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**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

IN THE MATTER OF

THE CONTINUED COSTING AND PRICING OF
UNBUNDLED NETWORK ELEMENTS AND
TRANSPORT, TERMINATION, AND RESALE

DOCKET NO. UT-003013, PART D

**WORLDCOM'S OPPOSITION TO
QWEST'S PETITION FOR
ADMINISTRATIVE REVIEW**

3

4 WorldCom, Inc., on behalf of its regulated subsidiaries in Washington
5 (collectively "WorldCom"), hereby submits its Opposition to Qwest's Petition for
6 Administrative Review in this matter. In support thereof, WorldCom states as follows.

7

I. INTRODUCTION

8 Qwest requests that the Commission modify, clarify, or reverse certain portions of
9 the Initial Order that address Qwest's nonrecurring charges. WorldCom hereby opposes
10 Qwest's Petition and asks the Commission to reject Qwest's arguments on the following
11 issues:

- 12
- 30% Reduction to Work Times for Uncontested Elements.
 - 13 • Cable Racking.
 - 14 • UNE-P POTS New Connection.
 - 15 • Directory Assistance Listings ("DAL").
 - 16 • Poles, Ducts and Rights of Way.

17 WorldCom primarily requests that the Commission review the Initial Order and
18 the record in this matter, and affirm the Initial Order on these issues. Qwest has raised no
19 argument in its Petition that should cause the Commission to change the ruling of the
20 Initial Order. As demonstrated by the Order itself and below, the Initial Order is well

1 reasoned and amply supported by the record and the law. WorldCom joins, however, in
2 Qwest’s request for clarification of the Commission’s intention to implement its rulings
3 on poles, ducts, conduits and rights of way.

4 II. DISCUSSION

5 A. 30% REDUCTION TO WORK TIMES FOR UNCONTESTED ELEMENTS.

6 The Initial Order requires Qwest to reduce its work time estimates for its
7 nonrecurring costs by 30% across the board, with certain exceptions for times that have
8 already been specifically ordered by the Commission.¹ Qwest argues that this
9 requirement is in error with regard to the rate elements that were unchallenged by other
10 parties.² Qwest contends that the Initial Order’s reasoning on this issue is flawed.
11 WorldCom disagrees.

12 The crux of the Initial Order’s reasoning is that Qwest bears the burden to
13 demonstrate that its rates are just, reasonable, nondiscriminatory and compliant with the
14 Federal Communications Commission’s (“FCC’s”) Total Element Long Run Incremental
15 Cost (“TELRIC”) methodology, and that Qwest failed to carry that burden. Key
16 premises of the Administrative Law Judge’s (“ALJ’s”) conclusion that the 30% reduction
17 should apply across the board to Qwest’s nonrecurring cost proposals are as follows:

18 The importance of validation is underscored by the Commission’s
19 discussion regarding expert testimony in the Eighth Supplemental Order.
20 The Commission acknowledged the standard set by the U.S. Supreme
21 Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 113 S.Ct. 2786
22 (1993). The Supreme Court in *Daubert* focused on the methodology used
23 by experts to arrive at their conclusions, and emphasized the responsibility
24 of the courts to ensure that the proffered evidence is valid and has been

¹ Initial Order, ¶¶ 62-63.

² Qwest Brief at 3.

1 tested. The Court determined that expert opinions which have not been
2 validated should not be considered.³

3
4 The Commission applied the Daubert standard to the evidence in the
5 Phase I proceeding:
6

7 The Commission is satisfied that we have met [the]
8 proposed standard, because of our active participation in
9 the evidentiary hearings in this proceeding. The transcript
10 reflects pertinent and substantial cross-examination by the
11 bench of virtually every subject matter expert who
12 appeared in support of the cost models sponsored by the
13 parties. The bench challenged these experts on their
14 qualitative methodological approach to modeling, and on
15 the qualitative assumptions, inputs, and values posited by
16 these witnesses. We are confident that the findings we
17 make in this Order are supported by the evidence of record
18 and are informed by our questions of these witnesses.

19 *Eighth Supplemental Order, at para. 456.*⁴

20 Incumbent LEC reliance on cost studies that are unsupported by empirical
21 data conflicts with the long recognized edict of the FCC that:
22

23 ... [I]ncumbent LECs have greater access to the cost
24 information necessary to calculate the incremental cost of
25 the unbundled elements of the network. Given this
26 asymmetric access to cost data, we find that incumbent
27 LECs must prove to the state commission the nature and
28 magnitude of any forward-looking cost that it seeks to
29 recover in the prices of interconnection and unbundled
30 network elements.

