BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the	)	
	)	Docket No. UT-003013 PART B
Continued Costing and Pricing of	)	
Unbundled Network Elements, Transport,	)	AT&T/XO PETITION FOR
Termination, and Resale	)	RECONSIDERATION AND/OR
	)	REHEARING

AT&T Communications of the Pacific Northwest, Inc. ("AT&T"), and XO Washington, Inc., ("XO") (collectively "AT&T/XO") respectfully request that the Commission reconsider and/or rehear determinations the Commission made in its Thirty-Second Supplemental Order (June 21, 2002) ("Order").

I. INTRODUCTION

1. The Commission has demonstrated a commitment to the development of effective local exchange competition when presented with policy and operational issues, particularly in the proceeding addressing Qwest Corporation's ("Qwest's") Statement of Generally Available Terms and compliance with Section 271 of the Telecommunications Act of 1996. The Commission's pro-competitive resolutions of those issues, however, would be rendered virtually meaningless if the Commission does not also establish rates for competing local exchange carriers' ("CLECs'") access to, and interconnection with, the networks of the incumbent local exchange carriers ("ILECs") based on the total element long-run incremental costs ("TELRIC") principles first adopted by the FCC in its *Local Competition Order*[1] and recently upheld by the Supreme Court.

[1] *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325, First Report and Order (Aug. 8, 1996).

2. Many of the determinations in the Order threaten just such a result. The Commission has accepted Qwest and Verizon Northwest Inc.'s ("Verizon's") embedded costs from as long ago as 1997 as representative of the ILECs' costs to provide unbundled network elements ("UNEs") and rejected all evidence to the contrary. The Commission has also refused to require the ILECs to use the costs the Commission previously established in Docket Nos. UT-960369, *et al*., when using the same facilities for high capacity UNEs, resulting in two sets of costs for the identical facilities. The Commission, moreover, has severely limited CLEC cost recovery for interconnection and transport and termination of traffic exchanged with the ILECs, in contravention of FCC rules.

3. Even Qwest has implicitly recognized that the Commission's determinations in the Order (as well as in the prior cost docket) do not comply with the FCC's TELRIC principles by unilaterally filing rates for two-wire, four-wire, DS1 and DS3 loops that are significantly less than the rates established by the Commission. Effective local exchange competition will not develop in Washington if the Commission adopts rates that are *higher* than the rates that the ILEC is willing to charge. Accordingly, AT&T and XO urge the Commission to reconsider and/or rehear the determinations in the Order and establish rates that will encourage the development of competitive telecommunications alternatives for Washington consumers.

II. RECIPROCAL COMPENSATION

A. Tandem Switch Compensation Rate.

4. FCC Rule 51.711(a)(3) provides, "Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate." This language is clear and unambiguous, yet the Commission has concluded otherwise. The Order states that "once a CLEC is entitled to tandem

compensation, Rule 51.711(a)'s symmetry requirement necessitates that a two-tiered rate be established." Order ¶ 103. The FCC rule is not susceptible to such an interpretation.

5. The Commission does not rely on the language of the rule but on other language from the FCC's *Local Competition Order*. Order ¶¶ 103-04. The FCC, however, has interpreted its own rule to mean what it says. In a letter quoted in the Order, the agency noted that "there has been some confusion stemming from additional language in the text of the Local Competition Order regarding functional equivalency," but confirmed that "a carrier demonstrating that its switch serves 'a geographic area comparable to that served by the incumbent LEC's tandem switch' is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network." Order ¶ 100 (quoting letter from FCC bureau chiefs). The Commission cites no FCC order or judicial decision that supports the Commission's interpretation. That interpretation is inconsistent with federal law, and the Commission, therefore, should reconsider that interpretation.

B. Interconnection Cost Sharing

6. The Commission properly concluded that both interconnecting LECs must share the costs of interconnection, regardless of which carrier actually constructs those facilities. The Commission, however, adopted an exception to this requirement: "As argued by the ILECs, the cost sharing for interconnection facilities will be determined according to the relative *local* traffic flow over that facility. Whereas the FCC has concluded that ISP-bound traffic is interstate traffic, this traffic should be excluded from the consideration of interconnection facilities cost sharing." Order ¶ 113 (emphasis in original and footnote omitted). The Commission should reconsider this exception.

7. The Commission cites 47 C.F.R. 51.709 to support its exception, but only subsection (a) of that rule makes reference to "local" telecommunications traffic. Subsection (b)

states, "The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods." If the FCC had intended to limit this obligation to transmission facilities used for local traffic, the rule would have so provided. Indeed, the recently remanded FCC Order addresses only the minute of use compensation rates for ISP-bound traffic and expressly does not alter carriers' interconnection facility cost-sharing obligations: "This interim regime affects only the intercarrier compensation (i.e., the rates) applicable to delivery of ISP-bound traffic. It does not alter carriers' other obligations under our Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection." *Id.* ¶ 78 n.149. The Commission, therefore, should not exempt ISP-bound traffic from the calculation of each party's proportionate share of the cost of interconnection facilities.

III. QWEST COST STUDIES

A. Probability of Manual Orders.

8. The Commission rejected CLEC proposals not to permit Qwest to include costs of manual order processing because such costs are not incurred on a forward-looking basis. Order ¶ 128. In the context of that discussion, the Commission referenced the requirement in the 17th Supplemental Order in Docket No. UT-960369, *et al.*, that the ILECs are required to establish "separate rates for manual and electronic ordering." *Id.* The Order, however, appears to require only that Qwest charge a single rate that includes the relative probabilities (and attendant costs) of manual and electronic ordering. *Id.* ¶ 129. CLECs that submit orders electronically should not be required to compensate Qwest for the costs Qwest allegedly incurs to process manually submitted orders. The Commission, therefore, should clarify that, consistent with its prior

determination, Qwest should establish separate non-recurring charges for orders submitted electronically and orders submitted via facsimile for manual processing.

B. TIFs.

9. The Commission found that "after defining the network element or service being studied, Qwest must determine the total installed investment that the element or service will require." Order ¶ 181. "According to Qwest the total installed factor ('TIF') is a cost factor that combines all proper investment loadings into one factor that, when multiplied against the material investments, provides a total installed investment." *Id.* The Commission rejected all proposals to modify Qwest's TIFs and accepted Qwest's proposed TIFs. *Id.* ¶ 203. This determination is not supported by record evidence and is inconsistent with the FCC's TELRIC requirements.

10. The Commission refused to make any of the adjustments that any other party recommended to Qwest's TIFs because "the TIFs were derived from Qwest's records and therefore reflect *costs actually incurred*" over five years ago. *Id.* ¶ 201 (emphasis added). This is a classic definition of embedded costs, which the FCC has expressly prohibited state commissions from using to establish UNE rates. *Local Competition Order* ¶ 705. The Commission's adoption of embedded costs as the basis for Qwest's TIFs thus represents a clear violation of the FCC's TELRIC standards.

11. The Commission also concluded that "no party has shown that the application of Qwest's TIFs to its equipment cost estimates results in unreasonable installed cost estimates." *Id.* ¶ 200. Qwest, however, has the burden both to produce evidence and to prove that its cost estimates comply with the FCC's TELRIC requirements. *Local Competition Order* ¶ 680. Qwest produced evidence of its embedded costs but produced no evidence to demonstrate that those costs represent the costs that an efficient provider would reasonably incur on a forward-

looking basis. By refusing to require Qwest to produce such evidence and requiring CLECs to prove Qwest's cost estimates unreasonable, the Commission shifted the burden of proof to the CLECs contrary to FCC orders.

12. Despite Qwest's failure to produce sufficient evidence to prove that its proposed TIFs comply with TELRIC principles, other parties submitted evidence that Qwest's cost estimates do not comply with those principles. The Commission rejected that evidence because it was based on a qualified expert's opinion and "[t]his Commission has expressed its preference for reliance on 'hard' data that can be validated rather than the opinion of subject matter experts." Order ¶ 200. TELRIC principles, however, necessitate the use of expert opinion because cost estimates must reflect the costs that an efficient provider reasonably will incur *in the future*, not the costs that have been incurred in the past. *E.g., Local Competition Order* ¶ 683. The Commission's "preference" for "hard" data cannot justify rejection of expert opinion when that opinion complies with TELRIC principles while the "hard" data does not.

