BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the	)	
	)	Docket No. UT-003013 PART B
Continued Costing and Pricing of	)	
Unbundled Network Elements, Transport,	)	
Termination, and Resale	)	
	)	

PART B POST-HEARING BRIEF OF

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.

ELECTRIC LIGHTWAVE, INC.

FOCAL COMMUNICATIONS CORPORATION OF WASHINGTON

XO WASHINGTON, INC.

May 29, 2001

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I. INTRODUCTION

1. Over five years have passed since this Commission's first order on local competition issues and since enactment of the federal Telecommunications Act of 1996 ("Act"), yet effective local exchange competition has not even begun to develop in Washington. Nor is Washington alone – truly effective local exchange competition has yet to take hold anywhere in the country. As a result, financial markets, as well as the incumbent local exchange companies ("ILECs") are further inhibiting the ability of competing local exchange companies ("CLECs") to provide an effective alternative source of telecommunications services. CLEC stock prices have plummeted, and sources of capital funding have all but disappeared. CLEC after CLEC has been forced to scale back network construction and expansion into new markets, and consequently, CLECs increasingly are compelled to rely on facilities provided by the ILECs to be able to offer service to their customers.

2. The prices the Commission establishes for the unbundled network elements ("UNEs") at issue in Part B of this docket, as well as reciprocal compensation rates, will in large measure determine whether, and the extent to which, local exchange competition will eventually emerge in Washington. The unbundled loop prices the Commission established in the previous cost docket have rendered those facilities uneconomical in all geographic areas other than urban Seattle and Tacoma and have effectively denied competitive alternatives to the majority of consumers in this state. The Commission now must establish rates for high capacity loops and other UNEs that will determine whether potential competition for the remaining consumers will be maximized or further limited. AT&T Communications of the Pacific Northwest, Inc. ("AT&T"), Electric Lightwave, Inc., Focal Communications Corporation of Washington, and XO Washington, Inc., ("XO") (collectively "Joint CLECs") provide this Part B Post-Hearing Brief to assist the Commission to resolve these issues in a manner that will enable competitors to

provide effective choices of telecommunications services and the attendant benefit to at least some Washington consumers.

II. LEGAL AND POLICY ISSUES

A. Policy Issues

Development of Local Competition

3. The primary policy issue presented in this docket is the same issue that underscores both the prior and current costing and pricing proceedings – whether the Commission's resolution of disputed issues will foster or inhibit the development of local exchange competition. Washington public policy is to "[m]aintain and advance the efficiency and availability of telecommunications service," to "[e]nsure that customers pay only reasonable charges for telecommunications service," and to "[p]romote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state." RCW 80.36.300(2), (3) & (5). Rates for ILECs' bottleneck services and facilities that exceed forward-looking cost are unreasonable, increase competitors' costs, and limit the potential customers they can serve.

4. The ILECs and the CLECs have presented starkly different costing and pricing proposals for many of the facilities and services at issue in Part B of this docket. Qwest Corporation, f/k/a U S WEST Communications, Inc. ("Qwest") and Verizon Northwest Inc., f/k/a GTE Northwest Incorporated ("Verizon") seek to maximize rates charged to CLECs for UNEs and to minimize reciprocal compensation payments to CLECs in order to maintain the ILECs' de jure monopoly. CLECs propose reasonable UNE and reciprocal compensation rates as a means of fostering the development of local exchange competition while permitting the ILECs to recover appropriate forward-looking costs. The Commission, of course, must establish

reasonable prices based on forward-looking costs, but the Commission, in exercising its judgment, should do so to further the legislative goals of fostering local exchange competition.

ILEC Obligation to Build Facilities

5. The Act requires ILECs to provide access to UNEs "on rates, terms and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(3). Qwest and Verizon currently construct facilities for customers requesting service under the terms and conditions established in their federal and state tariffs. Qwest and Verizon, however, propose to refuse to provide service to a requesting CLECs if no facilities are available except under very narrow conditions. The ILEC proposed policies with respect to facility construction restrictions thus violate Qwest's and Verizon's nondiscrimination obligations under federal law.

6. The ILECs claim that their proposed limitations on the obligation to construct facilities find support in the Eighth Circuit's statement that "subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's *existing* network – not to a yet unbuilt superior one." *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997) (emphasis in original), *rev'd in part and remanded on other grounds, AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999). The Eighth Circuit's statement, however, was made in the context of rejecting FCC rules requiring incumbent LECs to provide requesting CLECs with service that is *superior* in quality to the service the incumbent LECs provide to other customers. That court concluded that the Act does not authorize the FCC to impose such a requirement, but the court did not address, much less resolve, the issue of whether Qwest must construct *additional* facilities that are "at least equal in quality" to existing Qwest network facilities.

7. The ILECs also rely on paragraph 451 of the FCC's August 8, 1996, *Local Competition Order*, which states that the FCC "expressly limit[s] the provision of unbundled

interoffice facilities to *existing* incumbent LEC facilities." (Emphasis in original.) Again, the ILECs take this quote out of context. The FCC was addressing rural and small incumbent LECs' contention that they not be required to construct new facilities to accommodate new entrants. The limitation was an example of the FCC's consideration of "the economic impact of our rules in this section on small incumbent LECs," after which the FCC noted "that section 251(f) of the 1996 Act provides relief for certain small LECs from our regulations under section 251." Far from endorsing the ILECs' position, the FCC implicitly has required Qwest, Verizon, and other incumbent LECs to construct new facilities unless specifically relieved of that obligation under the Act or FCC rules.

8. Washington law is even more demanding. State statutes prohibit Qwest and Verizon from "subject[ing] any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." RCW 80.36.170. Qwest and Verizon also "shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communication and furnish telephone service as demanded." RCW 80.36.090. The Commission has established by rule the circumstances in which Qwest and Verizon may refuse service to a requesting customer within its service territory, and those circumstances do not include lack of facilities. WAC 480-120-061. Qwest and Verizon propose to refuse to provide facilities to CLECs when the ILECs would provide the same facilities to other customers. Indeed, Verizon goes so far as to propose that a CLEC be precluded from using facilities Verizon specially constructs for an end user customer to prevent a CLEC from circumventing Verizon's policy to refuse to build facilities for CLECs. The ILECs' proposals thus violate Washington, as well as federal, law.

9. The Commission, therefore, should reject the ILECs' policy proposals on facilities construction and should require Qwest and Verizon to build facilities for CLECs in the same circumstances and under the same terms and conditions that the ILECs construct those facilities for other customers.

Dark Fiber Restrictions

10. Verizon proposes several restrictions on CLECs' access to dark fiber. These restrictions include (a) limiting available dark fiber to fiber that terminates on a fiber patch panel; and (b) reserving the right to revoke leased fiber from CLECs with 12 months notice. Neither of these restrictions is reasonable and both should be rejected.

11. The FCC has required Verizon and other ILECs to provide access to UNEs at technically feasible points within the ILEC's network, and Verizon does not contend that accessing dark fiber at a fiber splice point in a manhole, controlled environmental vault, or other location is not technically feasible. Rather, Verizon claims that obtaining access to dark fiber at these locations would require Verizon to construct additional facilities from that location to a fiber patch panel which Verizon believes it is not required to do. Tr. at 2477 (Verizon-Lee). As discussed above, Verizon's "no build" rule is unlawful under both federal and state law and cannot be used to justify refusing to provide UNEs. In the alternative, CLECs should be able to access dark fiber directly at locations other than at fiber patch panels in Verizon premises. The Commission, therefore, should reject Verizon's proposed restriction and permit CLECs to access dark fiber at any termination point, including not only fiber patch panels but splice points in manholes, controlled environmental vaults, or any other location in Verizon's network.

12. Verizon's other unreasonable dark fiber policy proposal is to be able to revoke leased fiber from a CLEC with 12 months' notice. The CLEC will be using that fiber to provide

service to customers. Verizon's proposal thus threatens to disrupt service to CLECs' customers solely to enable Verizon to provide service to its customers. CLECs' customers are no less important than Verizon's customers, and nothing in federal or state law authorizes Verizon to disconnect service currently being provided to one customer in order to provide those facilities to another customer.

13. Verizon purports to justify its right to revoke dark fiber as necessary to its carrier of last resort obligations and that the FCC cited such restrictions as reasonable. Ex. T-1130 (Verizon-Lee Direct) at 10. The FCC, however, stated only that "if incumbent LECs are able to demonstrate to a state commission that unbundling dark fiber threatens their ability provide service as a 'carrier of last resort,' states have the flexibility to establish reasonable limitations and technical parameters for dark fiber unbundling." *UNE Remand Order* ¶ 352. Verizon has made no such demonstration. Verizon, moreover, conceded that one option available to the CLEC if the dark fiber it is using were to be revoked would be to obtain that same fiber as part of a service provided by Verizon. Tr. at 2479-80 (Verizon-Lee). Not only would such a conversion threaten to disrupt customer service and strand CLEC investment in the electronics used to light the dark fiber, but Verizon would be doing nothing more than compelling a CLEC to use Verizon electronics, rather than its own, on the same fiber. Few, if any, CLECs would be willing to rely on ILEC facilities that may be revoked unilaterally by the ILEC – which is likely Verizon's goal in light of its opposition to providing dark fiber under any circumstances. The Commission, therefore, should reject Verizon's proposal as a self-serving attempt to deny CLECs access to dark fiber.

Termination Liability for UNE Conversions

14. The ILECs refused to provide high capacity circuits and EELs as UNEs until after the FCC issued the UNE Remand Order in November 1999. Even after that Order was issued, the ILECs effectively refused to provide such circuits except as private line or special access services under their tariffs. Many CLECs consequently obtained DS-1 and DS-3 circuits from Qwest and Verizon as private line or special access circuits because that was the only realistic way they could provide local exchange service to certain end-user customers. To minimize the cost of those services, CLECs often agreed to lower rates that required volume or term commitments and associated penalties for early termination. In addition to other constraints the ILECs seek to impose on CLECs' ability to convert special access services to UNEs, Qwest and Verizon intend to impose termination liability on those CLECs that agreed to volume or term commitments for such services. The ILECs' proposal is unreasonable and should be rejected.

15. Termination liability, when properly calculated and applied, is a reasonable means of ensuring that parties comply with their agreements. In the context of contracts for telecommunications services, termination liability ensures that a customer will continue to obtain and pay for services at a level and over a time period that will enable the service provider to recover its costs and make a reasonable profit. This paradigm, however, breaks down under circumstances in which the service provider is an ILEC and the customer is a competitor that is obtaining the service only because it cannot obtain the underlying facilities as UNEs. Under these circumstances, the CLEC was entitled to obtain the services as UNEs at UNE rates and obtained tariff services only because the alternative was to refuse service to an end-user customer. The CLEC thus has already paid Qwest or Verizon significantly more for the facilities – even under volume and term discounts – than the ILEC should have charged for those

facilities as UNEs. Qwest and Verizon now propose to add insult to injury by assessing termination liability that essentially requires the CLEC retroactively to pay even more for those facilities.

16. Joint CLECs do not propose elimination of all termination liability for special access services when converting them to UNEs. Such charges may be appropriate if the termination liability is associated with facilities construction under the same terms and conditions the ILECs constructs such facilities for other customers. In addition, at some point in the future when CLECs have an unencumbered choice between tariff services and UNEs, CLECs choosing tariff services should not be permitted to escape the consequences of that choice. Such choice, however, currently does not exist and will not exist until Qwest and Verizon demonstrate to the Commission that they are providing (as opposed to promising to provide) high capacity UNEs and EELs, including converting special access and private line circuits, without unlawful or unreasonable restrictions. Pending such a demonstration, the Commission should assume that CLECs needing high capacity circuits will continue to obtain them from Qwest's and Verizon's tariffs as a matter of necessity for which those CLECs should not be penalized with termination liability.