31
32 *Local Competition Order, at para. 680.*⁵

33 * * * * *

34 The very foundation of the nonrecurring rates proposed by Qwest rest on
35 the input of subject matter experts who estimate the need to perform a
36 particular task, the average amount of time it will take to complete this
37 task, and the probability that this task will need to be performed.
38 Although all subsequent calculations stem from these estimates, Qwest

³ Initial Order at para. 47.

⁴ Initial Order at para. 48.

⁵ Initial Order at para. 59.

1 proffers little, if any, additional support for its assumptions other than to
2 claim that its engineers and product managers provided these estimates
3 using forward-looking assumptions based on their extensive experience
4 with the tasks and activities associated with providing each service or
5 network element.⁶

6
7 * * * * *

8
9 In sum, Qwest asks the Commission to accept the opinions of its subject
10 matter experts at face value, while rejecting all other parties' expert
11 testimony, based on the theory that only the people who actually provision
12 the network elements in question, can provide reasonable forward-looking
13 estimates. This argument is untenable because -- as Commission Staff
14 observes -- it leads to the inescapable conclusion that no one, including the
15 Commission, could ever successfully challenge Qwest's subject matter
16 expert testimony.⁷ Such a conclusion is impermissible because it conflicts
17 with the Commission's obligations pursuant to state statutes, and to
18 promote efficient competition and to establish network element rates that
19 are just, reasonable, and non-discriminatory pursuant to the Act.⁸

20
21 Commission Staff asserts that the Commission must reject Qwest's
22 nonrecurring cost study, as filed, because Qwest has failed to establish that
23 its proposed nonrecurring rates are cost-based, reasonable, and
24 nondiscriminatory. Staff emphasizes two significant flaws in Qwest's
25 studies. First, Staff states that Qwest has never shown that its SME
26 estimates are forward-looking estimates based on TELRIC principles. In
27 fact, some estimates are two or three times older than the forward-looking
28 component of the estimate claims to be.⁹ Second, because Qwest provides
29 no information on the actual time an SME, or an average of SMEs, take to
30 perform a task, and how process or equipment improvements would affect
31 that time, the SME estimates cannot be audited.¹⁰ As a result there is no
32 way for parties or the Commission to accurately judge the reasonableness
33 of Qwest's proposed rates. After considering all of the parties' arguments,
34 Staff's arguments are most persuasive.¹¹

35
36 * * * * *

37
38
39

⁶ Initial Order, para. 55, citing Qwest Brief at 6.

⁷ Staff Brief, at 6.

⁸ Initial Order at para. 57.

⁹ Staff Reply Brief at 6.

¹⁰ TR at 4316-17.

¹¹ Initial Order at para. 58.

1 Although Commission Staff identifies significant problems with Qwest’s
2 proposal, Staff suggests that Qwest’s nonrecurring costs be approved on
3 an interim basis with the understanding that they will be updated with time
4 and motion studies to validate the subject matter expert’s work time
5 estimates in the next phase of this docket. Commission Staff’s interim
6 rate proposal leads to the acceptance of rates (albeit on a temporary basis)
7 that likely overstate the efficient forward-looking cost of providing UNEs.
8 Previous cost dockets have also raised concerns that the estimates of ILEC
9 subject matter experts tend to be biased upwards.¹² Commission Staff’s
10 remedy is inconsistent with its previously stated concern that setting
11 nonrecurring rates at “too high a level” can present a barrier to entry.¹³
12 Thus, Staff’s interim rate proposal is rejected.¹⁴

13
14 * * * * *

15
16 Although it may be argued that a composite adjustment is too blunt or
17 imprecise, the sheer size of the task requires such a remedy. Qwest’s
18 nonrecurring cost study is in excess of 500 pages long. Thus, it is unduly
19 burdensome for the Commission to individually identify and remedy the
20 abundance of problems created by Qwest’s complete reliance on
21 anonymous SME work time estimates.

22
23 It can also be argued that the composite work time reduction should not
24 apply to rate elements that were largely unchallenged by parties. This
25 argument must also be rejected, as there is nothing in the record indicating
26 that the uncontested rate elements benefit from greater evidentiary support
27 than those rate elements with obvious flaws. Furthermore, a different
28 conclusion would run counter to the Part B Order, at paragraph 17, where
29 the Commission asserted that “Qwest’s argument that the validity of its
30 proposed rates can be inferred from the fact that other parties are not
31 forthcoming with independent studies is thin.” As noted above, it is
32 Qwest – and Qwest alone – that bears the ultimate burden to demonstrate
33 that the costs it seeks to recover are cost-based, reasonable, and
34 nondiscriminatory. The absence of a challenge does not overcome the
35 flaws forming a barrier to approving the company’s proposed rates.¹⁵

36
37 Although much more detail is set forth in the Order to support the decision, the
38 above paragraphs highlight the law and the facts upon which ALJ rested his decision. In
39 its Petition, Qwest does not dispute the findings made by the Judge on the type of

¹² *Eighth Supplemental Order*, at para. 451.