13. The Commission also discounted Mr. Weiss' testimony because it was based on his experience with independent telephone companies, not with a regional Bell operating company:

> We do not find the Joint CLECs argument convincing because small companies are known to have less buying-power than large companies. We would expect to observe smaller TIFs for a small company because it has to pay more for materials. Since TIFs are calculated as installed cost divided by material cost, a larger expenditure for materials will raise the value of the denominator in the TIF calculation and therefore lower the value of the ratio, all else being equal.

Order ¶ 202. This finding is flawed on multiple levels.

14. First, Mr. Weiss worked for a "mid-size independent telephone company," not a "small company." Ex. T-1330 (Weiss Response) at 2. Second, the record is devoid of any evidence to support the propositions underlying the Commission's findings (1) that small

companies have significantly less buying power than large companies for all products and services or that the mid-size company for which Mr. Weiss worked had significantly less buying power than Qwest; (2) that Mr. Weiss' knowledge and experience is limited to his employment with a mid-size independent telephone company; and (3) even if those two propositions were true, that "all else [is] equal," *i.e.*, that a small company has unequal buying power with respect to materials but equal buying power with respect to engineering and installation of those materials. Third, the Commission's first proposition (that small companies always have less buying power than large companies) is logically irreconcilable with the third proposition (that small companies incur exactly the same engineering, installation, and other non-material costs as Qwest incurs) in the absence of any evidence to support either proposition. Fourth, even if the Commission's other unsupported speculation had support in the record and was logically consistent, there is no evidence or logical inference that the increased material costs incurred by a mid-sized ILEC accounts for 100% of the difference between the TIFs that Mr. Weiss recommended and the TIFs that Qwest proposed.

15. The Commission also dismissed concerns that the data on which Qwest relies is now five years old, finding that "there is no evidence indicating that Qwest's TIFs from 1997 result in an overstatement of costs." Order ¶ 203. There is no evidence, however, that the costs that Qwest incurred five years ago represent the costs that Qwest reasonably will incur in the future. To the contrary, scarcely a day goes by without a story or analyst's report that telecommunications equipment manufacturers are in financial difficulty and need to generate revenues any way they can. In later cost docket proceedings in other states, Qwest produced more recent contracts with equipment vendors (which also provide engineering and installation) that reflect significantly lower prices (and correspondingly lower costs to provide high capacity

loops). *E.g.*, *In re Application of Qwest for Commission Determination of Prices for Wholesale Facilities and Services*, Utah PSC Docket No. 00-049-105, Reporter's Transcript of Proceedings at 399-402 (Oct. 18, 2001) (excerpts of cross-examination of Qwest witness Robert Brigham) (attached to this Petition as Exhibit A). At a minimum, the Commission should reopen the record in this proceeding or provide an opportunity in another phase of this docket or in Docket No. UT-023003 to consider this and other more recent evidence.

16. Qwest's TIFs do not comply with the FCC's TELRIC principles, and the Commission should reconsider and/or rehear its decision to the contrary.

C. Utilization or Fill Factors.

17. The Commission approved Qwest's proposed utilization rates for high capacity loops because the Commission found the proposal for an 85% utilization too high and "the use of OC3-based architecture is the least-cost solution when demand for DS1s at a given location exceeds 11 DS1s, even if the utilization rate for this architecture may be lower than the utilization rate for other solutions." Order ¶ 204. The Qwest cost studies that the Commission cites, however, assume fully deployed optical equipment used in the various architectures, including all line cards and other "plug-in" components that would be deployed only as needed to serve the anticipated demand. In other words, Qwest assumes an OC3 architecture that is fully equipped to provide 84 DS1 circuits even though it is only being used to provide 31 DS1s. An efficient, forward-looking provider would minimize its costs and would outfit its equipment with only the line cards and other material necessary to serve the anticipated demand. Contrary to these TELRIC principles, Qwest has inflated its cost estimates by using inconsistent assumptions – a low fill factor and fully deployed equipment.

