BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

OF

WORLDCOM, INC.

May 29, 2001

INTRODUCTION

1. WorldCom submits the following post-hearing brief in Part B of this docket. WorldCom was a joint sponsor of the testimony presented by Messrs. Weiss and Klick. Accordingly, WorldCom advocates the same positions with respect to the cost evidence presented and the prices proposed by Qwest and Verizon as the Joint CLECs. WorldCom also shares the Joint CLECs concerns respecting the incumbent local exchange carriers' obligations to facilitate line splitting, reciprocal compensation and OSS. Therefore, rather than restating those same arguments here WorldCom concurs in the Part B post-hearing brief filed by the Joint CLECs. In this brief, WorldCom addresses only the non-recurring and recurring costs/prices of the UNE platform and the recurring rate structure proposed by Qwest for unbundled dedicated transport.

I. LEGAL AND POLICY ISSUES

A. Policy

2. The central purpose of the 1996 Act is to promote competition in all telecommunications markets, including the local residential market. In requiring that prices for network elements be based on cost, Congress reflected its understanding that accurate cost-based pricing of unbundled network elements would be one of the keys to opening local markets. While cost-based pricing is not designed to guarantee that any particular competitor will be able to make a profit in the local market, it is designed to produce rates that promote competition, and if, to the contrary, the rates that have been established appear to stifle competition, there is good reason to believe that they may not be cost-based.

3. With respect to implementation of the pro-competitive policies that formed the basis of the Act, the State of Washington is at a crossroads. Washington is a major state within Qwest's 14-state region where competitive providers, including WorldCom, have expressed a desire to enter and compete in the residential local exchange market, but where the pricing of the platform of unbundled network elements ("UNE-P") makes that entry impossible.

4. WorldCom's desire and ability to sell local service to residential customers is reflected in the markets it has entered. In New York, Texas, Pennsylvania, Michigan, and Illinois,[1] where the state commissions have done much of the necessary work to set rates at or close to TELRIC, and where the BOCs have complied or are seeking to comply with the FCC's other market-opening rules, WorldCom has responded by offering local service to the extent possible in the state. Consumers have greatly benefited from open local markets, but enjoy those benefits only in states where the pricing set for UNEs is cost-based, or at least permits significant entry while state commissions complete the work of bringing rates down to cost so that the entire local market can support sustained competition.

5. Further, Qwest's request for this Commission's approval of its application under section 271 of the Act is presently pending. It is therefore critically important at this juncture that the Commission carefully consider the question whether it should open a docket to reexamine the rates that have been previously established for the network elements that make up the UNE platform. Once Qwest has obtained authority to enter the in-region long distance market, if the conditions for competitive entry have not

[1] WorldCom recently announced that is will enter the residential local exchange market in Georgia commencing in June 2001.

already been put in place, it is unlikely that a robustly competitive residential local exchange market will ever emerge.

6. The competitive advantage Qwest possesses by virtue of its current relationship with virtually all residential end-users and its control of the bottleneck facilities necessary to serve those customers, make it impossible for competitors to enter the residential local exchange market unless the rates competitors must pay for network elements are appropriately set at TELRIC. WorldCom submits that, even in Docket UT 960369, given the range of costs established by the cost models that formed the basis for setting prices, it was possible to adopt prices for the network elements that comprise the UNE platform that were supported by the record and that would have both permitted the ILECs to recover their costs and allowed competitors to profitably enter the residential local exchange market.

7. A number of factors suggest that a reexamination of the UNE loop rate currently in effect is warranted. First, the retail rates Qwest charges for services, other than basic exchange service, that make use of the loop suggest that an $18.18 statewide average loop rate may be too high. For example, according to Qwest's tariffs on file with the Commission today, Qwest only charges $11.00 for voice grade network access channel provisioned as part of a private line service. Additionally, the almost total lack of entry into the residential local exchange market to date raises serious concerns regarding whether the rates for the UNE platform are in fact cost-based.[2] Finally, all of the cost models that were considered by the Commission in arriving at the rates currently

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[2] As the Commission is aware, the state-wide average UNE loop rate in effect until late last year when it entered its final order in UT 960369 was $11.33. The currently effective loop rate exceeds $11.33 in all but two wire centers in downtown Seattle. As such, there is even less likelihood than there was previously that competitors

in effect have been substantially revised since they were presented in 1997. Moreover, as the Commission acknowledged in the 8th Supplemental Order entered in UT 960369 none of the models presented in that proceeding were appropriate for adoption for use in future proceedings.[3] Rather, as the Commission noted the models were in a process of evolution. WorldCom submits that the time is not ripe to examine the results of the revised models and to make the effort to set a rate that will both compensate the ILECs for their costs and promote competition in all local exchange markets in Washington.

B. Legal

8. As the FCC has recently emphasized, TELRIC is not designed to guarantee a profit to any particular CLEC.[4] The Act does not require any ILEC to lease network elements at below-cost rates in order to facilitate entry. At the same time, the impact of proposed UNE rates on the prospects for competition is relevant to whether these rates are cost-based. The FCC adopted TELRIC precisely "to expedite the development of fair and efficient competition," Local Competition Order ¶ 618. Indeed the statutory rights of new entrants would be meaningless if an incumbent could charge such high rates for the use of its network that new entrants could not profitably offer competing services to consumers. As a result, in the context of its evaluation of a BOCs application under section 271, the FCC has considered evidence of the real-world effect of the pricing process to be highly relevant to whether the rate-setting process resulted in cost-based rates: "Because the purpose of the checklist is to provide a gauge for whether

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[3] *In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale*, Docket No. UT 960369, Eighth Supplemental Order, May 11, 1998, ¶ 35.

[4] *In re Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Telephone Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Servcies in Kansas and Oklahoma,* CC Docket No.

the local markets are open to competition, we cannot conclude that the checklist has been met if the prices for interconnection and unbundled elements do not permit efficient entry."[5] Accordingly, if the rates do not permit competition, absent some other explanation, they are likely not based on the cost of the elements.

9. The Commission should in particular scrutinize with great care UNE rates where they effectively preclude entry, where there is reason to believe that there is a reasonable range of costs all supported by evidence to be used as the basis for setting prices. To the extent that a state is called upon to exercise its discretion in establishing a rate, it is unreasonable given the broader purposes of the Act for it to select a higher rate that kills competition when the evidence also supports selection of a lower rate that permits competition to flourish. See, e.g., American Tel. & Tel. Co. v. FCC, 836 F.2d 1386, 1390 (D.C. Cir. 1988) (per curiam) (Communications Act "requires a balance of investor and consumer interests"). WorldCom believes that upon reexamination, this Commission should be able to articulate a principled basis for adopting rate for the network elements that comprise the UNE platform that both permits Qwest and Verizon to recover their economic costs and earn a reasonable profit, and enables local residential competition to develop.[6] It would frustrate the purposes of the Act for a state commission to set a rate that blocks competition even if it is at the upper end of what

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00-217, Memorandum Opinion and Order, FCC 01-29 (rel. Jan. 22. 2001 ("*KS-OK Order"*) at ¶ 92.

[5] *In re Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 F.C.C.R. 20543 (1997) ("*MI Order*") at ¶ 287.

[6] Based on evidence recently introduced in Arizona, WorldCom expects to be able to introduce evidence in Washington supporting a statewide average loop price in the $11.00 range.

arguably could be defended as based on cost, when a more reasonable rate also based on cost would give the BOC room to earn a reasonable profit, and would also promote competition within the state.

10. In sum, while the effect of pricing decisions on any particular competitor and its plans to enter a market is irrelevant under section 271, the effect of pricing on competition in general relates directly to whether prices are cost-based. While the Act is not pro-competitor, but it is most decidedly pro-competition.[7] WorldCom therefore urges the Commission to open a docket to reexamine the UNE loop rate charged by Qwest and Verizon in Washington.

III. UNE COSTS/PRICES

A. Qwest

1. Non-recurring Costs/Study Methodology

11. Non-recurring costs are the one-time costs incurred in order to provision network elements. The Joint CLECs have identified a number of problems with Qwest's non-recurring costs studies with which WorldCom concurs. Additionally, WorldCom challenges Qwest's inclusion of a product management expense factor as part of its development of direct costs. The cross-examination of Ms. Million demonstrated that the majority of activities associated with product management are unnecessary in the case of wholesale services. *Tr.* at pp. 1895-1898. Further, the costs associated with activities

[7] *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98 & 95-185, First Report and Order, 11 F.C.C.R. 15499 (1996) (*"Local Competition Order"*) at ¶ 618; *see also, Local Competition Order* at ¶ 630 ("[t]he price levels set by state commission will determine whether the 1996 Act is implemented in a manner that is *pro-competitor* . . . or, as we believe Congress intended, *pro-competitive"*) (emphasis in original).

such as product and service identification that are typically recovered through application of a product management expense factor are already being recovered by the ILECs as part of their OSS recovery in the case of network elements. *Tr.* at 1896. For this reason, WorldCom recommends that the Commission require Qwest to reduce its product management expense factor to zero.

b. UNE Platform (UNEC)

12. Qwest has proposed to use the customer transfer charge established in Docket UT 960369 as a surrogate for the cost of converting its existing POTs customers to a CLEC using the UNE platform. In principal, setting the non-recurring charge for UNE-C existing, first line equal to the customer transfer charge makes sense. The activities required to convert an existing POTs customer to a CLEC using the UNE platform should be no different than those required to transfer such a customer to a reseller. However, as demonstrated through the cross-examination of Qwest witness Million, the customer transfer study from the last case that Qwest has introduced in support of the rates proposed here is dated. Indeed both the time estimates and probabilities reflected in that study must be updated to reflect Qwest's current expectations regarding flow through as well as the more current view of what activities are necessary to convert an existing customer to UNE-P. The attached Confidential Chart reflects WorldCom's suggested revisions to Qwest's NRC study as supported by the record developed in this proceeding. Applying updated assumptions in the customer transfer study results in a NRC for UNEC existing of $241. The time estimates for initiating flowthru and screen and route are consistent with Qwest's current view as reflected in Exhibit C-1024. The time associated with typing the change of service

provider is taken from Exhibit C-1038 the older customer transfer study. The lower time seemed appropriate since Qwest has failed to produce evidence justifying the higher assumption reflected in Exhibit C-1024. Finally the flowthru probability assumed are those recommended by Staff witness Roth and incorporated into Qwest's disconnect study filed as Exhibit C1010. It should be noted that the probability reflected in WorldCom's attachment is more conservative than the probability recently proposed by Qwest in Arizona in connection with the same NRC rate. In Arizona, Qwest has proposed an NRC associated with UNEC existing first line (mechanized) of $.68. This is far below the recommendation, WorldCom makes here.

2. Recurring Costs

f. UDIT/EUDIT

13. Unlike Verizon which proposes a single rate structure for unbundled dedicated transport, Qwest separates UDIT into on element consisting of the transport between the CLEC wire center and Qwest's wire center (EUDIT) and the other consisting of the transport between Qwest wire centers. As the cross-examination of Mr. Kennedy revealed, there is simply no cost justification for charging EUDIT on a flat rate basis while charging UDIT on the basis of distance sensitive charges. The facilities are both functionally equivalent. If Qwest were providing the facility to itself in connection with providing private line service to an end use customer the entire length of the facility from the Qwest serving wire center to the terminating end office would be priced in accordance with a single rate structure based on distance. This is also what should pertain in the case of unbundled elements.

CONCLUSION

14. WorldCom respectfully requests the Commission to adopt the recommendations contained in this brief and that of the Joint CLECs.

DATED this 29th day of May 2001.

Respectfully submitted,

WORLDCOM, INC.

By: ________________________________

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