¹³ Staff Reply Brief, at page 4.

¹⁴ Initial Order at para. 60.

1 evidence that Qwest presented to support its cost studies and rate proposals. Qwest bears
2 the burden here to *demonstrate* that its proposals are supported by the evidence – all of its
3 rate proposals, regardless of whether a competitive local exchange carrier (“CLEC”)
4 specifically challenges the rate. This conclusion is consistent with public policy. After
5 all, the Commission is responsible to review all rates proposed, not just those challenged
6 by the other parties. Once a rate is proposed and a final order issued, all the rates are
7 ultimately “approved” by the Commission, not just those in dispute between the parties.

8 The ALJ found, based on the law, including Commission precedent, that Qwest’s
9 nonrecurring cost study methodology was flawed, as a whole. Qwest failed to validate its
10 employee expert based cost studies with empirical evidence. Qwest does not dispute that
11 it failed to present the employee experts who prepared the cost studies for cross-
12 examination by the Commission, Commission Staff or any other party. Qwest also does
13 not dispute that it failed to present time and motion studies to support its employee expert
14 time estimates and opinions. The Commission should reject Qwest’s argument that the
15 ALJ’s reasoning on this issue is flawed.

16 Qwest next argues that it is undisputed that it presented a prima facie case for
17 each and every nonrecurring rate element.¹⁵ WorldCom disagrees. In fact, as
18 demonstrated by the Initial Order and the briefs, a dominant theory in the evidence
19 presented by Staff and the other parties was that Qwest failed to present a prima facie
20 case, i.e., it failed to present demonstrate that its proposed rates are consistent with
21 TELRIC and to provide information to enable evaluating parties to validate its employee
22 expert opinions.

¹⁵ Initial Order at paras. 64-65.

¹⁶ Qwest Brief at 4.

1 For these reasons, the Commission should reject Qwest's request to reverse the
2 decision in the Initial Order to apply the 30% reduction in work times to all Qwest
3 nonrecurring rates, regardless of whether the rates were specifically challenged by other
4 parties.¹⁷

5 **B. CABLE RACKING.**

6 CLEC to CLEC direct connection involves placement of a cable between the
7 collocations of each CLEC. In this proceeding, Qwest proposed that CLECs ordering the
8 direct connection would be charged design, engineering, and installation flat charges.
9 These flat or nonrecurring charges are designed to cover order processing, development
10 of the price quote, and the time to engineer and install cable racking.¹⁸

11 The Initial Order concludes:

12 WorldCom next argues that if Qwest is permitted to assume that cable
13 racking will be installed, then Qwest also should be required to assume its
14 existing rack capacities. Although Qwest has assumed too few cables will
15 occupy these racks, it is unreasonable to assume capacities will approach
16 the levels suggested by WorldCom. Qwest must assume that rack
17 capacities will be no less than 20 DS0 cables, 10 DS1 cables, and 3 DS3
18 cables. All other assumptions in Qwest's Direct Connection proposal are
19 reasonable and are approved. Qwest must reduce the work time estimates
20 for elements by 30 percent for the reasons stated above in paragraphs 62
21 through 65.¹⁹

22
23 Qwest argues that the Commission should reverse the requirement that Qwest
24 modify its cable rack capacities based on Ms. Million's testimony that WorldCom had
25 misinterpreted the cable racking capacity when arguing that Qwest's cost study assumed a
26 capacity of only three cables.²⁰ Qwest continues:

¹⁷ Qwest does not challenge the propriety of the 30% recommended work time reduction for those rates that were challenged by the other parties.

¹⁸ Initial Order at para. 91.

¹⁹ Initial Order at para. 101.

²⁰ Qwest Brief at 5.

1 Because the 1 foot of new cable racking included in the cost study as part
2 of the nonrecurring charge is dedicated to the CLECs, the assumption of 3
3 relates to the number of CLECs that will share the additional 1 foot of
4 racking, not the number of cables in the rack. The CLEC is able to place
5 as many cables in the dedicated cable racking as there is capacity for. In
6 the case of such dedicated racking, Qwest has no ability to assume rack
7 capacities as ordered by the Commission at paragraph 101 because Qwest
8 does not control how much cable the CLECs place in the rack. Thus, the
9 Commission should reverse the requirement in paragraph 101 that Qwest
10 modify its assumption with regard to cable racking capacities.²¹
11
12 WorldCom’s expert, Roy Lathrop, interpreted the cost study and the costs related
13 to the cable racking portion of Qwest’s direct connection flat charge to:

14 [A]ssume[s] that five percent of the time collocators will require twenty
15 feet of new cable racking (for DS0, DS1 and DS3 cabling), and that ninety
16 percent of the time collocators will require ten feet of new cable racking
17 for fiber cabling. Furthermore, the cable racking cost is developed
18 assuming the capacity of the cable racking is only three cables.²²
19

20 Based on this interpretation of Qwest’s study, Mr. Lathrop recommended:

21 If cable racking already exists, the correct approach for direct connection
22 costing is to assess a cost for the capacity of cable racking space
23 consumed by the cables. Note that cables are typically routed within
24 [central offices] on overhead cable racks supported from the ceiling. The
25 bulk of cabling in a [central office] is copper, which is typically placed on
26 wider cable racks (15” to 30”), while fiber and power cables are often
27 placed on narrower (12” or 15”) cable racks. The “pile-up” or height of
28 cables on the racking can be over a foot and a half in some areas of a
29 [central office].²³
30

31 Qwest did not correctly develop its cable racking costs on a capacity basis.
32 For the cable racking Qwest assumes will be installed (based on the
33 percentages and lengths identified above), Qwest understates cable
34 racking capacity and thereby overstates cable racking costs. Qwest
35 spreads the cost of the cable racking over three cables, despite the fact that
36 cable racking capacity is many times (orders of magnitude) greater.
37 Indeed, in its cost study, Qwest lists more realistic cable rack capacities,
38 identified as “existing cable racking” and capacities associated with
39 Qwest’s Collocation Cost Model. If the Commission permits Qwest to

²¹ Qwest Brief at 5-6.

²² Exhibit 2026 at 11.

²³ Id.

1 assume cable racking will be installed to develop costs for its Direct
2 Connections service flat charge, WorldCom recommends that Qwest be
3 required to use cable racking capacities that are no less than what it
4 identifies as its existing cable racking capacities.²⁴

5
6 Mr. Lathrop then included a table in his testimony that contained Qwest's
7 collocation model cable racking capacity assumptions.²⁵

8 The conclusions set forth in the Initial Order are reasonable based upon the
9 evidence presented by Mr. Lathrop. WorldCom asks the Commission to adopt the
10 recommendations of the Initial Order on this issue. However, if the Commission decides
11 to reevaluate the Initial Order's recommendations on cable racking as requested by
12 Qwest, it should first require Qwest to prove that Mr. Lathrop's interpretation of the
13 assumptions set forth in the study are inaccurate. Based on the conclusions set forth in
14 the Initial Order, Ms. Million's rebuttal testimony did not clearly demonstrate the
15 inaccuracy of Mr. Lathrop's interpretation of the cost study.

16 **C. UNBUNDLED NETWORK ELEMENT PLATFORM (" UNE-P ") POTS NEW**
17 **CONNECTION.**

18 This rate element concerns Qwest's provision of new service via UNE-P to a
19 competitive local exchange carrier. In this instance, the end user customer location does
20 not have existing service.²⁶ The Initial Order requires Qwest to reduce the work times for
21 this item by 30%, and to eliminate work times associated with connecting a customer to
22 the network.²⁷

²⁴ Id. at 13.

²⁵ Id.

²⁶ Initial Order at para. 200, citing Exhibit No. T-2020, at page 12 (Million).

²⁷ Initial Order at para. 202.

1 Qwest argues that the Commission should reverse the Initial Order on this issue.²⁸
2 WorldCom disagrees. The recommendation of the Initial Order is reasonable and
3 supported by the record as well as the law. The Initial Order reasons that the record is
4 insufficient to support Qwest's proposal for this rate element. Once again, Qwest failed
5 to satisfy its burden of proof.

6 The ALJ agreed with WorldCom's arguments that Qwest's supporting
7 documentation, including discovery responses, lacked adequate descriptions of the tasks
8 being performed.²⁹ In addition, the Initial Order observed:

9 The record indicates that there are several inconsistencies within Qwest's
10 cost study and support documentation. For example, Exh. C-2024
11 indicates that its source data is from 1999. Qwest did not provide
12 sufficient evidence to support these values and there is no evidence that
13 supports the supposition that the data has been updated to reflect recent
14 productivity gains. Moreover, the supporting documentation appears to
15 include, without explanation, the cost of reconnecting a customer line,
16 even though it claims to estimate the cost of establishing a new service
17 connection.³⁰ Qwest's proposed nonrecurring rate for UNE-P New
18 Connection must be adjusted to eliminate work time for reconnecting a
19 customer line, and other work times must be adjusted by a 30% reduction
20 as discussed above.

