

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
Chairman
WILLIAM A. MUNDELL
Commissioner
MARC SPITZER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner

IN THE MATTER OF QWEST)
CORPORATION'S FILING OF RENEWED)
PRICE REGULATION PLAN)
_____)

DOCKET NO. T-01051B-03-0454

IN THE MATTER OF THE INVESTIGATION OF)
THE COST OF TELECOMMUNICATIONS)
ACCESS)
_____)

DOCKET NO. T-00000D-00-0672

SURREBUTTAL

TESTIMONY

OF

ARMANDO FIMBRES

PUBLIC UTILITIES ANALYST IV

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

JANUARY 12, 2005

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EXECUTIVE SUMMARY
QWEST CORPORATION
Docket Nos. T-01051B-03-0454 & T-00000D-00-0672

My surrebuttal testimony addresses the rebuttal testimony submitted December 20, 2004 by Mr. Teitzel and Mr. Shooshan on behalf of Qwest Corporation.

So many points addressed by Mr. Teitzel and Mr. Shooshan appear to be out of context that the complex information in my direct testimony was either misunderstood or perhaps a full examination of the workpapers, totaling 25 Microsoft Excel files and equaling 2,020 printed 8.5x11 pages, that I provided to Qwest was not conducted.

Intermodal competition appears to have grown in importance in the rebuttal testimony of Mr. Teitzel and Mr. Shooshan compared to Qwest's direct testimony of May 20, 2004. The change is unexplained. By contrast, CLEC competition receives relatively little discussion.

Qwest's May 20, 2004, subsequent statements by Qwest and even Mr. Shooshan's rebuttal testimony indicate that Wireless competition is excluded from the three criteria proposed by Qwest for the designation of competitive zones. Wireless is not considered a facilities-bypass provider (criteria #1), a user of unbundled elements (criteria #2) or a user of resale services (criteria #3). Wireless is only mentioned once in Mr. Teitzel's Competitive Zone direct testimony and, then, only in a footnote¹ reference.

VoIP has the potential to be a local exchange alternative but its inclusion in this proceeding for the purpose of competitive zone designation is unsupported by the available facts.

Specific issues raised by Mr. Teitzel regarding my use or representation of Listings Information, LERG² data, Market Share analysis and HHI³ estimates are without merit. As supported by my direct testimony, market share and HHI analyses were conducted on three bases – Listings Information; Qwest and CLEC Access Line Information; and, Qwest and CLEC Access Line Information and Wireless Line estimates. Additionally, analyses were done across multiple geographies – Statewide, NPAs, Wire Centers and, in part, Zip Codes – for both business and residence customers.

Qwest's objections to Staff's zip code proposal are not supported with corresponding expense estimates. Adding weight to Staff's zip code proposal is market evidence that providers already use zip codes for communicating service availability to end-users. Cox and Sprint PCS⁴ use zip codes within their websites for determining service availability. Even Qwest requires the entry of a zip code for those seeking new service using Qwest's online website.⁵

¹ Footnote 162 at P. 74

² Local Exchange Routing Guide

³ Herfindahl-Hirschman Index

⁴ Cox: <http://www.cox.com/DigitalCable/>; Sprint PCS: <http://www.sprintpcs.com/>.

⁵ <https://iot.qwest.com/iot/control/newnameaddr>

INTRODUCTION

Q. Please state your name, occupation, and business address.

A. My name is Armando Fimbres. I am a Public Utilities Analyst employed by the Arizona Corporation Commission (“ACC” or “Commission”) in the Utilities Division (“Staff”). My business address is 1200 West Washington Street, Phoenix, Arizona 85007.

Q. What is your role in this case?

A. I submitted direct testimony on November 18, 2004 addressing the competitive situation in Arizona on behalf of Staff. My surrebuttal testimony will address the rebuttal testimony submitted on December 20, 2004 by David L. Teitzel on behalf of Qwest Corporation, and Harry M. Shooshan, III, consultant for Qwest Corporation.

GENERAL OBSERVATIONS

Q. What general points stand out in Mr. Teitzel’s rebuttal testimony?

A. Many aspects of Mr. Teitzel’s rebuttal testimony require clarification. While specific points on which I differ with Mr. Teitzel’s rebuttal testimony are addressed later in my testimony, a few introductory comments are appropriate in framing my overall position with respect to Mr. Teitzel’s testimony.

1 - Mr. Teitzel has taken many aspects of my direct testimony out of context. I was careful to address the contextual importance of my competitive analysis and related information, directly raising the importance of context at 13 points in my direct testimony. Mr. Teitzel ignores the context in which various analyses are offered in his rebuttal testimony.

2 - The importance of Intermodal telecommunications competition, as conveyed in Mr. Teitzel’s rebuttal testimony, appears to have risen substantially in importance compared to his direct testimony. Mr. Teitzel’s direct testimony does not address Wireless or

VoIP in substance until page 56 of his 107 page testimony, following his discussion of CLEC competition, and accords these issues very little importance in Qwest's competitive zone proposal. In Mr. Teitzel's rebuttal testimony, Intermodal competition is the second issue addressed on page 2 of his 74 page testimony. Mr. Teitzel chooses to address Intermodal competition issues in advance of CLEC competition issues. Mr. Teitzel goes on to address Intermodal competition at many points in his rebuttal testimony. Qwest's need to support Intermodal competition may have risen as the evidence to support substantial and sustainable CLEC competition has declined.

3 - At several points in his testimony, Mr. Teitzel characterizes my direct testimony as "misleading", "incorrect", "unclear", "wrong", "unsupported", an "opinion" or "not based on facts". The number of protests in Mr. Teitzel's rebuttal testimony suggests that Mr. Teitzel did not review workpapers provided by Staff in response to Qwest's data request. In addition to the 23 exhibits included in my direct testimony, Staff has provided workpapers that totaled 25 Microsoft Excel files, equaling 2,020 printed 8.5x11 pages, and 11.1 MB in electronic storage. Given my extensive analysis, Mr. Teitzel's statements are without merit.

Q. What general points stand out in Mr. Shooshan's rebuttal testimony?

A. I observe two general points in Mr. Shooshan's testimony that warrant some discussion:

1 - At P. 19-20, Mr. Shooshan comments that minutes of use ("MOUs") should be the basis for market share and HHI analyses. Qwest did not provide responses to Staff's data requests STF 3.18 and STF 6.2 that requested MOU information. Market share and HHI analyses were conducted on three bases – Listings Information; Qwest and CLEC Access Line Information; and, Qwest and CLEC Access Line Information and Wireless Line estimates. Additionally, I analyzed multiple geographic areas – Statewide, NPAs, Wire Centers and, in part, Zip Codes – for business and residence.

2 - As observed with Mr. Teitzel's rebuttal testimony, Mr. Shooshan's rebuttal testimony of my direct testimony is heavily dependent on observations regarding Wireless. In Qwest's direct testimony, CLEC competition appeared to be the focus. In Qwest's rebuttal testimony, Wireless seems to have been given elevated attention. I note that Wireless does not satisfy any of the three criteria offered by Qwest for competitive zone designation. My attention is captured by Mr. Shooshan's rebuttal testimony at P. 20, lines 8-10, "Although Qwest has elected not to rely on the presence of wireless service in its competitive zone criteria, I believe that wireless service is an effective substitute for Qwest's basic local exchange service." I agree that Qwest has chosen not to include Wireless in the competitive zone criteria. By continuing to offer views on Wireless that do not support Qwest's competitive zone proposal, Mr. Shooshan appears to differ with both Qwest's May 20, 2004 application and with my analysis and direct testimony.

Q. Can you summarize your general observations regarding Mr. Teitzel's and Mr. Shooshan's rebuttal testimony?

A. Yes,

- 1 – Mr. Teitzel's and Mr. Shooshan's rebuttal testimonies are based on points in my direct testimony that have been taken out of context.
- 2 – Mr. Teitzel and Mr. Shooshan have not based their rebuttal testimony on a thorough examination of the data included in my direct testimony, nor the workpapers provided in response to Qwest's request.
- 3 – Intermodal competition appears to have grown in importance compared to Qwest's direct testimony, submitted on May 20, 2004. Qwest provides no explanation for this shift in emphasis.

4 – Qwest does not provide any new analysis, as evidenced by Mr. Teitzel’s lack of rebuttal testimony workpapers⁶.

COMPETITIVE ISSUES

Q. At P. 4, Mr. Teitzel disagrees with your conclusion regarding the state of telecommunications competition in Arizona since the 96 Telecom Act was enacted. Can you clarify?

A. Mr. Teitzel takes exception to my statement “...competitive gains in the nearly 9 year window since the 96 Telecom Act was passed highlight slow progress with little to support that acceleration is imminent.” Let’s examine my statement further and add more competitive analysis context for clarification.

Since Arizona is one of the largest six states⁷ in market size within Qwest’s RBOC region, Arizona should logically be one of the most competitive six states. The relevant issue, however, is not Arizona’s ranking but rather its factual, competitive situation. I believe 9 years should be a sufficient period for CLECs to have gained significant share and established their market intentions. Qwest agrees. As evidenced by Qwest testimony submitted in the TRO case, T-00000A-03-0369, as little as 5 years should be sufficient for an efficient facilities-based CLEC to succeed.

In the TRO case, Qwest Witness Peter Copeland⁸ presented a complex computer model to illustrate that an efficient facilities-based CLEC should be able to gain 5% share in five years. If the competitive situation in Arizona is robust, as portrayed by Mr. Teitzel’s rebuttal testimony then the obvious question is, why do so few CLECs appear to meet the

⁶ 12/28/04 email from Tim Berg, representing Qwest, to Tim Sabo, representing Staff, “Dave Teitzel--Has no workpapers”

⁷ Arizona, Colorado, Minnesota, Oregon, Utah, Washington

⁸ direct testimony of Peter B. Copeland, 1/9/04, T-00000A-03-0369

5%, 5-year figures suggested by Qwest in the TRO case or 9 years as I point out in this case? Is the model wrong? Is the 5-year period wrong? Is the 5% market share figure wrong? Are most of the facilities-based CLECs not efficient? Any or all of these factors could be contributors. Regardless, Qwest's own TRO testimony supports my position that 9 years is sufficient.

Let's consider the second point in my statement to which Mr. Teitzel takes exception. Wireless systems have been in operation since the early 1980s. Wireless had been in existence for many years when the 96 Telecom Act was passed yet Congress, and the FCC with the understanding of the RBOCs, omitted wireless from consideration as a local exchange service. The natural progression of Wireless competition has been visible for years and even so was not a factor in the current Price Cap Plan. Even the FCC does not consider Wireless a local exchange alternative on a par with CLEC services, as demonstrated by its Triennial Review Order. More significantly, however, Qwest has offered no evidence, other than anecdotal, to demonstrate the degree to which Wireless phones in Arizona are displacing primary lines rather than secondary lines.

I agree with the characterization used by Cox in its direct testimony – “VoIP is a nascent technology...” While the promise of VoIP appears great, there is little factual evidence to suggest that VoIP is the basis on which Qwest should be granted competitive relief in this proceeding. More time is needed to determine the path of VoIP services and their impact on local exchange services. I referenced an article from TechNewsWorld⁹ in my direct testimony that suggests VoIP progress has some challenges that need to be fully addressed.

⁹ TechNewsWorld.com, 9/28/04, “VoIP Looms Large, But Problems Persist”

Qwest's December 29, 2004 announcement¹⁰ concerning a delay of its Oregon¹¹ VoIP plans for residence customers illustrates how the path of new technologies is uncertain. Announced "two years ago" with initial plans for a roll-out in the first-half of 2004, Qwest has delayed its service introduction "until early 2005".

