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June 8, 2007

Frances Nichols Anglin  
Oregon Public Utility Commission  
550 Capitol St., NE  
Suite 215  
Salem, OR 97301

Re: ARB 775

Dear Ms. Nichols Anglin:

Enclosed for filing in the above entitled matter please find an original and (5) copies of Qwest Corporation's Surrebuttal Testimony of:

Renee Albersheim (Qwest/40;  
Curtis Ashton (Qwest/41;  
William Easton (Qwest/42;  
Karen Stewart (Qwest/43; and  
Teresa Million (Qwest/44; and Exhibits Qwest/45, Qwest/46, Qwest/47 and Qwest/48).

If you have any questions, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in cursive script that reads "Carla".

Carla M. Butler

CMB:

Enclosure

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**CERTIFICATE OF SERVICE**

**ARB 775**

I hereby certify that on the 8<sup>th</sup> day of June 2007, I served the foregoing **QWEST CORPORATION'S SURREBUTTAL TESTIMONY OF RENÉE ALBERSHEIM, CURTIS ASHTON, WILLIAM EASTON, KAREN STEWART AND TERESA MILLION** in the above entitled docket on the following persons via means of e-mail transmission to the e-mail addresses listed below.

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DATED this 8<sup>th</sup> day of June, 2007.

**QWEST CORPORATION**



By: \_\_\_\_\_

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**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

**ARB 775**

**In the Matter of**

**ESCHELON TELECOM OF OREGON,  
INC.**

**Petition for Arbitration of an  
Interconnection Agreement with Qwest  
Corporation, Pursuant to Section 252 of the  
Telecommunications Act**

**SURREBUTTAL TESTIMONY OF**

**RENÉE ALBERSHEIM**

**FOR**

**QWEST CORPORATION**

**DISPUTED ISSUE NOS. 1-1, 9-37, 9-37(a), 9-38, 12-64, 12-67, 12-71, 12-72, 12-73 and 12-  
87**

**June 8, 2007**

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**I. IDENTIFICATION OF WITNESS**

**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Renée Albersheim. I am employed by Qwest Services Corporation, parent company of Qwest Corporation (“Qwest”), as a Staff Witnessing Representative. I am testifying on behalf of Qwest. My business address is 1801 California Street, 24th floor, Denver, Colorado, 80202.

**Q. DID YOU FILE DIRECT TESTIMONY ON MAY 3, 2007 AND REBUTTAL TESTIMONY ON MAY 23, 2007?**

A. Yes, I did.

1  
2  
3  
4  
5  
6

**II. PURPOSE OF TESTIMONY**

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. The purpose of my testimony is to respond to portions of the rebuttal testimony of Eschelon witnesses Mr. Douglas Denney, Mr. Michael Starkey and Ms. Bonnie Johnson.

1                   **III.           THE CHANGE MANAGEMENT PROCESS (“CMP”)**

2  
3   **Q.       ESCHELON CLAIMS THAT ITS ICA PROPOSALS HAVE NO IMPACT ON**  
4   **THE CHANGE MANAGEMENT PROCESS (“CMP”).<sup>1</sup> PLEASE RESPOND**  
5   **GENERALLY.**

6   A.       Eschelon’s proposals for the parties’ interconnection agreement would have no impact on  
7       the CMP if Qwest could reasonably maintain one set of systems, processes and  
8       procedures for Eschelon and another set of systems, processes and procedures for other  
9       CLECs. That is simply not the case, however, for the disputes at issue in this arbitration.  
10       Separate systems, processes and procedures would create an administrative burden for  
11       Qwest and would increase the potential for errors, thereby degrading the quality of the  
12       service that Qwest provides to its CLEC customers. Maintaining separate systems,  
13       processes and procedures would not be efficient, and would result in increased costs, and  
14       at times might not even be technically feasible.

15  
16       If Eschelon’s CMP-related proposals were to be adopted, in order to maintain a single set  
17       of processes, Qwest would have to seek an ICA amendment from Eschelon before  
18       implementing any change request submitted by CLECs or by Qwest that would have an  
19       impact on the related systems, processes or procedures. At best, this onerous requirement  
20       would insert extra steps into the process required by the CMP. At worst, this burden  
21       would give Eschelon the power to veto change requests submitted by other CLECs  
22       through the CMP. No single CLEC should have the ability to prevent other CLECs from  
23       having changes implemented in the CMP.

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<sup>1</sup> See, for example, Rebuttal Testimony of Michael Starkey (“Starkey Rebuttal”), at p. 18.

1 **Q. YOU MENTIONED COSTS ABOVE, AND AS A FORMER PROGRAMMER,**  
2 **YOU HAVE EXPERIENCE ESTIMATING THE COSTS OF SYSTEMS**  
3 **CHANGES. WOULD YOU EXPLAIN THE KINDS OF TASKS ASSOCIATED**  
4 **WITH MAKING THE SYSTEMS CHANGES YOU DESCRIBE ABOVE?**

5 A. Yes. A change to systems generally involves the following steps: analysis, design,  
6 development, testing and implementation. Analysis includes evaluation of the change  
7 requested, and a determination of all of the specific requirements of the change. During  
8 the design phase, a determination is made as to how best to meet the requirements of the  
9 change. Generally this task involves choosing between altering existing computer  
10 programs, creating new programs to integrate with existing programs, or when required,  
11 reprogramming the entire application to accomplish all requirements. During  
12 development, the actual programming changes are made. The next step is testing.  
13 Testing is usually done in phases. The first phase will test the new or changed programs  
14 to ensure they work properly. The next phase will integrate the new or changed programs  
15 into the larger application. The application will be tested internally to make sure that it  
16 still works properly. The last phase of testing involves using the application with  
17 production data to ensure that the changes have no negative impacts on the systems the  
18 application works with. If any stage of testing fails, further development work may be  
19 required. After additional development is completed, testing starts over again. The  
20 change will not move forward to implementation until it successfully completes all  
21 phases of testing. The last phase is implementation. This often involves a test period in  
22 which the people who use the application test the new version to make sure it works  
23 properly and that it meets the requirements of the original change request. Upon end-user  
24 acceptance, the change is considered complete.

25  
26 **Q. HOW DO YOU ESTIMATE THE COST OF MAKING A CHANGE LIKE THE**  
27 **ONE DESCRIBED ABOVE?**

1 A. The cost for each of the steps discussed above can be measured as a labor rate multiplied  
2 by the number of labor hours required to complete each step. For example, if the labor  
3 rate applied to this work is \$60 per hour, and the steps for the change can be completed  
4 with 100 hours of effort, generally the time required for a very basic programming  
5 change will cost \$6,000.

6

7 **Q. ARE THE COSTS OF MAKING A CHANGE THE ONLY COSTS TO**  
8 **CONSIDER?**

9 A. No. One must also consider the cost of maintaining the change, especially if it is made  
10 for one end-user and not for all others. Going forward, any time the application is  
11 changed, one must make sure that all subsequent changes work for the one end-user, and  
12 for all the other end-users. This adds time and, therefore, adds costs to all phases of  
13 development for all changes going forward.

14

15 **Q. WITH REGARD TO QWEST'S OPERATIONS SUPPORT SYSTEMS ("OSS"),**  
16 **YOU HAVE ARGUED THAT INCREASED COMPLEXITY RESULTS IN A**  
17 **GREATER POSSIBILITY FOR ERRORS. CAN YOU EXPAND ON THAT?**

18 A. Yes. As computer programs become more complex, it becomes more difficult to  
19 anticipate the impact a change can have on these programs. Programmers will try to  
20 come up with test scenarios to encounter all possibilities, but sometimes they are not  
21 successful. So when programs are more complex, the full impact of changes, including  
22 impacts to other applications or systems, may not be discovered until after the change is  
23 implemented. In a worst-case scenario, this can result in a significant slow down in  
24 system response time, or worse, it can result in system shutdown.

25

26 **Q. DOES INCREASED COMPLEXITY IMPACT HUMAN PROCESSES, AS WELL**  
27 **AS SYSTEMS PROCESSES?**

1 A. Yes. For example, a service delivery coordinator who must manually process a CLEC  
2 order will be more efficient and accurate if typing that order is standardized. Every  
3 variation in how that order must be typed increases the complexity of the process, and  
4 increases the likelihood of errors.

5  
6 **Q. WILL ESCHELON'S PROPOSALS, SUCH AS FOR JEOPARDY NOTICES,  
7 RESULT IN ADDED COMPLEXITY?**

8 A. In the specific example of jeopardy notices, Eschelon wants this Commission to believe  
9 that Qwest can maintain jeopardy notice requirements specific to Eschelon, and allow the  
10 CMP to maintain separate jeopardy notice requirements for all other CLECs. Qwest's  
11 jeopardy notices are created by a series of computer programs, however. Thus,  
12 Eschelon's proposed ICA language would require Qwest to maintain two separate sets of  
13 computer programs.

14  
15 **Q. MR. STARKEY CLAIMS ON PAGE 42, AND ESCHELON'S OTHER  
16 WITNESSES ALSO CLAIM, THAT ESCHELON'S PROPOSALS REFLECT  
17 THE STATUS QUO. IS THAT CORRECT?**

18 A. No. Eschelon's proposals for service intervals (Issue 1-1), acknowledgement of mistakes  
19 (Issue 12-64), expedited orders (Issue 12-67), jeopardies (Issue 12-71), and controlled  
20 production testing (Issue 12-86) do not reflect Qwest's current operating procedures. If  
21 these proposals are accepted, Qwest will be forced to treat Eschelon differently than it  
22 treats all other CLECs, or Qwest will be forced to change its operations to be consistent  
23 with Eschelon's contract, thereby adversely affecting the operations of other CLECs. If  
24 intervals are changed in the CMP, the change will not apply to Eschelon and opt-ins to  
25 Eschelon's contract without the advice adoption letter. There is a potential that Qwest  
26 will have to deal with two intervals, one for Eschelon, and one for everyone else. The  
27 end result is that an interval change will not be possible until Eschelon signs an advice

1 adoption letter. Thus Eschelon will have the ability to hold interval changes hostage.

2  
3 **Q. ESCHELON WITNESS MS. JOHNSON INTRODUCED A NUMBER OF**  
4 **EXHIBITS REGARDING NEGOTIATION LANGUAGE IN HER TESTIMONY.**  
5 **PLEASE RESPOND GENERALLY.**

6 A. In my direct testimony, I noted: “Eschelon proposed a new version of section 12 and  
7 negotiations were based on Eschelon’s rewrite of the section.” My testimony made no  
8 other claims with regard to Eschelon’s new version of Section 12. Eschelon’s witnesses  
9 go to some lengths to try to demonstrate that Qwest insists on using its own language and  
10 does not allow CLEC input. Eschelon’s re-write of Section 12 and the parties’  
11 negotiation of Section 12 illustrate exactly the opposite.

12  
13 **Q. ARE THERE ANY FACTUAL ERRORS IN ESCHELON’S DISCUSSION OF**  
14 **NEGOTIATION LANGUAGE?**

15 A. Yes. While the errors are not relevant to the issues at hand, they reflect Eschelon’s  
16 apparent global effort to try to portray Qwest as a bad actor. For example, Eschelon  
17 claims that CLEC forums used to be held in which Qwest discussed proposed changes to  
18 contract language.<sup>2</sup> Setting the factual record straight, however, CLEC forums were not  
19 for the discussion of contract language, but rather for discussion of processes and  
20 procedures, and to serve as an outlet for additional training and information. The last two  
21 forums for this purpose for CLECs were held in June 2005 and July 2005. However,  
22 although the forum venue has changed (Qwest no longer hosts CLEC representatives at a  
23 hotel like it did in 2003), nevertheless, all stakeholders continue to discuss these issues in  
24 meetings and/or conference calls.

25  

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<sup>2</sup> Starkey Rebuttal, at p. 24.

1 **Q. MR. STARKEY ARGUES THAT “QWEST ALONE IS IN CHARGE OF ITS**  
2 **TEMPLATE AND THE COMMISSION SHOULD BE AWARE THAT THE**  
3 **TEMPLATE IS NOT ARRIVED AT THROUGH COLLABORATION WITH**  
4 **CLECS EITHER IN CMP OR ELSEWHERE.”<sup>3</sup> HAS QWEST TAKEN THE**  
5 **POSITION IN THIS ARBITRATION, OR IN ANY OTHER, THAT THE**  
6 **NEGOTIATIONS TEMPLATE LANGUAGE CANNOT BE CHANGED**  
7 **THROUGH NEGOTIATION?**

8 **A.** No, not at all. However, the negotiations template has proven valuable in the 170+ new  
9 agreements that Qwest has entered into with other CLECs over the past two years. Qwest  
10 reasonably believes that the existence of these agreements, and the existence of Qwest’s  
11 processes to act consistently with these agreements, is powerful evidence that the terms  
12 of these agreements have been effective.

13

14 **Q. MR. STARKEY STATES ON PAGE 19 OF HIS REBUTTAL TESTIMONY,**  
15 **THAT “ESCHELON AND OTHER CLECS ALSO NEED A MECHANISM TO**  
16 **COMMENT ON, OR OBJECT TO, PROPOSED QWEST CHANGES AND TO**  
17 **SUBMIT THEIR OWN REQUESTS BECAUSE QWEST CHANGES ARE NOT**  
18 **ONLY INTERNAL TO QWEST BUT HAVE AN EFFECT ON ESCHELON AND**  
19 **HOW IT MAY CONDUCT BUSINESS.” DO YOU AGREE?**

20 **A.** Yes. With this comment, Eschelon admits that the CMP serves a critical role. The CMP  
21 gives CLECs the mechanism to which Mr. Starkey refers. Rather than nullifying the  
22 CMP by allowing Eschelon to freeze certain, one-off processes in place, the Commission  
23 should adopt Qwest’s proposed CMP-related ICA language.

24

25 **Q. MR. STARKEY IMPLIES IN HIS DISCUSSION OF THE CMP THAT BECAUSE**

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<sup>3</sup> Starkey Rebuttal, at p. 24.



1       **PRODUCT AND PROCESS CHANGE REQUESTS ARE NOT VOTED ON IN**  
2       **THE CMP, AS SYSTEMS CHANGE REQUESTS ARE, CLECs NEED GREATER**  
3       **PROTECTION IN THEIR INTERCONNECTION AGREEMENTS AGAINST**  
4       **FUTURE PRODUCT AND PROCESS CHANGE REQUESTS.<sup>4</sup> IS THIS A VALID**  
5       **ARGUMENT?**

6    A.    No. Voting in the CMP does not give CLECs greater protection against changes caused  
7        by systems change requests. What voting does is allow CLECs to determine the order in  
8        which changes will take place. Mr. Starkey has not described the voting process in the  
9        CMP accurately. Budget and system resources available to implement systems change  
10       requests are limited. As a result, the votes that are taken regarding systems change  
11       requests allow CLECs to determine which change requests have greater priority, so that  
12       they can be implemented sooner, rather than later. The votes do not determine whether  
13       the change request will be implemented or not. Voting is not needed to prioritize product  
14       and process change requests because these requests are limited by the same constraints as  
15       systems change requests. In other words, if a product or process change request is  
16       accepted into the CMP, Qwest has determined that resources are available to implement  
17       that change request. Thus, Mr. Starkey's argument that CLECs need greater protection  
18       in interconnection agreements because product and process change requests are not  
19       prioritized by a vote is misplaced. What Mr. Starkey's argument does is highlight what  
20       appears to be Eschelon's true purpose, which is apparently to freeze processes in place in  
21       its interconnection agreement so the CMP will not be allowed to function as it was  
22       intended.

23  
24    **Q.    MR. STARKEY CLAIMS ON PAGE 49 OF HIS REBUTTAL TESTIMONY**  
25        **THAT QWEST MISREPRESENTS THE FACTS WHEN IT STATES THAT NO**

---

<sup>4</sup> Starkey Rebuttal, at p. 41.

1           **CHANGE REQUESTS DEVELOPED THROUGH CMP HAVE CONFLICTED**  
2           **WITH INTERCONNECTION AGREEMENTS. HAS QWEST**  
3           **MISREPRESENTED THE FACTS?**

4    A.    No. To support his argument, Mr. Starkey refers to Qwest notifications as if they were a  
5           hidden smoking gun. But he provides no specific examples of Qwest notifications  
6           whatsoever. Instead, he refers to Eschelon's "CRUNEC" example and to a complaint  
7           proceeding in Arizona. With regard to the "CRUNEC" example, I explained in my direct  
8           testimony that Qwest was simply clarifying a definition. That clarification of the word  
9           "conditioning" did not contravene any ICAs. With regard to the Arizona complaint  
10          proceeding, a hotly-contested part of the dispute is the meaning of the terms of the ICA at  
11          issue and how these terms should be interpreted. It is Qwest's position that it has never  
12          violated the parties' ICA.

13  
14    **Q.    MR. STARKEY REFERS TO ATTACHMENTS 5 AND 6 OF ITS CURRENT**  
15          **INTERCONNECTION AGREEMENT WITH QWEST IN MINNESOTA AS**  
16          **EVIDENCE THAT QWEST CONSIDERS "BUSINESS PROCESS"**  
17          **APPROPRIATE FOR INCLUSION IN INTERCONNECTION AGREEMENTS**  
18          **GENERALLY.<sup>5</sup> HOW DO YOU EXPLAIN THE FACT THAT THERE ARE**  
19          **PROCESSES AND PROCEDURES IN THE ICA?**

20    A.    In Minnesota, Eschelon adopted the original ICA between Qwest and AT&T that was  
21           executed in 1997. The language and attachments to that agreement pre-date the existence  
22           of the CMP and are significantly out-of-date. As I explained in my rebuttal testimony,  
23           Qwest agreed in its older contracts to a considerable amount of process and procedure  
24           language. Doing so, however, made compliance with many varied contractual  
25           requirements difficult. Since then, the industry created the CMP and Qwest has tried

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<sup>5</sup> Starkey Rebuttal, at p. 32.

1 consistently to exclude process and procedure language from its ICAs so that it has  
2 uniform practices in place and so the CMP can function efficiently and effectively.

3  
4 **Q. MR. STARKEY GOES TO SOME LENGTH IN HIS REBUTTAL TESTIMONY**  
5 **TO CLAIM THAT QWEST HAS WAFFLED ON ADDRESSING *TRO/TRRO***  
6 **RELATED ISSUES IN THE CMP.<sup>6</sup> PLEASE COMMENT.**

7 A. Qwest has made several attempts to address *TRO/TRRO* implementation issues in the  
8 CMP, all of which have met with resistance from Eschelon. This includes Qwest's effort  
9 to implement processes solely for those CLECs who have signed *TRO/TRRO*  
10 interconnection agreements and *TRO/TRRO* amendments. These CLECs need to know  
11 how to do business with Qwest under the terms of these agreements. What Mr. Starkey  
12 describes as "waffling" are really Qwest's attempts to deal with the concerns raised by  
13 Eschelon and the reality that many of the terms at issue are subject to litigation with a  
14 coalition of CLECs led by Eschelon. Qwest's actions with regard to implementation of  
15 the *TRO/TRRO* requirements in the CMP demonstrate that Qwest is not and cannot act  
16 arbitrarily to implement changes through the CMP.

17  
18 **Q. AS PART OF ESCHELON'S CRITICISM OF QWEST'S HANDLING OF**  
19 ***TRO/TRRO*-RELATED ISSUES IN THE CMP, MR. STARKEY REFERS TO**  
20 **"SECRET PCATs".<sup>7</sup> IN THIS ARBITRATION, ESCHELON HAS ATTEMPTED**  
21 **TO ATTACK QWEST'S POSITION WITH REGARD TO THE CMP-RELATED**  
22 **ISSUES IN DISPUTE BY PRESENTING A HANDFUL OF FACTUAL**  
23 **ALLEGATIONS CONCERNING, FOR EXAMPLE, THE PCATs AND CRUNEC.**  
24 **PLEASE RESPOND.**

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<sup>6</sup> See, for example, Starkey Rebuttal, at pp. 25-30.

<sup>7</sup> See, for example, Starkey Rebuttal, at p. 25.

1 A. Besides distorting the facts associated with these examples, Eschelon holds out these few  
2 isolated examples as the rule in the CMP, rather than the exception. As I illustrated in  
3 my rebuttal testimony, Eschelon presents just four examples, despite the fact that the  
4 CMP handled 1,069 different change requests up to the date of the filing of my rebuttal  
5 testimony. Eschelon concedes that an evaluation of the CMP would look much different  
6 if the review included all the examples of issues that the CMP handles successfully. At  
7 the arbitration hearing in Minnesota, an attorney for the Minnesota Department of  
8 Commerce asked Eschelon witness, Bonnie Johnson, the following questions in cross  
9 examination:

10  
11 Q: I just have one more question...You basically provided exhibits without  
12 textural explanations...[T]he exhibits to your testimony don't generally concern  
13 instances where the CMP process...has worked for Qwest and Eschelon but,  
14 rather, examples of where either that process hasn't worked or that there  
15 continues to be disputes; right?

16  
17 A: Correct.

18  
19 Q: So we might have a different binder if we were looking at examples of  
20 where a CMP process was successful?

21  
22 A: That is correct.<sup>8</sup>  
23

24 **Q. MR. STARKEY CLAIMS ON PAGE 47 OF HIS REBUTTAL TESTIMONY**  
25 **THAT QWEST CANNOT CLAIM THAT ALL CMP PARTICIPANTS SHOULD**  
26 **HAVE A SAY IN A CMP DISPUTE BECAUSE A CLEC CAN FILE A DISPUTE**  
27 **OUTSIDE THE CMP. WHAT IS QWEST'S BASIS FOR THIS CLAIM?**

28 A. First, as I discussed in my direct and rebuttal testimony, the CMP Document contains  
29 very specific procedures for disputes in the CMP. These procedures mandate notice to all  
30 CLECs and provide all interested CLECs with the opportunity to participate. Eschelon  
31 claims that by raising issues in this proceeding, it has somehow simultaneously raised the

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<sup>8</sup> See Minnesota Hearing Transcript, vol. 4, p. 122, lines 11-25 through p. 123, lines 1-2.

1 issues in the CMP. That cannot be true because Eschelon has not submitted a change  
2 request, an escalation, a demand for postponement, or pursued any other recourse  
3 available to it in the CMP itself. As a result, other CMP participants who may have an  
4 interest in the process and procedural issues at stake in this arbitration proceeding have  
5 no notice and have no opportunity to comment on how Eschelon's proposals would  
6 impact their business operations. All CLECs are entitled to the same stability and  
7 business planning opportunities that Eschelon claims to seek through its CMP-related  
8 proposals in this arbitration. Finally, Eschelon is seeking to bypass the CMP and its  
9 participants by trying to accomplish changes to Qwest's processes and procedures via its  
10 ICA rather than via the industry forum that was created to accomplish these changes. All  
11 participants in this industry forum have a vested interest in such changes.

12  
13 **Q. MR. STARKEY ARGUES THAT QWEST DOES NOT NEED THE DISPUTE**  
14 **RESOLUTION PROCESS SET FORTH IN THE CMP DOCUMENT BECAUSE**  
15 **“QWEST CAN UNILATERALLY CHOOSE WHAT IT WILL, AND WILL NOT,**  
16 **IMPLEMENT WITHIN CMP.”<sup>9</sup> PLEASE RESPOND.**

17 **A.** First, as I have explained at some length in my direct and rebuttal testimony by citing to  
18 specific provisions in the CMP Document, Qwest cannot act unilaterally in the CMP. In  
19 redesigning the CMP in 2002, CLECs ensured that they would have several powerful,  
20 effective mechanisms through which they could object to, and halt, Qwest actions.  
21 Second, Qwest may very well use the dispute resolution process set forth in the CMP  
22 Document in the future.

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<sup>9</sup> Starkey Rebuttal, at p. 44.

1 **Q. DOES THE EXAMPLE CITED BY MR. STARKEY IN SUPPORT OF HIS**  
2 **CLAIM THAT QWEST CAN UNILATERALLY ACT THROUGH THE CMP**  
3 **SUPPORT ESCHELON'S POSITION?**

4 A. No. Mr. Starkey suggests that because Qwest controls the budget for change requests  
5 submitted in the CMP, Qwest controls the CMP process. But systems change requests  
6 are ranked through a vote of all CMP participants. It is not Qwest that prioritizes the  
7 implementation of changes requested through the CMP. If systems change requests  
8 submitted by Qwest are ranked low by a vote of all of the participating CLECs, then they  
9 are not implemented. Mr. Starkey further argues that Qwest can manipulate the budget to  
10 ensure that certain change requests will be implemented in spite of such change requests  
11 ranking. But that cannot be true because Qwest sets the budget for each IMA release  
12 long before the CMP participants vote to prioritize which change requests will be  
13 implemented in each release.

14  
15 **Q. IN OTHER STATES, MR. STARKEY HAS ARGUED THAT QWEST ACTS**  
16 **UNILATERALLY THROUGH THE CMP AND CAN CONTROL THE CMP**  
17 **THROUGH ITS BUDGET FOR SYSTEMS CHANGE REQUESTS? IS THAT**  
18 **PERSUASIVE?**

19 A. No. Qwest has withdrawn 30% of the systems change requests it has submitted in the  
20 CMP because they were ranked too low in the voting process by the CMP participants. If  
21 Qwest could control the CMP process unilaterally, as well as which change requests are  
22 implemented, by manipulating the budget, it would not have withdrawn any of the  
23 change requests it desired to have implemented, let alone 30% of them.

1                                    **IV.            ISSUE 1-1: SERVICE INTERVALS**

2  
3    **Q.    MR. STARKEY CLAIMS THAT ESCHELON’S PROPOSAL REFLECTS**  
4           **MINOR EDITS TO SECTION 1.7.1 OF THE SGAT, WHICH PROVIDES FOR**  
5           **AN ADVICE ADOPTION LETTER.<sup>10</sup> IS HE CORRECT?**

6    A.    No. First, Eschelon’s proposed language is not the same as Section 1.7.1 in the SGAT.  
7           Section 1.7.1 deals with the creation of new interconnection products and services, and  
8           has nothing to do with changes to provisioning intervals. Second, Section 1.7.1 of the  
9           SGAT and in Qwest’s negotiations template, which is a more current document, permits  
10          amendments to allow CLECs the opportunity to take advantage of new Qwest product  
11          and service offerings. That section has nothing to do with service intervals. Third,  
12          Eschelon is trying to establish a new process for itself to usurp a process that was already  
13          established through the CMP and that is handled through the CMP. Creating a separate  
14          process that mandates the use of specific letters in no way “streamlines” the existing  
15          service interval process.<sup>11</sup> On the contrary, it adds unnecessary, burdensome complexity,  
16          not to mention a one-off special process for one CLEC that Qwest must expend extra  
17          resources to try to keep track of in the future.

18  
19   **Q.    MR. STARKEY POINTS OUT THAT THE PROCESS FOR ADDING NEW**  
20          **PRODUCTS UNDER THE SGAT IS NOT CUMBERSOME AND DOES NOT**  
21          **REQUIRE MICRO-MANAGEMENT.<sup>12</sup> DOES THAT TESTIMONY ADDRESS**  
22          **QWEST’S CONCERNS WITH ESCHELON’S PROPOSAL?**

23   A.    No. Qwest’s primary concern is about the impact that Eschelon’s proposal has on the  
24          intervals for existing products. When evaluating this issue, the Commission should

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<sup>10</sup> Starkey Rebuttal, at p. 58.

<sup>11</sup> Starkey Rebuttal, at pp. 56, 59 and 60.

<sup>12</sup> Starkey Rebuttal, at p. 59.

1 weigh the relative benefits of locking intervals in place as a part of a proceeding  
2 involving Qwest and Eschelon versus the value of having service interval issues resolved  
3 through the CMP. For the reasons discussed throughout my testimony, Qwest believes  
4 that the CMP provides meaningful protections for CLECs, while creating the flexibility  
5 to make modifications as the industry evolves.

6  
7 **Q. MR. STARKEY CLAIMS THAT YOUR CITE TO THE *TRO/TRRO* DOES NOT**  
8 **SUPPORT YOUR ARGUMENT AT ALL.<sup>13</sup> HOW DOES YOUR REFERENCE**  
9 **TO THE *TRO/TRRO* SUPPORT YOUR ARGUMENT?**

10 A. The *TRO* and *TRRO* are examples of how the telecommunications industry changes and  
11 demonstrate Qwest's need for the flexibility to respond. Future industry changes, which  
12 may result from legal rulings or improvements in technology, for example, may require  
13 service interval changes. No party, not Qwest and not Eschelon, can predict when or how  
14 these changes will take place. But freezing intervals in Qwest's interconnection  
15 agreement with Eschelon would have the practical effect of hampering, or even  
16 preventing, the implementation of future changes through the CMP, especially because  
17 any such changes will require Qwest to execute interconnection agreement amendments  
18 with Eschelon and any CLECs that have opted into the Qwest-Eschelon interconnection  
19 agreement.

20  
21 **Q. MR. STARKEY STATES ON PAGE 62 OF HIS REBUTTAL TESTIMONY THAT**  
22 **ONLY QWEST CAN UNILATERALLY PREVENT CLECs FROM OBTAINING**  
23 **INTERVAL CHANGES VIA THE CMP. IS THAT TRUE?**

24 A. No. I explained in detail in my direct testimony and rebuttal testimony all the avenues of  
25 recourse that CLECs can take through the CMP when one or more of them object to a

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<sup>13</sup> Starkey Rebuttal, at p. 63.



1 Qwest proposed change. This recourse includes filing written comments, escalating the  
2 objection to the CMP Oversight Committee, having implementation of the proposed  
3 change postponed through the CMP Document's detailed process for postponement,  
4 and/or seeking dispute resolution or filing a complaint with a state commission.

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**V. WIRE CENTER ISSUES (9-37, 9-37A, 9-38)**

**Q. ARE ANY WIRE CENTER ISSUES STILL IN DISPUTE?**

A. No. Qwest and the Joint CLECs, of which Eschelon is a member, have come to an agreement settling all wire center issues. This settlement includes interconnection agreement language. The signed settlement will be filed with all relevant state commission, including the Oregon Commission, by June 14, 2007.

1           **VI.           ISSUE 12-64: ACKNOWLEDGEMENT OF MISTAKES**

2  
3 **Q.       ESCHELON BASES ITS POSITION ON THIS ISSUE ON THE RESULT OF A**  
4 **COMPLAINT THAT IT FILED AGAINST QWEST IN MINNESOTA. WHAT**  
5 **EFFORTS DID QWEST UNDERTAKE AS A RESULT OF THE 2003**  
6 **MINNESOTA DOCKET?**

7 A.       In response to Eschelon’s complaint in 2003, Qwest undertook significant efforts to  
8 ensure that it handles wholesale orders in an appropriate manner and in a way that allows  
9 CLECs to compete meaningfully. These efforts are listed in Qwest’s February 2004  
10 compliance filing in that docket and include such investments as: systems upgrades so  
11 that retail sales representatives could not access or modify wholesale orders; adoption of  
12 Performance Indicator Definition (“PID”)-20 to evaluate how accurately Qwest processes  
13 LSRs; development of a quality assurance plan; implementation of a customized training  
14 program; etc. Qwest’s implementation of these changes and improvements has been so  
15 effective that since the date of the compliance filing, Eschelon has never requested an  
16 acknowledgement of mistakes letter from Qwest for a customer. All of the efforts that  
17 Qwest undertook to address the issue raised in Eschelon’s complaint demonstrate that  
18 Qwest has been proactive in ensuring that such mistakes do not take place in the future.  
19 They demonstrate that there is no need to impose further contractual obligations upon  
20 Qwest as requested by Eschelon.

21  
22 **Q.       IN HER REBUTTAL TESTIMONY, MS. JOHNSON ASSERTS THAT**  
23 **ESCHELON’S PROPOSED LANGUAGE FOLLOWS THE MINNESOTA**  
24 **COMMISSION’S DECISION IN THE 2003 DOCKET.<sup>14</sup> IS THAT TRUE?**

25 A.       No, as I explained in my rebuttal testimony, the Minnesota Commission’s order was very

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<sup>14</sup> Starkey Rebuttal, at p. 8.

1 specific, and the efforts that Qwest undertook so that CLECs can compete meaningfully  
2 were extensive and effective, as demonstrated by the record that I have described. As I  
3 said in prior testimony, the Minnesota Commission limited Qwest's obligation to  
4 wholesale orders. The scope of the original order was limited to wholesale orders.<sup>15</sup>

5  
6 **Q. MS. JOHNSON CLAIMS THAT QWEST HAS REFUSED TO PROVIDE ROOT**  
7 **CAUSE ANALYSIS ON JEOPARDIES.<sup>16</sup> DOES SHE EXPLAIN THE REASON**  
8 **FOR QWEST'S REFUSAL?**

9 A. No. Eschelon's requests for root cause analysis are based on Eschelon's erroneous  
10 position that Qwest is required to provide a Firm Order Commitment ("FOC") at least a  
11 day before the new due date for orders placed in jeopardy. (See Issues 12-71, 12-72 and  
12 12-73.) Eschelon has asked Qwest to expend resources on root cause analyses based on a  
13 process that is not Qwest's current practice and that Qwest is not required to follow.  
14 Exhibit Eschelon/117 demonstrates how Eschelon's proposed language for root cause  
15 analysis in the parties' ICA could result in abuse. Eschelon would be in a position to  
16 demand root cause analyses even when such demands were unreasonable and  
17 unwarranted.

18  
19 **Q. MS. JOHNSON CLAIMS ON PAGE 16 OF HER REBUTTAL TESTIMONY**  
20 **THAT RECIPROCITY IN A REQUIREMENT TO ACKNOWLEDGE**  
21 **MISTAKES IS NOT NECESSARY BECAUSE OF QWEST'S UNIQUE**  
22 **POSITION IN THE WHOLESALE MARKET. PLEASE RESPOND.**

23 A. Ms. Johnson does not acknowledge the fact that there are end-users who are customers of  
24 both Qwest and Eschelon. Not all end-user customers choose to buy all of their

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<sup>15</sup> *In the Matter of a Request by Eschelon Telecom for an Investigation Regarding Customer Conversion by Qwest and Regulatory Procedures, Order Finding Service Inadequate and Requiring Compliance Filing*; Docket No. P-421/C-03-616 (July 30, 2003), p. 9.

<sup>16</sup> Rebuttal Testimony of Bonnie Johnson ("Johnson Rebuttal"), at p. 10.

1 telecommunications services from one provider. If Eschelon insists on imposing an  
2 obligation regarding acknowledgement of mistakes on Qwest, it should be willing to  
3 undertake the same obligation to acknowledge its own mistakes to customers who buy  
4 services from Qwest, as well as from Eschelon.

5



1 delivered in one day, the order will have to be expedited five days, and it would cost the  
2 customer \$1000 (\$200/day x five days). In contrast, if the same customer approaches  
3 Qwest and orders a DS1 private line (the retail analogue) and wants the line delivered in  
4 one day, the order must be expedited nine days and the cost to the customer is \$1800  
5 (\$200/day x nine days). Eschelon receives superior service.

6  
7 **Q. IS IT TRUE, AS DESCRIBED BY MR. DENNEY, THAT QWEST HAD**  
8 **OFFERED EXPEDITES AT NO CHARGE, AND THEN UNILATERALLY**  
9 **STARTED CHARGING ESCHELON AND OTHER CLECs FOR THE**  
10 **SERVICE?<sup>20</sup>**

11 A. No. Qwest provided expedites for design services under certain defined circumstances, at  
12 no charge for CLECs, until it became apparent that CLECs were gaming the system.  
13 Previously, Qwest's program became unworkable because of the large number of  
14 improper CLEC expedite requests. As a result, Qwest modified its expedite service  
15 through the CMP. As detailed in my direct testimony, Qwest provided ample advance  
16 notice of the changes to the expedite service. Expedites are a superior service, and a  
17 majority of CLECs have been willing to enter into an ICA amendment and pay \$200 per  
18 day for the service.

19  
20 **Q. MR. DENNEY SUGGESTS ON PAGE 131 OF HIS REBUTTAL TESTIMONY**  
21 **THAT QWEST'S NEW EXPEDITE PROCESS IS BASED ON A QWEST**  
22 **NOTICE, NOT ON COVAD'S CHANGE REQUEST. PLEASE RESPOND.**

23 A. The primary reason for this notice was to ensure parity among all Qwest customers, both  
24 wholesale and retail. Qwest's intent was to ensure that all Qwest customers, whether  
25 wholesale or retail, would have access to expedited orders under the same circumstances

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<sup>20</sup> Denney Rebuttal, at pp. 130-131.

1 and, in the case of expedites for designed services, at the same rate.

2  
3 **Q. DID ESCHELON HAVE ANY RECOURSE IF IT OBJECTED TO QWEST'S USE**  
4 **OF THE NOTICE DISCUSSED BY MR. DENNEY?**

5 A. Yes. Eschelon could have asked that the notice be reclassified as a "Level 4" change,  
6 thus requiring the submission of a change request.

7  
8 **Q. DID ESCHELON ASK THAT THE NOTICE BE RECLASSIFIED?**

9 A. No.

10  
11 **Q. MR. DENNEY CLAIMS ON PAGE 134 OF HIS REBUTTAL TESTIMONY THAT**  
12 **QWEST OFFERS EXPEDITES TO ITS RETAIL CUSTOMERS AT NO ADDED**  
13 **CHARGE, BUT REFUSES TO DO SO FOR ITS WHOLESALE CUSTOMERS. IS**  
14 **MR. DENNEY CORRECT?**

15 A. No, he is not. Mr. Denney supports his assertion by referring to Qwest's retail tariffs.<sup>21</sup>  
16 The language he has relied on with more specificity in testimony in other states refers to  
17 the restoration of service (in other words, repair). The contract language at issue here  
18 does not relate to repair, it relates to new orders, and whether or not these new orders are  
19 to be expedited. As I noted in my rebuttal testimony, the Arizona Staff evaluated these  
20 arguments in Eschelon's expedite complaint case and determined correctly that language  
21 regarding repair is irrelevant to expedites.<sup>22</sup>

22  
23 In its testimony, Eschelon fails to note that: (1) the tariff provisions it cites concern only  
24 restoration of service, which is accomplished by a *repair* ticket, as opposed to an ASR or

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<sup>21</sup> Rebuttal Testimony of Douglas Denney ("Denney Rebuttal"), at p. 119.

<sup>22</sup> See *In The Matter of the Complaint of Eschelon Telecom of Arizona, Inc. Against Qwest Corporation, Direct Testimony of Pemala Genung*, January 30, 2007 ("AZ Genung Direct"), at p. 28.



1 LSR for provisioning a circuit, after fire, flood or other Act of God; (2) restoration of  
2 service is wholly unrelated to expediting an order for a new loop; and (3) Qwest provides  
3 the same terms to CLECs when a CLEC's customer is eligible for waiver of non-  
4 recurring charges for restoration of service after a fire, flood or Act of God. At the  
5 arbitration hearing in Minnesota, Qwest's attorney asked Eschelon's expert witness,  
6 James Webber, several questions in cross-examination concerning the tariff provisions:

7  
8 Q: ...It says under the heading for "J": "Reestablishment of service following  
9 fire, flood, or other occurrence;" is that right?

10  
11 A: Yes...

12  
13 Q: ...And down below it refers again to fire, flood or other occurrences  
14 attributed to acts of God; is that right?

15  
16 A: Yes.

17  
18 Q: And it doesn't say anything here about a business's grand opening event;  
19 correct?

20  
21 A: I believe that's accurate.

22  
23 Q: And it doesn't say anything here about a new order or a disconnect in  
24 error; is that right?

25  
26 A: Disconnect in error is not identified here.

27  
28 Q: What about a new order? ... Do these words appear anywhere in here...?

29  
30 A: I don't see them.

31 Q: And the word expedite doesn't appear anywhere on this page either; is that  
32 right?

33  
34 A: It doesn't appear to.<sup>23</sup>

35 This exchange illustrates the fact that the retail tariffs bear no relationship to Qwest's  
36 provision of expedites, a service that often applies to such conditions as grand-opening  
37 events.

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<sup>23</sup> Minnesota Hearing Transcript, vol. 4, p. 62, lines 16-25, p. 63, lines 1-25, and p. 64, lines 1-11.

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**Q. MR. DENNEY OFFERS NEW LANGUAGE REGARDING EXPEDITES ON PAGE 125 OF HIS REBUTTAL TESTIMONY. DOES THIS NEW LANGUAGE RESOLVE QWEST’S CONCERNS?**

A. No. Eschelon’s proposed language still lumps expedites under one umbrella in Section 12, and still removes that language from Section 7 for LIS and Section 9 for UNEs. Eschelon’s proposed language still does not distinguish between expedites for designed services and expedites for non-designed services, and it does not accurately reflect Qwest’s current expedite process. The new proposal is also vague. It speaks of an “applicable condition” for which an expedite charge will not apply, but does not define this condition. Qwest’s language, on the other hand, clearly distinguishes between the expedite processes for designed and non-designed services, and only applies expedite charges to designed services. Further, Qwest’s language reflects its current process, and its language is consistent with expedites as they are offered to all of Qwest’s customers, retail and CLEC alike.

**Q. AT SEVERAL POINTS IN HIS REBUTTAL TESTIMONY, MR. DENNEY SUGGESTS THAT QWEST HAS CHANGED ITS JUSTIFICATION FOR CHANGES TO THE EXPEDITE PROCESS. HAS QWEST CHANGED ITS POSITION?**

A. No. Qwest has been consistent. Mr. Denney attempts to argue otherwise by mixing the discussion of whether and how expedites are offered with the discussion of what rate should apply to expedites. The two topics are separate, however, and Qwest’s justification for each topic is separate. Regarding how expedites are offered, Qwest’s expedite procedures are the same for CLECs as they are for Qwest’s retail customers. The distinction between expedites for designed services and expedites for non-designed services applies to all customers, CLEC and retail alike. For non-design services (e.g.,

1 POTS services), CLECs and Qwest's retail customers alike can both obtain an expedited  
2 due date under certain, limited emergency circumstances at no charge. On behalf of  
3 Eschelon, expert witness James Webber conceded this point in cross-examination in the  
4 arbitration of the parties' disputed issues in Minnesota:

5  
6 Q: So right now today if one of Eschelon's QPP customers who is served a  
7 POTS-type service has a fire or a flood or medical emergency, th[en] Eschelon  
8 can contact Qwest and request an expedite, th[en] Qwest will evaluate and Qwest  
9 will provide that expedite if resources are available, for free, correct?

10  
11 A. Yeah, I believe the circumstances ha[ve] to be that Qwest reviews the  
12 circumstance and concurs that the conditions are met.<sup>24</sup>

13 In other words, Qwest's CLEC expedite procedures are in parity with its retail expedite  
14 procedures. And, again, both the Arizona Staff and the Minnesota ALJs concluded that  
15 Qwest's current expedite process is nondiscriminatory.

16  
17 Regarding the rate for expedited orders, the basis for Qwest's position has not changed.  
18 Expedites are not UNEs. Expedites are a superior service. Therefore, the rate for  
19 expedites should not be cost-based. This is discussed further in the testimony of Qwest  
20 witness Teresa K. Million.

21  
22 **Q. FINALLY, MR. DENNEY CLAIMS THAT THE ADDED COMPLEXITY OF**  
23 **DESIGNED SERVICES DOES NOT JUSTIFY A \$200 PER DAY RATE.<sup>25</sup>**  
24 **PLEASE RESPOND.**

25 A. First, the added complexity of designed services does justify the rate, as more Qwest  
26 personnel are involved in the provisioning of designed services, and when designed  
27 service orders are expedited, Qwest must redeploy those personnel to meet the shorter

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<sup>24</sup> Minnesota Hearing Transcript, vol. 4, p. 42, lines 4-13.

<sup>25</sup> Denney Rebuttal, at p. 120.

1 provisioning intervals for those orders, without impacting delivery of other CLECs'  
2 orders. Second, Mr. Denney is basing his argument on the premise that the rate for  
3 expedites should be cost-based. Again, expedites are not UNEs. Therefore, it is not  
4 appropriate to assess a rate for expedites based on cost. This issue is discussed at length  
5 in the testimony of Qwest witness, Ms. Million.

1           **VIII.           ISSUES 12-71, 12-72 AND 12-73: JEOPARDY NOTICES**

2  
3   **Q.   MS. JOHNSON STATES THAT ONLY THE ADDITION OF ONE PHRASE**  
4   **MAKES ESCHELON’S PROPOSAL CONSISTENT WITH QWEST’S CURRENT**  
5   **PRACTICE. IS THAT ONE PHRASE CONSISTENT WITH THE PROCESS**  
6   **IMPLEMENTED IN THE CMP?<sup>26</sup>**

7   A.   No, it is not. As I stated in my rebuttal testimony and on the witness stand in the  
8   Minnesota hearing on this issue, Eschelon has added the phrase requiring Qwest to send  
9   an FOC “at least a day before” the new due date on the order. This is not Qwest’s current  
10   practice, and this timing issue with regard to jeopardy notices was never implemented  
11   through the CMP. The evidence presented by Eschelon regarding the applicable CMP  
12   Change Requests shows that Qwest never made such a commitment. The actual change  
13   requests, which were attached to my rebuttal testimony include the minutes from the  
14   project meetings.<sup>27</sup> As I have discussed in prior testimony, a review of the meeting  
15   minutes associated with these change requests shows that there was never an explicit  
16   request by Eschelon or an agreement by Qwest to provide “at least a day” (or 24 hours)  
17   notice in advance of a new due date.

18  
19   **Q.   MS. JOHNSON’S DISCUSSION OF JEOPARDY NOTICES LINKS THE**  
20   **CLASSIFICATION OF A JEOPARDY AS “CNR” (CUSTOMER NOT READY)**  
21   **TO QWEST’S FAILURE TO SEND AN FOC. ARE THE TWO SUBJECTS SO**  
22   **LINKED?**

23   A.   No. Sending an FOC with a new due date for an order in jeopardy has nothing to do with  
24   how the jeopardy is classified in the first place. To make this clear, we should look at the

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<sup>26</sup> Johnson Rebuttal, at p. 18.

<sup>27</sup> See Exhibits Qwest/19 - Change Request PC072303-1 and Qwest/20 - Change Request PC081403-1.

1 sequence of events specifically for a CNR jeopardy:

- 2 • First, Eschelon places an order for service.
- 3 • Second, Qwest sends an FOC indicating the original due date for the order.
- 4 • Third, on the due date, Eschelon is not ready and, as a result, Qwest cannot  
5 deliver the service.
- 6 • Fourth, Qwest sends a CNR jeopardy notice to Eschelon.
- 7 • Fifth, Qwest is supposed to send an FOC with a new due date.
- 8 • Sixth, Qwest delivers the service on the new due date.

9 The above-described events take place when an order is placed in jeopardy because the  
10 customer is not ready. Contrary to Ms. Johnson's discussion, the FOC with the new date  
11 is not dependent on the classification that was applied to that jeopardy notice. It would  
12 be inappropriate for Qwest to issue a second jeopardy notice classified as CNR if Qwest  
13 had failed to send an FOC with a new due date. As I noted in my rebuttal testimony,  
14 Qwest could only find three instances (out of the 23 examples) in which that situation  
15 occurred in the data presented by Eschelon in Exhibit Qwest/27.

16

17 **Q. ESCHELON'S WITNESSES REFER BACK TO EXHIBIT ESCHELON/115 AS**  
18 **AN ACCURATE REPRESENTATION OF QWEST'S ERRORS WITH REGARD**  
19 **TO ORDERS IN JEOPARDY. DO YOU AGREE?**

20 A. No. Eschelon bases its analysis of these orders on its erroneous assumption that Qwest

1 must submit an FOC for an order in jeopardy at least a day before the new due date.<sup>28</sup> As  
2 I have said before, that is not Qwest's current practice and it has never been implemented  
3 through the CMP. Therefore, Eschelon's analysis is incorrect. The same is true for the  
4 data sent to Eschelon's service team at Qwest, cited in Exhibit Eschelon/118.

5  
6 **Q. MS. JOHNSON DISCUSSES QWEST'S RECENT UNWILLINGNESS TO**  
7 **CONTINUE RESPONDING TO ESCHELON'S CLAIMS REGARDING**  
8 **JEOPARDY ERROR DATA. PLEASE RESPOND.**

9 A. Eschelon's service management team at Qwest has found it fruitless to continue to  
10 respond to Eschelon's data because Eschelon continually presents the data on the premise  
11 that FOCs must be sent at least a day before the new due date. This is not now, and has  
12 not been, Qwest's practice, and it is not a requirement. Thus, it is absolutely pointless for  
13 Qwest to continue to try respond to Eschelon's data, as Eschelon's data has been  
14 continuously presented based on an incorrect premise. The service management team's  
15 refusal to continue responding to Eschelon's data is not a sudden reversal. The team was  
16 never able to respond to Eschelon's data because it was incorrect to begin with.

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<sup>28</sup> See Johnson Rebuttal, at p. 84.

1           **IX.           ISSUE 12-87: CONTROLLED PRODUCTION OSS TESTING**

2  
3   **Q.       DOES ESCHELON’S PROPOSED LANGUAGE REFLECT QWEST’S**  
4   **CURRENT PRACTICE?**

5   A.    No. Eschelon’s proposals for sections 12.6.9.4 contain the phrases “unless the Parties  
6       agree otherwise” and “as otherwise mutually agreed by the parties.” Both of these  
7       proposals would give Eschelon the right to decide whether or not to participate in  
8       controlled production testing. That is not Qwest’s current practice. Qwest’s current  
9       practice is to determine whether or not controlled production testing is required for each  
10      new release of IMA. CLEC participation in controlled production testing is not  
11      negotiable. If controlled production testing is required, CLECs must complete this phase  
12      of testing in order to be certified to use the new release of IMA. For example, Qwest has  
13      determined that controlled production testing is required for release 20.0 of IMA. All  
14      CLECs must complete controlled production testing in order to be certified to use IMA  
15      release 20.0. Ms. Johnson relied on documentation for release 19.2 of IMA, and for that  
16      specific release, controlled production was optional. However, for release 20.0 of IMA,  
17      Qwest determined that controlled production testing was required. Qwest must be able to  
18      determine the testing requirements for each release of IMA. It is not Qwest’s current  
19      practice to allow CLECs to negotiate their participation in controlled production, but this  
20      is what Eschelon’s proposed language would permit.

21  
22   **Q.       MS. JOHNSON MAKES MUCH OF THE DIFFERENCE BETWEEN NEW**  
23   **IMPLEMENTATIONS AND RE-CERTIFICATIONS.<sup>29</sup> IS THE DISTINCTION**  
24   **RELEVANT TO QWEST’S CONCERNS WITH ESCHELON’S LANGUAGE?**

25   A.    No. The real issue is who has the authority to decide whether or not controlled

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<sup>29</sup> See, for example, Johnson Rebuttal, at pp. 37-38 and 41-42.



1 production testing is required. Eschelon wishes to make the decision negotiable. Qwest  
2 does not.

3

4 **Q. MS. JOHNSON INCLUDES A SIGNIFICANT DISCUSSION REGARDING THE**  
5 **FACT THAT OSS INCLUDES NON-ELECTRONIC, AS WELL AS**  
6 **ELECTRONIC, SYSTEMS.<sup>30</sup> IS THAT RELEVANT TO THIS ISSUE?**

7 A. No. The issue is certification testing requirements for use of computer-to-computer  
8 interfaces. The definition of OSS is not relevant to the issue of testing requirements for  
9 the use of Qwest's computer systems.

10

11 **Q. WHO IS IN THE BEST POSITION TO DETERMINE WHETHER TESTING IS**  
12 **REQUIRED TO VERIFY THAT MODIFICATIONS TO ITS SYSTEMS ARE**  
13 **WORKING PROPERLY?**

14 A. As the owner of the electronic interface (IMA), and the downstream systems that the  
15 electronic interface accesses, Qwest is the only party in a position to know what testing is  
16 required to verify that an application modification is working properly.

17 In order for a CLEC to use the computer-to-computer interface provided by Qwest to  
18 access its OSS (whether it is IMA EDI or IMA XML), that CLEC must complete the  
19 certification process. If the CLEC does not wish to complete the certification process, the  
20 CLEC may not use Qwest's computer-to-computer interface to submit its orders. That  
21 does not mean orders cannot be submitted electronically, however. The CLEC still has  
22 the alternative of using Qwest's human-to-computer electronic interface, known as IMA  
23 GUI.

24

25 **Q. MS. JOHNSON CLAIMS ON PAGE 40 OF HER REBUTTAL TESTIMONY**

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<sup>30</sup> See, for example, Johnson Rebuttal, at pp. 32-33.

1           **THAT QWEST IS TRYING TO IMPOSE THE COST OF UNNECESSARY**  
2           **TESTING ON ESCHELON. IS THAT ACCURATE?**

3    A.    No. When Qwest determines that testing is required, the testing is necessary. The cost of  
4           testing, both to Qwest and to Eschelon, is part of the cost of doing business with  
5           computer-to-computer transactions. All parties have an interest in saving costs and  
6           ensuring that transactions will be processed correctly. Qwest does not ask a CLEC to test  
7           functionality that the CLEC is not planning to use. All testing scenarios are based on  
8           products and services that the CLEC has indicated it will purchase from Qwest via its  
9           interconnection agreement. Qwest incurs costs during controlled production testing as  
10          well, since the testing is conducted by employees of both companies working together.  
11          Qwest has determined that the risk of not testing outweighs the cost of testing.

12  
13   **Q.    IS IT TRUE THAT UPDATES TO EXISTING SYSTEMS REQUIRE LESS**  
14   **RIGOROUS TESTING?**

15   A.    No. IMA Release 20.0 is a prime example of why that is not always true. The  
16          underlying architecture of IMA Release 20.0 is changing from EDI to XML. This is such  
17          a significant change that Qwest is treating this as a new implementation that requires  
18          controlled production testing for all CLECs who wish to move to this release of IMA.  
19          Ms. Johnson cites provisions in the EDI Implementation Guidelines for IMA Release  
20          19.2. The provisions of that Implementation Guideline document have no bearing on  
21          IMA Release 20.0. But if Eschelon's proposed language for controlled production testing  
22          were in place today, Eschelon could argue that it would not be required to do controlled  
23          production testing for IMA Release 20.0, even though all other CLECs are required to do  
24          so, and the reasons for undertaking the testing are well-founded and critical.

25  
26   **Q.    DOES VERSION 19.2 OF THE EDI IMPLEMENTATION GUIDELINES UPON**  
27   **WHICH MS. JOHNSON RELIES ANTICIPATE THE NEED FOR**

1           **CONTROLLED PRODUCITON TESTING, EVEN FOR TRANSACTIONS FOR**  
2           **WHICH THE CLEC HAS ALREADY BEEN CERTIFIED?**

3           A.     Yes. Page 48 of the guidelines states:

4  
5                     At the time a CLEC migrates to a new release, any transaction(s) that the CLEC  
6                     does not yet have in production using a current IMA EDI version is considered to  
7                     be a new implementation effort. These transactions must be implemented using  
8                     all Phases of the implementation lifecycle as defined in this document. **In some**  
9                     **releases, existing transactions are updated with significant additions that add**  
10                    **business rules and/or large map changes. If the CLEC intends to use the new**  
11                    **functionality, they will be required to perform a new product**  
12                    **implementation of this transaction. This will entail Progression Testing and**  
13                    **Controlled Production submittal of scenarios that reflect the new**  
14                    **functionality. CLECs not intending to use the new functionality will be**  
15                    **allowed to recertify existing functionality that is still available in the new**  
16                    **release.**<sup>31</sup>

17  
18           The bolded language clearly anticipates the need for controlled production testing due to  
19           significant changes in a release. That is what took place in IMA Release 20.

20  
21           **Q.     IS IT VALID TO ASSUME THAT THE TESTING THAT IS REQUIRED TODAY**  
22           **WILL BE SUFFICIENT TO MEET TESTING NEEDS IN THE FUTURE?**

23           A.     No. Qwest's systems are constantly changing and evolving. Eschelon is well aware of  
24           this fact. As of November 30, 2006, Eschelon itself submitted 136 systems change  
25           requests to Qwest. Other CLECs have submitted a total of 311 systems change requests  
26           in the same time period. In addition, Qwest itself submitted 283 systems change  
27           requests. Many of Qwest's systems change requests have been made in response to  
28           industry changes in standards for electronic order processing. For example, the industry  
29           has recently determined that ILECs and CLECs should use a different communications  
30           protocol, known as XML, for the processing of orders.

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<sup>31</sup> EDI Implementation Guidelines Release 19.2, p. 48. (Emphasis added.)

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**Q. MS. JOHNSON SUGGESTS ON PAGE 35 OF HER REBUTTAL TESTIMONY THAT THE IMA IMPLEMENTATION GUIDELINE DOCUMENT SHOULD BE UNDER CMP CONTROL. DO YOU AGREE?**

A. No. The Implementation Guidelines are written by Qwest's Information Technologies (IT) Department as an explanation of Qwest's requirements for CLEC use of its computer-to-computer interfaces. Only Qwest can determine the requirements for use of these interfaces. Ms. Johnson cites the CMP Document and an excerpt from the CMP Redesign Minutes contained in Exhibit Eschelon/119 as evidence that Qwest committed to including the Implementation Guidelines within the scope of CMP. That is not what those minutes indicate. What Qwest committed to was putting changes to EDI (in other words, systems change requests) and EDI testing timeframes within the control of CMP. Both of these commitments are contained within the CMP Document itself.

**Q. MS. JOHNSON CITES THE PROVISIONS OF THE IMPLEMENTATION GUIDELINES FOR IMA RELEASE 19.2 AS EVIDENCE THAT THE CMP DOCUMENT'S STATEMENTS WITH REGARD TO CERTIFICATION TESTING ARE IRRELEVANT. PLEASE RESPOND.**

A. Ms. Johnson's citation is misplaced. In fact, the reverse is true. As I stated in my direct testimony, and I which will repeat here, the CMP Document clearly places certification testing requirements under Qwest's control:

New Releases of the application-to-application interface may require re-certification of some or all business scenarios. A determination as to the need for re-certification will be made by the Qwest coordinator in conjunction with the Release Manager of each Release.

IMA Implementation Guidelines reflect the CMP Document's statement that Qwest determines what testing is required. The Implementation Guidelines for IMA EDI

1 Release 19.2 reflected Qwest's determination of the testing requirements for that release  
2 of IMA, and the Implementation Guidelines for IMA XML Release 20.0 reflect Qwest's  
3 determination of the testing requirements for that release of IMA.  
4

5 **Q. ARE QWEST'S SYSTEMS MEANT ONLY TO SERVE QWEST'S INTERESTS?**

6 A. No. As I stated in my direct testimony, "CLECs need access to OSS to obtain products  
7 and services from Qwest."<sup>32</sup> However, Qwest's OSS are maintained by Qwest, and  
8 CLEC access to Qwest OSS must be governed by Qwest. Qwest must ensure that all  
9 parties that access Qwest's OSS, whether CLECs, other wholesale customers, or retail  
10 customers, can do so without having an adverse impact on Qwest's OSS or other parties  
11 use of Qwest's OSS. Certification testing of computer-to-computer interfaces with  
12 Qwest's OSS is necessary to ensure that no adverse impacts result from CLEC electronic  
13 transactions.  
14

15 **Q. MS. JOHNSON STATES ON PAGE 44 THAT ESCHELON HAS NOT SAID IT  
16 WOULD NEVER PARTICIPATE IN CONTROLLED PRODUCTION TESTING.  
17 BY PHRASING HER ANSWER IN A DOUBLE NEGATIVE, WHAT DOES MS.  
18 JOHNSON ESSENTIALLY FAIL TO SAY?**

19 A. Ms. Johnson does not say that Eschelon will ever participate in controlled production  
20 testing.  
21

22 **Q. SHOULD CLEC PARTICIPATION IN ANY PHASE OF CERTIFICATION  
23 TESTING FOR USE OF QWEST'S OSS BE NEGOTIABLE?**

24 A. No. OSS are the lifeblood of not only Qwest's wholesale operation, but also serves a  
25 myriad of other purposes. The risk of glitches caused by improper interfaces is

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<sup>32</sup> Direct Testimony of Renée Albersheim, at p. 78.

1 significant. The risk that Qwest could improperly subject CLECs to unnecessary testing  
2 is far outweighed by the importance of ensuring that Qwest has systems that operate  
3 properly. Because of the importance of these systems to the entire industry, Qwest  
4 should have the right to determine how to protect the integrity of its OSS.

5

**X. CONCLUSION**

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**Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

A. My testimony demonstrates that, despite protestations to the contrary, Eschelon is seeking to freeze systems, processes and procedures into the parties' ICA so that changes cannot be implemented through the CMP without first obtaining Eschelon's agreement. Eschelon's proposals would subvert the intended purpose of the CMP, and would give Eschelon more rights than all other CLEC participants in the CMP. This Commission should not allow Eschelon to use its interconnection agreement as a means to give it the power to veto changes requested in the CMP by other CMP participants.

**Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

A. Yes, it does.

**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

**ARB 775**

**In the Matter of**

**ESCHELON TELECOM OF OREGON,  
INC.**

**Petition for Arbitration of an Interconnection  
Agreement with Qwest Corporation,  
Pursuant to Section 252 of the  
Telecommunications Act**

**SURREBUTTAL TESTIMONY OF**

**CURTIS ASHTON**

**FOR**

**QWEST CORPORATION**

**(Disputed Issues 8-21 and 8-21(a) –(e))**

**June 8, 2007**



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**I. IDENTIFICATION OF WITNESS**

**Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH QWEST CORPORATION.**

A. My name is Curtis Ashton. I am employed by Qwest Corporation (“Qwest”) as a senior staff technical support power maintenance engineer in the technical support group, local network organization. My business address is 700 W. Mineral, Littleton, Colorado, 80120.

**Q. DID YOU PREVIOUSLY FILE DIRECT TESTIMONY AND REBUTTAL TESTIMONY IN THIS DOCKET?**

A. Yes, I filed my direct testimony on May 3, 2007, and my rebuttal testimony on May 23, 2007.

**Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.**

A. The purpose of my testimony is to reply to certain portions of the Rebuttal Testimony filed by Eschelon witness Michael Starkey, relating to charges for DC Power. In particular, I address issue 8-21, including subsections (a) – (e), relating to charges for DC Power Plant.

