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May 21, 2003

Mrs. Theodora M. Mace
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive, SW
PO Box 47250
Olympia, WA 98504

Re: UT-023003

Dear Judge Mace:

Enclosed are the original and nineteen copies of MCI's Response to Verizon's Motion for Declaratory Ruling.

If you have any questions please feel free to contact me at 303-390-6168.

Sincerely,


Michael N. Rivera

cc: all parties of record

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

**In the Matter of Review of
Unbundled Loop and Switched Rates
And Review of Deaveraged Zone
Rate Structure**

Docket No. UT-023003

MCI RESPONSE TO VERIZON’S MOTION FOR DECLARATORY RULING

1. WorldCom, Inc. and its regulated subsidiaries operating in Washington (“MCI”) hereby respond to Verizon’s Northwest Inc.’s (“Verizon’s”) Motion for Declaratory Ruling. MCI respectfully requests that the Washington Utilities and Transportation Commission (“Commission”) deny Verizon’s Motion.

2. This Commission has decided repeatedly that it does not consider subject matter expert (“SME”) testimony to be reliable to support incumbent local exchange carrier non recurring cost studies. In its 41st Order, the Commission found SME testimony to be inadequately documented, incapable of independent verification and lacking in consideration of efficiencies.¹ It reasoned:

Commission Staff asserts that the Commission must reject Qwest’s nonrecurring cost study, as filed, because Qwest has failed to establish that its proposed nonrecurring rates are cost-based, reasonable, and nondiscriminatory. Staff emphasizes two significant flaws in Qwest’s studies. First, Staff states that Qwest has never shown that its SME estimates are forward-looking estimates based on TELRIC principles. In fact, some estimates are two or three times older than the forward-looking component of the estimate claims to be.² Second, because Qwest provides no information on the actual time an SME, or an average of SMEs, take to perform a task, and how process or equipment improvements would affect

¹ See 41st Supplemental Order at pp. 17-20.

² Staff Reply Brief, at page 6.

that time, the SME estimates cannot be audited.³ As a result there is no way for parties or the Commission to accurately judge the reasonableness of Qwest's proposed rates. After considering all of the parties' arguments, Staff's arguments are most persuasive.

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

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

Local Competition Order, at para. 680.⁴

Qwest's argument that it should not be required to file time and motion studies because they are prohibitively expensive and by definition backward looking is not persuasive. On the contrary, as noted by WorldCom and Commission Staff, Qwest fails to address the Commission's previously expressed concerns,⁵ and SME estimates cannot be substituted for properly conducted time and motion studies.⁶ Thus, the submission of nonrecurring cost studies without supporting time and motion data in the future will be rejected absent extraordinary circumstances.⁷

3. In the 44th Supplemental Order, the Commission reiterated the importance of supporting non recurring cost estimates with verifiable time and motion studies, capable of evaluation by third parties:

We affirm the 30% composite reduction applied to all rate elements, including uncontested elements, except as noted otherwise. The Commission has made clear in several prior cases, outlined in the Initial Order, that the cost methodology used by ILECs must be open, capable of easy adjustment and capable of verification. Qwest's reliance on SMEs

³ TR at 4316-17.

⁴ 41st Supplemental Order at p 20.

⁵ *Eighth Supplemental Order*, at para. 450-451.

⁶ Staff Brief, at page 6.

⁷ 41st Supplemental Order, Docket No. 003013 (October 11, 2003) at pp. 21-22.

precludes easy verification and infects all rates, not just those that are contested.

The burden of proof rested with Qwest to show that its cost estimates complied with the FCC's pricing rules. Its cost methodology and use of SMEs makes verification that its rates comply with TELRIC standards difficult if not impossible for the parties and the Commission.⁸

4. The Commission recently repeated these concerns in this docket.⁹

5. Verizon now asks the Commission to waive this requirement with regard to five products for which it intends to propose rates in this docket: (1) dark fiber; (2) SS7; (3) transport; (4) dedicated transit service ("DTS"); and (5) enhanced extended links ("EELs"). Verizon proposes instead to use SME testimony in support of these rates.

6. According to Verizon, the elements identified in the Motion for Declaratory Ruling "...generate insufficient volumes to provide an adequate statistical sample upon which to base reliable measured time intervals." (Motion at page 2) Verizon's position is based upon a Declaration of Dr. Kulkarni. Dr. Kulkarni concludes, based on the information provided by Verizon, "...the volume of orders occurring in this twelve-month period is insufficient to obtain a statistically valid analysis of the ordering processes at NACC." (Kulkarni Declaration at page 3, paragraph 4)

7. Verizon's argument should be rejected. These are not extraordinary circumstances that should enable Verizon to circumvent the Commission's clear mandate that Verizon support its non recurring costs with verifiable time and motion studies.

