

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 B**

VERIZON NORTHWEST INC.'S RESPONSE TO PETITIONS FOR RECONSIDERATION AND CLARIFICATION OF THE PART B ORDER

Pursuant to the Washington Utility and Transportation Commission's ("WUTC") July 2, 2002 Notice, Verizon Northwest Inc., ("Verizon NW") responds to petitions for reconsideration and clarification of the 32nd Supplemental Order (the "Part B Order") filed by Covad Communications Company ("Covad"), AT&T Communications of the Pacific Northwest and XO Washington Inc. (collectively "AT&T/XO"), and the Washington Telecommunications Ratepayers Association for Cost-Based and Equitable Rates ("TRACER").

I. The Commission Should Defer Consideration of Line Splitting, Line Sharing Over Fiber, And Packet Switching Until The FCC Issues Rules Consistent With *United States Telecom Association v. FCC*.¹

Covad requests that the Commission modify the Part B Order to (i) include resolution of remaining terms, conditions, and prices for line splitting in Part E of this proceeding, and (ii) require the immediate opening of a new docket to address line sharing over fiber-fed loops and packet switching. Covad Petition at 1-5. In its request, Covad fails to address the impact of *United States Telecom Association v. FCC*, which remanded the *UNE Remand Order*,² and vacated and remanded the *Line Sharing Order*.³ As Verizon NW demonstrated in its Motion for

¹290 F.3d 415 (D.C.Cir. 2002).

²*In the Matter of Implantation of the Local Competition Provisions of the Telecommunications Act of 1996* CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98 (rel. Nov. 5, 1999).

³*In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC-Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. Nov. 1999).

Reconsideration, the Commission's decision to defer the issues of line splitting, line sharing over fiber-fed loops, and packet switching to another proceeding is prudent in light of the D.C. Circuit's opinion. Any attempt to establish terms, conditions, or rates for line splitting, line sharing over fiber-fed loops, or packet switching before the ILEC's obligations, with respect to those issues settled at the federal level, would unnecessarily waste Commission and industry resources.

II. The Commission Should Disregard Covad's Recommendations Regarding Loop Extender Rates.

Covad requests that the Commission modify the Part B Order to permit Verizon NW to charge for 2-wire loop extenders "only where that technology is requested for a purpose other than to bring the loop up to technical specifications." Covad Petition at 5-6. Covad fails to cite any evidence in the record to support its request, as required by Washington Administrative Code §480-09-810(3). Indeed, nothing in the record can support Covad's request, since Covad filed no testimony on this issue and did not raise it in its post-hearing briefs. A petition for reconsideration is not the appropriate mechanism to raise an issue for the first time. Due process requires Covad to present its proposals on the record in a manner that permits Verizon NW an opportunity to create a record in response. Covad did not do this with respect to its request regarding the charge for 2-wire loop extenders, and that request must be denied.

III. Verizon NW's Non-Recurring Cost Studies

AT&T/XO request that the Commission reconsider establishing non-recurring rates based on Verizon NW's actual observed work times plus 20%. AT&T/XO Petition at 11-12. AT&T/XO criticize the Commission for relying on actual observed work times in "an order processing center that had been in operation for only a short time." *Id.* at 11. AT&T/XO are mistaken on this fact. As explained in Verizon NW's Motion for Reconsideration, actual

observed work times referenced by the Commission were the times to process Access Service Requests at Verizon's National Access Contact Center ("NACC"). Verizon NW Motion at 9. The NACC has been the single point of contact for processing interexchange-carrier requests for interstate and intrastate access services for over two decades. Exhibit T-1161:5-7. (Richter). Thus, the actual observed work times reflect a work center that has a great deal of experience processing orders similar to the orders CLECs place for dark fiber, EELs, dedicated transport, and SS7.

IV. Verizon NW's Recurring Cost Studies

A. AT&T/XO's Petition

In seeking reconsideration of several decisions regarding Verizon NW's recurring rates, AT&T/XO simply repeat arguments from their post-hearing brief already considered and rejected by the Commission, without providing any new evidence or arguments. Verizon NW's post-hearing brief provided an adequate rebuttal to each of these points, and the Commission should not reach a different result on reconsideration.

First, Verizon NW provided an adequate rebuttal to CLEC allegations, at pages 9-11 and 12 of AT&T/XO's Petition, that its high capacity loop studies fail to include documentation or an explanation demonstrating that their cost estimates are consistent with the methodology or results adopted by the Commission in Docket UT-960369. As outlined by Verizon NW, the direct evidence provided by the CLECs on this issue ignores the differences in customer demand between high capacity digital facilities and DS-3 loops. *See* Verizon NW's Reply Brief at ¶111.

