

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Review of: ) DOCKET NO. UT-023003  
Unbundled Loop and Switching )  
Rates; the Deaveraged Zone )  
Rate Structure; and Unbundled ) TWENTY-FIRST SUPPLEMENTAL  
Network Elements, Transport, ) ORDER  
and Termination (Recurring )  
Costs) )  
) ESTABLISHING ISSUES LIST

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1 **Proceedings.** Docket No. UT-023003 – also referred to as the “new generic cost case” – is a generic proceeding initiated by the Commission to review Qwest’s and Verizon’s recurring and nonrecurring costs for unbundled network element (“UNE”) loop and switch rates, including the deaveraged loop zone rate structure, previously established by the Commission in other proceedings. On August 5, 2003, in the Twelfth Supplemental Order in this case, the Commission bifurcated the recurring from the nonrecurring cost portions of Docket No. UT-023003. The Commission will consider nonrecurring costs in Docket No. UT-033034. On November 25, 2003, the Commission entered an order removing Qwest cost issues from both proceedings. Only Verizon’s costs are now at issue in the cost dockets.

2 **Appearances.** Qwest Corporation (“Qwest”), by Lisa Anderl, attorney, Seattle, Washington; Verizon Northwest Inc. (“Verizon”), by Catherine Ronis, attorney, Washington, D.C.; Covad Communications Company (“Covad”), by Karen Frame, attorney, Denver, Colorado; AT&T of the Pacific Northwest, Inc. (“AT&T”), Pac-West, Inc. (“Pac-West”), and XO Washington, Inc. (“XO”), by

Gregory J. Kopta, attorney, Seattle, Washington; MCI/WorldCom (“WorldCom”) by Michel Singer-Nelson, attorney, Denver, Colorado; WeBTEC, by Arthur Butler, attorney, Seattle, Washington; Eschelon Telecom, Inc. (“Eschelon”), by Dennis Ahlers, Minneapolis, Minnesota; and Commission Staff, by Shannon Smith, Senior Assistant Attorney General.

3     **Background.** In the Twentieth Supplemental Order in this proceeding the Commission asked the parties to update the issues list previously established in the Fourth Supplemental Order on November 8, 2002. At that time, this docket included both recurring and nonrecurring UNE/OSS costs for both Qwest and Verizon. Currently, the docket will address only the recurring costs of Verizon with two exceptions: Qwest’s deaveraged loop and subloop rates.

4     In their responses, the parties agree that the issues list should now exclude all Qwest issues, except for deaveraged loop and subloop rates, and all nonrecurring cost/OSS issues. The primary dispute among the parties about the issues list relates to Verizon’s proposal to exclude certain issues pursuant to the Federal Communications Commission’s (FCC’s) Triennial Review Order (TRO)<sup>1</sup> and the D.C. Circuit Court of Appeal’s recent decision in *United States Telecom Association v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“USTA II”). In that decision, the Circuit Court upheld portions of the TRO but vacated other portions. The Circuit Court stayed for 60 days those portions of its order vacating the TRO. The stay expires May 3, 2004.<sup>2</sup>

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<sup>1</sup> *Report and Order on Remand and Further Notice of Proposed Rulemaking, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 18 FCC Rcd 16978 (2003) (“Triennial Review Order” or “TRO”).

<sup>2</sup> On March 31, 2004, all five FCC commissioners indicated they would seek a 45-day extension of the stay ordered in the USTA II decision and urged the telecommunications industry to seek agreement on terms for offering unbundled network elements. The FCC also announced that it would ask the U.S. Solicitor General to request a comparable extension of the deadline for filing a petition for certiorari. *NARUC Bulletin*, No. 7, April 2, 2004.

5 MCI also raises the issue whether to add both recurring and nonrecurring issues to the to the nonrecurring cost case. Covad requests that “transfer of installed splitters” remain as an issue in the recurring cost proceeding.

6 **Verizon’s proposal to exclude issues.** Verizon’s proposed list eliminates several UNEs<sup>3</sup> based on the TRO:

- All subloops except copper distribution subloops and other types of distribution subloops to multi-unit premises (*TRO at ¶¶253-54*).
- OCn<sup>4</sup> loops and transport (*TRO ¶¶ 202, 315, 389*).
- Any transmission links, including dark fiber, in the dedicated transport UNE (Unbundled Dedicated Interoffice Transport or “UDIT”) that do not connect two Verizon central offices (*TRO ¶ 366*).
- Unbundled packet switching (UPS) (Verizon has submitted no costs for unbundled packet switching in its filed testimony) (*TRO ¶ 537*).

7 Verizon contends these UNEs should be excluded because the TRO specifically found no impairment to competing carriers without them. Verizon further contends that no party appealed these TRO findings and that, in USTA II, the D.C. Circuit Court affirmed these TRO findings.

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<sup>3</sup> Appendix A to this order compares Verizon’s proposal with the other parties’ issues list. The issues affected by Verizon’s proposal are highlighted.

<sup>4</sup> OCn is an optical interface designed to work with a Synchronous Optical Network (SONET). See Newton’s Telecom Dictionary 528 (18<sup>th</sup> ed. 2002). SONET is an optical interface standard for translating electronic communications signals into photonic signals for transmission across fiber optic facilities. Ideally, SONET transmission systems are laid out in a ring formation to provide redundancy. See, *Newton’s Telecom Dictionary (18<sup>th</sup> ed. 2002)*. OCn transmission facilities are deployed as SONET channels having a bandwidth of typically 155.52 Mbps (OC 3 or the equivalent capacity of 3 DC3s) and higher.

8 Verizon also suggests that several other UNE's might be barred under USTA II, such as mass-market switching, DS1 and DS3 dedicated transport, dark fiber, shared transport and UNE-P. However, Verizon does not specifically request these be eliminated now.

9 Staff and the other parties argue that since the U.S. Supreme Court may yet review USTA II, it is not appropriate to eliminate any associated issues from this case right now. Staff argues that if the legal status of the TRO later becomes clear, Verizon can be relieved of its obligation to provide the UNEs in question (at TELRIC rates) at that time.

10 **Discussion and decision.** In general, the Commission is persuaded that it should exclude those issues that Verizon specifically requests be excluded, with one qualification. The Commission suspended the Washington State TRO proceeding because the USTA II decision created uncertainty about the nature of the State's continuing role under the TRO. However, the USTA II decision did not create similar uncertainty about the UNEs Verizon is addressing here. The USTA II court upheld the TRO findings that competing carriers are not impaired without those UNEs. During the pendency of any stay of the Circuit Court's order, the TRO remains in effect. If the Circuit Court grants no further stay and the U.S. Supreme Court does not grant *certiorari*, the Circuit Court order upholding the portions of the TRO associated with Verizon's request becomes final. Either way, the proper course at this time is to go forward in the Commission's recurring cost docket based on an issues list that reflects the exclusion of UNE's for which the FCC and the federal appeals court found no impairment.

- 11 If the issues Verizon now seeks to have excluded from the recurring cost proceeding must, for some reason, be addressed by the Commission at a later time, the Commission retains the option of adding add them to the nonrecurring cost docket or of reviewing them in some other future cost proceeding.
- 12 With regard to mass market switching, DS1 and DS3 dedicated transport, dark fiber, shared transport and UNE-P, it may well be that they, too, will be eliminated from consideration based on court proceedings regarding the TRO. Verizon can request that the Commission eliminate them as the legal requirements governing whether they must be unbundled become clear.
- 13 The Commission's only concern relates to Verizon's proposal to, in part, limit the UNE issues list to "copper distribution subloops." It is possible that other types of copper subloop may appropriately be considered UNEs.<sup>5</sup> The Commission's acceptance of Verizon's proposed exclusions should not be viewed as endorsement of Verizon's limitation of this item to "distribution" subloops.
- 14 **MCI Issues.** MCI proposed adding 26 new issues, for both recurring and nonrecurring costs, but then subsequently agreed it was too late now to add issues to the recurring cost case. Instead MCI now recommends adding all its new issues to the nonrecurring cost case.
- 15 Verizon and Staff oppose adding these new issues to the recurring cost case at this point.

