

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Review of  
Unbundled Loop and Switching Rates and  
Review of the Deaveraged Zone Rate  
Structure.

DOCKET NO. UT-023003

COMMISSION STAFF'S  
COMMENTS REGARDING  
FCC'S INTERIM ORDER

1 The Commission Staff (Staff) submits these comments pursuant to the Commission's September 22, 2004, Notice of Opportunity to Comment. The Commission requests comments on the effect, if any, of the Federal Communication Commission's (FCC) August 20, 2004, Order and Proposed Rulemaking<sup>1</sup> on the rates the Commission will decide in this docket. For the reasons set forth below, Staff recommends the Commission establish rates for all unbundled network elements (UNEs) at issue in this docket.

**A. The FCC's Interim Order**

2 The FCC issued its Interim Order in order to "avoid disruption in the telecommunications industry" while the FCC crafts its unbundling rules in a manner consistent with the D.C. Circuit's decision in *United States Telecom Ass'n v. FCC*.<sup>2</sup> The Interim Order contemplates three distinct phases during which different unbundling requirements apply—the interim period, the transition period, and the post-transition period.

---

<sup>1</sup> *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313/CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, FCC 04-179 (rel. Aug. 20, 2004) ("Interim Order").

<sup>2</sup> 359 F.3d 554 (D.C. Cir. 2004), *petitions for cert. filed*, 73 U.S.L.W. 3036 (U.S. July 7, 2004) (Nos. 04-12, 04-15, 04-18) After receiving an extension of time, the appellants filed their petitions for certiorari on June 30, 2004.

3           The interim period is effective until the earlier of (1) six months after the Interim Order is published in the Federal Register or (2) the effective date of the FCC’s final unbundling rules. During this period, incumbent local exchange carriers (ILECs) must provide unbundled access to switching, enterprise market loops, and dedicated transport under the same rates, terms, and conditions that applied under their interconnection agreements in effect as of June 15, 2004; except to the extent that those rates are superseded by voluntary negotiated agreements, an intervening FCC order affecting specific unbundling requirements, or a state commission order raising UNE rates. *Interim Order*, ¶ 29.

4           The transition period is effective for six months following the expiration of the interim period. If the FCC’s final unbundling rules do not include switching, enterprise loops, or dedicated transport, then access to and prices of those elements are governed according to the terms of the transition period for the duration of the transition period. *Id.*

5           Finally, the post-transition period begins when the transition period expires. In the post-transition period ILECs must provide UNEs as required by the FCC’s final unbundling rules, subject to the terms and conditions set forth in the FCC’s rules and the state commissions’ proceedings. *Id.*

**B.     The Commission Should Set UNE Rates in this Docket Notwithstanding the FCC’s Interim Order**

1.     The FCC’s Interim Order Does Not Affect the Commission’s Obligation to Establish Certain UNE Rates and Adopt a Proper Forward-Looking Cost Model.

6           In its Notice and Opportunity to Comment, the Commission stated that in the Interim Order “the FCC put in place a freeze on the changes in the rates, terms and conditions applied under interconnection agreements in place as of June 15, 2004, except that, with respect to rates only, state public utility commissions could order increases in rates for network elements.”

*Notice of Opportunity to Comment*, at 1. It is important to note, however, that the “rate freeze” the FCC imposed in its Interim Order applies only to switching, enterprise market loops,<sup>3</sup> and dedicated transport. *Interim Order*, ¶¶ 1, 16, 21. Nothing in the Interim Order affects the Commission’s authority to set rates for other UNEs, such as mass market loops.

7           The Interim Order does not implicate the primary purpose of this docket, which is to revisit and re-establish Verizon Northwest Inc.’s (Verizon) cost-based rates for certain UNEs. The Interim Order addresses which UNEs are subject to the unbundling requirements of 47 U.S.C. § 251(c)(3), not the requirement that state commissions base the rates for those UNEs on their forward-looking cost. 47 U.S.C. § 252(d)(1)(A). *See also* 47 U.S.C. § 251(d)(2) (authorizing FCC to determine which UNEs must be unbundled pursuant to 47 U.S.C. 251(c)(3)).

8           The Interim Order is in essence a short-term remedy to address access to certain UNEs that are in a state of flux pending the issuance of the FCC’s final unbundling rules. The Commission must determine the rates for those UNEs that are not subject to the Interim Order. The Interim Order does not (and cannot) divest the Commission of its jurisdiction to set rates pursuant to 47 U.S.C. § 252(d), and the Commission’s decision regarding the choice of a cost model will inform its on-going obligations under the federal Act. Also, because it is possible that the FCC ultimately will decide to require access to switching, enterprise market loops, and dedicated transport, any decision made on this record will inform the Commission’s future

---

<sup>3</sup> Generally, enterprise market loops are DS1 or greater. Mass market loops (the pricing and access to which are unaffected by the Interim Order) are copper loops and subloops used to provide narrowband and broadband services. *See In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16,978, FCC 03-36, ¶ 7 (2003) (“TRO”).

pricing decisions for those elements. Because the Commission has the evidence before it, it makes sense to decide those issues on this record.

2. Rates, Terms, and Conditions of UNEs During the Interim Period

9 As stated above, because the Interim Order applies only to switching, enterprise loops, and dedicated transport, the Commission must set rates for other UNEs and decide the characteristics for a proper forward-looking cost study in this docket. With respect to switching, enterprise market loops, and dedicated transport, the Interim Order establishes temporary pricing. Therefore, it makes sense to view the Interim Order as affecting the implementation date of the Commission's decision regarding the rates, terms, and conditions governing unbundled access to switching, enterprise market loops, and dedicated transport, not underlying rates. While it is possible that the FCC may remove switching, enterprise loops, and dedicated transport from the list of UNEs, it has not done so. Therefore, the Commission should set rates for those UNEs and await the FCC's ultimate decision as to whether ILECs will be required to provide unbundled access to them.

Dated: September 30, 2004.

CHRISTINE O. GREGOIRE  
Attorney General

SHANNON E. SMITH  
Senior Counsel  
Attorneys for Commission Staff  
(360) 664-1192