Second, AT&T/XO's request that the Commission adopt an 85% utilization assumption for fully deployed equipment in calculating high capacity loop costs does not provide any basis for a different result from that ordered by the Commission. *See* AT&T/XO Petition at 8, 12. As

outlined in Verizon NW's Reply Brief, nothing in the record supports an 85% fill factor and AT&T/XO's preferred technology mix. Indeed, neither the CLECs nor their witness could demonstrate that they experience a fill factor close to 85%. Tr. 3585 (Weiss); Exhibit 1332. Nor could the CLECs provide any examples of a competitive market experiencing such a high fill factor. Tr. 3585 (Weiss). *See* Verizon NW Reply Brief at ¶ 123.

Verizon NW, by contrast, demonstrated why the use of an 85% fill factor coupled with the use of the OC-3 technology choice recommended by AT&T/XO was unreasonable. Such a proposal leads to the absurd conclusion that the average end user DS-1 customer has a demand for 71 DS-1s despite the fact that Verizon NW's individual end user customers do not even approach that average level of demand. Exhibit T-1174:19(Collins). If served uneconomically by an OC-3 with 84 DS-1s, customers with demand for one or two DS-1s would have fill factors on those facilities of 1.2% and 2.4% respectively. *Id.* at 20. Application of AT&T/XO's flawed logic simply represents an attempt to understate the UNE DS-1 cost by utilizing the economies of scale of larger capacity technology while at the same time ignoring the underlying demand for which the UNE is intended. *See* Verizon NW Reply Brief at ¶¶ 112-13.

Finally, AT&T/XO repeat their request that recurring charges for dark fiber should be no higher than an unbundled loop rate when the fiber is used to provide loops, and no higher than a dedicated transport rate when the fiber is used to provide dedicated transport. In repeating this request, AT&T/XO fail to provide a citation to anything in the record substantiating the claim that the underlying facilities are the same. *See* AT&T/XO Petition at 13. As explained by Verizon NW, the underlying facilities are not the same and are not used in the same manner. *See* Verizon NW Reply Brief at ¶ 125. For example, a 2-wire analog loop consists of either copper or a combination of copper and fiber (with associated DLC). The cost for such a loop is

determined on a per voice grade channel basis. On the copper portion, the cost is on a per pair basis and on the fiber portion the cost is expressed on a per DS-0 basis (*i.e.* based on a fraction of the total bandwidth traveling over a single fiber). Exhibit T-1174:13-14 (Collins). On a dark fiber loop, however, a single fiber is provided throughout the length of the loop; a customer uses the entire fiber, not just a fraction of the bandwidth traveling over it as in the case of “lit” facility services. *See* Exhibit 1171/C-1171 at Binder 9, Tab 22, Section A. In short, AT&T/XO’s proposal is based on an incorrect factual premise unsupported by the record, and should not be reconsidered.

B. TRACER’s Petition

TRACER renews its criticism of ICM for designing a network that meets both existing and future demand and that assigns spare capacity to working lines in existence today. TRACER Petition at 4-6. TRACER repeats its post-hearing argument that inclusion of spare capacity required to serve future demand forces today’s customers to subsidize customers who will enter the market in the future. *Id.* at 4. As explained in Verizon NW’s Reply Brief, TRACER essentially argues that an objective fill rate,⁴ rather than actual or projected fill rates, should be used to establish TELRICs. The Part B Order is the third Order by this Commission rejecting TRACER’s flawed argument.⁵ *See* UT-960369 Eighth Supplemental Order at ¶ 171; UT-980311(a) Tenth Supplemental Order at ¶ 296. In this proceeding, no party provided any new evidence for the Commission to consider to reach a different result. *See* Verizon NW Reply Brief at ¶¶ 81-82.

⁴ As the Commission has explained, “objective fill is the level of utilization at the point at which additional equipment is installed to meet the level of demand. The objective fill is almost always greater than the actual fill.” UT-960369 Eighth Supplemental Order at ¶ 168.

⁵ TRACER’s argument was also rejected by the California Commission in D.96-08-021 (R.93-04-003, I.93-04-002).

TRACER cites the FCC's findings in the *Tenth Report and Order*⁶ that proper costing for universal service should not be determined by ultimate demand. However, as the Commission correctly concluded, the FCC's universal service cost model, HCPM, does not provide guidance for UNE costing issues pending in Part B. The FCC itself has noted this on several occasions. In its *Fifth Report and Order*⁷, the FCC explicitly alerted parties to the fact that it had not evaluated the HCPM for any purpose other than national universal service cost calculations. See *Fifth Report and Order* at ¶12. In the *Tenth Report and Order*, cited by TRACER, the FCC made it clear that

[t]he federal cost model was developed for the purpose of determining federal universal service support, and it may not be appropriate to use nationwide values for other purposes, such as determining prices for unbundled network elements. . . . we caution parties from making any claims in other proceedings based upon the input values adopted in this Order.

