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May 21, 2004

VIA OVERNIGHT

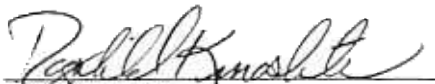
Ms. Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
Post Office Box 47250
Olympia, WA 98504-7250

Re: Docket No. UT-033044

Dear Ms. Washburn:

Enclosed are an original and fourteen copies of MCI's Comments to the Commission's May 6, 2004 Notice of Opportunity to Submit Comments. Copies have been sent out to all parties via regular mail. If there are any questions or concerns, please contact either Michel Singer Nelson 303-390-6106 or myself 303-390-6686.

Sincerely,


Ragnild Kinoshita

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

**In the Matter of the Petition of
QWEST CORPORATION
To Initiate a Mass-Market Switching
and Dedicated Transport Case
Pursuant to the Triennial Review Order**

DOCKET NO. UT-033044

MCI COMMENTS

MCI, Inc. files these comments in response to the Commission's May 6, 2004 Notice of Opportunity to Submit Comments.

The Commission requested that parties advise it as to whether a status conference is necessary at this time in this matter. That depends. Pending before the Commission at this time is a request of several competitive local exchange carriers ("CLECs") to order Qwest to continue to provide unbundled network elements ("UNEs") according to existing interconnection agreements until further order of this Commission. If the Commission grants the CLEC request, MCI believes that the Commission should wait until after June 15, 2004 to evaluate whether a status conference would be helpful. If the CLEC request is denied, however, the parties should have a conference prior to June 15 to discuss how to handle UNEs in the near future, given the legal uncertainty involved.

2. Pursuant to the directive of the Federal Communications Commission ("FCC"), Qwest Corporation ("Qwest") and CLECs are actively engaged in individual and group business to business negotiations in an attempt to come to agreement concerning Qwest's continued provision of the unbundled network element platform (UNE-P). It is likely that the parties will have nothing conclusive to report on the status of these negotiations until after June 15, 2004. Moreover, the Supreme Court granted the Solicitor General's request to extend the time to file for certiorari with the Court until

June 30, 2004. Other interested parties will likely seek the same extension. Thus, parties have more time to evaluate whether to appeal the U.S. District Court's decision. Parties will know more after June 15 about whether the FCC and the other parties intend to seek certiorari. As a result of the combination of these events, a status conference held before June 15, 2004 will likely not be as productive as one held after June 15.

3. In its Notice, the Commission also requested that the parties respond to a series of questions. It noted that MCI, among others, filed responses to a similar Colorado Public Utilities Commission's inquiry on the effect of *USTA II* on telecommunications service for CLEC customers and the plans of parties to conduct negotiations urged by the

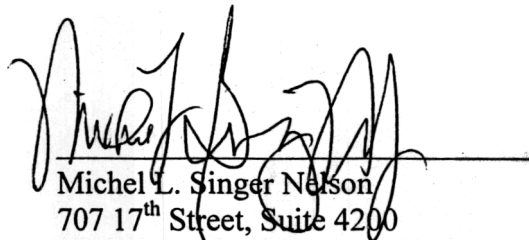
The Commission stated that it did not wish to have MCI repeat those comments

MCI has nothing material to add to the Colorado comments at this time. In the interest of a complete record here in Washington, however, MCI attaches hereto its comments filed in the Colorado proceeding.

Dated this 21st day of May 2004

Respectfully submitted,

MCI



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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 03I-478T

REGARDING THE UNBUNDLING OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS PURSUANT TO THE TRIENNIAL REVIEW ORDER

Docket No. 03I-485T

REGARDING ADOPTION OF A BATCH HOT CUT PROCESS PURSUANT TO 47 C.F.R. § 51.319(d)(2)(ii)

COMMENTS OF WORLDCOM, INC.

WorldCom, Inc., on behalf its regulated subsidiaries ("MCI"), files these comments in response to the Commission's question posed in Decision No. C04-0333 issued in this docket.

GENERAL COMMENTS

MCI shares the Commission's concerns as to the confusing effect of *USTA II* on the telecommunications services for CLEC customers. The Commission has correctly expressed its intention to ensure that telecommunications services to CLEC customers are not unduly disrupted in the event the *USTA II* decision becomes effective. Under these circumstances, in these uncertain times, the proper way to preserve stability is to maintain the status quo.

MCI is pursuing good-faith negotiations with Qwest Corporation ("Qwest"). Attached to these comments as Exhibit 1 is a letter issued by MCI CEO Michael Capellas to the Chairman and the Commissioners of the Federal Communications Commission ("FCC") dated April 1, 2004, in response to Chairman Powell call to the industry. This letter generally addresses the issues raised in this Commission's request for comments.

In a letter dated April 7, 2004, from James L. Lewis, Senior Vice President, sent to Qwest, MCI stated that it is fully committed to proceed with future discussions on a transparent basis without the restrictions of a nondisclosure agreement. MCI asked Qwest to join in a commitment to good faith, public discussions.

On April 15, 2004, MCI announced that it had reached an agreement with Qwest Corporation ("Qwest") on a framework for transparent and mediated negotiations regarding access to the public telephone network. These open negotiations will be monitored by Cheryl Parrino, former Chair of the Wisconsin Public Service Commission and former CEO of the Universal Service Administrative Company. This agreement came in response to MCI approaching Qwest and the other Bell companies in the wake of MCI CEO Michael Capellas' April 1 letter to the FCC accepting the commissioners' call for mediated negotiations.

MCI is hopeful that these open negotiations will result in a commercial agreement to address the Commission's concerns about the effect of *USTA II* on telecommunications services for CLEC customers. MCI believes that a consensual agreement with Qwest might well enable it to preserve its ability to continue to provide quality telecommunications services for its customers. It is in the interest of all companies and consumers for MCI and Qwest to put our positions on the table, in full view of fair and impartial mediators and to attempt to reach agreement as quickly as possible.

Qwest also issued a "mailout" on April 15, 2004, that stated that both Qwest and MCI have agreed on the retention of Cheryl Parrino as a qualified and neutral mediator to monitor these negotiations. Qwest has also stated that it is Qwest's intention that the

discussions at the joint mediation session will be conducted on a transparent basis without the restrictions of a non-disclosure agreement.¹

Qwest's mailout also states that it believes that a joint mediation session will provide an effective and efficient vehicle for reaching resolution of these critical issues within the timeframes under which all parties are operating. Discussions at the mediation session will focus on commercial arrangements to replace UNE-P, but Qwest will continue through individual negotiations to discuss such arrangements for high capacity transport, loops, and dark fiber.

RESPONSE TO COMMISSION'S QUESTIONS

With respect to the specific questions posed, MCI provides the following responses:

a) What FCC unbundling rules will be in effect in light of the USTA decision?

Response: If and when the USTA mandate issues, and subject to interconnection agreement change of law provisions as discussed below, all UNE rules as set out in the TRO will be in effect except those rules expressly vacated by the USTA court, (unbundled local switching and transport)

b) What unbundling obligations, if any, will remain in effect for Qwest Corporation for mass market switching and high-capacity (DS1, DS3, and dark fiber) transport, either under §§ 251 or 271 of the Telecommunications Act, when the USTA decision becomes effective?

Response: Under § 251, all existing obligations will remain in effect, for the reasons set out below in Response to Question c. Additionally, so long as Qwest continues to maintain authority to provide in-region interLATA services under § 271 of the Act, it is

¹ The mailout can be found at: C:\Documents and Settings\thomas.f.dixon\Local Settings\Temporary Internet Files\OLK62>ContactMailAttach4.htm

obliged to maintain the preconditions for a competitive marketplace that were a condition precedent for obtaining such authority.

c) In the event USTA becomes effective, will Qwest have any legal obligation to provide network elements and services at prices based on Total Element Long Run Incremental Cost (TELRIC)?

Response: Yes. The unbundling obligations imposed in the federal Telecommunications Act of 1996 (“the Act”) remain in effect, as do the state mandated obligations discussed in response to question e below. Even if *USTA II* is not permanently stayed and takes effect, giving effect to *USTA II*'s vacatur does not in and of itself mean the end of UNE switching and UNE-P. To the contrary, the FCC will then be charged, on remand, with implementing *USTA II* and determining whether CLECs are impaired without access to UNE switching. Neither *USTA II* court nor any other authority has determined that CLECs are not impaired without access to unbundled mass market switching.

In addition, Qwest is bound by its interconnection agreements with CLECs such as MCI to follow the change of law provisions therein. If and when a change of law regarding Qwest's obligations to provide unbundled network elements occurs, MCI is entitled to negotiate a change of law amendment with Qwest with respect to its individual interconnection agreements, and the change of law provisions in MCI's interconnection agreements govern the process of negotiating and arbitrating amendments to implement the *Triennial Review Order* or *USTA II*. Until such an amendment is negotiated – and, if necessary, arbitrated – Qwest cannot unilaterally withdraw UNE switching or UNE-P at cost-based rates.

For example, MCImetro's interconnection agreement provides:

3.3 In the event the FCC or the Commission promulgates rules or regulations, or issues orders, or a court with appropriate jurisdiction issues

orders, which make unlawful any provision of this Agreement, the Parties shall negotiate promptly and in good faith in order to amend this Agreement to substitute contract provisions consistent with such rules, regulations or orders. In the event the Parties cannot agree on an amendment within thirty (30) days from the date any such rules, regulations or orders become effective, then the Parties shall resolve their dispute under the applicable procedures set forth in the Dispute Resolution provisions of this Agreement.

If *USTA II*'s vacatur of the *Triennial Review Order*'s national finding of impairment regarding mass market switching goes into effect, absent FCC action to the contrary, there nevertheless will be no determination by any governing body that CLECs are not impaired without access to UNE switching. The Act requires cost-based unbundled access to elements without which CLECs would be impaired. In the absence of a finding of no impairment, there is no justification, under the Act, for Qwest to charge anything other than a TELRIC-based rate for UNE switching. Furthermore, the Commission has independent authority pursuant to the federal Act and state law to require additional unbundling beyond that which is required by the Act, so long as the state's additional unbundling rules are not inconsistent with the Act or the FCC's rules implementing the Act. It certainly has independent authority to maintain the status quo until such time as the FCC implements new unbundling rules pursuant to *USTA II*. In the absence of any national findings of no impairment – of which there are none – a requirement under state law that Qwest provide UNE mass market switching and UNE-P at TELRIC-based rates would not be inconsistent with federal law and would be appropriate.

d) Will Qwest's current Statement of Generally Available Terms and Conditions (SGAT) as it relates to unbundled switching and dedicated transport remain in full force and effect in the event USTA becomes effective?

Response: Yes, for reasons stated in response to Question c. Qwest's Colorado SGAT has change of law provisions in section 2.2.

e) What state unbundling rules remain in effect after USTA becomes effective?

Response: All such rules remain in effect unless and until Qwest prevails in a claim that any such rule is preempted by federal law. As the Court correctly held in USTA II, the FCC in the TRO made no preemption ruling. Moreover, Colorado law requires unbundling in C.R.S. § 40-15-503(2)(b) that provides impertinent part:

...the commission shall adopt rules governing, and shall establish methods of paying for, without limitation, the following:

(I) Cost-based, nondiscriminatory carrier interconnection to essential facilities or functions, which shall be unbundled;

(II) Cost-based number portability and the competitively neutral administration of telephone numbering plans;

(III) Cost-based, open network architecture;

f) Which state tariffs remain in effect after USTA becomes effective?

Response: All existing wholesale tariffs remain in effect since Qwest's wholesale tariff for interconnection, unbundled network elements, and resale of telecommunications services is its current SGAT.

g) What should the Commission do to facilitate negotiations between parties on prices, terms, and conditions of unbundled network elements affected by USTA?

Response: See attached letter from MCI CEO Michael Capellas to the FCC dated April , 2004, in response to Chairman Powell's call for negotiations to arrive at wholesale agreements which this Commission has endorsed.

h) Should the Commission set a procedural schedule and/or hear oral argument on these issues?

Response: Not at this time while parties pursue good faith negotiations to create certainty and to ensure that telecommunications services to CLEC customers are not unduly disrupted

Dated: April 16, 2004

WORLDCOM, INC.

By: _____
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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within pleading upon all parties herein by depositing copies of same in the United States mail, first class postage prepaid, or as otherwise indicated, at Denver, Colorado, this 16th day of April 2004, addressed as follows:

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2nd Century Communications, Inc.
4630 Woodland Corporate Boulevard # 100
Tampa, FL 33614

Direct Comm, Inc.
3000 East 20th Street Suite C5
Farmington, NM 87402-5350

Advanced Communications
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DMJ Communications
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Advanced Telecommunications Network Inc
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ReFlex Communications, Inc.
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**ALL OTHER PARTIES HAVE BEEN SERVED THIS DOCUMENT BY
ELECTRONIC MEANS**

MASTER SERVICE LIST

As of: 02/03/04 Docket: UT-033044 Page: 1
 Name: Qwest Corporation (T156)
 Comments: In the Matter of the Petition of Qwest Corporation to Initiate a
 Mass-Market Switching and Dedicated Transport Case Pursuant to the
 Triennial Review Order.
 Original MSL Date: 10/14/03

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MASTER SERVICE LIST

As of: 02/03/04 Docket: UT-033044 Page: 2
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MASTER SERVICE LIST

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Comments: In the Matter of the Petition of Qwest Corporation to Initiate a
Mass-Market Switching and Dedicated Transport Case Pursuant to the
Triennial Review Order.
Original MSL Date: 10/14/03

Status Name and Address..... Phone & Fax..... Added.... By.

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I hereby certify that I served a true and correct copy of the foregoing on the following:

Please see attached Service List

Sent by the following indicated method or methods:

- By **faxing** full, true, and correct copies thereof to the attorneys at the fax numbers shown above, which are the last known fax numbers for the attorneys' offices, on the date set forth below. The receiving fax machines were operating at the time of service and the transmissions were properly completed, according to the attached confirmation reports.
- By **mailing** full, true, and correct copies thereof in sealed, first-class postage-prepaid envelopes, addressed to the attorneys as shown above, the last-known office addresses of the attorneys, and deposited with the United States Postal Service at Seattle, Washington, on the date set forth below.
- By sending full, true, and correct copies thereof via **overnight courier** in sealed, prepaid envelopes, addressed to the attorneys as shown above, the last-known office addresses of the attorneys, on the date set forth below.
- By causing full, true and correct copies thereof to be **hand-delivered** to the attorneys at the attorneys' last-known office addresses listed above on the date set forth below.
- By **e-mailing** to the e-mail addresses as noted on the attached service list.

DATED 21st of May, 2004


Ragnhild Kinoshita