[Service Date September 23, 2002]

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the	)	DOCKET NO. UT-003013
	)	
	)	THIRTY-EIGHTH SUPPLEMENTAL ORDER;
	)	
Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination	)	FINAL ORDER ON RECONSIDERATION, PART B
	)	
……..	)	

1 ***Synopsis:*** *This Order affirms in part, reverses in part and clarifies in part the Thirty-Second Supplemental (Part B) Order, which decided issues related to costing and pricing for Qwest and Verizon.*

2 **Nature of Proceeding:** This proceeding commenced on February 17, 2000, to establish prices intended for use in pending and future arbitrations between Verizon or Qwest and other telecommunications service providers, and in tariffs required pursuant to Commission orders in other proceedings.

3 **Procedural History:** This matter was heard upon due and proper notice before Administrative Law Judge Lawrence J. Berg, commencing on March 26, 2001, and concluding on April 20, 2001.

4 **Commission Order:** The Commission entered its Order in Part B on June 21, 2002, addressing the following issues: digital subscriber line provisioning, including line splitting and line sharing over fiber-fed loops; updated cost recovery of operational support systems; loop conditioning; reciprocal compensation, including tandem rates and interconnection cost sharing; and the nonrecurring and recurring costs and rates of numerous unbundled elements.

5 **Petitions for Reconsideration and Answers:** Petitions for Reconsideration were filed on July 2, 2002, by Qwest, Verizon, Covad/WorldCom, AT&T/XO, and

TRACER. Responses to Petitions were filed on July 18, 2002, by Qwest, Verizon, Covad/WorldCom, AT&T/XO and Commission Staff. The matter is now ready for Commission consideration.

6 **Appearances:** The following parties represented by the named counsel participated in the Part B hearings: Qwest Corporation ("Qwest"), by Lisa Anderl, Seattle; Verizon Northwest Inc. ("Verizon"), by Jennifer McClellan, W. Jeffrey Edwards, and Meredith Miles, Richmond, Virginia; WorldCom, Inc. ("WorldCom"), by Ann E. Hopfenbeck, Denver, CO, and Brooks Harlow, Seattle, WA; Covad Communications Company ("Covad") by Brooks Harlow, and Megan Doberneck, Denver, CO; Telecommunications Ratepayers for Cost-based and Equitable Rates ("TRACER"), and Rhythms Links, Inc., by Arthur A. Butler, Seattle; XO Washington, Inc., Electric Lightwave, Inc., AT&T Communications of the Pacific Northwest, Inc., and Focal Communications Corporation (collectively, "Joint CLECs"), by Gregory J. Kopta and Mary Steele, Seattle; and Commission Staff, by Mary Tennyson and Gregory Trautman, Assistant Attorney Generals, Olympia.

I. MEMORANDUM

A. Procedural History

7 In November 1996, the Commission entered an Order Instituting Investigation and Consolidation in Docket Nos. UT-960369, 960370, and 960371.[1] The Commission initiated those proceeding to consider cost and pricing issues that arose during the arbitration process and out of the Commission's obligations under the Telecommunications Act of 1996 ("Telecom Act" or "Act") to establish rates for unbundled network elements ("UNEs"), interconnection, transport and termination, and wholesale services.[2] These cost and pricing issues also arise from the Commission's obligations under Title 80 RCW to regulate telecommunications companies in the public interest, and to establish rates and charges for telecommunications services.

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[1] *See, In the Matter of the Pricing Proceeding For Interconnection, Unbundled Elements, Transport and Termination, and Resale*, Docket Nos. UT-960369 (general), UT-960370 (US WEST), and UT-960371(GTE), Order Instituting Investigations (November 20, 1996) (referred to in this Order as UT-960369). Qwest was formerly known as US WEST. Verizon was formerly known as GTE.
[2] Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. §§ 151 *et seq*. (1996), 47 U.S.C. § 252(d).

8 Docket No. UT-960369 involved three phases. In Phase I of that proceeding, the Commission established a cost methodology and determined the direct cost of many unbundled network elements, as well as the wholesale discount for the resale of retail services for providing certain telecommunications services.[3]

9 In Phase II, the Commission determined the mark-up that should be applied to the direct cost of unbundled network elements.[4] The mark-up was added to the direct cost in order to include a contribution to the common costs incurred by incumbent local exchange carriers in the price of unbundled network elements. In addition, the Phase II proceeding addressed the recovery of operations support system ("OSS") transition costs, nonrecurring charges, collocation, and various other matters related to the costing and pricing of interconnection and unbundled network elements.

10 In Phase III, the Commission addressed the deaveraging of unbundled loop prices.

11 The Commission opened proceedings in the instant docket on February 17, 2000, to address issues arising out of Docket No.UT-960369. On March 16, 2000, the Commission[5] established a two-part schedule. Several other parts to this proceeding were subsequently established. The Commission's entered its *Thirteenth Supplemental Order* in Part A on January 31, 2001. The *Thirteenth Supplemental Order* addressed line sharing, OSS, collocation, and certain nonrecurring charges. The Commission entered the *Thirty-Second Supplemental (Part B) Order* on June 21, 2002.

B. Format of this Order

12 This Order generally follows the outline of the Part B Order, addressing issues raised in the Petitions for Reconsideration in the sequence in which they arise in the body of the Part B Order.

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[3] *In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale, Docket No.* UT-960369 et al., *Eighth Supplemental Order* (April 16, 1998)*("Eighth Supplemental Order*).

[4] *In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale*, Docket No. UT-960369 et al., *Seventeenth Supplemental Order* (August 30, 1999) *("Seventeenth Supplemental Order*").

C. Discussion and Decision

1. DIGITAL SUBSCRIBER LINE ("DSL")[6] ISSUES

a. Line Splitting

13 Line splitting describes the situation where a Competitive Local Exchange Carrier ("CLEC"), rather than an Incumbent Local Exchange Carrier ("ILEC"), provides underlying voice service over the low frequency portion of the loop and another CLEC provides data service over the high frequency portion of the loop. Line splitting requires the use of a line splitter, a device that separates the voice traffic from the data traffic over the same loop, allowing for simultaneous transmission of both forms of communication. Both Qwest and Verizon agree to provide line splitting over UNE-P loops.

14 The parties raised three line splitting issues in Part B: 1) whether customers who are receiving DSL service from an ILEC must lose that service if the customer chooses to obtain voice services from a CLEC; 2) whether Qwest and Verizon must provide splitters for line splitting; and 3) whether the Commission should impose a deadline by which ILECs must identify for CLECS a line splitting product definition and permanent costs and prices for that service.

15 On the first and third issues, the Part B Order determined that development of terms and conditions necessary to implement line splitting should proceed in a Washington Line Splitting Collaborative, which the Commission will initiate as soon as possible consistent with its current heavy regulatory work load. Issues to be addressed include: a) the provisioning of DSL service by an ILEC in conjunction with voice services provided by a CLEC; b) a product definition for line splitting, proposed rates (including OSS); and, c) a reasonable deployment schedule.

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[5] In this Order, the Washington Utilities and Transportation Commission is referred to as the "Commission." The Federal Communications Commission is referred to as the FCC.
[6] There are numerous technical versions of digital subscriber line service. Although those versions are sometimes collectively referred to as "xDSL," we simply use the term "DSL" in this Order.

16 As to the second issue, the Part B Order determined that efficient use of network resources calls for an ILEC to offer to sell an already-installed splitter if a CLEC wishes to convert a line sharing arrangement to a line splitting arrangement. Otherwise, ILECs would not be required to provide splitters in a line splitting arrangement. The Order required the parties to identify rates accordingly during the new generic cost proceeding.[7]

17 **Covad/WorldCom.** Covad/WorldCom assert that prior to entry of the Part B Order, in the Washington/Qwest Section 271/SGAT proceeding, the parties negotiated all terms and conditions relating to Qwest's line and loop splitting offerings. Furthermore, based on Qwest's statements in a Minnesota proceeding,[8] Qwest's charges and rates for line splitting are identical to those for line sharing and thus no charges, other than those assessed when CLECs order line sharing, should be assessed when a CLEC orders line splitting.

18 Since Covad/WorldCom claim the only issue remaining open with respect to Qwest is the pricing for its line splitting product, Covad/WorldCom urge the Commission to include the issue in the new generic cost proceeding, rather than institute a separate proceeding. Similarly, Covad/WorldCom assert that although less is known about Verizon's proposed terms and conditions, much work has been done in a New York collaborative on line splitting. Covad/WorldCom urges the Commission to consider the remaining terms, conditions and prices for the Verizon line splitting product in the new generic cost case rather than in a separate proceeding.

19 **Qwest and Verizon**. Qwest's response to Covad/WorldCom does not confirm whether its SGAT establishes a product definition for line splitting. All parties previously agreed that a product definition must be determined before rates can be set.

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[7] The Part B order deferred several determinations to Part E of the proceedings. All these issues will now be considered in the new generic cost proceeding established by the Commission in Docket No. UT-02003. This Order will substitute reference to the new generic cost proceeding for reference to Part E.

[8] *See, Minnesota Pub. Utils. Comm'n*, Docket No. P-421/CI-01-1375, Rebuttal Testimony of Kathryn Malone, dated April 18, 2002.

20 Both Verizon and Qwest respond that Covad/WorldCom's request ignores the May 24, 2002, Washington D.C. Court of Appeals *USTA* decision.[9] In *USTA* the D.C. Circuit remanded the FCC's *UNE Remand Order*[10] and vacated and remanded the FCC's *Line Sharing Order*.[11] In the portion of the Circuit Court opinion addressing the *UNE Remand Order*, the Court found that the FCC's unbundling rules in that Order were overbroad because they establish a national list of unbundled network elements without considering different levels of competition that already exist in regional geographical markets. With regard to the *Line Sharing Order*, the Court indicated that the FCC's unbundling of the high frequency spectrum of copper loop, enabling CLECs to provide DSL services, completely failed to take into account the relevance of competition in broadband services coming from cable and satellite telecommunications competitors.

21 Although most of Verizon's arguments associated with the effect of the *USTA* decision bear upon the Commission's treatment of line sharing and unbundled packet switching, Verizon claims that the Commission must also defer any decision on line splitting in the face of the Circuit Court decision.

22 Verizon and Qwest contend that in light of that decision, it is premature to come to any decision on line splitting, line sharing over fiber fed loops, or packet switching. If the Commission must still address these issues, it should wait to address them in the new generic cost case or when the parties know the outcome of the issue at the Court of Appeals and the FCC.

23 **Commission Decision.** We are not persuaded that the D.C. Circuit decision in *USTA* holds any current precedential value for us. Because the parties have requested reconsideration of that decision and the Court has not issued its mandate yet, *USTA*

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[9] *United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).
[10] *In the Matter of the Implementation 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). ("*UNE Remand Order").*
[11] *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, 14 FCC Rcd 20912 (rel. Dec. 9, 1999) ("*Line Sharing Order*")

has no binding effect[12]. Even when the case is finally decided, we will have to assess carefully its actual effect on our regulatory authority.

24 In the Part B Order, we did not come to any decision on the proper treatment to be accorded line splitting. In light of the parties' need to arrive at a product definition before pricing can occur, as well as the fact that neither Qwest nor Verizon confirm Covad/WorldCom's view that line splitting issues have been largely resolved, we affirm that the best course is to defer action pending the outcome of the Washington Line Splitting Collaborative we plan to establish.

b. Line Sharing On Fiber-Fed Loops

25 The FCC has required ILECs to unbundle the high frequency portion of the local loop, even where the ILEC's voice customer is served by digital line carrier (DLC) facilities, including both copper and fiber-fed facilities. In its *Line Sharing Reconsideration Order*,[13] the FCC held that CLECs must be allowed to line-share using DSLAM[14] facilities that they deploy at either an incumbent's central office or at a remote terminal. Where there is no room in the remote terminal for the placement of CLEC facilities, ILECs must, nevertheless, make line sharing available to CLECs. The FCC recognized that there may be many different ways to provide line sharing on fiber fed loops, and has initiated a proceeding that requests comment on the feasibility of different methods of providing line sharing where an incumbent LEC has deployed fiber in the loop.[15] A similar proceeding has also been initiated by the California Public Utilities Commission.

i. CLEC Access to Fiber-Fed Loops

26 In the Part B Order, the Commission rejected Verizon's contention that a nationwide fiber-fed DLC wholesale product should be based on wholesale market rates, rather

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[12] On Sept. 5, 2002, the US Court of Appeals rejected the parties request for rehearing in USTA, but agreed to stay the effect of its earlier decisions vacating the line sharing rules until January 2, 2003. *USTA v. FCC* No. 00-1012, 2002 US App. LEXIS 18766 (DC Cir. Sept. 4, 2002)

[13] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order on Reconsideration, CC Docket No. 98-147, and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Fourth Report and Order on Reconsideration, CC Docket No. 96-98 (rel. January 19, 2001)("*Line Sharing Reconsideration Order*")

[14] Digital Subscriber Line Access Module

[15] *See*, Line Sharing Reconsideration Order, at para. 55-56.

than TELRIC, because the product is a service, not a UNE. The Part B determination relied on the Commission's previous conclusion in Part A of this proceeding that the high frequency portion of the loop is a UNE, not a retail service. The Part B Order further rejected Qwest's DA Hotel proposal because the company's proposal for sharing the cost of the DA Hotel would create a significant barrier to entry. The Part B Order also rejected Covad/WorldCom's contention that it should be able to obtain access by collocating a line card in the ILEC's remote DSLAM ("plug and play").

27 The Part B Order indicated the Commission would defer a decision on access to fiber-fed loops of ongoing proceedings before both the California Public Utilities Commission and the FCC to determine the technical feasibility of line sharing options and to establish terms and conditions for access to fiber-fed loops. However, the Order indicated that the Commission would not wait indefinitely for those other proceedings to conclude.

28 **Verizon.** Verizon agrees that the proper course of action is to defer a decision on line sharing issues. However, Verizon also contends that as the result of the *USTA* decision, the Commission should revisit its previous finding that the high frequency portion of the loop is a UNE. Verizon argues that *USTA* remanded the *UNE Remand Order* and vacated and remanded the *Line Sharing Order*. Since the Commission's Part A Order categorizing the high frequency portion of the loop as a UNE was based on the FCC's directive in the *Line Sharing Order*, the *USTA* decision effectively eliminates the basis for the Commission's Part A decision. Verizon asserts the Commission has provided no other basis for determining that the high frequency portion of the loop is a UNE.

29 Verizon further argues that the states can not mandate unbundling beyond those elements the FCC includes on its national list. Once the FCC makes a determination of which elements may or may not be unbundled, based on consideration of the "necessary" and "impairment" tests contained in 47 U.S.C. 251(d)(2), any state action requiring further unbundling would be "inconsistent" with federal action and would be preempted.

30 **Covad/WorldCom.** Covad/WorldCom respond that the D.C. Circuit decision vacating and remanding the FCC's *Line Sharing Order* does not relieve Verizon of the obligation to provide line sharing as a UNE at TELRIC pricing. They argue the

USTA decision is not yet final under federal appellate procedural rules[16] because the D.C. Court has not yet issued its mandate. The parties to *USTA* have petitioned for a rehearing en banc and further action is pending.

31 Covad/WorldCom also argue that the FCC ordered Verizon, as a condition to the *Bell Atlantic/GTE Merger*,[17] to continue to provide the line shared loop as a UNE at TELRIC rates until June 2003, or until a final, non-appealable judicial decision determines that the merged company is not required to do so. Covad/WorldCom observe that Verizon has contractual obligations under its Interconnection Agreements to provide line sharing; that the Commission has independent authority to require access to line shared loops and set TELRIC rates; that other state Commissions, including Michigan and Texas, have determined they have authority to continue requiring that access be provided to line shared loops; and that ILECs are providing line sharing to their own affiliates, so that depriving CLECs of access to line-shared loops would constitute discriminatory treatment.

32 **AT&T/XO.** AT&T/XO contend that Verizon's interpretation of the *UST*A decision is ill-founded. If the FCC's rules establishing a national UNE list were to be interpreted as constituting both a floor and a ceiling, allowing no leeway for different treatment by state regulatory commissions, there would be no room for the state discretion clearly contemplated under § 251(d)(3). AT&T/XO assert that the D.C. Circuit Court opinion applies only to the FCC's UNE determinations and does not affect the ability of state commissions, acting under state regulatory authority, to add additional unbundled network elements to the list. AT&T/XO point out that, contrary to Verizon's arguments, the *USTA* decision actually supports individual state unbundling determinations since the D.C. Circuit Court rejected the FCC's national "one size fits all" UNE list.

33 **Commission Decision.** Based on the lack of finality of the D.C. Circuit's *USTA* decision, we decline to change our Part A finding categorizing the high frequency portion of the loop as a UNE. Furthermore, even when there is finality to that decision, we will have to carefully assess the effect on the Commission's regulatory

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[16] Fed. R. App. Proc. 41.
[17] In Re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and

authority. We affirm our decision in the Part B order to await, for a reasonable time, the outcome of the FCC and California line sharing proceedings, before ruling on the appropriate form and cost of access to fiber-fed loops.

ii. Operational Support Systems ("OSS")

34 In the Part A Order, the Commission determined that ILECs were entitled to recover OSS transition costs from the CLECs. In Part B, the Joint CLECs requested clarification as to whether the Part A Order capped the OSS cost recovery for all OSS development by Qwest and Verizon.

35 The Part B Order clarified that OSS costs approved in Part A did not constitute a recovery cap; that because the list of UNEs may change over time, ILECs may incur additional OSS costs and should be allowed to recover them; and that allowing recovery of OSS costs creates an incentive for ILECs to reduce nonrecurring rates. The Commission directed Qwest and Verizon to update their OSS Transition Costs in the new generic cost proceeding and further directed Qwest and Verizon to support their updated nonrecurring cost studies with time and motion studies that reflect decreased work times achieved through increased efficiencies in mechanized processes.

36 **Verizon.** Verizon requests reconsideration of the portion of the Part B Order that requires the use of time and motion studies to support nonrecurring costs. Verizon claims that time and motion studies are administratively burdensome, expensive to conduct, and duplicative of actual data. Verizon states that it conducts time and motion studies only when it lacks a sufficient sample size of actual data upon which to base costs. Verizon requests the flexibility to use actual observed work times or activities in future dockets.

37 **Qwest.** Qwest agrees with Verizon and argues that the Commission should continue to evaluate nonrecurring costs by review its current and past estimates from subject matter experts rather than by time and motion studies. Qwest asserts such studies are not indicative of forward looking costs and are not suited to the types of activities involved in Qwest's ordering and provisioning processes.

Application to to Transfer Control of a Submarine Cable Landing License, CC Docket No. 98-184, FCC 00-221 (rel. June 16, 2000), ¶316, ("Merger Order").

38 **AT&T/XO.** AT&T/XO state that time and motion studies are inadequate. However, AT&T/XO suggest that such studies at least provide the benefit of being based on neutral observation of ILEC work activities, as opposed to self-reporting by employees who have an interest in inflating the amount of time required to perform a task.

39 **Commission Staff.** Staff argued that paragraph 51 of the Part B Order required Qwest and Verizon to file time and motion studies in the new generic cost proceeding, with respect to nonrecurring costs that are affected by OSS-related costs savings. Staff also stated that the Commission should not permit ILECs to substitute either subject matter experts' estimates or some vague notion of "actual data" for properly conducted time and motion studies.

40 **Commission Decision.** We agree with Staff's interpretation of paragraph 51. Our Part B directive to file time and motion studies was made with respect to the updated OSS transition costs Qwest and Verizon intended to file in Part E. We do not foreclose the use of actual data in all future proceedings, but we will not accept future ILEC-proposed nonrecurring costs simply because they rely on "actual data" or "subject matter expert" testimony.

2. LOOP CONDITIONING – NONRECURRING COSTS

41 The Part B Order determined that Verizon's rates for loop conditioning[18] work were much higher than Qwest's, because of gross discrepancies in the work time estimates for loop conditioning activities between the two companies. For that reason, the Commission directed Verizon to recalculate its costs and rates using Qwest's previously approved work time estimates. However, because the Commission found Verizon's average loop length exceeds that of Qwest, based on submissions made in UT-960369, the Order required installation work time estimates approved for Qwest to be adjusted by a ration of 17:13 to reflect the difference. The Order further required both parties to update their average loop length data in the new generic cost case.

[18] Loop conditioning involves the removal of bridge taps, low-pass filters, range extenders and similar drivers that carriers use to improve voice transmission capability from a copper loop (usually 18,000 feet or longer) in order to allow access to all of the loop's native features, functions and capabilities.