Tenth Report and Order at ¶ 41. The FCC reiterated this position in its review of Verizon's 271 application in Massachusetts:

The Commission has never used the USF cost model to determine rates for a particular element, nor was it designed to perform such a task. ***The model was designed to determine relative cost differences among different states, not actual costs.*** That is the purpose for which the Commission has used the model in the universal service proceeding.

*Verizon MA 271 Order*⁸ at ¶ 32 (emphasis added).

⁶ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Report and Order, FCC 99-304 (1999).

⁷ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Report and Order, FCC 98-279 (rel. October 28, 1998).

⁸ *In the Matter of Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc. for Authorization to Provide In-Region, Inter-LATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130 (rel. April 16, 2001).

Finally, just days after the Supreme Court issued its decision in *Verizon Communications Inc. v. FCC*,⁹ the FCC explicitly cautioned against using the HCPM to estimate the costs of UNEs. *Joint Application of BellSouth Corp., et al. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order at ¶ 73 (rel. May 15, 2002). Thus, while the Commission may not have provided an explanation or rationale for not relying on the FCC's universal service decisions in costing UNEs, the FCC itself has. The Commission should not reconsider its decision to accept Verizon NW's method for sizing distribution facilities.

V. Tandem Switching Rate

In the Part B Order, the Commission held that a two-tiered rate will apply when a CLEC's switch satisfies the applicable test.¹⁰ Part B Order at ¶¶ 102-105. AT&T/XO argue that 47 C.F.R. § 51.711(a)(3) and an FCC letter interpreting that rule mean that once a CLEC switch satisfies the applicable test, a two-tiered rate is inappropriate because the CLEC should be entitled to the tandem rate for *all* traffic terminated to it. AT&T/XO Petition at 2-3. As the Commission's analysis and decision in the Part B Order make clear, AT&T/XO are wrong. Contrary to AT&T/XO's argument—the same argument already asserted in their testimony and briefs and rejected in the Part B Order—neither the rule nor the FCC letter support their position. Rather, the Commission's decision to require a two-tiered rate is consistent with applicable law and should not be reconsidered.

⁹ 122 S.Ct. 1646 (2002).

¹⁰ Verizon NW moved for reconsideration of the Commission's decision regarding the applicable test to the extent that it permits a CLEC to become eligible for the tandem rate without demonstrating that its switch satisfies the geographic area test.

AT&T/XO focus on a subsection of the applicable FCC rule—subsection (a)(3). As the Commission recognized in the Part B Order, however, § 51.711—not just subsection (a)(3) of that rule—governs the tandem rate issue. That rule requires that rates between carriers be *symmetrical*, unless certain exceptions exist:

(a) Rates for transport and termination of telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section.

47 C.F.R. § 51.711(a). Subsection (a)(3) is not an exception to the symmetrical rate requirement.¹¹ As such, even if a CLEC becomes eligible for the tandem rate by demonstrating that its switch satisfies the appropriate test, § 51.711's symmetrical rate requirement still applies. Symmetrical rates mean that an ILEC and a CLEC that are exchanging traffic both pay and receive the same rate for the same category of traffic. 47 C.F.R. § 51.711(a)(1). As the Commission pointed out, acceptance of AT&T/XO's argument that the tandem rate should apply to 100% of the traffic terminated to a CLEC whose switch satisfies the applicable test would violate this rule by producing asymmetrical rates. *See* Part B Order at ¶¶ 102-105.

AT&T/XO also contend that a FCC letter interpreting § 51.711(a)(3) supports their position. AT&T/XO Petition at 3. It does not. The purpose of that FCC letter was to clarify the test a CLEC's switch must satisfy in order to be eligible for the tandem rate, *not* how the tandem rate should be applied after a CLEC's switch satisfies the appropriate test. *See* Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau of the FCC, and Dorothy T. Attwood, Chief, Common Carrier Bureau of the FCC, to Charles McKee, Senior Attorney, Sprint

¹¹ Subsections (b) and (c) are not at issue in Part B.

PCS (May 9, 2001). In short, the Commission should not reconsider its decision to apply a two-tiered rate, which is consistent with applicable law.

VI. Conclusion

For the reasons stated herein, Verizon NW asks that the Commission reject the petitions for reconsideration and clarification filed by Covad, AT&T/XO, and TRACER.

Respectfully submitted,

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