21
22 Like here, Qwest argued in its closing brief to the ALJ that WorldCom's proposed
23 changes to Qwest's UNE-P New Connection charges are unsupported by the record. To
24 the contrary, WorldCom's expert witness, Mr. Morrison, testified that Qwest's supporting
25 documentation was insufficient to substantiate its proposed costs and that time and
26 motion studies should be performed to provide a verifiable basis for the costs.³¹ When
27 he reviewed Qwest's responses to discovery, he noticed that many unnecessary tasks

²⁸ Qwest Brief at 7-8.

²⁹ Initial Order at paras. 201 and 202, citing WorldCom Reply Brief, at pages 30-31.

³⁰ Exhibit No. 2023, at page 360.

³¹ Tr. at 4936-4937.

1 were included in the time estimates that were not described in the study. He testified:
2 “Without the ability to do in depth analysis on all those additional processes that lay
3 behind a single line description, it is very, very difficult to get a handle on this cost study
4 and come up with any kind of truly accurate answers to the tasks that are being
5 performed, because the tasks that are being performed are not totally described in the cost
6 study.”³² Consequently, he concluded that Qwest’s proposal is “off by at least 50%.”³³
7 Compare the tasks listed in discovery responses, Exhibits 2273-2290, to the tasks listed in
8 Qwest’s cost study, Exhibit 2023. Mr. Morrison also addressed this study in his general
9 evaluation in his written testimony of all of Qwest’s NRC studies.³⁴

10 Qwest’s criticisms of WorldCom’s arguments and the conclusions of the Initial
11 Order on this issue are based on an assumption that a TELRIC analysis is an exact
12 science. It is not. The FCC set forth guiding principles to be applied in evaluating
13 whether ILEC cost studies comply with TELRIC. Mr. Morrison applied those guiding
14 principles during his review of Qwest’s studies and determined that Qwest’s studies did
15 not comply with TELRIC.³⁵

16 The conclusions of the Initial Order on this rate element are amply supported by
17 the record and the law and should be adopted by this Commission. For the reasons set
18 forth in Mr. Morrison’s testimony and WorldCom’s Post Hearing Briefs, WorldCom asks
19 the Commission to reject Qwest’s arguments to reverse the Initial Order’s conclusions on
20 this issue.

21

³² Tr. at 4937.

³³ Id.

³⁴ Exhibit T-2270 at 24-25; Exhibit C-2271 at 8-12.

1 **D. DIRECTORY ASSISTANCE LISTINGS (" DAL").**

2 DAL information consists of name, address and telephone number information for
3 all end users of Qwest and other LECs that are contained in Qwest's directory assistance
4 database and, where available, related elements required in the provision of directory
5 assistance service to CLECs' end users.³⁶ Qwest argues in its Petition that the
6 Commission should reverse the interim adoption of the TELRIC rates set forth in Exhibit
7 2135, as proposed by WorldCom in this proceeding.³⁷ Qwest had proposed the use of
8 market-based pricing for the provision of DAL information.

9 Qwest essentially argues that the ALJ should have rejected the facts and the law
10 that WorldCom cited to support its position on this rate element and instead, agreed with
11 Qwest. Qwest raises no new argument in its Petition. The Initial Order reasonably and
12 correctly rejected Qwest's arguments. This Commission should do the same.

13 The Initial Order first rejects Qwest's attempt to charge CLECs market-based
14 rates for DAL under the UNE Remand Order on the basis that it provides customized
15 routing.³⁸ In light of the conclusion in the Initial Order that Qwest in fact is not providing
16 customized routing as required by the FCC, Qwest's market-based rate proposal for DAL
17 was rejected.³⁹ Qwest has not sought administrative review of the Initial Order's
18 conclusion that it is not providing customized routing as requested by WorldCom and,
19 therefore, it must offer operator services and directory assistance services at TELRIC
20 rates. Thus, the basis for this ALJ conclusion has not been challenged. For the reasons

³⁵ Tr. at 4961-4963.

³⁶ Initial Order at para. 221, citing Qwest's Brief at page 67.

³⁷ Qwest's Brief at 7-8; Initial Order at paras. 232-239.

³⁸ Initial Order at para. 232.

³⁹ Id.; see also discussion in the Initial Order on customized routing at paras. 179-186.

1 set forth in the Initial Order on this issue, the Commission should adopt the
2 recommendation of the ALJ.

3 Qwest directs the Commission to the UNE Remand Order’s discussion of whether
4 OS/DA should be set at TELRIC rates or at market-based rates in support of its
5 arguments that the ALJ erred in his analysis of this issue. The Commission should
6 disregard this Qwest argument. These citations to the UNE Remand Order are no longer
7 instructive on this issue because of the Initial Order’s “undisputed” conclusion that Qwest
8 does not satisfy the UNE Remand Order’s prerequisite to an ILEC’s ability to set OS/DA
9 services at market-based rates.⁴⁰

10 The FCC has confirmed that incumbents like Qwest enjoy a competitive
11 advantage with respect to the provision of critical directory assistance service as a result
12 of their legacy as monopoly providers and their “dominant position in the local exchange
13 and exchange access markets”⁴¹ and that they have “access to a more complete, accurate
14 and reliable database than its competitors.”⁴² These findings confirm that, as the
15 incumbent local exchange carrier (“ILEC”) in its territory in Washington, Qwest
16 maintains significant market power over the provision of listing data and explain why a
17 continued requirement for cost-based prices for these services is consistent with FCC
18 guidelines.

⁴⁰ See discussion of Initial Order at paras. 166-186 and 223-224 and 232.

⁴¹ *FCC Memorandum Opinion and Order, In the Matter of the Petition of SBC Communications Inc. for Forbearance of Structural Separation Requirements and Request for Immediate Interim Relief in Relation to the Provision of Nonlocal Directory Assistance Services, et al* CC Docket No. 97-172, DA 00-514, at fn. 42, (adopted April 11, 2000) (hereinafter, “*SBC Forbearance Order*”).

⁴² *Id.*, See also, *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, First Report & Order*, FCC 01-27, CC-Docket No. 99-273 (2001) at ¶ 3, (hereinafter, “*DAL Provisioning Order*”).

1 The FCC determined that the DAL database is a UNE under Section 251(c)(3) in
2 its Local Competition Order.⁴³ More recently, in the Executive Summary of the UNE
3 Remand Order, the FCC in a section titled “Network Elements that Must be Unbundled”
4 specifically stated, “LECs must also offer unbundled access to call-related databases,
5 including but not limited to, the Line Information database (LIDB), Toll Free Calling
6 database, Number Portability database, Calling Name (CNAM) database, Operator
7 Services/Directory Assistance databases....”⁴⁴ In that Order, the FCC did not remove
8 DAL databases from the list of UNEs. Additionally, the *Local Competition Report*
9 defined call-related databases as “databases, other than operations support systems, that
10 are used in signaling networks for billing and collection or the transmission, routing, or
11 other provision of telecommunications service.”⁴⁵ Thus, Qwest is obligated to provide
12 nondiscriminatory access to the DAL database at TELRIC rates.

13 DAL is also subject to the 1996 Telecommunications Act’s⁴⁶ nondiscriminatory
14 access requirement pursuant to Section 251(b)(3). These two sections (47 USC
15 §251(b)(3) and §251(c)(3)), however, are not mutually exclusive. Section 251(b)(3)
16 requires nondiscriminatory access as between all LECs and DA providers, while the UNE
17 requirements of Section 251(c)(3) remain applicable as between ILECs and CLECs such
18 as Qwest and WorldCom.

⁴³ 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 (rel. Aug. 8, 1996) (“Local Competition Order”) at para. 538.

⁴⁴ *In re the Matter of 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, FCC 99-235 (rel. Nov. 5, 1999) (“UNE Remand Order”) at ¶19.

⁴⁵ Local Competition Order, at fn. 1126; see also, UNE Remand Order at ¶ 403 (emphasis added).

⁴⁶ 47 U.S.C. §151 et. seq.

1 In the FCC’s recent DAL Provisioning Order, the FCC recognized that ILECs
2 continue to charge CLECs and competing DA providers like WorldCom, discriminatory
3 and unreasonable rates for DAL. The FCC found that Section 251(b)(3) prohibits ILECs
4 from charging discriminatory and unreasonable rates to CLECs and other eligible
5 directory assistance providers. Although it declined to adopt a specific pricing structure
6 for DAL as between all LECs under dialing parity, it encouraged states to set their own
7 rates consistent with the nondiscriminatory access requirements of 251(b)(3). In doing
8 so, the FCC specifically recognized that state imposed rates based on cost-based models
9 utilizing valid cost studies were consistent with dialing parity. The FCC specifically
10 cited a decision of the New York Public Service Commission that analyzed cost studies
11 from the ILEC and other LECs to arrive at a cost-based price model for the
12 nondiscriminatory provision of directory assistance.⁴⁷

13 Indeed, the FCC recently reaffirmed that incumbents must “make available to
14 unaffiliated entities all of the in-region telephone numbers they use to provide non local
15 directory assistance service at the same rates, terms and conditions they impute to
16 themselves”⁴⁸ and “comply with the nondiscrimination requirements set forth in section
17 272(c)(1).”⁴⁹

18 Because Section 251(b)(3) mandates nondiscriminatory access between all
19 competitive providers, Qwest must provide DAL at the same price it imputes to itself or,
20 put another way, at cost.

⁴⁷ *Id.* at ¶ 38, fn. 99, citing *Opinion and Order in Module 1 (Directory Database Services)*, Case 98-C-1375, Opinion No. 00-02, State of New York Public Service Commission (Feb. 8, 2000).

⁴⁸ *SBC Forbearance Order*, DA 00-514 at ¶ 2 (2000).

⁴⁹ *Id.* at ¶ 15 (citations omitted).

1 In Texas, based on a cost study submitted by Southwestern Bell Telephone
2 (“SWBT”), the Texas Commission set a cost-based price for initial listings at \$0.0011
3 and \$0.0014 for updates.⁵⁰ Similarly, the California Public Utilities Commission agreed
4 with WorldCom in arbitration with Pacific Bell and ordered that the appropriate cost-
5 based rate for DAL be considered in one of its cost proceedings.⁵¹

6 The evidence in the record shows that at least as late as fourth quarter 1999, the
7 average TELRIC pricing for DAL over the 14 state Qwest region ranged between
8 \$0.0073 per listing for initial loads and \$0.0171 per listing for daily updates.⁵²

9 This rate shows that there is no basis for imposing a “market rate” of 2.5 cents per
10 initial listing and 5 cents for each update⁵³. If a true market were to exist, competition
11 would drive the price of each listing more toward cost-based rates rather than a 192%
12 increase in the cost of daily updates based on the price Qwest estimated in its FCC filing.
13 Rather, Qwest continues to discriminate against all other carriers by charging them a rate
14 higher than what Qwest charges itself. For Qwest to claim otherwise would mean that
15 Qwest charges itself a “market based” rate, which would be a sham rate. Such inflated
16 prices threaten to barricade any meaningful competition in the market place and have the
17 potential to cause competitors to drop out of the market where there would exist no
18 incentive for further innovation.⁵⁴

⁵⁰ See, Texas 1998-2000, *Directory Assistance Listing Cost Study, Total Element Long Run Incremental Cost Study*, Form 2; cited in, MCI Texas Arbitration Award, Texas Commission Docket 19075, at pages 12-14.

⁵¹ See, *Application by Pacific Bell Telephone Company (U 1001 C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services, L.L.C. (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996*, California PUC, Decision 01-09-054 at pp. 6-10 (September 20, 2001).

⁵² See Exhibit 2135.

⁵³ Exhibit 2056 at Sections 10.6.1 and 10.6.3.

⁵⁴ Exhibit T-2320 at 9 and Exhibit T-E2320 at 9.

1 Based on this testimony and these arguments, the Initial Order reasonably
2 concludes:

3 Even if the Commission subsequently finds that Qwest’s provisioning of
4 customized routing qualifies for the FCC’s OS/DA exemption, Qwest’s
5 DAL proposal should be rejected because WorldCom presents convincing
6 evidence and arguments that market-based rates for DAL are
7 discriminatory and, therefore, contradict both the Telecom Act and FCC
8 orders. For example, the FCC states in the DAL Provisioning Order:
9

10 Section 251(b)(3) of the Act and the Commission’s rules
11 prohibit LECs from charging discriminatory rates, for
12 access to DA databases, to competing directory assistance
13 providers that fall within the protection of that section (i.e.,
14 those that provide telephone exchange service or telephone
15 toll service). Thus, LECs must offer access to their DA
16 database at rates that do not discriminate among the entities
17 to which it provides access. Further, failure to provide
18 directory assistance at nondiscriminatory and reasonable
19 rates to DA providers within the protection of section
20 251(b)(3) may also constitute an unjust charge under
21 section 201(b).⁵⁵ (*Footnotes omitted*).⁵⁶
22

23 The Initial Order continues:

24 Furthermore, while the FCC declined to adopt a specific pricing standard
25 in its SBC Forbearance Order, the FCC did conclude that the ILECs “must
26 make available to unaffiliated entities all of the directory listing
27 information that they use to provide region wide directory assistance
28 service at the same rates, terms, and conditions they impute to
29 themselves...”⁵⁷ Therefore, Qwest’s proposal is rejected because it fails to
30 consider the cost Qwest actually incurs to provide DAL.⁵⁸
31

32 The Initial Order reasonably adopts WorldCom’s proposal to use Qwest’s region
33 wide TELRIC rates on an interim basis. It holds, “While these rates may be in need of an
34 update, they are a reasonable proxy for Qwest’s forward-looking costs. These rates

⁵⁵ DAL Provisioning Order, at para. 35.

