BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the **CONTINUED COSTING AND PRICING OF UNBUNDLED NETWORK ELEMENTS, TRANSPORT, TERMINATION, AND RESALE**	**Docket No. UT-003013, Part B**

QWEST CORPORATION'S PART B

POST-HEARING REPLY BRIEF

Lisa Anderl
QWEST CORPORATION
1600 Seventh Avenue, Suite 3206
Seattle, Washington 98191
Phone: (206) 345-1574
Fax: (206) 343-4040

John M. Devaney
Kelly A. Cameron
PERKINS COIE LLP
607 Fourteenth Street, N.W., Suite 800
Washington, D.C. 20005-2011
Phone: (202) 628-6600
Fax: (202) 434-1690

Attorneys for Qwest Corporation

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Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

I. INTRODUCTION

In its opening brief, Qwest Corporation ("Qwest") emphasized a fundamental difference between its approach to the costing and pricing issues in this docket and that of the competitive local exchange carriers ("CLECs"). Qwest's cost studies and proposed prices are forward-looking, but they also are grounded in the company's real-world experience of maintaining a network and providing CLECs with interconnection services and access to unbundled network elements ("UNEs"). By contrast, the costs the CLECs present and the prices they advocate are premised upon unrealistic assumptions about what it takes to operate a network and provide wholesale services and are designed to drive down prices to a level that would deny Qwest the full recovery of its costs that it is entitled to under the Telecommunications Act of 1996 ("the Act").

The parties' post-hearing briefs are further confirmation of these different approaches to the costing and pricing issues in this docket. At virtually every turn, the CLECs criticize Qwest for relying on actual experience in developing the inputs and assumptions that are used in its cost studies. For example, although Qwest has extensive data showing the extent to which facilities and equipment are utilized throughout its network, the CLECs criticize Qwest for relying on this body of information as an indicator of realistic and achievable fill factors. As the CLECs would have it, the term "forward-looking," as used in connection with cost studies, should preclude Qwest and the Commission from relying on this type of real-world, actual experience in developing prices that meet the Act's "just and reasonable" requirement. That approach is not only illogical, but it also violates the admonition from the United States Court of Appeals for the Eighth Circuit that prices for interconnection services and UNEs should <u>not</u> be based upon unrealistic constructs and assumptions about the networks of incumbent local exchange carriers ("ILECs").

Reliance on actual experience and the incorporation of reality into Qwest's cost studies does not mean, as the CLECs contend, that Qwest's studies produce estimates that reflect

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

embedded costs. Qwest's cost studies do not produce embedded cost estimates. The studies use state-of-the art network designs and the least-cost, forward-looking technologies that are currently available. The fact that Qwest often uses these same designs and technologies in its own network does not mean that they are inappropriate for use in a forward-looking study. In addition, the CLECs' claim that Qwest's studies produce estimates of embedded costs ignores the fact that Qwest applies forward-looking productivity and inflation factors to the investment included in its studies. The use of those factors clearly differentiates the investment in Qwest's studies from Qwest's embedded costs.

An additional theme that underlies many of the CLECs' arguments is the claim that the Commission should resolve the costing and pricing issues in this docket with a singular focus on doing whatever is necessary to make it easier for CLECs to compete in Washington's local exchange market. The CLECs cite falling stock prices and the declining availability of capital funding as reasons for the Commission to reach decisions that support their positions in this docket. Qwest urges the Commission to respond cautiously to this theme that the CLECs advance.

To be sure, the Commission's pricing decisions in this docket should support competition in the local exchange market. But that objective is achieved not by a decision-making process designed to establish the lowest possible prices, but, rather, by application of principles that lead to cost-based prices, send the proper economic signals to the market, and ensure that Qwest and Verizon will recover the costs they incur. If the Commission continues to adhere to sound economic principles for the costing and pricing of network elements, Qwest and Verizon will receive proper compensation for their large and ongoing network investments, and CLECs will receive pricing signals that will encourage them to use an efficient mix of resale, unbundled elements, and construction of their own facilities. This result, which is achieved through objective application of cost-based pricing principles, will lead to the greatest benefits for Washington consumers.

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

II. LEGAL AND POLICY ISSUES

A. Legal

1. The Pricing Requirements of the Telecommunications Act of 1996, FCC Rules, and Related Decisions of Federal Courts

The parties' opening briefs reflect a general agreement that Qwest's and Verizon's right to recover the costs of providing interconnection and access to UNEs is rooted in sections 251(c) and 252(d) of the Act. These provisions establish that ILECs will recover their costs through rates that are just, reasonable, and nondiscriminatory. The rates may include a reasonable profit and must be determined without reference to a rate of return proceeding.

While the parties agree that these cost recovery provisions govern the Commission's determination of rates in this docket, there is some disagreement concerning how these provisions should be applied. For example, AT&T, ELI, Focal, and XO ("Joint Intervenors") argue that the Commission should set rates with the primary goal in mind of further fostering local exchange competition. Joint Intervenor Brief at 2-3. To be sure, the Commission's rulings should be consistent with the pro-competition focus of the Act, but the Joint Intervenors are wrong to suggest that the Commission should set rates based on its perception of which prices will best foster competition. To the contrary, the Act and the FCC's rules require that rates be based upon an analysis of the cost of providing a service or an element, using the costing methodology of TELRIC, or Total Element Long Run Incremental Cost, that all parties agree applies. The application of TELRIC is not a policy-laden exercise, as the Joint Intervenors suggest, but, rather, is an objective determination of the costs that the ILECs will incur in providing interconnection services and access to UNEs. As the FCC stated recently in an analogous context, "[t]he Act requires that we review whether the rates are cost-based, not whether a competitor can make a profit by entering the market."[1]

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[1] *In the Matter of Application of SBC Communications, Inc. for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29 at ¶ 92 (Rel. Jan. 22, 2001).

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

Likewise, there is disagreement between the CLECs and the ILECs concerning the current state of the law relating to TELRIC. As Qwest discussed in its opening brief, in *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 751 (8th Cir. 2000) ("*Iowa Utilities II*"), the Eighth Circuit ruled that the FCC's application of TELRIC is unlawful. The court vacated 47 C.F.R. § 51.505(b)(1), which required that TELRIC should be 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." In doing so, the court held that this rule violated the plain meaning of section 252(d)(1)(A)(i), and it rejected the proposition that costs should be based "on the cost that some imaginary carrier would incur by providing the newest, most efficient, and least cost substitute for the actual item or element which will be furnished by the ILEC pursuant to Congress' mandate for sharing."[2] Instead, the court emphasized that "it is the cost of providing actual facilities and equipment that will be used by a competitor (and not some ideal state of the art presently available technology ideally configured but neither deployed by the ILEC nor to be used by the competitor) which must be ascertained and determined."[3]

The CLECs assert incorrectly that this ruling by the Eighth Circuit has no current legal effect and should be ignored. However, while the Eighth Circuit formally stayed its ruling, it has made clear that despite the stay, it still is "not permissible for [a state commission] to set prices based on the forward-looking costs of an idealized network. . . ."[4] It emphasized further that its decision vacating 47 C.F.R. § 51.505(b)(1) "remains the law . . . ."[5] Nowhere in their briefs do the CLECs acknowledge, much less attempt to distinguish, this important decision from the Eighth Circuit.

As noted in its opening brief, Qwest prepared the cost studies that it submitted in this docket prior to the Eighth Circuit's recent decision that reaffirmed *Iowa Utilities II* and in a

[2] 219 F.3d at 750.
[3] *Id.* at 751.
[4] *Southwestern Bell Tel. Co. v. Missouri Pub. Serv. Comm'n*, 236 F.3d 922, 925 (8th Cir. 2001).
[5] *Id.* at 924 n.4.

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

manner that is fully consistent with the FCC's application of TELRIC. As a result, when compared to the current state of TELRIC as defined by the Eighth Circuit, Qwest's cost studies are conservatively low in their estimates of cost.

2. The Joint Intervenors Have Improperly Raised Legal Issues Relating to the ILECs' Obligation to Build Facilities and the CLECs' Obligation to Pay Termination Liability.

In their opening brief, the Joint Intervenors raise two issues that have not been raised before and for which there is no evidence in the record. First, they request that the Commission issue a ruling addressing the extent of Qwest's and Verizon's obligation to build facilities that the CLECs request. Second, they ask the Commission to issue a broad declaration establishing that CLECs are not required to pay Qwest or Verizon termination liability when the CLECs convert from using private line or special access circuits to using UNEs. Joint Intervenor Brief at 3-5, 7-9. For several reasons, the Commission should reject the CLECs' request for legal rulings relating to these issues.

First, the purpose of this docket is to establish costs and prices for certain interconnection services and UNEs; this docket is not intended to resolve issues relating to the terms and conditions of the contractual relationships between the ILECs and the CLECs. As the Commission described it in a Notice of Prehearing Conference issued February 18, 2000, the purpose of this docket is to address "cost and pricing issues for UNEs for which new or modified cost studies are required and which could not be resolved in Docket Nos. UT-960369, UT-960370 and UT-960371, cost studies and pricing of OSS, collocation, capacity charge for transport and termination, and any other UNEs which are ordered by the FCC." The issues that the Joint Intervenors are attempting to raise involve terms and conditions, not costing and pricing issues. The appropriate forum for addressing issues of this type is the Section 271 workshop proceedings that the Commission is conducting. Indeed, briefs filed on May 16, 2001, in those workshops specifically address the two issues that the Joint Intervenors have suddenly attempted to bring into this docket. The Commission should allow these issues to be determined in the

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

orderly, collaborative process that is being followed in the workshops and should reject the Joint Intervenors' improper attempt to duplicate the ongoing efforts in the workshops by also raising these issues in this proceeding.