42 **Verizon.** Verizon claims that the Commission rejected its work times solely because Verizon did not explain how its engineering activities to remove load coils and bridge taps from its network differ from Qwest's. Verizon contends this is not a relevant inquiry. Rather the Commission should determine whether Verizon supported its work time estimates with sufficient evidence. Verizon argues that the burden of proof required of it under the Act is to demonstrate how its wholesale rates recover its own costs, not the costs of another company, and that Verizon did provide sufficient proof to support its proposed rates. Verizon contends the Commission erroneously imposed a burden of proof on it that is inconsistent with the Act.

43 **AT&T/XO.** AT&T/XO argue that the Commission is not altering Verizon's burden of proof, but rather is pointing out that Verizon failed to prove that its estimates reflect the costs that a reasonably efficient provider would incur on a forward looking basis. The Commission made a similar comparison in Part A, where Verizon had more reasonable inputs for collocation that the Commission then required Qwest to adopt.

44 **Commission Decision.** We reject Verizon's argument. The Part B Order does not impose a burden of proof on Verizon inconsistent with the Act. The order merely requires Verizon to perform its loop conditioning activities with efficiency comparable to Qwest's.

3. RECIPROCAL COMPENSATION

a. Reciprocal Compensation Rate Structure and Rates

45 In the Part B Order, the Commission required that a per-MOU reciprocal compensation rate structure, based on permanent UNE switching and transport rates, replace interim reciprocal compensation rates in existing interconnection agreements.

46 **Verizon.** Verizon sought to clarify that the Commission was merely repeating certain arguments made by the Joint CLECs in paragraphs 76 and 84 of the Order, which begin "The Joint CLECs contend that…" and "According to the Joint CLECs…" respectively. In those paragraphs the Joint CLECs are implying that the issue of reciprocal compensation rates for local traffic became moot when the ILECs "opted into the FCC's interim compensation regime." The FCC established this "regime" in

the *ISP Order on Remand*.[19] Verizon argues that the FCC interim compensation system required ILECs first to offer to exchange all traffic, both Internet-bound and §251(b)(5) traffic (local traffic), at the FCC's lower interim rates for Internet-bound traffic. The ILEC must offer to exchange traffic at the FCC interim rates as a precondition to implementing the interim rate regime. Verizon asserts that in Washington it has long since made this offer, but most Washington CLECs have not accepted the offer. Thus, the interim rates have not gone into effect for both Internet-bound and local traffic.

47 **Decision.** The Part B Order clearly states that the Commission retains authority to establish the appropriate rate structure for non-ISP-bound intrastate traffic. The issue is not rendered moot by the *ISP Order on Remand*.

b. Tandem Switch Compensation Rate

i. Functional Equivalency

48 A CLEC's originating traffic that passes through an ILEC's tandem switch incurs an additional switching cost that requires the CLEC to pay a tandem switching rate in addition to an end-office switching rate, depending on where the CLEC delivers its traffic. An ILEC, however, does not have a similar (or symmetrical) choice when delivering volumes of traffic to a CLEC, because there is no comparable hierarchical switching function on the CLEC's network.

49 The Part B Order found, pursuant to a Ninth Circuit Court of Appeals decision,[20] that if a CLEC meets the "comparable geographic area test,"[21] it is entitled to receive compensation at the tandem switching rate for termination of traffic. Furthermore, the Part B Order indicated that a CLEC that does not meet the geographic area test

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[19] Order on Remand and Report and Order, *In the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98; CC Docket No. 99-68, FCC 01-131 (rel. Apr 27, 2001) ("*ISP Order on Remand*"), *remanded, WorldCom, Inc. v. FCC,* 288 F.3d 429 (D.C. Cir. 2002).
[20] *U.S. West Communs. v. Wash. Utils. & Transp. Comm'n*, 255 F.3d 990 (9th Cir. 2001).
[21] A determination that the CLEC switch serves a geographic area comparable to that served by the ILEC tandem switch. *See, First Report and Order, In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, No. 96-98, 11 FCC Rcd 21905, 1996 FCC LEXIS 4312 (rel. Aug. 8, 1996)("Local Competition Order") at ¶1090.

may still be entitled to the tandem switch compensation rate if the CLEC's switch is found to be the functional equivalent of the ILEC's tandem switch.[22]

50 **Verizon.** Verizon argues that the Ninth Circuit opinion held that the geographic area test was dispositive of the question whether the CLEC was eligible for the tandem rate. Venison also suggests that FCC Rule 51.711 does not provide for tandem rate compensation other than where the geographic area test is met.

51 **AT&T/XO.** AT&T/XO dispute Verizon's characterization of the applicable legal authority. They argue that neither the FCC nor the Ninth Circuit precludes the CLEC from receiving the tandem rate when the CLEC's switch does not serve a geographic area comparable to the area served by an ILEC tandem. Both the FCC rule and the Ninth Circuit Opinion only state that where the CLEC switch does serve such an area, the tandem rate applies.

52 **Commission Decision.** We agree that the Ninth Circuit addressed only the issue whether a CLEC, having met the geographic area test under 47.C.F.R. 51.711(a), should be compensated at the tandem rate for some or all of the ILEC traffic terminated on the CLEC network. The Ninth Circuit referred to an FCC letter[23] that clarified the scope of Section 51.711(a)(3):

> [The FCC] noted that although there has been some confusion stemming from additional language in the text of the *Local Competition Order* regarding functional equivalency, section 51.711(a)(3) requires only a geographic test.

53 The "additional language" from the *Local Competition Order* referred to in the sentence above states, in relevant part:

> We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem

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[22] *Id. at 1090.*
[23] *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 PCS (May 9, 2001) ("FCC Letter").

> switch or directly to the end-office. In such event, states shall also consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch. Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the approximate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate.[24]

54 Neither the FCC Letter, nor the Ninth Circuit Opinion, negates the *Local Competition Order's* holding that states may consider whether the tandem rate is appropriate based on functional similarities between a CLEC's network and an ILEC's network. We affirm our Part B determination that CLECs meeting a functional equivalency test may be allowed compensation at the tandem switch rate.

ii. Two –Tiered Rate

55 In Part B the Commission determined that merely because a CLEC qualifies for the tandem switch rate does not mean that 100% of the traffic terminated on a CLEC's network should be compensated at that rate.

56 **AT&T/XO.** AT&T/XO argue that Rule 51.711(a)(3), as clarified by the FCC Letter, provides that once a CLEC qualifies for tandem rate compensation under the geographic area test, then the CLEC is entitled to that rate for all local traffic terminated on its network. AT&T/XO claim that the FCC's *Local Competition Order*, at paragraph 1090, is inconsistent with Rule 51.711. AT&T/XO object to the Commission's Part B two-tier rate requirement as being unsupported by any FCC order or judicial interpretation.

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[24] Local Competition Order at ¶ 1090.

57 **Verizon.** Verizon points out that Rule 51.711(a) states: "Rates for transport and termination of telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c)[25] of this section." Verizon observes that subsection (a)(3), which sets forth the geographic area test, is not an exception to the rule's symmetrical rate requirement. Thus, even if a CLEC becomes eligible for the tandem rate by meeting the geographic area test, the rule's symmetrical rate requirement still applies. Furthermore, Verizon contends that the FCC Letter interpreting Rule 51.711(a)(3) merely clarifies the test a CLEC switch must satisfy to become eligible for the tandem rate, not how the tandem rate should be applied after the test is met.

58 **Qwest.** Qwest cites the language of the *Local Competition Order* at paragraphs 1090 and 1086[26] as support for its assertion that not all calls terminating on a CLEC's network must be priced at the tandem rate. Qwest further argues that FCC Rule 709(a) requires state commissions to establish rates for transport and termination of local telecommunications traffic and that such rate structures must be consistent with the way in which costs were incurred. Thus, Qwest contends that a CLEC's termination rates must reflect the cost efficiencies associated with the use of end-office direct trunking, since the use of such trunking relates directly to the way in which costs are incurred.

59 **Commission Decision.** We affirm our Part B determination that two-tiered rates are appropriate to meet the symmetry requirement of Rule 51.711 and to properly compensate a CLEC when part of the CLEC's terminating traffic is compensated at the tandem switch rate. The language quoted above from the *Local Competition Order* ("whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch") clearly indicates that the FCC contemplated two rates, in the event that some traffic terminated on a CLEC network was eligible for compensation at the tandem rate. We will further consider two-tier compensation rates in the new generic cost proceeding.

c. Interconnection Cost Sharing

60 The Part B Order held that ILECs and CLECs should compensate each other for an Interconnection Entrance Facility (and for transport, to the extent not included in the

[25] Paragraphs (b) and (c) are not at issue in this proceeding.
[26] See Part B Order at ¶ 104.

Interconnection Entrance Facility) at the nonrecurring and recurring rates that the ILEC charges when it constructs those facilities, in proportion to the amount of traffic each carrier delivers to the other over those facilities for local termination, excluding ISP-bound traffic.

61 The Part B Order further stated that the Commission may revisit this decision as further judicial and regulatory review of the nature of ISP-bound traffic occurs.

62 **AT&T/XO.** AT&T/XO challenge the Commission's decision to exclude ISP-bound traffic flow from the formula for determining cost sharing for interconnection facilities. AT&T/XO argue that 47 C.F.R 51.709(b), establishing proportionate cost sharing for terminating traffic, does not limit cost sharing to local traffic. If the FCC had so intended, the rule would have expressly included such a limitation. AT&T/XO also argue that the FCC *ISP Order on Remand* addresses only the minute-of-use compensation rates for ISP-bound traffic and does not otherwise alter carriers' interconnection facility cost-sharing obligations[27].

63 **Qwest.** Qwest contends that a reading of 47 C.F.R. 51.709 as a whole does not support AT&T/XO's argument. Rather, 47 C.F.R. 51.709(a) establishes that reciprocal compensation applies to the transport and termination of "telecommunications traffic," and 47 C.F.R. 51.709(b)(1) defines "telecommunications traffic" as not including interstate access traffic. Furthermore the *ISP Order on Remand* concludes that ISP-bound traffic is interstate in nature. Therefore, 47 C.F.R. 51.709(b) does not include ISP-bound traffic. Finally, Qwest points out that other state commissions in Colorado and Oregon have arrived at similar conclusions.

64 **Commission Decision.** We agree with Qwest that 47 C.F.R. 51.709 does not contemplate inclusion of ISP-bound traffic flows when calculating each party's proportionate share of cost of interconnection facilities. Therefore, we reject AT&T/XO's arguments and reaffirm our decision in the Part B Order on this issue.

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[27] *ISP Order on Remand* at ¶ 78 n.149.

