

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the )  
 )  
Continued Costing and Pricing of ) Docket No. UT-003013  
Unbundled Network Elements, Transport, ) *PART D*  
Termination, and Resale. )  
\_\_\_\_\_ )

**REPLY BRIEF OF COMMISSION STAFF**

**NON-CONFIDENTIAL VERSION**

CHRISTINE O. GREGOIRE  
Attorney General

MARY M. TENNYSON  
Senior Assistant Attorney General

GREGORY J. TRAUTMAN  
Assistant Attorney General  
1400 S Evergreen Park Drive SW  
P.O. Box 40128  
Olympia, WA 98504-0128

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## **I. INTRODUCTION**

1 The issues addressed in this Part D of the generic costing and pricing proceeding include Qwest's proposals for numerous nonrecurring charges, Qwest's proposals for numerous recurring charges, and Verizon's proposals for fewer, but similar, elements.

## **II. LEGAL AND POLICY STANDARDS**

2 States retain authority to designate additional elements that incumbent carriers must provide on an unbundled basis. The states' exercise of this authority must be based on the "necessary" and "impair" standards of the Telecommunications Act of 1996, and may address questions which go beyond a "generic cost case." The Commission has responded to the FCC's recent Triennial Review of the Section 251 unbundling obligations of ILECs by stating its support for continued state authority for making additions to the FCC's list of UNEs on a state-by-state basis.<sup>1</sup>

### **A. LEGAL**

3 Elements that the FCC determined that incumbent carriers must provide access to on an unbundled basis, include the following categories of equipment and services:

- (1) loops, including loops used to provide high-capacity and advanced telecommunications services;
- (2) network interface devices;
- (3) local circuit switching (except for larger customers in major urban markets);
- (4) dedicated and shared transport;
- (5) signaling and call-related databases; and,
- (6) operations support systems.

*See UNE Remand Order, Third Report and Order, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 99-238 (1999). FCC Report No. CC 99-41, September 15, 1999. The FCC*

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<sup>1</sup> Reply Comments of the Washington Utilities and Transportation Commission in CC Docket Nos. 01-338, 96-98, and 98-147, July 17, 2002.

also noted that Section 251(d)(3) permits state commissions to require incumbent LECs to unbundle additional elements, as long as the obligations are consistent with the requirements of section 251 and the national policy framework instituted in the UNE Remand Order. The FCC did not require the unbundling of Operator Services/Directory Assistance, *except* when the incumbent LEC does not provide customized routing to a requesting carrier to allow it to route traffic to alternative OS/DA providers. (UNE Remand Order, page 13.)

## **B. POLICY**

4 This Commission initiated this proceeding to establish rates for those UNEs that were not yet priced, to fulfill its obligations under the 1996 Act and its authority under Title 80 RCW and Title 480 WAC. In its Eighth Supplemental Order in UT-960369<sup>2</sup>, this Commission determined to adopt the FCC's use of TELRIC pricing as the standard to judge the rates for unbundled network elements. There is apparently still disagreement between the parties of what is TELRIC pricing, and Staff advocates that the Commission continue to develop and refine its determinations, using the principles it previously stated in the Eighth Supplemental Order, summarized as follows:

5 The appropriate TELRIC methodology: (1) assumes the use of best available technology within the limits of existing network facilities; (2) makes realistic assumptions about capacity utilization rates, spare capacity, field conditions, and fill factors; (3) employs a forward-looking, risk-adjusted cost of capital; (4) uses economic depreciation rates for capital recovery; and (5)

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<sup>2</sup> Eighth Supplemental Order: Interim Order Determining Prices in Phase II; and Notice of Prehearing Conference, Docket No. UT-960369, et al., ¶¶ 9-10 (May 11, 1998) ("Eighth Supplemental Interim Order").

properly attributes indirect expenses to network elements on a cost-causative basis.<sup>3</sup> These are still valid principles. The FCC's rules, adopting the use of TELRIC pricing, were recently upheld in *Verizon Communications, Inc., v. Federal Communications Commission*, \_\_\_ U.S. \_\_\_, 122 S.Ct. 1646, 152 L.Ed.2d 701 (2002).

6 The Part B order at ¶¶ 50-51 requires Qwest and Verizon to conduct time and motion studies to determine the benefits (presumably reduced nonrecurring costs) resulting from OSS costs they have incurred since 1999. Qwest's cost studies submitted in Part D of this proceeding are based on the estimates of Subject Matter Experts (SME), who estimate the time required to perform certain tasks, project how those time estimates will be modified by future process improvements, and predict the probability that each task will be performed in a particular instance. Staff additionally recommends that the Commission require Qwest to provide a schedule of when time and motion studies will be conducted and that an independent third party be allowed to view the actual tests and to interview SMEs on how the tracking of time for each element is estimated.

7 A potential solution to this issue may be to allow Qwest to conduct time and motion studies on a regional basis, where several states participate in a process similar to the Qwest OSS collaborative effort.

8 Staff concurs with Qwest that no other party to this proceeding has presented its own cost studies that can replace Qwest's cost studies. Staff notes that while parties criticized Qwest's costs, they did not present costs based on their own networks which would have provided the Commission another view of actual costs or time estimates. However, the mere lack of other studies in this proceeding does not validate Qwest's studies. In fact, when Staff made a record requisition for whether other utilities charge Qwest an inquiry charge each time it inquires about availability,

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<sup>3</sup> *Id.* at ¶10.

Qwest's objection to the question was sustained on the basis that Qwest must base its costs on its own costs, and not those of another utility. *Tr.* at 4585. Therefore, even if the CLECs in this case had presented studies of their own costs to accomplish the same or similar tasks, those studies would not provide a basis for determining Qwest's costs of providing a service.

9 Although Qwest has provided more detail of the process used to obtain SME time estimates in this Part D and the cost information Qwest presents in Part D is more developed and explicit, Staff believes that the method of using only SME estimates lacks the necessary objectivity that could be gained through properly structured time and motion studies. Qwest's proposed rates may be accepted for the interim until time and motion studies are performed to improve the accuracy of Qwest's time estimates. The same treatment should be applied to Verizon, consistent with the Commission's *Part B Order*, ¶¶ 50 and 51.

### **III. QWEST**

#### **A. Non-recurring Costs**

10 In addition to comments provided in its Opening Brief, Staff provides the following response to arguments raised in the briefs of other parties, as itemized below.

11 At page 6 of its Opening Brief, WorldCom outlines the concerns raised by setting non-recurring costs at too high a level. Staff shares these concerns, and believes they are valid. As WorldCom states, because NRC's are charged "up-front", if those charges are set at too high a level, they can present a "barrier to entry" into the market. Staff also recognizes, however, that NRCs should be set at TELRIC levels, even if those costs actually turn out to be "too high" in the judgment of the CLECs, to encourage competition.

#### **1. Overview**

## 2. Factor Issues

The Commission determined in its June 21, 2002, Part "B" Order that Qwest's proposed wholesale cost factors are reasonable and has approved those factors.<sup>4</sup> However, Staff believes it is important to point out that WorldCom's' brief, at Confidential page 21, misstates the effect of its insertion of year 2000 data into Qwest's expense factor model. While the numbers contained in the table on page 21 of WorldCom's opening brief appear to be accurately calculated, the statement of the effect of that difference on the total TELRIC cost, in percentage figures **BEGIN CONFIDENTIAL DISCUSSION,**

**END CONFIDENTIAL DISCUSSION**

12 Although the percent stated by WorldCom in its opening brief appears correct based on the narrow comparison WorldCom has done, it is still misleading when one considers that the overall effect on TELRIC cost, and therefore, prices, is less than one percent.

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<sup>4</sup> Thirty-Second Supplemental Order; Part B Order; Line Splitting, Line Sharing Over Fiber Loops; OSS; Loop Conditioning; Reciprocal Compensation; and Nonrecurring and Recurring Rates for UNEs, Docket No. UT-003013, served June 21, 2002, at paragraph 139.

### 3. Work Time Estimate Issues

13 The data provided by Qwest's SMEs are outdated and need to be replaced by more current studies. In many cases the estimates/predictions have remained the same for three to four years, despite recent improvements to Qwest's OSS. Staff recommends that the Commission require Qwest to update its study, using more recent data, as the data in the study presented here are, in many cases, two to three times older than the projections claim to be. For example, the estimates were made 18 to 48 months ago, when they claim to be forward looking for a period of 18-24 months.<sup>5</sup>

14 Staff believes that Qwest's rates for the nonrecurring charges for the elements at issue in this Part D should be set on an interim basis, until Qwest completes time and motion studies to validate its SME estimates. At a minimum, until time and motion studies are completed, Qwest should be required to update its SME estimates to provide more current information every two years. Qwest should also be required to use its subject matter experts to project expected productivity gains 24 months into the future so the cost studies will be truly forward-looking. Thus, by the time the Commission addresses the OSS costs in Part "E", either time and motion studies or SME estimate updates should be completed for all NRC elements, consistent with the Part "B" order, at ¶51. Indeed, the Commission made recovery of additional OSS costs contingent on the completion of time and motion studies.

#### a. Subject Matter Experts

15 This topic, and the related topic of time and motion studies, have been highly disputed areas in

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<sup>5</sup> For example, the data contained on Exhibit C-2024, pages 27-30 appear to have been collected no later than 7-20-98, the date at the top of pages 27 and 29. Qwest's nonrecurring cost study to support its rates for basic installation with cooperative testing, included in Exhibit 2065, was filed in May, 1998. Other pages within Exhibit C-2024 which contain similar dates are pages 39-42, 50, 57-58, 68, 71-71, 76-78, 89-92, 302-303, 326-330, 616, 619-620, 624, and 641.

both Parts B and D of this docket. Qwest insists that its costs should be developed solely on the basis of the estimates of its subject matter experts, or “SMEs.” Qwest Opening Brief at 16. Staff disagrees. It is amply clear that subject-matter expert testimony cannot be substituted for properly conducted time and motion studies. The Commission has required that Qwest and Verizon file such studies, as indicated below.

**b. Time and Motion Studies**

16 The Commission determined in its June 21, 2002, Part "B" Order that both Qwest and Verizon must file updated nonrecurring cost studies in Part "E", to be supported by time and motion studies that reflect the decreased work times that have been achieved through their increasingly mechanized processes as a result of OSS investments over the past several years.<sup>6</sup> Therefore, Staff suggests that Qwest's NRC's, should be approved on an interim basis in this part of the docket with the understanding that they will be updated during Part "E" of this proceeding.

**c. Other Forms of Validation**

**4. Discussion of Individual Rates.**

**a. Resale customer transfer charge through g. DS1/DS3/OC Capable loops**

18 Staff has no additional comments on reply, for these rate elements.

**h. Coordinated Install without Cooperative Testing, Basic Install with Cooperative Testing**

19 Staff disagrees with Covad’s statement that there is “uncontroverted evidence”<sup>7</sup> that Qwest regularly and routinely fails to provide loops that meet basic continuity and technical specifications. No evidence was presented in the Part D case that noted an extraordinary

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<sup>6</sup> See paragraphs 50 and 51 of the 32<sup>nd</sup> Supplemental Order in UT-003013 issued on June 21, 2002.

<sup>7</sup> Covad’s Opening brief, at page 9.



amount of bad loops delivered by Qwest. Staff recommends that cooperative testing only be used when the ordering party has determined that the available loop is faulty. In that circumstance, if the test shows the fault is a problem with the loop that Qwest did not fix before delivery to the CLEC, Qwest should not be allowed to charge the CLEC for the test. However, if cooperative testing is ordered prior to the CLEC's determination of the condition of the loop, Qwest should be allowed to charge the CLEC for the test.

***j. Multiplexing through t. DSO Analog Trunk Ports***

20 Staff has no comments on reply to any of these elements.

***u. Customized Routing***

21 Paragraph 463 of the FCC's UNE Remand Order (FCC 99-238) provides helpful guidance on this issue:

22 "..... Thus, we require incumbent LECs, to the extent they have not accommodated technologies used for customized routing, to offer OS/DA as an unbundled network element." (*Emphasis added*). The question as to whether Qwest had "accommodated" WorldCom's request for customized routing using Feature Group D signaling is the issue. Regardless of how this is resolved by the Commission, Qwest should be required to present cost studies for its Operator Services/Directory Assistance costs, to allow the Commission to determine whether Qwest is appropriately pricing this product. If Qwest is correct in its assertion that it may price these elements at market rates, the price must still exceed Qwest's costs, in order to avoid these rates being subsidized by other rates. *See* RCW 80.36.300(4).

***v. Common Channel Signaling/SS7 through ff. Bona Fide Request Process***

23 Staff has no comments on reply relating to these rate elements.

## **B. Recurring Costs**

### **1. Overview**

### **2. Discussion of Individual Rates**

#### **a. Channel Regeneration, through m. DSO Analog Trunk Ports**

24 Staff has no comments on reply relating to these rate elements.

#### **n. Customized Routing.**

25 WorldCom's opening brief argues<sup>8</sup> that its request to Qwest for customized routing over Feature Group D trunks is required by its interconnection agreement with Qwest. The BFR process is one of at least two ways that interconnection disputes can be resolved under the terms of the agreement. Thus, if the provision of customized routing as requested by WorldCom is an interconnection agreement dispute, it can be addressed through the BFR process, an interconnection dispute resolution complaint filed here at the Commission, or as a Telecom Act compliance issue through the FCC's complaint process, depending on the Commission's preference and discretion. *See also* Staff's comments in section A.4.u. of this Reply Brief.

#### **o. Common Channel Signaling/SS7 through u. Category 11 and Daily Usage Record File**

26 Staff has no comments on reply related to these rate elements.

## **IV. VERIZON**

### **A. Multiplexing Service Connection**

### **B. Fiber Optic Patchcord**

### **C. Virtual Collocation**

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<sup>8</sup> *See* WorldCom's Brief at pp. 42-53, and especially footnotes #99 and #111 at pages 45 and 49, respectively.

27 Staff expressed its concern that there are differences in power cable lengths for virtual and physical collocation, and that Verizon has not recognized the difference. See Exhibit T-2380 (Griffith) page 5, lines 12-13. Based on physical distances from the battery supplies, Staff believes that the physically collocated equipment would require longer lengths of cabling than are required for virtual collocation. (*Id.* page 6, lines 7-9). In its opening brief at ¶¶23-25, Verizon attempts to refute Staff’s expressed concern, but the company still has not provided any *data* to support its arguments that the cable lengths for virtual and physical collocation are the same. Verizon’s citations are solely to Mr. Richter’s testimony, not to any actual data. In fact, in Mr. Richter’s reply testimony, Exhibit T-2004, page 6, lines 12-17, he states only that “...the power cable average lengths *may* be the same for both [physical and virtual] collocation arrangements, and there is no certainty that power cable lengths will be shorter for virtual collocation.” While the power cable lengths may be the same, of course, they *may not* be. Verizon has the burden of proving that they are in fact the same, to justify its power cable lengths for virtual collocation proposed in this proceeding. Unfortunately Verizon has failed to present verifiable evidence to support its conclusion. Staff recommends Verizon be required to submit verifiable data for cable lengths from WA state central office locations using virtual and physical collocation.

**1. Rack Mounted Space**

**2. Engineering**

**D. Dedicated Transit Service**

**V. CONCLUSION**

28 Staff’s recommendations remain the same as the recommendations made in Staff’s Opening Brief. There may be several alternative ways to resolve WorldCom’s request for customized

routing, including handling the matter as an interconnection dispute, if the parties do not resolve the matter without intervention of the Commission. Staff also recommends that Qwest be required to provide cost support for its OS/DA rates, even if Qwest believes those rates are appropriately “market-based,” so that a determination can be made of whether those rates are above Qwest’s costs.

Respectfully submitted this 12<sup>th</sup> day of August, 2002.

CHRISTINE O. GREGOIRE  
Attorney General

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MARY M. TENNYSON  
Senior Assistant Attorney General

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GREGORY J. TRAUTMAN  
Assistant Attorney General  
Counsel for Commission Staff