**II. DC POWER (ISSUES 8-21 AND 8-21(A-E))**

**Q. PLEASE PROVIDE AN OVERVIEW OF THE DISPUTED ISSUES IN THE CONTRACT RELATING TO -48 VOLT DC POWER.**

1 A. There are several disputed issues in the interconnection agreement (Issues 8-21  
2 and 8-21(a)-(e)) that relate to Qwest's provisioning of -48 Volt DC Power to  
3 CLEC collocations within Qwest's central offices. For each of these issues,  
4 beginning with Issue 8-21, a core dispute is whether language in the ICA  
5 pertaining to billing on a measured basis for the DC Power used by a CLEC  
6 should apply to both the DC Power Plant and DC Power Usage charges described  
7 in the ICA, as Eschelon contends, or only to DC Power Usage charge, as Qwest  
8 contends.

9

10 **Q. MR. STARKEY STATES SEVERAL TIMES IN HIS REBUTTAL**  
11 **TESTIMONY THAT CLECs ORDER POWER DISTRIBUTION CABLES,**  
12 **NOT POWER PLANT. PLEASE COMMENT.**

13 A. Mr. Starkey understands all too well that CLECs expect power plant to be made  
14 available to them when they order a power distribution cable. Quite obviously, a  
15 power distribution cable without available power plant would provide no power.  
16 When CLECs order power distribution cables they expect that power capacity  
17 will be made available over those cables, and the capacity that they expect to be  
18 made available is the amount that they order. The power plant provides that  
19 capacity. The Utah Commission recognized this fact in its decision squarely  
20 rejecting Mr. Starkey's argument in the McLeod complaint proceeding in that  
21 state involving these same issues:

22 McLeod effectively orders "power plant" by means of its power  
23 distribution cable order and sizes these cable orders based on both the List  
24 2 drain of the equipment it intends to collocate in the short-term and the  
25 List 2 drain of additional equipment it may collocate in the future in that

1 space. The only power plant order McLeod then provides to Qwest is its  
2 order for distribution cable. It is therefore reasonable Qwest uses this  
3 order to bill McLeod for its power plant.<sup>1</sup>  
4

5 **Q. WOULD YOU COMMENT ON MR. STARKEY'S REBUTTAL**  
6 **TESTIMONY, AT PAGES 73-74, REGARDING QWEST WITNESS JEFF**  
7 **HUBBARD'S TESTIMONY IN THE McLEOD PROCEEDING IN IOWA,**  
8 **TO THE EFFECT THAT QWEST DEFINITELY BUILDS POWER**  
9 **PLANT BASED ON A CLEC ORDER.**

10 A. As is readily apparent from my testimony, any demand for additional power plant  
11 capacity, either by a CLEC or by Qwest, will necessarily move the power plant  
12 closer to exhaust, and create an earlier need for augmentation than if that demand  
13 were not present. While Qwest often does construct additional power plant in  
14 response to a CLEC collocation order, Qwest is not required to demonstrate that it  
15 has actually constructed power plant in response to each and every collocation  
16 order to be entitled to charge for power plant capacity. What matters is that the  
17 CLEC places an order for power and that Qwest makes the power plant capacity  
18 available in accordance with the amperage requirements specified in that order.  
19 Ms. Million discusses this in greater detail in her testimony.  
20

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<sup>1</sup> *In the Matter of McLeodUSA Telecommunications Services, Inc. v. Qwest Corporation for Enforcement of Commission-Approved Interconnection Agreement*, Public Service Commission of Utah Docket No. 06-2249-01, September 28, 2006 Report and Order (hereinafter "*Utah Report and Order*"), p. 25. The *Utah Report and Order* was provided as Exhibit Qwest/31 to my May 23, 2007 Rebuttal Testimony.

1 **Q. DO YOU AGREE WITH MR. STARKEY’S STATEMENT THAT**  
2 **QWEST’S INVESTMENT IN POWER PLANT FACILITIES IS**  
3 **INCREMENTAL TO POWER USAGE?**

4 A. No, and as I pointed out in my rebuttal testimony, Mr. Starkey is purposefully  
5 vague when he uses the term “usage.” I explained in my rebuttal testimony that  
6 the “usage” on which Eschelon wants to be billed for power plant—namely, the  
7 usage that would be captured at various times throughout a year under the power  
8 measuring option—is no part of Qwest’s power plant augment planning. The  
9 amount of power capacity ordered by CLECs is, however, a part of that power  
10 plant augment planning.

11

12 In similar fashion, Mr. Starkey is again very vague when he uses the term “usage”  
13 throughout his rebuttal testimony to claim that Qwest sizes power plant based on  
14 “usage.” For instance, Mr. Starkey contends that Qwest sizes power plant based  
15 on “usage” for the entire central office at the busy hour. The “usage” to which  
16 Mr. Starkey refers there, however, is not the same “usage” upon which Eschelon  
17 is asking to be billed here. The “usage” upon which Eschelon proposes it should  
18 be billed for power plant is the measured usage, specific to Eschelon, captured at  
19 various times throughout the year in power measurements. That is a completely  
20 different thing than the combined peak busy hour usage for the entire central  
21 office. Further, as I described in my rebuttal testimony, the combined central  
22 office busy hour “usage” is, in any event, only one factor in Qwest’s power plant

1 planning. Mr. Starkey continues to ignore these critical points in order to support  
2 his contention that “usage drives power plant investment.”

3

4 **Q. EVEN IF QWEST COULD SOMEHOW CAPTURE ESCHELON’S PEAK**  
5 **POWER USAGE EACH YEAR, WOULD THAT BE RELEVANT?**

6 A. No. As I stated in my rebuttal testimony, even if Qwest could capture Eschelon’s  
7 peak usage and treat that as a proxy for the combined List 1 drain of Eschelon’s  
8 equipment, that is NOT the basis on which Qwest charges for power plant, it is  
9 NOT the basis on which the power plant rate was designed, and it is NOT the  
10 basis on which Eschelon seeks to be charged for power plant in this proceeding.  
11 For the same reason, even if Qwest could obtain the actual combined List 1 drain  
12 for all of Eschelon’s equipment, whether by forecasting (as Mr. Starkey suggests)  
13 or otherwise, that number is similarly irrelevant based on the way that Qwest’s  
14 power plant rate was designed. If Eschelon wants to take issue with that, the  
15 proper place to do so would be in a cost docket with cost evidence, as Ms. Million  
16 testifies, and as the Minnesota, Utah and Washington commissions have already  
17 determined.

18

19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

20 A. Yes.

21

**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

**ARB 775**

**In the Matter of**

**ESCHELON TELECOM OF OREGON,  
INC.**

**Petition for Arbitration of an  
Interconnection Agreement with Qwest  
Corporation, Pursuant to Section 252 of the  
Telecommunications Act**

**SURREBUTTAL TESTIMONY OF**

**WILLIAM R. EASTON**

**FOR**

**QWEST CORPORATION**

**(Disputed Issues 2-3, 2-4, 5-6, 5-7, 5-7(a), 5-8, 5-9, 5-11, 5-12, 5-13, 5-16, 7-18, 7-19, 22-88,  
22-88(a), 22-89, 22-90 and 22-90(a-ac))**

**June 8, 2007**

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**I. IDENTIFICATION OF WITNESS**

**Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.**

A. My name is William R. Easton. My business address is 1600 7th Avenue, Seattle Washington. I am employed as Director – Wholesale Advocacy. I am testifying on behalf of Qwest Corporation (“Qwest”).

**Q. DID YOU FILE DIRECT AND REBUTTAL TESTIMONY IN THIS PROCEEDING?**

A. Yes.

**II. PURPOSE OF TESTIMONY**

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. The purpose of my testimony is to respond to the Eschelon rebuttal testimony of Mr. Denney. Specifically, I reply to this testimony as it relates to the following disputed issues:

- Section 2 issues
- Section 5 issues
- Section 7 issues
- Section 22 issues

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**III. SECTION 2 DISPUTED ISSUES**

**Issue No. 2-3 – Effective Date of Rate Changes**

**Q. ON PAGE 5, LINE 2–9, MR. DENNEY CITES A COLORADO COMMISSION RULING IN THE QWEST/AT&T ARBITRATION AND IMPLIES THAT THE POSITION THAT QWEST TOOK IN THAT ARBITRATION IS INCONSISTENT WITH QWEST’S PROPOSED LANGUAGE REGARDING THE EFFECTIVE DATE OF RATES IN THIS CASE. DO YOU AGREE?**

A. No. The language requested by AT&T and opposed by Qwest in the Colorado arbitration required that interim rates be subject to “true-up” back to the date on which the rate was first charged. This is in contrast to the Qwest language in this case which states that rates shall be applied on a prospective basis from the effective date of the legally-binding Commission decision, unless otherwise ordered by the Commission. The Qwest language respects the Commission’s authority to determine the effective date of rates and, despite Mr. Denney’s claims, is entirely consistent with the agreed-upon language in section 22.4.1, and the agreed-upon language is section 22.4.1.1 which states that “such commission approved rates shall be effective as of the date required by a legally binding order of the Commission.”

**Q. ON PAGE 5, LINES 1-9, MR. DENNEY IMPLIES THAT QWEST IS ATTEMPTING TO UNDERMINE ESCHELON’S ABILITY TO ARGUE**

1           **IN FAVOR OF A TRUE-UP OF INTERIM RATES. IS THIS THE**  
2           **EFFECT OF THE QWEST LANGUAGE?**

3    A.    No. Eschelon is not precluded in any way from arguing its position regarding a  
4           true- up of rates. The Qwest language merely clarifies that, unless ordered  
5           otherwise by the Commission, rates should be applied on a prospective basis.

6  
7    **Q.    ON PAGE 5, LINES 16-18 AND PAGE 6, LINES 1-4, MR. DENNEY**  
8           **CRITICIZES YOUR TESTIMONY THAT THE QWEST LANGUAGE**  
9           **AVOIDS AMBIGUITY WHEN NO TRUE-UP REQUIREMENT IS**  
10          **SPECIFIED, NOTING THAT THE QWEST LANGUAGE DOES NOT**  
11          **MENTION THE TERM “TRUE-UP.” PLEASE COMMENT.**

12   A.    It is not necessary for the Qwest language to specify the term “true-up.” The  
13          Qwest language refers to rates being applied on a “prospective basis.” Clearly, if  
14          rates are not applied prospectively, they are applied retrospectively which, by  
15          definition implies a “true-up.”

16  
17   **Q.    ON PAGE 6, LINES 4-12, MR. DENNEY ARGUES THAT YOU ARE**  
18          **INCORRECT WHEN YOU STATE THAT “UNDER THE QWEST**  
19          **PROPOSAL, ONE LOOKS FIRST TO THE COMMISSION ORDER TO**  
20          **DETERMINE WHEN A RATE APPLIES.” PLEASE COMMENT.**

21   A.    I stand by my testimony: it is only if the Commission has not ruled otherwise that  
22          the prospective application language comes into play. However, it does appear  
23          from Mr. Denney’s explanation that he now understands the intent of the Qwest

1 language and thus no longer feels it leads to the potential for ambiguity he  
2 claimed previously.

3  
4 **Q. ON PAGE 6, LINE 15 TO PAGE 7, LINE 18, MR. DENNEY ARGUES**  
5 **THAT THE AGREED-UPON LANGUAGE IN THE ICA ALREADY**  
6 **ACCURATELY ADDRESSES TRUE-UPS. DO YOU AGREE?**

7 A. No. In fact, Eschelon itself now appears to recognize that the previously agreed-  
8 to language in section 22.4.1.2 did not address situations where an order does not  
9 specify a true-up requirement. As Mr. Denney discusses on pages 6 and 7,  
10 Eschelon has now proposed to add language at the end of section 22.4.1.2 to  
11 clarify that, in such situations, rates will be applied on a prospective basis. In  
12 light of this language, it is not clear why Eschelon objects to the Qwest section  
13 2.2 proposal.

14  
15 **Issue No. 2-4 – Change of Law Provisions**

16  
17 **Q. ON PAGE 3, MR. DENNEY DISCUSSES ESCHELON’S PROPOSAL TO**  
18 **ADD LANGUAGE TO SECTION 2.2, STATING THAT “EACH PARTY**  
19 **HAS AN OBLIGATION TO ENSURE THAT THE AGREEMENT IS**  
20 **AMENDED ACCORDINGLY.” IS THIS SENTENCE NECESSARY TO**  
21 **ENSURE THAT THERE IS NO DELAY IN AMENDING AGREEMENTS?**

22 A. No. Qwest’s language removes any incentive for delay by providing that with  
23 notice by either party within 30 days, the effective date of any resulting

1 amendment shall be the effective date of the change of law. This language  
2 removes the ability of one party or the other to drag out the negotiations of an  
3 amendment to establish a later implementation date of the change of law.

4

5 **Q. MR. DENNEY ARGUES ON PAGE 9, LINES 3-11, THAT QWEST’S**  
6 **CHANGE OF LAW LANGUAGE WOULD ALLOW QWEST “TO**  
7 **IGNORE CHANGES IN LAW THAT QWEST DOES NOT LIKE, WHILE**  
8 **EMBRACING CHANGES IN LAW THAT WORK TO QWEST’S**  
9 **ADVANTAGE.” DO YOU AGREE?**

10 A. No. The Qwest language allows either party to give notice to make such change  
11 effective on the effective date of the legally-binding change. This process does  
12 not allow either party to ignore changes that it does not like. Although Mr.  
13 Denney argues that Eschelon is at a disadvantage because of Qwest’s greater  
14 regulatory resources, as I noted in my rebuttal testimony, Eschelon is a  
15 sophisticated company with a great deal of awareness of the regulatory  
16 environment. Clearly, Eschelon’s participation in these arbitration proceedings  
17 has not demonstrated a lack of regulatory sophistication or resources.

18

19 **Q. ON PAGE 10, LINE 19 TO PAGE 11, LINE 2, MR. DENNEY ARGUES**  
20 **THAT ESCHELON’S ALTERNATIVE PROPOSAL SIMPLY STATES**  
21 **THAT IF A PARTY WISHES AN IMPLEMENTATION DATE OF**  
22 **CHANGE OF LAW TO BE SOMETHING DIFFERENT FROM THE**  
23 **EFFECTIVE DATE OF THE ORDER, THE PARTY SHOULD OBTAIN A**

1           **RULING FROM THE COMMISSION TO THAT EFFECT. WHY IS**  
2           **QWEST OPPOSED TO THIS ALTERNATIVE LANGUAGE?**

3       A.     Mr. Denney stated in his direct testimony that one of the goals of the change of  
4           law language is to provide the parties with clear guidance on when changes of law  
5           will take effect. However, rather than providing a clear process for how the  
6           parties are to proceed in cases of change of law, as the Qwest language does, the  
7           new Eschelon language allows for the issue to be resolved by the Commission at  
8           some point in the future. The language proposed by Qwest would reduce  
9           litigation by removing one potential issue from dispute, and would ensure that the  
10          parties have an incentive to quickly resolve change of law issues that may arise in  
11          the future.

12  
13                                   **IV.     SECTION 5 DISPUTED ISSUES**

14  
15       **Q.     MR. DENNY ALLEGES ON PAGE 36, LINE 3 TO PAGE 37 LINE 9,**  
16           **THAT QWEST’S TESTIMONY IS NOT FOCUSED ON THE ACTUAL**  
17           **ISSUES SURROUNDING THIS DISPUTED ICA LANGUAGE. DO YOU**  
18           **AGREE?**

19       A.     No. in my view, it is Mr. Denny who is ignoring the larger picture surrounding  
20           these issues. Telecommunications is a highly-competitive and quickly-evolving  
21           market. Telecommunications providers, including CLECs, have failed financially  
22           in the past, and likely will fail in the future. In such situations, CLECs, like any  
23           business, are often desperate to keep their business alive and will therefore likely

1 take any action in an effort to remain afloat. This interconnection agreement  
2 needs to anticipate such a scenario, and recognize that each week that Qwest  
3 would be unable to protect itself against an Eschelon business failure would result  
4 in an additional \$1 million of bills to Eschelon (across the region) that would go  
5 unpaid.

6  
7 Any creditor deserves to be in a position to protect itself against such losses. The  
8 measures that Qwest proposes are nothing new or draconian. Qwest has either  
9 implicitly or explicitly had these rights since its first interconnection agreement in  
10 Oregon. Even with these rights, Qwest faces significant challenges in minimizing  
11 unpaid CLEC debts.

12  
13 Eschelon's proposals ignore this reality and instead seek to water down Qwest's  
14 current ability to protect itself. Eschelon seeks to decrease Qwest's ability to  
15 collect its bills by requiring Qwest to clear hurdles, such as waiting for  
16 Commission review, before discontinuing order processing (Issues 5-6) or  
17 demanding a deposit (Issues 5-12, 5-13, 5-14). Eschelon seeks to water down its  
18 obligation to pay bills by limiting its obligations to pay not to the amount of the  
19 bill, but rather to an amount that is close to the amount billed. (Issue 5-8.) Even  
20 then, Eschelon seeks to water down that obligation to re-define "repeatedly  
21 delinquent" in such a manner that it would only be obligated to pay its bills on  
22 time four months a year to avoid triggering a potential deposit requirement.  
23 (Issue 5-9.)

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Eschelon does not stop there, however. It also proposes limiting Qwest’s ability to seek a deposit further by attempting to limit that right to its weakened definition of “repeatedly delinquent,” thereby eliminating all other possibilities where a deposit request would be appropriate. (Issue 5-13.) Even in that situation, Eschelon seeks to require Qwest to either seek Commission approval or wait for a Commission decision to demand a deposit. (Issue 5-11.)

The cumulative effect of these proposals is to make it nearly impossible for Qwest to take effective action to collect valid, undisputed bills owed by Eschelon. Such protections for Eschelon impose significant financial risk on Qwest. Imposing such a risk would only make sense if there were a very significant demonstration of need. More than 11 years of history under the Telecommunications Act demonstrate that no such need exists.

**Q. ON PAGE 36, LINES 8-21, MR. DENNEY TALKS ABOUT THE NEED FOR COMMISSION OVERSIGHT AND QUOTES FROM AN AT&T FILING IN NEBRASKA. PLEASE COMMENT.**

A. I am not familiar with the issues in the docket which gave rise to AT&T’s filing. I would only note that the most recent AT&T agreements contain the same billing and deposit language that Eschelon is disputing here.



1 **Issue No. 5-6 – Discontinuing Order Processing for Non-Payment**

2 **Q. ON PAGE 38, LINES 4-7, MR. DENNEY STATES THAT ISSUE 5-6**  
3 **CONCERNS WHETHER “QWEST MAY UNILATERALLY**  
4 **DISCONTINUE PROCESSING ESCHELON’S ORDERS ... EVEN WHEN**  
5 **THE BASIS FOR DOING SO IS DISPUTED.” DO YOU AGREE?**

6 A. Absolutely not. First, although Mr. Denney describes the actions of Qwest as  
7 unilateral, any action that Qwest takes must first be triggered by Eschelon’s  
8 failure to pay its *undisputed* billing amounts. Second, as to the disputed basis, the  
9 language in section 5.4.2 concerning discontinuation of order processing  
10 specifically excludes disputed amounts. Mr. Denney has cited the recent billing  
11 dispute between the parties as the basis for his concern about the proposed section  
12 5.4.2 language, and implies that the Qwest demand for payment included payment  
13 of disputed amounts. As I noted in my rebuttal testimony, Qwest required a  
14 payment based on the amount shown as past due on its books, less a figure  
15 provided by Eschelon itself for amounts in dispute. The amount demanded was  
16 clearly not an amount that Eschelon disputed, as Qwest allowed Eschelon to  
17 exclude the amount it believed to be in dispute. Contrary to Mr. Denney’s  
18 assertions, the facts do not show that Eschelon’s expressed concern about Issue 5-  
19 6 is real or warranted. The facts show that if Eschelon pays its *undisputed* billing  
20 amounts, Qwest will not discontinue processing orders.

21

1 **Q. MR. DENNEY STATES ON PAGE 40, LINES 4-6, “IF QWEST IS WRONG**  
2 **AND THERE IS NO PAYMENT DUE, BUT IT DISCONTINUES**  
3 **PROCESSING ORDERS OR DISCONNECTS CUSTOMERS ANYWAY,**  
4 **ESCHELON’S ENTIRE BUSINESS IS DISRUPTED FOR NO REASON.”**  
5 **IS THERE ANY BASIS FOR HIS CONCERN?**

6 A. No. As I noted in my rebuttal testimony, discontinuing processing orders is not a  
7 step that Qwest takes lightly. It is for this reason that the language in this  
8 provision: (1) excludes disputed amounts; (2) provides that Qwest will not take  
9 this action until payments are more than 30 days past due; and (3) requires that  
10 Qwest provide notice to Eschelon (and the Commission) at least 10 business days  
11 in advance. In the large billing dispute that Mr. Denney cites as a basis for his  
12 concern, Qwest was not “wrong.” In fact, as was just discussed, Qwest allowed  
13 Eschelon to calculate the amount it believed was undisputed and therefore  
14 rightfully due Qwest. The protections built into Qwest’s proposed language and  
15 Qwest’s past practices demonstrate that Eschelon’s concerns are overstated.

16 **Q. ARE THERE ANY RECENT CASES YOU CAN POINT TO THAT**  
17 **DEMONSTRATE QWEST’S CONCERN WITH THIS ISSUE?**

18 A. Yes. Minnesota is the only Qwest state which requires Commission approval to  
19 disconnect service. Recent events in Minnesota have demonstrated the problems  
20 with this requirement. For example, on May 19, 2006, CP Telecom filed an  
21 application with the Commission to discontinue service to Minnesota Phone  
22 Company for failure to make required payments. *In the Matter of CP Telecom’s*

1        *Petition to Discontinue Service to Minnesota Phone Company*, MPUC Docket  
2        No. P6333,6198/M-06-719. On June 5, 2006, Minnesota Phone Company filed a  
3        letter indicating that it had filed a Chapter 11 bankruptcy petition. On August 17,  
4        2006, the Minnesota Commission dismissed the CP Telecom petition due to the  
5        bankruptcy proceeding. In the meantime, Minnesota Phone Company was  
6        allowed to continue running up bills that will never be repaid.

7        Similarly, Eschelon's proposed language would prevent Qwest from protecting  
8        itself from mounting unpaid debt, and thus force it to continue to process orders  
9        pending the outcome of a proceeding. This proposed language would place  
10       Qwest at additional risk of providing service to a CLEC without assurance of  
11       being compensated. Although Mr. Denney argues that the Eschelon language  
12       protects Qwest from untimely payments, provisions such as late payment fees  
13       provide no protection when a carrier is ultimately unable to make payments.

14    **Q.    DOES MR. DENNEY SPECIFY UNDER WHAT CIRCUMSTANCES IT**  
15    **WOULD BE APPROPRIATE TO DISCONTINUE ORDER**  
16    **PROCESSING?**

17    A.    No. Although on page 40, lines 12-16 of his testimony, he states that he does not  
18    disagree that Qwest should be allowed to stop processing orders "under  
19    appropriate circumstances," he does not explain what these circumstances are and,  
20    instead, infers that only the Commission can make such a determination. Mr.  
21    Denney fails to explain why failure to pay *undisputed* amounts should not  
22    constitute an appropriate circumstance.

1 **Issue No. 5-8 – Disconnecting Service for Non-Payment**

2 **Q. DO YOU AGREE WITH MR. DENNEY’S CONCLUSION ON PAGE 45,**  
3 **LINES 1-4, THAT IF IT IS NOT QWEST’S PRACTICE TO INVOKE**  
4 **COLLECTIONS ACTIONS OVER A FEW DOLLARS, THEN QWEST**  
5 **SHOULD HAVE NO PROBLEM INCLUDING THE TERM “NON-DE**  
6 **MINIMUS” IN THE ICA?**

7 A. No. As I stated in both my direct and rebuttal testimony, there is no reason to add  
8 a term such as “non-de minimus” that is subject to interpretation. Eschelon  
9 presents no evidence that Qwest has ever invoked collections or deposit  
10 requirements based upon insignificant amounts, and again offers no compelling  
11 reason to depart from language that was agreed to by the CLECs and Qwest  
12 during the Section 271 workshops.

13

14 **Q. ON PAGE 45, LINES 11-16, MR. DENNEY ARGUES THAT QWEST HAS**  
15 **THE INCENTIVE TO DISCONTINUE PROCESSING ESCHELON’S**  
16 **ORDERS AND DISCONNECT ESCHELON’S CIRCUITS. PLEASE**  
17 **COMMENT.**

18 A. Mr. Denney overreaches when he attempts to attribute an anti-competitive motive  
19 to Qwest’s collections practices. The reality is that these collection practices are  
20 reasonable and prudent business practices designed, not to put customers out of  
21 business, but to help insure that Qwest is compensated for the services it provides.

22

1 **Issue No. 5-9 – Definition of Repeatedly Delinquent**

2 **Q. HAS QWEST FAILED TO DEMONSTRATE THAT ITS STANDARD OF**  
3 **THREE MONTHS WOULD PROVIDE A BETTER INCENTIVE FOR**  
4 **TIMELY PAYMENT, AS MR. DENNEY ARGUES ON PAGE 46, LINE 9**  
5 **TO PAGE 47, LINE 3?**

6 A. No. It is certainly true that a more stringent standard provides greater incentive  
7 for timely payment. Under the Qwest standard, a carrier would have to pay its  
8 bills on time more than 75% of the time to avoid being considered “repeatedly  
9 delinquent.” Under the Eschelon standard, however, Eschelon could be late in its  
10 payments for two months, pay the bill for the third month on time, and then be  
11 late again for the next two months. In a twelve-month period, Eschelon could pay  
12 its bills on time only four months out of twelve, or 33% of the time, and still not  
13 be considered “repeatedly delinquent.” There can be no question that the Qwest  
14 proposal provides a greater incentive for timely payment. Although Mr. Denney  
15 cites a handful of older interconnections agreement with different language, the  
16 majority of the Qwest interconnection agreements use the definition that Qwest is  
17 proposing here, which is a definition identical to the “repeatedly delinquent”  
18 definition that was reviewed and agreed to in the Section 271 workshops by  
19 Qwest and participating CLECs. Given that this is the definition agreed to during  
20 the 271 workshops, Mr. Denney’s claim on page 48, lines 13-20, that this language  
21 is somehow discriminatory rings hollow. Ultimately, Eschelon can provide no

1 legitimate argument to change this language other than to give itself an additional  
2 and unwarranted business advantage.

3

4 **Q ON PAGE 48, LINES 8-12, MR. DENNEY STATES THAT YOU ASSUME**  
5 **THAT ANY DIFFERENCE BETWEEN SGAT LANGUAGE AND**  
6 **PROPOSED ICA LANGUAGE SHOULD BE REJECTED. IS THAT**  
7 **YOUR POSITION?**

8 A. No. My position is that billing issues were discussed at length during the 271  
9 process and, where possible, CLECs and Qwest reached consensus on the billing  
10 language. Where consensus was not possible, an arbitrator examined the parties'  
11 positions and recommended language. The result was language that balances the  
12 needs of both the billing and the billed parties. Eschelon has offered no  
13 compelling reason why this language is no longer appropriate.

14 **Issue No. 5-11 – Deposit Requirements**

15 **Q. ON PAGE 49, LINES 16-19, MR. DENNEY ARGUES THAT PROVIDING**  
16 **ESCHELON WITH AN OPPORTUNITY TO SEEK COMMISSION**  
17 **RELIEF IN THE CASE OF A DEPOSIT REQUEST IS IMMINENTLY**  
18 **FAIR, SINCE ESCHELON IS THE PARTY WHO IS AT RISK OF**  
19 **HAVING ITS ORDERS REJECTED OR HAVING TO PAY A DEPOSIT.**  
20 **PLEASE COMMENT.**

21 A. As I pointed out in my rebuttal testimony, the purpose of the payment language in  
22 an ICA is to balance the needs of both the billing and billed parties. Mr. Denney

1 focuses only on the impacts of deposit requirements on Eschelon and ignores the  
2 importance of deposits for Qwest. While Eschelon may be the party who is at risk  
3 of having to pay a deposit, Qwest is the party who is at risk of non-payment.  
4

5 **Issue No. 5-12 – Commission Involvement in Setting Deposit Requirements**

6 **Q. IN ARGUING FOR COMMISSION INVOLVEMENT IN DEPOSIT**  
7 **REQUIREMENTS, MR. DENNEY STATES ON PAGE 50, LINES 15-17,**  
8 **THAT “IT IS COMMONPLACE FOR STATE COMMISSIONS TO**  
9 **REVIEW AN ILEC BUSINESS PRACTICES AS THEY RELATE TO**  
10 **THEIR CLEC WHOLESALE CUSTOMERS.” IS IT A COMMON**  
11 **PRACTICE TO HAVE STATE COMMISSIONS DETERMINE**  
12 **DEPOSITS?**

13 **A.** I am not aware of this being a standard practice, at least not in Qwest’s 14 state  
14 region. The more standard, and more reasonable, practice, is to have  
15 commissions involved in approving a set of rules, and then making sure the  
16 parties abide by them. In this way, commissions do not need to be involved in the  
17 day-to-day business relationship between the parties. This is, in fact, what has  
18 been done relative to Qwest’s proposed deposit requirements. As I noted  
19 previously, the “repeatedly delinquent” requirement was developed and reviewed  
20 by commissions during the Section 271 workshops.  
21

1 **Q. ON PAGE 51, MR. DENNEY ARGUES THAT IF QWEST HAD TO**  
2 **INCUR ADDITIONAL DEBT WHILE THE COMMISSION DECIDED**  
3 **WHETHER A DEPOSIT WAS APPROPRIATE, IT WOULD JUST BE A**  
4 **MATTER OF QWEST RECEIVING PAYMENT LATER. DO YOU**  
5 **AGREE?**

6 A. No. In the Minnesota Phone Company case that I cited earlier, the company  
7 entered bankruptcy and was unable to pay all of its debts. It is not just a question  
8 of the timing of payment, as Mr. Denney argues, but is a question of providing  
9 protection from the risk that a company will ultimately be unable to pay its bills.

10

11 **Q. HAS QWEST BEEN REQUIRED TO WRITE OFF BAD DEBT FROM**  
12 **CLECs THAT HAVE BEEN UNABLE TO PAY THEIR BILLS?**

13 A. Yes. Qwest has been forced to write off millions of dollars in bad CLEC debt.

14

15 **Issue No. 5-13 – Increasing Deposits Based on Credit Reviews**

16 **Q. HOW DO YOU RESPOND TO MR. DENNEY’S CLAIM ON PAGE 52,**  
17 **LINES 8-18, THAT THE DEPOSIT LANGUAGE IN SECTION 5.4.7**  
18 **LACKS STANDARDS OR OBJECTIVITY?**

19 A. I would suggest that judgment is appropriate for many business issues and  
20 relationships. I would also note that a CLEC always has the dispute option if it  
21 believes that Qwest is treating it unfairly in a request for a deposit. Eschelon  
22 offers no evidence that this language, which was developed during the Section



1 271 process and is in the contracts of the majority of carriers, has caused  
2 problems. In the unlikely event that it were to cause problems, Eschelon would  
3 be fully capable of quickly seeking relief from this Commission.

4 Contrary to Mr. Denney's claims, this change in deposit requirements would not  
5 be based simply on something that Qwest has read in the newspaper. It is  
6 possible, however, that Qwest could read something in the newspaper that would  
7 lead it to question Eschelon's credit worthiness. Based on this information,  
8 Qwest could then perform a credit review. Should the review determine that there  
9 were sufficient credit concerns, the Qwest proposed language would allow Qwest  
10 to request a deposit.

11  
12 **Q. ON PAGE 53, LINES 17-19, MR. DENNEY ARGUES THAT IT IS**  
13 **NECESSARY TO CLARIFY THE SECTION 5.4.7 LANGUAGE TO**  
14 **MAKE IT CLEAR THAT THIS ONLY APPLIES TO INCREASING**  
15 **EXISTING DEPOSITS, NOT TO SITUATIONS WHERE NO DEPOSIT**  
16 **HAD BEEN REQUIRED PREVIOUSLY. DO YOU AGREE?**

17 **A.** Absolutely not. Eschelon's proposed language undermines the purpose of the  
18 section, which is to allow deposit requirements to reflect a change in  
19 circumstances. A change in circumstances may well warrant a deposit  
20 requirement, despite the fact that a deposit had not been required previously.

21

1 **Q. ON PAGE 55, LINES 2-4, MR. DENNEY ARGUES THAT PROVIDING**  
2 **THIS TYPE OF CONTROL TO AN ILEC OVER A CLEC IS NOT**  
3 **CUSTOMARY FROM A PUBLIC POLICY PERSPECTIVE. PLEASE**  
4 **COMMENT.**

5 A. It is certainly customary in the states in the Qwest region. The language in  
6 dispute here was developed and reviewed during the Section 271 process and was  
7 not disputed in the AT&T or Covad arbitrations. However, it is not customary in  
8 this (or in other states,) to have commissions involved in setting deposit amounts,  
9 as Mr. Denney proposes.

10

11 **Q. ON PAGE 56, LINE 17 TO PAGE 57, LINE 3, MR. DENNEY DISCUSSES**  
12 **CONCERNS ABOUT QWEST ENGAGING IN “GAMESMANSHIP”**  
13 **RELATED TO QWEST TIMING CREDIT REVIEWS TO ENSURE**  
14 **MAXIMUM DEPOSITS. DOES MR. DENNEY OFFER ANY EVIDENCE**  
15 **FOR THIS CONCERN?**

16 A. No. As was just discussed, the Section 5.4.7 language is in most CLECs’  
17 agreements. I am not aware of any of these carriers ever alleging that Qwest has  
18 engaged in “gamesmanship” with this provision.

19

20

21

22

23

1 **Issue No. 5-16 – Providing Copies of Protective Agreements**

2 **Q. DO YOU AGREE WITH MR. DENNEY’S STATEMENT ON PAGE 58,**  
3 **LINES 5-6, THAT PROVIDING COPIES OF SIGNED PROTECTIVE**  
4 **AGREEMENTS IS A COMMON PRACTICE?**

5 A. No. The section 5.16.9.1 language was developed jointly by Qwest and CLECs  
6 during the Section 271 workshops and does not contain a requirement for  
7 providing CLECs copies of the signed protective agreements. I am not aware that  
8 any other CLEC has requested that Qwest provide copies of the agreements on an  
9 on-going basis, as Eschelon is requesting here.

10

11 **Q. MR. DENNEY ARGUES THAT ESCHELON IS NOT OFFERED**  
12 **PROTECTION UNDER THE AUDIT CLAUSES OF SECTION 18.1. DO**  
13 **YOU AGREE?**

14 A. No. Like the section 5.16.9.1 language, the audit language was developed jointly  
15 by CLECs and Qwest during the Section 271 workshops. Mr. Denney fails to  
16 demonstrate that these agreed-to provisions do not provide adequate protection for  
17 Eschelon. The audit provisions, in conjunction with the stringent requirements set  
18 forth in section 5.16.9.1, provide Eschelon with ample protection.

19

20 **Q. ON PAGE 59, MR. DENNEY ARGUES THAT NON-DISCLOSURE**  
21 **AGREEMENTS ARE NOT COVERED BY SECTION 18.1, AND HE**  
22 **CITES AN ANSWER YOU GAVE DURING YOUR CROSS-**

1           **EXAMINATION IN COLORADO. HAS MR. DENNEY ACCURATELY**  
2           **PORTRAYED YOUR TESTIMONY ON THIS ISSUE?**

3       A.     No. Mr. Denney cites only one answer that I provided, and he does not discuss  
4           the fact that I stated as follows:

5                     ...going back to 18.3.1, it says that “Either party may request an audit of  
6                     the other party’s compliance with this agreement, measures and  
7                     requirements applicable to limitations on the distribution, maintenance and  
8                     use of proprietary or other protected information that the requesting party  
9                     has provided to the other.” And to me, that specifically gets at  
10                    information such as the forecasting information we’re talking about here.

11  
12           To address Eschelon’s concern that the definition of “Audit” could be read to  
13           exclude non-disclosure agreements, I also testified that it would make sense from  
14           Qwest’s perspective to not capitalize the word audit in section 18.3.1, so as to  
15           remove any confusion as to whether the definition of “Audit” in section 18.1.1  
16           would preclude non-disclosure agreements from being covered under the section  
17           18.3.1 language.

18

19       **Q.     ON PAGE 58, LINES 7-8, MR. DENNEY STATES THAT IN THE**  
20           **MINNESOTA ARBITRATION PROCEEDING, YOU DESCRIBED THE**  
21           **ADMINISTRATIVE BURDEN THAT THIS WOULD PUT ON QWEST AS**  
22           **BEING A CASE OF SIMPLY PUTTING A COPY OF THE SIGNED**  
23           **AGREEMENT IN THE MAIL. PLEASE COMMENT.**

24       A.     Mr. Denney ignored my full answer that the burden would be created by the fact  
25           that job churn, and the potential for others to opt into this agreement, are what  
26           creates an administrative burden. It would create a burden, for example, if every

1 time someone changed jobs, Qwest were required to mail off a copy of the  
2 protective agreement to Eschelon and to anyone else who opts into this  
3 agreement. The biggest burden would be tracking this unique requirement and  
4 ensuring compliance. Such a requirement makes sense only if there is a  
5 corresponding benefit, which does not exist.  
6

7 **V. SECTION 7 DISPUTED TRANSIT RECORD ISSUES**

8 **Issue No. 7-18 and 7-19 – Provision of Transit Records for Bill Verification**

9 **Q. IS MR. DENNEY CORRECT WHEN HE STATES ON PAGE 62, LINES 7-**  
10 **8, THAT WITHOUT QWEST’S CALL RECORD DATA, THERE IS NO**  
11 **WAY TO VERIFY QWEST’S BILLING?**

12 **A.** No. As I noted in my rebuttal testimony, Eschelon has two sources of information  
13 that allow it to validate transit billing. First, Qwest’s monthly transit bills provide  
14 detail of transiting minutes by end office, and provide the company code of the  
15 terminating carrier. Through a comparison with the recordings from its own  
16 switch, Eschelon can validate that Qwest transited these calls to the terminating  
17 carrier. In addition, presumably the terminating carrier is billing Eschelon for  
18 termination. Eschelon can therefore compare the details of the termination bill  
19 with the details of the Qwest transit bill to determine if there are any  
20 inconsistencies.  
21

1    **Q.    IN A FOOTNOTE ON PAGE 62, MR. DENNEY ARGUES THAT QWEST**  
2           **IS REQUIRED TO PROVIDE THE INFORMATION THAT ESCHELON**  
3           **IS SEEKING UNDER THE PROVISIONS OF SECTION 21.8.4.3 OF THE**  
4           **INTERCONNECTION AGREEMENT. DO YOU AGREE?**

5    A.    No. Section 21.8.4.3 of the agreement reads as follows:

6                   **21.8.4.3 Investigation and Resolution of Dispute.** Both CLEC and  
7                   Qwest agree to expedite the investigation of any disputed amounts,  
8                   promptly provide all documentation regarding the amount disputed that is  
9                   reasonably requested by the other Party, and work in good faith in an  
10                  effort to resolve the dispute through informal means prior to initiating any  
11                  other rights or remedies. In addition, where a dispute is based on  
12                  summary records, the billing Party shall determine by WTN all the cases  
13                  where discrepancies identified on a summary basis exist. If the Parties  
14                  have not resolved the dispute within thirty (30) Days of receipt of the  
15                  notice of dispute, the billing Party will provide the disputing Party with a  
16                  written status update. If at any point the billing Party concludes that it will  
17                  deny the dispute, the billing Party will provide to the disputing Party a  
18                  written statement of the denial and the reasons and rationale for the denial.  
19                  Qwest personnel involved in billing and disputes shall have access to all  
20                  Billing data that Qwest provides to CLEC, in the format provided to  
21                  CLEC (such as BillMate®), to facilitate communication about Billing  
22                  matters. In the event of a Billing dispute, the Parties will endeavor to  
23                  resolve the dispute within sixty (60) Days of written notice of the dispute.

24                  As the section heading indicates, this section has to do with dispute investigation  
25                  and resolution, not with the ongoing provisioning of records which Eschelon is  
26                  seeking in this issue. Not only does Eschelon already have the information  
27                  available to verify the Qwest billing, as I noted in my rebuttal testimony, but  
28                  Qwest has also offered to work with Eschelon to provide some sample checking  
29                  of selected end offices.

30

1 **Q. ON PAGE 62, LINES 9-14, MR. DENNEY ARGUES THAT ESCHELON**  
2 **SHOULD NOT HAVE TO PAY IN ORDER TO RECEIVE THE DETAILS**  
3 **BEHIND QWEST’S BILLS. PLEASE COMMENT.**

4 A. Qwest’s billing does provide the details necessary to verify the billing. In my  
5 rebuttal testimony, I provided a sample of a Qwest transit bill, which provides  
6 detail of transiting minutes by end office and provides the company code of the  
7 terminating carrier. As I noted above, this information, coupled with Eschelon’s  
8 own information, would allow for the necessary bill verification.

9

10 **VI. SECTION 22 DISPUTED ISSUES**

11 **Issue No. 22-88 – Rate Reciprocity**

12 **Q. ON PAGE 136, LINES 14-16, MR. DENNEY STATES THAT YOU ARE**  
13 **WRONG WHEN YOU STATE THAT EXHIBIT A NEED NOT REFER TO**  
14 **CHARGES FROM ESCHELON TO QWEST SINCE THEY ARE**  
15 **SPELLED OUT IN THE ICA. PLEASE COMMENT.**

16 Q. My point is simply that there is no need to make all of the rates in Exhibit A  
17 reciprocal. To the extent there are charges from Eschelon to Qwest, these charges  
18 are specifically identified in the ICA. Mr. Denney makes my point when he cites  
19 the language from section 8.2.3.10:

20 **8.2.3 General Terms--Caged and Cageless Physical Collocation**

21 8.2.3.10 ...If, pursuant to the random audit, Qwest does not demonstrate  
22 non-compliance, *Qwest shall pay CLEC using the rates in Exhibit A for*

1                    *Additional Labor Other, for CLEC time spent, if any, as a result of*  
2                    *Qwest's audit...*

3                    This section of the ICA makes it very clear what rates are to apply. Mr. Denney's  
4                    claim that this provision is "clearly insufficient" to determine what rate Eschelon  
5                    would charge Qwest is puzzling.

6

7                    **Issue No. 22-88(a) – Reference to CLEC Access Tariff**

8                    **Q.     WOULD QWEST'S PROPOSED LANGUAGE REGARDING ACCESS**  
9                    **RATES LEAD TO THE MISTAKEN CONCLUSION THAT A CLEC**  
10                    **MUST CHARGE ACCESS RATES OUT OF QWEST'S TARIFF RATHER**  
11                    **THAN THE CLEC'S OWN ACCESS TARIFFS, AS MR. DENNEY**  
12                    **ARGUES ON PAGE 137, LINE 22 TO PAGE 138, LINE 2?**

13                    A.     No. In his direct testimony, Mr. Denney cited the language from the ICA  
14                    concerning tariff access rates, which reads as follow:

15                    7.2.2.3.3.1     Notwithstanding any other provision of this Agreement, in  
16                    the case of Exchange Access (IntraLATA Toll) traffic where Qwest is the  
17                    designated IntraLATA Toll provider, or where Qwest has agreed to be a  
18                    presubscribed IntraLATA Toll provider for other LEC end user toll  
19                    Customers, *Qwest will be responsible to CLEC for payment of CLEC*  
20                    *Tariff access rates* for traffic terminating to CLEC's network. Qwest will  
21                    also be responsible for traffic originating from CLEC's network for a  
22                    CLEC End User Customer utilizing an intraLATA Toll-free service where  
23                    Qwest is the provider of the intraLATA Toll-free service. (Emphasis  
24                    added.)

25                    Given this clear language in the ICA that CLEC tariff access rates apply, it is  
26                    difficult to believe that the reference to the Qwest tariffs on the Exhibit A would  
27                    lead to a mistaken conclusion.



1

2 **Issue No. 22-90 – Unapproved Rates**

3 **Q. ON PAGE 142, MR. DENNEY ARGUES THAT ARBITRATING INTERIM**  
4 **RATES IN THIS PROCEEDING DOES NOT ADDRESS HOW TO DEAL**  
5 **WITH UNAPPROVED RATES GOING FORWARD. PLEASE**  
6 **COMMENT.**

7 A. As I explained in my rebuttal testimony, Eschelon's proposed process is not one  
8 that this Commission has deemed to be necessary in the past. What is important  
9 is that CLECs such as Eschelon have recourse before this Commission if they  
10 believe that an unapproved rate is not appropriate. The fact that unapproved rates  
11 are being arbitrated in this proceeding is a clear demonstration that CLECs have  
12 recourse. Given this existing recourse, establishing an additional process is not  
13 necessary.

14 **Q. ON PAGE 145, MR. DENNEY NOTES THAT QWEST IS TAKING A**  
15 **DIFFERENT APPROACH TO UNAPPROVED RATES IN OREGON**  
16 **THAN IT HAS IN OTHER STATES. PLEASE COMMENT.**

17 A. In other states, in an effort to resolve rate issues, Qwest agreed to Eschelon's  
18 proposed procedure, despite concerns about the necessity of the procedure. In  
19 response, however, Eschelon did not close the issue, but instead changed its  
20 position regarding the language in the agreement. Eschelon then pressed forward  
21 with litigating rate issues and reserved the right to argue that those rates should  
22 change in a later cost docket. The combination of positions that Eschelon has

1 taken has left neither a benefit to Qwest nor efficiencies to this Commission.  
2 Accordingly, Qwest has decided to take a different approach in Oregon and has  
3 agreed to litigate interim rates as a part of this arbitration proceeding, and thus  
4 avoid the creation of a unique procedure for dealing with rates.

5

6

## **VII. CONCLUSION**

7 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

8 **A. Yes.**

**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

**ARB 775**

**In the Matter of**

**ESCHELON TELECOM OF OREGON,  
INC.**

**Petition for Arbitration of an  
Interconnection Agreement with Qwest  
Corporation, Pursuant to Section 252 of the  
Telecommunications Act**

**SURREBUTTAL TESTIMONY OF**

**KAREN A. STEWART**

**FOR**

**QWEST CORPORATION**

**(Disputed Issue Nos. 4-5 (a, b, c), 9-31, 9-32, 9-33, 9-34, 9-35, 9-36, 9-39, 9-41, 9-42,  
9-50, 9-51, 9-52, 9-53, 9-54a, 9-55, 9-56, 9-56a, 9-58, 9-58 (a, b, c, d, e), 9-59, 9-61,(a,  
b, c) and 24-92)**

**June 8, 2007**

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**I. INTRODUCTION**

**Q. PLEASE STATE YOUR NAME.**

A. My name is Karen A. Stewart. I filed direct testimony in this proceeding on May 11, 2007 and rebuttal testimony on May 25, 2007.

**Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

A. My surrebuttal testimony addresses the rebuttal testimony of Eschelon witnesses Douglas Denney and Michael Starkey relating to the following issues as they are numbered in Eschelon’s petition for arbitration: Issue Nos. 4-5 (a, b, c), 9-31, 9-32, 9-33, 9-33a, 9-34, 9-35, 9-36, 9-39, 9-50, 9-51, 9-52, 9-53, 9-54, 9-54a, 9-55, 9-56, 9-56a, 9-58, 9-58 (a, b, c, d, e), 9-59, and 9-61,(a, b, c).

**Q. DO YOU HAVE AN UPDATE CONCERNING ANY ISSUES THAT THE PARTIES HAVE RESOLVED?**

A. Yes. The parties have settled Issue Nos. 9-39, 9-41 and 9-42. Issue Nos. 9-39 and 9-41 are part of a settlement agreement that is pending Commission approval prior to incorporating the agreed-to language into the ICA. Because of the settlement, Qwest is not presenting testimony on these issues.

**II. ISSUES 4-5 (A, B, C) - DESIGN CHANGES**

**Q. WHAT DISPUTES REMAIN BETWEEN THE PARTIES RELATING TO DESIGN CHANGES?**

A. As I describe in my rebuttal testimony, two fundamental issues relating to design changes remain in dispute. First, Qwest and Eschelon continue to disagree over whether a charge for changes to connection facility assignments (“CFAs”) should apply in the circumstance where a CFA is required while Qwest and Eschelon are performing a coordinated cut-over. This dispute is designated as Issue 4-5(a). Second, there is a fundamental disagreement between the parties concerning the rates that should apply to design changes involving unbundled loops and CFA changes that Eschelon requests. This issue is designated as Issue 4-5(c).

1

2 **Issue 4-5**

3 **Q. WHAT DISPUTE REMAINS WITH RESPECT TO ISSUE 4-5?**

4 A. This dispute originally involved two ICA sections, Sections 9.2.4.4.2 and 9.2.3.8.  
5 Qwest has agreed to Eschelon's proposed language for both of these sections,  
6 which should close Issue 4-5.

7 **Q. DOES MR. DENNEY SUGGEST THAT THERE ARE OTHER ISSUES**  
8 **ENCOMPASSED BY ISSUE 4-5 THAT REMAIN OPEN?**

9 A. Yes. As I describe in my rebuttal testimony, Mr. Denney raises an issue  
10 involving loop and CFA design change charges that is unrelated to the ICA being  
11 arbitrated in this proceeding. According to Mr. Denney, Qwest has charged  
12 Eschelon and other CLECs for loop and CFA design changes without having a  
13 right to do so in existing ICAs or in Qwest's Oregon Statement of Generally  
14 Available Terms ("SGAT"). Based on this assertion, Mr. Denney argues that  
15 Qwest should be required to credit Eschelon and other CLECs for the loop and  
16 CFA charges it has previously assessed.

17 **Q. IS THE ISSUE THAT MR. DENNEY RAISES APPROPRIATE FOR**  
18 **CONSIDERATION IN THIS ARBITRATION OF A PROSPECTIVE**  
19 **INTERCONNECTION AGREEMENT?**

20 A. No. Mr. Denney's assertions are not only wrong on the merits; they also are not  
21 properly raised in this arbitration. The purpose of this proceeding is to resolve the  
22 parties' differences relating to the language for a *prospective* ICA that will be  
23 ordered at the conclusion of the proceeding. It is not the purpose of this  
24 proceeding for either party to request Commission action relating to concerns or  
25 complaints arising from their existing ICA. No such issues are raised in  
26 Eschelon's petition for arbitration or in Qwest's response to the petition. The  
27 issue that Mr. Denney raises is unrelated to the terms and conditions for the  
28 prospective ICA that is being arbitrated and therefore is not properly a part of this  
29 proceeding.

1

2 *Issue 4-5(a)*

3 **Q. ARE YOU ASSERTING, AS MR. DENNEY STATES AT PAGES 14-15 OF**  
4 **HIS REBUTTAL TESTIMONY, THAT ESCHELON IS REFUSING TO**  
5 **PERMIT ANY COST RECOVERY FOR CFA CHANGES?**

6 A. No. Mr. Denney mischaracterizes my testimony when he states that I have  
7 incorrectly asserted that Eschelon is unwilling to pay anything for design changes  
8 involving CFA changes. I recognize that Eschelon has proposed a rate of \$5.00  
9 for CFA design changes, but my point is that this rate does not even come close to  
10 compensating Qwest for the costs it incurs to perform these changes. Although I  
11 have previously discussed the fact that Eschelon has not provided any information  
12 or cost support showing how the \$5.00 rate was developed or whether the rate  
13 bears any relationship to the costs that Qwest incurs to perform CFA changes, Mr.  
14 Denney's rebuttal testimony does not respond to this criticism. Mr. Denney states  
15 only that the actual design work needed for CFA changes "would take a matter of  
16 seconds or minutes," apparently implying that Eschelon's proposed \$5.00 charge  
17 is appropriate.<sup>1</sup> However, Mr. Denney never supports this incorrect assertion with  
18 a description of the activities and costs that are required for a CFA change. The  
19 fact remains that Eschelon has not in any way demonstrated that the rate it is  
20 proposing is cost-based and would permit Qwest to be fully compensated for the  
21 costs imposed by CFA changes.

22 **Q. IS THE INAPPROPRIATENESS OF ESCHELON'S PROPOSED RATE**  
23 **FOR CFAs CHANGED IN ANY WAY BY THE FACT THAT THE RATE**  
24 **WOULD BE INTERIM, AS MR. DENNEY EMPHASIZES AT PAGE 17**  
25 **OF HIS REBUTTAL TESTIMONY?**

---

<sup>1</sup> See Rebuttal Testimony of Douglas Denney ("Denney Rebuttal"), at p. 18. Also, at page 19, Mr. Denney discusses the deposition of Mr. Jenson in the current Minnesota cost docket. Teresa Million, a Qwest cost witness in that docket, rebuts Mr. Denney's incorrect understanding of Mr. Jenson's testimony regarding the time necessary to complete a CFA design change.

1 A. No. Mr. Denney suggests incorrectly that Qwest's concerns about Eschelon's  
2 proposed rate are unfounded because the rate would be interim. The relevant  
3 point about the proposed \$5.00 rate is not that it would be interim, but that it is  
4 not cost-based and therefore would prevent Qwest from fully recovering its costs.  
5 Any denial of complete cost recovery, even for a limited period, would be  
6 unlawful and improper. In addition, while Mr. Denney describes the rate as  
7 "interim," the rate likely would remain in effect for an indefinite period. There is  
8 also no assurance that the rate would last only for a limited period, as Mr. Denney  
9 suggests.

10 **Q. MR. DENNEY ASSERTS AT PAGE 19 OF HIS REBUTTAL TESTIMONY**  
11 **THAT QWEST ALREADY RECOVERS THE COSTS OF CFA DESIGN**  
12 **CHANGES THROUGH THE OREGON CHARGE FOR COORDINATED**  
13 **INSTALLATIONS. IS THIS ASSERTION CORRECT?**

14 A. No. It is important to remember that design changes involving CFAs are typically  
15 the result of flawed or defective CFA assignments that CLECs provide to Qwest,  
16 as I describe in my rebuttal testimony. Mr. Denney's claim that the existing  
17 Oregon rate for coordinated installations includes the costs of these changes  
18 necessarily assumes that the coordinated installation rate was set with the  
19 assumption that CLECs would provide defective CFAs and thereby impose last-  
20 minute design and service order change costs upon Qwest. It would be very  
21 surprising if the coordinated installation rate were to include this assumption,  
22 and I am not aware of any information indicating that it does. While Mr. Denney  
23 asserts that certain activities associated with the coordinated cutovers required for  
24 CFA changes are already included in the coordinated installation rate, he fails to  
25 cite anything from a cost study or a Commission rate order to support this  
26 assertion. As Ms. Million discusses in her rebuttal testimony, the Oregon rate for  
27 coordinated installations does not include the additional cutover activities and  
28 costs that Qwest must perform and incur when a CLEC like Eschelon provides  
29 defective CFAs. Moreover, Mr. Denney fails to recognize that technician time is  
30 not included in the Qwest cost study that generates the design change rate that



1 Qwest is proposing. Accordingly, the adoption of Qwest's rate for design  
2 changes would not result in a "double recovery" of the technician time and costs  
3 that are included in the Oregon rate for coordinated installations.

4 **Q. PLEASE RESPOND TO MR. DENNEY'S REPEATED CLAIM THAT CFA**  
5 **CHANGES ARE MERELY "RECORDS CHANGES" AND THAT**  
6 **ADOPTION OF QWEST'S PROPOSED DESIGN CHANGE RATE**  
7 **WOULD RESULT IN AN OVER-RECOVERY.**

8 A. Mr. Denney's claim that CFA changes are merely "records changes" is incorrect.  
9 Qwest must perform multiple steps involving substantially more than just a  
10 "records change" when a CLEC requests a CFA change mid-stream in the  
11 installation process. The new CFA must first be verified to be available (*i.e.*, not  
12 reserved) and viable (*i.e.*, not defective). The circuit design and associated  
13 records must also be updated. Several Qwest departments are involved to  
14 accomplish the change properly. Moreover, testing personnel are needed to  
15 coordinate this entire effort. The testing personnel coordinate with the Central  
16 Office Technician to confirm the new CFA is viable. If viable, the testing  
17 personnel provide the Service Delivery Coordinator with the CFA information to  
18 supplement the order. The testing personnel may confirm with the CLEC testing  
19 personnel that the circuit is operational. The Designer must then redesign the  
20 circuit with the new CFA. Once the tester has coordinated these efforts, the tester  
21 will have the Central Office Technician run a jumper from the tie pair to the new  
22 CFA per the new design (*i.e.*, the "lift and lay" portion of the effort). A CFA  
23 change may be accomplished by utilizing a cable pair within the same 100 pair  
24 block on a central office frame (a few inches). However, if there are no viable  
25 termination locations within that block, a move to a different block may be  
26 required (a few feet). In some cases, a move to an entirely different frame may be  
27 required (a few hundred feet).

28 In these cases, the existing tie cable may not be usable. A different tie cable, then,  
29 will have to be used and checked for cable length limitations, etc. Again,

1           however, the number of steps required to accomplish the physical relocation of  
2           the circuit is not the issue. The engineering time that is required to properly  
3           install a service for the end-user customer and the resulting coordination effort by  
4           Qwest— which precede the physical relocation of the circuit—represent the  
5           greater part of the CFA change effort.

6           In addition, Ms. Million explains in her rebuttal testimony (pages 17 to 19) that  
7           the design change rate Qwest is proposing is based on the average cost of  
8           performing a design change for all types of products (*i.e.*, loops and transport) and  
9           includes CFA changes. The nonrecurring cost study upon which the rate is based  
10          estimates the amount of time, on average, that it will take to perform any given  
11          task in the list of activities necessary to complete a design change and the  
12          probability that the task will occur. The study and the resulting rate are therefore  
13          based on average for all design changes, and application of the average rate to  
14          CFA changes does not, contrary to Mr. Denney's claim, result in an over-  
15          recovery.

16       **Q.    IS MR. DENNEY CORRECT IN ASSERTING AT PAGES 21-22 OF HIS**  
17       **REBUTTAL TESTIMONY THAT ISSUES RELATING TO ESCHELON'S**  
18       **QUALITY CONTROL FOR CFAs ARE IRRELEVANT?**

19       **A.**    No. Mr. Denney himself injected this issue into the proceeding by asserting in his  
20          direct testimony that Eschelon sometimes requires multiple CFA changes and  
21          therefore could be required to pay multiple CFA charges. In responding to this  
22          assertion in my rebuttal testimony, my point was to demonstrate that the examples  
23          Mr. Denney describes reveal that Eschelon may have a problem with CFA quality  
24          control. This issue is relevant for determining the appropriate rate for design  
25          changes only to the extent Eschelon is relying on the examples to support the low  
26          CFA rate it is advocating. If Eschelon is having the level of difficulty with CFA  
27          assignments suggested by Mr. Denney's testimony, the solution is not to set an  
28          arbitrary rate for CFA changes that prevents Qwest from recovering costs.  
29          Instead, the solution is for Eschelon to improve its quality control and to minimize  
30          the number of CFA changes it requires.

1 *Issue 4-5(c)*

2 **Q. WITH RESPECT TO ESCHELON’S CLAIM THAT SEPARATE RATES**  
3 **SHOULD BE SET FOR LOOPS, TRANSPORT, AND CFA DESIGN**  
4 **CHANGES, IS MR. DENNEY CORRECT IN ASSERTING (PAGES 23-24**  
5 **OF HIS REBUTTAL TESTIMONY) THAT IT IS IRRELEVANT THAT**  
6 **QWEST’S SINGLE RATE FOR DESIGN CHANGES IS LISTED IN THE**  
7 **“MISCELLANEOUS CHARGES” SECTION OF EXHIBIT A OF THE**  
8 **ICA?**

9 **A.** No. If the design change charge applied only to Unbundled Dedicated Interoffice  
10 Transport (“UDIT”) and not to unbundled loop and CFA design changes, as Mr.  
11 Denney claims, the rate would appear in the section of Exhibit A that lists rates  
12 specific to UDIT (*i.e.*, Section 9.6). That section includes multiple rates that  
13 apply only to UDIT. For example, the UDIT section of Exhibit A lists the  
14 transport-specific rates for “DSO UDIT (Recurring Fixed and per Mile).” These  
15 rates apply only to transport and not to other UNEs or services. By contrast, rates  
16 listed in the “Miscellaneous Charges” section of Exhibit A, Section 9.20, may  
17 apply in multiple circumstances and, in several instances, to more than one  
18 network element or activity. For example, the service referred to as “Additional  
19 Engineering – per Half Hour or fraction thereof” is not limited to a single  
20 interconnection service or network element and could be used in several different  
21 scenarios.

22 Mr. Denney’s reading of Exhibit A illogically assumes that Qwest and Eschelon  
23 included a transport-specific charge in a section of the ICA pricing exhibit that is  
24 not specific to transport and that applies to multiple elements, services and  
25 activities. The illogic of this reading is further demonstrated by the fact that, as  
26 Ms. Million describes in her rebuttal testimony, the cost study upon which the  
27 design change charge is based is not limited to transport and includes both  
28 unbundled loops and CLEC-caused CFA changes.

1 **Q. IS THERE ANY MERIT TO MR. DENNEY’S CLAIM THAT THE COST**  
2 **STUDY USED TO SET THE DESIGN CHANGE CHARGE IS BASED**  
3 **EXCLUSIVELY ON DESIGN CHANGE CHARGES FOR TRANSPORT?**

4 A. No. Ms. Million explains in both her rebuttal and surrebuttal testimony that the  
5 cost study specifically includes costs and activities relating not just too transport-  
6 related design changes, but also to costs and activities for loop and CFA design  
7 changes.

8 **Q. MR. DENNEY ALSO IMPLIES AT PAGES 23-24 OF HIS REBUTTAL**  
9 **TESTIMONY THAT QWEST CANNOT ASSESS ANY OF THE**  
10 **MISCELLANEOUS CHARGES IN EXHIBIT A UNLESS A PROVISION**  
11 **IN THE BODY OF THE ICA OR SGAT SPECIFICALLY REFERS TO**  
12 **AND AUTHORIZES THE CHARGE. IS THIS A CORRECT**  
13 **INTERPRETATION OF THE ICA?**

14 A. No. Qwest’s ability to charge the miscellaneous rates in Exhibit A is not  
15 dependent upon a specific reference to the rate in the body of a specific section of  
16 the ICA or SGAT. Exhibit A is a comprehensive listing of the elements and  
17 services that are available under the ICA and the rates that apply to them. The  
18 presence of an element or service in Exhibit A establishes an obligation on  
19 Qwest’s part to provide the element or service at the listed price, and an  
20 obligation on Eschelon’s part to pay the listed price. There are multiple examples  
21 of rates listed in Exhibit A that are not specifically referred to in the body of the  
22 ICA, but that nevertheless clearly apply to Qwest’s and Eschelon’s business  
23 relationship. For example, “Additional Engineering – per Half Hour or fraction  
24 thereof” could apply to different types of UNEs and services where Eschelon has  
25 an additional need to complete an engineering job. This is available for use with  
26 different UNEs and services, even though there is no language in the provisions of  
27 the ICA addressing individual services and UNEs that refers to the “Additional  
28 Engineering” rate element. If CLECs could only order the rate elements in  
29 Exhibit A that are specifically referred to in each section of the ICA, the number  
30 of elements and services that would be available to Eschelon under the ICA

1 would be significantly reduced. That result would not be in Eschelon's interest,  
2 which Mr. Denney may not have realized when he presented this argument in his  
3 testimony.

4 **Q. PLEASE RESPOND TO MR. DENNEY'S ASSERTION AT PAGES 32-33**  
5 **OF HIS REBUTTAL TESTIMONY THAT ESCHELON HAS NO**  
6 **OBLIGATION TO SUBMIT A COST STUDY TO SUPPORT THE**  
7 **DESIGN CHANGE RATES THAT IT IS PROPOSING.**

8 A. In claiming that CLECs have no obligation to submit cost studies in support of the  
9 rates they are proposing, Mr. Denney ignores the Act's basic requirement – set  
10 forth in Section 252(d)(1) – that rates must be based on the cost of providing an  
11 interconnection service or UNE. Section 252(e) (2) prohibits state commissions  
12 from approving ICAs that do not comply with this requirement. Without a cost  
13 study or any other evidence to support Eschelon's proposed design change rates,  
14 the Commission has no basis for determining whether Eschelon's rates meet the  
15 Act's pricing requirement and, in turn, whether the ICA is lawful. Mr. Denney's  
16 cavalier position that CLECs can demand rates without providing any cost  
17 support for them has no support in the Act.

18 Mr. Denney does correctly point to statements from the FCC requiring ILECs to  
19 submit proof of the costs they incur. However, he then inaccurately asserts that  
20 Qwest did not meet that burden with respect to design changes.

21 **III. ISSUE 9-31 - ACCESS TO UNEs**

22 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF THIS ISSUE.**

23 A. This issue involves language in Section 9.1.2 of the ICA that defines the access  
24 that Qwest will provide Eschelon to the UNEs that Qwest makes available under  
25 Section 251(c)(3) of the Act. Consistent with applicable legal requirements,  
26 Qwest has agreed to ICA language obligating it to provide Eschelon with non-  
27 discriminatory access to UNEs at agreed service performance levels and to  
28 perform "those Routine Network Modifications that Qwest performs for its own  
29 End User Customers."

1 **Q. HAS QWEST ATTEMPTED TO ADDRESS ESCHELON’S CONCERNS**  
2 **IN THIS SECTION?**

3 A. Yes. Using Eschelon’s language as a starting point and with Qwest’s red-lined  
4 changes, Qwest proposed the following language:

5 **Additional activities available for Access to** Unbundled Network  
6 Elements includes moving, adding to, repairing and changing the  
7 UNE (through, e.g., design changes, maintenance of service  
8 including trouble isolation, additional dispatches, and cancellation  
9 of orders) **at the applicable rate.**

10 Qwest has offered this language as a good faith effort to settle this dispute  
11 between the parties.

12 **Q. WHAT IS QWEST’S CONCERN WITH THE WORDS “ACCESS TO”**  
13 **THAT APPEARS IN ESCHELON’S PROPOSED LANGUAGE?**

14 A. Typically, when one refers to “access” to a UNE, it is in the context of the CLEC  
15 paying a recurring rate to be able to “use” the UNE. Qwest is concerned that  
16 Eschelon is attempting to redefine “access” to include not only moving and  
17 adding to a UNE, but also to include a long list of design changes -- “maintenance  
18 of service including trouble isolation,” “additional dispatches,” and “cancellation  
19 of orders.” These activities are not included in the recurring rates for UNEs.

20 Qwest’s concern about Eschelon’s intention is increased by the fact that Eschelon  
21 witness Mr. Starkey has testified in other proceedings that in Eschelon’s view;  
22 literally “thousands” of activities are included in the mandatory access to UNEs  
23 that Qwest must provide. Although Eschelon cannot even identify these  
24 thousands of activities, it claims nonetheless that all of them are either included in  
25 existing UNE recurring rates or, in a small number of instances, must be provided  
26 upon Eschelon’s payment of a cost-based TELRIC rate. In other words, Eschelon  
27 is claiming that all of these unidentified activities are part of “access” to a UNE  
28 and that a tariffed, non-TELRIC rate cannot apply to any of these activities. The  
29 obvious flaw in this contention is that Eschelon is categorizing activities as  
30 relating to “access” and being TELRIC-based without knowing what they are.

1 That is precisely why Qwest has proposed the “at the applicable rate” language  
2 that I quote above. Unlike Eschelon’s language, Qwest’s language recognizes the  
3 *possibility* that some of the many activities encompassed by the terms “moving,  
4 adding to, repairing and changing” may not be part of access to a UNE and may  
5 not be governed by TELRIC rates.

6 Moreover, when viewing Eschelon’s proposed definition of “access,” including  
7 the words “adding” and “moving,” the logical response is to ask what these terms  
8 mean. Does the proposal mean that when Eschelon orders access to one  
9 unbundled loop, Qwest must add to it, (*e.g.*, install a second unbundled loop) at  
10 no additional charge? What does moving mean? Does it mean that accessing a  
11 UNE through payment of a monthly recurring rate somehow obligates Qwest to  
12 move it at no additional charge? Does “moving” mean that Qwest must somehow  
13 move the UNE only at the same location, or perhaps even across town? The point  
14 is that this language is far-reaching and creates an unacceptable level of exposure  
15 and financial risk for Qwest, which can only be protected against by obligating  
16 Eschelon to pay for these activities “at applicable rates.”

17 **Q. IS QWEST’S CONCERN ABOUT THE FINANCIAL EXPOSURE**  
18 **CREATED BY ESCHELON’S LANGUAGE MORE THAN**  
19 **HYPOTHETICAL?**

20 A. Yes. Mr. Denney expressly testified in the Minnesota arbitration that the costs of  
21 most of the activities encompassed by Eschelon’s language are included in  
22 monthly recurring rates. Eschelon’s proposal could thus prevent Qwest from  
23 recovering its costs and would effectively require it to provide services for free.  
24 With that in mind, Qwest proposed the language I set forth above, which we  
25 believe properly balances Eschelon’s concern that the listed services are available  
26 and Qwest’s concern that it be properly compensated for providing the services.

27 **Q. AT PAGES 100-102 OF HIS REBUTTAL TESTIMONY, MR. STARKEY**  
28 **DISCUSSES A QWEST CMP CHANGE INVOLVING A RESTRICTION**  
29 **THAT QWEST PLACED ON THE NUMBER OF VERBAL CFA**

1           **CHANGES CLECs ARE PERMITTED TO SUBMIT ON DUES DATES.**  
2           **DOES THIS “EXAMPLE” SUPPORT ESCHELON’S PROPOSAL**  
3           **RELATING TO THE SCOPE OF THE ACCESS TO UNES THAT QWEST**  
4           **SHOULD PROVIDE?**

5       A.    No. As I discuss in my rebuttal testimony at page 13, the “example” that Mr.  
6           Starkey refers to is a September 2006 CMP notice regarding a process  
7           clarification for CFA changes that did not deny access to any UNEs or UNE  
8           activities. Rather, it was a reasonable clarification by Qwest regarding the  
9           process for CFA changes on the due date. Qwest was attempting to address  
10          concerns created by CLECs who were abusing the CFA change process.

11       **Q.    HAS ESCHELON AGREED THAT QWEST’S PROPOSED LANGUAGE**  
12       **COULD SETTLE THE ISSUE BETWEEN THE PARTIES?**

13       A.    No. At pages 86-87 of his rebuttal testimony, Mr. Starkey repeats Eschelon’s  
14           claim that these activities should be priced at TELRIC, while ignoring Qwest’s  
15           concern that Eschelon’s language would require Qwest to provide services for  
16           free. Mr. Starkey fails to show that Eschelon’s language is not susceptible to an  
17           interpretation that would require Qwest to provide services without compensation.  
18           Nor does he show Eschelon’s language would permit Qwest to charge TELRIC  
19           rates for these activities separate and apart from the monthly recurring rate for  
20           UNEs.

21           **IV.    ISSUE NOS. 9-33 AND 9-34 – QWEST NETWORK MAINTENANCE**  
22           **AND MODERNIZATION ACTIVITIES**

23       *Issue 9-33*

24       **Q.    HAS ESCHELON REVISED ITS ICA PROPOSALS RELATING TO**  
25       **ISSUE 9-33?**

26       A.    Yes. Eschelon has three different proposals relating to this issue, as set forth at  
27           pages 162-163 of Mr. Starkey’s direct testimony. Under Eschelon’s first  
28           proposal, Qwest would be prohibited from making network changes that  
29           “adversely affect service to any End User Customers.” Eschelon’s second  
30           proposal includes this same prohibition, but it allows for “a reasonably anticipated



1 temporary service interruption, if any, needed to perform the work.” Eschelon’s  
2 third proposal is as follows: “If such changes result in the CLEC’s End User  
3 Customer experiencing unacceptable changes in the transmission of voice or data,  
4 Qwest will assist the CLEC in determining the source and will take the necessary  
5 corrective action to restore the transmission quality to an acceptable level if it was  
6 caused by the network changes.”

7 **Q. WHAT IS THE COMMON FLAW WITH EACH OF THESE**  
8 **PROPOSALS?**

9 A. The common flaw is that each proposal contains broad, undefined terms that  
10 would put Qwest at risk of violating the ICA whenever it makes modernization  
11 and maintenance changes to its network. As I have described in my prior  
12 testimony, Eschelon has not offered any definition of what it would mean to  
13 “adversely affect” service to an End-User customer. Although I expressed  
14 Qwest’s concern about the vagueness of this term in both my direct and rebuttal  
15 testimony, Eschelon still has not come forward with any definition of the term or  
16 with any standard by which the parties would determine whether a change to the  
17 network has a prohibited “adverse affect” on an End-User. Further, Eschelon’s  
18 new, third proposal is as vague as its first two proposals. Specifically, the third  
19 proposal prohibits “unacceptable changes” in transmission, but, again, Eschelon  
20 does not tie this term to any standard or metric. As a result, disputes involving  
21 whether a change violates the ICA would hinge on subjective evaluations of  
22 whether a change was “unacceptable.” With that vagueness in the ICA, Qwest  
23 would be left guessing about whether a network change is prohibited under the  
24 ICA and would almost certainly have reduced incentive to perform network  
25 maintenance and modernization. That result would not be in the interest of either  
26 party and, more importantly, could result in Oregon consumers not receiving the  
27 full benefits of network maintenance and modernization.

28 **Q. DOES MR. STARKEY CITE ANY RELEVANT LEGAL AUTHORITY IN**  
29 **SUPPORT OF ESCHELON’S “NO ADVERSE AFFECT” PROPOSAL?**

1 A. No. In support of this proposal, Mr. Starkey relies (page 115) on 47 CFR  
2 § 51.319(a)(8), which is one of the FCC rules that defines the access to unbundled  
3 loops that ILECs are required to provide. The portion of the rule that Mr. Starkey  
4 relies upon provides that an ILEC “shall not engineer the transmission capabilities  
5 of its network in a manner . . . that disrupts or degrades access to a local loop or  
6 subloop . . . .” Mr. Starkey states that this provision has the same effect as  
7 Eschelon’s “no adverse affect” proposal, but this assertion ignores the fact that the  
8 context and language of the FCC’s rule is different from Eschelon’s proposal.

9 First, the FCC rule specifically addresses the type of access an ILEC must provide  
10 to a local loop, and is not intended to define the level of transmission quality that  
11 an ILEC must ensure exists following network maintenance and modernization  
12 activities. Second, the rule establishes a general obligation of an ILEC and, of  
13 course, is not intended to serve as contract language. The rule therefore does not  
14 have the level of specificity required for an ICA, as it is recognized that ILECs  
15 and CLECs must agree upon or arbitrate the specific contract language that is  
16 needed to implement FCC rules and orders. Third, when the FCC uses the terms  
17 “disrupt” and “degrade,” it does so in specific reference to the access an ILEC  
18 must provide to a loop, and not in reference to the level of service to an end-user  
19 customer.

20 Similarly, Rule 51.316(b), which Mr. Starkey also cites, does not relate to  
21 network maintenance and modernization activities. Instead, it involves  
22 conversions from wholesale services to UNEs. While that section uses the term  
23 “adversely affecting,” it does not purport to be a contractual provision and thus  
24 does not attempt to define when a conversion would result in an “adverse effect.”

25 **Q. CITING AGREED ICA LANGUAGE IN SECTION 9.1.9, MR. STARKEY**  
26 **ASSERTS AT PAGE 113 OF HIS REBUTTAL TESTIMONY THAT YOU**  
27 **HAVE INCORRECTLY REPRESENTED THAT ESCHELON’S**  
28 **PROPOSAL WOULD IMPEDE QWEST’S ABILITY TO PERFORM**

1           **NETWORK MODERNIZATION AND MAINTENANCE. IS HE**  
2           **ACCURATELY DESCRIBING YOUR POSITION?**

3    A.    No. Section 9.1.9 does provide that Qwest can make necessary modifications and  
4           changes to UNEs in its network. However, the problem is that Eschelon's  
5           proposal dilutes this essential right by prohibiting changes that have an undefined  
6           "adverse effect." My point is not that Qwest is without a right to make network  
7           maintenance and modernization changes. Instead, my point is that faced with a  
8           prohibition against changes that have an "adverse effect" and undefined  
9           consequences for violating that prohibition, Qwest would have substantial risk  
10          whenever it were to make a network change. The presence of that risk, which  
11          would result from Eschelon's language, would inevitably reduce Qwest's  
12          incentive to carry out network changes.

13    *Issue 9-33(a)*

14    **Q.    IS THIS ISSUE CLOSED?**

15    A.    Yes. As I reported earlier, the parties have resolved this issue.

16    *Issue 9-34*

17    **Q.    MR. STARKEY ASSERTS THAT SINCE ESCHELON IS ONLY**  
18           **SEEKING DETAILED INFORMATION IN NOTICES WHEN QWEST'S**  
19           **NETWORK CHANGES HAVE CUSTOMER-SPECIFIC EFFECTS, THE**  
20           **NOTICE REQUIREMENT IS NARROWLY TAILORED AND IS NOT**  
21           **BURDENSOME. IS THIS ASSERTION ACCURATE?**

22    A.    No. Despite Mr. Starkey's testimony, Eschelon's proposed language relating to  
23           notice requirements would appear to require Qwest to provide detailed notices  
24           that include circuit IDs and customer addresses whenever an Eschelon end-user  
25           might be affected. Thus, in the examples I provide in my testimony relating to  
26           switch software upgrades and changes in dialing plans, it would appear that  
27           detailed notice would be required because the changes would specifically affect  
28           Eschelon end-users. If Eschelon's intent is to impose these detailed notice  
29           requirements only in the narrow situations that Mr. Starkey describes, Eschelon  
30           should modify its proposed ICA language to make that clear. For example, at

1 page 122 of his rebuttal testimony, Mr. Starkey states that a change that is  
2 “specific to an end user customer” is one that is made “to the service of a  
3 customer at an address and not a change made that affects a geographic area (or  
4 many customers).” But that is not what Eschelon’s proposed ICA language says.  
5 Instead, the language states only that Qwest will comply with these detailed  
6 notice requirements for changes “specific to an End User Customer,” without ever  
7 defining what this phrase means.

8 **Q. HAS QWEST’S NETWORK AND MODERNIZATION ACTIVITIES**  
9 **BEEN A MAJOR ISSUE FOR EITHER RETAIL OR CLEC END USERS?**

10 A. Not that I am aware of. It was never established in the Covad arbitrations (in  
11 which this issue was extensively reviewed by this and numerous other  
12 commissions) that Qwest had ever disconnected (or even disrupted) the service to  
13 a single Covad DSL customer due to a copper retirement. Even in the most  
14 service-affecting situation, that of copper loops being retired, Covad who  
15 primarily relies on copper loops across the Qwest region has not a retirement  
16 related problem. Clearly, Eschelon’s description of a single incident, (that  
17 arguably may or may not have resulted from a network modernization activity)  
18 for a single customer, would be an anomaly. Qwest regularly – on a daily basis –  
19 performs network modernization and maintenance activities across its 14 states.  
20 If Qwest were in the habit of being cavalier about affecting the service it provides  
21 to CLECs and end-users, this Commission would certainly be aware of that. The  
22 FCC notice requirements for network-affecting activities have stood the test of  
23 time and provide ample notice to the CLEC community. It would be  
24 unreasonable to modify these federal notice requirements in the very significant  
25 ways that are required by Eschelon’s proposal.

26 **Q. IS MR. STARKEY’S TESTIMONY SEEKING CUSTOMER ADDRESSES**  
27 **IN NOTICES OF NETWORK CHANGES CONSISTENT WITH THE**  
28 **COMMISSION’S DECISION IN THE QWEST-COVAD ARBITRATION?**

29 A. No. As I describe in my rebuttal testimony at pages 23 to 24, this Commission  
30 rejected Covad’s demand for Qwest to provide customer-specific information in

1 notices relating to Qwest’s retirement of copper loops. Consistent with that ruling  
2 and the language of FCC Rule 51.327, Qwest does not have any obligation to  
3 provide Eschelon with the addresses of its customers that could be affected by  
4 network maintenance or modernization. Instead, Qwest’s obligation is to provide  
5 Eschelon with sufficient information about where a network change is taking  
6 place so that Eschelon – not Qwest – can identify the addresses of any of its  
7 customers that could be affected by the change. In addition, if that information is  
8 not enough, Qwest’s notices include the name and telephone number of a contact  
9 person at Qwest who can provide additional information about the location and  
10 nature of the network changes, as required by Rule 51.327(a)(2).

11 **V. ISSUE 9-51 – APPLICATION OF UDF-IOF TERMINATION RATE**  
12 **ELEMENT**

13 **Q. PLEASE PROVIDE AN OVERVIEW OF THE DISPUTE RELATING TO**  
14 **ISSUE 9-51.**

15 A. This issue concerns a dispute regarding how to define a rate element involving  
16 unbundled dark fiber (“UDF”). Eschelon has proposed changes to the definition  
17 of this rate element, claiming that the definition requires clarification. As part of  
18 the ongoing discussion between the parties, Qwest has re-reviewed this definition,  
19 and in an effort to settle this issue between the parties, proposes a new definition  
20 for this rate element.

21 **Q. WHAT IS QWEST’S NEWLY PROPOSED CONTRACT LANGUAGE**  
22 **RELATING TO ESCHELON’S ISSUE 9-51?**

23 A. Qwest’s proposal for Section 9.7.5.2.1.a is:

24 a) UDF-IOF Termination (Fixed) Rate Element. This rate element is a  
25 recurring rate element and provides a termination at the interoffice FDP  
26 within the Qwest Wire Center. A minimum of two UDF-IOF termination  
27 charges apply per pair. A UDF-IOF termination charge also applies per  
28 each termination at an FDP or like cross-connect point for each  
29 intermediate office on the dark fiber route.

30

1 This description accurately and fully captures the description of this rate element  
2 as represented in the cost studies Qwest uses for this rate element. Ms. Million  
3 provides additional information on the dark fiber termination rate in her  
4 surrebuttal testimony.

5 **Q. WHY SHOULD THE COMMISSION ADOPT QWEST'S LANGUAGE**  
6 **RELATING TO THIS ISSUE?**

7 A. Qwest has consistently applied this rate element on the same basis for all CLECs.  
8 Qwest's application of this rate element ensures that Qwest receives proper cost  
9 recovery, as Qwest's definition recognizes that more than one dark fiber cross-  
10 connect termination can be required in a central office. Eschelon's attempt to  
11 restrict application of the rate to one termination per pair per central office ignores  
12 the reality that the configuration of a central office may require more than one  
13 cross-connect termination. Because Eschelon's proposal would deny Qwest full  
14 recovery of its costs when more than one termination is required, the Commission  
15 should reject the proposal. Qwest has taken additional steps to provide clarity in  
16 its definition at the request of Eschelon and believes it is consistent with the cost  
17 study reviewed by Ms. Million and Mr. Denny for this rate element.

18 **VI. ISSUE 9-53 – ACCESS TO UCCRE**

19 **Q. DOES THE ABSENCE OF ANY DEMAND FOR THE UCCRE PRODUCT**  
20 **GIVE RISE TO CONCERNS ABOUT THE LOGIC OF THE PRODUCT**  
21 **WITHDRAWAL PROCESS THAT ESCHELON IS PROPOSING**  
22 **THROUGH ITS ALTERNATIVE PROPOSAL NOS. 2, 3, AND 4 FOR**  
23 **THIS ISSUE?**

24 A. Yes. Eschelon appears to be proposing a product withdrawal process specifically  
25 in response to Qwest's desire to cease offering the UCCRE products for which  
26 there is no demand at all in Oregon, or in any other state in Qwest's region. It  
27 does not seem either logical or efficient to initiate a time-consuming, resource-  
28 intensive generic docket relating to product withdrawals in response to Qwest's  
29 attempt to cease offering products that no CLEC is ordering or has ever ordered.

1 The fact that there is no demand at all for this product and no legal obligation to  
2 provide it, should provide a sufficient basis for Qwest to stop offering them. It  
3 should not be necessary to go through a time-consuming generic docket to reach  
4 this logical and seemingly inevitable outcome. As I explain in my rebuttal  
5 testimony, Qwest is attempting to grandfather the service for existing CLECs that  
6 have UCCRE in their interconnection agreement, and to not offer the service (for  
7 which there is not interest or demand) for new CLEC agreements.

8 **Q. WHY DOES QWEST BELIEVE THAT THIS ARBITRATION BETWEEN**  
9 **TWO CARRIERS IS NOT THE APPROPRIATE FORUM FOR THE**  
10 **COMMISSION TO CONSIDER AND POTENTIALLY ADOPT A**  
11 **PROCESS THAT COULD AFFECT ALL OREGON LOCAL EXCHANGE**  
12 **CARRIERS?**

13 A. Interconnection arbitrations involve disputes between an ILEC and a CLEC that  
14 relate to specific disagreements over the language to include in an ICA. As set  
15 forth in Section 252 of the Act, arbitrations must be preceded by at least 135 days  
16 of negotiations between an ILEC and a CLEC that focus on the language in an  
17 ICA. By imposing this negotiation requirement, the Act is designed to facilitate  
18 voluntary agreements between ILECs and CLECs and to limit the number of  
19 disputed issues that a state commission must decide. In this regard, Section  
20 252(b)(4) limits the arbitration authority of state commissions to the open or  
21 disputed issues that remain after at least 135 days of negotiations and that are set  
22 forth in the petition for arbitration and any response to the petition: “The State  
23 commission shall limit its consideration of any petition under paragraph (1) (and  
24 any response thereto) to the issues set forth in the petition and in the response, if  
25 any, filed under paragraph (3).” Section 252(b)(4)(A).

26 This requirement for state commissions to limit the exercise of their arbitration  
27 authority to issues that were negotiated by an ILEC and a CLEC but left  
28 unresolved or open means that interconnection arbitrations are not the proper  
29 forum for commissions to implement broad changes in rules and processes that  
30 apply to all local exchange carriers and that were not negotiated by the particular

1 ILEC and CLEC involved in the arbitration. Instead, commissions are permitted  
2 only to consider disputed, negotiated issues relating to specific language to  
3 include in ICAs. This requirement ensures that after at least 135 days of  
4 negotiations, the issues that will be presented to state commissions in  
5 interconnection arbitrations for resolution will generally be well-defined, and the  
6 parties' positions relating to the issues will be thoroughly developed. Here,  
7 Qwest and Eschelon did not negotiate Eschelon's broad proposal for adoption of a  
8 generic product withdrawal process. Eschelon made this proposal only after the  
9 Minnesota Department of Commerce presented a similar proposal in the  
10 Minnesota arbitration. Thus, Eschelon's proposal is not properly part of this  
11 arbitration proceeding and should be addressed, if at all, in a broader context that  
12 allows other interested parties to provide input.

13 **Q. DOES ESCHELON PROVIDE ANY REBUTTAL TO YOUR TESTIMONY**  
14 **THAT THERE IS NO DEMAND FOR UCCRE FROM ESCHELON OR**  
15 **OTHER CLECs?**

16 A. No. Again, Mr. Denney addresses this issue largely by repeating arguments he set  
17 forth in his direct testimony. I have already addressed those arguments in my  
18 rebuttal testimony. Mr. Denney does not contest the fact that Eschelon and other  
19 CLECs have not ordered, and do not intend to order, UCCRE. Once again, the  
20 absence of any rebuttal from Mr. Denney relating to this fact undermines any  
21 claim by Eschelon that it would be competitively impaired if Qwest were to not  
22 provide access to UCCRE in the ICA.

23 **Q. HAS UCCRE EVER BEEN ORDERED BY ESCHELON OR ANY OTHER**  
24 **CLEC?**

25 A. No. CLECs have not ordered UCCRE.

26 **Q. IS THERE ANY ALTERNATIVE AVAILABLE IN THE UNLIKELY**  
27 **EVENT A CLEC DECIDES IN THE FUTURE THAT IT DESIRES THE**  
28 **UCCRE FUNCTIONALITY?**



1 A. Yes, the same functionality is available as a tariffed service known as Command-  
2 A-Link.

3 **VII. ISSUES 9-55 – COMBINATION OF LOOPS AND TRANSPORT**

4 **Q. CAN YOU PROVIDE A VERY BRIEF OVERVIEW OF THIS ISSUE?**

5 A. The dispute covered by Issue 9-55 arises from Eschelon’s attempt to define a  
6 “Loop Transport Combination” as a generic “umbrella” EEL and then to sweep  
7 unique products and commingled circuits with unique terms and conditions under  
8 this umbrella.

9 **Q. DOES MR. STARKEY’S TESTIMONY CREATE ANY ADDITIONAL**  
10 **CONCERNS FOR QWEST REGARDING ESCHELON’S PROPOSED USE**  
11 **OF THIS TERM?**

12 A. Yes. On page 136 of his rebuttal testimony, Mr. Starkey states that the goal of  
13 Eschelon’s language is to provide expressly in the ICA that the UNE piece of a  
14 loop-transport combination is governed by the ICA. This can be (and has been  
15 through Qwest’s language) addressed without using the confusing “Loop-  
16 Transport Combination” umbrella term that masks the critical differences between  
17 the three different Qwest products that are combinations of loops and transport.

18 Qwest’s fundamental concern is that Eschelon’s proposal to use the term “Loop-  
19 Transport Combination” in the agreement is intertwined with its proposals in  
20 Issue 9-58 (a, b, c, d, e) to treat commingled EELs as if the complete circuit is a  
21 UNE. Because different pricing and provisioning obligations apply to  
22 commingled EELs, on the one hand, and combinations of UNE loops and UNE  
23 transport, on the other, there is a legal requirement not to treat commingled EELs  
24 as though the entire circuit is a UNE. But Eschelon’s proposal confuses these  
25 distinctions and creates unnecessary and improper confusion. It is both clearer  
26 and more consistent with governing law to list and treat individually in the ICA  
27 each of Qwest’s three distinct products that are combinations or commingled  
28 arrangements of loops and transport. Qwest’s language properly identifies the  
29 individual terms and conditions for each EEL arrangement.

1 **Q. IN SUMMARY, WHY SHOULD THE COMMISSION ADOPT QWEST’S**  
2 **PROPOSAL AND REJECT ESCHELON’S USE OF THE TERM “LOOP-**  
3 **TRANSPORT COMBINATIONS?”**

4 A. For the reasons I have identified here and in my direct and rebuttal testimony,  
5 Qwest recommends the Commission adopt the Qwest position and that it reject  
6 the Eschelon Loop-Transport Combination language.

7 Qwest has developed and implemented separate and distinct systems, procedures  
8 and provisioning intervals for EELs, combinations of UNEs and tariffed private  
9 line services and is under no legal requirement to implement costly modifications  
10 to provide Eschelon’s proposed “loop-transport combination” umbrella product.  
11 If Eschelon’s true concern is that UNEs be governed under the ICA and  
12 Commission jurisdiction while non-UNE (*e.g.*, private line) circuits are governed  
13 under the tariff, Qwest proposed ICA language addresses their concern.<sup>2</sup> Qwest  
14 recommends the Commission adopt the Qwest proposed resolution and that it  
15 reject the Eschelon Loop-Transport Combination language.

16 **VIII. ISSUES 9-56 AND 9-56A – SERVICE ELIGIBILITY CRITERIA**  
17 **AUDITS**

18 **Q. DOES MR. DENNEY CITE ANY RULINGS FROM THE FCC THAT**  
19 **SUPPORT ESCHELON’S DEMAND THAT QWEST BE PERMITTED TO**  
20 **CONDUCT SERVICE ELIGIBILITY AUDITS ONLY UPON A**  
21 **DEMONSTRATION OF “GOOD CAUSE”?**

22 A. No. Mr. Denney’s rebuttal testimony simply repeats the partial quote from the  
23 FCC’s *Supplemental Order Clarification* that Mr. Denney claims supports the  
24 imposition of a good cause requirement before an ILEC can conduct a service  
25 eligibility audit. However, as I discuss in my rebuttal testimony, the  
26 *Supplemental Order Clarification* was superseded by the *TRO*, which does not  
27 condition the right of an ILEC to conduct a service eligibility audit on a  
28 demonstration of good cause. Moreover, Mr. Denney fails to discuss footnote

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<sup>2</sup> See Rebuttal Testimony of Karen A. Stewart, at pp. 34-35.

1 1898 from the *TRO* in which the FCC summarizes the audit rights it established in  
2 the *Supplemental Order Clarification*. Nowhere in that summary does the FCC  
3 suggest that it adopted a good cause requirement in the *Supplemental Order*  
4 *Clarification*. Finally, I observed in my rebuttal testimony that it is curious that in  
5 his direct testimony, Mr. Denney did not quote or describe in any detail the FCC's  
6 rulings in the *TRO* relating to audit rights, since that is the FCC's latest  
7 pronouncement on the issue. In his rebuttal testimony, Mr. Denney again fails to  
8 discuss or even mention the service eligibility audit framework the FCC  
9 established in the *TRO*.

10 **Q. AT PAGE 98 OF HIS REBUTTAL TESTIMONY, MR. DENNEY STATES**  
11 **THAT WITHOUT A GOOD CAUSE REQUIREMENT, “THE AUDIT**  
12 **PROCESS BECOMES A POTENTIAL TOOL FOR BULLYING RATHER**  
13 **THAN A MEASURE FOR ASSURING COMPLIANCE.” IS THERE ANY**  
14 **VALIDITY TO THIS ASSERTION?**

15 A. No. As I describe in detail in my direct and rebuttal testimony, the audit  
16 framework the FCC adopted ensures that ILECs will not abuse the audit process  
17 by: (1) limiting audits to once per year, and (2) requiring an ILEC to pay a  
18 CLEC's costs of responding to the audit if the auditor determines that the CLEC  
19 is in compliance with the service eligibility criteria. Mr. Denney continues to  
20 refuse to acknowledge these components of the *TRO*'s audit framework, which  
21 have been incorporated into the ICA through agreed-upon language in Section  
22 9.23.4.3.1.3.5.

23 **Q. DOES MR. DENNEY CITE ANY LANGUAGE FROM THE *TRO* TO**  
24 **SUPPORT ESCHELON'S DEMAND THAT BEFORE CONDUCTING AN**  
25 **AUDIT, QWEST MUST IDENTIFY THE SPECIFIC CIRCUITS ON A**  
26 **HIGH-CAPACITY EEL THAT QWEST BELIEVES DO NOT MEET THE**  
27 **SERVICE ELIGIBILITY CRITERIA?**

28 A. No. Mr. Denney fails to cite any rulings or language from the *TRO* that supports  
29 this demand. In fact, there is no such requirement in the *TRO*, just as there is no  
30 requirement for an ILEC to demonstrate good cause before conducting an audit.

1 **IX. ISSUES 9-58 (ALL A, B, C, D, E) ORDERING, BILLING, AND CIRCUIT**  
2 **ID FOR COMMINGLED ARRANGEMENTS**

3 **Q. HAS QWEST BEEN ABLE TO IDENTIFY THE SPECIFIC COSTS**  
4 **ASSOCIATED WITH ESCHELON'S REQUEST THAT PRIVATE LINE**  
5 **ACCESS SERVICES BE PROVISIONED WITH AN LSR AND BILLED**  
6 **WITHIN THE CRIS BILLING SYSTEM?**

7 A. It is not possible to identify the precise costs that would be required to make these  
8 significant changes, as that determination would require significant work and cost  
9 analysis. However, it is clear that the magnitude of these changes is such that  
10 they would require extensive work and a large investment of costs, relating to  
11 both analyzing the process changes required and then implementing them. In  
12 many respects, the effects of implementing these changes within Qwest's  
13 provisioning systems would be similar to those that would result from rate  
14 ratcheting (*i.e.*, billing a single circuit at multiple rates, both UNE and private line  
15 access). With ratcheting, a first step would have required that either the Qwest  
16 Customer Records Information System ("CRIS") or the Integrated Access Billing  
17 System ("IABS") would have been modified so that it performs cross-billing and  
18 cross-association of products. In an affidavit submitted by Qwest in New Mexico  
19 in 2002 in Utility Case No. 3495 regarding the potential of requiring Qwest to  
20 ratchet rates, Qwest demonstrated that a switch in billing UNEs from Qwest's  
21 CRIS system to its IABS system alone would require many thousands of hours in  
22 coding and other work. This was in addition to the daunting challenge of the  
23 necessary transfer of ordering UNEs on LSRs to ordering UNEs on ASRs, as  
24 private line access is ordered today. While I realize that Eschelon is not  
25 specifically requesting ratcheting at this time, the net effect of its demands is that  
26 Qwest would allow Eschelon to order private line access circuits via an LSR and  
27 to bill them in CRIS, which could result in very similar work efforts as would  
28 have been required for the ratcheting proposal that I describe above.

29 **Q. PLEASE ADDRESS MR. DENNEY'S REBUTTAL TESTIMONY AT**  
30 **PAGE 104 WHERE HE STATES THAT ESCHELON ONLY WANTS**

1           **QWEST TO ALIGN “THE ORDERING, TRACKING AND REPAIR, AND**  
2           **BILLING PROVISIONS OF A POINT-TO-POINT UNE EEL AND A**  
3           **POINT-TO POINT COMMINGLED EEL,” BUT THAT THIS IS NOT A**  
4           **REQUEST TO HAVE QWEST MODIFY ITS SYSTEMS.**

5       A.     Qwest does not understand Eschelon’s position, unless Eschelon is saying that  
6           Qwest does not need to modify its systems. The only way that Qwest could avoid  
7           modifying its systems to meet the far-reaching changes that Eschelon is proposing  
8           would be if Qwest performed each of the tasks I list above on a manual basis. If  
9           that were the case, implementation of manual procedures would impose  
10          significant time demands and costs on Qwest. In addition to the manually-  
11          intensive day-to-day work that would be required, Qwest would have to invest  
12          substantial amounts of time to train its personnel performing this work so that  
13          they could respond to orders any degree of processing consistency. All of this  
14          effort would be for just one CLEC in one state with a limited number of orders.

15       **Q.     WHEN A CLEC REQUESTS A COMMINGLED ARRANGEMENT, DOES**  
16           **QWEST BELIEVE IT WOULD MORE OFTEN BE WITH AN**  
17           **INTRALATA ACCESS PRIVATE LINE OR WITH AN INTERSTATE**  
18           **ACCESS PRIVATE LINE?**

19       A.     Based on my experience with commingled arrangements, I believe most CLECs  
20           would choose the maximum network flexibility of commingling with a private  
21           line access circuit from the Qwest FCC tariffs, not a state tariff private line.

22       **Q.     IS THE FACT THAT CLECs ARE LIKELY TO COMMINGLE WITH**  
23           **PRIVATE LINE ACCESS CIRCUITS OBTAINED THROUGH FCC**  
24           **TARIFFS RELEVANT TO WHETHER THE COMMISSION SHOULD**  
25           **CONSIDER ESCHELON’S PROPOSAL HERE OR IN A SEPARATE,**  
26           **GENERIC PROCEEDING?**

27       A.     Yes. I am not an attorney, but I do not believe this Commission has jurisdiction  
28           over FCC access private line tariffs. Since I am not an attorney, I certainly  
29           acknowledge that this issue is better handled in briefs than through my testimony.

1 **X. ISSUES 9-59 – ESCHELON ALTERNATE COMMINGLED EEL REPAIR**  
2 **LANGUAGE**

3 **Q. DOES MR. DENNEY ACKNOWLEDGE IN HIS REBUTTAL**  
4 **TESTIMONY THAT QWEST’S PROPOSED REPAIR PROCESS FOR**  
5 **COMMINGLED ARRANGEMENTS WOULD NOT RESULT IN A CLEC**  
6 **PAYING FOR A TROUBLE ISOLATION CHARGE IF TROUBLE WERE**  
7 **FOUND IN QWEST’S NETWORK?**

8 A. Yes, Mr. Denney makes that acknowledgement at page 109 of his rebuttal  
9 testimony. However, even with this clarification, Eschelon is still concerned  
10 about Qwest’s repair language because the language recognizes the reality that  
11 there may be times when a second repair ticket is required.

12 **Q. WOULD IT BE APPROPRIATE TO ADOPT ICA LANGUAGE UNDER**  
13 **WHICH ESCHELON WOULD NEVER BE REQUIRED TO OPEN A**  
14 **SECOND REPAIR TICKET FOR COMMINGLED EELs?**

15 A. No. In response to the concerns that Eschelon expressed about the repair process  
16 for commingled EELs, Qwest took the significant step of agreeing to modify its  
17 process to eliminate, in most cases, the need for Eschelon to submit a second  
18 trouble ticket. However, it is entirely unrealistic to assume that a second trouble  
19 ticket would never be needed. For example, if Eschelon were to incorrectly  
20 identify the trouble with a commingled EEL as being associated with the non-  
21 UNE circuit of the arrangement, it would be unavoidable that a second trouble  
22 ticket would have to be submitted that correctly identifies the trouble as being  
23 associated with the UNE circuit. Nor does Eschelon dispute that there are  
24 situations where a second repair ticket is required for some private line and UNE  
25 combinations.

26 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION WITH**  
27 **REGARD TO ISSUE 9-59?**

28 A. Issue 9-59 identifies an alternative proposal for addressing commingled EEL  
29 repairs if Eschelon’s demands that Qwest modify its ordering, installation, repair  
30 and billing process for Commingled EELs in Issue 9-58 (a, b, c, d, e) are not

1 adopted by the Commission. Qwest's processes for handling UNEs and special  
2 access services involve many employees, processing steps and service centers  
3 over 14 states, and it would therefore be extremely difficult and costly for Qwest  
4 to make a change to this process for a single CLEC in a single state.

5 I recommend that the Commission reject Eschelon's Issue Nos. 9-58 (a, b, c, d, e)  
6 and its alternate proposal in Issue 9-59, and adopt Qwest's proposed repair  
7 process for commingled EELs as outlined in my rebuttal testimony. The newly-  
8 proposed Qwest repair process addresses Eschelon's repair concerns. It could be  
9 implemented for Eschelon and all other CLECs cost-effectively and as a part of  
10 Qwest's existing repair systems.

11 **XI. ISSUE 9-61 (A, B, C) LOOP-MUX COMBINATION**

12 **Q. IF QWEST PROVIDES MULTIPLEXING PURSUANT TO UNE RATES,**  
13 **TERMS, AND CONDITIONS FOR USE WITH UNE COMBINATIONS,**  
14 **WHAT IS THE BASIS FOR THE DISPUTES ENCOMPASSED BY ISSUE**  
15 **9-61 AND ITS SUBPARTS?**

16 A. The dispute concerns the rates, terms, and conditions that apply to multiplexing  
17 when Qwest provides multiplexing commingled with a non-UNE – typically,  
18 private line transport. Because multiplexing is a feature or function of transport,  
19 but not of UNE loops, a commingled arrangement that involves tariffed transport  
20 and a UNE loop requires that Eschelon and other CLECs obtain multiplexing  
21 based on tariffed rates, terms, and conditions. This dispute arises because it  
22 appears that Eschelon is insisting that in addition to obtaining multiplexing for  
23 UNE combinations pursuant to UNE rates, terms, and conditions, it should be  
24 permitted to obtain multiplexing pursuant to those same UNE rates, terms, and  
25 conditions when it is used to commingle a UNE loop with non-UNE transport.

26 **Q. HAS THE FCC SPOKEN CONCERNING WHETHER UNE RATES OR**  
27 **TARIFFED RATES SHOULD APPLY TO MULTIPLEXING THAT ILECs**  
28 **PROVIDE FOR USE WITH COMMINGLED ARRANGEMENTS?**

1 A. Yes. As described in my rebuttal testimony, the FCC confirmed in the *TRO* that  
2 multiplexing used with commingled EELs is a tariffed access service and is not  
3 governed by UNE terms and pricing. Mr. Starkey never addresses these  
4 controlling statements by the FCC. To reiterate, in providing an example of a  
5 tariffed “interstate access service” to which a CLEC may attach a UNE, the FCC  
6 specifically referred to multiplexing: “Instead, commingling allows a competitive  
7 LEC to connect or attach a UNE or UNE combination with an interstate access  
8 service, *such as high-capacity multiplexing* or transport services.” *TRO*, at  
9 ¶ 583. (Emphasis added.) In the very next sentence, the FCC emphasized that  
10 “*commingling will not enable a competitive LEC to obtain reduced or*  
11 *discounted prices on tariffed special access services . . .*” (Emphasis added.)  
12 This portion of the *TRO* directly refutes any claim by Eschelon that it is entitled to  
13 multiplexing at UNE rates, terms, and conditions when it obtains multiplexing for  
14 use with commingled arrangements.

15 **Q. AT PAGES 143-144 OF HIS REBUTTAL TESTIMONY, MR. STARKEY**  
16 **STATES THAT I HAVE INACCURATELY ASSERTED THAT**  
17 **ESCHELON IS ATTEMPTING TO OBTAIN MULTIPLEXING AS A**  
18 **“STAND-ALONE UNE” AND THAT, ON THE CONTRARY, ESCHELON**  
19 **IS ONLY SEEKING TO OBTAIN MULTIPLEXING AS A FEATURE,**  
20 **FUNCTION, OR CAPABILITY OF THE UNBUNDLED LOOP. IS THERE**  
21 **ANY MERIT OR MATERIALITY TO THIS CRITICISM?**

22 A. No. Despite this claim, Mr. Starkey has never explained why central office-based  
23 multiplexing used to “mux up” multiple unbundled loops to a higher transport  
24 facility is a feature and function of a single individual UNE loop. If central  
25 office-based multiplexing used to mux up multiple loops to a higher bandwidth  
26 transport facility is not a feature or function of an individual loop, then any  
27 request to have Qwest provide central office-based multiplexing separate from  
28 transport is clearly a request for stand-alone transport multiplexing.

29 **Q. AT PAGE 144 OF HIS REBUTTAL TESTIMONY, MR. STARKEY**  
30 **REPEATS HIS FACTUAL ASSERTION THAT MULTIPLEXING IS A**



1           **“FEATURE, FUNCTION, OR CAPABILITY” OF THE UNE LOOP AND**  
2           **ARGUES THAT I HAVE NOT PRESENTED TESTIMONY REBUTTING**  
3           **THAT ASSERTION. HOW DO YOU RESPOND?**

4    A.    First, the FCC’s description of the multiplexing used with commingling as “an  
5           interstate access service” should put to rest Mr. Starkey’s claim that multiplexing  
6           used with commingling is a feature, function, or capability of the UNE loop.  
7           Second, this description from the FCC in the *TRO* is consistent with the statement  
8           of the FCC’s Wireline Competition Bureau in the Verizon-WorldCom Virginia  
9           arbitration confirming that loop multiplexing is not a network element: “We thus  
10          reject WorldCom’s proposed contract language because it defines the ‘Loop  
11          Concentrator/Multiplexer’ as a network element, which the Commission has  
12          never done.”<sup>3</sup> Third, in my rebuttal testimony, I do refute Mr. Starkey’s claim  
13          that multiplexing is a feature, function, or capability of the UNE loop. In sum,  
14          central office based transport multiplexing is not required for a UNE loop facility  
15          to function. If the functioning of a DS1 loop was dependent upon multiplexing,  
16          there might be a factual argument that multiplexing is a feature or function of the  
17          loop. But since a DS1 loop functions regardless of whether there is transport-  
18          related multiplexing used with the loop, multiplexing cannot reasonably be  
19          viewed as a “feature, function, or capability” of the loop. In addition, the  
20          multiplexing function is provided through equipment that is physically separate  
21          from and independent of UNE loops

22    **Q.    IS MR. STARKEY CORRECT IN ASSERTING THAT THE FCC**  
23    **WIRELINE COMPETITION BUREAU’S STATEMENT IN THE**  
24    **VERIZON-WORLDCOM VIRGINIA ARBITRATION IS NOT ENTITLED**  
25    **TO WEIGHT BECAUSE IT IS NOT A STATEMENT FROM THE FCC**  
26    **ITSELF?**

---

<sup>3</sup> *In the Matter of Petition of WorldCom, Inc., et al., for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia and for Arbitration*, CC Docket Nos. 00-218, 249, 251, 17 FCC Rcd. 27,039 (FCC Wireline Competition Bureau July 17, 2002), at ¶ 494.

1 A. No. That argument about the binding effect of the Verizon-WorldCom Virginia  
2 order has been presented before, and courts have rejected it. In our post-hearing  
3 briefs, Qwest will provide cites to decisions in which federal courts have rejected  
4 the contention that the Verizon-WorldCom Virginia order is not entitled to weight  
5 because the Wireline Bureau purportedly does not speak for the FCC as a whole.  
6 There also is no merit to Mr. Starkey’s claim that the Verizon-WorldCom  
7 Virginia order actually undermines Qwest’s position because the Wireline Bureau  
8 ruled that multiplexing is a feature, function, or capability of UNE transport. As I  
9 discussed earlier, Qwest agrees that multiplexing is a feature, function, or  
10 capability of UNE transport, and, accordingly, it makes multiplexing available on  
11 UNE rates, terms, and conditions for UNE combinations comprised of UNE loops  
12 and UNE transport.

13 However, the fact that multiplexing is a feature, function, or capability of UNE  
14 transport does not make multiplexing a feature, function, or capability of the loop.  
15 This is a leap that is completely unsubstantiated or even connected to the FCC’s  
16 statements regarding transport and transport-related multiplexing. Indeed, it is  
17 significant that while finding that multiplexing is a feature of UNE transport, the  
18 FCC expressly rejected the contention that it is a feature of the loop. If the  
19 Wireline Bureau had intended that its finding about multiplexing being a feature  
20 of UNE transport also means that multiplexing is a feature of the UNE loop, it  
21 presumably would have said so, and certainly would not have expressly rejected  
22 WorldCom’s contention that loop multiplexing is a UNE.

23 **Q. IS IT IRRELEVANT, AS MR. STARKEY CLAIMS, THAT ESCHELON**  
24 **AND OTHER CLECs ARE ABLE TO SELF-PROVISION**  
25 **MULTIPLEXING?**

26 A. No. Mr. Starkey argues at page 147 of his rebuttal testimony that the ability of  
27 CLECs to self-provision multiplexing – and he does not contest the fact that  
28 Eschelon has that ability – is only relevant to a “necessary and impair” inquiry  
29 under Section 251(d) of the Act into whether ILECs are required to provide  
30 network elements as UNEs under Section 251. However, there is at least an

1 implicit undertone to Eschelon's testimony on this issue suggesting that loop  
2 multiplexing will not be available at reasonable rates, terms, and conditions if  
3 Qwest is not required to provide multiplexing as a UNE. The fact that CLECs  
4 self-provision multiplexing and that Eschelon has the ability to do the same  
5 responds directly to any suggestion that loop multiplexing is realistically available  
6 only through Qwest at UNE rates and terms.

7 **XII. CONCLUSION**

8 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

9 A. Yes.

**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

**ARB 775**

**In the Matter of**

**ESCHELON TELECOM OF OREGON,  
INC.**

**Petition for Arbitration of an  
Interconnection Agreement with Qwest  
Corporation, Pursuant to Section 252 of the  
Telecommunications Act**

**SURREBUTTAL TESTIMONY OF**

**TERESA MILLION**

**FOR**

**QWEST CORPORATION**

**(Disputed Issues 4-5, 8-21, 9-43, 9-44, 9-51, 12-67 and 22-90)**

**June 8, 2007**

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**I. IDENTIFICATION OF WITNESS**

**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Teresa K. Million. I am employed by Qwest Services Corporation, parent company of Qwest Corporation (“Qwest”), as a Staff Director in the Public Policy organization. In this position, I am responsible for directing the preparation of cost studies and representing Qwest’s costs in a variety of regulatory proceedings. My business address is 1801 California St., Room 4700, Denver, Colorado.

**Q. DID YOU FILE DIRECT AND REBUTTAL TESTIMONY IN THIS PROCEEDING?**

A. Yes, I did.

**II. PURPOSE OF TESTIMONY**

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. The purpose of my testimony is to respond to the cost issues raised in the testimonies of Mr. Michael Starkey with respect to Issue Nos. 8-21, DC Power Plant; and 9-43 and 9-44, Conversions; and of Mr. Douglas Denney with respect to Issue Nos. 4-5, Design Changes; 9-51, UDF-IOF Terminations; 12-67, Expedite Order Charge; and 22-90, Unapproved Rates.

1 **III. RESPONSE TO MR. STARKEY**

2 **ISSUE 8-21 - DC POWER PLANT**

3 **Q. MR. STARKEY STATES, AT PAGE 78 OF HIS REBUTTAL**  
4 **TESTIMONY, THAT QWEST STRUCTURED ITS POWER PLANT**  
5 **RATE ON THE BASIS OF USAGE. DO YOU AGREE?**

6 A. No. As I pointed out in my direct and rebuttal testimony, Qwest’s power plant  
7 rate is not developed using -- or based upon -- any concept of actual power usage.  
8 If Qwest’s proposed power plant rate *were* based on usage, as Mr. Starkey claims,  
9 the cost study would have to include a “fill factor” to account for the cost of spare  
10 capacity that Mr. Starkey admits “must be shared equally by all power users.”<sup>1</sup> It  
11 does not.

12  
13 There is no correlation between the cost per amp of power plant generated by  
14 Qwest’s study and Mr. Starkey’s contention that it should be applied on a per-  
15 amp-used basis. And, although Mr. Starkey made this same argument on behalf  
16 of McLeod in several Qwest states, the ALJ in Washington understood this lack  
17 of correlation when she stated in her order in the McLeod Power complaint  
18 proceeding that the “Qwest collocation power plant rate was not developed on a  
19 “usage” basis, as McLeod claims. Even though the word “usage” is found in the  
20 formula, the rate was developed to get at what the cost of hypothetical power  
21 plant would be on a per amp basis, without regard to usage.”<sup>2</sup>

22  
23 It makes no sense for Mr. Starkey to continue to argue that Qwest’s rate is or

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<sup>1</sup> Rebuttal Testimony of Michael Starkey, p. 75.

<sup>2</sup> *McLeodUSA Telecommunications Services, Inc. v. Qwest Corporation*, Washington State Utilities and Transportation Commission, Docket UT-063013, Initial Order: Recommended Decision to Deny Petition for Enforcement, September 29, 2006 (“Washington *Recommended Decision*”), p. 24, ¶ 58. The Washington Commission has subsequently issued its Final Order in the McLeod Complaint case which affirms this Initial Order.

1 should be applied on a usage basis. In every state where a power plant rate  
2 element that is the same as the one at issue in this arbitration has been approved in  
3 a contested case, Qwest's cost studies were closely scrutinized by the state  
4 commission and the parties. And, in each case, the power plant rate was  
5 described as applying on a per-amp-ordered basis. The resulting cost docket rates  
6 were also described as applying on a per-amp-ordered basis, were billed to the  
7 CLECs on a per-amp-ordered basis, and no CLEC complained about Qwest's  
8 application of those rates. If there had been any question about the way CLECs  
9 were being charged, it surely would have been brought to light before now. In  
10 Utah, the Commission pointed out in its decision in the McLeod complaint that  
11 the record did not "contain any evidence that McLeod, prior to May 2005, raised  
12 any concern of discriminatory conduct with Qwest pertaining to its collocation  
13 power plant engineering or billing."<sup>3</sup> Thus, as the Utah Commission found, the  
14 only chargeable unit developed in Qwest's cost study is the cost of an amp of  
15 power plant capacity, and nothing in that rate development has anything to do  
16 with the actual electrical current that any telecommunications equipment in a  
17 central office might consume.

18

19 **Q. MR. STARKEY STATES, AT PAGE 83 OF HIS REBUTTAL**  
20 **TESTIMONY, THAT QWEST HAS NOT MADE ANY ADDITIONAL**  
21 **INVESTMENT IN ITS POWER PLANT WHEN IT BEGINS TO CHARGE**  
22 **ESCHELON. DO THE FCC'S TELRIC PRICING RULES REQUIRE**  
23 **QWEST TO ADD CAPACITY TO ITS POWER PLANT IN ORDER TO**  
24 **CHARGE CLECs FOR POWER PLANT?**

---

<sup>3</sup> *In the Matter of the Complaint of McLeodUSA Telecommunications Services, Inc. vs. Qwest Corporation for Enforcement of Commission-Approved Interconnection Agreement*, Public Service Commission of Utah, Docket No. 06-2249-01, Report and Order, September 28, 2006 ("Utah Report and Order"), p. 25.



1 A. No. As I stated in my rebuttal testimony, there is nothing in the FCC's TELRIC  
2 rules that requires Qwest to add to its existing power plant to accommodate CLEC  
3 demand for capacity. If Qwest's power plant, as it existed in 1996, had had  
4 adequate capacity to meet CLEC demand, Qwest would have been under no  
5 obligation to build additional plant to accommodate that demand, and Qwest  
6 would still have been entitled to charge CLECs for the amount of power plant  
7 capacity made available to them. In fact, Qwest did sometimes increase the size  
8 of its power plant in response to the orders it received from CLECs for power  
9 feeds during 1999 and 2000, and based on assumptions about the amount of  
10 power capacity required to meet those orders. Nevertheless, Qwest's power plant  
11 study still calculates cost on the basis of an Amp of power plant capacity, and not  
12 on the basis of the size of any given power plant or the actual usage of electrical  
13 current coming through it.

14  
15 **Q. DID McLEOD MAKE THE SAME ARGUMENTS ABOUT THE**  
16 **ENGINEERING OF QWEST'S POWER PLANT THAT MR. STARKEY**  
17 **PRESENTS IN THIS PROCEEDING?**

18 A. Yes. As I noted in my rebuttal testimony, Mr. Starkey made these same  
19 arguments on behalf of McLeod in several states, including Washington, Utah,  
20 Colorado and Arizona.<sup>4</sup> In evaluating the validity of those arguments in  
21 determining the proper application of Qwest's power plant rates, the Washington  
22 ALJ found that "McLeod's arguments are generally unpersuasive."<sup>5</sup> Furthermore,  
23 Mr. Starkey argued for McLeod as he does for Eschelon, that based on Qwest's  
24 engineering practices, Qwest's power plant rate, as currently applied, is

---

<sup>4</sup> Although there has been no decision to date in the McLeod Power Complaint proceeding in Arizona, the Commission decisions in Washington, Utah and Colorado have all found in Qwest's favor on the arguments by McLeod that are similar to those presented by Eschelon in this proceeding.

<sup>5</sup> *Washington Recommended Decision*, at ¶ 62.

1 discriminatory. However, in affirming the ALJ's recommended decision in its  
2 Final Order, the Washington Commission concluded "that McLeod failed to meet  
3 its burden to show that Qwest's DC Power rate is improperly discriminatory."<sup>6</sup> In  
4 Eschelon's Minnesota arbitration, the Arbitrator likewise determined that "there is  
5 no evidentiary basis for drawing such a conclusion here."<sup>7</sup> Similarly, in its  
6 decision in the McLeod Power Complaint proceeding the Utah Commission  
7 stated, "We find nothing in the ICA, statute, regulation, or Commission order that  
8 would require Qwest to do more than it is now doing; namely, billing McLeod for  
9 its collocation power plant based upon McLeod's orders for power distribution  
10 cable. We therefore conclude Qwest's billing to McLeod for DC Power Plant  
11 does not constitute discriminatory conduct."<sup>8</sup> Finally, in Colorado, the ALJ  
12 determined that "McLeodUSA failed to meet its burden of proof to demonstrate  
13 the basis upon which rates were approved in Docket 99A-577T, Decision C02-  
14 409, how such rates are discriminatory, and how they result in McLeodUSA  
15 paying more than its share for the costs of the DC Power Plant under the  
16 amendment in violation of law."<sup>9</sup> Thus, in the McLeod proceedings, Mr. Starkey  
17 has been unable to prevail on the same discrimination claim he advances on  
18 behalf of Eschelon in this case. Like the other commissions that have considered  
19 this claim, this Commission should reject it.

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<sup>6</sup> *McLeodUSA Telecommunications Services, Inc. v. Qwest Corporation*, Washington State Utilities and Transportation Commission, Docket UT-063013, Order 04, Final Order Affirming Initial Order; Denying Petition for Enforcement, February 15, 2007 ("*Washington Final Order*"), p. 7, ¶ 24.

<sup>7</sup> *Minnesota Arbitrator's Report*, at ¶ 108.

<sup>8</sup> *Utah Report and Order*, at p. 26.

<sup>9</sup> *McLeodUSA Telecommunications, Inc. v. Qwest Corporation*, Public Utilities Commission of the State of Colorado, Docket No. 06F-124T, Decision No. R07-0211, Recommended Decision of Administrative Law Judge Dismissing Complaint and Granting Counterclaim, March 14, 2007 ("*Colorado Recommended Decision*"), p. 26, ¶ 100.

1

2 **ISSUES 9-43 AND 9-44 – CONVERSIONS**

3 **Q. HAVE QWEST AND ESCHELON SETTLED THE ISSUES**  
4 **SURROUNDING CONVERSIONS?**

5 A. Yes. It is my understanding that the issue of the appropriate rate for conversions  
6 has been settled, along with the other *TRRO* wire center issues in dispute, pending  
7 approval by the Oregon Commission of the settlement agreement that has been  
8 reached among the parties. It is also my understanding that the settlement  
9 agreement will soon be submitted to the Commission for approval. Accordingly,  
10 I am not burdening the record with additional testimony on this issue.

11

12 **IV. RESPONSE TO MR. DENNEY**

13 **ISSUE 4-5 – DESIGN CHANGES**

14 **Q. MR. DENNEY TESTIFIES ON PAGE 28 OF HIS DIRECT TESTIMONY**  
15 **THAT ESCHELON “NEEDS A RULING THAT PROVIDES CERTAINTY**  
16 **THAT QWEST WILL CONTINUE TO PROVIDE DESIGN CHANGES AT**  
17 **COST-BASED RATES.” HAS QWEST PROPOSED A COST-BASED**  
18 **RATE FOR DESIGN CHANGES IN OREGON?**

19

20 A. Yes. In my direct testimony, Qwest proposed as interim the cost-based TELRIC  
21 rates, including the design change charge, established by the New Mexico  
22 Commission in Utility Case 3495, Phase B, and made effective May 24, 2005.  
23 This \$51.76 design change charge is contained in the “Miscellaneous Charges”  
24 section of the New Mexico SGAT, Exhibit A, just as it is in Oregon, and applies  
25 to all types of design changes requested or required by a CLEC.

26 **Q. DOES THE RATE PROPOSED BY QWEST FOR DESIGN CHANGES**  
27 **ONLY APPLY TO TRANSPORT (I.E., UDOT), OR DOES IT ALSO APPLY**

1 **TO UNBUNDLED LOOPS AND CFA CHANGES?**

2 A. Contrary to Mr. Denney’s claim, the Qwest-proposed rate for design changes does  
3 not apply only to transport. The design change study submitted by Qwest in the  
4 New Mexico cost docket, upon which Qwest’s proposed rate for the Design  
5 Change charge is based, calculates the average cost of performing a design  
6 change for all types of products (*i.e.*, loops and transport) and under all types of  
7 circumstances, including CFA (connecting facility assignment) changes. The  
8 nonrecurring cost study estimates the amount of time, on average, that it will take  
9 to perform any given task in the list of activities necessary to complete a design  
10 change and the probability that the task will occur. Qwest’s nonrecurring cost  
11 study did not distinguish between the various circumstances in which a design  
12 change might be requested by a CLEC. Furthermore, as I explained in my  
13 rebuttal testimony, it is clear from the description of the design change element  
14 included in the Executive Summary of the New Mexico Nonrecurring Cost Study  
15 (Study ID #8607, provided as Exhibit Qwest/45) that the study is intended to  
16 apply to all types of design changes and not just to transport. Otherwise, the  
17 description would not include references to end-user premises (transport is from  
18 one central office to another central office and does not involve end-users),  
19 optional features and functions, and type of channel interface. The notation, “type  
20 of channel interface,” in the design change description specifically contemplates  
21 situations involving CFA changes.

22 Finally, it is important to note that the design change element in Oregon is, as  
23 Qwest has stated, contained within the Miscellaneous Charges section of Exhibit  
24 A of the interconnection agreement and not in the section where the rates  
25 pertaining specifically to UDIT are contained. And, while Mr. Denney is correct  
26 that the terms and rates in an interconnection agreement generally determine

1 whether a rate applies, there has never been a dispute about the fact that Qwest's  
2 miscellaneous charges apply in a variety of circumstances and to a variety of  
3 products. The fact that Qwest may not have charged a CLEC its proposed rate for  
4 certain types of design changes does not prove an absence of costs for those  
5 changes. Nor does that fact mean that the costs for those design changes were not  
6 included in the cost study and the resulting rate. Indeed, that is precisely why  
7 Qwest wants to ensure that, going forward, Eschelon's ICA clearly reflects an  
8 intent to apply the design change charge in all design change circumstances, as  
9 contemplated by the structure of the rate.

10

11 **Q. IS IT UNUSUAL FOR QWEST TO FOREGO CHARGING CLECs FOR**  
12 **RATES THAT HAVE BEEN APPROVED BY THE COMMISSION IN A**  
13 **COST DOCKET?**

14 A. While it is not Qwest's usual practice to forego charging the CLECs for the work  
15 it performs, especially if it has Commission-approved rates, it is not  
16 unprecedented. For example, in Washington, as part of Part A of Docket No. UT-  
17 003013, Qwest was granted approval to begin charging the CLECs for costs  
18 associated with providing access to Operations Support Systems ("OSS").  
19 However, Qwest did not immediately begin billing CLECs because Qwest's  
20 billing systems required significant modifications to permit assessing the  
21 approved charge. As with any company faced with limited resources and budget  
22 constraints, Qwest must prioritize its system changes to meet the most pressing  
23 needs of the business. As a result, Qwest was unable to implement the billing  
24 changes necessary to bill for OSS charges in Washington until the first quarter of  
25 2005, despite the fact that Part A of the docket concluded in 2001. In other  
26 instances, Qwest has voluntarily suspended billing of Commission-approved UNE  
27 rates for various reasons. The point is that past business decisions not to charge a

1 particular rate for a service Qwest provides do not forever preclude Qwest from  
2 charging the rate for that service. The charge is still necessary for Qwest to  
3 recover its costs, and the decision to forego cost recovery for some period of time  
4 does not forever waive Qwest's right of cost recovery.

5

6 **Q. MR. DENNEY ARGUES, AT PAGE 25 OF HIS REBUTTAL TESTIMONY,**  
7 **THAT THE DECISION OF THE MINNESOTA COMMISSION IN ITS**  
8 **UNE COST DOCKET TO SET MISCELLANEOUS CHARGES AT ZERO**  
9 **IS PROOF THAT QWEST'S MISCELLANEOUS CHARGES DO NOT**  
10 **APPLY IN A VARIETY OF CIRCUMSTANCES. PLEASE COMMENT.**

11 A. Mr. Denney's testimony on this point is confusing at best. He quotes several  
12 passages from an August 2, 2002 ALJ Report in the Minnesota cost docket  
13 (Docket CI-01-1375) related to that Commission's decision to set miscellaneous  
14 charges at zero, and then jumps to the conclusion that these passages mean that  
15 miscellaneous charges do not apply to a variety of circumstances. Yet, earlier in  
16 his testimony, Mr. Denney states that the contract determines if and when such  
17 charges apply. Furthermore, Mr. Denney's testimony ignores the fact that in  
18 almost all of Qwest's states, except Oregon, Qwest's miscellaneous charges,  
19 including its design change charge, are Commission-approved charges. The fact  
20 is that the Minnesota decision is irrelevant to the discussion of whether  
21 miscellaneous charges apply in a variety of circumstances.

22

23 Mr. Denney continues his discussion about the application of miscellaneous  
24 charges by pointing out that despite a Commission-approved rate for additional  
25 out-of-hours labor in Washington, Qwest required a contract amendment before  
26 allowing out-of-hours installations for EELs. He states that in that case, it was  
27 *clear* the rate applied to both loop and EEL installations (a variety of products),

1 but that Qwest demanded a contract amendment. It seems by Mr. Denney's own  
2 testimony that the only thing that is *clear* is that the parties do not always agree  
3 when or if a miscellaneous charge should apply in a given circumstance. That  
4 Qwest sometimes believes it is necessary to clarify the application of a rate in a  
5 contract amendment, and that other times Qwest believes, as in the case of design  
6 changes, that the rate application is evident from the way the rate is developed, is  
7 merely a function of Qwest's own belief about when amendments are necessary  
8 and when they are not. It has nothing to do, however, with whether miscellaneous  
9 charges apply in a variety of circumstances to a variety of products, which they  
10 clearly do.

11

12 **Q. ON PAGE 27 OF HIS REBUTTAL TESTIMONY, MR. DENNEY STATES**  
13 **THAT THE COSTS ASSOCIATED WITH DESIGN CHANGES FOR**  
14 **LOOPS AND CFAs ARE DISSIMILAR TO THOSE ASSOCIATED WITH**  
15 **UDIT DESIGN CHANGES. DO YOU AGREE?**

16 A. No. Regardless of the reason for a design change – whether it is caused by a  
17 CLEC request after an order has been initiated or by a CLEC providing an  
18 incorrect CFA on an installation due date – Qwest must interrupt the order flow,  
19 correct the information in its systems, and reinitiate the order process so that the  
20 order can be completed with the new design or corrected information. These  
21 same activities take place regardless whether the design change involves loops,  
22 CFAs or UDIT. Furthermore, as I explain below, the costs of performing these  
23 activities are only slightly different for each of these products. The biggest  
24 differences in the activities required for the design changes, as described by Mr.  
25 Denney, are associated with work performed by Qwest's central office  
26 technicians on the installation due date. However, there is no central office  
27 technician time, or any other type of technician time included in Qwest's design

1 change study. That is because technician costs are captured in other nonrecurring  
2 cost studies. The only times and activities included in the design change study are  
3 related to service order processing and the manual efforts required to walk the  
4 order through to completion once the automated process has been interrupted  
5 because of the need to perform a design change. Thus, there is very little  
6 difference in cost among the various types of design changes.

7

8 **Q. MR. DENNEY STATES, ON PAGE 31 OF HIS REBUTTAL TESTIMONY,**  
9 **THAT BECAUSE QWEST'S COST STUDY FOLLOWED AN ACCESS**  
10 **SERVICE REQUEST ("ASR") FLOW INSTEAD OF A LOCAL SERVICE**  
11 **REQUEST ("LSR") FLOW, THE STUDY MUST BE TRANSPORT-**  
12 **SPECIFIC. IS THAT ACCURATE?**

13 A. No. While it is true that the study that forms the basis for the design change  
14 charge is based on an ASR (access service request) flow, the reason is not that the  
15 study is specific to transport. Rather, the reason the study follows an ASR flow is  
16 that the TELRIC design change study was modeled based upon Qwest's existing  
17 TSLRIC design change study for access services, including switched and special  
18 access. In other words, at the time that Qwest was developing a TELRIC rate for  
19 design changes, it already had a TSLRIC study for access services, and the  
20 relatively new UNE study was simply set up to mimic the existing TSLRIC study.  
21 The fact is that access services follow an ASR flow, regardless whether they  
22 involve private line loops or transport, and the design change charge that Qwest  
23 had developed for its access services was not limited to transport-specific  
24 changes. That is why the executive summary description of the design change  
25 charge discussed above was developed to apply to a variety of circumstances and  
26 a variety of products.



1 It is only in the case of UNEs that service order flows for ASRs are identified  
2 with transport and LSRs are identified with loops. The use of an existing ASR  
3 order flow provided a simplifying assumption in Qwest's TELRIC study for  
4 design change. Contrary to Mr. Denney's assertions, as I discussed above, the use  
5 of either an ASR or LSR order flow has only a minimal impact on the overall cost  
6 of design changes. For example, Qwest's current TELRIC study for design  
7 change (filed in Minnesota in December 2006) assumes a 100% LSR order flow,  
8 again as a simplifying assumption, resulting in less than a 5 minute difference in  
9 time and less than a \$3 difference in cost (related to order flow) between the two  
10 studies.

11

12 **Q. IS IT NECESSARY TO DEVELOP SEPARATE CHARGES FOR THE**  
13 **VARIOUS TYPES OF DESIGN CHANGES, AS MR. DENNEY**  
14 **SUGGESTS?**

15 A. No. As I pointed out in my rebuttal testimony, particularly in an increasingly  
16 competitive marketplace, it would be inappropriate to micromanage Qwest's  
17 product offerings by requiring Qwest to provide costs and processes to address  
18 every possible way of provisioning all available products.

19 Eschelon has taken advantage of the fact that the design change charge as it is  
20 applied to UDIT is, according to Mr. Denney, lower than it would be if the costs  
21 were calculated on a stand-alone basis. At the same time, by its own admission,<sup>10</sup>  
22 Eschelon has had the benefit of no charge for design changes to unbundled loops.  
23 Now that Qwest has determined to exercise its right to charge CLECs for all of  
24 the design change types included in the calculation of its rate, Mr. Denney would  
25 have this Commission believe that Qwest must accept interim rates for those

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<sup>10</sup> Rebuttal Testimony of Douglas Denney ("Denney Rebuttal"), p. 15.

1 design changes, and then seek permanent rates from the Commission in a  
2 different proceeding.<sup>11</sup> As I have pointed out above, Qwest has proposed a rate  
3 for design changes – for which it has already received approval from the New  
4 Mexico Commission – that is an average of the costs for performing design  
5 changes for all types of products, under all types of circumstances.

6 **Q. MR. DENNEY STATES, ON PAGE 18 OF HIS REBUTTAL TESTIMONY,**  
7 **THAT A FEW MINUTES OF A CENTRAL OFFICE TECHNICIAN’S**  
8 **TIME SHOULD NOT AMOUNT TO A CHARGE OF \$103.10. IS THERE**  
9 **ANY RELATIONSHIP BETWEEN THIS TECHNICIAN TIME AND THE**  
10 **APPROPRIATE RATE FOR DESIGN CHANGES?**

11 A. No. As I explained previously, the fact is that the design change charge does not  
12 include any cost for the central office technician’s time required for a design  
13 change. Mr. Denney’s assertion results more in confusing the reader than in  
14 adding relevant information to the discussion of the issue. For example, Mr.  
15 Denney points to a rate for design changes of \$103.10 that Qwest initially  
16 proposed, despite the fact that I stated very clearly in both my direct and rebuttal  
17 testimony that Qwest’s current proposed rate for design changes is \$51.76. The  
18 design change charge is a charge based on New Mexico’s approved cost to  
19 process changes to an existing order at the request of a customer (such as  
20 Eschelon) associated with a design change, and to provide a new design,  
21 including CFA changes, as well as to process updates to systems and databases  
22 pursuant to that request. The design change cost study does *not* include central  
23 office technician time. Thus, although on page 19 of his rebuttal testimony, Mr.  
24 Denney discusses Mr. Jensen’s deposition testimony regarding the central office  
25 work required for a CFA change, that testimony has no relevance whatsoever with

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<sup>11</sup> Denney Rebuttal, p. 17.

1 respect to the cost of a design change charge.

2 And, contrary to Mr. Denney's assertions, those costs are not recovered in any of  
3 Qwest's other installation charges and, thus, do not result in double recovery.  
4 This is so because those costs are not triggered unless a CLEC asks Qwest to  
5 interrupt the flow of an order to make a design change, or until an order cannot be  
6 completed on a due date because the CFA information provided for the order is  
7 incorrect. As I discuss above, regardless of the cause of the design change, Qwest  
8 must interrupt the order flow, correct the information in its systems and reinitiate  
9 the order process so that the order can be completed with the new design or  
10 corrected information. These steps occur whether or not the initial order was  
11 placed as a basic installation or as a coordinated cut. And, again, contrary to Mr.  
12 Denney's assertions on page 17 of his rebuttal testimony, the coordinated  
13 installation that Eschelon pays for does not include costs for the activities  
14 included in the design change charge. This is so because the cost for a  
15 coordinated installation, just like a basic installation or any of the other types of  
16 installation, is based on the assumption that the order will process through  
17 Qwest's systems once and through the groups involved in provisioning once, from  
18 beginning to end without interruption. This is not to say that there are no  
19 assumptions included in the installation costs to address manual handling at  
20 various points in the process due to an order falling out of the systems; however,  
21 those assumptions do not cover situations where the order must be reinitiated and  
22 completed with a different design. Mr. Denney's suggestions that these costs are  
23 recovered in some other charge that Eschelon pays are no different from his  
24 incorrect suggestion that the design change charge covers the cost of a "few  
25 minutes of central office technician's time."<sup>12</sup>

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<sup>12</sup> Denney Rebuttal, p. 18.

1 **ISSUE 9-51 – APPLICATION OF UDF-IOF TERMINATION RATE ELEMENT**

2 **Q. MR. DENNEY ARGUES, ON PAGE 92 OF HIS REBUTTAL**  
3 **TESTIMONY, THAT QWEST PROPOSES TO CHANGE THE TERMS**  
4 **RELATED TO APPLICATION OF THIS RATE DESPITE THE FACT**  
5 **THAT THE RATE HAS NOT CHANGED SINCE IT WAS APPROVED.**  
6 **PLEASE COMMENT**

7 A. In the case of UDF-IOF terminations, Qwest has consistently applied this rate on  
8 a per-termination basis since it was introduced as a rate element. In other words,  
9 Qwest has consistently applied terminations at each end of the path plus  
10 additional terminations at each of the intermediate offices on the path between the  
11 A and Z offices, depending on the actual configuration of each intermediate office  
12 and what is needed to deliver dark fiber as ordered by a CLEC to its collocation  
13 space. Qwest’s proposed language in this arbitration – which Qwest has clarified,  
14 as described by Ms. Stewart – is merely intended to spell out clearly this  
15 consistent application of the termination rate element. Therefore, Mr. Denney is  
16 incorrect when he suggests that Qwest is proposing to change the application of  
17 the rate, and he is further incorrect to suggest that the rate was not intended to be  
18 applied in this manner.

19

20 **Q. MR. DENNEY COMPLAINS THAT QWEST HAS NOT PROVIDED**  
21 **ESCHELON WITH THE COST STUDIES THAT SUPPORT THIS RATE,**  
22 **AND THUS THAT HE IS UNABLE TO DETERMINE IF QWEST’S**  
23 **PROPOSED APPLICATION IS CORRECT. HOW DO YOU RESPOND?**

24 A. Qwest has maintained throughout this arbitration proceeding that cost issues  
25 should be raised in a separate cost proceeding and has, therefore, generally not put  
26 its cost studies into evidence. Despite its position on this matter, Qwest has

1 provided Eschelon with its available cost support for rate elements that have not  
2 been previously addressed or approved in a cost proceeding by this Commission.  
3 However, for rates that have been approved in fully litigated, contested cost  
4 dockets, Qwest sees no reason to provide support for those rates in this  
5 proceeding. The only purpose that would be served in making those studies  
6 available to Eschelon is to provide Eschelon an opportunity to re-litigate and  
7 collaterally attack those final rates in the context of its arbitration. Clearly, that  
8 would be inappropriate given that Eschelon has other avenues available to it if it  
9 wishes to challenge Commission-approved rates. Furthermore, as Mr. Denney  
10 points out in his discussion of unapproved rates, state commissions have not  
11 always adopted Qwest's cost studies and models in determining Qwest's TELRIC  
12 rates. Therefore, unless Qwest was specifically ordered to make a compliance  
13 filing using its own studies and models, Qwest may not even be in possession of  
14 the underlying cost support for a commission-approved rate. For example, a  
15 commission staff may have made a compliance run, or may have taken the results  
16 from competing runs to determine a rate. Thus, it is Qwest's position that if  
17 Eschelon seeks cost support for Qwest's commission-approved rates, it should do  
18 so through the state commission or its staff. Nevertheless, as Mr. Denney notes  
19 on page 92, footnote 240 of his rebuttal testimony, Qwest agreed to provide  
20 Eschelon with a copy of its Termination cost study for the approved New Mexico  
21 rate that Qwest proposes in this proceeding based on Mr. Denney's assurances  
22 that he only wishes to satisfy himself that the cost for terminations is calculated  
23 on a per termination basis as I have represented.

24  
25 **Q. DOES QWEST'S APPROVED METHOD OF CALCULATING**  
26 **TERMINATION COSTS INCORPORATE THE POSSIBILITY THAT**  
27 **THERE WILL BE MORE THAN ONE TERMINATION PER CENTRAL**

1           **OFFICE, AS MR. DENNEY SUGGESTS ON PAGE 96 OF HIS**  
2           **REBUTTAL TESTIMONY?**

3    A.    No. Because dark fiber routes are very specific to each CLEC's needs, it would  
4           be impossible for Qwest to predict the number of terminations that might be  
5           required for any particular route. This is also why the recurring rate for the dark  
6           fiber itself is calculated on a per-mile basis. Thus, Qwest's recurring costs for  
7           UDF-IOF terminations were developed on a per-termination basis, assuming the  
8           average cost to terminate a fiber at a fiber distribution panel ("FDP"). The  
9           termination costs are calculated per FDP, assuming that the network components  
10          for a single bay are divided by the total terminations per bay. There are no  
11          assumptions in the study regarding typical dark fiber configurations, or the  
12          number of terminations that might be necessary for any given configuration,  
13          because the study assumes that a charge will apply for each termination based on  
14          the actual configurations required to provide dark fiber to CLECs. Qwest has  
15          consistently applied the termination rates for all CLECs on a per-termination basis  
16          -- the number of dark fiber terminations required for the specific route requested  
17          by a CLEC. This application of termination rates is no different from what Qwest  
18          is proposing for terminations in Eschelon's case. As I explained above, Qwest is  
19          merely trying to ensure that its description of these rate elements in Eschelon's  
20          ICA is consistent with the way that Qwest has applied them since they were  
21          approved by state commissions.

22  
23    **ISSUE NO. 12-67 – EXPEDITES**

24    **Q.    MR. DENNEY STATES, ON PAGE 117 OF HIS REBUTTAL**  
25           **TESTIMONY, THAT YOU HAVE NOT EXPLAINED WHAT YOU MEAN**  
26           **BY THE PHRASE "SUPERIOR SERVICE." PLEASE COMMENT.**

1 A. As Mr. Denney points out in his testimony, the Eighth Circuit found that the Act  
2 does not require Qwest to provide service that is superior *to what it provides itself*  
3 in connection with providing service to its own retail customers. As I pointed out  
4 in my rebuttal testimony, the fact that Qwest often provisions circuits for CLECs  
5 in shorter intervals than it does for its own retail customers provides support for  
6 the argument that the further provision of expedites constitutes a superior service.  
7 In other words, because the CLECs are already able to obtain circuits from Qwest  
8 more quickly than Qwest's own retail customers, without any additional charge,  
9 while Qwest's retail customers, including other wholesale carriers, must pay an  
10 expedite fee to obtain the same intervals as CLECs, the provision of expedites to  
11 CLECs constitutes superior service.

12

13 For example, the standard installation interval for a DS-1 for Qwest's private line  
14 retail customers is 9 days, while in many of Qwest's states the installation interval  
15 for CLECs for the exact same DS-1 circuit is only 5 days. In those states,  
16 therefore, in order for a Qwest retail customer to obtain the same 5-day  
17 installation interval as a CLEC, the retail customer must request an expedite at a  
18 charge of \$200 per day advanced, or \$800 for the same service that a CLEC  
19 receives at no additional cost. If a CLEC then requests an expedite to have a  
20 circuit installed in an even shorter period of time (for example 3 days), at \$200  
21 per day advanced, the CLEC would pay an additional \$400 for the service, while  
22 Qwest's retail customer would pay \$1200 to receive the same service. This  
23 scenario clearly gives the CLEC a competitive advantage over Qwest when  
24 provisioning DS-1 services for its end-user customers, and amounts to service that  
25 is superior to what Qwest provides for its own retail customers.

26

1 Even in states where there is no difference in the interval between retail and  
2 wholesale, an expedite gives one competitor an advantage over another  
3 competitor because of that competitor's ability to go to the head of the line and  
4 have circuits provisioned more quickly than they otherwise would be in the  
5 normal course of business. This service has a value, above and beyond the cost of  
6 the service, that is recognized throughout the industry, as evidenced by the rates  
7 charged by other ILECs and CLECs for expedites. For example, in many of the  
8 AT&T states, the expedite charge for a DS-1 circuit is \$675, less \$50 for each day  
9 the installation date is closer to the standard interval. In some of the Verizon  
10 states, the expedite charge is a flat \$500 one-time fee regardless of the number of  
11 days advanced. In other Verizon states, the rate varies depending on the number  
12 of days advanced from \$647.85 to \$1,537.06. Similarly, there are CLECs whose  
13 charges for expedites also range from \$250 to \$500. Thus, just as Qwest believes  
14 that expedites constitute a superior service that should be valued above cost, so  
15 too do other carriers in the industry, including CLECs.

16  
17 **Q. ON PAGE 118 OF HIS REBUTTAL TESTIMONY, MR. DENNEY**  
18 **POINTS OUT THAT QWEST PROVIDES "PREMIUM" MANAGED**  
19 **CUTS AND "PREMIUM" LABOR WITHOUT CLAIMING THOSE ARE**  
20 **SUPERIOR. DO THOSE LABELS HAVE ANY RELEVANCE TO THIS**  
21 **DISCUSSION?**

22 A. No. Mr. Denney has taken two rates out of Qwest's SGAT Exhibit A that are  
23 labeled "premium," and argues that because Qwest has not claimed that they are  
24 superior services, it must mean that Qwest's claim with respect to expedites is  
25 wrong. Mr. Denney's argument is off base and irrelevant. The rates to which Mr.  
26 Denney refers are described as "premium" because they are for work performed  
27 on holidays during *premium* shifts. In other words, Qwest classifies its bargained-



1 for labor into many categories, including three categories that reflect 1) an  
2 employee's regular work hours (*i.e.*, up to 40 hours per week), 2) his or her  
3 overtime hours for work over a 40-hour work week, or in excess of the  
4 employee's scheduled tour for that particular day, and 3) *premium* time worked  
5 on holidays or in excess of 49 hours in a week. These labor classifications are  
6 merely used to determine the hourly rate for time worked and have absolutely  
7 nothing to do with Qwest providing a premium or superior service. Bringing  
8 these labels into the discussion of expedites only serves to confuse the expedites  
9 issue instead of clarifying it with relevant facts.

10

11 **Q. IF QWEST DOES NOT CHARGE ITSELF TO EXPEDITE ORDERS, BUT**  
12 **ONLY INCURS COST, IS CHARGING ESCHELON A NON-COST-**  
13 **BASED PRICE DISCRIMINATORY?**

14 A. No. First, in order to accept such an argument, one would have to accept that  
15 Qwest has a Section 251 obligation to provide CLECs with expedited orders. As  
16 I explained in my rebuttal testimony, the only pricing authority for  
17 interconnection and UNEs that the Act confers upon state commissions is that set  
18 forth in Section 252(c)(2), which directs states to set prices in the exercise of their  
19 Section 252 arbitration authority for interconnection services and UNEs that  
20 ILECs provide under Sections 251(c)(2) and (c)(3). Section 252(c)(2) provides  
21 specifically that, in exercising their arbitration authority, states shall determine  
22 "the just and reasonable rate for the interconnection of facilities and equipment  
23 for purposes of subsection [251(c)(2)] . . . [and] for network elements for  
24 purposes of subsection [251(c)(3)]."<sup>13</sup> As shown by this language, nothing in this  
25 section gives states pricing authority over superior services that an ILEC is not

---

<sup>13</sup> 47 U.S.C. § 252(d)(1).

1 required to provide, such as expedited orders; instead, the authority that Congress  
2 granted in that section is plainly limited to elements and services that must be  
3 provided under Section 251(c). Nowhere in Section 251 is there any requirement  
4 for ILECs to provide CLECs with superior service. Nevertheless, as I have  
5 discussed above, Qwest already provisions such services to the CLECs in shorter  
6 intervals than it provides for its own retail customers. To conclude that Qwest  
7 must provision services in even shorter intervals, and at cost-based rates, would  
8 place the CLEC's end-user customers in a superior position to Qwest's retail  
9 customers.

10 Furthermore, when the FCC initially tried to interpret the Section 251(c)(3)  
11 requirement to provide nondiscriminatory access to UNEs as requiring ILECs to  
12 provide superior service, the Eighth Circuit struck down the FCC's interpretation  
13 as violating the Act. It is important to note that this particular portion of the  
14 Eighth Circuit's decision was never disturbed by the United States Supreme  
15 Court.<sup>14</sup> In fact, the Florida Commission articulated this point clearly when it  
16 said:

17  
18 It is clear there is no obligation imposed or implied in Rule 51.311(b) that  
19 an incumbent render services to a CLEC superior in quality to those  
20 provided to a retail customer requesting similar services. So long as *rates*  
21 *are identical* for all requesting parties, CLEC and retail alike, parity exists  
22 in the provisioning structure for service expedites, and there is no conflict  
23 with Rule 51.311(b). We reiterate that current regulations do not compel  
24 an ILEC to provide CLECs with access superior in quality to that supplied  
25 to its own retail customers.<sup>15</sup>

26 Thus, because this Commission's authority to apply TELRIC pricing is limited to  
27 Section 251 services and elements under the Act, and the service of expediting

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<sup>14</sup> See e.g., *Iowa Utilities Board v. AT&T*, 120 F.3d 753, 812-813 (8th Cir. 1997), *aff'd in part and rev'd in part*, 525 U.S. 366, 397 (1999).

<sup>15</sup> *In re Joint Petition by NewSouth et al.*, 2005 Fla. PUC LEXIS 634 \*150, Order No. PSC-05-0975-FOF-TP (Fla. PSC Oct. 11, 2005). (Emphasis added.)

1 orders is a superior service not required by Section 251, it would not be  
2 appropriate for the Commission to determine a TELRIC-based price for the  
3 Expedited Order charge.

4 Second, to interpret Qwest's charging of a non-cost-based price as discriminatory,  
5 one would have to conclude that Qwest is obligated in all cases to charge CLECs  
6 only its own costs. If that were the case, the FCC would have established a  
7 costing methodology for UNEs based on Qwest's actual cost for its embedded  
8 network. It did not. Instead, the FCC established a methodology (TELRIC) that  
9 requires Qwest to determine the average cost of various network elements based  
10 on a hypothetical, forward-looking network. If Qwest's actual costs based on its  
11 embedded network were the appropriate standard under the FCC's rules, Qwest  
12 would be charging CLECs much higher rates for many unbundled network  
13 elements that it instead provides at forward-looking TELRIC rates, which are well  
14 below the costs that Qwest actually incurs. Nevertheless, as I have explained  
15 above, TELRIC is not the appropriate pricing method to apply in the case of  
16 expedites. Alternatively, to accept Mr. Denney's discrimination argument, one  
17 would have to assume that Qwest is obligated to charge CLECs only amounts it  
18 imputes to itself for services it provides to the CLECs. Again, this is not a proper  
19 interpretation of the FCC's nondiscrimination requirement.

20 McLeod tried to prevail on similar argument in its DC Power Complaint cases in  
21 several of Qwest's states, however, as the Washington Commission found in its  
22 proceeding:

23 We have long held that a utility may charge different rates for the same  
24 service if it is reasonable to do so. In this case, Qwest does not  
25 "collocate" equipment, hence its imputed rates for DC power may  
26 reasonably differ from the rates it charges CLECs under negotiated  
27 interconnection agreements. Moreover, Qwest provided evidence that it  
28 does not assign power costs to itself solely on a measured basis, but rather

1                   that it takes into account the total costs for power plant which do not vary  
2                   with usage. The fact that Qwest does not impute to itself the same costs  
3                   for DC power that it charges McLeod does not of itself constitute  
4                   improper discrimination.”<sup>16</sup>

5                   The fact is that regardless of Qwest’s own costs to provide expedites for its retail  
6                   customers, Qwest has determined a rate based on the value of an expedite that it  
7                   has already established for purposes of charging its own customers. By charging  
8                   that same amount to Eschelon, an amount that Eschelon can pass along to *its* retail  
9                   customers, Eschelon’s end-user customers are placed in a better position than  
10                  Qwest’s end-user customers when an expedite is requested because of their  
11                  already shortened installation interval.

12

13   **Q.    IS ESCHELON’S PROPOSED CHARGE OF \$100 PER EXPEDITE A**  
14   **COST-BASED CHARGE?**

15   A.    No. The \$100 per expedite fee proposed by Eschelon is a flat, per order charge.  
16        As Mr. Denney admits on page 120 of his rebuttal testimony, it is not based on  
17        any analysis of Qwest’s costs to perform an expedite and is, in fact, below the  
18        minimum floor established in Qwest’s TSLRIC study for the activities necessary  
19        to complete an expedite. Nor is Eschelon’s proposed expedite fee based on any  
20        analysis of the value associated with Eschelon’s ability to leapfrog ahead of its  
21        competitors’ orders that are already in queue.

22

23   **Q.    ESCHELON HAS ARGUED IN OTHER JURISDICTIONS THAT**  
24   **QWEST’S DUE DATE CHANGE CHARGE SUPPORTS ESCHELON’S**  
25   **LOWER PROPOSAL FOR AN EXPEDITE CHARGE. PLEASE**  
26   **COMMENT.**

---

<sup>16</sup> *Washington Final Order*, p. 7, ¶ 24.

1 A. A careful reading of the definition of the Due Date Change charge will show the  
2 fallacy of comparing it with the Expedite charge proposed by Qwest. The Due  
3 Date Change charge applies in instances when a CLEC wants to change the due  
4 date to a *later* date, after the technician has been assigned or dispatched on the  
5 original due date. In the case of an Expedite charge, however, the charge is based  
6 on the value to the customer of being able to go to the head of the line and have  
7 its order worked ahead of orders that are already in queue. As I explained in my  
8 rebuttal testimony, the basis for this service is that there is value to the CLEC to  
9 have the ability to leapfrog ahead of other customers. In the case of a Due Date  
10 Change, the CLEC is not asking to move its date ahead of everyone else; rather, it  
11 has missed the original due date, and Qwest is simply trying to recoup its cost for  
12 having to dispatch a technician again to complete the work at a later time.

13

14 **Q. HOW IS A VALUE-BASED CHARGE, SUCH AS AN EXPEDITE,**  
15 **DETERMINED?**

16 A. As I explained in my rebuttal testimony, Qwest's expedite charge is not based on  
17 cost, although Qwest certainly does incur costs to process a request for an  
18 expedited order. For these orders, Qwest must invest time and resources to work  
19 the order into an existing provisioning schedule, coordinate activities among the  
20 several Qwest departments that are involved in the installation process, and  
21 communicate with the customer regarding the status of the order. However, the  
22 value of an expedited order is the intangible benefit of a superior service provided  
23 to the customer by Qwest (*i.e.*, the ability to go to the head of the line and  
24 leapfrog over the other customers whose orders are already in queue). As I've  
25 explained previously, if Qwest did not charge its customers for the value they  
26 receive in going to the head of the line, those customers would receive an unfair  
27 advantage over other customers. Therefore, by making expedites available to all

1 of its customers for a fee, every customer has the same ability as every other  
2 customer to decide for itself how important it is to obtain expedited orders. As  
3 the Minnesota Commission acknowledged, “the cost Qwest bears to expedite an  
4 order may vary depending on the number of expedite requests Qwest receives,  
5 and the number of requests Qwest receives may vary with the cost [to the CLEC]  
6 to expedite an order.”<sup>17</sup> Obviously, *it would be impossible for Qwest to expedite*  
7 *every order*; thus, Qwest sets a price for obtaining superior service that guarantees  
8 that only those customers for whom the priority to expedite an order is very high  
9 will request the service.

10

11 **Q. HAVE YOU PROVIDED AN EXAMPLE BASED ON COMMON**  
12 **EXPERIENCE THAT COULD HELP EXPLAIN THIS CONCEPT?**

13 A. Yes. In my rebuttal testimony, I explained that the price that concert-goers pay  
14 for tickets provides a good analogy to the situation presented in the case of  
15 expedites. Concert-goers pay a premium for seats that are up front and closer to  
16 the stage than they do for seats that are in the back and farther away from the  
17 stage. And while it does not cost any more to produce a show for the people in  
18 the front row than it does to produce a show for the people in the last row, it is not  
19 unusual for the people in the front row to pay a ticket price that is two or three or  
20 more times higher than the price for back-row tickets. The reason some concert-  
21 goers are willing to pay the higher price is because they perceive enough value in  
22 being close to the stage to make it worth paying the premium fee. Other concert-  
23 goers are willing to sit farther away to pay a lower price.

24

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<sup>17</sup> *In the Matter of the Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. §252(b)*, Docket No. P5340, 421/IC-06-768, Order Resolving Arbitration Issues, Requiring Filed Interconnection Agreement, Opening Investigations and Referring Issue to Contested Case Proceeding (rel. March 30, 2007), p. 18.

1 The same is true of expedite charges; some customers, including CLECs, are  
2 willing to pay a premium in order to receive what they perceive to be the superior  
3 service of shortening their installation interval and moving to the head of the line.  
4 Other CLECs are satisfied to accept the standard installation interval and forego  
5 paying the additional fee. Each CLEC makes the choice to pay or not pay the fee  
6 on the basis of the perceived value to their business to expedite orders. This is no  
7 different than the decision process that Qwest's retail and other wholesale  
8 customers go through when they determine whether or not to pay the \$200 per  
9 day fee to expedite their installation orders.

10

11 **ISSUE NO. 22-90 (B)-(AE) – UNAPPROVED RATES**

12 **Q. MR. DENNEY STATES, ON PAGE 150 OF HIS REBUTTAL**  
13 **TESTIMONY, THAT HE DISAGREES WITH SEVERAL STATEMENTS**  
14 **FROM YOUR DIRECT TESTIMONY THAT INTRODUCE THE**  
15 **DISPUTED ISSUE INVOLVING UNAPPROVED RATES. PLEASE**  
16 **COMMENT.**

17 A. Mr. Denney takes issue with my statement that many commissions made TELRIC  
18 decisions in their initial cost dockets on the basis that they believed it was their  
19 public duty to “jump start” competition. He says that my claim leaves the  
20 impression that in early cases, some commissions low-balled TELRIC rates. He  
21 goes on to say that he has been involved in many cost dockets where commissions  
22 set TELRIC rates, and they were not policy driven. I too have been extensively  
23 involved in cost dockets in many of Qwest's states, and my experience leads me  
24 to a different conclusion.

25 The reason that I put quotation marks around the phrase “jump start” in my  
26 testimony is that I was involved in a cost docket in Arizona in which then-

1 Commissioner Marc Spitzer used those exact words in his opening statement to  
2 describe what he viewed as the Commission's role in setting Qwest's TELRIC  
3 rates. Furthermore, Qwest's TELRIC rates often vary widely from one state to  
4 another, and I can only conclude that these variations are explained, in part, by the  
5 fact that some state commissions appear to have been influenced by something  
6 other than pure economic theory and cost analysis.

7 For example, Qwest's nonrecurring rates for the basic installation of an unbundled  
8 analog loop in its states range from a low of \$2.38 (\$4.33, including disconnect)  
9 in Minnesota, to a high of \$104.73 in Wyoming. These differences simply cannot  
10 be explained by differences in either geography or density between these two  
11 states, especially because nonrecurring rates are not driven by such differences.  
12 The processes for provisioning loops in Qwest's 14-state region are identical and  
13 are processed in regional centers. For example, the Qwest CLEC Coordination  
14 Center in Omaha, Nebraska is a center that houses the employees who test circuits  
15 as part of the provisioning process for all CLECs in all 14 states. The cost to  
16 Qwest for the work performed by these employees is the same whether they are  
17 testing a circuit in Minnesota or Wyoming. Furthermore, the methods, practices  
18 and procedures under which the technicians in each of these states operate are  
19 identical. Nevertheless, the Commissions in Minnesota and Wyoming reached  
20 very different results in determining the costs and setting the TELRIC rates for  
21 basic installations. My contention is that such disparate results are driven by  
22 factors other than pure economic costing principles.

23

24 **Q. ON PAGE 153 OF HIS REBUTTAL TESTIMONY, MR. DENNEY STATES**  
25 **THAT QWEST'S PROPOSAL TO USE RATES FROM THE NEW**  
26 **MEXICO COST DOCKET VALIDATES THE APPROACH THAT**



1           **ESCHELON HAS TAKEN IN DEVELOPING ITS INTERIM RATES. IS**  
2           **THIS ASSERTION CORRECT?**

3    A.    No. There is a fundamental and critical difference in the approaches that Qwest  
4           and Eschelon have taken in proposing interim rates. Qwest's approach  
5           emphasizes the need for consistency in the methodology that the Commission  
6           uses to set the interim rates. By proposing that the Commission base all of the  
7           rates on those ordered by the New Mexico Commission in the cost docket held in  
8           that state, Qwest is advocating rates that are based on the same or similar  
9           methodologies, inputs, and assumptions. Significantly, Qwest is not proposing  
10          selective use of the New Mexico rates by, for example, suggesting that the  
11          Commission use some rates but not others. Instead, Qwest is proposing that the  
12          Commission use all of the New Mexico-approved rates that match the rate  
13          elements at issue in this proceeding, including in some instances, rates that Qwest  
14          believes are too low. For the sake of consistency in methodology, Qwest is  
15          willing to live with all of the relevant rates from New Mexico, including rates that  
16          it believes are too low.

17          By contrast, however, Eschelon has set aside any concerns about consistency and  
18          has instead used *at least nine different methodologies* to come up with the rates it  
19          is proposing. Under Eschelon's approach, the methodology employed to develop  
20          a rate often is driven by the desired result. If one methodology produces a rate  
21          that is too high for its liking, Eschelon sometimes discards that methodology in  
22          favor of another one that produces a lower rate. This unprincipled approach  
23          underlies many of the interim rates that Eschelon is proposing.

24    **Q.    YOU STATE THAT IN CONTRAST TO QWEST'S USE OF A SINGLE**  
25          **METHODOLOGY, ESCHELON USES AT LEAST *NINE* DIFFERENT**  
26          **METHODOLOGIES TO ACHIEVE THE RESULTS IT DESIRES. WHAT**

1           **METHODOLOGIES DOES ESCHELON EMPLOY?**

- 2    A.    At pages 271-273 of his direct testimony, Mr. Denney describes the multiple  
3           methodologies underlying Eschelon’s rate proposals:
- 4           • For some rates, Eschelon “[a]veraged rates approved by state Commissions in  
5           other large Qwest states in which Eschelon operates.”
  - 6           • For other rates, Eschelon averaged approved rates from other states “with Qwest  
7           proposed rates in other states.”
  - 8           • In some cases, Eschelon used rates from the “Eschelon/Qwest historical ICA.”
  - 9           • In other cases, Eschelon adopted rates set forth in Qwest’s Statement of  
10           Generally Available Terms and Conditions (“SGAT”).
  - 11           • For some rates, Eschelon picked rates from Qwest’s “Negotiations Template.”
  - 12           • For other rates, Eschelon bases its proposal on “Qwest cost support for rates  
13           across the states.”
  - 14           • In some instances, Eschelon adopted “Qwest proposed rates in other states.”
  - 15           • Some rates also reflect largely unexplained 50% reductions in the rates proposed  
16           by Qwest; and
  - 17           • Other rates proposed by Eschelon are based upon purported “corrections” to  
18           Qwest’s studies “to reflect Commission cost decisions.”

19    **Q.    IS THERE EVIDENCE DEMONSTRATING THAT ESCHELON’S USE**  
20           **OF THESE DIFFERENT METHODOLOGIES FOR DEVELOPING**  
21           **RATES IS RESULT-ORIENTED AND INTENDED TO PRODUCE THE**  
22           **LOWEST POSSIBLE RATES IN MANY INSTANCES?**

- 23    A.    Yes. There are multiple examples of Eschelon choosing a specific methodology  
24           because it produces a lower rate than the other methodologies that Eschelon  
25           employs.

1 For example, the first rate in Mr. Denney’s table on page 282 of his direct  
2 testimony (Eschelon/9) shows that Eschelon’s proposed nonrecurring cost for the  
3 section 8.1.1.2 Cable Augment Quote Preparation Fee is \$700, based on an  
4 “Average of Approved Rates from other states.” First, it is important to note that  
5 Mr. Denney’s “averaged” rate is *not* an average of all of the approved rates from  
6 other states in Qwest’s region, but only two of the states in which Eschelon  
7 operates (Arizona and Colorado). While Mr. Denney presumably feels justified  
8 in picking only those states’ rates to average, a true average would have taken into  
9 consideration the commission decisions in all of Qwest’s states. If he had  
10 averaged all of Qwest’s commission-approved rates (including Arizona,  
11 Colorado, Idaho, Minnesota, Montana, North Dakota and Wyoming), Mr. Denney  
12 would have calculated an average rate for Cable Augment Quote Preparation Fee  
13 of \$1,170.95. In addition, if Mr. Denney had used the rate for section 8.1.1.2  
14 from the existing Qwest-Eschelon ICA, he would have proposed a rate of  
15 \$2,317.19. If he had used the rate from the negotiations template, he would have  
16 proposed a rate of \$1,608.58. As noted above, Mr. Denney used both of these  
17 methodologies to select rates for other elements, but he did not use them for this  
18 element when they produced a higher rate than Eschelon is proposing. Based on  
19 Qwest’s consistent proposal to use the lower of the New Mexico-approved rate or  
20 the Oregon rate adjusted to reflect the New Mexico Commission’s decision,  
21 Qwest proposed a rate for section 8.1.1.2 of \$1,126.01.

22 Not surprisingly, Mr. Denney apparently abandoned the averaging methodology  
23 when he could find a lower rate using one of the other methodologies mentioned  
24 above. For example, in the case of the Quote Preparation Fee (“QPF”) for Virtual  
25 Collocation (section 8.2.1.1), if Mr. Denney had averaged the approved rates –  
26 either for the five other states in which Eschelon operates (including the Utah rate

1 of zero), or all 12 of Qwest's states with approved rates, he would have calculated  
2 average rates of \$2,402.46 and \$2,902.73, respectively. Instead, Mr. Denney  
3 chose to use the rate for the existing Qwest-Eschelon ICA, which resulted in a  
4 lower proposed rate of \$2,317.19. Note that this is the same rate that he chose *not*  
5 to use in the above example. Qwest, on the other hand, proposes a rate for section  
6 8.2.1.1 of \$929.45, consistent with its proposal to use the lower of the New  
7 Mexico-approved rate or the adjusted Oregon rate. Qwest stands by this  
8 methodology despite the fact that the New Mexico rate is the lowest in the Qwest  
9 region, with the exception of the aberrational zero rate in Utah.

10 In a slight deviation from his averaging methodology, Mr. Denney also included  
11 not only the approved rates from select states, but also Qwest's proposed but  
12 unapproved rates from other states. For example, in the case of section 9.7.4.1.4  
13 UDF-IOF Single Stand Termination, per Stand/Office, he proposed a recurring  
14 rate of \$4.01 based on this modified averaging methodology. If Mr. Denney had  
15 averaged *all* of Qwest's approved and unapproved rates for section 9.7.4.1.4  
16 terminations, the result would have been higher at \$4.16. Furthermore, if he had  
17 averaged just the approved and unapproved rates from the states in which  
18 Eschelon operates, including Oregon, the result would have been a proposed rate  
19 of \$4.19. Finally, if Mr. Denney had chosen to use the rate from the existing  
20 Qwest-Eschelon ICA, he would have proposed a rate of \$5.54. Instead, he chose  
21 to average only the approved and unapproved rates for Arizona, Colorado, Utah  
22 and Washington. Using its consistently applied methodology, Qwest proposes a  
23 rate for section 9.7.4.1.4 of \$4.35.

24 These are just a few examples of the pains that Mr. Denney apparently went  
25 through to ensure that many of the rates he proposed as interim on behalf of  
26 Eschelon were based on the lowest rates he could find and not on the application

1 of a single, consistent methodology that produces rates that are both desirable and  
2 undesirable.

3 **Q. ARE YOU PROVIDING MATERIALS THAT DISCLOSE THE**  
4 **ASSUMPTIONS AND METHODOLOGIES THAT THE NEW MEXICO**  
5 **COMMISSION USED TO SET THE INTERIM RATES QWEST IS**  
6 **PROPOSING?**

7 A. Yes. Attached hereto as Exhibits Qwest/46, Qwest/47, and Qwest/48 are copies  
8 of the following orders from the New Mexico wholesale cost docket that resulted  
9 in the rates Qwest is proposing:

10  
11 *In the Matter of the Consideration of Costing and Pricing Rules for OSS,*  
12 *Collocation, Shared Transport, Non-Recurring Charges, Spot Frames,*  
13 *Combination of Network Elements and Switching, New Mexico Public*  
14 *Regulation Commission, Utility Case No. 3495, Phase B, Recommended*  
15 *Decision of the Hearing Examiner, February 13, 2004 (“Recommended*  
16 *Decision”).*

17  
18 *In the Matter of the Consideration of Costing and Pricing Rules for OSS,*  
19 *Collocation, Shared Transport, Non-Recurring Charges, Spot Frames,*  
20 *Combination of Network Elements and Switching, New Mexico Public*  
21 *Regulation Commission, Utility Case No. 3495, Phase B, Order on*  
22 *Recommended Decision, August 31, 2004 (“Order on Recommended*  
23 *Decision”).*

24  
25 *In the Matter of the Consideration of Costing and Pricing Rules for OSS,*  
26 *Collocation, Shared Transport, Non-Recurring Charges, Spot Frames,*  
27 *Combination of Network Elements and Switching, New Mexico Public*  
28 *Regulation Commission, Utility Case No. 3495, Phase B, Final Phase B*  
29 *Order, May 24, 2005 (“Final Order”).*

30 **Q. IN ADDRESSING THE NEW MEXICO RATES QWEST IS PROPOSING,**  
31 **MR. DENNEY ASSERTS, ON PAGE 150 OF HIS REBUTTAL**  
32 **TESTIMONY, THAT QWEST’S PROPOSAL WOULD RESULT IN**  
33 **“DRAMATIC RATE INCREASES” AND DOES NOT CONSTITUTE A**  
34 **COMPROMISE? IS THIS ASSERTION ACCURATE?**

1 A. No. In fact, Mr. Denney contradicts this assertion only a few pages later (on page  
2 157) when he acknowledges that 20% of the rates that Qwest is proposing are  
3 equal to or lower than the rates that Eschelon itself is proposing, and that another  
4 17% of Qwest’s proposed rates “are within five percent” of Eschelon’s proposed  
5 rates. Mr. Denney goes on to state that Qwest’s proposed rates are, on average,  
6 36% greater than Eschelon’s so-called “compromise proposal.”<sup>18</sup> However, as I  
7 discuss above, Eschelon’s “compromise proposal” is, in reality, a mishmash of the  
8 lowest possible rates that Eschelon has hand-picked from multiple sources, based  
9 on multiple contrasting methodologies. It should not be surprising, therefore, that  
10 the New Mexico rates that Qwest is proposing tend, on average, to be higher than  
11 the rates that Eschelon cherry-picked from many different sources through this  
12 results-driven, biased process. Unlike Eschelon, the New Mexico Commission  
13 was not guided by the goal of determining the lowest possible rates; instead, its  
14 stated goal was to base rates on application of the FCC’s TELRIC pricing  
15 principles.

16 Moreover, Mr. Denney’s use of the 36% figure is misleading, since that figure is  
17 nothing more than a “simple average” of the percentages by which Qwest’s  
18 proposed New Mexico rates exceed Eschelon’s rate proposals. As Mr. Denney  
19 acknowledges, the 36% figure “does not take into account the level of each  
20 rate.”<sup>19</sup> The effect of focusing on percentages instead of rate levels is that  
21 relatively small differences between rates, that both parties agree should be low  
22 (*e.g.*, \$1.00 vs. \$1.50), produce large percentage differences (*e.g.*, 50%) even  
23 though the financial significance of the difference in the parties’ proposals is  
24 minimal (*e.g.*, a rate difference of \$0.50).

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<sup>18</sup> Denney Rebuttal, p. 156.

<sup>19</sup> *Id.*

1 **Q. MR. DENNEY HAS ACCUSED QWEST OF DOING LITTLE MORE**  
2 **THAT PRESENTING ITS “WISH LIST” OF INTERIM RATES? DO THE**  
3 **NEW MEXICO RATES THAT QWEST IS PROPOSING COMPRISE AN**  
4 **UNCOMPROMISING “WISH LIST,” AS MR. DENNEY ASSERTS?**

5 A. No. Mr. Denney has disregarded my testimony in which I explain that most of  
6 the New Mexico rates that Qwest is proposing are lower, and sometimes  
7 substantially lower, than the rates that Qwest proposed in the New Mexico cost  
8 docket. The New Mexico Commission made several changes to Qwest’s rate  
9 proposals that resulted in rates that were generally 20% to 30% lower than  
10 Qwest’s original proposals. For example, as I discuss in my direct testimony, the  
11 New Mexico Commission adopted nonrecurring rates that reduced all of Qwest’s  
12 proposed rates by 30% across the board. Although Qwest did not agree with this  
13 decision by New Mexico’s Commission, it is nonetheless proposing the New  
14 Mexico rates in the interest of compromise, and to avoid the necessity of  
15 presenting and litigating cost studies for rates that will be in place only on an  
16 interim basis. Furthermore, when adjusting the Oregon unapproved rates, in cases  
17 where there was no approved New Mexico rate, I made the same 30% reduction  
18 that the New Mexico Commission made in its cost docket order. If Qwest had  
19 intended to present an uncompromising “wish list,” it would not be advocating  
20 rates that a state commission has already lowered through changes that Qwest  
21 disputed.

22 **Q. IN CONNECTION WITH MR. DENNEY’S “WISH LIST”**  
23 **CHARACTERIZATION, HOW DO THE NEW MEXICO RATES**  
24 **COMPARE TO THE RATES THAT QWEST PROPOSED IN THE**  
25 **RECENTLY TERMINATED OREGON COST PROCEEDING, DOCKET**  
26 **UM 1025?**

1 A. In most instances, the New Mexico rates that Qwest is proposing are lower – and  
2 often substantially lower – than the rates that Qwest proposed in docket UM 1025.  
3 These differences arise from the changes to Qwest’s rate proposals that the New  
4 Mexico Commission ordered, including the 30% across-the-board reduction to  
5 Qwest’s proposals for nonrecurring rates. Again, if Qwest were submitting a  
6 “wish list” of rates instead of making a serious attempt at compromise, it would  
7 not be proposing rates that, taken as a whole, are significantly lower than those it  
8 advocated in docket UM 1025.

9 **Q. MR. DENNEY ALSO ARGUES, ON PAGES 153-154 OF HIS REBUTTAL**  
10 **TESTIMONY, THAT NEW MEXICO “LIKELY” HAS A DIFFERENT**  
11 **COST STRUCTURE THAN OREGON, AND THAT IT IS THEREFORE**  
12 **INAPPROPRIATE TO USE NEW MEXICO RATES. IS THERE ANY**  
13 **MERIT TO THIS CRITICISM OF QWEST’S PROPOSAL?**

14 A. No. Mr. Denney begins with the premise that unlike Oregon, New Mexico is “a  
15 small, relatively rural state” and therefore “likely” has a different cost structure  
16 than Oregon. This assertion, which Mr. Denney fails to support with any data or  
17 statistics, fails to recognize that New Mexico and Oregon are among the  
18 geographically largest states in the country and are similar in size. According to  
19 Bureau of Census data, New Mexico is the sixth largest state, geographically,  
20 with 121,355 square miles of land. And, Oregon is the ninth largest state,  
21 geographically, with 95,996 square miles of land.<sup>20</sup> While Oregon has a higher  
22 population density, both states have large geographic areas that are rural and  
23 undeveloped.

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<sup>20</sup> [http://factfinder.census.gov/servlet/GCTTable?\\_bm=y&-geo\\_id=&-ds\\_name=DEC\\_2000\\_SF1\\_U&-lang=en&-mt\\_name=DEC\\_2000\\_SF1\\_U\\_GCTPH1\\_US9&-format=US-9|US-9S&-CONTEXT=gct](http://factfinder.census.gov/servlet/GCTTable?_bm=y&-geo_id=&-ds_name=DEC_2000_SF1_U&-lang=en&-mt_name=DEC_2000_SF1_U_GCTPH1_US9&-format=US-9|US-9S&-CONTEXT=gct)



1 More important, Mr. Denney fails to recognize that for most of the rate elements  
2 at issue in this proceeding, there is no meaningful correlation between the cost of  
3 the element or service and the geography or line density of a state. Thus, the  
4 effort that Mr. Denney goes through, on page 154 of his rebuttal testimony, to  
5 present the table that shows loop rates (which are affected by line counts and  
6 density) has no bearing on the unapproved rate elements that are the subject of his  
7 discussion. A significant majority of the rate elements involve nonrecurring  
8 activities and collocation services that are provided primarily within a central  
9 office and, thus, are unaffected by a state's geography or line density. And, as I  
10 discussed above, the activities that are necessary to provision UNEs, as well as  
11 the operational centers that process them, are either common to all 14 states or, in  
12 the case of technicians, are based on common practices and procedures.  
13 Furthermore, for the few recurring elements that are being addressed in this  
14 proceeding, the difference in line counts, loop rates, density and, especially,  
15 CLEC market share, have nothing to do with Qwest's costs for those elements.  
16 Accordingly, even if Mr. Denney were correct in attempting to contrast the  
17 geographies of New Mexico and Oregon, his comparison would have no  
18 relevance to any of the rate elements at issue here.

19 **Q. IN HIS ATTEMPT TO DISTINGUISH THE "COST STRUCTURE" IN**  
20 **NEW MEXICO FROM THAT IN OREGON, MR. DENNEY STATES, ON**  
21 **PAGES 153-154 OF HIS REBUTTAL TESTIMONY, THAT THERE ARE**  
22 **SIGNIFICANT DIFFERENCES BETWEEN THE TWO STATES WITH**  
23 **RESPECT TO RATES FOR THE UNBUNDLED LOOP, THE NUMBER**  
24 **OF WIRE CENTERS, THE NUMBER OF ACCESS LINES, AND LINE**  
25 **DENSITY. DO THESE DIFFERENCES HAVE ANY BEARING ON THE**  
26 **RATE ELEMENTS AT ISSUE IN THIS PROCEEDING?**

1 A. No. Again, because most of the rate elements in dispute involve nonrecurring  
2 activities and services provided within a central office, loop rates, numbers of  
3 wire centers, numbers of access lines, and line density do not affect the costs that  
4 Qwest incurs or, in turn, the rates that should be established to ensure recovery of  
5 those costs. Mr. Denney's analysis might have been relevant if the parties were  
6 disputing rates for the unbundled loop or other loop-related unbundled network  
7 elements (since the costs and rates for loop UNEs may be affected by the factors  
8 Mr. Denney lists), however, these UNE rates are not in dispute and, therefore, Mr.  
9 Denney's analysis is nothing more than a diversion.

10 **Q. MR. DENNEY ASSERTS, ON PAGE 154 OF HIS REBUTTAL**  
11 **TESTIMONY, THAT QWEST'S RELIANCE ON RATES FROM NEW**  
12 **MEXICO CONFLICTS WITH YOUR TESTIMONY IN OTHER**  
13 **PROCEEDINGS IN WHICH YOU CRITICIZED HIM FOR AVERAGING**  
14 **RATES IN QWEST'S REGION BASED ON AN INSUFFICIENT NUMBER**  
15 **OF STATES. HOW DO YOU RESPOND?**

16 A. Mr. Denney is correct in stating that I have criticized him in the past, as I do again  
17 in this proceeding, for developing "average" rate proposals by including some  
18 states and selectively excluding others that would have increased the averages.  
19 The fundamental point of this criticism is that Mr. Denney excluded some states  
20 as part of a results-driven effort to produce low averages for his rate proposals. It  
21 is the same criticism that I have made in this case relating to Mr. Denney's  
22 selective use of multiple rate methodologies to produce the lowest possible rates.  
23 My concern is grounded in the lack of consistency in Mr. Denney's  
24 methodologies, whether it was his decision to selectively exclude some states  
25 from his averages, or his decision to select one of many rate methodologies based  
26 upon his desired result.

1 There is no conflict between my criticism of Mr. Denney's inconsistency in  
2 including some states in his averaging and excluding others and Qwest's proposal  
3 in this case to use rates from one state as the basis for interim rates. To the  
4 contrary, Qwest's proposal ensures consistency, as I am supporting the use of all  
5 of the relevant New Mexico rates, regardless of the amount of the rates. The only  
6 exceptions are that if Qwest's Oregon cost study produces a lower rate than the  
7 comparable New Mexico rate, or if there is no New Mexico-approved rate for an  
8 element, Qwest is supporting use of the lower Oregon rate or is adjusting the  
9 Oregon rate to reflect the reductions made by the New Mexico Commission.  
10 Unlike Mr. Denney's approach here and in other states, Qwest's approach is not  
11 results-driven.

12 Indeed, I deliberately chose to use the rates from a single state for Qwest's  
13 proposal, in part, to avoid the inherently unfair and distorted rate scheme that  
14 results from selective averaging and selective use of different rate-setting  
15 methodologies. Furthermore, as explained in my direct testimony, I chose New  
16 Mexico because its rate structure closely matched the rate structure proposed most  
17 recently in Oregon and in Qwest's other states, it had approved rates for most of  
18 the elements at issue, and it had rates that were more recently reviewed than in  
19 most of Qwest's other states. The fact is that I could have chosen Wyoming's  
20 rates as the basis for Qwest's interim rate proposal for the same reasons.

21 Wyoming's rate structure represents the most current structure for all of Qwest's  
22 rates, and its rates are the most recently reviewed and approved rates in Qwest's  
23 region. However, unlike the New Mexico Commission, after its review of  
24 Qwest's cost studies and models in the 2004/2005 Wyoming cost docket, the  
25 Wyoming Commission accepted *all* of Qwest's recurring and nonrecurring rates  
26 without adjustment. Of course, the result of its decision is that the rates in

1 Wyoming are, for the most part, the same or even higher than the rates initially  
2 proposed by Qwest for this arbitration in Oregon. And, although the Wyoming  
3 cost docket was a contested case with testimony from the Office of Consumer  
4 Counsel and included review of cost studies by the Wyoming Commission Staff,  
5 there was no participation by CLECs or other third parties in the case. Therefore,  
6 I chose instead to use the New Mexico-approved rates and methodology, which  
7 represent a genuine effort on Qwest's part to propose a compromise on interim  
8 rates in Oregon.

9 **Q. IN RESPONSE TO YOUR TESTIMONY THAT QWEST USED AN**  
10 **OREGON RATE IF QWEST'S OREGON COST STUDY PRODUCED A**  
11 **RATE LOWER THAN THE COMPARABLE NEW MEXICO RATE, MR.**  
12 **DENNEY STATES, ON PAGE 156 OF HIS REBUTTAL TESTIMONY,**  
13 **THAT QWEST HAS USED A HIGHER OREGON RATE FOR FIBER**  
14 **ENTRANCE FACILITES. HOW DO YOU RESPOND?**

15 A. Mr. Denney is correct that in the case of element 8.12.4, Fiber Entrance Facility, I  
16 have used the Oregon rate. However, the Oregon rate that I have proposed is the  
17 lower of the two Qwest rates that could have been proposed in this case, and Mr.  
18 Denney may be confused because he does not understand the application of the  
19 rate for this element. The way this element is calculated is to use the Standard  
20 Shared Entrance Facility rate, which is developed on a per fiber-strand basis.  
21 That per-strand rate must be multiplied by the minimum of 12 fiber strands  
22 required for the Fiber Entrance Facility. The New Mexico per fiber rate for a  
23 Standard Shared entrance facility (element 8.1.2.1) is \$656.44, and, when  
24 multiplied by 12, results in a per cable rate for the section 8.12.4, Fiber Entrance  
25 Facility of \$7,877.28. In contrast, Qwest's proposed Oregon rate for a Standard  
26 Shared entrance facility (element 8.1.2.2) is \$613.33, and, when multiplied by 12,

1 results in a per-cable rate for the section 8.12.4, Fiber Entrance Facility of  
2 \$7,359.96, which is clearly lower than New Mexico's approved rate.

3 **Q. ON PAGE 157 OF HIS REBUTTAL TESTIMONY, MR. DENNEY**  
4 **EXPRESSES SURPRISE THAT QWEST DID NOT CLOSE OUT THE**  
5 **RATE ISSUES FOR THE RATES IT PROPOSED THAT ARE LESS**  
6 **THAN OR EQUAL TO ESCHELON'S PROPOSAL. PLEASE**  
7 **COMMENT.**

8 A. The reason that Qwest did not negotiate or close out the rate issues mentioned by  
9 Mr. Denney is that its proposal for interim rates was intended as an alternative  
10 that the Oregon Commission could use to determine interim rates without having  
11 to conduct a complete cost case. Qwest's proposal was not intended as a  
12 negotiation position with Eschelon. Had Qwest approached Eschelon to close out  
13 the issues for which it is proposing rates that are less than or equal to Eschelon's  
14 proposal, Qwest would have effectively conceded lower rates for those elements  
15 but would still be in disagreement with Eschelon over the remaining rates. While  
16 Eschelon may have been willing to close out the 37% of Qwest's proposed rates  
17 that are either lower than Eschelon's proposed rates or no more than five percent  
18 higher than them, that would have left 63% of rates still to be decided. There  
19 would be no point in Qwest conceding the lower rates unless Eschelon was  
20 willing to make concessions too. However, Mr. Denney made it clear in his  
21 testimony that Eschelon does not believe that it should be required to pay rates  
22 higher than are currently in its existing ICA absent this Commission conducting a  
23 cost case. This is simply another example of Eschelon picking and choosing only  
24 the lowest possible rates. Therefore, consistent with its position on how to deal  
25 with unapproved rates, once again, Qwest is proposing that by accepting its entire  
26 package of rates put forth for this issue, this Commission will be able to adopt

1 interim rates that are based on a fully litigated cost case, determine rates that  
2 represent a compromise on the part of both parties, and address the complex cost  
3 issues inherent in a TELRIC case in a later proceeding designed for that purpose.

4

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 A. Yes, it does.

# EXECUTIVE SUMMARY

## NEW MEXICO INTERCONNECTION COST DOCKET UTILITY CASE 3495 PHASE B COMPLIANCE FILING

### NONRECURRING ELEMENTS

**Study ID 8607**  
Previous Study 6411

2002  
Nonrecurring Cost Study

SEPTEMBER 2004

This cost study reduces all nonrecurring time estimates by 30%.  
This cost study reduces Unloading element Engineering time to 60 minutes.  
This cost study applied updated factors.



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## **A. PURPOSE, SCOPE, AND APPLICATION**

This study estimates forward-looking nonrecurring total element long run incremental costs Qwest will incur to provide Unbundled Elements. Nonrecurring costs represent the one-time costs that are incurred in order to establish and disconnect the service. The study identifies the costs for various work activities involved in providing the service. The study results represent fully allocated 2002 costs and may be used for pricing and other management decisions.

## **B. DESCRIPTION OF SERVICE**

### **Design Change**

Design Change is incurred by the Company to review the original service design and make the changes necessary to meet a customer request. Design changes include such things as a change of end user premises within the same serving wirecenter, the addition or deletion of optional features, functions, BSE's or a change in the type of transport termination, type of channel interface, interface group or technical specifications package. The cost is per order per occurrence.

NONRECURRING COST DETAIL SUMMARY

Study Name: NEW MEXICO PHASE B COMPLIANCE NRC STUDY 8607  
 Study Year: 2002  
 Analyst: Deffley/Eoriatti  
 Product Group: Interconnection  
 State: New Mexico

Page 1 Of 2  
 ENRC Version: 2.17  
 Date: 09/22/04

Work Item	Time Minutes	Prob #1	Prob #2	Prob #3	Prob #4	Applied Time (Minutes)	Labor /Hour	Cost
A	B	C	D	E	F	G	H	H * (G/60)
<b>DESIGN CHANGE</b>								
.7 probability added to all inputs to meet commission ordered compliance of 30% reduction to all task times.								
<b>*ADD*</b>								
<b>-SERVICE DELIVERY COORDINATOR</b>								
.25 probability applies to tasks associated with non-electronic interface.								
.75 probability is % asr's for new trunk groups versus trunk group augments.								
VALIDATE EXACT	2	1.000				1.40	\$40.03	\$0.93
VALIDATE TIRKS	5	1.000				3.50	\$40.03	\$2.34
ASSIGN NEW TSC TGM/TRDB	4	1.000	0.750			2.10	\$40.03	\$1.40
INTRA-CO CALLS	1	1.000				0.70	\$40.03	\$0.47
SUPP GCOCMA CALL DESIGN	1	1.000				0.70	\$40.03	\$0.47
FOC - EXACT	1	1.000				0.70	\$40.03	\$0.47
MANUAL HANDLING FOC/DLR	5	0.250				0.88	\$40.03	\$0.58
ORDER DIST TRK - ORDER VAL	2	1.000				1.40	\$40.03	\$0.93
VALIDATE SOAC/TIRKS	1	1.000				0.70	\$40.03	\$0.47
ORDER COMPLETE VALIDATION	2	1.000				1.40	\$40.03	\$0.93
<b>Subtotal - SERVICE DELIVERY COORDINATOR</b>						<b>13.48</b>		<b>\$8.99</b>
<b>-DESIGN</b>								
Work is 100% manual.								
NAME AND LOG FACILITY	35	1.000				24.50	\$44.31	\$18.09
BUILD DRI AND WA	6	1.000				4.20	\$44.31	\$3.10
BUILD CIRCUIT DESIGN	10	1.000				7.00	\$44.31	\$5.17
CXRH & DISTRIBUTE DOC	4	1.000				2.80	\$44.31	\$2.07
<b>Subtotal - DESIGN</b>						<b>38.50</b>		<b>\$28.43</b>
<b>Total For Service:</b>						<b>51.98</b>		<b>\$37.42</b>

NONRECURRING COST DETAIL SUMMARY

Study Name: NEW MEXICO PHASE B COMPLIANCE NRC STUDY 8607

Study Year: 2002

Analyst: Deffley/Eoriatti

Product Group: Interconnection

State: New Mexico

Page 2 Of 2  
ENRC Version: 2.17  
Date: 09/22/04

Work Item A	Time Minutes B	Prob #1 C	Prob #2 D	Prob #3 E	Prob #4 F	Applied Time (Minutes) G	Labor /Hour H	Cost H * (G/60)
----------------	----------------------	-----------------	-----------------	-----------------	-----------------	--------------------------------	---------------------	--------------------

DESIGN CHANGE (cont)

	Cost		Cost		E
	Calculation B	C	Factor D	Cost	
22142 Direct Cost					\$37.42
22143					
22144					
22145					
22146					
22147 Marketing & Business Fees					
22148 Product Management Expense	D22148*E22142		0.019510	\$0.73	
22149 Sales Expense	D22149*E22142		0.011206	\$0.42	
22150 Product Advertising Expense	D22150*E22142		0.000000	\$0.00	
22151 Business Fees (Other Operating Taxes)	D22151*Sum(E22142:E22150)		0.005368	\$0.21	
22152 Total Marketing & Business Fees	Sum(E22142:E22151)			\$1.36	
22153					
22154 Sub-Total Direct Cost & Marketing	E22142+E22152			\$38.78	
22155					
22156 Other Direct Expenses					
22157 Network Operations	D22157*E22154		0.039777	\$1.54	
22158 Network Support Assets	D22158*E22154		0.016727	\$0.65	
22159 General Support Assets	D22159*E22154		0.085648	\$3.32	
22160 General Purpose Computers	D22160*E22154		0.046418	\$1.80	
22161 Uncollectible	D22161*E22154		0.002561	\$0.10	
22162 Accounting & Finance Expense	D22162*E22154		0.007160	\$0.28	
22163 Human Resources Expense	D22163*E22154		0.008695	\$0.34	
22164 Information Management Expense	D22164*E22154		0.077436	\$3.00	
22165 Intangibles	D22165*E22154		0.000000	\$0.00	
22166 Total Other Direct Expenses	Sum(E22157:E22165)			\$11.03	
22167					
22168 TELRIC	E22157+E22166			\$49.81	
22169					
22170 Common					
22171 Executive Expense	D22171*E22168		0.009894	\$0.49	
22172 Planning Expense	D22172*E22168		0.000491	\$0.02	
22173 External Relations Expense	D22173*E22168		0.006657	\$0.43	
22174 Legal Expense	D22174*E22168		0.004507	\$0.22	
22175 Other Procurement Expense	D22175*E22168		0.001740	\$0.09	
22176 Research & Development Expense	D22176*E22168		0.000005	\$0.00	
22177 Other General and Admin Expense	D22177*E22168		0.013975	\$0.70	
22178 Common Costs	Sum(E22171:E22177)			\$1.96	
22179					
22180 TELRIC + Common Costs	E22168+E22178			\$51.76	

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

IN THE MATTER OF THE CONSIDERATION )  
OF COSTING AND PRICING RULES FOR )  
OSS, COLLOCATION, SHARED TRANSPORT, )  
NON-RECURRING CHARGES, SPOT FRAMES, )  
COMBINATION OF NETWORK ELEMENTS )  
AND SWITCHING )  
\_\_\_\_\_ )

Utility Case No. 3495  
PHASE B

**RECOMMENDED DECISION OF THE HEARING EXAMINER**

Elizabeth C. Hurst, Hearing Examiner for this case, submits this Recommended Decision to the New Mexico Public Regulation Commission ("NMPRC" or "Commission") pursuant to 17.1.2.32.E.4 NMAC and 17.1.2.39.B. NMAC. The Hearing Examiner recommends that the Commission adopt the following discussion, findings of fact, conclusions of law and decretal paragraphs in its Order. The Hearing Examiner is including a table of contents in the Recommended Decision in an effort to better access subject topics due to the voluminous nature of this Recommended Decision.

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MONTGOMERY & ANDREWS, P.A.

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## I. Statement of the Case

The Commission opened this case *sua sponte* with a Procedural Order on October 17, 2000. The Commission stated its intention to consider establishing costing and price rules with respect to operational support systems (OSS), collocation, shared transport, non-recurring charges, SPOT frames, combination of network elements, switching, and other issues associated with the promotion of competition in the telecommunications industry, particularly the provision of local exchange service. This case is the Commission's Cost Docket and its purpose is to eventually establish permanent rates for interconnection and access to UNEs ("unbundled network elements"). The principles guiding the Commission towards this goal are Section 252(e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act")<sup>1</sup>; which requires that the price of interconnection and UNEs be cost based,<sup>2</sup> and the TELRIC ("Total Element Long Run Incremental Cost") pricing methodology established by the Federal Communications Commission ("FCC") in the *Local Competition First Report and Order*.<sup>3</sup> In Phase I of the wholesale cost docket, the Commission declared its intention to follow the FCC's pricing methodologies, including TELRIC.<sup>4</sup> The Commission set permanent, TELRIC-based prices for key network elements, including 2- and 4-wire loops (deaveraged for three zones), tandem switching, tandem switched local transport, extension technology, DS-1 and DS-3 direct

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<sup>1</sup> The Communications Act of 1934, as amended, by the Telecommunications Act of 1996 – Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 *et seq.* – is referred to hereafter as the "Act."

<sup>2</sup> 47 U.S.C. § 252.

<sup>3</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 & 95-185, First Report and Order, 11 FCC Rcd 15499, ¶ 167 (rel. Aug. 8, 1996) (*Local Competition First Report and Order*).

<sup>4</sup> *In the Matter of the Consideration of the Adoption of a Rule Concerning Costing Methodologies*, Docket Nos. 96-310-TC, 97-334-TC [NMPRC Utility Case No. 2917], Findings of Fact and Conclusions of Law and Order, ¶¶ 15–22 (N.M. State Corp. Comm'n, July 15, 1998).

trunked transport, and others. Additionally, in Phase II, the Commission also set interim rates for non-recurring charges, OSS, collocation and shared transport.

Due to the varying procedural needs of the parties, the differing purposes and proceedings for which the Commission needed to establish the interconnection and UNE rates, and because of the complexity of the issues, the cost docket was separated into phases. There are currently over 400 documents in this case that relate to the different phases of the case, and the Hearing Examiner does not believe that it would be helpful or prudent to list them all. However, all of the documents are hereby incorporated by reference into the record of this proceeding. The Hearing Examiner believes that a short discussion regarding the phases and/or issues that relate to the phases or to other Commission proceedings including Phase A, Benchmarking, Price Squeeze, Phase C and Phase D is appropriate to put the Commission's Cost Docket into context. Following these discussions, the Hearing Examiner will note the most important procedural events of Phase B.

Phase A was established as an expedited review of Qwest Corporation's ("Qwest") interim rates that could evaluate the reasonableness of Qwest's interim rates in a manner that would coincide with Qwest's filing of its 271 Application with the FCC, and prior to the lengthy and comprehensive permanent rate proceeding that would occur in late 2002 and 2003.

Hearings were held, evidence was taken, and a Recommended Decision was issued on June 6, 2002. The Commission issued its Final Order for Phase A on August 27, 2002, that resulted in interim interconnection and UNE rates that Qwest was

ordered to file as a revised Exhibit A to its SGAT (Statement of Generally Available Terms and Conditions) in order to comply with the Final Order for Phase A.

On July 19, 2002, (later withdrawn), and then again on August 30, 2002, Qwest filed "benchmarked" rates that it claimed included new and/or lower rates for several UNEs not previously covered in the earlier Case No. 2917 Cost Docket, nor in the interim rates recommended by the Hearing Examiner in the Phase A Recommended Decision. Qwest asserted that these rates "benchmarked" recurring and non-recurring rates based on the rates set by the Colorado Public Utilities Commission for most loop-related UNEs. Qwest also claimed that the vast majority of rates listed in proposed Exhibit A were lower than the prices the Commission had previously approved and were below the prices Qwest previously filed in Phase B of the current Cost Docket. In the *Final Order in 271 Application*, the Commission concluded that it was appropriate to allow the rates set forth in Exhibit A to the 10<sup>th</sup> Revised SGAT, as filed by Qwest on August 30th 2002, and as corrected by the September 6, 2002 errata notice and further modified by the Response to the Third Bench Request filed on September 24, 2002, as well as the errata to the Response to the Third Bench Request filed on September 26, 2002, to go into effect 60 days from the August 30, 2002 filing.<sup>5</sup> The Commission made no declaration concerning the extent to which these rates were TELRIC compliant.<sup>6</sup> The Commission also declined to comment on the extent to which these rates benefit the public interest or mitigate concerns over a possible price squeeze. In the *Phase A*

---

<sup>5</sup> Commission Final Order Re Compliance with Remaining Aspects of Section 271, Case No. 3269 & 3527, 3495 and 3750 (10/8/02) (*Final Order in 271 Application*) para 56.

<sup>6</sup> *Id.* at para 57.

*Order*, the Commission adopted a refund mechanism because it found it appropriate that Qwest, not Competitive Local Exchange Carriers (“CLECs”), should bear the risk associated with Qwest’s newly proposed rates being found to be unreasonable and subsequently replaced by TELRIC-based rates. However, the Commission does not feel it is appropriate to extend this requirement to the rates benchmarked by Qwest that revise the permanent rates established in Utility Case No. 2917.<sup>7</sup>

After Phase A had been heard but prior to the commencement of Phase B, as part of its evaluation in Case No. 3269, the Commission issued an *Order* on April 16, 2002, directing that a price squeeze analysis should be considered as part of the Commission’s determination of whether Qwest’s entry into the in-region, interLATA market in New Mexico would be consistent with the public interest. Pursuant to this order, separate price squeeze proceedings were held in August 2002. As a result of that proceeding, the Commission found that it had no credible evidence before it at that time demonstrating the existence of a classic price squeeze, however the Commission also found that if compelling evidence of a price squeeze of the type demanding regulatory relief is brought to the Commission’s attention then the Commission may revisit the issue at that time.<sup>8</sup>

Valor requested additional time to develop its own cost studies, and at Valor’s request, it was bifurcated from Qwest, and Phase C was created for the consideration of Valor’s permanent interconnection and UNE rates. Valor then filed to suspend costing

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<sup>7</sup> *Id.* at para 63.

<sup>8</sup> *Id.* at para 252.

and pricing requirements and to waive its AFOR requirement to file an interconnection tariff. A procedural order was issued and Valor filed a new case seeking relief from the procedural order. The Commission denied the relief requested. A second procedural order was issued and the case is pending.

Phase D was created as the catchall for Qwest's rates that were not included in Phase B by agreement of the parties or that were not included because it was a new rate.

The instant phase, Phase B, was created to consider Qwest's permanent interconnection and UNE rates. Phase B is the subject of this Recommended Decision. Qwest's current rates for interconnection and UNEs are a mix of interim and permanent rates. In Utility Case 2917, the Commission established final prices for certain interconnection facilities as well some UNEs.<sup>9</sup> In that same docket, the Commission established rates for some facilities, but ordered that such rates were interim pending further orders in this case. Furthermore, the current Qwest SGAT's Exhibit A contains rates for services that were not considered in Utility Case 2917. The reasonableness of the interim rates established in Phase A, and the expedited interim review process are subject to the issues of refund and true-up in Phase B and will be reviewed, as well as a review of the benchmarked rates, in the effort to set permanent rates.

Numerous procedural orders regarding schedules, discovery, and other procedural matters have been issued in this case in an effort to accommodate the parties' schedules, discovery, and other issues.

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<sup>9</sup> SCC 96-310-TC and NMPRC 2917.

AT&T withdrew from this case.

Time Warner withdrew from this case.

Hearings were held on December 4, 5, 6, 9, and 10, 2002, and then resumed in January 6, 7, 8, and 9, 2003.

Marvin H. Kahn testified on behalf of the Attorney General's Office.

Teresa K. Million, Richard Buckley, Joe Craig, Dennis L. Pappas (including the adoption of parts of the testimony of Rachel Torrence), William L. Fitzsimmons, D.M. (Marti) Gude, Renee Albersheim (including the adoption of the testimony of John Curtis), Robert (Jeff) Hubbard (including the adoption of parts of the testimony of Rachel Torrence), and Nita A. Taylor testified on behalf of Qwest. The testimony of Qwest witnesses' Kathryn Malone and William R. Easton (including the adoption of the testimony of Robert Kennedy) were described as being primarily definitional in nature and were stipulated into the record without objection.

Brian Harris, Peter J. Gose, August H. Ankum, and Timothy J. Gates testified on behalf of Staff. The parties stipulated into the record the testimony, deposition, and model runs concerning Qwest's Study No. 6411 of Staff Witness, Sidney L. Morrison, due to health reasons. Additionally, pursuant to the agreement of Staff and Qwest, the Hearing Examiner took administrative notice of Mr. Morrison's testimony in the State of Washington Cost Docket including his reference to the FCC testimony of Elizabeth Ham.

Mark T. Bryant testified on behalf of WorldCom, Inc. ("MCI").

The following appearances were entered:

For the Attorney General: David E. Mittle, Assistant Attorney General.

For MCI: David M. Kaufman, Esq.  
Lesley J. Lehr, Esq.

For Qwest: Norton Cutler, Esq.  
John M. Devaney, Esq.  
Mary Rose Hughes, Esq.  
Andrew S. Montgomery, Esq.  
Thomas W. Olson, Esq.  
George B. Thompson, Jr., Esq.

For Staff: Cydney Beadles, Esq.  
Avelino Gutierrez, Esq.  
Dahl Harris, Esq.  
Roy Stephenson, Esq.

On December 31, 2002, Qwest filed its Responses to Bench Requests Days 1-5.

On January 17, 2003, the Hearing Examiner issued a Bench Request to Staff  
Witness Morrison.

On January 30, 2003, Qwest filed its Supplemental Responses to Bench  
Requests Days 1-5.

On January 31, 2003, MCI filed its Responses to Bench Requests.

On January 31, 2002, Qwest filed its Responses to Bench Requests Days 6-9.

On January 31, 2003, Staff filed its Responses to Bench Requests to Staff  
Witness Morrison.

On February 13, 2003, MCI filed its Supplemental Responses to Bench  
Requests.

On February 24, 2003, Qwest filed its unopposed Motion to Supplement the Record by including Qwest's Comments in Reply to Staff Witness Mr. Morrison's Responses to Bench Request, and Qwest's Comments in Reply to WorldCom, Inc.'s Additional Responses to Bench Requests,

On February 28, 2003, MCI filed a Clarification to its Bench Request Response.

At the conclusion of the January 2003 hearings, the Parties agreed that opening briefs would be filed on or before March 26, 2003, and that reply briefs would be due twenty days later. On February 24, 2003, the Parties requested a one-week extension of the briefing filing deadlines. The Hearing Examiner granted this filing extension, and the briefs were due on April 3, 2003. On March 19, 2003, Qwest filed a Motion for Extension requesting a further twelve day extension to the briefing filing dates. On March 24, 2003, the Hearing Examiner granted Qwest's Motion.

On April 15, 2003, the Attorney General, MCI, Qwest, and Staff filed post hearing legal briefs.

On May 5, 2003, MCI/WorldCom, Qwest, and Staff filed post hearing legal reply briefs.

On August 12, 2003, W. Levis from MCI sent a letter that was filed in the correspondence file regarding claims of ex parte communication.

On October 2, 2003, Qwest filed a Notice of Supplemental Authorities.

On October 24, 2003, MCI filed a Motion to Strike Qwest's Notice of Supplemental Authorities.

On November 3, 2003, Qwest filed its Response to MCI's Motion to Strike



Qwest's Notice of Supplemental Authorities.

For convenience of reference, the Hearing Examiner has prepared an Appendix attached to the Recommended Decision that sets forth the major model adjustments and compliance filings recommended by the Hearing Examiner. The Hearing Examiner cautions the parties that the Appendix may not be totally inclusive, and the parties should refer to the Recommended Decision itself for all findings and recommendations.

## **II. Law and Policy Relating to Establishing Rates for UNEs and Interconnection**

### **A. Federal Law**

#### **1. The Telecommunications Act of 1996**

The Preamble of the Telecommunications Act of 1996 states that it was designed "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Pub. L. No. 104-404, 110 Stat. 56 (1996). The Act requires that Incumbent Local Exchange Carriers ("ILECs"), like Qwest, must provide "nondiscriminatory access to network elements in accordance with Sections 251(c)(3) and 252(d)(1)" of the Act.<sup>10</sup> Section 252(d)(1) requires that state determinations regarding the rates, terms, and

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<sup>10</sup> 47 U.S.C. § 271(B)(ii).

conditions of the interconnection be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit.<sup>11</sup>

Section 251(c)(3) of the Act requires an ILEC to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." To effectuate its purpose and "jump-start"<sup>12</sup> local competition, the Act obligates ILECs, like Qwest, to allow competitors to enter their local markets, recognizing three strategies a potential competitor may pursue: resale, leasing, or interconnection of the competitor's facilities with the ILEC's network.<sup>13</sup> The FCC specifically noted that Section 251 of the Federal Act "neither explicitly nor implicitly expresses a preference for one particular entry strategy."<sup>14</sup>

Among the most important issues arising under the Act are the rates that CLECs must pay as compensation for the use of these network elements. These rates generally fall into two categories: "recurring" and "non-recurring."<sup>15</sup> An ILEC recovers the forward-looking costs of capital investments, as well as certain other costs, through regular monthly "recurring" charges over the length of time a CLEC leases a UNE. The ILEC may additionally recover up front, through a "non-recurring" charge, certain labor-

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<sup>11</sup> 47 U.S.C. § 252(d)(1).

<sup>12</sup> Verizon Communications, Inc. v. Federal Communications Commission, 535 U.S. 467, 488, 122 S. Ct. 1646, 1661, 152 L. Ed. 2d 701, 723 (2002), citing 141 Cong. Rec. 15572 (1995) (remarks of Sen. Breaux (La.) on Pub. L. 104-104 (1995)).

<sup>13</sup> *Local Competition First Report and Order* at paragraph 12.

<sup>14</sup> *Id.*

<sup>15</sup> See 47 C.F.R. § 51.507(a), (b).

related and other one-time costs the incumbent incurs when it processes a CLEC order for a network element or change in service.

## 2. The FCC's Pricing Rules and Related Orders

Congress delegated to the FCC, the task of enacting rules to implement the local competition provisions of the Federal Act, with the caveat that the FCC cannot preclude “the enforcement of any regulation, order, or policy of a State commission” that establishes access and interconnection obligations of local exchange carriers and is not inconsistent with the Federal Act. 47 U.S.C. Section 251(d)(3).<sup>16</sup> In response to this mandate, the FCC’s *Local Competition First Report and Order* promulgated rules that, among other requirements, established the TELRIC pricing methodology for state commissions to follow when setting rates under circumstances set forth in the Federal Act. The pricing rules are designed to “produce rates for monopoly elements and services that approximate what the incumbent LEC would be able to charge if there were a competitive market for such services. *Local Competition First Report and Order*, paragraph 738. These pricing rules, implementing section 252(d)(1) of the Federal Act, *supra*, were recently affirmed by the United States Supreme Court in, Verizon Communications, Inc. v. Federal Communications Commission, 535 U.S. 467, 488, 122 S. Ct. 1646, 1661, 152 L. Ed. 2d 701, 723 (2002). The FCC’s pricing rules are set forth at 47 C.F.R. 51.501 through 51.515.

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<sup>16</sup> See also 47 U.S.C. Sections 252(e)(3), 252(f)(2), and 253(b) for additional provisions preserving state commission authority.

The Hearing Examiner is also cognizant that Qwest may now claim that there are rate elements that were proposed in this proceeding that may no longer be applicable because of the issuance of the FCC's Triennial Review Order<sup>17</sup> (TRO). However, this recommended decision addresses all of the rate elements proposed by Qwest because the Hearing Examiner believes that this proceeding is about setting costs and was noticed as such. The Hearing Examiner does not believe that this is the appropriate forum to address nor determine the legality of which UNEs need to be provided as a result of the TRO or appeals of the TRO.

**3. Necessity to Validate the Recommendations of the Subject Matter Experts ("SMEs") Against the Costs Incurred by an Efficient Firm.**

Staff declared this Commission has made it clear on numerous occasions that a party needs to provide support for the view of its expert:

The Commission has previously expressed the importance of being able to validate an expert's opinion. In the AT&T/GTE Arbitration, the Commission stated that "[t]here is need for parties to be able to validate the assumptions that are used within a cost study ... For, as GTE testified, reliance on expert opinion, that is difficult to validate, can lead to 'all sorts of errors' ... it is important that a study methodology be transparent to other parties and the Commission. The approach followed by GTE is difficult or impossible to validate because of its great reliance on expert opinion.<sup>18</sup>

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<sup>17</sup> In the matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Federal Communications Commission, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, and Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, "Report and Order and Order on Remand and Further Notice of Proposed Rulemaking," FCC 03-36, (Released August 21, 2003).

<sup>18</sup> Staff Brief at p. 17, citing SCC Docket No. 96-310-TC/97-334-TC, Supplemental Findings of Fact, Conclusions of Law and Order ("Phase II Order") (December 31, 1998), paragraphs 37 (citing SCC Docket No. 96-310-TC/97-334-TC, Findings of Fact, Conclusions of Law and Order ("Phase I Order"))

Staff Brief at p. 17.

Qwest claims that because TELRIC costing is by definition a hypothetical exercise, it creates the significant risk of a commission relying on unrealistic assumptions and values to produce inaccurate prices that are not cost-based. Thus, Qwest implies that it is essential to use real world experiences and historic data as a reality check for SME inputs and assumptions. Qwest argues that it is not advocating an embedded cost approach; rather, Qwest simply suggests that the Commission "look forward from somewhere"<sup>19</sup> when validating SME inputs, assumptions, and model results. Qwest Brief at pp. 5-7.

## **B. State Law**

### **1. Commission Authority - Generally**

NMSA 1978, § 63-7-1.1(1998) sets forth the Commission's powers and duties concerning the regulation of transportation and transmission companies and common carriers; telephone and telegraph companies. NMSA 1978, § 63-7-1.1.G sets forth that the Supreme Court shall affirm the commission's order unless it is: arbitrary, capricious or an abuse of discretion; not supported by substantial evidence in the record; or otherwise not in accordance with law. "Substantial evidence means such relevant

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(July 15, 1998), paragraph 73); see also SCC Docket No. 97-35-TC, In the Matter of the Interconnection Contract Between AT&T Communications of the Mountain States, Inc and GTE Southwest, Inc. Pursuant to 47 U.S.C. Section 252, Findings of Fact, Conclusions of Law and Order (September 19, 1997), ("GTE/AT&T Arbitration Order") paragraph 259.

<sup>19</sup> Qwest Brief at p. 7, citing *In The Matter of U S WEST Communications, Inc.'s Statement of Generally Available Terms and Conditions*, Colorado Public Utilities Commission Docket No. 99A-577T, Decision No. C01-1302, at 30 (CPUC Nov. 13, 2001) ("*Colorado Pricing Order*").

evidence as a reasonable mind might accept as adequate to support a conclusion.” In re Application of Timberon Water Co., Inc., 114 N.M. 154, 156, 836 P.2d 73, 75 (1992).

In carrying out its regulatory responsibilities, the Commission must act as a finder of facts in its quasi-judicial capacity. It is necessary and proper for fact-finding tribunals to weigh the testimony presented, determine the credibility of witnesses, reconcile inconsistent or contradictory evidence and then make ultimate findings of fact. Westbrook v. Lea General Hospital, 85 N.M. 191, 195, 510 P.2d 515 (1973). If there are internal conflicts and inconsistencies in the testimony of a single witness then these, too, must be resolved by the finder of fact in making its ultimate findings. Kelly v. Montoya, 81 N.M. 591, 593, 470 P.2d 563 (1970).

Of course, the mere existence of conflicts and inconsistencies among testimony and expert opinions in the record “does not mean that the ultimate decision arrived at is unsupported by substantial evidence.” Nor is the Commission “bound by the opinions of experts so long as the Commission’s ultimate decision is supported by substantial evidence.” Attorney General v. New Mexico Public Service Commission, 101 N.M. at 553 and 554 (citations omitted).

In reaching its ultimate decision, the Commission is not tied down either by the Public Utility Act or by case law to the consideration of a single factor in establishing rates. Instead, “The Commission is vested with considerable discretion in determining whether a rate to be received and charged is just and reasonable.” Hobbs Gas Co. v. New Mexico Public Service Commission, 94 N.M. 731, 733, 734, 616 P.2d 1116 (1980).

The extent of the Commission's discretion was perhaps best expressed in Mountain States Tel. & Tel. Co. v. New Mexico State Corporation Commission, 90 N.M.

325, 563 P.2d 588 (1977). There, the Supreme Court declared that:

The Commission has a duty to be a prime mover in the procedure to see that the public interest is protected ... . Considering this broad mandate it could hardly be envisioned that the Commissioners would sit as spectators, like Roman Emperors in the coliseum, and simply exhibit a 'thumbs-up or thumbs-down' judgment after the dust of battle settles in the arena.

The Commission has an ongoing, affirmative duty to establish rules and regulations, issue orders, examine records, conduct investigations, grant continuances and do all other things necessary to insure that the public has fair...rates and that the utility is fairly treated. Its role is not a passive one.

Id. at 331 and 332.

## **2. The New Mexico Telecommunications Act**

On March 7, 2000, the New Mexico Legislature passed House Bill 400 and Senate Bill 123, identical bills amending the New Mexico Telecommunications Act. Laws 2000, Ch. 100 and 102 (codified in part at NMSA 1978 Sections 63-9A-2 and 63-9A-8.2 (2002 Cum. Supp.)) ("House Bill 400"). House Bill 400, among others things, declared the Legislature's intent to encourage competition in telecommunications to increase investment, improve service quality and lower prices. House Bill 400 required the Commission to adopt a rule that will "ensure the accessibility of interconnection by competitive local exchange carriers in both urban and rural areas of the state." Section 63-9A-8.2(B)(4).

Qwest maintains that the New Mexico Telecommunications Act is consistent with federal law. That is, its purposes are consistent with TELRIC pricing principles, which are intended to encourage competition, technological innovation, and efficiency.<sup>20</sup> Qwest Brief at p. 8.

### 3. NMPRC Rules and Orders

This Commission has likewise embraced the FCC's TELRIC pricing, and methodology, and the Commission's commitment to TELRIC-based pricing is evident in the record of the prior cost dockets, and, most recently, in the *Final Order* on Qwest's § 271 application.<sup>21</sup> Further, the Commission has specified by regulation that TELRIC costing methodology is to be employed in the pricing of UNEs.<sup>22</sup>

On December 12, 2000, the Commission adopted 17.11.18 NMAC, entitled Interconnection Facilities and Unbundled Network Elements, which became effective January 1, 2001. NMPRC Case No. 3439, Final Order Adopting 17.11.18 NMAC. Sections 17.11.18.4 through 17.11.18.16 set forth the requirements and standards governing the ratesetting process for UNEs. The Commission's regulations specify that the proponent of UNE cost or price determinations shall conduct a cost study to prove to the Commission that its proposed UNE rates are TELRIC-based:

An ILEC shall conduct a cost study using the methodology set forth in 17.11.18.15 NMAC and shall provide supporting documentation in accordance with 17.11.18.16 NMAC to prove to the Commission

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<sup>20</sup> Qwest cites NMSA 1978, § 63-9A-2.

<sup>21</sup> *Final Order in 271 Application* at ¶ 38.

<sup>22</sup> 17.11.18.14 NMAC; 17.11.18.15.A NMAC.



that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element.<sup>23</sup>

Rule 17.11.18.15, to which this rule refers, sets forth TELRIC standards as just summarized. Rule 17.11.18.16, to which it also refers, sets forth the requirements for supporting workpapers and source documents with which a proponent of UNE cost or price determinations must comply.<sup>24</sup>

#### **4. Other State Commission Orders**

Commission orders from other states, especially from state commissions that regulate Qwest, will be cited throughout this document, where relevant and appropriate.

### **III. Cost Models and Studies -- TELRIC and Qwest's Modeling Framework**

Two parties, Qwest and MCI, submitted cost models for the Commission to consider in this proceeding. According to Qwest, its studies calculate the TELRIC that an efficient carrier would incur today using currently available, least-cost, forward-looking technologies and methods of operation, including the economies that arise from building a replacement network to serve total demand. Qwest asserts that its studies use prices from current vendor contracts and price lists for much of the forward-looking investment. Qwest also claims that its studies include forward-looking operating expenses, using its recent New Mexico expenses as the starting point then adjusting these expenses to account for what Qwest believes to be reasonably anticipated increases in productivity and inflation.

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<sup>23</sup> 17.11.18.14 NMAC.

<sup>24</sup> 17.11.18.16.A-E NMAC.

Qwest relied on the Integrated Cost Model ("ICM") to develop most of its proposed recurring rates for UNEs and interconnection. The ICM has five modules: switching, loop, transport, capital costs, and expense factors. Qwest maintains that these ICM modules contain recommended default inputs, but that a user can override the defaults with different inputs.

Qwest relied on the Enhanced Non-Recurring Cost Study Model ("ENRC") to calculate the one-time, non-recurring costs associated with establishing UNE service for a customer. Working with SMEs and product managers, a cost analyst identified the activities Qwest believes necessary to establish a service or to install a network element. Qwest states that the SMEs actually responsible for performing these activities provided the work times and probability that each will occur. To be consistent with TELRIC, these experts allegedly allowed for changes in provisioning activities that Qwest has not yet implemented but are currently feasible.<sup>25</sup> The ENRC first aggregates the non-recurring cost estimated for each activity to determine a direct non-recurring cost for each UNE and then applies cost factors to the direct costs to assign administrative costs. Finally, to produce the final non-recurring rates proposed by Qwest, the model allocates a share of common costs to each element. Qwest Brief at pp. 9-11.

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<sup>25</sup> "For example, Qwest's non-recurring cost study for loops includes the order flow-through rate of 85% that Qwest expects to reach but has not yet achieved." Qwest Exhibit 8, Million Rebuttal pp. 20-22.

The study sponsored by MCI uses HAI Model-Version 5.2a,<sup>26</sup> the most recent version of an economic costing model developed at the request of MCI and AT&T for the purpose of estimating the cost to provide unbundled network elements, universal service, and interconnection services. This model is designed to estimate the costs that an efficient carrier would incur to provide voice-grade telephone service in a manner that is also capable of providing access to advanced services. MCI describes HAI as a “bottom up” model, meaning that it designs a network based on detailed and granular information regarding demand, network component capabilities and costs, and expenses. To be consistent with TELRIC principles, HAI purportedly determines costs to serve current demand, as reflected by the most up-to-date, publicly available line counts, assuming the use of a forward-looking network architecture currently being deployed. MCI claims that HAI relies on publicly available information and SME opinion regarding the availability, capacities, and costs of equipment available in today’s marketplace. MCI maintains that its model is easy to use and has over 1,400 user-adjustable inputs, making it very flexible and open to review and analysis. Finally, MCI asserts that the HAI Inputs Portfolio and HAI Model Description provide thorough documentation and support for the model inputs and detailed description of model methodologies and assumptions. MCI Brief at pp. 15-16.

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<sup>26</sup> Hereafter “HAI”.

**A. Criteria and Requirements**

Qwest asserts that the cost models the Commission relies upon to determine the costs of UNEs and interconnection must comply with TELRIC standards. That is, the cost model chosen should identify the forward-looking direct cost caused by the provision of a network element over the long run, plus the incremental cost of shared facilities and operations. According to Qwest, the model should identify the total element cost, that is, the average incremental cost of providing the entire quantity of a network element based on the replacement costs of reproducing the telecommunications network considering the most efficient least cost technologies currently available.<sup>27</sup>

Qwest cautions the Commission to be skeptical of cost studies that use inputs and produce results that are incapable of validation. Qwest suggests that the Commission look to the cost estimates produced by other cost models and the booked investments actually experienced by Qwest when validating model results. Qwest Brief at p.11.

For its part, MCI points to the eight criteria recommended to the FCC by the Joint Board of State and Federal Regulators for the evaluation of cost models in the FCC's Universal Service Fund proceeding.<sup>28</sup> MCI Brief at pp. 13-14.

Staff maintains that this Commission has previously expressed a preference for non-proprietary models and data that is in the public domain. Staff also asserts that this

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<sup>27</sup> Qwest cites Qwest Exhibit 5, Million Direct, pp. 4-5.

<sup>28</sup> MCI cites In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 96J-3, at paragraph 1 (rel. November 8, 1996).

Commission previously stated that Qwest should provide documentation that validates the reasonableness of any cost estimates, and that assumptions and inputs used within a cost study be capable of validation by third parties. Moreover, Staff argues that Qwest's cost studies are subject to the explicit requirements of the Commission's rules regarding interconnection and UNEs, specifically 17.11.18.16 NMAC. Staff contends that Qwest's filing fails in many respects to meet the requirements of this rule despite the fact that this rule was issued on December 12, 2000, and despite the fact that the applicability of this rule was raised on March 18, 2002, when the Joint Motion addressing the sufficiency of Qwest's filing was filed. Staff Brief pp. 34-35.

Qwest acknowledges that 17.11.18.16 NMAC expressly applies only to ILEC cost studies; however, Qwest argues that the rationale underlying this rule should apply to all cost studies filed with the Commission. Qwest Brief at pp. 8-9.

## **B. Selection of a Cost Model**

In this proceeding, Staff provided analysis of only Qwest's cost studies since Qwest bears the burden of proof in supporting its costs and resulting rates.<sup>29</sup> Specifically, Commission rules provide that ILECs must "prove to the Commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element."<sup>30</sup>

Moreover, Staff points out that the FCC noted:

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<sup>29</sup> Staff cites Staff Exhibit 9, Gates Direct, at pp. 4 and 9.

<sup>30</sup> Staff cites 17.11.18.15 NMAC.

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 it seeks to recover in the prices of interconnection and unbundled network elements.<sup>31</sup>

Staff maintains that the standard of proof ordinarily required in an administrative proceeding is proof by a preponderance of the evidence,<sup>32</sup> which the FCC has described as the "greater weight of evidence, evidence which is more convincing than the evidence which is offered in opposition to it."<sup>33</sup> Staff Brief at pp. 35-36.

**1. Qwest's ICM Model**

**a. ICM's Loop Module ("LoopMod")**

Qwest contends that LoopMod calculates investment based upon standard engineering designs for loop networks, the current vendor prices Qwest pays for loop-related facilities in New Mexico, and New Mexico data for line counts and distribution areas ("DAs"). Qwest believes that comparisons to the results of other studies and

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<sup>31</sup>*Local Competition First Report and Order*, paragraph 680; see also In the Matter of the Interconnection Contract Between AT&T Communications of the Mountain States, Inc. and US WEST Communications, Inc. Pursuant to 47 U.S.C. Section 252, SCC Docket No. 96-411-TC; Findings of Fact, Conclusions of Law and Order (March 20, 1997), ("AT&T/US West Arbitration Order") paragraph 28.

<sup>32</sup> See Bender v. Clark, 744 F.2d 1424, 1429 (10th Cir. 1984); In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, Memorandum Opinion and Order, CC Docket No. 97-137 (released: August 19, 1997) ("Ameritech-Michigan Order"), paragraph 45.

<sup>33</sup> Staff cites the Ameritech Michigan Order, paragraph 46 (citing Hale v. Dep't of Transportation, 772 F.2d at 885; St. Paul Fire and Marine Ins. Co. v. United States, 6 F.3d 763, 769 (Fed. Cir. 1993). See also, 21 Charles A. Wright & Kenneth W. Graham, Jr., *Federal Practice and Procedure: Evidence* § 5122, at 557-58 (1997) (cited in Ameritech-Michigan Order, paragraph 46, note 88 (stating that "the normal burden of proof in a civil case is measured by a 'preponderance of the evidence.' In effect, this means that if the [finder of fact] cannot make up its . . . mind, it should find against the party with the burden of proof."))).

Qwest's recent loop investments confirm the reasonableness of LoopMod's results. Qwest Brief at p. 12. Qwest claims that LoopMod incorporates improvements over its previous model, RLCAP, including data updates (such as material prices and loop quantities), mechanical adjustments (sharing percentages and placement activities by Density Group), and changes to make the model more user-friendly.

LoopMod combines distribution and feeder investment to determine the total investment for outside plant. In the feeder network, Qwest claims that LoopMod uses a mix of copper and fiber facilities with adjustable inputs that allow the user to establish the most economic, cost-efficient breakpoints. Qwest avers that LoopMod analyzes each route in each New Mexico wire center to determine the demand and the distance from the demand to the central office. Using this New Mexico-specific information, the model allegedly sizes the electronics and cables needed to efficiently serve demand.

Staff generally agrees that LoopMod is an improvement over its predecessor, RLCAP, which had been criticized for not having verifiable algorithms and inputs. According to Staff, LoopMod has a much better user interface, more user-definable inputs, and better underlying support.<sup>34</sup> However, Staff argues that LoopMod and other Qwest models still have "hard-coded" inputs and algorithms that are not transparent, open, and verifiable. For example, in the context of digital loop carrier assumptions and their impact on costs and rates, Staff claims that it was unable to find the algorithms that spread the various technology assumptions across the various model inputs. Staff Brief at pp. 38-39.

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<sup>34</sup> Staff cites Staff Exhibit 9, Gates Direct, pp. 4, 9 – 10, and 12.

Qwest denies Staff's charge that Qwest's models have "hard-coded" inputs and algorithms that are not transparent. Qwest maintains that a user can change ICM's inputs through the ICM interface and that it has produced underlying formulas and data in response to requests from the Bench and other parties' interrogatories. Qwest Reply Brief at p. 9.

Staff asserts that while the model's construction may be TELRIC compliant, certain LoopMod inputs and assumptions clearly are not, resulting in a systematic overstatement of Qwest's forward-looking loop costs. Staff maintains that the Commission should require Qwest to make the modifications to its loop cost study that were recommended by Staff or reject the loop module of ICM just as it rejected RLCAP in the prior cost docket. Staff Brief at pp. 38-41.

### **Recommendation**

In the context of rejecting US WEST's SCM model in Phase I, this Commission reiterated its clear commitment to open models:

The Commission concludes that open, or non-proprietary models are preferable. The public should be provided with the opportunity to review our basis for establishing rates. In some cases confidentiality may be necessary, but it certainly should be avoided where reasonable alternatives exist.

Phase I Order, paragraphs 33 – 34 and 193 – 194. The Commission further noted that "[u]se of open models is a widely-accepted regulatory objective " and that the benefits of adopting a model in the public domain include "availability, verifiability, and replicability." *Id.* at paragraph 194 (citations omitted). This Commission also



reaffirmed prior findings regarding its strong preference to use, to the greatest extent possible, data that is in the public domain. Phase II Reconsideration Order, paragraph 11.

The Commission has previously stated that Qwest should provide documentation that validates the reasonableness of any cost estimates. Phase II Order, paragraph 45. And assumptions and inputs used within a cost study must be capable of validation by third parties. *Id.* at paragraph 107.

Therefore, with the Commission's guidance from its prior orders, the Hearing Examiner finds that while there has been some criticism of LoopMod, its methods, and assumptions, nothing in the record indicates that the model is either a "black box" or fundamentally incapable of producing cost estimates that comply with the FCC's TELRIC methodology.<sup>35</sup> Therefore, the Hearing Examiner recommends that it is reasonable that the Commission consider LoopMod, and its results, in the process of establishing UNE loop rates in New Mexico.

**b. ICM's Switching Module ("SCM")**

Qwest estimates switching costs utilizing the SCM program, which is incorporated into ICM. To design a switching network, Qwest asserts that a carrier must determine the number of customers on each switch, the volume of anticipated calls, and the functions the customers likely will demand over the life of the switch. Qwest believes that these same decisions are at the core of the switching issues to be

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<sup>35</sup> Black box is defined by The American Heritage Dictionary as: A device or theoretical construct with known or specified performance characteristics but unknown or unspecified constituents and means of operation; something that is mysterious, especially as to function.

decided here. Further, Qwest contends that the inputs the Commission adopts are likely more important than the model it selects.

Qwest claims that SCM calculates efficient, realistic levels of forward-looking investment by using the prices that switch manufacturers are charging today. SCM's investment calculations are allegedly tailored to the characteristics of each switch location in New Mexico and, consistent with the FCC's pricing rules, reflect reasonably anticipated New Mexico-specific usage of switching facilities. Qwest believes that SCM's investment reflects: (1) the number of switches needed to provide service in New Mexico; (2) the number of lines associated with each switch in New Mexico; (3) the average number of calls per line for each New Mexico switch; (4) the CCS (call second) per line for each switch in the state; and (5) the reasonably anticipated rate of growth for each switch. These inputs directly affect the design and size of the switches that SCM includes which, in turn, dictate the amount of investment the model includes. Qwest maintains that because these inputs are specific to New Mexico, the investment the model produces also is New Mexico specific.

To calculate the recurring costs of the analog line port, SCM purportedly focuses on three cost components: (1) the analog line port, which runs from the switch to the CLEC collocation area; (2) feature cost per line; and (3) capital lease "right to use" fees assessed by switch vendors for the use of their intellectual property. SCM estimates the analog line port cost by calculating the investment for a port through the SCM Core and converting the investment into a monthly cost by applying cost factors in ICM. Qwest Brief at pp.19-20.

Qwest notes that concern was expressed during the hearings over its explanation of how the port rate and the MOU rate corresponded to the vendor prices in the actual contracts in the record. Qwest claims it first calculates the costs of various switch elements such as the fabric, the port, and the processor from a base year. Qwest allegedly updates these costs by comparing the prices for various items in the new vendor contracts with the base year prices for the same items. This index is then used to update all the costs in the base year contracts. Thus, Qwest claims all the costs in the SCM reflect the current prices in the Qwest switching contracts.

Staff maintains the model Qwest uses to develop switching investment is archaic. Staff contends that this is the same SCM, modeled after the same vendor contracts, that this Commission rejected in 1998, specifically stating that SCM's "inputs and outputs are inconsistent with its vendor contracts."<sup>36</sup> According to Staff, SCM was developed almost twenty years ago and, at best, models a first generation digital switch from that time period. Staff also claims the model is based on pricing tables that are approximately ten years old.<sup>37</sup> Based on these assertions Staff maintains that these aspects of SCM cannot be considered forward-looking, as required by the FCC's TELRIC methodology. Moreover, Staff argues that the confusing welter of papers, disks, proprietary and non-proprietary testimony and adoptions of testimony does more to obfuscate Qwest's costs than it does to elucidate and support its costs. Thus, Staff

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<sup>36</sup> Staff cites Phase I Order, ¶¶ 191, 193.

<sup>37</sup> Staff cites Qwest Response to Staff Data Requests, Set 2 - No. 39S1; see also Staff Exhibit 8, Ankum Direct, pp. 14 - 17.

contends that Qwest's evidence does not approach the standard set by the FCC's *Local Competition First Report and Order*. Staff Brief at p. 77.

Qwest disagrees with Staff regarding the transparency of its model and sufficiency of its supporting documentation. According to Qwest, the openness of SCM is supported by the fact that Staff's witness was able to trace SCM's calculations.<sup>38</sup> Furthermore, Qwest claims that its witness provided extensive documentation explaining how SCM calculates investment, including several excel spreadsheets that permit interested parties to follow SCM's calculations all the way through the model, in addition to the explanations provided at a technical conference convened with Staff. Thus, Qwest maintains that while the calculations of switching investment are necessarily complex, they are readily understandable and auditable. Qwest Reply Brief at pp. 27-28.

### **Recommendation**

Although there has been some criticism of SCM, its methods, and assumptions, the Hearing Examiner finds nothing in the record to indicate that the model is either a "black box" or fundamentally incapable of producing cost estimates that comport with the FCC's TELRIC methodology. Therefore, the Hearing Examiner recommends that the Commission consider SCM, and its results, in the process of establishing UNE switching rates in New Mexico.

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<sup>38</sup> Qwest cites TR Day 7 at pp. 155-56.

**c. ICM's Transport Module**

ICM's transport module estimates the investment in transmission and channel termination equipment Qwest believes is necessary to provide transport between two switching offices and calculates dedicated and switched transport investment, including the Unbundled Dedicated Interoffice Transport ("UDIT") for DSO, DSI, DS3, OC3, OC12 and OC48 circuits. The mileage-sensitive transmission investment allegedly includes the cost of fiber facilities and intermediate multiplexing equipment while the fixed channel termination investment includes the electronic equipment that converts electronic signals into optical signals, as well as the equipment used to multiplex or demultiplex the signal. According to Qwest, the network configurations and inputs in the transport module are based on informed judgments of experienced network and engineering experts, along with information from actual vendor contracts and price lists. Qwest Brief at p. 21.

**Recommendation**

No party expressed concern regarding ICM's transport module. Based on her review of the record, the Hearing Examiner finds nothing to indicate that this portion of Qwest's cost study is either a "black box" or fundamentally incapable of producing cost estimates that comport with the FCC's TELRIC methodology. Therefore, the Hearing Examiner recommends that the Commission consider ICM's transport module, and its results, in the process of establishing UNE transport rates in New Mexico.

**d. ICM's Expense Factors Module**

Qwest did not address this issue in its Briefs. However, Staff asserts that "the Expense Factors Module includes inputs that reflect Qwest's expenses and investments adjusted for inflation factors." Staff Brief at p. 42.

**Recommendation**

No party expressed concern regarding ICM's expense factor module. The Hearing Examiner finds nothing in the record to indicate that this portion of Qwest's study is either a "black box" or fundamentally incapable of producing cost estimates that comport with the FCC's TELRIC methodology. Therefore, the Hearing Examiner recommends that the Commission consider ICM's expense factor module in the process of establishing UNE and collocation rates in New Mexico.

**2. Other Qwest Recurring Cost Studies**

In addition to its cost studies for the unbundled loop, switching, and transport that are part of ICM, Qwest filed stand-alone recurring studies for multiple other elements. These studies include, for example, recurring costs for high capacity loops, dark fiber, unbundled packet switching, sub-loops, collocation, and line sharing. A complete list of these studies is set forth in the testimony of Qwest Witness, Ms. Teresa Million. Qwest Brief at p. 22.

According to Staff, Qwest is proposing to utilize a 10.72% cost of money and the FCC prescribed depreciation lives – both of which the Commission approved in the prior cost docket.<sup>39</sup> Staff Brief at p. 43.

### **3. Qwest's Nonrecurring Cost Studies**

Non-recurring costs are the one-time costs associated with establishing a service or providing a UNE. These costs typically arise from specific activities or transactions that an ILEC must perform in response to a CLEC order for service or for a UNE. Qwest has presented its ENRC, which is a collection of cost studies that estimate the non-recurring cost for all UNEs and interconnection services. The ENRC calculates non-recurring costs for provisioning and installation activities based on time estimates and probabilities of occurrence of the tasks Qwest believes necessary to accomplish each function. The time estimates and probabilities for each task are allegedly provided by engineers and product managers who are responsible for performing the tasks and overseeing the relevant products and services.

According to Qwest, the ENRC calculates the direct non-recurring costs for each UNE and interconnection service based on time estimates to perform tasks, probabilities that tasks will be performed, and labor rates associated with each job function. The ENRC then applies expense factors to the direct non-recurring costs to provide the TELRIC supported by Qwest for each UNE and interconnection service.

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<sup>39</sup> Staff cites Qwest Exhibit 6, Million Supplemental Direct, at pp. 24-25, citing Phase I Order, ¶¶ 242 and 252, Phase I Reconsideration Order, ¶ 69.

The final step involves an allocation of common costs to each non-recurring cost element.

The ENRC allegedly contains inputs based on Qwest's current experience in processing orders and provisioning network plant, adjusted where appropriate to include forward-looking considerations. According to Qwest, the ENRC considers the actual processing and provisioning activities that are in place today or, as established by SMEs, are scheduled for implementation. Qwest maintains the study assumes levels of mechanization and flow-through that exceed the levels Qwest currently achieves.

While the ENRC estimates the non-recurring costs for most UNEs and interconnection services, it does not calculate the non-recurring costs for collocation and line sharing, with the exception of line sharing installation, which is included in the ENRC. Those non-recurring costs are developed separately. Qwest Brief at pp. 22-23.

#### **4. WorldCom's HAI Model**

According to MCI, HAI Model-Version 5.2a is designed to estimate the costs that an efficient carrier would incur to provide voice-grade telephone service in a manner that is also capable of providing access to advanced services. To be consistent with TELRIC principles, HAI determines costs to serve current demand, as reflected by the most up-to-date, publicly available line counts, assuming the use of a forward-looking network architecture currently being deployed. MCI asserts that HAI relies on publicly available information and subject matter expert opinion regarding the availability,



capacities, and costs of equipment available in today's marketplace. MCI Brief at pp. 15-16.

MCI claims that the costs produced by its model are based not only on actual customer locations, line counts, and geography; they also incorporate Commission-ordered depreciation lives, a New Mexico-specific labor factor, and New Mexico's tax rates. According to MCI, these various state-specific factors make HAI an appropriate model for determining costs to provide service to New Mexico customers. MCI Brief at pp. 17.

Qwest disputes MCI's claim that its cost model is state specific. According to Qwest, MCI's witness acknowledged that some HAI inputs are national default values that the sponsors had not modified to reflect conditions specific to New Mexico. Qwest argues that these inputs are the same values this Commission previously rejected when it considered the HAI model in 1997 in its AT&T/US West Arbitration Order. Qwest Brief at p. 29.

MCI defends its use of national, rather than New Mexico specific inputs, for investment in telecommunications plant items such as cable, circuit equipment, or switches. MCI claims its model recognizes that such items are bought and sold in a national market, and there is no reason to believe that the cost of a digital switch, for example, would vary from one state to another. MCI Reply Brief at pp. 5-6.

Qwest claims that the Commission should be skeptical of cost studies that use inputs and produce results that are incapable of validation. Qwest notes, for example, that HAI produces total per line investment for the unbundled loop of only \$625, which

stands in marked contrast to the investment of more than \$1,000 produced by other models and that Qwest has actually experienced. Qwest argues that while it is reasonable to expect that cost models will produce different results and that TELRIC estimates will differ from a carrier's historical costs, a result that departs as dramatically from all other measures, such as HAI's loop estimate does, should be very closely scrutinized. Thus, Qwest suggests that HAI is designed specifically to produce low costs rather than TELRIC estimates. Qwest Brief at p. 11.

### **Recommendation**

The Hearing Examiner finds MCI's argument in support of national values for certain model inputs credible and therefore recommends that the Commission consider such inputs when establishing UNE rates in this proceeding.

#### **a. HAI's Loop Module**

According to MCI, HAI uses a state-of-the-art methodology to precisely determine customer locations. Where available, the model uses geocoded data that purportedly allows customers to be located, for modeling purposes, within 50 feet of their actual locations. For those customer locations where geocoded data is not available, HAI uses a road surrogate location method that places customers uniformly along roads in the particular census blocks where they are located. HAI then uses both geocoded and surrogate customer location data to develop clusters of customers that can be served together in a telephone plant serving area. To be consistent with forward-looking network design the clusters are developed such that no point in the

cluster is more than 18,000 feet from the cluster's centroid. The clusters are also designed to not exceed 1,800 lines per cluster, and, so that no point in the cluster may be more than two miles from its nearest neighbor. MCI avers that once the clusters have been identified, the process incorporates state-specific terrain characteristics that increase installation costs based on actual conditions that a carrier would face in placing facilities. MCI Brief at p. 16.

Qwest contends that HAI's loop module is flawed and unreliable. Qwest maintains that HAI relies on hidden, unverifiable processes to determine the amounts of feeder and distribution plant and related investment to include in the network.<sup>40</sup> Qwest believes this is a fatal flaw because the amounts of feeder and distribution that a model includes are significant cost drivers, determined in substantial part by the manner in which customers are grouped together into "clusters" (i.e. the functional equivalent of distribution areas). Qwest Brief at p. 24.

### **Recommendation**

While 17.11.18.16 NMAC expressly applies only to ILEC cost studies, the Hearing Examiner agrees in principle, that the rationale underlying this rule should not be disregarded when considering any cost study filed with the Commission.<sup>41</sup> While

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<sup>40</sup> This topic is discussed in greater detail below at p. 49.

<sup>41</sup> 17.11.18.16 NMAC SUPPORTING DOCUMENTATION: When an ILEC files a cost study with the Commission in support of its forward-looking economic cost estimates, it must also file a complete set of supporting workpapers and source documents. A) The workpapers must clearly and logically present all data used in developing the estimate and shall provide a narrative explanation of all formulas or algorithms applied to the data. The workpapers must allow others to replicate the methodology and calculate equivalent or alternative results using equivalent or alternative assumptions. B) The workpapers must clearly set forth all significant assumptions and identify all source documents used in

MCI's inability to be more accommodating with respect to the modeling of customer location is troubling, the Hearing Examiner does not believe this alone it is sufficient grounds for summarily rejecting HAI's loop related estimates. Rather, the record indicates that HAI's loop related assumptions and support documentation are, on the whole, no more or less convincing than the evidence proffered by Qwest, who ultimately maintains the burden of proof in this proceeding. In order to meet its obligation to establish UNE loop rates in this proceeding, it appears that the Commission must choose to base its decisions on customer location estimates that are theoretically sound, but predominantly unknown (MCI's proposal), or a relatively open methodology based on a purely hypothetical construct whose accuracy and relation to reality have not been proven (Qwest's proposal). In sum, neither of the loop studies inspires great confidence, and thus, requires this Commission to make very difficult decisions based on a number of poorly supported or wholly unverifiable assumptions or forego establishing UNE loop rates at this time. The latter option is clearly unacceptable.

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preparing the cost estimate. C) The workpapers must be organized so that a person with expertise in analyzing forward-looking cost studies, but otherwise initially unfamiliar with the particular study, will be able to work from the initial investment, expense, and demand data to the final cost estimate. The workpapers must clearly identify what each number used in developing the estimate represents. D) The source of any data relied on in the study should be clearly identified and readily available, if not included with the workpapers. E) Any figures expressed in terms of dollars per unit must be traceable to the original source documents containing the number of dollars and units from which the figures were calculated. F) To the extent practicable, an ILEC shall provide all data and workpapers in computer-readable form on diskettes using commercially available spreadsheet or database software formats. Each diskette must contain a "read me" or similar file that describes the contents of each file on the diskette and provides an explanation of the definitions, formulas, equations, and data on the diskette. G) An ILEC shall provide an index or detailed table of contents of the workpapers and source documents.

Moreover, the fact that the firms providing the data underlying HAI's customer location estimates are, as described by MCI,<sup>42</sup> third party firms operating in a highly competitive markets, adds little to this investigation because it fails to speak as to how Taylor, Nelson, Sofres ("TNS") converted this data for use in this proceeding, or what fundamental assumptions were made.<sup>43</sup> While TNS's other line(s) of business may take place in a competitive market, there is no evidence that the market for the services it provides in this proceeding are subject to the same constraints. If TNS had been willing to be more cooperative in this proceeding perhaps more convincing results could have been attained. Until such time, it is unlikely that any model based on TNS's results can be relied upon, with unwavering confidence, by any commission.

**b. HAI's Switching Module**

Qwest claims that HAI's estimates suggest that a carrier could replace its switching network for less than 25% of the actual investment Qwest has incurred. According to Qwest, HAI materially underestimates switching costs in a manner inconsistent with TELRIC because the modelers have excluded large categories of essential switching investment. Moreover, Qwest maintains that HAI is incapable of developing switching investment so the modelers have simply plugged into the model the switching investment numbers – not the underlying data – the FCC developed in the USF Inputs Order despite the FCC's repeated statements that the USF Inputs Order should not be used to establish rates for UNEs. Qwest Brief at p. 30.

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<sup>42</sup> TR Day 9 p. 166.

<sup>43</sup> See Qwest Exhibit 34, White Deposition. This is a sealed confidential exhibit.

## Recommendation

Qwest's concerns regarding the source of MCI switching investment data are misplaced. The switching investment estimates underlying HAI's cost estimates are based on publicly available data that was reviewed in great detail by the FCC prior to the release of the USF Inputs Order.<sup>44</sup> The Hearing Examiner finds that the fact that the underlying data and analysis conducted by the FCC was not presented in this proceeding does not, by itself, invalidate HAI's resulting cost estimates. Qwest's concerns regarding the exclusion of essential switching investment are discussed below in section IV.B.

### c. HAI's Transport Module

No party addressed the overall efficacy HAI's transport module in their post hearing briefs.

## Recommendation

The Hearing Examiner finds that there is no evidence on record suggesting that HAI's transport module is unacceptable, and recommends that the Commission consider the use of the HAI transport module in this proceeding.

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<sup>44</sup> In the Matter of the Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, Tenth Report and Order, CC Docket No. 96-45, 14 FCC Rcd 20156 (Released November 2, 1999) ("USF Inputs Order") at para. 290.

**d. HAI's Development of Expenses**

According to Qwest, HAI grossly understates the expenses an efficient carrier would incur to build and operate a replacement network. Qwest asserts that it is reasonable to expect differences between its booked costs and TELRIC estimates and that it is unrealistic to assume that a carrier operating in Qwest's New Mexico service territory could operate with less than one-half of the expenses Qwest currently incurs.

Qwest claims HAI uses two devices to reduce expenses. First, Qwest maintains that HAI calculates expenses by applying expense factors to the artificially low investment levels calculated by the model. According to Qwest, HAI determines maintenance expenses by applying a maintenance factor to investment that has been reduced by the HAI's cost sharing assumptions. Qwest believes this is an entirely illogical result, since it assumes a direct relationship between the costs of installing telephone cables and the costs of maintaining the network when, according to Qwest, there is no such relationship. Qwest claims this improper effect occurs with multiple expenses in HAI, not just with the maintenance expenses.

Secondly, Qwest argues that after initially determining expenses based on these artificially low levels of investment, HAI then applies arbitrary and unsupported "allocators" to reduce expenses even further. For example, after reducing the costs for "general purpose computers" to only 48% of Qwest's current costs, Qwest claims that HAI applies a 56% reduction to the remaining costs through the unexplained application of a so-called "Office Worker General Support Allocator." Qwest maintains that HAI

applies this same double-reduction to several categories of expenses, resulting in a gross understatement of operating costs. Qwest Brief at pp. 31-33.

MCI claims that Qwest's references to its actual expenses are irrelevant, have no relevance to validation of the results of a properly constructed TELRIC model, and should be granted no weight by this Commission. MCI Reply Brief at pp.7-9.

### **Recommendation**

Qwest's concerns regarding the HAI's treatment of expenses are addressed below in section VI.

## **IV. Recurring Rates for Unbundled Network Elements**

### **A. Recurring Rates for the Unbundled Loop – Methodologies, Assumptions, and Inputs**

#### **1. [and 2.] Distribution Network Design and Feeder Network Design**

In the distribution network, Qwest's model-LoopMod uses five designs or density groups ("DGs") that Qwest believes reflect industry-accepted architectures. LoopMod maps each New Mexico distribution area (DA) to one of the DG designs based on the area of the DA and the size and type of terminals within it. According to Qwest, LoopMod uses the densities and sizes of actual New Mexico DAs to determine distribution cable lengths. To produce investment estimates that are purportedly specific to New Mexico, LoopMod weights the DAs based on their proportionate share of total working lines in the state.



Staff claims that Qwest failed to support or justify the DG designs that are fundamental to Qwest's entire loop study. According to Staff, LoopMod, as with RLCAP, relies upon generic distribution network designs based, in significant part, on the density of access lines in distribution areas.<sup>45</sup> Staff maintains that Qwest's base designs for DG 2 (multi-building/multi-tenant), DG 3 (single-family on normal size lots), and DG 4 (single-family on large-size lots) were taken from actual plat maps<sup>46</sup> while the base designs for DG 1 (high rise buildings) and DG 5 (rural serving areas) were based solely upon SME opinions.<sup>47</sup> Staff contends that the plat maps for DG 2, DG 3, and DG 4 admitted into evidence during hearings<sup>48</sup> were not properly labeled and did not contain a legend identifying the various lines, marks, shapes, and symbols contained within. Staff Brief at pp. 39-40. Further, Staff claims that until Qwest's loop study witness Buckley testified on cross-examination, the parties did not learn that the DG maps are representations of actual Colorado areas. Thus, according to Staff, Qwest's entire design for DGs 2, 3, and 4 is based upon one distribution area selected arbitrarily in Colorado.<sup>49</sup>

Staff asserts that while each New Mexico distribution area is assigned to a DG, Qwest offered no evidence that these designs adequately represent all distribution

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<sup>45</sup> Staff cites TR Day 3, p. 20, lines 14 – 18.

<sup>46</sup> Staff cites *Id.* at p. 40, lines 865 – 870; and p. 17, lines 17-19.

<sup>47</sup> Staff cites *Id.* at p. 20, lines 22 – 25.

<sup>48</sup> Staff cites Staff Exhibit 1 (DG2 (Qwest Attachment A to Staff interrogatory 02-017)), Staff Exhibit 2 (DG3 (Qwest Attachment B)), and Staff Exhibit 3 (DG4 (Qwest Attachment C)).

<sup>49</sup> Staff cites TR Day 3 at p. 44, lines 11 – 14.

areas, any single distribution area in New Mexico, or even a forward-looking network.<sup>50</sup> Further, Staff believes Qwest failed to offer support that would indicate the manner in which these engineering designs were developed or why they were appropriate for use in a TELRIC study. For example, Staff claims that Qwest failed to justify why the density characteristics chosen to segregate areas are appropriate, or to provide support for the engineering design assumptions. Staff argues that without underlying documentation for the maps or SME opinions, among other things, LoopMod as presented does not provide a sufficient basis upon which to accept the investment results or the resulting costs and rates. Thus, Staff believes that Qwest's loop cost study essentially fails to comply with Commission rules, specifically 17.11.18.16 NMAC, and fails to meet Qwest's burden of proof. Staff Brief pp. 38-41.

Qwest believes that Staff's criticism of LoopMod's use of DGs is misplaced. Qwest claims that it developed the five DGs employed in the model using the distribution architectures that Qwest and other carriers currently use when designing distribution networks. Qwest also claims that LoopMod calculates investment based on characteristics that are unique to the DAs, that is, it does not assign the same investment to all the DAs within a DG category. Qwest maintains that Staff was unable to point to any DAs in New Mexico that do not comfortably fit within one of the five DGs used in its study. Qwest Reply Brief at pp. 10-11.

Qwest also argues that Staff is fundamentally confused concerning how and why it used plat maps in its study. According to Qwest, it used actual plat maps of areas that

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<sup>50</sup> Staff cites Qwest Exhibit 11, Buckley Direct, p. 9.

are representative of DGs 2, 3, and 4 to assist in determining the facilities these DGs require.<sup>51</sup> Qwest claims its personnel went to actual locations that are representative of each DG and surveyed these areas to determine with as much precision as possible, the types, amounts, and locations of facilities needed to serve each DG. After conducting the surveys, Qwest obtained actual Colorado plat maps of areas representative of these DGs and marked up the maps to reflect the cable routes, cable sizes, and locations of the network components required for each DG. Qwest believes that these maps were the proper starting point because basic DG designs do not differ significantly from one state to another and, in any case, they were modified to develop more refined designs specifically tailored to New Mexico. Qwest claims there is no merit to Staff's assertion that Qwest should have conducted an exhaustive survey of New Mexico DAs instead of relying on the sampling it used because the time and resources required for such an exercise would be enormous and there is no evidence that it would lead to any increase in accuracy. Qwest Reply Brief at pp. 11-12.

Qwest claims that the plat map labeling issues raised by Staff are insignificant. According to Qwest, Staff had possession of the plat maps for almost a year prior to the hearings and asked numerous data requests relating to them to which Qwest provided detailed responses. Thus, Qwest avers that Staff had ample opportunity to ask additional questions or depose Qwest's witness if there were outstanding issues to be resolved prior to the hearings. Finally, Qwest claims that Staff failed to explain how any

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<sup>51</sup> Qwest claims it did not use plat maps for DGs 1 and 5 because the types of maps required for this exercise do not exist for either areas comprised primarily of high-rise buildings or rural areas with less than 50 dwellings per square mile. Qwest Reply Brief at footnote 33.

allegedly deleted data affected the amount of cable predicted by LoopMod or had any other effect on loop costs. Qwest Reply Brief at p. 12.

MCI avers that HAI's Distribution Module begins with a calculation of the length and size of all cables required to serve all customers in Qwest's New Mexico service territory, based on the customer location information contained in the HAI database and line count information obtained from the FCC's ARMIS reporting system. After the module has estimated the quantities of all distribution elements, it calculates the investment associated with these elements, including distribution and drop cable, structures, NIDs, terminals and splices, SAIs, and DLC terminals, using as inputs the user-adjustable unit prices of each element. MCI Brief at pp. 18-19.

HAI's Feeder Module configures the portion of the network that extends from the wire center to the Serving Area Interfaces ("SAIs"). According to MCI, based on information it receives from the Distribution Module, HAI estimates the size and type of cables required to reach the SAIs located in each serving area, along with supporting structures (poles, trenching, conduit, manholes, and pullboxes for fiber optic cable). The Feeder Module then estimates the investment associated with these elements, using as inputs MCI's proposed unit prices of each such element. MCI brief at pp. 19-20.

Qwest notes that the HAI clusters that determine feeder and distribution investment are created by an MCI vendor, TNS, and because TNS deems virtually all of the data, algorithms, and methods it uses to create the clusters as proprietary, none of this information has been made available to the Commission, other parties, or even

MCI. Thus, Qwest argues, none of the information that would be required to conduct a meaningful audit of TNS's work is part of the record in this case or otherwise available.<sup>52</sup> Qwest Brief at pp. 25-26.

Qwest asserts that the "point code processing", which involves using the TNS clusters to place customers in locations marked by "V" and "H" coordinates, was performed by an employee of AT&T who did not testify in this case, using data that is not part of the record, and that neither MCI nor other parties have seen.<sup>53</sup> Qwest maintains that MCI's witness did not review AT&T's work for accuracy but, given his familiarity with AT&T's personnel and the point code process, he testified that he was "confident that they did the right thing here."<sup>54</sup> According to Qwest, "This is precisely the type of unverifiable assumption that is improper under the Commission's rules relating to cost models." Qwest Brief at p. 26.

Moreover, Qwest asserts that MCI's witness testified that the very same AT&T personnel mistakenly provided Idaho ARMIS data and year 2000 line counts used in the version of HAI filed with Dr. Bryant's direct testimony.<sup>55</sup> Qwest claims that such serious missteps hardly support MCI's assumption that AT&T's personnel accurately located customers when performing the point code processing. Qwest Brief at p. 27.

Finally, Qwest criticizes the methodology used by TNS to estimate the amount of plant necessary to connect customers within clusters because it is overly hypothetical.

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<sup>52</sup> Qwest cites Qwest Exhibit 34, White Deposition. This is a sealed confidential exhibit.

<sup>53</sup> Qwest cites TR Day 9, Bryant Cross, at p. 62.

<sup>54</sup> *Id.*

<sup>55</sup> MCI Exhibit 1.

That is, it ignores natural and man-made obstacles that must be negotiated by outside plant. According to Qwest, the Commission should not give weight to any cost model that relies on hidden, unverifiable data and processes, particularly where the available evidence casts serious doubt on the reliability of those processes. Qwest Brief at p. 28.

### **Recommendation**

The record indicates that neither Qwest nor MCI have sufficiently addressed the significant and longstanding problems with how their models locate customers and design loop facilities. It is disappointing that some 7 years after the Act, neither Qwest nor MCI has adequately addressed this fundamental cost issue. MCI appears to be on the right path to solving customer location by using geocoded data. But, while MCI has proposed a fundamentally sound and intuitive approach to solving for customer locations, MCI fails to support its conclusions due to a series of proprietary agreements with TNS and the firms providing TNS with the underlying customer location data. Finally, when you add that erroneous data was filed with MCI's study,<sup>56</sup> and the TNS insistence that its representative's deposition be deemed proprietary, the Hearing Examiner's concerns regarding the efficacy of this model are compounded.

Qwest's proposal is equally flawed. Qwest also appears to be on the right track because it uses field visits and engineering practices in its estimates, and because their process is open to inspection. Although Qwest's approach is arguably better supported than MCI's because the mechanism it uses to place customers is open to inspection, its

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<sup>56</sup> TR Day 9, Bryant Cross, at pp. 69-70, and p. 81.

approach is ultimately a generic exercise that may or may not reflect actual conditions in New Mexico. The Hearing Examiner also finds it ironic that Qwest faults MCI for supporting the use of national inputs, but then relies on data from Colorado to establish the cost of loops in New Mexico. Qwest's arguments against MCI's methodology contradict its own proposals.

Thus, the Hearing Examiner is in the unenviable position of choosing between two deficient distribution and feeder network designs, or a makeshift compromise because she clearly cannot reject both parties' studies as it is imperative that permanent UNE loop rates be established as soon as possible. Ultimately, the Commission has to choose between a relatively open construct that provides a generic estimate of customer locations and therefore, the amount of feeder, and distribution cable needed – or – a proprietary construct that in theory provides very accurate estimates of customer locations, but is unverifiable. Each approach offers multiple reasons for outright rejection, yet, paradoxically, each study makes its competitor's approach more favorable. Nevertheless, the Hearing Examiner recommends that the Commission consider the results of both models when establishing UNE loop rates in this proceeding. Just as Qwest failed to show that the use of national data by MCI resulted in errors, neither has it been shown that Qwest's reliance on data from Colorado results in biased loop cost estimates.

**3. Determining Loop Lengths (Including Use of Minimum Spanning Tree Methodology)**

According to MCI, a significant improvement in the newest version of the HAI Model was the development of a right-angled Minimum Spanning Tree ("MST") function to calculate distribution route distances. The right angled MST calculates the distances to connect customer locations using a mathematical graph theory that determines distances as if locations within a distribution cluster were connected by strands following horizontal and vertical paths in a Cartesian coordinate system while assuming the possibility of branches only at customer locations. MCI claims that the right-angled MST function results in a conservatively high estimate of actual strand distances because it provides for additional plant, beyond the minimum necessary to connect two points, just as the sum of the length of the legs of a right triangle is greater than the length of the hypotenuse; and because it assumes that cable will branch only at customer locations while actual telephone plant has the option of branching at additional locations where it more efficient to do so. MCI also claims its strand distance estimates are conservative because its customer location methodology, where surrogated customer locations are evenly distributed along roads, is likely to result in greater dispersion of customer locations than occurs in the existing telephone network. MCI Brief at pp. 20-21.

Qwest claims MST is an unproven mathematical graph theory that determines the minimum amount of cable required to connect customer locations as if they were "dots on a page". Qwest claims that the MST approach should be rejected because it ignores real world features and obstacles that must be navigated by plant engineers. Qwest also maintains that MST artificially increases distribution distances and costs in



rural zones while simultaneously reducing these values in the higher density zones where CLECs are more likely to compete for customers. Qwest Brief at pp. 33-35.

MCI characterizes Qwest's concerns as poorly founded. MCI claims that just because two different model methodologies provide different distributions is not, by itself, a reason for preferring one methodology to another. MCI Reply Brief at pp. 9-10. According to MCI, in supporting use of the MST algorithm, the FCC expressly stated its concern about overstating distribution distances in higher density areas, noting that "we believe that any choice in maximum density clusters in which the minimum spanning tree algorithm is not applied may result in an arbitrary overestimate of costs for some clusters."<sup>57</sup> MCI Brief at p. 21.

However, Qwest claims that there are substantial differences between the MST method used in the Synthesis Model and the method used in HAI. According to Qwest, the FCC's MST function begins the design of the distribution network by applying "an engineering rule of thumb." Qwest contends that there is at least some relationship between the FCC's MST function and the method engineers use in the real world to design distribution networks, which is why the FCC's MST produces almost twice as much distribution cable mileage in some states as HAI's MST. Qwest notes that the Minnesota Commission explicitly cited this difference as a reason it rejected HAI's MST algorithm in a recent cost proceeding. Qwest Reply Brief at p. 19.

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<sup>57</sup> MCI cites USF Inputs Order at ¶72.

## Recommendation

Qwest presents two main criticisms of the right-angled MST used by HAI in this proceeding. First, Qwest asserts that MST understates the distance between the Central Office ("CO") and customer locations because it is overly hypothetical and ignores both natural and man-made obstacles that must be navigated by outside plant. Second, Qwest professes that MST improperly increases distribution distances and costs in rural zones while simultaneously reducing these values in the higher density zones where CLECs are more likely to compete for customers. The Hearing Examiner finds neither argument convincing.

While it is true that MST does not explicitly route outside plant around specific obstacles or terrain features there is no evidence that it underestimates loop lengths. To the contrary, Qwest's response to a Bench Request<sup>58</sup> indicates that Qwest's concerns are misplaced because, on average, HAI assumes longer loop lengths than LoopMod with MST turned on or off. Thus, if Qwest believes its loop length estimates to be accurate, which it must, there is ample support for MCI's claim that MST produces conservatively long loop length estimates. Furthermore, this comparison indicates that there does not appear to be any systematic error in loop length estimates by density zones. Therefore, the Hearing Examiner finds no support for Qwest's claim that HAI understates urban loop costs at the expense of rural locations. In fact, the Hearing Examiner finds that the record indicates that the opposite is true, that is, HAI appears to overstate loop lengths in urban areas when compared to Qwest's estimates.

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<sup>58</sup> Qwest Bench Requests Attachment 22A Loop Length Comparison.

The remainder of this section discusses the recommended inputs for both loop models.

#### **4. Inputs Relating to the Unbundled Loop**

##### **(a) Access Line Count**

Qwest claims that MCI's witness mistakenly used year 2000 line counts and did not treat all lines as pair-equivalents. According to Qwest, if the Commission decides to rely on the HAI model, it should require MCI to correct these errors with data from 2001 because Qwest lost a significant number of access lines in New Mexico since 2000.

Qwest also argues that a "corrected" version of HAI filed by MCI after the hearings still counts some lines on a channel-equivalent basis. According to Qwest, earlier versions of the HAI model treated digital access lines on a channel-equivalent basis, meaning, for example, that DS1s were included in the model as 24 physical lines and DS3s were included as 672 physical lines. Qwest claims HAI's developers have attempted to correct for this problem in the model but the problem has not been completely eliminated. Qwest suggests that these lines be counted as physical pairs to avoid overstating line counts and understating the cost of the loop. Qwest Brief at pp. 35-36.

MCI claims that the problem identified by Qwest regarding the vintage of line counts has been corrected. However, MCI denies that the corrected version of the model it filed fails to correctly count physical circuits. MCI Reply Brief at p. 10.

## Recommendation

Although MCI supports different values than Qwest it inexplicably failed to directly challenge Qwest's line count data or its treatment of lines on a pair equivalent basis. No other party addressed this issue. The Hearing Examiner recommends that the Commission approve the line count data employed by Qwest in its cost model. The Hearing Examiner recommends that the Commission require MCI to populate its model with line count data from 2001. Further, the Hearing Examiner recommends that the Commission require MCI to submit a compliance filing indicating the number and type of lines, by CO, and documentation demonstrating that access lines are counted on a physical pair basis. This filing should include the raw ARMIS data and a detailed explanation of the calculations used to present line counts on a physical pair basis.

### (b) Structure Sharing

Structure sharing refers to the extent to which a carrier can share the costs of placing cables with other utility companies. Thus, because placement costs make up a significant part of the costs of constructing a network, public utilities, cable companies, and similar firms have a strong incentive to share placement costs whenever possible. In this proceeding Qwest assumes that it will pay 50%, 80%, and 95% of the costs of placing aerial, buried, and underground structure, respectively, in all density groups. Qwest maintains that these cost sharing assumptions are reasonably close to the sharing percentages the Commission previously adopted.<sup>59</sup> Qwest Reply Brief at p. 20.

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<sup>59</sup> In that proceeding, the Commission adopted 40% for aerial, 70% for buried, and 90% for underground.

According to Staff, Qwest's replacement network assumption improperly reduces the amount of sharing that could be achieved in a forward-looking environment.<sup>60</sup> Staff claims that the FCC explicitly rejected this approach in the USF Inputs Order where it noted that:

as part of the logical argument that the entire telephone network is to be rebuilt, it is also necessary to assume that the telephone industry will have at least the same opportunity to share the cost of building plant that existed when the plant was first built.<sup>61</sup>

Staff Brief at p. 51-52.

Moreover, Staff claims that Qwest overstates its costs by incorrectly assuming that sharing opportunities are constant across all density zones. Staff contends that Qwest should have assumed greater structure sharing in urban areas and less in rural areas since the frequency of shared facilities allegedly decreases with population density. In support of its argument Staff quotes the FCC, who noted that this conclusion "reflects the general consensus among commenters that structure sharing varies by structure type and density."<sup>62</sup> To correct for these alleged errors Staff's witness proposed structure sharing percentages that are more aggressive than, but generally consistent with, the methodology underlying those approved by the FCC in the USF Inputs Order.<sup>63</sup>

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<sup>60</sup> This assumes that the vast majority of Qwest's network would be rebuilt in fully developed areas where structure sharing is limited by the fact that other utilities and network operators facilities are already in place. [Qwest Exhibit 14, Papas Direct, p. 12]

<sup>61</sup> USF Inputs Order footnote 504.

<sup>62</sup> USF Inputs Order, paragraph 249.

<sup>63</sup> Staff adjusted its proposal to 50% sharing for 2 inch bore for DG 1 and DG 2. [Staff Brief at p. 55]

Staff also claims that Qwest ignores the revenue that it receives from other operators that share its facilities. Staff suggests that the Commission should consider an offset for such revenues when setting UNE loop rates. Staff Brief at pp. 50-56.

According to Qwest, the structure sharing percentages proposed by Staff deviate substantially from this Commission's prior rulings, are unsupported by evidence, and methodologically flawed. For example, Qwest argues that Staff improperly assumes that Qwest will share substantial percentages of buried placement costs in rural areas where almost all cable is plowed into the ground even though cost sharing is not feasible with plowing.

Qwest claims that Staff's proposed sharing percentages and its criticisms of Qwest's sharing assumptions are premised on the flawed assumption that TELRIC requires going back in time to use the same level of cost sharing that Qwest experienced when it first installed its New Mexico network. Qwest maintains that there is no merit to Staff's claim that the FCC authorized such an assumption in the USF Inputs Order. To the contrary, Qwest argues that the FCC expressly warned against reliance upon its decisions in the USF Inputs Order when establishing UNE rates.

Further, Qwest maintains that application of this approach in establishing UNE rates would defeat TELRIC's objective to give new entrants appropriate "make or buy" price signals. Qwest claims that no new entrant would choose to build its own facilities if it could instead lease them from the ILEC at prices based on cost determinations that assume deployment of the most efficient technology available today, but under historical conditions when, according to legend, digging was easy and sharing abundant.

Qwest maintains that there is no evidence that LoopMod's use of consistent structure sharing percentages across all density zones produces a different result than a density-specific approach would yield. Moreover, Qwest notes that in the first cost docket, the AT&T/US West Arbitration Order and the GTE/AT&T Arbitration Order, this Commission adopted Qwest's approach.

Finally, regarding Staff's comments, Qwest claims that the pole attachment expenses it incurs typically exceed the pole attachment revenues it receives. Qwest maintains that it considered this cost/revenue relationship in developing LoopMod's cost sharing assumption for aerial plant. Qwest Reply Brief at pp. 20-23.

According to MCI, the structure sharing inputs used in its model, HAI, reflect the sharing opportunities that would be available to an efficient carrier constructing a telephone network over the long run. HAI assumes that Qwest will bear between 100% and 25% of structure costs, depending upon the structure type and density zone. MCI Brief at p. 24.

Qwest claims that HAI incorrectly assumes that an ILEC will pay little more than one-third of the cost of placing cables based on the unsupported view that three utilities provide services over similar facilities – electric utilities, telephone, and cable. Qwest claims that HAI's modelers have refused to change this default despite overwhelming evidence that it does not reflect actual sharing percentages, and despite its rejection by every state commission in Qwest's region that has evaluated HAI. Furthermore, Qwest maintains that MCI has no data or studies demonstrating that the level of cost sharing assumed by HAI is actually occurring or available.

Qwest asserts that this Commission rejected these identical HAI sharing assumptions in the first cost docket and in the U S WEST/AT&T and GTE/AT&T interconnection arbitrations, stating that "the sharing assumptions made by the Hatfield model are not reasonable."<sup>64</sup> Qwest claims that there is no evidence supporting HAI's sharing assumptions; rather, Qwest argues that recent evidence, including MCI's own experience, indicates that far less sharing occurs than the Commission assumed in its earlier orders.

According to Qwest, the unrealistic nature of the HAI sharing assumptions is exemplified by the extensive amount of sharing the model assumes for the costs of installing cables by plowing them into the ground. Qwest claims that while plowing is the cheapest method of placing cables, utility companies are unable to install their facilities jointly when they plow so these costs cannot be shared. Qwest asserts that the FCC recognized this reality in the USF Inputs Order when it concluded, "100 percent of the cost of cable buried with a plow should be assigned to the telephone company."<sup>65</sup> Qwest believes that HAI's approach to plowing, assuming large amounts of inexpensive plowing and then assuming high levels of sharing, reveals the modelers' willingness to use inconsistent assumptions to produce the lowest possible costs.

Furthermore, Qwest argues that the same type of methodological inconsistency is evidenced by the model's assumption that the telephone company will share all placement costs with other telecommunications carriers. Qwest believes that this

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<sup>64</sup> GTE/AT&T Arbitration Order at ¶69.

<sup>65</sup> USF Inputs Order ¶248. The Hearing Examiner notes that Qwest's Brief mistakenly cited ¶148.



assumption is inconsistent with HAI's assumption that only one carrier will build the replacement network. Qwest maintains that if only one carrier is building the entire replacement network, no other carriers will be available to share placement costs. Qwest Brief at pp. 36-39.

In response to Qwest, MCI argues that to the extent the presence of other telecommunications carriers (i.e. electric companies, cable TV companies, providers of advanced services) may underlie the sharing assumptions in HAI, that demand is not part of the demand used to size the telecommunications network it models for this proceeding. MCI also claims that Qwest's comparison of its own sharing opportunities and those recently experienced by MCI is misleading because MCI's recent network construction is vastly different than the type of network required to serve the local exchange customers served by Qwest. MCI Reply Brief at p. 10-12.

### **Recommendation**

Qwest's support for its structure sharing assumptions relies upon the notion that it is building a replacement network in New Mexico that must navigate in and around developed neighborhoods, as they exist today. Previously, this Commission determined that similar structure sharing assumptions made by Qwest were "inconsistent and overstate the cost of installing a loop" because they contemplate existing structures where they increase costs (i.e. navigating existing sidewalks, streets, etc), but ignore these features where they result in cost reductions (i.e. using manholes already

installed in existing streets).<sup>66</sup> Utilizing a structure sharing methodology that skews costs in this manner is anticompetitive, particularly for a UNE such as the Loop, which is essential to the provision of services by Qwest's competitors and is unlikely to be efficiently reproduced given the scale and capital intensive nature of such an undertaking. For these reasons, the Hearing Examiner finds little merit in Qwest's suggestion that loop rates should be established so as to send appropriate "make or buy" signals to entrants. Just as it would be improper to establish loop rates that discouraged facilities based entry, it is also improper to establish loop rates based on a methodology that encourages too much facilities based entry, or the inefficient duplication of this outside plant.

The Hearing Examiner is also not persuaded by Qwest's claim that its assumptions are conservatively low when compared to the recent experience of MCI in New Mexico. MCI's actual costs are informative, but not controlling, in this proceeding because there is no reason to assume that MCI, or any other CLEC for that matter, is an efficient carrier.<sup>67</sup> The FCC's TELRIC pricing methodology makes no reference to the costs incurred by CLECs or the cost of building a network that does not approach the economies of scope and scale present in an ILEC's operations. Thus, it is more appropriate that MCI's actual costs be seen as a cost ceiling or a minimum level of efficiency, not as the benchmark for efficiency.

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<sup>66</sup> Findings Of Fact, Conclusions Of Law And Order - 96-310-TC; 96-334-TC at para 125-126.

<sup>67</sup> In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming, WC Docket No. 02 - 314, FCC 02-332, December 23, 2002, Paras. 422, 426.

In sum, the Hearing Examiner recommends that the Commission reject Qwest's structure sharing assumptions because they are overly conservative and likely result in an overstatement of the costs Qwest actually incurs to make loops available to CLECs.

MCI's structure sharing proposal relies heavily on the assumption that an ILEC has the opportunity to share structure costs evenly among three carriers. However, the record indicates that it is wrong to assume that three carriers will share these costs equally, particularly because cable companies are not required to pay one-third of the cost of the structure they attach to.<sup>68</sup> Moreover, MCI has failed to provide any evidence indicating that the structure sharing assumptions used in HAI are any more reasonable at this time than they were when the Commission previously rejected them.<sup>69</sup> For these reasons the Hearing Examiner also recommends that the Commission reject MCI's structure sharing proposal.

While the Hearing Examiner is persuaded by Staff's arguments opposing the structure sharing percentages proposed by Qwest, the Hearing Examiner does not find Staff's proposal to be sufficiently supported by the evidence in the record. Staff's proposal rightly assumes that structure sharing varies by structure type and population density, but Staff's support for its own inputs goes no further than the assertion that "Staff's percentages reflect the sharing percentages that an efficient firm would realize."<sup>70</sup> Moreover, the record indicates that Staff's proposal assumes structure

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<sup>68</sup> See TR Day 4 at p. 94 and TR Day 3 at p. 113. This finding is consistent with the conclusion reached by the Colorado PUC in Decision No. C01-1302, at page 47 and Decision No. C02-409, at p. 38.

<sup>69</sup> GTE/AT&T Arbitration Order at para 69.

<sup>70</sup> Staff Exhibit 9, Gates Direct, at p. 69.

sharing percentages that are not likely to be achieved by an efficient carrier, particularly with respect to the sharing of facilities plowed into the ground.<sup>71</sup>

Because none of the proposals regarding structure sharing presented by Qwest, MCI, and Staff have been adequately supported in the record, as an alternative, the Hearing Examiner recommends that the Commission adopt, for both Qwest's and MCI's models, the structure sharing inputs approved by the FCC in the USF Inputs Order. The Hearing Examiner finds that these inputs are well documented, fall within the range of values proposed by parties in this proceeding, and reflect the fact that sharing opportunities are likely to vary by structure and density zone. Whereas the structure sharing inputs adopted by the FCC assumes nine density zones, and Qwest's model assumes only five, Qwest must adjust the FCC's inputs to fit its model. The Hearing Examiner recommends that Qwest submit a compliance filing demonstrating how it proposes to apply the FCC's structure sharing inputs in a manner that is consistent with Qwest's model.

The Hearing Examiner finds that Qwest's assertion that the FCC does not permit states to use inputs from the USF model when determining the UNE rates is incorrect. The FCC did not explicitly forbid using USF model inputs; rather, the FCC merely cautioned that the use of nationwide values may not be appropriate in cost proceedings.<sup>72</sup> Further, the Hearing Examiner does not find this warning to be relevant here because the sharing percentages approved by the FCC in the USF Inputs Order

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<sup>71</sup> Qwest Exhibit 14, Pappas Direct, at pp. 15-16.

<sup>72</sup> USF Inputs Order at ¶32.

are based in large part on the structure sharing percentages developed by the State of Washington Commission ("WUTC") for use in a cost docket comparable to this proceeding.<sup>73</sup>

**(c) Placement Costs**

Placement costs are the contracted or internal labor costs for various activities involving placement of buried cable. Qwest argues that the FCC's TELRIC methodology requires placement costs to be estimated based on the placement methods that an efficient carrier would use to build a telecommunications network in New Mexico, as it exists today. Qwest asserts that a new entrant building a network in populated areas would have to navigate roads, sidewalks, alleys, lawns, and other existing structures, and thus, the UNE rates established in this proceeding should consider the costs of the more expensive placement methods required to navigate these obstacles. Qwest Brief at p. 40.

Staff maintains that Qwest's interpretation of the "scorched node" approach, where all of Qwest's outside plant disappears, but all other existing structures are still in place is improper because it artificially increases placement costs. According to Staff, the location of Qwest's wirecenters is the only existing condition that must be considered in a TELRIC environment. Further, Staff claims that Qwest's replacement network assumption sets the ILEC's TELRIC based on CLEC costs which, according to

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<sup>73</sup> USF Inputs Order at ¶246 citing Washington USF Proceeding, Tenth Supplemental Order, Docket No. UT-980311(a) at para. 108. In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements Transport and Termination, and Resale, Docket No. UT-960369, 8<sup>th</sup> Supplemental Order, released May 11, 1998, at paras 73-76. ("WUTC 8<sup>th</sup> Supplemental Order").

Staff, makes no sense and would destroy the very dynamic the FCC has established that allows CLECs to choose between self-provisioning and the use of UNEs. Staff claims that Qwest's approach is inconsistent with federal law because it results in over-recovery of Qwest's actual costs to provide the network element in question.

Staff also argues that Qwest's placement percentage assumptions should be rejected for lack sufficient support. According to Staff, by reviewing its own actual work orders and job-specific information, Qwest could have tracked various placement activities in the density groups and then adjusted its cost studies to reflect forward-looking assumptions. Staff believes that the lack of sufficient support lends an abstract and biased quality to LoopMod's results, and that consideration of whether its placement and sharing assumptions are adequately forward-looking is reduced to speculation. Staff Brief at pp. 56-60.

Qwest claims that Staff interpretation of the FCC's cost methodology improperly turns TELRIC into a time machine that jumps back and forth in time to find the least costly inputs and assumptions. Qwest claims that Staff's proposal for placement costs is plainly contradicted by Staff's own statements that TELRIC forbids relying on an ILEC's historical costs and practices. According to Qwest, Staff would have the Commission apply a double standard under which cost estimates would be based on forward-looking costs, except where historical costs may be lower. Qwest Reply Brief at p. 13.

MCI states that the buried placement costs in HAI were developed based on the experience of members of the model development team, contractor information, and

cost information from other sources such as the National Construction Estimator. MCI claims the buried placement cost inputs used by the HAI Model are reasonably based on real world experience and should be adopted without adjustment. MCI Brief at p. 24.

Qwest claims that HAI grossly understates the TELRIC for placing facilities because it ignores all of the existing structures that would have to be navigated by a carrier placing cables today. Further, Qwest argues that MCI ignored its recent experience regarding placement costs and failed to provide any justification for HAI's large deviation from the buried placement costs this Commission previously ordered. Moreover, Qwest accuses MCI of referring to the FCC's USF Inputs Order only when use of that order reduces costs. Qwest asserts that the FCC adopted placement costs that are substantially higher than HAI's in most of the model's nine density zones. Qwest Brief at pp. 39-41.

MCI claims that Qwest's reference to MCI's recent placement cost experience is improper because MCI is engaged in the construction of a network that is vastly different from the ubiquitous local exchange network that is being modeled in this proceeding. MCI Reply Brief at p. 13.

### **Recommendation**

The placement costs and activity percentages supported by Qwest in this proceeding are notably similar to those supported by Qwest (formerly US West), and

ultimately rejected by this Commission in Docket Nos. 96-310-TC; 96-334-TC.<sup>74</sup> In that proceeding, the Commission rejected Qwest's placement assumptions primarily because Qwest was unable to explain why its placement costs were so much higher than the values it supported before FCC during the USF proceeding. The Commission also noted that Qwest's placement percentages were skewed towards more expensive placement activities such as directional bore. As a remedy, this Commission ordered Qwest to use, on an interim basis, the BCPM<sup>75</sup> national default values for activity costs that it supported before the FCC. The Commission also noted that it would reconsider these values once the FCC selected the input values for its cost model.

The Hearing Examiner finds that the record suggests that Qwest's current proposal suffers from the same problems previously identified by this Commission, and thus, should be rejected in this proceeding. Qwest's proposed placement inputs are overstated because they rely upon the notion, rejected above, that Qwest is building a replacement network in New Mexico that must navigate in and around developed neighborhoods, as they exist today. This assumption is rejected for the reasons stated above with respect to structure sharing.

Staff's suggested placement inputs do not offer a more attractive alternative for Qwest's model. For example, Staff's placement inputs differ from Qwest's proposal only with respect to the placement percentages for buried distribution cable in DGs 1 and 2 and buried feeder cable in DG1. In addition, where they vary, Staff's alternative inputs

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<sup>74</sup> See for example, Findings Of Fact, Conclusions Of Law And Order - 96-310-TC; 96-334-TC at paras. 45-81; and Qwest's support documentation, Loop Defaults.pdf, at pp. 4 and 5.

<sup>75</sup> Benchmark Cost Proxy Model.



values are not appreciably different than Qwest's, and therefore, the Hearing Examiner finds that they fail to address the significant discrepancies in placement cost and placement activity noted above.

Having found that the placement proposals supported by Qwest and Staff are unacceptable, the Hearing Examiner recommends that the Commission order Qwest to utilize the buried placement costs and percentages adopted by the Commission in the previous cost docket, but on a permanent basis. Because the density zone structure of Qwest's current cost model differs from the model it sponsored in the earlier proceeding, the Hearing Examiner recommends that Qwest submit a compliance filing demonstrating how it maps the recommended placement inputs to the five DGs used in its current study.

Qwest claims that HAI grossly understates the TELRIC for placing facilities. Qwest maintains that MCI's proposal is poorly supported and contradicts both Qwest and MCI's recent experience in New Mexico and other states. Qwest also notes that when all placement inputs are taken into consideration HAI produces an average placement estimate of \$0.73 per foot, a value that is significantly lower than the value previously approved by this Commission, and the results derived by Qwest's witness when using a slightly modified version of the nationwide inputs adopted by the FCC in

the USF Inputs Order.<sup>76</sup> Qwest suggests that the Commission adopt new placement inputs for HAI based on the assumptions used in LoopMod.

Based on the record, the Hearing Examiner recommends that the Commission reject MCI's proposed inputs and require MCI to use the buried placement cost and placement percentage inputs adopted by the FCC in the USF Inputs Order. Having already found Qwest's proposed inputs unacceptable for use in LoopMod, MCI's assumptions are equally unacceptable for use in HAI. MCI's proposal is unacceptable because its inputs are not supported by the evidence in the record. Having rejected all other proposals, the Hearing Examiner finds that the placement assumptions adopted by the FCC in the USF Inputs Order provide the most reliable source of data with which to estimate Qwest's forward looking costs.

**(d) Plant Mix and Selection of Loop Technology**

Plant mix refers to the proportions of outside plant that is assumed to be aerial, buried, or underground. Qwest claims this Commission approved an aerial plant mix of 18% in an earlier cost proceeding because it was similar to the amount of aerial plant that Qwest was deploying in New Mexico at that time. Qwest model assumes an aerial plant mix percentage of 14% in this proceeding to allegedly reflect the general decrease in the use of this type of plant. Qwest Brief at pp. 41-42.

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<sup>76</sup> In his analysis Qwest witness Fitzsimmons adjusted the cost of the first density zone to equal the cost of the second density zone. This adjustment was made to mirror the pattern of inputs used in the version of HAI filed by MCI. See, Qwest Exhibit 17, Fitzsimmons Rebuttal Testimony, footnote 40.

MCI believes the default plant mix percentages used in HAI are reasonable assumptions for a forward-looking network in New Mexico and the Commission should adopt those inputs as filed. MCI Brief at pp. 24-25.

Qwest notes that HAI assumes that approximately 28% of plant will be aerial. Qwest claims that this input is a transparent attempt to reduce costs through the use of a plainly unrealistic assumption, and, for this very reason, this input was rejected by this Commission in the U S WEST/AT&T arbitration and has been rejected by every state commission in Qwest's region that has considered it. Qwest argues that MCI failed to provide any support for its current assumption or any value greater than that previously approved by the Commission. Furthermore, Qwest claims that all the relevant evidence suggests that the use of aerial plant has been declining in recent years.<sup>77</sup> Qwest supports the Commission adopting an aerial percentage of up to 17%.

Staff asserts that LoopMod uses a default aerial percentage input of 14% to split both distribution and feeder cable between buried and aerial. Staff believes that the aerial percentage for distribution plant should be increased to 20% in DGs 1, 4, and 5 and to 25% in DGs 2 and 3, and that the aerial percentage for feeder plant should be increased to 20%. Staff Brief at p. 61.

Qwest argues that while Staff in effect supports aerial plant mix percentage between 20% and 25%, it failed to offer support for its assumptions other than to say that aerial plant is less expensive than the other alternatives. Qwest suggests that the

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<sup>77</sup> Qwest cites Qwest Exhibit 11, Buckley Direct, at pp. 32-33; Qwest Exhibit 14, Pappas Direct, at pp. 19-20.

Commission adopt an underground plant percentage of no less than 7.5%. Qwest claims that HAI uses only 2.7% underground plant, including no underground distribution plant in six of its nine density zones and very little in the remaining three even though MCI's witness agreed that underground plant is the "predominant" type of plant that carriers use in urban areas.<sup>78</sup>

According to Qwest, the FCC recognized this flaw in the HAI model, stating that it "disagree[s] with HAI's assumption that there is very little underground distribution plant and none in the six lowest density zones."<sup>79</sup> By contrast to HAI, Qwest avers that the FCC's inputs to its universal service model, upon which MCI relies elsewhere, assume that approximately 8% of plant is underground. Qwest Brief at pp. 43-44.

MCI believes Qwest's criticism is misplaced. According to MCI, since underground placement is the most costly of all plant structure types it is used only where aerial and buried placement is not feasible due to paved surfaces such as streets and sidewalks. Thus, MCI avers that it is exclusively an urban phenomenon, and because six of the nine density zones used by HAI typify more rural settings, it is entirely appropriate that no underground placement is used in these areas. MCI also claims that in the most urban areas HAI appropriately places the overwhelming majority of plant in underground conduit. For feeder plant, the percentage of underground plant in the highest-density zone is 90%, and in the next most-dense density zone, is 85%. Furthermore, MCI claims that very little distribution plant is placed in these density

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<sup>78</sup> Qwest cites TR Day 9, Bryant Cross, at p. 101.

<sup>79</sup> Qwest cites USF Inputs Order at paragraph 228.

zones (most distribution areas in these zones are comprised of high-rise buildings, where feeder plant terminates directly in the basement of the building). So, while the overall percentage of underground cable placed in the HAI Model is not large, the proportion of underground placement is appropriate to the conditions where the cable is placed. MCI recommends that the Commission reject Qwest's criticism, and affirm the HAI default assumptions for underground cable placement.

### **Recommendation**

The Hearing Examiner recommends that the Commission approve for use in Qwest's model an aerial plant mix percentage of 17%, the upper end of the range proposed by Qwest. The Hearing Examiner finds the evidence presented by Qwest credible. While aerial plant may offer an economic advantage over buried and underground facilities, it is clear that the current trend in network development is moving away from aerial plant for both engineering and aesthetic considerations. The Hearing Examiner finds that the input value of 17% is an equitable reflection of Qwest's current network and TELRIC's forward-looking requirement. The Hearing Examiner finds that the aerial plant mix percentages supported by MCI and Staff may be cost minimizing, however, cost minimization is not the sole criteria to be considered here. While MCI and Staff's proposals may minimize the cost the ILEC incurs during installation, it may not be the social cost minimizing solution because there is a higher likelihood of network failure with aerial plant, and local ordinances often require buried or underground

facilities in order to improve the appearance of the community. The Hearing Examiner finds that MCI and Staff's proposals are not supported by evidence in the record.

Similarly, the Hearing Examiner finds that the alternatives to Qwest's underground plant mix assumption lack evidentiary support, and fail to reflect recent trends in deploying infrastructure. Therefore, the Hearing Examiner recommends that the Commission approve for use in Qwest's model the underground plant mix input proposed by Qwest.

Having found that MCI's proposed plant mix inputs are not supported in the record, the Hearing Examiner recommends that the Commission adopt for HAI, the alternative inputs proposed by Qwest, as these values are more consistent with Qwest's current network and TELRIC's forward-looking requirement.<sup>80</sup>

### **Selection of Loop Technology**

A digital loop carrier (DLC) is an electronic device that connects to customers' copper distribution pairs at a remote terminal, converts the analog signals to a digital multiplexed format, and then transports the digital signal over a fiber or copper transport to the local switch in the central office.<sup>81</sup>

Staff claims that Qwest's default in running LoopMod is the DS0 (single voice grade circuit) option, as opposed to the Fiber Pair option, meaning that LoopMod will include investment for copper-fed DLC systems that ignore the efficiencies of fiber-fed DLC systems. According to Staff, Qwest's failure to sufficiently assume the use of its

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<sup>80</sup> See Qwest Exhibit 17, Fitzsimmons Rebuttal, at p. 34.

<sup>81</sup> Staff cites Staff Exhibit 9, Gates Direct, attached Exhibit TJG-2.

systems' GR-303 integrated capabilities overstates the cost of providing unbundled loops by including investment in equipment (i.e., central office terminals) that is not required if integrated digital loop carrier ("IDLC") is used in the integrated mode. Staff Brief at p. 64.

Staff asserts that Qwest's failure to assume 100% IDLC not only overstates the cost of providing loops, but also creates an anticompetitive effect because Qwest will provision its retail services using more efficient, less expensive IDLC technology while provisioning its unbundled loops with the less efficient, more expensive universal digital loop carrier ("UDLC") technology. Thus, the economic costs incurred by CLECs would be artificially inflated relative to those incurred by Qwest. Staff Brief at p. 67.

Staff claims that Qwest misunderstands its position on this issue, which is, for feeder routes that use DLC systems; Qwest should assume that 100% are used in the IDLC mode. Staff is not advocating that Qwest assume the use of IDLC systems for every loop in the network. Staff Brief at p. 68.

Qwest claims that LoopMod does not use IDLC in universal mode. However, Qwest notes it does include a small percentage of UDLC copper systems because installing a small UDLC system on low-density routes is allegedly cheaper than using a small IDLC. Qwest contends that using IDLC for these routes would produce significant excess capacity and increased costs.

Qwest claims that all the feeder circuits in LoopMod run at the DS-1 level to the switch, following the design used for retail loops. Thus, UNE-P loops include only the basic LoopMod cost because the loop runs to the switch. However, if a CLEC orders an

unbundled loop to be delivered to a collocation cage at the DS-0 level, Qwest must multiplex that loop down from the DS-1 level in the feeder to DS-0. Qwest believes it has included in its grooming cost model the exact equipment for grooming IDLC loops that Staff's witness suggests. According to Qwest, there is a dispute over the cost of this equipment because Staff believes that the existing cards in an IDLC terminal can groom the loop down to the DS-0 level at virtually no cost. However, Qwest claims that the grooming cards and other necessary equipment cause Qwest to incur costs; a cost that Qwest only adds to loops that traverse an IDLC feeder. Thus, Qwest claims this issue only affects its proposed allocated grooming charge in the basic cost of the unbundled loop.

According to Qwest, Staff also suggests that loops can and should be delivered to a CLEC's collocation area via a DS-1 signal with no multiplexing and, thus, no grooming charge. Although Qwest claims it could deliver loops in this manner, the CLEC would then be responsible for the cost of a DS-1 running from the FDI ("Feeder Distribution Interface") to its collocation arrangement. Qwest claims that Staff is advocating that it run a DS-1 from the FDI to the collocation arrangement, but only charge the CLEC for the DS-0s the CLEC actually uses. Qwest maintains that this proposal plainly violates the Act's cost recovery requirements because Qwest must dedicate a DS-1 to the CLEC and yet, would not recover its cost. In this circumstance Qwest believes that it is entitled to the full TELRIC cost of a DS-1 from the CLEC regardless of the amount of capacity used. Qwest Reply Brief at pp. 24-25.



According to Staff, the concentration ratio for DLC systems is a critical input in the estimation of loop costs. Staff contends that Qwest's decision to assume generous quantities of fiber deployment for cost study purposes compels the use of a higher concentration ratio. Staff conservatively recommends a ratio of 6:1. Staff Brief at p. 70.

Qwest asserts that adjusting the concentration ratio to 6:1 as suggested by Staff only decreases average loop investment by approximately \$1.00. Qwest Brief at p. 17.

Staff claims that it was not able to correct Qwest's inputs and assumptions regarding DLC. Although one can view the investments for the different types of DLC equipment in LoopMod, Staff maintains that the user cannot view how those technologies are used in the engineering assumptions because these assumptions are largely hard-coded into LoopMod and cannot be effectively mitigated by input or assumption changes through the user interface. For example, Staff claims that there is no way for the user to require 100% use of IDLC in the feeder network.

According to Staff, the Commission should require Qwest to re-run all of its studies with all Staff recommended inputs and assumptions, including 100 percent IDLC where DLC systems are assumed to exist, with a 6:1 concentration ratio. Staff asserts that Qwest should then provide these results in the form of a compliance filing for review by the parties. Staff Brief at p. 71.

## Recommendation

Based upon the evidence in this record, the Hearing Examiner recommends that the Commission approve Qwest's proposed loop technology assumptions as filed, with the sole exception that the DLC concentration ratio be reset to 6:1.<sup>82</sup>

While Staff expressed concern that Qwest's cost model relied upon the relatively inefficient UDLC technology, the record indicates that Staff's concerns are misplaced.<sup>83</sup> The evidence presented by Qwest indicates that its model assumes the least cost DLC solution depending on the size of the Remote Terminal modeled. That is, UDLC is only used in the limited circumstance where 32 line Remote Terminals are modeled. The remaining 97.8% of the lines served over DLC are provisioned over IDLC systems that connect directly to the switch at a DS-1 level.<sup>84</sup>

The Hearing Examiner also finds that Qwest has provided a sufficient explanation with regard to its handling of grooming costs when a CLEC orders the UNE-P. When a CLEC orders the UNE-P, Qwest stated that the CLEC would only pay the loop rate because the loop would connect to the switch as a copper analog loop (for those that are served using non-DLC) or as a DS1 (for those that are served using Integrated DLC.) However, the Hearing Examiner finds that it appears that Qwest intends to assess grooming fees on every unbundled loop ordered. Inasmuch as this charge is designed to recover the costs associated with the equipment used in extracting the unbundled loop from the Integrated DLC circuits, the Hearing Examiner

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<sup>82</sup> Qwest should show that this change has been implemented in its compliance filing.

<sup>83</sup> TR Day 3 at p.129.

<sup>84</sup> *Id.* at p. 74.

recommends that Qwest be ordered to recalculate these costs so that the grooming rate element applies only to loops that actually require grooming.<sup>85</sup>

**(e) Drop Lengths**

The drop wire is the facility that extends from the nearest distribution terminal to the customer's premises. According to Qwest, the actual drops in place in New Mexico and across Qwest's region provide verifiable evidence of a reasonable drop length. Qwest claims that a survey of approximately 8,000 drops in eight states, including 807 drops from New Mexico, produced an average drop length of between approximately 143 and 150 feet. In New Mexico, the average length was allegedly 153 feet. Qwest believes that this data provides the best evidence in the record for this input and demonstrates that LoopMod's average drop length of 126 feet is conservative.<sup>86</sup> However, should the Commission determine that a different average length is appropriate, Qwest maintains that it should not assume less than the average of 111 feet that Dr. Fitzsimmons used in his sensitivity analysis. Qwest Brief at p. 44.

Staff contends that Qwest's updated drop survey is no better than the original survey this Commission rejected because it lacked statistical validity. Staff recommends that the Commission adopt Staff's drop length estimates, which vary by plant type and DG, assuming a maximum aerial drop of 100 feet. Staff notes that its drop length recommendations are generally consistent with the drop length estimates approved for Qwest by the state commissions in Arizona, Colorado, and Minnesota.

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<sup>85</sup> See Qwest's Response to Bench Request Set 2, No. 004.

<sup>86</sup> Qwest cites Qwest Exhibit 17, Fitzsimmons Rebuttal, at pp. 36-37.

Staff also argues that Qwest's mobilization charge should be rejected because it specifically allows Qwest to recover costs that are the result of inefficient operations, and thus, are not properly included in a TELRIC study.<sup>87</sup> Moreover, Staff declares that during the hearings Qwest agreed to remove the mobilization charge from its studies.<sup>88</sup> Staff Brief at pp. 71-74.

MCI proposes inputs for drop lengths that vary by density zone, ranging from 50 feet in the four highest density zones to 150 feet in the least dense zone. Allegedly, these drop length inputs assume that setbacks will vary from a low of twenty feet in urban areas to greater distances in more rural areas, with homes generally located closer to the front of the lot. According to MCI, rather than assume that all structures in two highest density zones will be served by the more expensive cables appropriate to large office buildings, its model explicitly takes account of the type of building to which distribution cable must be extended, and places the drop type appropriate to the building types and the number of occupants in each building location, regardless of the density zone in which the structure occurs. MCI claims that the drop length estimates used by Qwest are excessive. MCI Brief at pp. 24-25.

Qwest argues that MCI has simply plugged HAI's national default lengths for drops into the New Mexico run of the model to produce an average length of 74 feet. Qwest claims that it is particularly important to use state-specific drop lengths in New

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<sup>87</sup> Mobilization charge is a trip charge levied by contractors for unproductive trips to a location where a drop is to be placed. This charge applies only when the contractor must make an additional trip to the work site through no fault of its own. See TR Day 3, at pp. 65-66.

<sup>88</sup> *Id.* at p. 69.

Mexico because of the many large rural areas in this state. Thus, Qwest argues that the Commission should reject MCI's proposal in favor of Qwest's state specific inputs. Qwest Brief at p. 45.

MCI states that HAI's drop length assumptions are based on a national survey. According to MCI, when you compare average drop lengths of between 87 to 90 feet adopted by the Colorado, Arizona, and Minnesota Commissions, the average drop length assumed in Qwest's cost study is clearly excessive. MCI Reply Brief at p. 15.

Qwest contends that Staff's reliance on drop lengths ordered in other states is misplaced because the FCC has encouraged the use of drop lengths specific to each state.<sup>89</sup> Furthermore, Qwest claims that Staff provided no meaningful evidence in support of its proposed drop lengths, its 100 foot aerial drop length limit, or its counter-intuitive claim that drop lengths do not increase as lot sizes increase. Qwest claims that its survey is the best evidence in the record relating to drop lengths, and that it demonstrates the reasonableness of the average length used in LoopMod. Qwest Reply Brief at p. 27.

### **Recommendation**

The record indicates that Qwest's drop length study is no better now than it was the last time this Commission rejected it. The fact that Qwest added additional observations from another jurisdiction does nothing to address the significant sampling and measurement flaws that this study appears to suffer from. Once again, there is no

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<sup>89</sup> Qwest cites BellSouth Georgia/Louisiana 271 Order at ¶¶ 73-74.

representation that this is a statistically accurate sample.<sup>90</sup> Similarly, the Hearing Examiner has little confidence in the efficacy of using HAI's national default drop lengths estimates in this jurisdiction. The Hearing Examiner agrees with Qwest's general argument that because New Mexico has relatively large and numerous rural areas, it is appropriate to use drop lengths that are greater than those suggested by a nationwide survey. Having already rejected the proposals of Qwest and MCI, the Hearing Examiner recommends that the Commission adopt the drop length estimates endorsed by Staff, after making the adjustments discussed below.

While the Hearing Examiner believes that the drop length estimates proffered by Staff provide the most reasonable assumptions for New Mexico, she is not persuaded by Staff's argument that aerial drops will generally not exceed a length of 100 feet. Staff offered the opinion of its expert to support its claim, and the Hearing Examiner finds Qwest's rebuttal testimony on this issue to be more persuasive.<sup>91</sup> Therefore, the Hearing Examiner recommends that the Commission adopt for LoopMod drop lengths of 70 feet in DG 3, 150 feet in DG 4, and 200 feet in DG 5 for both aerial and buried drops.

Having found insufficient support to accept MCI's drop length inputs, the Hearing Examiner recommends that the Commission approve for HAI the drop length input

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<sup>90</sup> Findings Of Fact, Conclusions Of Law And Order - 96-310-TC; 96-334-TC. at para 136.

<sup>91</sup> "Utility companies do not extend buried plant onto private property to reduce the drop length. Regardless of whether the drop is buried or aerial, the drop will extend from the easement where the pedestal is located to the living unit. The distance will be the same for either type of placement." Buckley Rebuttal, p. 9.

proposed by Qwest.<sup>92</sup> These values reflect the fact that New Mexico has relatively large and numerous rural areas, and are generally consistent with those adopted by the Colorado Commission.<sup>93</sup>

Finally, the Hearing Examiner recommends Qwest be required to remove all mobilization costs from its study. The Hearing Examiner finds that CLECs should not compensate Qwest for mix-ups that result in non-productive field visits, to do so would contradict the basic efficiency that is required of a TELRIC cost study.

**(f) Cable Sizing, Fill and 5) Other Issues**

Staff recommends that the Commission require Qwest to expand the cable tables to include larger cables (up to 3,000 pair) so that when appropriate, the model reflects greater economies of scale. Staff believes that Qwest's 900 pair cable limit causes Qwest to assume multiple cables when one larger cable would more efficiently handle the traffic of several smaller cables. Staff Brief at pp. 74-75.

Qwest claims its engineers do not use the cable sizes proposed by Staff in distribution because they are too large for the number of distribution pairs needed per pedestal and would lead to improperly low fill factors. Qwest also argues that Staff's criticism is inconsistent with its other proposal to increase fill factors and further is not consistent with a least-cost approach to designing the distribution network. Qwest Reply Brief at p. 27.

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<sup>92</sup> See Qwest Exhibit 17, Fitzsimmons Rebuttal, at p. 37.

<sup>93</sup> See Colorado PUC Decision No. C02-409, at p. 42.

Qwest claims that HAI now uses a single default distribution cable sizing factor across all density zones; which is designed to improperly reduce loop cost estimates. According to Qwest, this change is contradicted by HAI's sponsors' own statement in the documentation that accompanied an earlier release:

"In determining appropriate cable size, an outside plant engineer is more interested in a sufficient number of administrative pairs . . . . The appropriate distribution cable sizing factor, therefore, will vary depending upon the size of the cable . . . . Since smaller cables are used in lower density zones, Distribution Cable Sizing Factors in HM 5.0a are lower in the lowest density zones."<sup>94</sup>

Additionally, Qwest argues that this approach to cable sizing is also contrary to the FCC's statement in the USF Order that "lower density zones should utilize lower copper fill factor inputs."<sup>95</sup> Qwest asserts that MCI failed to provide any engineering or cost-based analysis to justify its new position. Qwest Brief at p. 46.

MCI contends that LoopMod assumes excessive and inefficient amounts of unused capacity in the distribution network because it models two lines per site in DGs 1, 2 and 5, and three lines per site in DGs 3 and 4, for 50% and 33% distribution fills, respectively. MCI claims that these assumptions are improper because they force today's customers to subsidize costs incurred for future customers.

MCI claims that HAI properly sizes cables because it assumes the use of forward-looking DLC technology in the feeder portion of the network allowing for much higher feeder fill ratios, and, therefore, more efficient use of capacity. MCI believes that

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<sup>94</sup> Qwest cites HAI 5.0a Inputs Portfolio at p. 32.

<sup>95</sup> Qwest cites USF Inputs Order ¶ 193.



this approach is appropriate because additional service requirements may be quickly addressed by installing additional channel cards at the remote terminal site, rather than additional cables. MCI contends that accepted engineering guidelines for provisioning DLC systems provide for the initial installation of enough channel cards to meet existing demand plus just six months of anticipated growth. Applying this guideline, MCI argues that the appropriate fill would be 100% for fiber and 90% or higher for DLC remote terminals.

In the distribution portion of the network, MCI supports HAI's application of a target cable sizing factor of .75, reflecting the assumption that 3 of every 4 pairs in a cable will be assigned to a working line. MCI notes, however, that because cables are available in standardized sizes, the "achieved" fill will be less than the targeted fill. MCI Brief at pp. 26-27.

Staff recommends that the Commission accept Qwest's proposed sizing, or fill, factor of 90% for channel units, but that Qwest be required to increase its sizing factor for remote terminals from 80% to 90% because it is so easy to augment these facilities that ILECs usually engineer them to accommodate only six months of growth. Staff Brief at pp. 75-76.

In response to Staff, Qwest argues that its assumptions already reflect rules that engineers operate under while Staff's terminal sizing factor of 90% is unrealistic and merely an attempt to lower costs without regard for the additional costs Qwest will incur when the terminal capacity is soon exhausted. Qwest maintains that while six months is the minimum engineering forecast period for channel units the forecast period for a

remote terminal is as long as five years because it is not economical to add incremental terminals to a location as growth occurs. Buckley Rebuttal Testimony at p. 5.

### **Recommendation**

Staff requests that the Commission require Qwest to assume cables as large as 3000 pairs to reflect greater economies of scale. However, as Qwest points out, this suggestion should be rejected because it is contrary to Qwest's engineering practices.

MCI and Qwest offered vastly different estimates regarding efficient distribution fill factors. The Hearing Examiner finds neither approach, as filed, to be reasonable. MCI's application of a target cable sizing factor of .75, plus allowances for breakage, is inconsistent with the way in which an efficient telecommunications network is engineered and would very likely increase overall costs as outside plant is frequently reinforced to serve demand.<sup>96</sup> However, Qwest's assumption of 3 lines per cite in DGs 3 and 4 may result in unreasonable low fill rates.<sup>97</sup> When faced with this same question the FCC stated:

We find that a fill factor that assumes that more than two-thirds of capacity is idle for an indefinite time is unreasonably low. By way of comparison, the Commission adopted fill factors ranging from 50 to 75 percent for the Universal Service Fund (USF) cost model, the Kansas Commission adopted a 53 percent fill factor for distribution cable, and the New York

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<sup>96</sup> See Qwest Exhibit 12, Buckley Rebuttal, at pp. 4-5.

<sup>97</sup> TR Day 3 at p. 126. (Buckley) "...for Density Group 3 and Density Group 4 because we do a three pairs per site design, we are going to do somewhere around that 30 percent, maybe a little higher, maybe a little lower, depending on the modularity spare that would exist in the design...I can change my model to two pairs per site, which would show something more in the 50 percent range.."

Public Service Commission adopted a 50 percent fill factor.<sup>98</sup> (Footnotes omitted)

Thus, consistent with the FCC's findings, the Hearing Examiner recommends that the Commission require Qwest to size distribution cables based on the assumption of 2 distribution pairs per site. While it may have been necessary in the past to assume, on average, more than 2 distribution pairs per site, the increasing popularity of DSL and cable modems, and the prevalence of wireless communications suggest that fewer distribution pairs per site will be necessary in a forward looking network.<sup>99</sup>

The Hearing Examiner agrees with Qwest that MCI's approach to sizing distribution cables is inconsistent with the documentation supporting earlier versions of HAI, and the FCC's conclusion that lower density zones should utilize lower fill factor inputs. The Hearing Examiner recommends that the Commission approve for HAI the distribution cable sizing factors proposed by Qwest.<sup>100</sup>

Consistent with Staff's position, the Hearing Examiner recommends that the Commission accept Qwest's proposed sizing, or fill, factor of 90% for channel units. However, the Hearing Examiner does not recommend that Qwest be required to increase its sizing factor for remote terminals. Qwest's argument regarding the forecast period for a remote terminal is credible and should be accepted as filed.

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<sup>98</sup> In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma. CC Docket No. 00-217 at 80.

<sup>99</sup> Qwest Responses to BR Numbers 13 and 19 and Qwest 271 arguments in Case No's 3269, et al.

<sup>100</sup> Qwest Exhibit 17, Fitzsimmons Rebuttal, at p. 39.

## **B. Recurring Rates for Switching – Methodologies, Inputs and Assumptions**

### **1. Development of Switching Investment**

Switches are used to connect one customer to another or to connect a customer to an interoffice facility. The traditional rate structure for switching facilities is composed of a fixed monthly rate for the switch port where a customer's loop is terminated and a usage sensitive rate assessed per Minutes of Use ("MOU") for calling activity. The traditional rate structure reflects that fact that switch ports are dedicated to a single line but the processing capacity of a switch, that is, the portion of the switch that ultimately constrains usage at any given point in time is shared among all users. The primary switching dispute in this proceeding is centered on the degree to which the terms of current vendor contracts eliminate the need for a usage sensitive rate.

### **2. Usage-Based or Flat-Rated Switching**

Staff claims that Qwest has failed to offer persuasive evidence that increased usage on a switch necessarily leads to higher costs for that switch. According to Staff, Qwest argues that because part of the contract for switching accounts for usage sensitive costs, all the costs are usage sensitive. Staff believes that Qwest made no attempt to separate those costs that are usage based, and those that are not. Staff Brief at pp. 77-78 and Staff Reply Brief at pp. 9-11.

MCI claims that Qwest's model (SCM) estimates costs in a manner that is fundamentally inconsistent with the way in which its actual switching costs are incurred. MCI argues that only flat-rate basis switching rates are appropriate because this pricing

structure most closely reflects how Qwest incurs switching costs. According to MCI, given that Qwest pays once for its switches based upon the full capacity of the switch, but on a per-line basis, there is no reason why CLECs should have to pay more, depending on how much their customers use the switch, in order to obtain access to the same capacity. MCI Brief at pp. 28-29.

According to MCI, Qwest's argument in support of usage-based switch pricing is two-fold. First, Qwest claims that a switch engineered to handle higher peak usage costs more than a switch designed to service a lower peak traffic volume. Second, when peak demand exceeds a certain threshold, the cost per line increases. MCI contends that neither of these arguments supports a usage based rate element. MCI maintains that while the first argument is a truism (i.e. that a switch designed to serve higher capacities will be more expensive) it says nothing about how the cost of the switch should be recovered. MCI claims it is unreasonable to assess CLECs with a usage based charge unless there is evidence that Qwest must pay its vendors a separate charge for each minute that the switch is used. According to MCI, Qwest has presented no such evidence in this case.

MCI also claims that the second argument is irrelevant because, even assuming that one of Qwest's switch contracts would require it to pay more per line for new lines if certain usage levels are exceeded, Qwest has presented no evidence that those traffic thresholds have been, or are even likely to be, exceeded. To the contrary, given the increased usage of DSL and wireless, MCI argues that there is good reason to believe

that switch usage is more likely to decrease, rather than increase, in the future. MCI Reply Brief at pp. 15-16.

Qwest argues that a flat rate switching proposal must be rejected because it contradicts the principle of cost causation. That is, because switch vendors impose usage related costs upon Qwest, it is appropriate for UNE rates to have a usage sensitive component. Qwest avers that Staff's witness acknowledged, during the hearings, that most of the elements of a switch are "shared elements" and "no parts of the switch are dedicated" to one user.<sup>101</sup> Moreover, Qwest notes that Staff's witness agreed with the general principle that the cost of dedicated facilities should be recovered on a flat rate basis but shared facilities cannot.<sup>102</sup> Qwest Brief at p. 47.

Staff's witness testified that Qwest's proposed usage based switching rates would result in cross subsidies from high volume users to low volume users because the per line cost for a switch would be the same for each but the revenue collected would be greater in the case of the high volume user. Ankum Direct Testimony at pp. 37-39. MCI also supports the arguments of Staff's witness, Dr. Ankum, who argued that establishing usage-sensitive rates for local switching could result in anti-competitive cross-subsidies and distinct competitive disadvantages for CLECs. MCI Brief at pp. 28-29.

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<sup>101</sup> Qwest cites TR Day 7, Ankum Cross, at p. 132.

<sup>102</sup> *Id.* at pp. 132-134 (quoting from deposition testimony agreeing with "general pricing principle" that shared facilities should be priced on a minute of use basis and dedicated facilities should be flat-rated and noting that "[i]f you cannot dedicate facilities to a customer, then you cannot flat rate it.").

Qwest disagrees with the subsidy analysis proffered by Staff and MCI. Qwest claims that Staff failed to provide an answer to its point that under a flat-rated approach to switching rates, low volume users will subsidize high volume users. Qwest asserts that because termination compensation in New Mexico is paid on the basis of minutes of use, flat rate switching would exacerbate this distortion and increase the potential subsidy. Thus, Qwest argues that if the Commission approves UNE switching rates with zero usage costs then the reciprocal compensation rate must also be set to zero. Qwest Brief at pp. 48-49.

Staff argues that Qwest has failed to comply with FCC guidance with regard to charging for switching on MOU basis because Qwest's study does not differentiate between peak and non-peak costs, and thus, results in economically inefficient pricing that is not consistent with TELRIC methodology. Staff Brief at pp. 77-78 and Staff Reply Brief at pp. 9-11.

Qwest attempts to rebut Staff's argument by noting that the FCC concluded in the *Local Competition First Report and Order* that while peak sensitive pricing is the most economically efficient rate structure, "the practical problems associated with peak-sensitive pricing make it inappropriate for us to require states to impose such a rate structure for unbundled local switching or other shared facilities whose costs vary with capacity."<sup>103</sup> Qwest Reply Brief at p. 28.

Staff recommends that the Commission order Qwest to rerun SCM based on the assumption of cost recovery primarily on a flat rate, with certain costs allowed for in a

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<sup>103</sup> *Local Competition First Report and Order* at para 757.

minute per use charge that will cover the costs of an increase in call seconds ("CCS") throughput. Staff Brief at pp. 77-78 and Staff Reply Brief at pp. 9-11.

Qwest claims that Staff's post-hearing brief appears to reflect a softening of Staff's position on this issue. According to Qwest, Staff now appears to support allocating switching costs between the port and a per minute of use charge. Since Staff has not proposed its own allocation Qwest recommends that the Commission adopt its current proposal, which allocates 42% to the port and 58 % to the MOU element. Qwest Reply Brief at p. 28.

### **Recommendation**

Initially, both MCI and Staff argued in favor of establishing a "flat rated only" rate structure for UNE switching based on the premise that this rate structure most closely reflects the terms of current vendor contracts. However, now Staff does appear to have changed its position, and thus, tacitly withdrawn all such arguments against usage sensitive rates.<sup>104</sup> While Staff ultimately suggested that switching rates be based on the assumption of cost recovery that is primarily flat rated, with certain costs allowed for in a minute per use charge that will cover the costs of an increase in CCS throughput, Staff did not propose an alternative to Qwest's allocation between flat and usage costs. Nor did Staff offer convincing arguments to support its claim that Qwest failed to properly separate those costs that are usage based and those that are not. To the contrary, the

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<sup>104</sup> See Staff Brief at p. 78 "The Commission should order Qwest to rerun its SCM based on the assumption of cost recovery primarily on a flat rate, with certain costs allowed for in a minute per use charge that will cover the costs of an increase in CCS throughput."



record indicates that the methodology employed by Qwest to allocate current switching investments to its proposed flat and usage sensitive rate elements is reasonable.<sup>105</sup> Thus, the Hearing Examiner finds that Qwest's flat plus usage sensitive switching rate proposal is reasonable and recommends that the Commission approve this proposal provided that Qwest shows that the switching investments used in its calculations are consistent with the recommendations in this decision.

The Hearing Examiner does not find any arguments in favor of a flat rated only switching rate structure to be convincing. While it appears that the terms of switching vendor contracts have been simplified so that switches are purchased on a per line basis, rather than by individual components, the record indicates that the nature of the underlying costs have not changed. For example, MCI agrees that a switch engineered to handle higher peak usage costs more than a switch designed to service a lower peak traffic volume.<sup>106</sup> Given that switches are designed to accommodate certain levels of busy hour traffic, and this capacity is both finite and shared, it is appropriate to recover the cost of this usage sensitive investment through a usage sensitive rate structure; which is exactly what Qwest has proposed.

While the Commission must consider the rate structure underlying Qwest's investments when establishing the UNE rate structure, the retail rate structure chosen by the vendor does not necessarily reflect the true economic cost of providing the equipment in question. In this case the vendor's retail rate structure simplifies the terms

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<sup>105</sup> Qwest Exhibit 8, Million Rebuttal, at p. 93.

<sup>106</sup> MCI Reply Brief at p. 15.

of the purchase by bundling together the costs of fixed and usage sensitive components, but it does not alter the fact that Qwest is faced with usage sensitive switching costs. Furthermore, if usage costs were truly irrelevant, or nonexistent as MCI claims, the per line prices of the switching contracts would not vary based on CCS throughput.

Finally, the Hearing Examiner is not persuaded by claims that call volume constraints are based on busy hour usage such that peak and off peak pricing is required by the FCC. While the FCC explored the possibility of such a rate methodology, it is clear that the FCC also recognized that the practical problems associated with this rate structure were prohibitive. Neither is the Hearing Examiner persuaded by arguments suggesting that under a usage sensitive rate structure high volume users will be forced to subsidize low volume users. This argument relies on the assumption that there are no usage sensitive costs associated with switches, or the usage sensitive rate has been miscalculated. No party offered evidence to support either of these assumptions. Thus, the Hearing Examiner recommends that the Commission order Qwest and MCI to submit compliance filings that recalculate switching investments consistent with the input recommendations discussed below.

Having found unconvincing all of the arguments posed in support of a flat rated only switching rate structure the Hearing Examiner recommends that HAI's switching cost estimates be recalculated to reflect the flat plus usage sensitive switching rate methodology recommended in this decision. Given that Qwest is the only party on record to provide these calculations the Hearing Examiner recommends that Qwest

perform these calculations as part of a compliance filing. Furthermore, Qwest should be required to show that it has made these calculations in a manner that is consistent with both the recommendations in this order and the methodology employed in Exhibit TKM-5REB.

### **3. Inputs Relating to Switching**

#### **a. Fill Factors**

Qwest proposes a switch port fill factor of 80%. Qwest claims this input is conservatively high considering that its actual New Mexico fill rate is 77%. Qwest Reply Brief at p. 29. Both Staff and MCI propose switch port fill factors in excess of 90%.

Staff maintains that a 95% fill factor is TELRIC compliant because Qwest's new switch vendor contracts, called "Just In Time" contracts, allow additional ports to be purchased as needed, on a per line basis, so that high rates of utilization can be achieved from the time switches are placed. Staff claims that Qwest's own calculations support this argument because Qwest assumes that the vast majority of the lines are placed at cutover (i.e. when the switch is placed), assuring Qwest a high rate of utilization and return over the life of the switch.<sup>107</sup> Staff agrees with Qwest that additional lines are necessary for maintenance and administrative purposes. However, Staff maintains that its recommended spare capacity of 5% generously accommodates those needs, assuming approximately 2.5% spare set aside for each. Staff claims that deficient facilities will be returned to and replaced by the vendor so these facilities are

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<sup>107</sup> Staff cites Staff Exhibit 8, Ankum Direct, at p. 65.

not a cause or a reason to increase spare capacity (or lower the rate of utilization) in cost studies. Staff Brief at pp. 78-81.

MCI asserts that HAI assumes fill factors for local switches of 94% based upon industry experience and expertise of the model's developers in conjunction with the opinions of subject matter experts. MCI claims that this input is consistent with the fill factor determined by the FCC to be reasonable for purposes of universal service funding. MCI Brief at p. 29. MCI also notes that in the USF Inputs Order, the FCC concluded that Qwest's 78% average fill factor, similar to that proposed here, for its entire territory was based on switches with unreasonably low fill factors, including seven switches having an average fill factor of .027%. Further, MCI declares that after eliminating switches with unreasonably low fill factors, the FCC noted that the majority of Qwest's switches had fill factors ranging from 88% to 98%. MCI Reply Brief at p. 17.

According to Qwest, Staff's claim that its proposed 95% fill rate "generously accommodates" the excess switching capacity that a carrier requires is specious. Qwest claims that there are four independent reasons why any efficient carrier must have more than 5% spare capacity in its switches: (1) switches must have some spare capacity for growth, since the absence of such capacity would produce service quality problems every time growth occurs; (2) some excess capacity is needed for administrative purposes; (3) switching equipment, like other network facilities, does not come in the precise increments needed to serve existing demand, which leads to some "lumpiness" of "modularity fill"; and (4) as the FCC and New Mexico Staff have recognized, it is appropriate and efficient for carriers to maintain some dedicated idle

lines (lines connected to the switch but not in use) at vacant locations that are likely to be reoccupied since this practice avoids the cost and delay associated with disconnecting a line from a switch and soon thereafter reconnecting the line. Qwest avers that it is not possible to achieve all of these objectives within the switching network by operating switches at a 95% fill level. It is for these reasons that Qwest maintains that neither Staff nor MCI could identify any carriers that operate switches at this level. Qwest Reply Brief at pp. 29-30.

Qwest suggests that HAI's fill rate input suffers from the same problems already identified with respect to Staff's pleadings. Qwest also notes that the FCC recently rejected the argument that UNE switching rates should be calculated using the 94% fill factor from the USF Inputs Order.<sup>108</sup> If the Commission adopts HAI for calculating switching rates, Qwest proposes a switch port fill factor of 80%. Qwest Brief at pp. 50-51.

### **Recommendation**

Qwest claims that its proposed 80% fill factor is a conservative estimate based on the assumption that an efficient operator will have approximately 12% of capacity set aside for soft dial tone, 5% for administrative purposes and 5% for growth and breakage. While Qwest's general arguments may be sound, the Hearing Examiner

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<sup>108</sup> Qwest cites In the Matter of Application by Verizon New England Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Vermont, CC Docket No. 02-7, FCC 02-118, ¶36 (rel. Apr. 17, 2002).

finds that the average level of excess capacity assumed necessary for the modeling constraints discussed above is exorbitant and inefficient.

Qwest claims that its fill rate proposal is conservatively high given that its current average switch port fill rate in New Mexico is 77%. This value is not substantially different than the fill rate assumption rejected by the FCC in the USF Inputs Order because Qwest's support calculations included switches with unreasonably low fill factors. After eliminating observations with "unreasonably low fill factors", the FCC noted that the majority of Qwest's switches had fill factors ranging from 88 percent to 98 percent.<sup>109</sup> These numbers suggest that Qwest's current average fill rate in New Mexico suffers from the same problem identified by the FCC in the USF Inputs Order. However, regardless of the reason why, the FCC's calculations indicate that Qwest's current fill rate assumptions underestimate the efficiencies that Qwest attained in the past. Therefore, the Hearing Examiner finds that this is not an appropriate assumption for a TELRIC cost study.

The Hearing Examiner also finds the fill rates proposed by Staff and MCI to be unacceptable because they are poorly supported and do not accurately reflect real world constraints that reduce fill rates such as soft dial tone, maintenance, and breakage. While a switch port fill rate of roughly 95% may be appropriate for determining relative cost differences in a USF proceeding, the Hearing Examiner finds that this particular input may result in UNE rates that understate the cost that an efficient carrier incurs to provide access to this UNE.

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<sup>109</sup> USF Inputs Order at fn 709.

Having rejected the proposals of Qwest, MCI, and Staff, the Hearing Examiner recommends that the Commission approve a switch port fill factor of 90%. The Hearing Examiner finds that this value is reasonable given Qwest's claim that it has in the recent past, and continues to, suffer negative line growth.<sup>110</sup> Finally, the Hearing Examiner finds 90% to be reasonable and conservative given that it falls in the lower region of the switch fill range calculated by the FCC.

**b. Digital Line Offset**

MCI asserts that HAI makes an adjustment to end-office switching investment to capture cost savings that result from the deployment of digital loop carrier systems ("DLC"). This adjustment purportedly accounts for the fact that lines served by IDLC do not use the main distribution frame and that such lines use a switch port termination that is cheaper than an analog line interface. Switching investments used in HAI have an implicit assumption of 18.3% DLC lines. However, MCI claims that because DLC is forward-looking technology, forward-looking cost studies usually assume a much higher DLC penetration rate. Thus, HAI estimates 62.7% DLC penetration in New Mexico and, accordingly, applies a \$30 per line offset to DLC lines in excess of 18.3%. MCI Brief at pp. 29-30.

Qwest claims that the digital line offset proposed by MCI lacks evidentiary support, and was calculated in an arbitrary manner. Qwest notes that the FCC rejected this same argument in the USF Order because DLC efficiencies were already taken into

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<sup>110</sup> Qwest Responses to BR Numbers 13 and 19 and Qwest 271 arguments in Case No's 3269, et al.

account in the switching investment data and the switching investment data could not be used to determine the percentages of lines served by digital connections. Qwest maintains that MCI has failed to address these concerns in this proceeding.<sup>111</sup> Qwest Brief at pp. 51-52.

### **Recommendation**

The Hearing Examiner agrees with MCI that the general concept underlying HAI's digital line offset makes intuitive sense. However, given that the design of the offset is described by MCI's witness as "pretty straightforward"<sup>112</sup> the Hearing Examiner expected MCI to be able to better quantify and support its proposal than it has in this proceeding. MCI has been aware of the problems with its argument since the FCC rejected them in November of 1999, yet MCI offers no new arguments, data, or calculations in this proceeding indicating that the FCC erred in the USF Inputs Order.<sup>113</sup> Thus, consistent with Qwest's position and the FCC's findings, the Hearing Examiner recommends that the Commission set the digital line offset to zero when calculating UNE switching rates in New Mexico. The record does not support an alternative conclusion.

#### **c. Switch Upgrades**

MCI asserts that HAI does not include the cost of upgrading switches because it assumes carriers are using the most currently available technology, and therefore,

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<sup>111</sup> Qwest cites TR Day 9, Bryant Cross, at pp. 142-144.

<sup>112</sup> *Id.* at p. 143.

<sup>113</sup> *Id.* at pp.142-144.



upgrades are unnecessary. MCI maintains that upgrade costs should not be included in a TELRIC cost study. MCI Brief at p. 30.

Qwest contends that carriers must upgrade their switches regularly to keep them current and to offer new features and functionality to its customers. Carriers also upgrade switches to add new features through operating software, to increase a switch's processing power, and to comply with the requirements of new laws. Qwest maintains that switch upgrades are a real cost of doing business in a competitive market. Between 1996 and 2000, Qwest claims to have spent more than \$200 million (or nearly \$4.00 per line per year) to upgrade its digital switches, adding features and functions that New Mexico CLECs and their customers are using today. Qwest argues that MCI insists upon full access to these benefits but refuses to pay for them by excluding investment for upgrades from HAI. According to Qwest, MCI attempts to justify this approach by improperly relying on the FCC's USF Inputs Order, where in an attempt to determine only the cost of a new switch, the cost of upgrades were deliberately excluded. Qwest claims that while this sort of "rough justice" might be acceptable for the purpose of allocating universal service support, it is not appropriate for developing UNE rates. Moreover, Qwest maintains that there is an irreconcilable inconsistency between the CLEC's exclusion of upgrades and their use of a ten-year depreciation life for switches.

If the Commission relies on HAI for switching rates, Qwest recommends that it require MCI to include upgrade costs in the amount recommended by Ms. Million.<sup>114</sup> Qwest Brief at pp. 52-53.

According to Staff, the Qwest proposed switch upgrades are inappropriate for the following reasons: (1) switch upgrades ignore that under TELRIC facilities are assumed to be state-of-the art facilities, that by definition do not require upgrades; (2) switch upgrades pertain to older switches not placed under the current contracts; (3) upgrade costs seem excessive given that high capacity lines are only fractionally more expensive than ordinary lines under the current contracts; (4) switch upgrade calculations are not supported; (5) Qwest ignores that UNE prices are periodically updated; and (6) other commissions have not allowed switch upgrades.

Staff contends that under TELRIC, cost studies should identify costs under the assumption that all facilities are state-of-the-art, and, therefore, the notion that additional expenses are incurred for upgrading older facilities is inconsistent with TELRIC methodology. Staff Brief at p. 82. Staff also claims that calculating UNE rates based on the cost of state-of-the-art switches and the inclusion of upgrade costs results in a double count of certain costs. Staff Reply Brief at p. 20. Finally, Staff also argues that Qwest failed to support the derivation of its proposed costs. Staff Brief at pp. 83-84.

Qwest claims that Staff's "snapshot in time" approach regarding switch upgrades ignores the fact that any efficient carrier operating in a competitive market must

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<sup>114</sup> Qwest cites Qwest Exhibit 8, Million Rebuttal, at p.80.

regularly upgrade its switches to meet the requirements of new laws and regulations and consumer demand for increased functionality. Qwest Reply Brief at p. 31.

MCI claims that the costs for which Qwest seeks recovery are not anticipated to be incurred until three years after a switch is placed in service. According to MCI, such costs are not appropriate for inclusion in a TELRIC cost model. MCI Reply Brief at p. 19.

### **Recommendation**

The Hearing Examiner finds that the majority of Staff and MCI's arguments regarding the proper application of forward-looking TELRIC principles and switching upgrades are reasonable. However, while Staff's continually updated UNE rate approach correctly estimates the cost an efficient carrier is likely to incur providing switching at the exact time this facility is assumed to be installed, because it ignores any additional investment necessary to maintain the "state of the art" features and functions of a switch, it is likely to understate the cost incurred by an efficient provider going forward. It is inevitable that even the most "state of the art" switch will require some level of future investment to maintain this status. It is also evident that TELRIC principles require a line to be drawn so as to eliminate the cost of upgrading facilities that can be considered outdated. Thus, the crux of this argument is "how far forward should the Commission look when drawing the line regarding upgrades?"

Looking too far forward may overstate efficient costs if it includes the cost of updating switching facilities that are arguably obsolete. Not looking forward at all, as

Staff and MCI advocate, likely understates true costs because it assumes an efficient carrier would replace all of its switches rather than invest in even the smallest and most long term cost efficient upgrade. The Hearing Examiner finds that neither option, on its own, is particularly appealing or likely to emulate the cost of switching if it were to be provided by efficient suppliers in a competitive environment. Thus, in an attempt to find an equitable solution that is forward-looking and based on the most currently available technology, the Hearing Examiner recommends that the Commission include the cost of switch upgrades in the calculation of UNE switching rates provided Qwest shows that these costs meet the following requirements.

First, these costs must have been incurred to provide non line-growth related updates to switches deployed in New Mexico.<sup>115</sup> Qwest has represented in this and other proceedings that line growth has been negative in New Mexico. Thus, there is little reason to assume that an efficient carrier serving customers in New Mexico would incur significant line growth related upgrade costs to meet reasonably foreseeable capacity requirements. Second, these costs must pertain to switches installed no earlier than 1998. By limiting costs in this manner, the Hearing Examiner seeks to exclude the cost Qwest may have incurred upgrading older switching technology to emulate the features and functions of a "state of the art" switch.

The Hearing Examiner notes that these requirements are quite stringent and might result in the near or total exclusion of the upgrade costs Qwest seeks to include in

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<sup>115</sup> The rationale behind the exclusion of growth related upgrades is more fully explained in the next section.

the calculation of UNE switching rates. Nevertheless, the Hearing Examiner finds that the application of this methodology results in rates that are within the range of reasonableness required by TELRIC. Furthermore, the Hearing Examiner would not be persuaded arguments that this is a backward looking approach that is not credible. Rather, in this instance, the Hearing Examiner finds that past performance, as limited by the restrictions discussed above, to be the best predictor of future performance.

Having already recommended that the Commission include the cost of switch upgrades in the calculation of UNE switching rates these costs must be added to the switching cost estimates produced by HAI. Given that Qwest is the only party on record to provide these calculations<sup>116</sup> the Hearing Examiner recommends that the Commission add to HAI's switching cost estimates the per line level of switch upgrade expenses ultimately approved for LoopMod. Qwest should be required to show that it has made these calculations in a manner that is consistent with both the recommendations in this order and the methodology employed in Exhibit TKM-5REB.

**d. Growth Lines**

Qwest argues that the Commission should join the FCC and the D.C. Circuit Court of Appeals by including in base switching rates the cost of additional lines required to meet future demand. Qwest asserts that there is nothing "unfair" or "uneconomic" about developing costs based on purchases of both new switches and additional lines. Qwest claims that in reviewing this issue in connection with an appeal

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<sup>116</sup> See Qwest Exhibit 8. Million Rebuttal, at p.80; and Exhibit TKM-5REB.

of an FCC section 271 ruling, the D.C. Circuit held that "the [FCC] reasonably concluded" that "inclusion of growth additions" "did not violate TELRIC."<sup>117</sup> Qwest Brief at pp. 53-54.

Staff maintains that growth rate Qwest assumes for switching is inappropriate and inconsistent with the growth rate assumptions used in the proprietary spreadsheets that calculate the switch vendor discounts that are inputs into SCM. Staff claims that when calculating the implicit switch discounts Qwest used a higher growth rate that significantly skews the calculation of switch investments and switching costs. Staff also claims that Qwest's weightings of growth and initially installed lines impact the costs of other switch components, such as trunk costs. According to Staff, the cost increases for trunk investments are more significant than for lines because often there are no charges for initially installed trunks while growth trunks are expensive. Staff Brief at p. 85.

MCI maintains that HAI does not include costs associated with growth lines that may be added to the switch. MCI Brief at p. 30. MCI claims the growth related costs for which Qwest seeks recovery are not anticipated to be incurred until three years after a switch is placed in service. MCI argues that a TELRIC model should estimate the cost to serve current demand, not demand that may or may not materialize in three years. MCI notes that while history may suggest certain predictable levels of growth, Qwest's actual New Mexico line count decreased from 2000 to 2001. MCI argues that increasing switching investment to reflect costs associated with serving future demand unreasonably burdens today's customers with costs to provide service three years from

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<sup>117</sup> Qwest cites AT&T Corp. v. FCC, 220 F.3d 607, 618 (D.C. Cir 2000).

now. Finally, MCI claims that a competitive firm will add excess capacity only when it makes economic sense to do so (i.e., when revenues from future demand will be greater than the cost of placing excess capacity today). Thus, assuming economically efficient behavior, MCI asserts that additional "growth lines" should result in a cost savings, not a cost increase. MCI Reply Brief at pp. 19-20.

Qwest suggests that MCI's support of sizing a switch with little or no spare capacity and no margin for growth is inconsistent with sound engineering practices. Qwest claims that Staff supports the inclusion of growth lines in the switching calculations.<sup>118</sup> However, Qwest claims that Staff's suggestion that Qwest should purchase more initial switch capacity is inconsistent with Staff's proposed switch fill factor of 95%, and with the manner in which it calculates associated non-recurring costs. Qwest further contends that Staff erred when it claimed that Qwest used different growth rates for switch ports and vendor discounts. Qwest represents that the different growth rates identified by Staff reflect the different growth rates used in the switching and loop modules. Qwest maintains that this difference is appropriate because switches and distribution loops have different economic depreciation lives and different usage growth rates. Qwest Reply Brief at pp. 32-33.

### **Recommendation**

MCI is the only party to explicitly advocate that line growth be completely eliminated from consideration when calculating switching costs in this proceeding.

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<sup>118</sup> Qwest cites Staff Exhibit 8, Ankum Direct, at pp. 63-65.

MCI's position is based on the assumption that TELRIC does not allow for consideration of future demand. The Hearing Examiner rejects this argument; because as Qwest argues, it is inconsistent with the findings of the FCC and the D.C. Circuit Court.

Although the record indicates that current New Mexico line growth is in fact negative, the Hearing Examiner finds that it is unreasonable to expect this trend to continue indefinitely into the future. Moreover, even in the face of negative line growth, the Hearing Examiner finds it reasonable to assume some level of line growth when estimating UNE switching rates. For example, population sprawl and customer churn will require Qwest to add switch ports to meet service quality obligations because these facilities are not perfectly fungible. Thus, the Hearing Examiner recommends that the Commission require Qwest to assume a net switch line growth of 1% for the purpose of estimating switching investment and costs in this proceeding. The growth rate the Hearing Examiner recommends is lower than the rate proposed by Qwest due to Qwest's information that existing line counts are falling and Qwest appears to be "forecasting" an average loss in the near term; a position Qwest has elaborated on in other proceedings before the Commission.<sup>119</sup>

Having already recommended that the Commission include the cost of growth lines in the calculation of UNE switching rates these costs must be added to the switching cost estimates produced by HAI. Given that Qwest is the only party on record to provide these calculations the Hearing Examiner recommends that the Commission add to HAI's switching cost estimates the growth line additive proposed by Qwest.

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<sup>119</sup> Qwest 271 arguments in Case No's 3269, et al.



However, Qwest should be required to show that it has made these calculations in a manner that is consistent with both the recommendations in this order and the methodology employed in Exhibit TKM-5REB.

**e. Billing Costs**

According to Qwest, both MCI and Staff ignore the cost of the centralized polling equipment required to collect the measurements from the switches, billing costs, and collection costs for switch usage; costs that Qwest claims it is entitled to recover. Further, Qwest contends that Staff's witness, Dr. Ankum, acknowledged that even under his flat rated switching proposal, Qwest still would have to measure and bill for the switch usage associated with shared transport.<sup>120</sup> Qwest Brief at p. 54.

Staff maintains that Qwest misinterpreted the testimony of Dr Ankum regarding the costs associated with measuring equipment. Staff claims that while Dr. Ankum testified that Qwest should be allowed to recover those costs, he in no way testified that this should be done on a per MOU basis as alleged by Qwest. Staff suggests that the costs associated with billing are already included in the per line cost of the switch in Qwest's contracts, and in Staff's flat rated switching proposal, thus, separate consideration of these costs on a per MOU basis is unnecessary. Staff Reply Brief at pp. 15-16.

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<sup>120</sup> Qwest cites TR Day 7 at pp. 159-60.

## **Recommendation**

While this topic is largely ignored by MCI in its post hearing briefs, it appears Staff agrees that the costs associated with billing should be included in the UNE cost estimates. However, Staff first maintains that separate consideration of these costs is unnecessary because they are already included in Staff's flat rated switching proposal. Secondly, Staff goes on to argue that a usage sensitive rate structure for billing related costs is inappropriate even if billing related costs are incurred in association with shared transport, a network element which Staff agrees should have a usage sensitive rate structure. Having already addressed Staff's first argument by recommending that the Commission reject the "flat rated only" rate structure for UNE switching, the Hearing Examiner will now address Staff's remaining argument.

Consistent with the reasoning supporting the rejection of the flat rated only rate structure for UNE switching the Hearing Examiner recommends that the Commission accept Qwest's proposal to include billing related costs in its calculation of the usage sensitive rates for UNE switching. The record indicates that even if a flat rated only rate structure was adopted for UNE switching it is still necessary to measure and bill for usage regarding shared transport. Thus, the Hearing Examiner finds that it is appropriate for Qwest to include these costs in its calculations.

Having already recommended that the Commission include the cost of billing equipment in the calculation of UNE switching rates these costs must be added to the switching cost estimates produced by HAI. Given that Qwest is the only party on record to provide these calculations the Hearing Examiner recommends that the Commission

add to HAI's switching cost estimates the level of billing expenses proposed by Qwest. Qwest should be required to show that it has made these calculations in a manner that is consistent with both the recommendations in this order and the methodology employed in Exhibit TKM-5REB.

**f. Features**

According to Qwest, HAI does not capture Qwest's capitalized lease costs associated with the right-to-use fees Qwest pays for the additional software needed to provision vertical features in the switch in either its switching investment or its expense factors. Qwest maintains that these are necessary costs that any efficient carrier must incur to provide switching; and HAI's failure to include these costs would improperly deny Qwest compensation for a cost it must incur to provide the switching UNE. Qwest Brief at p. 55.

Staff claims that it included the costs associated with vertical features in its flat rated only switching rate structure. Staff Brief at p. 86. MCI did not address this issue separately in its brief, as it appears that these costs are included in its proposed flat rate port charges.

**Recommendation**

Qwest claims that the cost of the right-to-use fees it pays for the software necessary to provision vertical features in the switch are not represented in the investment calculations used in SCM or in Qwest's expense factors because of changes

in accounting practices.<sup>121</sup> Thus, Qwest has provided separate calculations to estimate these costs. The Hearing Examiner finds Qwest's proposal reasonable and recommends that the Commission approve Qwest's proposal to include the cost of software right-to-use fees in the cost of the switch port.

Having already recommended that the Commission include the cost of the right-to-use fees Qwest pays for the software necessary to provision vertical features in the calculation of UNE switching rates these costs must be added to the switching cost estimates produced by HAI. Given that Qwest is the only party on record to provide these calculations the Hearing Examiner recommends that the Commission add to HAI's switching cost estimates the level of features expenses proposed by Qwest. Qwest should be required to show that it has made these calculations in a manner that is consistent with both the recommendations in this order and the methodology employed in Exhibit TKM-5REB.

**g. AMA Expenses**

AMA or automatic message accounting is a service feature that automatically records data regarding user-dialed calls.<sup>122</sup> According to Qwest, Staff inappropriately eliminates all usage-based charges from Qwest's switching rates, including AMA expenses. Qwest claims that although Staff's witness argued that measurement costs are not necessary with a flat-rated switch port, he admitted that even with flat rated switching Qwest still must measure calls and provide billing records for certain

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<sup>121</sup> Qwest Exhibit 8, Million Rebuttal, at pp. 85-86.

<sup>122</sup> Federal Standard 1037C Glossary of Telco Terms, available at <http://www.its.bldrdoc.gov/fs-1037/>

products.<sup>123</sup> Thus, even under what Qwest believes is Staff's flawed flat rated switching proposal, Qwest claims it must be permitted to recover the AMA costs it will incur. Qwest Brief at p. 55.

Staff believes that separate consideration of AMA expenses is inappropriate for two reasons: first, because it is no longer appropriate to measure switch usage associated with a monthly flat-rated port; and secondly, AMA investments are already included in the per line switch prices. Staff agrees that Qwest must measure calls so that it can provide billing records to the CLECs to bill their customers, but Staff claims there is a separate DUF (daily usage feed) charge for that type of measuring. Staff claims that AMA activities are exclusively for Qwest's own purposes so that it is able to bill CLECs. Furthermore, Staff maintains that the AMA investments are already included in the per line prices under current contracts. According to Staff, AMA investments are already included in the per line price, so Staff asserts that including the AMA expenses again in the switching cost study would be tantamount to a double count. Staff Brief at pp. 86-87.

### **Recommendation**

Consistent with the previous recommendations in this recommended decision regarding billing costs and the rate structure for UNE switching, the Hearing Examiner recommends that the Commission approve Qwest's proposal to include AMA expenses in the usage sensitive cost estimates for switching. The Hearing Examiner finds

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<sup>123</sup> TR Day 7 at pp.159-160.

credible Qwest's argument that it is necessary to measure switch usage in order to accurately bill CLECs for the UNEs they use to provide various services. Additionally, Staff's argument in support of excluding such costs relies predominantly on the assumption that the Commission will adopt a flat rated switching rate structure. Inasmuch as this proposal has been previously rejected by the Hearing Examiner, there is little support for its arguments here. Furthermore, the record indicates that even with a flat rated only rate structure for switching all AMA costs are not avoided.<sup>124</sup>

However, the Hearing Examiner recommends that Qwest be required to show in a compliance filing that the AMA costs it seeks to include in the usage sensitive switching rates established in this docket are not already being recovered in the DUF rates previously approved by this Commission.

#### **h. SS7 Expenses**

Qwest proposes to include the cost of providing Signaling System No. 7 ("SS7") in the usage sensitive rate for UNE switching.<sup>125</sup> Staff contends that SS7 costs should not be recovered on a usage sensitive basis or as part of the monthly flat-rated switch port. Staff claims that SS7 costs are incurred only when calls are made that require some form of transport so these costs are most appropriately recovered as part of shared and common transport. Staff Brief at p. 87.

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<sup>124</sup> *Id.*

<sup>125</sup> SS7 is a common channel signaling system in which a single channel conveys signaling information relating to multiple circuits or calls and other information, such as that used for network management.

Qwest argues that the Commission should reject Staff's position for two reasons. First, Qwest claims it is required by the FCC to provide CLECs with access to its SS7 network as part of the switching UNE. Thus, SS7 is clearly integrated with the switching UNE, and SS7 costs are properly recovered through switching rates. Qwest also contends that Staff's proposal to shift these costs to a per minute of use transport rate is directly related to its proposal to eliminate a per minute of usage rate for switching but that since it is appropriate to continue with a per minute of use rate for switching, there is no need to move the SS7 costs to transport. Qwest Reply Brief at pp. 34-35.

MCI did not address this issue separately in its post hearing briefs.

### **Recommendation**

Staff's position regarding the rate structure for SS7 is based in large part on its flat rated only UNE switching proposal and based upon its assertion that SS7 costs are incurred only when calls are made that require some form of transport. Regardless of the switching rate structure ultimately adopted by the Commission, the record indicates that SS7 is in fact necessary to provide Caller Number Identification on calls that do not require transport. Thus, the Hearing Examiner recommends that the Commission reject Staff's arguments and adopt Qwest's proposed treatment of SS7 costs as filed.<sup>126</sup>

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<sup>126</sup> TR Day 3 at p. 169.

## C. Recurring Rates for Transport

### 1. Dedicated Transport

Qwest claims to have proposed separate rates for UDIT and Extended UDIT ("E-UDIT") because E-UDIT has lower traffic densities than UDIT and requires electronics that more closely resemble those used to provision a high capacity loop than transport. Qwest Brief at p. 21.

#### Recommendation

Although Qwest represents that it has proposed separate rates for UDIT and E-UDIT, it has in fact proposed a single weighted average rate based on the facilities it assumes necessary to provide each portion of this UNE.<sup>127</sup> Previously, in the Group 4 Order,<sup>128</sup> this Commission ordered Qwest to eliminate the distinction between E-UDIT and UDIT so that these two dedicated transport link arrangements could be treated as a single UNE. However, the Commission also afforded Qwest the ability to present evidence in this docket that might lead to an adjustment of UDIT/E-UDIT rates to reflect the difference in the cost of service, assuming such a showing could be made.

While Qwest's arguments regarding this issue appear to be inconsistent with respect to the appropriate rate structure (i.e. separate rates for UDIT and E-UDIT vs. a single rate based on a weighted average of UDIT and E-UDIT cost estimates), the

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<sup>127</sup> See TR. Day 2 at p. 43 and Exhibit TKM-1B Supplemental.

<sup>128</sup> Order Regarding Facilitator's Report On Checklist Item 2 (Access To Unbundled Network Elements), Checklist Item 4 (Access To Unbundled Loops), Checklist Item 5 (Access To Unbundled Local Transport) And Checklist Item 6 (Access To Unbundled Local Switching) (Group 4 Order) (Nov. 20, 2001) at pp. 69, 210.



record indicates that Qwest's proposal is reasonable and consistent with the previous decision of this Commission. The Hearing Examiner finds that Qwest has adequately justified the distinction between the network components necessary to provide UDIT and E-UDIT and their associated costs. As such, the Hearing Examiner recommends that the Commission approve Qwest's proposal as filed.<sup>129</sup>

## **2. Shared Transport**

Qwest asserts that its shared transport cost proposal is based on efficient forward-looking assumptions, as evidenced by the fact that the shared transport cost it supports is less than the HAI estimate for this element. Qwest Brief at p. 55.

### **Recommendation**

No party challenged Qwest's shared transport cost study or the resulting cost estimates. Based upon her review of the evidence presented by Qwest, the Hearing Examiner recommends that the Commission approve Qwest's shared transport proposal as filed.

## **D. Recurring Rates for High Capacity Loops**

In estimating the cost for high capacity loops, Qwest claims to have employed the same methodology as it used within LoopMod. According to Qwest, its cost estimates include investment for the digital transmission paths that transport, for

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<sup>129</sup> The Hearing Examiner also notes that no party disputed Qwest's inputs or the manner in which these costs were estimated. Furthermore, as noted by Qwest, HAI produces transport costs that are higher than the costs that ICM calculates. See Qwest Brief at p. 22.

example, DS1 and DS3 signals between Qwest wire centers and customer locations. Qwest asserts that no party submitted evidence challenging Qwest's calculations of the costs of high capacity loops. Qwest Brief at p. 56.

### **Recommendation**

Qwest is correct that no party challenged the cost estimates it proposed for recurring rates for high capacity loops. However, whereas this recommended decision recommends changes to various inputs to Qwest's loop model (LoopMod) these changes should also be reflected in Qwest's high capacity loop model. Specifically, the Hearing Examiner recommends that the Commission require Qwest to modify its high capacity loop model to be consistent with the structure sharing and placement cost inputs previously recommended for LoopMod.

### **V. Non-recurring Rates - Methodologies, Inputs and Assumptions**

Qwest's non-recurring cost model (ENRC), is designed to estimate the one-time, non-recurring costs (NRCs) associated with establishing a service or providing a UNE through the following process. First, the one-time activities Qwest believes necessary to establish a particular service are identified. Second, Subject Matter Experts ("SMEs"), including engineers and product managers who are responsible for performing the tasks and overseeing the products and services at issue are consulted to estimate the work-time associated with each of the one-time activities and the probability that each activity will occur. Third, labor rates are matched to the personnel performing each work activity. These labor rates, together with the work times and

probabilities are loaded into the model to develop Qwest's proposed direct NRC for each activity. Fourth, the NRC estimates for each activity are aggregated into a direct NRC for each unbundled network element. Next, annual cost factors are applied to the direct costs in order to assign additional and administrative costs to the direct NRC, resulting in Qwest's proposed nonrecurring TELRIC. Finally, Qwest allocates a share of common costs to each element. Qwest Brief at p. 56.

Staff's general criticism of Qwest's NRC study is threefold. First, Staff claims that Qwest's study is poorly supported and unverifiable because it relies chiefly upon SMEs for inputs instead of verifiable time and motion studies. Second, Staff claims that Qwest's study is not forward looking, and thus, fails to comply with TELRIC, because it is based on Qwest's current systems and practices rather than the most efficient technology available. Third, Staff claims that Qwest assumes too many work items and excessive work times to perform various tasks.

Staff asserts that Qwest's critique of Staff's expert testimony is equally applicable to Qwest's own expert opinion. Thus, given that Qwest controls all cost data, employs the experts it relied upon, and has an incentive to inflate NRCs, Staff believes that the Commission should find that Qwest has not satisfied its burden of proof. Staff recommends the Commission require that time and motion studies be conducted, or alternatively, that Qwest create a suitable benchmark for findings of other time and motion studies to determine NRCs in New Mexico. Staff Brief at p. 89.

In its post hearing briefs, MCI does not address the nonrecurring rates at issue in this proceeding. The individual arguments posed by Qwest and Staff are discussed in greater detail below.

**A. Ordering and Provisioning**

Staff maintains that while Qwest does an adequate job in explaining the processes it uses to arrive at its ordering and provisioning work time estimates, the self-referential list of tasks is not documentation, rather, it is merely a description of work allegedly undertaken by Qwest employees that does not allow for independent verification of the accuracy of the assumptions, or the times assigned to a particular task. Staff Brief at p. 90.

**1. Flow-Through and Mechanization**

Qwest claims that it has significantly changed its flow-through and mechanization assumptions since the prior New Mexico cost docket, and as a result, Qwest used the 85% and 60% flow-through rates established in Section 271 proceedings for certain UNEs even though Qwest is actually achieving flow-through below these levels. Qwest Brief at p. 58 and Qwest Reply Brief at p. 36.

According to Qwest, Staff claims that the ENRC assumes too many manual activities, either because Qwest does not have enough mechanization or because activities handled through computerized systems "fall out" into the manual process too frequently. However, Qwest claims that Staff fails to understand that Qwest only includes manual activity for certain tasks for a small percentage of orders that either fall

out or cannot be resolved via the computer systems. Qwest asserts that it assumes most orders do not include these tasks because they are handled through computerized systems and, therefore, the ENRC includes very little cost for manual activities.<sup>130</sup>

Staff contends that Qwest's reference to the "small percentage of orders that either fall out or cannot be resolved via the computer system" is a misrepresentation of the number of orders that flow through. As an example Staff refers to DS1 ENTRANCE FACILITY, work items for DESIGN, which indicates two items at only 5% manual intervention, followed by five items from a low manual intervention of 20% to a high of 100%.

Staff also argues that Qwest's NRC study is based on an inefficient Operational Support Services ("OSS") because much of the manual activity included in Qwest's cost study involve people running computers to enter or transfer data from one program to another. Staff believes such assumptions should be rejected because they deny the capability of modern integrated computer systems such as those used by airlines and Internet retailers. Staff believes that its witness provided ample discussion of how work order mechanization will increase efficiency and decrease costs, and which systems are currently available to do this.<sup>131</sup> Staff Brief at pp. 90-91 and Staff Reply Brief at pp. 22-23.

Qwest claims that the software packages recommended by Staff do a poor job of running the OSS for many CLECs. Qwest argues that use of this technology is not

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<sup>130</sup> Qwest cites Qwest Responses to Staff Witness Morrison's Answers to Bench Requests.

<sup>131</sup> Staff cites Staff Exhibit 11, Morrison Direct Testimony, Ins. 520-677.

appropriate for a TELRIC estimate of the cost of serving all existing demand because there is no evidence in the record that any software exists that can provide the level of flow through or mechanization that Staff proposes. Qwest Brief at p. 57-58.

## 2. Fall-out

"Fall-out" is when a problem occurs that causes Qwest's OSS to reject an order. When this happens manual intervention is required to complete the order, which is more cost causative than a fully automated process. Staff Brief at p. 92. Staff argues that Qwest's approach to fall-out is not forward looking and unnecessarily drives costs up because it assumes too large of a percentage of orders fall-out at too many points within the process. *Id.*

Staff recommends that the Commission require Qwest to apply a 2% fallout rate once to the entire end-to-end ordering and provisioning process. Staff claims that applying a 2% fall-out rate only once to the entire ordering and provisioning process reflects forward looking quality/cost efficiencies which are reasonable to expect from a progressive company focused on forward looking process improvements. This assertion is based in large part on comments attributed to Elizabeth Ham, a Southwestern Bell (SBC) employee, who described how SBC improved its EASE (Easy Access Sales Environment) OSS to 99% flow through capability.<sup>132</sup> Staff contends that SBC's experience demonstrates the type of flow through that can be achieved via

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<sup>132</sup> "Our consumer EASE product permits a 99% flow through of all service orders that are entered by all residential or customer retail operations. We would expect the same flow through from a trained CLEC service rep." Morrison Direct at p. 26. Ms. Ham's comments were made during an Operations Support Systems Forum convened by the FCC Common Carrier Bureau on May 28 and 29, 1997.

currently available technology and processes. Staff's proposal also relies on the assumption that automated distributing frames eliminate the need for manual provisioning of most cross connects. Morrison Direct at p. 26.

Staff argues that fallout must be viewed in the context of the total provisioning processes rather than viewing process steps individually because viewing steps individually compounds the rate of failure for the business processes. To demonstrate its point Staff's witness provides an example where two parties that agree that a 10% fallout rate is acceptable in provisioning a network element. The first party applies 10% to 100 provisioning orders with 10 work steps each and creates 100 additional expense work item computations. The second party applies a 10% fallout rate once to provisioning the network element, which results in only 10 expense work item computations. Staff believes that the former methodology is inefficient because the cost for 100 additional work item computations would greatly exceed the cost of 10 expense work item computations. Morrison Direct at p. 29.

Qwest contends that Staff's proposal is unrealistic and not supported by the record. For example, Qwest argues that Staff's alleged support for a 2% fall-out rate is flawed because SBC's EASE system can only be used for resale, which only requires a billing transfer for existing ILEC services, and not UNEs, which requires activity to connect an unbundled loop to a collocation area. Further, Qwest maintains that the automated distributing frames referenced by Staff do not work with Qwest's current

systems, do not satisfy DS1 circuit requirements, and failed Qwest's field trials.<sup>133</sup> Thus, Qwest argues it is unreasonable to assume the use of these technologies in its cost study. Qwest Brief at p. 59.

Qwest argues that its fall-out rate methodology does not compound the rate of failure for processes. Qwest claims it merely recognizes that each work center involved in the provisioning process will have its own levels of flow-through and/or fall-out, and that each center performs a function that is separate and distinct from the other centers.<sup>134</sup>

Staff maintains that if SMART MDF's do not work with Qwest systems, then Qwest systems are not forward-looking. Staff avers that automatic distributing frames are a reality, and are designed to integrate with forward-looking OSS, which have the ability to integrate with legacy systems as well. According to Staff, this means that the argument that SMART MDF's or other ADF technology will not work with Qwest systems must be rejected. Staff Reply Brief at p. 25.

#### **B. and C. Task Times and Verification of Data**

Qwest asserts that its SMEs have the best knowledge of the task time inputs for a cost model based on their actual experience in performing the tasks that form the basis of the inputs. Qwest claims that its time estimates are trended forward 12-18 months to account for likely improvements by an efficient carrier based on the SME's

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<sup>133</sup> Qwest Exhibit 16, Pappas Rebuttal, at p. 18.

<sup>134</sup> Qwest Exhibit 8, Million Rebuttal, at p. 26.



knowledge of planned and possible improvements in the ways that various tasks are performed. Qwest Brief at p. 60.

Staff testified that Qwest's task times associated with provisioning many unbundled elements are overstated by fifty percent or more. As such, Staff recommended a number of alternative task times to be used in Qwest's model. Staff's alternate inputs reflect its position regarding the design and flow through capabilities of an efficient OSS, and Staff's position that Qwest should not be compensated for excessive work times associated with verification and validation of data. Staff Exhibit 11, Morrison Direct at p. 7 and Staff Exhibit 16, Morrison CD of Qwest's NRC-6411.

Qwest claims there is no justification for Staff's proposed work time reductions except for the unsupported opinion of Staff's witness that there was duplication of effort and a lack of mechanization. Qwest recommends that the Commission reject these proposed reductions. Qwest Brief at p. 62.

Staff notes that this is an area where the dueling experts problem is particularly acute because Qwest says it takes "x" minutes to perform a task, Staff's witness says "no, it take x minus 3 minutes to do the task", and the Commission is left having to decide who is right. According to Staff, given that it is Qwest that controls the data, Qwest that receives the CLEC orders and Qwest employees that perform the tasks, the Commission has no alternative but to adopt the time recommendations made by Staff's expert witness. In cases such as this, where a party has not met the burden of proof imposed by law, Staff believes the Commission should find against the party making the unsupported assertion. Staff Brief at p. 94. Additionally, as noted above, Staff

recommends that the Commission order Qwest to perform time and motion studies to accurately ascertain task times. Staff Brief at p. 95.

Qwest argues that a time and motion study can only cover existing processes used by an efficient carrier today, and even then, the study would still have to be revised by SMEs to account for likely improvements in technology and work processes. Thus, Qwest maintains it is more effective to use SME estimates from the beginning. Qwest Brief at p. 60.

### **Recommendation**

Qwest maintains that it relied on the actual experience of its SMEs and systems as the basis for its NRC estimates. Qwest insists that its model is efficient and forward-looking because it includes process and system improvements that it expects will be implemented in the next 12-18 months. Alternatively, Staff believes that Qwest's NRC study reflects the embedded cost of providing interconnection and UNEs based on an outdated OSS, not the most efficient forward-looking OSS required by TELRIC principles. Staff's remedy calls for significant adjustments to various work time estimates and significant increases in the flow through capabilities of the end-to-end ordering and provisioning process.

These conflicting opinions represent a fundamental difference in approaches to TELRIC costing principles. Recently, when faced with the same question, the FCC elected to establish NRCs based on a model supported by AT&T and WorldCom

(currently MCI), which is arguably analogous to Staff's position in this proceeding. The FCC found AT&T/WorldCom's NRC model superior to Verizon's because it:

"... [met] the TELRIC requirement of optimization constrained only by current switching locations. In contrast, Verizon's model is not based on an optimization constrained only by current switching locations. Rather, it is tied to existing processes and the existing network. Furthermore, it is not evident that the "forward-looking adjustment factors" proposed by Verizon are sufficient to bring the model within TELRIC standards. To the contrary, the ground rules for these adjustments seemed to preclude such adjustments, focusing only on expected improvements in performing a particular sub-task, not on the possibility of entirely new procedures based on an alternative, more efficient, currently available, technology."<sup>135</sup>

Although parallels exist between the arguments presented to the FCC and those before this Commission, the record does not support a comparable solution because Staff, the only other party to address NRC issues in this proceeding, has proposed adjustments to the inputs of Qwest's study, rather than an alternative model that estimates NRCs in a "bottom up" fashion. However, the FCC's conclusion does suggest that significant adjustments will be required of the inputs used in Qwest's model in order to make the resulting NRCs reflect TELRIC pricing principles.

The estimation of NRCs in this proceeding has been made unduly difficult because of the parties' universal reliance on the unsupported opinions of SMEs for model inputs. As Staff observed, this puts the Commission in the difficult position of having to choose which of the "dueling experts" is correct. Qwest maintains that its experts' opinions should be given the most weight because they actually perform the tasks in question. Conversely, Staff argues that the Commission has no alternative but

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<sup>135</sup> DA 03-2738 "Virginia Order" at para 567.

to adopt the recommendations made by Staff's expert witness because Qwest has not met its burden of proof.<sup>136</sup> Neither of these proposals is truly adequate because it requires the Commission to accept the opinion of either Qwest's or Staff's expert at face value, without any form of validation.

Concerns associated with validating expert opinions are not a new issue for this Commission, for example:

"...Validation of the opinion of these experts is difficult, and U S WEST provided no clear method to use for validating the numbers. The Commission has previously expressed the importance of being able to validate an expert's opinion. In the AT&T/GTE Arbitration, the Commission stated that "[t]here is a need for parties to be able to validate the assumptions that are used within a cost study...For, as GTE testified, reliance on expert opinion, that is difficult to validate, can lead to 'all sorts of errors.'" ...<sup>137</sup>

In this proceeding no party has provided evidence that could be used for validating SME inputs. Staff maintains that time and motion studies are the answer. Qwest suggests that the Commission should consider Qwest's real world experiences and historic data as a reality check. However, Qwest did not provide any historic data capable of supporting its NRC work time estimates.

Therefore, while it is ultimately Qwest's burden to demonstrate that the costs it seeks to recover are cost-based, reasonable, and nondiscriminatory, the Hearing

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<sup>136</sup> At p. 36 of its Brief Staff notes that "[i]ncumbent 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." *Local Competition First Report and Order*, at para. 680.

<sup>137</sup> 96-310-TC at paras. 72-73.

Examiner recommends that the Commission reject both Qwest's and Staff's inputs for lack of support.<sup>138</sup>

Without a source of verifiable data the Commission has no choice but to make a very difficult judgment call regarding how to adjust the inputs to Qwest's model so that the resulting rates sufficiently address TELRIC principles.<sup>139</sup> When faced with a similar decision in Washington, the WUTC ordered Qwest to reduce the majority of its work time estimates by a fixed percentage.<sup>140</sup> Having reviewed the record, and the WUTC's decision, the Hearing Examiner finds that this approach is reasonable and recommends that the Commission require Qwest to reduce the work time estimates in its NRC study by 30% across the board except where explicitly approved or adjusted in this decision.

The WUTC justified the magnitude of this composite reduction based on a review of the supporting documentation for Qwest's NRC studies, the arguments of interested parties, and because Qwest failed to demonstrate how efficiency gains have been properly accounted for in its study.<sup>141</sup> The Hearing Examiner finds similarities in this proceeding. Most notably, the Hearing Examiner finds that Qwest has failed to show

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<sup>138</sup> Staff suggested that the Commission accept its alternative inputs by default. The Hearing Examiner does not find this to be an acceptable solution because Staff's adjustments are just as unsupported and speculative as Qwest's, and Staff's testimony only addresses a limited number of Qwest's proposed inputs.

<sup>139</sup> Daubert v. Merrell Dow Pharmaceuticals, Inc., 113 S.Ct. 2786 (1993). The Supreme Court in Daubert focused on the methodology used by experts to arrive at their conclusions, and emphasized the responsibility of the courts to ensure that the proffered evidence is valid and has been tested. The Court determined that expert opinions which have not been validated should not be considered.

<sup>140</sup> The WUTC noted that the 30% reduction would not apply to inputs that were the direct result of previous WUTC Orders. 41<sup>st</sup> Supplemental Order at para 62.

<sup>141</sup> See 41<sup>st</sup> Supplemental Order at paras 62-63.

how productivity improvements have been reflected in its cost study.<sup>142</sup> Although Qwest claims its SME inputs are forward looking and continuously updated, there is little evidence to support these assertions. In fact, the record indicates that no written instructions were provided to the SMEs regarding how to estimate the forward looking nature of their responses. The manner in which these inputs were collected is predominantly oral and completely undocumented, and a number of inputs are older than the forward-looking component of the estimate claims to be.<sup>143</sup>

It could be argued that a composite adjustment is too blunt and imprecise to be relied upon. However, the Hearing Examiner finds that this argument is without merit, the sheer size of Qwest's NRC study requires such a remedy. It would be unduly burdensome for the Commission to individually identify and remedy the many problems created by Qwest's reliance on data that cannot be validated. Such a process could also result in the Commission being asked to individually defend hundreds of piecemeal adjustments made to Qwest's model to correct for Qwest's Model's fundamental flaws. The Hearing Examiner finds that this would be an inefficient use of the Commission's resources.

While Qwest is likely to argue that a composite work time reduction should not apply to rate elements that were unchallenged by parties, this argument must also be

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<sup>142</sup> See TR Day 2 at pp. 13-14.

<sup>143</sup> Qwest claims that its time estimates are trended forward 12-18 months to account for likely productivity improvements yet it appears that these estimates were last updated in 2001. Furthermore, because respondent's were instructed to assess the validity of previous processes and time estimates rather than start from scratch, the Hearing Examiner is concerned that the results are biased towards existing times and procedures. TR Day 1 at p. 57.

rejected.<sup>144</sup> There is no reason to assume that the assumptions underlying uncontested rate elements are more appropriate or benefit from greater evidentiary support than those rate elements contested by Staff. Qwest alone bears the burden of demonstrating that the costs it seeks to recover are cost-based, reasonable, and nondiscriminatory. The absence of a challenge from Staff or MCI does not change this fact, or suggest tacit approval of any costs. Moreover, the FCC's decision in the Virginia Order suggests that the composite reduction recommended in this decision is both necessary and likely conservative given the structure of Qwest's model.

Regarding fall-out, Staff claims that Qwest assumes excessive fall-out and manual intervention in the ordering and provisioning process. As a remedy, Staff proposes that the Commission require Qwest to assume a 2% fallout rate that should be applied once during the entire end-to-end ordering and provisioning process. The Hearing Examiner recommends that the Commission reject Staff's proposal for the following reasons. First, the record does not support Staff's argument, primarily because Staff failed to establish that the automated distribution frame systems, such as OKI's SMART-MDF and a similar system produced by Con-x, are currently available, and function as claimed.<sup>145</sup> Secondly, Qwest argued that the application of fallout rates to individual work steps is more accurate than estimating a composite value because it allows the Commission to evaluate the efficiencies reflected in the cost studies in greater detail. Qwest's argument is more persuasive.

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<sup>144</sup> The WUTC considered and rejected this argument at para 29 of the 44<sup>th</sup> Supplemental Order.

<sup>145</sup> Qwest Exhibit 16, Pappas Rebuttal Testimony, at pp. 19-20.

Finally, consistent with Staff's position and the decision of the WUTC,<sup>146</sup> the Hearing Examiner recommends that the Commission should require Qwest to perform time and motions studies so that the Commission and interested parties have a verifiable source of data for work times and processes upon which to establish NRCs going forward. The Hearing Examiner does not find any of Qwest's arguments in opposition of such studies persuasive.

The record indicates that Qwest is already in the preliminary stages of conducting time and motion studies to comply with an order issued by the WUTC, and that the results of these studies are applicable to Qwest's entire service territory. Furthermore, while Qwest is correct that time and motion studies would not eliminate all possible concerns with the resulting inputs, Qwest's witness conceded that these studies would at least provide a variety of verifiable data to start from.<sup>147</sup>

#### **D. Time Allowed for Testing Circuits**

Staff's witness proposes a 50% reduction to Qwest's work times for this task.<sup>148</sup> Staff claims this input is overstated because modern test equipment is capable of completing multiple tests with the touch of a button. Staff also argues that the amount of time assumed by Qwest may include time to clear faults. According to Staff, Qwest has the responsibility of doing the job correct the first time around and not charge time for clearing avoidable faults. Staff Reply Brief at pp. 28-29.

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<sup>146</sup> See 41st Supplemental Order at paras 66.

<sup>147</sup> TR Day 1 at p. 52.

<sup>148</sup> Staff Exhibit 13, p. 132.



According to Qwest the estimates provided by its employees with actual experience in the testing process are reliable indicators of the time required for tests and should be adopted instead of Staff's speculative modifications. Qwest maintains that it provided detailed backup that includes estimates for each task time for every nonrecurring charge, which in many cases, includes the name of the person or persons providing the estimate, performing the work, or supervising the people who perform the work. Qwest contends that Staff's witness simply reduces all time estimates by half while providing no backup to justify this position. [Qwest Brief at p. 63-64; Million Rebuttal at p. 32.

### **Recommendation**

In sum, Qwest asks the Commission to accept the opinions of its SMEs at face value because they actually perform this task. Qwest argues that the 50% reduction in work time proposed by Staff is somehow more arbitrary than Qwest's original and similarly unsupported proposal. The Hearing Examiner recommends that the Commission reject Qwest's argument and find that Qwest fails to provide the necessary support for its proposal. Thus, Qwest should be required to reduce the work time estimates for this element by 30 percent for the reasons stated above in Section V.B. and C.

### **E. Loop Installations**

Qwest argues that the Commission should reject Staff's proposed time reductions for loop installations and accept the Qwest time estimates that are based on

the experience and opinions of the SMEs who perform these installations. Qwest Brief at p. 64. No other party addressed this issue.

### **Recommendation**

Although no party challenged Qwest on this issue, the Hearing Examiner recommends that the Commission find that Qwest has failed to provide the necessary support for its proposal. Qwest should be required to reduce the work time estimates for this element by 30 percent for the reasons stated above in Section V.B and C.

### **F. Loop Conditioning**

Qwest proposes a charge of \$652.83 for removing up to 25 load coils and bridge taps from a specified loop route. The rate is based on SME work time estimates for traveling to the location of the load coil or bridge tap, the time needed for work site set-up and break down, and the time needed to condition the line. Qwest claims the cost of line conditioning is the same for 1 or up to 25 load coils because the additional time required to unload the additional 24 loops in a binder group is minimal once Qwest has incurred travel and set-up time. Qwest maintains that the FCC has established that an ILEC can recover the cost of loop conditioning in its First Report and Order where it stated that the "requesting carrier would . . . bear the cost of compensating the

incumbent LEC for [loop] conditioning."<sup>149</sup> Qwest avers that the FCC re-affirmed its position in the Third Report and Order.<sup>150</sup> Qwest Brief at p. 63-64.

Staff argues that expenses associated with removing load coils or bridged taps is at its very premise, contradictory to setting rates based upon TELRIC principles. According to Staff, these expenses are associated with "retrofitting" the existing, embedded network because a network design based upon the least cost, most efficient technology available would result in loop facilities that would include few if any load coils.

