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Mary S. Hobson (ISB #2142)
Stoel Rives LLP
101 South Capitol Boulevard – Suite 1900
Boise, ID 83702
Telephone: (208) 389-9000
Facsimile: (208) 389-9040
mshobson@stoel.com

Adam L. Sherr (WSBA #25291)
Qwest
1600 7th Avenue - Room 3206
Seattle, WA 98191
Telephone: (206) 398-2507
Facsimile: (206) 343-4040
asherr@qwest.com

Attorneys for Qwest Corporation

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 POST-HEARING
REPLY BRIEF**

Qwest Corporation (“Qwest”), by and through its undersigned counsel, hereby submits its post-hearing brief in reply to *Staff’s Post-Hearing Memorandum* (“Staff’s Memo”) and *Interveners Post Hearing Memorandum* [sic] (“Interveners’ Memo”). Qwest requests the Commission to 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”).

A. REPLY TO STAFF’S MEMO

Staff’s Memo does not attempt to assist the Commission in reviewing and analyzing the over 800 hundred pages of transcript and the numerous complex and detailed exhibits presented in the record. Instead, it only attempts to minimize the unrefuted evidence presented by Qwest

and to steer the Commission toward an erroneous conclusion based on speculation, mischaracterization and avoidance of the evidence.

1. Qwest offers substantial and competent evidence of satisfaction of section 62-622(3) for each of the seven exchanges.

Among the most flagrant examples of mischaracterization contained in Staff's Memo are the claims that "Qwest admitted it did not attempt to provide information of the status of competition in each exchange"¹ (*Staff's Memo*, p. 2) and "Qwest made no effort to provide information on the status of competition in each exchange." *Id.* at 3. In fact, Qwest provided abundant exchange-specific evidence including evidence identifying competitors active in each exchange (*Tr.* 356; *Exhibit 12*), the areas covered by each competitor (*Exhibit 12*), the competitively priced alternatives offered by those competitors (*Exhibits 13 and 19*) and the regulated line loss for each exchange² (*Exhibit 2*). Of course, Qwest did not offer an exchange-specific analysis of the functional equivalence between wireless services and Qwest's basic local exchange service, since these technologies function in the same manner regardless of the exchange in which they are offered.

Staff ignored all of the relevant evidence of "the status of competition in each exchange" and instead attempted to discredit Dr. Lincoln's survey, which was designed to reflect the perceptions of the entire population of Title 61 residence and business customers that would be affected by price deregulation. While the survey offers evidence about the opinions of customers in each of the seven exchanges, it was not designed to survey each exchange as a separate population. Staff appears to take this expedient as an excuse to disregard the competent evidence of customers' perception status of competition in all of the seven exchanges provided by the survey.

Staff first attempts to suggest that the survey is faulty because it cannot be used to draw statistical inferences for the individual exchanges. *Staff Memo*, p. 2. In fact, what Dr. Lincoln testified is that, "you could draw some statistical inferences, but you would have a wide range of margin of error because the sample size would be relatively small to the population of that particular exchange." *Tr.* 308. Qwest will show Staff ignores this expert advice when it attempts to selectively cite the few disaggregated responses that appear to support its views.

¹ Staff did not and could not cite record evidence for this claim since Qwest made no such admission.

² The only one of the seven exchanges that did not suffer a loss of regulated lines since 2000 is Meridian, which had a very slight line gain. *Tr.* 59.

As Exhibit 113 clearly demonstrates, Qwest did provide exchange-specific information about the survey responses. Review of that exhibit reveals that with few exceptions, the individual exchange results are similar to those for the survey population as a whole. For example Staff seizes on the results for the residence survey for Twin Falls saying, “only 15 residential customers in the Twin Falls exchange answered “yes” when asked if it were possible for them to rely solely on cell phones for the purpose of making and receiving local calls.”³ *Staff’s Memo*, p. 2. However, Exhibit 113 shows that 53.6 percent of the population surveyed in Twin Falls responded affirmatively to the feasibility of sole reliance on cell phone service. *Exhibit 113*, p. 3. This result is completely consistent with the 50 percent affirmative response to the same question from the entire population of residence customers. *Id.*

Staff repeatedly attempts to diminish the significance of Dr. Lincoln’s survey by calling it “limited” (*See, e.g., Staff’s Memo*, p. 2). Staff also alleges “in addition to other significant problems,” the survey “did not even attempt to explore the status of competition in each exchange.” *Id.* at 3. These characterizations are, at best, meaningless. Staff offers no evidence to support its claim of “significant problems” with the survey, and describing it as “limited” appears to be nothing more than a backhanded assertion that, had it conducted a survey, Staff would have asked more questions.⁴ The fact is Staff did not ask any questions. Although it had three months between Qwest’s filing of Dr. Lincoln’s survey and the time set for its submission of its own testimony, Staff made no attempt to survey Idaho customers in any scientific way.⁵ While Staff does not carry any particular burden of proof with regard to Qwest’s application, one would expect Staff to attempt to develop a record that would allow the Commission to properly

³ This reference to the number of responses from Twin Falls and the chart provided on page six of Staff’s Memo, appear to be offered, not so much as a criticism of Dr. Lincoln’s survey, but as an attack on the whole science of statistical sampling. Dr. Lincoln testified as a duly qualified expert in the field of opinion surveys and research. Staff offered no evidence to refute his assertion that the survey results were accurate to a 95% confidence level (*Tr.* 230). For Staff to then suggest in its Memo that the Commission can ignore the results of the survey simply because the number of persons responding in each exchange is small compared to the total number of customers in the exchange reflects a fundamental misunderstanding of statistical methodology.

⁴ Dr. Lincoln testified about the notion, offered by Dr. Johnson, that the survey should have gone further as follows: “There are no problems with the methodologies employed in our surveys. What Dr. Johnson calls for is an extensive, in-depth survey to address a plethora of what are essentially marketing, (not regulatory) issues.” *Tr.* 253.

⁵ Staff’s only effort to gather evidence from Idaho customers was Mr. Hart’s “conversations with students and young adults, including my stepson, that subscribe to Cricket service.” *Tr.* 648. Even then, Mr. Hart did not offer any evidence of the questions asked or the answers received apart from indicating that there were “complaints” about service quality during periods of high volume. *Id.* Certainly, this effort is more “limited” than Dr. Lincoln’s survey.

assess the issues and make an informed decision. Instead, it seems Staff has chosen to withdraw to the sidelines and make unfounded criticisms of the evidence that is offered.

It is exceedingly ironic, therefore, that after contending that Dr. Lincoln's survey cannot be taken seriously, Staff attempts to selectively rely on it where Staff mistakenly believes its results support Staff's belief that customers are rejecting wireless service because it is not price competitive with basic local exchange service. At page six of Staff's Memo Staff states, "the survey results for the Meridian exchange provide additional insights of interest, one on the pricing question." Thus, having just gone to the trouble of pointing out that the number of responses in Meridian is small compared to the total number of Title 61 lines in the exchange, and having previously selectively quoted Dr. Lincoln to create the impression that nothing can be learned about individual exchanges from the survey, Staff attempts to argue from the disaggregated survey numbers that the 33 residence customers surveyed in Meridian are somehow to be relied upon to the exclusion of the 377 respondents from the other exchanges. This result-oriented selectivity must be rejected. Dr. Lincoln testified that the results for the individual exchanges would not yield the same low margin of error that characterizes the entire survey. *Tr. 308*. Hence the fact that the Meridian results, taken by themselves, appear to deviate from the result for the whole survey is neither surprising, nor probative. Staff's claim that Meridian is a better indicator of the experiences of those with actual cell phone experience is also completely erroneous. Dr. Lincoln provided the unrefuted testimony that "respondents in households where someone used a cell phone more frequently (59.7%) reported cell phone service prices to be the same or less than (combined) than those in households where no one used a cell phone (41.7%)." *Tr. 238*. Staff's ostensive reason for singling out Meridian's results as most representative of those with experience with cell phone service is unfounded.

Furthermore, the whole notion that Dr. Lincoln's survey is faulty because it does not produce exchange-specific results to the same degree of statistical accuracy as the overall survey is misguided. Contrary to Staff's Memo, Qwest does not offer Dr. Lincoln's survey as proof of the "status of competition" in each exchange. *Staff's Memo, p. 3*. Rather, Qwest relies on the testimonies of Messrs. Souba and Teitzel to show where wireless competitors are active, what prices and services they offer, how many customers they have, how Qwest's line counts are affected and related topics to demonstrate "the status of competition in each exchange." Qwest further relies on Mr. Shooshan's testimony to show that this Idaho version of wireless

competition is consistent with national trends. Dr. Lincoln's survey results are offered to show the opinions of those Idaho customers who still subscribe to Qwest wireline service on whether wireless alternatives are, in their views, functionally equivalent and competitively priced with wireline services. Since the functionalities of wireless and basic local exchange service do not differ from exchange to exchange, there is no reason to survey each exchange as a separate unit. Likewise, since the prices of wireless and wireline services do not change from exchange to exchange there is nothing that suggests any one exchange would be different from the others if separately surveyed.

In fact, the entire point of the statistically valid survey is to produce results through sampling of the population that would be reproduced if the entire population were questioned.

Tr. 230. Dr. Lincoln testified regarding the survey's 95 percent confidence level as follows:

Our 95% confidence level implies that we could go out into the entire population, repeat our questioning and be confident of these findings 95 out of 100 times. The 95% confidence level and 5% margin of error are very common standards in social science research. *Id.*

Dr. Lincoln's survey, therefore, provides information about customer perception in each exchange. It is the only such evidence in the record. Staff's insistence that the Commission ignore this significant insight as to how actual customers view some of the contested issues in this case does not appear to serve the interests of those customers.

2. Qwest has offered substantial and competent evidence of "actual effective competition."

At page three of Staff's Memo, Staff alleges that Qwest has taken a "cavalier approach" to addressing the Legislature's intent, expressed in Idaho Code § 62-602(2), that "effective competition" must involve "a significant number of customers having both service provider and service option choices" and "means more than the mere presence of a competitor." This is a mischaracterization, and a puzzling one at that, given the state of the record. Qwest has shown that customers in each of the seven exchanges have, in addition to Qwest, at least six wireless providers available to serve their basic local exchange calling needs. *Tr. 357.* And, Qwest has shown that these wireless providers offer a variety of service options. *Exhibit 13.* Indeed, these facts do not really seem to be disputed. Nor does there appear to be dispute that these competitors are not merely present, but are serving massive numbers of customers – over

600,000 of them throughout Idaho. It appears strange, therefore, that Staff seizes on this language to contend Qwest's application is "cavalier" and somehow misses the mark.

Nor does Staff's contention that "Qwest's interpretation of 62-622(3) enabled it to ignore the legislature's stated intent" shed any light on Staff's argument. Nowhere in this record does Qwest argue that the Legislature's intent should be ignored. To the contrary, Qwest has argued that the Commission should carefully review and give effect to the legislative intent underlying section 62-622(3). *See, e.g., Qwest's Opening Post Hearing Brief, pp. 5-8.* It is only when Staff states, "Qwest's own witness conceded that the Company 'never attempted to prove a precise loss of lines attributable to wireless competition,'" (*Staff's Memo, p. 3*) does it become clear what it is that Staff is complaining about. It is merely this: Staff thinks Qwest has failed to meet some invisible, undefined market loss standard.

Staff's market loss standard is properly described as "invisible," because it is nowhere provided for in statute or in the Commission's prior decision construing sections 62-622(3) and 62-602(2). In fact, in the *Burley* case,⁶ the Commission rejected the notion that either of the statutes relied upon by Staff require a showing of market loss. The Commission stated:

U S WEST correctly notes that Section 62-602(2) 'does not speak in terms of market shares, percentage of customers or other numerical standards.'

* * *

Given the language of the statute, we conclude it would be inappropriate for the Commission to declare a specific penetration level or loss of a specific market share as a bright line test for application of Section 62-622(3). The concern raised by U S WEST is valid, and Section 62-622(3) itself does not provide a benchmark loss of market share for deregulation. Nonetheless, given the expressed intent of the legislature, it is difficult to foresee circumstances where competition could be deemed effective and throughout the local exchange calling area where less than half the customers have a choice of provider.⁷

Thus, the Commission's prior ruling rejects Staff's market loss standard and correctly focuses on the language of the legislative intent statute that effective competition will involve a

⁶ *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) ("the Burly Order").

⁷ *Id.* at 11-12 (emphasis added).

significant number of customers having “both service provider and service option choices.”⁸ *Idaho Code § 62-602(2)* (emphasis added). There is no question that Qwest has demonstrated that a “significant number” of customers in the seven exchanges have provider and option choices. *Tr. 58-59*.

Staff’s market loss standard is also properly characterized as “undefined” because Staff will not say what showing of market loss would meet its standard:

Q. And do you have a percentage in your mind as to what you do have to have?

A. Nope.

Q. Okay.

A. I have percentages in mind that I think are clearly not there, and that is the three to five percent range that we have.

Tr. 726.

Therefore, Staff admits that Qwest has experienced market loss, but is unwilling to accept this as evidence of competition (*Staff’s Memo, p. 3* “*the record is thus devoid of any evidence demonstrating that wireless services provide actual, substantive and meaningful competition*”), or to articulate an alternative standard. Staff’s reluctance to state what would satisfy its expectations for “effective competition” is understandable in light of the fact that neither the statutes nor the Commission’s ruling in the *Burley* case support Staff’s contention that Qwest cannot prove effective competition without proving “a precise loss of lines to wireless competition.” *Staff’s Memo, p. 3*.

Once again, Staff’s argument is ironic. Staff couches its criticisms in terms of “Qwest’s interpretation of Section 62-622(3),” when statutory interpretation requires that Staff’s market loss standard be rejected.

3. The record evidence on functional equivalency and competitive pricing of wireless services overwhelmingly supports Qwest’s application.

Staff describes Qwest’s focus on the statutory standard as a “goal oriented approach to the case [that] enabled Qwest to disregard the requirement that actual competition exist for its services.” *Staff’s Memo, p. 4*. This is a most odd criticism since the statute itself sets out that standard for demonstration of “effective competition.” While it is certainly true that Qwest’s

⁸ Commissioner Smith writing in a dissent in the *Burley* case also pointed out that, “during legislative debate on this statutory provision, the requirement that specific market share percentages or penetration levels be the test of competitive entry was rejected.” *Id, Dissent, p. 2*.

goal in presenting its case was to demonstrate it satisfies the statute, focusing on that goal is the polar opposite of attempting to “disregard” the requirement that competition be shown to exist. The only conclusion that can be drawn is that Staff believes the “real” requirement for demonstrating competition is something not contained in statute, i.e., proof of market loss in excess of the three to five percent loss conceded by Staff.⁹

a. Functional Equivalence.

There is no evidence in this case that contradicts the fact that the wireless services offered by the numerous providers in each of the seven exchanges provide the “functional equivalent” of Qwest’s basic local exchange service. Even Mr. Hart admits this:

Q. Mr. Hart, would you agree that wireless carriers employ [provide]¹⁰ two-way interactive switched voice communications in the seven exchanges that are the subject of this matter?

A. I would agree that as [is] part of the function they provide.

Tr. 672.

The debate on “functional equivalence” in this record, therefore, is almost exclusively¹¹ a debate about whether section 62-622(3) requires that Qwest prove that effective competition exists for uses of its wirelines that are not basic local exchange service. This is, of course, the legal debate that was the focus of Staff’s petition for declaratory ruling, which was briefed by the parties prior to hearing.

However, in its effort to minimize Qwest’s case, Staff’s Memo attempts to characterize the debate over whether section 62-622(3) requires Qwest to prove effective competition for data transmission and other non-voice uses as some kind of ploy to “limit” the evidence and avoid the “inconvenience of evidence demonstrating that customers purchase cell phone service as a supplement and not a substitute for wireline service.” *Staff’s Memo*, p. 5. This is a most tortured

⁹ Qwest does not suggest by this reference that there has only been 3-5% line substitution in Idaho. Record evidence suggests that the level of line substitution may be much higher. The FCC cites studies showing that 20% of residential customers have replaced “some” wireline usage with wireless usage, while 11% have replaced a “significant” percentage of their use. *Tr. 160*. Meanwhile Leap Wireless reports that more than one-quarter of their customers have disconnected their wirelines. *Tr. 161*.

¹⁰ The court reporter was apparently having some difficulty hearing the exchange. Qwest has quoted the transcript verbatim and inserted in brackets the words in the question and answer that were obviously intended by the speakers.

¹¹ Qwest will respond to the arguments raised by the Intervenors that certain residence and small business uses of wirelines do not find substitutes in the offerings of wireless companies in the section of this brief responding to Intervenors.

restatement of a position that Staff much more fairly characterized in its memorandum in support of its request for declaratory ruling¹² as follows:

Qwest and the Commission Staff have significantly different interpretations of Section 62-622(3), and each approached the case consistent with its own interpretation of the statute . . . The interpretation of a relevant statute presents a legal issue solely for the Commission's resolution.¹³

Although Staff attempts in its Memo to presumptively foreclose the debate, it cannot be allowed to do so. Staff was right the first time when it acknowledged Qwest's evidence is consistent with its legal interpretation of the statutes. Although Staff disagrees with Qwest's interpretation, settlement of the debate can only come from the Commission, and perhaps ultimately the Court, applying the legal standards of statutory interpretation.

b. Competitive Pricing.

On the subject of competitive pricing, Staff's superficial approach once again glosses over the substantial and competent evidence presented by Qwest and blurs legal distinctions, that if ignored by the Commission, could lead to an erroneous result.

Staff contends Qwest has treated "cell phone attributes" (presumably differences regarding data transmission) as not relevant to the analysis of functional equivalency, while at the same time including (presumably other) "cell phone attributes" as relevant to the pricing issue.¹⁴ As discussed in the foregoing section, the first contention is nothing more than a characterization of the fact that Qwest and Staff disagree as to whether Qwest must prove effective competition for more than basic local exchange service. If Qwest is right, data transmission and the other non-voice uses of wirelines are irrelevant to the discussion of functional equivalence. If, on the other hand, Staff's interpretation is upheld, then and only then do those topics become relevant. The outcome of that debate may very well determine the outcome of the case, but Qwest's position on functional equivalence and pricing are entirely consistent with its interpretation of the statutes.

Qwest's inclusion of "cell phone attributes" in the pricing comparison is consistent with its interpretation of the relevant statutes because, to satisfy section 62-622(3)(b), Qwest must

¹² Staff's Petition for a Declaratory Ruling/ Memorandum in Support of Petition, (April 30, 2003).

¹³ *Id.*, p. 10.

¹⁴ Staff's Memo, p. 5 ("to put it plainly: cell phone attributes when considering functional equivalence, NOT RELEVANT; cell phone attributes when considering competitively priced, RELEVANT.")

pricing is some ploy to divert attention from “unhelpful price comparison information.” *Staff’s Memo*, p. 5.

Instead of giving credence to the statistically valid survey showing how paying customers actually view the competitiveness of wireless prices, Staff prefers to rely on a “side-by-side comparison” of prices and rest on its own opinions of what differences are “significant.”¹⁷ This points to one more faulty assumption inherent in Staff’s reliance on side-by-side comparisons to the exclusion of market evidence: the assumption that these comparisons can actually capture all of the dynamics of the competitive marketplace in which customers exercise their choices. The fact is, even when the defects in the methodology are corrected, Staff’s witnesses admit side-by-side comparisons of wireless and wireline pricing are nearly impossible:

Wayne Hart: “I have prepared an analysis comparing wireless prices with Qwest’s rates. However, I must point out that such a comparison is very difficult as the products are so different and there are so many different options for each product.” *Tr.* 638.

* * *

Q. BY MS. HOBSON: Now, you will agree with me, will you not, that in order to do a dollars-and-cents comparison between wireline and wireless service, you have to make some assumptions in order to do that?

A. Too many. *Tr.* 681.

Ben Johnson: “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.” *Tr.* 779.

Therefore, the Commission should not be misled into thinking that the side-by-side comparisons present clear-cut evidence upon which the Commission can confidently rely – to the exclusion of market data – to decide whether wireless services are competitively priced. As Mr. Hart would say, such comparisons are based on “too many” assumptions. *Tr.* 681. These assumptions range from customer usage levels, to the time-of-day customers call, to their preferences for a plethora of services and features this Commission has not regulated since 1989. It would be a mistake to place too much confidence in such comparisons because, as Dr. Johnson would say, “apples to apples” comparisons are difficult between the price structures of wireless

¹⁷ See, e.g., *Tr.* 639 (*Mr. Hart concludes that a \$3.50 price difference means wireless service is not competitively priced.*)

products, which are driven by the market, and Qwest's government-regulated rate structure. And, it would be a mistake because, as Mr. Teitzel would say, too much that customers value is left out:

[I]t must be emphasized that these differentials [depicted in Qwest's Exhibit 19] do not include a comparison of toll revenues. Many wireless plans include toll calling without incremental charge for calls that would be assessed toll rates if those same calls were made by a Qwest wireline customer. If toll calling were included in this assessment, the net rate differential between Qwest wireline service and many wireless plans would be reduced further.

It must also be emphasized that these differentials do not place any monetary value on the mobility of wireless service, an attribute that many customers would consider when comparing the relative value of wireless and wireline services.

Tr. 410-411.

For all of these reasons, and not because it wished to avoid an allegedly unhelpful comparison, Qwest provided evidence about how customers perceive the comparison of wireless to wireline prices. In a scientific, statistically valid survey of the customers who will actually be affected by price deregulation, Dr. Lincoln found that 55.6 percent of residence customers and 55 percent of business customers find that wireless service costs about the same or less than wireline service. *Exhibits 8 and 10.*

Staff seeks to ignore this input from the very customers it purports to represent by speculating that the respondents answered the question from the standpoint of "use of a cell phone as a supplemental telephone service, which could be minimized to limit the expense." *Staff's Memo, p. 6.* Of course, Staff offers no evidence to support this assessment that Idaho customers meant to answer a question that was not presented to them. Once again, had Staff wished, it could have conducted its own survey to determine whether Idaho customers really share its view, but Staff chose not to do so.

Both Staff and Qwest ask that the Commission look at the market to really understand what is happening with competition. Staff wants the Commission to look at the market and see that only three to five percent of customers have so far actually substituted. *Tr. 724.* But, of course, the standard is not whether most customers have already moved to a competitor. The standard is whether there is a competitor for them to move to if, for example, Qwest uses its pricing freedom to dramatically increase prices. Qwest asks the Commission to look at the

market because doing so demonstrates not only that there are several competitors to move to, but that those competitors already have at least part of the customers' business. Further, these competitors are aggressively seeking the rest of Idaho customers' business.¹⁸ No one disputes that there are presently over 600,000 wireless services in operation in Idaho. *Tr.* 721. That is roughly three wireless services for every four wirelines in service in Idaho. *Tr.* 58. If Staff is right that most wireless customers also have wireline service, that means most Idaho customers are paying for both wireline and wireless services at the same time. *Tr.* 720. This, Qwest submits, puts the question of "competitively priced" in a new, and very different light. The Commission is not assessing a market in which customers are choosing between services based on price and looking at those "disparities" that have been so heavily relied by Staff. The Commission is confronted by a market in which the majority of customers already willingly pay for both services.

If the Commission steps back for a moment and considers section 62-622(3) as a whole, it will be reminded that the language that has been the focus here i.e., that there must be a "competitively priced" alternative, is only found in subpart (b). Subpart (b) is one of two possibilities for demonstrating "effective competition." Subpart (a) does not contain any requirement about the price of the competitive offering of a "facilities-based competitor." *Idaho Code, § 62-622(3)(a)*. So why did the Legislature include this pricing standard for one type of competition, and not for the other? Common sense dictates that once it moved past the familiar model of a wireline competitor overbuilding the incumbent's network, the Legislature endeavored to ensure that whatever technology was offered up as a "functional equivalent" to basic local exchange service was something the customers could actually afford—something that provided a real choice. Wireless services certainly fit that description. Even Mr. Hart conceded that Idaho customers have shown that they can afford wireless service. *Tr.* 722 (*"I'm assuming they wouldn't buy it if they didn't think they could afford it."*)

Qwest expects Staff will argue that customers may feel that they can afford wireless service at this point because they are minimizing their use and spending most of their time on their wireline phones where usage is, for the most part, flat-rated. *See, e.g., Staff's Memo, p. 6*. Putting aside for the moment the fact that Staff offers absolutely no evidence that customers are

¹⁸ *See, e.g., Exhibit 15* (containing Idaho-specific advertisements in which wireless competitors tout their service as an alternative to local service).

behaving as Staff speculates, this argument overlooks an obvious fact of checkbook economics: if customers disconnect their wirelines, then they save a minimum¹⁹ of \$25.89²⁰ (if they are residence customers) or \$41.74²¹ (if they are business customers), which sums could be used to offset any increase that additional usage adds to their wireless bills. In fact, shifting all of their voice usage to their cell phones may actually save many Idaho customers money over what they are already paying. Under these circumstances, Staff's contention that wireless service is not competitively priced appears out of touch with customers' reality.

Of course, not every customer is already buying both wireless and wireline service. But, as discussed above, Qwest's Exhibit 19 shows that multiple Idaho wireless competitors offer a calling plan for local calling at a price within \$10.00 of the price of Qwest's service for every customer class and usage level. *Tr. 359*. These plans include flat-rated options available to customers in all seven exchanges that cost only \$9.00 per month more than Qwest's basic service. *Tr. 359, Exhibit 19*. While no one expects that every Idaho customer will prefer wireless to basic local exchange service, the point is that such wireless options present actual, viable choice to customers because they offer two-way interactive switched voice communications, and they offer that capability in a mobile form. And, as Staff points out, mobility has proved valuable to Idaho customers. *Tr. 721-722*. The existence of such choice is the key because the existence of choice will constrain Qwest's prices.

Qwest urges the Commission to look at the price differences shown on methodologically sound comparison such as Exhibit 19, in the broader context of actual customer reaction to wireless services in the marketplace. Doing so points out that the differences in wireless and wireline prices are not significant and do not dissuade most Idaho customers from buying wireless service. In fact, the majority of Idaho customers buy both services. While customers may still choose to keep their wireline phone, it cannot be concluded that customers who buy both services are doing so because they are trying to save money.

¹⁹ Since many customers subscribe to custom calling features or use toll services, and since many wireless plans include these services at no additional price, disconnecting wireline services may actually save more than the line cost.

²⁰ *Exhibit 20, p. 1* (assumes Qwest flat rate for residence service plus applicable taxes and surcharges).

²¹ *Id at p. 2*.

B. RESPONSE TO INTERVENORS

In contrast to the Staff's efforts, the Intervenors made a straightforward presentation of concerns from the standpoint of Idaho customers that could be affected by price deregulation. Qwest welcomes the opportunity to discuss these concerns and to point out that, while Qwest considers every customer's view important, the points raised by the Intervenors do not support rejection of the application. More importantly, Qwest will show that rejection of Qwest's application is not necessary to provide the protections and assurances that the Intervenors seek in this case.

1. Wireless services offer a viable choice for residence basic local exchange service customers.

The positions of Intervenors, like those of Staff, are colored by their belief that Qwest must demonstrate effective competition for services that are not basic local exchange service. Hence, the Intervenors argue, that "\$26 for a landline buys much more than voice . . . it buys data transmission, phone system and extension phone operations, and a permanent phone number." *Intervenors' Memo, pp. 4-5*. Qwest leaves to the Commission the question of interpretation of the relevant statutes and with it, the question whether data transmission is an appropriate part of the analysis. Further, Qwest will address the "phone system" operations below in the context of business customers. The concerns raised on behalf of residence customers are the operation of extension phones, number portability and directory listings.

Intervenors are simply incorrect that wireless phones will not operate extension phones. Mr. Teitzel testified concerning the availability in the Idaho market of "docking station" devices that allow wireless customers to insert their cell phones in a device "enabling incoming calls to the wireless phone to be answered by any extension phone in the house or business." *Tr. 437*. Mr. Teitzel further pointed out that outgoing calls may be made from any extension phone with this arrangement. *Id.* Hence Intervenors' Memo is mistaken when it asserts, "cell phone technology will not operate most home phone extension systems." *Intervenors' Memo, p. 1*. The docking stations described by Mr. Teitzel do just that. Although not all cell phones will operate in a docking station at this time, customers concerned about this particular adaptation of wireless technology can select a wireless provider that offers this technology. Furthermore, as Mr. Teitzel also testified, wireless providers and business analysts acknowledge that "in-building coverage" for wireless phones is a strategic focus of wireless providers now and in the

immediate future. *Tr.* 447. This means customers will have increasing options for adaptation of wireless technology to their home and small business needs.

The concern that residence (and small business) customers will not be able to retain their “permanent” telephone number should they decide to switch to wireless is also based on a mistake of fact. Qwest is fully capable of providing number portability to wireless carriers (*Tr.* 391), and the FCC has established a November 24, 2003 deadline for implementation of number portability by wireless carriers. *Id.* While this date is months in the future, Qwest’s offer to cap its line prices for small business and residence customers through the end of 2004 protects customers from even the theoretical possibility of price increases during the period in which number portability to wireless carriers is unavailable to them.

Finally, wireless customers who wish to publish their numbers in a directory have the option of purchasing a listing at modest cost. *Tr.* 362-363. For business customers who may rely on directory listings to attract customers, such a purchase may be a necessary cost of doing business. However, the cost is small, particularly when it is remembered that many multi-line small business customers wish to publish only one of the numbers assigned to their accounts. In addition, many businesses who rely on incoming calls already pay substantial monthly sums for directory advertising. For example, Intervenor Gary Neal’s law firm has three separate advertisements in the current Boise QwestDex directory. The addition of another \$6.00 charge to also publish a wireless number in the business white pages would make a small difference to the law firm’s costs for directory services.

Residence customers do not have the same needs or preferences when it comes to publishing their telephone numbers. Many Qwest customers seek to preserve their privacy by purchasing premium listing services that prevent their numbers from being published or provided by directory assistance operators. More seek to limit access to their numbers for commercial purposes by putting them on “Do Not Call” lists like that offered by the Idaho Attorney General. The Commission should not assume that simply because a directory listing has long been bundled with basic local exchange service that customers prefer the continuation of that practice. To the extent that they do, however, it is an option that wireless service customers can choose.

Wireless service offers a reasonable option for nearly every residence basic local exchange service customer. However, to the extent that some customers prefer not to use wireless services, Qwest’s basic local exchange service will still be available to them. Further,

as will be explained in more detail below, even after the expiration of Qwest's voluntary price freeze, competition from wireless services will ensure that Qwest offers quality wireline service at reasonable prices. To do otherwise would be to drive customers to competitors and would be contrary to Qwest's interests in remaining a viable business.

2. The concerns expressed by Intervenor for small business customers do not demonstrate that Qwest has failed to satisfy the "effective competition" standard of section 62-622(3).

The primary thrust of the Intervenor's objections to Qwest's application is that multi-line small businesses cannot operate as they do today using wireless technology. *See, e.g., Intervenor's Memo, p. 6.* Although Qwest offered evidence to the contrary, for purposes of this discussion only, Qwest will assume that wireless technology does not provide a viable competitive alternative for (i) operation of facsimile machines, (ii) operation of "key" systems or other small business configurations that utilize "hunting" or "rollover," and (iii) operation of digital subscriber line service (DSL). Even so, Qwest complies with the requirements of sections 62-602(2) and 62-622(3) in that it has shown that "effective competition" involving "a significant number of customers having both service provider and service options" exists for its basic local exchange service throughout the seven exchanges. Qwest will explain.

First, it must be noted that two of the three applications relied on by the Intervenor – operation of facsimile machines and DSL – involve data, not voice, uses of the network. If the Commission upholds Qwest's interpretation of the statutes, these two issues, although important from the standpoint of customer relations, become irrelevant to the statutory analysis and cannot be used as a basis for rejection of Qwest's application.

The remaining issue of small business phone systems must be put into some perspective in relation to small business customers in general. Although the exact numbers are not well-established in the record, it does appear that there are approximately 26,000 small business customers represented in the seven exchanges.²² Intervenor claim that Mr. Hart "did testify without objection that more than 50% of the business customers subscribe to more than one line." *Intervenor's Memo, p. 6.* In fact, what Mr. Hart testified was, "I would estimate that

²² In making this statement, Qwest relies, as do the Intervenor, on the testimony of Dr. Lincoln in stating that the pool for respondents for the small business portion of his survey consisted of "26,183 small business billing phone numbers (rollovers and multiple lines eliminated)." *Tr. 231.*

about 50 percent of business customers subscribe to more than one line.”²³ *Tr.* 729. Taking Mr. Hart’s estimate for the sake of argument, this means that 50 percent of small business customers have only one line. For these customers, the discussion about operation of “business phone systems” is meaningless. Single line small business customers are in exactly the same position as residence customers when it comes to wireless options – except that the economics of disconnecting a business phone line in favor of a wireless service are more favorable because they can eliminate a larger expense.²⁴ Qwest submits that this 50 percent of small business customers represents “a significant number of customers having both business service provider and service option choices” and therefore meets the standard, of “effective competition.” *Idaho Code* §§62-602(2); 62-622(3).

Qwest’s position is supported by precedent. In the *Burley* case, Commissioner Smith wrote in the dissent, “thirty percent is a significant number of customers, especially when you consider that no one expects that 100% of customers will have this option.”²⁵ The majority wrote, “it is difficult to foresee circumstances where competition could be deemed effective and throughout the local exchange calling area where less than half the customers have a choice of provider.”²⁶ It is consistent with both of these prior interpretations of the statute that where 50 percent of customers have a choice, the standard has been met. However, the record actually shows that more than 50 percent of small business customers have choice.

Intervenors seem to assume all small businesses with more than one line operate like Mr. Neal’s law firm²⁷ in which all lines come into a “system” and operate in “rollover” so that a receptionist can answer all calls and forward them to the right recipient. *Tr.* 548-549. However the record created by Intervenors’ own witnesses contradicts their assumption that all multi-line small business customers use such a system. For example, Mr. Sales testified that in the small

²³ It is unfortunate that neither Intervenors nor Staff sought discovery on these points so that the Commission might have better evidence than these estimates, but the point can still be made.

²⁴ See section, A.3.b. above.

²⁵ *Burley Order, dissent, p. 2.*

²⁶ *Id.*, p. 12 (*emphasis added*).

²⁷ Intervenors also seem to assume that all businesses keep the same hours and place the same priority on answering the telephone. Hence they argue that since “33% didn’t answer the phone,” there is something wrong with Dr. Lincoln’s survey. (*Intervenors’ Memo, p.10*). Contrary to Intervenors’ understanding, Dr. Lincoln’s Exhibit 6 does not show that 33 percent of businesses did not answer “after 3 separate calls.” *Id.* Instead it shows that 33 percent of call attempts were not answered. *Exhibit, p. 1.* The potential explanations for this are numerous, including that the business is open at night and not during the day (restaurants; bars), the business is only open part-time (galleries; decorator shops), or the business operator was serving a live customer or otherwise too busy to answer the phone.

business he operated, “I had one land line for the phone, one fax line that operated my internet and fax machine, and a cell phone.” *Tr.* 599. Similarly, Mr. Chattin testified, “I have a land line, a land line that operates my DSL and our fax machine, and a cell phone.” *Tr.* 570. Each of these customers have more than one wireline, but they do not have “systems” that will not operate with wireless technology. Nor is there any reason to assume the experience of Messrs. Sales and Chattin is any less representative of small business customers, than that of Mr. Neal. The record contains no evidence of how many business “systems” are being used in the present market in the seven exchanges, but the record is clear that the number of small business customers using them is less than the “majority” that Intervenors ask the Commission to assume.²⁸

Furthermore, it is not accurate to assume that even small businesses like Mr. Neal’s law firm are totally without choice of wireless providers. Although Qwest has conceded for purposes of this discussion only that wireless technology cannot efficiently operate Mr. Neal’s current phone system, it does not follow that the law firm could not exercise its competitive options and eliminate some of its reliance upon Qwest’s wireline service if it wished, for example, to avoid hypothetical price increases. To illustrate, Mr. Neal testified that the firm purchases four lines from Qwest that operate in rotation. *Tr.* 547. He also testified that each of the four attorneys in the office have a cell phone. *Tr.* 547; 562. If the attorneys simply adopted the practice of placing their outgoing calls using their wireless services, the law firm could likely eliminate the need for one or more of its lines. The business system would still operate to take incoming calls and route them from a single number to the appropriate attorney, but there would be no need to maintain wirelines for outgoing calls. If the firm wanted to get more aggressive about eliminating lines, the attorneys could provide their individual cell numbers to clients who call frequently. If even one line were eliminated, Qwest would have lost 25 percent of the Neal law firm’s business. This pattern, repeated throughout the small business community, would mean even those customers who at first appear to be “captive” because of their use of small business systems, could actually have a huge competitive impact on Qwest.

Furthermore, as Qwest pointed out in its Opening Brief,²⁹ even if some customers do not have wireless options to meet all of their needs, they do not need to rely upon Commission price regulation to protect them from being harmed by price increases or poor service. Qwest has

²⁸ *Intervenors’ Memo*, p. 6 (“the majority of small business customers have multiple lines, which cell phone technology cannot operate.”)

²⁹ *See, Qwest’s Opening Brief*, pp. 18-20.

successfully shown that a “significant number of customers” have options. *Idaho Code § 62-602(2)*. The statutes do not require that Qwest show all customers have options for good reason. A significant number of customers exercising their options is adequate to constrain the incumbent’s price. As Mr. Schmit testified, “I can’t afford to lose the 30, 45 or 60 percent of our market” who would move to a competitor if Qwest significantly increased prices. *Tr. 540*. These price constraints are even more effective where, as here, Qwest cannot identify those customers who are using their wirelines in a fashion that does not lend itself to ready substitution by wireless services. *Tr. 726*.

This, then, is a much different situation than in the *Burley* case where the majority found that a geographically identifiable 70 percent of customers had no choice of service providers.³⁰ In that case, the Commission found that “the economic incentive to ignore those areas where no competition or regulation exists” could jeopardize “the availability of high quality universal service at just and reasonable rates.”³¹ But here the incentives drive the opposite conclusion. Since Qwest cannot identify “areas where no competition or regulation exists” it is forced to act as if every line is vulnerable to competition. Qwest cannot assume that small business customers will not shift some or all of their usage onto wireless service and eliminate lines. Instead, it must assume all customers have options and attempt to retain customers with high quality service, innovative service arrangements, and reasonable prices. That is what it means to be in a competitive market. The Company simply cannot force big price increases or poor service on the small business customers who are the focus of the Intervenors’ concerns because to do so would be a serious business mistake from which Qwest might not recover.

C. CONCLUSION

Based upon the foregoing reply, as well as Qwest’s previously submitted briefs and the entire record herein, Qwest respectfully requests that the Commission approve its application for price deregulation.

³⁰ *Burley Order*, p. 10.

³¹ *Id.*

Respectfully submitted this 11th day of July, 2003.

Qwest Corporation



Mary S. Hobson
Stoel Rives LLP

Adam L. Sherr
Qwest Corporation

Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of July, 2003, I served the foregoing **QWEST CORPORATION'S POST-HEARING REPLY BRIEF** upon all parties of record in this matter as follows:

Jean Jewell, Secretary	<u> X </u>	Hand Delivery
Idaho Public Utilities Commission	<u> </u>	U. S. Mail
472 West Washington Street	<u> </u>	Overnight Delivery
Boise, ID 83720-0074	<u> </u>	Facsimile
Phone: (208) 334-0300	<u> </u>	Email
Fax: (208) 334-3762		
jjewell@puc.state.id.us		

Weldon Stutzman, Deputy Attorney General	<u> X </u>	Hand Delivery
Idaho Public Utilities Commission	<u> </u>	U. S. Mail
472 West Washington Street	<u> </u>	Overnight Delivery
P.O. Box 83720	<u> </u>	Facsimile
Boise, ID 83702	<u> </u>	Email
Telephone: (208) 334-0300		
Facsimile: (208) 334-3762		
Wstutzm@puc.state.id.us		

Executed protective agreement

Marlin D. Ard	<u> </u>	Hand Delivery
Willard L. Forsyth	<u> X </u>	U. S. Mail
Hershner, Hunter, Andrews, Neill & Smith LLP	<u> </u>	Overnight Delivery
180 East 11 th Avenue	<u> </u>	Facsimile
P.O. Box 1475	<u> </u>	Email
Eugene, OR 97440-1475		

Attorneys for Verizon

Executed protective agreement

John Gannon, Esq.	<u> </u>	Hand Delivery
1101 West River – Suite 110	<u> X </u>	U. S. Mail
Boise, ID 83702	<u> </u>	Overnight Delivery
Telephone: (208) 433-0629	<u> </u>	Facsimile
<i>Attorney for Meierotto, Padget, Herrick & Neal</i>	<u> </u>	Email

Dean J. Miller
McDevitt & Miller LLP
420 West Bannock Street
P.O. Box 2565
Boise, ID 83701
Telephone: (208) 343-7500
Facsimile: (208) 336-6912
joe@mcdevitt-miller.com
Attorneys for WorldCom, Inc.
Attorneys for AT&T
Attorneys for Time Warner Telecom
Executed protective agreement

Hand Delivery
 U. S. Mail
 Overnight Delivery
 Facsimile
 Email

Dean Randall
Verizon Northwest Inc.
17933 NW Evergreen Parkway
Beaverton, OR 97006-7438
dean.randall@verizon.com
Executed protective agreement

Hand Delivery
 U. S. Mail
 Overnight Delivery
 Facsimile
 Email

Mary Jane Rasher
10005 South Gwendelyn Lane
Highlands Ranch, CO 80129-6217
Telephone: (303) 470-3412
mjrasher@msn.com

Hand Delivery
 U. S. Mail
 Overnight Delivery
 Facsimile
 Email

Adam Sherr
Qwest
1600 7th Avenue - Room 3206
Seattle, WA 98191
Telephone: (206) 398-2507
Facsimile: (206) 343-4040
asherr@qwest.com

Hand Delivery
 U. S. Mail
 Overnight Delivery
 Facsimile
 Email

Clay R. Sturgis
Moss Adams LLP
601 West Riverside – Suite 1800
Spokane, WA 99201-0663

Hand Delivery
 U. S. Mail
 Overnight Delivery
 Facsimile
 Email

Brian Thomas
TimeWarner Telecom
223 Taylor Avenue North
Seattle, WA 98109
Brian.Thomas@twtelecom.com

Hand Delivery
 U. S. Mail
 Overnight Delivery
 Facsimile
 Email

Susan Travis
WorldCom, Inc.
707 17th Street – Suite 4200
Denver, CO 80202
Telephone: (303) 390-6333
Susan.a.Travis@worldcom.com

Hand Delivery
 U. S. Mail
 Overnight Delivery
 Facsimile
 Email

Conley E. Ward, Jr.
Givens Pursley LLP
277 North 6th Street – Suite 200
P.O. Box 2720
Boise, ID 83701-2720
Telephone: (208) 388-1200
Facsimile: (208) 388-1300
cew@givenspursley.com
Attorneys for Idaho Telephone Association
Executed protective agreement

Hand Delivery
 U. S. Mail
 Overnight Delivery
 Facsimile
 Email



Brandi L. Gearhart, PLS
Legal Secretary to Mary S. Hobson
Stoel Rives LLP