4. QWEST'S NONRECURRING COSTS

a. Probability of Manual Orders

65 In the Part B Order, the Commission affirmed that ILECs are entitled to recover the additional costs incurred to manually process orders. The Commission required Qwest to establish a unified order processing rate after making revisions to its nonrecurring cost studies to reflect a 75% probability of mechanized orders and a 25% probability of manual orders.

66 **AT&T/XO.** These parties argue that in the *Seventeenth Supplemental Order* in UT-960369 the Commission required ILECs to establish separate rates for manual and electronic ordering. They dispute the Commission's Part B Order because it appears to use a probability ratio to establish a single rate for both manual and electronic ordering. They contend that CLECs who submit orders electronically should not be required to compensate Qwest for costs of manual processing of those orders, because Qwest does not incur the costs.

67 **Qwest.** Qwest argues that the Commission correctly allowed Qwest to assess a single nonrecurring charge, developed by using appropriate assumptions regarding the relative probabilities of manual versus mechanized orders. Qwest claims that this approach is consistent with the way the Commission sets other nonrecurring rates.

68 **Commission Decision.** In the *Seventeenth Supplemental Order* we did establish interim rates that reflect the cost of providing CLEC access to an ILEC's operational support system, including separate rates for manual and electronic ordering.[28] We recognized in the *Seventeenth Supplemental Order* that the cost of manual access to ILEC systems is greater than electronic access. In light of that recognition, we reverse our Part B decision on this issue and reaffirm our conclusion in the *Seventeenth Supplemental Order*. Qwest must establish separate nonrecurring charges for orders submitted electronically and orders submitted for manual processing.

[28] UT-960369, *Seventeenth Supplemental Order*, at para. 112.

b. Poles, Ducts, and Rights of Way

69 In Part B, Qwest proposed four nonrecurring charges for activities relating to poles, ducts, and rights of way. Of these charges, the CLECs challenged Qwest's proposed charge for conducting a field verification of conduit occupancy. This charge is based on Qwest's estimated costs to physically inspect each manhole along a proposed route of conduit, in order to ensure that sufficient space exists to accommodate a requesting CLEC's fiber.

70 The Commission found that Qwest's proposal to inspect every manhole along a prescribed route was excessive and directed Qwest to base its costs only on inspection of manholes where congestion is likely to occur. The Commission further directed Qwest to reduce its time estimates for work activities performed in the manholes to two hours and to adjust its nonrecurring cost study accordingly. Finally, the Commission indicated to the parties the difficulty of rendering a decision on an issue such as this with so little evidence on the record.

71 **Qwest**. Qwest requests the Commission to reconsider its Part B Order with regard to frequency of inspections of both manholes and poles for which it is permitted cost recovery. Qwest argues that it does not have the option to change its practices to conform to the cost recovery allowed because environmental events, such as flooding, are not discovered unless more frequent inspections are made. Qwest also argues that to making more frequent inspections is more cost efficient because it avoids the problem of uncovering a problem just at the point a CLEC wishes to deploy its facilities. At that point, the CLEC is faced with a delay in deployment while the problem is fixed. Qwest asks the Commission to give the company an opportunity to present additional testimony on the propriety of its manhole and pole inspection practices during the new generic proceeding.

72 **AT&T/XO.** AT&T/XO contend that the Commission's decision was based on record evidence and Qwest presents no evidence in the record to support its request for reconsideration.

73 **Commission Decision.** We are concerned that Qwest adequately inspect its facilities so that CLEC deployment of facilities can occur as efficiently as possible. Nevertheless, based on the record evidence on the issue to date, we have no basis for

changing our determination in Part B at this time. We will permit Qwest to present additional evidence on the question of inspection frequency during the new generic cost proceeding.

5. QWEST'S RECURRING COST STUDY

a. Total Installed Factor ("TIF)

74 In developing its recurring cost study, Qwest first determined the total installed investment that the element or service would require. Total installed investment is the sum of material and equipment costs plus investment loadings associated with, but not limited to, installation, engineering, and warehousing. According to Qwest the total installed factor ("TIF") is a cost factor that combines all proper investment loadings into one factor that, when multiplied against the material investments, provides a total installed investment. Qwest's TIFs reflect "actual" average costs to be added to material investments.

75 In the Part B Order, the Commission accepted Qwest's proposed TIFs because: 1) the CLECs did not introduce any evidence to demonstrate that the installed costs proposed by its witness were consistent with the "hard data" of cost levels actually incurred by Qwest; 2) the CLECs' witness, Mr. Weiss, based his testimony on experience with a small independent telephone company, and small companies have less buying power than large companies; 3) even though Qwest's data was from 1997, neither the CLECs nor Staff proposed substituting TIFs from 2001 for Qwest's numbers; and 4) other information elicited in response to Commission bench requests showed that Qwest's TIFs from 1997 did not overstate costs.

76 **AT&T/XO.** AT&T/XO dispute the Commission's decision to reject all proposals to modify Qwest's TIFs. They claim that Qwest's TIFs are based on costs dating back to 1997 and thus represent embedded costs in violation of TELRIC principles. AT&T/XO also challenge the Commission's reliance on older "hard data" instead of the opinion of experts who can better judge costs than an efficient provider reasonably would incur in the future.

77 AT&T/XO take issue with the Commission's discounting of Mr. Weiss's testimony because his experience was with independent telephone companies. The CLECs

argue that Mr. Weiss worked for a mid-sized telephone company, not a small company, as suggested in the Part B Order. Furthermore, there is no evidence to support findings that small companies have significantly less buying power than Qwest; that Mr. Weiss's knowledge is limited to his experience at a mid-sized telephone company; or that a small company has unequal buying power with respect to materials but equal buying power with respect to engineering and installation of those materials. AT&T/XO suggest that the Commission is contradicting itself when it states on one hand that small companies always have less buying power than large companies and on the other hand that small companies incur exactly the same engineering installation and other non-material costs as Qwest incurs. The CLECs argue that there is no evidence that the increased material costs incurred by a mid-sized ILEC account for 100% of the difference between the TIFs proposed by Mr. Weiss and those proposed by Qwest.

78 Finally, AT&T/XO argue that in subsequent cost proceedings in other states Qwest has produced more recent contracts with equipment vendors, including engineering and installation, which reflect significantly lower prices.

79 **Qwest.** Qwest contends that in response to bench requests it supplied the Commission with information demonstrating there was very little fluctuation in TIFs from year to year. Thus, the TIFs Qwest used do meet TELRIC requirements and are forward-looking because they are not anticipated to change.

80 Qwest further points out that the Commission properly evaluated the testimony of Mr. Weiss. The company he characterized as "mid-sized" serves only 20,000 lines from one central office, a far cry from Qwest, which has approximately 25 million lines in 14 states. Qwest also argues that while Qwest may have more buying power with respect to equipment and material than a small company, there is no basis to assume that each company would experience different installation costs for discrete pieces of equipment.

81 **Commission Decision.** We affirm our decision to adopt Qwest's TIFs, based on our evaluation of Mr. Weiss's testimony and on the consistency of TIFs from year to year. It is reasonable to assume that Qwest would receive favorable equipment prices based on its size as compared to a firm the size of Mr. Weiss's.

82 We are concerned about AT&T/XO's claim that Qwest has entered into recent contracts containing significantly lower prices for equipment and installation. The parties must submit evidence regarding current equipment and installation contract prices in the new generic cost case.

b. Utilization Rates or Fill Factors

83 In Part B, the Joint CLECs challenged Qwest's utilization rates or fill factors, which the Commission found ranged from 37% to above 95%. The Joint CLECs proposed an alternative utilization value of 85% for DS1 and DS3 capable loops.[29] The Commission rejected the use of an 85% fill factor on the basis that such a high level of demand is not an appropriate assumption for a TELRIC study because it is inconsistent with current or foreseeable future demand. In addition the Commission found that use of OC3-based architecture is the least-cost solution when demand for DS1s at a given location exceeds 11 DS1s, even if the utilization rate is lower than it would be for other solutions.

i. Fill Factor and DS3 Model Documentation

84 **AT&T/XO.** AT&T/XO argue that the Qwest cost studies the Commission relied on in adopting Qwest's utilization factors assume fully deployed optical equipment rather than use of line cards and "plug-in" components on an as-needed basis. AT&T/XO contend that Qwest assumes an OC3 architecture that is fully equipped to provide 84 DS1 circuits even though it is only being used to provide 31 DS1s. This violates TELRIC principles because it inflates cost estimates by using inconsistent assumptions – a low fill factor and fully deployed equipment.

85 AT&T/XO also point out that all of Qwest's cost estimates for high capacity loops are based on various architectures that are weighted to reflect different levels of demand. Qwest's DS3 model documentation shows eight different design architectures to

[29] Utilization or fill factors are used to increase per line costs of various facilities to recover the cost of unused network capacity that results from breakage, customer churn, and near term growth in demand. All else being accurate, if fill factors are assumed to be unreasonably low, a model will reflect an inefficient network and costs will be overstated. This is because a relatively small number of lines in service will be responsible to recover the cost of an inefficient level of excess capacity. Conversely, if fill factors are unreasonably high, costs will be understated and an efficient firm will not be able to recover its costs to provide network elements.

provision DS3 circuits, all having different weights, with none over 50%. Qwest's cost study, however, assumes only a single design architecture and that design has the highest costs and the lowest fill factor. Thus Qwest has inflated its cost estimate by assuming Qwest will use this single architecture for provisioning all DS3 facilities.

86 AT&T/XO request the Commission either apply the 85% fill factor to the fully deployed equipment or require Qwest to reduce its equipment prices to reflect deployment of only those facilities needed to serve anticipated demand. AT&T/XO also urge the Commission to require Qwest to revise its DS3 model to reflect the range of assumptions contained in the model documentation. AT&T/XO request either rehearing on this issue or permission to present additional evidence either in the new generic cost case.

87 **Verizon.** Verizon contends that AT&T/XO are simply repeating arguments that have already been considered and rejected by the Commission and that the record does not support the 85% fill factor proposed by them. Verizon also argues that the evidence provided by AT&T/XO ignores the differences in customer demand between high capacity digital facilities and DS3 loops.

88 **Qwest.** Qwest responds that it used only one architecture in the cost study to develop DS3 costs. Qwest asserts that the model submitted was also used to calculate the cost for entrance facilities. Entrance facilities carry traffic to the central office and thus require larger pipes and high capacity design, whereas DS3 capable loops only serve low demand end-user customers. It would not be appropriate to use the rate design for entrance facilities for end-user customers because fill factors would be overstated.

89 **Commission Decision**. AT&T has not previously raised the argument that Qwest's cost studies reflect fully deployed optical equipment rather than using only line cards and materials to accommodate anticipated demand. However, AT&T/XO does not point to any evidence in the record to support its contention that Qwest assumes an OC3 architecture that is fully equipped to provide 84 DS1 circuits even though its actual demand is 31 DS1s. We have agreed to revisit high capacity loop rates in the new generic cost case to ensure consistency with DS0 rates. AT&T/XO can raise the line card issue in that case. Furthermore, ILECs must provide information on the trend in utilization rates to determine if the percentage of revenue producing facilities has increased based on Part B rates.

ii. Fiber Fill Rate

90 In Part B, TRACER proposed using a 100% fiber fill rate in Qwest's model for determining the costs of high capacity loops because that was the rate adopted in the FCC *High Cost Order*.[30] The Part B Order rejected TRACER's proposal because: 1) TRACER failed to show any record support for it; 2) TRACER did not show that Qwest's model sizes cables in a manner consistent with the model used by the FCC; and 3) TRACER failed to show that use of a 100% fill rate in Qwest's cost model would adequately address breakage.[31]

91 **TRACER.** TRACER argues that the FCC found that use of a 100% fill rate is appropriate because "the allocation of four fibers per integrated DLC site equates to an actual fill of 50%". Tracer argues further that "because fiber capacity can easily be upgraded, 100% fill factors applied to four fibers per site are sufficient to meet unexpected increases in demand…and to handle maintenance issues."[32] TRACER then points out that in its modeling in this proceeding, Qwest also assumes four fibers per site. Thus, with 100% redundancy assumed in the cost study, just as with the FCC cost study, there is ample allowance for breakage. Furthermore, TRACER contends that to determine the fiber fill factor to use in this case, Qwest mechanically applied the 65% fill prescribed by the Commission for voice grade loops in UT-960369, rather than providing meaningful engineering analysis regarding fiber sheath fill.

92 **Qwest.** Qwest responds that TRACER is repeating arguments previously addressed by the Commission in the Part B Order. The FCC *High Cost Order* addresses universal service issues, not pricing for UNEs. Qwest also disputes TRACER's characterization that Qwest "mechanically applied" a 65% fill factor. Qwest points out that the record shows its witness Mr. Buckley[33] described the various fill factors used in the cost studies and that he described the difference between fiber sheath fill

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[30] *In the Matter of Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket No. 96-45; CC Docket No. 97-160, Tenth Report and Order, 14 FCC Rcd 20156 (rel. November 2, 1999) *("High Cost Order")*.
[31] Breakage describes excess capacity that is installed because capacity cannot always be adjusted in the same discreet increments as demand. For example, fiber cable is generally available in standardized united of 12, 24, 48, 72 and 144 fiber strands.
[32] High Cost Order at ¶ 208.
[33] TR 2057-2059

and electronics fill. Furthermore, Mr. Buckley stated that Qwest used an ordered fill for fiber sheath.

93 **Commission Decision.** We reject TRACER's request for reconsideration. The FCC itself has advised the parties that it has not evaluated the High Cost Price Model (HCPM) for any purpose other than national universal service cost calculations.[34] In addition, where Qwest has developed an assumption for a specific number of fibers per location in its cost studies, that establishes the minimum cable size. However, actual costs will be determined by the discrete cable sizes that are manufactured. Thus TRACER has not shown how using the 100% fill rate in Qwest's model would address breakage.

iii. Aggregating Demand

94 The Part B Order rejected TRACER's argument that Qwest's fill factor analysis fails to account for numerous instances where it is possible to aggregate demand from a number of end-user customers located in the same building or complex. TRACER asserts that by looking only at individual end-user demand in modeling DS1 costs, and ignoring situations where demand at a given location can be aggregated, Qwest understated the efficiencies to be achieved by deploying OC-3 fiber-based architectures, and thus overstated DS1 costs. TRACER had recommended use of a 100% fill factor.

95 **TRACER.** TRACER argues that in determining the appropriate fill rate for Qwest the Commission failed to take aggregation possibilities into account. TRACER requests the Commission to reconsider the utilization assumed for OC3 architectures in light of TRACER's argument, or to rehear the issue, requiring Qwest to quantify circumstances where it is able to aggregate the demand from multiple end-users located in the same high-rise building or complex.

96 **Qwest.** Qwest contends the Commission did adequately consider TRACER's argument and that a review of the record supports this contention. Qwest points out that it used data for end-user demand on a per-location basis and thus already reflected the aggregation occurring at each location. In light of evidence that the

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[34] *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) at ¶ 12.

average number of DS1s per location in the state is less than three, Qwest's models did properly account for the ability to aggregate demand.

97 **Commission Decision.** We affirm the use of Qwest's proposed utilization rates. Nothing in the record supports TRACER's contention that Qwest failed to consider the possibility of aggregating demand. Furthermore, Qwest's ability to aggregate demand is overly speculative in light of the current level of utilization.

c. High Capacity Loops

98 The Part B Order rejected the calculation of high capacity loop prices, based on the models used in Docket No.UT-960369, for three reasons: 1) none of the models submitted in UT-960369 was in the record in the Part B proceeding; 2) the Commission previously indicated that those models would be inappropriate for use in future proceedings; and 3) the models from UT-960369 do not estimate the costs of many UNEs at issue in Part B.

99 **AT&T/XO**. AT&T/XO contend that high capacity loops use many of the same facilities and equipment as DSO 2- and 4-wire unbundled loops. Failure to set the same cost for identical facilities in both DSO and high capacity loops may result in two different cost estimates for the exact same facility depending on whether the facility is used to provide a four-wire loop or a DS1 loop.

100 **Qwest.** Qwest argues that the record does not support AT&T/XO's premise that the high capacity loops (fiber loops) addressed in Part B are the same loops that were the subject of UT-960369. Qwest points to evidence from a CLEC witness in Part B who agreed that costs for fiber-based loops were not addressed in UT-960369. Qwest further argues that CLECs have presented no evidence that Part B loop costs are any different than loop costs determined in UT-960369.

101 Qwest also asks the Commission to clarify that in light of its findings in this section, the Commission has accepted Qwest's proposal regarding recurring costs for high capacity loops.

102 **Verizon.** Verizon asserts that the evidence presented by CLECs in Part B ignores the difference in customer demand between high capacity digital facilities and DS3 loops.

103 **Commission Decision**. We reject AT&T/XO's arguments. We have already determined that cost models used in UT-960369 were inappropriate for future use. Costs derived from such models would also be suspect. We anticipate being able to review loop rates, under the same cost models as were used in Part B, in the new generic cost case. We will also review high capacity loop rates and fiber loop rates to ensure consistency.

104 We affirm the Part B Order accepting Qwest's proposed recurring rates for high capacity loops

d. Unbundled Dark Fiber ("UDF")

i. Rates Inconsistent with UNE Loop Rates.

105 In Part B, the Joint CLECs argued that the recurring charges for dark fiber should be no higher than the charges for a two-wire analog loop when the fiber is used as a loop, and no higher than the charge for a DS1 transport facility when the fiber will be used as transport, consistent with the Commission's findings in UT-960369. They objected to Qwest's proposal for a recurring rate of $98.64 for an unbundled dark fiber loop, contending this was unreasonable when compared to the statewide average UNE-loop rate of $18.16. The Commission rejected the CLECs' argument, finding the comparison inappropriate because the capacity of the elements is different. The Commission adopted Qwest's proposed rates.

106 **AT&T/XO.** AT&T/XO claim that the Commission rejected the use of capacity as a way to differentiate costs in UT-960369. In that case the Commission required that line counts used in cost models count fiber on a per-strand, rather than on per-channel-equivalent basis. AT&T/XO argue the Commission cannot now establish costs based on capacity rather than on physical size. AT&T points out that the capacity of copper facilities can be enhanced electronically to provide DS1 service. Therefore, based on the Commission's costing logic, Qwest would be entitled to charge a much higher rate for four-wire copper loops if CLECs intend to use them for DS1 service for providing two voice channels. AT&T requests reconsideration of this finding or review in the new generic proceeding.

107 **Commission Decision.** We affirm our adoption of Qwest's rates established in Part B, but advise the parties that the Commission will also review rates for dark fiber loops in the new generic cost proceeding.

6. VERIZON'S NONRECURRING COSTS AND STUDY METHODOLOGY

a. Verizon's Order Entry Costs

108 The Part B Order addressed Verizon's order-processing times and costs as they relate to ASRs[35] and LSRs.[36] The Part B Order discussed Verizon's ASR nonrecurring costs, which Verizon derived based on an "actual work" time study performed by Arthur Anderson and adjusted to reflect the discontinuity in various ordering processes. The Part B Order rejected Verizon's adjustments as well as those proposed by CLECs and Commission Staff, and required Verizon to use the actual observed work times plus 20%, as the basis for its ASR costs. However, the Part B Order did not expressly address nonrecurring costs for ordering sub-loops and UNE-Ps, which CLECs order by placing LSRs, rather than ASRs.

109 **AT&T/XO.** AT&T/XO first argue that the Commission improperly decided to increase the observed work times by 20% and that this adjustment violates TELRIC principles. AT&T/XO assert that Verizon's NACC order processing center has been in operation for only a short time and that Verizon provides no basis for a conclusion that the actual observed work times are reasonably efficient. Furthermore, there is no support in the record for the 20% adjustment. AT&T/XO also argue that the decision to require the 20% adjustment contradicts other portions of the Part B Order where the Commission rejected proposals to decrease ILEC cost estimates because the proposals were based on the opinions of subject matter experts rather than "hard data" capable of validation.

110 AT&T/XO next argue that the Commission should not approve different costs for ASR order-processing and LSR order-processing because the functionality is the

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[35] Access Service Requests. CLECs use these to order dark fiber, EELs, dedicated transport and SS7. They are processed at the company's National Access Contact Center ("NACC").
[36] Local Service Requests. CLECs order some unbundled elements, such as sub-loops and UNE-P through this process. Verizon processes LSRs at its National Open Market Centers ("NOMCs").

same, regardless of whether Verizon has set up two different service centers to accommodate the different types of orders.

111 **Verizon.** Verizon disputes the assertion that the company's order processing center has been in operation for only a short time. Verizon asserts that the National Access Contact Center, where ASRs are processed, has been processing inter-exchange carriers' requests for access services for over two decades, and the actual observed times reflect long experience in processing orders similar to CLEC orders for dark fiber, EELs, dedicated transport, and SS7.

112 Verizon further notes that the Part B order requires the company to use ASR work times for elements that are ordered via the LSR process through Verizon's National Open Market Centers. Verizon contends that ASRs and LSRs are processed by different work groups using different processes. Thus Verizon urges the Commission to adopt the ordering work-time estimates for sub-loops and UNE-P that Verizon has calculated.

113 **Commission Decision.** We reaffirm our decision to require a 20% adjustment to Verizon's actual observed work times. Verizon adequately refuted AT&T/XO's claims that the observed times were associated with a newly opened order-processing center. Also, AT&T/XO would have us adopt their assumption that employees are operating at 100% efficiency – not a reasonable assumption because it ignores such realities as routine employee break time and time away for job training. The Commission derived the 20% adjustment from its review of the record as a whole and based on use of reasoned judgment.

114 We adopt on an interim basis the same work times and costs for LSRs as for ASRs. The distinction between work time estimates for ASRs (processed at the NACC) and work time estimates for LSRs (processed at NOMCs) is neither well-developed on the record nor in the parties' briefs. The record suggests that Verizon's LSR work time estimates are unreasonably high, as are its ASR work times, but there is little development of this issue in the record. The method used by Verizon to obtain its time estimates for LSRs in the company's cost studies is not clear. Since we have a clearer picture of the ASR times and have ordered Verizon to adjust the actual observed times by 20%, we direct Verizon to use those costs in determining charges

for LSR processing of sub-loop and UNE-P orders until the Commission is able to consider further evidence on the issue during the new generic cost proceeding.

b. High Capacity Loops

i. Converting Special Access or Private Line Circuits to High Capacity Loops

115 In the Part B Order we agreed with the Joint CLECs that there is no difference between converting a circuit to an unbundled loop and converting a circuit to an enhanced extended loop (EEL). We required Verizon to charge the same nonrecurring charge for conversions of special access or private line circuits, regardless of whether those circuits are being converted to EELs or to unbundled loops.

116 **Verizon.** Verizon states that it has not proposed a charge for the conversion of special access and private lines to unbundled loops because the FCC has prohibited such conversions.[37] Furthermore the FCC only allows conversions of special access and private lines to EELs when the CLEC proves that a significant amount of local exchange service is being provided to a particular customer.[38] The FCC put these constraints in place because of a concern that exchange access carriers would be able to arbitrage special access rates and harm universal service. Thus the Commission should not require nonrecurring charges for conversions of special access and private lines to unbundled loops.

117 **AT&T/XO.** AT&T/XO argue that Verizon has misrepresented the FCC's actions regarding special access and private line conversions. AT&T/XO contend that the FCC does not generally prohibit converting special access service to UNEs. Rather, the FCC has restricted only conversion of special access circuits to combinations of UNEs, specifically EELs.[39] AT&T/XO assert that reading the FCC's Order as creating a blanket prohibition against conversion would be nonsensical since the FCC requires ILECs to convert special access circuits to EELs when that combination of loop and transport carries a significant amount of local exchange service.

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[37] *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Supplemental Order Clarification*, CC Docket No. 96-98, FCC 00-183 (June 2, 2000).
[38] *Id at ¶ 22.*
[39] *Id.*

118 **Commission Decision.** We agree with AT&T/XO. The FCC's *Supplemental Order Clarification,* at paragraph 8, states:

> Therefore, until we resolve the issues in the Fourth FNPRM,[40] IXCs may not substitute an incumbent LECs' unbundled loop-transport combinations for special access services unless they provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer.

119 The FCC's *UNE Remand Order*, at paragraph 177, states:

> We find no basis for placing a restriction on what services a carrier may offer using the loop network element. Indeed, the prospect of competition among carriers to provide services over the loop at prices that more closely reflect the provider's costs seems to us to accord fully with Congress's intent in passing the 1996 Act. We do not now decide whether or not this analysis may extend to the EEL, but rather seek comment on that issue in the Further Notice of Proposed Rulemaking, below. Footnotes omitted.

120 We conclude that the Commission has authority to require Verizon to establish rates for loop and EEL conversions. The issue whether a CLEC provides a significant amount of local exchange service must be decided on a case-by-case basis, but that does not act as a prohibition to rate-setting. Verizon must submit the same nonrecurring charges for the conversion of special access and private line circuits to unbundled loops and EELs.

7. VERIZON'S RECURRING COSTS AND RATES

121 In Part B, Verizon sponsored a new cost model, the Integrated Cost Model ("ICM"), for the purpose of estimating the company's recurring and nonrecurring costs.[41] According to Verizon, ICM is a long-run incremental cost model designed to

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[40] Further Notice of Proposed Rulemaking.
[41] ICM is comprised of six modules: Loop, Switch, Interoffice Transport, Signaling System 7 ("SS7"), Expense, and Mapping/Reporting. *See*, Verizon Brief, at para. 66.

calculate the forward-looking cost of provisioning telecommunications services and UNEs out of Verizon's network in Washington. ICM allegedly does this by designing the network using currently available, forward-looking technology, while reflecting Verizon's engineering practices and operating characteristics, and by relying on the prices for labor, material, and equipment that Verizon is actually able to obtain in Washington State.[42]

122 In the Part B Order, the Commission took issue with Verizon's cost model, but concluded that substituting the models used in UT-960369 for the ICM was not a viable option. The Commission noted that first, the UT-960369 models were not a part of the record in the Part B proceeding, and second, the Commission rejected using these models in future proceedings. Third, the UT-960369 models did not provide cost estimates for many of the UNEs at issue in Part B.

123 The Commission found itself limited to using the ICM because no party sponsored an alternative cost model. The Commission explicitly declined to adopt or endorse Verizon's cost model but rather, required Verizon to adjust the model to reflect specific findings made in Part B and to re-run its model on the basis of those changes.

a. Loop Lengths

124 The Part B Order criticized Verizon's ICM study because it developed loop length estimates that vary greatly from Verizon's actual loop lengths. The Commission found that these loop lengths conflicted with the company's purported goal of building a cost model that reflects actual operating characteristics. The Commission further found that Verizon's method for identifying customer locations was problematic. The ICM breaks a wire center into grids that are 1/200th by 1/200th of a degree in size. There is no indication that Verizon's customer location methodology accounted for multi-tenant housing units, and thus the methodology is likely to lead to an overstatement of the average length of the loop. The Commission ordered Verizon to modify the ICM to reflect loop lengths at the wire-center level based on data the company developed in 1998.

[42] Verizon Brief, at para 63.

125 **Verizon.** Verizon contends that the Part B Order's requirements for modifications to the ICM reflect a misunderstanding of the basic structure, inputs, and outputs of the model. Verizon states that if changes are made, they will lead to improper cost estimates. Each Commission ordered change to the ICM modifies significant loop cost drivers and changes the resulting loop cost, which in turn decrease the likelihood that the model will still be consistent with the statewide average cost from UT-960369. Verizon asserts that such items as loop length, drop length, and feeder/distribution ratios are not inputs to the ICM, but rather are outputs resulting from the operations of the study.

126 Verizon also argues that modifying the ICM to reflect the 1998 loop length estimates would violate TELRIC principles, which assume an instantaneous rebuild of the network with forward-looking technologies. Also, modification would not reflect Verizon's actual network, which was deployed over many years. Verizon suggests that use of TELRIC principles leads to inconsistencies between the model and the actual network characteristics and that these inconsistencies should be expected.

127 **AT&T/XO.** AT&T/XO contend that the Commission has required Verizon to incorporate changes to its model values for loop length, feeder/distribution ratios, and drop lengths. If Verizon cannot adjust its model, the Commission should reject the model and establish interim rates for Verizon's high capacity loops equal to rates Qwest has included in its compliance filing for comparable UNEs. The Commission should then permit Verizon to submit adjustments to its cost model or a new cost model in the new generic cost case.

128 **Commission Decision.** We affirm our conclusions on this issue stated in the *Ninth Supplemental Order*,[43] where we recognized that a TELRIC cost model might result in inconsistencies between model values and actual values.[44] There we advised the parties that if substantial differences occurred, the sponsor of the cost study must be prepared to explain the basis for the differences. In this instance, Verizon failed to explain why actual loop lengths are so much shorter than model loop lengths, since the locations of central offices are the same. Verizon previously argued to the

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[43] *In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale,* Docket No. UT-960369 et al., *Ninth Supplemental Order* (June, 1998) ("*Ninth Supplemental Order*").
[44] *Ninth Supplemental Order* at ¶ 49.

Commission that it should reject the Hatfield model because the interoffice cable lengths contained in the model are significantly different than actual[45]. The Commission accepted that argument then and it reaffirms the point now.

129 Finally, Verizon previously argued that the usefulness of a model can be judged by how well it predicts a carrier's actual network. Verizon assumes its methodology is accurate but fails to provide any factual support for this assumption. Verizon's supposed inability to adjust its model flouts the Commission's earlier guidance that it wanted Verizon to provide an open and easily adjustable cost study to support its proposed charges. We order Verizon to adjust its ICM model to reflect loop lengths at the wire-center level based on data the company developed in 1998.

b. Distribution Facilities

130 In Part B, Verizon estimated demand to be 1.12 lines per lot with capacity being 2.34 lines per lot. Because this estimate resulted in a fill rate of 48% -- a higher fill rate than previously adopted by the Commission – the Commission adopted this demand estimate as reasonable.

131 **TRACER.** TRACER contends that Verizon's cost studies design a network to meet both existing and future demand, and then inappropriately assign the spare capacity to the working lines in existence today. As a result Verizon is charging current customers for facilities they do not need, raising the cost of competitive entry and requiring current customers to subsidize future customers. TRACER cites the FCC's *High Cost Order* for the proposition that fill factors used in federal cost studies should reflect current demand and not the building of distribution plant to meet

[45] We note that in a recent similar cost setting proceeding before the Massachusetts Department of Telecommunications and Energy, *Investigation by the Department of telecommunications and Energy on its own Motion into Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Awarded-Cost Discount for Verizon on New England, Inc., d/b/a Verizon Massachusetts Resale Services in the Commonwealth of Massachusetts,* DTE 01-20, Order entered July 11, 2002, Verizon advocated use of a difference cost model (Loop Cost Analysis Model) which relied on existing network data. In that proceeding, Verizon contended that "existing-loop routes and structures are efficient and provide the best estimate of what a carrier would build in order to serve demand in Massachusetts:. (Order at 137). The Massachusetts DTE agreed with Verizon that reliance on existing feeder routes actually lowers costs and that "a 'reconstructed network' under TELRIC principles should be read as technologically reconstructed network rather than a physically rerouted network". (Order at p.139).

ultimate demand. The FCC stated that fill factors should reflect only current demand in order to avoid excess capacity and increased cost estimates. TRACER claims this same logic should apply to Verizon's ICM distribution-facility sizing and fill factors. TRACER further argues that cost models should be updated as growth occurs and new capacity is required. Furthermore, TRACER asserts that it is improper to base the *High Cost Order* model on current demand and at the same time base the costs of UNEs on ultimate demand, because UNE costs will be used to provide universal service. If universal service costs should not include costs for providing excess capacity, then neither should UNE costs.

