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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,)
IDAHO FALLS, AND POCA TELLO)
EXCHANGES.)**

Throughout this case Qwest has misstated or mischaracterized Staff's arguments or evidence, and then explained why the misstated issue is not applicable to its case. For the most part Staff has ignored Qwest's incorrect statements of the issues presented by Staff, believing the record is clear and speaks for itself and that the record will be fully reviewed by the Commission. Nonetheless, because Qwest's post-hearing memorandum contains several such mischaracterizations, some of which are repeated from earlier Qwest arguments, Staff feels compelled in this Reply Memorandum to address two incorrect assertions made by Qwest.

At page 2 of Qwest's Opening Post-Hearing Brief, Qwest makes the following statement: "Staff *insists* that because there is no evidence that large numbers of Qwest customers have disconnected their wirelines . . . then wireless service must not be 'functionally equivalent' or 'competitively priced' with Qwest basic local exchange service" (italics added). Similarly, Qwest states as follows at page 13 of its brief: "Meanwhile, to require as Staff would

STAFF'S POST-HEARING
REPLY MEMORANDUM

insist the Commission do, that Qwest show that it has already lost substantial market share to its wireless competitors is contrary to the statute” (italics added). Qwest accuses Staff of “attempting to apply a market loss standard that is not present in statute.” Qwest’s Opening Post-Hearing Brief, p. 13.

Notably, Qwest provides no citations to the record for its statements that Staff insists Qwest must show loss of a significant market share to successfully prove its case. There can be no reference to the record because Staff never insisted, or even mildly asserted, that Qwest is required to prove loss of a significant market share to wireless providers. What Staff did assert, and on what Staff believes the Commission must insist, is that Qwest meet its burden to prove the requirements of the statute are met before price de-regulation is ordered.

One of those statutory requirements is that wireless service provide a genuine, actual competitive alternative to Qwest’s basic local service. Information about whether customers are switching from Qwest’s local service to wireless service would be relevant to that inquiry. Staff pointed out that Qwest offered no evidence to show whether or to what degree it has lost basic local customers to wireless service in each of the seven local exchanges. See, e.g., Tr. p. 112 (Q. “Do you know how many of the 350 lines [dropped] in the Nampa exchange were due to people dropping wireline service and going only with wireless service?” A. “I do not.”); and Tr. p. 94 (“Qwest never attempted to prove a precise loss of lines attributable to wireless competition.”) Pointing out that Qwest failed to provide meaningful evidence on whether cellular service actually competes with Qwest’s basic local service, and that Qwest utterly failed to meet its burden of proof on that point, is very different from insisting that Qwest must prove loss of a “substantial market share.” Qwest avoids addressing the real issue, i.e., the lack of evidence that cellular service is a competitive alternative to wireline service in the seven exchanges, by claiming Staff would require an unwarranted or unreasonable element of proof that Qwest reasonably did not attempt to meet.

The second mischaracterization Staff will address Qwest previously made and is repeated in Qwest’s post-hearing brief. At page 8 of its brief, Qwest quotes testimony of Staff witness Wayne Hart regarding the language of *Idaho Code* § 62-622(3)(b), the statute under which Qwest filed its application. Qwest notes Mr. Hart’s testimony that “the very idea of subparagraph (b) 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. p. 635, quoted at Qwest post-hearing brief, p. 8. From that Qwest implies Mr. Hart was testifying to a definition of “functionally equivalent.” Qwest then asserts that “Staff consultant Ben Johnson, however, took an extreme position at odds with Mr. Hart, that ‘functionally equivalent’ means identical or virtually identical.” Qwest post-hearing brief, p. 8. Using hyperbole not unusual for Qwest in this case, the Company claims Dr. Johnson “used this exceedingly stringent definition as a tool by which to exploit every difference between wireless and wireline services as a basis for denying Qwest’s application.” According to Qwest, Dr. Johnson reaches a “peak of absurdity” by testifying that wireless service has attributes, such as mobility, that are superior to wireline service attributes. Qwest post-hearing brief, pp. 8-9.

There is nothing “at odds” or inconsistent between the testimony of Mr. Hart and Dr. Johnson on the issue of functional equivalence. Mr. Hart’s testimony was in response to Qwest’s assertion that Section 62-622(3)(b) limits the functionally equivalent standard to *only* voice communication, as is clear from the complete question and answer in Mr. Hart’s testimony:

Q. Is it appropriate under this statute for the Commission to limit its review to a comparison of two-way, switched voice communication services, and not consider what other features may be a part of the “local services” claimed to be providing “effective competition?”

A. I don’t believe it is. First, the very idea of subparagraph (b) 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. The term used in the statute is “functionally equivalent.” *In comparing the different functions of two different services, although it is important to review their similarities to determine if one is a substitute for the other, it is also necessary to compare their differences.* It seems to me a comparison to determine whether two different services are “functionally equivalent” would be incomplete and seriously flawed if all that was compared was their identical functions and uses.

Second, the structure of the statute supports a review of different functions when the Commission is comparing services to determine if they are “functionally equivalent.” The legislature used the term “basic local exchange services” nine times in Section 62-622, and once in paragraph (3) of the section. Yet in subparagraph (b), the legislature used the term “local services” when defining the services that must be functionally equivalent and competitively priced. I believe the legislature’s selection of terms was deliberate and directs a review of the full

functions of the two services to determine whether one is “functionally equivalent” to the other. *If the legislature wanted to limit the Commission’s comparison to whether they both provide two-way switched voice communication services, it could have said that in subparagraph (b).*

Tr. pp. 634-36 (italics added).

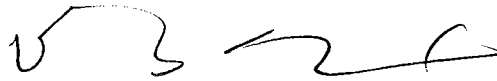
In his testimony, Dr. Johnson made the comparison of functions and attributes Mr. Hart testified is invited by subparagraph (b). As noted by Qwest, Dr. Johnson at pages 771–75 of the transcript identifies ten key attributes of wireline service that distinguish it from wireless service. As is clear from the questions preceding and following Dr. Johnson’s discussion of the wireline attributes, Dr. Johnson is explaining that, “Because of these functional differences, wireline and wireless services are often used for different purposes. As a result, most consumers who choose to purchase wireless service also continue to purchase wireline service.” Tr. p. 775. In what Qwest describes as a “peak of absurdity,” Dr. Johnson testified that “The primary advantage of wireless services is mobility; certainly this is its strongest advantage over traditional wireline service.” Tr. p. 771.

The testimonies of Mr. Hart and Dr. Johnson are consistent and complementary. Mr. Hart explains, consistent with the purpose of Section 62-622(3)(b), that it is necessary to review both the similarities and differences between two products in determining whether one is a reasonable substitute for, and thus is competitive with, the other. Dr. Johnson provides a detailed discussion of the differences between wireless and wireline services to “help the Commission to gain a better understanding of why so many consumers choose to pay for both services.” Tr. p. 770. In other words, Dr. Johnson explains why, due to the different functions of wireline and wireless services, one is not used by customers as a substitute for the other. That is exactly the discussion Mr. Hart testified is appropriate when considering the “functionally equivalent” standard in paragraph (b). The position stated by Dr. Johnson is not extreme, nor is it “at odds” with Mr. Hart’s testimony.

These two mischaracterizations of Staff’s testimony addressed in this memorandum are representative of the approach Qwest brought to this case. It would not be productive for Staff to address each mischaracterization of the evidence or arguments identifiable in Qwest’s post-hearing brief; the resulting memorandum would be lengthy and not particularly helpful to the merits of the case. Staff discusses two examples of Qwest’s mischaracterizations here in

order to caution the Commission to review carefully the positions stated by Qwest “in [its] zeal to advance [its] argument.” Borrowed from Qwest’s Post-Hearing Brief, p. 9.

Respectfully submitted this 11th day of July, 2003.



Weldon B. Stutzman
Deputy Attorney General

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 11TH DAY OF JULY 2003, SERVED THE FOREGOING **STAFF'S POST-HEARING REPLY MEMORANDUM**, IN CASE NO. QWE-T-02-25, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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