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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
QWEST CORPORATION FOR)	CASE NO. QWE-T-02-25
DEREGULATION OF BASIC LOCAL)	
EXCHANGE RATES IN ITS BOISE, NAMPA,)	
CALDWELL, MERIDIAN, TWIN FALLS,)	STAFF'S POST-HEARING
IDAHO FALLS, AND POCATELLO)	MEMORANDUM
EXCHANGES.)	

The Commission Staff, by its counsel of record, Weldon B. Stutzman, Deputy Attorney General, files this post-hearing memorandum.

INTRODUCTION

Qwest claims in its Application that cell phone service in seven local exchanges in southern Idaho constitute effective competition to Qwest's basic local services, requiring deregulation of its basic rates in each of the seven exchanges. The statute under which Qwest filed its Application is well known to the Commission, and its interpretation has already been briefed by the parties. *Idaho Code* § 62-622(3) requires the Commission to "cease regulating basic local exchange rates *in a local exchange calling area* upon a showing by an incumbent telephone corporation that effective competition exists for basic local exchange service throughout *the local exchange calling area.*" (italics added.) Paragraph (b) of Section 62-622(3) provides that effective competition may exist when "there are functionally equivalent,

competitively priced local services reasonably available to both residential and small business customers from a telephone corporation unaffiliated with the incumbent telephone corporation.”

Qwest’s case amounts to little more than evidence that there has been a significant increase in cell phone use during the last four years, and a decrease in the number of Qwest’s basic local service access lines from December 2000 through September 2002. Qwest did not attempt to establish a causal connection between those two simple facts. Qwest’s case on “functional equivalence” depends wholly on limiting that standard to establishing that wireline and wireless services both provide voice communication. Qwest’s best evidence on price competitiveness is a limited customer survey designed to gauge customers’ perceptions about the relative costs of wireline and cell phone service. On this weak record, the Commission should issue an Order rejecting Qwest’s Application for deregulation of its basic local rates in the Boise, Meridian, Nampa, Caldwell, Twin Falls, Pocatello and Idaho Falls local exchanges.

NO EVIDENCE SPECIFIC TO EACH LOCAL EXCHANGE

The terms of *Idaho Code* § 62-622(3) require initially that a record be established showing “effective competition exists” and “in a local exchange calling area.” The Commission thus should consider the exchange specific information in the record to determine whether Qwest has met its evidentiary burden in each local exchange calling area.

Given the terms of the relevant statute, it is significant that Qwest admitted it did not attempt to provide information of the status of competition in each exchange. The witness Qwest retained to conduct a customer survey testified the survey was not done on an exchange basis, stating “the purpose of the study was to assess if competition existed within the seven exchanges in total.” Tr. p. 308. The witness stated the survey was not prepared on an exchange specific basis because “Qwest is applying for deregulation of all seven exchanges in total, not an exchange-by-exchange deregulation process.” *Id.* The witness accordingly admitted that he “cannot draw statistical inferences for any of these seven exchanges, not very strongly.” *Id.*

That assessment is confirmed by looking at the exchange specific results of the Qwest survey, admitted in the record as Exhibit 113. For example, page 3 of Exhibit 113 reveals that 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. There are approximately 23,000 basic local customers in the Twin Falls exchange. Exhibit 2, p. 8. Eleven residential customers in the Meridian exchange answered “yes” to the question,

which has approximately 22,500 basic local customers. The fact that 11 customers in Meridian said it is possible they could rely on cell phones for making and receiving local calls cannot seriously be regarded as meaningful information on the status of effective competition in the Meridian local exchange calling area.

Despite asking for deregulation in seven specific local exchanges, and the statutory requirement that evidence be presented on effective competition in each local exchange calling area, Qwest made no effort to provide information on the status of competition in each exchange. Instead, it lumped the limited evidence it had in a package and presented it as a single application. The customer survey commissioned by Qwest, in addition to other significant problems, did not even attempt to explore the status of competition in each exchange and cannot seriously be viewed as meaningful evidence. On this failing alone the Commission should reject Qwest's Application.

NO EVIDENCE OF ACTUAL, EFFECTIVE COMPETITION

The record also reveals a cavalier approach by Qwest to another key component of Section 62-622(3). An incumbent telephone corporation seeking price deregulation is required to show that "effective competition exists" in a local exchange calling area. The legislature clarified its intent regarding effective competition in *Idaho Code* § 62-602(2), where it stated that "effective competition throughout a local exchange calling area will involve a significant number of customers having both service provider and service option choices and that actual competition means more than the mere presence of a competitor." The legislature also added "for there to be actual and effective competition there needs to be substantive and meaningful competition throughout the incumbent telephone corporation's local exchange calling area." *Idaho Code* § 62-602(2).

Qwest's interpretation of Section 62-622(3) enabled it to ignore the legislature's stated intent in Section 62-602(2) and the requirement that cell phones actually provide effective competition to Qwest's basic local service. The record is thus devoid of any evidence demonstrating that wireless services provide actual, substantive and meaningful competition throughout each of the seven exchanges named in Qwest's Application. So for example, Qwest's own witness conceded the Company "never attempted to prove a precise loss of lines attributable to wireless competition." Tr. p. 94.

Worse than that, Qwest was untroubled by evidence that for many customers wireless service is not an alternative to Qwest's local service, let alone a competitively priced alternative. When asked whether for a substantial number of customers cell phones are not an alternative, Qwest's witness reluctantly agreed "that there are certain classes and types of customers for whom cell service many not be their first choice and that a line from Qwest, a basic local exchange service line, is the most appropriate service for them." Tr. p. 118. Revealing Qwest's disconnected approach to the case, the witness immediately added: "But that does not mean that they don't meet a statutory test that indicates that they have a choice of provider and that they can complete calls that are switched interactive voice." *Id.* It does not matter to Qwest that in reality customers may not be able to substitute their local phone with wireless service, because "based upon the definition that we are dealing with here in terms of identifying competitive situations, . . . customer premise equipment, key systems, multiple appearance lines, are beyond the definition that we are faced with in the statute in terms of determining whether or not competition exists and is effective." Tr. p 120. Qwest offered a solution for captive customers faced with an unregulated rate increase: "They have the choice to not pay it. They have the choice to drop lines to reduce their bill." Tr. p 121. That is indeed a strange approach to determine that competition exists and is effective, causing Commissioner Smith to observe that "we could debate whether your response to trying to regain part of the cell phone market is going to be on the backs of people who really don't have a substitute in the products that they're using." Tr. p. 133.

**WEAK EVIDENCE ON FUNCTIONAL EQUIVALENCE
AND COMPETITIVELY PRICED**

Qwest's goal oriented approach to the case enabled it to disregard the requirement that actual competition exist for its services in a local exchange calling area. Qwest instead focused on the means by which effective competition may appear in a local calling area, as set forth in subparagraph (b) of Section 62-622(3). The key components of this paragraph are that alternative services must be "functionally equivalent" and "competitively priced," requirements that became almost meaningless by Qwest's application of the statute.

Qwest repeatedly declared that the functionally equivalent standard is limited only to a determination that wireless service provides voice communication. Qwest witnesses thus often declared that information or evidence about different attributes of wireline and wireless service,

and the reasons customers purchase wireless in addition to wireline service, were irrelevant in this case. For example, when Qwest's survey witness was asked if the survey could have inquired of fax machine use by residential customers, he responded: "You know, I consider that irrelevant. It would be a waste of time and money." Tr. p. 318. Qwest's insistence, when considering functional equivalence, that information on functions other than voice communication is irrelevant avoided the inconvenience of evidence demonstrating that customers purchase cell phone service as a supplement and not a substitute for wireline service.

At the same time, the facts regarding whether the services are competitively priced created an inconvenience for Qwest, since a side-by-side comparison of rates for average customers shows a significant disparity in cost. See Exhibits 101 and 119. The Company used different approaches to solve that dilemma. First, Qwest argued that different attributes of cell phones, primarily their mobility, have added value to customers and thus *must* be considered, in some unexplained way, when making price comparisons. To put it plainly: cell phone attributes when considering functional equivalence, NOT RELEVANT; cell phone attributes when considering competitively priced, RELEVANT.

The other way Qwest dealt with unhelpful price comparison information was to disregard it. Qwest's witness advised the Commission that price comparisons are not effective in assessing competitive pricing, and that customer perceptions about pricing is more important. Tr. p. 277. According to Qwest's witness, "A better approach involves studying actual consumer price perceptions. Such perceptions will influence consumers' willingness to substitute. Until they learn that their perceptions are different than reality, perception will drive their behavior." Tr. p. 277. The survey Qwest commissioned accordingly was designed to test only customers' perceptions about the relative costs of wireline and cell phone service. Tr. p. 298. Apparently agreeing with the survey witness that perception is more important than actual price comparisons, another Qwest witness recommended the survey results "should be considered, and strongly considered in this proceeding." Tr. p. 510. The survey results thus deserve a closer look.

First, it is important to keep in mind how carefully the question on pricing was put to respondents. All survey participants were Qwest wireline customers, and approximately 67% of residential respondents and 60% of business customers also used a cell phone. Exhibit 113, pp. 2 and 10. The question presented asked if the respondents "think the monthly price of using cell phone service for your household is about the same, more than, or less than the price of using

traditional service”? As phrased, the question asked for a perception of costs for a customer’s current cell phone use compared to the monthly cost for his or her use of “traditional service.” For most respondents then, the comparison involved current use of a cell phone as a supplemental telephone service, which could be minimized to limit the expense, and their current use of traditional wireline service, which would include all uses and costs, including added features and long distance costs. Despite the result oriented crafting of the question, the survey results on customer perceptions on pricing are not impressive for Qwest’s case. The survey results on the pricing question are as follows:

Exchange	Title 61 Access Lines (Exhibit 2)	Number of Residential Customers Who Said Cell Phones Cost Same or Less (Exhibit 113, p. 6)	Number of Business Customers Who Said Cell Phones Cost Same or Less (Exhibit 113, p. 14)
Boise	128,000	70	84
Caldwell	18,200	13	10
Idaho Falls	39,000	23	12
Meridian	22,000	11	9
Nampa	32,000	24	16
Pocatello	32,000	19	21
Twin Falls	22,500	15	17

Thus, when considering whether cell phones represent effective competition in the Meridian exchange, the Commission should “strongly consider” that 11 Meridian residential customers believe their current use of a cell phone costs about the same or less than their “traditional service.” The Commission should “strongly consider,” when evaluating the competition in the Caldwell and Idaho Falls exchanges, that 10 small business customers in Caldwell, and 12 small business customers in Idaho Falls, believe their current use of cell phone service costs about the same or less than their wireline service.

The survey results for the Meridian exchange provide additional insights of interest, one on the pricing question. The Meridian exchange showed the highest percentage of wireline residential respondents that also currently use a cell phone – nearly 91%. See Exhibit 113, p. 2. It is also the exchange where the *highest* percentage of customers stated a belief that their cell phone costs *more* than their wireline service. See Exhibit 113, p. 6. In addition, the Meridian exchange had the highest percentage of residential customers respond “no” when asked if their

household could solely rely on cell phones to make and receive local calls – at 57.6%, more than 12 percentage points above the next highest exchange results. See Exhibit 113, p. 3. These results reveal, perhaps, that customers’ perceptions about cell phones and their relative costs are closer to reality where they are actually using both.

There is another notable point regarding the high percentage of customers in Meridian with cell phones. Qwest maintains that the “tremendous growth in wireless subscribership” proves that “customers have embraced wireless technology as a competitive alternative to traditional land line service.” Tr. p. 69. As proof, Qwest submitted Exhibit 1 – showing a significant increase in wireless use, and Exhibit 2 – showing that Qwest’s local access lines decreased in six of the seven exchanges through September 2002. Qwest made no attempt to establish a causal link between the large increase in cell phone use and the comparatively insignificant decrease in its access lines, apparently assuming the cause and effect conclusion is self-evident. The Meridian exchange, however, supports a different conclusion. The Meridian exchange, where Qwest’s survey shows the *highest* percentage of customers using cell phones, is the only exchange that saw an *increase* in the number of access lines through September 2002. See Exhibit 2, p. 5. Using logic similar to Qwest’s, and in the absence of real evidence, the Commission could conclude that an increase in cell phone use results in an increase in Qwest’s local access lines.

By its own testimony, the best evidence offered by Qwest on the statute’s functional equivalence and competitive pricing requirements is the customer survey commissioned by the Company. The survey was designed to capture only customers’ limited perceptions, and made no attempt to determine if customers’ purchasing decisions demonstrate the presence of actual, effective competition between cell phone service and Qwest’s basic local service. The survey question on functional equivalence was crafted to minimize adverse responses, and many negative responses were disregarded to improve the results. See Tr. pp. 299-301. The question regarding competitive pricing was crafted to capture only customers’ limited perceptions about relative costs. Nonetheless, Qwest’s survey witness assured the Commission it can “take comfort in knowing that Qwest, by commissioning the survey research I oversaw, has allowed the affected constituents a fair and valid forum to voice the public’s interest in this matter.” Tr. p. 292.

CONCLUSION

Qwest prepared and filed this case with a goal in mind—deregulation of its rates for basic local service in seven exchanges in southern Idaho. With its eyes fixed firmly on the prize, Qwest worked backward to fit the law and facts to its objective. Unfortunately, neither the law nor the facts support Qwest's goal. Undeterred, the Company fashioned an interpretation of law to fit its case, and constrained the facts required to fit its interpretation of the law. The Commission should issue an Order rejecting Qwest's Application and the attempt it made to obtain an objective in the absence of law and meaningful facts.

Respectfully submitted this 27th day of June 2003.



Weldon B. Stutzman
Deputy Attorney General

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 27TH DAY OF JUNE 2003, SERVED THE FOREGOING STAFF'S POST-HEARING MEMORANDUM, IN CASE NO. QWE-T-02-25, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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