

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Review of:) DOCKET NO. UT-023003
Unbundled Loop and Switching)
Rates; the Deaveraged Zone)
Rate Structure; and Unbundled) SIXTH SUPPLEMENTAL ORDER:
Network Elements, Transport,) REQUIRED PREPARATION OF TIME
and Termination) AND MOTION STUDIES IN
) SUPPORT OF NONRECURRING
) COSTS FOR ORDERING AND
) PROVISIONING UNBUNDLED
) NETWORK ELEMENTS
.....)

1 Proceeding. Docket No. UT-023003 – also referred to as the “new generic cost case” – is a generic proceeding to review unbundled network element (“UNE”) loop and switch rates, including the deaveraged loop zone rate structure, previously established by the Commission in other proceedings. The Commission has also decided to consider numerous other related issues.

2 Background. The Commission convened a prehearing conference on February 6, 2003, at Olympia, Washington before Administrative Law Judges Theodora M. Mace and Lawrence J. Berg. The primary purpose of the conference was to address the scope of the proceeding and scheduling issues. The parties raised a dispute regarding whether Commission Orders require Qwest Corporation (“Qwest”), and Verizon Northwest, Inc. (“Verizon”), to prepare time and motion studies in support of nonrecurring costs for ordering and provisioning elements. The presiding ALJs took the disputed issue under advisement and conferred with the Commissioners. The Commission is fully advised regarding the positions of the parties and arguments presented during the prehearing conference regarding the dispute. The Commission enters this Order separate from other matters addressed during the prehearing conference to expedite and ensure full compliance that is necessary to promote a well-developed record in this proceeding with minimal delay.

MEMORANDUM

Do Prior Commission Orders require parties to perform time and motion studies in support of nonrecurring costs for both ordering and provisioning elements?

- 3 **Positions of the Parties.** Qwest and Verizon both stated that they understood Commission Orders to require that time and motion studies supporting nonrecurring costs to be performed for ordering activities only. WorldCom and Covad stated that they understood Commission Orders to require that time and motion studies be performed for both ordering and provisioning activities. Commission Staff stated that it was “leaning towards WorldCom’s position.”¹ Qwest and Verizon claim that they require additional time to file direct evidence if they are required to perform time and motion studies for both ordering and provisioning activities.

Discussion and Decision

- 4 Nonrecurring costs (“NRCs”) are the one-time costs associated with establishing a service or network element, and are expense-based. The development of nonrecurring cost studies begins with the identification of tasks and activities that are necessary to establish a service or to provide an unbundled network element (“UNE”). After the necessary tasks associated with establishing a particular service or element are identified, the time needed to perform each task and the probability that the task will have to be performed is measured or estimated. The performance times and probability estimates are then multiplied by the appropriate labor rate to develop the direct costs of a given activity.

¹ The parties discussion regarding the scope of time and motion studies appears in the prehearing conference transcript pages 222 through 237.

- 5 NRCs for ordering activities occur at the outset when an order is placed, and they flow through other elements. NRCs for provisioning activities occur in the central office or in the field when wholesale orders are completed.
- 6 Issues in the new generic cost case arise from different sources. Some issues are being raised for the first time in this proceeding (such as Commission Staff's proposal for deaveraged zone switching rates), some were raised in Docket No. UT-960369 (such as loop rates), and some were raised in Docket No. UT-003013, Parts B and D. In particular, NRC issues arise from Parts B and D. This proceeding was opened while both Parts B and D were underway. Commission Orders in Part B, Part D, and the new generic cost case culminate in the requirement that Qwest and Verizon prepare time and motion studies in support of NRC for both ordering and provisioning activities.
- 7 On June 21, 2002, the Commission entered the Part B Order addressing numerous problems associated with NRC studies supported by subject matter expert ("SME") testimony.² The Commission rejected numerous NRCs based on SME testimony,³ and required that Qwest and Verizon support requests for updated OSS transition cost recovery with time and motion studies. On September 26, 2002, the Commission entered the Part B Final Order on Reconsideration, affirming decisions regarding NRC studies.⁴
- 8 On October 11, 2002, the Part D Initial Order was entered.⁵ The Part D Initial Order took the Commission's analysis regarding NRC study methodology one step further and required that "all future nonrecurring cost studies filed by any party in any proceeding must be supported by time and motion studies." *Part D Initial Order, at para. 70.*

² See Docket No. UT-003013, 32nd Supplemental Order ("Part B Order").

³ A summary of the Part B NRC issues appears in Docket No. UT-003013, 41st Supplemental Order ("Part D Initial Order"), at para. 51.

⁴ See Docket No. UT-003013, 38th Supplemental Order ("Part B Final Order on Reconsideration").

⁵ See Docket No. UT-003013, 41st Supplemental Order ("Part D Initial Order").

- 9 A prehearing conference was convened in this proceeding on October 16, 2002, shortly after the Part D Initial Order was entered and prior to the filing deadline for Part D petitions for administrative review. The purpose of the conference was to discuss the scope of issues and scheduling in this proceeding. The parties' discussions focused on the Part B requirement that time and motion studies be prepared in support of OSS costs. Qwest and Verizon represented that OSS-related NRCs are incurred at the outset of the ordering process and flow through all other NRCs. There was minimal discussion regarding Part D issues at the conference because decisions in the Initial Order remained subject to administrative review. Qwest noted that several UNE rates in Part D were also identified as rates to be reviewed in the new generic cost case, including nonrecurring costs for two provisioning elements – dark fiber and hot cut coordinated conversion⁶ -- but there was no discussion regarding the requirement that parties file time and motion studies in support of all NRCs.
- 10 On October 31, 2002, Qwest filed a petition for administrative review of the Part D Initial Order in Docket No. UT-003013.⁷ However, Qwest did not request review of the requirement all future nonrecurring cost studies filed by any party in any proceeding must be supported by time and motion studies.
- 11 On November 8, 2002, an order was entered in the new generic cost case regarding issues raised at the October 16th prehearing conference.⁸ The PHC Order affirmed that the Part B Final Order required Qwest and Verizon to file time and motion studies to support the OSS-related NRCs that are incurred at the outset of the ordering process, and demonstrate how those costs flow through all other NRCs.⁹

⁶ See TR at 159-160.