The sum of my direct testimony supports the conclusion that CLEC competition is not accelerating. Only VoIP stands-out as an area from which competitive acceleration could result at some unknown point in the future. These points support my direct testimony statement that there is "little to support that acceleration is imminent" with respect to the Arizona competitive landscape at present.

Q. Is there more that could be learned about the robust competition in Arizona suggested by Mr. Teitzel?

A. Although Mr. Teitzel reminds parties by his rebuttal testimony that Arizona has a more robust competitive environment than Idaho, Iowa, Montana, New Mexico, North Dakota, South Dakota, and Wyoming, more could be gained by comparing the situations in Phoenix and Tucson with that of the Omaha, Nebraska MSA, where Qwest filed an FCC petition for forbearance on June 21, 2004. A significant and common factor among the Phoenix, Tucson and Omaha MSAs is the competition between Qwest and Cox. On July 9, 2004, Staff asked Qwest for the following information in STF 7.5.

"Please explain Qwest's market share position for Phoenix and Tucson in the same context that Qwest's Omaha market share position was explained in its FCC petition."

¹⁰ Oregonlive.com, 12/30/04, "Qwest puts hold on proposal for calls from home over Internet"

¹¹ Qwest also has delayed similar service launches in all 14 states within its RBOC region; TelephonyOnline.com, 1/3/05, "Qwest delays residential VoIP"

Without presenting any actual figures, Qwest's August 2, 2004 response indicates that the Omaha MSA has a greater percentage (Qwest uses the term proportion) of lines losses than the Phoenix and Tucson MSAs.

"...Qwest access line losses in the Omaha MSA are significant, and when compared to the smaller Qwest retail line base in Omaha, represent a larger proportion of line losses for that MSA than the percentages shown on Confidential Exhibit DLT-17 for the Phoenix and Tucson MSAs."

Qwest also indicated in its response to data request STF 7.6 that:

"There is no specific "trigger" or "criteria" that would lead Qwest to petition the FCC for forbearance from dominant carrier regulation in Phoenix and Tucson."

Qwest must have used specific criteria to support its Omaha filing, however, has not explained how specific criteria for Phoenix or Tucson compares to Omaha's competitive position.

Mr. Teitzel initially stated in his direct testimony at P. 7 that "Three years ago, Cox was just entering the Phoenix telecommunications market..." He subsequently retracted his statement in a Notice of Errata docketed on July 27, 2004. That Qwest was unable to state when its key competitor entered the Phoenix market helps illustrate how confusing the competitive situation can be. A robust competitive market should be more obvious and more easily confirmed.

Q. At P. 8, Mr. Teitzel reacts to your use of white pages listings for competitive analysis. Can you comment?

A. Mr. Teitzel's rebuttal testimony on the subject of customer information listings also requires comment. I did use the term "highly accurate" in my direct testimony but Mr. Teitzel apparently missed the context of my full statement.

"The Listings Information is contributed by all wireline providers and, in some cases, wireless providers of local exchange services for end-user customers and is refreshed often to serve end-user needs and therefore is highly accurate."

I do not believe that Mr. Teitzel was intending to convey that the many Qwest databases and services dependent on the flow of listings information are inaccurate and not refreshed in accordance with CLEC, ILEC and end-user expectations. Mr. Teitzel failed to observe that I requested comprehensive Listings Information, not just listings contained in the White Pages directory. My interest is exhibited in the explanation attached to the data request (STF 3.20) sent to Qwest on June 16, 2004.

"This information should be separated by residence and business and include a count of all listings in its comprehensive database(s), not just those published in the white pages directories or available via director(y) assistance."

Staff further tried to ensure that Qwest was providing all listings information. Qwest affirmed its understanding via email¹² on July 30, 2004. Inclusion of all listings information was also addressed in part by Qwest's response to STF 19.1 by which Staff sought to obtain Foreign Listings thought to be missing in the response to STF 3.20. Qwest affirmed in its response that Foreign Listings had already been provided.

At P. 8, lines 14-16, Mr. Teitzel states that "...it is not accurate to suggest that white pages listings are equivalent to access lines." Mr. Teitzel mischaracterizes my direct testimony. I was careful to explain in my direct testimony at P. 3, lines 2-5, that:

¹² 7/30/04 email from Norm Curtright to Tim Sabo

“The Listings information is useful for analysis because it contains records for all Residence and Business main accounts without regard to listing options, such as privacy or premium listings, thereby allowing analysis based on essentially 100 percent of Residence and Business local exchange main accounts in Arizona”

Not only does my statement explain that all listings information was used in my analysis without regard to the listing preferences suggested by Mr. Teitzel but also clarifies that main accounts are the primary interest. The additional listing information was not used for market share and HHI analyses. Nowhere in my direct testimony do I attempt to portray that listings information analysis is representative of all access lines.

Additionally, I took steps in my direct testimony to include market share and HHI analyses based on access lines or access line estimates. Exhibit AFF-10 in my direct testimony indicates that I was not misleading in my use of listing information and actually provided a concise table to contrast the use of listings and access line information for market share and HHI analyses.

Q. Has Staff found additional support for the use of Listings Information?

A. Yes. Although Mr. Teitzel attacks my use of listings information for analysis of competition, Qwest itself appears to use listings information for its internal analysis of competition. In response to STF 36.12 and STF 36.13, Qwest discloses for the first time the existence of a "Market Intelligence & Decision Support" (MIDS) report. Qwest states that the MIDS report uses listings information, and contains¹³ "statistical information by state, city, NPA, prefix, line type and carrier type." Qwest also states that the MIDS report

¹³ STF 36.12 and STF 36.13, Market Intelligence & Decision Support (MIDS) File, Data types used: Qwest, CLEC, ILEC, RSID and VOIP.

is "provided weekly to the Qwest Market Intelligence group". Therefore, Qwest seems to be using listings information for its own analysis of market conditions.

Q. Could the Listings Information have been the basis for even more analysis?

A. Yes. Had Qwest supplied the listings information updates as requested by data request STF 18.1, the recent competitive trend pertaining to main accounts, or main lines, could have been analyzed. This may have added clarity to the continuing customer loss believed by Qwest. Mr. Teitzel states at P. 6, lines 5-7, that "it is noteworthy that the number of White Pages directory listings associated with CLEC end user access lines increased by over 450%" from December 2000 to September 2004. The percent increase sounds dramatic until one gives fair meaning to the relatively low base from which the percent is derived, a base that by December 2000 represented a period of approximately 5 years since the implementation of the 96 Telecom Act.

While Mr. Teitzel protests my use of listing information, he does not hesitate to use listing information within his own rebuttal testimony. I note that the listings information updates requested in August 2004¹⁴ were not made available to Staff while Qwest was able to provide September 2004 listings information for its own use. I further note that Mr. Teitzel does not clarify whether he used main listings, additional listings or both as the basis for his point at P. 6, lines 5-7. I, however, was careful to make such a distinction in my use of listings information. My workpapers and direct testimony make clear that I only used main listings in my market share and HHI analyses. Staff has been unable to verify or in any way examine Mr. Teitzel's calculations since Qwest has repeatedly confirmed that Mr. Teitzel has no workpapers. Mr. Teitzel's calculations are entirely unsubstantiated and should be given no weight.

¹⁴ Staff's data request STF 18.1, 8/12/04

Q. At P. 9, Mr. Teitzel seems to take issue with your use of the Local Exchange Routing Guide (LERG) for competitive analysis. Can you clarify that misunderstanding?

A. Mr. Teitzel's objection to the manner in which I used the LERG is peculiar. The manner in which Mr. Teitzel suggests the LERG should not be used is not the manner in which I used the LERG. Nowhere do I suggest in my direct testimony that there is a singular correlation between the location of switches in the LERG data and the location of customers being served by CLECS providing service. I state in my direct testimony at P. 3, lines 19-23:

“From the LERG information it is possible to determine WHO has switches, WHAT type of switches are installed, WHERE switches are located, WHEN switches are scheduled to become active, WHICH NPA-NXXs are assigned to specific switches and many related factors, such as number pooling.”

By not commenting on the manner in which I did use the LERG, I assume that Mr. Teitzel does agree with the manner in which I did use the LERG.

Q. At P. 20, Mr. Teitzel takes issue with the manner in which you addressed market share and HHI analyses. Do you have any response?

A. I took steps in my direct testimony to present the Commission and all parties with multiple perspectives of market share analysis. I did not rely solely on listings information analysis, using access line information made available from Qwest in response to RUCO data requests and even derived estimates based on wireless substitution for main and additional lines. That none of the results meet with Mr. Teitzel's approval is not surprising since market share metrics are not included in the three measures offered in Qwest's Price Cap Application. Qwest does not seem to be supportive of any market share metrics.

1. A competitor has facilities in place and is marketing or offering services in competition with Qwest; or,

2. A competitor is marketing or offering services through the provision of unbundled network elements provided by Qwest; or,
3. A competitor is marketing or offering services through the resale of Qwest's service.¹⁵

Dr. Johnson correctly states in his direct testimony, filed on November 20, 2004 on behalf of RUCO, that "The mere fact that a certain number of "warm bodies" have shown up and announced their intention to offer local telephone service is not indicative of the extent to which meaningful "entry" is actually occurring or the extent to which customers are willing to accept these firms' offerings as viable substitutes for those of their existing carrier." If this case is to be determined on the factual existence of competition rather than the potential for competition, some measure of market share is relevant for competitive zone criteria.

Q. Do you have any response to Mr. Teitzel's specific objections to your market share calculations?

A. At P. 20, lines 8-19, Mr. Teitzel comments directly on my presentation of Qwest's market share and related HHI estimates. His comments deserve additional context. Staff understands that specific market share parameters do not currently exist within the Commission rules to assist in the designation of competitive zones. For that purpose, I presented analysis testimony meant to convey the range of possibilities and those which could be used in the designation of competitive zones. The Commission may not want to put undue emphasis on any single parameter, but may want to examine the whole range of market share parameters.

Should the Commission choose to use HHI as criteria it is relevant to know that regardless of the number of competitors, the presence of one competitor with 70% share cannot allow

¹⁵ See the attachment to Qwest's May 20, 2004 filing: "Revised Price Cap Plan Terms, Conditions and Operation of the Revised Price Cap Plan."

the HHI to drop below 4,900. If only one competitor has the remaining 30% share, the total HHI is 5,800. If six competitors, however, equally share 30% while one is at 70% the HHI is 5,050. Now, suppose that two competitors each have 50% of the market. The corresponding HHI would be 5,000. This illustrates, mathematically, that having one competitor at 70% with six at 5% results in similar market concentration as two competitors equally sharing the market. These simple estimates help communicate that Qwest's market share is not the only key factor. The presence of measurable competitors is another way for an HHI to be lowered and may be the best way to support the existence of robust competition. As I expressed in its direct testimony, an HHI of 5,000 is one that may have been reached and even exceeded in several zip codes, some that even Qwest did not seem to suspect in its May 20, 2004 testimony¹⁶.

For completeness, one more estimate should be considered. Even if 5 competitors equally shared the market, each at 20%, the HHI would be 2,000, still above 1,800. This provides an idea of the number of aggressive competitors needed to reach the DOJ figure. Staff agrees that the DOJ figure is a rigorous test and that the 1,800 HHI figure should not be taken as absolute. Staff has thus far formed no concrete opinion on the appropriate levels of market share and HHI that should be used if so chosen by the Commission. Staff does believe that some form of market share figures need to be utilized by the Commission in designating competitive zones.

Q. Can you summarize your position regarding Mr. Teitzel's and Mr. Shooshan's rebuttal testimony pertaining to Competitive Issues?

A. Yes,

¹⁶ direct testimony of Armando Fimbres, November 20, 2004, page 53, lines 7-17

- 1 – By Qwest’s own complex modeling, submitted in the TRO case, T-00000A-03-0369, efficient facilities-based CLECs should have been able to gain 5% market share in 5 years. The 96 Telecom Act is nearly 9 years old and very few CLECs have met those figures.
- 2 - The sum of my direct testimony supports the conclusion that CLEC competition is not accelerating. Only VoIP stands-out as an area from which competitive acceleration could be imminent.
- 3 - As promising as VoIP appears, little factual evidence exists to categorize VoIP as an imminent threat to local exchange services.
- 4 - Mr. Teitzel has misunderstood my use of listings information in market share and HHI analyses.
- 5 - Some form of market share and/or HHI analysis criteria must be used in the designation of competitive zones.
- 6 - Qwest expressed a change in its understanding by a Notice of Errata docketed on July 27, 2004. That Qwest is no longer able to state when its key competitor entered the Phoenix market helps illustrate how confusing the competitive situation can be. A robust competitive market should be more obvious and more easily confirmed.

CLEC COMPETITION

Q. At P. 17, Mr. Teitzel comments on the upcoming FCC decisions regarding the Triennial Review Order. Do you have any comments?

A. I do have a few comments regarding Mr. Teitzel’s reference at P. 17, lines 8-11. CLECs appear to have placed a surprising number of switches over the course of the 9 years since the 96 Telecom Act was enacted. Even though there may be a surprising number of switches, CLEC utilization of these switches is not significant in some cases. The recent decision in which “...the FCC found that the BOCs should no longer be required to provide

local switching (and the UNE-P wholesale service that includes local switching) as an unbundled network element at TELRIC-based prices”, as stated by Mr. Teitzel at P. 17, may actually motivate the CLECs to increase their utilization of UNE loops. That would be a welcomed change in the local exchange competitive environment. For now, however, the FCC decision appears to add more uncertainty to an environment already filled with uncertainty. The recent FCC decision to not require the unbundling of fiber-based loops, such as Fiber-To-The-Home (“FTTH”), will ultimately present barriers for UNE loops in new and upgraded communities. One must wonder if the local wireline switches already in place will be used at a time when, as Qwest suggests so strongly in Mr. Teitzel’s rebuttal testimony, that a shift or at least an expansion to VoIP should take place. Whether CLECS are really going to commit themselves to two types of switching and network technologies is unclear.

The potential offered by the local switching that appears to be available is promising but unproven. There is really no evidence to suggest that the CLECs will suddenly make use of local switches for local exchange competition when the CLECs have not done so in the last 9 years.

Q. At P. 18, Mr. Teitzel claims that you believe that AT&T and MCI are abandoning the mass market by virtue your direct testimony on P. 9. Do you have any response?

A. I assume that Mr. Teitzel actually meant to reference my direct testimony at P. 10, lines 1-7 which addressed announcements by AT&T and MCI. As a point of fact, abandon is not a word used in my direct testimony nor have I found it used by AT&T or MCI in their announcements. Discontinue, however, is a word that has been used by AT&T and MCI. I believe that both CLECs will still attend to their existing base and perhaps even implement a strategy to migrate existing customers to other technologies, such as VoIP.

What is very clear is that AT&T and MCI have expressed intentions not to actively market to new residential customers.

Q. At P. 19, Mr. Teitzel states that your statement about competition is an opinion and not based on facts. Do you have a response?

A. Mr. Teitzel is certainly entitled to his opinion. By his statement, however, Mr. Teitzel overlooks key facts which I provided to Qwest in the form of workpapers that totaled 25 Microsoft Excel files, equaling 2,020 printed, 8.5x11 pages and 11.1 MB in electronic storage. My volume of analysis evidences an effort and testimony based on facts.

Mr. Teitzel goes on to state at P. 19 that “Mr. Fimbres' attempt to narrow the focus of this docket to an assessment of wireline CLECs utilizing CLEC-owned loops to compete with Qwest ignores market realities and should be rejected.” This statement warrants a response.

Staff's belief that facilities-bypass competition is more credible evidence of sustainable competition than UNE or Resale competition is supported by the sum of facts presented in my direct testimony. The Omaha, Nebraska situation supports that as well. Staff also believes that evidence of facilities-bypass competition should carry more weight than UNE or Resale competition in the designation of competitive zones. The Omaha, Nebraska situation supports that as well. Furthermore, Staff believes that Qwest's criteria for designating competitive zones are weighted in the opposite direction. I note that only one of Qwest's three criteria involves facilities-bypass provider.

Mr. Teitzel seems to believe that I do not give sufficient credence to the number and type of CLECs. I think it's fair to note that my extensive analysis, as illustrated in Exhibits

AFF-1 through AFF-23 in my direct testimony, identified more switches and competitors than those offered by Qwest in its direct testimony. My direct testimony also did a lot more than simply identify CLECs or switches, which in my opinion is not sufficient evidence to warrant regulatory relief in the form of competitive zones. The CLECS must be active and the switches must be utilized.

Q. Do any of the official FCC reports support the analysis of your direct testimony?

A. Yes. On December 22, 2004, the FCC's Wireline Competition Bureau released its updated Local Telephone Competition Status Report. The FCC reports that ILECs have 2,415,432 out of 3,229,626 access lines in Arizona¹⁷. This means that CLECs have only 25% of the access lines, as reported by the FCC and is similar to and consistent with my observation¹⁸ that CLECs have only 21.9 percent of Residence Main Listings. In Arizona, ILECs such as Qwest clearly remain the dominant carriers.

