BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF THE CONTINUED COSTING AND PRICING OF UNBUNDLED NETWORK ELEMENTS AND TRANSPORT AND TERMINATION

Docket No. UT-003013

PART A POST HEARING BRIEF OF COVAD COMMUNICATIONS COMPANY AND RHYTHMS LINKS

I. INTRODUCTION

1. The prices of unbundled network elements ("UNEs") are key to determining whether there will be rapid deployment of and vigorous competition for advanced telecommunications services such as xDSL. Each UNE price, after all, becomes a direct cost to the competitive local exchange carrier ("CLEC"), and ultimately, the consumer. In this docket, the Commission's decisions will determine whether there will be competition for xDSL at the consumer level or whether Qwest Communications Inc. ("Qwest") and Verizon of the Northwest, Inc. ("Verizon") will be permitted to continue their monopoly hold on that market.

2. Covad Communications Company and Rhythms Links, Inc., two digital local exchange carriers (collectively “the DLECs”) providing xDSL service in Washington, focus this post hearing brief primarily on the line sharing issues before the Commission. The most important decision the Commission will make with respect to line sharing in this proceeding is to determine the price CLECs will pay for the high frequency spectrum network element (the "HUNE"). The DLECs urge the Commission to set the price for the HUNE at the price Qwest continues to charge itself, which is also the price Verizon agrees is appropriate: $0. This non-discriminatory price recognizes there is no incremental loop cost associated with the HUNE, and will result in a more level playing field to permit real price and service competition – not monopoly power – to determine how xDSL services will be deployed to Washington consumers. Conversely, Qwest asks the Commission to adopt an arbitrary price for the HUNE (one-half of the unbundled loop cost) that will artificially inflate the cost of xDSL services to Washington consumers, require those consumers to pay a second time for the copper loop already serving

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their premise, and feather the pockets of Qwest with revenue gained from an essential network element that has no incremental cost to Qwest.

3. Of nearly equal importance are the prices the Commission will establish for the collocation of equipment necessary for line sharing (primarily POTS splitters), the prices for installation and disconnection of shared lines, and the charge for operational support systems ("OSS") upgrades.

4. The DLECs' proposed collocation rates are based on the efficient collocation of equipment in central offices. Despite having already had significant experience collocating CLEC line sharing equipment in Washington, Qwest's proposed collocation prices are not based on Washington data. Instead, Qwest seeks to impose model rates that reward its own inefficient decision-making and give Qwest the ability to unilaterally increase its competitors' costs. Similarly, Verizon bases its cost proposals on inaccurate and inappropriate modeling assumptions designed to increase CLEC costs with no concomitant benefit.

5. With regard to the non-recurring cost of installing and disconnecting shared lines, Qwest relied in this docket on its NRC study for stand-alone loops despite admitting (a) that line sharing requires a different study, and (b) that Qwest has, in fact, completed such a study. Qwest failed to meet its burden of proof in this docket, and the Commission should reject Qwest's cost proposals.

6. Finally, the DLECs challenge Qwest's proposed allocation of the OSS costs Qwest says it will incur to provide line sharing. Qwest's allocations rely on hearsay, not proof, and also should be rejected by the Commission.

II. LEGAL AND POLICY ISSUES[1]

7. Line sharing occurs when xDSL and voice services are both provided across the same loop. On December 9, 1999, the FCC released its line sharing order requiring

[1] Citations to the record will be made by Exhibit and page number. Citations to the transcript will be made as "Hearing Transcript (witness), page and line."

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ILECs to make available the UNE necessary for line sharing.[2] The Commission subsequently opened this docket to determine the prices of the elements necessary to provide line sharing.

8. What the Commission must determine in this docket is (1) the price CLECs will pay for the high frequency spectrum network element or HUNE; (2) the recurring and non-recurring prices for installing and maintaining the additional equipment needed to support line sharing; (3) the non-recurring prices for installing and disconnecting a shared line; and (4) the recurring charge (if any) for OSS upgrades necessary for line sharing. Both policy and legal considerations will guide the Commission's determinations on these issues.

A. POLICY ISSUES

9. The Commission's responsibility in this proceeding is to price UNEs so CLECs have the ability to effectively compete with ILECs in the provision of telecommunications services to Washington consumers. This will be possible only if UNEs are priced at long-run, forward-looking costs, and are non-discriminatory in their application.[3] Ultimately, appropriate pricing mechanisms will benefit consumers, and are in fact necessary to bring consumers the benefits of competition promised in the Act.

10. The Commission's pricing of line sharing UNEs is especially significant to consumers in the State. Unlike basic "plain old telephone service," xDSL service is currently unavailable to a substantial portion of Washington consumers. As a result, the Commission's efforts in line sharing will not only bring competitive xDSL offerings, but will also expose this service to many consumers who previously did not have access to this exciting technology. How the Commission prices these line sharing UNEs will in large part determine the breadth of the

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[2] In the Matter of 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 (Rel. Dec. 9, 1999) ("FCC Line Sharing Order").

[3] Ex. 180 (Klick Response), p. 11.

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"digital divide" that separates those with access to high-speed data services and those without such access. When it was discovered the existing loop could deliver high-speed data without any additional loop costs, there was great hope for ubiquitous, low-cost, high-speed data services. If that hope to be realized, the Commission must price line sharing UNEs efficiently, must avoid creating unnecessary costs of providing xDSL service, and must keep the xDSL consumer in the forefront of its public policy concerns.

11. All parties agree the Commission should price the line sharing UNEs in a way that promotes efficient competition among providers. The appropriate consideration is competition among xDSL providers, not competition between xDSL providers and data providers using other forms of technology. The FCC ordered line sharing to break the ILECs' monopoly hold on the HUNE, because that monopoly hold prevented meaningful competition from CLECs who were then required to either buy an entire loop or build new facilities. Thus, the Commission's goal here is to establish prices that are cost-based, non-discriminatory, and efficient as between the ILEC and a CLEC wishing to serve a customer by using the HUNE. Whether high-speed data providers using other technology can effectively compete with xDSL providers will be and should be a function of the cost and capabilities of the technology. The Commission should reject claims that xDSL service should be over-priced to benefit other such providers. As a matter of public policy and good economics, the right policy for the Commission is to set prices correctly and let the market choose among alternative technologies.[4]

12. Finally, the Commission will be asked to set prices that mimic those found in a competitive market. No commission, however, has a crystal ball that will allow it to foresee just what price a competitive market will produce. The Commission, therefore, has two options – it can guess what that price would be, or it can apply an economically sound cost methodology designed to best replicate what happens in competitive markets. The DLECs urge the Commission not to price based on a "hunch," but instead to consider appropriate pricing

[4] Ex. 194 (Cabe Response), p. 7.

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methodology in conjunction with meaningful evidence in the record. In addition, the Commission should remember that to mimic a competitive market, it must not allow pricing that will lead to supra-normal profits,[5] and it must not give the incumbent the ability to unilaterally raise its competitors' costs.

B. LEGAL ISSUES

1. Telecom Act

13. The Federal Telecommunications act of 1996 ("1996 Act") fundamentally changed the way in which telecommunications services are provided to consumers. Rather than being bound to take service from the ILEC as a result of the ILEC's historical monopoly franchise, Congress gave consumers the right to choose which provider would serve them using the existing facilities. To promote meaningful competition between the ILEC and competitors, Congress required that network elements necessary for competition be made available at cost-based, nondiscriminatory prices.[6] These principles apply not just to competition in the provision of basic local phone service, but also to competition that provides consumers advanced telecommunications services. Congress' intent, expressed in Section 706 of the Act, was to:

> [E]ncourage the deployment on a reasonable and timely basis of advanced telecommunications capability of all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications markets, or other regulating methods that remove barriers to infrastructure investment.[7]

Congress directed the Federal Communications Commission ("FCC") to promulgate rules for pricing network elements, and directed State commissions to set prices consistent with the principles of the Act and the directives of the FCC.

2. Federal Court Decisions

(a) Iowa Utilities II

14. Although no federal court case directly instructs a commission as to pricing for

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[5] Ex. 194 (Cabe Response), p. 10.
[6] 47 U.S.C. § 252(d).
[7] Ex. 90 (Cabe Direct), p. 15.

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line sharing, the Eighth Circuit Court of Appeals' July 18, 2000 decision on remand in Iowa Utilities Board v. FCC ("Iowa Utilities II")[8] related to the FCC's rules on pricing UNEs generally. Contrary to Qwest's claims, that ruling has no impact on this proceeding. First, the Eighth Circuit has ordered a stay of that ruling, pending resolution by the Supreme Court, so it may never become effective.[9] The Commission should recall that the Eighth Circuit already voided the FCC's pricing rules once, only to be reversed by the Supreme Court in AT&T Corp. v. Iowa Utilities Board[10].

15. Second, an analysis of Iowa Utilities II shows the relatively narrow scope of the ruling on the FCC's TELRIC pricing rules under 47 C.F.R. § 51.505. Attached hereto as Attachment A is a copy of 47 C.F.R. § 51.505, with § 51.505(b)(1) – the only portion of that regulation the Eighth Circuit was vacated – crossed out. The Eighth Circuit did not vacate the total element long-run incremental cost ("TELRIC") methodology which is otherwise required by FCC Rule 51.505(b).[11] Moreover, a State commission is still prohibited under the FCC's rules from pricing elements based on embedded costs,[12] opportunity costs,[13] or revenues used to subsidize other services.[14] Thus, any claim that a UNE price can reflect that it is a "highly valuable asset" to the ILEC, or "provides substantial value" to the CLEC, amounts to a request for "opportunity costs," which is still foreclosed by the FCC's pricing rules under 47 C.F.R. § 51.505.[15] In addition, the Eighth Circuit confirmed that an ILEC is not entitled to a profit in the pricing of any element.[16]

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[8] 219 F.3d 744 (8th Cir. 2000).
[9] The Eighth Circuit issued its order staying that portion of the decision which vacated Section 51.505(b)(1) on September 22, 2000. The docketing statement from the Eighth Circuit reflecting that order is included in Attachment A.
[10] 525 U.S. 366 (1999).
[11] Iowa Utilities II, 219 F.3d at 752 ("Here the FCC's use of a forward-looking cost methodology was reasonable").
[12] 47 C.F.R. § 51.505(d)(1).
[13] 47 C.F.R. § 51.505(d)(3).
[14] 47 C.F.R. § 51.505(d)(4).
[15] See Local Competition Order, ¶¶ 708-09 (discussed at Ex. 200 (Cabe Rebuttal), pp. 3-4).
[16] Iowa Utilities II, 219 F.3d at 752 ("Section 252(d)(a)(B) states only that rates paid for either interconnection or furnishing unbundled access 'may include a reasonable profit.' The use of the word 'may' indicates that the inclusion of a reasonable profit is not mandatory but permitted.").

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16. The real test of the relevance of this ruling (if it ever becomes the law) in this docket is whether the DLECs' proposed pricing relies on the FCC's definition of "efficient network configuration" in 47 C.F.R. § 51.505(b)(1). In every case, the DLECs' position does not require a hypothetical network as contemplated in § 51.505(b)(1). As is discussed below, the DLECs' proposed price for the HUNE is the same regardless of the network configuration. Section 51.505(b)(1) also has no impact on the DLECs' objection to Qwest's proposed installation and disconnection rates.

17. Similarly, the DLECs' proposed collocation rates reflect efficient placement of splitters based on the ILECs' central offices and existing technologies.[17] The DLECs have not proposed collocation rates that require a hypothetical central office, but instead seek prices that require the ILEC to make efficient decisions within the available space and equipment. Ultimately, the DLECs propose that Qwest cannot unnecessarily increase CLECs' costs by choosing to implement line sharing in a way that is inefficient, inappropriate and not required. FCC Rule 51.505(b)(1) is not implicated in this analysis.

18. The DLECs' proposed pricing for planning and engineering for splitter collocation differs from Qwest's only in the amount of time assumed in three collocation scenarios, and in the number of splitters that can be placed in a relay rack.[18] The DLECs propose time assumptions based on actual Qwest central offices and engineering practices.[19] The assumptions do not rely on 47 C.F.R. § 51.505(b)(1). Similarly, the DLECs' primary objection to Verizon's pricing proposals springs from Verizon's practice of assessing costs based on inappropriate (and hypothetical) equipment categories rather than any survey of actual costs. Finally, the DLECs' objection to Qwest's OSS cost recovery is not at all based on a hypothetical network, but on Qwest's attempt to recover more than what is actually necessary to implement line sharing. In sum, Iowa Utilities II vacated only 47 C.F.R. § 51.505(b)(1), and that section need not be relied

[17] Hearing Transcript (Zulevic), 976:21-24.
[18] Ex. 182 (Klick Rebuttal), p. 17.
[19] Hearing Transcript (Zulevic), 976:21-24.

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on to support the DLECs' proposed prices. As a result, the Eighth Circuit's Iowa Utilities II decision, even if it does become effective, has no impact on this proceeding.

(b) All cost studies require assumptions to determine the proper inputs.

19. One conclusion that ILECs, and in particular Verizon, will seek to have drawn after the Iowa Utilities II case is that a UNE price must reflect actual costs they incur in providing the UNE. To the contrary, neither ILEC has proposed prices that reflect actual costs. Instead, the ILECs ask the Commission to rely on cost studies which employ models to best determine the best prices for many central offices with actual costs that differ for many reasons. Models are, by necessity, hypothetical in nature as there is no one central office in existence that identically matches any model and no two central offices that are exactly alike. As Mr. Klick explained, any study requires modeling unless each central office is being separately examined and priced.[20]

20. The question, then, is not whether a party's proposed pricing relies on assumptions, but is whether these assumptions are appropriate under proper pricing standards and policy considerations. As is demonstrated herein, the DLECs propose prices that assume efficient ILEC deployment of line sharing within existing central offices and using existing technology. This is completely consistent with the Commission's pricing standards and public policy considerations. Qwest's model, on the other hand, is based on inefficient practices and supposedly supported by data that did not come from any central office in Washington. Similarly, Verizon based its cost proposals on an impermissibly small sample of central offices and broad-brushed generalizations regarding line sharing equipment that Verizon's own witnesses admit are not correct.

3. FCC Orders

21. In its Local Competition Order[21] the FCC set out rules for state commissions to apply when establishing UNE prices. The FCC adopted a cost-based pricing methodology based

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[20] Hearing Transcript (Klick), 1109:24-1110:5.

[21] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15,499, ¶ 1 (1996) ("Local Competition Order").

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on forward-looking economic costs, concluding that best furthered the goals of the 1996 Act.[22] The adoption of a forward-looking cost methodology required the FCC to reject claims that UNEs should be priced to recover other costs, including:

> (1) embedded or accounting costs in excess of economic costs; (2) incumbent LECs' opportunity costs; (3) universal service subsidies; and (4) access charges.[23]

To properly capture forward-looking economic costs, the FCC adopted the TELRIC methodology.[24] Because in competitive markets, the price of a good or service tends towards its long-run economic cost, the FCC expected this pricing methodology to best encourage efficient levels of entry and investment.[25]

22. The FCC also placed the burden of demonstrating costs of providing UNEs on the ILEC, because the ILEC has access to that information and is better situated to meet that burden:

> We note that incumbent LECs have greater access to the cost information necessary to calculate the incremental cost of the unbundled elements of the network. Given this asymmetric access to cost data, we find that incumbent LECs must prove to the state commission the nature and magnitude of any forward-looking cost that it seeks to recover in the prices of interconnection and unbundled network elements.[26]

This allocation of the burden of proof on costing issues was codified in FCC Rule 51.505. Thus, where the ILEC fails to offer evidence sufficient to prove the appropriateness of its proposed prices, the Commission should reject those prices in full.

23. When the FCC issued its Line Sharing Order it specifically directed that the price of line sharing UNEs "should be set by states in the same manner as they set the price for other unbundled network elements,"[27] and noted that virtually all states had already adopted and implemented a TELRIC methodology.[28] With regard to the establishment of the price of the HUNE, the FCC further required that TELRIC principles be used to adopt a reasonable method

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[22] Local Competition Order, ¶ 620.
[23] Local Competition Order, ¶ 621.
[24] Local Competition Order, ¶ 672.
[25] Local Competition Order, ¶¶ 672-75.
[26] Local Competition Order, ¶ 680.
[27] FCC Line Sharing Order, ¶ 135.
[28] FCC Line Sharing Order, ¶ 132.

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for determining the shared loop cost. In extending the methodology, the FCC concluded:

> In arbitrations and in setting interim prices, states may require that incumbent LECs charge no more to competitive LECs for access to shared local loops than the amount of loop costs the incumbent LEC allocated to ADSL services when it established its interstate retail rates for those services. This is a straightforward and practical approach for establishing rates consistent with the general pro-competitive purpose underlying the TELRIC principles. We find that establishing the TELRIC of the shared line in this manner does not violate the prohibition in section 51.505(d)(1) of our rules against considering embedded cost in the calculation of the forward looking economic cost of an unbundled network element.[29]

The FCC went on to explain the reasons for its determination:

> We find it reasonable to presume that the costs attributed by LECs in the interstate tariff filings to the high-frequency portion of the loop cover the incremental costs of providing xDSL on a loop already in use for voice services. Under the price cap rules for new access services, the recurring charges for such services may not be set below the direct costs of providing the service, which are comparable to incremental costs. The rates the incumbent LECs set for their special access xDSL services should cover those costs. The incumbent LECs filed their cost support for their own special access DSL services before we issued the notice giving rise to this Order compelling line sharing, and they have defended their cost support when challenged in petitions to reject or suspend their tariff filings. Since the incremental loop cost of the high-frequency portion of the loop should be similar to the incremental loop cost of the incumbent LEC's xDSL special access service, this approach should result in the recovery of the incremental loop cost of the high-frequency portion of the loop.[30]

In a later Order regarding access reform issues, the FCC clarified that this pricing principle for the HUNE is mandatory, not suggestive. The FCC stated:

> The Line Sharing Order concluded that states should not permit incumbent LECs to charge more to competitive LECs for access to shared local loops than the amount of loop costs the incumbent LEC allocated to ADSL services when it established its interstate retail rates for those services. [31]

24. The FCC established another critical directive for the application of TELRIC principles in its Local Competition Order. The FCC expressly prohibited ILECs from charging CLECs for costs not caused by the provision of the UNE being priced:

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[29] FCC Line Sharing Order, ¶ 139 (emphasis added).
[30] FCC Line Sharing Order, ¶ 140 (footnote omitted) (emphasis added).
[31] FCC 00-193, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45 (rel. May 31, 2000), at ¶ 98 (emphasis added).

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> Only those costs that are incurred in the provision of the network elements in the long run shall be directly attributable to those elements. Costs must be attributed on a cost-causative basis. Costs are causally-related to the network element being provided if the costs are incurred as a direct result of providing the network elements, or can be avoided, in the long run, when the company ceases to provide them.[32]

In addition, the FCC found in the Local Competition Order that embedded costs, opportunity costs, and universal service subsidies are not proper considerations for setting the price of unbundled network elements.[33] These FCC principles apply in this docket.

4. Washington Law and Prior Commission Orders

25. Washington State telecommunications policy as declared by the legislature in 1985 provides that it is the policy of the State to:

> (1) Preserve affordable universal telecommunications service;
>
> (2) Maintain and advance the efficiency and availability of telecommunications service;
>
> (3) Insure that customers pay only reasonable charges for telecommunications service;
>
> (4) Insure that rates for noncompetitive telecommunications services do not subsidize the competitive ventures of regulated telecommunications companies;
>
> (5) Promote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state . . . .[34]

Properly interpreted and applied, these policies are fully consistent with the 1996 Act and applicable FCC orders. The DLECs' recommendations in this docket will further several of these policies and have no adverse impact on any of them. For example, adopting the DLECs' recommendation to set the HUNE price at $0 will clearly "advance the efficiency and availability of telecommunications service" and "[p]romote diversity in the supply telecommunications services," while having no adverse effect on universal service.

26. This Commission has addressed imputation issues and quite properly preferred to avoid a price squeeze by lowering prices rather than by raising them. In the only case in which the Commission has had to decide whether to increase end-user rates or to decrease the price for

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[32] Local Competition Order, ¶ 691.
[33] Local Competition Order, ¶¶ 704-15.
[34] RCW 80.36.300.

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the bottleneck monopoly input in order to ensure that the ILEC's rates for the competitive service passed imputation, the Commission expressed a clear preference to decrease the monopoly rate.[35] Consistent with its prior order, the Commission should set the monopoly HUNE rate low ($0), rather than forcing ILECs and CLECs to set or maintain higher xDSL retail rates.

27. The Commission has also followed the FCC in rejecting arguments that opportunity costs be considered in pricing UNEs.[36] Thus, the Commission should not consider the resale value of the HUNE or any purported loss of revenue to Qwest from the HUNE. Further, the Commission should set a price that will "lead to the efficient utilization of the incumbent local exchange company's network"[37] Setting a HUNE price above $0 will ultimately suppress demand for line sharing, which will lead to greater demand for a separate voice and data loop to the end-user premise or promote continued use of dial-up data services that are not the most efficient use of the ILECs' voice networks.

28. The Commission approved a standard for cost models in the prior cost docket, requiring that for UNE pricing, "the inputs 'must be realistic, accurate estimates of all of the actual costs a provider would incur if it built out a new network using the least cost, forward-looking technology.'"[38] Thus, the Commission should reject Qwest's proposed collocation cost studies because they are not based on the least cost approach. Indeed, the Commission may not only reject Qwest's inefficient costs and prices for collocation, but may also direct Qwest to provide the most efficient means of collocation of the splitter under its authority to regulate "the rates, services, facilities, and practices" of telecommunications companies.[39] For similar reasons, the Commission should take this opportunity to require Verizon not to withdraw the Verizon

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[35] See Order Granting Complaint In Part, Northwest Payphone Association, et al., Docket No. UT-920174 (March 17, 1995) (ordering U S West to reduce access line rates rather than increase payphone end user rates to eliminate price squeeze).

[36] 17th Supplemental Order, Generic Cost Docket, Docket Nos. UT-960369, et al., 172-73, 202.

[37] 8th Supplemental Order, Generic Cost Docket, Docket Nos. UT-960369, et al., 23.

[38] 8th Supplemental Order, Generic Cost Docket, Docket Nos. UT-960369, et al., 27 (quoting U S West Brief) (emphasis in original).

[39] See, e.g., RCW 80.01.040(3); Fourth Supplemental Order, WUTC v. U S West Communications, Inc., Docket Nos. UT-941464, et al. (October 1995) (requiring unbundling, collocation, and interconnection under state law provisions prior to passage of TCA).

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provided splitter option that the DLECs have already relied upon in developing line sharing products in Verizon territory.

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III. LINE SHARING

29. All of the parties in this Docket are in basic agreement as to the components that make up the network elements necessary for line sharing. Qwest agrees with the DLECs, for example, that the HUNE is the high frequency spectrum on a copper loop that extends between the network interface device at the customer premise and the termination point at the Qwest central office.[40] Qwest also acknowledged that the network architecture diagrams attached to CLEC witness Michael Zulevic's Response Testimony[41] accurately describe the architecture and elements for which Qwest provides proposed pricing.[42]

30. The parties are also in agreement on the conditions necessary for line sharing between an ILEC and a CLEC. Line sharing (for the purposes of this cost docket) requires access to the HUNE on an all-copper loop.[43] According to current FCC rules, the loop must already be carrying ILEC voice services before a CLEC can order the HUNE.[44] If the end-user no longer uses ILEC voice services on the loop, then the ILEC need no longer provide a CLEC with the HUNE on that loop.[45] To access the loop, a CLEC must have access to a POTS splitter in the central office from which the loop extends. That POTS splitter can either be CLEC owned and collocated (as is the case with Qwest) or ILEC owned and leased to the CLECs (as is the case with Verizon). The loop is then connected to the POTS splitter via either tie cables or jumpers, where the voice and data signals are again directed to their appropriate destinations via either tie cables or jumpers.[46]

31. The Commission must determine pricing for the HUNE, collocation, non-recurring costs, and OSS cost recovery. As to the HUNE, DLECs and Verizon agree that the

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[40]Hearing Transcript (Fitzsimmons), 177:3-14.
[41]Exs. 173, 174, 175.
[42]Ex. 20 (Thompson Rebuttal), p. 21; Hearing Transcript (Hubbard), 665.
[43]Hearing Transcript (Fitzsimmons), 302:22-24. As noted at page 7 of Exhibit 180 (Klick Response), line sharing can also be performed across a loop containing a fiber component. Because there is no agreement for line sharing under those circumstances, however, they are not being priced in this docket. See also Ex. 190 (Cabe Direct), pp. 6-7.
[44]47 C.F.R. § 51.319(h)(3).
[45]Id.
[46]Ex. 92 (Interim Line Sharing Agreement), pp. 1-2.

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appropriate price, as mandated by the FCC and supported by good public policy, is $0. Qwest, on the other hand, seeks to charge the DLECs more for the HUNE than it ever allocated to its own products, thereby demonstrating the worst of how monopoly pricing can allow monopolists to manipulate the market for the goods and services they control. The differences between the DLECs' and Qwest's collocation pricing proposals are explained by disputes on three basic issues: (1) the appropriate engineering time assumptions (both quantity and allocation) for splitter collocation; (2) the length of cable necessary for installation of the splitter based on the appropriate location of the POTS splitter in the control office; and (3) whether Qwest is entitled to recover costs of using an intermediate distribution frame ("IDF") between the main distribution frame ("MDF") and the splitter. The differences between the DLECS and Verizon are also very simple. Verizon seeks to withdraw its Verizon-owned splitter option, but only after DLECs have deployed their networks in reliance on that option. In addition, Verizon has set its pricing for collocation and the ILEC-owned splitter based without conducting a proper cost survey and without taking into account the significant differences between passive, non-powered line sharing equipment and more traditional powered telecommunications equipment.

32. Disagreement regarding install and disconnect pricing is more fundamental. Qwest, for example, did not even offer an NRC model that considers line sharing. Similarly, Verizon's NRC proposal does not take into account the mechanized OSS for which CLECs will be paying.

33. Qwest's claim for OSS recovery is also insufficient in that Qwest has failed to meet its burden of demonstrating which OSS costs are necessary only for line sharing. (as opposed to other UNEs). Similarly, Qwest has not proven that either its line sharing demand assumptions or estimates of the useful life of these OSS upgrades are correct or have any legitimate basis at all. To the contrary, Qwest expressly refused to provide the DLECs with critical evidence of potential increases in demand for line sharing OSS that would reduce the per-unit cost of the OSS upgrade for the DLECs.

A. HUNE PRICE

34. The most critical unbundled network element necessary for line sharing is the high frequency portion of the copper loop serving the end-user, or the "HUNE". Verizon and the DLECs agree that the appropriate price for the HUNE is $0, so the Commission need not take any action with respect to Verizon. Qwest, however, seeks to impose on the DLECs significant HUNE costs that it knows it does not incur and has never had to bear.

35. Consistent with position of Verizon and the evidence submitted by the DLECs, the Commission should conclude the appropriate price of the HUNE is $0. Qwest incurs no incremental loop cost to provide the HUNE: the Commission established unbundled loop cost of $18.16 does not change as a result of line sharing. Qwest's FCC filings in support of its DSL tariffs show it has no loop cost, and no HUNE cost, in providing that service. Moreover, sound policy requires the Commission establish a price for the HUNE that equals the cost of the HUNE, which is $0. In fact, the various reasons given by Qwest for establishing a price greater than zero for the HUNE are both arbitrary and contrary to federal law. For all of these reasons, the Commission should establish the price of the HUNE at $0.

1. The HUNE Creates No Incremental Cost in the Existing Loop

36. It is undisputed that there is no incremental cost to Qwest when a CLEC (or Qwest itself) uses the HUNE to provide DSL service. Qwest's witness Fitzsimmons made that clear:

> Q: Now, focusing again on what we have described as the loop, the piece of copper between the network interface device and the central office, isn't it correct that there are no additional costs to the loop itself when a CLEC provides DSL service using the HUNE?
>
> A: That's correct. . . . [T]here are not any additional costs.[47]

Because there is no loop cost associated with the HUNE, Qwest did not include any loop cost in its filed cost studies supporting its FCC tariffs for MegaBit services. Instead, the loop cost is treated as wholly a cost of the voice service, and is recovered by Qwest through its voice rates.

[47]Hearing Transcript (Fitzsimmons), 181:3-11.

This fact is admitted by Qwest:

> In the retail service environment for MegaBit service, the cost of the loop is attributed to the basic service, and therefore there is no incremental cost of the loop attributed to MegaBit.[48]

37. The fact that line sharing can only be provided on a loop already being used for voice service provides further reason why there is no incremental cost of the HUNE. Once a loop is connected to an end-user, there are no changes to the physical loop required for the HUNE to be used,[49] and so Qwest incurs no additional costs to provide CLECs (or itself) with the HUNE. In Washington, moreover, Qwest is subject to rate-of-return regulation and the Commission can therefore be 100% confident that Qwest is recovering 100% of the cost of the entire loop – which includes the HUNE – from basic voice services.

38. As discussed above, this Commission has been directed to price UNEs using an incremental cost methodology. The Commission has also been directed by the FCC to use a TELRIC-like analysis to capture the true incremental cost of the HUNE.[50] The "allocation" formula Qwest has proposed for pricing the HUNE clearly does not seek to capture the incremental costs of adding xDSL service over a Qwest loop. Because the Commission must price at incremental cost, and it is undisputed that there is no incremental cost to Qwest for providing the HUNE to CLECs, the Commission should find that that price of the HUNE to CLECs must be $0.

2. Because Qwest's Filings in Support of its Megabit Tariffs Show No Loop Cost and No HUNE Cost, Establishing a Price for the HUNE of Anything Other Than $0 Would Be Discriminatory

39. One of the fundamental policy reasons the FCC ordered line sharing was to

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[48]Ex. 34 (Qwest response to Information Request Covad 01-021).
[49]The only exception to this rule is if conditioning is required to make the loop capable of carrying xDSL services, which is not at issue in this docket.
[50]FCC Line Sharing Order, ¶¶ 139-40.

prevent discrimination by Qwest and other ILECs.[51] That discrimination arose from the ILEC providing its own xDSL services across existing voice loops, but not allowing CLECs to do the same. As the FCC recognized, that practice resulted in discrimination on at least two fronts: pricing and access to customers.[52] The FCC directed states to implement a pricing methodology for the HUNE that would prevent this kind of discrimination in a line sharing situation. This Commission should follow the FCC's direction. If it does, there is no dispute that the application of that FCC pricing methodology results in a $0 HUNE price in this proceeding.

40. The pricing discrimination problem arose because the ILECs, including Qwest, charged themselves $0 for the HUNE while requiring CLECs to purchase unbundled loops at prices that generally exceeded $17 or more.[53] The FCC sought to eliminate discrimination in line sharing by requiring that CLECs pay no more than the ILEC charges itself for the use of the HUNE.[54] The FCC found "it reasonable to presume that the costs attributed to LECs in the interstate tariff filings to the [HUNE] cover the incremental costs of providing xDSL on a loop already in use for voice services."[55] The FCC concluded this approach was reasonable in large part because the ILECs "filed their cost support for their own special access DSL services before we issued the notice giving rise to this Order compelling line sharing."[56] The FCC was convinced this pricing method would accurately capture the true incremental cost of the HUNE.

41. In the present case, Qwest admits it did not and currently does not attribute any cost for the loop to its xDSL products in its MegaBit tariff.[57] In fact, when Qwest filed its

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[51] FCC Line Sharing Order, ¶ 133. See also In the Matter of a Commission Initiated Investigation into the Practices of Incumbent Local Exchange Companies Regarding Shared Line Access, MPUC Docket No. P-999/LI-99-678, Order Requiring Technical Trails, Good Faith Resolution of Operational Issues, and a Resulting Report, p. 2 (Oct. 8, 1999) ("The Commission has concluded that the denial of line sharing at an equitable price is discriminatory and presents a barrier to competition.").

[52] FCC Line Sharing Order, ¶¶ 33-35.

[53] FCC Line Sharing Order, ¶ 133 ("In the current environment, competitive LECs must purchase access to additional lines in order to offer xDSL-based services, while incumbent LECs use their own voice loops to offer these same services.").

[54] FCC Line Sharing Order, ¶ 139 (noting that the Minnesota Commission had approved of this approach).

[55] FCC Line Sharing Order, ¶ 140.

[56] Id.

[57] Ex. 11 (Thompson Supplemental Direct), pp. 5-6; Ex. 194 (Cabe Response), p. 3.

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proposed tariff for MegaBit service in Washington, Commission staff was told by Qwest that loop costs were not included in the cost support for the service because the cost of the loop was already being recovered in the rates for other services.[58] Staff accepted this explanation and believes it would now place CLECs at a competitive disadvantage to allow a charge for the loop to be made for their use of the same functionality for which Qwest charges itself nothing.[59] Qwest's own cost allocation is the best evidence before the Commission of what Qwest believes the cost of the HUNE is. Qwest further admits the application of the FCC's pricing methodology set forth at paragraphs 139 and 140 of the Line Sharing Order, if followed, requires a $0 HUNE price.[60]

42. The Commission should apply the FCC's pricing methodology to the undisputed facts and establish the price of the HUNE at $0. This is the only way that an equally efficient competitor has the same opportunity to compete with Qwest's DSL-based service offerings.[61]

3. Sound Policy Requires the Commission To Establish a Price for the HUNE that Equals the Cost of the HUNE, Which is $0

43. The Commission should not adopt Qwest's arbitrary proposal to set the HUNE price equal to one-half the Commissioned-established unbundled loop rate.[62] This recommendation has no basis in economics or sound public policy and should be rejected out of hand. In fact, principles of economics and sound public policy require that the HUNE be priced at $0, and there are many reasons why a price greater than $0 will create economic inefficiencies and promote bad policy.

44. Qwest readily admits that its recommended price for the HUNE is not based on meaningful evidence.[63] Instead, Qwest proposes what it calls a "reasonable" price, but its economist agreed there is no meaningful evidence that a price of 1% of the loop cost is any less

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[58]Ex. 350 (Spinks Direct), p. 12.
[59]Ex. 350 (Spinks Direct), p. 12.
[60]Hearing Transcript (Fitzsimmons), 186:13-18.
[61]Ex. 190 (Cabe Direct), p. 10.
[62]Ex. 2 (Fitzsimmons Response), p. 11.
[63]Ex 2 (Fitzsimmons Response), p. 11.

reasonable than a price of 50% of the loop cost.[64]

45. Instead of relying on empirical evidence or solid economic principles, Qwest simply picked a number that it likes, but cannot support. In fact, Qwest's proposed method of imputing one-half of the unbundled loop rate to the HUNE was not even manufactured until "January, 2000," obviously in preparation of its direct testimony in this and other pricing proceedings.[65] On the meager evidence presented, the Commission should reject Qwest's proposed price for the HUNE.

46. Contrary to Qwest's position, the CLECs' proposal to price the HUNE at $0 is good economics, good policy, and is based on meaningful evidence in the record. First, as Dr. Cabe testified, any price other than zero for the HUNE would require CLECs to pay the amount of the line sharing charge to Qwest and recover that amount from their customers. This would amount to double recovery for Qwest, with consumers paying twice for the single loop that serves their home or business.[66] This would also insulate Qwest from vigorous price competition from CLECs, and Qwest could expect to maintain a margin on retail xDSL services at least equal to the line sharing charge.[67] In addition, a non-zero price would cause the costs of loops used for line sharing to be priced above their economic cost. Such a result is inefficient and could result in higher cost forms of service becoming more viable, when they should not be deployed at all.[68]

47. Moreover, a price greater than $0 for the HUNE will allow Qwest to double recover its loop costs, and provide Qwest with windfall profits.[69] Because Qwest is rate of return regulated in Washington it is undisputed that Qwest's voice rates were set to fully recover its loop costs.[70] Although Qwest purports to seek outcomes found in competitive markets, double recovery, windfall profits, and prices above cost simply would not occur in a competitive

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[64]Hearing Transcript (Fitzsimmons), 208:11-20; Hearing Transcript (Fitzsimmons), 238:5-15 (witness does not know whether 0% or 50% is closer to a competitive outcome).
[65]Hearing Transcript (Thompson), 409:8-12.
[66]Ex. 194 (Cabe Response), p. 4.
[67]Ex. 194 (Cabe Response), p. 4.
[68]Ex. 194 (Cabe Response), pp. 7-8.
[69]Ex. 190 (Cabe Direct), p. 15.
[70]Hearing Transcript (Thompson), 536:1 – 537:21.

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market.[71]

48. In addition, any price greater than $0 would allow Qwest to put the CLECs in exactly the price squeeze that the FCC sought to avoid by ordering line sharing.[72] A price squeeze could happen because Qwest could undercut CLEC prices by setting its retail prices for MegaBit below the sum of direct costs plus the HUNE charge it does not have to pay.[73] Qwest argues it can somehow prevent that price squeeze by agreeing to require its MegaBit services to be priced at some point higher than the sum of its direct cost plus an "imputed" amount for the HUNE.[74] However, Qwest agrees this supposed imputation could not be enforced by the Commission since MegaBit is federally tariffed service.[75] Moreover, as Dr. Cabe explained, even if the imputation commitment could be enforced, it would still result in an artificially high minimum price for xDSL services, thereby minimizing or eliminating altogether the benefits of competition.[76]

49. Qwest's proposed HUNE imputation is a red-herring. As Dr. Fitzsimmons and Jerrold Thompson admitted, an imputation still results in Qwest keeping for itself the amount of the imputation, while CLECs would incur the direct cost of having to pay the HUNE price to Qwest.[77] This result is one of the significant, discriminatory aspects of the imputation method proposed by Qwest. Because of that unique situation, Qwest could predatorily price its MegaBit service to pass any imputation test by one or two pennies, effectively forcing CLECs to accept only pennies above their direct costs while Qwest recovers those pennies plus the fully imputed amount.[78] While that result may not meet the classic definition of a price squeeze, it still means that Qwest could effectively leverage its monopoly control of the loop to under-price MegaBit to

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[71]Ex. 194 (Cabe Response), p. 10.
[72]FCC Line Sharing Order, ¶ 141.
[73]Ex. 1 (Fitzsimmons Direct), p. 18.
[74]Ex. 1 (Fitzsimmons Direct), p. 18.
[75]Hearing Transcript (Thompson), 369:23–370:7. In addition, Dr. Cabe explained how Qwest might use "promotions" or "rebates" to avoid the effect of the imputation. Hearing Transcript (Cabe), 1166:13-25.
[76]Ex. 194 (Cabe Response), p. 4; Ex. 182 (Klick Rebuttal), p. 5.
[77]Hearing Transcript (Fitzsimmons), 226:2-10, 293:1-19; Hearing Transcript (Thompson), 420-421.
[78]Hearing Transcript (Thompson), 424–426.

a point where CLECs could not effectively compete, thereby increasing its monopoly hold over Washington consumers and depriving those consumers of the benefit of vigorous competition for xDSL services.

50. In the end analysis, the record in this proceeding demonstrates the party that will be harmed most by a price greater than $0 for the HUNE is the Washington consumer. Costs to the CLEC must, after all, be passed through to the consumer.[79] Qwest proposes that the consumer pay more loop costs if it has a shared line, even though there are no more loop costs created, and even though Dr. Fitzsimmons claims the price of the loop should not be dependent on how it is used.[80] The Commission apparently recognized this problem when it previously required Qwest (then U S WEST) to reduce the cost of input elements to competitors rather than increase its prices to the consumer to prevent a price squeeze.[81]

51. The evidence is clear. If the Commission adopts a price greater than $0 the Commission will simply be insuring that (a) Washington consumers pay twice for one copper loop already connected to their premise, that they are already paying for; (b) the price of xDSL service to Washington consumers will never be driven below the artificial limit caused by Qwest's HUNE imputation; and (c) competition, and all of its resultant benefits, will not emerge for xDSL services in the residential market. The only beneficiary of such a decision is Qwest, which, by "agreeing" to the imputation, will cement and protect its monopoly profits from the threat of CLEC competition.

52. The Commission should not permit that to happen. The incremental cost of the HUNE is $0. There are no good policy reasons to set a price for the HUNE that exceeds that cost, and many excellent reasons not to. The Commission should follow the FCC's guidance and the Commission's own prior orders, apply TELRIC principles, make good policy, and find that the price of the HUNE is $0.

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[79]Hearing Transcript (Fitzsimmons), 176:7-17; Ex. 194 (Cabe Response), p. 4.
[80]Hearing Transcript (Fitzsimmons), 242:10-17.
[81]Order Granting Complaint In Part, Northwest Payphone Association, et al., Docket No. UT-920174 (March 17, 1995).

4. A non-zero HUNE charge with an offsetting credit for local service does not benefit consumers

53. The Commission may be tempted to order a positive HUNE price accompanied by an equal offset to the voice rate paid by the customer to Qwest. Such a result, which is not advanced by the DLECs, Qwest, or Verizon in this proceeding, would only harm consumers. It would increase costs associated with the provision of line sharing without providing any benefits to consumers, and as such should be rejected.[82] As Dr. Cabe explained, such a mechanism would make consumers no better off than a $0 HUNE price, because the amount paid by the consumer for both services would thus not change.[83] The only exception is that both voice and DSL prices could rise due to the increased regulatory and transaction costs required to achieve this result, thereby harming consumers.[84]

54. In addition to customers' failure to benefit financially from such an approach, a discount for only certain people would likely cause customer confusion and concerns over the equitable treatment of customers who choose not to use a high-speed data service or to use other forms of high speed data, and over a customer credit in Qwest areas not available to Verizon customers.[85] This customer confusion is not balanced by any benefits to the approach.

55. Third, CLECs' marketing plans will have to distinguish between Qwest and Verizon service areas, which is an unjustified barrier to competition.[86] This, along with increased administrative costs that raise the cost of providing xDSL service, will only make high-speed data services less accessible to Washington consumers, and will only increase the digital divide in the state.[87] For these reasons, sound policy and the public interest require a finding that a $0 HUNE is far more preferable to a non-zero HUNE price and an equal voice service discount. As Chairwoman Showalter observed of Dr. Cabe's position:

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[82]To be clear, a positive HUNE price with a voice rate offset is certainly better than a positive HUNE without an offset, but both results are inferior to a zero HUNE price.
[83]Hearing Transcript (Cabe), 1202:25-1203:3.
[84]Hearing Transcript (Cabe), 1203.
[85]Hearing Transcript (Cabe), 1203:4-20.
[86]Hearing Transcript (Cabe), 1204:17-1205:5.
[87]Ex. 194 (Cabe Response), p. 13.

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> So bottom line is you are saying a zero price doesn't really harm anybody and is the quickest way to competition.[88]

The Commission should accept Dr. Cabe's expert opinion and price the HUNE at $0.

B. COLLOCATION

56. With respect to Washington, all parties have agreed that the Commission should set prices for three network configurations that a CLEC might use in a line sharing situation.[89] Qwest's proposal is based on its collocation cost study filed at the direction of the Commission, which was adjusted in certain limited ways to account for line sharing.[90] The DLECs' cost witness John Klick started with Qwest's study and relied on Qwest's input prices, but made the appropriate adjustments to the model inputs to properly price what is necessary for line sharing for each of the three network architectures.[91] In doing so he relied on engineering witness Mr. Zulevic, whose testimony was based on efficient decisions an ILEC should make in a realistic central office.[92] In response, Qwest, further modified its prices to better – but not completely – reflect line sharing.[93] After considering the evidence, the Commission should adopt the DLECs' proposals for final collocation pricing because they most accurately reflect the application of the appropriate UNE pricing principles to the requirements for line sharing.

57. The DLECs propose pricing three separate collocation scenarios for Qwest:[94] (1) collocation of the frame-mountable splitter on a distribution frame; (2) collocation of the splitter in a relay rack adjacent to the CLEC's collocation area; and (3) collocation of the splitter within the CLEC's existing collocation area. The primary differences in these pricing proposals for collocation boil down to two issues: (a) engineering time assumptions (both quantity and allocation); and (b) the length of cable necessary for installation of the splitter. The Commission

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[88]Hearing Transcript (Cabe), 1205:22-24.
[89]Ex. 20 (Thompson Rebuttal), p. 21.
[90]Ex. 10 (Thompson Direct), p. 4.
[91]Ex. 182 (Klick Rebuttal), pp. 10, 13.
[92]Hearing Transcript (Zulevic), 972:15-21.
[93]Ex. 20 (Thompson Rebuttal), pp. 20-21.
[94] Because the DLECs' proposal does not reward Qwest's inefficient decision to use an IDF, their proposals do not distinguish between splitter on an MDF and splitter on an IDF. Qwest proposed four separate configurations rather than three because it distinguishes between IDF and MDF collocation.

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has established that cost study inputs "must be realistic, accurate estimates of all of the actual costs a provider would incur if it built out a new network using the least cost, forward-looking technology." Consistent with this standard, the Commission should adopt the DLECs' collocation pricing proposals as demonstrated by John Klick.

58. Verizon's issues differ slightly from Qwest's. At the highest level, Verizon seeks to increase CLEC costs by withdrawing its agreement to provide ILEC-owned splitter functionality to CLECs seeking to line share. The Commission should follow the lead of the California Commission in addressing this issue and require Verizon to continue to offer the ILEC-owned splitter option that the CLECs relied upon in deploying their line-sharing infrastructure. Beyond that, Verizon's collocation and splitter costs for line sharing should be rejected by the Commission because they are based only on an incomplete survey of a limited number of Verizon collocations in Washington and the application of hypothetical pricing guidelines that do not correspond to the real equipment used for line sharing.

1. Cable Lengths

59. The first major area of disagreement between Qwest and the DLECs is in the length of cables, which impact both the recurring and non-recurring charges for tie-cables used to connect POTS splitters to the distribution frame and/or the CLEC's collocation area. To price tie cables for the three line sharing configurations, the Commission must determine the distance between the distribution frame and the splitter common area, between the distribution frame and the CLEC's collocation area, and between the splitter common area and the CLEC's collocation area. As is demonstrated below, the DLECs' assumptions as to cable lengths are appropriate and well supported. The Commission should use these inputs in determining the recurring and non-recurring collocation charges.

60. Verizon's cost studies also suffer from infirmities regarding cable lengths and should be rejected by the Commission. While Verizon's proposed costs for collocation of and access to splitter functionality require certain assumptions be made regarding cable length,

Verizon admits that it has performed no studies on cable length.[95] Verizon's failure to perform such a study is fatal to its cost proposals because Verizon, in fact, has already placed splitters in bays where the CLEC splitters will be collocated and therefore had access to the information it could have presented to the Commission had it chose to do so.[96] In light of Verizon's consistent claims that "hypothetical" networks cannot be the basis of cost proposals, it is remarkable that Verizon expects the Commission to approve its own hypothetical pricing when relevant data is actually available.

61. Verizon also inappropriately increases CLEC costs by being the only ILEC to require the use of Category 5 cabling to connect the splitters to the distribution frames and CLEC collocation areas.[97] Qwest does not require the use of Category 5 cabling, which is more expensive than the required Category 3 cabling, because it is not necessary to maintain telecommunications quality in the central office. In fact, Verizon does not even use Category 5 cabling for distribution frame jumpers that carry the same data signals and have the same interference potential as tie-cables.[98] If Verizon wants to deploy – for its own reasons – only Category 5 cabling, the Commission should not allow it to charge any more than the cost of the Category 3 cabling requested by the DLECs.

62. Finally, Verizon also inappropriately increased the recurring cost of splitter access and collocation by developing those costs based on a model associated with digital circuit equipment.[99] As Verizon admits, POTS splitters are non-powered equipment with no complicated electronics and require less maintenance and engineering than the other equipment traditionally placed in the digital circuit equipment line item.[100] Again, instead of using actual cost information Verizon has relied on hypothetical modeling that does not even apply to the type of equipment used in line sharing to try to increase CLEC costs. The Commission should reject

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[95] Hearing Transcript (Bykert), 1258.
[96] Hearing Transcript (Bykert), 1256.
[97] Hearing Transcript (Bykert), 1266-67.
[98] Hearing Transcript (Bykert), 1269.
[99] Hearing Transcript (Behrle), 1276, 1277, 1279.
[100] Hearing Transcript (Behrle), 1275 et seq.

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Verizon's proposed splitter access and collocation costs and require Verizon to file a new cost study that does consider the significantly lower expenses associated with splitters.

(a) Splitter on the MDF or IDF

63. In this first collocation scenario, cabling is only required from the frame to the CLEC's collocation area.[101] Mr. Klick assumed this total distance would average 165 feet (including the required vertical cabling), which would be sufficient to reach an average CLEC's physical collocation area in a three story 100 foot by 120 foot central office, if it is assumed that the CLEC's collocation area is located between 40 and 260 feet from the distribution frame.[102] These assumptions are reasonable and are similar to ILEC assumptions made in this docket.[103] Pursuant to these assumptions, the DLECs proposed cross connect charges for this configuration assume 165 total feet of cable.[104]

(b) Splitter in the common area

64. This configuration will require two cables between the distribution frame and the relay rack in the common area (one data and voice, and one voice only), and one cable from the relay rack to the CLEC's collocation area.[105] The more important distance, then, is that between the distribution frame and the relay rack. As Mr. Hubbard acknowledged, every foot the splitter is placed farther away from the distribution frame requires two additional feet of cabling.[106] In addition, xDSL technologies have a distance limitation, in that the service simply will not work across a loop that extends more than 18,000 feet from the DSLAM that creates the DSL signal, so every unnecessary foot of cabling reduces the effective reach of xDSL services outside of the central office.[107] For these reasons, the Interim Line Sharing Agreement between Qwest and the CLECs calls for the splitter to be placed as close to the CLEC's DS0 termination point (i.e., the

[101] Ex. 72 (Zulevic Response), p. 4.
[102] Ex. 182 (Klick Response), p. 19.
[103] Hearing Transcript (Klick), 1112:18 – 1113:3.
[104] Ex. 182 (Klick Response), p. 20.
[105] Ex. 182 (Klick Response), p. 20.
[106] Hearing Transcript (Hubbard), 677:13-22.
[107] Ex. 172 (Zulevic Response), p. 3.

frame) as possible.[108]

65. To balance the goal of placing the splitter near the frame with the realities of Qwest central offices, the DLECs' witness Zulevic testified that the proper assumption for this configuration is that the splitter will be placed within 25 feet of the frame.[109] This 25-foot assumption is quite reasonable based on actual collocation practices. As Qwest's witness Hubbard and DLEC witness Zulevic agreed, there are approximately five to seven rows of relay racks within 25 feet of a distribution frame.[110]

66. If the splitter is 25 feet from the frame, the two cables running between the frame and the common area would be 40 feet each, and the one cable from the common area to the CLEC's collocation area would be 140 feet.[111] The DLECs' proposed cross connect charges for this configuration use these cable lengths as inputs.[112] The proposal by Qwest, however, places the splitter 100 feet from the frame, which results in significantly higher cabling requirements than the DLECs' proposal.[113] Qwest based this 100 foot recommendation on its selective survey of Qwest central office installations. Qwest's survey included 31 installations in only 13 Minnesota central offices.[114] Qwest gave no justification, however, for failing to report the measurements from any of the 78 Washington central offices, or from the other 37 Minnesota central offices where line sharing is being implemented.[115] In fact, the only evidence of actual splitter placement in Washington central offices came from Mr. Zulevic, who testified that in two central offices in Washington, Qwest has placed splitters in an area that added 100-150 feet of cabling cost, even though "there was plenty of space available within that 25-foot distance from the mainframe . . . ."[116] Qwest has presented no evidence that its 100 foot distance is efficient or

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[108]Ex. 92 (Interim Line Sharing Agreement), p. 2.
[109]Ex. 172 (Zulevic Response), p. 3.
[110]Hearing Transcript (Hubbard), 726:11-16; Ex. 172 (Zulevic Response), p. 6.
[111]Ex. 182 (Klick Rebuttal), p. 20. These numbers include vertical distance as well as horizontal distance. Id.
[112]Ex. 182 (Klick Rebuttal), p. 20.
[113]Hearing Transcript (Hubbard), 669:4-11; 672:7-11.
[114]Hearing Transcript (Hubbard), 669:22-23.
[115]Hearing Transcript (Hubbard), 669:24-670:15.
[116]Hearing Transcript (Zulevic), 971:4-16.

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necessary in Washington, and as a result Qwest's proposed pricing should be rejected by the Commission.

67. The DLECs' assumption that the splitter should be placed within 25 feet of the distribution frame (1) complies with the Interim Line Sharing Agreement, (2) minimizes the length of cabling across which the data signal must travel; and (3) significantly reduces the amount of cabling requiring by minimizing the doubling effect of having two cables run from the splitter to the MDF. These assumptions, and the corresponding cross connect charges, should be adopted by the Commission.

(c) Splitter in CLEC Collocation Area

68. This line sharing configuration requires two cables of an equal length – one from the distribution frame to the CLEC's collocation area, and one returning to MDF.[117] The DLECs' proposed total cable length of 230 feet for this scenario is based on the assumption that the CLEC's collocation area is located 165 feet from the frame, which is discussed above.[118] The Commission should accept this proposed cable length as the proper input for determining cross connect charges in this configuration.

(d) CLECs' use of existing tie cables

69. Finally, if a CLEC is already collocated in the ILEC's central office, the CLEC may have existing tie cables connecting the distribution frame to the CLEC's collocation area. If the CLEC chooses, it should be able to use the tie cables previously used for other purposes for line sharing. Qwest agrees this is appropriate.[119] Mr. Klick calculated and reported the appropriate reductions that should be applied to cabling costs in that situation.[120]

2. Engineering Costs

70. The DLECs agree they should pay Qwest for planning and engineering work required for splitter collocation. The Commission should adopt the DLECs' proposals for

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[117]Ex. 172 (Zulevic Response), pp. 5-6.
[118]Ex. 182 (Klick Rebuttal), p. 20.
[119]Hearing Transcript (Hubbard), 690:12-16.
[120]See Ex. 182 (Klick Rebuttal), p. 21.

engineering time assumptions and related collocation pricing because the assumptions are based on credible evidence and appropriate allocations, while the Qwest assumptions are not credible, do not distinguish based on the type of collocation, and overstate the costs of planning and engineering splitter collocation. The time assumptions for planning and engineering in the DLECs' cost proposal were sponsored by Mike Zulevic, who has more than 30 years of technical engineering experience as a central office technician, central office supervisor, or engineer of equipment placed in Qwest (then U S WEST) central offices.[121] Based on his extensive experience working in Qwest central offices, Mr. Zulevic provided to Mr. Klick an estimate of the manpower requirements for planning and engineering required in each of the three forms of splitter collocation.[122] In providing information to Mr. Klick, Mr. Zulevic's assumptions were "based upon how to use the existing network in the most efficient way."[123] Those values representing the number of hours for each planning and engineering function are as follows:[124]

[121]Ex. 170 (Zulevic Direct), p. 3.
[122]Ex. 172 (Zulevic Response), p. 8.
[123]Hearing Transcript (Zulevic), 976:21-24.
[124]Ex. 172 (Zulevic Response), p. 9.

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Function	MDF Splitter Collocation	Common Area Splitter Collocation		Splitter in CLEC Collocation Space
		Splitter	Relay Rack	
Outside Plant Access Design	0.0	0.0	0.0	0.0
MDF Planning	2.0	1.0	0.0	1.0
Overhead Rack Planning	0.5	0.5	0.0	0.5
Power Engineer	0.0	0.0	0.0	0.0
Equipment Engineer	3.0	1.0	3.0	0.0
Equip. Installation Project Manager	2.0	1.0	1.0	1.0
Operations Group	1.5	1.0	1.0	1.0
ILEC Contact Group	1.0	1.0	0.0	1.0
Other ILEC Groups	1.0	1.0	0.0	1.0

Using these assumptions, Mr. Klick developed total engineering costs by (a) attributing direct installation-related engineering costs to each splitter; and (b) where relay racks are installed to hold the splitter, attributing the engineering cost of the relay racks across all of the splitters that could be placed in the rack.[125]

71. To attribute the engineering cost of relay racks across splitters, Mr. Klick assumed that a relay rack can hold 12 shelves of equipment, most likely splitters.[126] As Mr. Zulevic testified, a standard size relay rack can hold 14 splitter shelves.[127] In addition, the Interim Line Sharing Agreement does not prohibit Qwest from placing its own equipment in the same bay as the CLEC splitters. Neither does it require Qwest to build separate racks for splitters. In fact, the Agreement would allow Qwest to avoid rack construction cost altogether by placing CLEC splitters in existing, unused relay rack space.[128] These circumstances combine to indicate that relay racks can always be filled to capacity, so Mr. Klick's assumption that these engineering costs should be spread across 12 splitters is a conservative one.

72. The engineering manpower requirements proposed by Qwest, on the other hand, were developed by Qwest's witness Hubbard, who has no central office engineering experience,[129] and who has never engineered a splitter collocation,[130] and who relied on reports of

[125]Ex. 182 (Klick Rebuttal), p. 17.
[126]Ex. 182 (Klick Rebuttal), p. 18.
[127]Ex. 172 (Zulevic Response), p. 8.
[128]Ex. 192 (Interim Line Sharing Agreement), p. 2; Hearing Transcript (Hubbard), 699:21-700:19.
[129]Ex. 80 (Hubbard Direct), pp. 102.
[130]Hearing Transcript (Hubbard), 672:17-19.

splitter installation from Minnesota – not Washington – central offices.[131] In addition, while Mr. Hubbard recommends 20 hours of planning and engineering for every job, and neither Mr. Hubbard nor Mr. Thompson adjusted Qwest's engineering estimates for the different types of splitter collocation.[132] Mr. Hubbard testified, however, that "[e]ach alternative has unique costs, requirements, and benefits." [133] Similarly, Qwest did not allocate the cost of engineering the rack (as opposed to installing the splitter) across all the equipment that will be placed in the rack or bay. Mr. Hubbard admitted, however, that Qwest only has to engineer the rack and conduct load assessments once to hold all of the equipment, and does not re-engineer the entire bay or conduct load assessments for each new piece of equipment.[134]

73. Further, Mr. Hubbard's testimony regarding engineering time is riddled with contradictions. Mr. Hubbard, for example, testified that engineering time is required for (a) checking the plans for a central office; (b) verifying the accuracy of the plans; (c) performing a central office field visit; and (d) updating the central office design database with the new plans for the splitter installation.[135] This is contradictory because there is no need to verify the accuracy of plans or perform a field visit if Qwest correctly updates its central office design database.

74. Moreover, Qwest seeks to have competitors pay extra engineering costs as a result of its own inefficient engineering decisions. Although Qwest is allowed to place splitters in existing racks and avoid some new construction costs, Qwest built new splitter bays in central offices providing line sharing.[136]

75. The DLECs' proposal, based on Mr. Zulevic's extensive central office experience and an appropriate allocation of engineering costs to the different types of collocation, is credible

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[131]Hearing Transcript (Hubbard), 669:12-18.
[132]Ex. 83 (Hubbard Response), p. 9.
[133]Ex. 80 (Hubbard Direct), p. 7. See also Hearing Transcript (Hubbard), 715:5-718:12; 742:12-16. In addition, the jobs Qwest looked at to develop these proposed hours did not include any collocations where the splitter was located in the CLEC's collocation area. Hearing Transcript (Hubbard), 743:12-18.
[134]Hearing Transcript (Hubbard), 709:25-711:17.
[135]Ex. 83 (Hubbard Response), pp. 3-5.
[136]Hearing Transcript (Hubbard), 694:1-13.

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and unassailed on the record. Accordingly, if the Commission accepts the assumptions and allocations advanced by the DLECs, then the Commission should also accept the pricing advanced by the DLECs. Based on the greater credibility of the DLECs' engineering calculations as compared to Qwest's, the Commission should adopt the DLECs' engineering cost proposals.

3. Qwest Shelf Allocations (Fill Rate)

76. The assumptions as to rack occupancy is an important factor in the development of forward-looking costs. Some incumbent collocation cost models substantially overstate costs by assuming that relay and cable racks will have to be installed for the exclusive use of a single competing CLEC, or a small number of CLECs, instead of sharing racks between competitors and the ILEC. Incorporating such inefficiencies into the calculation of collocation costs – including splitter collocation required for line sharing – deprives competitors of the benefits of the economics of scope and scale achievable by an efficient incumbent.[137] This would violate a key requirement of long-run, forward-looking cost studies, and generate rates for collocation and the central office components of line sharing that would be overstated and discriminatory.

77. As discussed above, it is undisputed that a rack will accommodate 14 splitters, but the DLECs' proposal assumes only 12 splitters per rack for pricing purposes. Thus, the DLECs divided the total cost of engineering a relay rack by 12 splitter shelves per rack to price on a per-splitter basis. This is a conservative approach, it is more realistic than Qwest's assumption of 8 shelves per rack, and given that Qwest can place splitters on existing ILEC racks, the "fill factor" proposed by Qwest is completely unnecessary.

4. Efficient Configuration

78. In its earlier orders, cited above, the Commission adopted Qwest's recommendation that cost study inputs "must be *realistic, accurate estimates* of all of the *actual* costs a provider would incur if it built out a new network using the least cost, forward-looking technology."[138] In examining costs incurred inside a central office to provide line-sharing, the

[137]Ex. 180 (Klick Rebuttal), p. 13.
[138]Eighth Supplemental Order, Docket UT-960369, ¶ 27.

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above recommendation requires that cost study inputs be realistic, accurate estimates of all of the actual costs a provider would incur if it built out a new "central office" using the least cost, forward-looking technology." A forward-looking central office would contemplate outside loop plant terminating at the ILEC's MDF, and it would contemplate CLEC collocation areas located throughout the central office, not concentrated in one area far distant from the MDF.[139] Splitter collocation assumptions must be consistent with this forward-looking central office design and location of the CLEC's collocation facilities.[140]

79. Consistent with these standards, the FCC has ordered that in making collocation available to competitors an ILEC "may not require competitors to use an intermediate interconnection arrangement" because "such intermediate points of interconnection simply increase collocation costs without a concomitant benefit."[141] Thus the FCC has thus prohibited ILECs from passing on the cost of this inefficient network architecture to CLECs. A result otherwise would reward inefficient decisions and allow an ILEC to unilaterally increase its competitors' costs. This Commission has been similarly skeptical of the use of an intermediate frame, also called a SPOT frame.[142] As a result, the Commission should not set line sharing prices to include costs associated with the ILEC's use of an intermediate frame between the MDF and the splitter.

80. Qwest does not dispute that it seeks to recover costs associated with the use of an IDF in its "interconnection tie pair" charge. The interconnection tie pair is only necessary when an ILEC requires the use of an IDF that is not part of the MDF.[143] The use of an IDF requires Qwest to use blocks and one cable unnecessary if the CLEC is connected directly to the MDF.[144] It is the cost of these additional blocks and cable that makes up Qwest's recurring

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[139] Ex. 182 (Klick Rebuttal), p. 11.
[140] Ex. 182 (Klick Rebuttal), p. 11.
[141] In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, First Report and Order and Notice of Proposed Rulemaking, 14 FCC Rcd 4761, ¶ 42 (Nov. 9, 1999) ("Advanced Services Order").
[142] 17th Supplemental Order, ¶¶ 338-39, Generic Cost Docket, Docket Nos. UT-960369 et at. (August 1999).
[143] Hearing Transcript (Hubbard), 668:23-25.
[144] Ex. 190 (Cabe Direct), pp. 18-19.

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"interconnection tie pair" charge.[145] As a result, if the Commission determines to price based on efficient collocation decisions consistent with the FCC's order, it should reject Qwest's interconnection tie pair charge. [146]

5. Miscellaneous Charges

81. The Commission should also reject Verizon's proposed non-recurring costs for "minor materials" used to install splitters, which Verizon calculated by applying a straight percentage to the cost of a splitter. Again, instead of proposing a price based on the actual cost of the handful of nuts and bolts required to place a splitter in a rack, Verizon concocted a hypothetical cost that has no basis in any type of reasonable cost study, but instead results from the simple application of a set percentage to the cost of equipment. Using that approach, the price of the same nuts and bolts can vary significantly depending on whether the splitter costs $100 or $10,000. The Commission should reject Verizon's hypothetical approach to pricing nuts and bolts and require Verizon to perform a real cost study on the installation of splitters.

82. Likewise, the Commission should reject Verizon's attempt to compel CLECs to pay for jumper costs that Verizon would incur regardless of line sharing. In short, Verizon is attempting to compel CLECs to pay a recurring cost for the jumper that must exist for the end-user to get voice service even without line sharing.[147] While this cost may seem insignificant on a case by case basis, the cumulative effect of each additional, unnecessary cost placed on the CLECs is to deter competition for xDSL services and increase Verizon revenues at the expense of the consumer. Verizon's voice rates were set by the Commission to recover the cost of this single jumper, and the Commission should not permit Verizon to double recover for it.

C. NON-RECURRING CHARGES

83. The Commission should reject Qwest's proposed prices for installation and

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[145] Ex. 70 (Brotherson Direct), pp. 8-9.
[146] Ex. 182 (Klick Rebuttal), p. 12.
[147] See Hearing Transcript (Boshier), 1224; Hearing Transcript (Behrle), 1291-1292.

disconnection of a shared loop because 1) Qwest failed to offer a non-recurring cost model relevant to line sharing; 2) Qwest seeks to charge CLECs the cost of manual ordering and provisioning; and 3) Qwest seeks unnecessarily to collect for disconnection at the time of installation.

1. Qwest Did Not Offer a Line Sharing NRC Model

Qwest has the burden in this proceeding of demonstrating the accuracy of its proposed prices.[148] With regard to the appropriate installation and disconnection rates for line sharing, it simply has not met its burden. Qwest's proposed installation and disconnection rates for line sharing are taken from Qwest's collocation NRC cost model.[149] Qwest did not offer a line sharing specific NRC cost model in this proceeding, even though Mr. Thompson admitted there are differences between provisioning line sharing and provisioning an unbundled loop.[150] Qwest cannot claim that a line sharing NRC model could not have been provided, as Qwest admits submitting such a model in the Minnesota line sharing proceeding.[151] In short, because Qwest agrees the model it used is not designed for line sharing, it cannot dispute that its proposed prices are without support and must be rejected.

2. Qwest's Pricing for Installation and Disconnect Improperly Includes the Cost of Manual Ordering and Provisioning

84. The Commission should also reject Qwest's proposed installation and disconnection charges because Qwest is attempting to charge CLECs for manual ordering and provisioning.[152] The FCC required that:

> Incumbent LECs should be able to implement OSS and other loop facility modifications within 180 days of the Commission's release of this order to accommodate requests for access to this new network element. We believe that there may be interim measures that will allow competitive carriers to begin obtaining some form of access to this unbundled network elements even before 180 days.[153]

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[148] 47 C.F.R. § 51.505(e); Local Competition Order, ¶ 680.
[149] Hearing Transcript (Thompson), 465:1 – 466:8.
[150] Hearing Transcript (Thompson), 466:18-21.
[151] Hearing Transcript (Thompson), 466:13-14.
[152] Ex. 180 (Klick Response), pp. 27-28.
[153] FCC Line Sharing Order, ¶ 161.

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In light of the FCC's order, these systems should already be in place. Qwest should not be able to recover the significantly higher costs associated with manual ordering and provisioning associated with line sharing because it has failed to meet the FCC requirement to update its OSS systems.

85. Moreover, the Commission's May 11, 1998 order in Docket No. UT-960370 required Qwest to update the installation and disconnection charges when appropriate. Specifically, the Commission stated:

> The cost findings in this Order do not reflect the transactional efficiencies that may be achieved through computer links between the ILECs' and CLECs' operational support systems. When these systems are in operation, we expect the ILECs to fulfill their commitment to revise their studies to reflect the associated savings.[154]

Here, Qwest has stated in Exhibit BJB-14 to witness Brohl's testimony that both the Interconnect Mediated Access – Electronic Data Interexchange ("IMA-EDI") and the Interconnect Mediated Access – Graphical User Interface ("IMA-GUI") allow CLECs to "use the same interface to send their pre-ordering and ordering transactions, which are processed by the same OSSs that provide these functions to US WEST's retail units."[155] If true, Qwest should have provided an updated study to reflect the efficiencies and cost savings achieved by automating the ordering and provisioning process, rather than continuing to base these charges on manual processing. Without a valid submission by Qwest on the charges for installation and disconnection, Qwest's proposed prices must be rejected.

86. In any event, the proper basis for calculating installation and disconnection charges, consistent with long-run, forward-looking costs is on the basis of full electronic flow-through OSS systems.[156] Under Qwest's current proposal, CLECs are put in a lose-lose scenario. They are paying for Qwest's OSS upgrades, but being provided with only inferior manual ordering and provisioning. To make matters worse, Qwest also proposes that CLECs pay

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[154] 8th Supplemental Order, ¶ 482, Generic Cost Docket, Docket Nos. UT-960369 et at. (April 1998).
[155] Ex. 114 (OSS Descriptions).
[156] Ex. 180 (Klick Response), p. 29.

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Qwest's costs to provide inferior manual ordering and provisioning. The Commission should order Qwest to refile its proposed prices to include costs for installation and disconnection that reflect 100% full-electronic, flow through processes.

3. CLECs Should Not Have to Pay an Up-Front Disconnect Charge

87. The parties also differ on when the disconnect charge should be assessed. The CLECs demonstrated the charge should only be assessed when the CLECs' customer actually cancels its DSL service and the line is no longer shared. This is because the majority of xDSL customers will maintain service for a very long period of time.[157] A CLEC should not be required to pay Qwest for disconnection costs until it actually ceases to line share. Conversely, Qwest believes the charge should be assessed and paid at the time the shared line is ordered. Further, Qwest's cost study supporting its proposal does not take into account either the time value of money or the churn rate for shared lines in determining what amount of money CLECs should pay at the time of ordering for the costs of disconnect. Under the CLECs' proposal to pay the cost of disconnection at the time of disconnection, it is not necessary to determine the churn rate or reduce the costs to its present value to avoid a windfall to Qwest.[158] The Commission should order that whatever disconnection charge it approves be collected at the time of disconnect.

D. LINE SPLITTING OVER UNE-P

88. The Commission has determined that the cost of line splitting over UNE-P will not be addressed in this phase of the Docket, so the DLECs have not addressed that issue here.

IV. OSS COST RECOVERY

A. SUFFICIENCY AND ACCURACY OF OSS COST ESTIMATES

89. Both this Commission and the FCC have expressed skepticism as to the magnitude of any increase in costs associated with improved OSS.[159] Rather than substantiate its

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[157]Ex. 182 (Klick Rebuttal), p. 30.
[158]Ex. 182 (Klick Rebuttal), p. 30.
[159]Compare 17th Supplemental Order, ¶ 107, et seq., with FCC Line Sharing Order, ¶¶ 94, 96.

request for OSS cost recovery, Qwest relied on vague hearsay that gives the Commission and CLEC's no chance to verify the work it claims is necessary. The basis for the bulk of the amount that Qwest seeks to recover is a formal proposal for a contract issued by Telcordia. This document cannot serve as evidence of the forward looking economic cost of improved OSS or even as a basis for a "known and measurable" expenditure for any purpose. For this reason alone, its request for OSS recovery should be denied.

90. In its initial testimony, Qwest's claim for OSS recovery relied on telephone conversations which relayed the total amount of the OSS upgrade costs, as well as the determination that 85% of these costs "could be attributed solely to line sharing."[160] However, that offer on which Qwest was relying was an offer which apparently was never accepted and had expired some months before testimony was filed in this proceeding.[161] In addition, Qwest claims no knowledge as to how the quote was prepared, and provided nothing in writing to explain or substantiate the claim that 85% of the 14 million dollar total "could be attributed solely to line sharing."

91. Rhythms affirmatively sought further information from Qwest as to the claim that the great majority of OSS modifications would solely benefit CLECs using line sharing arrangements. In response, Qwest provided only high level generalities relating to the alleged complexity of placing two different local service providers on one line – Qwest and the CLEC.[162] The FCC has proposed that in order to validate a claim like this, an ILEC must provide a detailed evidentiary basis on which interested parties and the Commission could determine the extent to which any new OSS capabilities benefit its own operations (or those of affiliates), rather than just unaffiliated competitors.[163] This test is certainly not met by the testimony and discovery response provided by Qwest.

92. Qwest's approach to OSS recovery is fully consistent with a monopolist's desire to

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[160]Ex. 200 (Qwest Response to Request RLI 03-008).
[161]Ex. 194 (Cabe Response), p. 23.
[162]Ex. 194 (Cabe Response), p. 24; Ex. 200 (Qwest Response to Request RLI 03-008).
[163]Ex. 190 (Cabe Direct), pp. 20-21.

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maintain its market power by raising the cost of potential competitive entry. Qwest has delayed the implementation of these systems, has sought to require potential competitors to pay the full capital cost of these conversions (even though they stand to benefit immensely from these upgraded systems), and at the same time seeks to assess installation and disconnection rates on the basis of the inefficient, costly manual processes inherent in their embedded legacy systems. This is not consistent with the pro-competitive attitude envisioned by the Telecommunications Act, and should be rejected by the Commission.[164]

B. APPROPRIATE COST RECOVERY MECHANISM

93. The appropriate method for recovery of the costs, if any, properly associated with the upgrades necessary for line sharing is a monthly recurring charge that is no longer assessed once the cost of the upgrade, if any, has been recovered. The amount of the charge should be calculated by determining the upgrade cost properly attributed solely to line sharing (including the time value of money), and by calculating a per-month assessment on CLEC and MegaBit xDSL customers that takes into consideration total xDSL demand assumptions, and time by the expected life of the upgrade.[165]

C. ALLOCATION ISSUES AND LINE SHARING

1. Number of Lines/Demand Assumptions

94. Qwest's proposed OSS cost recovery charges must be rejected because Qwest's assumptions as to the number of lines over which such costs will be recovered is without support in the record. The FCC has cautioned that assessing such recurring costs at levels that are too high will penalize those carriers who are the first to compete.[166] This anti-competitive result should cause the Commission to consider the evidence as demand assumptions carefully before allocating OSS costs.

95. Here, Qwest has provided no support for its claim of anticipated demand. Qwest

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[164]Ex. 182 (Klick Rebuttal), p. 27.
[165]See Ex. 194 (Cabe Response), pp. 17-22.
[166]Hearing Transcript (Thompson), 448:13-20.

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took demand assumptions of a single CLEC and extrapolated to obtain an industry-wide demand "estimate," did not seek demand assumptions from other CLECs, and did not rely at all on its own MegaBit demand numbers.[167] These MegaBit numbers are likely to be the best starting point to estimate of future demand for shared lines because, prior to line sharing, MegaBit was the only xDSL product available to consumers in Qwest's territory across the consumer's existing phone line. Because Qwest has approximately 630 MegaBit customers per central office,[168] using those numbers for what they are – the best evidence of demand for xDSL over an existing phone line – would have produced a far smaller recurring cost that what was proposed.[169] The Commission therefore should reject Qwest's proposed demand assumptions as used in its OSS pricing proposals.

2. Length of Time – Depreciation Life

96. While Qwest proposes to recover its OSS upgrades over a short period of time, the record does not support a finding that line sharing will have a life of only five years.[170] Qwest provided no study to support that claim, and offered no legitimate evidence on that point. As set forth above, these kinds of costs should be recovered over an appropriate time frame, or else those who pave the way for competition are significantly disadvantaged. The Commission should reject Qwest's proposed OSS recovery until such time as it offers real evidence as to the life of line sharing.

97. In addition, the DLECs propose that the Commission order that any charge be imposed only until the Commission-established amount has been recovered.[171] Because the volume assumptions are subject to substantial uncertainty, such a limit must be imposed to prevent substantial over recovery by the ILEC.[172] Verizon agrees the charge should be

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[167]Hearing Transcript (Thompson), 436:18 – 437:12.
[168]Hearing Transcript (Thompson), 444:5-11.
[169]Compare 175,000 current MegaBit customers (Hearing Transcript, 443:25-444:4) with Qwest's estimates on Ex. 45.
[170]Hearing Transcript (Thompson), 456:17-20.
[171]Ex. 194 (Cabe Response), p. 22.
[172]Ex. 194 (Cabe Response), p. 22.

discontinued once the specified amount has been recovered.[173]

3. Allocation Over Other Loops

98. The Commission should allocate OSS costs over all loops carrying DSL service, not just those shared by CLECs, for three reasons. First, while the ILECs claim that they receive no benefit from these expenditures, this is almost certainly wrong. All xDSL customers will benefit from the competitive pressures that will be significantly facilitated by full electronic, flow through OSS.[174] As Dr. Cabe explained, because all users of shared lines are buyers in the same market, they all derive immediate benefit from competition on price and quality, all of which is enabled by improved OSS.[175] Under such circumstances, if all xDSL customers benefit, all xDSL customers should pay a portion of the cost.[176] Second, as a result of major mergers and consolidations (that continue to this day), the ILECs currently are burdened with numerous legacy OSS systems that do not communicate well with each other.[177] In a competitive environment, the ILECs will soon be forced to consolidate into region-wide or nationwide call center environments, which will be feasible only if a single set of local service ordering guidelines is used throughout the entire company.[178] Thus, much of the OSS work being undertaken by ILECs now – in terms of eliminating database errors and developing a single set of rules to be utilized system wide – will be extremely valuable to ILECs in the near future.[179] Specifically with respect to line sharing, the possibility that Qwest will establish a separate subsidiary to provide MegaBit service throughout its region further suggests that Qwest's customers also will benefit from whatever OSS modifications are made to permit CLECs to implement line-sharing.

99. Third, the Commission should implement a recovery mechanism that is least

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[173]Ex. 194 (Cabe Response), p. 22.
[174]Ex. 182 (Klick Rebuttal), p. 25.
[175]Ex. 194 (Cabe Response), p. 19.
[176]Ex. 182 (Klick Rebuttal), p. 25.
[177]Ex. 182 (Klick Rebuttal), pp. 25-26.
[178]Ex. 182 (Klick Rebuttal), pp. 26.
[179]Ex. 182 (Klick Rebuttal), pp. 26.

discriminatory and serves the public interest by promoting the development of efficient competition.[180] Dr. Cabe explained how imposing an OSS charge on CLECs but not the ILEC would allow the ILEC to either be insulated from true price competition or engage in a price squeeze.[181] Providing access to line sharing arrangements under non-discriminatory prices, terms and conditions requires, at a minimum, that all end-user customers are similarly situated with respect to any OSS transition charge.[182] For these reasons, any OSS charge should apply equally to customers of ILECs and to CLECs.

D. OTHER ISSUES

100. For reasons of efficiency, the DLECs focused in this docket on the costs associated with line sharing. Accordingly, the DLECs join in the comments of the other CLECs in this docket regarding all other costs being considered.

V. COLLOCATION

101. For reasons of efficiency, the DLECs focused in this docket on the costs associated with line sharing. Accordingly, the DLECs join in the comments of the other CLECs in this docket regarding all other costs being considered.

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[180]Ex. 194 (Cabe Response), p. 20.
[181]Ex. 194 (Cabe Response), p. 21.
[182]Ex. 202 (Cabe Rebuttal), p. 18; Ex. 194 (Cabe Response), pp. 20-21.

VI. CONCLUSION

102. For the reasons set forth above, the DLECs respectfully request that the Commission adopt their proposed line sharing prices for the HUNE and collocation, and reject the ILECs' proposed charges for installation, disconnection and OSS upgrades. The HUNE costs $0, and it should be priced at $0. The DLECs' suggested pricing for collocation accurately reflects the efficient placement of splitters, and will ensure competitively fair deployment of line sharing. Proposed non-recurring and OSS charges have simply not been proven by the ILECs, and must be rejected on the record before the Commission. The Commission should take the next important step toward assuring that fair competition for advanced services will thrive for the benefit of Washington consumers.

Respectfully submitted this 9th day of October 2000.

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