

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the
Continued Costing and Pricing of Unbundled
Network Elements, Transport, Termination,
and Resale

Docket No. UT-003013, Part D

QWEST’S PETITION FOR
ADMINISTRATIVE REVIEW
OF THE 41ST SUPPLEMENTAL
ORDER; PART D INITIAL ORDER

On October 11, 2002, the assigned Administrative Law Judge (“ALJ”) entered the Forty-
First Supplemental Order¹ in this case. In accordance with WAC 480-09-780(2), Qwest hereby
files this petition for administrative review of that order, and asks the Commission to modify,
clarify, or reverse certain findings and conclusions when it enters its final order.

I. INTRODUCTION

Qwest requests that the Commission modify, clarify, or reverse certain portions of the
Initial Order that address Qwest’s nonrecurring charges. Qwest also requests that the Commission
adopt a timeline for filing compliance tariffs that is longer than the timeline set out in the Initial
Order. Qwest recommends that the Commission adopt the Initial Order except for the findings,
conclusions and orders on the following issues:

1. 30% Reduction to Work Times for Uncontested Elements. Initial Order at
§III.F.1.d., paragraphs 62-65. The Commission should not require Qwest to reduce
its work time estimates for nonrecurring rate elements that were unchallenged by
any party.

¹ Forty-First Supplemental Order; Part D Initial Order; Establishing Nonrecurring and Recurring Rates for UNEs.
 (“41st Supplemental Order” or “Initial Order”).

2. Cable Racking. Initial Order at §III.F.2.d, paragraph 101. The Commission should reverse the requirement that Qwest modify its cable rack capacities.
3. Miscellaneous Charges. Initial Order at §III.F.2.w., paragraph 194. The Commission should clarify that there is no required reduction to work time estimates for this element.
4. UNE-P Conversion. Initial Order at §III.F.2.y, paragraphs 198-199. The Commission should reverse the requirement to reduce the work times for these items by 30%.
5. UNE-P POTS New Connection. Initial Order at §III.F.2.z., paragraph 202. The Commission should reverse the requirements to reduce work times for this item by 30% and to eliminate work time for establishing a customer connection to the network.
6. Operator Services/Directory Assistance. Initial Order at §III.F.2.bb., paragraph 220. The Commission should clarify when the cost study identified in paragraph 220 should be filed.
7. DAL. Initial Order at §III.F.2.cc., paragraphs 232-239. The Commission should reverse the requirement that Qwest only be permitted to charge the rates contained in Exhibit 2135 for directory assistance listings.
8. Poles, Ducts and Rights of Way. Initial Order at §III.F.2.ee., paragraph 243. The Commission should confirm that work time reductions are unnecessary with regard to these activities in light of the Commission's Part B Order.²
9. Deadline for Filing Compliance Tariffs. Initial Order at §VI., paragraphs 359-360. Qwest recommends that the Commission modify the requirement for filing compliance tariffs from eight business days to 15 business days.

II. DISCUSSION

For each of the nine aspects of the initial order summarized above, Qwest asks the Commission to review the initial order and the record in this matter, and to reverse, modify, or clarify the initial order as set forth herein.

30% Reduction to Work Times for Uncontested Elements. Initial Order at §III.F.1.d., paragraphs 62-65. The Initial Order requires Qwest to reduce its work time estimates for its nonrecurring costs by 30% across the board, with certain exceptions for times that have already

² *In the Matter of the Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination*, Docket No. UT-003013, Thirty-second Supplemental Order; Part B Order; Line Splitting, Line Sharing Over Fiber Loops; OSS; Loop Conditioning; Reciprocal Compensation; and Nonrecurring and Recurring Rates for UNEs, (June 21, 2002) ("Part B Order").

1 been specifically ordered by the Commission. *Initial Order*, ¶¶ 62-63. Qwest believes that this
2 requirement is in error with regard to the rate elements that were unchallenged by other parties,
3 and recommends that the Commission reverse this requirement as to those rate elements.³

4 The stated rationale for this requirement is that Qwest has failed to demonstrate that
5 efficiency gains experienced since 1998 have been properly accounted for. *Id.*, ¶ 62. The order
6 goes on to state that the composite adjustment is reasonable and accurate based on the supporting
7 documentation for Qwest’s nonrecurring studies and the arguments presented by the parties. *Id.*,
8 ¶ 63. The order then describes three rate elements that were challenged by other parties – charges
9 associated with poles, ducts and rights of way, the Bona Fide Request (“BFR”), and the Space
10 Availability charge. While Qwest is seeking review of certain aspects of the decision with regard
11 to poles, ducts and rights of way, Qwest is not challenging herein the ordered reduction to the
12 work times associated with the BFR and the Space Availability charge.

13 The Initial Order, in paragraphs 64 and 65, discusses why it is appropriate to reduce work
14 times across the board, without individual analysis of each rate element, and why it is appropriate
15 to apply the reductions even to the uncontested rate elements. Qwest seeks review of those
16 aspects of the initial order. Qwest believes that those aspects of the Initial Order are in error, are
17 not supported by the record, and are arbitrary.

18 The Initial Order states that work times must be reduced for all elements because it “is
19 unduly burdensome for the Commission to individually identify and remedy the abundance of
20 problems created by Qwest’s complete reliance on anonymous SME work time estimates.” *Id.*, ¶
21 64. With all due respect, Qwest submits that if the Commission is to conduct a cost docket
22 properly, it is precisely that burden that falls to the Commission as the decision-maker – to review
23 each contested and uncontested rate element and make individual decisions with regard to the

24 _____
25 ³ Not only are these rate elements uncontested, some of the elements were specifically evaluated and supported by
26 Commission Staff. Thus, with regard to some of the rates, the Commission has the benefit of an independent
evaluation of reasonableness of the rates. The uncontested rate elements are as follows: Resale Customer Transfer
Charge; Coordinated Installation without Cooperative Testing; UDF Field Verification; Dark Fiber Splice; Vertical
Features; Subsequent Order Charge; Digital Line Side Port; Digital Trunk Port; and, DS0Analog Trunk Port.

1 evidence in support of and opposed to that rate element. Furthermore, to the extent that the Initial
2 Order claims that the SMEs are “anonymous”, the Initial Order is in error. While it is true that
3 many of the subject matter experts did not testify, their identities are disclosed in Exhibit C-2024.
4 Finally, the Initial Order fails to specifically identify the “abundance of problems” that might be
5 created by use of SMEs, or why a blanket 30% reduction is rationally or precisely related to those
6 problems.

7 The Initial Order then states that there is “nothing in the record indicating that the
8 uncontested rate elements benefit from greater evidentiary support than those rate elements with
9 obvious flaws.” *Id.*, ¶ 65. However, this reasoning is flawed. The specific criticisms levied
10 against certain rate elements have not been shown to be necessarily applicable to the uncontested
11 elements. Uncontested rate elements are ones that by their very nature are supported only by
12 Qwest’s direct case. Because those rates were uncontested, Qwest did not provide additional
13 evidentiary support for them in its rebuttal case, and did not pursue questions on cross-
14 examination.

15 Qwest believes that it is undisputed that it presented a prima facie case for each and every
16 nonrecurring rate element. Qwest provided a list of required tasks and estimated work times and
17 probabilities for each element, as well as a detailed explanation of its nonrecurring cost study
18 methodology. Each activity was also supported in more detail by the information in Exhibit C-
19 2024.

20 The Initial Order departs from prior Commission practice and orders by rejecting
21 uncontested rates. Qwest provided the exact same level of support for its nonrecurring rates in
22 Part D that was accepted in Docket Nos. UT-960369, et al., and that it provided in Part B. In both
23 of those proceedings, Qwest’s nonrecurring rates were accepted where they were not challenged
24 by another party in response testimony. Based on the prior Commission decisions in UT-960369,
25 Qwest had no reason to present a different type of case in the first instance. Although the Part B
26 Order criticized certain aspects of Qwest’s support for its nonrecurring costs, the Part B Order

1 accepted those costs to establish rates. Qwest had no opportunity to react to the Part B Order for
2 purposes of its Part D presentation, (in other words, to modify its presentation to address Part B
3 concerns) because the Part B Order had not been entered at the time the Part D evidence was
4 offered.

5 In this proceeding, where certain rate elements or specific work times were challenged by
6 other parties, Qwest had an opportunity on rebuttal to further explain, clarify, or support its
7 proposal. In some instances, Qwest's supplemental explanation was accepted by the ALJ.⁴
8 However, where rates went unchallenged, Qwest had no opportunity to present the additional
9 support that the Initial Order claims is lacking. Yet the Initial Order fails to consider that Qwest
10 was never told that these rates required additional support, and fails to consider that Qwest in fact
11 *was* able to provide compelling support for some of the work times that were challenged. Thus,
12 the Initial Order should have adopted Qwest's proposed work times for the uncontested rate
13 elements, concluding that Qwest made a prima facie case with regard to each of those rates.

14 Cable Racking. Initial Order at §III.F.2.d, paragraph 101. The Commission should
15 reverse the requirement that Qwest modify its cable rack capacities. Ms. Million explained in her
16 rebuttal testimony that WorldCom had misinterpreted the cable racking capacity when arguing
17 that Qwest's cost study assumed a capacity of only three cables. *Ex. T-2049, pp. 25-26*. Because
18 the 1 foot of new cable racking included in the cost study as part of the nonrecurring charge is
19 dedicated to the CLECs, the assumption of 3 relates to the number of CLECs that will share the
20 additional 1 foot of racking, not the number of cables in the rack. The CLEC is able to place as
21 many cables in the dedicated cable racking as there is capacity for. In the case of such dedicated
22 racking, Qwest has no ability to assume rack capacities as ordered by the Commission at
23 paragraph 101 because Qwest does not control how much cable the CLECs place in the rack.

24 _____
25 ⁴ For example, Qwest proposed a nonrecurring charge for CLEC to CLEC cross connections. WorldCom challenged
26 the estimated work time for circuit design. On rebuttal, Qwest explained further why its work time was appropriate.
The Initial Order accepted that explanation, and found that Qwest had sufficiently explained its work time and
allowed it to remain at the proposed level. *Initial Order*, ¶ 106.

1 Thus, the Commission should reverse the requirement in paragraph 101 that Qwest modify its
2 assumption with regard to cable racking capacities.

3 Miscellaneous Charges. Initial Order at §III.F.2.w., paragraph 194. The Initial Order
4 required Qwest to reduce the work time estimates for these rate elements by 30% for the reasons
5 stated in paragraphs 62-65. Qwest seeks administrative review of this requirement because there
6 are no “work times” associated with the miscellaneous charges. These charges are simply the
7 technician’s labor rate on a per-half-hour basis for specific CLEC-requested work. Qwest
8 presented its direct case on these charges, including direct testimony and underlying data
9 supporting the labor rates. *Exs. C-2024, p. 358 and T-2100, pp.21-26.*

10 No party challenged Qwest’s proposal during the hearing, and no party challenged the
11 hourly rates as inappropriate. The only challenge to these rates was raised by Covad on brief, and
12 Covad’s concerns with these rates were rejected by the Initial Order as lacking support in the
13 record. Thus, the Commission should clarify in its final order that the Miscellaneous Charges are
14 simply hourly rates for specific work, and that there is no required reduction to work time
15 estimates for this element.

16 UNE-P Conversion. Initial Order at §III.F.2.y, paragraphs 198-199. The Commission
17 should reverse the requirement to reduce the work times for these items by 30%. There are a
18 number of different rate elements associated with UNE-P Conversions, depending upon the
19 underlying retail service that is being converted to UNE-P. Qwest takes issue with the ordered
20 reduction for all rates, as such a reduction is not supported by the record or the rationale in the
21 Initial Order.

22 First, Qwest points out that these rates are already structured in compliance with the Part B
23 requirement that Qwest establish separate charges for manual and mechanized ordering. Thus, the
24 work times for each element can and should be examined separately to assess the reasonableness
25 of the assumptions. This rate structure assures the Commission at the outset that carriers will be
26 charged in accordance with how their orders are placed, consistent with Commission

1 requirements.

2 Second, with regard to the rates for UNE-P POTS, Qwest points out that these rates were
3 approved by the Commission in Part B, only four months ago. *Part B Order*, ¶ 144. The
4 nonrecurring rate for a mechanized order for UNE-P POTS is \$0.68 for the first line and \$0.14 for
5 each additional line. Qwest's effective assumed work times for these activities are well under the
6 Commission-ordered six minutes for activity in the Interconnect Service Center. Further, Qwest
7 voluntarily accelerated the effectiveness of these proposed Part D rates into the Part B proceeding
8 in order to give CLECs the benefit of Qwest's assumed process improvements. Thus, the Initial
9 Order's conclusion that Qwest has not properly reflected process improvements or efficiency
10 gains since 1998 is demonstrably incorrect as to these elements, and should be reversed.

11 Finally, a review of the supporting documentation establishes that the work time estimates
12 for the UNE-P conversion rates were reviewed and updated in March and June 2001, only months
13 before Qwest's testimony was filed in November 2001. *Ex. C-2024*, pp. 379-389. Thus, it is clear
14 that the 30% reduction to the work times associated with UNE-P conversions is an imprecise and
15 inaccurate adjustment, as the rates do not suffer from the flaws that such an adjustment was
16 designed to address.

17 UNE-P POTS New Connection. Initial Order at §III.F.2.z., paragraph 202. The Initial
18 Order required Qwest to reduce the work times for this item by 30%, and to eliminate work times
19 associated with connecting a customer to the network. The rationale behind these requirements is
20 set forth in paragraph 201, and is twofold – the Initial Order states that the source data is from
21 1999 and has not been appropriately updated; the Initial Order also states that the cost of
22 reconnecting a customer line is inappropriately included in the cost study. The Commission
23 should reverse the requirements to reduce work times for this item by 30% and to eliminate work
24 time for establishing a customer connection to the network.

25 The 30% reduction is inappropriate if it is based on an assumption that Qwest's work times
26 have not been updated since 1999. Qwest's documentation shows that there are work times for

1 five work groups – the Interconnect Service Center (“ISC”), the Loop Provisioning Center
2 (“LPC”), the Central Office (“CO”), Dispatch, and Installation and Maintenance (“I&M”). The
3 applied time for the ISC is 0.75 minutes (*Ex. 2023, p. 359*), reflecting assumptions updated in
4 March 2001 (*Ex. C-2024, p. 379*). The applied time for the LPC is 1.69 minutes (*Ex. 2023, p.*
5 *359*), reflecting a Commission-ordered probability of 15% manual handling. The overall LPC
6 time of 11.25 minutes is supported by detailed information provided in May 2001 (*Ex. C-2024, pp.*
7 *400-401*). Although some of the other activities are based on time estimates of an older vintage,
8 the supporting documentation shows that Qwest assumes that a UNE-P new connection is the
9 same as a new retail customer connection. Qwest has many years of experience with this activity,
10 and does not expect that the times associated with dispatching a technician and installing service
11 will be different for UNE-P.

12 The Initial Order is also incorrect to require Qwest to eliminate the time associated with
13 reconnecting a customer line. The reconnection time is simply reflective of an assumption that the
14 customer is a “new” customer, i.e., not a “conversion” or “existing” customer, but also reflects the
15 assumption that the customer likely has Qwest facilities to his or her premises that were connected
16 at one time – thus, the assumption is for a “reconnection”. If the order requires a dispatch, and
17 facilities need to be connected to provide service, it is only through the inclusion of these work
18 activities that the work will be performed. Thus, the Commission should reverse the Initial Order
19 on this issue.