18. The Commission's conclusion also rests on the false premise that all of Qwest's cost estimates for high capacity loops are based on various architectures that are weighted to

reflect different levels of demand. Qwest's DS3 model documentation describes eight design architectures to provision DS3 circuits with no one configuration having a weighting over 50%. The cost study itself, however – which actually produces the costs on which Qwest bases its proposed rates – assumes only a single design architecture. Not surprisingly, that architecture has the highest costs and the lowest fill factor resulting in inflated costs. Again, Qwest has inflated its cost estimate by assuming that Qwest will use a single architecture for provisioning all DS3 facilities, even if such an architecture is not the least cost solution based on the anticipated demand.

19. The Commission, therefore, should reconsider its approval of such inconsistencies either by applying an 85% fill factor to the fully deployed equipment, regardless of the type of architecture used, or requiring Qwest to reduce its equipment prices to reflect deployment of only those facilities needed to serve the anticipated demand and requiring Qwest to revise its DS3 model to reflect the assumptions in the model documentation. To the extent necessary, the Commission should rehear its determination and permit presentation of additional evidence on these issues in phase E or in Docket No. UT-023003

D. Consistency of Loop Cost Estimates

20. The Commission established rates for two-wire and four-wire unbundled loops in Docket Nos. UT-960369, *et al.*, and those rates are not at issue in this docket. UNEs that are at issue, however, include many of the same equipment and facilities as unbundled loops. The copper plant used to provide four wire copper loops, for example, is exactly the same plant that Qwest uses to provide some DS1 loops. The electronics used to provide two- and four-wire loops via digital loop carrier ("DLC") are the same electronics that Qwest uses to provide high capacity loops. Parties other than the ILECs, therefore, proposed that the Commission establish costs for high capacity loops that incorporate and are consistent with the costs the Commission

established in the prior cost docket to the extent that these loops use some or all of the same facilities. A decision not to require such consistency violates basic TELRIC principles and represents arbitrary and capricious decision-making.

21. The basis for the Commission's rejection of the Joint CLECs' proposal does not address the central issue. The Commission characterized the proposal as recommending the use of the same cost models that were used in Docket No. UT-960369. Order ¶¶ 228-29. While use of those same models would ensure the necessary consistency, the proposal was not so narrow. AT&T/XO's concern is that failure to incorporate the costs the Commission found in the prior cost docket results in two different cost estimates for the exact same facility depending on whether that facility is used to provision a four-wire loop or a DS1 loop. A single facility has only one cost, regardless of the service provided over it. *See, e.g.*, *Local Competition Order* ¶ 766 ("Interconnection and unbundled elements are intermediate services provided by incumbent LECs to other telecommunications carriers, and there is no evidence that the cost of providing these intermediate services varies with the class of service the telecommunications carrier is providing to its end user customers").

22. The Commission's refusal to establish consistent cost estimates for the same facilities also extends to unbundled dark fiber loops. The Commission did not find "germane" a comparison between Qwest's proposed dark fiber loop rate of $98.64 with the statewide unbundled loop rate established in Docket No. UT-960369 of $18.16 "because the capacity of these elements is significantly different." Order ¶ 253. The Commission rejected that very position in Docket No. UT-960369 when it required that line counts used in cost models count fiber on a per strand, rather than per channel equivalent, basis. Having established costs per physical loop, the Commission cannot now justify a substantially higher rate for one of those

loops because it has a higher capacity than other loops that are the same size. Indeed, proper electronics can increase the capacity of copper facilities to provide a DS1 service. Using the reasoning in the Order, therefore, Qwest should be entitled to charge two or three times the rate previously approved by the Commission for four-wire copper loops if the CLEC intends to use that loop to provide DS1 service, rather than two voice channels. Such an outcome is irreconcilable with TELRIC principles and the Commission's prior cost determinations.

23. The Commission, therefore, should reconsider its decision not to require the cost estimates in this proceeding to incorporate, and be consistent with, the costs the Commission established in Docket No. UT-960369 for the same facilities. At a minimum, the Commission should provide parties with an opportunity in Docket No. UT-023003 to ensure that all loop rates are based on facilities with the same costs.

IV. VERIZON COST STUDIES

A. Non-Recurring Cost Methodology – Order Entry Time Study.

24. Verizon's non-recurring charges include recovery of costs that Verizon allegedly incurs to enter and process CLEC orders. The Commission rejected CLEC and Staff proposals to reduce Verizon's inflated cost estimates for these activities and found "that a just and reasonable adjustment to Verizon's actual observed work times is an increase of 20%." Order ¶ 277. This increase, according to the Commission, is intended to make "allowance for tasks that are not performed and observed as a continuous activity." *Id*. This finding is inconsistent with TELRIC principles and should be reconsidered.