Q. Can you summarize your position regarding Mr. Teitzel's and Mr. Shooshan's rebuttal testimony pertaining to CLEC Competition?

A. Yes,

- 1 – CLECS appear to have a surprising number of local switches available for local exchange competition, however, not all of these switches are being utilized to provide local exchange service.
- 2 - Facilities-based competition is the most substantial and sustainable form of CLEC competition.

¹⁷ Report at Table 6; "Local Telephone Competition: Status as of June 30, 2004", Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, December 22, 2004

¹⁸ Fimbres direct testimony at P. 7, line 5

- 3 - Only one of Qwest's three competitive zone criteria concerns facilities-based competition. The other two of Qwest's criteria would allow Qwest competitive relief if there was one Resale or UNE provider.
- 4 - FCC figures in the December 22, 2004 report support my direct testimony and indicate that ILECs, such as Qwest, clearly remain the dominant carriers in Arizona.

INTERMODAL COMPETITION

Q. Do you have a general response to the many issues raised about Wireless competition?

A. Yes. I note a general dependency in Mr. Teitzel's rebuttal testimony on the impact of Wireless services. For analysis purposes, Staff included Wireless as a local exchange alternative in this matter as evidenced by the data requests sent to Wireless providers, the related Wireless information requested of Qwest and the zip code approach that has been recommend by Staff for use in designating competitive zones. I have been surprised by Qwest's responses and behavior regarding Wireless providers.

For example, in a July 27, 2004 meeting attended in person or by phone by several representatives from Staff, Qwest, RUCO, Time Warner and AT&T, Qwest was asked if Wireless should be considered a facilities-bypass provider for the purposes of competitive zone designation. At first, Qwest answered yes, however, when informed by AT&T's counsel, Mr. Wolters, that Qwest's position could result in all wire centers passing the first criteria for competitive zone designation offered by Qwest, Mr. Berg, Qwest's attorney, answered that Wireless was not a facilities-bypass provider for the purpose of designating competitive zones¹⁹. Therefore, how Staff or anyone else in this case should view Wireless against the criteria (stated below) offered by Qwest is not clear.

¹⁹ This position was reaffirmed by Qwest's response to Staff data request STF 36.14.

1. A competitor has facilities in place and is marketing or offering services in competition with Qwest; or,
2. A competitor is marketing or offering services through the provision of unbundled network elements provided by Qwest; or,
3. A competitor is marketing or offering services through the resale of Qwest's service.²⁰

By Qwest's own admission, Wireless does not satisfy the 1st criteria. Unless Qwest wishes to present evidence that Wireless is a user of UNEs or Resale services, then the 2nd and 3rd criteria cannot be satisfied either. Once again, how Staff or anyone else in this case should view Wireless against the criteria offered by Qwest is not clear.

Despite the dilemma presented by Qwest pertaining to the inclusion of Wireless, Staff chose to include Wireless in its rigorous analysis. Even so, the Wireless LIS trunk information that Staff requested in STF 26.1.c was provided by Qwest in such a limited fashion it was not useful. Without that information I am unable to speak to the trend in Wireless LIS trunks interconnecting with Qwest. I also requested Wireless MOUs from Qwest in STF 3.18 and again in STF 6.2. In a phone discussion with Qwest on July 28, 2004, Staff was told that Wireless MOUs could only be provided in raw data form. Believing the work would exceed available resources, Staff declined to accept the information in raw form. Even so, Staff continued its search for information directly with Wireless providers. Evidence of that search can be found in my direct testimony at P. 26.

Finally, Staff's recommendation to base competitive zones on zip code parameters was made with the knowledge that if Wireless is deemed by the Commission to be a local exchange alternative on a par with CLECs in a future proceeding, Wireless information

²⁰ See the attachment to Qwest's May 20, 2004 filing: "Revised Price Cap Plan Terms, Conditions and Operation of the Revised Price Cap Plan."

could more easily be included for competitive zone designation by using zip code parameters than using wire center boundaries.

Q. At P. 11, Mr. Teitzel states “By any measure, wireless substitution is a present and increasing competitive factor in Arizona and must be considered in a balanced assessment of telecommunications competition in the market.”

A. To that, I offer a simple measure, one that I suggest²¹ for anyone inclined to choose Wireless for their main line, local exchange service. In order to reach the critical 911 service, a user must do the following.

1. Press the power-on button on the wireless phone.
2. Wait for the phone to establish proper contact with the wireless network.
3. Key in 9-1-1
4. Press the send key
5. Wait for the phone to first send the proper tones
6. Wait for the phone to establish the connection.

If 911 can be reached in less than 12 seconds and that is satisfactory for local exchange service, then an end-user is at least making an informed decision. End-users should remember that reaching 911, or any dialed number, is dependent on (1) the phone having adequate battery power, (2) adequate signal strength at the user location and (3) an available channel to establish the call, a potential problem during peak Wireless usage periods. Consider the stark difference when considering the same points for wireline local exchange service. Concerns for real-time service availability are such that wireline local exchange service providers have central office battery power supported by emergency generators and each end-user has a dedicated loop (the equivalent of a wireless channel) with strict quality standards.

²¹ 911 is a critical service. Calls should only be made to 911 for the purpose of reporting an emergency or confirming the accuracy of information for the desired phone or location upon initiating new service.

As I indicated in my direct testimony “An important fact can be found in footnote 702 of the FCC TRO order “ AT&T points out, for example, that wireless service is engineered to provide only roughly 70% call completion rate while wireline call completion rates exceed 99%.” A recent report from Consumer Reports²² helps illustrate how many service issues remain with wireless service. Qwest’s wireline service, and any CLEC service, is more reliable, superior, and representative of local exchange service expectations.

Q. Do you have any reaction to the statements by Dr. Pociask at P. 13-14 in M. Teitzel’s rebuttal testimony?

A. Dr. Pociask is essentially correct but his statements have to be placed in context. Wireless is “functionally equivalent” and “functionally comparable”. I said as much in my direct testimony. I was careful, however, not to use the terms “sufficiently equivalent” or “sufficiently comparable” as to equate to local exchange service. CLECs with loop-based networks or cable phone systems are “sufficiently equivalent” or “sufficiently comparable” to Qwest’s wireline local exchange service. CLECs are “sufficiently equivalent” because their service meets the same real-time standards of Qwest’s local exchange service, which I outlined earlier. Wireless does not.

The approximately 2.8 million Arizona wireless users can be logically divided into five general²³ categories:

²² 1/4/04, Reuters, “Consumers: Cell phone service still stinks”; 1/05/05, The Dallas Morning News, “Consumer Reports survey: Verizon is best of a mediocre lot”

²³ Additional categories could be illustrated in which MOUs are added in concert with or following the displacement of main and additional wireline phones. Since those categories do not add to the discussion of the full displacement categories of 4 and 5, additional categories have been omitted for this example.

- (1) Full Market Expansion: Those who use a wireless phone without diminishing or changing their wireline phone usage. For these users a wireless phone is fully incremental.
- (2) Part Market Expansion & Part Value Displacement: Those who may expand their overall usage but still shift part of their wireline usage to a wireless phone.
- (3) Part Value Displacement: Those who do not expand their overall usage but shift some of the wireline usage to wireless phone.
- (4) Full Displacement of Additional Line: Those who fully replace their additional wireline phone with their wireless phone.
- (5) Full Displacement of Main Line: Those who fully replace their main wireline phone with their wireless phone.

Qwest would have parties in this proceeding believe that sufficient numbers warranting regulatory relief are already present in categories 4 and 5. I believe the overwhelming numbers, as supported by my direct testimony, are in categories 1, 2 and 3. I support Qwest's general concerns, however, since the uncertainty of local exchange mass market behavior could lead to dramatic shifts, with little notice, in users from category 1 to category 2 to category 3 and, finally, categories 4 and 5, the categories of most concern in this proceeding.

I also sought to conduct MOU analysis and even recommended tracking and analysis related to Wireless MOUs. MOU information is one more factor that could be considered by the Commission in determining whether to include Wireless as an alternative.

Q. At P. 20, Mr. Shooshan states that you chose "...to look the other way..." in your analysis of Wireless competitive information. Do you have any response?

A. I do not agree with Mr. Shooshan. My direct testimony contained much more extensive analysis of Wireless as a potential competitor than Qwest's direct testimony. However, all of the competitive analysis and corresponding testimony submitted by Qwest and by Staff eventually leads to answering a final question – is the Wireless competitive impact sufficient to warrant competitive zone consideration on a par with CLEC competition? I believe my direct testimony is responsive to that key question. I note that neither Mr. Teitzel nor Mr. Shooshan has presented any data or analysis in their Direct or rebuttal testimony that links the competitive impact of Wireless to any geography below the state level. Therefore, how parties in this case are supposed to understand where the wireless impacts have occurred is not clear. As proposed by Qwest, competitive zones are geographically defined by wire centers. However, Qwest has not presented data that measures Wireless users by wire center or any other boundary below the state level. Staff, at least, has offered a zip code boundary proposal that offers the potential for inclusion of Wireless, and VoIP.

For the multitude of fact based reasons presented in my direct testimony²⁴, supported by extensive analysis, I affirm my position that the Wireless evidence is not sufficient to warrant competitive zone consideration on a par with CLEC competition. The most relevant examples may be – (1) Wireless is not yet deemed to be an adequate substitute for local exchange service by the FCC and (2) Wireless users cannot be confirmed by wire centers.

Q. Do you have a general response to the many issues raised by Mr. Teitzel about VoIP competition?

²⁴ Pages 26, 27, 30, 31

A. As with Wireless, I devoted considerable analysis time and effort but did not find substantial evidence of VoIP users. Even Qwest, with its responses to AFF 1.1-1.5, indicated it could not provide supporting information. VoIP has potential but its inclusion in this proceeding for the purposes of competitive zone designation is unsupported. As pointed out in my direct testimony, the number of VoIP users is very low²⁵ and the future of VoIP service is uncertain²⁶.

Q. Can you summarize your position regarding Mr. Teitzel's and Mr. Shooshan's rebuttal testimony pertaining to Intermodal Competition?

A. Yes,

- 1 - Intermodal competition appears to have grown in importance without explanation compared to Qwest's direct testimony of May 20, 2004.
- 2 - Competitive zone criteria proposed by Qwest does not allow for the inclusion of Wireless as a local exchange competitive alternative.
- 3 - Qwest's wireline local exchange service, and that of any CLEC, is more reliable, superior, and representative of local exchange market expectations than Wireless.
- 4 - As stated in my direct testimony, I believe that Wireless usage, or MOU information, should be tracked, analyzed and made available for the Commission's use as one more indicator of the competitive situation.
- 5 - Qwest has not presented data that defines Wireless users by wire center or any other boundary. Staff, at least, has offered a zip code boundary proposal that offers the potential for inclusion of Wireless, and VoIP.
- 6 - VoIP has potential but its inclusion in this proceeding for the purposes of competitive zone designation is unsupportable at this time.

²⁵ Pages 34 - 36

²⁶ Pages 38 - 40

COMPETITIVE ZONES

Q. At P. 21, Mr. Teitzel expresses concerns about the use of zip codes as recommended in your direct testimony. Do you have any comments?

A. My direct testimony included comments supporting the use of zip codes as referenced in the testimony of Staff witness Matt Rowell. I will limit my comments for that reason to areas of competitive impact.

I am sensitive to causing undue expense for Qwest as it seeks regulatory flexibility with competitive zones. I am also concerned, however, with ensuring that rules pertaining to competitive zones are equal for all parties and that information used to designate competitive zones is also based on input from the diverse set of participants who will be impacted by competitive zones. In fairness, as Qwest gains regulatory relief other participants will be faced with a much more competitive environment.

Mr. Teitzel expresses Qwest's concern for increased expense at P. 21 without including estimates²⁷. Without knowledge of the expenses that might be incurred by Qwest using zip code competitive zone designations, I am unable to comment on the reasonableness of such expenses. In the competitive context, however, I believe that expenses involving the use of zip code information are already borne within the sophisticated marketing departments and billing systems of all telecommunications providers. Sophisticated use of zip code information appears to be a standard operating procedure of all telecommunications providers.

Staff also notes that Qwest²⁸ has been able to report broadband data to the FCC²⁹ for several years on a zip code basis. Qwest also reports other competitive data³⁰ to the FCC

²⁷ Qwest provided no expense figures in response to Staff data request STF 35.3

²⁸ Qwest admits in response to STF 38.5, "Qwest does report broadband information on a zip code basis to the FCC"

on a zip-code basis. Reporting local exchange information for use in designating competitive zones would seem to be no more difficult.

Q. At P. 22, Mr. Teitzel expresses concern that more confusion will result from competitive zone designated by zip code than wire centers, as proposed by Qwest. Do you have any comments?

A. Customer use and understanding of zip code information is far greater than conveyed by Qwest³¹. Many websites appear to be driven by zip code searches. For instance, customers wishing to determine if Cox digital cable service is available in their area need only enter the zip code - <http://www.cox.com/DigitalCable/>. The wireless firm with whom Qwest is partnering, Sprint PCS, allows customers shopping for service plans to enter a zip code – <http://www.sprintpcs.com/>. Even, Qwest's own website requires customers searching for new phone service to enter their zip code – <https://iot.qwest.com/iot/control/newnameaddr>. Conversely, I would be very surprised to learn that many customers know the Qwest wire center in which they are served or could be served. Nowhere on Qwest's website is a customer seeking new service required or asked to enter a wire center name.

Telecommunications is long past the time when customers understood that phone numbers, such as MA5-4444, meant Main 5-4444 and roughly understood that their service came from the Main telephone office, perhaps just down the street.

Q. At P. 24, Mr. Teitzel suggests using prefixes as an alternative to zip codes for competitive zone boundaries. Is that a practical approach?

²⁹ e.g., FCC 00-290, August 2000

³⁰ See "Local Telephone Competition: Status as of June 30, 2004", Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, December 22, 2004 at page 3 and footnote 12 (describing zip-code based reporting requirement).

³¹ Qwest admits in response to STF 38.1, "Qwest uses zip codes in marketing activities"

A. Given the many changes that have occurred in telephone number assignments and which are likely to continue, this proposal is impractical. To begin, I am going to assume that Mr. Teitzel means a “Qwest area code and prefix” rather than just a “Qwest prefix” since prefixes are commonly used in more than one area code. That clarification helps illuminate the problem. Prefixes are not unique to areas, providers or even types of telecommunications services. Is a prefix that was once a Qwest prefix going to remain a Qwest prefix? Number portability has basically untied phone numbers from geographies. Number pooling further complicates the numbering distinction that once existed between providers and types of telecommunications services. Consider a simple example. Which of the following prefixes in the 480 area code might customers believe are assigned to Qwest and which are assigned to Cox: 350, 471, or 663? Perhaps not surprisingly, it appears that both Qwest and Cox have thousands blocks within all three prefixes. Adding more confusion, it appears that number portability has resulted in at least 11 providers (including Qwest) having customers using numbers in 480-350, 5 providers in 480-471 and 12 providers in 480-663³². Therefore, how customers will understand who is the provider is for any area code and prefix is unclear.

Q. At P. 49, Mr. Teitzel responds to Mr. Lee’s testimony from November 18, 2004 representing the Department of Defense (“DOD”). Do you have any reaction to the position taken by DOD and rebutted by Teitzel regarding separate business and residence competitive zones?

A. With complexity of the competitive situation, anyone can become confused by the information and its meaning. In its direct testimony, Qwest appeared to believe that Cox had entered the Phoenix market “serving primarily business customers”³³. That statement was subsequently retracted by Mr. Teitzel in a Notice of Errata docketed on July 27, 2004.

³² Information based on June 18, 2004 data provided by Qwest

³³ Teitzel direct testimony, May 20, 2004, page 7, lines 17-18

While a competitive zone for all customers would be easier to determine and manage, separate business and residence competitive zones are worthy of full discussion. All CLECs are not competing equally in business and residence. For example, my direct testimony states at P. 21-22, that XO, Eschelon, Xspedius and McLeod are focused on business services. As supported by Exhibit AFF-7 in my direct testimony, Cox is the only CLEC with significant residence presence³⁴. Staff Witness Rowell's direct testimony also supported the use of separate business and residence competitive zones.

Q. Can you summarize your position regarding Mr. Teitzel's and Mr. Shooshan's rebuttal testimony pertaining to Competitive Zones?

A. Yes,

- 1 – In response to Staff's proposal to use zip codes as the basis for competitive zone, Mr. Teitzel expresses Qwest's concern for increased expense without providing any supporting data.
- 2 - Qwest already appears to be reporting broadband information to the FCC on a zip code basis.
- 3 - Video cable and Wireless providers already use websites in which users search for the availability of services by zip code. At least one of Qwest's websites requires that customers enter their zip codes when searching for new phone service.
- 4 - Mr. Teitzel's proposal to use prefixes is more confusing to customers than zip codes and not practical since prefixes are no longer unique to geographic areas or providers.

Q. Does this conclude Staff's surrebuttal testimony?

A. Yes, it does.

³⁴ Exhibit AFF-7 presents indexed information to protect confidential numbers.