

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Review of:) DOCKET NO. UT-023003
Unbundled Loop and Switching)
Rates; the Deaveraged Zone)
Rate Structure; and Unbundled) EIGHTH SUPPLEMENTAL ORDER:
Network Elements, Transport,) DENYING MOTION FOR
and Termination) DECLARATORY ORDER;
) CLARIFYING REQUIREMENT TO
) FILE TIME AND MOTION STUDIES
.....)

1 Synopsis: The Commission denies Verizon’s motion for a declaratory order but clarifies that under certain circumstances time and motion studies are not required to support nonrecurring costs.

I. INTRODUCTION

2 Proceeding. Docket No. UT-023003 – also referred to as the “new generic cost case” – is a generic proceeding to review unbundled network element (“UNE”) loop and switch rates, including the deaveraged-loop-zone rate structure previously established by the Commission in other proceedings. The Commission has also decided to consider numerous other related issues.

3 Appearances. The following parties have entered appearances in this proceeding: Qwest Corporation (“Qwest”), by Lisa Anderl and Adam Sherr, attorneys, Seattle; Verizon Northwest Inc. (“Verizon”), by Jeff Edwards and Meredith Miles, attorneys, Richmond, Virginia; Covad Communications Company (“Covad”), by Megan Doberneck, attorney, Denver, CO; AT&T of the Pacific Northwest, Inc. (“AT&T”), Pac-West, Inc. (“Pac-West”), and XO Washington, Inc. (“XO”), by Gregory Kopta, attorney, Seattle; MCI/WorldCom (“WorldCom”) by Michel Singer Nelson, attorney, Denver, Colorado; TRACER, by Lisa Rackner, attorney, Portland, Oregon; Eschelon Telecom, Inc. (“Eschelon”), by Dennis D. Ahlers, Minneapolis, MN; Allegiance Telecom of Washington, Inc. (“Allegiance”), by Dale Dixon, attorney, Portland, Oregon; and Commission Staff, by Shannon Smith, Assistant Attorney General, Olympia.

4 **Background.** The Commission convened a prehearing conference on February 6, 2003, at Olympia, Washington, before Administrative Law Judges Theodora M. Mace and Lawrence J. Berg. The primary purpose of the conference was to address the scope of the proceeding and scheduling issues.

5 During the prehearing conference the parties raised several disputes regarding the preparation of time and motion studies required by the Commission to support nonrecurring cost studies presented during the hearing: whether Verizon and Qwest must retain third parties to perform time and motion studies; whether Verizon and Qwest must prepare time and motion studies for both ordering and provisioning of network elements; and whether WorldCom and other competitive local exchange carriers (“CLECs”) would be permitted to observe the conduct of time and motion studies. All of these disputes have been resolved by means of various orders entered by the Commission in this case to date.

6 In the Commission’s Fifth Supplemental Order, the Commission declined to require all time and motion studies to be performed by third-party vendors. The Order stated that “parties must prepare verifiable time and motion studies to support nonrecurring costs studies, *except under extraordinary circumstances.*”¹ The Order further required that time and motion studies be prepared for both ordering and provisioning of elements. The Orders did not require preparation of time and motion studies for recurring costs.

7 On March 21, 2003, Verizon filed a motion for a declaratory ruling, pursuant to WAC 480-09-230,² seeking confirmation from the Commission that it need not perform time and motion studies to support nonrecurring costs (“NRCs”) associated with the virtual collocation elements the Commission rejected in Part D of Docket No. UT-003013.

8 On April 1, 2003, Qwest filed a response in support of Verizon’s motion. In conjunction with its response, Qwest requested a broad exemption from the requirement for time and motion studies when the order frequency for an element was too low.

¹ Fifth Supplemental Order at p. 2, ¶4 (emphasis added).

² Verizon refers to WAC 480-09-420 in its Motion, but WAC 480-09-230 is the rule governing declaratory orders.

