

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
STAFF'S ANSWER TO QWEST'S
PETITION FOR ADMINISTRATIVE
REVIEW OF 41ST SUPP. ORDER

On October 21, 2002, Qwest filed a petition for administrative review of the Administrative Law Judge's (ALJ) initial order in Part D of this proceeding. The initial order, captioned as the Commission's 41st Supplemental Order, was issued on October 11, 2002. Commission Staff (Staff) responds through this answer on November 12, 2002, as allowed for by the Commission's rules.

Staff's response to the issues raised by Qwest's petition, numbered 1 through 9, are set out below.

1. 30% Reduction to Work Times for Uncontested Rate Elements (p. 2-5). Initial Order at §III.F.1.d., paragraphs 62-65.

Staff believes the initial order is clear on this topic and Staff disagrees with Qwest's assertions. While not adopting Staff's recommendations, the initial order incorporates Staff's overall analysis regarding Qwest's use of SME time estimates versus time and motion studies to support its work times. The use of SME time estimates applies to contested rate elements as well as to the non-contested elements. In fact, Staff addressed the issue of SME time estimates up front in the posthearing brief so that the issue would be globally applied to all NRCs.

The ALJ's decision accepts the global concern of the issue of SME time estimates and

therefore, reasonably, applies a global remedy for the SME time estimate problem. The rationale for reducing the work time estimates, as set out in ¶¶ 62-65 of the initial order, is that Qwest has failed to demonstrate that efficiency gains experienced since 1998 have been properly accounted for. This rationale applies to rate elements that were not specifically contested by any party, as well as those that were specifically addressed. Qwest should be required to reduce the work times for those rate elements, even if no party specifically disputed or challenged the rates for those elements.

Qwest's assertion that it did not have an opportunity to bolster its case in support of uncontested rate elements (through rebuttal testimony) should be rejected. If Qwest presents only a minimal case in its direct testimony and *only* provides meaningful support for its proposals if a party challenges a particular rate, the company runs the risk of having its support being found to be inadequate, as in this case. Such strategy should not be encouraged by allowing Qwest's argument to prevail. Qwest has had numerous opportunities to provide meaningful support for its NRCs. *See* 41st Supplemental Order, at pages 15-23. Additionally, Qwest had opportunity through its reply brief to address this concern and failed to convince the judge in that attempt as well.

3. Miscellaneous Charges. (p. 6) Initial Order at §III.F.2.w., paragraph 194.

Staff believes Qwest's arguments have merit and that the Commission should review the initial order on this topic.

4. UNE-P Conversion. (p. 6-7) Initial Order at §III.F.2.y, paragraphs 198-199.

Staff believes the initial order is clear on this topic and Staff disagrees with Qwest's assertions. Although Qwest argues that the manual and mechanized rate structure somehow mitigates the need to determine the reasonableness of the overall level of the charges, Staff is not

convinced. The ALJ's decision clearly states (quoting from the Commission's Part B Order at paragraph 67) that, "Qwest's argument that the validity of its proposed rates can be inferred from the fact that other parties are not forthcoming with independent studies is thin." The lack of a verifiable way to check Qwest SME time estimates is the real issue here. Staff also incorporates its response to Qwest's issue No. 1 above, as similar issues are addressed there. In addition, Qwest may propose rate increases in the new generic cost docket if it can support its assertions with verifiable time and motion studies at that time.

6. Operator Services/Directory Assistance.(p. 8) Initial Order at §III.F.2.bb., paragraph 220.

Qwest asks the Commission to clarify when the cost study should be filed; Staff concurs in the request that the Commission set a date or proceeding for filing of this study. Staff recommends that Qwest be required to file its cost studies for these elements along with its compliance filing in this phase (Part D) of the cost proceeding. Indeed, this would be consistent with the ALJ's treatment of all other NRCs at paragraph 62 of the order stating, "Thus, Qwest must resubmit its nonrecurring cost studies as part of a compliance filing" If there are continued disputes during the compliance phase the Commission should retain the option of *also* requiring further consideration in the new generic cost docket.

7. Directory Assistance Listings (DAL) Database. (p. 8-10) Initial Order at §III.F.2.cc., paragraphs 232-239.

Staff believes the initial order is clear on this topic and Staff disagrees with Qwest's assertions. DAL is an essential input into any OS/DA offering and the FCC rulings should apply as the ALJ has outlined. As the ALJ observed, the FCC required TELRIC pricing of DAL, even though it is not specifically identified as a UNE . The Commission should adopt the analysis of

the initial order on this point.

8. Poles, Ducts and Rights of Way. (p. 10-11) Initial Order at §III.F.2.ee., paragraph 243.

Staff agrees with Qwest on the issue of field verifications, but disagrees with Qwest on the issue of Inquiry Activity. The Commission should adopt the recommendation of the initial order on inquiries and affirm the 30% reduction in the estimated work time for those items. Qwest asserts that the “per inquiry” fee may be higher than the “per mile” fee, but there is no information in the Part D record about the actual or average number of miles for CLEC orders that Qwest has fulfilled. Therefore, Staff cannot determine whether Qwest’s assertions are accurate. If the majority of CLEC orders are within a short distance from the ILEC central office, the “per mile” fee may still be less than the “per inquiry” fee.

As to field verifications, the Commission should clarify whether Qwest has properly interpreted the intention of the initial order. As noted in the language and examples included in footnote 50 on page 21 of the initial order, prior orders of the Commission provided specific direction that is inconsistent with a blanket application of the 30% reduction in work times. The last sentence of the footnote summarizes the guidance the ALJ gives on issues such as this, as follows: "...Qwest should abide by the Commission's prior decisions and explicitly demonstrate where this exemption applies within its nonrecurring cost study."

9. Deadline for Filing Compliance Tariffs. (p. 11-12)Initial Order at §VI., paragraphs 359-360.

Staff does not dispute Qwest’s assertions about the complexity of, and time required for, compliance filings. However, Staff advocates that the time for review of compliance filing be extended as well. If Qwest's standard deadline of 15 business days after entry of the order is accepted, then Staff would like to see a stated effective date of 30 days on uncontested items and,

likewise, 30 business days after the service date of a final order for other parties (including staff) to respond to contested items.

Respectfully submitted this 12th day of November, 2002.

CHRISTINE O. GREGOIRE
Attorney General

MARY M. TENNYSON
Senior Assistant Attorney General