8. First, if what Verizon represents is true, Verizon is unable to use SME testimony to develop a reliable and accurate cost study. An expert's knowledge of and experience with the tasks involved in a cost study are the criteria that qualify the expert to

⁸ 44th Supplemental Order, Docket No. 003013 (December 19, 2003) at pp. 12-13.

⁹ See 6th Supplemental Order, Docket No. 023003, (February 20, 2003).

develop a cost study. How can a subject matter expert develop a cost study on the rate elements subject to Verizon's motion when the elements, "...generate insufficient volumes to provide an adequate statistical sample upon which to base reliable measured time intervals." (Motion at page 2) Without a sample, the expert cannot obtain the requisite knowledge or experience to develop reasonable time intervals. To rely solely upon expert opinion with what Verizon claims to be a dearth of orders would be a useless exercise that would be highly subjective.

9. Second, the Commission has already rejected a request from Qwest in this docket to exempt services experiencing a low volume of orders from the rule requiring time and motion studies.¹⁰ Verizon has stated nothing in its motion to cause the Commission to modify its ruling.

10. If, however, the Commission is concerned that the number of orders for these rate elements is too low to enable Verizon to develop an accurate time and motion study, rather than allow Verizon to present SME testimony in support of its rates, the Commission could modify Verizon's proposed time and motion study methodology.

11. First, if the data suggest, Verizon could assume a different distribution of data (discrete probability models) that is more suited to small finite populations, other than the normal or Gaussian distribution used by Dr. Kulkarni. Second, Verizon could generate orders using a "pseudo-CLEC" approach thereby reaching the needed number of observations for a statistically valid study within the study period. Third, Verizon could continue to collect observations over time and update the study on a quarterly basis until a statistically valid amount of data is acquired.

¹⁰ 8th Supplemental Order, Docket No. 023003 (April 8, 2003) at p. 5.

12. The first option – using a different statistical test to attempt to deal with the small sample size – is not ideal. While these other methods and distributions attempt to approximate a normal distribution, it is clear that a larger sample that truly reflects a standard normal distribution would be preferred.

13. The second option – the use of a pseudo-CLEC to generate orders – is a process with which the industry is well acquainted. This process was used extensively during the collaborative OSS testing for Qwest’s 271 proceedings. This is not intended to mimic the Qwest 271 OSS process; instead, MCI is proposing that the parties agree on a process whereby Verizon would submit an agreed upon number and type of orders. Or, in the alternative, the competitive local exchange carriers (“CLECs”) could submit orders that would later be rescinded.

14. The third option may not be viable in the context of Verizon’s proposal for a very limited observation period (two to four weeks). However, extending the observation period should enable Verizon to generate a sufficient number of orders to develop a statistically valid sample for the time and motion studies. In sum, because alternatives exist to enable Verizon to submit time and motion studies, the Commission should reject Verizon’s request to offer only expert testimony in support of these five rate elements.

15. Moreover, by focusing on the number of observations, Verizon is not considering the other benefits of time and motion studies. Even if the study does not result in a statistically valid result, the experience will certainly identify activities and processes that might be inefficient and could be substantially improved. To that end, the time and motion studies will be invaluable in helping Verizon improve its processes and

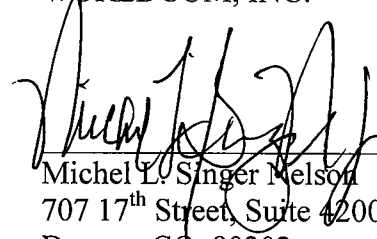
reduce costs for all involved. In other words, the time and motion studies are not just the results of a person holding a stopwatch and observing activities. Instead, as the Commission has found, it should be a critical review of existing processes resulting in improved methods and procedures. Without this ultimate goal in mind, Verizon has no incentive to improve its processes. Indeed, the incentive is to maximize work times to increase rates to dependent competitors.

11. For all of these reasons, MCI respectfully requests that the Commission reject Verizon's Motion. If the Commission is concerned about the low numbers of orders that may be subject to the time and motion studies, MCI requests that the Commission require Verizon to modify its proposed methodology as suggested above.

Dated this 21st day of May 2003.

Respectfully Submitted,

WORLDCOM, INC.



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