⁷ Qwest was the only party that petitioned for administrative review of the Initial Order.

⁸ See Docket No. UT-023003, Fourth Supplemental Order (“PHC Order”).

⁹ Fourth Supplemental Order, at para. 20.

12 The PHC Order then stated:

Commission *orders* flowing from the Part D proceeding will give the parties guidance as to whether time and motion studies must be prepared in support of *other nonrecurring costs* in [the new generic cost case].
(*Emphasis added*). *Fourth Supplemental Order, at para. 20.*

13 The PHC Order also noted that no party in Docket No. UT-003013 had requested review of the Part D decision requiring that time and motion studies be prepared in support of all NRCs in this proceeding.¹⁰

14 On December 20, 2002, the Commission entered the Part D Final Order reviewing findings and conclusions made in the Initial Order. The Commission noted that – under the Initial Order – Qwest was required to implement reduced UNE NRC rates on an interim basis *until* the company provides NRC studies, accompanied by time and motion studies, capable of independent validation by other parties. Similarly, the Commission noted that Verizon was allowed to implement proposed UNE NRC rates on an interim basis, but Verizon was *required* to resubmit NRC cost studies supported by time and motion studies in the new generic cost case. *Forty-Fourth Supplemental Order, at paragraph 10.*

15 The Commission further noted that only Qwest filed a petition for administrative review, and that “Qwest does not challenge the Initial Order’s overall requirement that Qwest submit future nonrecurring cost studies accompanied by time and motion studies.” *Forty-Fourth Supplemental Order, at paragraph 10.*

16 The Fourth Supplemental Order in this proceeding expressly informed Qwest and Verizon that they could be required by the Commission’s Part D orders to prepare time and motion studies in support of NRCs other than those that are incurred at the outset of the ordering process. The Part D Initial Order expressly

¹⁰ See Fourth Supplemental Order, at footnote 4.

states “all future nonrecurring cost studies filed by any party in any proceeding¹¹ must be supported by time and motion studies.” Any reasonable reading of the express language in the Part D Initial Order leads to the conclusion that parties are to perform time and motion studies for both ordering and provisioning activities related to NRCs.¹²

- 17 There is no evidence in any of the successive generic cost proceedings that suggests that SME testimony regarding provisioning activities is qualitatively different than SME testimony regarding ordering activities. The heart of the analysis regarding NRCs in the Part D Initial Order is that SME testimony regarding the time intervals to perform tasks is rejected as a reliable statistical methodology. The Part D Initial Order makes no distinction between ordering and provisioning activities.
- 18 In light of the comprehensive rejection of SME testimony as a reliable statistical methodology in the Part D Initial Order, and as affirmed in the Part D Final Order, there is no basis for parties to form an understanding that time and motion studies need to be prepared for ordering-related activities but not provisioning-related activities. Those Commission Orders make clear that SME testimony is not a reliable statistical methodology with regards to all nonrecurring costs. The Part D Initial and Final Orders plainly require that time and motion studies must be performed to support all nonrecurring costs that comprise nonrecurring cost studies submitted in the new generic cost case. The Commission may reject any nonrecurring costs that are not the product of measured time intervals and subject to validation, except under exceptional circumstances.

¹¹ We limit the phrase "any proceeding" to any proceeding in this docket.

¹² Both the Part D Initial and Final Order refer to ordering and provisioning time estimates in the context of the totality of NRCs at issue. See Forty-First Supplemental Order, at footnote 50, and Forty-Fourth Supplemental Order, at footnote 5.

19 Having considered again our earlier decision that parties are required to perform time and motion studies in support of all nonrecurring costs, we also consider the time in which parties must perform these studies. Although the Commission's decisions in Part D did not become final until 60 days ago, for all intents and purposes the parties knew of the requirement that time and motion studies be performed in support of all nonrecurring costs as early as October 31, 2002, the deadline for parties to file petitions for review to the Part D Initial Order.

20 The generic cost proceedings have suffered from a lack of incentives for the incumbent local exchange carriers to develop their costs as they would in a more traditional regulatory rate case, and the possibility of delay seems to favor their interests in this case. With hearings regarding nonrecurring costs scheduled to begin nearly one year from now, there is insufficient justification to push those hearings even further out than they are today.

21 Qwest and Verizon must allocate whatever resources are necessary to file direct evidence regarding nonrecurring costs supported by time and motion studies according to the procedural schedule that has been established in this proceeding. The Commission intends to establish permanent rates based on the best evidence made available in this proceeding, and may impose sanctions where parties disregard their obligations established by Commission orders. Further, the Commission may schedule status conferences during the course of this proceeding to ascertain whether parties are complying with our orders in a timely way.

ORDER

22 THE COMMISSION ORDERS That Parties must comply in this proceeding with Commission Orders that require time and motion studies to be performed in support of nonrecurring costs for both ordering and provisioning elements.

Dated at Olympia, Washington and effective this 20th day of February, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner