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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION) CASE NO. QWE-T-02-25
OF QWEST CORPORATION FOR PRICE)
DEREGULATION OF BASIC LOCAL)
EXCHANGE SERVICES)
_____)

REBUTTAL TESTIMONY OF

John F. Souba

on behalf of

QWEST CORPORATION

April 21, 2003

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1 I. INTRODUCTION

2

3 Q. PLEASE STATE YOUR NAME, ADDRESS AND POSITION WITH
4 QWEST.

5 A. My name is John Souba. My office is located at
6 999 Main Street, Boise, Idaho. I am the lead Idaho
7 regulatory manager in the Policy and Law department.

8 Q. DID YOU PREVIOUSLY SUBMIT DIRECT TESTIMONY IN THIS
9 CASE?

10 A. Yes, I did.

11 Q. WHAT WITNESSES ARE SUBMITTING REBUTTAL TESTIMONY
12 ON BEHALF OF QWEST?

13 A. In addition to me, Qwest witnesses Lincoln,
14 Teitzel and Shooshan are filing rebuttal testimony. Also,
15 Qwest Idaho President Jim Schmit is filing rebuttal
16 testimony. Dr. Lincoln responds to Mr. Hart's and Dr.
17 Johnson's contentions that effective competition does not
18 exist within the seven exchanges. He explains how today's
19 effective competition places reasonable constraints on the
20 pricing of basic local exchange service. He also responds
21 to Staff's unfounded criticism of Dr. Lincoln's customer
22 survey and highlights how the "data" Staff relies upon is
23 neither valid nor statistically meaningful. Mr. Teitzel

1 demonstrates that Idaho statutory requirements for economic
2 deregulation of Qwest's basic local exchange service have
3 been met. Specifically, he responds to the Staff and
4 intervenors testimony by demonstrating that wireless service
5 is functionally equivalent to Qwest's local exchange
6 wireline service. He also rebuts Staff's contentions about
7 competitive pricing and presents a counterpart to Mr.
8 Hart's Exhibit 101 that is based on data more consistent
9 with, and relevant to, the statutory criteria than the data
10 on which Mr. Hart chose to reply.

11 Mr. Shooshan responds to assertions that wireless
12 service is a complement to - not a substitute for - basic
13 local exchange service. He further demonstrates why
14 competition from wireless service providers satisfies the
15 statutory standard for price deregulation of basic local
16 exchange service in Qwest's seven exchanges. Mr. Schmit
17 discusses consumer input associated with the three public
18 workshops held by the Commission. He also describes certain
19 commitments Qwest is willing to make that address public
20 interest issues raised by customers and, previously, by
21 Commission Staff in the Burley case.

22 Q. HOW HAVE YOU STRUCTURED YOUR REBUTTAL TESTIMONY?

1 A. I have divided my testimony into five primary
2 sections. In the first section, I contrast my opinion and
3 interpretation of certain central statutory sections with
4 that of Staff witnesses Hart and Johnson. In the second
5 section, I respond to Mr. Hart's discussion about Qwest's
6 loss of access lines in recent years. The third section
7 deals with the issue of pricing flexibility in a competitive
8 market.

9 In the fourth section, I discuss consumer input and
10 reaction to Qwest's application as evidenced by the comments
11 filed with the Commission in this case. Finally, in the
12 last section, I provide my conclusion and recommendation to
13 the Commission.

14

15

II. STATUTORY DISCUSSION

16 **Q. PLEASE IDENTIFY THE STATUTORY OPINIONS AND**
17 **INTERPRETATIONS OF STAFF YOU BELIEVE REQUIRE REBUTTAL.**

18 A. In its testimony, Staff offers several statutory
19 opinions and interpretations that Qwest believes are
20 untenable. First, Staff suggests that "functionally
21 equivalent" means virtually identical. Staff witness
22 Johnson essentially takes the position that two services can
23 not be functionally equivalent unless they are identical in

1 every way. Qwest witnesses Teitzel will offer rebuttal to
2 Staff's opinion. Second, Staff takes the position that
3 "local services" in Idaho Code section 62-622(3)(b) means
4 something broader than "basic local exchange services."

5 Third, Staff reasons that relief is never appropriate
6 under section 62-622(3) if such relief may or will lead to
7 increased rates for some ratepayers. Fourth, Staff argues
8 that relief under section 62-622(3)(b) is inappropriate
9 because Qwest could instead seek flexibility under Idaho
10 Code section 62-622(1), i.e., the so-called "maximum rates"
11 statute. Lastly, Staff suggests that the Commission must
12 deeply explore the impact on other exchanges that are not
13 the subject of Qwest's application for price deregulation in
14 the seven exchanges.

15

16 **A. "Local services" v. "basic local exchange services"**

17 Q. MR. HART CONTENDS THAT THE USE OF THE TERM "LOCAL
18 SERVICES" IN SECTION 62-622(3)(b) IS INTENDED TO MEAN
19 SOMETHING BROADER THAN "BASIC LOCAL EXCHANGE SERVICE" AS
20 DEFINED IN THE STATUTE. DO YOU AGREE WITH HIS
21 INTERPRETATION?

22 A. No, I do not. As background, section 62-622(3)
23 provides that the Commission shall cease regulating basic

1 local exchange rates in a local exchange calling area upon a
2 showing by an incumbent that "effective competition exists
3 for **basic local exchange service** throughout the local
4 exchange calling area." That section then sets out the two
5 ways in which "effective competition" can be proven - either
6 by showing actual competition from facilities-based
7 competitors (under section 62-622(3)(a))¹ or by showing that
8 there are "functionally equivalent, competitively priced
9 **local services** reasonably available to both residential and
10 small business customers." Mr. Hart compares the two bolded
11 sections and suggests that the legislature used the
12 different terms intentionally to require incumbents to show
13 effective competition for more services than just "basic
14 local exchange service," as defined by section 62-603(1).
15 This distinction is critical to Staff's position because
16 basic local exchange service, as defined by statute, does
17 not include data uses of the phone line; it only includes
18 voice communications. Staff thus needs to convince the
19

¹ It should be noted that section 62-622 (3) (a) does not specify that the "actual competition from a facilities based carrier" be for "basic local exchange service"--that is obvious from the context. Staff's interpretation of section 62-622 (3) (b) would result in the absurd proposition that the "effective competition" standard is met under subsection (a) by actual competition for basic local exchange service but that subsection (b) requires competition for additional services to meet the identical "effective competition" standard.

1 Commission that "local services" means something different
2 and broader than "basic local exchange services" in order to
3 use its various data-related concerns against Qwest in this
4 case.

5 Mr. Hart's interpretation of section 62-622(3) is
6 strained in the extreme for several reasons. First, and
7 perhaps the most obvious reason, is that it makes no sense
8 to assume that the legislature intended to require an
9 incumbent to prove the existence of functionally equivalent,
10 competitively priced and reasonably available voice **and data**
11 alternatives in order to prove the existence of effective
12 competition for **voice** service. Second, the statute offers
13 no definition of "local services" and Mr. Hart's
14 interpretation appears to be pure conjecture. Third, in
15 section 62-622(2), the statutory language equates the two
16 terms "local service" and "basic local exchange service."
17 It reads, "The commission shall not regulate the prices for
18 basic local exchange services for telephone corporations
19 that were not providing **such** local service on or before
20 February 8, 1996." (emphasis added) I believe the
21 legislature did not intend to create a second, undefined,
22 class of local service as Mr. Hart suggests. Instead, I
23 believe the only logical interpretation of the term "local

1 service," as used in section 62-622(3)(b), is as a short-
2 hand reference to "basic local exchange service", defined as
3 two-way interactive switched voice communications services
4 provided by non-incumbent service providers. Idaho Code
5 section 62-603(1).

6 Q. IS MR. HART'S "LOCAL SERVICES" INTERPRETATION
7 CONSISTENT WITH PRIOR STAFF POSITIONS REGARDING THE MEANING
8 OF "FUNCTIONALLY EQUIVALENT?"

9 A. No. In Qwest's Burley deregulation application
10 (Case No. USW-T-99-15), Qwest witness James Wozniak set out
11 in his supplemental direct testimony (page 14, line 18) the
12 requirements for a service to meet the test of functional
13 equivalence. He said,

14 "The end-user of such a service should be able
15 to place and receive voice calls (but not
16 necessarily have data transmission capability)
17 using a dedicated message path for the length of
18 a user's particular transmission. As part of
19 this functional equivalency, the service should
20 also have access to emergency services where
21 available, access to operator services, access
22 to interexchange carriers and access to
23 directory assistance"
24

25 In response, Staff witness Joseph Cusick offered an
26 interpretation at odds with Staff's current interpretation.
27 On page 11, line 20 of Mr. Cusick's direct testimony, he is
28 asked if he has looked at wireless services to determine if

1 they are functionally equivalent. Mr. Cusick responded
2 that, for the most part, he agreed with the requirements
3 listed by Mr. Wozniak as mentioned in his answer quoted
4 above. The one exception that Mr. Cusick indicated he would
5 add to Mr. Wozniak's list for wireless services to meet the
6 functional equivalency test was the availability of E911
7 service for wireless telephones. Mr. Cusick, the Supervisor
8 of the Telecommunications Section, did not testify that
9 wireless services need to provide access to the Internet,
10 data and fax services, in-home extension phones or any of
11 the other additional features Mr. Hart and Dr. Johnson now
12 suggest the Commission must consider when evaluating the
13 test of functional equivalence under section 62-622(3)(b).

14 **Q. HAS THE COMMISSION INDICATED WHAT ATTRIBUTES OR**
15 **FEATURES IT BELIEVES A SERVICE MUST HAVE IN ORDER TO BE**
16 **CONSIDERED FUNCTIONALLY EQUIVALENT TO BASIC LOCAL EXCHANGE**
17 **SERVICE?**

18 A. Not specifically. However, although we are all
19 bound by the definition of basic local exchange service
20 found in the statutes, I believe it is nevertheless
21 instructive to see the attributes and services the
22 Commission included in its definition of universal services.
23 This definition may be viewed as basic local exchange

1 service plus associated services that the Commission would
2 require a provider to offer if it is to qualify for
3 financial universal service support.

4 **Q. HOW HAS THE COMMISSION DEFINED UNIVERSAL SERVICES?**

5 A. In Case No. GNR-T-98-7, the Commission designated
6 certain telecommunications services as being "universal
7 services" which must be made available by providers that are
8 allowed "eligible telecommunications carrier" (ETC) status
9 by the Commission. In developing this list, the Commission
10 found, "The Commission finds that universal services are not
11 necessarily all those services the Commission would like
12 customers throughout Idaho to have." (Order No. 27715, page
13 6)

14 **Q. WHICH SERVICES DID THE COMMISSION DETERMINE TO BE**
15 **PART OF UNIVERSAL SERVICES?**

16 A. The Commission included the following services in
17 the list of universal services on page 9 of the Order:

- 18 1. *Voice grade access to the public switched network.*
19 This is defined as a functionality which enables a user to
20 transmit voice, **not data**, communications. (emphasis added)
- 21 2. *Local usage.*
- 22 3. *Dual tone multi-frequency signaling or its*
23 *functional equivalent i.e. touchtone signaling.*

1 4. *Single-party service or its **functional equivalent**.*

2 (emphasis added) The Order states that, "'Single party
3 service' is telecommunications service that permits users to
4 have exclusive use of wireline subscriber loop or access
5 line for each call placed, or, **in the case of wireless**
6 **telecommunications** carriers which use spectrum shared among
7 users to provide service, a dedicated message path for the
8 length of a user's particular transmission." (emphasis
9 added) This language clearly suggests that wireless service
10 is a functionally equivalent service to single-party voice
11 service provided over a wireline subscriber loop.

12 5. *Access to emergency services **where available**.*

13 (emphasis added) The Commission indicates on page 2 of the
14 Order that this service **does not include** provision of the
15 underlying emergency services themselves such as the 911 or
16 E911 public service answering points (PSAPs), which are
17 controlled and operated by local governments. Instead, this
18 universal service only includes "access to emergency
19 services where available."

20 6. *Access to operator services.*

21 7. *Access to interexchange service.*

22 8. *Access to directory assistance.*

23 9. *Toll Limitation.*

1 Q. HOW DOES THIS LIST OF "SERVICES" COMPARE TO THE
2 CHARACTERISTICS OF A FUNCTIONALLY EQUIVALENT SERVICE
3 DESCRIBED IN MR. WOZNIAK'S TESTIMONY IN THE BURLEY CASE ON
4 BEHALF OF QWEST?

5 A. It is virtually the same. Aside from stating that
6 the service must be a "single party" service, as opposed to
7 "multi-party service" which was eliminated by Qwest many
8 years ago, the only other differences are that the universal
9 services definition provides a signaling technique and that
10 it should include toll limitation.

11 Q. HAVE ANY WIRELESS SERVICE PROVIDERS IN IDAHO
12 APPLIED FOR ETC STATUS BY COMMITTING TO PROVIDE ALL THE
13 UNIVERSAL SERVICES IDENTIFIED BY THE COMMISSION?

14 A. Yes. IAT Communications, Inc., d.b.a. Clear Talk,
15 filed its petition for designation as an eligible
16 telecommunications carrier with the Commission in February
17 of this year. In its petition, Clear Talk indicates it
18 "provides all of the services and functionalities required
19 by the Commission for E.T.C. designation (as enumerated in
20 the Commission's Order No. 27715). On page 5 of its
21 application, for example, Clear Talk indicates it offers,
22 "unlimited local usage in its monthly service plan - at no
23 additional charge." From its application, it would appear

1 that Clear Talk believes it offers a functionally
2 equivalent, wireless service

3 Q. DOES THE COMMISSION INCLUDE INTERNET ACCESS,
4 NUMBER PORTABILITY, DATA TRANSMISSION, EXTENSION PHONES,
5 ACCESS TO PBXs OR EXTENSION HANDSETS AS PART OF ITS
6 DEFINITION OF UNIVERSAL SERVICES?

7 A. No.

8 Q. ISN'T THE DEFINITION OF UNIVERSAL SERVICES ONE
9 WHICH IS CONSIDERED TO EVOLVE OVER TIME RATHER THAN A STATIC
10 DEFINITION?

11 A. Yes. The Commission has the responsibility to
12 examine the development of telecommunications services and
13 has the option to review and revise the definition as
14 appropriate.

15 Q. IS IT APPROPRIATE IN THIS CASE TO CHANGE OR EXPAND
16 THE DEFINITIONS OF UNIVERSAL SERVICE OR BASIC LOCAL
17 EXCHANGE SERVICE?

18 A. No. First, only the legislature can change the
19 statutory definition of "basic local exchange service".
20 Second, any effort to review, and possibly change, the
21 definition of universal service must be carefully weighed in
22 light of many factors after input by all interested

1 telecommunications providers. It should not be done in a
2 casual manner in this case.

3 Q. IN ATTEMPTING TO CONTRAST WIRELESS "LOCAL SERVICE"
4 TO LANDLINE BASIC LOCAL EXCHANGE SERVICE, MR. HART POINTS
5 OUT THERE ARE POCKETS WITHIN MOST OF THE SEVEN EXCHANGES
6 WHERE WIRELESS SERVICE IS NOT AVAILABLE, INCLUDING ROBIE
7 CREEK (PAGE 27, LINE 10). HOW DO YOU RESPOND?

8 A. The Commission has already provided guidance in
9 this area. In the Burley case order, No. 28369, page 12,
10 the Commission states, "Nor is the Commission convinced that
11 the statute requires a competitor to actually construct
12 facilities to all parts of the local calling area." The
13 Commission indicated it would be difficult to foresee
14 circumstances where competition could be deemed effective
15 and throughout the local calling area where less than half
16 the customers have a choice of provider. There is no
17 question in this case that the vast majority of customers in
18 these seven exchanges have ready access to wireless
19 telephone service as evidenced in Dr. Lincoln's survey and
20 the coverage maps of the wireless providers themselves. The
21 availability of wireless service to Robie Creek is not a
22 prerequisite to the Commission's approval of Qwest's
23 application. It should be noted as well that, in discovery

1 (Interrogatory No. 2-12; Request for Production 2-17), Qwest
2 asked Staff to identify all pockets in the seven exchanges
3 where wireless service is unavailable. Given Staff's
4 insistence that price deregulation is inappropriate due, in
5 part, to the existence of such pockets, Qwest believes it
6 was appropriate to put Staff to the test of specifically
7 identifying each such pocket so that the Commission and the
8 parties could appreciate the magnitude of this concern. In
9 response, Staff admitted that it "did not attempt to locate
10 all pockets within the seven exchanges where wireless
11 service is not available." Instead, Staff argues that it is
12 Qwest's burden to demonstrate reasonable availability in the
13 seven exchanges. Through Dr. Lincoln's survey data
14 testimony and Mr. Teitzel's exhibits regarding the number of
15 carriers and plans available in the seven exchanges, there
16 can be no doubt that Qwest has met its burden. Staff's
17 conjecture that there may be other pockets and its anecdotal
18 evidence (Staff mentions that a citizen at the Pocatello
19 workshop indicated a lack of service in Pocatello Creek) do
20 not adequately rebut Qwest's overwhelming evidence.

21

1 B. The possibility of increased prices

2 Q. STAFF SEEMS TO ARGUE THAT QWEST'S APPLICATION, IS
3 CONTRARY TO THE PUBLIC INTEREST BECAUSE STAFF BELIEVES
4 QWEST INTENDS TO INCREASE RATES FOR BASIC LOCAL EXCHANGE
5 SERVICE. DOES THE STATUTORY SECTION UNDER WHICH QWEST SEEKS
6 RELIEF PROHIBIT PRICE INCREASES?

7 A. No, section 62-622(3)(b) allows Qwest full pricing
8 freedom to raise and lower its rates. Staff's concern that
9 Qwest may use its regulatory freedom to increase rates
10 underscores the fact that Staff apparently does not agree
11 with the legislature's determination that where effective
12 competition is present, regulation is not necessary. The
13 test here is whether or not the conditions of the statute
14 have been met - not whether prices will either decrease or
15 forever remain the same. Consumers in Idaho participate in
16 all kinds of competitive markets today in which the prices
17 of goods and services, even vital goods and services,
18 increase as well as decrease.

19 Q. WHAT EFFECT DOES THE STAFF'S OPPOSITION BASED ON
20 POSSIBLE PRICE INCREASES HAVE ON THE STATUTE WHICH ALLOWS
21 FOR FULL PRICING FLEXIBILITY?

22 A. By opposing Qwest's application on the basis that
23 it might raise prices, the Staff is effectively rendering

1 section 62-622(3) moot. If an application under this
2 section can be denied because an applicant could raise a
3 price, then this section of the law may as well be stricken
4 from the books. In effect, the Staff would leave section
5 62-622(1), the maximum rates section, as the only option
6 available for relief from full rate regulation, even in the
7 face of effective competition. Staff's position, when seen
8 in its true light, is wholly inconsistent with the plain
9 language of the statute and with the intent of the
10 legislature, which enacted two forms of pricing flexibility
11 to allow incumbents appropriate freedoms based on the
12 presence of competition. Staff's advocacy effectively
13 writes 62-622(3) out of the statute.

14

15 **C. Relief under section 62-622(1)**

16 Q. BOTH MR. HART AND DR. JOHNSON ARGUE THAT QWEST
17 SHOULD HAVE SOUGHT PRICING FLEXIBILITY UNDER SECTION 62-
18 622(1) - THE "MAXIMUM RATES" STATUTE (PAGES 36 AND 47
19 RESPECTIVELY). WHY DIDN'T QWEST FOLLOW THAT ADVICE?

20 A. Staff implies that it is inappropriate for Qwest
21 to seek price deregulation under section 62-622(3) because
22 section 62-622(1) can provide Qwest another form of
23 flexibility, i.e., the ability to lower rates without

1 Commission approval. To insist that section 62-622(1)
2 offers Qwest the only appropriate form of flexibility in
3 view of the effective competition it faces from wireless
4 providers is inappropriate and at odds with the
5 legislature's intent in enacting the different statutory
6 provisions.

7 Sections 62-622(1) and (3) address two entirely
8 different situations in the telecommunications marketplace.
9 Section 62-622(1) does not require any showing of
10 competition, but requires an incumbent such as Qwest to
11 either accept the rates established by the Commission in its
12 last rate case, or undergo regulatory review akin to a rate
13 case to establish new rates. Subsection (1) is a
14 continuation of rate regulation by the Commission, based on
15 the assumption that the only effective constraint on an
16 incumbent's rates is regulation.

17 By contrast, section 62-622(3) does not address rate
18 levels, but focuses on whether "effective competition" is
19 present. If effective competition is shown, the statute
20 eliminates rate regulation on the assumption that
21 competition, and not regulation, will control prices.

22 For Staff to claim that section 62-622(1) offers all
23 the price flexibility that Qwest needs is to argue that the

1 legislature was wrong to eliminate rate regulation even when
2 effective competition is demonstrated. Obviously, if this
3 is Staff's position, its argument must be summarily
4 rejected.

5 On the other hand, to the extent that Staff's
6 testimony attempts to convince the Commission that Qwest
7 does not face "effective competition" Staff must overcome
8 Qwest's evidence that it has met the statutory standard by
9 showing that "functionally equivalent" and "competitively
10 priced" local services are available from a number of
11 unaffiliated wireless providers. Staff cannot use section
12 62-622(1) to create an additional requirement that Qwest
13 also prove that the "flexibility" offered under section 62-
14 622(1) is not adequate to meet the threat of effective
15 competition.

16

17 **Q. WHY ISN'T THE FLEXIBILITY TO REDUCE PRICES**
18 **SUFFICIENT TO MEET A COMPETITIVE CHALLENGE?**

19 A. What the legislature apparently understood, and
20 what Staff fails to recognize, is that where there is
21 competition more flexibility than is provided under section
22 62-622(1) may be required.

1 I can think of no other competitive market where one
2 provider is restricted to price reductions only. It is not
3 unusual for competitors to adjust prices, both upward and
4 downward, on products as a means of promotion or product
5 introduction or development. Prices may rise as vendors
6 augment services by adding value through product
7 enhancements or by offering packaged services at a discount
8 to stand-alone product pricing. Likewise, prices may be
9 lowered for variety of reasons such as inventory reduction,
10 reflection of lower production costs or to stimulate
11 revenues.

12 Furthermore, it is not clear to Qwest that the maximum
13 rates statute, section 62-622(1), eliminates rate-of-return
14 regulation. This is of particular concern where, as here,
15 Qwest is seeking relief for only some of its exchanges.
16 Under the rate-of-return scenario, Qwest may be required to
17 "track" any price reductions implemented and account for
18 these "lost" revenues in any subsequent rate proceeding for
19 either the "maximum rate" exchanges or for the remaining
20 Qwest exchanges. As such, Qwest would be forced to incur
21 the additional expense of tracking any price reductions and
22 would be subject to "second guessing" as to the necessity of
23 any prior price reductions

1 D. Staff's focus on other exchanges

2 Q. ASIDE FROM THE POSSIBILITY THAT QWEST MAY RAISE
3 PRICES IN THE SEVEN EXCHANGES, DOES MR. HART EXPRESS OTHER
4 REASONS FOR OPPOSING QWEST'S APPLICATION?

5 A. Yes. He also expresses a concern that granting
6 Qwest's application could "lead to a significant rate
7 increase for customers in the remaining exchanges." (page
8 35, line 19)

9 Q. WHAT DO YOU BELIEVE IS THE BASIS FOR HIS CONCERN?

10 A. Mr. Hart understands that Qwest's current prices
11 have been set in a regulated environment using statewide
12 average pricing. In essence, he is pointing out that
13 revenues from the seven exchanges² subsidize and support the
14 operations in the remaining smaller exchanges. Should the
15 revenues from these seven exchanges be removed from the
16 equation, Mr. Hart postulates it is likely that an earnings
17 review for the remaining exchanges would justify the
18 Commission setting higher prices in these regulated
19 exchanges.

² In response to Qwest Interrogatory No. 2-27, Staff stated, "The residential and small business customers of the more populous, urban regions of the state currently subsidize and support the cost of basic local exchange service for Qwest's residential and small business customers in the less populous, rural regions under current averaged prices of Qwest's basic local exchange service."

1 I don't disagree that, all other things being equal,
2 the Commission could order price increases in the remaining
3 rural exchanges under such an earnings review. But, for two
4 reasons, I do not believe Mr. Hart is raising a valid basis
5 for rejecting Qwest's application. First, his concern again
6 has the effect of adding requirements to section 62-622(3)
7 that the legislature did not itself impose. While the
8 legislature set out that a telephone company must prove
9 effective competition (in one of the two ways set out
10 respectively in 62-622(3)(a) and (b)) in order to obtain
11 price deregulation, Mr. Hart apparently believes that the
12 telephone company must also prove that it meets an unwritten
13 requirement that exchanges that are not price deregulated
14 will not be subjected to conditions that could justify
15 regulated rates in those exchanges being increased by the
16 Commission.

17 Second, the Commission has already found an affordable
18 monthly residential flat rate to be \$24.10 for customers in
19 many of Idaho's independently operated exchanges that
20 resemble Qwest's higher-cost exchanges for which it is not
21 seeking price deregulation in this case. These rates have
22 been in place for years and to my knowledge, there has been
23 no serious negative impact on subscribership in those

1 exchanges. Since Qwest's residential rate in the seven
2 exchanges is only \$17.50, even a significant increase by
3 Qwest would not seem to implicate unreasonable rates given
4 the \$24.10 residential rate charged, by order of the
5 Commission, by rural phone companies.

6 Q. WOULDNT'T THE COMMISSION HAVE TO APPROVE ANY PRICE
7 INCREASES FOR THESE OTHER EXCHANGES FOLLOWING A FULL REVIEW
8 OF THE CASE AND AFTER HAVING CONSIDERED THE PUBLIC INTEREST?

9 A. Yes. It is difficult to understand, therefore,
10 why the Staff appears to believe that if the Commission
11 should, upon an appropriate record, raise rates in rural
12 Qwest exchanges the public interest would not be served.

13 Q. IF QWEST WERE TO ACCEPT MR. HART'S SUGGESTION AND
14 BRING ITS APPLICATION FOR THE SEVEN EXCHANGES UNDER THE
15 "MAXIMUM RATES" STATUTE, WOULD THAT BETTER "PROTECT"
16 RATEPAYERS IN THE OTHER EXCHANGES?

17 A. No, his suggestion does not really seem to fit the
18 concern he offers as a basis for opposing Qwest's
19 application. If Qwest were to have the Commission set
20 "maximum rates" under section 62-622(1) and then reduce
21 those rates in the seven exchanges, in a subsequent earnings
22 review following those price reductions, there would be (all
23 other things being equal) less revenue to cover Qwest's

1 total operations within southern Idaho. Rates in the
2 uncapped exchanges would thus have to increase to cover the
3 reduced revenue stream.

4 Q. DO THE STATUTORY SCENARIOS BEING ADVOCATED BY THE
5 STAFF LEAVE QWEST WITH ANY SUBSTANTIVE FLEXIBILITY TO
6 COMPETE IN TODAY'S COMPETITIVE MARKET?

7 A. No. The Staff seems to meet itself coming and
8 going. It opposes granting Qwest pricing freedom under 62-
9 622(3)(b) because it "might" raise prices - an action
10 permissible under that law. And, although the Staff
11 suggests Qwest has other options under the maximum rates
12 statute (62-622(1)) for pricing flexibility, it is also
13 concerned that reduced financial support, possibly from
14 price reductions permissible under that statute, will lead
15 to higher rates in Qwest's other exchanges. Staff seems to
16 want both ends of the argument leaving Qwest to face growing
17 competition without the necessary tools to effectively
18 compete in a market where wireless service is exploding and
19 landline service is declining.

20

21

22

23

1 market share in order to meet the requirements of section
2 62-622(3)(b). In the Commission's order from the Burley
3 case, Order No. 28369, page 11, the Commission stated,
4 "Given the language of the statute, we conclude it would be
5 inappropriate for the Commission to declare a specific
6 penetration level or loss of a specific market share as a
7 bright line test for application of Section 62-622(3)."

8 Today, based on information provided by Alyson
9 Anderson on April 3, 2003, there were well over 577,000
10 cell phones being used in Idaho as of December 2002. This
11 is an increase of 37,000 cell phones (6.8% increase) over
12 the June 2002, value shown in my Exhibit No. 1. It seems
13 clear to me that, absent wireless competition, Qwest would
14 likely be serving the needs of many thousands of those
15 customers and would probably not be experiencing loss of
16 access lines.

17 Q. ACCORDING TO MR. HART, IT IS "VERY LIKELY" THE
18 MAJORITY OF QWEST'S ACCESS LINE LOSS IS DUE TO DSL
19 SUBSCRIBERSHIP. (PAGE 28, LINES 6-25) HAVE YOU EXAMINED THE
20 IMPACT OF DSL ON QWEST'S LINE LOSS?

21 A. Yes. Residences account for the vast majority of
22 DSL subscriptions. While it is true that some residential
23 customers will disconnect an additional line once they have

1 subscribed to DSL, this in no way can account for the
2 reduction of approximately 14,000 Title 61 lines referenced
3 by Mr. Hart. I had an employee review the number of
4 residential additional lines in service in Idaho as of June
5 2000 and June 2002 associated with customers who added DSL
6 service during that period. This review indicated that
7 slightly over 1,400 additional lines were removed after
8 residential customers added DSL during that period. In
9 other words, only 10% of the 14,000 access line reduction
10 can be attributed to displacement of additional residential
11 lines by DSL.

12

13 **IV. PRICING FLEXIBILITY IN A COMPETITIVE MARKET**

14 **Q. MR. HART INDICATES THE ONLY FLEXIBILITY QWEST WILL**
15 **GAIN IF ITS APPLICATION IS APPROVED IS THE ABILITY TO RAISE**
16 **ITS RATES (PAGE 37, LINE 12). DO YOU AGREE?**

17 A. No. Although Mr. Hart attempts to minimize the
18 operating efficiencies Qwest seeks through this application,
19 these savings are nevertheless an important part of Qwest's
20 need to be competitive. As pointed out by Mr. Hart, current
21 regulations require that Qwest report special promotions to
22 the Commission prior to offering and report on the
23 accounting of the regulated revenues following the

1 promotion. In addition, Qwest must track and account for
2 foregone revenues and be prepared to impute them in any
3 subsequent rate proceeding as though they had been
4 collected. Additionally, regulations require Qwest to
5 separately itemize billing for "regulated" and "optional"
6 services on its customer bills

7 None of Qwest's wireless competitors are bound by
8 these rules. Adhering to these regulations carries a burden
9 of expense which Qwest could eliminate if its application is
10 approved. Competing effectively is as much about
11 operational efficiency as it is about competitive pricing.

12 **Q. DOES THE COMPANY HAVE THE ABILITY TO OFFER PRICING**
13 **PROMOTIONS FOR REGULATED BASIC LOCAL EXCHANGE SERVICE TODAY?**

14 A. Not completely. Again, this is part of what Qwest
15 is seeking in this case. Mr. Hart points out on page 34,
16 line 22, that Qwest is allowed to discount or waive the one-
17 time installation charge for basic local exchange service.
18 What Mr. Hart doesn't mention is that Qwest has not been
19 allowed to discount the monthly rate for basic local
20 exchange service in any of its packages or promotions.
21 Qwest has always been required to account for the full
22 tariffed rate for basic local exchange service as part of
23 any packaged service offering. In effect, any monthly

1 discounts tied to the package must be derived from other,
2 non-regulated services included in the package. Qwest's
3 competitors are not bound by this limitation and are free to
4 discount or promote all their services in accordance with
5 normal business pricing practices.

6 Q. MR. HART INDICATES QWEST HAS HAD THE ABILITY TO
7 BOTH RAISE AND LOWER PRICES FOR BASIC LOCAL EXCHANGE SERVICE
8 PROVIDED TO LARGE BUSINESS CUSTOMERS SINCE 1989 (page 33,
9 line 23). IN THE FOURTEEN YEARS SINCE QWEST HAS HAD THIS
10 FREEDOM IN IDAHO, HAS THE COMPANY ENGAGED IN THE TYPE OF
11 PRICING ACTIVITY ENVISIONED BY DR. JOHNSON TO THE DETRIMENT
12 OF UNIVERSAL SERVICE? (PAGE 41, LINE 23; PAGE 42, LINE 1-4)

13 A. No. In fact, during the last fourteen years since
14 Qwest gained pricing freedom for large business customers,
15 it has maintained parity for pricing of basic local exchange
16 service between unregulated prices for large businesses and
17 regulated prices for small business customers.

18 It would be counter-productive for Qwest to behave as
19 Dr. Johnson suggests should the Commission grant Qwest's
20 application in this case. Qwest values its relationship
21 with its customers and needs to maintain a good relationship
22 going forward. Moreover, Qwest has played an important role
23 in helping develop Idaho's telecommunications infrastructure

1 as being one of the best in the nation. This has been
2 accomplished through a partnership in Idaho with the
3 Commission, business leaders and the state legislature.
4 Qwest cannot afford to jeopardize these valued relationships
5 by setting prices for basic local exchange service that are
6 considered by the public to be exorbitant and that would
7 drive away the very base of customers Qwest needs in order
8 to survive.

9 **Q. IS THE CURRENT COMPETITIVE MARKET SUFFICIENT TO**
10 **CONSTRAIN QWEST FROM RAISING PRICES WITHOUT RISK OF LOSING**
11 **CUSTOMERS?**

12 A. Yes. The popularity and tremendous growth of
13 wireless service usage underscores the fact that customers
14 have accepted this service as a good alternative to Qwest's
15 basic local exchange service. In addition, the FCC and the
16 Idaho Commission have ruled that Qwest has opened its
17 markets to competition in Idaho. In view of the current
18 availability of retail wireless service along with other
19 options available for wholesale customers (including resale,
20 the purchase of unbundled network elements and the purchase
21 of UNE-P), any significant increase in Qwest's prices for
22 landline service would both drive away customers and attract
23 even more providers to actively compete in the Idaho

1 market.³ The market has developed to the point that Qwest
2 is constrained as to pricing and should be given a chance to
3 compete on an equal basis.

4 Q. UNDER THE CURRENT FORM OF REGULATION, CAN THE
5 COMMISSION GUARANTEE CUSTOMERS THAT PRICES FOR QWEST'S BASIC
6 LOCAL EXCHANGE SERVICE WILL NOT INCREASE IN THE FUTURE?

7 A. No. As with many other products, prices tend to
8 increase over time if for no other reason than to keep pace
9 with inflation.

10 By September of 2002, Qwest's access lines in service
11 dropped to a level that was around 14,000 fewer than Qwest
12 had in December 2000. This equates to a revenue loss of
13 several million dollars of Title 61 revenue per year for
14 Qwest. Under today's form of regulation, Qwest could seek
15 recovery of these lost revenues by filing a rate case and
16 asking the Commission for increased rates for its remaining
17 customers. Rate cases are complex, time consuming and
18 expensive procedures and there is no guarantee the

³ This is not to imply that CLECs are not already actively competing with Qwest in Idaho. Qwest's public website (see www.qwest.com/wholesale/results/checklist.html) indicates that, as of February 2003, Idaho CLECs had 9,111 UNE-P lines in service (p. 91 of March 2002-February 2003 PID report), 5,347 residential resold lines in service (p.223) and 487 business resold lines in service (p.234). Since these forms of competition exclusively utilize Qwest's facilities, CLECs can quickly increase their level of competition without significant capital expenditures. Should Qwest sharply increase its basic local exchange service rates, CLECs will invariably take advantage of such an event to expand their presence in Idaho.

1 Commission would grant all the revenue relief Qwest
2 requested. However, assuming some relief was granted,
3 Qwest's remaining customers would experience an increase in
4 their basic local exchange service rates. I don't believe
5 the Commission has the option of maintaining the "status
6 quo" while watching the forces of competition and technology
7 change the landscape of telecommunications in Idaho. As it
8 has done in the past, the Commission must continue to change
9 with the times and allow Qwest an opportunity to compete in
10 the market. It's the only viable approach if Qwest is to
11 continue its tradition of service and investment in Idaho.

12

13

V. WRITTEN CONSUMER INPUT

14 **Q. HAS THE COMMISSION SOUGHT INPUT FROM CONSUMERS**
15 **REGARDING THEIR OPINIONS AND REACTION TO QWEST'S**
16 **APPLICATION FOR PRICING FLEXIBILITY?**

17 A. Yes. The Commission issued press releases that
18 gave an overview of Qwest's application and provided
19 consumers with information about how to write or e-mail
20 the Commission with their views. I understand the press
21 releases were carried by the Idaho Statesman in Boise,
22 Idaho State Journal in Pocatello and the Twin Falls Times
23 News in Twin Falls. Some radio stations in those areas

1 also provided coverage using the Commission's press
2 release.

3 Q. DIDN'T THE COMMISSION ALSO HOLD PUBLIC WORKSHOPS
4 IN THREE MAJOR IDAHO COMMUNITIES TO ANSWER CUSTOMERS'
5 QUESTIONS AND SOLICIT INPUT FROM CONSUMERS?

6 A. Yes. Mr. Schmit was in attendance at these
7 workshops, which were held in Pocatello, Twin Falls and
8 Boise. I will provide a review of the customer comments
9 filed via letters or e-mail to the Commission and Mr.
10 Schmit will cover consumer input from the workshops in his
11 testimony.

12 Q. HOW MANY LETTERS OR E-MAILS (LETTERS) DID THE
13 COMMISSION RECEIVE FROM CONSUMERS?

14 A. Because of timing differences, my count of the
15 letters varies slightly from Mr. Hart's count. My count
16 indicates the Commission received comments from only 45
17 customers and from 3 organizations. Of the 45 customer
18 comments, eight customers live in exchanges that are not
19 included in the seven exchanges identified in Qwest's
20 application, leaving 37 customer letters from people
21 living in one of the seven exchanges.

22 Two of the three organizations that submitted
23 comments supported Qwest's application. For those 37

1 customers living in one of the seven exchanges, 9
2 supported Qwest's application, while 28 opposed the
3 application.

4 Q. FOR THOSE CUSTOMERS OPPOSING QWEST'S
5 APPLICATION, HOW WOULD YOU CATEGORIZE THEIR CONCERNS?

6 A. I believe they essentially fell into three
7 categories. First, some people were simply opposed
8 deregulation of any kind citing what they believe to be
9 bad experiences in other areas such as the airline,
10 banking or trucking industries. Several people indicated
11 a concern that Qwest would stop offering stand-alone dial
12 tone service and would instead require people to buy
13 "packaged" services including features they may not need
14 or want. Finally, customers, especially those on low or
15 fixed incomes, expressed concerns about higher prices.

16 Q. DO YOU AGREE WITH THE CONCLUSIONS MR. HART DREW
17 FROM THE WRITTEN CONSUMER COMMENTS FILED IN THIS CASE?

18 A. I only agree as to his conclusions regarding
19 customers' concerns for higher pricing and the elimination
20 of stand-alone dial tone service.

21 I do not agree that "those commenting see dial-up
22 Internet access as part of 'basic' landline service."
23 (Hart, page 33, line 11) Of the 37 customers writing from

1 the affected exchanges, I counted only two who indicated
2 their concern over access to the Internet. Both of these
3 persons opposed any form of deregulation, citing other
4 industry examples.

5 **Q. WHAT ABOUT MR. HART'S OTHER CONCLUSIONS?**

6 A. I disagree with his view that people see
7 landline service as a "necessity" and see wireless service
8 as a complementary service. (Hart, page 33, line 11)
9 Instead, I believe the 28 customers who sent comments
10 opposing Qwest's application were expressing the view that
11 maintaining affordable communications service was very
12 important to them. The necessity they expressed had more
13 to do with their need to communicate with others for
14 personal, social or business reasons rather than an
15 expression of the value they place on one type of
16 technology over another.

17 **Q. WHAT IS YOUR ASSESSMENT OF THE VOLUME OF**
18 **CONSUMER LETTERS RECEIVED BY THE COMMISSION?**

19 A. I consider the volume of letters to be very low
20 when viewed against the number of customers we have in the
21 seven major exchanges. This low volume is consistent with
22 the low attendance Mr. Schmit describes in his testimony
23 regarding the workshops. We have received 28 letters from

1 customers opposed to Qwest's application from a base in
2 the seven exchanges of nearly 292,000 customers. This
3 amounts to about one one-hundredth of one percent of the
4 affected customers. I believe this is a strong indication
5 that consumers generally are comfortable with Qwest's
6 request to compete on an equal basis against its wireless
7 competitors.

8 Q. MR. SCHMIT RESPONDS TO CONSUMERS' CONCERNS ABOUT
9 PRICING AND THE FEAR THAT QWEST WILL OFFER ONLY PACKAGED
10 SERVICES. WILL YOU PLEASE COMMENT ON THE THIRD ISSUE YOU
11 MENTIONED, I.E., A GENERAL FEELING OF OPPOSITION TO ANY
12 FORM OF DEREGULATION?

13 A. Certainly. This case is not about deregulation
14 of Qwest's operations. Qwest is only seeking pricing
15 flexibility in this case for seven southern Idaho
16 exchanges. As I mentioned in my direct testimony, this
17 Commission will retain jurisdiction over the quality and
18 availability of services, as well as credit and collection
19 policies and practices. The Commission will continue to
20 handle dispute resolution at both the wholesale and retail
21 level. Qwest has had pricing flexibility for Title 62
22 basic local exchange service for fourteen years and there

1 has been no negative impact on universal service that
2 could be even remotely described as a drawback of such
3 pricing freedom.

4 VI. CONCLUSION

5 Q. PLEASE CONCLUDE YOUR TESTIMONY AND PROVIDE THE
6 COMMISSION WITH YOUR RECOMMENDATION.

7 A. Qwest's current application for economic
8 deregulation in seven exchanges is the second attempt by
9 Qwest to achieve pricing flexibility. Qwest appreciates
10 the guidance provided by the Staff and the Commission in
11 the Burley case and has attempted to respond to that
12 guidance in this case.

13 Since the Burley case was filed, the growth of
14 cellular service has been no less than phenomenal. Today,
15 we see that over half a million Idahoans have chosen to
16 purchase wireless service to meet some or all of their
17 communications needs, as over 577,000 wireless lines are
18 in service. At the same time that this form of
19 competitive service continues to rise in popularity, Qwest
20 has experienced a decline in its access lines for the
21 first time in memory. There is no doubt customers are

1 disconnecting Qwest's landlines in favor of using wireless
2 services.

3 Qwest has met the statutory requirements for
4 achieving economic deregulation of its Title 61 basic
5 local exchange services. Wireless service is functionally
6 equivalent, competitively priced and reasonably available
7 in the seven southern Idaho exchanges. Through Mr.
8 Schmit's testimony, Qwest has also gone above and beyond
9 any obligation and made specific, time-bound commitments
10 for pricing stability in response to Staff's suggestions
11 in the Burley case and concerns raised by customers in
12 this case.

13 What Qwest is asking for is not new. Qwest achieved
14 this same pricing freedom in 1989 for large business
15 customers, for data services, for exchange access and for
16 vertical features at a time when wireless phones were in
17 their infancy in Idaho. Today, one can hardly go out in
18 public without seeing people using wireless phones.

19 I encourage the Commission to approve Qwest's
20 application on the basis that the statutory requirements
21 have been met. Through this approval, the Commission will
22 support a new competitive climate, while providing

1 customers with price stability. By approving Qwest's
2 application, the Commission will continue an Idaho
3 tradition of network modernization through the addition of
4 high-speed broadband services and of maintaining the
5 state's continued leadership in the area of progressive
6 regulatory oversight.

7 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

8 A. Yes, it does.

9

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April, 2003, I served the foregoing **REBUTTAL TESTIMONY OF JOHN F. SOUBA ON BEHALF OF QWEST CORPORATION** upon all parties of record in this matter as follows:

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