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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Docket No. UT-003013 (Part B)
Continued Costing and Pricing of Comments Of Qwest Corporation On The
Unbundled Network Elements, Transport, Effect Of The Eighth Circuit’s Opinion In Iowa
Termination, and Resale Utilities Board v. FCC On Part B

In accordance with the Commission’s Fifth Supplemental Order, Qwest Corporation (“Qwest) (f/k/a U S WEST Communications, Inc.), hereby submits its comments on the potential effect of the United States Court of Appeals for the Eighth Circuit’s ruling on remand in *Iowa Utilities Board v. FCC*, No. 96-3321, on Part B of Docket UT-003013.

In the its Opinion¹, issued on July 18, 2000, the Court vacated 47 C.F.R. § 51.505(b)(1), which maintained that the prices for unbundled network elements (UNE) be based on TELRIC costs which were to be measured based on the most efficient telecommunications technology currently

¹ *On Petitions for Review of an Order of the Federal Communications Commission, Iowa Utilities Board v. FCC*, Case No. 96-3321 (and consolidated cases).

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2 available and the lowest cost network configuration, given the existing location of the incumbent
3 ILEC's wire centers. Instead, the court found that the clear intent of Congress was that costs used for
4 pricing UNEs be reflective of the actual costs of the facilities and equipment used by the competitor.²
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6 Qwest has previously addressed the Commission's question regarding this Court ruling, with
7 respect to the cost studies filed in this docket, in the pre-filed Testimony of Teresa K. Million,³
8 where she states, in part:

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10 It is clear that the Court believes an ILEC's rates should be based on the
11 forward-looking cost of providing its existing facilities and equipment rather
12 than an imaginary reconstructed local network. Thus, cost models that
13 calculate unit costs using realistic, achievable and actual inputs to produce a
14 realistic outcome would meet the requirements of the Telecom Act. The cost
models presented by Qwest use assumptions based on actual experience or
company practice and, therefore, already reflect this interpretation by the
Court for the most part. While the Court's action and forthcoming rules from
the FCC may impact Qwest's approach to future cost studies, I do not believe
that it requires changes to the cost studies presented in this proceeding.

15 It should be noted that the Court has not yet issued its mandate on this ruling and thus the
16 terms of the Order are not yet effective. Furthermore, the FCC rules could remain in effect if the
17 decision is stayed pending appeal. Nevertheless, Qwest agrees with Verizon's assessment of the
18 ruling that, "[b]ecause of the original consolidation of appeals in the Eighth Circuit, the action of that
19 court is binding for all purposes, and represents a material change in the controlling law that must be
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² *On Petitions for Review of an Order of the Federal Communications Commission, Iowa Utilities Board v. FCC*, Case
No. 96-3321 (and consolidated cases). at 8.

³ Million Direct, Docket UT-003013 *Part B*, at 5.

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2 addressed by the parties to this proceeding and applied by the Commission.”⁴ Consequently, Qwest
3 believes that the Court’s ruling potentially impacts all of the cost determinations made by this
4 Commission in all phases of the Generic Docket and must certainly guide the Commission as it
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6 considers appropriate assumptions and inputs in Part B. However, Qwest believes that any further
7 analysis or deliberations regarding the ruling should await the Eighth Circuit Court's release of its
8 mandate, when the accompanying appeals and other court actions can be assessed.
9

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22 Dated: August 16, 2000

_____ ⁴ Verizon Northwest Inc.’s Comments on 8th Circuit Opinion, UT-003013, August 15, 2000, at 2.