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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

Docket No. UT-023003

**QWEST’S ANSWER TO WORLDCOM’S
MOTION TO COMPEL RE TIME AND
MOTION STUDIES**

Pursuant to the schedule previously established in this matter, Qwest Corporation (“Qwest”) hereby answers WorldCom’s motion to compel observation regarding time and motion studies.

I. INTRODUCTION

On March 14, 2003, WorldCom, Inc. (“WorldCom”) filed with the Commission a Motion to Compel, asking the Commission to order both Qwest and Verizon to allow WorldCom to observe and participate in various aspects of the time and motion studies that Qwest and Verizon will conduct in this docket. For the reasons set forth below, Qwest opposes WorldCom’s motion and asks the Commission to deny it. WorldCom will have access to the information it seeks through normal discovery methods, and Qwest should not be compelled to allow WorldCom to participate in the process of assimilating and compiling the raw data.

II. DISCUSSION

WorldCom’s Motion to Compel summarizes the Commission orders and the parties’ exchanges of information on the issue of Time and Motion Studies and Qwest will not repeat that background information here. As noted by WorldCom, Qwest has already agreed to provide WorldCom with a copy of its Study Work Plan, when such plan is finalized and available; has agreed to allow WorldCom to be present when the

1 work plan is explained to the personnel involved; and, has agreed to allow observation by 2 to 3 WorldCom
2 representatives of 3 to 5 individual events as requested WorldCom. *WorldCom Motion ¶7.*

3 The one issue on which Qwest and WorldCom disagree is whether WorldCom should be permitted
4 to observe the process of assimilating and compiling the raw data. WorldCom states that it needs to be
5 permitted this type of discovery for several reasons. First, WorldCom claims that the information is relevant
6 and is subject to discovery under WAC 480-120-480(6)(iv). *Motion ¶ 11.* Second, WorldCom claims
7 that it must have access to the underlying data and assumptions in order to validate the studies. *Motion ¶*
8 *12.* Finally, WorldCom disputes Qwest's claim that such discovery might intrude on attorney/client or work-
9 product privileges. WorldCom claims that it is permitted to discover facts and opinions that form the basis
10 for expert opinions, and that the assimilation and compilation of the data is such fact and opinion. *Motion ¶*
11 *19.*

12 Qwest refused this request by WorldCom on the basis that such "real time" discovery would be
13 disruptive to Qwest's internal work processes, and that Qwest will be undertaking this work in conjunction
14 with the preparation of its cost studies and testimony in this matter. Qwest asserted that such observation
15 could intrude on privileged matters. Qwest therefore refused to allow WorldCom to participate in the actual
16 process of data compilation and assimilation. However, Qwest did not refuse to allow WorldCom discovery
17 of the data.

18 Importantly, Qwest never stated that the data WorldCom seeks would not be available to it. Qwest
19 *agrees* that WorldCom will have access to the raw data, and to the assumptions underlying the process,
20 through the normal discovery processes in the rule, including data requests, depositions, or other means.
21 However, this does not mean that WorldCom is allowed to be privy to every word of every conversation
22 that Qwest employees may have with each other in connection with the preparation of the studies. Yet the
23 observation requested by WorldCom would allow just that, and Qwest therefore opposes it.

24 It is important to note that Qwest objects only to the method of discovery that WorldCom seeks,
25 which is extraordinary and unwarranted in this case. WAC 480-09-480 allows data requests, depositions
26 and subpoenas as types of discovery available in a particular case. It does not provide for observation of

1 activities of another party as a type of discovery. Observation as requested by WorldCom (and already
2 agreed to by Qwest for certain activities) is an extraordinary form of discovery, and should not be ordered
3 where the information sought is available through other means.

4 Qwest continues to believe that WorldCom's request is extraordinary and unreasonable.
5 WorldCom is essentially asking the Commission to allow it to "look over the shoulder" of Qwest's cost
6 analysts and other experts as they assimilate the raw data that has been gathered in the time and motion
7 study. This raw data will already be available to WorldCom through both the observation process and
8 through normal discovery (i.e., data requests). WorldCom will have access to the raw data, and to the
9 assumptions underlying the assimilation and compilation process, but it should not be allowed to be involved
10 in the process of compiling and assimilating the data.

11 III. CONCLUSION

12 In conclusion, Qwest asks the Commission to deny WorldCom's motion to compel. The
13 information WorldCom seeks will be available to it via data requests and other discovery methods.
14 WorldCom has not established that the information it seeks is only available in the manner WorldCom
15 requests, and the burden to Qwest of allowing the observation of the preparation of its cost studies and
16 testimony far outweighs any reason that WorldCom has given for being allowed such "real time" discovery.

17 Respectfully submitted this 21st day of March, 2003.

18 QWEST

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