17. Accordingly, the Commission should require Qwest and Verizon to waive termination liability for converting special access and private line circuits to UNEs and EELs when the CLEC incurred such liability because it could not obtain the same facilities as UNEs. The Commission should establish a rebuttable presumption that such a waiver applies for any order of tariff special access or private line services on or before the date of a Commission order concluding that the ILEC has demonstrated that it is providing high capacity UNEs and EELs as required by the Act and Commission-approved interconnection agreements. Such a presumption

could be rebutted with evidence either that (1) the termination liability is associated with recovery of the costs for special construction on the same terms and conditions the ILEC obtains such cost recovery from other customers; or (2) the particular CLEC had an effective choice between tariff services and UNEs and voluntarily chose the tariff services.

Access to On-Premises Wiring[1]

18. The Commission has requested the parties to address as a legal matter the Commission's authority to order access to intra-building cable, or on-premises wiring. In this proceeding, the parties have addressed only access to on-premises wiring owned or controlled by Qwest and Verizon. The FCC's *UNE Remand Order* clearly requires that Qwest and Verizon provide such access. The Order states that loops end at the "demarcation point" – the point at which an ILEC's control of the wire ceases, and the subscriber's control of the wire begins. *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*; CC Docket No. 96-98, Third Report and Order and Further Notice of Proposed Rule Making (rel. Nov. 5, 1999) (the "*UNE Remand Order*"); *see also* 47 C.F.R. § 68.3. The *Order* revised the Commission's prior definition of the point at which a loop ends specifically to recognize that inside wire may be part of the loop. *UNE Remand Order*, ¶ 165. The FCC took this step in recognition of the fact that:

> A facilities-based provider's ability to offer service in a multi-unit building or campus may be severely impaired if it must install duplicative inside wiring.

Id. at ¶ 216.

19. Neither Qwest nor Verizon appears to question that an ILEC must provide access to inside wire. The issues that have been raised in this proceeding focus not on whether access is

[1] Commission Issue No. 2

required, but rather on the manner of access and the costs that may be associated with providing access to on-premises wiring. The FCC has required that competitors be provided access to the inside wire sub-loop element at any technically feasible point, including

> the point of interconnection between the drop and the distribution cable, the NID, or the MPOE . . . [Technically feasible points] also include any FDI, whether the FDI is located at the cabinet, CEV, remote terminal, utility room in a multi-dwelling unit, or any accessible terminal.

UNE Remand Order, at ¶ 210.

20. The most significant aspect of access to on-premises wiring relates to how new entrants will obtain such access in multi-tenant environments ("MTEs") and multiple dwelling units ("MDUs"). As the FCC has determined, "incumbent LECs possess market power to the extent that their facilities are important to the provision of local telecommunication services in MTEs." *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets,* WT Docket No. 99-217; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98; *Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network,* CC Docket 88-57; First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57. (rel. October 25, 2000) ("*MTE Order*") at ¶ 11. The FCC has recognized that, "in the absence of effective regulation, [ILECs] therefore have the ability and incentive to deny reasonable access to these facilities to competing carriers." *Id.*

21. The parties have not developed a full record regarding the manner in which access should be provided to building premises wire in this proceeding. With respect to Qwest, those issues are being addressed more fully both in connection with Qwest's ongoing Section 271

proceeding and in a complaint proceeding filed with the Commission against Qwest by AT&T. See AT&T Communications of the Pacific Northwest, Inc., v. Qwest Corp., Commission Docket No. UT-003120. Because these proceedings already have developed a more full record on the relevant issues, Joint CLECs propose that all issues regarding the terms and conditions of access to on-premises wiring with respect to Qwest should be decided by the Commission in those proceedings rather than in this cost docket.

22. Verizon has proposed that issues with respect to access to its on-premises wiring should not be resolved in this proceeding, but should be resolved in a separate phase of this Docket. Joint CLECs believe that this proposal make sense. The new phase should also determine the pricing for access to on-premises wiring with respect to both Qwest and Verizon.

B. Legal Issues

23. The Act provides the primary legal framework in which the Commission must establish costing and pricing of new entrants' access to, and interconnection with, the networks of Qwest and Verizon. The Act includes substantive provisions and directions to the FCC to implement those provisions, and it preserves states' ability to enforce regulations and policies that are consistent with the letter and spirit of the Act. The Commission, therefore, must comply with the costing and pricing standards of the Act itself, the FCC's interpretation of those standards as reviewed by the federal courts, and the Commission's own policies, which preceded – and contributed to – the development of the Act and FCC orders.

1. Act

24. The Act requires that Qwest and Verizon provide interconnection and unbundled network elements at "rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(2) & (3). The prices must be "based on the cost (determined without reference to a rate of return or other rate-based proceeding) of providing the

interconnection or network element," "nondiscriminatory," and "may include a reasonable profit." *Id*. § 252(d)(1).

25. The Act also requires all local exchange carriers "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." *Id*. § 251(b)(5). The terms and conditions for reciprocal compensation will not be considered just and reasonable unless they "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier" and "determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls." *Id*. § 252(d)(2).

2. Federal Court Decisions

26. The Supreme Court recently affirmed the FCC's authority to promulgate its costing and pricing standards, reversing the initial decision of the Eighth Circuit Court of Appeals that had vacated these portions of the *Local Competition Order* and Rules. *AT&T Corp. v. Iowa Utils. Bd*., 119 S. Ct. 721 (1999). The Eighth Circuit once again vacated the FCC's pricing rules based on its disagreement with the FCC's substantive interpretation of the Act, but the court has stayed the effect of that decision pending appeal to the Supreme Court. *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000); *Id*., Order Granting Motion for Stay (8th Cir. Sept. 22, 2000). The FCC's pricing rules for unbundled network elements and collocation thus remain in full force and effect.

3. FCC Orders

Local Competition Order

27. The FCC promulgated rules implementing the Act, including the pricing standards in Section 252(d), in *In re Implementation of the Local Competition Provisions in the*

Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, First Report and Order (Aug. 8, 1996) ("*Local Competition Order*") and accompanying rules, 47 C.F.R. §§ 51.1, *et seq*. The FCC interpreted the Act to require that prices for interconnection, unbundled network elements, and collocation be based on forward-looking total service (or element) long run incremental costs ("TSLRIC" or "TELRIC"). *Id*. ¶¶ 618-740; 47 C.F.R. § 51.505. Such costs, according to the FCC, must be measured "based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers," and may not include embedded costs, retail costs, opportunity costs, or revenues to subsidize other services. 47 C.F.R. § 51.505(b)(1) & (d).

28. Specifically with respect to pricing, "[e]lement rates shall be structured consistently with the manner in which the costs of providing the elements are incurred." *Id*. § 51.507(a). The FCC has required that, in addition to TELRIC, a "reasonable measure" of "forward-looking common costs" must be included in the prices for interconnection and access to network elements. *Local Competition Order* ¶ 694. The FCC found, however, "that the TELRIC pricing methodology we are adopting provides for . . . a reasonable profit and thus no additional profit is justified under the statutory language." *Id*. ¶ 699.

Reciprocal Compensation Remand Order

29. The FCC issued additional orders and rules addressing competitive issues in the wake of the *Local Competition Order*. The most recent of which addresses compensation for traffic bound for Internet Service Providers ("ISPs") and once again concludes that ISP-bound traffic is jurisdictionally interstate. *In re Implementation of the Local Competition Provisions/Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 & 99-68,

FCC 01-131, Order on Remand and Report and Order (April 27, 2001) ("*Reciprocal Compensation Remand Order*"). The FCC established rates, terms and conditions for such traffic and the order will preempt state commission jurisdiction over this issue when and if it becomes effective.

4. WUTC Orders

30. The provisions of the Act and FCC orders are the principal legal requirements governing this proceeding. The Act, however, preserves the ability of the states to enforce their own regulations and policies to the extent that such enforcement is consistent with the requirements of the Act and does not substantially prevent implementation of those requirements and the purposes of the Act. 47 U.S.C. § 251(d)(3). In the past, the Commission was at the forefront of efforts to bring the benefits of effective local exchange competition to Washington consumers, and its orders and policies promulgated prior to the passage of the Act helped to shape the Act and the *Local Competition Order*.

31. The Commission has recognized that access to, and interconnection with, the networks of Qwest and Verizon are essential to the development of effective local exchange competition, and made some attempts prior to passage of the Act to hold Qwest and Verizon to their representations to provide such services and facilities at reasonable rates, terms and conditions. *See WUTC v. U S WEST*, Consolidated Docket Nos. UT-941464, *et al.*, ("Interconnection Docket"), Fourth Supp. Order at 51-53 and Eighteenth Supp. Order. More specifically, the Commission determined that "the appropriate measurement of costs is TSLRIC." *Id.* Fourth Supp. Order at 89; *accord, e.g., WUTC v. U S WEST*, Docket No. UT-950200 ("U S WEST Rate Case"), Fifteenth Supp. Order at 80 ("costs should be measured from the ground up, *i.e.*, on a long-run, incremental, going-forward basis and without consideration of the actual costs incurred in the past by USWC"). The Commission also has required that Qwest

submit proper "imputation studies which support price ceilings for the services offered for interconnection," while recognizing that "the simple passing of an imputation study is not sufficient evidence to support the fairness of proposed rates." Interconnection Docket, Fourth Supp. Order at 92. These requirements are consistent with the Act, as well as with the FCC's interpretation of the Act, and thus should guide this Commission in determining the proper prices for access to, and interconnection with, the ILECs' networks.

III. UNE COSTS/PRICES

A. Qwest

32. The FCC's pricing rules require that costs be modeled based not on a company's "existing network design and technology that are currently in operation," *Local Competition Order* at ¶ 684, but rather on "the most efficient telecommunications technology currently available and the lowest network cost network configuration, giving the existing location of the incumbent LEC's wire centers." 47 C.F.R. § 51.505(b)(1). The purpose of this methodology is to replicate the conditions of a competitive market. *Local Competition Order* at ¶ 679. In contrast, pricing that is based on "existing network design and technology that are currently in operation" enshrine the inefficiencies of existing networks. *Id.* at ¶ 684. The FCC has explicitly rejected such an embedded pricing methodology. *Id.*

33. None of the Qwest recurring or non-recurring models filed with the Commission meet the FCC's pricing standards. Instead, Qwest cost models "use assumptions based on actual experience or company practice." Ex. T-1001 (Million Direct) at 5. As Qwest readily admits, this means that more efficient practices used in the industry are not reflected by its models. Tr. 1821 (Qwest-Million).

34. This failure to reflect the FCC's requirement of least cost, most efficient technology pervades all of the cost studies and models that Qwest has filed in this proceeding.

Qwest has relied upon assumptions about material investments, utilization rates, cost factors and other model inputs that are designed to reflect Qwest's fully distributed, embedded costs rather than the costs of a forward looking, efficient network. Ex. T-1330 (Weiss at 15-18; Ex. T-1310 (Joint CLECs-Klick) at 10-12). Qwest has not met its burden, therefore, to prove that "the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element." 47 C.F.R. § 51.505(e). Joint CLECs propose that all of Qwest's cost models should be rejected and that Qwest should be required to file new models demonstrating that those models are based upon efficient practices rather than Qwest's actual practices as an incumbent monopolist.

1. Non-recurring Costs/Study Methodology

a. Non-recurring Cost Issues

35. In the prior cost docket, this Commission criticized Qwest's non-recurring cost models on a number of grounds. The Commission noted specifically that those studies were based not on public information, but on estimates made by Qwest subject matter experts that "may be biased upward." *See In the Matter of Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale,* Consolidated Docket Nos. *UT-960369, et al. ("Consolidated Cost Docket"),* Eighth Supp. Order at 450-51. Qwest non-recurring costs studies in this proceeding have corrected none of the problems noted by the Commission in the prior docket. Once again, Qwest has provided only the unvalidated opinions of unidentified "experts," none of whom appeared before the Commission, rather than a study designed to meet Qwest's burden of proving the forward-looking non-recurring costs that an efficient provider would incur in providing network elements.

36. Qwest's cost studies themselves are nothing more than a list of the tasks that Qwest contends will be required to establish each particular service or element and the amount of

time Qwest alleges is required to perform each task. The studies then multiply the time estimates by an estimate of the probability that the task will be performed and Qwest's labor rate for the task.

37. Except for the labor rates, all of the information used in the studies comes from Qwest "subject matter experts" using assumptions based on Qwest's current OSS systems. Tr. 1828 (Qwest-Million). Qwest has made no adjustments to the estimates to reflect the efficiencies that would be achieved by forward-looking OSS systems, except to the extent that Qwest anticipated productivity increases for its existing systems at the time the initial estimates were made. Tr. 1836 (Qwest-Million). In fact, Qwest is presently revising the non-recurring cost studies it has presented in other states to reflect increased efficiencies that are not shown in the studies it has filed here. Tr. 1842-43, 1879 (Qwest-Million).

38. Qwest provided no support for the tasks, probabilities, times or even labor rates that make up its non-recurring cost studies in the evidence that it presented to the Commission. For this reason, Joint CLECs requested that Qwest provide all of its support for the studies on discovery. All of Qwest's supporting documentation is found in Exhibit C-1024. This documentation demonstrates that Qwest's estimates are little more than back-of-the-envelope guesses. They certainly do not present a forward-looking estimate of how an efficient carrier would provide the elements and services. Moreover, this "supporting" documentation demonstrates that the Commission's concern about a possible upward bias on the part of Qwest "experts" in estimating the times required to accomplish the necessary tasks is warranted.

39. The Commission has requested that the parties discuss how the Commission can validate the reasonableness of opinions offered by subject matter experts like those used in

Qwest's non-recurring cost studies.[2] As the Commission determined in the prior cost proceeding, cross examination of subject matter experts is one way in which opinions of such experts can be validated. *Consolidated Cost Docket* Eighth Supp. Order at ¶ 456. Mr. Thomas Weiss provided the recommendations of the Joint CLECs regarding the non-recurring studies. Mr. Weiss is an engineer with substantial experience in network operations and provisioning. Ex. T-T-1330 (Weiss) at 1-6. In contrast, Qwest presented Ms. Theresa Million, an attorney whose principal expertise is in tax and regulatory compliance. Ex. 1001 (Million Direct), at 1. As Ms. Million admitted, she is not a subject matter expert in the processes that are reflected in Qwest's non-recurring cost studies. Tr. 1884. Qwest chose not to present the experts who actually provided the opinions reflected in its non-recurring cost studies. This deliberate choice prevents the Commission from testing Qwest's assumptions. Mr. Weiss appeared for examination, however, and was closely questioned concerning the bases for his opinions and adjustments to the Qwest studies. Joint CLECs believe that this validation demonstrates the credibility of Joint CLECs recommendations regarding non-recurring charges.

40. For the most part, Joint CLECs will discuss concerns with specific studies below. Two concerns, however, have an impact on all of the studies. First, this Commission determined in the last cost proceeding that it was not proper for Qwest to bundle together disconnection costs with connection charges. *Consolidated Cost Docket,* Eighth Supp. Order at 471-72. The initial cost studies Qwest filed in this proceeding ignored that Commission holding. *See* Ex. C-1002. Qwest later did file studies separating disconnection charges from the connection charges. According to the testimony in this proceeding, however, Qwest has not determined when it will charge a disconnect fee. Tr. 2109.

[2] Commission Issue No. 1.

41. In most circumstances, where Qwest is providing unbundled network elements, there will be no basis for any disconnect charge. For example, if the service being provided by certain elements is transferred from a CLEC to Qwest, there will be no need to disconnect the elements and no basis for a charge to the CLEC. The Commission should not permit Qwest to establish a tariffed wholesale charge for disconnection without also determining the limited circumstances under which such a charge might be appropriate. The Joint CLECs suggest that this issue should be determined in another phase of this proceeding or in connection with the ongoing Qwest Section 271 proceedings.

42. A second overarching problem with Qwest's non-recurring cost studies is that the cost factors Qwest applies in calculating its directly attributed costs are overstated. As Qwest admits, many of the costs captured by those factors should be less in a wholesale environment than the costs that Qwest would incur in serving retail customers. Tr. 1895-1898. Nevertheless, Qwest's wholesale cost factors are in some cases considerably higher than its retail cost factors. Ex. 1031C; Tr. 1899-1900. This improperly inflates costs to CLECs. Qwest should be required to revise its cost factors to reflect the TELRIC principles.

b. UNE Combination Platform (UNE-P)

43. Qwest has proposed to use the Customer Transfer Charge ("CTC") determined in the Consolidated Cost Docket as a surrogate for the cost of converting existing Qwest POTS customers to a CLEC intending to serve the customer using a UNE platform. In making this proposal, however, Qwest relies on the CTC cost study it submitted in the prior proceeding. A review of the cost study demonstrates that it was not forward looking even when filed originally in the prior docket. The study ignored numerous efficiencies that Qwest now admits it has achieved. *See, e.g.,* Tr. 1879-1891. WorldCom's post-hearing brief sets forth in detail how the CTC study must be adjusted to reflect a forward looking analysis of the cost of converting an

existing POTS customer to a UNE-platform. When adjustments are made, the proper charge for the conversion is approximately $2.56.

44. Qwest's remaining non-recurring charges for UNE combinations are also inflated. Mr. Weiss has modified those estimates to make them reflect more realistic assumptions. Ex. C-1331 (Weiss Errata). Even with these modifications, it is likely that the proposed costs remain overstated. The Commission should, therefore, reject Qwest's proposed non-recurring cost studies with respect to unbundled network element combinations and require Qwest to refile studies that meet the Commission's requirements for validation. In the alternative, the Commission should adopt the cost estimates and non-recurring charges for the unbundled network element combinations proposed by the Joint CLECs.

c. Enhanced Extended Loops (EELs).

45. Qwest has provided non-recurring costs estimates for providing EELs at the DS0, DS1 and DS3 level. It proposes one charge for the first EEL ordered and a separate charge for additional EELs in the same order. Mr. Weiss has reviewed Quest's cost studies for these elements and noted that the studies assumed unnecessary tasks and tasks that should, on a forward looking basis, be performed on a mechanized basis rather than manually. Mr. Weiss has modified his estimates to make them reflect more realistic assumptions. *See* Ex. C-1331. The Commission should adopt the cost estimates and non-recurring charges for new EELs proposed by the Joint CLECs.

d. High Capacity Loops.

46. As with Qwest's proposed non-recurring charges for EELs, Qwest's non-recurring cost proposal for high capacity loops also includes numerous unnecessary activities and activities that could be handled by an efficient OSS system. Mr. Weiss identifies some of these problems in his restatement of the Qwest proposal. *See* Ex. C-1331 at 6-19. Joint CLECs

propose that the Commission adopt the cost estimates and non-recurring charges for high capacity loops set forth in the testimonies of Mr. Weiss and Mr. Klick. Ex. C-1318; C-1331.

e. Subloops.

47. Qwest has proposed a variety of different non-recurring charges that it contends should be applied to provisioning subloops. The first of these is a "Field Connection Point" field verification charge. This is a charge that Qwest intends to apply to any request for subloop access. It purportedly covers the costs of assessing the feasibility of accessing the subloop at any given location and determining the requirements for making a physical connection at that location. Ex. 1001 (Million Direct) at 13. Qwest also proposes that "the cost for actually making the connection will be determined on an individual case basis (ICB)." *Id.*

48. The Joint CLECs have a number of concerns with this proposal. The first of these is that Qwest's proposed charge is simply not necessary in most circumstances. Qwest contends that it will be required to undertake verification activities because CLECs are entitled under the FCC's rules to have access to subloops at any technically feasible point. Tr. 1845-46. In most cases, however, CLECs will seek access at defined points like the feeder-distribution interface. Qwest should not need to undertake extensive engineering to determine the feasibility of access at such defined points. Tr. 1846.

49. Moreover, as established during the course of the hearing in this matter, Qwest has produced next to no support for its proposed charge. The only support in the record is a single sheet of paper listing the engineering time estimates used in the non-recurring charge calculation. Tr. 1847, Ex. C-1024 at 182. Qwest has provided no indication as to how these estimates were derived or what activities Qwest anticipates will be undertaken in completing the proposed verification.

50. Mr. Weiss has analyzed Qwest's proposed field connection point charge to the extent possible given how little detail Qwest's studies provide on this proposal. As Mr. Weiss has testified, the design work required can and should be standardized. *See* Ex. C-1331 at 6. If Qwest is permitted to impose this charge at all, it should be at the rate proposed by Joint CLECs as indicated in the testimony of Mr. Weiss and Mr. Klick.

51. In addition to the FCP charge, Qwest also proposes significant non-recurring charges for access to feeder and distribution subloops. As with Qwest's other cost proposals, these proposals include unnecessary activities and inflated time estimates. The Commission should, therefore, adopt the cost estimates and non-recurring charges for subloop elements that the Joint CLECs proposed in the testimony of Mr. Klick and Mr. Weiss. Ex. C; C-1318; C-1331.

f. UDIT/E-UDIT.

52. Qwest has proposed non-recurring costs for what it terms Unbundled Dedicated Interoffice Transport ("UDIT") and Extended UDIT. As with Qwest's other cost studies, these cost studies include a number of activities that should be handled by an efficient OSS system as well as a number of unnecessary activities. *See* Ex. C-1331 at 32-35. For these reasons, Joint CLECs propose that the rates to be established for UDIT and E-UDIT non-recurring charges should be based on the rates proposed by Joint CLECs through the testimonies of Mr. Klick and Mr. Weiss. Ex. C-1318; C-1331.

g. Multiplexing.

53. Qwest's multiplexing costs studies, like Qwest's other cost studies, include a number of activities that should be handled by an efficient OSS system as well as a number of unnecessary activities. *See* Ex. 1331 at 36. For these reasons, Joint CLECs propose that the rates to be established for UDIT and E-UDIT non-recurring charges should be based on the rates

proposed by Joint CLECs through the testimonies of Mr. Klick and Mr. Weiss. Ex. C-1318; C-1331.

h. Poles, Ducts, Conduits and Rights of Way

54. Qwest proposes nonrecurring charges for various aspects of providing access to its poles, ducts, conduits, and rights-of-way. The Joint CLECs specifically take issue with Qwest's proposed charge for field verification of conduit occupancy. This charge allegedly compensates Qwest for the costs it incurs to physically inspect each manhole along a proposed route of conduit to ensure that sufficient space exists to accommodate a requesting CLEC's fiber. The Joint CLECs' first concern is that no such activity should be necessary. Qwest undertakes a review of its records to ensure that sufficient space exists, and Qwest is compensated for the costs of undertaking that review through a separate conduit occupancy inquiry fee. An additional field inspection to verify the accuracy of Qwest's records should not be necessary, and CLECs should not be responsible for paying Qwest to verify its own records. Tr. at 3124 (XO Knowles).

55. Even if the Commission were to determine that Qwest may charge the requesting CLEC to conduct a field verification of Qwest's records, Qwest is not entitled to charge for work that Qwest does not perform or that Qwest performs for its own internal purposes. The time required to undertake the activities necessary to verify Qwest's ability to accommodate a CLEC's request is approximately two hours per manhole plus travel time. *Id*. Qwest, however, estimates that considerably more time is necessary and includes time for Qwest to revise its own records. When asked to provide further information on these time estimates, Qwest stated that it had none. Ex. 1035 (Qwest Response to XO Data Request No. 01-001). Qwest thus significantly overestimates the time required and includes activities that enable Qwest to undertake additional network verification for Qwest's sole benefit. The CLEC should not pay

for any more time than is necessary to conduct the verification required to process the CLEC's specific request.

56. Nor should the CLEC be required to pay for verification activities that Qwest does not need to conduct. Qwest proposes a charge for each manhole along the conduit route the CLEC has requested to occupy, but every manhole along the route does not need to be checked. Tr. at 3125 (XO Knowles). Qwest should only be entitled to charge for field verifications in those manholes necessary to verify sufficient conduit space is available to accommodate the CLEC's request for occupancy.

57. Accordingly, the Joint CLECs recommend that the Commission reject Qwest's proposal to impose a charge for field verification of conduit occupancy. If the Commission permits Qwest to impose such a charge, it should require Qwest to revise that charge to be based on an estimate of two hours per manhole to undertake the necessary activities plus an additional amount for travel time. In addition, the Commission should authorize Qwest to impose this charge only for those manholes that Qwest must check to verify sufficient space exists in the conduit route the CLEC has requested to occupy.

i. Unbundled Dark Fiber

58. As with Qwest's proposed non-recurring charges for providing access to poles, ducts, conduits, and rights-of-way, Qwest's proposed inquiry charges to determine whether dark fiber is available are also unnecessary. Qwest proposes to charge both for a records inquiry as well as field verification. Essentially, Qwest appears to contend that its records are not complete enough to allow it to determine whether dark fiber exists in a route without an on-the-ground review. This field verification charge of almost $1,500 is patently unreasonable. Qwest should know the location and amount of dark fiber in its network without a physical inspection. The

Commission should not permit Qwest to charge CLECs for inefficiencies created by problems with Qwest's own records.

59. Qwest's other proposed non-recurring charges for ordering and provisioning dark fiber are substantially overstated. Although Mr. Weiss has not reviewed or restated the amounts calculated by Qwest, the cost studies that Qwest has provided in support of its dark fiber charges have the same problems as the remaining cost studies it has filed. The Commission should require Qwest to file cost studies that calculate these costs on a forward-looking, most efficient basis.

j. Loop Conditioning

60. The Commission asked the parties to address in this proceeding the rate structure that should be used to recover the cost of load coil and bridge tap removal. Qwest filed no cost studies on this point, claiming that the Commission has already determined the rates that should apply for load coil and bridge tap removal.

61. As the Commission itself has indicated, the rate structure that should be used in recovering the cost of load coil and bridge tap removal has not yet been determined. *Consolidated Cost Docket*, Twenty-Fifth Supp. Ord. At ¶ 100. The Commission has approved a cost of $304.12 for deloading a 25 pair binder group. This charge, however, should be recovered on a per-pair basis resulting in a charge of $12.17 per pair. Ex. T-1310 (Joint CLECs – Klick) at 45-47. As the Joint CLECs set forth in their testimony, it is a common practice for an ILEC to deload all 25 pairs in a relevant binder group even where it received a request to deload a single loop. *Id.* This activity brings that binder group up to modern design standards and the deloaded pairs are then available for the provision of advanced services. This increases the value of the ILEC's loop plant. *Id.*. It makes no sense to charge a CLEC seeking a single pair for the cost of deloading all pairs, where the ILEC benefits from this activity.

k. On-premise wiring

62. It appears that the only non-recurring charge for on-premise wiring proposed by Qwest in this proceeding is the field connection point described above. The concerns raised by the Joint CLECs regarding Qwest's proposed field connection point charges are magnified when that issue is considered in the context of on-premise wiring. As indicated above, CLEC access to on-premise wiring in MDUs is critical to enable competition for a large percentage of residential customers. *See also* Ex. T-1270 (Baker Reply) at 35-36. If Qwest is permitted to charge more than $1,600 plus additional unspecified ICB charges for access to any residential building, there will never be competition in the residential MDU market.

63. Joint CLECS are aware that the Commission is considering this issue in connection with Qwest's Section 271 proceeding and believe that Qwest may have retracted the position that CLECs will be required to pay FCP charges for access to MDUs. Joint CLECs hope that Qwest will confirm its change of position in this proceeding. If Qwest continues to propose FCP charges for access to on-premise wiring, the Commission should reject Qwest's proposed charges.

2. Recurring Costs

a. Recurring Cost Issues.

64. Qwest has calculated its recurring rates based upon several separate stand-alone cost studies reflecting Qwest's purported "actual experience or company practice." Ex. T-1001 (Million Direct) at 5. There are two universal problems with all of the recurring cost studies presented here. First, Qwest has made no effort to show the extent to which these studies comply with past decisions of the Commission. Ex. T-130 (Joint CLECs – Klick) at 8-9. Second, as indicated above, Qwest's recurring cost models, like its non-recurring cost models, ignore TELRIC methodology in favor of presenting the Commission with embedded costs based

upon Qwest's existing network. *Id.* at 10-11. For these reasons, the Commission should reject all of Qwest's recurring cost studies and require Qwest to refile studies that comply with the Act and the prior findings of this Commission.

(1) Improper Reliance on New Cost Models

65. Rather than relying on models evaluated by this Commission in the prior cost docket, Qwest has provided completely new models for evaluation in this proceeding. For example, as will be discussed in more detail below, Qwest has presented costs for high capacity loops using, not the RLCAP model used in the prior proceeding, but rather a new model with a different methodology. *Id.* at 35-36. The dark fiber transport models Qwest has used in this proceeding also use a different methodology than the transport studies submitted in the prior cost docket. *See* Qwest Response to Bench Request 2-024.

66. Qwest has provided no evidence in this docket that the inputs, assumptions and methodologies used in its cost models comply with the Commission's prior rulings. Exhibit T-1310 (Joint CLECs-Klick) at 18-19. Qwest has also failed to demonstrate the extent to which the methodology used in its new studies is consistent with the methodology used in the prior docket. There is every likelihood, therefore, that the prices proposed by Qwest in this docket are inconsistent with the charges that the Commission has previously approved for elements using the same facilities.

67. Qwest's approach raises an additional concern. Qwest proposes that the Commission adopt the common cost factors developed in the prior docket. *Id.* at 19. This is not appropriate, as the Commission itself determined in the prior docket when it assigned different common cost factors to Qwest and Verizon because of differences in the methodology used in the studies submitted by the two companies. *Id.* The same common cost factors used in the prior cost docket would be appropriate here only if Qwest had used the same methodology in this

proceeding as was used in the prior docket. Since Qwest has made no showing that this is the case, the Commission should, reject Qwest's reliance on the common cost factor adopted in the prior proceeding.

(2) Use of Embedded Costs

68. The second overarching problem with the Qwest studies presented in this proceeding is Qwest's failure to comply with the basic TELRIC principles in developing the studies. All of the studies are performed in the same manner. Qwest first determines the investment that contends is required to provide a particular service or element. Qwest then applies capital cost factors and operating expense factors, such as maintenance, to produce to produce direct costs. Qwest then multiplies the direct costs by common and attributable cost factors to yield the monthly cost per element. At almost every stage of this process, however, Qwest relies, not upon forward-looking costs as required under TELRIC, but rather on the company's embedded costs. The costs Qwest proposes to assess on CLECS, therefore, enshrine the embedded inefficiencies that now exist in Qwest's network. This result is contrary to the Act and this Commission's prior orders.

(i) Embedded Materials Costs

69. Qwest uses its embedded costs rather than the costs that would be incurred by an efficient carrier in several ways. First, Qwest uses current materials and placement costs as the basis from which total investment costs are developed. Ex. T-1001 (Million Direct) at 7. The costs Qwest is incurring today may provide an indication of the costs it will incur on a forward-looking basis. Qwest contended in the context of its merger with US WEST, however, that it would achieve significant operational efficiencies and cost savings. See, e.g., Qwest/USWC Joint Proxy Statement/Prospectus at p. I-17. In fact, it should be expected that Qwest will benefit from cost savings as a result, for example, of increased bargaining power with suppliers.

Qwest filed its cost studies in this proceeding shortly after the merger closed. The purported "actual" material investments used by Qwest here, therefore, cannot reflect savings Qwest will achieve from the merger. A true forward-looking model would take such expected savings into account.

(ii) Embedded Fill Factors

70. Other factors used in calculating investment ignore the requirements of TELRIC. This Commission has previously determined that it is not appropriate to use actual current fill rates in performing TELRIC calculations. Nevertheless, the fill factors used by Qwest in this proceeding appear to be based principally upon Qwest's actual experience. *See* Exhibit T-1009 (Million Rebuttal) at 27-28. Moreover, for at least some elements the fill rates consider only capacity Qwest supplies to end users rather than all demand for the element. TR 1873-74. The fill rates do not provide a reasonable projection of what Qwest would experience in total demand on a forward-looking basis. *See* Ex. T-T-1330 (Weiss) at 15-17. In fact, in some cases, the fill rates are absurdly low. *Id.* The effect of these unrealistic fill factors is to significantly increase the element rates proposed by Qwest. Mr. Weiss' proposals reflect fill factors that should be achieved in a competitive environment. All of Qwest's cost studies should be revised to reflect the reasonable utilization factors proposed by Mr. Weiss.

(iii) Embedded TIF

71. Qwest has also inflated its investment by applying Total Installed Factors (TIFs) that are substantially inflated compared to efficient industry practices. TIFs are applied to material investments within Qwest cost studies to inflate those investments to account for costs such as installation, transportation, warehousing, power and taxes. Qwest calculates these factors based on embedded costs. It uses its book expenses to calculate a ratio of the amount it presently expends to accomplish tasks like warehousing as compared amount expended on

material investments. Ex. T-1009 (Million Rebuttal) at 24. Although Qwest contends that it uses its "most current" expenditures in calculating the TIFs, some of the calculations presented in this proceeding were based upon information dating as far back as 1997. Tr. 1868-70; Ex. C-1027.

72. Because Qwest's TIFs are based on its book expenditures, these TIFs necessarily reflect Qwest's existing practices and procedures rather than the forward-looking, most efficient practices and procedures required by a TELRIC analysis. Joint CLECs have presented evidence of TIFs that should be achieved by an efficient provider of local telecommunications services. These TIFs are significantly less than those calculated based upon Qwest's present procedures. As an example, as Mr. Weiss has testified, Qwest's TIFs inflate the cost of materials such as circuit equipment mountings by as much as 211%, implying that it costs more to install a simple digital electronic circuit than it costs to purchase the circuit itself. Exhibit T-1330 (Weiss) at 10-11.

