

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

In the Matter of the Review of Unbundled Loop and Switching Rates and Review of the Deaveraged Zone Rate Structure))))) <hr/>	Docket No. UT-023003 WORLDCOM MOTION TO COMPEL
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WorldCom, Inc., on behalf of its regulated entities in Washington, moves the Commission under WAC 480-09-480 for an order requiring Verizon Northwest, Inc. (“Verizon”) and Qwest Corporation (“Qwest”) to permit the parties in this proceeding to observe the time and motion studies performed by Verizon and Qwest, or their agents, as ordered by this Commission in previous Orders in this docket as well as Docket No. UT 03103. In support thereof, WorldCom states as follows:

1. This Commission’s Sixth Supplemental Order in this docket succinctly explains the long and complicated history of this issue.¹ The Commission stated:

6. Issues in the new generic cost case arise from different sources. . . . 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

¹ *Sixth Supplemental Order: Required Preparation of Time and Motion studies in Support of Nonrecurring Costs for Ordering and Provisioning Unbundled Network Elements*, Docket No. UT-023003 (February 20, 2003).

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

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.*

11. On November 8, 2002, an order was entered in the new generic cost case regarding issues raised at the October 16th prehearing conference.⁶ 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.⁷

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.*

16. . . . The Part D Initial Order expressly states "all future nonrecurring cost studies filed by any party in any proceeding⁸ must be supported by time and motion studies." Any reasonable reading of the express language in the Part D Initial Order leads to

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").

⁶ See Docket No. UT-023003, Fourth Supplemental Order ("PHC Order").

⁷ Fourth Supplemental Order, at para. 20.

⁸ We limit the phrase "any proceeding" to any proceeding in this docket.

the conclusion that parties are to perform time and motion studies for both ordering and provisioning activities related to NRCs.⁹

18. . . . 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.

2. Thus, Qwest and Verizon are required to undertake time and motion studies for purposes of gauging the resources required to perform non-recurring tasks undertaken in the provision of unbundled network elements (“UNEs”).
3. During a prehearing conference, the parties discussed the concept of observation of the time and motion studies performed to comply with these orders. WorldCom and Covad requested that they be allowed to observe them. Qwest and Verizon responded, requesting information as to the extent of the proposed observation. A schedule was then created to allow for the exchange of information between the parties on the issue.
4. WorldCom provided a proposal for observation to Qwest and Verizon on February 14, 2003.¹⁰ Qwest responded on February 28, 2003.¹¹ Verizon has not yet provided a written response. Verizon did, however, telephone counsel for WorldCom on the afternoon of March 13, 2003 to provide a preliminary oral response.

⁹ 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.

¹⁰ See Attachment A.

¹¹ See Attachment B.

5. WorldCom requested that it be allowed to obtain a copy of the ILECs' "Time and Motion Study Work plan," which set the parameters for the study, including but not limited to:
 - a. Definition of project deliverables or objectives;
 - b. Detailed explanation of the process designed to accomplish the objectives;
 - c. Identification of individuals involved in implementing the process as well as those with whom they will interact;
 - d. Timelines for achieving objectives;
 - e. Standard forms, processes and instructions meant to ensure conformity with the work plan and consistency throughout the study;
 - f. Rules to be followed to protect against bias in the study.

6. After receiving the Time and Motion Study Work plan, WorldCom will be able to articulate the specific steps and processes that it believes it should be allowed to observe. Absent that Work plan, however, and in the interest of moving the process along, WorldCom proposed that parties be allowed to observe three main processes:
 - a. ILEC time and motion study managers explaining the Time and Motion Study Work plan to the personnel to be observed;
 - b. 3 to 5 individual observation events chosen by WorldCom, including 2 to 3 WorldCom representatives observing actual measurement activities;
 - c. The assimilation and compilation of raw data from Time and Motion Study observations to activity time estimates for purposes of estimating actual non-recurring charges in the ILEC cost studies.

7. Both Qwest and Verizon agreed to provide WorldCom with a copy of its work plan, although they would not commit to including the subjects described by WorldCom in that work plan. Both Qwest and Verizon also agreed to allow WorldCom to be present when the work plan was explained to the personnel to be observed. Qwest additionally agreed to allow observation by 2 to 3 WorldCom representatives of 3 to 5 individual events.
8. Verizon explained that while its plans to prepare time and motion studies are preliminary at this point, it would employ a third party to perform the time and motion study of the Access Service Request (“ASR”) ordering process and thus, there would be no need for other parties to observe. As to the Local Service Request (“LSR”) ordering process, computers automatically generate processing times during the process; therefore, no need exists for WorldCom to observe. With regard to provisioning activities, Verizon agreed to allow observation as long as the observation did not disrupt day-to-day operations.
9. Both Qwest and Verizon refused to allow WorldCom, or presumably any other party, to observe the assimilation and compilation of raw data for purposes of estimating actual non-recurring charges. They claim that this is an “internal” work activity in anticipation of the preparation of cost studies and testimony for the hearing. Qwest stated that it believed observation of this step in the creation of cost studies is privileged, would be disruptive to the process and does not lend itself to observation by a third party.
10. WorldCom disagrees with the limitations that Qwest and Verizon have placed on the observation of the time and motion study process. WorldCom

disagrees that employing a third party to perform a study negates the need for observation and likewise, that the computer generation of data negates the need for observation. WorldCom also disagrees that the parties should be precluded from observing the assimilation and compilation of data for the development of non-recurring costs.

11. WAC 480-120-480(6)(iv) permits discovery of data relevant to the issues in the proceeding as well as data that is reasonably calculated to lead to the discovery of admissible evidence. No party has argued that the data sought here is not relevant to the validity of the assumptions underlying the ILEC cost studies. It is. At a minimum, it is reasonably calculated to lead to the discovery of admissible evidence.
12. The Commission ordered the ILECs to perform time and motion studies because it rejected subject matter expert (“SME”) testimony as a reliable statistical methodology. At the heart of the rejection of the SME process is the Commission’s mandate that the underlying data and assumptions used in the ILEC cost studies be capable of independent validation by other parties.¹² Through observing these activities, the other parties can attempt to ensure that, consistent with the Commission’s Orders, the resultant time and motion study is a scientific attempt to measure the actual resources required by Qwest and Verizon to undertake certain non-recurring activities.
13. Hiring a third party to perform the time and motion study, as Verizon plans to do for the ASR ordering processes does not negate the need for independent

¹² Sixth Supplemental Order at paras. 14 and 18 and the underlying orders.

validation by other parties. Nor does computer generation of the data during the ordering processes.

14. Time and motion studies are a superior vehicle for measuring the resources required to accomplish non-recurring activities when done correctly. However, the time and motion study process is subject to manipulation in the same manner as is a cost study based upon subject matter expert opinion. It is for that reason that some amount of third party participation/observation is required before WorldCom can in good conscience agree that the process or methodology undertaken by either Qwest or Verizon is appropriate. In sum, independent validation is best achieved by allowing the other parties in the proceeding to observe the process.
15. Even if a third party performs the test, the other parties should be allowed to verify the accuracy of the time calculations and the necessity and efficiency of the processes and equipment employed. As to computer generation, parties should be allowed to verify that the computer-generated time is accurate. Additionally, once again, the parties should be allowed to verify the necessity and efficiency of the processes and equipment. All of this data is necessary to enable other participating parties, the ILEC wholesale customers, to analyze whether the ILEC cost studies and resulting rates are consistent with the Federal Communications Commission's Total Element Long Run Incremental Cost ("TELRIC") principles.
16. Qwest and Verizon both refuse to allow WorldCom or any other party to observe the most crucial steps of its time and motion study process, the

assimilation and compilation of the data for purposes of developing non-recurring costs. Qwest and Verizon claim that the information is “internal.” This is not a valid objection to produce relevant information. The parties have entered into a protective agreement that protects the confidentiality of the data. This provides adequate protection against any feared inappropriate disclosure.

17. The ILECs next claim that the assimilation and compilation of the time and motion study data into the cost studies are “privileged matters” as the task is performed in anticipation of the hearing.
18. The first problem with the ILECs’ privilege claim is that they simply make a conclusory statement that the information is privileged without any basis to enable the Commission or the other parties to assess whether a privilege applies. WorldCom asks the Commission to reject this blanket claim of privilege. At a minimum, the Commission should require the ILECs to provide substance to its privilege claim.
19. The second problem with the objection to permitting the observation of the data compilation and assimilation is that it is discoverable as information that provides the basis for the ILECs’ expert opinions. Rule 26 of the Washington Rules of Civil Procedure permits discovery of facts and opinions that form the basis of expert opinion. The assimilation and compilation of the data used in the ILEC cost studies is fact and opinion that underlies the testimony of the ILECs’ experts. The ILECs cannot hide the discovery of this information under the protective cloud of “privilege.” Presumably, attorneys do not

develop the cost studies presented by the carriers. Rather, experts create them. Involving attorneys in the process does not in and of itself create a privilege and protect the information from discovery. Further, allowing the ILECs to prevent observation of this step of the process would subvert the Commission's goal of evaluating cost studies that are capable of independent validation.

20. For these reasons, WorldCom asks the Commission to compel Qwest and Verizon to allow the parties to this proceeding to observe the process of assimilating and compiling the raw data into activity time estimates for estimating actual non-recurring charges. WorldCom also asks the Commission to order Verizon to allow the parties to observe Verizon's LSR process as well as its third party expert's time and motion studies of the ASR process.

Dated this 14th day of March 2003.

Respectfully Submitted,

WORLDCOM, INC.

By: _____

Michel L. Singer Nelson

707 -17th Street, #4200

Denver, Colorado 80202

303-390-6106

303.390.6333

michel.singer_nelson@wcom.com