BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of: **Docket No. UT-003013**
Part A

OPENING BRIEF OF QWEST CORPORATION

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I.INTRODUCTION

1. This proceeding is a follow-on cost docket to address issues not resolved in the first generic cost proceeding, Docket Nos. UT-960369, et al., and to address new issues that arose after the first docket had concluded. The docket is currently in three parts. This Part A is to address collocation, OSS cost recovery, and line sharing issues. Part B, scheduled for hearing in November and December, will address issues raised by the FCC's UNE Remand order, as well as reciprocal compensation issues. Part C will address issues around line splitting, also known as line sharing over UNE-P.

2. There are three main issues upon which the Commission must make a decision in this Part A proceeding – line sharing, OSS cost recovery, and collocation. Line sharing is a new issue, while OSS cost recovery and collocation issues have been facing the Commission for some time, and were addressed in the prior generic docket. For each of these three issues, and the sub-issues contained within, the Commission should adopt costs and prices based on Qwest's cost studies and Qwest's proposals. Unlike other parties' proposals, Qwest's proposals are consistent with applicable law, are supported by the record, and are consistent with the results which would be produced in a competitive environment.

3. With regard to line sharing, the Commission should adopt a positive price for the high

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frequency portion of the loop, which is equivalent to one-half of the loop price. Further, the Commission should adopt Qwest's collocation proposal for line sharing, which includes configurations as requested by the CLECs. Qwest has also identified OSS costs that are specific to line sharing, and has proposed a monthly rate to recover those OSS costs from the carriers who use the OSS modifications to provide line sharing. Finally, Qwest's nonrecurring charges for line sharing (including installation and disconnection charges) should be ordered as the proper nonrecurring charges.

4. The issue of OSS cost recovery is fairly straightforward. The Commission, in its 17th Supplemental Order in Docket Nos. UT-960369 et al., approved Qwest's request to recover OSS costs from the cost causers – the CLECs. In this proceeding, Qwest has refined and explained its cost recovery proposal, and believes that it is a fair and reasonable method of cost recovery for the OSS costs that Qwest has incurred to modify its systems to allow CLECs to access those systems. Qwest does not propose separate transactional charges for the use of those systems, and seeks only to recover actual costs already incurred. As stated in the hearings, and elsewhere in this brief, Qwest is willing to consider an alternate mechanism for cost recovery, or an alternate method of calculating the cost recovery charge. However, no party has presented any details of such a proposal, and Qwest's should therefore be accepted.

5. The issue of costs and prices for collocation has been pending for some time. In Docket Nos. UT-960369, et al., the Commission determined that no party had submitted an acceptable cost model or pricing proposal. In response to that determination, Qwest undertook to create a new collocation cost study, which it filed in this proceeding. Qwest believes that collocation issues must generally be resolved in accordance with its cost and pricing proposal. Only Qwest presented a cost study and complete pricing proposals. The cost study was supported by

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testimony and documentary evidence in the record, and presents an accurate estimate of Qwest's actual costs to provide collocation on its premises. The other parties' recommendations with regard to inputs or adjustments to the model should be rejected, as they do not reflect actual costs, and model a hypothetical central office, in violation of appropriate costing and pricing standards.

II.

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LEGAL AND POLICY ISSUES

A. Policy Issues

6. The Commission is experienced in these cost docket proceedings, and is well aware that its decisions on the issues presented must be consistent with the law, and must also be consistent with the general policies of the state and the federal government to advance competition in the local telecommunications markets. The Commission has, to date, been quite successful in achieving those outcomes, and has promoted competitive entry and competition in the state, to the benefit of consumers.

7. The Commission here should continue to be mindful of the state and federal policies in favor of promoting competition, not individual competitors. Additionally, with proper pricing decisions in this docket, the Commission can further the policies which promote the deployment of advanced services, and diversity in supply of telecommunications services.

B. Legal Issues

1. Telecom Act (including, but not limited to, sections 254(k) and 706)

8. *Section 252 -- Just and Reasonable Rates.* Congress struck a careful balance in passing the Telecommunications Act of 1996. While taking the extraordinary step of requiring ILECs like Qwest to turn over pieces of their networks to competitors, Congress sought to ensure that the ILECs would be properly compensated for this forced use of their property. As Congress was aware, the prohibition against unlawful takings set forth in the Fifth Amendment to the United States Constitution requires that ILECs be fairly compensated for the compelled surrender of their property to competitors. Accordingly, section 252(d)(1) of the Act requires state commissions to

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establish rates for interconnection and unbundled network elements that are "just and reasonable."

9. Further, the Act, under Section 252(d)(1)(A)(i), specifically mandates that just and reasonable rates for interconnection and access to unbundled elements should be "based on the cost (determined without reference to rate-of-return or other rate-based proceeding) of providing the interconnection or network element." As will be discussed later in other sections of this brief, certain parties' proposals, if adopted, would violate this provision of the Act by pricing interconnection and access to UNEs by reference to Qwest's earnings relative to the rate of return established in the 1995 rate case.

10. *Section 254(k) – Subsidies prohibited.* Section 254 addresses universal service issues. Subsection (k) states that a telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The state commissions, with regard to intrastate services, are charged with ensuring that services which are included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

11. The Commission can ensure consistency with this requirement by pricing the high frequency portion of the loop in such a way that it bears a reasonable share of the joint and common costs associated with the provision of that element. As discussed below, the entire loop is a joint cost of providing the two dedicated connections to allow line sharing. As such, failure to reasonably allocate a portion of that cost to the high frequency portion of the loop will result in other elements and services bearing a disproportionate share of those costs.

12. *Section 706 – Advanced Services.* Section 706 instructs the state commissions to act in such a way as to encourage the deployment of advanced telecommunications capability to all

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Americans. Clearly the Commission's decisions with regard to line sharing can be in furtherance of that mandate. In this regard, the Commission should encourage both deployment and competition in advanced services by, among other things, establishing a positive price for the valuable asset (i.e., the high frequency loop) used to provide xDSL services.

2. Federal Court Decisions

13. In July 2000, the Eighth Circuit issued a decision in *Iowa Utilities Board v. FCC*, No. 96-3321 (8th Cir. July 18, 2000). That decision held that the FCC's TELRIC pricing standard is unlawful. Although the Eighth Circuit has stayed its decision pending petitions for certiorari, the ruling provides valuable guidance, and reflects the best view on what the Commission should do in order to adopt prices that comply with the Act.

14. The Eighth Circuit vacated 47 C.F.R. § 51.505(b)(1) which required that TELRIC should be based on "the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers." The court held that this rule violated the plain meaning of Section 252(d)(1)(A)(i) of the Telecommunications Act that requires that just and reasonable rates for network elements should be "based on the cost (determined without reference to rate of return or other rate based proceeding) of providing the interconnection or network element." *Id.* at 6-8. The Court rejected the notion that costs should be based "on the cost that some imaginary carrier would incur by providing the newest, most efficient, and least cost substitute for the actual item or element which will be furnished by the ILEC pursuant to Congress' mandate for sharing." The Court reasoned "*Congress was dealing with reality, not fantasizing about what might be*. . . . At bottom, Congress has made it clear that it is the cost of providing actual facilities and equipment that will

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be used by a competitor (and not some ideal state of the art presently available technology ideally configured but neither deployed by the ILEC nor to be used by the competitor) which must be ascertained and determined." *Id.* at 8 (emphasis added).

a. Line Sharing Issues

15. A long line of Federal Court decisions support the position that the Commission should assign a positive price to the high frequency portion of the loop. Failure to do so would constitute a taking of property without just compensation. A taking occurs when the government forces a property owner to accede to the occupation or use of its physical property by someone else. *See, e.g., Dolan v. City of Tigard*, 512 U.S 374, 384 (1994); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435-36 (1982). The mandated use of property strips the owner of two of the most important property rights: the power to exclude others and to hold property only for one's own benefit and purposes, and the power to control the use of one's own property. *See Loretto*, 458 U.S. at 435-36; *Kimball Laundry Co. v. United States*, 338 U.S. 1, 12-13 (1949). Accordingly, even if the owner retains bare legal title to its property, where the government has taken the essential benefits of ownership either for itself or others, it is obligated by the Fifth Amendment to pay "just compensation."

16. An obvious example of a taking is an invasion or occupation of physical property authorized by the government – a so-called "physical taking." *See Loretto*, 458 U.S. at 432, 45-37. For example, in *Loretto*, the state of New York granted cable companies the right to install wiring and equipment on the roof of any residential rental building. The applicable statute deprived a building owner of any power to deny access to its property or to "interfere" with any installed equipment. *Id.* at 423-24. The Supreme Court recognized that the effect of the statute

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was to strip the property owner of all attributes of ownership in the rooftop space at issue and to vest those rights exclusively in the cable company. *Id.* Accordingly, the Court held that regardless of the importance of the public purpose underlying the statute, the Constitution required New York to compensate the plaintiff for "destroy[ing]" all of her "rights 'to possess, use and dispose'"[1] of her property: "The one incontestable case for compensation . . . seems to occur when the government deliberately brings it about that its agents, or the public at large, 'regularly' use, or 'permanently' occupy, space or a thing which theretofore was understood to be under private ownership.'" *Id.* at 428 n.5 (quoting Frank I. Michelman, *Property, Utility, and Fairness: Comments on the Ethical Foundations of 'Just Compensation' Law*, 80 Harv. L. Rev. 1165, 1184 (1967)).

17. In addition to physical occupation of property, a taking occurs when the government directs an owner to operate or use its property at the direction of another party. *See*, *e.g.*, *United States v. Pewee Coal Co.*, 341 U.S. 114 (1951) (operating coal mine during World War II); *Kimball Laundry Co.*, 338 U.S. at 12-13 (operating laundry facilities for military personnel). Even if the government does not physically invade or occupy the property, a taking occurs if the owner loses control over its own operations and must permit the use of its property on behalf of another. Just as with a physical taking, this type of taking divests the owner of the power to exclude others and hold property only for one's own purposes, and the power to control the use of one's own property. *Kimball Laundry*, 338 U.S. at 12, 13. (holding that "the taker fully occupies the owner's shoes").

18. In this case, the CLECs are exercising their right under the 1996 Act and the FCC's Line Sharing Order to lease the high frequency loop from Qwest. The Act and the FCC's Order

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[1] 458 U.S. at 435 (quoting *United States v. General Motors Corp.*, 323 U.S. 373, 377-78 (1945).

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mandate Qwest's acquiescence to the CLECs' requests, denying Qwest the right to refuse demands for this unbundled network element. This conveyance of property interests under compulsion of federal law gives rise to both a physical taking under *Loretto* and an expropriation under *Kimball Laundry*.

19. The transfer of leasehold interests in the high frequency loops to the CLECs constitutes a physical taking. Once a CLEC has acquired the high frequency loop, Qwest loses the most fundamental rights it has in this property – the power to exclude others and the power to control use. Indeed, as a technical matter, the CLECs have exclusive physical use of the high frequency loops because these loops are connected to their networks. Thus, like the cable access statue at issue in *Loretto*, the Act and the Line Sharing Order "destroy [ ] . . . the most treasured strands in an owner's bundle of property rights" because Qwest effectively has been dispossessed of its property. *Loretto*, 458 U.S. at 435-36.

20. A taking also exists because Qwest cannot use the high frequency loop to provide its own services, just as the owners of Kimball Laundry could not provide the services of their choice at the laundry plant. In addition, while Qwest – like the owners of Kimball Laundry – continue to maintain the facility (Ex. 192 ¶ 7.), it possesses none of the attributes of ownership, since it cannot dictate what services will be provided over its high frequency loops and cannot control the flow of telecommunications over those loops. As a result, Qwest has been compelled to suspend its own operations insofar as those loops are concerned. In short, the CLECs "could no more completely have appropriated [Qwest's] opportunity to profit" from this leasing of the high frequency loops. *See Kimball Laundry*, 338 U.S. at 13.

21. The taking that arises from the CLECs' use of Qwest's high frequency loops will constitute violations of the Fifth Amendment unless Qwest receives just compensation for the use of its

property. The requirement of just compensation has been interpreted to mean that the property owner is "entitled to be put in the same position, from a monetary standpoint, as if there had been no taking." *Cloverport Sand & Gravel v. United States*, 6 Cl. Ct. 178, 187 (1984) (citing *Almota Farmers Elevator & Whse. Co. v. United States*, 409 U.S. 470, 473 (1973)). In *Kimball Laundry*, the Supreme Court held that "the proper measure of compensation is the rental that probably could have been obtained" for the property. *Kimball Laundry*, 338 U.S. at 7.

