

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Pricing Proceeding) for Interconnection, Unbundled Elements) Transport and Termination, and Resale) _____))	DOCKET NO. UT-960369
In the Matter of the Pricing Proceeding) for Interconnection, Unbundled Elements) Transport and Termination, and Resale) for U S WEST COMMUNICATIONS, INC.) _____))	DOCKET NO. UT-960370
In the Matter of the Pricing Proceeding) for Interconnection, Unbundled Elements) Transport and Termination, and Resale) for GTE NORTHWEST INCORPORATED)) _____))	DOCKET NO. UT-960371 JOINT PETITIONERS' RESPONSE TO ANSWERS TO PETITION FOR RECONSIDERATION

XO Washington, Inc., f/k/a NEXTLINK Washington, Inc., Electric Lightwave, Inc., Advanced TelCom Group, Inc., AT&T Communications of the Pacific Northwest, Inc.,¹ WorldCom, Inc., and TRACER (collectively “Joint Petitioners”) provide the following response to the answers of Qwest Corporation, f/k/a U S WEST Communications, Inc. (“Qwest”) and Commission Staff to the Petition to reconsider, rehear, and stay the 27th Supplemental Order (“Final Order”) in the above-captioned proceeding. Neither Qwest nor Staff has fully addressed, much less resolved, the issues raised in the Petition. Accordingly, the Commission should grant the relief the Joint Petitioners have requested.

DISCUSSION

A. Qwest Statewide Averaged Loop Rate

¹ AT&T was not among the original Joint Petitioners but joins in the Petition, as well as in this Response.

1. The Joint Petitioners' first issue with the Commission's calculation of Qwest's statewide averaged loop rate is the lack of record evidence to support the quantification of Commission post-model run adjustments, which artificially inflate the price to an unreasonable level. Both Qwest and Staff recommend that the Commission not reconsider its calculations, but neither Qwest nor Staff provided any citation to record evidence that supports those calculations. The only citation Qwest provided was to the testimony of Robert Harris, Qwest Answer at 2, which addressed only one of the Commission's adjustments – the alleged impact of competition. Dr. Harris, however, did not suggest an adjustment to the loop price on this basis, much less quantify any such adjustment. Rather, Dr. Harris discussed the issue of the impact of competition in the context of recommending that the Commission adopt Qwest's proposed "market-based cost of capital." The Commission's separate adjustment to the loop cost to reflect alleged competitive impacts thus not only departs from the record evidence, it conflicts with the Commission's decision to use Commission-prescribed cost of capital.

2. Staff, on the other hand, states that the Commission may "use its expertise to estimate a value for the items which could not be quantified. A good faith and reasoned estimate is better than no estimate at all." Staff Answer at 3. While the Commission's estimate may have been made with "good faith," Joint Petitioners respectfully disagree with the assertion that it was "reasoned" in light of the lack of evidentiary support for that estimate. Any exercise of Commission expertise must be based on record evidence, particularly when determining costs and establishing rates based on those costs. The Joint Petitioners' proposal to average the cost model outputs and add the level of common costs that Qwest itself proposed, without additional adjustments, is supported by the record and would not require the Commission to arbitrarily

quantify adjustments it was unable to make in some of the cost models.

3. The Joint Petitioners' second issue with respect to the statewide averaged loop price is the lack of any analysis of the impact of the Commission's decision on the development of local exchange competition. Again, this issue receives short shrift from both Qwest and Staff. Staff ignores the issue, while Qwest contends that the Commission has no "obligation to establish the lowest loop price possible" and should not change its decision just because "new entrants find the purchase of unbundled loops less desirable." Qwest Answer at 2. If the Commission, like Qwest, has no interest in fostering the development of effective local exchange competition, then the Commission should follow Qwest's advice.

4. The Joint Petitioners, however, believe that the Commission is interested in the broad public policy goal of encouraging the development of effective competition, which requires that the prices for UNE loops be reasonable and procompetitive. In its review of Ameritech's Section 271 application for Michigan, the FCC recognized that "efficient competitive entry into the local market is vitally dependent upon appropriate pricing of checklist items." *In re Application of Ameritech Michigan Pursuant to Section 271*, CC Docket No. 97-137, Report and Order ¶ 281 (Aug. 19, 1997). The FCC further stated, "for purposes of checklist compliance, prices for interconnection and unbundled network elements must be based on TELRIC principles. We emphasize, however, that it is not the label that is critical in making our assessment of checklist compliance, but rather what is important is that the prices reflect TELRIC principles and *result in fact in reasonable, procompetitive prices.*" *Id.* ¶ 290 (emphasis added). Qwest presumably will rely on the prices adopted in this proceeding to support its Section 271 application to the FCC and thus Qwest, like the Commission, should have an interest

in ensuring that the rates are demonstrably reasonable and procompetitive.

5. The Commission undoubtedly realizes by now that opening formerly monopoly markets to multiple providers requires more than a single decision in a single case. The Commission and interested parties must devote enormous resources to address and resolve multiple issues. Unfortunately for consumers and CLECs, the incorrect resolution of any one of these issues can have a substantial negative impact on the ability of competitors to provide effective alternative sources of telecommunications services. The Commission, for example, may make the many decisions necessary to ensure that Qwest provides competitors with nondiscriminatory access to unbundled loops, but those decisions would be in vain if the Commission establishes prices for those loops at a level that does not enable competitors to use those loops to provide service to end user customers. Establishing the statewide averaged rate for Qwest loops at the level in the Final Order would undermine pro-competitive decisions the Commission has made to resolve other issues. Prices based on that rate would minimize competitors' ability to use Qwest loops and, correspondingly, would further limit the number of potential telecommunications customers who have access to effective alternatives to the incumbent provider.

6. Staff misses the point when it suggests that “[a]t some point in the future, perhaps near future, it may be appropriate to reexamine this issue” of the loop rate. Staff Answer at 3. New entrants cannot continue to devote scarce resources to repeatedly litigating cost issues, rather than constructing networks and serving customers, particularly if the Commission has not given any indication that it would likely lower the rate in the Final Order. Indeed, if the Commission is willing to establish a lower rate, it can and should do so now, not at some

indefinite point in the future. The Joint Petitioners, therefore, strongly urge the Commission to establish a statewide averaged loop rate for Qwest that is consistent both with the record evidence and with this Commission's commitment to bringing the benefits of effective local exchange competition to all Washington consumers.

B. Qwest Wire Center Groupings

7. The Joint Petitioners also seek reconsideration of the Commission's decision establishing the five zone loop prices for the Qwest wire centers in its Spokane and Tacoma exchanges. Staff and Qwest apparently agree that the Commission should provide more information about how it allocated exchanges into various zones, but both of these parties would have the Commission do no more than correct potential errors. Staff Answer at 3; Qwest Answer at 3. Whether correcting errors alone would be sufficient, however, depends on a detailed explanation of how the Commission's calculations vary from the Joint CLECs' proposal and Exhibit 2C, which the Commission has yet to provide. The Commission should both account for and reconcile these discrepancies, and in the process, ensure that unbundled loops are priced at a reasonable and financially viable level in as many wire centers as possible in the state's second and third largest cities. Adoption of the Joint CLEC proposal in its entirety would accomplish this goal.

8. Qwest contends that the Joint Petitioners "raise no new issues in their latest petition, and it should be denied on that basis alone." Qwest Answer at 3. The Joint Petitioners raise these issues again, however, because the Commission has yet to address them, other than to stand behind its initial determination without further explanation. The Joint Petitioners would prefer that the Commission disclose its calculations, reconcile its analysis with the record

evidence, and make necessary adjustments as part of its initial resolution of this proceeding, rather than on remand following judicial review. More importantly, the Commission's determinations on these issues as reflected in the Final Order represent a departure from past Commission decisions fostering the conditions necessary for effective local exchange competition to develop throughout the state. The Joint Petitioners are unwilling to accept that the Commission would knowingly make decisions that would discourage competition outside the Seattle and Bellevue metropolitan areas without making every effort to avoid that outcome.

9. Staff appears to blame the methodology for the discrepancy in wire center groupings into the five zones, suggesting that “[t]o the extent such groupings are not premised on a calculation error, Staff does not share [the Joint Petitioners’] concern since it is the result of establishing UNE-loop rates on a wirecenter basis rather than on an exchange level basis as Staff had proposed in the proceeding.” Staff Answer at 4. Staff, however, fails to explain how any combination of the eight Spokane wire centers would result in a rate significantly lower than the statewide average when the Commission considers five of those wire centers to be in the most rural zone and assigns none of the wire centers to an urban zone. To the contrary, Staff proposed an unbundled loop rate for the Spokane exchange of \$19.52, significantly *higher* than the statewide average of \$18.16, as well as the geographically deaveraged prices and in all but the most rural zone. Ex. 256 (Staff Deaveraged Rates for Qwest).

10. The Commission's choice is simple: (a) adopt both the methodology the Joint CLECs proposed and the wire center groupings based on Exhibit 2C and encourage at least limited competition on both sides of the Cascade Mountains; or (b) use the undisclosed calculations on which the Final Order is based and forestall, if not reverse, competitive efforts in

Spokane and other areas outside Seattle. The Joint Petitioners urge the Commission to choose the first option and to continue to make the decisions necessary to foster effective consumer choice in as many areas of the state as possible.

PRAYER FOR RELIEF

11. Accordingly, the Joint Petitioners strongly urge the Commission to reconsider or rehear its decision with respect to Qwest loop prices, and to issue an order as follows:

A. Recalculating the statewide averaged price for a Qwest two-wire unbundled loop as \$15.47;

B. Adopting Exhibit 2C as the method for converting the Qwest statewide averaged price into five geographically deaveraged zones and using a statewide average of \$15.47; and

C. If denying the Petition, staying the effectiveness of the rates in the Final Order pending judicial review.

RESPECTFULLY SUBMITTED this 18th day of October, 2000.

DAVIS WRIGHT TREMAINE LLP
Attorneys for XO Washington, Inc., f/k/a
NEXTLINK Washington, Inc.; Electric Lightwave,
Inc., Advanced TelCom Group, Inc., and AT&T
Communications of the Pacific Northwest, Inc.

By _____
Gregory J. Kopta

Ann E. Hopfenbeck, Esq.
WORLD.COM, INC.
707 17th Street, Suite 3600
Denver, CO 80202
Phone: (303) 390-6106
Fax: (303) 390-6333
E-mail: ann.hopfenbeck@wcom.com

Arthur A. Butler
Lisa Rackner
ATER WYNNE LLP
Attorneys for TRACER
601 Union Street, Suite 5450
Seattle, WA 98101-2327
Phone: (206) 623-4711
Fax: (206) 467-8406
E-mail: aab@aterwynne.com