25. The Commission ignores the TELRIC requirement that rates are to be established based on a reasonable estimate of the costs an efficient provider will incur on a forward-looking basis. The "actual observed work times" in an order processing center that had been in operation for only a short time provides no basis on which to conclude that those times reflect reasonable

efficiency when they study was undertaken, much less on a forward-looking basis. Even if Verizon had produced such evidence – which it did not – there is no identification or quantification of any "tasks that are not performed and observed as a continuous activity." The Commission's figure of a 20% increase over actual observed work times thus is spun from whole cloth, not the evidentiary record.

26. The Commission's finding, moreover, is inconsistent with other findings in the same order. The Commission rejected CLEC proposals to decrease ILEC cost estimates because those proposals allegedly were not based "on 'hard' data that can be validated rather than the opinion of subject matter experts." Order ¶ 200. The Commission, however, has adopted an *increase* over the "hard" data that Verizon provided of its actual observed work times based not on additional "hard" data or even expert witness testimony but on the Commission's own judgment. Such inconsistency in the standards the Commission uses to evaluate record evidence and party proposals represents arbitrary and capricious decision-making and should be corrected.

B. High Capacity Facilities

27. The Commission rejected the Joint CLECs' concerns with the technology mix, fill factors, and consistency with cost determinations in Docket No. UT-960369 assumed in Verizon's high capacity facility cost studies on the same basis as it rejected those same concerns with Qwest's cost studies. Order ¶¶ 371 & 386. Verizon's cost studies, however, suffer from the same deficiency as Qwest's cost studies discussed above by applying a low fill factor to fully deployed equipment, rather than matching the deployment to the fill factor. Verizon also has not estimated costs for facilities used to provide high capacity circuits consistently with the Commission's prior cost determinations, as the Commission itself concluded. *See* Order ¶¶ 347,

353, 355, & 361. Accordingly, the Commission should reconsider its decision on these issues, or alternatively rehear and consider additional evidence in phase E or Docket No. UT-023003.[2]

C. Dark Fiber.

28. The Commission refused to compare Verizon's dark fiber rates with the rates for unbundled loops and dedicated transport that the Commission established in Docket No. UT-960369, just as the Commission refused such a comparison for Qwest. Order ¶ 406. The Commission, however, misinterprets the Joint CLECs' position as an "assertion that an unbundled loop and dedicated transport both use the same underlying facility." *Id*. The Joint CLECs' assertion is that dark fiber to be used for loop facilities uses the same facilities as unbundled loops and that dark fiber to be used for dedicated transport uses the same facilities as unbundled dedicated transport. The Joint CLECs thus proposed that unbundled dark fiber be priced no higher than an unbundled loop when the fiber is used to provide loops and no higher than dedicated transport when the fiber is being used to provide dedicated transport.

29. The Commission, therefore, should reconsider its decision to permit Verizon to charge substantially more for dark fiber when it is provided alone than Verizon charges when that same facility is lit and used to provide either an unbundled loop or dedicated transport.

V. CONCLUSION

30. Effective local exchange competition cannot and will not develop in Washington in the foreseeable future if CLECs cannot obtain access to, and interconnection with, Qwest's and Verizon's networks at rates based on TELRIC costs. Several of the Commission's

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[2] In addition, the Commission accepted Verizon's proposed cost model and inputs for use in this proceeding, but Verizon's model and inputs will be at issue in the new cost docket. Accordingly, the Commission should clarify that these determinations apply only to this proceeding and do not preclude parties from addressing these issues in the new cost docket, including in the context of a re-examination of Verizon's high capacity loop rates.

determinations in the Order are inconsistent with the FCC's TELRIC principles, as well as the determinations that the Commission made in the prior cost proceeding, resulting in rates that substantially exceed reasonable, forward-looking costs. AT&T and XO, therefore, urge the Commission to reconsider and/or rehear those determinations.

RESPECTFULLY SUBMITTED this 2nd day of July, 2002.

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