22. In this case, the fundamental point to be gleaned from the law relating to takings is that Qwest must receive compensation for the CLECs' use of the high frequency of a loop. As discussed below, a rate of one-half of the Washington (deaveraged) rate for the unbundled loop, is a proper approximation of the just compensation to which Qwest is entitled. Without compensation in the form of a positive rate for the high frequency loop, the CLECs' use of this UNE will give rise to an unconstitutional taking of Qwest's property.

b. OSS Cost Recovery

23. When the Commission entered its 17th Supplemental Order in Docket Nos. UT-960369, et al., allowing Qwest to recover its OSS transition costs from the CLECs, there were two federal district courts decisions confirming that CLECs are obligated to pay the costs of OSS development. Qwest (then U S WEST) cited and discussed those cases in its February 18, 1999 brief in Docket Nos. UT-960369 et al., and will briefly describe them again here. The rulings remain valid, and continue to support this Commission's cost recovery decision.

24. In AT&T Communications of the South Central States v. BellSouth Telecommunications, Inc., 20 F.Supp. 2d 1097 (E.D. Ky. 1998) (No. 97-79), the Kentucky court held that because OSS costs associated with developing interfaces are caused by CLECs and benefit only them, the

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CLECs must pay these costs:

> The PSC correctly notes that '[o]ne would not argue he was denied access to a concert on the basis that he was required first to buy a ticket.' . . . Because the electronic interfaces will only benefit the CLECs, the ILECs, like BellSouth, should not have to subsidize them. . . . AT&T is the cost causer, and it should be the one bearing all the costs; there is absolutely nothing discriminatory about this concept.

Slip op. at 16.

25. Similarly, in U S WEST Communications, Inc. v. AT&T Corp., Nos. A1-97-085, A1-97-082 (D.N.D. January 8, 1999), the federal district court for North Dakota held that U S WEST has no obligation to pay the costs of OSS development:

> [T]he Agreement provides that those who create the cost, pay the cost. No one disputes that access to the OSS is essential. It is in fact a critical and essential part of the infrastructure being sold to a competitor. The Act and the Agreement mandate the provision of interconnection, again, on a non-discriminatory basis. That does not mean that the incumbent LEC must pay a portion of the costs involved in providing the interconnection for the use of a competitor.

Slip op. at 21 (emphasis added).

26. The facts upon which the Commission based its original decision to allow OSS cost recovery from the CLECs were identical to those in the Kentucky and North Dakota cases, and have not changed. Qwest modified its internal systems and developed its OSS interfaces – including Electronic Data Interexchange ("EDI") and Interconnection Mediated Access ("IMA") – only for the benefit of the CLECs. Neither Qwest nor its customers caused the systems modifications or the OSS interface expenditures. Based on the same reasoning that the courts followed in AT&T v. BellSouth and U S WEST v. AT&T, these costs should be borne exclusively by the CLECs.

c. Collocation Issues

27. The legal principles guiding the Commission's decisions on collocation issues are generally the same as set forth in other sections – the discussions about costing and pricing under the Telecom Act and under the Constitution apply equally well to collocation as they do to line sharing or other requirements under the Act. The recent guidance from the D.C. Circuit Court of Appeals[2] on collocation issues does not directly address the costing issues in this case, but does clearly stand for the proposition that the CLEC does not have the right to select the collocation space in the ILEC's central office. Yet some of Covad's costing and pricing proposals would be tantamount to allowing just that – even if Covad does not actually select the space, Covad wants to be charged as if it had selected the space. These proposals, discussed in Section III.B., are inconsistent with the holding of the D.C. Circuit Court.

3. FCC Orders

28. *The FCC's Pricing Rules.* A fundamental underpinning of the FCC's pricing rules is that prices should replicate conditions in a competitive market. Thus, the FCC has emphasized that the TELRIC standard it adopted in its pricing rules "attempts to replicate, with respect to the bottleneck monopoly elements, *the rates that would be charged in a competitive environment*."[3] The FCC explained its rationale for basing rates on conditions in a competitive market:

> Adopting a pricing methodology based on forward-looking, economic cost best replicates, to the extent possible, the conditions of a competitive market . . . . Because a pricing methodology based on forward-looking costs simulates the conditions in a competitive marketplace, it allows the requesting carrier to produce efficiently and to compete effectively, which

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[2] GTE Service Corp., et al. v. FCC, 205 F.3d 416 (D.C. Cir. 2000).

[3] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order*, CC Docket 96-98, FCC-96-352 (rel. Aug. 8, 1996) (First Report and Order), ¶ 740.

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should drive retail prices to their competitive levels.[4]

29. *Line Sharing*. The FCC's Line Sharing Order gives specific guidance regarding cost recovery of those expenditures made to the ILEC's OSS to facilitate line sharing. The FCC stated that incumbent LECs "should recover in their line sharing charges those reasonable incremental costs of OSS modification that are caused by the obligation to provide line sharing as an unbundled network element." Line Sharing Order, ¶ 144. This is all that Qwest seeks to do with its proposed line sharing OSS charge.

4. WUTC Orders

30. Applicable Commission orders are cited in appropriate sections of the brief. In Qwest's view, the most relevant orders are the Eighth Supplemental Order and the Seventeenth Supplemental Order in Docket Nos. UT-960369. Those orders affirmed Qwest's ability to recover OSS transition costs. They also established costing and pricing standards, including the application of factors for joint and common costs, that are used in Qwest's proposals in this proceeding.

III. LINE SHARING

31. Line sharing is the provision of xDSL-based service by a competitive LEC and voiceband service by an incumbent LEC on the same loop.[5] Line sharing is enabled through a newly identified UNE, the high frequency portion of the local loop. The high frequency portion of the loop was identified as a UNE by the FCC in its Line Sharing Order. In that order, the FCC

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[4] First Report and Order ¶ 679.

[5] *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*; Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, FCC-99-355 (rel. Dec. 9, 1999) (Line Sharing Order), ¶ 4.

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defined the element, provided guidance on costing and pricing the element, and authorized the ILEC to recover costs associated with modifications to the ILEC's OSS to provision line sharing. (Line Sharing Order ¶ 144).

32. On December 1, 1999, many of the parties to this proceeding entered into a stipulation regarding the terms and conditions for providing line sharing. The Commission here must address the appropriate cost recovery for Qwest associated with the provisioning of line sharing, and associated with the effort to make this innovative, new product available in Washington.

33. There are four main topics upon which the Commission must make decisions in order to determine appropriate cost recovery: the price of the high frequency portion of the loop; issues concerning collocation for line sharing; OSS for line sharing; and, nonrecurring charges for line sharing. OSS for line sharing is discussed in section IV.D. The issue of line splitting (line sharing over UNE-P) has been deferred to Part C, but is discussed briefly in section III.D. below.

34. Economic principles, as well as mandates of the Telecommunications Act and Constitution, require that Qwest be properly compensated for the UNEs that it provides to other carriers. These UNEs now include the high frequency portion of the loop. The testimony in this proceeding establishes that the most efficient and reasonable price for the high frequency spectrum is 50% of loop costs. Further, under the Eighth Circuit's decision in *Iowa Utilities Board v. FCC*, No. 96-3321 (8th Cir. July 18, 2000), Qwest's actual experiences in real central offices provide the most reasonable benchmark for determining costs, as opposed to hypothetical guesses as to what a most efficient central office would look like in a line sharing scenario. Thus, the evidence in this docket, as well as the legal framework governing this Commission's decisions, mandates that the cost issues be resolved in favor of Qwest.

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A. HUNE Price

35. The Commission should establish a price of 50% of the loop price (not to exceed $10.00) for the high frequency portion of the loop (HUNE). As the Commission considers the parties' competing and sometimes complex economic and pricing testimony relating to the high frequency loop, it should not lose sight of the fundamental underpinning of this case: the CLECs are demanding that Qwest turn over a highly valuable asset to its competitors for free. There is no dispute that the high frequency loop is a valuable piece of Qwest property and that by surrendering this network element to its competitors, Qwest is losing a valuable asset, providing substantial value to the CLECs, and enhancing the ability of CLECs to compete with Qwest in providing high speed data services.

36. If one were to conduct a random survey of the population concerning whether it would be appropriate for the government to require a company to turn over an asset to its competitors for free, there is little doubt that most people would respond with a resounding "no." Indeed, the concept would strike most people as inherently unfair and contrary to the spirit of free competition. Not surprisingly, the law also recognizes the unfairness of this type of government action, and it protects against the forced surrender of property without just compensation. The discussion in section II.B.3.a. above details the legal principles which control this pricing decision.

37. The FCC has directly addressed the meaning of "just" compensation as that term applies to establishing rates for UNEs. According to the FCC, "[j]ust compensation is normally measured by the *fair market value* of the property subject to the taking."[6] The CLECs' advocacy of a price

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[6] First Report and Order ¶ 740. (emphasis added).

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of zero for the high frequency loop can be adopted only if the Commission concludes that it is just and reasonable for Qwest to receive nothing in return for surrendering a valuable piece of its network to its competitors. As the FCC's own definition of "just" compensation makes clear, there is no reasonable interpretation of Congress' use of "just and reasonable" that supports requiring Qwest to give away a valuable asset for free.

38. Accordingly, the CLECs' demand that the high frequency loop be priced at zero directly contradicts the FCC's directives that UNEs should be priced in a manner that replicates rates in a competitive market. Those directives from the FCC require a positive price for the high frequency loop. Allocating 50% for the high frequency portion of the loop is just and reasonable and consistent with the FCC's pricing principles.

39. The CLECs acknowledge that establishing prices that mirror conditions in a competitive market is the economically correct approach. As stated by their witness, Dr. Cabe, the goal in this proceeding is to establish prices as would be set in a competitive environment. Tr. 1144. The norm in a competitive market is that a product in limited supply that has a positive demand also has a positive price. (Ex. T-3 at 7).

40. At the hearing, the parties searched for a good analogy as a way to illustrate the issue. The difficulty of the CLECs' position is perhaps best illustrated by the difficulty those parties had in finding a real world example of a situation where a competitive provider of goods or services is willing to give away a valuable asset for free. The analogy selected by Dr. Cabe is informative, but does not support the CLEC position. An architect might well give his client a duplicate set of house plans after the client had already paid for the original, but that is not the same as the situation presented by the high frequency portion of the loop. Indeed, when asked if that architect would give away that same set of plans to a third party, Dr. Cabe agreed that he would not. Tr.

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1150. But that is exactly the situation the CLECs would have the Commission believe supports a zero price for the loop. It simply does not, and no other examples of a "free good" in a competitive market were provided, because none exists.

41. The price for the high-frequency spectrum UNE should be cost-based and replicate a competitive price to the greatest extent possible. The process of deriving this price begins with the recognition that: 1) line sharing recasts the loop cost as a cost that is common to two dedicated connections on a shared line; and 2) the FCC established that the cost-based price of an unbundled network element should recover a reasonable portion of common costs. Fulfilling the cost-based requirement for UNE pricing is, therefore, accomplished by setting a price that recovers a reasonable share of the common loop cost. What remains is to determine the most reasonable allocation of common loop costs for recovery in the price of the high-frequency spectrum UNE.

42. Additional guidance for allocating a reasonable share of the joint loop cost to this UNE comes from the FCC's recognition that prices for UNEs should replicate, to the best of our ability, prices that would prevail in a competitive market. This is consistent with the development of efficient competition. When Qwest leases the high frequency loop to a competitor, it can no longer provide xDSL service over that portion of the loop. In a competitive market, a firm would not give away a productive asset without expecting something in return. Moreover, there are two dedicated connections on a shared line, and there is no meaningful evidence that more or less than fifty percent of the loop cost should be allocated to either connection. Dr. Fitzsimmons' testimony establishes that the most reasonable solution is to allocate one-half of the loop cost for recovery by the price of the high-frequency spectrum UNE. (Ex. T-2 at 16).

