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IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH SECTION 271 OF
TELECOMMUNICATIONS ACT OF 1996

DOCKET NO. T-00000B-97-238

REBUTTAL TESTIMONY OF

Arizona Corporation Commission

DOCKETED

DAVID L. TEITZEL

MAY 29 2001

RE: PUBLIC INTEREST AND TRACK A

DOCKETED BY 

QWEST CORPORATION

MAY 29, 2001

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I. IDENTIFICATION OF WITNESS

My name is David L. Teitzel. I am employed by Qwest Corporation ("Qwest"), formerly known as U S WEST Communications, Inc., as Director-Product and Market Issues. My business address is 1600 7th Avenue, Room 2904, Seattle, Washington, 98191. I filed direct testimony in this proceeding on April 17, 2001.

II. OVERVIEW OF TESTIMONY

My rebuttal testimony addresses issues raised in this proceeding through the direct testimonies of Mr. David Kaufman on behalf of e.spire Communications, Mr. Michael Patten on behalf of Cox Arizona Telecom, Ms. Mary Jane Rasher on behalf of AT&T and Mr. Don Price on behalf of WorldCom, Inc. In my testimony, I discuss why the current state of local exchange competition in Arizona is sufficient to meet Section 271 Track A requirements, contrary to the positions taken by the above-named witnesses, and why Qwest's reentry into the interLATA long distance market continues to be in the public interest. Finally, I discuss why many of the issues and concerns raised by intervenors in this proceeding are well outside the scope of Track A and Public Interest requirements, and indeed, well outside the scope of the Section 271 proceeding entirely.

- 1 • Assurance of future compliance by the BOC.

2 Mr. Kaufman's claims are not targeted specifically to any of these three
3 requirements. In fact, the preponderance of his concerns have been addressed
4 in other workshops in this proceeding, and e.spire has been an active participant
5 in those workshops. Notwithstanding Mr. Kaufman's concerns, Track A and
6 Public Interest issues revolve essentially around two primary considerations:
7 whether local exchange markets are fully open to competition and whether those
8 markets will remain fully open to allow the benefits of competition to flow to
9 consumers.

10
11 b. Arizona Local Exchange Markets Are Open

12
13 As stated at page 30 of my direct testimony, Arizona CLECs have
14 captured over 214,000 access lines, representing nearly 7% of the Arizona local
15 exchange access line base.² As of December 2000, a total of 65
16 interconnection agreements were in effect between Qwest and Arizona CLECs.
17 A range of services is available from these CLECs to residential and business
18 customers, and CLECs are providing these services via CLEC-owned facilities,
19 via unbundled network elements (UNEs) and through resale of Qwest's retail
20 services. The availability of a range of services from a variety of CLECs is a
21 strong indicator that local markets are open in Arizona.

² By contrast, CLECs in Oklahoma may have captured as little as 5.5% of the total access lines in

1 At page 2 of his testimony, Mr. Kaufman contends that Qwest's large local
2 exchange market share should dissuade the commission from issuing a finding
3 that local markets are open in Arizona. However, the FCC has specifically
4 rejected a market share loss test as a criteria in determining whether a Bell
5 Operating Company (BOC) meets Section 271 requirements.³ It is not surprising
6 that Qwest has a substantial, though declining, proportion of the local exchange
7 market in Arizona in view of Qwest's (f/k/a U S WEST) position as the primary
8 local service provider of record in the state prior to the advent of the
9 Telecommunications Act of 1996. The FCC has been clear that "BOC entry into
10 the long distance market will benefit consumers and competition *if the relevant*
11 *local exchange market is open to competition consistent with the competitive*
12 *checklist.*"⁴ Additionally, the FCC has addressed factors beyond a BOC's control
13 as follows:

14 Given an affirmative showing that a market is open and the competitive
15 checklist has been satisfied, low customer volumes in and of themselves
16 do not undermine that showing. Factors beyond a BOC's control, such
17 as individual CLEC entry strategies for instance, might explain a low
18 residential customer base. We note that Congress specifically declined
19 to adopt a market share or other similar test for BOC entry into long
20 distance, and we have no intention of establishing one here.⁵

21 Qwest's compliance with the competitive checklist, and the fact that alternative
22 providers are offering competitive local exchange services in Arizona and that

SWBT service territory. See SBC-Kansas/Oklahoma Order at ¶5. As I stated, in my direct testimony, Qwest has used a more conservative method to estimate access lines than SWBT did.

³ BANY Order at ¶426; SBC-Texas Order at ¶419.

⁴ SBC-Texas order at ¶419; SBC-Kansas/Oklahoma Order at ¶268.

⁵ SBC-Kansas/Oklahoma Order at ¶268.

1 these providers are serving residential and business subscribers, shows that the
2 local markets are indeed open in the state.

3 At page 3, Mr. Kaufman cites several CLECs as being in financial distress
4 or undergoing bankruptcy proceedings as evidence that the local markets in
5 Arizona may not be irreversibly open. However, a number of the CLECs he
6 cites are data services providers, such as Covad, Northpoint and Rhythms Links,
7 and are not offering local exchange voice services in Arizona. He fails to cite
8 risky or flawed business plans or recent events in the financial markets as
9 contributors to these firms' financial difficulties. In addition, he neglects to cite
10 CLECs who have reported very strong financial results. For example, McLeod
11 USA reported at the Morgan Stanley Global Communications Conference on
12 March 20, 2001 that its revenues are projected to increase 50% from \$1.4 billion
13 in 2000 to \$2.1 billion by the end of 2001, and that its earnings before interest,
14 taxes, depreciation and amortization (EBITDA) will increase by 95% from \$115
15 million to \$225 million over that same period. Further, Lehman Brothers
16 estimates that McLeod will become profitable in 2003.⁶ In any competitive
17 market, there will be failures and successes, and I suspect this will continue to
18 be true in telecommunications markets. However, this dynamic does not mean
19 that markets are any less competitive, or any less open.

20 Regarding the dynamics of the CLEC industry, Mr. Robert Taylor,
21 chairman of the Association for Local Telecommunications Services (ALTS)

⁶ TheStreet.com, April 11, 2001

1 made the following statement at the 2001 ALTS convention:

2 We have seen the shakeout, and it is behind us. The U.S.
3 economy is improving, and the CLECs are poised to take
4 advantage of the insatiable demand for broadband capacity.⁷
5

6 It is clear that the CLEC industry sees a bright future, contrary to the scenario
7 painted in Mr. Kaufman's testimony.

8
9 c. Local Markets Will Remain Open

10
11 Extensive evidence has been presented in previous Arizona Section 271
12 checklist item workshops showing that local exchange markets are open. The
13 evidence presented in the previous workshops, coupled with the evidence in my
14 direct testimony, shows that Qwest's local markets are open to competition and
15 that competition is present. Additionally, the Performance Assurance Plan (PAP)
16 being addressed in the Post Entry Performance Plan (PEPP) workshops, in
17 which e.spire has had an opportunity to participate, are designed to ensure
18 Qwest's continued compliance with Section 271 guidelines. The details of the
19 PAP should be addressed in the PEPP workshop, which is specifically designed
20 to address this issue. Qwest's continued compliance with the requirements of
21 Section 271 under the terms of the PAP assures that local markets will remain
22 open to competition. Finally, the FCC has found that its ongoing enforcement
23 authority under Section 271(d)(6) and the risk of liability from anti-trust or other

1 private causes of action provide additional assurances of future compliance. Mr.
2 Kaufman apparently ignores these considerations.

3 In regard to Mr. Kaufman's complaints around reciprocal compensation,
4 special access circuit conversion and UNE provisioning intervals, these topics
5 have been discussed at length in previous Arizona 271 workshops, with e.spire's
6 full participation, to ensure wholesale provisioning issues are resolved prior to
7 issuance by the ACC of a recommendation to the FCC for approval of Qwest's
8 Section 271 application. To the extent consensus could not be reached on
9 these issues, they were presented in briefs as impasse issues for Commission
10 determination. Mr. Kaufman's complaints are issues for other workshops and
11 are beyond the scope of Track A and Public Interest considerations in this
12 proceeding.

13
14 **IV. MR.MICHAEL PATTEN**

15 a. General Overview

16
17 Mr. Patten's complaints regarding Qwest's proposed reentry into the
18 interLATA long distance market revolve around two arguments. First, at Page 2,
19 he suggests that the fact that Qwest has a major, though declining share, of the
20 local exchange market shows that competitive presence "is tenuous and will be
21 sensitive to any anticompetitive pressure." Second, at Pages 2-4, he targets

⁷ Comments of Robert Taylor, TR Daily, May 14, 2001

1 Qwest's "Competitive Response Program" as evidence of the anticompetitive
2 activity he alleges, and asks the ACC to require Qwest to discontinue this
3 program as a precondition to interLATA reentry. Mr. Patten's arguments are not
4 in alignment with Track A and Public Interest requirements and should be
5 dismissed.

6
7 b. Market Share and Geographic Penetration

8
9 As stated in my rebuttal of Mr. Kaufman, the FCC has specifically rejected
10 market share as a criteria in determining whether a BOC meets Section 271
11 requirements.⁹ In fact, in paragraph 419 of the SBC-Texas Order, the FCC
12 stated:

13 *We note that Congress specifically declined to adopt a market*
14 *share or other similar test for BOC entry into long distance, and we*
15 *have no intention of establishing one here. We further find that the*
16 *record confirms our view, as noted in the Bell Atlantic New York*
17 *Order, that BOC entry into the long distance market will benefit*
18 *consumers and competition if the relevant local exchange market is*
19 *open to competition consistent with the competitive checklist.*
20 *[emphasis added].*

21
22 Rather than market share data, Track A requires the BOC to demonstrate that
23 the markets are open to competition. In Arizona, CLECs are competing in local
24 exchange markets and are providing services to residential customers through a
25 combination of facilities-based services and resale. In Confidential Exhibit DLT-
26 2 to my direct testimony, I conservatively estimated that over 214,000 access

1 lines in Arizona are now being served by CLECs. I concede that, by definition,
2 any estimating process is imprecise. To corroborate the conservative estimate
3 discussed above, Qwest has served data requests on the major CLECs
4 providing local exchange services in Arizona asking that they provide specific
5 data regarding number of access lines currently served.

6 In addition, the FCC has approved Section 271 applications presented by
7 SBC and Verizon in the states of New York, Massachusetts, Texas, Oklahoma
8 and Kansas. In each instance, the BOC provided its best estimate of the
9 number of residential and business access lines served by CLECs in those
10 states. The FCC reviewed this evidence and found it sufficient to warrant
11 approval of the applications. Therefore, the process of providing estimates of
12 access lines served has been repeatedly supported by the FCC. As discussed
13 in my direct testimony, I have used a more conservative method of estimating
14 access lines than either SBC or Verizon.

15
16 c. Competitive Response Program

17
18 Mr. Patten's second complaint is that Qwest's Competitive Response
19 Program is, from Cox's perspective, anticompetitive. This is a serious allegation
20 and is absolutely false. The Competitive Response Program provides incentives
21 to former customers who have left Qwest for a local exchange competitor to

⁹ BANY Order at ¶426; SBC-Texas Order at ¶419

1 consider returning once again to Qwest. This program is strictly a recognition that
2 local exchange competition exists,⁹ and echoes incentive programs commonly
3 provided in competitive markets in other industries, such as the interLATA long
4 distance market, the credit card industry and the airline industry.

5 Throughout his comments, Mr. Patten chooses to use terms such as
6 "anticompetitive," "predatory pricing" and "eliminate the ability of a CLEC to
7 effectively compete." Yet he has provided absolutely no evidence to
8 demonstrate the accuracy of his allegations. In contrast, the ACC has oversight
9 of Qwest's Competitive Response Program, and has not found the program to be
10 anticompetitive in any way. While Qwest has succeeded in encouraging a small
11 minority of former customers to return to Qwest from a CLEC, the program in no
12 way can be characterized as "eliminating the ability of a CLEC to compete."
13 Additionally, this program is financially self-sufficient, and revenues generated by
14 the customers who do return to Qwest recover any charges waived and costs of
15 program implementation. The Competitive Response Program is in no way an
16 example of pricing predation, as Mr. Patten implies.

17 At page 3, footnote 1, Mr. Patten makes an indirect accusation of
18 impropriety in Qwest's handling of carrier-proprietary information in developing
19 customer contact lists for the Competitive Response Program. Again, his
20 indirect accusation is not founded in fact, and to my knowledge, Cox has not
21 asked Qwest for details around how customer contact lists for this program are

⁹ At Page 4, Footnote 2, Mr. Patten notes that Cox also has a "winback" tariff in effect in Arizona.

1 managed. However, Qwest adheres strictly to all guidelines around proper
2 handling of carrier-proprietary information. When a retail customer disconnects,
3 Qwest records the reason for the disconnect on the retail customer record in the
4 retained database. Specific codes are assigned to various disconnect reasons.
5 For example, customers disconnecting due to business closure are assigned a
6 certain code, customers disconnecting to move to another state are assigned a
7 different code, and customers disconnecting to establish service with another
8 provider are assigned a code indicating simply that the customer disconnected
9 for competitive reasons. It is simply the record of customers who have
10 disconnected from Qwest for competitive reasons that is used as a basis for the
11 Competitive Response Program customer contact list. No wholesale or carrier-
12 proprietary information is used in developing this list. Mr. Patten's unsupported
13 allegation should be dismissed.

14
15 **V. MS. MARY JANE RASHER**

16 **a. General Overview**

17
18 Ms. Rasher's testimony is organized around four primary complaints: 1)
19 that Qwest has not demonstrated compliance with Track A guidelines, 2) that
20 Qwest has not opened its local markets to competition, 3) that
21 "remonopolization" will occur if Qwest is granted reentry into the interLATA long
22 distance market, and 4) that a structural separation of Qwest into distinct

1 wholesale and retail entities must occur to open local markets in Arizona. Ms.
2 Rasher presents a broad array of complaints in her testimony, many of which are
3 well beyond the scope of this proceeding and are apparently intended to distract
4 focus from the scope of my direct testimony regarding the presence of
5 competition in local markets and the public interest benefits of Qwest's reentry
6 into the interLATA market. In addition, many of her arguments concern
7 standards AT&T suggests Qwest must meet that have not been required of other
8 BOCs in states for which the FCC has granted petitions for interLATA entry. I
9 urge the ACC, in considering Qwest's application, to focus on the evidence
10 presented in my direct testimony, coupled with evidence already discussed in
11 prior workshops, in determining whether Qwest has satisfied the checklist
12 requirements.

13
14 **b. Qwest Has Demonstrated Compliance With Track A Requirements**

15
16 In her first complaint, at page 2, Ms. Rasher lists "attributes" of 47 USC
17 (C)(1)(a) of the Telecommunications Act of 1996 (the Act), indicating the BOC
18 has the burden of establishing that:

- 19 a. the BOC has entered into one or more binding
20 interconnection agreements that have been approved by the
21 state commission
22 b. under such agreement(s), the BOC is providing access and
23 interconnection to one or more competing providers of
24 telephone exchange services
25 c. such competing provider(s) are commercial alternatives to
26 the BOC, are operational, and are providing telephone

- 1 exchange service for a fee
2 d. such competing providers are providing telephone exchange
3 service to a significant number, more than a *de minimis*
4 number, of business and residential subscribers
5 e. such telephone exchange service consists of service
6 provided either exclusively over the competing providers'
7 own facilities or predominantly over their facilities in
8 combination with the resale of the telecommunications
9 services of another carrier.

10
11 In fact, Ms. Rasher's attributions, that she suggests are requirements of
12 a BOC in seeking authority to enter the interLATA long distance market, are
13 imprecise cites. Ms. Rasher paraphrases excerpts from a variety of FCC orders,
14 and takes these references out of context. Specifically, 47 USC(c)(1)(A) of the
15 Act states:

16 A Bell Operating Company meets the requirements of this subparagraph if
17 it has entered into one or more binding interconnection agreements that
18 have been approved under Section 252 specifying the terms and
19 conditions under which the Bell operating company is providing access
20 and interconnection to its network facilities for the network facilities of one
21 or more competing providers of telephone exchange service (as defined in
22 section 3(47)(A), but excluding exchange access) to residential and
23 business subscribers. For the purpose of this subparagraph, such
24 telephone exchange service may be offered by such competing providers
25 either exclusively over their own telephone exchange service facilities or
26 predominantly over their own exchange service facilities in combination
27 with the resale of the telecommunications services of another carrier.

28
29 Further, in its April 16, 2001 order granting Verizon's Section 271 application for
30 Massachusetts, the FCC found as follows:

31 To qualify for Track A, a BOC must have interconnection agreements with
32 one or more competing providers of "telephone exchange service ... to
33 residential and business subscribers." The Act states that "such
34 telephone service may be offered ... either exclusively over [the
35 competitor's] own telephone exchange service facilities or predominantly
36 over [the competitor's] own telephone exchange facilities in combination
37 with the resale of the telecommunications services of another carrier.

1 The Commission concluded in the Ameritech Michigan Order that section
2 271(c)(1)(A) is satisfied if one or more competing providers collectively
3 serve residential and business subscribers.¹⁰
4

5 The Section 271 Track A requirements in the Act are clear, as are the FCC's
6 interpretations of these requirements in the Verizon Massachusetts Order.

7 In my direct testimony, I supplied ample evidence that Qwest satisfies Track A
8 requirements as outlined in Section 271 and the FCC's interpretations of that
9 Section.

10 In her first complaint, Ms. Rasher suggests at page 3 that Qwest has not
11 demonstrated that items (c) and (d) of her list have been satisfied. I disagree.
12 Each of the CLECs identified in Confidential Exhibit DLT-1 as having
13 interconnection agreements in effect with Qwest are commercial enterprises, are
14 operational and are providing service for a fee. It is not clear whether Ms.
15 Rasher is suggesting that Qwest attach tariffs, price lists or catalogs for each of
16 these providers in Arizona to its application to demonstrate the range of rates
17 offered by these providers. If that is her suggestion, it is simply overkill. No
18 BOC has supplied this level of granularity in any Section 271 application
19 approved by the FCC to date. One purpose of the workshop process is to
20 examine evidence around the extent of competitive entry. The evidence
21 presented in my direct testimony demonstrates precisely that. Regarding item
22 (d), Ms. Rasher contends that I have not demonstrated that CLECs are providing
23 service to a significant number of business and residential customers. I

¹⁰ Verizon-Massachusetts Order at ¶223

1 disagree. Confidential Exhibit DLT-2 to my direct testimony shows that,
2 conservatively, over 214,000 access lines are now served by CLECs in Arizona,
3 representing nearly 7% of the total number of access lines in service in the state.
4 While the adjective "significant" is subject to a wide variety of interpretations, I
5 believe the number of access lines now served by CLECs in Arizona is
6 significant, and is in the range of CLEC market penetration identified by SBC in
7 Kansas, Oklahoma and Texas in its Section 271 petitions for those states, which
8 were approved by the FCC.

9 In Ms. Rasher's second complaint, at page 4, she alleges Qwest has not
10 opened its local markets to competition, and has provided no assurances that
11 local markets, once opened, will remain so. This complaint has been the subject
12 of extensive discussion in workshops conducted thus far. The evidence
13 presented in the previous workshops, coupled with the evidence in my direct
14 testimony, shows that Qwest's local markets are open to competition and that
15 competition is present. In addition, the sections of this rebuttal testimony
16 concerning Mr. Kaufman and Mr. Patten address this point and I will not
17 readdress the point here. Additionally, the Performance Assurance Plan (PAP)
18 being addressed in the Post Entry Performance Plan (PEPP) workshops, in
19 which AT&T is an active participant, are designed to ensure Qwest's continued
20 compliance with Section 271 guidelines. The details of the PAP should be
21 addressed in the PEPP workshop, which is specifically designed to address this
22 issue. Finally, the FCC has found that its ongoing enforcement authority under

1 Section 271(d)(6) and the risk of liability from anti-trust or other private causes of
2 action provide additional assurances of future compliance. Ms. Rasher
3 apparently ignores these considerations. Consequently, her complaints should
4 be dismissed.

5 At Page 5, Ms. Rasher cites my direct testimony as stating that "...
6 checklist compliance, alone, is sufficient to show that the local market in Arizona
7 is open to competition." Her citation to my testimony is inaccurate, and is taken
8 out of context. Beginning at page 36 and continuing through page 38 of my
9 direct testimony, I quoted FCC orders and stated that, based on previous FCC
10 rulings in other BOCs' 271 applications, compliance with the competitive
11 checklist, also known as the 14-point checklist is, itself, a strong indicator
12 markets are opened, and that long distance entry is thereby consistent with the
13 public interest. In addition, I quoted the FCC as stating that checklist
14 compliance means "barriers to competitive entry in the local market have been
15 removed and [that] the local exchange market today is open to competition."¹¹ I
16 went on to say, at page 36, that all evidence presented in preceding workshops
17 should be considered by the ACC in formulating its recommendations to the FCC
18 regarding Qwest's interLATA reentry. My testimony is clear: a variety of factors,
19 including checklist compliance, should be considered by the state commissions
20 in considering Qwest's Section 271 application.

21 At pages 6 through 9, Ms. Rasher complains that Unbundled Network

¹¹ BANY Order at ¶426; SBC-Texas Order at ¶419.

1 Element prices preclude competitive entry. She is wrong. As illustrated in
2 Confidential Exhibit DLT-2, well over 17,000 unbundled loops are currently in
3 service in Arizona, in addition to competition in the form of resale and service
4 provided via CLEC-owned facilities. CLECs are using unbundled loops to
5 compete with Qwest in Arizona. However, Ms. Rasher then narrows her
6 complaint to a comparison of Qwest's residential local exchange rates and UNE-
7 P rates, completely ignoring cable telephony entry strategies employed by
8 CLECs such as Cox in Arizona. She also ignores the fact that Qwest's retail
9 residential services are fully available for resale at defined discounts in the state.
10 It is a fact that CLECs are presently competing with Qwest in Arizona via CLEC-
11 owned facilities, resale and use of UNEs. The issue of UNE pricing is well
12 beyond the scope of this proceeding, has been the subject of vigorous debates
13 in numerous cost dockets, and is an example of Ms. Rasher's attempt to dilute
14 the ACC's focus on the extent to which competition exists. The rates for
15 recurring and non-recurring charges for UNEs for which a state commission has
16 not previously addressed are to be addressed in the cost dockets.

17 Next, beginning at page 9, Ms. Rasher enters into an argument that
18 Qwest's intrastate switched access prices must be reduced to cost as a
19 precondition to Qwest's reentry into the interLATA market. This issue is
20 completely beyond the scope of Track A and Public Interest guidelines. To the
21 best of my knowledge, intrastate switched access charges have not been
22 ordered to be priced at cost in other states in which the BOC has been granted

1 interLATA relief. This simply is not a precondition to approval of Section 271
2 applications and has nothing to do with the public interest requirements
3 associated with interLATA market entry as outlined by the FCC. In addition, Ms.
4 Rasher ignores the 2001 ACC order in Qwest's Arizona rate case, which
5 establishes specific pricing requirements around switched access and other
6 Qwest services. In the Order, Qwest is required to reduce switched access
7 rates by \$5 million per year for each of the three years identified in the price cap
8 terms of the Order. Ms. Rasher's complaint should be dismissed as extraneous
9 to this proceeding.

10 Beginning at page 12, and continuing through page 21, Ms. Rasher cites
11 a series of alleged "evidence" that Qwest has not cooperated in opening its local
12 markets. Her citations have nothing to do with this proceeding. In other
13 proceedings, if a jurisdiction found that Qwest's (f/k/a U S WEST) actions were
14 not in alignment with a particular rule, Qwest took rapid action to correct that
15 situation. Ms. Rasher's complaints are yet another attempt to cloud the issues
16 in this proceeding. In this proceeding, the ACC must decide whether local
17 markets are open and whether post-entry protections are in place to ensure
18 those markets remain open. Detailed cooperative workshops have been held in
19 Arizona to determine whether the local markets are open to competition.
20 Significant penalties, including financial penalties and FCC authority to revoke
21 Qwest's interLATA privilege, exist to ensure Qwest's continued compliance with
22 Section 271 guidelines. Ms. Rasher's complaints in this area are beyond the

1 scope of this proceeding and should be dismissed.

2 Beginning at Page 21, Ms. Rasher complains that some competitive
3 providers are exiting the market, and this is evidence that local markets are not
4 truly open in Arizona. Ms. Rasher completely ignores significant market
5 dynamics, completely unrelated to Qwest, such as corrections in the stock
6 market, flawed and/or risky business plans, reductions in available venture
7 capital, an overabundance of competitors in finite markets, etc., which have been
8 very real factors in the evolution of the competitive telecommunications market.
9 She also ignores the strong performance of such CLECs such as Cox, Sprint,
10 AT&T, and others that run contrary to the trend she attempts to construct. In
11 any competitive market, there will be successes and failures, and I suspect this
12 will continue to be true in telecommunications markets. However, this dynamic
13 does not mean that markets are any less competitive. Again, Ms. Rasher's
14 complaints transcend the scope of this proceeding and have little bearing as to
15 the degree to which Track A and Public Interest requirements have been met in
16 Arizona.

17 Beginning at page 27, Ms. Rasher argues that Qwest will somehow
18 "remonopolize" the market if interLATA relief is granted. Ms. Rasher's
19 arguments ring hollow. If Qwest is to "remonopolize" the market, it would need
20 to do so through non-compliance with Section 271 checklist requirements and
21 violations of the PAP. In this event, not only would Qwest invite severe
22 financial penalties, it would trigger intervention by the FCC, resulting in likely

1 revocation of Qwest's interLATA privilege. Ms. Rasher's argument should be
2 summarily dismissed.

3
4 c. Structural Separation of Qwest

5
6 In Ms. Rasher's final argument, beginning at page 27, she suggests that
7 local markets in Arizona cannot be truly opened without structurally separating
8 Qwest into distinct wholesale and retail entities. Ms. Rasher devotes over ten
9 pages of testimony to this argument, which echoes the arguments sponsored by
10 AT&T in other states. Again, her argument runs well beyond the scope of this
11 proceeding and is geared to cloud the ACC's consideration of the evidence
12 presented in this proceeding. It is important to note that state commissions
13 have recommended approval to the FCC, and the FCC has granted such
14 approval, for SBC and Verizon to enter the interLATA markets in New York,
15 Texas, Oklahoma, Kansas and Massachusetts. In none of these states has the
16 incumbent been required to structurally separate into distinct wholesale and retail
17 entities as a precondition to entry into the interLATA market. Protections
18 provided by Section 271 requirements, PAP mechanisms and Section 272
19 affiliate guidelines have been determined to be sufficient to ensure BOCs will
20 continue to compete fairly as they are granted authority to enter the interLATA
21 market.

22 In fact, contrary to Ms. Rasher's implication, structural separation has not

1 been required of Verizon in the state of Pennsylvania. The Pennsylvania PUC,
2 on a 5-0 vote, ordered a "functional separation" of Verizon's Pennsylvania
3 operations, and ruled that structural separation was not necessary. By way of
4 background, in a 1999 decision,¹² the Pennsylvania PUC required physical
5 structural separation of Verizon's Pennsylvania wholesale and retail operations.
6 In commenting on that order, Jeffrey A. Eisenach, Randolph J. May and Charles
7 A. Eldering, of the Progress & Freedom Foundation, stated:

8 If [the order] is not modified, it will have the effect of inhibiting the further
9 development of local and long distance competition in Pennsylvania and
10 stifling the incentives to invest that are necessary to the build-out of
11 competing modern telecommunications infrastructures, particularly the
12 upgrade of infrastructures supporting the transition to widespread delivery
13 of broadband services. *Regulatory Overkill: Pennsylvania's Proposal to*
14 *Breakup Bell Atlantic, December 16, 1999, page 5.*

15
16
17 As noted earlier, on April 11, 2001, the Pennsylvania PUC reversed and modified
18 its 1999 order, concluding that full physical structural separation of Verizon-
19 Pennsylvania's retail and wholesale businesses was not required to achieve that
20 State commission's goal of opening the local telecommunications market in
21 Pennsylvania to competition. Rather, the Pennsylvania PUC has ordered
22 Verizon-Pennsylvania to engage in the functional separation of its wholesale and
23 retail units and to adhere to an interim Code of Conduct, pending adoption of a
24 permanent Code of Conduct in a later rule-making proceeding.¹³ On April 20,

¹² See, Opinion and Order, *Joint Petition of Nextlink Pennsylvania, Inc.*, Docket No. P-00991648, Sept. 30, 1999 (the "Global Order"), affirmed, *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa. Commw. Ct. 2001).

¹³ *Re: Structural Separation of Bell Atlantic-Pennsylvania Inc. Retail and Wholesale Operations*, Docket No. M-00001353, Opinion and Order, April 11, 2001. See also, *The Wall*

1 2001, Verizon Pennsylvania accepted the terms and conditions contained in the
2 Pennsylvania PUC's Opinion and Order. Significantly, the decisions of the
3 Pennsylvania PUC compelling structural (or functional) separation have been
4 clearly grounded in state statutory authority. See, 66 Pa.C.S. §3005(h).

5 Qwest believes that the rigorous and comprehensive workshop process in which
6 it is engaged with CLECs and Commission Staff representatives permits CLECs
7 and regulators to investigate and verify every aspect of Qwest's market-opening
8 activities. Further, Qwest believes its proposed Performance Assurance Plan
9 reinforces Qwest's continued compliance with requirements for interLATA market
10 entry, and accomplishes far more benefit for consumers than the extreme
11 structural separation measures proposed by AT&T.

12 The current requirements of §271 and §272 provide the necessary
13 framework to open local markets to competition. While AT&T has chosen to
14 "compete by litigation," Qwest has been actively working to open its markets with
15 CLECs truly interested in providing consumers with a choice for their local
16 service. For example, as of March 2001, Qwest has negotiated over 1,000
17 interconnection agreements with competitive carriers across its 14-state territory.
18 It has constructed over 450 collocations for competitors in Arizona. In addition,
19 competitors in Arizona are providing local service through: (1) over 49,000
20 resold lines and, (2) over 17,000 unbundled loops. The level of competition

Street Journal, March 23, 2001, page A3, "Regulators Stop Short of a Verizon Split: AT&T is Dealt a Setback in Pennsylvania's Order on Bell's Local Services," by Yochi J. Dreazen and Shawn Young.

1 continues to grow and demonstrates that the current requirements placed upon
2 Qwest to open its markets are accomplishing their intended objective – choice
3 for consumers.

4 The FCC has previously considered structural separation of Qwest, and
5 dismissed the concept. With encouragement from AT&T, the FCC considered
6 structural separation of Qwest as a precondition to its merger in 2000 with U S
7 WEST, and found that this action was "unnecessary and inappropriate" to protect
8 competition in the traditional U S WEST region.¹⁴ This has also been the FCC's
9 position generally on structural separation. Former FCC Chairman William
10 Kennard stated "Congress had an opportunity to adopt a wholesale-retail
11 distinction. [and chose not to]...that is not the way the Telecom Act (of 1996)
12 was set up." In its Report and Order 143,¹⁵ *In the Matter of the Furnishing of*
13 *Customer Premises Equipment by the Bell Operating Companies and the*
14 *Independent Telephone Companies*, the FCC concluded that "...the
15 inefficiencies and other costs to the public associated with...structural separation
16 requirements substantially outweigh corresponding benefits." Moreover, current
17 FCC Chairman Michael Powell recently stated that he opposes structural
18 separation and believes that Congress rejected it when the Act was passed.¹⁶
19 These observations by Messrs. Kennard and Powell strongly support the view

¹⁴ *In the Matter of Qwest Communications International Inc. and U S WEST, Inc. Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 99-272, Memorandum Opinion and Order, March 10, 2000, ¶46, Page 24, and Fn. 135.

¹⁵ CC Docket No. 86-79, released January 12, 1987

¹⁶ *Communications Daily*, April 6, 2001, "Powell Says He's No Fan of Company-specific Merger

1 that the FCC would not now be inclined to order involuntary structural separation
2 of Qwest's retail business away from its network and wholesale businesses.

3 Structural separation is not necessary as a precondition to approval of
4 Qwest's reentry into the interLATA long distance market. First, there are already
5 extensive safeguards in place to ensure that the local service market is open to
6 competition. To obtain a recommendation from the ACC to the FCC in favor of
7 Qwest's Section 271 applications, and to ultimately obtain FCC approval, Qwest
8 must demonstrate that local markets are fully open, that it is competing fairly and
9 that the local markets will remain open. Qwest must also comply with Section
10 272 requirements in providing interLATA services. As discussed previously in
11 this testimony, failure to comply with these requirements will result in severe
12 financial penalties and potential revocation of Qwest's interLATA privilege. This
13 provides assurance that local markets will remain open.

14 Second, structural separation is not only unnecessary, it will reduce
15 Qwest's efficiencies and increase its costs, which is ultimately bad for customers.
16 Qwest agrees with telecommunications analysts who have said structural
17 separation would "constitute a setback to the clear vision of the
18 Telecommunications Act of 1996 to achieve competition in all
19 telecommunications markets, including the local service marketplace.¹⁷

Conditions.

¹⁷ Letter from the Progress & Freedom Foundation, the Cato Institute, Competitive Enterprise Institute, The Commonwealth Foundation, Mercatus Center at George Mason University, CSE Foundation and the Independent Institute to Senators McCain, Tauzin, Dingell and Hollings dated 2/28/2001.

1 Third, AT&T's proposed forced structural separation of Qwest's retail
2 business away from its network and wholesale businesses is *not* competitively
3 neutral. If the ACC were to mandate structural separation, the result will
4 constitute disparate and discriminatory regulatory treatment for Qwest, as
5 compared to the facilities-based CLECs. Physical structural separation of Qwest
6 will not be a competitively neutral regulatory policy, because other facilities-
7 based CLECs (or carriers generally) will not be bound by a similar regulatory
8 burden. If the integrated provision of local exchange, long distance, and
9 broadband services, particularly over an integrated network as with Qwest, is
10 economically efficient, then restricting that business structure only to CLECs, and
11 denying it to Qwest, will artificially raise the costs of only one competitor --
12 Qwest. Forced structural separation of Qwest's retail business away from its
13 network and wholesale businesses will undermine the most fundamental precept
14 of efficient competition -- that firms can vie for a stake in the marketplace based
15 solely on their relative ability to satisfy consumer demand. Therefore, the likely
16 result of forced structural separation will be a form of inefficient competition, in
17 which competition based upon the merits of the rival firms will be replaced by a
18 regulatory scheme that determines outcomes in the marketplace. The ACC's
19 laudable goals of promoting efficient local exchange competition will not be well
20 served by this form of pseudo-competition proposed by AT&T.

21 Simply put, the provisions of Section 271 and 272 of the Act are more
22 than sufficient to ensure fair and equitable competition. Ms. Rasher's structural

1 separation suggestion is a ruse designed to distract regulators from the job at
2 hand – bringing competition and choice to both the local and long distance
3 marketplaces. Ms. Rasher’s testimony on this issue should be dismissed.
4

5 **VI. MR. DON PRICE**

6 a. General Overview
7

8 Mr. Price echoes many of the complaints of AT&T, e.spire and Cox
9 concerning issues such as pricing of UNEs, pricing of switched access, alleged
10 examples of Qwest non-compliance with Section 271 guidelines, Qwest’s
11 provisioning intervals for special access and UNE services, and the need for
12 structural separation of Qwest as a precondition to reentry into the interLATA
13 market. I have discussed Qwest’s position on these issues previously in my
14 rebuttal testimony, and I will not readdress these issues here. However, he also
15 introduces concerns not expressed by other carriers around the state of
16 wholesale service competition in Arizona and the status of Operational Support
17 Systems (OSS) as a means of ensuring that local markets are open. He also
18 suggests that Qwest has “market power” to “control market prices” and exercises
19 market power through “control of local bottleneck facilities.”¹⁸ Finally, at page 9,
20 he states the public interest will be served if regulations are designed to “create
21 conditions where competition in local telecommunications markets can flourish,

¹⁸ Direct testimony of Don Price, P. 10, L. 1-7

1 and existing competition in the long distance markets is not diminished.”

2
3 **b. Public Interest Evidence**

4
5 In regard to Mr. Price's contention that regulations should encourage
6 competition in local and long distance markets to serve the public interest, I
7 entirely agree. In fact, recent evidence from states in which Section 271 FCC
8 approval has been granted clearly shows that interLATA market entry by the
9 BOC has this precise effect. On May 21, the FCC produced its latest report on
10 the status of competition, entitled "Local Telephone Competition: Status as of
11 December 31, 2000." In this report, the FCC highlights competitive dynamics in
12 New York and Texas, states in which the BOC has been granted interLATA
13 relief. Following are three key conclusions from this report:

- 14
- 15 • CLECs captured 20% of the market in the State of New York –
16 the most of any state. CLECs reported 2.8 million lines in New
17 York, compared to 1.2 million lines the prior year – an increase
18 of over 130%, from the time the FCC granted Verizon's long
19 distance application in New York in December 1999 to
20 December 2000.
 - 21 • CLECs captured 12% of the market in Texas, gaining over half-
22 a-million (644,980) end-user lines in the six months since the
23 Commission authorized SBC's long distance application in
24 Texas – an increase of over 60% in customer lines since June
25 of 2000.
 - 26 • CLEC market share in New York and Texas (the two states that
27 had 271 approval during the reporting period ending in
28 December 2000) are over 135% and 45% higher than the
29 national average, respectively.

30 Clearly, competitive intensity in the local exchange markets in these states has

1 heightened since the BOCs serving these states were granted interLATA relief.
2 In addition, as stated at page 46 of my direct testimony, New York consumers
3 are enjoying the fruits of full competition in the long distance market. The
4 September 6, TRAC study cited in my testimony showed that consumers shifting
5 to Verizon's long distance service after Verizon was granted authority to enter
6 the interLATA market saved between \$46 million and \$120 million annually.¹⁹
7 This evidence shows that, after the BOC enters the interLATA long distance
8 market, competition intensifies in both the local and long distance markets, and
9 consumers are the direct beneficiaries of that increased competition.

10
11 c. Implications of Market Power

12
13 At page 10, Mr. Price makes the allegations that Qwest can currently
14 control the market price for services and that it can inappropriately exercise
15 control of its "local bottleneck facilities." First, Mr. Price is clearly unfamiliar with
16 the recent ACC order establishing pricing guidelines for Qwest's services in
17 Arizona. Essentially, for a three year period, Qwest's prices for "basic" services,
18 such as local exchange services, are subject to Commission-mandated price
19 caps. Services classified as "fully competitive" are flexibly priced and pricing for
20 these services is generally governed by market conditions. Qwest certainly
21 does not have "the ability to control price for those services" as stated by Mr.

¹⁹ Direct testimony of David L. Teitzel, P.46, L. 1-5

1 Price.

2 Second, Qwest's local markets are fully open. Qwest is obligated, under
3 terms of the Act, to provide full and non-discriminatory access to its network via
4 resale, interconnection and through sale of unbundled network elements. In
5 addition, Qwest has supplied extensive evidence in previous Arizona workshops
6 demonstrating Qwest's compliance with Section 271 checklist requirements.
7 Mr. Price's arguments should be dismissed.

8
9 d. Structural Separation Implications

10
11 While I have addressed Qwest's position regarding the concept of
12 structural separation at length in my rebuttal of Ms. Rasher, there is an aspect of
13 Mr. Price's structural separation recommendation that begs comment. At page
14 69, lines 15 – 27, he suggests that structural separation would lead to full
15 deregulation of Qwest's retail operations. He states "by imposing an appropriate
16 incentive structure on Qwest's wholesale operation, Qwest's *retail* operation
17 could be freed of virtually all traditional regulations very quickly." This is an
18 interesting concept. However, implicit in this concept is that Qwest's deregulated
19 retail operation would be driven to quickly increase the basic residential service
20 recurring rates to cost-recovery levels, creating rate shock on Arizona
21 consumers. While Qwest believes that competition drives all prices toward cost
22 (either upward or downward), Mr. Price's draconian recommendation has

1 untenable near-term consequences for customers. In addition, his suggestion
2 ignores the regulatory constraints on Qwest's prices for the three year term of
3 the Arizona price plan as approved by the ACC in 2001.

4
5 **VII. CONCLUSION**

6
7 In my rebuttal testimony, I have discussed how the evidence presented
8 through my direct testimony in this proceeding is sufficient to support a finding
9 by the ACC that Qwest's reentry into the interLATA long distance market is
10 appropriate. Specifically, I discussed why Qwest's Performance Assurance
11 Plan (PAP), coupled with the functional separation requirements of Section 272
12 and continued oversight by the FCC of Qwest's compliance with Section 271
13 requirements, will ensure that Qwest's local markets will remain fully open after
14 Qwest is granted reentry into the interLATA markets. In addition, I addressed
15 the contentions of Mr. Kaufman and Mr. Patten that Qwest's provision of local
16 exchange service to the majority of customers in Arizona should constitute a
17 basis for rejection of Qwest's Section 271 application, and clarified the FCC's
18 position regarding these contentions. The FCC, in approving SBC and
19 Verizon Section 271 applications in Massachusetts, New York, Texas, Kansas
20 and Oklahoma, specifically rejected "geographic penetration" or "market share
21 loss" in considering whether Track A requirements are met. Finally, I
22 discussed why the forced structural separation of Qwest's retail business away

1 from its network and wholesale businesses is unnecessary as a precondition to
2 Qwest's reentry into the interLATA market. This precondition has not been
3 ordered by the FCC in approving Section 271 petitions to date, and is an issue
4 extraneous to the ACC's consideration around Qwest's compliance with Track
5 A and Public Interest requirements in this proceeding. Finally, many of the
6 issues raised in the testimonies of the witnesses addressed in my rebuttal
7 testimony are well beyond the scope of Track A and Public Interest
8 considerations, and have been debated at length in previous Section 271
9 workshops. These issues should be considered in their appropriate contexts.

10 I urge the Commission to dismiss the suggestions offered by the four
11 parties contesting Qwest's Track A and Public Interest position and to issue a
12 recommendation to the FCC for approval of Qwest's Section 271 petition on
13 the strength of the evidence presented in this proceeding.