

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the	)	DOCKET NO. UT-003013
	)	
	)	
	)	FORTIETH SUPPLEMENTAL ORDER:
Continued Costing and Pricing of	)	DENYING QWEST’S PETITION FOR
Unbundled Network Elements,	)	FURTHER RECONSIDERATION;
Transport, and Termination	)	AFFIRMING AND CLARIFYING THE
.....	)	38 <sup>TH</sup> SUPPLEMENTAL ORDER, PART B
	)	ORDER ON RECONSIDERATION;
	)	GRANTING FURTHER TIME FOR
	)	COMPLIANCE

I. SYNOPSIS

1     *The Commission in this Order rejects Qwest’s request for further reconsideration of the 38<sup>th</sup> Supplemental Order, Part B Order on Reconsideration; clarifies Qwest’s obligation to file nonrecurring costs and charges for order processing; and grants Qwest additional time to file costs and charges in compliance with the Part B Order on Reconsideration.*

II. PROCEDURAL HISTORY AND BACKGROUND

2     On June 21, 2002, the Commission entered its 32nd Supplemental Order; Part B Order (“Part B Order”) in this proceeding. The parties to the proceeding filed petitions for reconsideration of the Part B Order in accord with the schedule established for such filings.

3     On September 23, 2002, the Commission entered its 38th Supplemental Order resolving issues raised by parties in their petitions for reconsideration (“Order on Reconsideration”).

4     On October 3, 2002, Qwest filed a Petition for Further Reconsideration and/or Correction or Clarification of the 38<sup>th</sup> Supplemental Order. The issue Qwest raises is whether or not it should be required to submit separate nonrecurring costs and charges for CLEC service orders processed manually and for CLEC service orders processed electronically.

5     Qwest bases its request for further reconsideration or correction/clarification pursuant to the provisions of WAC 480-09-810 and –815, and RCW 34.05.470. WAC 480-09-810 (1)-(8) set forth procedures for the parties to follow in requesting the

Commission to reconsider a Commission order. WAC 480-09-810(9) states that reconsideration is not available on an order on reconsideration.

6 WAC 480-09-815 sets forth procedures for amendment, rescission or correction of Commission orders. RCW 34.05.470 sets forth procedures under the Administrative Procedures Act for reconsideration of orders.

7 In the Part B Order, the Commission cites its 17<sup>th</sup> Supplemental Order<sup>1</sup> in which it recognized that the cost of manual access to ILEC systems is greater than electronic access and that recovery of manual processing costs is consistent with TELRIC principles. In the 17<sup>th</sup> Supplemental Order, the Commission ruled that Qwest is entitled to recover additional costs incurred to manually process orders. *See Part B Order, ¶ 128*. On that basis, in the Part B Order, the Commission permitted Qwest to establish a single nonrecurring charge for order processing that incorporates an assumption that 75% of CLEC orders were submitted electronically and 25% were submitted manually. *See Part B Order, ¶ 129*.

8 AT&T/XO filed petitions for reconsideration of the Part B Order, contending that the 17<sup>th</sup> Supplemental Order, ¶ 112, required Qwest to establish separate rates for manual and electronic ordering. *See AT&T/XO Petition for Reconsideration, ¶ 8*. Qwest filed a response to AT&T/ XO, indicating that in the *Part B Order* the Commission properly authorized Qwest to establish a single nonrecurring charge, calculated by using appropriate assumptions about the relative probabilities of manual versus mechanized orders. *See Qwest's Consolidated Response to Petitions for Reconsideration at § B.1*.

9 In the Part B Order on Reconsideration, the Commission relied on ¶ 112 of the 17<sup>th</sup> Supplemental Order and reversed its single unified charge decision from the Part B Order. Instead, the Commission required Qwest to “establish separate nonrecurring charges for orders submitted electronically and orders submitted for manual processing.” *See Part B Order on Reconsideration, ¶ 68*.

### III. ARGUMENT

10 Qwest contends that the portion of the 17<sup>th</sup> Supplemental Order the Commission relied on in the Part B Orders was limited to OSS cost recovery and was not generally applicable to nonrecurring charges for specific UNEs. Furthermore, following entry of the 17<sup>th</sup> Supplemental Order, Qwest made compliance filings showing separate OSS cost recovery rates for manual and mechanized orders. The Commission rejected these filings. Qwest contends that eventually the Commission did establish rates for OSS cost recovery associated with costs for processing service orders in the

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<sup>1</sup> *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 (“17<sup>th</sup> Supplemental Order”))*.

13th Supplemental Order, Part A<sup>2</sup> in Docket No. UT-003013. In the Part A Order, the Commission rejected Qwest's proposed bifurcated OSS rates for order processing and instead adopted Verizon's proposal for a flat charge of \$3.27 per local service request.

- 11 Qwest also contends that since the date of the 17th Supplemental Order the company has made numerous compliance filings, including the filing of its entire interconnection tariff, WN U-42, and none of these filings contain nonrecurring rates that are structured to assess different charges for manual and mechanized ordering. Qwest asserts that all of these filings have been subject to review and comment by the parties as well as by the Commission, and that none of them has been rejected on the basis that UNE nonrecurring charges were not separated to reflect manual and mechanized ordering.
- 12 Qwest therefore suggests that the Commission erred in the *Part B Order* on Reconsideration and, to correct the error, the Commission should allow the company's nonrecurring charges to remain as previously approved after various compliance filings.
- 13 In the alternative, if the Commission does not agree with Qwest, Qwest poses several questions to clarify the terms of the Part B Order on Reconsideration:
- Must Qwest revise its OSS cost recovery rates to reflect separate nonrecurring charges for manual and electronic orders?
  - Must Qwest revise its nonrecurring rates for all UNEs?
  - If the latter, which nonrecurring rates must be revised?
- 14 Finally, if Qwest is to revise its rates in accord with the Part B Order on Reconsideration, Qwest raises the issue of the amount of time it would take to develop the separated nonrecurring costs and the amount of time and expense to program a billing system to recognize and bill for different types of order submission. Qwest requests additional time within which to make the required compliance filing.

#### IV. DISCUSSION AND DECISION

##### A. PETITION FOR FURTHER RECONSIDERATION

- 15 We deny Qwest's Petition for Further Reconsideration on grounds that it is not permitted under WAC 480-09-810(9). Furthermore, the arguments Qwest raises are

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<sup>2</sup> *In the Matter of the Continued Costing and Pricing of Unbundled Network Elements and Transport and Termination, Docket No. UT-003013 (January 31, 2001)* ("Part A Order").

not new or more persuasive than those the company submitted in its Consolidated Response to AT&T/XO's Petition for Reconsideration.

16 WAC 480-09-810(9) sets forth a specific limitation on requests for reconsideration of orders on reconsideration, although we retain the option to act when necessary to prevent manifest injustice. Qwest's current arguments against AT&T/XO's proposal were already presented to us, albeit in a more abbreviated form, in Qwest's Consolidated Response to Petitions for Reconsideration, with the exception of its emphasis on the fact that ¶ 112 of the 17<sup>th</sup> Supplemental Order addresses OSS rather than nonrecurring costs and charges.

17 The fact that ¶112 of the 17th Supplemental Order addresses OSS costs, rather than nonrecurring costs, does not negate the acknowledged fact that nonrecurring costs for manual processing of service orders exceed such costs for electronic or mechanical processing. In addition, the fact that the Commission has not ordered separate OSS costs and charges for manual and electronic order processing does not automatically signify that the Commission cannot order such separation for nonrecurring charges. The Commission previously was concerned with the possibility that Qwest would over-recover its OSS costs if Qwest proposed bifurcated charges for manual and electronic order processing were adopted. This concern led the Commission to adopt Verizon's unified OSS charge for order processing and for use by Qwest. Concerns about over-recovery are not at issue in the context of Qwest's implementation of non-recurring charges for service order and disconnection order processing. These concerns are not present in the context of nonrecurring charges. For these reasons, we find that there is no issue of manifest injustice present here, and we decline to grant Qwest's request to further reconsider our Part B Order on Reconsideration.

#### **B. CLARIFICATION OF PARAGRAPH 68 OF PART B ORDER ON RECONSIDERATION**

18 Qwest posed several clarifying questions regarding ¶ 68 of the Part B Order on Reconsideration. That paragraph ordered Qwest to "establish separate nonrecurring charges for orders submitted electronically and orders submitted for manual processing." Qwest asks whether ¶ 68 requires the company to revise its OSS cost recovery rates to reflect separate nonrecurring charges for manual and electronic orders and whether it needs to revise its nonrecurring rates for all UNEs.

19 Under the terms of the order of reconsideration, Qwest must revise its nonrecurring charges, not its OSS cost recovery rates, for service orders, so that anywhere there are nonrecurring charges for UNEs, the service ordering, or disconnection ordering, portion of the UNE charge is separated to reflect whether the order was manually or electronically submitted. We note that Verizon has recently filed separate

nonrecurring charges for manual and semi-mechanized service requests and disconnection requests.<sup>3</sup>

**C. REQUEST FOR ADDITIONAL TIME TO MAKE COMPLIANCE FILING**

20 The Part B Order on Reconsideration required the parties to make their compliance filings within eight business days of service of the Order. Thus, compliance filings are due on October 8, 2002.<sup>4</sup> Due to the short time permitted for compliance and the fact that Qwest will have to make some possibly significant changes to its tariffs in order to comply, we are persuaded it is reasonable to allow Qwest some additional time within which to comply. We have already granted Verizon until November 7, 2002 to make a compliance filing requiring substantial adjustments to its cost study. Likewise, we will grant Qwest until November 7, 2002, to comply with ¶ 68 of the Part B Order on Reconsideration.

**V. ORDER**

21 The Commission hereby orders Qwest to make its nonrecurring charge compliance filings, pursuant to ¶68 of the Part B Order on Reconsideration, showing two separate charges reflecting the cost differences between processing service orders and disconnection orders manually and electronically.

22 The Commission further orders Qwest to make its compliance filings on or before November 7, 2002.

Dated at Olympia, Washington and effective this \_\_\_\_ day of October, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

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<sup>3</sup> See Advice No. 3056, WN U-41, tariff sheet section 5, original sheet 3, filed on October 3, 2002.

<sup>4</sup> The Commission served the Part B Order on Reconsideration on September 23, 2002. Due to a copying or faxing omission, two pages were missing from the Order served. A complete copy of the Order was served on September 26, 2002 and the parties were notified that post hearing process would commence from the latter service date.

**NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).**