Second, even if this were the appropriate forum for these issues, the Joint Intervenors' attempt to raise them is clearly untimely. The Procedural Order in this docket established a fixed schedule for the parties to submit pre-filed testimony setting forth the evidence in support of their positions. An obvious purpose of this approach is to ensure that all parties have notice of the issues and the evidence relating to them as they prepare for and participate in the hearings. Nowhere in their pre-filed testimony and at no time during the hearing did any party raise the issues of the ILECs' obligation to construct facilities and the CLECs' obligations to pay termination liability. Had the Joint Intervenors raised these issues, Qwest would have addressed them in pre-filed testimony and during the hearing. The Joint Intervenors should not be permitted to raise these issues belatedly in their post-hearing brief and thereby deny Qwest and Verizon the opportunity to respond in the full manner that would have been available had the issues been raised earlier.

Third, on the merits, the Joint Intervenors' positions on both issues are unsustainable. Their request that the Commission relieve them of their obligations to pay termination liability is nothing more than an effort to have the Commission excuse them from their contractual obligations. As the Joint Intervenors acknowledge, CLECs purchasing private line and special access services have been able to obtain lower rates in exchange for volume or term commitments and associated penalties for early termination. Having obtained those lower rates, the Joint Intervenors now would like the Commission to protect them from having to honor their end of the bargain by doing away with termination liability. The Commission should not excuse the CLECs from this essential term of the agreements they voluntarily struck with the ILECs and also should not interfere with individual contractual agreements between ILECs and CLECs by issuing the type of broad policy declaration that the Joint Intervenors seek.

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

In an attempt to support their request that the Commission excuse them from termination liability, the Joint Intervenors offer the argument that Qwest and Verizon should have provided high capacity circuits and enhanced extended loops ("EELs") as UNEs and at UNE rates before the FCC issued the UNE Remand Order in November 1999. Joint Intervenor Brief at 7. However, before the UNE Remand Order, the ILECs were not required to offer these elements as UNEs or to price them at UNE rates. Qwest's pricing of private lines, which CLECs purchased for use as high capacity loops and EELs, was completely lawful and provides no basis for the CLECs now to avoid the termination liability that they agreed to pay.

Equally unsupportable on the merits is the Joint Intervenors' request for a declaration from the Commission that would require Qwest and Verizon to construct facilities for CLECs under the same terms and conditions that apply to the construction of facilities for retail customers. The Joint Intervenors claim that the nondiscrimination obligations of Section 251(c)(3) of the Act require ILECs to construct new CLEC facilities upon demand is a misreading of both the statute and Congress' intent. The plain reading of the phrase "unbundled network elements" clearly implies that pieces of an ILEC's existing network are to be made available to their competitors, not that additional facilities "equal in quality" are to be constructed.[6]

In passing the Act, Congress intended to strike a balance between the property rights of the ILECs and the public policy benefits to consumers of a nationally competitive telecommunications network. Thus, in Section 252(d)(1), Congress ensured that ILECs interconnect and unbundle pieces of their network to competitors in exchange for just and reasonable compensation.[7] Furthermore, the Eighth Circuit in *Iowa Utilities II* embraced this interpretation when it held "subsection 251(c)(3) implicitly requires unbundled access only to an

[6] *See*, Joint CLECs Part B Post-Hearing Brief, Washington UTC Docket UT-003013 Part B at ¶ 6 (May 29, 2001).
[7] Under § 252(d)(1) of the Act, state commissions are required to establish rates for interconnection and unbundled network elements that are just and reasonable.

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

incumbent LECs *existing* network- not to a yet unbuilt superior one.*"* [8] The Joint Intervenors incorrectly assert that Qwest has taken the court's statement out of context, because the issue of new construction was not specifically addressed. Although the courts have required unbundling of existing network elements, the prevailing law, as represented by the Eighth Circuit's pronouncement, is that ILECs are not required to construct additional facilities for CLECs. Indeed, it is clear that the *Local Competition Order* "limits the unbundling of interoffice facilities to *existing* incumbent LEC facilities." (Emphasis in original).[9] The fact the FCC addressed this issue in the context of small incumbent LECs does not mean that larger LECs are *ipso facto* under an affirmative obligation to construct additional facilities for CLECs.

The Joint Intervenors' claim that Washington law requires this extraordinary remedy is equally unsupportable. First, RCW 80.36.090, cited by the Joint Intervenors, addresses the provision of services to the public, not the construction of facilities for another carrier. In fact, RCW 80.36.090 is commonly known as "the carrier of last resort" provision and places an affirmative obligation to serve the public on <u>all</u> telecommunications companies. The provision does not distinguish between incumbent and competitive telecommunications companies.[10] Furthermore, *In the Matter of Petition of AT&T Communications of the Pacific Northwest, Inc. to Amend Its Classification as a Competitive Telecommunications Company* [11]*,* AT&T acknowledges that it is "obligated to serve" under this provision. Second, the "undue or unreasonable prejudice or disadvantage" language found in RCW 80.36.170, although generally applicable to retail customers, has been used by the Commission to authorize unbundling of

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[8] *See, Iowa Utils. Bd. v. FCC*, 219 F.3d 753, 813 (8th. Cir 1997)(emphasis in original)*, rev'd in part and remanded in part on other grounds*, *AT&T v. Iowa Utils. Bd.*, 119 S.Ct. 721(1999).
[9] *Local Competition Order* at ¶ 451.
[10] *See, WUTC v, U.S. West Communications, Inc.*, Docket No. UT-961638, 1998 Wash. UTC LEXIS 40 at 24 (January, 16, 1998).
[11] Docket No. UT- 960248, 1997 Wash. UTC. LEXIS 5 at 36,53 (January 24, 1997).

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

ILEC existing network elements,[12] physical interconnection,[13] and reciprocal compensation (prior to the FCC's recent decision) [14] in conformance with the Act, but has never been interpreted by the Commission or the Washington courts to mandate ILEC construction of CLEC facilities.

In addition, the Commission's own rules do not justify Joint CLECs position. WAC 480-120-011, the provision that determines the applicability of the Commission's rules, clearly states that the "rules and regulations govern the furnishing of intrastate telecommunications service and facilities to the *public* by telecommunications companies . . . and [t]he purpose of these rules is to set forth reasonable service standards . . . to the end that modern, adequate, efficient and sufficient telecommunications service will be rendered to the *public*." (Emphasis added). Following from this, the language of WAC 480-120-061 that requires the furnishing of suitable and proper telephone facilities and connection to all persons and corporations clearly is meant to apply to telephone company treatment of retail users[15] and not of other telecommunications companies. In fact, the Commission applied this provision equally to competitive telecommunications carriers in their provision of service to retail consumers.[16]

The Commission, therefore, should reject the Joint Intervenors' untimely and unlawful request that that Qwest and Verizon be required to construct new and additional facilities for CLECs.

3. The Commission Should Reject WorldCom's Request to Reexamine the Rate for Unbundled Loops.

The Commission should reject WorldCom's request to revisit the rate for the unbundled

[12] *See, In the Matter of Petition for Arbitration of an Interconnection Agreement Between AT&T Communications of the Pacific Northwest, Inc. and GTE Northwest Incorporated Pursuant to 47 U.S.C. 252,* Docket No. UT-96037, 1998 Wash. UTC LEXIS 50 (March 16, 1998).
[13] *See, In the Matter of the Petition of MFS INTELENET of Washington, Inc. for Classification as a Competitive Telecommunications Company,* Docket No. UT-9415161, 1996 Wash UTC LEXIS 39 (November 4, 1996).
[14] *See, Worldcom, Inc., f/k/a MFS INTELENET of Washington, Inc. v. GTE Northwest Inc.,* Docket No. UT-980338, 1999 Wash. UTC LEXIS 295 (May 12, 1999).
[15] *See, Professional Business Services, Inc. v. U.S. West Communications,* Docket No. UT-900162, 1991 Wash. UTC LEXIS 43 (April 11, 1991).
[16] *See, In the Matter of Petition of Spokane Telco, Inc., Execulines, Inc., CALL U.S. for Classification as Competitive Telecommunications Companies* Cause No. U-85-93, 1986 Wash UTC LEXIS 6 (September 19, 1986).

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

loop that the Commission established in Docket No. UT-960369. Citing no evidence at all, WorldCom asserts broadly that the loop rate cannot be cost-based because there is minimal competition in the residential local exchange market in Washington and because the cost models that WorldCom and others presented in Docket No. UT-960369 were "in a process of evolution." WorldCom Brief at 4.

As the Commission is fully aware, the Commission and the parties to Docket No. UT-960369 devoted substantial time and effort to develop the unbundled loop rate that resulted from that proceeding. The rate is based upon cost studies that are TELRIC-based and inputs that the Commission determined are consistent with a cost-based approach to setting prices. WorldCom's broad, unsupported assertion about the state of residential competition is hardly evidence that the loop rate is not cost-based. Moreover, as Qwest discussed in its opening brief, in an attempt to support its request for the Commission to revisit the rate for the unbundled loop, WorldCom put forth a flawed financial analysis of the likelihood of earning a profit on residential service in Washington. Evidence developed during the hearing demonstrated that the revenue assumptions underlying WorldCom's profit analysis were both too conservative and inconsistent. Qwest Opening Brief at 34-35. That evidence, which WorldCom no longer relies on in its post-hearing brief, falls far short of demonstrating that the unbundled loop rate is not cost-based.

4. Access to On-Premise Wiring

In their post-hearing brief, the Joint Intervenors state accurately that issues relating to the manner in which CLECs may access building premises wire are being addressed in Qwest's ongoing Section 271 workshops. Joint Intervenor Brief at ¶ 10. In view of the fact that these issues are being addressed in other proceedings, the Joint Intervenors recommend that CLEC access to building premises wire not be addressed in this proceeding. Qwest agrees that the terms and conditions relating to many of the CLECs' access to building premises wire are best addressed in the context of the Section 271 workshops. However, the CLECs have indicated an interest in purchasing this network element, and it is necessary, therefore, to establish a price for

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

it. As discussed below in the section of this brief relating to recurring costs and prices, Qwest has presented a cost study and proposed recurring rates for on-premises wiring, and the Commission should adopt Qwest's proposed rates for this element.

5. Intercarrier Payments of Reciprocal Compensation for the Exchange of Local Traffic.

Joint Intervenors, Qwest, and Verizon agree that the FCC's recent *ISP Order II*[17] establishes that the FCC has exclusive jurisdiction over the issue of intercarrier compensation for Internet traffic. Joint Intervenor Brief at 48; Qwest Brief at 45; Verizon Brief at 50. As Verizon observes in its brief, since the FCC issued that order, numerous CLECs have acknowledged in public filings that state commissions no longer have jurisdiction over this issue. Verizon Brief at 50 n.37. The FCC's exclusive jurisdiction over intercarrier compensation for Internet traffic is rooted in the unambiguous conclusion in its *ISP Order II* that this traffic is interstate in nature. *See* Qwest Brief at 8. Thus, the FCC has stated that "[b]ecause we now exercise our authority under Section 201 to determine the appropriate inter-carrier compensation for ISP-bound traffic . . . *state commissions will no longer have authority to address this issue.*[18]

While Staff acknowledges this assertion of jurisdiction by the FCC, it nevertheless contends that state commissions are not precluded from addressing intercarrier compensation for Internet traffic. Staff's argument in support of the continuing jurisdiction of state commissions is strained and cannot be squared with the FCC's unequivocal contrary conclusion. Staff argues that the Commission is not entirely preempted by the FCC Order because some 251(b)(5) traffic is clearly intrastate and therefore within its jurisdiction.[19] The FCC did not engage in such fine hair splitting between interstate and intrastate traffic in *ISP Order II*. In fact, the FCC’s mixed use facilities rule considers traffic to be interstate when it is not possible to distinctly separate

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[17] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order (Rel. Apr. 27, 2001)("*ISP Order II*").
[18] *ISP Order II* at ¶ 82 (emphasis added).
[19] *See,* Commission Staff Brief at 29.

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

interstate and intrastate traffic.[20] The FCC determined that Internet traffic is primarily interstate and is therefore no longer within the Commission's jurisdiction to regulate. Finally, Commissioner Furchtgott-Roth's dissent in *ISP Order II* and the possibility that a court of appeals could overturn the FCC's order do not, of course, provide the Commission with a basis for ignoring the FCC's assertion of exclusive jurisdiction over this issue.[21]

B. <u>Policy</u>

In discussing issues relating to policy in its opening brief, Staff observes that the Commission has established in previous orders that the CLECs are required to bear the costs that the ILECs incur to provide access to their operational support systems ("OSSs"). Staff Brief at 4. Qwest's and Verizon's right to recover their OSS costs is not an issue that can be disputed. The only OSS issue in dispute, therefore, is the amount and method of cost recovery.

III. UNE COSTS AND PRICES

A. <u>Qwest</u>

1. Nonrecurring Costs and Study Methodology

As Qwest described in its opening brief, its nonrecurring cost studies begin with input from subject matter experts concerning the types of tasks and activities that are necessary to establish a service or to provide a UNE. The subject matter experts estimate the time needed to perform each task and the probability that the task will have to be performed. The experts use forward-looking assumptions and rely on their extensive experience to develop these estimates. The estimates of times and probabilities are multiplied by the appropriate labor rate associated with the activity. *See* Qwest Opening Brief at 11-12.

[20] The mixed use facilities rule was introduced in a 1989 proceeding where the FCC adopted the Federal-State joint board recommendation that lines carrying both intrastate and interstate traffic are subject to the FCC's jurisdiction where it is not possible to separate the uses of the special access lines by jurisdiction. The FCC determined that interstate traffic is deemed *de minims* when it amounts to ten percent or less of the total traffic on a special access line. *See, MTS and WATS Market Structure, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, 4 FCC Rcd 5660(1989)("*MTS/WATS Market Structure Separations Order").*

[21] *See*, Commission Staff Brief at 29.

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

The CLECs and the Staff assert two general criticisms of Qwest's nonrecurring cost studies, neither of which has merit. First, they assert that Qwest's nonrecurring and recurring studies are designed to reflect Qwest's embedded costs and past experience instead of forward-looking costs based upon least-cost, currently available technology. *See, e.g.*, Joint Intervenor Brief at 15-16; Staff Brief at 5. Second, they contend that the assumptions that underlie Qwest's nonrecurring studies are not in the record and cannot be verified.

Qwest's Cost Study Methodology

With respect to the first criticism, it is simply incorrect to suggest that Qwest's nonrecurring and recurring cost studies are not forward-looking and are designed to produce rates that are based on Qwest's embedded costs. To the contrary, as Ms. Million testified, Qwest's cost studies specifically identify the forward-looking, direct costs that are associated with provisioning a service in the long run, plus the incremental costs of shared facilities and operations. The assumptions, methods, and procedures that Qwest uses in its recurring studies are deliberately designed to produce the forward-looking replacement costs of reproducing the telecommunications network using the most efficient, least-cost technologies. Ex. T-1001 at 4 (Million Direct). Likewise, as stated above, the subject matter experts who provide input for Qwest's nonrecurring studies specifically use forward-looking assumptions.

Perhaps the clearest demonstration of the fact that Qwest's studies do not produce estimates of embedded costs is the use of productivity and inflation factors in the studies. Ex. T-1001 at 7. The studies specifically adjust investment-related costs to account for inflation/deflation and increases in productivity that can reasonably be expected because of improvements in technology and operating processes. An embedded costs study would not, of course, include these types of forward-looking adjustments to investment.

The suggestion that Qwest's studies are not forward-looking rests on selective cites to statements by witnesses that are not presented in the proper context. For example, in discussing the Eighth Circuit's ruling in *Iowa Utilities II* in which the court held that TELRIC requires

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

estimates based on the costs of providing "actual facilities and equipment," not costs based upon an imaginary construct,[22] Ms. Million explained that Qwest's studies do rely on Qwest's actual experience and practices. The CLECs and Staff cite this statement as support for their assertion that Qwest's studies produce estimates that are based on embedded costs. That assertion is a long, unjustified leap from the intent of Ms. Million's statement. The reality is that Qwest's telecommunications network and engineering practices are generally consistent with current industry standards and, in many cases, reflect the types of assumptions and inputs that should be used in a forward-looking cost study. In addition, the technologies and practices that telecommunications carriers are deploying and using in their networks today should serve as an important reality check against which to test the assumptions in a cost study. If a study assumes the use of technologies that carriers are not using, for example, that could indicate that the study runs afoul of the Eighth Circuit's admonition that TELRIC should not estimate the costs of an imaginary network but, instead, should be rooted in reality. That is what Ms. Million intended by her reference to reliance upon Qwest's actual practices and experience. That reliance does not establish, as the CLECs and Staff suggest, that Qwest's studies estimate embedded costs. As the examples cited above demonstrate, Qwest's studies use key assumptions that are a significant departure from an analysis based upon embedded costs.

Likewise, the CLECs and Staff place undue emphasis on a response by Ms. Million during cross-examination to a question concerning whether Qwest's cost studies reflect practices of other carriers that may be more efficient than those of Qwest. Nowhere in their testimony do the CLECs or Staff witnesses describe any practices of other carriers that are more efficient than Qwest's practices. And, when asked whether she was aware of any practices of other carriers that are more efficient than those of Qwest and that are not included in Qwest's cost studies, Ms. Million pointed out that no party in this proceeding had identified any, and that she was not independently aware of any. Tr. at 2009 (Million Redirect).

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[22] *Iowa Utilities II* at 8.

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

The criticisms from the CLECs and the Staff relating to Qwest's reliance on experience and realistic assumptions in its cost studies are contrary to the standards for cost studies that this Commission and the Eighth Circuit have clearly articulated. In the Eighth Supplemental Order, the Commission endorsed the standard that Qwest uses for the inputs to its studies: "In judging the soundness of the cost inputs, we believe that U S WEST has proposed a useful standard: the inputs 'must be *realistic, accurate estimates* of all of the *actual* costs a provider would incur if it built out a new network using the least cost, forward-looking technology.'"[23] Similarly, as noted earlier, in addressing the method for calculating rates for UNEs and interconnection under the Act, the Eighth Circuit emphasized that "Congress was dealing with reality, not fantasizing about what might be. . . ."[24] Ms. Million's statements are fully consistent with this standard that the Commission and the Eighth Circuit have endorsed.

WorldCom and the Joint Intervenors also challenge the cost factors that Qwest uses in its nonrecurring and recurring studies, asserting inaccurately that these factors inflate the estimates that the studies produce. Joint Intervenor Brief at ¶ 42; WorldCom Brief at 6-7. They argue that in some cases, Qwest's wholesale cost factors are higher than the comparable retail cost factors. In response to Bench Request 2-026, Qwest provided a detailed explanation of how the product management expense factor is developed. That response demonstrates why there are differences between wholesale and retail cost factors, with the wholesale factors sometimes being higher and sometimes being lower than the retail factors.

As explained in the response, the factors for product management for retail and wholesale are calculated using different expense data because the retail and wholesale organizations are separate from each other and have different levels of expenses. For example, residential retail service requires relatively low product management expenses because that is a long-established

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[23] Eighth Supplemental Order: Interim Order Determining Prices in Phase II; and Notice of Prehearing Conference, Docket Nos. UT-960369, *et al.*, ¶ 27 (May 11, 1998) (emphasis in original, quoting U S WEST Brief at 5) ("*Eighth Supplemental Interim Order*").
[24] *Iowa Utilities II* at 8.

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

service that is comprised of a straightforward mix of products. By contrast, wholesale customers are sophisticated users of complex and constantly evolving telecommunications services and products. As a result, Qwest is required to devote account teams and substantial resources on an individual basis to its wholesale customers. This framework leads to substantial product management costs that are spread over a much smaller base of customers than, by comparison, the large base of residential retail customers. Accordingly, the CLECs are wrong to argue that there should not be differences between wholesale and retail cost factors; there are real differences between the wholesale and retail operations that lead to different cost factors.

Qwest's Reliance on Subject Matter Experts

The thrust of the CLECs' and Staff's criticism relating to subject matter experts is that Qwest relied on the opinions of experts without presenting them as witnesses at the hearing and providing an opportunity to test the validity of their recommendations and opinions. This criticism ignores the evidence that Qwest presented to support the assumptions it used in its nonrecurring studies and also unrealistically assumes that parties should present as witnesses all experts who contribute to a cost study.

Qwest did present documentation that identifies and supports the times and probabilities used in its nonrecurring cost studies. *See* Ex. C-1024. This documentation reflects input from many experts and provides the assumptions that underlie the studies. Significantly, while the Staff and the CLECs challenged some of the work times described in this backup and used in Qwest's studies, in many cases, they did not challenge Qwest's assumptions. The absence of challenges to many of Qwest's assumptions is, in itself, a form of validation. In their post-hearing brief, the Joint Intervenors assert without any support at all that Qwest's supporting documentation demonstrates an upward bias on the part of Qwest's subject matter experts in estimating work times. Joint Intervenor Brief at 17. The Joint Intervenors offer nothing but these sweeping allegations and provide no examples of this alleged bias.

The suggestion that Qwest should have presented as witnesses the experts who

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

contributed to the assumptions in the nonrecurring cost studies also is contrary to the practice that has been followed before the Commission for years. It clearly would have been very time-consuming, unwieldy and burdensome for Qwest to have presented the dozens of experts who contributed to the assumptions and inputs used in the cost studies. Instead, consistent with the practice that parties have followed in the Commission's wholesale pricing proceedings, Qwest presented a cost witness, Ms. Million, who was prepared to respond to questions concerning the inputs and assumptions that are in the studies. If the CLECs or Staff desired to question the input that Qwest received from subject matter experts, they were free to ask Ms. Million, and they could have relied on the backup documentation that Qwest provided.

a. <u>Nonrecurring Cost Issues (including 6 minute order processing time)</u>

The general issues relating to Qwest's nonrecurring cost studies that Staff and the CLECs raised in their briefs are discussed above. But, in addition, the Joint Intervenors repeat their claim that Qwest's nonrecurring studies should assume the use of operational support systems ("OSSs") that have greater efficiencies than Qwest's OSSs. Joint Intervenor Brief at ¶ 37. Qwest is not required, however, to assume the use of OSSs different from those that it uses for itself and for wholesale customers.

The CLECs assert that Qwest's studies should assume fully mechanized order processing regardless whether Qwest's existing OSSs are fully mechanized and regardless whether Qwest uses some manual processes to handle its own retail orders. In making that assertion, they do not identify any particular type of OSS that they believe would achieve this goal.

The CLECs' assumption about the type of OSSs to which Qwest must provide access directly conflicts with Eighth Circuit's ruling in *Iowa Utils. Bd. v. FCC,* 120 F.3d 753, 813 and n.39 (8^{th} Cir. 1997), *aff'd in part, rev'd in part sub nom, AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999), establishing that ILECs are required to provide access only to their existing networks: "We also agree with the petitioners' view that subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's *existing* network – not to a yet unbuilt superior

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

one."[25] This clear interpretation of the Act establishes that Qwest is required only to provide CLECs with access to its existing OSSs – the same OSSs that Qwest uses to process its retail orders.

b. UNE Combination Platform (UNE-P)

As discussed in its opening brief, Qwest has proposed to use the customer transfer charge ("CTC") established in Docket UT-960369 as a surrogate for the cost of converting its existing POTS customers to a CLEC using the UNE platform. The CLECs agree with the concept of using the CTC as the nonrecurring charge for UNE-P existing, but they assert that the CTC that the Commission approved in the prior docket should be modified. *See, e.g.*, WorldCom Brief at 7. There is no foundation in the record, however, for an accurate or meaningful modification of the CTC that the Commission previously approved. The "Confidential Chart" attached to WorldCom's brief, which purports to calculate a revised CTC, is not part of the record and is untimely. It does not provide a basis upon which the Commission should revise the CTC. The Commission established the existing CTC based on a thorough evaluation of the evidence, and there is an appropriate foundation for applying that CTC to the UNE platform.

c. Enhanced Extended Links

Qwest incurs nonrecurring costs for Enhanced Extended Links ("EEL") that reflect the one-time activities that must be performed to establish an EEL link. Qwest's nonrecurring cost study for EELs develops the costs for these activities. Ex. T-1001 at 17-18 (Million Direct).

Joint Intervenors briefly address Qwest's proposed nonrecurring charges for EELs by asserting that the charges should be modified based upon Mr. Weiss' proposed adjustments for all of Qwest's nonrecurring charges. Joint Intervenor Brief at ¶ 45. Qwest addressed Mr. Weiss' proposed adjustments in its opening brief and demonstrated that they are based upon unrealistic assumptions and should be rejected. Qwest Brief at 14-16. For example, Mr. Weiss argues that Qwest's nonrecurring studies should assume that Qwest receives all of its orders from CLECs in

[25] 120 F.3d at 813 (emphasis in original).

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

an electronic form. He offers this argument even though it is the CLECs, not Qwest, who determine how orders are submitted, and despite the fact that a significant percentage of orders that CLECs submit to Qwest are transmitted by fax. Similarly, as discussed earlier, Mr. Weiss and the CLECs assert that instead of providing CLECs with access to its existing OSSs, Qwest's nonrecurring cost studies should assume access to OSSs that are completely mechanized. This assumption is inconsistent with Qwest's legal obligation to provide access only to its existing network and is not supported by any evidence of a particular type of OSS that Mr. Weiss believes would achieve this goal. *Id.*

d. High Capacity Loops

The Joint Intervenors cite the same adjustments proposed by Mr. Weiss and discussed above in connection with EELs for the nonrecurring charges that Qwest presented for high capacity loops. For the same reasons set forth above, those adjustments are inappropriate and should be rejected.

In addition, Mr. Weiss originally proposed adjustments to Qwest's nonrecurring charges to account for the inclusion of testing activities in Qwest's studies that he claimed were duplicative. However, during the hearing, Mr. Weiss retracted this criticism, acknowledging that there is no duplication of testing activities in Qwest's studies. Tr. at 3652-54 (Weiss Cross). That retraction resulted in an agreement on the record between the parties that the costs associated with these testing activities are properly part of Qwest's nonrecurring charges. Tr. at 3654 (Weiss Cross). In their brief, however, the Joint Intervenors recommend that the Commission adopt the nonrecurring charges for high capacity loops that were advocated in the testimony of Mr. Weiss and Mr. Klick. Those charges, however, do not include the testing costs that Mr. Weiss and the Joint Intervenors agreed are appropriate costs. Based on the agreement the parties reached on the record, therefore, the nonrecurring charges proposed by Mr. Weiss and Mr. Klick are understated. Accordingly, the Commission should reject their proposed charges.

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

e. Subloops

The nonrecurring charges associated with subloops arise from the costs Qwest incurs to provide CLECs with access to subloops at: (1) points close to the customer's premises, such as poles, pedestals, network interface devises and minimum points of entry; (2) the feeder distribution interface; and (3) the main distribution frame in the central office. The Joint Intervenors take issue with Qwest's proposed charge that is related to field connection point verifications. Joint Intervenor Brief at ¶¶ 47-50. They assert incorrectly that Qwest will not have to perform field verifications to determine the feasibility of accessing subloops at different locations.

Qwest's obligation is to provide access to subloops at any technically feasible point, including, as discussed above, at poles, pedestals, and minimum points of entry. When a CLEC requests access at one of these points, a Qwest engineer must inspect the proposed point of access to determine if access is feasible. This is an essential first step in the process of providing subloop access. The Joint Intervenors assert that these inspections should not be necessary because CLECs typically will request access at defined points, such as the feeder-distribution interface. However, because the CLECs are free to request access at any technically feasible point, it is simply wrong to assume that access always will be requested at a well-defined point where an inspection is not necessary. Moreover, the Joint Intervenors’ assertion that inspections of proposed points of access do not serve any legitimate purpose ignores the reality that even at FDIs and other well-defined points in the network, there are many environmental and other factors that can limit or preclude access, including, for example, construction projects, fallen trees, and flooding. The possibility of these and other circumstances require Qwest to conduct a field inspection before providing subloop access, and Qwest should be permitted to recover the legitimate costs it incurs for this activity.

The CLECs' desire to access subloops at any technically feasible, not at just pre-defined, standard points, also dictates that certain nonrecurring charges associated with field connections

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

points have to be determined on an individual case basis ("ICB"). If the CLECs were willing to agree with Qwest upon clearly defined points of access to subloops, Qwest would be able to develop standard prices for each point of access instead of charging the CLECs based on ICB pricing. However, the CLECs have not been willing to agree on this approach. Without agreement on standard designs, Qwest cannot develop standard prices for these activities.

f. UDIT and EUDIT

As set forth in Exhibit 1061, Qwest proposes two nonrecurring charges associated with UDITs: DSO UDIT Transport ($312.38) and a generic nonrecurring charge for DS1/DS3/OC-3 and OC-12 UDITs ($352.54). These charges reasonably compensate Qwest for the time and expense arising from implementing an order for the UDIT product.

None of the parties offer any specific challenges to these nonrecurring charges. The Joint Intervenors argue only that the general adjustments they have proposed for all of all Qwest's nonrecurring charges should apply to the UDIT nonrecurring charges. Joint Intervenor Brief at 22. For the reasons discussed previously, these adjustments are not appropriate, and the Commission should reject them.

g. Multiplexing

As Qwest explained in its opening brief, the cost issues involving multiplexing relate to Qwest's product offering of DS0 Low Side Channelization. Qwest Brief at 25-26. To provide this product, Qwest incurs nonrecurring costs associated with high-side and low-side multiplexing activities, and it has proposed nonrecurring charges to recover these costs. *See* Ex. 1063 (Recurring Rates and Nonrecurring Charges). No party has specifically contested the nonrecurring charges that Qwest has proposed to recover the costs it incurs for these multiplexing activities. The Joint Intervenors assert again that the general adjustments that they have proposed for all of Qwest's nonrecurring charges should apply, and, for the reasons already stated, the Commission should reject their proposed adjustments.

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

h. Poles, Ducts, and Rights of Way

Qwest must perform several types of nonrecurring activities and incurs several types of nonrecurring costs to provide CLECs with access to poles, ducts, and rights of way. *See* Qwest Brief at 26. The Joint Intervenors challenge only the need for Qwest to conduct field verifications of conduit occupancy and the costs associated with that activity. Joint Intervenor Brief at 54. They claim that it is not necessary for Qwest to inspect manholes along a proposed route of conduit to ensure that sufficient space exists to accommodate the fiber of a CLEC

While Qwest maintains records relating to conduit use, the availability of those records does not eliminate the need to perform field verifications. Qwest's experience demonstrates that there are multiple circumstances in the field that can affect the availability of a conduit route. For example, conduit routes can be damaged through construction activities or by environmental factors such as flooding. Qwest regularly updates its records, but it is unavoidable that occurrences in the field will sometimes outpace Qwest's updates to its records. For this reason, when a CLEC requests the use of Qwest's conduit routes, it is necessary for Qwest to conduct a visual inspection to ensure that the route is available.

The Joint Intervenors assert further that only two hours per manhole should be required for a field verification and that Qwest should not have to inspect all of the manholes along a conduit route. Joint Intervenor Brief at ¶¶ 56, 57. However, nowhere in their pre-filed testimony did any of the CLECs challenge these assumptions. Tr. at 3080 (Knowles Cross). These assertions rest only on Mr. Knowles' statements during the hearing that he has been told by engineers that only two hours should be needed to inspect a manhole and that not all manholes need to be inspected. Tr. at 3124-25. However, Mr. Knowles acknowledges that it is proper to allow time for a technician to remove water and gas from each manhole that is inspected. Tr. at 3127-28 (Knowles Cross). He also acknowledges that work time assumptions for manhole inspections must allow for travel time for the technician to reach each manhole that must be inspected, and that his estimate of two hours per manhole does not include time for travel. Tr. at

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

3127 (Knowles Cross). These acknowledgements by Mr. Knowles demonstrate that the two-hour timeframe that the Joint Intervenors propose is not realistic and should be rejected. It is unreasonable to expect that an engineer can travel from a central office to a manhole, pump the manhole to remove gas and water, and conduct a physical inspection in the manhole within two hours.

Similarly, the Joint Intervenors do not attempt to explain their assertion that it is not necessary to inspect all manholes. If a CLEC requests to place its fiber in a conduit route, Qwest must inspect the entire route. A spot check of the type that the Joint Intervenors advocate is insufficient to determine the availability of conduit.

i. <u>Unbundled Dark Fiber</u>

Neither Staff nor any CLEC offered any evidence specifically challenging Qwest's proposed nonrecurring charges ("NRCs") for dark fiber. Mr. Weiss' adjustments to Qwest's NRCs on behalf of the Joint Intervenors did not include any adjustments to the NRCs that Qwest proposed for dark fiber.

In their brief, however, the Joint Intervenors, for the first time, take issue with Qwest's NRCs for this network element. Joint Intervenor Brief at ¶¶ 58, 59. Their challenge to these NRCs is both untimely and not supported by any evidence. In addition, on the merits, their challenge misses the mark. Without citing any evidence, the Joint Intervenors assert that Qwest has no legitimate reason to check its records and to perform a field verification to determine if dark fiber is available. However, Qwest cannot determine the availability of this network element in response to a CLEC request without performing these tasks.

j. <u>On-Premise Wiring</u>

As stated above, Qwest agrees with the recommendation of the Joint Intervenors that issues relating to the terms and conditions of CLEC access to on-premise wire are best addressed in the context of the ongoing Section 271 workshops. However, because the CLECs have expressed an interest in purchasing this network element, it is necessary to take the steps needed

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

to ensure that Qwest recovers the costs it will incurs to provide the element. Qwest has presented a recurring cost study and proposed recurring rates that are discussed below. In addition to recurring costs, Qwest incurs nonrecurring costs associated with this network element. As stated in its opening brief, Qwest will address the recovery of the costs associated with these activities in its individual dealings with the CLECs that request this element.

In addition, in their opening brief, the Joint Intervenors suggest that Qwest may have decided not to charge CLECs for the costs that Qwest incurs relating to establishing field connection points ("FCPs") that are used to permit CLECs to gain access to wiring in multiple dwelling units ("MDUs"). Joint Intervenor Brief at ¶ 63. While Qwest and the CLECs have made progress on issues relating to the FCPs, the statement in the Joint Intervenors' brief requires some clarification. Because of the progress the parties have made on this issue, CLECs will often be able to gain direct access to wiring in MDUs without having to establish an FCP. Thus, in most cases, CLECs will not have to pay an FCP charge. However, there still may be cases where FCP-related charges are necessary, such as when a CLEC asks Qwest to perform cross-connects or where Qwest must retrofit terminals at an MDU to enable direct access. Qwest incurs costs associated with the splicing and other engineering activities that are needed to perform these tasks. These costs are legitimate and necessary, and Qwest is entitled to recover them.

k. <u>Loop Conditioning</u>

Qwest has a tariffed rate of $304.12 for loop conditioning. In the Seventeenth Supplemental Order, the Commission ruled that loop conditioning or deloading costs "will be recovered from the loops for which the deloading was requested."[26] As the Commission explained, if a CLEC requests deloading of four loops in a 25-pair binder group, the total deloading cost of $304.12 will spread across those four loops, not across all 25 loops. In

[26] Seventeenth Supplemental Order: Interim Order Determining Prices; Notice of Prehearing Conference, Docket Nos. UT-960369, *et al.*, ¶ 238 (Sept. 23, 1999).

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

reaching that result, the Commission recognized that Qwest does not deload all pairs in a binder group when a CLEC requests deloading of some pairs. The need to maintain voice grade service on the other lines in the binder group prevents Qwest from deloading those lines.[27]

In its post-hearing brief, Covad attempts to revisit this ruling by the Commission. It argues that "the $304.12 cost established by the Commission for deloading a 25-pair binder group should be recovered on a per-pair basis, resulting in a charge of $12.17 per pair." Covad Brief at 9. Covad attempts to support this argument by asserting that when an ILEC receives a request to deload even just one loop, "it is common practice to deload all 25 pairs in the relevant binder group." *Id.* The CLECs, Covad argues, should not have to bear the costs for the deloading of these entire binder groups.

In addition to the fact that the Commission has already addressed this issue, Covad's argument is undermined by the inaccuracy of its assertion that it is common practice for an ILEC to deload an entire binder group when a CLEC requests it to deload a small number of loops in a group. Covad cites no evidence for this assertion. Moreover, the evidence that the Commission cited in the Seventeenth Supplemental Order supports the opposite conclusion – that the need to maintain voice grade service prevents ILECs from deloading entire binder groups.

Covad's argument also is inconsistent with the principal of cost causation. The costs of deloading loops in a binder group are caused by the CLEC that requests a deloaded loop. It would violate the principal of cost causation to assign some of those costs to Qwest, as Covad asserts should happen. Even if Qwest were to benefit from a CLEC's deloading request, the reality is that the costs of deloading are still caused by the CLEC's request and that the deloading would not occur but for the CLEC's request.

2. Recurring Costs

Before addressing each of the individual recurring cost studies and recurring rates that Qwest is presented, it is necessary to respond to a small number of inaccurate, high-level

[27] *Id.* at ¶ 239.

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

criticisms of Qwest's recurring cost studies that the CLECs offer.

As with their challenge to Qwest's nonrecurring studies, the Joint Intervenors assert that Qwest's recurring cost studies produce embedded cost estimates, not estimates of forward-looking costs. Joint Intervenor Brief at 26-27. This assertion, as discussed previously, is based on selected quotes from Qwest witnesses that the Joint Intervenors offer without the proper context. A fair reading of Qwest's testimony and cost studies establishes that Qwest's studies produce estimates of forward-looking costs, not embedded costs. The studies rely upon forward-looking technologies and network designs and apply forward-looking productivity and inflation factors to investment to yield costs that are indisputably forward-looking.

The Joint Intervenors also criticize Qwest for relying on new cost models for high capacity loops and dark fiber transport instead of relying exclusively on models that the Commission evaluated in the generic cost proceeding. Joint Intervenor Brief at 27. This criticism is surprising and, frankly, is seriously misguided. It should go without saying that cost models should change over time to reflect advancements in technology, changes in demand, and other factors. Indeed, AT&T and WorldCom have consistently emphasized this point in attempting to explain the many different versions of the Hatfield model that they have presented in the past few years. If Qwest did not change its models to reflect new technologies and engineering practices, the CLECs surely would attack Qwest on that ground. The key inquiry is not whether Qwest has changed its models, but, rather, whether the models produce forward-looking costs that are based on realistic assumptions and inputs. Qwest's TELRIC models meet this standard, and they do so while using inputs and assumptions required by the Commission's prior orders. *See* Qwest Brief at 27-30.[28]

TRACER also repeats the argument that Qwest's recurring cost studies estimate costs based on an element-by-element basis and, therefore, do not reflect proper economies of scope

[28] The appropriateness of Qwest modifying its cost models is confirmed further by the statements in the Eighth Supplemental Order indicating that the Commission viewed the cost models the parties had presented as being in "an evolutionary process." Eighth Supplemental Order at ¶ 35.

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

and scale. TRACER Brief at 6. This assertion is incorrect. Consistent with the methodology Qwest followed in the recurring cost studies that it presented in previous cost proceedings and with Commission findings, Qwest's recurring studies in this docket include the economies of scale that result from building an entire network, not just piece parts. Ex. T-1009 at 19 (Million Rebuttal).

a. <u>The Total Installed Factor and Utilization or Fill Assumptions</u>

Qwest described the development of its Total Installed Factor ("TIF") in detail in its opening brief. Qwest Brief at 30-31. As Qwest explained, while installation and engineering costs are the major components of TIF, the TIF factor also includes costs associated with a number of other factors, including investments for: (1) testing and power equipment required to properly operate the equipment represented by the material investment; (2) sales tax and interest during construction, added to the material investment to cover expenses Qwest incurs when it purchases equipment; and (3) warehousing and transporting the equipment from Qwest's warehouses to the equipment's ultimate location.

Qwest relies on current General Ledger Journal files, as reflected in the company books, as well as other company reports (such as the MR2A) to calculate each of the underlying factors that make up the TIF. *See* Ex. 1009 at 7 (Million Reb.). In this regard, Qwest has consistently presented its material investment cost data on a fully loaded basis, using a TIF to arrive at that amount. *Id.*

The Joint Intervenors broadly challenge Qwest's TIFs on the ground that they are allegedly inflated "compared to efficient industry practices." Joint Intervenor Brief at ¶ 71. In support of this assertion, the Joint Intervenors represent that they "have presented evidence of TIFs that should be achieved by an efficient provider of telecommunications services." *Id.* at ¶ 72. The flaw in this assertion is that the CLECs did not present any meaningful evidence that Qwest's TIFs are inconsistent with those of an efficient provider. In fact, it is telling that despite requests from Qwest, the CLECs refused to produce evidence of their own TIFs. If there were

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

any merit to the CLECs' claim that Qwest's TIFs do not reflect efficient industry practices, the CLECs would have been eager to reveal their TIFs as a demonstration of the allegedly inflated nature of Qwest's TIFs. Their refusal to do so speaks loudly about the hollowness of their attack on Qwest's TIFs.

In their challenge to Qwest's TIFs, the Joint Intervenors cite testimony from Thomas Weiss and his "experience" with other carriers. However, it bears repeating that Mr. Weiss refused to provide any evidence from this experience substantiating his TIF testimony. *See, e.g.*, Ex. 1339, 1343 (Joint Intervenors' data request responses); Tr. at 3606-10 (Weiss Cross). Mr. Weiss also admitted that he never asked his clients in this proceeding (the nine Joint Intervenors) about their experiences with TIFs. Tr. at 3614 (Weiss Cross). And the Joint Intervenors similarly refused to provide any backup for Mr. Weiss' unfounded criticisms in response to Qwest's discovery requests on this issue. *See* Exs. 1337, 1344 (Joint Intervenors' data request responses).

In addition, to the extent that the Joint Intervenors are claiming that Qwest's TIFs are uniformly inflated because of overstated "installation" costs (Joint Intervenor Brief at ¶ 72), that claim ignores the fact that many elements that go into TIF have no installation costs associated with them. For example, transportation, finance charges, and warehousing, each of which is an element of TIF, do not involve any installation costs. *See* Ex. T-1009 at 6 (Million Rebuttal).

With respect to assumptions relating to fill factors or utilization rates, the Joint Intervenors criticize Qwest for relying on its actual experience with utilization in its network and assert that Qwest's reliance on that experience violates past rulings of this Commission. Joint Intervenor Brief at 29. However, this Commission has stated that the use of fill factors that are greater than actual and projected fill factors is "contrary to the concept of deriving TELRIC."[29] The Commission's conclusion in this regard is based, at least in part, upon the FCC's pronouncement that "the per-unit costs associated with the element must be derived by dividing

[29] Eighth Supplemental Interim Order at ¶ 171.

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

the total cost associated with the element by a reasonable projection of the actual total usage of the element." *Id*. (citing First Report and Order at ¶ 682). As these rulings demonstrate, it is entirely proper for Qwest to rely on its actual experience to derive forward-looking fill factors. Qwest responds to the Joint Intervenors' specific recommendations relating to fill factors in the discussion below relating to high capacity loops.

b. UNE Combination Platform (UNE-P)

The CLECs have accepted Qwest's proposed recurring charges for UNE-P. Joint Intervenor Brief at ¶ 74.

c. Enhanced Extended Loops (EEL)

The CLECs have accepted Qwest's proposed recurring rates for EEL. Joint Intervenor Brief at ¶ 76.

d. High Capacity Loops

Qwest described the methodology underlying its calculation of rates for high capacity loops in its opening brief. Qwest Brief at 36-38. In their post-hearing briefs, the Joint Intervenors and TRACER repeat their incorrect contention that the Commission already set DS1 and DS3 loop rates in the generic cost proceeding. Joint Intervenor Brief at 31-32; Tracer Brief at 6-7. Qwest has already responded to this argument in its opening brief. Qwest Brief at 36-38. In short, the adjustments to unbundled loop costs that the Commission required in the Eighth Supplemental Order were not intended to establish a cost for a high capacity loop; instead, they were intended to produce a proper allocation of placement and structure costs across all loops in Washington. The Commission's adjustments relating to the DS1s and DS3s arose from the Hatfield model's improper treatment of these circuits on a channel-equivalent basis instead of a physical-pair basis. By including DS1s and DS3s on a channel-equivalent basis, the Hatfield model overstated demand for DS0s and thereby improperly reduced the cost of DS0s. The Commission's adjustment in the Eighth Supplemental Order corrected this flaw in the Hatfield model for the purpose of establishing a rate for unbundled DS0 loops; it did not result in the

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

Commission setting rates for DS1 and DS3 loops. *See* Qwest Brief at 36-37.

The Joint Intervenors attempt to support this argument by asserting that Qwest witness, Dick Buckley, testified that "Qwest's RLCAP Model filed in the prior cost docket also generated loop investment for the universe of unbundled loops, including high capacity loops." Joint Intervenor Brief at ¶ 77. However, this quote fundamentally mischaracterizes Mr. Buckley's testimony. In his pre-filed testimony, Mr. Buckley could not have been clearer in stating that "[n]one of the loop models considered by the Commission addressed the equipment required to provision high capacity circuits." Ex. T-1050 at 5. When Mr. Buckley referred during the hearing to loop investment for "the universe of unbundled loops," as confirmed by his pre-filed testimony, he was referring specifically to voice-grade unbundled loops, not to high capacity circuits.

Moreover, the Joint Intervenors' testimony relating to this issue also contradicts their claim that the Commission established rates for DS3s in the generic cost proceeding. While Mr. Klick conceded that DS3 loops could only be provided on all-fiber loops, he agreed that the Hatfield model did not include investment for this type of loop. Tr. at 3782 (Klick Cross).

Finally, TRACER challenges the utilization rates that Qwest uses in its studies for high capacity loops on several grounds and advocates a rate of 85 percent in place of the rates in Qwest's studies. Tracer Brief at 8-12. For multiple reasons, Tracer's criticisms of Qwest's utilization rates are without merit, and its use of a utilization rate of 85 percent is wrong.