73. By failing to reflect efficient practices, Qwest uses its TIFs to inflate the element prices it proposes in this proceeding. Mr. Weiss and Mr. Klick have adjusted Qwest's proposals to reflect more efficient practices. The Commission should reject Qwest's cost studies because they do not comply with the FCC's TELRIC requirements or the requirements this Commission has established in the prior cost docket. Alternatively, the Commission should accept the adjustments presented by Mr. Weiss and Mr. Klick.

b. UNE Combination Platform (UNE-P)

74. Qwest has proposed that the recurring charges for UNE-P should be the sum of the recurring charges applicable to the underlying elements. The Joint CLECs do not take issue with this proposal.

75. Qwest's initial testimony in this proceeding made it appear that Qwest intended to impose separate charges for vertical features. In rebuttal testimony, however, Qwest has stated that it does intend to provide vertical features at no charge, consistent with the Commission's decision in Docket No. UT-960369, *et al.* *See* Eighth Supp. Ord., ¶ 276.

c. Enhanced Extended Loops (EEL)

76. As with UNE-P, Qwest proposes to charge recurring rates for EELs that are the sum of the recurring rates applicable to the underlying elements. The Joint CLECs do not take issue with this proposal.

d. High Capacity Loops

77. The Commission has already determined UNE loop rates using cost models that included investment for providing DS1 and DS3 loops. In fact, in the prior cost docket the Commission specifically increased the Hatfield Model loop estimate to reflect the cost of loop structure for DS1 and DS3 loops. Exhibit T-1310 (Joint CLECs Klick Direct) at 35-36. As Qwest witness Mr. Buckley admitted, Qwest's RLCAP Model filed in the prior cost docket also generated loop investment for the universe of unbundled loops, including high capacity loops. Tr. 2048.

78. In order to make the charges for high capacity loops consistent with the charges for loop facilities adopted in the prior cost docket, the only appropriate method to determine the rates for high capacity loops incorporating those facilities is to start with the rates established in the prior docket. To adjust these rates to allow for the provisioning of high capacity services, the Commission may simply subtract the costs for the plug-in electronics used in the prior loop costs analysis and add an appropriate TELRIC cost for the plug-in electronics required to provide DS1 and DS3 loops. Exhibit T-1310 (Joint CLECs-Klick) at 36. Mr. Klick has provided a

calculation that develops proposed recurring rates for DS1 and DS3 loops on this basis. Exhibit E-T-1310 (Joint CLECs-Klick Errata).

79. In contrast, Qwest relies on entirely new cost models to develop the cost for DSI and DS3 loops. As discussed above, Qwest has provided no evidence that these models are consistent with the Commission's prior determinations. Moreover, these models provide embedded loop costs rather than TELRIC estimates. The Commission should, therefore, reject Qwest's proposed charges for high capacity loops.

80. If the Commission does determine to use the models proposed by Qwest, the Commission should adopt the revisions to the models proposed by Mr. Klick and Mr. Weiss. These revisions are required to bring the model closer to TELRIC, incorporating assumptions that reflect efficient practices rather that Qwest's "actual" monopoly costs and procedures.

e. Subloops

81. The Commission determined loop rates in the prior cost docket using results from three different cost models. In this proceeding, Qwest proposes to use only its RLCAP model in developing subloop element rates. The only appropriate method for establishing subloop rates, however, is to use the compliance runs relied upon by the Commission in establishing de-averaged loop rates. Exhibit T-1310 (Joint CLECs-Klick) at 33. Joint CLECs have been unable to provide evidence of those rates in this proceeding because the Commission has not provided those runs. The Commission, however, should use its prior determinations in developing subloop rates to ensure consistency among the rates established in both dockets.

f. UDIT/E-UDIT

82. Qwest's transport proposals suffer the same deficiencies as its other cost studies as described above. Qwest's utilization factors and TIFs fail to reflect forward looking, efficient assumptions. Mr. Klick and Mr. Weiss have adjusted these studies to correct these problems to

the extent possible. The Commission should adopt the cost proposals presented in Mr. Klick's testimony.

g. Multiplexing

83. The Joint CLECs do not address this issue, but reserve the right to respond to other parties' discussion in their reply brief.

h. Unbundled Dark Fiber

84. Qwest has proposed separate recurring charges for dark fiber depending upon whether that dark fiber is provided as a loop or as interoffice transport. The charges proposed, however, are significantly higher than the charges established by this Commission for unbundled loops and transport. For example, Qwest proposes a recurring rate of $98.64 for an unbundled dark fiber loop, compared to the state-wide average UNE-loop rate of $18.16, established in the prior cost docket. This is inappropriate. The recurring charges for dark fiber should be no higher than the charges for a two-wire analog loop when the fiber is used as a loop and no higher than the charge for a DS1 transport facility when the fiber will be used as transport.

B. On-Premises Wiring

85. No party presented evidence of the recurring charges that should be assessed for on-premises wiring with direct testimony. In rebuttal, Qwest did provide a cost study that it contends provides an estimate of recurring charges. Exhibit 1009 (Million Rebuttal) at 15 - 16. It is inappropriate, however, to establish recurring charges without first determining the conditions under which an element will be offered. As indicated above, the record in this proceeding is undeveloped regarding the terms and conditions for access to on-premises wiring. For this reason, Joint CLECs agree with Verizon that the matter of recurring pricing for on-premises wiring should be deferred to another proceeding.

C. Verizon

1. Non-recurring Costs/Rates

a. Study Methodology

86. Verizon has proposed nonrecurring costs for ordering and provisioning the UNEs at issue in Part B of this docket based on Verizon's nonrecurring cost study. Mr. Klick and Mr. Weiss examined that study and found that it significantly overestimates the costs Verizon incurs on a forward-looking basis. Ex. T-1310 (Joint CLECs Klick) at 49-53; Ex. C-1318 (Klick Ex. 9/9C); Ex. T-1330 (Joint Intervenors Weiss) at 23-25; Ex. C1332 (Ex. TWH – 3C).

87. Verizon claims to have based its work time estimates on time and motion studies, but Verizon produced no documentation or other evidence that support those study results. The work time estimates are hard coded into Verizon's cost model and in many cases appear to be excessive based on the description provided. Ex. T-1330 (Weiss) at 23-24. As the Commission found with respect to Verizon's models submitted in the prior cost docket, Verizon's nonrecurring cost model is a black box that fails to permit the Commission or the parties to fully examine, much less validate, the model results.

88. Based on the information Verizon provided, its nonrecurring cost estimates include service ordering and provisioning activities that would be handled on a forward-looking basis by an efficient OSS. *Id*. at 25. The Commission has required CLECs to pay for the modifications that Verizon has made to its OSS to facilitate CLEC access, yet Verizon assumes that much of the ordering and provisioning process will be undertaken manually, as though those modifications never took place. Verizon should not be able to have its cake and eat it too. If CLECs are paying for OSS modifications, those modifications should be reflected in the ordering and provisioning charges for UNEs. Mr. Weiss, therefore, has modified Verizon's cost estimates

to exclude service ordering and provisioning activities that should be handled electronically. Ex. C-1332 (Joint CLECs THW – 3C); *see* Ex. C-1318 (Joint CLECs – Klick 9C).

89. Verizon's nonrecurring cost study also contains technical errors. Certain spreadsheet "links" used in the study are faulty and result in the inadvertent addition of costs. Ex. T-1310 (Joint CLECs - Klick) at 51-52; Ex. C-1316 (Joint CLECs Klick – 7C). Mr. Klick has modified Verizon's nonrecurring cost estimates to correct these errors. *Id*. at 52; Ex. C-1318 (Joint Klick – 9C).

90. Even as modified by Mr. Klick and Mr. Weiss, Verizon's nonrecurring cost estimates likely overstate the costs Verizon incurs on a forward-looking basis to process orders for and provision UNEs. *See* Ex. T-1330 (Weiss) at 24. The Commission, therefore, should reject Verizon's proposed rates and require Verizon to refile a cost study and supporting documentation that can be adequately reviewed by the Commission and the parties. If the Commission permits Verizon to rely on its nonrecurring cost study as filed, the Commission should establish any nonrecurring charges based on that study only as modified by Mr. Klick and Mr. Weiss.

(1) Service Ordering

91. In addition to the general deficiencies with Verizon's cost study discussed above, Verizon's service ordering cost estimates are inflated. Verizon undertook an "Order Entry Time Study," which allegedly reflects the time its personnel take to perform various order entry activities, but Verizon did not use those times directly in its nonrecurring cost calculations. Instead, Verizon uses that study to develop relative relationships between the times required for various activities, and those relationships are applied to undocumented, hard-coded values in the nonrecurring cost study to generate the times that Verizon actually uses in its nonrecurring cost calculations. As a result, Verizon's nonrecurring cost estimates "are based upon activity times

that are as much as *ten times higher* than the activity times that Verizon actually observed in its Order Entry Time Study." Ex. T-1310 (Joint CLECs - Klick) at 52 (emphasis added); *see* Ex. C-1317 (Joint CLECs Klick – 8C). Mr. Klick has modified Verizon's nonrecurring cost estimates to correct these anomaly. *Id*.; Ex. C-1318 (Joint CLECs – Klick – 9C).

(2) Provisioning Costs

92. Verizon's provisioning cost estimates are subject to the same problems associated with Verizon's nonrecurring cost study as a whole which have been addressed above and will not be repeated here.

(3) Fixed/Shared – NOMC

93. The Joint CLECs concur in Commission Staff's concerns with respect to Verizon's proposal for a charge to recover its alleged shared/fixed costs for its National Open Market Center ("NOMC"). Ex. CT-1360 (Staff Roth Responsive) at 11-13. Verizon did not address Ms. Roth's concerns, claiming that the Commission has already approved this charge in Part A of this docket. The NOMC charge, however, was proposed in Part A only in the context of line sharing. Indeed, Verizon's witness agreed in Part A that the application of the NOMC charge to orders other than line sharing would be a Part B issue. Tr. at 1537 (Verizon Tanimura). The issue of the propriety of the NOMC charge beyond line sharing thus remains open and disputed in Part B, and the Joint CLECs join Staff in recommending that the Commission reject Verizon's proposal to impose this charge.

b. Dark Fiber

94. Verizon proposes various nonrecurring charges for ordering and provisioning dark fiber. As discussed in conjunction with the recurring charges for dark fiber below, the nonrecurring charges should be no higher than the charges applicable to unbundled loops or transport. In contrast to Verizon's proposed recurring charges for dark fiber, Verizon's proposed

nonrecurring charges are comparable to – and in many cases lower than – the nonrecurring charges for unbundled loops or transport. The Joint CLECs, therefore, do not take specific issue with these dark fiber nonrecurring charges on those grounds. To the extent that those charges are based on Verizon's nonrecurring cost study, however, they suffer from the same general deficiencies in that study discussed above and should be modified accordingly.

95. In addition to charges for ordering and provisioning dark fiber, Verizon proposes a nonrecurring Service Inquiry charge to determine whether dark fiber exists in the route the CLEC has requested. Such a charge is unreasonable. Verizon strains credulity in contending that it does not know the location and amount of dark fiber in its network without a physical inspection. *See* Tr. at 2527-28 & 2537 (Verizon-Lee). If that were the case, Verizon (and its customers) would consistently be in jeopardy of having no facilities available because Verizon would not know that no network capacity exists until it checked in response to a customer order for service and found no available facilities. Such network management would be irresponsible, and the Commission should not encourage such irresponsibility by permitting Verizon to charge CLECs as if Verizon maintained no records of its own network. Accordingly, the Commission should reject Verizon's proposed Service Inquiry charge.

c. Sub-loop Unbundling

96. Verizon's nonrecurring cost estimates for sub-loop elements include the same cost overstatements discussed in general above, and Mr. Klick in conjunction with Mr. Weiss has modified those estimates to make them reflect more realistic assumptions. Ex. T-1310 (Joint CLECs Klick) at 49-53; Ex. 1318 (Klick Ex. 9/9C) at 2; Ex. T-1330 (Weiss) at 23-25; Ex. C-1332 (Ex. TWH – 3C). The Commission, therefore, should adopt the cost estimates and nonrecurring charges for sub-loop elements that the Joint CLECs have proposed.

d. EELs

97. Verizon proposes different nonrecurring charges for EELs depending on whether the facilities are ordered and provisioned as a new EEL or converted from an existing private line or special access circuit. With respect to new EELs, Verizon's nonrecurring cost estimates include the same cost overstatements discussed in general above, and Mr. Klick in conjunction with Mr. Weiss has modified those estimates to make them reflect more realistic assumptions. Ex. T-1310 (Joint CLECs Klick) at 49-53; Ex. 1318 (Klick Ex. 9/9C) at 4; Ex. T-1330 (Weiss) at 23-25; Ex. C-1332 (Ex. TWH – 3C). The Commission, therefore, should adopt the cost estimates and nonrecurring charges for new EELs that the Joint CLECs have proposed

98. Verizon used a separate study to estimate the costs on which its proposed rates for EEL conversions is based, Ex. CR-1165, and that study is even more flawed than Verizon's NRC study. The fundamental deficiency in the study is that Verizon improperly treats the conversion as a disconnect and new order, even though the facilities remain in place. Tr. at 2565 (Verizon Richter). Verizon thus requires that an entirely new access service request ("ASR") form be submitted and processed – including disconnect – when the CLEC is requesting only to change the billing from a tariffed service to a UNE combination. None of the activities (and associated costs) apply to or are required for a simple conversion. Ex. T-1210 (XO Knowles Rebuttal) at 5-9; *See* Tr. at 2559-72 & 2576-78. Verizon further exceeds the limits of plausibly by maintaining that its systems cannot even electronically copy customer and circuit information from its special access or private line records to its UNE records. *See* Tr. at 2651-54 (Verizon Richter). Verizon also proposes to include costs to calculate termination liability even when no termination liability applies and in light of the fact that Verizon already recovers those costs as part of its tariffs. Tr. at 2572-76. Verizon's proposed charge for converting special access or private line circuits to EELs thus is patently unreasonable.

99. Qwest has proposed to charge the same rate for converting EELs as the customer transfer charge for UNE-P private line. Verizon's proposed charge for an EEL conversion is *two to three times higher* than the rate Qwest has proposed. A similar methodology to Qwest's proposal would be appropriate for Verizon as well, but Verizon does not propose to offer private line on a UNE-P basis. Tr. at 2876 (Verizon Trimble). Accordingly, the Joint CLECs propose that Verizon be authorized to charge no more than Qwest has proposed to charge for converting special access or private line circuits to EELs.

e. UNE-P

100. Verizon's nonrecurring cost estimates for UNE-P include the same cost overstatements discussed in general above, and Mr. Klick in conjunction with Mr. Weiss has modified those estimates to make them reflect more realistic assumptions. Ex. T-1310 (Joint CLECs Klick) at 49-53; Ex. 1318 (Klick Ex. 9/9C) at 1; Ex. T-1330 (Weiss) at 23-25; Ex. 1332 (Ex. TWH – 3C). The Commission, therefore, should adopt the cost estimates and nonrecurring charges for UNE-P that the Joint CLECs have proposed.

f. Loop Conditioning

101. Verizon has submitted cost studies for loop conditioning and has proposed rates for removal of load coils and bridge taps that are several times higher than the rates the Commission approved for Qwest (and Verizon on an interim basis) for conducting the same activities. Verizon concedes that it undertakes the same activities as Qwest and that its technicians are comparable to Qwest's personnel. Tr. at 2578-84 (Verizon Richter). Verizon nevertheless vastly exaggerates the amount of time necessary to undertake those activities. Ex. T-1310 (Joint CLECs Klick) at 46-47. The Commission has already established reasonable times for the activities required to remove load coils and bridge taps, and Mr. Klick adjusted the Verizon cost studies to reflect those times as well as to make them internally consistent. *Id.*;

Ex. 1314 (Joint CLECs JCK/BFP 5C). The Commission, therefore, should adopt the costs of loop conditioning that the Joint CLECs have proposed.

102. With respect to recovery of those costs, the same principles are equally applicable to both Qwest and Verizon. As discussed above, no loop conditioning charges should apply to loops that are 18,000 feet in length or less, and loop conditioning costs for longer loops should be recovered on a per loop basis, at least when those costs are incurred for loops that are between 18,000 and 20,000 feet in length. Ex. T-1310 (Joint CLECs - Klick) at 42-46.

g. Dedicated Transport & SS7

103. Verizon's nonrecurring cost estimates for dedicated transport include the same cost overstatements discussed in general above, and Mr. Klick in conjunction with Mr. Weiss has modified those estimates to make them reflect more realistic assumptions. Ex. T-1310 (Joint CLECs Klick) at 49-53; Ex. 1318 (Klick Ex. 9/9C) at 3; Ex. T-1330 (Weiss) at 23-25; Ex. 1332 (Ex. TWH – 3C). The Commission, therefore, should adopt the cost estimates and nonrecurring charges for dedicated transport that the Joint CLECs have proposed.

h. OSS

104. The Commission in its Nineteenth Supplemental Order in this docket rejected Verizon's compliance filing with respect to nonrecurring charges and required Verizon to separate its OSS costs from those charges and implement a separate OSS rate as authorized in the Thirteenth Supplemental Order. The nonrecurring charges Verizon has proposed in this Phase of the docket also include OSS costs. Accordingly, the Commission should require Verizon to remove those costs from all nonrecurring charges and recover those costs through the separate OSS charge the Commission authorized.

i. High Capacity Loops

105. Verizon proposes to establish nonrecurring charges for high capacity loops at the same levels as the nonrecurring charges the Commission approved in Docket Nos. UT-960369, *et al*., for unbundled loops – a proposal that did not become apparent until the hearings. Tr. at 2548-50 (Verizon Richter); Tr. at 2869-70 (Verizon Trimble). To the extent that these nonrecurring charges were calculated consistent with the costs Verizon has proposed in this docket, those charges are similarly overstated. *See* Ex. T-1310 (Joint CLECs Klick) at 49-53; Ex. 1318 (Klick Ex. 9/9C); Ex. T-1330 (Weiss) at 23-25; Ex. 1332 (Ex. TWH – 3C). Verizon, however, did not offer any cost study or other documentation to support its proposal for the nonrecurring charges for high capacity loops. The Commission, therefore, should require Verizon to file such supporting documentation, modified to be consistent with Mr. Klick's and Mr. Weiss' analysis, and the Commission should establish nonrecurring charges for high capacity loops based on those properly modified cost estimates.

106. Verizon did not propose any nonrecurring charge for converting special access circuits or private line circuits to high capacity loops (*i.e.*, to the loop portion of an EEL alone when Verizon-provided transport is not included). *But see* Tr. at 2876-81 (Verizon Trimble) (speculating that the CLEC would need to disconnect the special access or private line circuit and order a new circuit as an unbundled loop at full nonrecurring charges). Such conversions present the same transfer of billing information as an EEL conversion, and Qwest has proposed to charge the same rate for converting special access or private line circuits to EELs or unbundled loops. Accordingly, the Joint CLECs recommend that the Commission require Verizon to charge the same nonrecurring charge for conversions of special access or private line circuits regardless of whether those circuits are being converted to EELs or to unbundled loops.

2. Recurring Costs/Rates

a. ICM Cost Methodology

107. Verizon introduced a new cost model in this docket, the Integrated Cost Model ("ICM") that it proposes the Commission use to estimate UNE costs. Verizon, however, also agreed with the other parties that loop costs would not be relitigated in this docket, and the Commission limited the scope of this docket accordingly. Third Supp. Order at ¶ 7. The ICM nevertheless departs substantially from the methodology on which the Commission relied to determine costs, particularly loop costs, and Verizon produced no evidence to demonstrate that the ICM estimates costs that are consistent with the costs the Commission previously determined. Ex. T-1310 (Joint CLECs - Klick) at 9-10, 13-20 & 35-39. To the contrary, Verizon readily concedes that it used inputs and assumptions allegedly based on its own experience, rather than on the Commission's determinations, on issues such as structure sharing, cable sizing, fill factors, plant mix, and placement costs. Tr. at 2675-88 (Verizon Collins).

108. The result is cost estimates for loop facilities that vary significantly from costs the Commission previously established for the same facilities. Ex. T-1310 (Joint CLEC - Klick) at 35-37. Verizon made no attempt to provide an estimate of loop costs based on the ICM, which would have enabled the Commission and the parties to compare the costs the Commission established with costs produced by the ICM. Tr. at 2671 (Verizon Collins). Mr. Collins also testified, "I would not be surprised that for those – for that subset of the DS-1 loop compared to the four wire loop that the costs would be different. I certainly would expect when you had different methodologies and different points in time, I would certainly expect to see differences in cost." Tr. at 2674. Verizon thus effectively proposes that the Commission establish a higher cost for a four-wire loop when it is part of a DS-1 loop that the Commission previously established for the four wire loop alone.

109. A CLEC obtaining facilities from Verizon should pay rates that reflect the same costs for the underlying facilities. The Commission has already established a cost for Verizon's loop facilities. Any element at issue in this proceeding that incorporates loop facilities, therefore, should reflect those costs. The cost estimates produced by Verizon's ICM do not incorporate those costs. Accordingly, the Commission should reject the ICM cost estimates and adopt the UNE prices that the Joint CLECs developed based on the costs the Commission established in Docket No. UT-960369, *et al*.

b. Stand-alone Studies

110. Verizon's other cost studies are similarly deficient. These "stand-alone" studies also fail to include documentation or any explanation demonstrating that the costs they estimate are consistent with the methodology or results used by the Commission to establish rates in the prior cost docket. Verizon's DS-3 cost study, for example, fails to demonstrate that the cost estimates for the fiber facilities from the Verizon central office to the customer location are consistent with the Commission's earlier cost determinations. Ex. T-1310 (Joint CLECs - Klick) at 40-41. Mr. Klick has calculated recurring rates that are demonstrably consistent with the prior Commission decisions. *Id*. at 28-42. The Commission, therefore, should adopt these proposals, rather than proposals Verizon has developed based on its "stand-alone" cost studies.

c. Common Costs

111. If Verizon had estimated costs consistently with the Commission's methodology and results in Docket No. UT-960369, *et al*., Verizon could have legitimately relied on the same common cost factor the Commission established in that docket. Verizon, however, seeks the best of both worlds – higher cost estimates using its ICM and other new models along with the higher common costs factor established by the Commission. Verizon cannot have it both ways. The Commission established a common cost factor of almost 25% to Verizon because its earlier

model directly assigned a lower percentage of total cost to individual UNEs than the models on which Qwest relied. Ex. T-1310 (Joint CLECs - Klick) at 19; *Consolidated Cost Docket*, Seventeenth Supp. Order at 51. Verizon, however, produced no evidence to demonstrate that its ICM and stand-alone models similarly do not assign the same proportion of total costs to individual UNEs.

112. Consistent with the Joint CLECs' recommendation that the Commission establish rates consistent with those established in the prior cost docket, Verizon should be entitled to the same common cost factor but only if the underlying costs are developed using the same methodology. If the Commission permits Verizon to use the ICM, stand alone models, or some other methodology of estimating recurring costs for UNEs, the Commission should recalculate the common cost factor to ensure that Verizon does not overrecover its common costs. *See* Ex. T-1360 (Staff Roth Responsive) at 9-11.

d. Recurring Rates

(1) High Capacity Loops

113. Because the Commission established the cost of loop facilities in the prior cost docket, the appropriate method for determining rates for high capacity loops that incorporate those facilities "would be to *start* with the UNE loop rates already established by the Commission, *subtract* the cost of plug-in electronics implicit in the TELRIC for those loop costs, and *add* an appropriate TELRIC cost for the plug-in electronics associated with DS-1 and DS-3 loops." Ex. T-1310 (Joint CLECs - Klick) at 36 (emphasis in original). Mr. Klick used just such a calculation to develop proposed recurring rates for DS-1 and DS-3 loops. Ex. C-1222 (Klick – 13C).

114. Verizon relies on its ICM and stand alone DS-3 cost model to develop proposed prices for high capacity loops. As discussed above, neither of these models estimates costs

consistently with the Commission's prior determinations. The Commission, therefore, should reject Verizon's proposed prices and adopt the rates that the Joint CLECs propose.

115. If the Commission were to decide to use the ICM and stand alone DS-3 model, however, the cost estimates Verizon has developed using those models are overstated. For example, Verizon assumes all DS-1 loops are provided over copper facilities, even though DS-1 loops can be and are provided over fiber, including as part of a DS-3 circuit that is divided into DS-1 circuits at the building where the customer is located. Tr. at 2793-95 (Verizon Collins); Ex. T-1310 (Joint CLECs - Klick) at 39-40. Similarly, Verizon assumes that all DS-3 loops are provisioned over OC-3 facilities, when Verizon can and does also use less expensive options. Ex. T-1310 (Joint CLECs - Klick) at 40-41. Mr. Klick, in conjunction with Mr. Weiss, has modified the ICM and DS-3 model outputs to compensate for these unrealistic assumptions. If the Commission uses these models to estimate costs, despite these models' inconsistency with the Commission's prior decisions, the Joint CLECs recommend that the Commission adopt the revised DS-1 and DS-3 recurring loop rates that Mr. Klick and Mr. Weiss have developed.

(2) Switching

116. The Joint CLECs do not address recurring rates for switching, other than the issue of separate rates for vertical features discussed in conjunction with UNE-P below, but reserve the right to respond to other parties' discussion of recurring rates for switching in the reply brief.

(3) ISDN Loop Extenders

117. The Joint CLECs do not address this issue but reserve the right to respond to other parties' discussion in the reply brief.

(4) Dedicated Transport

118. Verizon's cost estimates for DS-1 and DS-3 dedicated transport rely on Verizon's corresponding loop cost estimates and thus are overstated to the same extent that the ICM and

DS-3 cost model outputs for loops are overstated. Ex. T-1310 (Joint CLECs - Klick) at 48. Again, Mr. Klick in conjunction with Mr. Weiss has modified Verizon's model outputs to reflect more realistic assumptions. *Id*. The Joint CLECs recommend that the Commission establish recurring rates for DS-1 and DS-3 transport based on these modified cost estimates.

(5) Tandem Switching

119. The Joint CLECs do not address this issue but reserve the right to respond to other parties' discussion in the reply brief.

(6) Dark Fiber

120. Verizon proposes recurring charges for dark fiber depending on whether that fiber will be used as a loop or interoffice transport. Those charges are significantly higher than the recurring charges for an unbundled loop and for dedicated transport (at least with respect to the rates for facilities per airline mile). The underlying facilities, however, are the same. The recurring charges for dark fiber, therefore, should be no higher than the two-wire analog loop rate when the fiber is to be used as a loop and no higher than the IDT DS1 Transport Facility per ALM when the fiber is used for transport.

(7) Sub-loop Elements

121. Verizon, like Qwest, uses its own model to develop sub-loop element rates based on the loop rates the Commission established in the prior cost docket. The appropriate methodology for establishing sub-loop rates, however, is to use the compliance runs on which the Commission relied to establish de-averaged loop rates. Ex. T-1310 (Joint CLECs - Klick) at 33. Because the Commission has not provided such runs, the Joint CLECs were unable to develop appropriate rates, but the Commission should develop such rates based on its prior determinations to ensure consistency between the rates established in both dockets.

(8) Intra-building riser cable

122. Verizon apparently agrees with Joint CLECs that recurring costs for intra-building riser cable should be determined in another phase of this proceeding. Joint CLECs do not take issue with this proposal.

(9) UNE-P

123. Verizon proposes recurring charges for UNE-P that are the sum of the recurring charges applicable to the underlying elements. The Joint CLECs do not take issue with Verizon's proposal except for Verizon's proposal to impose separate charges for vertical features. As discussed above with respect to Qwest, the Commission previously established switching rates that include the cost of vertical features. Ex. T-1310 (Joint CLECs Klick) at 34; *Consolidated Cost Docket*, Eighth Supp. Order ¶ 276. The Commission, therefore, should reject Verizon's proposed rates for vertical switching features and should continue to include those costs as part of unbundled switching.

(10) EELs

124. Verizon proposes recurring charges for EELs that are the sum of the recurring charges applicable to the underlying elements, *i.e.*, loop, transport, and multiplexing. This is the appropriate methodology, and thus the Joint CLECs do not take issue with Verizon's proposal.

(11) Customized routing & OS/DA

125. The Joint CLECs do not address this issue but reserve the right to respond to other parties' discussion in the reply brief.

(12) Packet Switching

126. The Joint CLECs do not address this issue but reserve the right to respond to other parties' discussion in the reply brief.

(13) SS7 Signaling & Call-Related Database

127. The Joint CLECs do not address this issue but reserve the right to respond to other parties' discussion in the reply brief.

(14) Fiber-fed DLC

128. The Joint CLECs do not address this issue but reserve the right to respond to other parties' discussion in the reply brief.

IV. RECIPROCAL COMPENSATION

A. Legal and Policy Issues

129. The FCC's *Reciprocal Compensation Remand Order*, when and if it becomes effective, will largely resolve or preempt Commission jurisdiction to address the legal and policy issues raised with respect to reciprocal compensation for ISP-bound traffic. The Joint CLECs, therefore, do not address any legal or policy issues on reciprocal compensation other than those specifically identified in the subsections below.

B. Jurisdiction

130. The FCC has concluded that ISP-bound traffic is jurisdictionally interstate and has preempted state commission authority to establish compensation for transport and termination of that traffic on a going-forward basis. *Reciprocal Compensation Remand Order* ¶ 82. If this Order becomes effective, this Commission, therefore, will not have jurisdiction to establish compensation for ISP-bound traffic. The Commission retains its authority to establish appropriate reciprocal compensation rates for local telecommunications traffic. 47 U.S.C. § 252(d)(2).

C. Rate Structure

131. The Commission has historically approved reciprocal compensation rates for terminating local traffic calculated on a per minute of use basis. The ILECs' concerns with

respect to the alleged disparity between call durations for ISP-bound traffic and voice traffic gave rise to the issue of whether the per minute of use rates should be bifurcated into a rate for call set-up and a per minute rate for call duration. The FCC's *Reciprocal Compensation Remand Order* has established applicable rates for terminating ISP-bound traffic, at least to the extent that Qwest or Verizon agree to offer to terminate all local traffic at those rates. The issue of the appropriate rate structure thus should be moot.

132. If Qwest or Verizon do not offer to terminate all local traffic and ISP traffic at the rates the FCC established, they must terminate ISP-bound traffic at Commission-approved reciprocal compensation rates for terminating local traffic. *Reciprocal Compensation Remand Order* ¶ 89. There is no basis under the *Reciprocal Compensation Remand* for the Commission to now adopt a new rate structure that will change the reciprocal compensation rates for terminating ISP-bound traffic. Again, therefore, the Commission should not establish a different rate structure than the existing minutes of use compensation.

133. If the Commission nevertheless determines to adopt a bifurcated rate structure for call set-up and call duration for terminating local traffic, the Commission should schedule additional proceedings in this docket to establish specific rates under that structure. No party introduced sufficient evidence to enable the Commission to calculate such rates, and at a minimum, all parties should be given the opportunity to provide such evidence. Accordingly, the Joint CLECs recommend that the Commission retain the current rate structure for reciprocal compensation for local traffic or, if the Commission adopts a bifurcated rate structure, that the Commission schedule additional proceedings to determine appropriate rates under that structure.

D. Tandem Switching Issue

134. FCC Rule 51.711(a)(3) requires ILECs to compensate the CLEC at the tandem rate if the CLEC's switch "serves a geographic area comparable to the area served by the

incumbent LEC's tandem switch." *See Also In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132, (Rel. April 27, 2001) at ¶ 107, fn. 173 (affirming that any "functional equivalency" test is inconsistent with the FCC's requirement to evaluate only the geographic area served by the CLEC switch). Qwest, however, recommends that the Commission deny CLECs the tandem interconnection rate – even when the CLEC switch serves a geographic area comparable to the area served by a Qwest tandem – when there are direct trunks between the CLEC switch and the Qwest end office. Nothing in the FCC rules authorizes Qwest to pay less for traffic that Qwest routes directly from a Qwest end office to the CLEC switch rather than through a Qwest tandem to the CLEC switch. Qwest's proposal thus violates federal law.

135. Qwest's proposal also ignores the reasons a CLEC is entitled to reciprocal compensation at the tandem rate when its switch covers a geographic area comparable to a Qwest tandem. If the CLEC switch serves such an area, "the CLEC is terminating traffic within that area regardless of whether the ILEC delivers the traffic through its tandem or directly from the end office. Stated differently, it is irrelevant whether the traffic *originates* from a Qwest end office or a Qwest tandem – the CLEC *terminates* that traffic to its customers located anywhere within the local calling area, *i.e.*, the area comparable to the geographic area served by the Qwest tandem." Ex. T1210 (XO Knowles Response) at 5-6. Indeed, even Qwest recognizes the concept that traffic delivered to a tandem should be compensated at the tandem rate when the tandem belongs to Qwest. Qwest does not propose that the CLEC pay reciprocal compensation at the end office rate if the CLEC switch is considered to be an end office and the CLEC delivers traffic to Qwest at its tandem for termination. Qwest's proposal that the CLEC be compensated

at the end office rate when the CLEC switch is the tandem thus is blatantly self-serving and discriminatory, as well as precluded by federal law.

136. Commission Staff unfortunately appears to agree with Qwest, at least in part. While far from clear, Dr. Blackmon's testimony suggests that the CLEC be compensated at the end office rate if the traffic is terminated within the geographic area served by the Qwest end office or otherwise would have been terminated without being routed through a tandem if the traffic had stayed on Qwest's network. Staff's proposal is no more consistent with federal law than Qwest's proposal. Staff presented no evidence that the costs to terminate traffic originated by Qwest under these circumstances is any less than the costs to terminate the traffic anywhere else in the geographic area served by the Qwest tandem. Staff, like Qwest, also does not propose to make such compensation reciprocal – *i.e.*, Staff does not propose that Qwest receive only the end office rate for traffic delivered by the CLEC to the Qwest tandem if the traffic otherwise would have bypassed the tandem if it had been carried entirely on Qwest's network. Staff also provided no evidence on the technical feasibility or additional costs required to measure and accurately segregate traffic that originates and terminates within geographic areas that are smaller than a rate center.

137. FCC rules and the Commission's prior decisions consistently and unequivocally require Qwest to pay reciprocal compensation at the tandem rate if the CLEC switch serves a geographic area comparable to the Qwest tandem, regardless of whether Qwest delivers that traffic to the CLEC from a Qwest tandem or directly from a Qwest end office. The Qwest and Staff proposals both violate federal and state law and should be rejected. The Commission should once again reaffirm that CLECs are entitled to the same tandem rate Qwest imposes,

without exception, when the CLEC switch is considered to be a tandem for reciprocal compensation purposes.

E. Interconnection Cost Sharing

138. Interconnection provides a path between the CLEC switch and the ILEC switch for the exchange of telecommunications traffic. *See* Ex. T1210 (XO Knowles Response) at 12; Qwest SGAT § 7.1.1. Consistent with industry practice, Qwest and Verizon have established three methods the Parties may use to construct this path: (1) the ILEC may primarily construct the facilities; (2) the CLEC may construct the facilities; and (3) each party may construct facilities to a negotiated meet point. Ex. T1210 (Knowles Response) at 12; *see* Qwest SGAT § 7.1.2. Qwest did not address the issue of cost sharing for interconnection in its testimony, but Qwest's SGAT provides that each of the interconnecting companies will pay its proportionate share the costs of interconnection facilities that *Qwest* provides, in whole or in part. SGAT §§ 7.1.2.1, 7.1.2.3 & 7.3.1.1; *see id.* § 7.3.2 (cost sharing for Direct Trunked Transport). The SGAT, however, does not require Qwest to pay its proportionate share of the costs of interconnection facilities that the *CLEC* constructs (other than Direct Trunked Transport between Qwest wire centers). SGAT § 7.3.1.2. Verizon's testimony included only a perfunctory discussion of cost sharing for interconnection facilities which did not include whether, and the extent to which, Verizon would pay for its proportionate share of interconnection facilities constructed by the CLEC. Ex. T-1180 (Verizon Jones Rebuttal) at 16-17.

139. The Act and the FCC Rules unequivocally require each carrier to pay for the costs of interconnection facilities in proportion to the amount of traffic that carrier delivers to the other carrier for termination. 47 U.S.C. § 252(d)(2); 47 C.F.R. §§ 51.701-11. By refusing to pay any proportion of the costs of interconnection facilities provided by the CLEC, Qwest's SGAT

violates state and federal law. To the extent that Verizon refuses to compensate CLECs for the interconnection facilities they construct, Verizon's position would also be unlawful.

140. XO proposed a revision to the SGAT that would bring it into compliance with applicable legal requirements. Pursuant to that proposal, each party would pay its proportionate share of the costs incurred to construct interconnection facilities, without regard to which party constructed those facilities. Ex. T1210 (XO Knowles Response) at 12-15. The CLEC always constructs facilities from its switch and through its switching center to a manhole outside the building. When the ILEC constructs facilities from its switch through its wire center to a manhole outside the wire center, Qwest imposes a charge for interconnection Entrance Facilities, and Verizon imposes a similar charge. XO proposed that the CLEC be entitled to the same charge for the facilities the CLEC has constructed through its switching center. *Id*. at 12-13. When the CLEC also constructs the interconnection facilities through the ILEC wire center using collocation, XO originally proposed that the ILEC pay its proportionate share of the charges the ILEC imposes for collocation elements that are used for interconnection, including collocation Entrance Facilities and Expanded Interconnection Channel Terminations ("EICTs"). *Id*. at 13-15. For administrative simplicity and based on the collocation prices that the Commission established in Part A of this docket, XO revised its proposal to recommend that the CLEC be entitled to charge a second interconnection Entrance Facility charge when the CLEC constructs the interconnection facilities in the ILEC wire center via collocation. Tr. at 3083-85 (XO Knowles).

141. XO's proposals are reasonable and fully consistent with federal and state legal requirements. Neither Qwest nor Verizon presented any evidence to the contrary, much less to support any different method for sharing the costs of interconnection facilities. The Joint

CLECs, therefore, recommend that the Commission require Qwest and Verizon to pay their proportionate share of the costs to construct interconnection facilities in both the ILEC wire center and the CLEC switching center as follows:

(a) When the ILEC provides Interconnection Entrance Facilities: The Parties should assume that the CLEC incurs the same costs to provide the same functionality in its switching center as the ILEC incurs in its wire center. 47 C.F.R. § 51.711. Each Party would pay the other for an Interconnection Entrance Facility (and Transport, to the extent not included in the Interconnection Entrance Facility) at the nonrecurring and recurring rates the ILEC charges when it constructs those facilities, in proportion to the amount of traffic each carrier delivers to the other over those facilities for termination, including ISP-bound traffic.

(b) When the Parties Interconnect Through Collocation: The Parties should assume that the CLEC is providing two Interconnection Entrance Facilities – one in its own switching center and one in the ILEC wire center – and Transport, to the extent that these facilities are not included in Interconnection Entrance Facilities. Qwest or Verizon would pay the CLEC for two Interconnection Entrance Facilities (plus any applicable Transport) at the nonrecurring and recurring rates the ILEC charges when it constructs those facilities, in proportion to the amount of traffic the ILEC delivers to the CLEC for termination, including ISP-bound traffic.

V. DSL ISSUES

A. Line Splitting

1. Architecture

142. The very purpose of the Telecommunications Act is to remove barriers to entry in telecommunications markets. *See, e.g.* 47 U.S.C. § 253. Procompetitive rulings regarding the provisioning of line splitting for the purposes of providing advanced services like DSL are critical to the furthering this objective. As Mr. Gillan's testimony indicates, customers who are

presently receiving DSL services overwhelmingly receive those services from incumbent carriers like Qwest and Verizon. Ex. T-1262 (Gillan Rebuttal) at 4-6. Unless the Commission acts to promote competition, the ILECs will continue to use their dominance in the provisioning of both voice and advanced services to protect and expand that dominance in both markets.

143. In order to permit competition, the Commission must ensure that line splitting can be implemented with a minimum of disruption to the customer. *Id.* at 2. Moreover, customers must be able to change data providers without disrupting their voice service, while also being able to change voice providers without disrupting their data service. *Id*. The deployment of line splitters in ILEC central offices by the ILEC will assist in accomplishing these objectives. *Id.* at 3-4. As Mr. Gillan testified before the Commission, however, a more critical concern must be with ensuring the customers who are receiving DSL service from Qwest or Verizon do not lose access to that service when the customer chooses to use a CLEC for voice service.

144. Most consumers presently receiving DSL service receive it from an incumbent like Qwest or Verizon. Many of these customers have been able to obtain service only after significant time and disruption. They are unlikely to be willing to change their voice provider to a CLEC if the result is that they will lose their DSL service. The refusal by Qwest and Verizon to continue providing voice service thus becomes a potent weapon in protecting against loss of the customer to a CLEC.

145. Moreover, Qwest and Verizon have identified no legitimate business reason that they would not be willing to continue providing DSL service. There is no evidence in the record that continuing to provide DSL service would result in any significant costs to the ILEC. In fact, an ILEC who did continue to provide service would have the opportunity to continue receiving revenue from the customer that the ILEC would otherwise lose. The only reason for the ILECs

to refuse to provide service to its customers is an anti-competitive desire to prevent these customers from changing voice carriers.

146. The Commission has asked for a response to two related questions regarding the first is whether the statement in paragraph 16 of the FCC Line Splitting Order regarding the provisioning of XDSL services by incumbent LECs applies to VADI. The fact that the FCC did not choose in its Line Splitting Order to require ILECs to continue providing DSL services does not bind the Commission with respect to either Qwest or VADI. The FCC found only that its prior Line Sharing Order did not require an incumbent LEC to continue providing voice service. The FCC further determined, however, that an incumbent carrier's refusal to provide service under such circumstances could be a violation of Section 201 or 202 of the Act. *In the Matter of Deployment of Wireline Services Offering Advance Telecommunications Capability*, CC Docket No. 98-147, Third Report and Order on Reconsideration, FCC 01-26 (rel. Jan. 19, 2001) at 25. The FCC indicated that it would consider the issue in the context of an enforcement action brought under those provisions. *Id.* Nothing in the Line Splitting Order, therefore, constrains this Commission from considering whether an incumbent LEC's refusal to continue providing data service when a customer obtains voice service from a CLEC is anti-competitive.[3]

147. The Commission has further requested discussion regarding legal authority that supports the Commission's regulation of the provisioning of Qwest's DSL offering. The D.C. Circuit has recently upheld the FCC's determination that incumbent carriers providing DSL services are subject to Section 251(c) obligations. *Worldcom, Inc. v. FCC,* 246 F.3d 690, 694 (D.C. Cir 2001). This Commission, therefore, necessarily has the ability to determine the extent of Qwest's (and Verizon's) obligation to provide DSL service as a consequence of the

[3] Commission Issue No. 7.

Commission's role in reviewing and approving interconnection agreements and pricing under Section 252 of the Act.

2. Costs.

148. Because the conditions for provisioning line splitting have not yet been determined, Joint CLECs have not addressed the associated costs.

3. Position on Recommendations of QWEST, Verizon and Staff

149. Joint CLECs agree with staff that the Commission should establish a time line for a collaborative proceeding.

B. Line Sharing Over DLC Loops

150. Joint CLECs do not address this issue, but serve the right to respond to other parties' discussion in the Reply Brief.

VI. OSS COSTS

A. UNE Remand Order

151. Neither Qwest nor Verizon made any specific proposal for OSS cost recovery in Part B of this docket. Qwest did provide estimates of costs that it contends were incurred as a result of OSS modifications made necessary by the UNE Remand Order. At hearing, Qwest admitted that many of the charges included in its estimates have already been considered by the Commission in Part A. Tr. 2146-2151. In fact, Qwest presented estimated costs to the Commission in Part A that in many cases substantially exceed the actual costs it has now presented in this Part B docket.

152. As Joint CLECs have previously argued, it is not appropriate to allow recovery of OSS costs incurred by Qwest or Verizon to modify their OSS to function in a market with multiple local exchange carriers. TELRIC, by definition, does not include the costs incurred by an ILEC for modifying existing networks to accommodate a multi-provider network. *See*

47 CFR § 51.319(g); *Local Competition Order*, ¶¶ 683, 685. Moreover, Qwest's showing here demonstrates the problems inherent in permitting an incumbent carrier to recover costs associated with modifying its OSS. Qwest presented and requested recovery of costs in Part A of this docket based on estimated expenditures. The filing it has made in this stage of the proceeding shows that those estimates were, in many cases, wildly inflated. Moreover, both Qwest and Verizon indicate that they intend to seek additional cost recovery for OSS development in future proceedings. The concerns raised by the Joint CLECs in Part A that the Commission will be faced with evaluating OSS recovery on an ongoing basis with no ability to ever make a final determination of the amount Qwest and Verizon may recover for the process of modifying its OSS appeared to be coming true. The Commission should determine now that its findings regarding cost recovery in Part A place a cap on the amounts that Qwest and Verizon may recover for OSS development.

B. Line Splitting-Line Sharing

153. Because neither Qwest nor Verizon has presented any specific cost recovery proposal for line splitting or line sharing, Joint CLECs do not address this issue.

VII. CONCLUSION

154. For the reasons and as discussed above, the Joint CLECs urge the Commission to adopt the Joint CLECs' proposed UNE recurring and nonrecurring rates, reciprocal compensation, DSL, and OSS recommendations, and policy positions.

RESPECTFULLY SUBMITTED this 29th day of May, 2001.

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