BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the CONTINUED COSTING AND PRICING OF UNBUNDLED NETWORK ELEMENTS, TRANSPORT, TERMINATION, AND RESALE	Docket No. UT-003013, Part A QWEST'S ANSWER TO PUBLIC COUNSEL'S PETITION FOR RECONSIDERATION OF THE THIRTEENTH SUPPLEMENTAL ORDER

Pursuant to the provisions of WAC 480-09-810, RCW 34.05.470, and the Fourteenth Supplemental Order . . . Further Filings Regarding Part A Petitions for Reconsideration, Qwest Corporation ("Qwest") hereby files its answer to Public Counsel's Petition for Reconsideration of the Commission's Thirteenth Supplemental Order in this matter.

I. INTRODUCTION

Public Counsel asks the Commission to reconsider its order with regard to the "double recovery" issue in connection with establishing a positive price for the HUNE. Public Counsel states no basis for reconsideration, which is generally limited to circumstances where factual or legal errors exist in the final order and may be corrected on reconsideration. However, Public Counsel does not allege any such errors, but merely repeats the same points that it made in its closing briefs on this issue. Thus, the Commission has already considered

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

Public Counsel's arguments. The Commission made the correct factual and legal findings with regard to this issue in the Thirteenth Supplemental Order, and no reconsideration is warranted.

II. ARGUMENT

A. The Commission Was Correct to Defer Consideration of the Double Recovery Issue.

The gist of Public Counsel's argument is that the Commission cannot defer consideration of the double recovery issue, but rather must address it in tandem with the establishment of the $4.00 rate for the HUNE. Public Counsel cannot prevail on this issue, for several reasons, not the least of which is that Public Counsel cannot remove the uncertainty around the issue of whether there will even be double recovery, which is why the Commission has deferred consideration of the issue.

1. The Issue of Revenue Neutrality Versus Earnings.

Public Counsel's argument is difficult to follow on this point, but it appears that Public Counsel is arguing that any new revenues associated with the use of the loop results in an over-recovery of loop costs, because ILECs are presumed to be recovering their loop costs from existing revenues. Implicit in this argument seems to be the assumption that a certain portion of local services revenues are earmarked or designated as revenues for loop costs. Public Counsel's argument is simplistic in the extreme, and misses a number of important points which must be considered in an environment which is both regulated and increasingly competitive.

First, as Qwest pointed out in its earlier pleadings, and as the Commission recognized in its order, "increased" revenues from one service, even if that service is a new one never

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

offered before, does not necessarily mean a net increase in revenues. Use of line sharing may well result in a decrease in the penetration of second lines. Thus, it may well be that Qwest previously sold two 1FR services to a single address, at $12.50 each, plus $4.35 for the SLC. With line sharing, the customer could discontinue service on one line, and take DSL service from a DLEC. Thus, Qwest's *revenues,* the very thing that Public Counsel claims are important, would decline by $12.85 each month, because it would receive only $4.00 for the line shared portion of the loop.

Second, Public Counsel ignores the fact that Qwest and other ILECs introduce new services and features on a regular basis, many of which use or are provided over the loop. Yet Public Counsel does not argue that any customer taking those new services ought to receive a discount on their local service. Additionally, under the current retail prices and access charges in effect, some loop costs have been assigned to toll and access as well. Those toll and access revenues could also decrease, as customers begin to use internet telephony and thereby avoid toll and access charges. Yet Public Counsel does not appear to recommend that the price for local service should go up if revenues for those services decrease. Thus, Public Counsel has failed to consider the implications of its proposal, and has one-sidedly offered only a rate decrease or credit.

Finally, it is somewhat disingenuous for Public Counsel to suggest that under current rates the ILECs are (presumed to be) recovering all their loop costs from existing services. Whether this presumption is accurate is not relevant to this discussion. What is relevant is the other presumption that Public Counsel employs, but does not discuss, and that is the presumption that all other rates and revenues will remain static or fixed with the advent of line sharing. This is the question that cannot be determined in a way to allow anyone to reach a

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

reasoned conclusion that double recovery will in fact exist. In the Thirteenth Supplemental Order, at ¶85, the Commission determined that it was premature at that time to determine whether the non-zero rate for the HUNE would lead to over-earnings on a regular basis, and thus deferred the issue. Public Counsel offers no new analysis or information to lead to a different conclusion one month later, and Public Counsel's arguments should be rejected.

2. There is No Certainty that Double Recovery Will Result, and the Issue Need Not be Addressed at this Time.

Public Counsel next claims that because an AFOR plan might be approved without an earnings review, and such an earning review therefore might not occur for the foreseeable future, the Commission should act now to "rebalance" rates. This argument is pure speculation. Qwest has already briefed the issue of whether the Merger Settlement Agreement permits what Public Counsel is proposing, and will not repeat those arguments here. However, this argument, as with all of Public Counsel's other arguments, is premised on the unsupported assumption that revenues will incrementally increase due to line sharing, and that a certain amount of the 1FR revenues is somehow assigned or earmarked for loop cost recovery. Neither assumption is correct, as discussed above.

3. There is No Violation of Section 254(k).

Public Counsel next argues that the Commission's ruling will result in a violation of Section 254(k) of the Act. Qwest addressed this issue in its closing brief, and will not belabor the point here. However, the Commission is at no risk of violating Section 254(k) of the Act by ordering a positive price for the HUNE with no retail offset. Public Counsel claims that unless there is some offset or sharing, the Commission would in essence be ordering that all loop costs be recovered from voice services. It is unclear how this can be true, when the

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

Commission has explicitly ordered that $4.00 per month of loop costs will be recovered from the line sharing DLEC, as well as imputed to Qwest's DSL service. Any revenues from voice services that exceed the costs of the loop are simply a contribution to the joint and common costs of the company, not double recovery.

4. The Commission's Ruling on this Issue is Not Anti-Competitive.

Public Counsel claims that failure of the Commission to adjust other rates would operate to place the DLECs who pay the line sharing charge at a competitive disadvantage. This argument is premised on the same assumptions already discussed above – i.e., that existing revenues and costs will remain static, that the $4.00 will represent incremental revenue, and that there really will be "double recovery" or windfall profits to the ILEC.[1] Additionally, it is worth noting that the DLECs who commented on this issue (Covad/Rhythms) did not favor a credit to Qwest's voice customers. Thus, while the competitors may not favor a positive price for the HUNE in the first instance (a position that is contrary to Public Counsel's), nor do they appear to favor a credit mechanism as a way to address competitive parity issues. Qwest believes that the Commission's ability to ensure that the HUNE price can be imputed into Qwest's DSL is sufficient to address competitive parity concerns, and that the lack of a credit to retail customers is not anti-competitive.

---

[1] Because Public Counsel is so insistent on this point, Qwest believes that it is worth noting that it currently provides fewer than 3000 line shared lines in Washington. At $4.00 per line per month, incremental revenues would be less than $150,000 per year. It is a matter of public record that Qwest's regulated revenues in Washington are between $900,000,000 and $1,000,000,000 annually. While Qwest is not making a "*de minimis*" argument here, it does seem as though Public Counsel's fervor on this issue is a bit out of proportion to the magnitude of the actual dollars involved.

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

B. A Tracking or Deferral Account is Unnecessary.

Public Counsel offers what it calls an "intermediate option" to the Commission, suggesting that the Commission could order the ILECs to set up an account where the revenues from line sharing are recognized, and used "as appropriate" in future proceedings. It is unclear whether Public Counsel would require refund of those revenues, but that does appear to be the argument that is being advanced.

This suggestion again assumes that there will be "double recovery," an assumption that Public Counsel makes but fails to support. Additionally, establishing such a tracking mechanism is a poor use of resources, when at any given point in time, the number of line sharing customers will be determinable, and the Commission will be able to ascertain, in the context of a future proceeding, what impact line sharing revenues should have going forward. Public Counsel's proposal essentially requires ILECs to collect these revenues subject to refund, and there is no legal or policy reason to support such a plan.

III. CONCLUSION

In conclusion, the Commission should deny Public Counsel's petition for reconsideration on the "double recovery" issue, and affirm its decision to address that issue in the next rate proceeding.

Respectfully submitted this 28th day of February, 2001.

Qwest Corporation

____

Lisa A. Anderl, WSBA # 13236

Qwest Corporation
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040