First, Qwest offers multiple architectures for high capacity loops, and each type of architecture has a different utilization rate. For example, Qwest's utilization rate for DS1 plug-ins for the SONET fiber mux architecture is 97 percent. Other architectures that Qwest uses have utilization rates of 39 percent, 65 percent, 71 percent, 74 percent, and 100 percent. Ex. T-1009 at 26 (Million Rebuttal). In challenging Qwest's utilization rates for high capacity loops, Tracer does not even mention these rates. Instead, it focuses exclusively on the utilization rate of 37 percent for Qwest's OC3-based SONET fiber mux architecture. In doing so, Tracer creates the

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

misimpression that 37 percent is indicative of the overall utilization rates that Qwest uses in its cost studies for high capacity loops.

Second, there is good reason for Qwest's use of a 37 percent utilization rate for the OC3-based SONET fiber mux architecture. This architecture provides capacity for 84 DS1s at a given location, and demand cannot be aggregated from one location to another without adding additional OC3s. Qwest's actual utilization for OC3s is 28 DS1s out of a capacity of 84 for an overall rate of 33 percent. Thus, the 37 percent utilization rate that Qwest uses in its cost studies is higher than the rate that Qwest is actually experiencing in its network. *Id.* at 28-29.

Third, Qwest's studies are careful to use the OC3-based architecture only when it is the least-cost solution.[30] Qwest does not deploy this solution until demand for DS1s at a given location exceeds 11 DS1s. If demand is less than that, the cost to deploy OC3s is much higher than the cost for lower capacity, copper-based architectures. However, with sufficient demand, the OC3-based architecture is clearly the least-cost solution, even if the utilization rate for this architecture is lower than the utilization rate for other architectures. *Id.*

Mr. Weiss' proposed utilization rate of 85 percent for the OC-3 based architecture simply does not comport with the real world. With an OC3 architecture, demand across multiple locations cannot simply be aggregated to calculate a utilization rate. The inability to aggregate demand in this manner arises from the fact that an OC3 in a central office provides capacity for 84 DS1s *only* if an OC3 is also provisioned at the end-user location. Accordingly, while an OC3 ring architecture can be deployed to serve demand at more than one location, this architecture results in high utilization rates in the central office but low utilization rates at end-user locations. In other words, as Ms. Million explained in her testimony, to serve multiple locations, an OC3 could be deployed in a central office and at end-user locations A, B, and C. This deployment

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[30] In its opening brief, Staff questions whether the use of a SONET fiber mux architecture is consistent with the TELRIC requirement of using least-cost technologies. Staff Brief at 9. As explained, Qwest's studies only use this architecture when there is sufficient demand to make it the least-cost solution. When demand at a given location does not exceed 11 DS1s, Qwest uses copper-based architectures because they continue to be the least-cost solution when demand for DS1s is low. Ex. T-1009 at 28-29.

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

could result in the utilization of all 84 DS1s in the central office, but only a portion (for example, 28 out of 84 DS1s) of the DS1s at each of the three end-user locations because the OC3 in the central office can only serve a total of 84 DS1s. Because of this limitation on the utilization of OC3s at end-user locations, with three end-user locations, it is necessary to use four OC3s to serve demand for 84 DS1s. *Id.* at 29-30.

Contrary to Mr. Weiss' assertion, unless there is demand for 168 DS1s in a single location, it is not possible to serve DS1 demand with only two OC3s. Based on a sample of 4,300 locations, the current level of end-user demand is an average of 2.4 DS1s per location. With this level of demand, it is apparent that the circumstances that would support Mr. Weiss' assumed use of only two OC3s simply do not exist in the real world. The utilization factor of 85 percent that he advocates could only exist in the type of imaginary network that is not the proper focus of a TELRIC study. *Id.* at 30.

e. <u>Subloops</u>

Qwest's proposed rates for subloops are geographically deaveraged based upon the same zones that the Commission used to establish deaveraged rates for unbundled loops. Qwest's proposed prices for subloops are based upon developing the percentages of feeder investment and distribution/drop investment to the total investment per geographic zone. These percentages are multiplied by the existing loop rate per zone to produce subloop rates for feeder and distribution. Ex. T-1001 at 11-12 (Million Direct). Qwest used RLCAP to geographically deaverage subloops in a manner consistent with the Commission's loop deaveraging decision. Ex. T-1009 at 22 (Million Rebuttal).

The Joint Intervenors argue that the only appropriate method for establishing subloop rates is to use the compliance runs that the Commission relied upon to establish deaveraged loop rates. Joint Intervenor Brief at 32. However, neither the CLECs nor Qwest has those compliance runs, and they cannot be used, therefore, to establish subloop rates. Ex. T-1009 at 22. Qwest is obligated to provide subloops and CLECs are demanding them, so it is necessary to establish

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

rates for them despite the unavailability of the compliance runs. Qwest's reliance on RLCAP to establish deaveraged subloop rates is a reasonable approach, since RLCAP is one of the models that the Commission relied upon to establish loop rates.

f. <u>UDIT and EUDIT</u>

In its post-hearing brief, WorldCom argues that Qwest should not have two separate rate structures for UDIT and EUDIT. WorldCom Brief at 8. However, there are sound reasons for having separate prices for these two distinct elements.

EUDIT is comprised of the facilities that connect Qwest's serving wire centers with CLEC wire centers. By contrast, UDIT is comprised of the transport facilities that connect Qwest's wire centers. There are significant differences between the facilities that comprise these two elements. UDIT is essentially the same as direct trunk transport ("DTT"). It consists of terminating and multiplexing equipment, fiber cable, conduit, and intermediate wire center equipment. EUDIT is comprised of outside plant facilities and is closely analogous to entrance facilities. Ex. T-1001 at 16 (Million Direct).

Because different facilities are used for EUDIT and UDIT, these products have different cost structures. Accordingly, it is necessary and appropriate to have different prices for these products. That is why Qwest has presented separate cost studies for EUDIT and UDIT. The study that Qwest submitted for EUDIT produces a flat-rated price. This pricing approach is consistent with the Commission's flat-rated pricing for the analogous entrance facility product. *See* Qwest’s Tariff WN U-42 Section 3.1A. and 3.1B. By contrast, Qwest's cost study for UDIT produces a distance-sensitive price, which is consistent with the Commission's distance-sensitive pricing for entrance facilities. The distance-sensitive pricing for UDIT and entrance facilities reflects the fact that both of these products rely on distance-sensitive components.

g. <u>Multiplexing</u>

No party has challenged Qwest's proposed rates relating to multiplexing. *See* Joint Intervenor Brief at ¶ 83.

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

h. **Unbundled Dark Fiber**

In its post-hearing brief, Staff confirms its agreement with the rates that Qwest has proposed for unbundled dark fiber. Staff Brief at 11. As Staff describes in its brief, in response to Staff's suggestion, Qwest modified its dark fiber study by substituting Washington-specific cost data for the region-wide data that was originally included in the study. This change had the effect of reducing Qwest's rates for this network element, and it satisfied the concerns that Staff had expressed. *Id.* Qwest's adjusted rates for dark fiber are set forth in Exhibit C-1040, which is Qwest's response to Staff Data Request No. 6.

Without any evidentiary support, the Joint Intervenors assert that Qwest's recurring rates for dark fiber should not be any higher than the rates the Commission has established for unbundled loops and transport. Joint Intervenor Brief at 33. They cite no evidence and provide no explanation in support of this claim. As Qwest's cost study for this network element demonstrates, dark fiber is a unique network element that has different physical and cost characteristics than unbundled loops and transports. Qwest's TELRIC study for dark fiber properly calculates the unique costs of dark fiber, using achievable fiber utilization rates in a replacement network. Ex. T-1009 at 37 (Million Rebuttal). Consistent with Staff's endorsement, the Commission should adopt Qwest's proposed nonrecurring rates for this network element.

i. **On-Premise Wiring**

In specific response to requests by CLECs for access to on-premise wiring, Qwest provided a cost study and a proposed rate for building cable in its rebuttal testimony. Qwest has provided a separate rate for building cable on a per pair basis at established field connection points. *See* Qwest Opening Brief at 42. The building cable study (Ex. C-1017) assumes that the CLECs will place their own common terminals or cross-connect facilities, at their own expense, to jumper to Qwest's terminal and building cable.

In their brief, the Joint Intervenors assert that the Commission should defer setting rates for on-premise wiring until Qwest and the CLECs have resolved all issues relating to the terms

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

and conditions for access to this network element. Joint Intervenor Brief at 33. The Commission should reject this proposal. The CLECs have made it clear that they intend to purchase on-premise wiring, and it is necessary, therefore, to set a price for it. Qwest's proposed price of $0.91 per pair, per month is reasonable and appropriate. The Joint Intervenors were free to present a price for this element, but they chose not to do so. The Commission should adopt Qwest's proposed price to ensure the availability of this network element and to provide Qwest a means for recovering the costs it incurs to make the element available to the CLECs.

B. Verizon

Qwest does not have comments relating to Verizon's costs and pricing proposals.

IV. RECIPROCAL COMPENSATION

A. Legal and Policy Issues

Since Qwest filed its opening brief, it has informed the CLEC community that it will be offering the terms that the FCC outlined in *ISP Order II* for intercarrier compensation relating to Internet traffic. As Qwest discussed in its opening brief, the FCC's *ISP Order II* deprives state commissions of jurisdiction to consider intercarrier compensation for Internet traffic. Qwest Brief at 42-45. With the exception of Staff, the parties to this proceeding agree that the Commission no longer has jurisdiction over this issue. Qwest responds to Staff's contrary contention in the section of this brief addressing legal issues. As that discussion demonstrates, Staff's assertion that the Commission still has jurisdiction over this issue is incorrect.

B. Jurisdiction

Please see the discussion above relating to the FCC's *ISP Order II* and the effect of that order on the Commission's jurisdiction over intercarrier compensation for Internet traffic.

C. Rate Structure

For the reasons stated in its opening brief, Qwest continues to oppose the Staff's recommendation of a multi-tiered rate structure for local traffic. Qwest Brief at 45-47. Qwest notes that the Joint Intervenors share in Qwest's opposition to a multi-tiered structure. Joint

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

Intervenor Brief at ¶ 132. In their opening brief, Staff does not respond to the administrative and billing-related concerns that form the basis for Qwest's opposition to this proposed rate structure. Those concerns are real, and they present significant obstacles to a multi-tiered structure.

If the Commission decides to adopt Staff's recommendation, Qwest concurs with Staff and the Joint Intervenors that the Commission should determine the rates for a multi-tiered structure in a separate proceeding. There is not sufficient evidence in this record to establish appropriate rates.

D. <u>Tandem Switching Issue</u>

Qwest's opening brief discusses in detail the legal and policy reasons that compel denial of the CLECs' request for a broad declaration that they are entitled to both end office and tandem switching rates for all local traffic that they terminate. Qwest Brief at 47-49. Staff agrees that "the end-office rather than the tandem switching rate should apply." Staff Brief at 39. As Staff accurately states, "[t]his is consistent with the principle that the originating carrier should pay the terminating carrier an amount equal to the cost that the originating carrier would have paid had the call stayed on its own network." *Id.*

The Joint Intervenors assert incorrectly that it would be a violation of federal law to deny CLECs the end office and the tandem rate, even, apparently, when that would result in a CLEC recovering more costs than it actually incurs. Joint Intervenor Brief at ¶¶ 134-37. To the contrary, the FCC's rules require rate symmetry for reciprocal compensation (47 C.F.R. § 51.711(a)), and the CLECs' proposal would violate this principle by allowing the CLECs to recover both the end office and the tandem rates in circumstances where Qwest would only be paid at the end office rate. Qwest Brief at 47-49. Moreover, any finding that a CLEC is entitled to be paid at the tandem rate in the first place must be based upon a specific analysis of an individual CLEC's switch. The need for a CLEC-specific analysis of this issue precludes the type of broad declaration that the CLECs seek relating to a general right of CLECs to be compensated at the tandem rate. *Id.*

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

E. **Interconnection Cost Sharing**

As explained in its opening brief, Qwest agrees to share in the costs of interconnection trunking and entrance facilities in proportion to the amount of local exchange traffic that Qwest originates over those facilities. Consistent with the FCC's ruling in *ISP Order II* that Internet traffic is interstate, this traffic must be excluded from the calculations of the costs that the CLECs and ILECs will bear for interconnection facilities. Qwest Brief at 49-51.

In the Joint Intervenors' brief, XO resurrects its demand that Qwest and Verizon pay not only for a portion of interconnection facilities, but also for the facilities that XO purchases for collocation. Joint Intervenor Brief at ¶¶ 140, 141. This renewed request, in which the other CLECs notably do not join, lacks both legal and evidentiary support. As evidenced by the absence of any citations to relevant legal authority, there is no requirement that an ILEC pay for a CLECs' collocation facilities. Indeed, as XO's witness, Mr. Knowles, acknowledged during the hearing, a substantial part of XO's motive for collocating, instead of interconnecting through other arrangements, is to enable it to obtain access to UNEs, cross-connect with other CLECs, and provide services to other CLECs. Tr. at 3057-61 (Knowles Cross). Qwest cannot properly be required to finance XO's acquisition of these benefits through cost sharing for collocation facilities.

Moreover, the position that XO takes in its brief is inconsistent with the testimony that Mr. Knowles provided during the hearing with respect to this issue. Mr. Knowles testified that XO will pay all the costs of its collocation facilities if those facilities are not priced "inappropriately high." Tr. at 3083-84 (Knowles Cross). He acknowledged further that, in XO's view, the collocation prices that the Commission has ordered are reasonable. *Id.* at 3084-85 (Knowles Cross). Consistent with this testimony, the Commission should reject XO's attempt to blur the distinction between collocation facilities and other interconnection facilities and should not require Qwest and Verizon to share in the costs of XO's collocation facilities.

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

V. DSL ISSUES

As Qwest discussed in its opening brief, there are multiple reasons why the Commission should reject WorldCom's request, presented through Mr. Lathrop during the hearing, that Qwest should be required to continue to provide DSL service to a customer that changes its voice service from Qwest to a CLEC leasing UNE-P from Qwest. Qwest Brief at 52-53. In its brief, Staff agrees with Qwest, citing several reasons why the Commission should not impose this requirement. As stated by Staff, the Commission does not have jurisdiction over interstate DSL service, the Commission's disconnection rules would not prevent Qwest from terminating this type of service to a customer, and, from a policy perspective, it would not be appropriate to require Qwest to continue providing this service against its will. Staff Brief at 44-45. For each of these reasons and for the reasons set forth in Qwest's opening brief, the Commission should reject this request.

The Joint Intervenors attempt to argue that it would be good policy and in the public interest for the Commission to require ILECs to continue providing DSL service when a customer changes its voice service to a CLEC using UNE-P. Joint Intervenor Brief at ¶¶ 143-45. This argument is disingenuous, as reflected by the fact that the CLECs would not agree to continue providing DSL service in a situation where one of their customers changes to another carrier for voice service. If the Joint Intervenors truly believed in their policy arguments, they would be willing to do what they are now requesting of the ILECs.

A. <u>Line Splitting</u>

1. Architecture (including ownership of the splitter)

Qwest has agreed to provide line splitting to voice CLECs using the UNE-P, but, for the reasons outlined in Qwest's opening brief, Qwest should not be required to provide access to or maintenance of the voice splitter. Qwest Brief at 53-57. Staff agrees that Qwest and Verizon should not be required to provide the line splitter, since the FCC did not mandate that ILECs provide splitters in its Line Sharing Order. Staff Brief at 41-42. The CLECs do not address

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

ownership of the splitter in their post-hearing briefs.

2. Costs

As stated in its opening brief, Qwest has not presented any new cost studies relating to line splitting, because no additional costs have been identified in relation to this service. Qwest Brief at 57. The other parties also have not addressed the costs associated with line splitting in their post-hearing briefs.

B. Line Sharing Over DLC Loops

Qwest has agreed to provide line sharing over DLC loops, and its method for doing so is outlined in its post-hearing brief. Qwest Brief at 57-58. Covad asserts that Qwest's proposed method for line sharing would somehow give Qwest an unfair advantage over the CLECs. Covad Brief at 19-20. However, to enable CLECs to provide DSL loops from remote terminals, Qwest is providing the CLECs with the same arrangement that Qwest uses for its retail customers. Tr. at 2308 (Brohl Redirect). There is no unfair advantage to be gained through this equal arrangement.

Covad also proposes for the first time in its brief that the Commission adopt its "plug and play" proposal for remote terminal access to DLC functionality. Covad Brief at 20-21. Covad did not present any evidence relating to this proposal, and Qwest, therefore, did not have any opportunity to cross-examine witnesses or otherwise present evidence relating to the proposal. Because of the untimeliness of the proposal and the absence of any supporting evidence, the Commission should reject "plug and play."[31]

VI. OSS COSTS

A. UNE Remand Order

The Joint Intervenors repeat their argument that the ILECs should not be permitted to recover the costs they incur to provide CLECs with access to OSSs. Joint Intervenor Brief at

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[31] *See* 17th Supplemental Order at ¶¶ 243, 244 (Absence of timely presented evidence required rejection of proposal).

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

¶ 152. The Commission has previously considered and squarely rejected this argument in the 17th Supplemental Order in Docket Nos. UT-960369, et al. Staff recognizes in its brief that the ILECs' right to recover their OSS transition costs is well settled. Staff Brief at 4. In its opening brief, Qwest describes and quantifies the OSS costs it has incurred thus far to comply with the requirements of the FCC's UNE Remand Order. Qwest Brief at 60-62. The CLECs have not specifically challenged the costs that Qwest has presented. However, as Qwest has stated, it is not proposing a specific cost recovery method for these costs in this docket.

B. <u>Line Splitting and Line Sharing</u>

Because Qwest is in the process of defining its line splitting product offering, it has not yet estimated fully the OSS costs it will incur to accommodate this product. Staff recognizes that unique modifications to OSSs may be necessary for line splitting, and that Qwest and Verizon will be entitled to recover the costs of those modifications. Staff Brief at 45-46. Staff also supports the eventual use of proposed or existing rates to recover the OSS costs associated with line splitting. *Id.* at 46. The Joint Intervenors and the other CLECs do not address this issue in their post-hearing briefs.

VII. CONCLUSION

For the reasons stated, Qwest requests that the Commission adopt the costs and rates that Qwest has proposed.

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Respectfully submitted,

Qwest Corporation

By: ________________________

Lisa Anderl
QWEST CORPORATION
John M. Devaney
Kelly A. Cameron
PERKINS COIE LLP
Attorneys for Qwest Corporation

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040