43. The Act's requirement of just and reasonable rates for UNEs and the FCC's pricing rules

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support allocating 50% of the loop costs to the high frequency loop. First, it is virtually undisputed that all the costs associated with the unbundled loop are rendered joint costs because of the presence of dedicated connections from a single customer to two different providers. Although Covad's witness Dr. Cabe attempted to challenge this conclusion about joint costs in his rebuttal testimony, he agreed that his theory had no basis in economic literature. Tr. 1167. Further, under the old test taking adage of "your first answer is probably the right one", Qwest submits that Dr. Cabe had it right in his first round of testimony, where he stated:

> In economic parlance, the vast majority of the costs of providing various portions of the loop bandwidth are joint or 'shared' costs…There is no one economically correct way to identify a specific portion of the joint cost of the loop with a specific portion of that loop's bandwidth. (Ex. T-190 at 10).

This statement comports with proper economic analysis; it is supported by the behavior of joint products; and it is supported by Covad's own witness in another proceeding. It is curious that in his response testimony, Dr. Cabe contradicts his correct interpretation by taking the position that:

> the analog voice portion of the loop causes the [loop] costs and the line shared access to the high bandwidth portion of the loop does not cause any loop costs. (Ex. T-194 at 12).

44. Dr. Cabe bases what seems to be an about-face on a faulty analysis of joint costs. He claims that, because the low-frequency spectrum is sold first, it causes the cost of the loop on a shared line. While it may be true that the low-frequency spectrum is most often sold first, the order of sale is not relevant to the proper analysis of costs and prices of joint products. For costing and pricing purposes, joint products are defined by how they are produced, not the order in which they are sold. (Ex. T-3 at 3-4).

45. The FCC's pricing rules require a "reasonable allocation" of common costs. Here, dividing

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the common costs equally between the two dedicated connections on the loop is reasonable and it consistent with the Act's requirement of just and reasonable rates.

46. Both the Act and the FCC's pricing rules are designed to foster fair and equal competition among providers and to foster technological innovation through investment in telecommunications facilities. Establishing a positive price for the high frequency loop in the manner Qwest recommends will promote these goals. By contrast, a price of zero for this UNE will distort competition and discourage investment in alternative methods of providing high speed data services.

47. The addition of line sharing to the unbundled loop renders all of the costs associated with the loop joint and common. (Ex. T-3 at 5). As Dr. Fitzsimmons explains, before there was line sharing, there was only one dedicated customer connection, and it caused all the costs of the loops. Line sharing resulted in a second dedicated connection, leaving the costs of the loop common to both connections. In other words, there are now two connections associated with the unbundled loop.

48. Accordingly, in establishing a price for the high frequency loop, the issue is what constitutes a reasonable share of joint or common costs. The FCC is clear about the requirement to allocate joint and common costs in establishing prices for UNEs and interconnection:

> Certain common costs are incurred in the provision of network elements . . . [S]ome of these common costs are common to only a subset of the elements or services provided by incumbent LECs. Such costs shall be allocated to that subset, and should then be allocated among the individual subset, to the greatest possible extent . . . *Because forward-looking common costs are consistent with our forward –looking, economic cost paradigm, a reasonable measure of such costs shall be included in the prices for interconnection and access to network elements.*[7]_

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[7] First Report and Order ¶ 694 (emphasis added).

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See also 47 C.F.R. § 51.505(c) (requiring "reasonable allocation" of forward-looking common costs). This Commission previously recognized the obligation to allocate common costs in the generic cost docket by including costs of this type in the rates it established for UNEs.

49. In the Line Sharing Order, the FCC directed state commissions to establish the price for the high frequency loop "in the same manner as they set the price for other unbundled network elements." Line Sharing Order ¶ 135. Consistent with that directive, the Commission is required to perform a reasonable allocation of common costs in establishing the price for the high frequency loop.

50. There is no fixed formula for determining what constitutes a reasonable allocation of these costs. As Dr. Fitzsimmons stated, there is no "correct" allocation of common costs; instead, the allocation of these costs must pass a test of reasonableness measured against the goals of the Act and the objectives of the FCC's pricing rules. However, it should be clear that not allocating *any* costs to the high frequency loop and establishing a price of zero is not reasonable. That result would violate each of the pricing parameters discussed earlier – the Act's requirement of "just and reasonable" rates, the FCC's directive that prices should replicate conditions in a competitive market, and the intent of Congress to avoid the unconstitutional taking of the property of incumbent LECs. Equally important, requiring Qwest to give away a valuable asset to competitors for free – the consequence of assigning no common costs to the high frequency loop – offends any common sense notion of what is "reasonable."

51. Far more supportable than a price of zero is a rate that reflects the FCC's clear intent to establish UNE prices that are consistent with the result in a competitive market.[8] As Dr.

[8] *See* First Report and Order ¶¶ 679, 740.

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Fitzsimmons explains, a rate based on equal allocation of common costs between the two dedicated uses of the loop is most consistent with the transition to a competitive market. This allocation will preserve incentives for efficient investment, maintain pricing symmetry, and promote competitive neutrality.

52. The FCC has emphasized that the 1996 Act "is intended to pave the way for enhanced competition in *all* telecommunication markets, by allowing all providers to enter all markets."[9] Consistent with this objective, the Act must be implemented in a manner that does not favor some providers over others. The FCC stressed this point in its pricing rules. "The commissions will determine whether the 1996 Act is implemented in a manner that is *pro-competitor* and favors one party . . . or, as we believe Congress intended, *pro-competition*."[10] And the Act itself requires prices that are "nondiscriminatory," a mandate that is designed to ensure that some providers are not favored over others. *See* 47 U.S.C. § 252(d)(1)(A)(ii).

53. Establishing a price of zero for the high frequency loop plainly would give a competitive advantage to DSL providers over these other types of providers who must pay for the facilities they use to provide high speed data services. For example, satellite providers are required to pay competitive prices for frequencies they acquire through public auctions and use to provide their services. Similarly, cable modem providers must make substantial investments in their network to be able to provide competitive, high speed data services. If DSL providers are allowed to obtain the network that is most critical to the services they provide for free, they will have a clear pricing advantage over these other types of providers. Ironically, a price of zero for the high frequency loop will give DSL providers the ability to engage in precisely the type of price squeezing against

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[9] First Report and Order ¶ 4 (emphasis in original).
[10] First Report and Order ¶ 618.

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their competitors that the FCC feared the incumbent LECs could impose against the DSL providers. The playing field simply will not be level for alternative providers of data services who must pay full, competitive prices for their facilities.

54. The corollary to this anti-competitive result is that investment in new technologies will be stifled. Alternative providers of high speed data services will have less incentive to invest if they are competing against DSL providers that do not pay for their essential facility. (Ex. T-1 at 17-18). Further, the DSL providers themselves will have significantly reduced incentive to build their own facilities and to invest in alternative technologies if they do not have to pay for the high frequency loop.

55. Accordingly, the Act's fundamental purposes – promoting equal and fair competition and fostering rapid, efficient technological change – support an allocation of the common costs associated with the unbundled loop that produces a positive price for the high frequency loop. While it is true that there is no precisely "correct" way of allocating these costs, an allocation can be "reasonable" only if it accounts for these critical policy considerations.

1. The CLECs' assertions that Qwest will double-recover loop costs and have the ability to impose a price squeeze do not justify a non-zero price.

56. *There will not be double recovery.* A fundamental argument of the CLECs in support of receiving the high frequency loop for free is that Qwest already recovers the full cost of the loop through its retail prices, and that any additional revenue from the loop will lead to a double-recovery. This argument is flawed for several fundamental reasons.

57. First, there is no evidence at all that Qwest already is recovering the cost of the loop through its retail prices. In fact, because retail rates were set without regard to the $18.16 cost of the loop, the CLECs' assertion that retail rates recover the cost of the loop is sheer speculation. It

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should be clear that there is absolutely no evidence on the record to establish that Qwest's overall revenues will, in the aggregate, increase if the Commission establishes a positive price for the HUNE. In fact, as Mr. Reynolds pointed out, the implementation of line sharing could just as easily drive overall revenues down. Tr. 1013-14 .

58. Second, the focus on Qwest's retail prices for determining the price of a UNE is improper. Congress has established that prices for UNEs must be cost-based, and that is the principle that this Commission and state commissions throughout the country have followed in establishing UNE rates. Nowhere does the Act or the FCC indicate that retail prices should be considered in establishing cost-based rates for UNEs. In fact, this Commission Ordered just the opposite when determining what mark-up would be applicable in UNE pricing. Instead, cost-based pricing requires an estimation of the incremental costs that are caused by providing a UNE, along with a reasonable allocation of common costs. Prices for services are not relevant to determining the *cost* of a UNE and, hence, are not relevant to determining the *price* of a UNE.

59. Finally, even the CLECs acknowledge the possibility that revenues will decrease with line sharing rather than increase. Mr. Zulevic correctly notes that line sharing means that some customers will be able to give up their second lines. (Ex. T-170 at 4). This would result in an overall revenue decrease rather than any "windfall".

60. *There will not be a price squeeze.* The CLECs also assert that if the price for the high frequency loop is anything other than zero, Qwest will have the ability to engage in an anti-competitive price squeeze. This assertion also is unfounded.

61. In its Line Sharing Order, the FCC stated that state commissions "may require that incumbent LECs charge no more to competitive LECs for access to shared loops than the amount of loop costs the incumbent LEC allocated to ADSL services when it established its interstate

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retail rates for those services." Line Sharing Order ¶ 139. This pricing "guidance" by the FCC suggests that state commissions could choose to price the high frequency loop based on the amount of loop cost the incumbent LEC "allocated," "attributed," or "imputed" in its interstate xDSL cost filing with the FCC.

62. As Mr. Thompson explains, pricing based on amounts ILECs *imputed* to their xDSL services is supported by the FCC's reference to the Minnesota Commission's approach: "Specifically, the Minnesota PUC held that it was 'not presently concerned with how [U S WEST] resolves the pricing issue, so long as the Company charges data CLECs the same loop rate that the Company presently *imputes* to its own DSL services." Line Sharing Order, footnote 326 (emphasis added). (Ex. T-16 at 3-4). Further, since the FCC's rules relating to interstate cost filings require the filing of only direct costs – and a loop cost cannot be a direct cost of an xDSL service – it is logical to assume that the FCC's primary concern is with the *price* of xDSL service, not the *cost*. In other words, the FCC's objective is to ensure that ILECs do not price their xDSL services in a way that results in a price squeeze for competitive DSL providers.

63. Here, as explained in Mr. Thompson's testimony, Qwest's price of $29.95 for its Megabit service ensures that there will not be a price squeeze. This price includes a contribution for common costs, including loop costs that approximates 50 percent or about $10, of the average unbundled loop cost/rate ordered by state commissions across the former U S WEST's 14-state region. This pricing produces the same result as an imputation using a combination of direct costs and $10 of the average UNE loop rate. Qwest's approach of pricing its Megabit service at a level that both exceeds an imputation using $10 of the estimated unbundled loop rate plus its direct costs ensure that there will not be a price squeeze if the Commission adopts a price of 50% of the deaveraged loop price (not to exceed $10) for the high frequency portion of the loop.

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2. If the Commission sets a positive price for the HUNE, does the Commission have the latitude to consider, now or in the future, a credit to retail services in light of the Qwest merger order and other relevant factors?

64. The question set forth above was specifically posed to the parties by the Commission at the close of the hearing. However, even before the issue of a credit is addressed, it is important to look at the assumptions underlying the question. The question assumes that if the Commission establishes a positive price for the HUNE, Qwest's revenues will, in the aggregate, increase. This assumption is not supported on the record.

65. The issue of whether there will be double recovery with a positive price for the HUNE (discussed above) is essentially the same issue underlying this question. The suggestion that there will be double recovery of loop costs is unsupported on this record. Indeed, as Mr. Reynolds pointed out, a CLEC may be able to use the HUNE to provision the equivalent of 16 business lines. Tr. 1014. If Qwest loses 16 business lines (at the current tariffed rate of $26.89) for every HUNE it sells (for $10 or less each), then it is evident that, all other things being equal, Qwest's overall revenues will decline rather than increase. Furthermore, loss of business lines means the loss of other revenues, such as toll and features.

66. With regard to the issue of a credit to retail rates, it is Qwest's position that the merger settlement agreement precludes the Commission from currently considering a credit to retail customers or services. The relevant portion of the merger settlement agreement is as follows:

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> Prior to January 1, 2004, neither Commission Staff nor Public Counsel shall initiate, nor support any third-party in a request for the Commission to initiate, any complaint proceeding regarding the overall revenue or earnings level of the Company. Prior to January 1, 2004, the Commission may not otherwise take any action that would change the retail prices or access rates of the Company.

Exceptions, not relevant here, permit rate filings in order to:

> (a) Implement a state or federal program of universal service support, or similar program; (b) Effect revenue-neutral rate rebalancing; (c) Adjust revenues for changes in reciprocal compensation; or (d) Adjust revenues for changes in mandated costs.

67. In Qwest's view, the proposal for a reduction to retail rates based on the HUNE price would be directly implicated (and precluded) by this provision in the settlement. Under the current state of regulation, the Commission may consider retail rates in the context of a rate case during or after 2004. However, whether the Commission considers the issue now or later, the end result should be a conclusion that no such credit is warranted, for the reasons set forth below.

68. If the Commission were to impose a credit to retail services reflecting a positive price for the HUNE, the Commission would be ordering a rate reduction for retail customers who obtain xDSL services from Qwest's competitors. This would be unfair to those customers who obtain xDSL service from Qwest (an interstate service under Qwest's FCC tariffs), and would be tantamount to forcing Qwest to reduce its price for its own xDSL offering. This would in turn be unfair to all of Qwest's customers, because it would force Qwest to try to recover the lost contribution from MegaBit from its other customers, even though MegaBit currently provides a significant contribution over its direct costs, while still being offered at a very reasonable price (a price which the competitors in fact sometimes claim to be too low). Thus, no credit to retail rates would be appropriate.

B. Collocation for Line Sharing

69. The Commission should adopt Qwest's proposed rates for splitter collocation. The fundamental difference in positions between the parties regarding collocation costs has to do with the relevance of Qwest's actual experiences in providing line sharing and whether those actual experiences provide a reasonable benchmark for determining costs for line sharing. Qwest presented evidence at the hearing that demonstrates that its actual experience should be considered forward looking under TELRIC principles and therefore provides a useful benchmark. In the present case, Qwest's proposed collocation costs meet the standard as set forth by the Eighth Circuit. The proposals from the CLECs do not.

1. Cable Lengths

70. The issue around cable lengths is whether the Commission should accept Qwest's estimate, based on actual experience, of a cable length of 100 feet between the main frame and the splitter location. This estimate is based on a survey that showed the actual average length to be 104 feet.

71. Qwest's evidence establishes that the Commission should base collocation costs on the use of an average cable length of 100 feet from the main distribution frame to the location of the splitter. The CLECs have argued that the Commission should assume that the splitter is located within 25 feet of the main distribution frame (MDF) in determining the appropriate costs for cabling and racking when a splitter is located in the common area. This position ignores standards regarding splitter location in exhibit 192, and ignores the only evidence in the record regarding the appropriate (and actual) cable length.

72. CLECs are permitted to locate the splitter in their own collocation cage. Where CLECs do

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not choose to do so, paragraph 7 of the terms and conditions for providing line sharing in Washington (ex. 192) requires that Qwest "will install and maintain the splitter in one of three locations in the central office: (i) in a relay rack as close to the CLEC DS0 termination points as possible; (ii) where an intermediate frame is used, on that frame; or (iii) where options (i) or (ii) are not available, on the main distribution frame or in some other appropriate location." Qwest complied with this obligation. No CLEC has complained about the location of splitters in Qwest's central offices or in any way alleged that splitter placement was improper.

73. Qwest has offered evidence that its average cabling length is 104 feet. (Ex. T-83 at 10). The thirteen central offices that form the basis for this calculation were the total central offices that had been completed and in which database information had been updated at the end of March, 2000. The survey provides a reasonable benchmark for determining cable lengths that should be used. Mr. Thompson has assumed a 100 foot cable length as a conservative assumption that is reasonable given Qwest's experience.

74. Covad attacks the 100 foot estimate by speculating that using the "most efficient" configuration, one could place splitters within 25 feet of the MDF and thereby reduce the cabling necessary to accomplish splitter collocation. There are several flaws with this position. Most fundamentally, this position ignores the stipulation that require that the splitter be located as close as possible to the ICDF or DS0 termination point. *See* Exhibit 192. Because the DS0 termination point is often not located on the MDF, the CLECs have agreed that the splitter be located at a location that bears no relationship to the location on the MDF.

75. The second problem with the 25 foot assumption is that it is based on a hypothetical central office from the collocation cost model. The Eighth Circuit has rejected such an approach. "It is clear from the language of the statute that congress intended the rates to be 'based on the

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cost . . . of providing the interconnection or network element,' not on the cost some imaginary carrier would incur by providing the newest, most efficient, and least cost substitute for the actual item or element which will be furnished by the existing ILEC pursuant to Congress's mandate for sharing." *Iowa Utilities Board v. F.C.C.*, No. 96-3321 at 7 (8th Cir., July 18, 2000).

76. The 100 foot assumption of Qwest "deal[s] with reality, not fantasizing about what might be." This Commission is required to use the same approach in calculating line sharing costs. Accordingly, Qwest respectfully requests that it assume the 100 foot cable length and thereby apply the rates proposed by Qwest for cable and relay racks.

2. Engineering Costs

77. Qwest's proposed rates for planning and engineering costs associated with splitter collocation accurately reflect the time that is required to perform this type of collocation. Qwest has proposed that the Commission assume twenty hours of planning and engineering time goes into a splitter collocation job. (Ex. T-83 at 8). This recommendation is based on actual experience with Qwest's existing central offices and systems. Mr. Hubbard described in detail the planning and engineering tasks associated with engineering a splitter collocation job, which average 22 hours per job. (Id. at 3-8). The effort of Qwest's engineers should be considered forward looking. This work is being performed to implement an FCC requirement that has existed for less than a year. Thus, the efforts do not reflect historic or embedded costs, but rather reflect the actual engineering costs that Qwest will incur to provide collocation for line sharing today and tomorrow.

78. By contrast, Covad has concocted recommendations based on hypothetical systems and based on processes that are simply not in place. Under *Iowa Utilities Board*, actual experience

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and actual facilities provide the most appropriate guideposts for these costs. Under this standard the Commission should adopt Qwest's proposal regarding planning and engineering time.

3. Qwest Shelf Allocations (Fill Rate)

79. The entire difference between the parties' positions on these costs relates to whether the Commission divides rates for land and building costs and splitter bays over 8 shelves as proposed by Qwest, or 12 shelves as proposed by Covad.

80. Qwest's position is more reflective of reality than the positions of the other parties. Specifically, actual demand for splitters at the time of hearing has resulted in splitters being installed in 78 central offices. Tr. 670. Each splitter can accommodate 96 lines. Tr. 965. The use of an assumption that 8 shelves per bay are in use is conservative, and is supported by what is actually occurring in Qwest's central offices today. In Qwest's offices surveyed, where splitters have been installed, there is currently an average of only three splitter shelves per bay (relay rack). In addition, there is substantial evidence indicating that line sharing will be short-lived technology, and that, therefore, there will never be high utilization of relay racks. For example, there has been much recent discussion in the industry about the emergence of Voice Over IP as a broad-based technology. Technologies of this type limit the foreseeable life of line sharing. (Ex. T-83 at 12)

81. Currently, the CLECs have placed just over 100 line sharing orders in three states, of which Washington is one. Tr. 587. The CLECs have offered no evidence of anticipated demand other than the speculation of Mr. Zulevic and Mr. Klick. Experience up to this point indicates that the demand assumptions made by Qwest are more than generous.

82. The record contains no meaningful evidence that more demand will exist in Washington.

Covad did not present any evidence to rebut Qwest's demand assumptions, relying simply on the fact that equipment bays have the capacity for 12-14 shelves, but failing to discuss how many of them may reasonably be assumed to be occupied at any point in time. In pricing relay rack, this Commission should respect the efficient decisions made by Qwest. Applying a reasonable assumption with regard to the number of shelves that will be utilized accomplishes this goal.

4. Efficient Configuration

83. The question of the most efficient configuration relates to whether the splitter is located on the MDF (main distribution frame), or on an IDF (intermediate distribution frame). However, characterizing this issue as a question of "most efficient configuration" is misleading, and largely a red herring. Covad attempts to argue that it does not matter what the actual configuration/location of the splitter is, so long as the rates reflect the most efficient configuration. In Covad's view, this configuration is when the splitter is located on the MDF.

84. This view is inconsistent with the terms of the stipulation between Covad and Qwest (U S WEST) which states that the splitter may be located in the CLEC collocation area, or in any one of several different locations in the central office. (Exhibit 192 at ¶ 7). It is also inconsistent with how all of the central offices in Washington are currently configured. As pointed out by Mr. Hubbard, Covad's witnesses focus on a hypothetical central office design, not the actual offices that are in place in Washington today. (Ex. T-84 at 3). Covad agreed that there are no central offices in Washington where the splitter is located on the MDF. Tr. 1104.

85. Finally, the allegation that locating the splitter on the MDF is the most efficient configuration is simply wrong. Qwest provides both voice and data services through the equipment and facilities located within its central offices. As described by Mr. Hubbard, the use

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of COSMIC frames, not the exclusive use of MDFs, may be the most efficient use of space in Qwest central offices, and that IDFs are necessary in either environment. (Exs. T-83 at 10-11 and T-84 at 4-5).

86. Qwest believes that it should be compensated for splitter collocation based on its actual forward looking costs, which are reflected in its cost analysis. In its rebuttal testimony, responding to Covad's complaints, Qwest proposed rates for all three splitter configurations described in Covad's testimony. Covad agreed that the three rate proposals in Mr. Thompson's exhibit 22 reflected the splitter configurations described in Covad's testimony. Tr. 1103. These rates reflect the actual splitter location in a particular central office, and allow the CLEC to pay for the configuration selected. The interim line sharing agreement (ex. 192) allows the CLEC to choose where the splitter is located in a particular central office, within the physical and practical limitations in the specific office. Thus, it is reasonable that charges be assessed in accordance with the configuration selected.

5. Miscellaneous Charges

87. Qwest is not aware of any issues to be addressed in this section, but will respond to any raised by other parties.

C. Non-Recurring Charges

88. The nonrecurring charges that are at issue for line sharing are the charges previously established in Docket Nos. UT-960369, et al., for installation and disconnection. Qwest did not propose any revisions to those charges in this proceeding, and in fact the Commission order accepting Qwest's rates for loop installation and loop disconnection was entered just recently, on September 1, 2000. As of the date of this brief, the tariff that implements that order has not yet

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been allowed to become effective.

89. Qwest did not propose revisions to its not-yet-effective nonrecurring charges because those prices already reflect efficiencies in order processing that have yet to be achieved. The level of work times ordered by the Commission in the Eighth Supplemental Order in Docket Nos. UT-960369, et al., are a fraction of the times actually being experienced by Qwest in the order process that currently exists. (Ex. T-16 at 16). This ordered reduction reflects some future level of efficiency that will take time to achieve. For the time being, Qwest's approved non-recurring rates reflect a majority of the savings that could be attributed to any near term efficiencies and need not be reviewed further in this proceeding. As such, no further downward adjustment is warranted. Qwest's proposed rates for line installation and disconnection properly reflect the actual costs Qwest will incur to perform these tasks.

90. The installation and disconnection costs proposed by the parties presents fundamentally the same dispute as collocation costs. Qwest has proposed costs based on actual experience using actual facilities as they exist today. By contrast, Covad has proposed costs based on mechanized processing systems that do not exist today. Qwest’s proposal is based on reality rather than fantasy. Accordingly, this Commission should adopt Qwest’s proposals for these costs.

D. Line Splitting over UNE-P

91. Line sharing, as discussed above, is the term used to describe the situation where a CLEC shares a loop with an ILEC. In line sharing, the CLEC provides xDSL services over the high frequency portion of the loop, while the ILEC provides voice grade service over the low frequency portion. Line splitting refers to the situation where two CLECs share a loop, and one CLEC uses the high frequency portion for xDSL while the other uses the low frequency portion for voice

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grade service. Line splitting over UNE-P (UNE-P is short for unbundled network element platform) refers to a specific type of line splitting, which is limited to circumstances when a CLEC is obtaining the full combination of network elements from the ILEC, including the loop, switching, and transport, necessary to provide local service.

92. During the hearings, Qwest was asked whether it would offer line splitting. Qwest stated that it would, and that line splitting over UNE-P would be available under the bona fide request (BFR process). Tr. 393. Line splitting over UNE-P is not required by any FCC or Commission order, and, as such, the product is not clearly defined. This is one reason why it was thought to be necessary to use the BFR process initially, until product definitions and configurations for a standardized offering were developed. The Commission in this case has correctly deferred the details of this issue to Part C in this docket, and Qwest will file testimony in accordance with the schedule established for that part of the docket.

93. However, line splitting in general is presently available, and it is within the CLEC's ability to provide. When a CLEC leases an unbundled loop (as opposed to a combination of the loop and other elements) from Qwest, the CLEC leases the entire loop, and is permitted to offer whatever service it desires over that loop. There is nothing that currently stands in the way of the CLEC offering the high frequency portion of that loop to another provider, and making the necessary network arrangements within its own network to allow the DLEC to provide an xDSL service over the loop along with the CLEC's voice grade service.

IV.

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OSS COST RECOVERY

94. There are two main issues in this proceeding with regard to OSS cost recovery. The first issue concerns cost recovery for the start up and maintenance costs that Qwest has incurred and continues to incur to allow CLECs to access Qwest's operational support systems (OSS). The second issue concerns cost recovery of the OSS costs that Qwest has incurred which are specific to the provision of line sharing.

95. Many parties have tried to ignore or challenge the Commission's prior ruling authorizing Qwest to recover OSS costs that it can establish have been incurred because of its legal obligation to allow the CLECs access to its OSS. However, the parties fail to suggest any valid reasons to either change or disregard the Commission's Seventeenth Supplemental Order, which established that ILECs are entitled to recover OSS development related costs from CLECs. (Seventeenth Supplemental Order at ¶¶ 98-106).

96. To the extent that the parties cannot avoid the outcome mandated by that order, they alternately attempt to challenge Qwest's ability to recover those OSS costs from the CLECs on the basis that those OSS costs are somehow included in or recovered by Qwest's retail and wholesale rates for other services.

97. The simple fact is that Qwest is required by the Act and the FCC to allow access to its OSS. OSS is an unbundled network element. Qwest is not seeking to impose any transactional charges for access to that UNE beyond cost recovery for the costs incurred to modify the OSS to allow for access, and to maintain the gateways for the benefit of the CLECs. It would be a violation of the costing and pricing principles of the Act to determine cost recovery for OSS with regard to Qwest's earnings or authorized rate of return as established in a rate case.

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A. Sufficiency and Accuracy of OSS Cost Estimates *(should there be an audit?)*

98. The first question to address is whether Qwest has presented sufficient evidence to establish the accuracy and validity of its OSS cost estimates. Ms. Barbara Brohl described in detail the process that Qwest employs to track all of its Information Technologies (IT) costs. (Ex. T-100 at 11). Ms. Brohl explained that each project is tracked individually in the Business Management System (BMS) by a unique project code. Exhibits C-102 through C-108 described each project in detail. Each project description contains information from which one can conclude that the project was implemented solely because of the need to provide OSS access to CLECs. Indeed, Qwest's analysis of each and every project included the question of whether Qwest's own operations benefited from the project. If the answer was yes, the project costs were excluded, even though the project could also be useful to the CLECs. (Ex. 122). Ms. Brohl also explained that all time is reported by project code in a time reporting system known as EZWARP, which is then transmitted mechanically into BMS on a monthly basis. In addition, all other expenditures and investments were captured by project code in BMS.

99. Nevertheless, NEXTLINK claims that the "Commission cannot determine the accuracy and propriety of Qwest's and Verizon's embedded OSS development costs without a third-party audit . . .." (Exhibit T-151 at 8). When asked at hearing if his statement implied a lack of confidence in the Commission's ability to scrutinize costs, Mr. Knowles avoided answering the question. Tr. 920-1. In fact, by Mr. Knowles' response it appeared that he was more concerned about whether the costs were "prudently incurred" rather than whether they were accurate and correct. Mr. Knowles admitted that there is a discovery process attached to a proceeding such as this if parties have questions about the data provided. Tr. 921.

100. The cost studies submitted by Ms. Teresa Million as part of her Direct Testimony

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contained a list of project codes and expenditures, by year, for each of the OSS projects for which Qwest seeks recovery. These project codes are the same as the project codes in Ms. Brohl's testimony, and Qwest has thus provided information regarding both the nature of the project and the cost for each. In the discovery phase of this proceeding, Qwest provided additional information as requested. (Ex. C-121). Qwest provided evidence supporting the validity of its OSS expenditures and its ability to distinguish OSS from other IT projects. As such, it is unnecessary and would be inappropriate to require an independent audit of those costs. In addition, there are issues about who pays for an audit performed on regional costs that benefit more than just the State of Washington. Tr. 933-4. Thus, Qwest recommends that no audit is required.

101. With regard to OSS for line sharing, it is Qwest has incurred actual direct costs of $11.9 million to modify its OSS for line sharing. There is no need for an audit, as Qwest has provided documentation showing that it paid Telcordia for the modifications. Additionally, Qwest's costs are on the very low end of the estimates submitted to the FCC. (*See,* Line Sharing Order, ¶ 143. Estimates ranged from $3.5-5.5 million up to hundreds of millions of dollars.)

B. Appropriate Cost Recovery Mechanism

102. The issue of the appropriate cost recovery mechanism raises two questions. First, there is the question of whether Qwest has already recovered its OSS costs in its retail rates. Second, there is the question, raised in NEXTLINK's testimony, of imposing an end user surcharge.

103. Qwest has clearly established that it is in compliance with the Commission's requirement in paragraph 110 of the Seventeenth Supplemental Order. Through the testimony of Ms. Million, it has shown that there is no possibility that wholesale OSS costs were included in or recovered by

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either Qwest's annual charge factors or its retail rates. (Ex. T-90 at 11-14). Although Staff suggested that Qwest's retail rates do recover Qwest's OSS costs, Staff was unable to identify a single retail rate in which those costs were included. Tr. 1611. Additionally, Staff's advocacy on this issue, where it contends that it is appropriate to look to a rate of return proceeding to determine issues of cost recovery under the Act, is apparently based on the incorrect belief that Qwest's OSS costs are somehow not costs associated with access to an unbundled network element. Tr. 1614. This is plainly incorrect, and recommendations premised on this incorrect position should be disregarded.

104. The proposal to impose an end user surcharge, which would require all customers to bear the costs of OSS modifications, is directly contrary to the Commission's Seventeenth Supplemental Order, which requires CLECs to bear the cost of OSS modifications. NEXTLINK offers no evidence or rationale to support its proposal, other than that it disagrees with the Commission's prior order. The Commission should simply reject this attempt to relitigate this issue without any showing of changed legal or factual circumstances.

C. CLEC Surcharge Rate Design *(LSR or per activity?)*

105. Qwest has stated consistently that the reason that it has chosen service orders as the mechanism for recovering the cost of OSS is that service order volumes are "predictable, have been tracked for decades, have systems and processes in place for reporting purposes, and are predictable from line loss forecasts." (Ex. T-100 at 13). Qwest believes that using service orders is appropriate for two reasons. First, service orders provide a reasonable way for Qwest to determine which CLECs are accessing the OSS to provide service to their customers, and thus, which CLECs are benefiting from the enhancements and modifications that Qwest has made to its

OSS. (Ex. T-95 at 11).

106. Mr. Knowles points out in Exhibit T-151, page 5, lines 15 through 17, that in the name of fairness, "…any authorized OSS cost recovery should ensure that each entity contributing to the cost recovery is responsible only for the costs attributable to that entity's use of [the] other carrier's OSS." At the hearing, Mr. Knowles stated "for transitional costs, I think those costs should be borne based on the use of the OSS systems to the extent that that can be determined predictably and consistently and applied that way." Tr. 943.

107. In spite of a belief that the "per service order" charge is a fair and equitable way to recover the costs of OSS from the CLECs, Qwest has continued to entertain alternative methods of cost recovery so long as those methods enable Qwest to actually recover its costs. However, apparently because no other party wants to actually endorse cost recovery, no party has advocated an alternative mechanism. Thus, Qwest's proposal is the only one that has been developed in this proceeding.

108. The second reason for selecting service orders as the recovery mechanism for OSS costs is that using service orders helps to keep the "per unit" charge lower than a per-LSR charge would be. Because the rate is developed by dividing a fixed pool of dollars by a denominator determined by some amount of demand; the higher the demand, the lower the resulting rate. Thus, Qwest has chosen service orders for its demand component because service orders spread the OSS cost recovery to the largest number of CLEC activities that use the OSS resulting in a per unit charge.

109. Mr. Knowles suggests that it would be more appropriate to charge for recovery of OSS over LSRs rather than service orders. Tr. 942. The problem with using an LSR approach to OSS cost recovery is that it completely ignores the fairness issue. Mr. Knowles admitted that he understands from the evidence presented that a single LSR could result in one or multiple service

orders, i.e., one or multiple loops per LSR. Tr. 942. Yet it appears from his statement at the hearing "[i]t's one loop, one LSR…" that Mr. Knowles is laboring under misinformation about how LSRs are processed through the OSS. Tr. 936.

110. Qwest believes that it is unfair to charge CLECs who order one loop per LSR at the same rate that it charges CLECs who order 20 loops per LSR. It should be evident that the CLEC ordering 20 loops at a time both receives more benefit (i.e., 19 more loops in service, with potentially a different customer for each loop) and makes more use of the OSS (i.e., up to 19 more customers provisioned through the systems), than the CLEC ordering one loop at a time. Nevertheless, under NEXTLINK's recommendation the CLEC ordering one loop per LSR pays the same OSS charge as the CLEC ordering 20 loops per LSR. The result is that CLECs who order fewer loops per LSR pay a larger proportionate share of the OSS cost recovery than those who are able to order more loops per LSR.

111. If the OSS rate were on a service order basis in the same situation, the CLEC ordering 20 loops would have 21 service orders and pay 21 OSS charges, while the CLEC ordering one loop would have two service orders and would pay two OSS charges. From a fairness perspective, Qwest believes that this cost recovery scheme results in a much more equitable sharing of the OSS cost recovery among the CLECs. In addition, as discussed previously, if the rate is based on LSRs rather than service orders and assuming an average relationship of three service orders to one LSR, the OSS rate per LSR will be three times higher than the rate per service order, or $25.71 as opposed to $8.57. (Ex. 806).

D.

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Allocation Issues and Line Sharing

1. Number of Lines/Demand Assumptions

112. In the case of OSS for Line Sharing, Qwest used a forecast of the number of lines anticipated to be shared for the entire 14-state region to develop demand. It based this demand forecast on the response by one CLEC to its request for demand data (other CLECs did not respond), and the judgement of the Line Sharing product manager. Tr. 436-7. This was the only demand calculation put forth in this proceeding, although Qwest made it clear in Mr. Thompson's testimony (ex. T-16 at 10) that it was willing to use other demand data if the CLECs would provide it. Tr. 437.

113. During the cross-examination of Mr. Thompson, it was suggested that the demand that Qwest forecasted for lines shared was too low, and not supported by Qwest's own experience with its Megabit service. However, as Mr. Thompson pointed out, at the time of the hearing, CLECs had deployed only 104 shared lines in three states. Tr. 587. This experience plus the input, or lack thereof, from the CLECs leads Qwest to believe that the demand forecast used in calculating OSS for Line Sharing is appropriate.

114. In response to Bench Request Nos. 3 and 4 (Exs. 903 and 904) Qwest has provided a detailed analysis of its demand forecast of service orders used to calculate the OSS rate for start-up and ongoing maintenance. This analysis accomplishes two goals. First it provides support for the assertion by Ms. Million that the forecast provided by Qwest encompasses all service order types, including connect, disconnect, change, to/from and others. Second, it provides an explanation for the (different) forecast presented originally in Mr. Buhler's testimony in Docket No. UT-960369 and the one presented by Ms. Million in this proceeding.

115. In comparing the forecast submitted by Mr. Buhler in 1997 to the forecast information,

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based in part on 1999 actuals, provided by Ms. Million it is clear that Mr. Buhler's earlier forecast was overly optimistic. For example, Mr. Buhler's forecast anticipated 1.5 million service orders to be placed in 1999, while actual service orders amounted to only a little more than 358,000. This data, when placed side by side, shows that service orders from CLECs have materialized at a slower pace than originally expected, and that the current forecast presented by Ms. Million is a more accurate reflection of Qwest's anticipated demand for service orders in the future. Again, in the absence of demand forecasts from the CLECs, Qwest has shown that the demand it used for calculating OSS rates is reasonable.

2. Length of Time – Depreciation Life

116. At the hearing Mr. Deanhardt questioned Mr. Thompson about the length of the recovery period used by Qwest to calculate the OSS rate for Line Sharing. Tr. 451-2. Mr. Thompson stated that in the absence of helpful information from the CLECs regarding their assumptions about the useful life of Line Sharing that he had to assume some life in order to calculate a recurring rate for OSS. Tr. 451. One way to estimate the useful life of a product is to look at the useful life (depreciation life) of the underlying asset. In the case of Line Sharing OSS the underlying assets are the computers that make up Qwest's OSS. The OSS assets for which Qwest is seeking recovery in this proceeding all reside in account 2124, General Purpose Computers. Account 2124 has an estimated depreciation life of 5.8 years in Washington. Tr. 452. Therefore, it is Qwest's position that the 5-year life used by Mr. Thompson to calculate the OSS rate for Line Sharing is reasonable.

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Allocation Over Other Loops

117. The issue has arisen as to whether Qwest should include lines over which it provides Megabit in the number of lines used to calculate the Line Sharing OSS rate. This suggestion was based on the hypothetical that 1) at some point Qwest would provide DSL services through a separate affiliate, and that 2) being a separate affiliate would necessitate use of OSS by the affiliate through the same type of access that CLECs use. Tr. 446-7. Mr. Thompson agreed that within the construct of the hypothetical it would be appropriate to include Qwest's DSL demand into the calculation. However, there was never any evidence established that would support either of the assumptions in Mr. Deanhardt's hypothetical. Tr. 448.

118. To the contrary, at this point, Qwest does not provide Megabit services through a separate affiliate. Nor has it been established that Qwest will ever provide Megabit services through a separate affiliate. In addition, in response to questions about the flexibility of design of the Line Sharing OSS, Ms. Brohl pointed out that all processes would have to be identical in order for the system enhancements to be available for other uses or users. Tr. 836. In explaining this concept further, Ms. Brohl went on to say that the processes for Megabit are different and so the system behaviors wouldn't be the same. Tr. 837, 2-17. Thus, it would be inappropriate for Qwest to include Megabit lines in the number of lines used to calculate the Line Sharing OSS rate when Qwest does not now or in the foreseeable future make use of the OSS enhancements for Line Sharing to provision its Megabit services.

V.COLLOCATION

119. Qwest facilitates interconnection and access to unbundled network elements within Qwest central office buildings through collocation. In accordance with the terms and conditions of the

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CLEC's respective interconnection agreements, both virtual and the various forms of physical collocation are available to CLECs.

120. Collocation allows a CLEC to place both equipment and cables into a Qwest central office, and to terminate those cables on transmission equipment owned by the CLEC. The CLEC installs and maintains its own equipment in the collocation space provided by Qwest. The CLEC's transmission equipment can be interconnected to the Qwest network, and to the equipment of other CLECs. Collocation also facilitates CLEC access to unbundled network elements.

121. As discussed in the testimony, and as demonstrated herein, Qwest's collocation service offerings comply with the Federal Communications Commission (FCC) orders in CC Docket Nos. 96-98 and 98-147. These collocation service offerings comply with the national rules for collocation established by the FCC's First Report and Order, CC Docket No. 96-98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, released August 8, 1996 (First Interconnection Order), and the First Report and Order, CC Docket No. 98-147, Deployment of Wireline Service Offering Advanced Telecommunications Capability, released March 31, 1999 (Advanced Services Order). (Ex. T-70 at 2).

A. Qwest's Cost and Pricing Proposal

122. In prior dockets, the Commission rejected U S WEST's collocation cost study, and ordered the arbitrated rates to continue as interim rates until the Commission resolved collocation issues in this proceeding. In response to criticisms of its earlier cost study, Qwest created an entirely new collocation cost study in 1999, and submitted it in this proceeding in February 2000. The cost study relies on actual data collected through an analysis of 41 collocation jobs in several

states (21 of those jobs were in Washington). The study also uses data from a separate study of five central offices for purposes of determining the appropriate DC power costs.

123. The collocation costs are grouped into four categories of collocation costs: Standard (general collocation elements), Cageless, Cage, and Virtual elements. The cost elements addressed by the collocation cost study are as follows. The non-recurring elements are: Terminations, Entrance Facility Installation, Fiber Cable Splicing, Backup AC Power Feed Installation (optional), Space Construction, Power Changes and Additions, Construction of Additional Bays, Labor, Quotation Preparation Fee (QPF), and Grounding (Cage).[11] Stand alone recurring charges are: Power Usage, and AC Power Usage (optional), Security Cards, Central Office Synchronization, Interconnection Tie Pair (ITP), Space Construction, Additional Bay, Additional Power Cable, Space Rent, Grounding (Cage), and Equipment Bay (Virtual). The cost-based rates proposed by Qwest for these services are listed in exhibit 12, as corrected by the filing in response to Bench Request 13. (Exs. 911 and C-911).

124. The testimony of Mr. Thompson sets forth in detail the methodology employed in the new collocation cost study. (Ex. T-10 at 5-6). All of the common collocation (e.g., standard and caged) and cageless collocation cost elements were modeled on the costs of actual collocation jobs. This was accomplished through an analysis of every item that was purchased and installed on a sample of collocation jobs. The invoices were analyzed through a multi-step process as follows:

Each item of material that was billed to each job was entered into a database;

Each item of material was classified into cost categories that represented the various components of collocation (i.e. cable racking, power cable, support structure etc.);

The costs for placing each component of a collocation job were calculated using standard

[11] There is also a small recurring charge associated with maintaining several of these elements.

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contract labor costs and the number of units on each job as determined from the invoices;

The calculated labor costs were compared to the actual invoiced labor charges to determine that they were reasonable;

The labor costs were added to the material costs to determine the total cost for each component of the job;

Each component of cost was then placed into groups that represented the collocation elements that were to be priced;

The element classifications were then designated as being recoverable through a one-time nonrecurring charge or a monthly recurring charge;

Each classification of costs that was designated for recovery through a nonrecurring rate was analyzed to determine whether the facility would be: (a) solely dedicated to the use of a single CLEC and therefore recovered through a nonrecurring rate; or (b) shared among numerous providers including Qwest and therefore recovered through a recurring rate;

Cost categories that were deemed to be shared among collocators were prorated to a standard job based on the anticipated number of CLECs that would participate in the use of those facilities; and

The results of the analysis were used to build a standard cost model with inputs that could be revised.

125. Several parties challenged the assumptions or inputs used in Qwest's collocation cost study. These issues are discussed in detail elsewhere in the brief. For example, Staff proposed that only Washington-specific data should be used in the cost study. Qwest responds to this concern, and others, below. Notably, however, no party presented a different cost study as an alternative to Qwest's proposal. Thus, Qwest believes that its collocation cost study should be adopted as sound, and well supported by the testimony and evidence herein.

126. At the hearing, Qwest modified its collocation proposal in two ways. First, Qwest corrected the cost study and pricing proposal to reflect the fact that the Commission has ordered two separate pricing arrangements for entrance facilities, depending upon whether Qwest actually

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constructed a second manhole in a particular office. Tr. 337-9. Second, Qwest corrected the cost study to remove an old assumption in the study and to reflect the fact that attenuators are not currently deployed in the provision of collocation. Both changes are reflected in the revised cost study that was submitted as Bench Request 13.

127. The six main issues that parties raised about Qwest's collocation cost study are discussed below. However, there are three issues that are general to the collocation cost study and pricing proposal, and those issues are discussed here. The first issue is the question of whether Qwest properly used the Commission prescribed cost of money and depreciation lives in its study. The second is Nextlink's claim that Qwest's assumption about the number of collocators in the central offices is too low. The third issue is Staff's recommendation that nonrecurring costs associated with collocation be recovered over time as opposed to up front.

128. Staff suggests that Qwest did not use the Commission-prescribed cost of money (9.63%) and depreciation lives in its cost study. Qwest understands that Staff reviewed the cost study and saw a different cost of money in certain cells in the spreadsheets. However, Mr. Thompson explained that only the Commission-ordered value was used in the actual cost calculations. (Ex. T-20 at 10; Ex. C-15 at 159). Mr. Thompson also established that the cost study used the prescribed lives in order to establish the depreciation factors. (Ex. T-20 at 10).

129. Nextlink has claimed that Qwest used an unreasonable assumption with regard to the number of collocators in each central office, stating that Qwest's assumption of three collocators is too low. In fact, Qwest assumes six collocators per central office – three using caged collocation and three using cageless. (Ex. T-20 at 14). Qwest's responses to data requests establish that six is a reasonable assumption, in line with actual experience. (Id).

130. Finally, there is the question of whether Qwest should be required to recover its

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nonrecurring collocation costs over a one to five year period as suggested by Staff (ex. T-360 at 11-12), or up front as a nonrecurring charge. No party has challenged the fact that Qwest's proposed nonrecurring charges seek to recover nonrecurring costs that Qwest incurs in the provision of collocation. Recovery of these costs up front, from the CLEC requesting the collocation, is the only fair and reasonable way to do so. Further, any other proposal is inconsistent with the FCC's guidance regarding cost recovery, and is unreasonable. The issue of risk specifically for nonrecurring costs of collocation was addressed by the FCC:

> To the extent that the equipment need for expanded interconnection service is dedicated to a particular interconnector, we believe that requiring that interconnector to pay the full cost of the equipment up front is reasonable because LECs should not be forced to underwrite the risk of investing in equipment dedicated to the interconnector's use, regardless of whether the equipment is reusable.[12]

Qwest's proposal for non-recurring rates follows this philosophy.

131. Contrary to Staff's suggestion, recovery of nonrecurring costs over time would not "ensure that ILECs fully recovered their nonrecurring costs" (Ex. T-360 at 12). The proposal for deferred recovery does not discuss the time value of money that would be required if Qwest were ordered to recover its expenditures over time. Assuming that Staff would agree with inclusion of the cost of money, the issue of risk would still fall solely and unreasonably upon Qwest. In essence, the effect of this proposal is for Qwest to act as the financier for the CLECs. Qwest would be ordered to forego recovery of a legitimate cost it undertook at the request of the CLEC, but effectively arrange financing for the CLEC at Qwest's cost of capital, at the discretion of the CLEC. This suggestion should be rejected by the Commission.

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[12] *In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport,* Second Report and Order CC Docket No. 93-162 at ¶ 33.

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Entrance Facilities

132. Qwest offers three choices for entrance facility: Standard Shared, Cross Connection and Express Fiber. Each of these is options is modeled under two separate assumptions – the assumption that the manhole is shared, and the assumption that it has been necessary to construct a separate manhole for the CLEC. These two assumptions take into account this Commission's concern that the construction of a separate manhole may be required because of congestion in many of Qwest's manholes used for entrance facilities. The Standard Shared entrance facility cost assumes that the point of interface occurs at manhole #1. The "CLEC POI" entrance facility cost assumes that the point of interface occurs at a separate manhole other than manhole #1. The Commission addressed this issue in its 17th Supplemental Order stating:

> [I]f U S WEST can demonstrate that its first manhole is congested, it can require the CLECs to use a separate manhole and recover the cost from the CLECs. Where U S WEST claims that a manhole is congested, it must provide access to the manhole so that the CLECs can verify that claim. [para.319]

Thus, Qwest's cost study and pricing proposal complies with the Commission's requirements in this regard.

133. **Standard Shared Entrance Facility** recovers the cost of extending the Qwest fiber optic cable from the CLEC fiber just outside the Qwest central office -- the point of interconnection (POI) at manhole #1-- to the CLEC equipment located in the Qwest central office. The Standard Shared Entrance Facility consists of a manhole, conduit/innerduct, placement of conduit/innerduct, fiber cable, fiber placement, splice case, a splice frame, fiber distribution panel, and the relay rack. The Standard Shared Entrance Facility charge consists of a non-recurring charge per fiber and a monthly recurring charge per fiber, with a minimum quantity of 12 fibers (the number of fibers in the standard cable).

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134. **The "CLEC POI" Entrance Facility** recovers the costs for a manhole just outside the Qwest central office, other than manhole #1, in addition to the costs for Standard Shared entrance facility. The CLEC POI Entrance Facility charge consists of a non-recurring charge per fiber and a monthly recurring charge per fiber, with a minimum quantity of 12 fibers (the number of fibers in the standard cable).

135. **Cross Connection Entrance Facility** recovers the same costs in the standard entrance facility except that it requires two fiber distribution panels. The fibers terminate on the first fiber distribution panel and provide test access and flexibility for cross connections to the second fiber distribution panel, where the CLEC's equipment is terminated within the central office. The Cross Connection Entrance Facility charge consists of a non-recurring charge per fiber and a monthly recurring charge per fiber, with a minimum quantity of 12 fibers (the number of fibers in the standard cable). As with the standard Entrance Facility, this Entrance Facility is also offered as a shared facility or a "CLEC POI", depending upon how the entrance facility is actually constructed in the particular central office.

136. **Express Fiber Entrance Facility** recovers the cost to terminate the CLEC fiber cable in its collocation space with no splice points. If the cable is not fire rated, a transition splice will be required inside the cable vault to convert the fiber cable to a fire rated cable for extension to the collocation space. An additional charge is assessed for the conversion to fire rated cable. The Express Fiber Entrance Facility consists of a non-recurring and a monthly recurring charge per cable, as opposed to per fiber. One would have to divide the per cable rate for Express Fiber by the number of fibers in the CLEC cable to produce a rate which is comparable to the per fiber rate for the two other types of entrance facilities. Again, as with the other Entrance Facility options, Qwest offers Express Fiber Entrance Facility as a shared facility or a "CLEC POI".

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137. Nextlink took issue with Qwest's charges for entrance facilities, and specifically challenged the Express Fiber element as too costly. Qwest looked into this issue, and discovered that its original cost study had not included an option for Express Fiber that reflected the shared manhole. Thus, the only offering was a "CLEC POI" Express Fiber Entrance Facility. The nonrecurring charge was $7,589.47, and the recurring monthly charge was $7.47 per cable (Ex. 12).

138. Upon discovery of this error, Qwest produced a rate element for Express Fiber Entrance Facility which reflected shared use of the manhole. This rate is shown in the response to Bench Request 13, which is the final corrected version of the collocation cost study. The shared rate consists of a nonrecurring charge of $1,201.16 per cable and a recurring monthly charge of $69.94 per cable. Qwest believes that this correction addresses Nextlink's concerns about the price of this element.

139. Qwest's costs and prices for entrance facilities are calculated in accordance with the Commission's prior requirements for cost studies and pricing, and are reasonable reflections of the actual costs Qwest will incur to provide collocation in Washington. As such, those costs and prices should be approved by the Commission.

2. Space Construction

140. Space construction recovers the cost of engineering the job, constructing an enclosure around the CLEC's leased space, providing a single power feed, overhead structures to support cable racking and CLEC equipment, cable racking, additional lighting, and the supporting environmental requirements (heating ventilation and air conditioning). There are separate nonrecurring charges for caged and cageless collocation arrangements. Upon completion of the

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collocation service, the Quote Preparation Fee (QPF) will be deducted from the Space Construction charge. The one-time charge for caged collocation is $54,298.34. The one-time charge for cageless collocation is $31,811.52. (Ex. 21)

141. The physical collocation space construction charge includes the provisioning of one 60 amp power feed for caged, and one 40 amp power feed for cageless. If the CLEC requests a caged collocation with a power feed of 20, 30, 40, 100, 200, 300 or 400 amperes, an adjustment to the space construction charge is applied for the amps requested. If the CLEC requests a cageless collocation with a power feed of 20, 30, or 60 amperes per bay, an adjustment to the space construction charge is applied for the amps requested.

142. The cageless collocation is designed to provide two bays for the CLEC's equipment. If the CLEC requires additional bays, an incremental non-recurring charge, per bay, is applied to recover the prorated costs of the supporting structure, cable racking, lighting, and grounding facilities.

143. Various parties have taken issue with certain aspects of the space preparation fee, and each of those areas is discussed in more detail below. One area that was raised as an issue by Staff witness Mr. Griffith is the appropriate amount of engineering labor to be included in the Space Preparation Charge. Mr. Griffith identified certain labor charges that were mis-categorized as engineering labor, when in fact they were installation labor. Those engineering costs are shown in exhibit C-15 at page 136. Qwest had already removed the two highest and the two lowest cost jobs from that study and produced an average engineering labor cost of just under $12,000 per job. Qwest investigated the issue raised by Mr. Griffith and agreed that certain labor charges should not have been included. Those charges were removed, resulting in a reduction of the engineering costs, and the resulting charges, by approximately $1,800, as shown in exhibit 21.

144. Staff has also recommended that both engineering and power costs should be calculated

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using Washington-specific inputs, as opposed to the regional survey of jobs that were used for both of those calculations. Qwest disagrees with this recommendation, on the basis that the broader sample of jobs is more reflective of the variety of collocation jobs, and therefore produces an average figure for cost recovery purposes that is more likely to be reflective of Qwest's actual costs. The DC power cost issue is discussed in more detail below.

a. Cage Enclosure

145. The dispute over the cage enclosure has to do with the appropriate cost for construction of the cage enclosure. Nextlink has alleged that the construction of a cage enclosure should not cost more than $5,000. Nextlink bases this allegation on an invoice for cage construction in Utah, which shows that in 1997, a contractor provided a cage and a gate in a central office location for just under $5,000. (Ex. C-159). There is no evidence that the same prices would prevail in Seattle in 2000. Nevertheless, Qwest's direct costs for cage construction for cages of 100 square feet and 200 square feet are also less than $5,000. (Ex. C-15 at 65). Qwest also has other costs associated with providing a caged enclosure which are not reflected in exhibit C-159. Specifically, Qwest incurs costs for HVAC which do not appear on exhibit C-159.

146. Consistent with the FCC's First Interconnection Order, CLECs have the option to subcontract the construction of the caged enclosure to contractors approved by Qwest, in conformance with Qwest's standards. Thus, the proper solution is not to order Qwest to set prices below cost because Nextlink produced a single invoice showing cage construction for under $5,000. Rather, the correct solution is to approve Qwest's costs and prices, which are supported by the cost study, and to allow Nextlink to obtain cage construction from a vendor other than Qwest if Nextlink chooses to do so.

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b. DC Power

147. The one time nonrecurring charge for collocation includes a standard 60 amp power feed for caged collocation, and a 40 amp feed for cageless. As can be seen from the cost study and the pricing proposal, a CLEC may order a smaller feed and receive a reduction of the one time charge, or order a larger feed and pay more than the standard rate. (Exs. 12 and C-15). Additionally, the CLEC may order additional DC power feeds. The rate element for the DC power feed, either as included in the one time charge or assessed as an additional charge, recovers the cost for the cables, lugs, fuses and Htaps required to hook the cables to the power network. Additional power feed cables are connected directly to the CLEC's equipment and dedicated exclusively for the use by the CLEC. A power feed consists of an original (A feed) with two cables and a back-up (B feed) with two cables, four for the combined A & B feed. Power feed is available in 20, 30, 40, and 60 amps for all physical collocation and 100, 200, 300, and 400 amps for caged collocation only.

148. Qwest's based its analysis of DC power costs on a study of power costs in five central offices. (Ex. C-16 at 144-7). As described earlier, Qwest's collocation cost study is generally based on the data collected from 41 collocation jobs. However, power costs from those jobs did not provide meaningful data for DC power costs in general, because all of the 41 cageless jobs required 40 amps of power. To accommodate different levels of amperage, Qwest utilized the five central office study to provide the different costs for different levels of amperage. Qwest then matched these costs with the distances from the 41 job study for cageless, and the assumed input adjustments for cage collocation. Of the 41 collocation jobs, a significant number were done in Washington (about 50%). The average distances for DC power delivery in the 41 job study were used in the rates proposed by Qwest in this proceeding.

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149. Staff and NEXTLINK claim that the use of data from other states overstates costs for Washington collocators. Mr. Knowles states that the Washington data is lower than the average cost for the five selected offices and believes that the cost study bears "no demonstrable relationship to the costs Qwest incurs in Washington." (Ex. T-151 at 21). Qwest disagrees that the data used in the study should be limited to Washington. As Mr. Thompson explained, using the larger universe of data in the collocation study was preferable in this case, even though it may be preferable to use state specific information in another situation such as a loop study. Here, even though there were 21 Washington jobs, that was still a fairly limited number, and the number of observations was not sufficiently large to make it preferable to use Washington only data as opposed to the larger universe of data. Tr. 526-7.

150. Both Mr. Griffith and Mr. Knowles recommend that only the two Washington offices of the 5 central office study be used for rates in Washington. Their recommendation would not significantly change the cost calculation, if the distances from the 41 job study continued to be used as the study was submitted. For example, the expense of the two Washington jobs from the five central office study is $73.68 per foot for cageless, 40 amp (or $5288). The total expense using the cost ($74.75) from these two Washington offices from the five office study and the same average distance from the 41 job study (70.74 feet) is $5231. The difference between the two calculations ($5288 - $5231) is only $57 for an average job. The distances from the 41 job study should continue to be used because they represent a good estimate of actual costs that Qwest incurs for collocation in Washington and other states. Because there is no significant difference in costs, and because the 41 job study is reasonably representative of Washington distances, the Commission should accept Qwest's cost analysis on this issue.

151. Staff and NEXTLINK also recommend that the power costs should always be calculated

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based on the distance between the CLEC collocation area and the battery distribution fuse board (BDFB). However, this is not a reasonable assumption for power feeds of more than 60 amps. None of the four manufacturers of BDFBs who were considered in this study have a BDFB with more than a 70 amp fuse in their primary product line. That means that the largest power feed cable is limited to this amperage. Any larger amperage requirement must be provided from the Main Power Board (MPB) with the standard BDFBs. (Ex. T-20 at 7).

152. The rate element for DC power usage recovers the cost of purchasing power from the electric company and the cost of the power plant and maintenance to provide power to the CLEC's equipment. The power plant consists of the back-up power generator, rectifiers, power boards, battery distribution frame boards, batteries and the cable and support structure that connects all these components. The monthly charges are based on the size of the power feed requested by the CLEC. Qwest is not aware that any party has challenged the usage portion of the DC power rate elements.

c. Grounding/Back-up AC Power

153. The rate element for grounding recovers the cost of extending the building DC ground from the grounding plane of the central office to the CLEC's caged collocation space. Grounding is necessary for equipment placed in the central office for safety reasons. Grounding is not included in the nonrecurring cost for caged collocation, because the size of the ground wire is dependent upon the size of the power feed, and the size of the power feed can vary dramatically in a caged collocation environment, depending upon what the CLEC orders. Thus, there is a separate rate element for grounding in a caged environment. The rate is per foot, based on the actual length of the grounding wire. Grounding is included in the one time cost for cageless

collocation, because the variances are more limited in the cageless environment. (Ex. C-15 at 13-14).

154. Back-up AC Power is charged on both a per cable and a usage basis. The per cable charge recovers the cost of providing the engineering and installation of holes/fire stopping, wire, conduit and support, breakers and miscellaneous electrical equipment necessary to conduct Back-up AC power from the generators to the CLEC's space. The monthly Back-up AC Power Feed charge is on a per foot basis. The length of the cable will be determined at the time the collocation order is placed and will be based on the distance between the CLEC equipment and the generator.

155. Qwest is not aware that any party has challenged the costs or prices for the AC power cable. The cost of this cable is determined in each case based on the actual length of the cable, and thus reflects the actual costs that Qwest will incur to provision this element.

156. The AC power usage rate element recovers the cost to provide Back-up AC power to the CLEC's equipment in the event of an commercial power failure. Back-up AC power usage is an optional service and is available in conjunction with Back-up AC Power Cable. Back-up AC power is available in 120V, 208V-single phase, 208V-three phase, 240V-single phase, 240V-three phase, and 480V-three phase. The recurring monthly charge is on a per ampere basis. Qwest is not aware that parties have challenged this rate.

3. Floor Space Rental

157. The charge for floor space rental recovers the cost of one 110 AC, 15 amp electrical outlet, preventative maintenance and repair of climate controls, filters, fire and life systems and alarms, mechanical systems, and HVAC, bi-weekly housekeeping service and general repair and maintenance. (Ex. T-70 at 14). A recurring monthly charge for rent applies on a per square foot

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basis. The charge per square foot is $2.97.

158. Qwest is not aware that any party has challenged this rate, or proposed a different rate for floor space rental. However, there was a bench request (#1) which asked Qwest to explain the difference between the $2.97 proposed charge and the lower per-square-foot calculation of $1.89 shown on exhibit C-57, page 2. Additionally, Worldcom has challenged the CLEC rentable/usable factor, which is applied to the base rental rate in exhibit C-57 to produce the total monthly rent. These items are both discussed below.

159. *Bench Request Number 1* The response to bench request #1 was admitted as exhibit number 901. That response demonstrates that both the $2.97 rate and the $1.89 rate shown in exhibit C-57 started with the same investment amount. The different results are because of different factors which are applied to produce the total. Specifically, the $2.97 is calculated using the Commission prescribed cost of money and depreciation life for buildings. It also includes factors for the direct costs, the attributable costs, and the common costs previously allowed by the Commission. Additionally, as discussed in greater detail below, Qwest's $2.97 is applied only to the actual number of square feet of rented space; the $1.89 is applied as part of a formula which results in an effective rate of $3.64 per square foot.

160. *CLEC Rentable/Usable Factor* The short answer on the CLEC Rentable/Usable factor (CLEC R/U) is that while it is used in exhibit C-57, it is not used in Qwest's collocation cost study for purposes of developing costs and prices for this proceeding. Nevertheless, Worldcom's witness presented testimony in opposition to the magnitude of the factor, suggesting that it should be lower than that used in C-57. Thus, Qwest believes that it warrants some additional discussion and explanation here.

161. The CLEC R/U was developed in the Collocation Rent Study that was submitted as

exhibit C-57. The factor is applied in that study in the calculation to produce a monthly rental amount for a CLEC. The factor was developed to reflect the fact that when a CLEC rents a certain amount of space, for example, 100 square feet, a certain amount of additional floor space is required to be used for access and hallways to allow the CLEC to reach its collocation space. The CLEC R/U includes only adjacent or local floor space for access to CLEC collocation space. It accounts for hallways, corridors and aisle space not common to the building but created exclusively for ingress/egress as a result of building CLEC enclosures on each floor. (Ex. C-57 at 6). The Building R/U, another factor used in the study, accounts for common areas. In the Collocation Rent Study, the $1.89 is applied to the number of square feet of space only after it is adjusted for the CLEC R/U and the Building R/U.

162. In the study which is exhibit C-57, 100 square feet of floor space would be charged not $189/month, but $364/month (100 square feet x $1.89 base rent x 1.69 CLEC R/U x 1.14 Building R/U = $364). Under Worldcom's proposal, using a CLEC R/U factor of 1.375, (ex. T-330 at 14) the rent for 100 square feet would be $296.25/month (100 square feet x $1.89 base rent x 1.375 CLEC R/U x 1.14 Building R/U = $296.25). Under Qwest's proposal for pricing in this docket, using the costs and pricing set forth in Mr. Thompson's testimony, 100 square feet of space would be charged $297/month (100 square feet x 2.97 space rental = $297). Thus, while Qwest disagrees with Worldcom's analysis that the CLEC R/U factor should be reduced, it would appear that there is no real dispute between the parties as to the price to be charged for space rental.

4. DS-0, DS-1 & DS-3 Terminations

163. This rate element recovers the cost of the terminations, tie cables, associated racking and

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terminating blocks and panels required to connect Qwest unbundled network elements to the CLEC's equipment in their collocation space. A monthly charge, based on the type of connection (DS0, DS1 or DS3) being used, applies for cable placement, cable, block placement, and blocks required by the CLEC. (Ex. T-70 at 8).

164. Terminations are the network connections between the CLEC network and the Qwest network. (Ex. C-15 at 11). For example, the cables and blocks used to make the connection between a Qwest unbundled loop and the CLEC equipment in the CLEC collocation space are referred to as terminations. Termination costs are broken into four separate components: the cost of the cables used to make the connection; the cost of placing those cables; the cost of the panels and blocks needed to terminate the cables to Qwest's network; and, the cost of placing the panels and blocks. (Ex. C-15 at 11).

165. The rates shown in exhibit 12 for termination are alternatives, and are not combined as Mr. Knowles suggested in his responsive testimony. In his rebuttal testimony, Mr. Thompson explained how the charges apply. For example, the Per Block charge would be chosen by the CLEC when 100 terminations were desired. Alternatively, if less than 100 terminations were desired, the CLEC would order as many terminations as were desired and pay the Per Termination rate. For example, in the case of DS-0, the nonrecurring rate for 100 terminations (a full Block), is $587.42. For 50 terminations the nonrecurring charge would be $402.50, or 50 x $8.05. The cross over point is about 73 terminations, that is, at 74 terminations the Block rate is less expensive, up to 100 terminations. The basis of this cross over point is the assumption that the utilization of the non-dedicated DS-0 block will be about 73%. This philosophy was also applied to DS-1 and DS-3 terminations, with appropriate assumptions for those services. (Ex. T-20 at 15).

166. Qwest's proposal for terminations allows the CLEC to self-provision the elements for terminations, including the cables and blocks. (Ex C-15 at 11; Response to Record Request 3, Tr. 392-3). The CLEC may choose to purchase its own cables and blocks and ask Qwest to install them. In that case, the CLEC would be charged only the rate element for placing the termination equipment. The CLEC may also choose to have a third party (Qwest-approved) vendor do the installation of cables and blocks that the CLEC has provided. In that case the CLEC would not be charged any of the "terminations" nonrecurring rate elements. There is a small monthly recurring charge for maintenance of the terminations.

167. Qwest's proposal for pricing this collocation element is reasonable. NEXTLINK's criticism of the proposal seems to have stemmed from a misunderstanding of how the rates would apply. Qwest's willingness to allow self-provisioning of both the equipment and labor associated with network terminations allows the CLEC to select the provisioning method that it desires.

5. Cable Splicing

168. The cable splicing rate element recovers the cost of labor and equipment required to perform a subsequent splice to the CLEC-provided fiber optic cable at the point of interconnection (POI) after the initial splice for the entrance enclosure. There are two nonrecurring charges associated with fiber splicing – a charge that is applied per setup and a second charge that applies per fiber spliced.

169. The issue of cable splicing concerns the appropriate cost for that function, and the price that Qwest may charge when it performs cable splicing for CLECs in connection with the provision of collocation. Nextlink has argued that the charge for cable splicing should not exceed $28.00 per fiber spliced, based on the prices a contractor in Salt Lake City charges. The $28 per

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fiber spliced does not appear to include testing, which is listed as a separate line item on exhibit C-157. Testing could add as much as 10% to the $28. Qwest has proposed a rate of $38.08, which reflects Qwest's direct cost of $30.59, marked up to reflect attributed (19.62%) and common (4.05%) costs. Qwest's cost includes testing of each splice on each side of the splice case. (Ex. C-15 at 11). Thus, Nextlink's proposal shows that the direct costs that Qwest incurs to perform a splice are not that different from the direct costs that Nextlink would incur with a third party. This tends to validate the reasonableness of the Qwest cost estimate. The difference, in large part, is the markups which are applied. However, those markups were only recently approved by the Commission, and Qwest is not aware that they are at issue in this proceeding. The Commission should therefore accept Qwest's estimate as reasonable.

6. Microwave Collocation

170. Microwave collocation refers to the collocation of a CLECs microwave facilities within or on the roof of a Qwest central office. Microwave collocation is required by the Act and the FCC's rules. Qwest currently offers microwave collocation on an individual case basis (ICB). The ICB offering is because Qwest has had very few requests for this type of collocation – only 12 in its 14-state region (Tr. 740), compared with hundreds of "traditional" collocations in Washington alone. ICB pricing reflects the reality that there have not been enough requests for this type of collocation to standardize an offering or prices. To the extent that microwave collocation requires performance of work or provision of facilities that are the same as those in the collocation cost study, Qwest will charge the prices which are produced by that study (or as ordered by the Commission herein). For example, Qwest's collocation cost study produces costs for floor rental – if microwave collocation requires floor rental within the central office, the floor rental rate from

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the cost study would be used in the ICB price quote.

7. Other Issues

171. The only other issue that was discussed in testimony but which does not have a separate place in the brief is the issue of 45-day versus 90-day installation intervals for collocation.

172. Qwest has addressed the issue of collocation installation intervals briefly in testimony in this docket. In general, Qwest believes that this issue is better addressed in the collocation rulemaking, Docket No. UT-990582. Qwest has filed comments in that proceeding addressing the 45-day interval, and the rulemaking will be addressed at the Commission's open meeting on October 25, 2000. This is a cost and pricing proceeding, not a "terms and conditions" proceeding. Thus, Qwest recommends that the Commission defer consideration of this issue to the rulemaking. Additionally, Qwest's collocation proposal, with prices for a 90-day interval, has been on file with the Commission in this docket since February. However, no party proposed a 45-day interval until July. At that point, Qwest did not have costs and prices prepared for the shorter interval, and was unable to determine whether the default output of the cost model produces reasonable costs for a 45-day interval in Washington. (Ex. T-20 at 11).

173. Qwest is not aware of other issues that need to be addressed, but will respond in its reply brief if other parties raise such issues. Finally, Qwest notes that certain issues are not addressed in this brief because although they were raised in testimony, they appear to have been resolved or withdrawn during the hearing. For example, the issue of whether ILECs should offer power in 20 amp increments was resolved when Staff withdrew that proposal through revisions to prefiled testimony.

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B. Verizon Cost and Pricing Proposals

174. Qwest does not have any comments on the Verizon proposals.

VI. CONCLUSION

175. There are three main issues upon which the Commission must make a decision in this Part A proceeding – line sharing, OSS cost recovery, and collocation. For each of these three issues, and the sub-issues contained within, the Commission should adopt costs and prices based on Qwest's cost studies and Qwest's proposals. Unlike other parties' proposals, Qwest's proposals are consistent with applicable law, are supported by the record, and are consistent with the results which would be produced in a competitive market.

176. With regard to line sharing, the Commission should adopt a positive price for the high frequency portion of the loop, which is equivalent to one-half the loop price. Further, the Commission should adopt Qwest's collocation proposal for line sharing, which includes configurations as requested by the CLECs. Qwest had identified OSS costs that are specific to line sharing, and has proposed a monthly rate to recover those OSS costs from the carriers who use the OSS modifications to provide line sharing. Finally, Qwest's nonrecurring charges for line sharing (including installation and disconnection charges) should be ordered as the proper nonrecurring charges.

177. The issue of OSS cost recovery is fairly straightforward. The Commission, in its 17th Supplemental Order in Docket Nos. UT-960369 et al., approved Qwest's request to recover OSS costs from the cost causers – the CLECs. In this proceeding, Qwest has refined and explained its cost recovery proposal, and believes that it is a fair and reasonable method of cost recovery of the OSS costs that Qwest has incurred to modify its systems to allow CLECs to access those systems.

Qwest does not propose separate charges for the use of those systems, and seeks only to recover actual costs already incurred. As stated in the hearings, and earlier in this brief, Qwest is willing to consider an alternate mechanism for cost recovery, or an alternate method of calculating the cost recovery charge. However, no party has presented any details of such a proposal, and Qwest's should therefore be accepted.

178. Collocation issues must generally be resolved in accordance with Qwest's proposal. As to Qwest's costs and prices for collocation, only Qwest presented a cost study or complete pricing proposals. This study was supported by testimony and documentary evidence in the record, and presents an accurate estimate of Qwest's actual costs to provide collocation on it premises. The other parties' recommendations with regard to inputs or adjustments to the model should be rejected. They do not reflect actual costs, and model a hypothetical central office, in violation of appropriate costing and pricing standards.

179. Finally, Qwest would encourage the Commission to act expeditiously on these issues, and implement prices for collocation, line sharing, and OSS cost recovery quickly in order to finally resolve these issues, to put some certainty around prices and cost recovery, and to allow the parties to move on to resolution of other issues.

Dated this 9th day of October, 2000.

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