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<sup>5</sup> See, *Maine Public Utilities Commission Investigation of Skowhegan OnLine Inc., Proposal for UNE loops, Docket No. 2002-704, Examiner's Report, December 19, 2003; Addendum to Examiner's Report, February 17, 2004.*

- 16 **Discussion and decision.** It is not appropriate to add new issues to the recurring cost proceeding at this time, especially not in the magnitude proposed by MCI. It may be appropriate to add them to the nonrecurring cost docket, but the Commission declines to add them automatically. Instead, the Commission will allow the parties to address the appropriate issues for inclusion in the nonrecurring cost docket at the time of the next scheduled prehearing conference date for that case on June 8, 2004.
- 17 **Covad Issue.** In addition to the TRO-related issues Verizon proposes to eliminate from the issues list, Verizon also proposes to eliminate “transfer of installed splitters.” In early 2003, MCI and Covad agreed that this issue could be eliminated. However, in response to Verizon’s proposal to eliminate it now on the basis of that earlier agreement, Covad requested that it be retained as an issue. The basis for Covad’s request is that its network has changed, Covad has new product offerings and the regulatory landscape has changed since it agreed to eliminate the issue. Because of this, Covad needs some time to examine whether this element will fit into its future plans.
- 18 **Discussion and decision.** The “transfer of installed splitters” should remain an issue in this case. Covad advances valid reasons to support its request. Retention will not prejudice any party and should not cause any inappropriate expenditure of Commission or party resources. Should Covad determine that the issue is not relevant, it should immediately advise the Commission.

### ORDER

- 19 IT IS ORDERED That the following issues are removed from the issues list for this proceeding: all subloops except copper distribution (and possible exceptions for other types of copper subloop), and other types of distribution subloops to multi-unit premises; OCn loops and transport; any transmission links, including

dark fiber, in the dedicated transport UNE (UDIT) that do not connect two Verizon central offices; and unbundled packet switching. The issues list that will govern the proceeding is attached to this Order as Appendix B and is incorporated by reference in this Order.

DATED at Olympia, Washington, and effective this 6<sup>th</sup> day of April, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE  
Administrative Law Judge

APPENDIX A

Docket No. UT-023003  
 Comparison of Issue Lists

Verizon	Other parties
2-wire loop (analog)	2-wire loop (analog)
4-wire loop (analog)	4-wire loop (analog)
2/4 wire loops (digital)	2/4 wire loops (non-loaded)
2/4 wire loops (xDSL capable)	
Deaveraged 2/4 wire loop (Qwest and Verizon)	Deaveraged 2/4 wire loop (Qwest and Verizon)
<i>High capacity loops (except OCn)</i>	High capacity loops
<i>Copper distribution subloops</i>	Sub loops
<i>Drop sub-element</i>	
NID	NID
Basic analog port	Basic analog port
Local office switching	Local office switching
Local tandem switching	Local tandem switching
Deaveraged switching	Deaveraged switching
Common transport (Except OCn Transport)	Shared transport
Dedicated transport (Except OCn Transport)	UDIT
UNE-P (new and existing)	UNE-P (new and existing)
Daily record usage file	Daily record usage file
EELs	EELs
Per-MOU reciprocal compensation	Per-MOU reciprocal compensation
	Rates for transfer of installed splitter
Updated average loop length	Updated average loop length
Tandem switch compensation	Tandem switch compensation
Recurring costs for high capacity loops	Recurring costs for high capacity loops
ICM – inflation	ICM –inflation
Common cost factor	Common cost factor
Intrabuilding riser cables	Intrabuilding riser cables
Signaling and call-related databases	Signaling and call-related databases
ISDN loop extenders	ISDN loop extenders
Dark fiber	Dark fiber
	<i>Unbundled packet switching</i>



**APPENDIX B**

**REVISED ISSUES LIST –NEW GENERIC RECURRING COST**

**Verizon**

2-wire loop (analog)  
4-wire loop (analog)  
2/4 wire loops – non-loaded  
Deaveraged 2/4 wire loop  
High capacity loops (except OCn loops)  
Sub loops (Copper subloops and multi-unit dwelling subloops)  
NID  
Basic analog port  
Local office switching  
Local tandem switching  
Deaveraged switching  
Shared Transport (except OCn transport)  
UDIT (except OCn transport)  
UNE-P (new and existing)  
Daily record usage file  
EELs  
Per-MOU reciprocal compensation  
Rates for transfer of installed splitter  
Updated average loop length  
Tandem switch compensation  
Recurring costs for high capacity loops  
Verizon ICM – inflation  
Verizon common cost factor  
Verizon intrabuilding riser cables  
Verizon UPS  
Verizon signaling and call-related databases  
Verizon ISDN loop extenders  
Verizon dark fiber rates

**Qwest**

Deaveraged loop and subloop