- 9 **Verizon Motion.** Verizon states that the virtual collocation elements for which it seeks an exemption are low-volume and not easily susceptible to time and motion measurement because of their infrequency. Verizon points out that the Commission indicated in the Fifth and Sixth Supplemental Orders in this proceeding that in the new generic case, the Commission might reject NRCs not supported by time and motion studies, except under exceptional circumstances. Verizon suggests that for the virtual collocation elements in question, the lack of frequency with which they are ordered creates such circumstances.
- 10 The elements for which Verizon seeks an exemption are as follows:
1. Engineering/ Major Augment – Virtual with Entrance Facilities
 2. Engineering/Major Augment – Virtual without Entrance Facilities
 3. Virtual Equipment Installation
 4. Virtual Software Upgrades
 5. Virtual Card Installation
 6. Fiber Optic Patchcord Pull
 7. Fiber Optic Patchcord Pull
- 11 For these elements, Verizon will support its nonrecurring costs based on input from subject matter experts (“SMEs”).
- 12 Verizon indicates that there are also three recurring cost rates associated with virtual collocation will be supported by SME estimates: Virtual Equipment Maintenance, Facility Termination – Fiber Optic Patchcord, and Cable Duct Space – Fiber Optic Patchcord. But Verizon suggests these recurring rates are not subject to the time and motion studies orders of the Commission. If the Commission does intend that recurring rates be supported by time and motion studies, then Verizon requests a similar exemption for these rates.
- 13 Verizon observes that of its 121 Washington central offices, only 25 have collocation arrangements. These 25 central offices have approximately 72 collocation arrangements, only four of which are virtual arrangements. The most recent virtual collocation arrangement was completed 5 years ago.
- 14 Verizon contends that CLECs are not interested in purchasing virtual collocation arrangements in Washington, as evidenced by the length of time from the installation of the last arrangement; that no CLEC objected to Verizon’s proposed

costs for these items in the Part D proceeding, that collocation elements do not lend themselves to time and motion studies because they are customized rather than routine types of installations; that CLECs do not provide Verizon with forecasts so it is difficult to anticipate orders; and, that the infrequency of the orders would make any study suffer for lack of a statistically valid sample. The burden of preparing time and motion studies far outweighs any resulting benefits.

15 Verizon states that it will identify the experts upon which it has relied to support the costs, as well as the factors developed by those experts.

16 Qwest is the only party to respond to Verizon's motion. Qwest supports the motion and requests the Commission to affirm that, in general, low-volume and/or difficult-to-study nonrecurring activities do not need to be the subject of time and motion studies.

17 Qwest does not list a particular group of rate elements that would fall within this description, nor does it have a similar set of collocation arrangement elements for which it would seek an exemption. However, Qwest does indicate that as its time and motion study process goes forward, there will emerge a number of NRC elements for which volumes will be either nonexistent or so low as to make a time and motion study either impossible or statistically invalid. Qwest provides a detailed explanation of the ordering process to demonstrate how difficult it is to track orders when there is a very low volume of requests for a particular element.

18 **Discussion and Decision.** The Commission's rule governing declaratory rulings is contained in WAC 480-09-230. That rule reflects provisions in the Administrative Procedures Act concerning declaratory orders by an agency: "Any person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency." *RCW 34.05.240(1)*. In this case, Verizon is requesting a determination about the applicability of the Commission's order requiring time and motion studies to certain elements that are infrequently ordered by CLECs. None of the CLECs that are parties to this case voiced any objection to Verizon's request. Nor did they object to Verizon's proposed costs for these elements in Part D of UT-003013. Because of the lack of actual controversy with regard to this particular set of cost elements, it is not clear that entry of a declaratory order

is the appropriate method for resolving Verizon's concern.³ For this reason, the Commission denies the request for a declaratory order, but will clarify its expectations regarding performance of time and motion studies associated with Verizon's listed virtual collocation elements.

19 Because Verizon's proposed list of elements is limited, and no party objected to the requested exemption for them, the Commission clarifies that for these particular elements exceptional circumstances exist that should exempt Verizon from preparing time and motion studies. However, Verizon must provide the SMEs who develop the time estimates for these elements as witnesses during the proceeding with the expectation that they will be able to testify knowledgeably about their preparation of the estimates. The exemption granted Verizon for these particular virtual collocation elements should not be interpreted as in any way an endorsement of the use of SMEs to support any other nonrecurring costs. Since time and motion studies are not required in support of recurring costs, Verizon's request for a similar exemption for its use of SMEs in preparation of recurring costs is moot.

20 The Commission declines to grant Qwest's request because it asks for a blanket exemption for unidentified low-volume elements.

ORDER

21 THE COMMISSION ORDERS That Verizon's Motion for Declaratory Order is denied. The Commission clarifies that for the virtual collocation elements identified by Verizon, time and motion studies are not required, but Verizon must provide a subject matter witness to testify regarding time estimates for those elements. The Commission denies Qwest's request for an order exempting unidentified elements from the requirement for time and motion studies.

³ RCW 34.05.240(1)(b).

Dated at Olympia, Washington, and effective this ____ day of April, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner