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**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 D)

QWEST’S MOTION TO STRIKE PORTIONS OF
WORLD COM’S PREFILED TESTIMONY

INTRODUCTION

Qwest Corporation ("Qwest") hereby files this motion to strike portions of the prefiled testimony of Don Price submitted on behalf of WorldCom. This motion is brought pursuant to WAC 480-09-425(2). The testimony that is the subject of this motion was filed on December 21, 2001, as responsive testimony in this cost docket. Rebuttal testimony is due March 7, 2002. Thus, Qwest requests an expeditious ruling on this motion, to avoid the need to prepare rebuttal and cross-examination.

Several portions of Mr. Price's testimony are inappropriate for consideration in this proceeding because the issues discussed have been finally decided in Qwest's SGAT/271 proceeding.¹ Additionally, WorldCom is seeking to have the Commission determine, or change previous determinations about, the terms and conditions of various service offerings. This is an

¹ Docket Nos. UT-003022 and UT-003040, referred to herein as "Qwest's SGAT/271 proceeding".

1 improper expansion of the clear scope of these cost proceedings, which have traditionally been
2 limited to costs and prices. Terms and conditions have been addressed in arbitrations or the
3 SGAT/271 proceeding. Finally, WorldCom is presenting testimony in this proceeding that is
4 directly contrary to positions that WorldCom took and stipulations that WorldCom made in the
5 SGAT/271 proceeding.

6 The testimony that should be stricken is as follows:

7 Page 12 line 13 through page 14 line 8 – discussion of Remote Terminal (RT) collocation.

8 Page 15 line 15 through page 19 line 18 – discussion of the terms and conditions under
9 which Qwest offers unbundled packet switching.

10 Page 23 lines 13-14; page 24 line 11 through page 33 line 15 – discussion of market based
11 rates for switching vertical features.

12 **DISCUSSION**

13 The testimony cited above is improper in this cost docket – it is outside the scope of the
14 proceeding, and will unnecessarily broaden the issues and delay the consideration of the costs and
15 prices for UNEs that is properly the subject of this proceeding.

16 Cost dockets in Washington have traditionally been limited to consideration of costs and
17 prices. Terms and conditions associated with a particular UNE or service have been considered in
18 arbitrations, complaints, and/or the SGAT/271 proceeding. This division of issues into separate
19 proceedings was first considered by the Commission in 1996, in Docket Nos. UT-960369, et al. In
20 the first order in that consolidated proceeding (Order Instituting Investigations; Order of
21 Consolidation; and Notice of Prehearing Conference, dated November 20, 1996) the Commission
22 explicitly stated that "[t]erms and conditions for interconnection will continue to be addressed in the
23 negotiation and arbitration process." The Commission considered the issue again in the 14th
24 Supplemental Order in that docket (September 30, 1998). The Commission noted that the parties
25 had addressed whether it is appropriate to tariff detailed terms and conditions in that proceeding,
26 and that parties had indicated their preference not to do so, because of the additional complexity

1 such consideration adds. The Commission found that it would not consider terms and conditions in
2 that proceeding (14th Supplemental Order, ¶¶ 73-75).

3 As recently as June 2001, in this docket, the Commission affirmed the by now long-
4 established practice of considering cost and pricing issues separately from terms and conditions. In
5 Part C, addressing Microwave Collocation, the Commission accepted a tariff containing the parties'
6 stipulated prices. The Commission also accepted Qwest's offer to file terms and conditions for
7 Microwave Collocation in the SGAT/271 proceeding, and ordered Qwest to do so by June 29,
8 2001. Those terms and conditions were considered in workshops in July 2001, and the parties were
9 able to agree upon language.

10 WorldCom's testimony here flies in the face of the established scope of a cost docket.
11 WorldCom would expand the scope of the proceeding to consider not only terms and conditions, but
12 the identification and establishment of entirely new UNEs. WorldCom should not be permitted to do
13 so in this docket, but should be directed to pursue its issues in another, more appropriate
14 proceeding. Furthermore, the Administrative Law Judge in this proceeding gave the parties several
15 opportunities to identify issues for consideration in Part D. Qwest identified many issues, including
16 costs and prices for a number of elements. WorldCom never identified that it wanted the ALJ to
17 consider defining new UNEs or expanding the scope of existing ones, but that is precisely what
18 WorldCom seeks to do through Mr. Price's testimony. WorldCom never requested leave to expand
19 the scope of the proceedings, yet has attempted to do so through the testimony of Mr. Price.

20 **Page 12 line 13 through page 14 line 8.** The testimony on these two pages is a brief
21 discussion of Remote Terminal (RT) collocation. RT collocation is one of the rate elements at issue
22 in this docket. However, WorldCom engages in this discussion not as background to discuss the
23 proper costs and prices for RT collocation², but as a foundation from which to later claim that
24 packet switching should be identified as a UNE without the limitations that have been ordered in the

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26 ² Indeed, Mr. Price states that the purpose of his testimony is *not* to take issue with Mr. Kennedy's pricing
recommendations (Price at page 14, lines 12-13).

1 SGAT/271 proceeding.³ This attempt to lay foundation for establishing a new UNE is improper,
2 and outside the scope of this proceeding, which is limited to consideration of costs and prices for
3 UNEs. Further, RT collocation was discussed on several occasions in the SGAT/271 proceeding –
4 first in Workshop 2, when collocation was discussed generally, and again in Workshop 4, in
5 connection with unbundled packet switching and access to subloops. All contested issues were
6 discussed, briefed, and resolved by the ALJ in the 11th and 20th Supplemental Orders in that
7 proceeding.⁴ WorldCom did not challenge any of the ALJ's recommendations on any of those issues.
8 The parties have received a final order on Workshop 2 issues, and are now awaiting a Commission
9 order on Workshop 4 issues. WorldCom essentially seeks another bite at the apple on those issues
10 – issues it either did not consider important enough to address in Workshop 4, or with which it was
11 previously satisfied with the outcome.

12 **Page 15 line 15 through page 19 line 18.** This testimony is related to the testimony
13 discussed above, and is a discussion of the terms and conditions under which Qwest offers
14 unbundled packet switching. As noted, these issues have already been decided in Workshop 4 in the
15 20th Supplemental Order addressing Packet Switching issues. Mr. Price specifically challenges
16 Qwest's SGAT provisions, (contained in SGAT Section 9.20) addressing packet switching
17 (testimony at page 16, lines 1-8). Mr. Price asks the Commission to revisit this issue, and modify
18 the conditions under which Qwest is obligated to offer packet switching as a UNE. However, that
19 very question was the fundamental issue addressed in the 20th Supplemental Order in Workshop 4.
20 The ALJ considered the parties' arguments that the definition of unbundled packet switching should
21 be expanded, (i.e., that certain conditions on the availability of the element be removed), and

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23 ³ See, Mr. Price's testimony at page 14, lines 7 and 8. Mr. Price's reference to "impairment" in this section of his
24 testimony is clearly for the purpose of later attempting to establish that a CLEC is "impaired" without access to
unbundled packet switching, which is the test that must be met under the Act in order to establish a new unbundled
network element.

25 ⁴ The 11th Supplemental Order addresses collocation issues generally, and Remote Collocation at paragraphs 77-79.
26 Packet Switching issues are discussed at paragraphs 239-259, and Subloop issues are discussed at paragraphs 260-
297 of the 20th Supplemental Order.

1 rejected that request, directing those parties to pursue the issue in a separate proceeding that
2 specifically addresses network elements and the FCC's "necessary" and "impair" standards.⁵
3 WorldCom did not challenge that decision. Further, the ALJ concluded that Qwest did not need to
4 modify any aspects of SGAT Section 9.20, and WorldCom did not challenge that aspect of the 20th
5 Supplemental Order either. To allow WorldCom to mount that challenge here would be highly
6 inappropriate.

7 **Page 23 lines 13-14; page 24 line 11 through page 33 line 15.** This testimony includes an
8 extensive discussion of market based rates for switching vertical features. This testimony is
9 improper and should be stricken for several reasons. First, Qwest is not proposing market based
10 rates for consideration in this proceeding. Second, WorldCom is attempting to relitigate terms and
11 conditions associated with access to local switching that have already been finally decided in the
12 SGAT/271 proceeding. Finally, WorldCom challenges language in Qwest's SGAT that WorldCom
13 itself stipulated to in Workshop 3.

14 At pages 24 and 25 of his prefiled testimony, Mr. Price takes issue with Qwest's SGAT
15 section 9.11.2.5, specifically the language in that section about Qwest charging market based rates
16 for local switching under certain circumstances. WorldCom stipulated to this very language in
17 Workshop 3. (See, Tr. 2878 – "WorldCom is in agreement that the fourth line and above should be
18 priced at market rate switching in this instance.") Even if WorldCom had not stipulated to this
19 language, the Commission has already ruled that such a provision is acceptable. The ALJ in the
20 13th Supplemental Order in Workshop 3 found that Qwest's proposal for market based pricing was
21 acceptable (paragraphs 258 and 278). WorldCom did not challenge that decision, and the
22 Commission's 24th Supplemental Order did not address the issue. WorldCom's testimony here is a
23 clear attempt to change terms and conditions associated with local switching that were very recently
24 the subject of a fully developed record in the SGAT/271 proceeding. WorldCom's testimony is

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26 ⁵ 20th Supplemental Order at paragraph 250.