20 Operator Services/Directory Assistance. Initial Order at §III.F.2.bb., paragraph 220. The
21 Initial Order required Qwest to file a cost study for call branding and switch set-up associated with
22 operator services and directory assistance. Qwest will do so, and simply asks the Commission to
23 clarify when the cost study identified in paragraph 220 should be filed. Qwest recommends that it
24 be permitted to do so in the new generic docket, No. UT-023003, assuming that the scope of the
25 docket, which is currently under consideration by the Commission, allows.

26 DAL. Initial Order at §III.F.2.cc., paragraphs 232-239. The Commission should reverse

1 the requirement that Qwest only be permitted to charge the rates contained in Exhibit 2135 for
2 directory assistance listing (“DAL”) information.

3 DAL information consists of name, address and telephone number information for all end
4 users of Qwest and other LECs that are contained in Qwest’s directory assistance database and,
5 where available, related elements required in the provision of directory assistance service to
6 CLECs’ end users. Qwest proposed the use of market-based pricing for the provision of DAL
7 information. WorldCom argued that the DAL database is a UNE and that cost-based pricing is
8 required to avoid discrimination barred by Section 251(b)(3) of the Act. WorldCom took this
9 position notwithstanding that it could not explain what it means by “cost-based,” did not offer its
10 own cost model and did not offer any evidence that Qwest’s proposed market-based prices are
11 discriminatory.

12 The Initial Order rejected Qwest’s proposal and ordered that U S WEST’s estimated
13 October 1999 TELRIC prices be adopted as interim rates. *Initial Order*, ¶ 235. This
14 determination rests in large part on a finding that WorldCom presented “convincing evidence and
15 arguments that market-based rates for DAL are discriminatory and, therefore, contradict both the
16 Telecom Act and FCC orders.” *Id.*, ¶ 233. The Initial Order is in error. As Qwest pointed out in
17 its opening and reply briefs, the Part D record is void of *any* evidence that Qwest’s proposed
18 market-based rates are discriminatory. WorldCom relied on the FCC’s *DAL Provisioning Order*
19 in which certain ILECs were criticized for discriminating against CLECs in this regard. That
20 order does not implicate Qwest. WorldCom’s guilt-by-association argument does not constitute
21 evidence that Qwest’s market-based DAL rates are discriminatory.

22 Additionally, neither the FCC nor this Commission have determined that the DAL
23 database is a UNE subject to TELRIC pricing. Furthermore, the Commission should consider its
24 own, and the FCC’s, previous findings on this and related issues. DAL information is by no
25 means a bottleneck service implicating the need for cost-based pricing. In its order competitively
26 classifying U S WEST’s DA services, this Commission concluded that there is effective

1 competition for DA services in Washington.⁵ At paragraph 448 of the UNE Remand Order, the
2 FCC found the existence of numerous (it specifically identified eleven) alternative wholesale
3 providers of directory listings. At paragraph 457 of the UNE Remand Order, the FCC held
4 explicitly that it was not persuaded that “the lack of unbundled access [at TELRIC pricing] to
5 incumbent LEC databases used in the provision of OS/DA necessarily results in quality
6 differences that would materially diminish a requesting carrier’s ability to offer service.”

7 Finally, at paragraph 450 of the *UNE Remand Order*, the FCC recognized that obtaining
8 customer listing was one of the costs of self-provisioning directory assistance services. The FCC
9 rejected the argument that self-provisioning directory assistance service, including obtaining
10 customer listings, "would involve substantial and material cost and delay competitive entry into
11 the local market." The FCC's recognition that there are alternatives available to the use of Qwest's
12 customer listing negates the need for regulated prices. The Initial Order is in error and should be
13 reversed.

14 Poles, Ducts and Rights of Way. Initial Order at §III.F.2.ee., paragraph 243. The
15 Commission should confirm that the 30% work time reduction is unnecessary with regard to these
16 activities in light of the Commission’s Part B Order. In the Part B Order, the Commission allowed
17 Qwest to assess charges for only some of its nonrecurring activities for field inspections.
18 Specifically, although Qwest will physically inspect every manhole and pole, under the Part B
19 Order, Qwest is allowed to charge for only one manhole per block in congested areas and one
20 manhole every four blocks in non-congested areas. Additionally, the Commission specifically
21 approved a work time of two hours per manhole, which was proposed by the CLECs. *Part B*
22 *Order*, ¶ 171. Thus, Qwest does not believe that the 30% work time reduction applies to these
23 activities.

24 Also, Qwest would like to call to the Commission’s attention that it has restructured its

25 _____
26 ⁵ *In the Matter of the Petition of U S WEST Communications, Inc. for Competitive Classification of its Directory Assistance Services*, Docket No. UT-990259, Order Granting Petition, (April 29, 1999), at 6.

1 pole and innerduct inquiry fees⁶ from a per mile basis (in Part B) to a per inquiry basis in Part D.
2 Thus, the per inquiry fee may be higher than the per mile fee, but the CLEC is able to request an
3 inquiry for multiple route miles of pole line or innerduct, and the overall cost to the CLEC will be
4 less than it was on a per-mile basis. Qwest asks the Commission to affirm that Qwest may charge
5 the approved Part B rates for field verifications, and the proposed Part D rates, without reduction,
6 for the inquiry activity.

7 Deadline for Filing Compliance Tariffs. Initial Order at §VI., paragraphs 359-360. The
8 Initial Order requires Qwest to file compliance tariffs eight business days after the entry of the
9 order. If the Commission adopts these ordering paragraphs, that requirement would apply to
10 tariffs that will be required in compliance with the Commission's Part D final order in this matter.
11

12 Qwest recommends that the Commission modify the requirement for filing compliance
13 tariffs – Qwest's experience is that the requirement in the Initial Order to file in eight business
14 days, which is consistent with prior Commission requirements, does not allow enough time to
15 accomplish such a filing. Qwest recommends that the Commission establish a standard deadline
16 of 15 business days (generally, three calendar weeks) to accomplish such a filing. This would
17 generally allow enough time for Qwest to have the internal meetings necessary to commence and
18 coordinate the filing effort.

19 In the past, Qwest has found that it must routinely request additional time for making
20 compliance filings.⁷ With an eight-day deadline, it is difficult for Qwest to evaluate an order,
21 determine what compliance filings must be made, determine how much time will be required, and
22 prepare and file a request for an extension of time. Additionally, once the request is filed, the
23

24 ⁶ Inquiry fees are the fees associated with the database research and are separate from the actual field inspections. *Ex. T-2101, pp.3-4.*

25 ⁷ In Docket Nos. UT-960369, et al., Qwest was granted an extension of time (one week) to file compliance tariffs
26 after the 25th Supplemental Order. In Docket No. UT-003013(A), Qwest was granted an extension of time (two weeks) to file compliance tariffs after the 13th Supplemental Order. In Docket No. UT-003013(B), Qwest was granted an extension of time (four weeks) to file compliance tariffs after the 40th Supplemental Order.

1 Commission or the ALJ must act on it expeditiously in order to grant or deny the request prior to
2 the eight-day deadline. All of this seems unnecessary, and could generally be avoided by
3 establishing a slightly longer filing interval in the first instance. This is not to say that extensions
4 will never be necessary – they may be. Qwest recently requested and was granted an extension in
5 Part B, even though the Commission initially established a four-week deadline for the compliance
6 filing. However, Qwest believes that a 15-business day deadline would generally ease the
7 administrative burden on both the parties and the Commission.

8 **III. CONCLUSION**

9 For the reasons stated above, the Commission should adopt those portions of the Initial
10 Order that are not challenged herein, and should reverse or modify the findings and conclusions
11 with regard to the nine issues discussed.

12 Respectfully submitted this 31st day of October, 2002.

13 QWEST

14
15
16
17 _____
18 Lisa A. Anderl, WSBA #13236
19 Adam Sherr, WSBA #25291
20 Qwest
21 1600 7th Avenue, Room 3206
22 Seattle, WA 98191
23 Phone: (206) 398-2500
24 *Attorneys for Qwest*
25
26