

**BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION  
COMMISSION**

**In the Matter of**

**DOCKET NO. UT 033025**

**Implementation of the Federal  
Communications Commission's  
Triennial Review Order**

**MCI'S COMMENTS CONCERNING  
PROCESS FOR IMPLEMENTING  
TRIENNIAL REVIEW ORDER**

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1 In response to the Washington Utilities and Transportation Commission's  
2 ("Commission's") August 22, 2003 Notice in this docket, WorldCom, Inc., on behalf of  
3 its regulated subsidiaries (now known as "MCI"), hereby presents its Comments  
4 Concerning Process for Implementing the Federal Communications Commission's  
5 ("FCC's") Triennial Review Order ("TRO" or "Order"). MCI responds specifically to  
6 the questions presented by the Commission as follows:  
7

8 **1. Who bears the burden of going forward and the burden of proof regarding the**  
9 **various issues identified in the FCC's order, i.e., should the Commission initiate**  
10 **the proceedings, or is it more appropriate for an ILEC or CLEC to initiate a**  
11 **proceeding?**  
12

13 **MCI Response:**  
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15 In general, MCI believes that the party that desires to rebut the presumptions  
16 established in the FCC's Order bears the burden of proof and should be the party to  
17 initiate a proceeding before the Commission.<sup>1</sup> The Commission may want to consider  
18 establishing a deadline (e.g., 10 to 14 calendar days following the October 2, 2003  
19 effective date of the Order), by which a party must submit its request to initiate such a  
20 proceeding. MCI also believes that the burden of proving that a currently available  
21 UNE should be discontinued should be on the party seeking to remove it from the  
22 current UNE list.  
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<sup>1</sup> See Review of the Section 251 Unbundling Obligations of Local Exchange Carriers, *Report and Order on Remand and Further Notice of Proposed Rulemaking*, FCC 03-36 (released August 21, 2003), effective October 2, 2003.

1 **2. How does the Commission’s review of the FCC’s Order affect ongoing**  
2 **proceedings before the Commission, e.g., issues pending in Dockets UT-**  
3 **003022/003040, UT-023003, UT-011219, UT-030614?**

4  
5 **a. Should the Commission consolidate proceedings, or hold certain**  
6 **proceedings in abeyance pending resolution of issues arising from the**  
7 **FCC’s Order?**

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9 **b. Should the Commission import evidence from these or other proceedings**  
10 **to a new docket addressing the various issues identified in the FCC’s**  
11 **Order?**

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14 **MCI’s Response:**

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16 MCI will not be able to assess the effect of the FCC’s Order on ongoing proceedings before  
17 the Commission until after it has had a full opportunity to digest the contents and  
18 analyze the repercussions of the 500+ page order. In fact, the parties and the  
19 Commission may not even be able to assess the Order’s effect on certain ongoing  
20 dockets until after the state proceedings conducted pursuant to the Order are  
21 completed. With that caveat in mind, MCI offers the following.

22  
23 Generally, MCI recommends against the Commission’s consolidation of ongoing  
24 proceedings that might relate to the TRO. Each of the Commission’s currently open  
25 dockets involves numerous issues unrelated to the TRO and will be affected uniquely  
26 by the Order. Consolidation of any of these proceedings would needlessly complicate  
27 the issues and the process. Such a result should be avoided given the number and  
28 complexity of issues that the Commission is required to address in the limited time it is  
29 afforded to complete the impairment proceedings. In addition, MCI is unaware of any  
30 proceeding in Washington that contains evidence that should be imported to the TRO  
31 proceedings. As to whether the Commission should hold any proceeding in abeyance  
32 as a result of the Order, MCI presents its recommendations below in its discussion of  
33 each of the cases listed in the Commission’s Notice.

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35 **UT 003022/003040 – Qwest Section 271/SGAT Docket**

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37 Other than the follow up proceedings on Qwest’s performance assurance plan (“PAP”),  
38 nothing is currently ongoing at the Commission relating to this docket. A prehearing

1 conference relating to the Commission's 6-month review of the PAP is scheduled for  
2 later this month. No reason exists to delay this aspect of the proceeding because of the  
3 Triennial Review Order. The PAP's 6-month review process involves a broad spectrum  
4 of issues that are not impacted by the Order. To the extent other aspects of the PAP are  
5 affected by the Order, those issues may be addressed separately, at a later time, after the  
6 Commission has issued its orders relating to the Triennial Review process. Likewise,  
7 after the Commission issues its Triennial Review order(s), interested parties may file  
8 petitions with the Commission asking it to open a proceeding specifically to examine  
9 potential amendments to any sections of the Qwest SGAT based on the Triennial  
10 Review order(s).

### 11 12 **UT 023003 – Generic Cost Proceeding**

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14 Parties are currently in the midst of filing testimony in this proceeding. Parties have  
15 filed their cost models and direct testimony in support of their respective proposals for  
16 recurring rates. Response testimony is due in early October and hearings are scheduled  
17 for January 2004. Extensive discovery has been propounded and answered by a  
18 number of parties.

19  
20 This proceeding may be impacted by the outcome of the upcoming Triennial Review  
21 Order proceedings. As with the SGAT, however, the extent of the impact will not be  
22 determined until the TRO proceedings are completed and the Commission has reached  
23 its decision(s) on the impairment issues. At the end of the proceedings, all the  
24 unbundled network elements ("UNEs") currently available may still be available. On  
25 the other hand, it is possible that switching, transport and other elements may no longer  
26 be available on a universal basis in Washington. The question is whether the  
27 Commission should proceed with the current schedule despite the uncertainty of the  
28 later availability of some UNEs.

29  
30 MCI recommends that the Commission continue with the current schedule. To date,  
31 the parties have invested a great deal of time, resources and money in this proceeding.  
32 Numerous rate elements are at issue, only a limited number of which are potentially  
33 impacted by the Triennial Review proceedings. And, even if the Commission were to  
34 eliminate some UNEs from an incumbent local exchange carrier's ("ILEC's")  
35 unbundling obligation, not only would there be a "phase out" period during which the  
36 elements would continue to be available, but any elimination would likely not occur on  
37 a statewide basis. Because it is more likely that certain UNEs will continue to be made  
38 available in Washington even following the state impairment proceeding(s), it will

1 continue to be necessary for the Commission to establish properly set Total Element  
2 Long Run Incremental Cost ("TELRIC") rates for these network elements. .  
3

4 The current schedule ultimately may be postponed for other reasons, if, for example,  
5 there are protracted discovery disputes, but MCI recommends that the Commission not  
6 hold the cost proceeding in abeyance solely on the basis of the FCC's Triennial Review  
7 Order.  
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### 9 **UT-011219 – Verizon SGAT Proceeding**

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11 The parties to this proceeding are currently negotiating sections of the SGAT. An issues  
12 list is due to be filed in December; testimony is scheduled to be filed in early 2004; and,  
13 hearings are scheduled for April 2004.  
14

15 Negotiation of the SGAT is a time consuming, resource intensive process. After many  
16 months, the parties have completed some sections of the SGAT and have several  
17 additional sections to address, including the UNE section. The parties plan to continue  
18 to negotiate on a regular weekly basis. However, because of potential impact of the  
19 Triennial, as well as the lack of resources available to negotiate the SGAT at the same  
20 time that the state Triennial proceedings are litigated, the parties believe it is unlikely  
21 that they will be prepared to present their disputes to the Commission by April 2004.  
22 For these reasons, the parties plan to file a joint motion to extend the current schedule.  
23

24 As long as Verizon permits carriers to continue to operate pursuant to their existing  
25 interconnection agreements with Verizon in Washington until the SGAT proceeding is  
26 concluded, MCI believes that it will not be unduly harmed by any delay.  
27

28 MCI recommends that the Commission hold the scheduling of testimony and a hearing  
29 in this proceeding in abeyance until the TRO proceedings are concluded.  
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### 31 **UT- 030614 – Qwest's Competitive Classification Docket**

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33 This proceeding is scheduled to be heard by the Commission during the week of  
34 September 15, 2003. Throughout the proceeding, several parties have commented that  
35 the Commission should hold this proceeding in abeyance pending the outcome of the  
36 Triennial Review proceedings. MCI agrees.  
37

1 Although the evidence in its current state is insufficient to justify Qwest's requested  
2 classification of its business services as competitive, there is no question that if the  
3 unbundled network platform ("UNE-P") is no longer available in its current form, the  
4 ability of CLECs to compete in the local market will be significantly impaired. UNE-P is  
5 the only vehicle that permits switchless carriers or carriers that do not have facilities in a  
6 given area to accumulate customers on an economically feasible basis (i.e., by  
7 purchasing the platform elements at reasonable, cost-based rates). Indeed, it is a  
8 primary market entry strategy for competitors that desire ultimately to become effective  
9 competitors to monopoly service providers.

10  
11 In its testimony in the proceeding, Qwest downplays the importance of the FCC's  
12 Triennial Review Order, arguing that UNE-P based competition represents only about a  
13 quarter of the CLEC loops in the relevant market. Whether or not this figure is correct,  
14 any action that would impact 25 percent of the CLEC market would be significant,  
15 especially when the CLEC market share is so minimal.

16  
17 While we will not know the exact impact of the TRO on this proceeding until after the  
18 TRO proceedings conclude, it is possible that the resolution of the impairment  
19 proceedings will impact the CLECs' use and perhaps the cost of UNEs in the future.  
20 For these reasons, it would not be prudent to make decisions relating to the  
21 competitiveness, or potential deregulation, of Qwest's business services based on the  
22 current availability of UNEs. MCI, therefore, recommends that the Commission hold  
23 Qwest's Petition in abeyance until after it has concluded its proceedings on the TRO.

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25 **3. Should the Commission address issues affecting Verizon and Qwest in separate**  
26 **proceedings or in one generic proceeding addressing all companies?**

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28 **a. If no party files a petition concerning a particular ILEC should the**  
29 **Commission initiate a proceeding or wait for a party to file a petition?**

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31 **MCI Response:**

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33 Because of the resources that will be required to address these proceedings and the  
34 short timeframe involved, MCI recommends that the Commission conduct a single  
35 proceeding that would include all ILECs and cover all regions of the state.

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37 As stated in response to Question No. 1 above, MCI believes that the Commission  
38 should not initiate its own proceeding but instead wait for a party that wishes to rebut

1 the FCC's presumption(s) to file a petition. The Commission may, however, wish to  
2 impose a deadline for the filing of any such petition, such as 10 to 14 calendar days  
3 following the effective date of the FCC's Order.  
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5 **4. What hearing format should the Commission adopt for the various issues**  
6 **identified in the FCC's Order, i.e., a paper process, workshop, or hearing process?**  
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8 MCI recommends that in this docket, the Commission follow its formal proceeding  
9 process. That is, a schedule for the filing of testimony and a hearing should be set.  
10 Discovery should be permitted. At the hearing, the witnesses should be permitted to  
11 present short summaries of their testimony followed by cross-examination by the other  
12 parties. Allowing a short summary of the direct testimony as opposed to cross  
13 examination only, will enable the parties orally to address their affirmative positions  
14 with the Commissioners so as to generate a thorough discussion of all parties' positions  
15 during the hearing.  
16

17 As an alternative to single witness question and answer format, the Commission could  
18 convene a panel of witnesses or from each of the testifying parties to address each  
19 particular subject. This, too, would likely produce a comprehensive dialog between the  
20 Commissioners and the various parties.  
21

22 MCI does not favor the workshop format that was used in the Qwest Section 271  
23 proceeding for this docket. The FCC's Order requires the state Commission to engage  
24 in a detailed fact-finding exercise in order to make the appropriate determinations  
25 concerning impairment. The nature of this inquiry is more conducive to an evidentiary  
26 hearing than it is to an informal workshop process. The hearing, unlike an informal  
27 workshop, is better designed to elicit facts and to probe the parties' various factual  
28 assertions. Moreover, the workshop format tends to take more time than the  
29 traditional method of resolving factual disputes between parties. In this case, the  
30 timetable set by the FCC for the state proceedings is too short to engage in a potentially  
31 time-consuming workshop process.  
32

33 **5. Should the Commission coordinate any of the proceedings arising from the FCC's**  
34 **Order with other states in Qwest's region?**  
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36 **MCI Response:**  
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1 MCI recommends that the Commission coordinate portions of the TRO process with  
2 other states in the Qwest region but conduct its own process for the evidentiary hearing.  
3

4 MCI supports a limited multi-state inquiry or investigation that would provide a forum  
5 for the development of facts that are common across the region. Such a process would  
6 make efficient use of party and commission resources, enhance judicial economy, and  
7 generate active participation by the broadest group of stakeholders. Moreover, this  
8 type of process would comport with due process requirements and ensure that all  
9 parties have a fair and meaningful opportunity to participate.  
10

11 In the context of the nine-month proceeding, many of the operational impairment issues  
12 will be common across the Qwest region. This is because Qwest generally employs the  
13 same Operations Support Systems (“OSS”), and follows the same business practices  
14 throughout its service territory. The same may be true for Verizon. Insofar as those  
15 systems and practices are relevant to an impairment analysis, there would be  
16 tremendous value in addressing those issues and eliciting the essential facts through a  
17 multi-state effort.  
18

19 In addition, broad areas of discovery and fact-finding (OSS for example) can take place  
20 uniformly and the results be made available to all states in the Qwest region.  
21 Information generated on a region-wide basis, or in a single state, could be introduced  
22 in multiple jurisdictions. This would facilitate each state’s independent fact-finding  
23 process, while avoiding unnecessary duplication of effort.  
24

25 Regardless of whether the Commission ultimately decides to participate in a formal  
26 multi-state process, collaboration across the region with respect to discovery requests  
27 would result in enormous time-savings and efficiencies. Such an approach is  
28 particularly appropriate given that many of the issues and facts involving Qwest and  
29 Verizon will be common across its operating territory. Given the relatively short period  
30 of time that all states have to conduct these proceedings, it makes little sense to try to  
31 “re-invent the wheel” and duplicate efforts in each state in which the company  
32 operates.  
33

34 In addition, developing an efficient fact-finding process is of particular importance to  
35 other companies that operate in a number of states. These companies’ resources are  
36 very limited, yet responding to discovery can be a very time-consuming and resource  
37 intensive task. Extensive and varied discovery often limits the CLECs’ (large and

1 small) ability to participate in lengthy and complex proceedings. Participation by as  
2 many stakeholders as possible is essential to the Commission's understanding of the  
3 impact its decision will have on the state of local competition in Washington.  
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7 Dated this 10<sup>th</sup> day of September 2003.  
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9 Respectfully Submitted,

10 **MCI**

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