⁵⁶ Initial Order at para. 233.

⁵⁷ SBC Forbearance Order, at para. 15.

⁵⁸Initial Order at footnote 161: “Qwest does not assert that its proposed [DAL] rates are TELRIC.” Qwest Reply Brief at 14-15.

1 should remain in effect until Qwest submits, and the Commission approves, a
2 Washington-specific cost study that complies with TELRIC principles.”⁵⁹

3 Qwest contends that the Initial Order’s conclusions on this issue are in error
4 because the DAL Provisioning Order generically held that ILEC DAL rates are
5 discriminatory and the Order did not specifically address Qwest rates.⁶⁰ This argument
6 misses the point.

7 First, the Initial Order’s conclusion is supported by several analyses, including the
8 conclusion that DAL should be set at TELRIC because Qwest fails to provide customized
9 routing in the manner required for it to be exempted from the UNE pricing requirements
10 for DA services. This Commission could adopt the Initial Order’s ultimate decision on
11 this basis alone.

12 Second, the discrimination analysis of the Initial Order does not rely on a finding
13 by the FCC that a particular LEC’s DAL rates are discriminatory. Rather, the Initial
14 Order notes the discussion of the FCC on the points in dispute between Qwest and
15 WorldCom and concludes that Qwest failed to present evidence that would enable the
16 Commission to find that its rates were non discriminatory as required by the Act and the
17 relevant FCC Orders.

18 Qwest bears the burden to prove that its proposals are consistent with the Act and
19 FCC Orders, i.e., that its proposed rates are non discriminatory. Qwest failed to present
20 evidence in this proceeding as to what it charges itself for this service. It cannot carry its
21 burden without this evidence.

⁵⁹ Initial Order at para. 235.

⁶⁰ Qwest Brief at 9.

1 For these reasons, the Commission should adopt the Initial Order’s findings and
2 conclusions on this issue.

3 **E. POLES, DUCTS AND RIGHTS OF WAY.**

4 For access to poles, ducts and conduit, Qwest requires a two-part “pre-ordering”
5 process that includes an inquiry fee and a field verification fee. For access to rights-of-
6 way (“ROW”), where Qwest has ownership or control to provide access, Qwest proposes
7 an inquiry fee and a documentation fee.⁶¹

8 The Initial Order concludes:

9 Qwest has included an unreasonable amount of time for database and field
10 verifications with respect to access to poles, conduit, and rights of way. In
11 the Part B Order the Commission expressed concern that Qwest’s proposal
12 would lead to excessive recovery of costs. The Commission also noted
13 that the record was not sufficiently developed to reach a definitive
14 conclusion.⁶² This Order affirms the Commission’s Part B findings with
15 regard to access to poles, conduit, and rights of way. However, Qwest
16 also must reduce work time estimates by 30 percent for the reasons stated
17 above in paragraphs 62 through 65, to the extent that the adjustment does
18 not conflict with the Commission’s Part B Order.⁶³

19
20 Qwest asks the Commission to affirm that Qwest may charge the approved Part B
21 rates for field verifications, and the proposed Part D rates, without reduction, for the
22 inquiry activity.

23 On its face, the Initial Order in this Part D appears to supercede the Part B Order
24 on the issue of database and field verification. However, although WorldCom does not
25 agree with the arguments set forth in Qwest’s Petition as to how the Part B and Part D
26 Orders should be assimilated, WorldCom agrees that clarification is needed as to how to

⁶¹ Exhibit T-2252 at 2.

⁶² Part B Order, at paras. 163-171.

⁶³ Initial Order at para. 243.

1 implement the Orders on the issues of field verification and inquiries relating to poles,
2 conduit and rights of way.

3 **III. CONCLUSION**

4 For the reasons stated above, the Commission should reject Qwest's arguments to
5 reverse or modify the findings and conclusions in the Initial Order with regard to the
6 issues discussed herein.

7 Dated this 12th day of November 2002.

8 Respectfully Submitted,

9 **WORLDCOM, INC.**

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