533	752971	749644	744502	740278	736180	734086	732171	730635	727815	726324
OR	1141925	1135621	1124327	1116164	1107989	1095756	1083329	1074067	1070674	1066579	1058431	1053778
SD	162573	160575	158430	157031	155358	153246	150739	147682	145679	144107	141806	140150
UT	835035	832310	829489	824163	816677	809841	803463	798429	796779	796228	793849	791421
WA	2002306	1996091	1989665	1982274	1974318	1964356	1951383	1940182	1936428	1929232	1916815	1911646
WY	193371	193691	193835	192344	191169	189607	189559	188384	188419	187840	186344	186012
Total	13302555	13260777	13196968	13106348	13020677	12922965	12815393	12705504	12646390	12567581	12460816	12394828

Note: Excludes Official Services, Resale and UNEs.

2. InterLATA BOC monthly minutes of use (MOU), by state for the period of 1/03 – 12/03.

Qwest LD Corp (QLDC) InterLATA Billed Minutes of Use – 2003													
State	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2003
AZ	NA*	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA		
CO													
IA													
ID													
MN	NA	NA	NA	NA	NA	NA							
MT	NA												
ND													
NE													
NM	NA	NA	NA										
OR	NA	NA	NA										
SD	NA	NA	NA										
UT													
WA													
WY													
Total													

* NA – not authorized

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3. Any source of MOUs (or market shares) for all providers serving mass markets (e.g., analysts' reports or other studies).

Response: *Deutsche Bank, June 2003, "Long Distance Sector: Competition Taking its Toll"*
JP Morgan, November 2003, "U.S. Telecommunications – The Art of War"
FCC Industry Analysis and Technology Division, August 2003, "Trends in Telephone Service"

4. Number of customers that have chosen BOC affiliates as their interLATA PIC by month by state for the period 1/03 – 12/03.

Net Change in QLDC Presubscribed Lines by State - 2003												
State	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
AZ												
CO												
IA												
ID												
MN												
MT												
ND												
NE												
NM												
OR												
SD												
UT												
WA												
WY												

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5. Number of BOC customers that have chosen a package that includes local exchange service and unlimited long distance by month by state for the period 1/03 – 12/03.

Net QLDC Sales of Local and Long Distance Packages - 2003												
State	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
AZ												
CO												
IA												
ID												
MN												
MT												
ND												
NE												
NM												
OR												
SD												
UT												
WA												
WY												

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II. Mass Market – Broadband, xDSL

1. Number of BOC customers choosing broadband/xDSL service by month, by state for the period of 1/03 – 12/03. This includes xDSL in cases where Qwest is or is not the internet access provider.

Total Qwest In Region DSL Data Subscribers			
1Q03	**2Q03**	**3Q03**	**4Q03**
526,300	535,954	576,760	636,614

III. Local Service Market

1. Track A type of submissions, monthly data, by state 1/03 – 12/03 (similar to data provided under 271).

Response: Qwest does not have current Track A type data available. Attached is the December 22, 2003 Order from the State of Washington granting Qwest competitive classification of analog services for business local exchange customers. In making this determination the Washington State Commission considered: a) the number and size of alternative providers of services; b) the extent to which services are available from alternative providers in the relevant market; c) the ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions; and d) other indicators of market power, including market share, growth in market share, ease of entry, and the affiliation of providers of services. Qwest believes that the Washington Commission's finding is indicative of the level of competition that it places in local exchange markets throughout its 14 state service area.

IV. Enterprise Market – Broadband and InterLATA Services

1. Summarize what services BOCs (and/or their affiliates) are providing in-region and what they are providing out-of-region (footprint) and to whom (which customers). For example services may include frame relay, and ATM. The FCC is looking for facts around who is buying from the enterprise market and who, and what, is selling in that market.

Response:

Enterprise Market Definitions

- ***Qwest:*** *Qwest defines the Enterprise market based on three common criteria: number of employees, number of locations, and spend amount. For the Enterprise market the customer (account) will have more than 500 employees, have multiple locations both in and outside of Qwest's 14-state region, and, currently spend or have the opportunity to spend over $10,000 annually. Because of the size and locations of these accounts it is rare that they would have just one communications provider. Typically these customers purchase a wide variety of products and services from several providers to ensure redundancy and diversity.*
- ***Industry Definition:*** *large business, also known as an "enterprise," a large business is a company with 500 or more employees. (Source: IDC, Worldwide Conferencing Services Market Forecast and Analysis, 2000–2005, pg. 12)*

2. Where is the market (in vs. out-of-region).

Response: Qwest views the Enterprise market as a nationwide market. The customers making up this market normally have numerous locations and are concentrated in large metropolitan areas (i.e., "headquarters cities"). As a result, a significant majority of the Enterprise market is located outside of Qwest's local exchange area.

3. Total BOC (and affiliate) enterprise revenue by month for the period 1/03 – 12/03.

Qwest In-region Enterprise Revenue - 2003*										
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov

* Dec. data and data by State is unavailable.

4. Total value of the enterprise/broadband and interLATA market. What is the total size of the market?

Response: Qwest does not collect any data on the overall size of the enterprise market, but focuses on individual market segments, such as ATM, Frame Relay, Private Line and Dedicated Internet Access (see following tables).

ATM Market Share

ATM Service Market 2002
U.S. Revenue Share*

Company	% Share
AT&T	
MCI	
Sprint	
SBC	
Qwest	
Verizon	
BellSouth	
Other IXC	
Other LEC	
Total	100.0%

ATM Service Market 2002
U.S. Port Share**

Company	% Share
AT&T	
MCI	
SBC	
Sprint	
Verizon	
Qwest	
BellSouth	
Other IXC	
Other LEC	
Total	100.0%

Source: *Vertical Systems Group* Web database pulled 01.15.04

*ATM revenue share is based on the U.S. market total of $2.18 billion for 2002.
** U.S. ATM port shares for 2002 are calculated using the installed base of 33,080 customer ports as of the end of 2002. Figures include all port speeds and count equally in the calculations.

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Frame Relay Market Share

Frame Relay Service Market 2002
U.S. Revenue Share*

Company	% Share
AT&T	
MCI	
Sprint	
Qwest	
SBC	
Verizon	
BellSouth	
Other	
Total	100.0%

Frame Relay Service Market 2002
U.S. Port Share**

Company	% Share
AT&T	
MCI	
Sprint	
SBC	
Verizon	
Qwest	
BellSouth	
Other	
Total	100.0%

Source: *Vertical Systems Group* Web database pulled 01.15.04

*Revenue share is based on a total U.S. frame relay market of $8.64 billion for 2002.
**Port Share is calculated based on a total U.S. installed base of 1,347,990 frame relay ports as of year end 2002. All port speeds are counted equally for share calculations.

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Private Line Market Share

U .S. Private Line* Long Distance Revenue Share by Service Provider, 2002

Company	% Share
AT&T	
MCI	
Sprint	
Qwest	
Level 3	
Others (includes other ILECs & Nex Gen Providers)	
Total	100.0%

U .S. Private Line* Local Revenue Share by Service Provider, 2002

Company	% Share
Verizon	
SBC	
BellSouth	
Qwest	
Others (includes other ILECs & Nex Gen Providers)	
Total	100.0%

Source· IDC, *U.S. Private Line Forecast and Analysis, 2002 - 2007*, 12.03.03

*IDC's definition of Private Line includes the following speeds: 56/64Kbps, fractional T1/E1, T1/E1, fractional T3/E3, SONET, OCN: OC3/STM1, and OC12/STM4.

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Dedicated Internet Access (DIA) Market Share

U .S. DIA* Share by Service Provider, 2002

Company	% Share
AT&T	
MCI (WorldCom)	
Sprint	
Verizon	
Qwest	
BellSouth	
SBC	

Company	% Share
XO	
Savvis	
Allegiance	
Cable & Wireless	
Other	
Total	100%

Source: IDC, 09/25/2003, Steve Harris

*In the Enterprise segment, most businesses use DIA to access the internet. DSL may be used by large enterprises, but typically in smaller, branch locations.

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QWEST, IN-REGION WIRELINE BROADBAND COMPETITORS

	ATM	Frame	DIA	DSL	OTHER/PL*

[Service Date December 22, 2003]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	
	)	
QWEST CORPORATION	)	DOCKET NO. UT-030614
	)	
For Competitive Classification of	)	
Basic Business Exchange	)	
Telecommunications Services	)	
. . . . .	)	

ORDER NO. 17

ORDER GRANTING COMPETITIVE CLASSIFICATION

TABLE OF CONTENTS

I. INTRODUCTION 3
II. MEMORANDUM 4
A. APPLICABLE LAW 4
B. PRESENTATIONS BY QWEST AND STAFF 7
1. Services selected by Qwest for competitive classification: nature and geographic scope 7
2. What constitutes an alternative to the selected services 9
3. Geographic scope of the relevant market. 10
4. Availability of alternatives in the relevant market. 10
5. Market concentration analyses. 13
6. Market structure and market power analyses. 14
7. No significant captive customer base 17
C. ISSUES RAISED BY THE OPPOSING PARTIES 18
1. Is defining "relevant market" a pre-condition to selecting services for competitive classification? 18
2. Should digital, wireless, and VoIP services be included in the analysis of competitive alternatives, and, if so, how? 19
3. Are Qwest's and Staff's market analyses based on unreliable data? 23
4. Do Qwest's and Staff's analyses sufficiently disaggregate the market, by geographic scope and customer size? 26
5. Are UNE-P, UNE-L, and resale price-constraining? 31
6. Is there a significant captive customer base? 39
7. Should this proceeding be guided by the TRO or await the outcome of the Commission's TRO or UNE Cost proceedings? 41
8. Should the Commission establish a cost floor? 43
9. Should the Commission implement access charge reform? 45
10. Should Qwest be required to modify its non-abandonment commitment? 46
11. Should Qwest be required to provide quarterly reports? 46
12. Should Qwest be required to adhere to a policy on portability of DID numbers? 47
D. COMMISSION DECISION 48
III. FINDINGS OF FACT 50
IV. CONCLUSIONS OF LAW 53
V. ORDER 53

Synopsis: The Commission grants Qwest's petition for statewide competitive classification of analog business local exchange services.

I. INTRODUCTION

1 **Nature of Proceeding:** Docket No. UT-030614 concerns a petition filed by Qwest Corporation (Qwest) on May 1, 2003, for competitive classification of analog business exchange telecommunications services pursuant to RCW 80.36.330.

2 **Hearing:** This matter was heard upon due and proper notice before Chairwoman Marilyn Showalter, Commissioners Richard Hemstad[1] and Patrick J. Oshie, and Administrative Law Judge Theodora M. Mace, on September 16-18, October 1 and October 21, 2003. A public hearing was held on September 17, 2003.

3 **Appearances.** Lisa Anderl, attorney, Seattle, Washington, represents Qwest. Jonathan C. Thompson and Lisa Watson, assistant Attorneys General, represent Commission Staff. Simon ffitch, assistant Attorney General, represents Public Counsel Section of the Office of Attorney General. Letty S. D. Friesen, attorney, Denver, Colorado, represents AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on Behalf of TCG Seattle and TCG Oregon (AT&T). Karen J. Johnson, attorney, Beaverton, Oregon, represents Integra Telecom of Washington, Inc. (Integra). Michel Singer-Nelson, attorney, Denver, Colorado, represents WorldCom/MCI. Lisa Rackner and Arthur A. Butler, attorneys, Seattle, represent Washington Electronic Business and Telecommunications Coalition (WeBTEC). Stephen S. Melnikoff, attorney, Arlington, Virginia, represents the United States Department of Defense and all other Federal Executive Agencies (DOD/FEA). Richard H. Levin, Santa Rosa, California, represents Advanced TelCom, Inc. (ATG).

4 **Commission.** The Commission grants Qwest's petition for statewide competitive classification of analog services for business local exchange customers. In so doing, the Commission notes Qwest's voluntary commitment to non-abandonment of service, more fully described below. The Commission also

[1] Commissioner Hemstad read the record of the proceeding, except for the October 21, 2003, hearing session at which he presided with the other Commissioners.

notes that Qwest does not seek a waiver of the prohibitions against undue or unreasonable preference or discrimination contained in RCW 80.36.170 and 80.36.180.[2]

II. MEMORANDUM

A. APPLICABLE LAW

5 Under RCW 80.36.330,[3] the Commission is authorized to "classify a telecommunications service provided by a telecommunications company as a competitive telecommunications service" if it finds that the service is "subject to effective competition." The statute defines "effective competition" to mean that: (1) "customers of the service have reasonably available alternatives" and (2) that "the service is not provided to a significant captive customer base."

6 In determining whether a particular service is subject to effective competition, the Commission must consider the following non-exclusive factors:

(a) the number and size of alternative providers of services;

(b) the extent to which services are available from alternative providers in the relevant market;

(c) the ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and

(d) other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

RCW 80.36.330(1)(a)-(d). In weighing the evidence and applying the statutory factors, the Commission is not governed by a precise recipe. Instead, the Commission considers the totality of the evidence presented on a case-by-case

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[2] *T 274-275.*

[3] The complete text of the statute is included as Appendix A to this Order.

basis.[4] The Commission may also rely on its own "institutional knowledge" of factors pertinent to the statutory standards. *In re Electric Lightwave, 123 Wn 2d 530, 549 (1994) (Electric Lightwave).*[5]

7 Once competitive classification is granted for a particular service, the provider may offer the service under a price list (generally requiring 10 days' notice) rather than a tariff (generally requiring 30 days' notice).[6] In addition, uniform statewide retail pricing for the subject service is no longer required, with two limitations. First, the incumbent local exchange carrier (ILEC) cannot charge prices or rates below its cost, as determined by cost standards established by the Commission.[7] Second, unless waived by the Commission,[8] RCW 80.36.170 and RCW 80.36.180 prohibit the ILEC from offering a competitively classified service in a manner that is unduly or unreasonably discriminatory or preferential.

8 As an additional safeguard, the Commission may reclassify the service or services as noncompetitive, in order to protect the public interest.[9]

9 The petitioner, in this case Qwest, bears the burden to demonstrate that the services selected deserve competitive classification under the statute.[10]

10 In this case, Commission Staff recommends that the Commission grant Qwest's petition in its entirety. Because Staff and Qwest are fully aligned with respect to their ultimate recommendation that the petition be granted, the Commission will consider their evidence and arguments as representing one side of the case. The Commission will then address the issues raised by the remaining parties, who are recommending that the Commission deny Qwest's petition. The remaining parties are referred to as "opposing parties" in the body of this order, except where they are individually identified.

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[4] *Seventh Supplemental Order, Docket No. UT-000883, at ¶ 73.*

[5] *Electric Lightwave* involved RCW 80.36.320, which applies to a petition for competitive classification of companies. The statute at issue in the instant case, RCW 80.36.330, applies to petitions for competitive classification of *services*. In both statutes, the list of factors to be considered is the same.

[6] *RCW 80.36.330(2); WAC 480-80-205.*

[7] *RCW 80.36.330(3),(4) and (6); WAC 480-80-204(6).*

[8] *RCW 80.36.330(8); WAC 480-8-241, -242.*

[9] *RCW 80.36.330(7).*

[10] *RCW 80.36.330(2).*

11 The parties have presented a mass of facts and arguments. Much of it attempts to follow in outline the list of four factors that we must consider under the statute.[11] The result is considerable redundancy in recitation of evidence and arguments, because there is significant overlap in the factors themselves, and in how they relate to the ultimate tests posed by the statute, i.e., whether there are reasonably available alternatives and no significant captive customer base. While that approach was thorough, and ensures that we have considered those factors in our deliberations, we structure this order so as to cover all relevant issues, without unnecessary repetition, though some is unavoidable. Thus, some of Qwest's and Staff's presentation will be discussed in the context of the issues raised by the opposing parties' objections.

12 As we will further discuss in this order, the analytical framework of the statute is actually quite straightforward and involves three basic steps:

(A) Identify the services selected ("Selected Services") for competitive classification.

1) Identify the services
2) Identify the geographic scope for which classification is sought

(B) Determine whether customers of the Selected Services have reasonably available alternatives.

3) Identify what services constitute alternatives to the Selected Services.
4) Evaluate substitutability of potential alternative services for the Selected Services.
5) Determine the availability of the alternative services.
6) Evaluate whether these alternative services are reasonably available.

(C) Determine whether there is a significant captive customer base.

7) Consider market share and market concentration.

[11] *RCW 80.36.330(1)(a) through (d).*

8) Consider market structure, including ease of entry, affiliated providers, and related statutory constraints.
9) Evaluate market share and market concentration in light of market structure for indications of market power.
10) Determine whether there is a significant base of customers of the Selected Services for which there is no reasonable alternative or for which the petitioner could exercise market power with respect to the Selected Services.

13 If, after completing this analysis, the Commission finds the Selected Services are subject to effective competition, the Commission "may" classify the Selected Services as competitive. We must exercise this discretion consistent with our general duty to regulate in the public interest.

14 With this framework in mind, we turn to the presentations of the parties.

B. PRESENTATIONS BY QWEST AND STAFF

1. Services selected by Qwest for competitive classification: nature and geographic scope.

15 Qwest and Staff identify two general markets for telecommunications services in Washington: retail and wholesale. Qwest provides residential and business retail telecommunications services, and it also sells wholesale services to competitive local exchange carriers (CLECs) in the form of total service resale (TSR or resale)[12] and unbundled network elements (UNEs).[13] The CLECs, in turn, use Qwest wholesale services to provide retail business and residential telecommunications services. CLECs may also serve customers using their own

[12] Total Service Resale, or "resale," means the purchase of a service from Qwest at a wholesale price that is marked down from Qwest's retail price for the service. Currently, this markdown, which is set by Commission order, is 14.74% lower than the price for Qwest's retail service.
[13] Unbundled network elements or "UNEs" are portions of Qwest's network that are available for purchase by CLECs at prices set by the Commission using a Total Element Long-run Incremental Cost standard (TELRIC). UNE-platform, or "UNE-P," is the purchase from Qwest by the CLEC of elements including a loop, switching and transport to provide a service to a CLEC customer. UNE-loop, or "UNE-L" means the CLEC has purchased only a loop from Qwest and the CLEC otherwise provides service through use of the CLEC's owned facilities.

facilities or a mix of purchased and owned facilities.[14] Qwest competes in the retail market with CLECs in providing the analog business services at issue in this case.

16 In this case Qwest has petitioned for competitive classification, in all of its exchanges in Washington (i.e., statewide),[15] of its retail analog flat-rate and measured-rate business exchange services, private branch exchange (PBX) trunks, Centrex services,[16] and vertical business features that are packaged with those services.[17] Qwest defines analog services as those services that terminate to analog customer premises equipment (CPE), although analog services may be provided over digital facilities that terminate to analog CPE.[18] A complete list of the selected services is set out in Exhibit 2,[19] but for simplicity we refer to them as

---

[14] CLECs also purchase special access lines from Qwest. A special access line is a dedicated line from a customer to a long distance company provided by a local phone company.

[15] The term "statewide" may be confusing, in the sense that Qwest does not serve all areas of the state. In areas outside its service territory, Qwest stands in the shoes of a CLEC. No one is contesting Qwest's right to compete in those areas. Thus, if the Selected Services are competitively classified in Qwest's territory, Qwest could offer the same types of services, on some competitive basis, anywhere in the state. In general, when using the term "statewide," in this proceeding, the parties and the Commission are referring to Qwest's 68-exchange service territory in the state of Washington.

[16] Centrex is a service used by medium to large customers that employs switching equipment and features at the telephone company's central office, with individual lines connecting the equipment and features to the instruments at the customer's premises. Private Branch Exchange, or PBX service, combines customer-owned equipment containing switching and features, located at the customer's premise, with telephone company-owned trunks connecting the customer's equipment to the telephone company's central office or switch.

[17] Qwest sought to have the same services as are at issue in this case competitively classified (in certain wire centers rather than statewide) in Docket No. UT-000883. The Commission granted that petition, limited to services provided over DS-1 and higher circuits, and in a more limited geographic area than Qwest sought. Seventh Supplemental Order, December 18, 2000. In Docket No. UT-021257, Qwest subsequently obtained competitive classification for digital services in the same wire centers and over the same capacity circuits for which services were competitively classified in Docket No. UT-000883.

[18] *T 111, 195-199.*

[19] In response to Bench Request No. 5, Qwest stated it had improperly included Centrex 21 – I (ISDN) and Centrex Prime – I (ISDN) in its retail line counts. Qwest also identified the following services that should be excluded from "Tenant Solutions" on Exhibit 2: DIGICOM I service; DIGICOM II service, Centrex 21 ISDN; Single Line ISDN service, Primary Rate Service (PRS) ISDN; High Capacity DS1 and DS3 services; Digital Switched Services; Frame Relay Service; and

analog basic business service, PBX, and Centrex, and we will refer to them collectively as the "Selected Services."

17 Having selected these services for competitive classification, Qwest seeks to demonstrate that these services are subject to effective competition, statewide. That is, it seeks to show that customers have reasonably available alternatives to the Selected Services, and that these services are not provided to a significant captive customer base. Staff joins Qwest in presenting evidence of effective competition.

2. What constitutes an alternative to the selected services

18 In order to show that customers have reasonably available alternatives, one must first define what it is that constitutes an alternative. In this case, Qwest and Staff rely on the availability of business analog services provided by CLECs, by means of UNE-P, UNE-L, resale, and CLEC-owned facilities.[20] They argue that these services are effective substitutes for the Selected Services because, like the Selected Services, they terminate to analog CPE. Qwest's business analog retail customers can choose one of these alternatives without buying new equipment, and obtain functionally equivalent service, i.e., basic connectivity to the public network for switched, voice-grade communications.

19 In addition to alternative analog services, Qwest and Staff cite intermodal forms of competition—notably, wireless and Voice over Internet Protocol (VoIP)—as deserving some weight as sources of competition for the Selected Services. Insofar as end-use customers may be choosing these modes over the Selected Services, these modes are competing with the Selected Services. However, Qwest and Staff do not rely on intermodal alternatives for proving a sufficient case under the statute. Rather, they assert that their case, in relying only on

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Uniform Access Solution service. The Commission here analyzes the revised list of services and line counts, but for simplicity, the Commission will refer to the revised list as Exhibit 2.

[20] *Exhibit 232C.* There is also a "miscellaneous" category, which includes special access lines. *See fn. 13, supra.* CLECs purchase special access lines under retail tariffs but use these lines to provide service to their own retail customers. They are therefore appropriately characterized as "wholesale" for purposes of analyzing CLEC lines. Approximately five-sixths of the special access lines included in *Exhibit 232C* are digital and so were removed from the numbers on which Staff calculated market share. *Wilson testimony, T 1363-1364.* The remaining special access lines are included in the calculations.

analog alternatives, understates the competitive environment and is therefore conservative; intermodal forms of competition further enhance the competitive picture.

20 Qwest and Staff do not rely on, and do not include, digital services as alternatives to the Selected Services. This point is more fully treated in a later section of this order.[21]

3. Geographic scope of the relevant market.

21 As the statute requires, Qwest and Staff evaluate, pursuant to RCW 80.36.330(1)(b), "the extent to which services are available from alternative providers in the relevant market." After defining "alternative providers" as primarily those that provide business analog services, there remains the question of the appropriate geographical scope of the "relevant market." Qwest asserts that the appropriate geographic scope is the entire state, but points out that evidence of competition is available at the exchange and wire-center level. Staff characterizes the appropriate geographic scope as "Qwest's statewide territory, defined at the exchange level."[22] Qwest and Staff then proceed to evaluate the number and size of alternative providers of analog business services, and the extent to which they are available throughout Qwest's territory, including at the exchange and wire-center level.

4. Availability of alternatives in the relevant market.

22 Qwest's and Staff's primary evidence derives from two major sources. Qwest compiled evidence regarding 37 CLECs[23] that purchase resale, UNE-P,[24] and UNE-L[25] on a wholesale basis from Qwest. Qwest's Exhibit 55C provides information about the size, as well as the number, of competitors using Qwest's wholesale services, including the number of lines provided by each CLEC in each exchange.[26]

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[21] See section II(C)(2) of this order.
[22] *Ex. 201T, p. 14.*
[23] *Exhibit 3.*
[24] *See fn. 11.*
[25] *Id.*
[26] *Exhibit 53C* provides the same information on a wire center basis.

23 Staff compiled and aggregated data provided by 27 CLECs that responded to a Commission order (sent to over 200 registered CLECs[27]) requesting information about the analog business services they provide in competition with Qwest, using either lines purchased from Qwest or CLEC-owned lines. Most significantly, in Exhibits 204C and 205C, Staff produced evidence of CLEC services using CLEC-owned facilities[28] by exchange and by wire center. This information was not available to Qwest when it filed its petition.[29]

24 Qwest and Staff each provide a market share analysis. Relying solely on the number of CLEC wholesale lines upon which its petition is based, Qwest calculates its market share at 83% statewide.[30] By adding CLEC-owned lines to Staff's compilation of CLEC wholesale data, Staff estimated Qwest's market share of analog business lines at 71.88%, statewide.[31]

25 Both Qwest's and Staff's analyses include calculations at more granular levels. Qwest and Staff break their figures down by exchange and by wire center, and by mode (UNE-P, UNE-L, resale, CLEC-owned, miscellaneous), though some data are consolidated into groups of exchanges in order to mask highly confidential information.

26 Using both sets of data, Qwest and Staff demonstrate several aspects of competitive alternatives to the Selected Services, in Qwest's Washington exchanges, including:

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[27] *Exhibit 201T at 10.*

[28] In this order, we use the terms "CLEC-owned facilities," "facilities-based lines," and "CLEC-owned lines" interchangeably. All refer to lines provided over CLEC-built facilities, as opposed to lines provided by CLECs over lines purchased (leased) from Qwest.

[29] Qwest filed its petition on May 1, 2003. With its petition (as well as in *Exhibits 53C-55C*, filed with its direct case on July 1, 2003), Qwest provided data regarding its own internal counts of CLEC lines purchased from Qwest on a wholesale basis to serve CLEC business customers. Subsequent to the filing of the petition, the Commission entered Order Nos. 06 and 08 on June 30 and July 22, 2003, respectively, which required CLECs to disclose information about the analog business lines they provided to serve end-use customers in Qwest exchanges statewide. The information from CLECs provided pursuant to these orders included their wholesale-purchased lines, special access lines, and facilities-based lines. This information was designated highly confidential and was reviewed only by Staff and Public Counsel. It was not available to Qwest.

[30] *Exhibit 51T at 4.*

[31] *Exhibit 225C; see also fn. 29, supra.*

- CLECs serve analog business retail customers in all Qwest exchanges except the Elk[32] exchange, which has only .03% of Qwest's analog business lines.[33]

- CLECs provide at least 203,662 analog business lines, compared to 520,635 analog business lines provided by Qwest.[34] Using these figures, the CLEC share is 28.12%.[35] This percentage is conservative, however, because not all CLECs responded to the Commission's request for data.

- The Qwest exchanges where CLECs own or lease analog business lines (whether through resale, UNE-P, UNE-L, or CLEC-owned facilities) cover 99.8% of Qwest's analog business lines.[36]

- Of CLEC analog business lines[37] in Qwest exchanges, 20% are provided through CLEC-owned facilities, 27% through UNE-P, 43% through UNE-L, and 10% through resale.

- CLECs have approximately 33% of for analog basic business lines.[38]

- CLECs provide UNE-P-based services in 61 of Qwest's 68 exchanges,[39] and these exchanges cover 99.73% of Qwest's analog business lines.

- CLECs provide UNE-P service in all wire centers except Castle Rock, Easton, Elk, Green Bluff, Pateros, Liberty Lake and Northport. These named wire centers account for .27% of analog business lines in Qwest wire centers.[40]

- CLECs provide UNE-L-based service in 15 of Qwest's 68 exchanges,[41] and these exchanges cover 83.9% of Qwest's analog business lines.[42]

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[32] Elk is an exchange located in eastern Washington, north of Spokane, close to the Washington-Idaho border.

[33] *Exhibit 232C; Exhibit 54C.*

[34] *Exhibit 225C.*

[35] *Exhibit 53C.* Using Qwest's data, which excludes CLEC-owned and special access lines, the CLECs market share is 21%. *See also fn. 153.*

[36] *Exhibit 232C.*

[37] *Exhibits 210C at 10 and 232C.*

[38] *Exhibit 232C.*

[39] *Id.*

[40] *Exhibit 53C*

- CLECs provide resale service in 48 of Qwest's 68 exchanges, and those 48 exchanges cover 98.5% of Qwest's analog business lines.[43]

- CLECs have 46% of analog PBX lines and 5% of analog CENTREX lines.[44]

27 As further evidence of CLEC competition, Qwest and Staff present evidence of CLEC listings in the information pages of local telephone directories, and of CLEC websites.[45] They also cite to CLEC price lists filed with the Commission. Qwest also cites, as evidence of competitive pressure, its loss, between the end of 1999 and the end of 2002, of 118,333 analog business lines in Washington, while CLEC lines in the same period increased 333%.[46]

28 Qwest and Staff cite to further facts indicating that their quantitative analyses provide a conservative picture of the competitive landscape. Wireless and VoIP have already been mentioned. Witness Wilson points out that Qwest has interconnection agreements with 150 carriers, some of which are the largest corporations in the world.[47] Over 30 carriers were reflected in Qwest's data set, and several more were reflected in Staff's data set.[48] Witness Wilson estimated that there are about 40 CLECs in Washington actively competing against Qwest for analog business service.[49]

5. Market concentration analyses.

29 Staff presents a market concentration analysis.[50] Staff's market concentration calculations in Exhibits 208C and 209C are based on the Herfindahl-Hirschman Index (HHI). That index, described in the Department of Justice's Horizontal

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[41] Staff data in *Exhibit* 232 showed 79,846 loops; *see also fn. 29, supra.*
[42] *Id.*
[43] *Exhibit 54C.*
[44] *Exhibit 225C.*
[45] *Exhibit 8; Exhibit 469; Exhibit 101T* at 17-18.
[46] *Exhibit 8; Exhibit 20C at 2.*
[47] *Exhibit 201T at 16.*
[48] *Id.*
[49] *T. 1431-1432.*
[50] *Exhibits 208C and 209C.*

Merger Guidelines (HMG),[51] is calculated by summing the squares of the individual market shares of all the participating firms in the relevant market. According to the HMG, an HHI under 1,000 indicates an unconcentrated market. An HHI between 1,000 and 1,800 indicates a moderately concentrated market. An HHI over 1,800 indicates a highly concentrated market. An HHI of 10,000 indicates a 100% pure monopoly market.

30 Staff's HHI results show that in no exchange was the HHI less than 5,000. However, Qwest and Staff argue that reliance purely on market share and market concentration, as measures of effective competition, is improper.[52] They contend that HHI results should be viewed in light of other factors, primarily market structure. They point out that the Commission found in UT-000883 that even a very high market concentration index does not disqualify services from being competitively classified, if the market structure is sufficiently pro-competitive.[53]

31 As reviewed in the next section, Qwest and Staff contend that the market structure in Washington ensures that the CLECs provide effective competition, in spite of the HHI indications.

6. Market structure and market power analyses.

32 Market structure generally refers to the ease with which competitors may enter or exit a market and the ability of customers to obtain alternatives. Market structure includes the effect of federal and state statutes and proceedings, such as the section 271 application process[54] that resulted in Qwest's being permitted to compete in the interLATA telecommunications market.[55]

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[51] *Exhibit 224 at 15.* The Horizontal Merger Guidelines are used by the Department of Justice and the Federal Trade Commission to determine the effects of a merger on competition.
[52] *Staff Opening Brief at 3; 7*
[53] *UT-000883, ¶ 73.*
[54] *In the Matter of the Investigation Into U S WEST Communications, Inc.'s Compliance with Section 271 and SGAT Pursuant to Section 252(f) of the Telecommunications Act of 1996, Docket No. UT-003033/UT-003040 (Section 271 proceeding).*
[55] Also affecting the structure are statutory constraints such as the prohibitions against undue or unreasonable preference or discrimination in *RCW 80.36.170* and *RCW 80.36.180.*

33 Market power in an anti-trust context has been defined as "the ability of a firm (or group of firms acting jointly) to raise price above the competitive level without losing so many sales so rapidly that the price increase is unprofitable and must be rescinded."[56] Staff witness Wilson proposes a similar definition – that market power is the ability of a firm to profitably raise price above cost without losing market share.[57] Indicators relevant to market power include market share, market concentration, growth in market share, ease of entry, and the affiliation of providers of service.

34 Qwest and Staff point out that several factors now indicate the presence of an effectively competitive market structure. These include: Qwest's 271 application process and approval (which required that Qwest demonstrate it had opened its network to local competition); the widespread availability and use of UNE-P as an entry mechanism; the favorable pricing of UNE-P (compared to resale and other modes) to CLECs; and the operation of a performance assurance mechanism to protect against Qwest "backsliding" in providing UNEs fairly and efficiently.

35 Staff points first and foremost to UNE-P. A CLEC can convert a Qwest customer to UNE-P-based service upon payment of a nonrecurring charge of $0.27[58] for the first line. Conversion can be accomplished in one business day.[59] The CLEC then pays a monthly wholesale rate to Qwest that has been fixed by the Commission, based on TELRIC[60] cost, and that varies from Zone 1 (lowest-cost) exchanges to Zone 5 (highest-cost) exchanges.[61] Especially in the lowest-cost zones, UNE-P wholesale prices are substantially below Qwest's uniform statewide business retail line price.

36 UNE-P, Staff asserts, is a key protector against the exercise of market power by Qwest. If Qwest were to try to raise prices above competitive levels, the margin

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[56] *Landes & Posner, "Market Power in Antitrust Cases," 94 Harv. L. Rev. 937 (1981), Exhibit 104 at 2. See also Exhibit 224, Horizontal Merger Guidelines, § 0.1.*

[57] *Exhibit 201T at 22; Exhibit 224 at 2.*

[58] *Exhibit 1T at 15.*

[59] A CLEC may convert a Qwest customer to resale service for a nonrecurring charge of $5.73 for the first line, and complete the conversion in one business day. CLEC purchase of UNE-L costs $37.53, with conversion accomplished in three business days. *Exhibit 1T at 15.*

[60] *Total Element Long Run Incremental Cost (TELRIC); see also fn. 11.*

[61] *Exhibit 6C.*

between Qwest's new retail prices and the fixed UNE-P wholesale prices would widen. CLECS, already present in every exchange but one, could compete even more effectively by taking advantage of the differential. CLECs that rely on resale (whose wholesale prices move in lockstep with Qwest's retail price), could quickly switch, for 27 cents, to UNE-P.

37 Therefore, UNE-P is price-constraining. Since UNE-P is available to CLECs in any exchange, including to CLECs providing resale, CLECs everywhere have access to a price-constraining form of competition. Qwest and Staff contend that UNE-P is the most advantageous method of market entry that has developed over the last few years, requiring little in the way of investment to acquire a customer. This ease of entry is reflected in the fact, previously mentioned, that CLECs provide retail service by means of UNE-P in 61 of the 68 Qwest exchanges, where 99.7% of Qwest analog business customers reside. It is also reflected by the rapid growth of UNE-P lines.[62]

38 Staff argues that the presence of CLECs in virtually every exchange, using a variety of facilities, is evidence of that CLECs believe they will be profitable and continue service. Staff contends that even though UNE-P requires little in the way of capital investment on the part of the CLEC, that is exactly why it is such an effective market entry tool for CLECs—entry barriers are extremely low.[63]

39 Ease and success of CLEC entry into the market is further supported, they say, by evidence of growth in CLEC analog business lines as a percentage of analog business lines. Qwest states that CLEC lines in its statewide territory have grown by 333% since 1999.[64] Not including CLEC-owned lines, CLEC lines increased 35% from 2000 to 2001 and 32% from 2001 to 2002.[65] Including CLEC-owned lines, CLEC analog business lines constitute 28.12% of total analog business lines in Qwest's exchanges statewide as of December 2002.[66]

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[62] *Exhibit 1 at 13.*
[63] *Staff Reply Brief at 16.*
[64] *Exhibit 20C* at 2.
[65] *Exhibit 20C at 2.*
[66] *Exhibit 225C.*

7. No significant captive customer base.

40 Qwest defines a captive customer as one that has no option but to take service from Qwest, not as a customer who has an option and elects not to take it.[67] Qwest asserts that it has no significant group of captive customers for analog business exchange services in Washington, as shown in the evidence demonstrating the number and diversity of CLECs and the presence and availability of price-constraining competitive services almost everywhere throughout Qwest's territory.[68] CLECs are active in the Qwest exchanges that include 99.89%[69] of Qwest business lines, and UNE-P is available in every exchange. Only 0.11%[70] of Qwest business lines might even be considered "captive," in their view, and they contend that this number is not significant.

41 Staff observes that there are CLECs serving in all exchanges but Elk and that even for Elk, the phone directory it uses shows 16 CLEC listings. Staff argues that customers in Elk are protected from unreasonable rates because Qwest is not seeking a waiver of the statutory requirements prohibiting undue and unreasonable preference or discrimination.[71] Staff contends that for that reason, Qwest would have to treat Elk customers the same as other similarly situated customers. Moreover, they contend that Elk represents less than .03% of the total access lines statewide[72] and Qwest competitors serve each surrounding wire center. Any CLEC seeking to serve an Elk customer could do so cheaply and virtually instantaneously via resale or UNE-P. Thus Qwest and Staff assert that ease of entry will protect Elk from any adverse consequence from granting this petition. [73]

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[67] *T 546-547.*

[68] This evidence is more fully recounted in sections II (B)(4)-(6) and II(C)(2)-(5).

[69] *Exhibit 51T at 9.*

[70] CLECs currently provide UNE-P service in 63 of 68 exchanges. The 63 exchanges cover 99.89% of Qwest's business lines. Thus, the exchanges where no UNE-P is present represent .11% of Qwest's business lines.

[71] *RCW 80.36.170 and RCW 80.36.180.*

[72] *Exhibit 53C.*

[73] *Commission Staff's Opening Brief at 35.*