132 **Verizon.** Verizon responds that TRACER is advocating use of an "objective fill rate," defined as the level of utilization at which additional equipment is installed to meet the level of demand. Objective fill is almost always greater than actual fill. Verizon points out that the Commission has rejected this approach before[46] and urges the Commission to reject it in this case. Furthermore, Verizon reiterates its previously stated argument that the FCC's *High Cost Order* does not give the Commission guidance in determining the costing of UNEs in this case.

133 **Commission Decision.** We affirm our earlier decisions rejecting the use of an objective fill rate. As noted earlier in this decision, the FCC itself has advised that caution be exercised in applying costs from its *High Cost Order* to price UNEs.

c. Drop Costs

134 In the Part B Order, the Commission ordered Verizon to adjust its drop lengths to match those adopted in UT-960369, because Verizon did not submit a drop length study in Part B as the Commission had previously urged it to do, and because no other alternative suggested by the parties to Part B was found suitable.

135 **Verizon.** Verizon claims that it will be difficult to adjust drop lengths in its ICM because drop lengths are outputs and not inputs. Verizon argues that the ICM drop lengths are appropriate because they are based on the specific density characteristics of the geographic area in question.

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[46] See Docket No. UT-960369, *Eighth Supplemental Order* at ¶171; Docket No. UT-980311(a) *Tenth Supplemental Order* at ¶ 296.

136 **AT&T/XO.** AT&T/XO reiterate the arguments they made about loop length adjustments to the Verizon cost model.

137 **Commission Decision.** We reject Verizon's arguments on drop lengths for the same reasons we rejected them regarding loop length. We requested that Verizon provide a study that would reasonably predict its actual network, and that was open and easily adjustable. Verizon has not done so. We affirm our requirement that Verizon adjust its drop lengths to correspond to those determined in UT-960369.

d. Structure Sharing

138 In the Part B Order, the Commission required Verizon to adjust its ICM study to reflect structure sharing ratios adopted by the Commission in UT-960369. Verizon argued that the Commission had not applied those structure sharing ratios to its UT-960369 study and the Commission pointed out that the Commission had not done so because Verizon's previous study did not allow the user the flexibility to alter the assumption of zero structural sharing. Thus in UT-960369 the Commission resolved the issue by reducing Verizon's cost model loop estimate to reflect cost sharing.

139 **Verizon.** Verizon argues that the structure sharing assumptions in the ICM reflect Verizon's actual structure sharing experience. The Part B Order does not match the ICM input requirements because the ICM does not provide for structure sharing by density zone. If inputs to the ICM reflect greater structure sharing values than Verizon actually experiences, competitors will take advantage of the assumed increase in sharing in building their networks.

140 **Commission Decision.** We again reject Verizon's argument that the ICM cannot be adjusted to reflect the structure sharing ratios, as we ordered. We directed Verizon to provide an open, adjustable cost model for this proceeding and it failed to do so. Since Verizon offers no new arguments, we affirm the Part B decision requiring this adjustment.

e. Pole Costs

141 The Part B Order rejected Verizon's pole cost proposal because it exceeded the cost estimate previously rejected by the Commission. The Part B Order directed Verizon

to adjust its model to reflect the pole cost estimates adopted in Docket UT-980311(a).[47] The Commission found those costs to be reasonable because they are based on publicly available data whose derivation is well documented.

142 **Verizon.** Verizon argues that the use of pole cost estimates from UT-980311(a) is incompatible with ICM input requirements. Verizon also contends that it provided significant documentation of pole costs reflecting actual vendor contracts in Washington and loading factors based on actual pole cost expenditures booked.

143 **Commission Decision.** We reject Verizon's arguments because Verizon failed to show that its purported pole costs are reasonable. Even though Verizon provided documentation of actual costs, the evidence cited indicates that Verizon overpaid for poles and ancillary equipment. We decline to adopt costs based on this type of data and affirm that Verizon must use pole cost estimates from UT-980311(a).

f. Statewide Average Loop Costs

144 In the Part B Order, the Commission stated that after Verizon adjusted its ICM as required, Verizon must make a compliance filing showing that the average cost of a DS0 loop comports with the Commission's prior finding of a monthly unbundled loop cost of $23.94. The Commission further ordered that Verizon must provide a detailed explanation and list of inputs that were adjusted to come up with the loop cost, and that all other recurring cost estimates were derived using the same input values used to obtain the $23.94. In addition, the Commission required Verizon to use the common cost factor approved in Part B and to demonstrate that its cost estimates reflect current authorized depreciation rates.

145 **Verizon.** Verizon asserts that the ICM loop cost calculations are already very close to the costs from UT-960369. Verizon further reiterates its argument that the adjustments required in Part B to its ICM model will be difficult to complete and will result in inaccurate cost estimates. Verizon urges the Commission to accept the ICM output as is, rather than adjusting it to reflect actual network characteristics from other studies or dockets.

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[47] *See In the Matter of Determining Costs for Universal Service*, Docket No. UT-980311(a), *Tenth Supplemental Order* (November 20, 1998)("*Washington USF Order*") at ¶ 180.

146 Verizon also seeks clarification that the Part B Order intended to refer to the $20.30 statewide average loop cost, not the $23.94 loop rate.

147 **AT&T/XO.** AT&T/XO reiterate their argument that the Commission ordered Verizon to provide an open, easily adjustable cost model for this proceeding and failed to do so. Therefore, AT&T/XO urge the Commission to use Qwest cost estimates where appropriate as interim Verizon recurring rates and that Verizon be required to defend its costs in the new generic cost proceeding.

148 **Commission Decision**. We agree with Verizon that paragraph 360 of the Part B Order intended to refer to the $20.30 statewide average direct loop cost, not the $23.94 loop rate which consisting of direct and common costs.

149 We disagree with Verizon that we should accept its ICM costs without further adjustment. Prior to entering our Order in Part B, we requested that Verizon provide support to us for its claim that its loop cost calculations are already within pennies of the costs from UT-960369. In response, Verizon provided a spreadsheet with a number of calculations. Verizon indicated where the specific data points that comprise the calculations are found in the ICM output, but these calculations do not appear in the record. Verizon claimed that these calculations are necessary because of the need to remove costs necessary to the development of sub-loop rates, but not applicable to the entire loop. We find that Verizon's response to our request for support for its loop cost calculations presents an issue that has not been addressed on the record and cannot be relied upon. Therefore, we reject Verizon's argument that the Commission consider the ICM output for the company's loop costs as a measure of cost study reliability.

150 Because Verizon has failed to supply a cost model in Part B that is open and easily adjustable, as we ordered it to do, and has failed to defend its cost estimates on the record in Part B, we affirm our order that Verizon adjust the ICM to reflect the findings we have made in the Part B Order. Verizon must make proportional adjustments to all of the model's outputs so that the average cost of a DS0 loop comports with the Commission's prior finding that the monthly cost of a an unbundled loop including common costs is $23.94.

g. Common Costs

151 In the Part B Order, we concluded that it was inappropriate to apply the 24.75% common cost factor from UT-960369 to Verizon's current cost study, because some common costs from UT-960369 are treated as direct costs by ICM. This could result in double recovery of these costs. Verizon submitted further information pursuant to a Bench Request indicating calculations resulting in rates of 17.89% and 19.3%. The calculations supporting these rates were not part of the record. However, the Part B Order adopted a rate of 19.3%, pending further consideration in the new generic cost case.

152 **Verizon.** Verizon argues that a more appropriate common cost factor for interim purposes would be the 24% factor established in the Seventeenth Supplemental Order. Using the 24% factor would avoid the administrative difficulties inherent in switching to an interim cost factor until a Commission Order is entered establishing yet another common cost factor as a result of the new generic cost proceeding.

153 **AT&T/XO.** AT&T/XO claim that Verizon failed to show that its new cost model is consistent with prior Commission findings and conclusions, and claim that Commission adoption of Verizon's costs would contradict prior Commission decisions. AT&T/XO argue that Verizon should present its arguments in the new generic cost proceeding.

154 **Commission Decision.** We reject Verizon's argument to adopt a 24% interim common cost factor. The 24% factor was developed by Qwest and was only applied to Verizon's model because Verizon's own calculations were unacceptable. We direct Verizon to use the 19.3% common cost factor derived pursuant to our Part B bench requests until a new common cost factor is determined in the generic cost proceeding.

h. ISDN Loop Extenders

155 The Part B Order approved Verizon's proposal for recurring rates for ISDN loop extenders. These rates apply only when loop extenders are required to facilitate

CLEC provisioning of ISDN BRI[48] service. CLECs would provision ISDN BRI services to their end-users through use of a basic 2-wire UNE loop. CLECs would need the loop extender only when the loop does not comply with the technical parameters for ISDN BRI.

156 **Covad/WorldCom.** Covad/WorldCom contend that Commission adoption of Verizon's 2-wire extension technology creates a pricing disparity between Verizon and Qwest. Qwest only charges for the additional UNE if an extender is ordered for purposes other than bringing a loop up to technical specs. Otherwise it is part of the loop cost. Covad/WorldCom contend Verizon also should charge CLECs for loop extenders only if an extender is ordered for purposes other than bringing a loop up to technical specifications.

157 **Verizon.** Verizon argues that Covad/WorldCom did not address this issue during the Part B hearing. It is improper on due process grounds to raise an issue for the first time during the Reconsideration phase of a proceeding.

158 **Commission Decision.** We agree that since Covad/WorldCom did not raise its argument during the proceeding we must reject it as untimely. Covad/WorldCom may raise the issue in the new generic cost case.

i. Dark Fiber

159 The Part B Order rejected the Joint CLECs' argument that an unbundled loop and dedicated transport both use the same underlying facility. The Order found that the Joint CLECs failed to establish that the average size of a fiber cable in the loop is the same as the average size fiber cable used for interoffice transport.

160 The Part B Order also rejected Verizon's inclusion of capacity costs in its recurring costs for dark fiber, because capacity costs are already accounted for by fill rates. The Part B Order permitted Verizon to recover only operations and maintenance costs associated with the dark fiber. The Part B Order also required Verizon to calculate its

[48] "BRI" is Basic Rate Interface. BRI provides users with 2 B-channels and one D-channel. The "B", or bearer, channels can carry up to 64kbps of voice or data traffic. The "D" or Data, channel can carry up to 16kbps of data that is typically used for network management operations.

costs for dark fiber in accord with the adjustments the Commission established for Verizon's cost model.

161 **AT&T/XO.** AT&T/XO dispute the Commission's refusal to compare Verizon's dark fiber rates with rates for unbundled loops and dedicated transport derived from UT-960369. They assert that dark fiber for loop facilities uses the same facilities as unbundled loops. Dark fiber for dedicated transport uses the same facilities as unbundled dedicated transport.

162 **Verizon.** Verizon argues that the CLECs offer no citation to the record in Part B to show that the underlying facilities are the same for dark fiber as for unbundled loops. A 2-wire analog loop consists of copper or a combination of copper and fiber. Costs are determined on a per-voice-grade-channel basis. On the copper portion, cost is determined on a per-pair basis. On the fiber portion, cost is determined on a per-DS0 basis (based on a fraction of the total bandwidth over a single fiber). On a dark fiber loop, a single fiber is provided for the length of the loop. A customer uses the entire fiber, not just a fraction of the bandwidth.

163 **Commission Decision.** We reject AT&T/XO's argument as unsupported in the Part B record. However, the CLECs may raise this issue in the new generic cost case and bring evidence to support their claims.

j. Sub-Loop Elements – Feeder Distribution

164 In Part B, Verizon proposed rates for three separate sub-loop elements (feeder, distribution, and drop) for both 2-wire and 4-wire UNE loops. In addition, the company proposed feeder and distribution sub-loop categories for dark fiber.[49]

165 The feeder sub-loop is the facility that extends from a Verizon central office main distribution frame ("MDF") to a feeder distribution interface ("FDI"), which may be a cross-connect box or a digital loop carrier ("DLC"). The distribution facility extends from the FDI to, and including, the network interface device ("NID") at the customer's premises. The "drop," (which is defined for the provision of "one" line) extends from the pedestal or terminal serving the customer's premise to and including the NID at the customer's premises.[50]

[49] Verizon Brief, at para. 98. These rates can be found in Exhibit T-1190, at page 23.
[50] Verizon Brief, at para. 98.

166 The Part B Order rejected use of compliance runs from UT-960369 to establish recurring rates for sub-loop elements, because these were not in the record of this proceeding. The Order accepted use of 50/50 feeder and distribution ratios when calculating sub-loop element rates.[51] The Order further authorized Verizon to establish the drop as a separate element as long as Verizon met three conditions: 1) to charge only one nonrecurring charge when CLECs order the distribution and drop portions of a loop at the same time; 2) to calculate distribution and drop rates that are consistent with the Part B Order; and 3) to set a cost to a CLEC for ordering feeder, distribution, and drop sub-loop elements, not to exceed the cost of the loop previously established by the Commission.

167 **Verizon.** Verizon contends that the 50/50 distribution/feeder ratio is based on the Hatfield model, which is not in the record in Part B. Furthermore, Verizon argues that the ICM's sub-loop percentages are consistent with its actual network characteristics.

168 **Commission Decision.** We reject Verizon's contention that because it is based on the Hatfield model the 50/50 ratio is not part of the record. Although the actual model was not made part of the record, the results were. The parties had ample opportunity to conduct discovery or cross-examination on the issue.

169 Furthermore, we do not find in the record support for Verizon's assertion that the ICM sup-loop percentages are consistent with its actual network. Verizon did not use actual network lengths in the ICM, and its witness indicated merely that he used output from the model. Verizon has already argued that it could appropriately ignore actual loop lengths in developing its costs, undermining its claim that its model reflects what is found in the actual network. We affirm the Part B Order directive to Verizon to use the 50/50 ratio for sub-loop feeder/distribution investment.

k. Unbundled Packet Switching

170 In Part B, Verizon did not propose specific rates for packet switching because it claimed that none of the four pre-conditions set forth in 47 C.F.R. 51.319(c)(3)(B)[52]

[51] Staff's proposed feeder and distribution ratios are set forth at Exhibit T-1350, Table 1.
[52] These conditions are: 1) the ILEC has deployed digital loop carrier systems, or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution system; 2) there

is present in Washington. Verizon proposed to respond to requests on a case-by-case basis through the BFR process.

171 In the Part B Order, the Commission reasoned that without unbundled packet switching, CLECs seeking to offer DSL services would be forced to collocate DSLAMs and splitters at a large number of remote terminals in order to serve the same number of customers previously served by a single set of electronics at a single central office.

172 The Commission recognized that Verizon does not currently remote-locate packet switching. However, if Verizon does subsequently provide remote packet switching and the four FCC conditions are met, CLECs would be faced with regulatory delay before the functionality associated with unbundled packet switching was made available to them, unless rates are established ahead of time.

173 The Commission further indicated that in the new generic cost proceeding, it would consider arguments relating to the legal standards necessary for imposing unbundled packet switching obligations on ILECs.

174 **Verizon.** Verizon reiterates arguments already addressed in an earlier portion of this decision –that in light of the decision in the *USTA* case, the high frequency portion of the loop is not a UNE, and that the states cannot mandate unbundling beyond what the FCC authorizes. Thus, the Commission has no authority to establish TELRIC rates for unbundled packet switching, and even if it did possess that authority, it would be required to base its decisions to unbundle on the impairment standard contained in Section 251(d)(2) of the Telecom Act of 1996.

175 **Covad/WorldCom.** Covad/WorldCom reiterate their arguments that the D.C. Circuit Court has not yet issued a mandate in the *USTA* case. Since the FCC has sought reconsideration of the order in that case, the decision is not final. Covad/WorldCom argues that the Commission has authority independent of Federal law to establish

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are no spare copper loops capable of supporting xDSL services requested by CLECs; 3) the ILEC has not permitted the CLEC to deploy a DSLAM in the remote terminal; and 4) the ILEC itself has deployed packet switching capability.

UNEs and that it may exceed federally required UNEs.[53] Finally, Covad/WorldCom argue that other states have exercised authority under state law to impose additional unbundling obligations on ILECs.

176 **AT&T/XO.** AT&T/XO reiterate their arguments that pursuant to §251(d)(2) and (d)(3), the FCC and the states have concurrent authority to adopt unbundling obligations in certain circumstances. The FCC may establish a national list of UNEs that serves as a "floor" below which the state regulatory agencies may not go. But the states may add unbundling obligations if they are consistent with the statute. AT&T/XO argue that if the FCCs unbundling requirements acted as both a "floor" and a "ceiling" there would be no room for additional state regulation and §251(d)(3) would be read out of the Act. AT&T/XO dispute Verizon's argument that an FCC decision not to unbundle an element constitutes a finding of "non-impairment." AT&T/XO argue that where the FCC declines to create an unbundling requirement, there can be no resulting inconsistency between state law and any federal legal requirement.

177 **Commission Decision.** We reaffirm and clarify our Order in Part B relating to unbundled packet switching. The Part B Order does not indicate that the Commission will decide whether to exercise independent state authority to require that unbundled packet switching be made available. Instead, we have referred the issue to the new generic cost case for the parties to present arguments on the appropriate legal standards. We agree with AT&T/XO that if the FCC's rule establishes both a "floor" and a "ceiling," the state would be precluded from taking any action. We affirm our independent authority to act pursuant to Section 251(d)(3) of the Act.

IV. FINDINGS OF FACT

178 Having discussed above in detail the Petitions for Reconsideration filed by the parties to this proceeding and having stated our findings of fact and conclusions of law in the text of the Order, the Commission now incorporates those portions of the preceding detailed findings and conclusions by this reference.

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[53] *See Iowa Utilities Board v. FCC*, 120 F3d 753, 807 (8th Cir. 1997), *not rev'd by AT&T v. Iowa Utils. Bd*., 525 U.S. 366 (1999);

179 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, accounts, securities, and transfers of public service companies, including telecommunications companies.

180 (2) Qwest Corporation and Verizon Northwest, Inc., are each engaged in the business of furnishing telecommunications service within the state of Washington as a public service company.

V. CONCLUSIONS OF LAW

181 The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and all parties to this proceeding.

182 (1) Qwest and Verizon must file appropriate rate tariffs that are either proposed and uncontested or approved consistent with the Part B Order as modified by this Order.

183 (2) Qwest and Verizon must file rate tariffs and supporting compliance filings for each network rate element that is rejected as proposed, consistent with the Part B Order as modified by this Order.

184 (3) The rates established by our findings are just and reasonable under the pricing standards stated in Section 252(d) of the Telecommunications Act of 1996, and are fair, just, reasonable, and sufficient under RCW 80.36.080.

VI. ORDER

185 The Commission hereby orders as follows:

186 The rates proposed by Qwest and Verizon, respectively, are approved in part and rejected in part, consistent with our findings and conclusions as follows:

187 (1) As to each network rate element that is uncontested or is approved without change, Qwest and Verizon shall file tariffs consistent with this Order no later than eight business days after the service date of this Order, with a stated

effective date of twelve business days after the date of filing, unless additional time is specifically requested and granted by letter of the Commission's executive secretary. The tariff filings must be limited to uncontested rate elements or those specifically authorized in this Order.

188 (2) As to each network rate element that is rejected as proposed, Qwest and Verizon shall file rate tariffs and supporting compliance filings consistent with this Order no later than eight business days after the service date of this Order. Other parties may respond to those items no later than twelve business days after the service date of this Order, unless additional time is specifically requested and granted by letter of the Commission's executive secretary. The Commission will enter an order approving or disapproving the subsequent filings or giving further instructions.

189 (3) A copy of each filing with the Commission must be served on counsel for other parties so that it is received on the date filed with the Commission.

190 (4) Each compliance filing must be accompanied by a brief description of what is accomplished by the filing, and how it complies with the terms of this Order, and must specifically identify each input modified, including the exhibit, page, and line number where the modification was made.

191 (5) The Commission retains jurisdiction over all matters and the parties in this proceeding to effectuate the provisions of this Order.

Dated at Olympia, Washington and effective this _____ day of September, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner