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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION
OF QWEST CORPORATION FOR PRICE
DEREGULATION OF BASIC LOCAL
EXCHANGE SERVICES**

Case. No. QWE-T-02-25

**QWEST CORPORATION'S OPENING POST-
HEARING BRIEF**

Qwest Corporation ("Qwest"), by and through its undersigned counsel, hereby submits its opening post-hearing brief. Qwest requests the Commission approve its December 17, 2002 application for price deregulation for the Boise, Caldwell, Idaho Falls, Meridian, Nampa, Pocatello and Twin Falls exchanges (the "seven exchanges").

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I. OVERVIEW

In 1997, the Idaho Legislature enacted a statute that required the Commission to “cease regulating basic local exchange service rates . . . upon a showing . . . that effective competition exists for basic local exchange service throughout the local exchange calling area.” *Idaho Code* § 62-622(3). Lest fruitless debate ensue, the Legislature also provided two specific scenarios under which “effective competition” would be deemed to occur. The first described a comfortable “overbuild” scenario under which a competing carrier offers an alternative facilities-based network. The second, more visionary scenario posed a situation in which “there are functionally equivalent, competitively priced local services reasonably available to both residential and small business customers.” *Idaho Code* § 62-622(3)(b). Qwest brings its application under this second scenario, relying on the ubiquitous presence of ever more aggressive competition for basic local exchange service customers from wireless carriers in the seven exchanges.

The following basic facts presented here are undisputed.

- Staff admits that wireless carriers provide “two-way interactive switched voice communications” within the local calling area, which is, of course, the definition of basic local exchange service provided in statute. *Idaho Code* § 62-603(1).
- There is no disagreement that virtually every residential and small business customer in the seven exchanges has a choice of at least six wireless providers offering a selection of service packages designed to provide a variety of levels of local usage, additional features, toll calling options and price ranges.
- Staff and Qwest agree that for two products to be “competitively priced” they do not have to be identically priced and that customer opinion as to the significance of a price difference and actual customer behavior are important.
- Qwest’s evidence that there are presently nearly 600,000 wireless subscribers in Idaho and that the numbers of wireless customers is increasing by over 6,000 per month is unchallenged.
- Staff does not dispute that wireless growth has exploded while Qwest’s wireline subscribership has actually declined during the same period.
- Wireless companies advertise their services as a complete substitute for wireline service.
- Staff chooses to ignore, but does not challenge, that Qwest presented a substantial body of evidence that wireless substitution for landlines is becoming a national trend.

- Staff does not dispute some number of Qwest's wireline customers in Idaho have already chosen wireless as their only telephone service.
- Everyone, including the Commission in a prior order, agrees that the Legislature did not adopt a market share test for determining effective competition.

The debate in this case centers on two key areas. First is a question of statutory interpretation that may be summarized as follows: did the Idaho Legislature intend that, to meet the standard of section 62-622(3)(b), the incumbent show that an alternative service provide "effective competition" for uses of wirelines other than for the provision of basic local exchange service? This subject was thoroughly briefed previously by the parties and is only referenced here in the context of specific arguments raised by the Staff and Intervenors.

The second large area of debate is about the meaning of the undisputed facts listed above. Staff insists that because there is no evidence that large numbers of Qwest customers have disconnected their wirelines (remember Staff concedes that some numbers have in fact done so) then wireless service must not be "functionally equivalent" or "competitively priced" with Qwest basic local exchange service. This argument, of course, begs the question. The statute does not require that the incumbent provide evidence that customers have switched exclusively to competitors in order to prove effective competition. Such a requirement would amount to a statutory "market loss" standard, which all concede was not intended by the Legislature. Thus, the questions of whether wireless services are "functionally equivalent" or "competitively priced" must be answered independently of whether waves of customers have in fact selected the alternative to the exclusion of the incumbent's service.

Guidance in answering the questions whether wireless service is "functionally equivalent" or "competitively priced" is found in Qwest's independent, statistically valid survey of Qwest wireline customers in the seven exchanges. This survey was conservatively drawn to test the opinions of only those customers who still use Qwest wireline service. The survey demonstrates that 50% of Idaho residence customers and 30% of its small business customers state they could rely solely on wireless service for their local calling needs. When the responses of those that replied negatively were probed, it was revealed that in many cases these customers were focused on wireline uses that do not come within the definition of basic local exchange service (such as dial-up Internet access). But even the most conservative results point to the fact that a very substantial percentage of wireline customers see wireless service as the "functional equivalent" of, indeed as a complete substitute for, their local calling service. On the question of

competitively pricing, 55.6 % of residence customers and 55% of small business customers stated that the price of wireless service is the same or less than wireline service. These percentages increase if one focuses on only those respondents who actually use wireless service. Thus these Idaho customers find wireless services to be “competitively priced.”

Commission Staff argues that the survey questions could have been drafted differently or that the customers did not appreciate what they were saying. They also point out that large percentages of customers did not respond that they could “solely rely on” wireless services. But these arguments miss the point. The question is whether wireless services present “effective competition.” Everyone agrees that competition is effective when it constrains the prices of the market participants such that they cannot raise their prices significantly without losing market share to competitors.

It is not possible for Qwest or anyone to prove what its future prices will be. But, Qwest has presented evidence that all the competitive market forces are in place to constrain its prices. Apart from clinging to the assertion that large numbers of customers have not yet fully substituted wireless for wireline, Staff does not challenge this Qwest evidence. The only marketing expert to testify in this case, Boise State University’s Dr. Douglas Lincoln, stated that since the majority of customers already believe wireless prices are the same or less than Qwest’s wireline prices, “the Company would be making a serious marketing mistake by making any kind of significant price increase.” *Tr. 271*. Qwest’s Idaho President stated this case was not brought to raise prices and that Qwest cannot afford to lose the 30, 45, or 60 per cent of customers that would react to a sharp price increase. “We’ve got to target our products and our pricing to make them attractive to that end of the market [that might switch], and those that might not otherwise change will get the benefit of the fact that we have two competing, competitive services.” *Tr. 540*.

Even Staff agrees that to have effective competition 100% of all customers do not have to have a competitive alternative. *Tr. 726*. In the final analysis, the opponents to Qwest’s application focus on the exceptions and the anecdotes, and lose sight of the big picture. That picture is a vibrant, robust, competitive telecommunications market in which some customers have already switched entirely and the vast majority of traditional telephone customers have already chosen wireless service to meet at least part of their basic local exchange calling needs. Idaho customers in the seven exchanges have wireless choices that are aggressively advertised to

them as a substitute for all their calling needs. Substantial numbers of customers believe they can rely exclusively on wireless service, and a majority believe wireless service is competitively priced. Given that everyone agrees that actual customer behavior is a key factor in answering the competitive pricing question, the fact that wireless growth has exploded under the same economic conditions which have seen a decline in wireline subscribership, cannot be overlooked in determining that wireless services are competitively priced.

The Legislature determined that effective competition exists when there is a functionally equivalent, competitively priced reasonably available alternative. The Legislature's intent is that "for there to be actual and effective competition there needs to be substantive and meaningful competition" and that "effective competition will involve a substantial number of customers having both service provider and service option choices." *Idaho Code § 62-602(2)*. By any measure, these standards established by the Legislature in 1997 have been met and the Commission should cease price regulation of basic local exchange service in the seven exchanges.

II. ISSUES PRESENTED

- A. Whether the legislature intended that the Commission consider uses of wirelines that do not meet the definition of basic local exchange service in determining whether effective competition exists for basic local exchange service.
- B. Whether wireless providers in the seven exchanges provide a functionally equivalent alternative to Qwest wireline basic local exchange service for local voice communications.
- C. Whether the assertions of Staff and Intervenors that some customers will choose not to accept the wireless alternative because of preference or need justify denial of Qwest's application.
- D. Whether wireless providers in the seven exchanges provide a competitively priced alternative to Qwest wireline basic local exchange service for local voice communications.
- E. Whether wireless providers in the seven exchanges provide a reasonably available alternative to Qwest wireline basic local exchange service for local voice communications.

- F. Whether Qwest has provided evidence of “effective competition” for each of the seven exchanges.
- G. Whether and to what extent on a national level wireless-for-wireline usage and line substitution is occurring, and to what extent has the FCC spoken to whether wireless and wireline providers competing for local service.
- H. Whether Qwest’s application, as supplemented by the proposals articulated by Mr. Schmit in his rebuttal testimony, is consistent with the public interest.

III. DISCUSSION

- A. **Idaho Code § 62-622(3)(b) requires only that Qwest demonstrate “effective competition” for basic local exchange services and not for all uses to which wirelines may be adapted.**

The parties have already extensively briefed the issues presented in this case relating to statutory interpretation in connection with Staff’s April 30, 2003 petition for a declaratory ruling. Rather than burdening the Commission with a restatement of its position, Qwest hereby refers to and incorporates by this reference its May 13, 2003 *Answer to Petition for Declaratory Ruling and Cross Petition* and its comments, as presented at the May 22, 2003 oral argument on Staff’s motion.

Nevertheless, the issue of whether the Commission can appropriately consider data usage and other adaptations of wirelines (including uses with particular customer premises equipment and use in connection with other unregulated services such as DSL and hunting or “rollover” service) is implicated in the Commission’s inquiry into both the functional equivalence and competitive pricing issues. Staff and Intervenors have attempted to suggest that the price or relative lack of suitability of wireless services for some of these non-voice usages precludes a finding of “effective competition” under the statute. They are wrong for a variety of reasons.

First, it would be contrary to law for the Commission in evaluating Qwest’s application to require Qwest to prove effective competition for non-voice uses and attributes. Qwest has appropriately focused on the statutory requirement of proving effective competition for basic local exchange service, as that term is defined in Idaho Code § 62-603(1). Second, Staff and Intervenors are wrong on the facts in many cases, as discussed in Section III. C. 1. below. Finally, Staff and Intervenors are wrong when they suggest that the presence of some customers who are unlikely to choose a wireless alternative because of their reliance on these non-voice

uses or attributes demonstrates that wireless competition will not be effective in replacing Commission price regulation. *See*, Section III. C. 2. below.

1. The scope of the Commission's inquiry has been coherently and consistently defined by Idaho statute.

There has been considerable cross-talk among the parties as to what is the correct list of attributes that the Commission should compare when determining whether wireless is functionally equivalent to wireline basic local exchange service. Based on the language of the relevant statutes -- Idaho Code §§ 62-622 (3) and 62-603 (1) — the correct focus for the Commission's inquiry is on the “transmission of two-way interactive switched voice communication within a local exchange calling area” for residential and small business customers. *Idaho Code § 62-503(1) (emphasis added)*. Using this criterion, Qwest's list of attributes is reasonable under the statute, while the lists of attributes favored by Staff and the Intervenor Meierotto are illogical and overly-expansive.

The efforts of Staff and Intervenor to urge the Commission to expand the scope of its analysis of “functional equivalence” to consider data and other uses of landlines beyond voice communications was apparently sufficiently persuasive that Commissioner Smith was prompted to wonder aloud if perhaps the statute contains a “big hole” with regard to the legislature's intent concerning these other uses of landlines. *Tr. 132*. In response, Qwest respectfully submits that the Legislature's focus on voice communications was far from unintended and is consistent with the entire scheme of Idaho's telecommunications statutes.

In 1988, nine years before section 62-622(3) was enacted, the Legislature passed the Telecommunications Act of 1988 which, *inter alia*, offered incumbent telephone corporations the opportunity to price deregulate all of their services except basic local exchange service. *Idaho Code §§ 62-601-62-605*. Implementation of that legislation meant that a number of services that customers considered highly important were no longer price-regulated by the Commission, even though the incumbent was not required to demonstrate effective competition to gain this regulatory freedom. The Legislature's intent at that time was articulated in what is now codified as subparagraph (1) of section 62-602:

The legislature of the state of Idaho hereby finds that universally available telecommunications services are essential to the health, welfare and economic well-being of the citizens of the state of Idaho and there is a need for establishing legislation to protect and maintain high-quality universal telecommunications at just and reasonable rates for all classes of

customers and to encourage innovation within the industry by a balanced program of regulation and competition.

Thus, as early as 1988 the Legislature struck the balance between regulation and competition by price deregulating every service and every wireline use, except basic local exchange service.¹ At the same time the Legislature provided the definition for “basic local exchange service” to which we refer today.

Basic local exchange service, i.e. local voice service, was the only use of the telecommunications network for which the Legislature felt the need “to protect and maintain high-quality universal telecommunications at just and reasonable rates” through the retention of Commission price regulation. This was consistent with the Commission’s traditional focus in that maintenance of “universal service,” the precept that every citizen should have affordably priced access to the network, had long been a primary goal of Commission regulation of telephone services. *See, Re Idaho Universal Telephone Service Fund*, 91 P.U.R.4th 90, 1988 WL 391376 (Idaho PUC).

By 1997, when section 62-622(3) was enacted the Legislature determined that “effective competition” could take the place of Commission rate regulation for basic local exchange service. But the policy of maintaining universal service remained. One year later in 1998, the Legislature turned its attention again to the subject of universal service, this time in the context of its maintenance in a multiple-provider (i.e., competitive) environment. *Idaho Code §§ 62-610A-62-610F*. Under the statutes enacted in 1998, the Commission was charged with establishing a “competitively and technologically neutral funding mechanism” to support “universal service.” *Idaho Code §62-610A*. Universal service was defined as “basic local exchange service and other telecommunications services designated by the commission as services which should be widely available to consumers in all regions of the state at just and reasonable rates.” *Idaho Code § 62-610B(6)*.

Therefore although the Legislature revisited the Idaho Telecommunications Act of 1988 twice since its enactment, it did not see fit to expand the scope of Commission rate regulation beyond basic local exchange service, which it continued to define as local voice service. The Legislature did, however, expand the Commission’s role in the preservation of universal service, not through rate regulation, but by empowering the Commission to create a competitively

¹ This deregulatory policy was adopted without requiring that the incumbent’s electing this regulatory status demonstrate any level of competition for the services that were to be deregulated.

neutral, explicit support mechanism for those services the Commission determined to comprise “universal service.”

2. In determining the scope of the inquiry the Commission should be guided by the requirements of universal service.

In Case No. GNR-T-98-7, conducted in 1998, the Commission exercised the powers granted in section 62-610C to designate those services “in addition to basic local exchange service,” “which should be widely available to consumers in all regions of the state at just and reasonable rates.” *Idaho Code § 62-610B*. First on the list was “voice grade access” to the telephone network but the other uses that have attracted interest in this case were not included. *Order No. 27715*.

Thus, despite the invitation extended by the Legislature, the Commission did not add data-related uses, or interoperability with specific customer-provided equipment to the concept of universal service, which remained defined as “voice.” This suggests that the Commission well understood that although many customers find other services and network uses highly valuable, it was not the role of the Commission to protect those services and uses with explicit support. Nor is it appropriate to protect them through rate regulation of the wirelines that provide them. As Qwest will demonstrate in Section B. 2. below, wireless services meet all the standards created for universal service.

B. The record demonstrates conclusively that wireless providers offer a functionally equivalent alternative to Qwest’s wireline basic local exchange service.

1. “Functionally equivalent” does not mean identical or virtually identical.

Regarding the meaning of “functional equivalence”, Staff witness Wayne Hart testified, “the very idea of subparagraph (b) [of section 62-622 (3)] is to make a comparison of two services that are not identical. The legislature apparently contemplated that services that are not technically the same as those provided by a facilities based competitor nonetheless could be enough like it that it might serve as a reasonable substitute.” *Tr. 635*. Staff consultant Ben Johnson, however, took an extreme position at odds with Mr. Hart, that “functionally equivalent” means identical or virtually identical. *Tr. 756*. (“Accordingly, for two services to be ‘functionally equivalent’ these services need to be virtually identical with respect to their functional attributes-those characteristics of the service which relate directly to the purpose for

which each service is specially fitted or used.”)² Dr. Johnson then used this exceedingly stringent definition as a tool by which to exploit every difference between wireless and wireline service as a basis for denying Qwest’s application.

In his zeal to advance his argument, Dr. Johnson identifies a list of ten attribute differences which lead him to the conclusion that wireless and wireline services are not functionally equivalent. *Tr.* 771-775. His approach reaches its peak of absurdity when he argues that wireless service is not functionally equivalent to wireline basic local exchange service because, in some respects, wireless service is superior to wireline basic local exchange service (for instance, due to its inherent mobility). *Tr.* 771. Taken literally and to its logical conclusion, Dr. Johnson’s definition of “functional equivalence” and application of that definition would preclude the Commission from ever finding any alternative mode of service functionally equivalent to Qwest’s service. The folly of that extreme approach is self-evident. Had the Legislature intended to limit the Commission’s consideration to identical or virtually identical modes of telecommunication, it would have not enacted section 62-622(3)(b).

2. Wireless service meets each of the criteria for ETC status and is therefore functionally equivalent to Qwest wireline basic local exchange service.

The list of attributes this Commission created for purposes of the Idaho universal service, or “high cost” fund in Case No. GNR-T-98-7 is markedly similar to the list it reviews in order to evaluate a carrier’s qualification to be an Eligible Telecommunications Carrier (“ETC”) under sections 214 and 254 of the Federal Telecommunications Act and 47 CFR § 54.101(a). Those ETC attributes include the following: (1) voice-grade access to the public switched network; (2) local usage; (3) dual-tone multi-frequency signaling (i.e., touch tone); (4) single-party service or its functional equivalent; (5) access to emergency service where available; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation. *Tr.* 431.

This is an appropriate list for the Commission to consider in evaluating the attributes that must be provided by a competing service to find “functional equivalence” to basic local exchange service because “universal service” as defined by the Legislature is basic local exchange service plus any other services designated by the Commission as requiring protection to remain “widely available to consumers . . . at just and reasonable rates.” *Idaho Code* § 62-

² Dr. Johnson admits that this stringent definition of functional equivalence has never been adopted by a state commission. *Exhibit 61.*

610B(6). Since the Commission has not expanded the universal service definition beyond “voice grade access” for “local usage,” it is appropriate that the Commission look to the qualifications for ETC status in considering the scope of “effective competition” for purposes of application of section 62-622(3).

Both the record built by Qwest in this case and the Commission’s June 11, 2003 Clear Talk ETC Order³ undeniably establish that the wireless services available in each of the seven exchanges meet the nine criteria for establishing ETC eligibility and that the Commission should explicitly adopt for establishing functional equivalence to basic local exchange service.

First, there is no dispute that wireless service provides voice-grade access to the public switched network, dual-tone multi-frequency signaling (i.e., touch tone), single-party service or its functional equivalent, access to operator services, access to directory assistance or toll limitation services. The Commission agrees. *Clear Talk ETC Order, at 5-6.*

Second, as evidenced by the Clear Talk ETC order, wireless carriers meet the “local usage” requirement. *Id.* (“Specifically, the Commission finds that . . . Clear Talk currently offers unlimited local usage in its monthly service plan at no additional charge”).⁴ As Mr. Teitzel’s testimony and exhibits demonstrate, each of the wireless carriers referred to by Qwest in this docket offer calling plans that provide customer a guaranteed level of local usage at a flat rate. Most every carrier offers multiple plans with varying amounts of price-included local minutes for a set amount. *See Exhibit 22.*

Third, the record reveals that wireless service provides access to emergency services equivalent to, and in many cases superior to, wireline basic local exchange service access. The 911 dialing pattern is identical on wireless and wireline phones. *Tr. 363.* Qwest’s testimony

³ *In the Matter of Petition of IAT Communications, Inc. dba NTCH-Idaho, Inc. or Clear Talk for Designation as an Eligible Telecommunications Carrier*, Case No. GNR-T-03-8, Order No. 29261 (June 11, 2003) (“Clear Talk ETC Order”).

⁴ The local usage requirement, as specified in 47 C.F.R. § 54.101(a)(2), refers to an amount of minutes of use of exchange service, prescribed by the FCC, provided free of charge to end users. To date, the FCC has not quantified a minimum amount of local usage required to be included in a universal service offering, but has initiated a separate proceeding to address this issue. *See, Universal Service Further Notice of Proposed Rulemaking*, FCC 98-278 (Oct. 26, 1998). Thus, while Clear Talk’s unlimited local usage plan certainly would satisfy any standard ultimately set by the FCC, an unlimited local offering is not presently required. Qwest assumes that once the FCC defines a standard in this regard, wireless carriers (especially those seeking or having received ETC status) will make sure they offer plans compliant with that standard. *See, e.g., Application of Nextel Partners, In the Matter of the Application of NPCR, Inc. d/b/a Nextel Partners Seeking Designation as an Eligible Telecommunications Carrier that May Receive Federal Universal Service Support*, Case No. GNR-T-03-16, at 4 (“Nextel Partners will meet the local usage requirement [once quantified by the FCC] by including local usage to its universal service customers.”).

demonstrates that, although the E-911 functionality has not completely evolved on the wireless side, the FCC has mandated that all wireless carriers fully implement E911 caller autolocate capability by December 2005. *Tr.* 388. While Staff offered generalized concerns about wireless access to 911 (*Tr.* 650), when pressed through discovery to produce tangible evidence that wireless customers in the seven exchanges had actually experienced any recent troubles accessing 911, Staff was unable to identify even a single instance. *Exhibit 45*. Staff's unsupported assertion is at odds not only with the facts, but also with the Commission's Clear Talk ETC Order. *Clear Talk ETC Order*, at 5 ("*Specifically, the Commission finds that . . . Clear Talk currently provides 911 access to emergency service and will be able to provide E911 service upon request*").

Finally, wireless services undeniably provide access to interexchange services. While Staff does not dispute this underlying fact, it does raise concerns that wireless providers do not offer customers a choice among interexchange carriers. *Tr.* 644. This concern is both extraneous (in that the criterion is access to interexchange services, not the right to choose among various interexchange service providers) and not entirely accurate. For instance, customers having particular preferences with regard to the choice of an interexchange carrier, can select among the six wireless carriers available in their exchanges. *Tr.* 481. In addition, as Mr. Teitzel pointed out, "in the wireless market, the distinction between local and long distance calling is all but eliminated with national calling plans." *Tr.* 380. Again, perhaps the most dispositive word on this subject has been spoken by the Commission itself in finding Clear Talk had satisfied ETC criterion 7. *Clear Talk ETC Order*, at 5 ("*Specifically, the Commission finds that . . . Clear Talk will provide access to an interexchange service through direct interconnection arrangements with MCI*"). Had the Commission believed, like Staff, that an essential component of basic local exchange service is a choice among scores of interexchange carriers, it would have presumably addressed that issue in the Clear Talk ETC proceeding. It did not, and Qwest sees no basis for drawing a distinction for the instant comparison of wireless and wireline functionality.

In sum, the evidence in the record, especially when viewed in light of the Commission's June 11, 2003 order regarding Clear Talk's ETC designation, makes abundantly clear that the wireless service provided by the many different carriers identified in this proceeding is functionally equivalent to Qwest's wireline offering of local voice communications services.

3. Wireless service is a substitute, not a complement to basic local exchange service.

Dr. Johnson is correct that two goods can be viewed as substitutes, complements, or as so unrelated as to have no impact on each other (e.g., eggs and gasoline). *Tr.* 761-762. Dr. Johnson goes to great lengths to explain the meaning of substitutes and complements and to then persuade the Commission that wireless and wireline services are primarily complementary by nature. *Tr.* 763, 764-765. Accepting Dr. Johnson's own definitions of these terms it is clear that, contrary to his assertion, wireless and wireline services are not complements.

In his direct testimony, Dr. Johnson states substitutes are "products that have a relation such that an increase in the price of one will increase the demand for the other or a decrease in the price of one will decrease the demand for the other." Complements are "products that have a relation such that an increase in the price of one will decrease the demand for the other or a decrease in the price of one will increase the demand for the other." *Tr.* 761. Applying these definitions adopted from economics literature, Dr. Johnson would apparently have the Commission believe that if Qwest were to dramatically increase its prices after obtaining price deregulation in this docket, demand for wireless services would dramatically decrease as a result. Similarly, if wireless providers were to dramatically decrease their prices, penetration of wireline services would increase. This makes no sense. Amazingly, Dr. Johnson later contradicts his own analysis when he acknowledges that even he would switch from wireline to wireless for his local calling needs if his local wireline company were to drastically increase rates. *Tr.* 766-767. In other words, Dr. Johnson admits wireless and wirelines are substitutes. This view is strongly supported by Dr. Lincoln's empirical survey, discussed in Section III. B. 5. immediately below.

Taking an entirely different angle, Staff also implies that wireless and wireline are not substitutes (and, hence, are merely complements) because pervasive line substitution has not already occurred. *Tr.* 724 (*"if there is only three to five per cent of the people that have substituted, that tells me that [wireless] is not competitive"*). As a matter of fact and of law, this position does not withstand scrutiny. From a factual basis, Qwest has offered significant evidence in this case that actual line and usage substitution is occurring and increasing rapidly. See Section III. G. below. As a matter of law, the Legislature did not adopt a market share test or require a showing of pervasive substitution as a prerequisite for finding "effective competition." Instead the Legislature adopted section 62-602(2), which provides "effective

competition . . . will involve a significant number of customers having both service provider and service option choices . . .” (emphasis added).

Section 62-622(3) provides that the marketplace should regulate the incumbent’s rates once alternative local voice services (i.e., choice) exists throughout the local exchange area. The relationship between choice and constraint on prices was recognized by the Commission in its Burley decision.⁵ In that case the Commission concluded that competitive choice was available to only 30% of the customers in the Burley exchange and accordingly expressed the concern that “U S WEST could cover its competitive losses by raising its rates for those customers . . . who have no choice of service providers.”⁶ The Commission further noted that “the economic incentive to ignore those areas where no competition or regulation exists could also jeopardize the availability of high quality universal service at just and reasonable rates.”⁷ These observations underscore the purpose of the “effective competition” standard, i.e., to determine that sufficient competitive forces are in place to constrain the incumbent’s prices. Qwest will demonstrate in Section III. G. that where, as here, Qwest cannot isolate or identify those who are unlikely to exercise their choice (because of preference, specialized, non-voice uses of wirelines, or economic hardship) the power of the majority of customers to choose will constrain prices and protect all wirelines customers.

Meanwhile, to require as Staff would insist the Commission do, that Qwest show that it has already lost substantial market share to its wireless competitors is contrary to the statute. It represents one of Staff’s many attempts to ignore the intent and language of the legislature. Wireless and wireline services are substitutes (not complements) for local voice calling purposes under Staff’s witnesses’ own definitions. Staff cannot avoid this common sense conclusion by attempting to apply a market loss standard that is not present in statute.

4. Wireline customers in the seven exchanges perceive wireless to be a functionally equivalent substitute service.

At the evidentiary hearing, Commissioner Smith inquired whether customer perception or the reality of the wireless service offerings should control the Commission’s evaluation of the three criteria set forth in section 62-622(3)(b). *Tr.* 497-498. Commissioner Smith’s question is a

⁵ *In the Matter of the Application of U S WEST Communications, Inc. for Deregulation of Basic Local Exchange Service in its Burley, Idaho Exchange*, Case No. USW-T-99-15, Order No. 28369, (May 3, 2000).

⁶ *Id.* at 10.

⁷ *Id.*

very good one. Both Qwest and Staff answered that both are important to consider. Qwest's testimony and evidence in this proceeding supports Qwest's application from both perspectives.

From the standpoint of customer perceptions, Dr. Douglas Lincoln designed, implemented and testified about a statistically valid, highly conservative⁸ opinion survey conducted in the seven exchanges. That study, which tracked results both on an aggregated and disaggregated (exchange by exchange) basis,⁹ demonstrates that a large percentage of Qwest wireline customers in the seven exchanges could solely rely on wireless service for purposes of local voice communications. Dr. Lincoln's survey tracked the responses from two views, one taking the respondents' answers without analysis, and a second view adding those responses that reflected non-voice reasons to the "yes" group.¹⁰ Dr. Lincoln's findings are summarized in the following table.

Table A – Could you solely rely upon wireless service for local calling purposes?¹¹

	Residential		Small Business	
	Yes	Yes (when non-voice added)	Yes	Yes (when non-voice added)
Aggregate (all 7 exchanges)	50.0%	62.2%	30.7%	85.4%
Boise	48.2%	62.5%	29.6%	85.7%
Caldwell	62.1%	75.9%	29.2%	70.8%
Idaho Falls	48.1%	51.9%	29.2%	85.4%
Meridian	33.3%	48.5%	20.8%	100.0%
Nampa	50.0%	66.7%	20.0%	85.0%
Pocatello	61.4%	63.6%	40.0%	92.5%
Twin Falls	53.6%	71.4%	48.5%	75.8%

⁸ The data is conservative because it was gathered only from those who still maintained a Qwest wireline (Tr. 223) thereby likely understating the number of who recognized that wireless can be substituted for basic local exchange service. Tr. 229. In addition, the survey used a strict surrogate for substitutability by asking if customers could "solely rely on" wireless service for local calling.

⁹ It should be noted that Dr. Lincoln's survey was designed to produce statistically reliable results for the group of affected customers in the seven exchanges as a whole. As a result, were the Commission to rely completely on the results disaggregated by exchange, the confidence level of the accuracy of the results for the disaggregated areas would decrease. Tr. 329-330.

¹⁰ Non-voice reasons included data usage and concerns about directory listings.

¹¹ Exhibit 8 at 2-4; Exhibit 10 at 2-4; Exhibit 113.

Dr. Lincoln's findings indicate that a significant percentage of Qwest customers in each of the seven exchanges perceive that they could solely rely on cell phones for local voice calling. These findings were obtained despite the conservative nature of the survey design, which resulted in contacts being made only to Qwest wireline customers. *Tr.* 228-229.

These survey results are important because they demonstrate that large numbers of the actual customers who will be affected if Qwest's application is granted perceive that they have a viable alternative to Qwest's basic local exchange service in the form of wireless service.¹² This is not the opinion of an expert or of a policy-maker, it is the opinion of the consumers who will exercise the choice. In enacting section 62-622(3) the Legislature stated that its intent that "effective competition" "will involve a significant number of customers having both service provider and service option choices." *Idaho Code, §62-602(2)*. Dr. Lincoln's survey results demonstrate that the Legislative intent has been realized with the development of wireless competition in these seven exchanges.

Dr. Johnson would have the Commission believe that the survey results are "skewed upward" because the survey did not inquire whether customers are "willing to rely solely upon wireless service." *Tr.* 766 (*emphasis original*). But that is not the point as Dr. Johnson's testimony so aptly demonstrates: "I could get rid of my wireline service but I'm not willing – unless someone forces me to (e.g. by drastically raising the price)." *Tr.* 766-767. It is this possibility of customer reaction to significant price increases, not the actual loss of market share to competitors, that demonstrates competition is effective. Dr. Lincoln's survey demonstrates the price-constraining forces of competition are in play in the telecommunications market in the seven exchanges.

5. Staff offered no verifiable, empirical data to support its opposition to Qwest's application on the grounds of functional equivalence.

While Staff criticizes Dr. Lincoln's survey on various grounds, Staff did not avail itself of the opportunity to conduct its own survey to test whether Dr. Lincoln's findings were accurate or inaccurate. *Tr.* 798. Instead, Staff offered only its belief that wireless is not functionally equivalent to wireline basic local exchange services, without any statistically-meaningful or empirical data to support it. *Exhibit 57*. Staff testimony presented two highly-untrustworthy and

¹² This interpretation of the data is consistent with the fact that the Commission received relatively few written customer comments objecting to the deregulation of basic local exchange service (*Tr.* 102-103), and that even fewer customers chose to participate in the Commission-sponsored workshops on this topic. *Tr.* 516-521.

poorly-designed “studies” – Mr. Hart’s conversation with several young adults (including his stepson) and a nonscientific “test” of wireless service quality conducted by Mr. Hart on March 17, 2003. *Tr. 648-650*. As Dr. Lincoln explains in detail in his rebuttal testimony, Mr. Hart’s March 17, 2003 “test” is, from the perspective of statistics and study design, fraught with errors and flaws that render Mr. Hart’s findings meaningless. *Tr. 282-286*. Staff’s uncorroborated criticisms and speculation about customer perceptions should be given little weight in the face of the thorough empirical evidence of customer opinion offered in this proceeding by Qwest.

C. The assertions of Staff and Intervenors concerning extension phones, FAX machines, Internet access and the like are not factually accurate; nor do they justify denial of Qwest’s application.

Staff and the Intervenors oppose Qwest’s application claiming that wireless service is not functionally equivalent to (or, in some cases, not competitively priced with) Qwest’s wireline basic local exchange service because wireless customers cannot access the Internet (at least on a basis Staff considers cost-effective) (*Tr. 654*), cannot do so on a high speed basis comparable to DSL (*Id.*), cannot provide DSL itself (*Tr. 613*), cannot send or receive faxes (*Tr. 550*), cannot utilize extension phone capabilities (*Tr. 584*) and cannot replicate a hunting/rollover function (*Tr. 622*).

For the reasons stated above in Section III. A. and in the briefing and oral argument incorporated herein, it was not the intention of the Legislature that rate regulation be continued in order to control prices for these uses of wireline service once an effective competitive alternative for voice service arose. Nor are any of these uses and functions components of basic local exchange service. Indeed, several of the examples presented relate to use of a price-deregulated services (e.g., DSL, “rollover”) which the witness considered important and was not aware was already price deregulated. *See, e.g., Tr. 616*. The decision regarding the retention of rate regulation to protect customers’ use of those services was made by the Legislature fifteen years ago, and must not be overturned here by a misapplication of section 62-622(3). That said, Qwest has demonstrated that the rapid development of technology in the competitive wireless market means wireless customers have access, or will soon gain access, to these features and functionalities.

1. Staff and Intervenors underestimate the services that are available to wireless customers.

As Mr. Teitzel explained at length, a number of wireless products exist to permit access to the Internet and to electronic mail. Wireless Internet access is now available and current data transmission rates are comparable to dial-up wireline speeds. *Tr. 392*. Further, as to high speed access to the Internet, both wireless and other non-wireline options are available to customers. Even without any telephone, broadband access to the Internet is available through Cable One at virtually the same price as Qwest's DSL product. *Tr. 394, fn. 9*. Ironically, Intervenor witnesses Joel Sales (*Tr. 601*) and Sharon Herrick (*Tr. 584*) testified that they currently subscribe to broadband cable Internet access.

Undoubtedly the most repeated complaint raised by witnesses for the Intervenors was their belief that wireless phones cannot be used with extension phones. *See, e.g., Tr. 584* (“with 5 adults and this size of a home I absolutely have to have a land line with extension phones”). As Mr. Teitzel has explained, this is simply inaccurate. Mr. Teitzel presented evidence of two products, a Cell Socket available at The Wireless Store in Eagle and a comparable product found at Radio Shack, that enable consumers to obtain extension phone functionality in conjunction with their wireless phones. *Tr. 436-437; 447*.

Several of the witnesses for the Intervenors complained that wireless is not functionally equivalent because it does not offer hunting/rollover-type functions typically seen in small and large businesses, (*Tr. 549*) or because it does not operate facsimile machines. *Tr. 550*. Again, as Mr. Teitzel's testimony suggests this is not entirely accurate. Mr. Teitzel testified that wireless phones can be used to interface with facsimile machines. *Tr. 441; Exhibit 27*. Mr. Teitzel also testified about a product being introduced by a company called “Ascendant” that provides hunting/rollover service in a wireless PBX environment. *Tr. 437-439; Exhibit 25*. In addition Lucent also offers a PBX integration device for wireless phones. *Tr. 485*. While Qwest does not suggest that these products offer an immediate solution to every small business customer, they are examples of how “wireless service thrives in a deregulated environment, where demand drives technology.” *Tr. 438*.

Thus, in many cases Staff and Intervenors are simply wrong about the equipment and capabilities that are presently available for use with wireless services (e.g., Internet access, extension phones), while in other cases the record shows that the technology is being introduced that, when made available to a wider market, will provide complete solutions to all of the needs

identified by Intervenor (e.g., operation of facsimile machines and PBX systems).

Nevertheless, the argument that not every customer today has a wireless option to meet every application to which customers have adapted their wirelines does not justify denial of Qwest's application. The standard for effective competition does not require that every customer have a completely viable competitive choice. Staff agrees. *Tr. 726* (“I would agree that you don't have to have 100-percent universal competitive choices”).

2. Effective competition is present when prices are constrained by the market, not just when 100% of the customers have a viable choice.

Under section 62-622(3) Qwest is not, required to demonstrate that every customer in the seven exchanges has a choice that is so appealing that he or she has either already disconnected Qwest's wireline or is likely to select a competitive alternative in the immediately foreseeable future. Clearly if that were the standard for deregulation, pricing relief would likely only come after it was too late. Nevertheless the earnest protestations of Staff and Intervenor suggest that they believe that the identification of consumer preferences (e.g., keeping a telephone number or having a published directory listing without additional charge) or of wireline-related uses that are not basic local exchange service (e.g. DSL, “roll-over”) are central to analysis of whether there is effective competition. This is a fundamental misconception.

As Mr. Cusick testified in the *Burley* case, regulation is an imperfect substitute for competition, the purpose of which is “to protect consumers from companies that may take advantage of a monopoly position by charging excessive rates.”¹³ If customers have choices, Qwest is not a monopoly. Nor is Qwest a monopoly if it cannot charge “excessive” rates.

All evidence is that Qwest cannot exercise monopoly power if rate deregulation is granted. Mr. Shooshan testified that “any changes Qwest makes in its rates for basic local exchange service will have to take into account wireless competition and customers' ability to shift their calling to any one of several alternative providers.” *Tr. 168*. Qwest witness John Souba, noted, “the current competitive environment will not allow Qwest to charge ‘excessive’ rates for local exchange services without a significant risk of losing large numbers of customers to wireless providers.” *Tr. 61*. Dr. Lincoln's survey demonstrated that significant percentages of customers perceived they have competitive choice. Further, in Dr. Lincoln's expert opinion the survey's findings “should provide the Commission some measure of assurance with regard to

¹³ *Tr. 164, citing, Case No. USW-T-99-15. See also fn. 5.*

Staff's oft-repeated fear that a price-deregulated Qwest will significantly increase its prices and hold Idahoans captive." *Tr.* 270. In fact, Dr. Lincoln stated, that Qwest "would be making a serious marketing mistake by making any kind of significant price increase." *Tr.* 271. This advice was not lost on Qwest's President who stated, "I can't afford to lose the 30, 45, or 60 percent of our market" who would react to a sharp price increase. *Tr.* 540. "We've got to target our products and our pricing to make them attractive to that end of the market [that might switch], and those that might not otherwise change will get the benefit of the fact that we have two competing, competitive services." *Id.* This recognition that wireline prices are constrained by wireless competition is also supported by the analysts. The Heritage Foundation recently published a report that contained this observation:

And while only about 6.5 million Americans rely exclusively on their wireless phones, with no wireline subscription, some 18 percent now consider their wireless phones to be their primary phone line. Most important, even for those who do not currently rely on wireless, it serves as a vital check on the market power of wireline incumbents.¹⁴

That Qwest cannot exercise pricing freedom to extract "excessive" rates from those who cannot choose a competitive alternative is underscored by the undisputed fact that Qwest cannot isolate those customers who are using Qwest wirelines for non-voice purposes such as operation of a FAX machine, dial-up Internet access or a key system. *Tr.* 726. This means that Qwest cannot simply increase rates for that group of customers without increasing rates for all business or all residence customers, thereby, as Qwest witness Me. Souba put it, "driv[ing] away the very base of customers Qwest needs in order to survive." *Tr.* 99.

This phenomenon of price constraint created by that group of customers who are willing to switch to wireless will also serve to protect those customers for whom paying today's regulated rates is something of a hardship, as in the case to which Commissioner Hansen referred in the hearing. *Tr.* 492. In a deregulated environment, these customers will not only have choice between the various low cost wireless plans to which Mr. Teitzel refers in his testimony (*Tr.* 492-493), they will have the choice of remaining with Qwest wireline service at a price that is constrained by competition.¹⁵ In addition, Qwest will continue to make stand-alone dial tone

¹⁴ *Tr.* 396, *citing*, Heritage Foundation Reports, Local Telephone Competition: Unbundling the FCC's Rules, February 10, 2003. (emphasis added).

¹⁵ Qwest has also committed to the Commission that it will not raise rates until 2005, at the earliest. *Tr.* 525.

services (including an enhanced form of measured service¹⁶), and Idaho Telephone Assistance Plan discounted rates available to customers. *Tr.* 64.

Thus, wireless services – even if they are not an alternative for everyone – will constrain prices for wireline service, and that is what is meant by “effective competition.” In addition, Qwest’s commitments to the Commission and its customers will provide further protection to those who choose not to, or cannot, use competitive alternatives.

D. The record shows that wireless providers offer a competitively-priced alternative for each segment of Qwest wireline local voice communications service customers.

1. How to determine whether two services are competitively priced.

As with the terms “functionally equivalent” and “reasonably available,” the Legislature did not offer a specific test for determining whether an alternative service is “competitively priced” with wireline basic local exchange service. Mr. Hart conceded that to be competitively priced two services need not have the identical price but merely be “similar enough that a customer can choose either one without significant difference in economic cost.” *Tr.* 674-675. Mr. Hart also conceded that what constitutes a “significant difference” in cost is a matter of customer perception to some extent. *Tr.* 675.

Commissioner Smith inquired of several witnesses during the evidentiary hearing how the Commission is to apply this prong of the statutory analysis, and, more specifically, whether consumer perceptions or actual data regarding pricing plans should guide the Commission’s evaluation. *See, e.g., Tr.* 502-503; *Tr.* 811-812. Qwest believes that both perception and reality play an important role in evaluating whether wireless alternatives are competitively priced. Qwest has provided the Commission abundant, methodologically-sound data demonstrating that, both as a matter of perception and reality, wireless providers are offering competitively-priced alternatives to Qwest’s basic local exchange customers throughout the seven exchanges.

As Dr. Lincoln explains in his testimony,¹⁷ whether two services or products are competitively priced requires application of the concept of the value proposition.¹⁸ The value proposition focuses on customer value, which is a key concept used today in the marketing

¹⁶ Qwest has offered to increase by one-third the block of time included in the monthly price of residence measured service. *Tr.* 526.

¹⁷ It is important to note that Staff, while disagreeing with Dr. Lincoln’s application of the “value proposition” concept, does not disagree with the applicability of the value proposition as a concept for evaluating competitive pricing. *See Exhibit 65.*

¹⁸ The value proposition is graphically illustrated in Exhibit 4.

profession to assess the degree to which multiple offerings are competitively priced. *Tr. 213*. Customers assess the value of any one offering by thinking about what they receive in return (i.e., the benefit) for what they are expected to pay for that offering. *Id.* If two products are perceived to have equal benefits, customers will choose the lower cost offering. *Id.* If two products have equal costs, customers will choose the offering they perceive to provide greater benefits. *Tr. 214*. It is important to note that “competitively priced” does not mean lower priced, as Dr. Johnson suggested.¹⁹ In many cases, given the value offered by the alternative service, customers may well be willing to spend a bit more for the alternative (still considering the two to be competitively priced) if the alternative service offers more value. *Tr. 215-217*.

Qwest urges the Commission, while incorporating the value proposition as the correct measure of competitive pricing, to keep in mind that the bottom line of the statute is whether customers have a viable, similarly-priced alternative? If so, Qwest, realizing its competitors will deplete its customer base if it significantly raises prices (*Tr. 61*), will not do so. The existence of this type of price constraint is at the heart of section 62-622(3).

2. Consumers in the seven exchanges think that wireless is competitively priced.

Dr. Lincoln’s survey conclusively shows that consumers in the seven exchanges perceive wireless service to be competitively priced. Of the 315 residential respondents having a definite opinion as to how cell phone service is priced compared with wireline service (i.e., excluding the “unsures”), 55.6% believe that it is “about the same” or “less than” wireline phone service. *See, Exhibit 8 at 5*. Of the 307 small business respondents with definite opinions on the same question, 55.0% think wireless is priced the same as or less than wireline phone service. *See, Exhibit 10 at 5*.

Dr. Lincoln’s results can be viewed on an exchange-specific basis as well.²⁰ The following table summarizes Dr. Lincoln’s exchange-specific findings with regard to the pricing perceptions of those with a definite opinion in each exchange.

¹⁹ In response to a question posed by Commissioner Smith, Dr. Johnson stated that a service might be competitively priced if 97% of all consumers had a wireless option that would save them money. *Tr. 812*.

²⁰ See fn. 9.

Table B – Do you think the monthly price of using cell phone service is about the same, more than, or less than the price of using traditional phone services?²¹

	Residential		Small Business	
	Same or Less	More	Same or Less	More
Aggregate (all 7 exchanges)	55.6%	44.4%	55.0%	45.0%
Boise	53.0%	47.0%	58.3%	41.7%
Caldwell	54.2%	45.8%	50.0%	50.0%
Idaho Falls	56.1%	53.9%	36.4%	63.6%
Meridian	40.7%	59.3%	39.1%	60.9%
Nampa	70.6%	29.4%	61.5%	38.5%
Pocatello	51.4%	48.6%	63.6%	36.4%
Twin Falls	75.0%	25.0%	60.7%	39.3%

It is clear that customers of each of the seven exchanges think that wireless service is competitively priced with Qwest’s wireline basic local exchange service. Dr. Lincoln’s findings also point to one other very important fact: with experience using wireless phones, consumer perception that wireless service is competitively priced grows. *Tr. 238.*

3. In reality, competitively priced wireless packages are available in each exchange for each segment of the residential and small business markets.

Everyone agrees that comparing wireless prices to Qwest’s Commission-ordered rate structure is difficult because of the numerous variables presented by the competitive market pricing for wireless. *See, e.g., Tr. 779 (“these services typically have different pricing structures which makes it difficult to make an ‘apples to apples’ comparison between particular wireline services and particular wireless offerings”).* Nevertheless Staff attempted to do so in Mr. Hart’s Exhibit 101. Thereafter in its rebuttal, Qwest filed a competing spreadsheet, in the form of Mr. Teitzel’s Exhibit 19, to address some of the mistakes made by Staff in an effort to provide a more reliable comparison.²² Staff attempted to depict price differentials from the view of three

²¹ *Exhibit 8 at 5; Exhibit 10 at 5; Exhibit 113.*

²² Following the submission of Mr. Teitzel’s rebuttal exhibits, Mr. Hart filed a “revised” version of his testimony and Exhibit 101, in which he corrected some of the errors pointed out by Qwest. This revised testimony

different customer segments (the low, average and high usage customer) in both the residential and small business context. For ease of comparison Qwest's Exhibit 19 followed the same structure. However, Staff's Exhibit 101 is significantly flawed in its underlying assumptions and methodology. In contrast, Qwest's Exhibit 19 presents a methodologically sound comparison.

a. *Exhibit 101, even as revised, is too flawed to be relied upon.*

Through its rebuttal testimony and cross examination of Mr. Hart, Qwest was able to highlight a series of methodological and other flaws plaguing Exhibit 101. First, Mr. Hart admittedly did not attempt to back out data usage despite the fact that the focus of sections 62-622(3) and 62-603(1) is on local voice service. *Tr. 682*. The result of Mr. Hart's inclusion of dial-up data usage is to increase the projections as to how many minutes low, average and high usage consumers need in their wireless plans, and therefore to increase the price differential between the products. *Tr. 683*.

Second, even assuming *arguendo* that the Commission agrees with Staff that data usage should be considered in this case, Mr. Hart's methodology in projecting total minutes of use still artificially inflated the minutes of use and, hence, the difference in prices. Staff relied upon Qwest's SLUS (subscriber line usage study) data, which tracks only originating local phone usage. Staff used the 2002 SLUS hold time data (which includes significant dial-up Internet usage),²³ while Qwest isolated for voice calling by using 1996 hold times. *Tr. 408*. Staff then doubled the number of 2002 outgoing minutes it deemed relevant for each customer segment. *Tr. 689*. This is a defect in Staff's analysis because dial-up Internet access represents outgoing traffic only. *Tr. 692*. Since Internet service providers do not call customers, Staff's estimates are artificially high. *Id.* Mr. Hart acknowledged this error during cross-examination. *Tr. 693*.

Third, in segregating peak from off-peak periods (to determine the size of the wireless calling plan needed), Staff erred by calculating the typical peak period as running from 6 am to 9 pm, Monday through Friday, but originally described that it had selected 7 am to 9 pm since it was the typical peak period used by wireless carriers. After the first day of evidentiary hearings, Mr. Teitzel pointed out Staff's error to Mr. Hart, who then revised his opinion, claiming 6 am to 9 pm is the most common peak period. *Tr. 687*. Again, the result of Mr. Hart's error is to

and exhibit reflect a "big change in the numbers" and a reduction in the differentials between wireless and wireline prices. *Tr. 677-678*.

²³ Qwest's average flat residential hold time increased by over 100% between 1996 and 2002, driven by an ever increasing level of Internet usage. *Tr. 404*. Lincoln rebuttal; Hart testimony explaining use of 2002 hold times.

artificially increase the average minutes of use needed for each customer segment and thereby exaggerate the differences in wireless/wireline prices.

Overstatements of the amount of peak time usage consumed by customers pervaded Exhibit 101. “Average hold time,” is a key part of the calculation of the length of time customers actually spend on the phone. *Tr. 696*. Mr. Hart admitted he used the median number of calls, rather than the average number of calls, to make the calculation that purported to be the average length of calls. *Tr. 698*. During cross examination, Qwest established that this unique approach to the calculation yielded an “average hold time” for flat rated business customers of 6 minutes, while simply dividing total time by total calls produced a true average of 2.90 minutes. *Tr. 698-702; Exhibits 38, 39, & 40*. Mr. Hart admitted that his “assumption” increased the price differentials between wireless and wireline services depicted on Exhibit 101. *Tr. 705*.

Mr. Hart also made the assumption that calling features included in many wireless plans do not add to the plans’ value compared with featureless wireline service. *Exhibit 101; Tr. 400*. Nevertheless, the majority of Qwest residential and business wireline customers subscribe to at least one feature. *Tr. 410, fn. 18*. Mr. Teitzel’s Exhibits 19 and 20 present the estimated price differentials both assuming no additional wireline features and assuming state average feature usage. *Exhibits 19 & 20*. Again, Staff’s exclusion of this consideration tends to artificially increase the actual price differentials customers would face assuming they migrated from Qwest wireline to wireless service for local voice calling purposes.

In another important omission, Staff admittedly failed to apply taxes and surcharges applicable to both wireline and wireless service in calculating the price differentials shown in Exhibit 101. *Exhibit 101; Tr. 400*. As several of the Intervenor witnesses point out, taxes and surcharges on wireline service significantly exceed those imposed on wireless service providers. *See, e.g., Tr. 586 (“these charges are unfairly influencing the difference in price”)*. Because wireline taxes and surcharges are larger both in real dollars and as a percentage of revenues, Staff’s exclusion of this information again tends to artificially distort the pricing differentials between wireline and wireless services.

Finally, Staff’s use of static blocks of minutes for each carrier – irrespective of how each carrier packages its service – is a methodological flaw that inflates the price differentials. As Mr. Teitzel’s Exhibit 20 explains on a carrier-specific basis, each wireless carrier has its own manner of packaging plan minutes. Some include unlimited or virtually unlimited evening, night and

weekend minutes, while still others charge only for outgoing minutes. Also, each carrier uses its own definition of peak and off peak hours in shaping its price plan. *Tr. 398-399; Exhibit 20.* Staff ignores these differences. Exhibit 101 offers a one-size-fits-all approach, treating all incoming and outgoing minutes between 6 am and 9 pm, Monday through Friday, as peak minutes, regardless of how each carrier's plans are actually structured. *Tr. 398-399.* Again, the impact of this overly-simplified methodology is to capture too many minutes when estimating low, average and high usage, which leads to a perception that "average" customers require wireless plans that include more minutes, and that are more expensive, than necessary to replicate wireline usage. Taking a more accurate, carrier-specific approach, Mr. Teitzel derived the appropriate wireless plan to use for comparison by taking into consideration each carrier's and each plan's parameters. *Exhibits 19-21.*

Mr. Hart's analysis on Exhibit 102, which purport to demonstrate that "the average customer does not spend enough on long distance to make up the difference" (*Tr. 643*), is equally flawed. Among other errors made in the preparation of this document, Mr. Hart assumed all long distance calls were made during peak hours. *Tr. 713.* This is an improper assumption in light of the fact that many wireless carriers offer unlimited toll calling during off peak hours. *See, Exhibit 22.* Furthermore, Mr. Hart assumed for purposes of his analysis that customers paid only 15 cents for intrastate long distance calls, (*Tr. 708*) when the confidential discovery responses provided by Qwest indicates that business and residence customers pay substantially more per minute on average. *Exhibit 42; Tr. 709-711.* Thus, Mr. Hart's assumptions about toll prices paid by "average" customers did not represent actual customer behavior but did serve, once again, to increase the difference in prices depicted on his exhibits.

b. Exhibit 19 demonstrates that competitively-priced wireless plans exist for each segment of residential and small business wireline customer.

As Dr. Lincoln explains, there is no objectively-identifiable threshold for determining whether two services will be perceived as being competitively priced by consumers in general. While Qwest certainly agrees with Dr. Lincoln's assertion, Mr. Teitzel's Exhibit 19 highlights each carrier that offers a wireless package for a given customer segment that is priced \$10.00 or

less²⁴ than the comparable wireline service, or that is priced less than the comparable wireline service. For each customer segment, both in the residential and small business markets, a minimum of three carriers offer similarly-priced packages. *Exhibit 19*.

During the cross examination of Mr. Teitzel, Commissioner Smith asked Mr. Teitzel whether customers have a realistic assessment of their level of usage. *Tr. 503*. Mr. Teitzel responded that customers do their best to evaluate their own usage when initially selecting a plan, and then adjust if and when they discover that they have significantly over- or underestimated their actual usage levels. *Tr. 503*. Given this reality and the abundance of competitively-priced offerings available in each exchange for each customer segment (*See, Exhibit 22*), it is clear that the Commission should find wireless services to be competitively priced with wireline basic local exchange services for purposes of meeting customers' local voice communications needs.

4. Staff's extreme position regarding what constitutes competitive pricing defies common sense and assumes Idaho customers are too unsophisticated to make logical pricing decisions.

While Staff never provides the Commission with a specific, objective measure of what constitutes "competitively priced," the guidance it does provide the Commission borders on the extreme. For instance, Mr. Hart asserts in his direct testimony that a \$3.50 differential (notwithstanding the additional value wireless customers receive in terms of mobility, added safety, free long distance, etc.) is too great to be considered competitively-priced. *Tr. 639*.

Dr. Johnson offers two approaches to answering the question. First, the Commission should evaluate whether the evidence shows that 97% of customers have a wireless option that would save money. *Tr. 812*. If not, the Commission should evaluate whether patterns of pricing have "emerged over time" that suggest the incumbent's prices are already being driven by competition. *Id.*

Dr. Johnson's 97% standard is ridiculous, both in terms of the percentage threshold and in terms of the fact that it requires a Commission finding that wireless options are actually less expensive for this overwhelming majority. As to the second proposal, it requires that Qwest's prices already be deregulated, as Commissioner Smith suggested. *Tr. 814*. Despite Dr.

²⁴ Qwest uses this \$10.00 differential for illustrative purposes only to suggest that several wireless plans in each usage group are priced in a manner that many customers could find competitive with their wireline rate, particularly where they are now paying for both wireless and wireline services.

Johnson's protestation that "there's much opportunity for Qwest to act as if it were subjected to competitive pressure under the current environment" (*Tr. 814*), basic local exchange lines are regulated. Qwest has discounted its custom calling features and toll prices in packaged offerings designed to compete with competition.²⁵ Further more, it would be grossly unfair to conclude that Qwest's prices in deregulated markets have not been driven by competition. The fact is, no record evidence concerning how Qwest has used its Title 62 pricing freedoms has been developed in this case, because Dr. Johnson's "standard" was not offered until he was responding live to questions at the hearing. In particular, since Qwest is not required to submit retail Title 62 contracts to the Commission for review, the Commission is in no position to adequately assess how Qwest has used pricing freedoms in a competitive market.

In summary, Staff has made no real attempt to identify a threshold or even a range to aid the Commission in evaluating whether wireless and wireline services are competitively priced. Mr. Hart's fatally flawed exhibits and Dr. Johnson's unrealistic approaches leave the Commission without meaningful guidance from Staff, except for Mr. Hart's insistence that "the market is . . . the best evidence, we've got." *Tr. 724*. Qwest agrees. And, as the section immediately below demonstrates, Idaho customers find wireless pricing competitive.

5. Idaho customers are currently willing to pay for wireline, wireless and cable services simultaneously.

The Commission's evaluation of whether wireless service is competitively priced with wireline basic local exchange service should be informed by the fact that, today, customers are willing to pay for wireless service, even though, if Staff's analysis is to be believed, it offers limited utility. Indeed, several of the witnesses for the Intervenors confirmed that they personally pay for a wireline home phone, one or more cell phones and, in some cases, cable broadband Internet access. *See, e.g., Tr. 570; 584; 601*. This fact should give the Commission comfort. If consumers do not feel that it is cost-prohibitive to pay for wireline, wireless and cable broadband services simultaneously, it is very unlikely that they would feel uncomfortable about migrating to wireless for local voice calling if Qwest were to significantly raise its basic local exchange rates. There is no reason to believe that customers are not able to access the relative benefits and costs associated with a particular wireless plan as compared with Qwest wireline service.

²⁵

Note that Qwest's competitors are not required to offer any of their services on an "ala carte" basis.

E. There is no dispute that wireless services are reasonably available throughout the local calling area.

There is no dispute that wireless services are “reasonably available” to both residential and small business customers throughout the seven exchanges. *Tr. 357; 657*. Indeed customers have at least six separate wireless providers from which to choose in each exchange. *Tr. 357*. The scope of the service area offered by each competing wireless carrier is depicted on Qwest’s Exhibit 12.

While Staff attempts to raise concerns about a few pockets of poor wireless reception, it has done nothing to locate any such “pockets” or to quantify the number of customers who might be affected. In fact, no witness has challenged the incontrovertible fact that wireless service is available from numerous carriers in nearly every location within the seven exchanges. *Tr. 177*.

F. Qwest’s evidence demonstrates that the statute’s requirements for deregulation have been met for each of the seven exchanges.

Although Staff did not raise the issue in prefiled testimony, at hearing Mr. Hart stated, “one of the weaknesses of Qwest’s case [is that] they have not done an exchange-by-exchange analysis as is required by the Code.” *Tr. 736*. This is a mischaracterization of Qwest’s case. Qwest provided an “exchange-by-exchange” analysis of the only feature of the evidence that varied by exchange, i.e., the availability of the service from specific wireless providers in each exchange. *See, Exhibits 12; 13*.

On the other hand, simply because the same facts apply in more than one exchange does not mean that Qwest has failed to offer sufficient exchange-specific evidence to support its case for each exchange. Whether wireless service is “functionally equivalent” to basic local exchange service is not a function of geography. The requirements of the statute and the characteristics of wireless and wireline service do not vary by exchange.

Similarly whether wireless service is “competitively priced” with Qwest’s basic local exchange service does not require a separate analysis for each exchange since all of the seven exchanges are in the same rate group for purposes of Qwest’s basic local exchange service rates. *Qwest southern Idaho Basic Local Exchange Tariff, Section 5.1.2*. Likewise the rates offered by the wireless carriers do not vary by exchange, although when certain providers used for the price comparisons do not offer service within a particular exchange, Qwest noted that fact. *See, Exhibits 19; 20*.

The only evidence offered by Qwest that was presented on an aggregated basis were the results of Dr. Lincoln's survey. Dr. Lincoln provided the Commission with findings concerning the opinions of the Idaho customers who would be affected by Qwest's application, if granted, which findings had a margin of error no greater than 5% at the 95% confidence level. *Tr. 230*. Obviously, had Dr. Lincoln been required to design a study with the same narrow margin of error and the same confidence level for each exchange, he would have had to conduct separate studies for each exchange. It is doubtful, however, that this would have been worthwhile since a critic could always suggest that the results for the population as a whole do not reflect the attitudes in particular neighborhoods etc. On the other hand, no one has offered a plausible explanation as to why the attitudes on something as ubiquitous as wireline and wireless telephones would differ significantly from exchange to exchange.

This is not to say that Dr. Lincoln's survey results cannot be disaggregated. Dr. Lincoln provided that information in two data responses that were combined to create Staff's Exhibit 113. As Dr. Lincoln explained, focusing on the specific exchange results, as opposed to the overall results, affects the margin of error for the individual exchanges (making it greater than 5%). *Tr. 330*. However, if one looks at the disaggregated results presented in Exhibit 113 for the critical substitution and pricing questions, it can be observed that, with few exceptions, the individual exchange results were similar to the overall survey results. *See, e.g., Exhibit 113, p. 3 (household could solely rely on wireless service)*.

G. Substantial evidence supports the conclusion that wireless substitution amounts to a national trend, and the FCC has recognized wireless services provide competition to incumbent local service providers.

In presenting its case Staff has apparently chosen to ignore the fact that wireless competition for local services as experienced by Qwest in Idaho is part of a national trend. While such tactics are convenient, they are unreasonable in light of the fact that Staff relies on information external to Idaho when it appears to support its position even if it is only anecdotal²⁶. Further, Staff makes no attempt to provide evidence that Idaho differs from the national data with respect to adaptation to wireless services.

²⁶

For example, Mr. Hart testified there are times that customers "incur[] roaming or long distance charges" even when calling from home. *Tr. 645*. Staff responses in discovery revealed that the source for this allegation was an article from USA Today describing the experience of a Texas customer. *Tr. 421*. The article indicated that wireless providers had addressed this issue. *Id.*

1. Wireless providers are making a nation-wide effort to attract local customers through advertising.

A number of wireless providers are advertising their service as a substitute for wireline phone service. *See, Exhibit 15.* AT&T Wireless, has asserted, “this could be your only phone,” while Leap Wireless’ Cricket product is billed as an “affordable wireless alternative to traditional landline phone service,” and Nextel asks, “who says your cell phone can’t do it all?” *Tr. 156.* Leap has been sufficiently successful with this approach that it reported that 26% of its customers have disconnected their wireline phones. *Id.* Clear Talk advertises its offering as “the Mobile Local Phone” that “includes all your local calls.” *Tr. 195.*

More colorfully, AT&T Wireless secured some of the notoriously expensive air time during the last Superbowl, to run an advertisement parodying an Antiques Roadshow episode on which a baffled collector seeks an opinion as to the purpose and value of a push-button telephone with attached wire. As the “appraiser” advises the phone has no value, the announcer states, “when your wireless phone can be your only phone, that’s M-Life from AT&T wireless.” *Tr. 293.* Meanwhile Cricket’s advertisements depicting wireline phones going over a cliff, inquire “why pay for both? Cricket — it could be your only phone.” *Tr. 294.*

These and similar advertisements make customers ever more aware that wireless offers a complete alternative to their wireline service. They also demonstrate a concerted effort by wireless providers to attract local wireline customers, an effort they would be unlikely to undertake if they believed their services were not competitive. *See also, Exhibit 16 (containing advertisements published in Idaho).*

2. Numerous articles and studies reflect the national trend toward wireless substitution.

Qwest has offered substantial evidence that the national trend toward wireless substitution has been documented in news reports and in scientific study. This evidence was offered through the testimonies of Mssrs. Teitzel and Shooshan. The information cited ranges from the description of individual customer experiences with substitution, (*See, e.g., Tr. 157, citing, Simon Romero, “When the Cellphone is the Home Phone,” from The New York Times*) to comprehensive empirical studies such as that conducted by CIT-PriMetrica and Ernst & Young, which concluded, “nearly 50 percent of U S households would be prepared to switch from a wireline service to a family wireless option with 600 shared base minutes offered at \$50 per month.” *Tr. 414.* All of this information was provided to Staff in discovery, yet none prompted

questions from Staff at the hearing, or found its way into Staff's presentation of the issues. Looking at this case from Staff's perspective could leave one with the erroneous impression that the questions presented in this case are unique, or that Qwest's advocacy is presented in this state because of some peculiarity of Idaho law. In fact, Staff's approach ignores a national context that is highly illuminating.

For example, the *New York Times* article, "When the Cellphone is the Home Phone," points out that among the reasons consumers cite for substituting is cost, i.e., that if consumers are paying for both wireline and wireless service, they may find using the wireless phone actually saves them money. *Tr.* 385. This observation is overlooked in Staff's discussion of "competitive pricing." Supporting the notion that wireless services present a viable substitute for wireline phone is a Heritage Foundation Report which cites, their "price and functionality." *Tr.* 396. Similarly, INSIGHT Research Corporation published a report in January of this year stating:

Wireless service has become the primary means of connectivity to the network for many subscribers. In the U S, falling prices have prompted some subscribers to use their mobile phones as their primary phones, especially when LD (long distance) services are bundled as part of the package.

* * *

A recent USA Today/CNN/Gallup poll found that about 18 percent of U S users regard their cell phone as their primary phones. INSIGHT expects the wireline/wireless replacement trend to continue.

Tr. 397.

This concept that the inclusion of long distance usage in wireless packages is stimulating wireless substitution is supported by other industry research.²⁷ Nonetheless Staff, without conducting any such research of its own, attempts to persuade the Commission that this aspect of wireless packaging is not significant because, "the average customer does not spend enough on long distance to make up the difference." *Tr.* 643. Once again, Staff misses the point, as Taher Bouzayen, an analyst with the communications strategy, consulting, and research firm Atlantic-ACM, notes because wireless plans offer free nights and weekends, per-minute costs are lowered, which drives wireless displacement of wireline services. *Tr.* 416.

²⁷ See, e.g., *Tr.* 416 citing, International Data Corporation Study #29018, "Wireless Displacement of Wireline Access Lines Forecast and Analysis" (October, 2002).

This displacement could significantly impact wireline companies. The Yankee Group anticipates mobile services will “severely cannibalize’ wireline minutes of use (*Tr. 160*), while pulver.com, a firm specializing in research on the Internet and Internet-protocol communications, produced a study estimating that up to 50% of residential lines may be subject to wireless conversion by 2010. *Tr. 160*.

3. The FCC has recognized that there is growing evidence of wireless substitution and that wireless services represent competition for incumbent local exchange service providers.

The FCC has been examining the increasing substitution of wireless for wireline service. While noting studies that estimate that between 3% and 5% of wireless subscribers have disconnected, the FCC has recognized there is “growing evidence that consumers are substituting wireless service for traditional wireline communications.”²⁸ In the same report the FCC noted estimates that 20% of residential customers have replaced “some” wireline usage with wireless, while 11% have replaced a “significant percentage.” *Tr. 160*.

In addition, the FCC recently granted petitions filed by Qwest and SBC Communications seeking relief under section 271 of the Telecommunications Act of 1996 to provide interLATA services in New Mexico and Nevada, respectively. In both cases the incumbents relied on the existence of wireless competition for its showing under the “Track A” requirement that it is providing access and interconnection to its network to unaffiliated competing providers of telephone exchange service. *Tr. 191*. In the New Mexico case, the FCC found that wireless service “is a commercial alternative to Qwest customers” and noted that it “had recognized in other contexts increased substitution between wireless mobile telephone and local telephone service.”²⁹

The foregoing demonstrates that Staff’s position that wireless is not being substituted for wireline service can be taken only by ignoring substantial reported evidence of the phenomenon, as well as the FCC’s pronouncements on this subject.

²⁸ *Tr. 159, citing, In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services* (rel. July 3, 2002), FCC 02-179, at 32 (7th CMRS Report).

²⁹ *Tr. 191-192, citing, In the Matter of Application by Qwest Communications International, Inc., for Authorization to Provide In-Region, InterLATA Services in New Mexico, Oregon, and South Dakota*, WC Docket No. 03-11, Order, ¶¶ 18; 20; fn. 53, (rel. April 15, 2003).

H. Granting Qwest's application is consistent with the public interest.

1. The public interest is served by implementing the Legislature's intent.

When the Idaho Legislature enacted the Telecommunications Act of 1988, it expressed its intent to “encourage innovation within the industry by a balanced program of regulation and competition.” *Idaho Code* § 62-602(1). That balance was achieved through the elimination of price regulation for every service and every wireline use except “basic local exchange service,” i.e., “two-way interactive switched voice communication within a local calling area.” *Idaho Code* §§ 62-603(1); 62-604-62-605. Thereafter, in 1997, the Legislature re-struck the balance, stating its intent that Idaho telecommunications become entirely price deregulated once effective competition develops for basic local exchange service. The foregoing has demonstrated Qwest's compliance with the effective competition standard set out in statute. In addition, this Commission can take notice of its own efforts, and those of the FCC, in assuring that Qwest's local exchange markets are fully open to competition through the 271 process.

As Mr. Shooshan stated, it becomes imperative that price regulation be withdrawn to encourage efficient competition and to establish a level regulatory playing field for all providers as markets are opened to competition. *Tr.* 162. Failure to equalize the treatment of competing firms once effective competition is present can have the effect of distorting the market and denying consumers the full benefits of competition. *Tr.* 165. Unequal regulatory treatment can also undermine incentives to invest in new infrastructure and deploy new services and capabilities. *Id.* These negative impacts of maintaining rate regulation once effective competition develops are contrary to the express intent of the Legislature to “encourage innovation” within the industry. The public interest is not served by retaining price regulation after competition has developed.

2. Staff's public interest concerns are not well-founded.

Staff raises a number of concerns under the guise of addressing the public interest that, when reviewed with the perspective of the statutory plan laid out by the Legislature, do not withstand scrutiny.

- a. *The fact that Qwest could raise rates cannot be a basis for denial of the application under the guise of the public interest.*

Staff's most urgent concern appears to be that if Qwest were granted pricing freedom, it could increase prices. Following Staff's logic, pricing freedom under section 62-622(3) can be

granted only if the Commission finds that the incumbent can not raise rates. This interpretation of the statute is hopelessly flawed on a number of grounds.

First, it imposes an impossible burden of proof on Qwest, which cannot prove where prices will go in the future under competitive pressure. Qwest's witnesses have stated that the competitive pressure from wireless carriers makes price increases problematic if Qwest does not wish to lose substantial numbers of customers (*Tr. 271; 540*), but Staff ignores these opinions in favor of its unsupported claim that Qwest could raise prices, contrary to its self interest. Qwest has attempted, through the testimony of Idaho President James Schmit, to provide assurance to the Commission that it will not raise prices through year end 2004. *Tr. 525*. But Staff rejected this effort. *Tr. 734* ("18 months is an awfully short time frame"). Thus, Staff argues, Qwest's application must be denied because it is unable to definitely prove what the future will bring.

Staff's position is also illogical because it essentially leaves section 62-622(3) without purpose or meaning. Had the Legislature intended that the only pricing freedom an incumbent will be permitted is the freedom to lower prices, it would not have enacted section 62-622(3); it would have simply rested on section 62-622(1), the so-called "maximum rates" section. In enacting the section upon which Qwest relies in this case, the Legislature explicitly eliminated rate regulation, which means that the Legislature was content to let the market control prices. There is no reason to believe that the Legislature held the completely unsupported misconception apparently embraced by Staff, that in competitive markets prices only go down.

Staff's position that the possibility of price increases trumps section 62-622(3) is even more untenable when considered together with its argument that Qwest should have filed its application under the "maximum rates" section. *Idaho Code § 62-622(1)*. This section, according to Staff at least,³⁰ provides the incumbent with all of the freedoms it needs to meet any competitive threat *except* the ability to increase rates. *Tr. 667*. However, if Staff is right about that, then the only purpose the Legislature could have intended in enacting section 62-622(3) was to grant incumbents the ability to raise, as well as lower, rates. That being the Legislature's intent, it cannot be contrary to public policy for the Commission to implement it.

³⁰ Qwest does not necessarily agree with Staff that the "maximum rate" statute, section 62-622(1) provides freedom from rate regulation. *See, Tr. 89*. Certainly this proposition has not been tested and has not been ruled on by either the Commission or an Idaho court.

- b. *Staff's concern that if its application is granted Qwest could raise the rates in the remaining exchanges demonstrates Staff's disagreement with the purposes of the statute and the transition to competition.*

Another of Staff's public policy concerns is that if Qwest's application is granted, Qwest may file a rate case to raise rates in the exchanges that remain under Title 61 regulation. It is ironic that Staff would seek to block the progress of competition in the seven exchanges because of the possible operation of rate regulation in the remaining exchanges. Once again Staff's position is at odds with the obvious intent of the Legislature in enacting section 62-622(3).

In enacting the statute that is the subject of this case, the Legislature demonstrated that competition would not necessarily develop in all exchanges at an equal rate. Rather than delay the benefits of a competitive market to those exchanges in which competition became effective, the Legislature drafted section 62-622(3) to permit an incumbent to seek pricing freedom on an exchange basis. Since the statute was enacted in 1997 there is no reason to believe that the Legislature did not understand that urban exchanges were more likely to experience effective competition before rural exchanges. Nor is there reason to believe that the Legislature or anyone else, would be surprised by the possibility that costs of provision of service could be higher in rural exchanges.

Staff's concern is that if section 62-622(3) operates as it should to remove rate regulation in exchanges with effective competition, and if rate regulation operates as it should to provide rates that are just and reasonable based on the costs of provision in the remaining exchanges,³¹ rural customers may pay more than customers who reside in competitive markets. In this respect Staff's quarrel is not with Qwest, it is with the Legislature and with the policy decision that various forms of internal support or subsidy must be eliminated in favor of cost-based rates and explicit support mechanisms. *See, Idaho Code §§ 62-610A-610F; 62-623.* Indeed in discovery, Staff admitted "the residence 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. *Exhibit 48.* Staff further stated that until a high cost fund for companies like Qwest is implemented, "it is

³¹ By saying this Qwest does not intend to suggest that it will seek a rate change in the remaining exchanges. The effort, expense and uncertainty of rate cases always make them a difficult choice. It is equally, if not more plausible that Qwest will attempt to seek regulatory freedom for the remaining exchanges as the case for effective competition develops.

appropriate that such support remain in the rates.” *Id.* Staff’s position, therefore, amounts to a claim that Qwest cannot receive price deregulation under section 62-622(3) (or, logically, under section 62-622(1) for that matter) until the Commission provides explicit subsidy to Qwest’s rural rates. Again Staff seeks to impose requirements for the achievement of price deregulation not contained in statute.

Moreover, this “public policy” concern of Staff is not a legitimate reason to deny Qwest’s application. Even if rate increases are ultimately ordered by the Commission, it does not follow that such increases are contrary to public policy if not offset by subsidy since the Commission has previously ordered rates for business and residence customers residing in rural exchanges served by independent telephone corporations that are well in excess of the averaged rates now paid by Qwest’s customers. Qwest is not aware that such rates caused substantial hardship or impacted universal service in those exchanges.

c. Staff’s suggestion that granting Qwest’s application could impede the development of competition is patently absurd.

In a “last ditch” effort to come up with reasons why Qwest’s application is contrary to the public interest, Staff suggested that Qwest could “*prevent competition from ever developing.*” *Tr.* 733. Naturally Staff did not elaborate as to how Qwest’s price deregulation could drive out wireless providers. In fact, any suggestion that Qwest could reduce prices to try to lure wireless customers back to Qwest would not only appear to benefit the public interest, but it would be contrary both to Staff’s theory that wireless and wireline services are merely complements and to the stubbornly held notion that all Qwest wants to do is raise rates.

Instead, Staff appeared to be focusing on the development of competition from competitors who are not wireless providers. *Tr.* 742. In doing so Staff even went so far as to suggest that the Commission’s findings that Qwest’s market was fully open to competition in the 271 process was “a past tense”. *Id.* This statement says more about the zeal of the Staff to oppose Qwest’s application than about the state of the market. Mr. Hart conceded that he did not know how deregulation of retail prices might affect competitors purchasing UNEs (*Id.*) or whether or not retail price increases might create price competition. *Id.* More significantly, perhaps, Staff did not recognize that Qwest’s Performance Assurance Plan (QPAP) was

specifically adopted by the Commission to prevent backsliding from the open-market status that justified the FCC's grant of interLATA relief to Qwest for Idaho.³²

3. Granting Qwest's application is consistent with the public interest.

In addition to demonstrating its compliance with the statutory requirements for price deregulation, Qwest has also made a number of commitments that will affirmatively enhance the public interest if the application is granted. First Qwest has confirmed that it will continue meet its responsibilities as an ETC for purposes of providing universal service (*Tr.* 524), and will continue to make Idaho Telephone Service Assistance available to low-income customers. *Tr.* 525.

In response to concerns expressed by Staff and others, Qwest will commit to continue to provide both local measured and flat-rated residence and business service on a standalone basis, unless otherwise authorized by the Commission. *Id.* In addition, Qwest will increase the block of time included in the monthly price of measured residence service from three to four hours. *Tr.* 526. To address Staff's concern that Qwest is merely preparing to raise rates, Qwest has committed that it will cap basic local exchange business and residence recurring rates through the end of 2004. *Tr.* 525. Qwest believes these commitments demonstrate its desire to continue to meet the needs of all of its customers after price deregulation is granted. *Tr.* 527.

In the *Burley* case Mr. Cusick testified that an applicant for price deregulation should be specific regarding any advanced services that customers should expect to receive if the application is granted.³³ In response to this particular part of Staff's "roadmap" for future deregulation cases, in this case Qwest also committed to deploy Digital Subscriber Line (DSL) services to a minimum of 10 additional communities in Idaho during the three years following approval of the application. *Tr.* 529. Qwest believes that DSL would be a valuable enhancement to many Idaho customers who do not presently have access to it and will, therefor, offer a tangible benefit customers outside the seven exchanges.

³² *In the Matter of USWest Communications, Inc.'s Motion for an Alternative Procedure to Manage its Section 271 Application*, Case No. USW-T-00-3, Commission Final Decision on Qwest Corporation's Compliance with Section 271, at 3-4 (June 10, 2003).

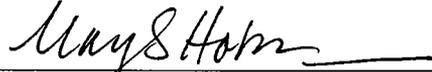
³³ Case No. USW-T-99-15, Cusick DI, p. 17.

IV. CONCLUSION

For the foregoing reasons, Qwest requests that the Commission grant its application under section 62-622(3) and cease rate regulation in the seven exchanges of Boise, Caldwell, Nampa, Meridian, Twin Falls, Pocatello and Idaho Falls.

Respectfully submitted this 27th day of June, 2003.

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