Staff contends that Qwest is selectively misquoting the FCC's directives regarding loop conditioning. Staff Brief at p. 97. Staff avers that the FCC does not require the establishment of NRCs for loop conditioning, rather, Staff argues that while FCC held open the possibility of nonrecurring charges for loop conditioning, it deferred the ultimate decision to state commissions to ensure that any such charges are consistent with the FCC's pricing rules for nonrecurring costs. Further, Staff maintains that the FCC's rules specifically require that any conditioning charges be based on forward-looking economic costs. Staff also cites 47 C.F.R. 51.507(e), which states that the sum of the recurring and nonrecurring costs for a given network element (in this case conditioned loops) cannot exceed total forward-looking economic costs. Taken together, Staff believes these rules preclude any nonrecurring conditioning charges for

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<sup>149</sup> *Local Competition First Report and Order* at paragraph 382.

<sup>150</sup> See Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238 paragraph 192 (rel. Nov. 5, 1999) ("*UNE Remand Order*").

Qwest because the network design assumptions in the company's recurring loop cost studies eliminate any need for such conditioning. Morrison Direct at p. 55.

Qwest agrees that a forward-looking loop design would not include the use of load coils for loops under 18 kilofeet, but claims nonetheless that the existing load coils serve valid purposes and, as noted above, the FCC has found that ILECs can recover the cost of removing them. Qwest avers that it offers CLECs the opportunity to realize the economies of scale of removing 25 load coils at a time. Qwest also maintains it does not recover these costs in the maintenance factor because the cost of removing load coils (upon a CLEC's request) is backed out of its maintenance factor calculations. Qwest Brief at p. 65.

Staff claims that Qwest's proposals are based entirely upon unverifiable SME estimates of the time required to remove load coils and bridge taps. Staff maintains that Qwest's task times are just too high and can be reduced dramatically by technicians with the right tools and experience. Staff Reply Brief at p. 29.

### **Recommendation**

Staff opposes Qwest's proposed loop conditioning NRC for three fundamental reasons. First, Staff argues that an NRC associated with loop conditioning is contrary to the FCC's TELRIC principles because a forward-looking network design would not contain devices like bridge taps and load coils which impede advanced services. The Hearing Examiner does not find this argument persuasive. While Staff is correct that a forward-looking network would contain few, if any, of these impediments, the FCC

specifically addressed this issue in both the *Local Competition First Report and Order* and the UNE Remand Order. In these orders the FCC found that requesting carrier should bear the cost of compensating the incumbent LEC for conditioning loops,<sup>151</sup> including those shorter than 18k feet.<sup>152</sup> Thus, the Hearing Examiner recommends the Commission give Staff's arguments no weight because establishing a NRC for loop conditioning is clearly not contrary to the FCC's pricing rules.

In dealing with this apparent paradox (i.e. forward-looking network design vs. load coils) the FCC recognized that the charges ILECs impose to condition loops represent sunk costs to CLECs that may constitute an entry barrier to offering xDSL services. For this reason the FCC deferred to state commissions the duty to ensure that the costs imposed on CLECs for line conditioning comply with the FCC's pricing rules for nonrecurring costs.<sup>153</sup>

Second, Staff argues that Qwest rate design proposal is flawed because Qwest seeks to recover the cost of conditioning as many as 25 loops from the first loop in a given binder group for which conditioning was requested. Although Staff did not address rate design in its post hearing briefs this topic is covered at great length in the testimony of its witness, Sidney Morrison.<sup>154</sup> In the event that the Commission approves a loop conditioning charge, Mr. Morrison argues that Qwest should assume that multiple loops are conditioned per request and that these costs be recovered on a

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<sup>151</sup> *Local Competition First Report and Order* at ¶ 382.

<sup>152</sup> UNE Remand Order at ¶ 193.

<sup>153</sup> UNE Remand Order at ¶ 194.

<sup>154</sup> Staff Exhibit 11, Morrison Direct at pp. 58-72.

per pair basis from all DSL capable loops ordered by a CLEC regardless of whether the particular loop ordered requires conditioning. The Hearing Examiner does not find Mr. Morrison's proposal to be acceptable because it fails to recover loop conditioning costs from the party that causes them. Loops are conditioned to allow for the provision of advanced services to a specific customer. The cost of removing bridge taps and load coils is a legitimate cost of doing business and should be paid for by the party for whom unloading or conditioning is performed.<sup>155</sup> Thus, the Hearing Examiner recommends that this Commission find that it is appropriate to recover these customer specific costs from the cost-causer. This recommendation is consistent with the findings of the WUTC.<sup>156</sup>

Furthermore, some of the assumptions contained in Mr. Morrison's testimony are overly speculative. Specifically, Mr. Morrison's justification for assuming that multiple loops can and will be conditioned with each de-loaded loop a CLEC requests requires significant leaps of faith regarding future demand, spare facilities, and loop lengths within a given binder group. The Hearing Examiner finds Qwest's arguments on these topics persuasive, and affirms her recommendation that the Commission reject Staff's rate design proposal.<sup>157</sup>

Finally, Staff argues that Qwest has overstated the true cost of conditioning loops by assuming excessive work times for various activities. As a remedy, Mr. Morrison

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<sup>155</sup> Qwest Exhibit 15, Pappas Rebuttal at p. 24, citing Multi-State Facilitator Unbundled Network Element Report at p. 40. This report can be found at <http://www.libertyconsultinggroup.com/WS3/UNE%20Report%208-20.doc>.

<sup>156</sup> WUTC 8th Supplemental Order at ¶ 155.

<sup>157</sup> See, Qwest Exhibit 15, Pappas Rebuttal, at pp. 26-29

proposed alternative work time estimates that are significantly lower than those supported by Qwest. Mr. Morrison claims that Qwest's propensity to overstate costs in New Mexico is evidenced by the fact that the line conditioning rate Qwest supports in New Mexico is higher than the rates that have been approved elsewhere in Qwest's service territory. Morrison Direct at p. 56. Qwest responds by stating that "[t]he fact that some of Qwest's states have awarded Qwest a lower rate for loop conditioning, does not mean that the rate Qwest sought in each state was not similar." Million Rebuttal at p. 42.

When analyzing this issue the WUTC found that Qwest's work time inputs were overstated based on a comparison of work time estimates for similar activities in different cost studies filed by Qwest (formerly US West). As a remedy the WUTC reduced Qwest's work time estimates by 25%. The WUTC also noted that Qwest's assumption of 3 hours of outside plant engineering was excessive given that the engineer's primary task was identifying the location of load coils to be removed. The WUTC ordered Qwest to re-file its study using 60 minutes of engineering time.<sup>158</sup> The loop conditioning study filed by Qwest in this proceeding is comparable to the study examined by the Washington Commission.

The Hearing Examiner recommends that the Commission find that Qwest has overstated its work time estimates and has failed to provide the necessary support for its proposal. Consistent with the decision of the WUTC, the Hearing Examiner recommends that Qwest be ordered to refile its study assuming 60 minutes of outside

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<sup>158</sup> WUTC 8<sup>th</sup> Supplemental Order at ¶¶ 149-151.

plant engineering. Qwest should be required to reduce all other work time estimates for this rate element by 30 percent for the reasons stated above in Section V.B. and C.

The alternative time estimates proposed by Mr. Morrison are unacceptable because they, like Qwest's original assumptions, lack support and likely understate the time necessary to condition loops.

## **VI. Expense Factors**

### **A. Qwest's Expense Factors Module**

To calculate expense factors Qwest's Expense Factors Module allegedly relies on expenses and investments pulled directly from standard accounting reports taken from Qwest's books. Qwest claims that the cost factors are based upon historical relationships, and all costs on Qwest's books are accounted for. Qwest also claims costs that are directly assigned to elements and costs that are not relevant to a TELRIC study were removed from the calculation of the factors. The module allegedly identifies the costs that have been removed to enable the user to audit fully the process for developing the factors. Qwest asserts that all of the calculations that go into the development of the factors are contained in one set of worksheets.<sup>159</sup> Qwest Brief at pp. 66.

According to Staff, Qwest proposes that the following factors be applied to the non-recurring costs: Marketing and Business Fees – 3.68%, Other Direct Expenses – 28.77%, and Common Factors - 4.45%, producing a total of 36.90%. Staff recommends

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<sup>159</sup> Qwest cites Qwest Exhibit 6, Million Supplemental Direct, at pp.26-27.



that Qwest use factors no higher than those approved in Washington for Directly Attributed Expenses and Common Costs. Staff Brief at pp 98-99.

Qwest contends that the cost factors employed to establish the costs of providing wholesale products and services in New Mexico should reflect costs specific to New Mexico, not costs specific to Washington or any other state. Qwest claims that while the methods the WUTC endorsed for developing cost factors are instructive, New Mexico-specific data should form the basis for the cost factors used in this case. Gude Rebuttal Testimony at p.17.

### **Recommendation**

The Hearing Examiner agrees with Qwest that while the methods the WUTC endorsed for developing cost factors are instructive, the expense factors adopted in this proceeding should strive to reflect costs specific to New Mexico. Thus, the Hearing Examiner recommends that the Commission reject Staff's proposal to limit the magnitude of Qwest's expense factors based on the values approved by the WUTC for use by Qwest in the State of Washington.

### **B. Method for Calculating Expenses**

Staff claims that Qwest inappropriately compounds its costs factors so while the total of all the factors is 36.90%, this compounding effect inflates the actual application of additional costs to the investment based costs by an additional 2.51% for a total of 39.41%.

Qwest maintains that the marketing and business fee, other direct expense, and common cost factors are designed to be applied cumulatively, meaning that the denominator of one factor is dependent on the numerator of the previous factor, thus reducing the sequentially calculated factors. For this reason, Qwest claims the costs resulting from these factors, therefore, are not "compounded" or inflated. Qwest Reply Brief at p. 40.

### **Recommendation**

Although Staff claims that Qwest's cost factors were improperly applied on a compounding basis Staff's argument is not supported by the record. Qwest's testimony indicates that these factors were designed to be applied cumulatively so that no compounding occurs.<sup>160</sup> Based upon the evidence in the record, the Hearing Examiner recommends the Commission accept this portion of Qwest's study as filed.

### **C. Marketing and Business Fees (including Product Management and Sales Expenses)**

According to Staff, when developing its NRC rates, Qwest applies factors to the Investment Based and Direct Costs to recover marketing and business fees as well as the other direct expenses. Staff argues that the recovery of these costs is inappropriate because Qwest should not have to provide for much, if any, product management or

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<sup>160</sup> See Qwest Exhibit 18, Gude Rebuttal Testimony, at pp. 15-16.

sales expense for recurring or non-recurring charges for wholesale services. Staff Brief at p.101.

Qwest maintains that the inclusion of these expenses is appropriate because it is required to support its wholesale offerings to CLECs. Qwest Brief at p. 68.

Staff contends that if it is appropriate to recover product management and sales costs, then Qwest should put forth a stand-alone study that specifically identifies these costs and maps them to specific wholesale elements. That is, Staff believes that Qwest should be required to prove why the same amount or percentage of sales and product management expense applies to a recurring charge for an unbundled loop as well as to a non-recurring charge to remove a load coil. Staff Brief at p.102.

Qwest contends that HAI improperly excludes product management and sales expenses. To serve CLECs properly, Qwest maintains that it must have employees that answer CLEC inquiries, assist in developing wholesale products, assist CLECs in processing orders, and serve on CLEC-specific account teams. Yet, according to Qwest, HAI does not allow for these costs in any quantifiable way. Qwest Brief at p.68.

MCI insists that product management and sales expenses are included in HAI through the application of its carrier to carrier customer operations factor. MCI Reply Brief at p. 20-21.

### **Recommendation**

Staff claims that Qwest should either exclude product management and sales expense, or, if the Commission concludes that it is appropriate to recover these expenses then Qwest should be required to provide a study that identifies and maps

expenses to specific wholesale elements. However, Staff fails to adequately quantify or explain why Qwest's current methodology is unreasonable. Additionally, the Hearing Examiner is not persuaded by Staff's argument that the recovery of these costs is inappropriate because Qwest should not have to provide for much, if any, product management or sales expense for wholesale services. Qwest demonstrated that these costs are necessarily incurred to provide its line of wholesale products.<sup>161</sup> Based upon the evidence, the Hearing Examiner recommends that the Commission approve this portion of Qwest's study as filed.

Although MCI contends that product management and sales expenses are included in HAI's carrier to carrier customer operations factor, the record indicates that Qwest is correct, HAI does not allow for these costs any quantifiable way.<sup>162</sup> Moreover, the amount MCI applies per line for this item appears to be unreasonably low. Thus, consistent with the testimony of Qwest Witness Gude, the Hearing Examiner recommends that MCI be required to include in HAI the level of product management and sales expense included by Qwest in its model.<sup>163</sup> Consequently, the Hearing Examiner recommends that MCI should be required to show the Commission where and how these costs have been explicitly included in HAI's cost estimates.

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<sup>161</sup> Qwest Exhibit 18, Gude Rebuttal, at pp.6-15.

<sup>162</sup> See Tr. Day 9 at p.129.

<sup>163</sup> See Qwest Exhibit 18, Gude Rebuttal, at p.67.

**D. Other Direct Expenses**

**Recommendation**

No party challenges Qwest's treatment of these expenses in this proceeding. Based upon her review of the record, the Hearing Examiner finds that there is sufficient evidence to support Qwest's expenses, and recommends that the Commission approve this portion of Qwest's study as filed.

**E. Common Costs**

**1. Overhead**

MCI asserts that HAI uses a 10.4% corporate overhead factor, based on AT&T's own overhead expenses. This factor allegedly represents a conservative estimate overhead costs that would be incurred by an efficient carrier operating a forward-looking network. MCI Brief at p. 33.

Qwest claims that MCI's proposed input is unsupported and inappropriate for use in this proceeding. According to Qwest, based on data from 2001, it would be appropriate to perform HAI runs in New Mexico with a corporate overhead factor in the range of 13.5 to 14.2 percent. Gude Rebuttal Testimony at p. 74.

## Recommendation

MCI failed to adequately support its proposed input. The Hearing Examiner finds the arguments presented by Qwest in opposition to MCI's proposal to be persuasive.<sup>164</sup> Further, consistent with the testimony of Qwest Witness Fitzsimmons, the Hearing Examiner recommends that the Commission require MCI to assume an overhead factor of 13.5% for use in this proceeding.<sup>165</sup>

### 2. Taxes

The HAI Model, as filed in New Mexico, uses a New Mexico-specific income tax rate of 39.94% and a New Mexico-specific Other Taxes factor of 3.36%. MCI Brief at p. 33.

Qwest claims that HAI improperly calculates Other Taxes. This error is allegedly caused by a factor methodology whereby the magnitude of Other Taxes fluctuates based on the level of "other operating expenses" HAI produces, even though Other Taxes are primarily property taxes. Qwest maintains that it is unreasonable to assume that changes to inputs, such as structure sharing, plant mix, placement costs, and general support assets, should impact the property taxes that Qwest will pay going forward. Qwest proposes that HAI be adjusted to reflect \$8.5 million of Other Taxes. Qwest Brief at pp. 69-70; Gude Rebuttal at pp. 75-79; and Fitzsimmons Rebuttal at pp. 47-48.

## Recommendation

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<sup>164</sup> See Qwest Exhibit 18, Gude Rebuttal, at pp. 67-74; and Qwest Exhibit 17, Fitzsimmons Rebuttal, at pp. 48-50.

<sup>165</sup> Qwest Exhibit 17, Fitzsimmons Rebuttal, at p. 50.

The record indicates that the methodology employed by HAI to calculate Other Taxes is improper. The Hearing Examiner finds that it is unreasonable to assume that Qwest's property taxes will fluctuate in the manner assumed by HAI. The Hearing Examiner finds Qwest's arguments to be persuasive, and based upon evidence in the record recommends that the Commission require MCI to adjust HAI to reflect the adjustment proposed by Qwest Witness Fitzsimmons.<sup>166</sup>

### **3. Current Cost to Booked Cost Conversions**

Staff contends that expense factors can be overstated in two primary ways. First, the numerator, maintenance expenses, can be overstated by not removing expenses that should be excluded from a forward-looking cost study. Staff argues that expenses incurred to maintain obsolete equipment such as analog switches should be excluded from a TELRIC study because this equipment is not forward-looking, least cost, nor most efficient. Staff claims that older vintage equipment typically costs more to maintain which inflates the amount of maintenance expense that would occur with a forward-looking network. Staff asserts that the second way a maintenance factor can be overstated is when the denominator, investment, is understated. Staff maintains that this can occur when the historical cost of investment is used in the expense-to-investment ratio because under the FCC's Uniform System of Accounts, the original cost of an asset purchased by a carrier is never adjusted to reflect the value of the asset in today's dollars.

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<sup>166</sup> See Qwest Exhibit 17, Fitzsimmons Rebuttal, at p. 48.

Staff claims the appropriate methodology for calculating maintenance expense factors in a forward-looking construct is one that determines forward-looking maintenance expense through a ratio of current expenses and current investment as opposed to historical investment. Staff suggests that current investment be determined by restating historic accounting balances using a current cost-to-book cost ("CC/BC") ratio.<sup>167</sup> Staff avers that these forward looking expense-to-investment ratios should then be multiplied within a given cost model by the model-derived investment to produce an estimate of forward-looking plant-specific operations expenses. Staff asserts that this methodology was first articulated by the FCC in its Inputs Further Notice<sup>168</sup> and then adopted in the USF Inputs Order.<sup>169</sup> Staff Brief at pp. 105-110.

Qwest contends that Staff's recommendation fails to acknowledge that the factors in both the Qwest model and HAI are a comparison of historical expenses and investments. Qwest notes that Staff's witness acknowledged that a TELRIC model would ideally include a comparison of TELRIC investments and expenses consistent with the network in the TELRIC model, but that creating such a model is simply too cumbersome.<sup>170</sup> For this reason Qwest claims that Staff agreed that a historical comparison is proper. Qwest maintains that changing the investments in the

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<sup>167</sup> The current cost, or CC amount, is the amount a company would spend to replace the existing technology with identical technology at current prices and placement costs for that technology. This is also referred to as "reproduction cost." Gude Rebuttal Testimony at p.18.

<sup>168</sup> Staff cites In the Matter of Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, Further Notice of Proposed Rulemaking, CC Docket Nos. 96-45 and 97-160 (released May 28, 1999), ("Inputs Further Notice"), ¶¶ 204 – 209.

<sup>169</sup> USF Inputs Order at ¶365.

<sup>170</sup> Qwest cites TR Day 7 at pp. 96-121.



denominator to reflect reproduction costs while leaving the expenses in the numerator as historical costs only serves to distort the expense factors, and understate actual expenses, especially when this factor is applied to TELRIC cost estimates. Qwest Brief at pp. 70.

Qwest claims that this occurs because the CC/BC-based "reproduction" investment level, which is used as the investment denominator, is typically significantly higher than the booked level of investment, and, thus, the resulting maintenance factor is less than if the booked investment amounts were used in the denominator. Qwest argues that this might be acceptable if the forward-looking "replacement" investment level (i.e., the TELRIC amount) to which the factor is applied were calculated using the CC/BC-based "reproduction" approach. However, Qwest claims that in a TELRIC study the amount of investment does not reflect CC/BC investment and, in fact, is usually less than the CC/BC investment. Thus, Qwest argues that the application of a maintenance factor based on CC/BC to TELRIC investment more significantly understates the maintenance expense amount than does using the actual booked investment. Gude Rebuttal Testimony at p. 21.

According to Staff, Qwest uses CC/BC ratios to restate investment used in calculating "Asset Related Expenses," known as asset related or secondary investment, but it chooses not to use CC/BC ratios for its other investment based factors. Staff recommends that Qwest be required to apply the CC/BC factors consistently. Staff Brief at p. 110.

Qwest argues that it is appropriate to use ratios in calculating secondary investments, such as Land, Buildings, Office Equipment, etc., because the CC/BC-adjusted secondary investment values used in calculating the secondary investment maintenance factors are the same investment values to which the maintenance factors are applied; thus, there is no mismatch between the investment amount used in the development of the factors and the investment to which the factors are applied. Gude Rebuttal Testimony at p. 30.

### **Recommendation**

Qwest argues that Staff's proposed CC/BC methodology is improper because it results in an understatement of Qwest's historical costs. Qwest's arguments here are identical to those considered and rejected by the FCC in the USF Inputs Order.

In the FCC's USF proceeding Qwest claimed that the CC/BC methodology was improper because it increased the mismatch between historic and forward-looking investment levels as a result of "reproduction" costs being different than "replacement" costs. However, the FCC rejected this argument, noting that "the differences between reproduction costs and replacement costs merely show that the mix of technologies has changed."<sup>171</sup> The FCC used the following hypothetical example to illustrate its point:

"If historic investment on a company's books consists of 100 miles of copper plant, at a cost of \$10 per mile, and 10 miles of fiber plant, at a cost of \$1 per mile, then the historic cost is \$1010. If current maintenance costs are \$10 for the copper plant and \$0.10 for the fiber plant, the total maintenance expense is \$10.10. If the price of copper increases to \$15 per mile and the price of fiber decreases to 80 cents per mile, then the

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<sup>171</sup> USF Inputs Order at ¶369.

reproduction costs would increase to \$1508. If the forward-looking model designs a network with 60 miles of copper and 50 miles of fiber, the resulting replacement cost is \$940. Using our methodology, we use the current-to-book ratios of 1.5 (\$15/\$10) and .8 (80 cents divided by \$1) to revalue the copper and fiber investment, respectively, at current prices, and the resulting maintenance expense for the forward-looking plant would be \$6.58 rather than \$10.10. This does not result in a mismatch. In our hypothetical example, the maintenance costs for fiber were substantially less on a per-mile basis than they were for copper. Thus, we would expect the forward-looking plant with considerably more fiber and less copper to have lower maintenance costs than the current plant, which has more copper" USF Inputs Order at ¶369 (footnotes omitted)

Although the FCC's example is hypothetical and designed to illustrate a specific point, the underlying theory remains sound. The Hearing Examiner does not find it unreasonable to assume that maintenance expenses for a TELRIC network, that is, a network based on forward-looking, least cost, most efficient design parameters would be less than Qwest's actual booked expenses.<sup>172</sup> Qwest's actual expenses are associated with the cost of its embedded facilities, including costs for maintaining facilities that do not comport with TELRIC's forward looking requirement, and in some cases, may arguably be obsolete. The Hearing Examiner finds Staff's testimony on this to be particularly persuasive.<sup>173</sup>

Moreover, when this issue was previously considered by this Commission it decided that:

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<sup>172</sup> For example, "...it is reasonable to weight these factors to reflect the fact that fiber requires less maintenance than copper cable." Qwest Exhibit 17, Fitzsimmons Rebuttal, at p. 42

<sup>173</sup> See, TR Day 7 at pp.119-121.

We agree with both the Attorney General and GTE that it is inappropriate to derive the maintenance expense factors as a ratio of current expenses divided by embedded investments.<sup>174</sup>

Qwest has failed to show why the methodology adopted by the FCC in the USF Inputs Order is inappropriate in this proceeding, or why this Commission should reverse its previous decision. Thus, the Hearing Examiner recommends that the Commission require Qwest to recalculate its maintenance expense factors after restating historic capital investment balances using the appropriate CC/BC ratio and submit the results of these calculations to the Commission as part of a compliance filing.

Although Qwest contends that the FCC made it very clear that the assumptions adopted in the USF Inputs Order should not be considered to be valid in the development of TELRIC prices,<sup>175</sup> Qwest's representation of the FCC's statements appears to be misleading. In the USF Inputs order, the FCC cautions the parties from making claims in other proceedings based upon the national input values it adopted. The Hearing Examiner concludes that the FCC's caution clearly does not bar the use of similar inputs in TELRIC proceedings, provided they are supported by the record, nor does it invalidate the assumptions or methodologies for use in other proceedings.<sup>176</sup>

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<sup>174</sup> See, GTE/AT&T Arbitration at ¶120.

<sup>175</sup> Qwest cites Tenth Report and Order, CC Docket Nos. 96-45 and 97-160, Released November, 2, 1999, at ¶32; and Memorandum Opinion and Order, In the Matter of Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLata Services in Vermont, CC Docket. 02-7, April 17, 2002, at ¶36.

<sup>176</sup> See USF Inputs Order at ¶32.

## **F. Maintenance Expense Factors**

### **1. Network Operations Expenses**

Qwest maintains that its network operations factor includes expenses associated with providing network administration, testing, plant operations, administration, and engineering. Qwest Brief at p. 71.

MCI states that HAI applies a 50% reduction to network operations expenses. This adjustment is allegedly designed to reflect certain cost savings that would result from the economically-efficient operation of a forward-looking telephone network.

According to MCI, in addition to capturing expense savings associated with deployment of forward-looking technology, reductions in network operations are also necessary to eliminate costs that are specific to retail operations that are not appropriately included in determining the cost of UNEs. MCI claims that two sub-accounts of the network operations account, testing and plant operations, relate to activities that are specific to retail operations and that will be performed by the CLEC rather than the ILEC. According to MCI its analysis indicates that, conservatively, 20% of the expenses in these two sub-accounts relate to retail operations. MCI Brief at p.34.

Qwest argues that MCI's proposed 50% reduction in network operations expenses is inappropriate and unsupported by the record. Further, Qwest argues that MCI's witness acknowledged that he has not performed any analysis of Qwest's

network operations expenses and, therefore, could not know if those expenses are inflated.<sup>177</sup> Qwest Brief at pp. 71-72.

### **Recommendation**

The Commission previously considered and rejected HAI's assumption that network operations expenses will be reduced by 50% in a forward looking network.<sup>178</sup> In this proceeding MCI has failed to adequately support this assumption or explain why the Commission should reverse its previous decision. Thus, the Hearing Examiner recommends that the Commission reject MCI's proposal. Consistent with the testimony of Qwest witness Fitzsimmons HAI's Network Operations Factor should be reset to 100 percent.<sup>179</sup>

## **2. Network Support Asset Expenses**

### **Recommendation**

No party disputed Qwest's inclusion or application of these expenses. Based on her review of the record, the Hearing Examiner finds Qwest's treatment of these costs to be reasonable. The Hearing Examiner finds that there is sufficient support in the record to recommend that the Commission approve this portion of Qwest's study as filed.

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<sup>177</sup> Qwest cites TR Day 9 at pp. 133-136.

<sup>178</sup> See GTE/AT&T Arbitration at ¶¶121-124.

<sup>179</sup> See Qwest Exhibit 17, Fitzsimmons Rebuttal, at p. 46.

### 3. General Support Asset Expenses

Qwest maintains that general support assets – computers, tools, buildings, trucks and office equipment – are essential to any carrier's ability to provide wholesale and retail products. Qwest maintains that these costs should be spread over the entire demand for the relevant products (i.e., products that use the assets in question) and recovered from all customers, whether wholesale customers paying UNE rates or retail customers paying retail rates, in proportion to overall demand. Thus, according to Qwest's proposed methodology, if a carrier has ten lines, three used by wholesale customers and the other seven by retail customers, charging each of those customers a per-line amount for these support costs (through either UNE rates or retail rates) will properly allocate recovery of these costs across wholesale and retail customers: 30% to the former, and 70% to the latter. Qwest Brief at p. 72.

MCI maintains that HAI reduces general support expenses by 50% in order to reduce costs associated with general support to the extent those costs are incurred in connection with Qwest's retail operations. MCI argues that these adjustments are consistent with the FCC's pricing rules, which provide that:

The sum of the allocation of forward-looking common costs for all elements and services shall equal the total forward-looking common costs, exclusive of retail costs, attributable to operating the incumbent LEC's total network, so as to provide all the elements and services offered.<sup>180</sup>

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<sup>180</sup> MCI cites 47 C.F.R. § 51.505(c)(2)(i).

According to MCI, both the Arizona and Colorado Commissions have adopted this adjustment as reflecting an appropriate allocation of wholesale and retail expenses. MCI suggests that this Commission also adopt the HAI factor. MCI Brief at pp. 34-35.

Qwest argues that MCI's 50% reduction in general support asset expenses is improper and illogical. Qwest maintains that it doesn't make sense to cut in half the portion of these costs recovered through UNEs on the theory that the omitted portion represents retail expenses. To the contrary, Qwest argues that these costs remain general support costs that would be recovered through retail rates if Qwest had retained the retail customer, but are not recovered through such rates once Qwest loses the retail customer.

MCI claims what Qwest fails to recognize is that even a company with no network assets at all would still require office equipment and computers and buildings to support its retail operations – the total cost of which MCI argues should be recovered from its retail rates. According to MCI, Qwest proposes that competitive companies recover not only their own retail costs, but also the proportion of general support costs that Qwest incurs in support of its retail operations. MCI Reply Brief at pp. 24-25.

### **Recommendation**

Given Qwest's argument that general support assets such as computers, tools, buildings, trucks and office equipment are essential to Qwest's ability to provide both wholesale and retail products, the Hearing Examiner finds that Qwest has not adequately demonstrated that its methodology excludes costs associated with its retail



operations. Further, the Hearing Examiner finds that Qwest's proposal is unreasonable because it allows Qwest to recover a portion of its retail costs from CLECs who purchase UNEs. While MCI's argument is convincing, its proposal is lacking adequate support because MCI did not establish why a 50% reduction is reasonable. Therefore, the Hearing Examiner recommends that the Commission adjust MCI's proposed allocator to reflect a 25% reduction in general support assets for use in HAI. This value represents the Hearing Examiner's best estimate of forward looking efficient costs given the record before her in this case.

**G. Productivity Factor**

According to Qwest, the key inputs to the Factors Module are the efficiency and inflation/deflation factors. The cost savings value input (aka: productivity factor) that Qwest uses in its studies is derived from the X-Factor productivity estimates proposed in FCC Docket No. 97-159. Qwest's cost savings value is derived from the X-Factor productivity estimates reported by the FCC, AT&T, and the United States Telephone Association ("USTA") in that docket; producing a two-year efficiency gain of 10.25%. Since Qwest's base expenses are at a 1999 level, this input allegedly reflects estimated efficiency gains resulting from increased labor productivity and improved technologies for the two-year period from 1999 to 2001. Qwest claims to have selected this percentage as an aggressive estimate of future efficiencies, relative to Qwest's historical trends.

Qwest's Expense Factors Module includes an inflation input of 8.16 percent. Qwest claims that this value is derived from a Wage & Salary Index analysis that is

based on data and other information specific to Qwest, prepared by Joel Popkin and Company. Qwest Brief at pp. 66-67.

Staff contends that the 6.5% productivity factor adopted by the FCC in its price-cap review is appropriate for use in calculating UNE rates in this proceeding. Staff Brief at p. 115.

Qwest notes that in support of its proposal, Staff relies on the FCC's adoption of a 6.5% productivity factor for Regional Bell Operating Companies ("RBOCs") in FCC Docket No. 97-159.<sup>181</sup> Qwest maintains that in the aforementioned docket the FCC and the participating parties presented a broad range of productivity factors where data from the FCC supported annual efficiency gains of between 5.2% - 5.8%, data provided by the USTA established annual efficiency gains of between 2.7% - 2.9%, and AT&T presented data purporting to support annual gains of between 6.3% - 7.1%.

According to Qwest, the productivity factor that it uses in its studies is a weighted average of these different proposals that strikes a reasonable balance among the competing proposals. However, Qwest claims the factor Staff proposes excludes the productivity estimates provided by USTA, relying exclusively on the FCC and AT&T data. Qwest notes that in USTA v. FCC, 188 F.3d 521 (D.C. Cir. 1999), the District of Columbia Circuit Court reversed and remanded the FCC's calculation of this factor. Qwest argues that although the FCC adopted a similar factor after the remand, that

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<sup>181</sup> The Hearing Examiner believes Qwest intended to refer to FCC Document No. 97-159, i.e. In the Matters of Price-Cap Performance Review for Local Exchange Carriers and Access Charge Reform, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket 96-262, (released May 21, 1997).

factor also fails to account properly for the USTA data and, therefore, suffers from the same flaw as the factor the D.C. Circuit reversed. Qwest Reply Brief at p. 43.

Staff claims its proposal is supported by numerous public sources such as Qwest's statement to the Securities Exchange Commission where Qwest noted that it had achieved significant cost savings through reductions in employees and operational efficiencies. Staff Brief at pp. 112-116.

### **Recommendation**

Although both Qwest and Staff rely on the same data to derive their proposed productivity factors they support vastly different results. Staff supports the value ultimately adopted by the FCC, while Qwest has recalculated this factor to allegedly correct a flaw recognized by the DC Circuit Court but overlooked by the FCC. Qwest believes that the FCC erred in its calculations because it did not properly account for the data proffered by the USTA. However, the FCC's order explicitly states why the USTA's data was given no weight in its calculations; because the "USTA has not provided any reliable estimate of the input price differential."<sup>182</sup> Further, the FCC found that the "USTA's conclusion that the long-term input price differential is zero was theoretically unsound, and unsupported by USTA's data."<sup>183</sup>

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<sup>182</sup> In the Matters of Price-Cap Performance Review for Local Exchange Carriers and Access Charge Reform, CC Docket Nos. 94-1 and 96-262, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket 96-262, FCC 97-159 (Released May 21, 1997), ¶¶133-143. ("Price Cap Review").

<sup>183</sup> "Input price differential refers, in the present context, to the difference between the rate at which input prices change in the economy in general and the rate at which LEC input prices change. Thus, when USTA claims that the long-term input price differential is zero, it is saying that the prices LECs pay for the

Qwest represents that the DC Circuit Court reversed and remanded this factor because it was improperly calculated. The Hearing Examiner finds that the court merely required the FCC to provide better support for its calculations, which the FCC did, when adopting a similar factor after the remand.<sup>184</sup> Further, the Hearing Examiner finds that Qwest has not shown in this proceeding why it is appropriate to include the USTA's data in its productivity factor calculations. The only support Qwest offers for its inclusion of this data are statements such as it "strikes a reasonable balance among the competing proposals" and it produces "an aggressive estimate of future efficiencies, relative to Qwest's historical trends." The Hearing Examiner does not find these arguments persuasive nor supported in this record and therefore recommends that the Commission approve the productivity factor proposed by Staff, as it is the most reasonable input supported by the record.

No party challenged Qwest's proposed inflation input. This input appears to be reasonable and is supported by the record and therefore, the Hearing Examiner recommends the Commission approve this portion of Qwest's study as filed.

## **VII. Collocation**

Qwest claims that its Collocation Model ("CM") produces forward-looking rates based on inputs from a detailed analysis by SMEs of the costs associated with 41

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resources they use in producing telecommunications services change at about the general rate of inflation." Price Cap Review at ¶¶96.

<sup>184</sup> In the Matter of Access Charge Reform CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers CC Docket No. 94-1, Low-Volume Long-Distance Users CC Docket No. 99- 249, and Federal-State Joint Board On Universal Service CC Docket No. 96-45; FCC 03-164 (Released July 10, 2003) at ¶¶ 34-45.

recent collocation jobs in Qwest central offices.<sup>185</sup> Qwest believes that for recently constructed sites, it is highly likely that the cost of replacing them is very similar to the cost of building them.

Qwest avers that this study was prepared by assembling the receipts for labor and materials from various outside vendors and the cost data for the Qwest internal resources used to build cageless collocation sites. After excluding the collocation jobs with the highest and lowest costs, Qwest computed averages of the cost of all the tasks allegedly required to install collocation sites such as engineering, installing HVAC ducting and cable racking, and running power cables to the collocated equipment and adding BDFBs.<sup>186</sup> Qwest adjusted the cost data from cageless collocation jobs to include costs for cages based on an analysis of prices charged by 13 different contractors for cage construction. Qwest claims that fluctuations in demand and strict time requirements have resulted in the use of outside vendors for a large portion of the aforementioned activities. Qwest avers that the average internal/external labor mix over the last three years is 50-50 and, thus, its study assumes 50 percent vendor and 50 percent Qwest installations.

Qwest notes that the jobs reflected in the collocation study do not include collocation jobs performed in New Mexico. However, Qwest maintains that an engineer

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<sup>185</sup> Qwest cites Qwest Exhibit 5, Million Direct, at pp. 45-53.

<sup>186</sup> Battery Distribution Fuse Bay ("BDFB").

employed by the company toured numerous New Mexico collocation sites and verified that the 41 jobs in the study were similar to collocation sites in New Mexico.<sup>187</sup>

Qwest also maintains that the analysis provided by Ms. Million comparing the rates for certain key collocation elements produced by Qwest's Collocation Model to the results of the FCC's methodology in the Second Report and Order<sup>188</sup> provides evidence of the reasonableness of Qwest's proposed collocation costs. Qwest claims that while the FCC's benchmarks are limited in scope, do not represent TELRIC, and allegedly reflect lower costs than are produced by TELRIC methodology,<sup>189</sup> they serve as a useful guide in determining the reasonableness of Qwest's proposal. Qwest believes its proposed rates are comparable to and comply with the FCC benchmarks. Qwest Brief at pp. 75-78.

#### **A. Power Cable Rates**

Qwest maintains that the only criticism of its power cable rates relates to the issue of cable lengths that is discussed below with respect to the placement of BDFBs.

#### **Recommendation**

Qwest is correct that with the exception of power cable lengths, no party challenged its power cable rate assumptions. Based upon the review of the record

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<sup>187</sup> Qwest cites Tr. Day 2, Million Cross, at p. 51.

<sup>188</sup> In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport, CC Docket No. 93-162 (released June 13, 1997.)

<sup>189</sup> Qwest cites Qwest Exhibit 5, Million Direct, at pp. 62-64.

these inputs appear to be reasonable, and the Hearing Examiner recommends that the Commission approve Qwest's power cable inputs as filed.

**B. Battery Distribution Fuse Bay Locations**

Staff argues that Qwest's proposed NRCs for this item are based on inefficient configurations and thus are not TELRIC compliant. Staff suggests that the Commission order Qwest to adopt the design parameters recommended by Staff's witness. Staff's witness proposes a 50% reduction in cable lengths to reflect the placement of the BDFB near the middle of the floor space in the collocation area so that costs are minimized. Staff Brief at pp.117-118.

Qwest argues that putting the BDFB in the center of just the collocators might lead to longer runs for other equipment in the CO. Qwest also claims that the added expense of a CLEC dedicated BDFB might exceed any power cable savings that result from placing a BDFB in the center of the collocators.<sup>190</sup> According to Qwest, no change in CO layout would provide lower costs for collocators without increasing costs for other activities. Qwest Brief at p. 78.

**Recommendation**

The Hearing Examiner finds that the position of a BDFB with respect to the CLEC's collocation area is significant because it determines the length of the cable needed to provide power to CLECs' telecommunications equipment. Yet, Qwest's position regarding this topic appears to be elusive and contradictory. For example,

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<sup>190</sup> Qwest cites Qwest Exhibit 8, Million Rebuttal, at p. 45.

Qwest represents that its collocation inputs are derived from a systemwide sample of 41 actual collocation jobs but the inputs it uses to estimate cable costs are in fact based on only five observations, none of which were from New Mexico. Qwest also claims that the cable lengths it used to calculate costs in this proceeding are specific to New Mexico but its opening brief and testimony suggest otherwise.<sup>191</sup> It appears that the cable length inputs used in Qwest's study are actually Qwest region wide values that it believes are a sufficient proxy for conditions in New Mexico based upon measurements taken by a Qwest engineer during walk-throughs of COs in New Mexico.<sup>192</sup> Qwest cites no data or study to support this assertion. Therefore, the Hearing Examiner recommends that the Commission find that Qwest has failed to adequately support its proposal.

Staff's alternative inputs are based entirely on the unsupported opinion of its expert, and thus, are equally unacceptable. Having found that the inputs presented by both Qwest and Staff are unacceptable, the Hearing Examiner recommends that the Commission require Qwest to resubmit its study after reducing its power cable length estimates by 20%. The Hearing Examiner finds this adjustment will result in more reasonable cable length estimates than those supported by Qwest or Staff. Although Staff's proposed cable length adjustment was rejected, in part, because it was too extreme, the Hearing Examiner believes it is reasonable to assume that Qwest's cable

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<sup>191</sup> Qwest claims that the jobs reflected in the collocation study did not include any collocation jobs performed in New Mexico. Qwest Brief at p.78.

<sup>192</sup> Qwest's testimony suggests that it believes these inputs are appropriate throughout its 14 state service territory. See Tr Day 2 at pp. 50-51.



lengths would be shorter based on data specific to New Mexico and optimal layout of the BDFB.<sup>193</sup>

### **C. Intermediate Distribution Frames**

According to Qwest, CLECs can choose between placing terminations on an IDF or having direct connections to the COSMIC frame or other frames. When requesting a direct connection, Qwest maintains that the CLEC is responsible for the tie cables between its collocation equipment and potentially every module or every other module on the COSMIC™ frame. Pappas Rebuttal at pp. 31-32.

Staff and Qwest agree that there should be no non-recurring cost for installation of an intermediate distribution frame ("IDF"). However, Qwest maintains that it is appropriate to assume that collocation tie pairs that connect a CLEC's collocation cage and the other UNEs in the central office (such as loops) should run through an IDF and include the cost of the IDF in the recurring cost of the interconnection tie pairs. Qwest Reply Brief at p. 44.

Staff maintains that this Commission ruled that Qwest could not require CLECs to use IDFs when interconnecting to Qwest's network.<sup>194</sup> Staff contends that IDFs have no redeeming engineering or operational value so their use in offering service to CLECs should be discontinued. Staff disagrees with Qwest's assertions that it is more efficient for a collocator to run 100 pair cables to an IDF and pick up UNEs there than to pay for

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<sup>193</sup> The Hearing Examiner recognizes that optimizing the layout of a BDFB could increase other costs, however, this does not necessarily lead to the conclusion that total costs have increased or efficiency has been reduced.

<sup>194</sup> Staff cites Phase II Reconsideration Order at ¶¶ 61 and 64.

direct cables to various locations in a CO or even multiple bays on Cosmic MDF. Staff contends that any intermediate frames add unnecessary expense. Staff Reply Brief at p. 34.

### **Recommendation**

Qwest has not proposed a NRC associated with the IDF, nor does it appear to require CLECs to use IDFs when connecting their collocated facilities to Qwest's network. Although Staff suggests that IDFs are unnecessary and increase costs, it failed to provide evidence supporting this claim. Moreover, Qwest's assertion that IDFs are used by Qwest, other ILECs, and CLECs, as an efficient manner in which to traverse a central office, reduce cross-connect activity at other frames, and relieve congestion at the main distribution frame is persuasive<sup>195</sup> and supported by the decisions of other commissions.<sup>196</sup>

Staff is correct that this Commission previously ruled that Qwest could not require CLECs to use IDFs when interconnecting to Qwest's network. However, in the order cited by Staff this Commission suggested that Qwest would be allowed to recover IDF related costs in the future if it could show that the IDFs were being provided by Qwest in a nondiscriminatory manner, and that no more efficient option exists for the running of jumpers in the central office.<sup>197</sup> The Hearing Examiner finds that Qwest has shown that it is willing to provide access to IDFs in a manner that is nondiscriminatory.

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<sup>195</sup> Qwest Exhibit 16, Pappas Rebuttal, at p. 30.

<sup>196</sup> For example, see WUTC 13<sup>th</sup> Supplemental Order at ¶¶ 248-249.

<sup>197</sup> Phase II Reconsideration Order at ¶59.

The concerns expressed by Staff are also mitigated by the fact that CLECs have the option to interconnect with Qwest's facilities without utilizing an IDF.<sup>198</sup> When a CLEC chooses to interconnect via a configuration that includes an IDF, as opposed to a direct connection, the Hearing Examiner finds that Qwest should be compensated for the cost of providing this facility. Therefore, based upon the evidence presented, the Hearing Examiner recommends that the Commission approve Qwest's proposal to include the costs of an IDF in the recurring rates for interconnection tie pairs when this configuration is requested by a CLEC.

#### **D. Floor Space Rent Charges**

Qwest floor space rent charge is designed to recover the cost of floor space and its use, including: one 110 AC, 15 amp electrical outlet, preventative maintenance and repair of climate controls, filters, fire and life systems and alarms, mechanical systems, HVAC, bi-weekly housekeeping service and general repair and maintenance. The proposed monthly recurring charge applies on a per square foot basis. Kennedy Direct Testimony (adopted by Easton) at p. 15.

To estimate floor space costs Qwest uses figures from the RS Means Report, slightly adjusting them to account for the special features of a central office (as opposed to a community dialing office), escalation and various architect fees.<sup>199</sup> Qwest Reply Brief at p. 79 and Million Rebuttal Testimony at pp. 47-51.

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<sup>198</sup> See Qwest Exhibit 16, Pappas Rebuttal, at p. 31.

<sup>199</sup> Qwest contends that the RS Means figures must be adjusted because they reflect the construction of a Community Dialing Office ("CDO"), which is less complicated and less costly to build than a fully functional CO. Qwest Reply Brief at p. 79.

Staff's witness argues that Qwest's proposed floor space charge is excessive based on a comparison with rates for commercial space in Albuquerque. Staff witness Morrison argues that Qwest's proposed rate of approximately \$38 per square foot per year is out of line with the current real estate market which suggests that the asking price for Class A office space is roughly \$20 per square foot per year. Morrison Direct at pp. 77-78.

Qwest contends that Staff's comparison between its proposal and the current real estate market for Class A office space is meaningless because a central office is not comparable to ordinary commercial space. Qwest argues that because COs have to meet very specific floor loadings and other requirements, central offices have significantly higher construction costs and other fees than normal commercial property. Qwest believes that Staff's proposal fails to recognize the unique nature of central office space and, therefore, should be rejected. Qwest Reply Brief at p. 45.

Staff contends that Qwest's inclusion of a 15% architectural fee and a 5% project management fee is not TELRIC compliant. Furthermore, Staff questions the propriety of Qwest's estimated land costs and the inclusion of landscaping fees because there are many urban locations where landscaping work is unnecessary. Staff suggests that the Commission reject Qwest's contentions and instead adopt the floor space fee proposed by Staff witness Mr. Morrison. Staff Brief at p.119.

## Recommendation

Staff suggests that Qwest's floor space cost estimates are exorbitant because they are significantly greater than the rates for Class A office space. The Hearing Examiner does not find Staff's comparison convincing. As noted by Qwest, there are significant differences in the construction requirements of a CO and a building that provides Class A office space, and thus, there is no justification that the costs for these different structures should be comparable. Furthermore, the Hearing Examiner finds that Qwest's testimony and responses to the bench requests generally provide a sufficient explanation regarding Qwest's adjustments to the RS Means cost estimates to account for these differences.<sup>200</sup> However, the Hearing Examiner finds that Qwest's treatment of architectural, project management, and landscaping fees is excessive and must be adjusted.

The RS Means data Qwest relies on to estimate floor space costs suggests that architectural fees should be approximately 11% of construction costs. However, Qwest estimated its expenses assuming architectural fees were 15% of construction costs. Qwest's supplemental bench request response 010S1 states that:

The 15% architectural fee applies to both the land and the building cost in Qwest's model. The reason that Qwest applies the fee to both is that the architectural fees for central offices are more than for traditional construction activities.

While it is reasonable to assume higher fees for this type of construction, Qwest failed to provide sufficient support for its assumption that these fees would be

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<sup>200</sup> See Qwest Exhibit 8, Million Rebuttal, at pp. 47-51 and Qwest Bench Request Response 008S1.

approximately 30% greater than the fees that apply to the construction of a community dialing office. Thus, the Hearing Examiner recommends that Qwest be required to assume architectural fees that are 13% of construction costs.<sup>201</sup> Furthermore, the Hearing Examiner does not find it reasonable to assume that the architectural fees should apply to Qwest's estimate of land costs. It is more reasonable to assume that site preparation and landscaping fees are proportionate to the cost incurred in the implementation of these types of projects and not the value of the land they are performed on.<sup>202</sup> Given that Qwest has already included the cost of site work and landscaping in its space cost estimates, it would be improper to account for these costs again in the manner suggested by Qwest. Thus, the Hearing Examiner recommends that the Commission order that Qwest must exclude its estimate of land costs when applying architectural fees.

Finally, the Hearing Examiner finds Qwest's estimate of its internal project management fees to be excessive given that Qwest's cost estimates already include the costs for architecture and general contracting. Therefore, without any other claim or justification, the Hearing Examiner finds that it is reasonable that Qwest be required to reduce its internal project management fee to 2% of construction costs, exclusive of

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<sup>201</sup> The Hearing Examiner believes this reduction reasonable based upon the record especially when considering that the recommended changes and exclusions do not lower floor space costs all that much; the Hearing Examiner estimates the final rate to be \$2.98 instead of \$3.17. Further, the Hearing Examiner notes that these findings result in a rate that is comparable with the rate approved by the WUTC.

<sup>202</sup> For example, there is no reason to assume that planting a tree on a piece of property valued at \$10M costs more than planting the same tree on property valued at \$100K.

land and architectural fees. The Hearing Examiner recommends that the Commission adopt this reduction.

#### **E. Security Charges**

Qwest proposes monthly recurring charges of \$0.42 for each security card issued to a CLEC employee and \$7.86 per person per CO for the cost of the security systems installed in the CO.

Staff argues that Qwest's security cost estimates are not forward looking because the expenses Qwest used are from 1996. Staff also questions Qwest's assumption that each security card issued will require 15 minutes of work on a monthly basis. Staff Brief at pp. 119-120.

#### **Recommendation**

Although Staff suggests that Qwest's reliance on investment data from 1996 results in cost estimates that are not truly forward looking there is nothing in the record to indicate that this has resulted in biased cost estimates. The Hearing Examiner does not find Qwest's assumption of 15 minutes of work time per badge per month to be inappropriate given the description of work activities related to the issuance of security cards as described in the testimony of Mr. Pappas.<sup>203</sup> The Hearing Examiner recommends that the Commission approve Qwest proposed security charges as filed.

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<sup>203</sup> See Qwest Exhibit 16, Pappas Rebuttal, at pp.37-38.

**F. Quote Preparation Fees**

Qwest's proposed quote preparation fee ("QPF") is a nonrecurring charge designed to recover the costs associated with verifying space, power, cable terminations, reviewing design requests and developing a price quote for the total cost to the CLEC for its collocation request. Qwest avers that CLECs will receive credit for the QPF charge when the collocation installation is completed and the CLEC submits the balance of the nonrecurring charge for that work. Kennedy Direct Testimony (adopted by Easton) at p. 12.

Staff argues that a QPF is inappropriate because advising a prospective tenant as to what space is available in a building is generally a function provided by management without any specific charge. Staff Brief at p.122.

Qwest responds by stating that Staff's position ignores that in preparing a collocation quote, Qwest performs all the engineering necessary to design the potential collocation space for the CLEC. It is for this reason that the fee is credited toward the CLEC collocation fee if the quote is accepted. According to Qwest, its study includes a summary of the times necessary to engineer the space and all the cable runs needed for collocation. These estimates are allegedly based on the amount of engineering fees incurred in the 41 recent collocation jobs that form the basis for the collocation study.<sup>204</sup> Qwest Reply Brief at p.45.

Staff claims that it was unable to trace the costs developed by Qwest in its collocation model back to specific work steps required to complete this task because

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<sup>204</sup> Qwest cites Tab ENGR of the data submitted in response to Bench Req. 14, 15 and 16.



Qwest's model includes hard inputs for the quotation preparation fees in a table that calculates nothing more than the average engineering cost for a number of jobs. Staff maintains that there is no support for any of the costs associated with the quotation fees (caged, cageless, or virtual) in Qwest's model. Therefore, Staff believes that the Commission should find that Qwest's proposed QPF is not TELRIC compliant.

Finally, Staff contends that if you assume a labor rate of \$50 per hour, Qwest's proposed QPF suggests that it requires more than 95 hours of labor to complete the tasks associated with the quotation preparation. Staff finds this excessive. Staff Brief at pp. 120-123.

### **Recommendation**

The Hearing Examiner is not persuaded by Staff's suggestion that the QPF be set at zero based on its comparison of Qwest's proposed QFP to the effort of a leasing agent in determining the availability of rental space. CLECs inquiring about the availability of collocation space have more specialized needs than other types of prospective tenants and Qwest should be compensated for its efforts in filling the CLEC's request. However, the Hearing Examiner agrees with Staff that Qwest's proposed QPF is excessive and may present a barrier to entry. Furthermore, the Hearing Examiner finds Qwest's supporting documentation insufficient, vague, and too highly aggregated to allow for a meaningful review of its assumptions.

Assuming that Qwest's facilities and records are accurate, and its employees are familiar with Qwest's COs, the Hearing Examiner finds that it is unreasonable to assume

that the efficient forward looking cost of preparing a quote should be as high as Qwest's proposal. Given these circumstances, the Hearing Examiner recommends that the Commission order Qwest to recalculate its costs assuming that it should take no more than 6 hours of labor for a Qwest engineer to: a) verify the status of the quantity of collocation space, power, and cable terminations requested by a CLEC; b) review the design requests, and c) compute the price quote based on its SGAT and/or the UNE rates approved by this Commission. Qwest should not be compensated for the cost of engineering a particular collocation arrangement until a firm order is placed. The Hearing Examiner also recommends that Qwest be required to submit the changes recommended above as part of a compliance filing and include in that filing the hourly labor rate input that applies to this task so it may be reviewed by Staff and MCI because this input was not apparent in Qwest's cost study or support documentation.

**G. CLEC to CLEC Connections**

CLEC-to-CLEC connections provide CLECs with the ability to connect with each other within the same Qwest wire center for the purpose of mutually exchanging traffic. Qwest asserts that a CLEC may also use these connections to connect multiple forms of its own collocations together within the same wire center. When a direct connection is requested between two collocations, a cable is placed between the collocation spaces of each CLEC. The connections may be physical to physical, physical to virtual, or virtual to virtual collocations. Kennedy Direct Testimony (adopted by Easton) at pp. 20-21.

According to Staff, the SME-provided data supporting the work tasks in Qwest's study leaves the impression that Qwest has provided an overly complicated cost study in order to camouflage its lack of substance. Furthermore, Staff claims that Qwest's study does not provide adequate information to determine if the labor hours charged for various work item tasks are justified. To provide support for its SME data, Staff suggests that Qwest should perform time and motion studies or engage an independent third party to audit and verify its assumptions. Staff recommends that the Commission reject Qwest's proposal because the work times appear to be inflated. While Qwest assumes that 10 hours of work time is necessary, Staff's expert suggests that CLEC to CLEC connections can be engineered in far less than 8 hours.

Staff maintains that another flaw in Qwest's study is the assumption that new cable racking must be installed with every connection. According to Staff, in a forward-looking TELRIC study the space in a central office for multi-tenant use should already include such charges. Finally, Staff claims that Qwest should be required to demonstrate that its space construction charges do not already recover the cable rack costs Qwest seeks to recover in this rate element. Staff Brief at pp. 123-126. Qwest claims that additional cable racking is necessary for CLEC to CLEC connections because there is no reason to assume that all CLECs will be located in adjacent floor space even in the most hypothetically efficient CO. Qwest Brief at p. 80.

Qwest suggests that its unsupported SME work time estimates are more accurate than those provided by Staff's expert. Qwest also argues that Staff's concern regarding the installation of additional cable racking is overstated given that Qwest only

assumes 5% new cable racking and because most of the charges for cable racking relate to the monthly recurring charge for shared use of existing cable racking.<sup>205</sup> Qwest Reply Brief at p. 46.

### **Recommendation**

Staff maintains that Qwest should not be permitted to charge for additional cable racking between CLEC's collocations because it assumes an inefficient placement of CLEC facilities within the CO, and because Qwest has not demonstrated that these costs are not already recovered in Qwest's collocation space construction charges. The Hearing Examiner finds neither of Staff's arguments persuasive. The testimony provided by Ms. Million provides a credible explanation regarding why it is reasonable to assume that some additional cable racks are necessary for CLEC to CLEC connections and why these costs are not already recovered elsewhere.<sup>206</sup> The manner in which Qwest calculates the cost of this additional cable racking is reasonable.

Staff and Qwest disagree over the amount of time necessary to engineer CLEC to CLEC connections. It appears that Qwest is again asking the Commission to accept the opinions of its SMEs over the opinions of other parties purely because Qwest's SMEs are currently performing the tasks referenced in its cost study. This argument is rejected for the reasons stated above. Therefore, the Hearing Examiner recommends that the Commission find that Qwest has failed to provide adequate support for the work time estimates in its proposal, and that the Commission require Qwest to resubmit its

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<sup>205</sup> Qwest cites Qwest Exhibit 8, Million Rebuttal, at p. 53.

<sup>206</sup> See *id.* at p. 52.

study after reducing its work time inputs by 30% for the reasons stated above in Section V.B and C.

#### **H. Space Availability Charge**

According to Qwest its proposed charge for reporting its space availability to the CLECs is consistent with the FCC's requirement for ILECs to provide CLECs with reports "indicating the incumbent LEC's available collocation space in a particular LEC premises," set forth in the Advanced Services Order.<sup>207</sup> Qwest Brief at p. 80.

Staff argues that advising a prospective tenant as to what space is available in a building is generally a function provided by management without any specific charge to that prospective tenant. Although Staff opposes a non-zero space availability charge, its witness reran Qwest's model using inputs that are allegedly more appropriate for the tasks at hand. Staff Brief at pp.126-128.

According to Qwest, the Commission should reject Staff's argument that the space availability charge should be eliminated because it directly contravenes the FCC's determination in the Advanced Services Order. Qwest maintains that the costs of these reports are real out-of-pocket costs for which Qwest is entitled to be compensated. Qwest Brief at p. 80.

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<sup>207</sup> Qwest cites, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147 (rel. Mar. 31, 1999) ¶ 58 ("Advanced Services Order").

## **Recommendation**

The Hearing Examiner is persuaded by Staff's argument that Qwest's proposed Space Availability Charge is overstated as a result of inflated work time estimates. Although Qwest's study suggests that much of the information required to produce a space inquiry report is inventoried, the Hearing Examiner finds that Qwest assumes an unreasonable amount of time to assemble and verify its data. The Hearing Examiner recommends that the Commission find that Qwest has failed to adequately support its proposal and require Qwest to resubmit its study after reducing the work time estimates for this rate element by 30 percent.

### **I. Remote Terminal Collocation**

Qwest explains that its Remote Terminal Collocation proposal provides space in available remote cabinets on a Standard Mounting Unit (SMU) level. The space includes access to AC/DC power, heat dissipation and access to Feeder Distribution Interface (FDI) terminations. Qwest proposes a nonrecurring Collocation Space rate designed to recover the cost of the cabinet space, the cost of the cabinet and all of the work and materials associated with placement of the cabinet and providing access to power. The nonrecurring Feeder Distribution Interface (FDI) Terminations rate is per 25 pair and includes the costs associated with augmenting the FDI to provide terminations. Qwest also proposes recurring rate elements designed to recover maintenance costs associated with equipment and FDI terminations, and a small portion of the power pedestal. Kennedy Direct Testimony (adopted by Easton) at pp. 18-19.

Staff contends that the rates proposed by Qwest for Remote Terminal (RT) collocation are improperly developed, excessive, and risk excluding CLECs from the market place. As a remedy Staff suggests that the Commission unbundle additional network elements. Staff suggests that Qwest be required allow CLECs to virtually collocate line cards within Next Generation Digital Loop Carrier (NGDLC) remote terminals.

Staff has three primary concerns about how costs were developed in Qwest's study. First, Staff disagrees with the manner in which Qwest applies cost factors to recover directly assigned, directly attributable, and common costs. Second, Staff disagrees with Qwest's decision to use the weighted average of material costs provided by two different vendors. Staff maintains that one vendor product is substantially more expensive than the other. Thus, because Section 51.505(b)(1) of the FCC's rules (i.e. The Code of Federal Regulations or CFR) requires that the TELRIC of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, Staff recommends that Qwest be required to use only the least expensive vendor of the two. Third, Staff contends that Qwest's utilization factors are too low. Staff believes Qwest should be required to substantiate why such an extremely low utilization level is appropriate, or in the alternative, a more appropriate utilization level should be applied.

Staff claims it has not rerun the RT Collocation Study for two reasons. First, the rate structure whereby Qwest seeks to recover all of its investment up front from competitors allegedly complicates the study so additional changes beyond simple inputs

will be necessary. Second, Staff contends that many of the inputs have no corresponding support (e.g. the fill factors used) so there is a limited basis upon which to rely upon input changes at this time. Staff believes the appropriate path to follow is to first determine the appropriate rate structure with respect to how RT collocation costs should be recovered, and then, second, to take that structure and appropriately construct and develop costs. Staff Brief at pp. 135-136.

Qwest finds Staff's criticism of Qwest's remote collocation study difficult to understand because Qwest claims it has offered, pursuant to the FCC's UNE Remand Order, to allow a CLEC to provide advanced services the same way that Qwest does, by placing a DSLAM or other device in a remote collocation cabinet built by Qwest. Qwest maintains that its study merely allocates a portion of the cabinet to the CLEC and seeks an NRC to compensate Qwest for that portion of the expense of building the cabinet and connecting it to the Qwest network. Qwest argues that the current dearth of applications for remote terminal collocation supports Qwest's view of the likely low fill factors.

Qwest disputes the technical feasibility of Staff's proposal to allow for the virtual collocation of line cards. Furthermore, Qwest claims that it does not provide advanced services to customers via Staff's proposed solution at any location in New Mexico, and thus, Qwest has offered CLECs the opportunity to collocate using the same technical solution Qwest uses in New Mexico. Qwest argues that a CLEC must first seek the unbundling of this facility in an arbitration proceeding before a state commission can set a cost. Qwest claims that no CLEC operating in New Mexico has made such a request.



In the event that the Commission interprets Staff's argument as a request that remote collocation be priced using NGDLC as a TELRIC-compliant technology, Qwest contends that Staff has provided no alternative cost estimates with which to set rates in this proceeding. Qwest claims it has conducted an analysis of using some forms of NGDLC which it employs elsewhere (though not New Mexico) and this analysis indicates that the NGDLC solution is more expensive.

### **Recommendation**

The Hearing Examiner finds that Qwest's proposal is reasonable and supported in the record and recommends that the Commission approve Qwest's proposal as filed.

### **VIII. OSS Issues**

#### **A. The CLECs Must Compensate Qwest for the Costs it Incurs to Provide CLECs with Access to its Operational Support Systems.**

According to Qwest, its right to recover the costs of providing CLECs with access to its OSS is established by the Act and the FCC's *Local Competition First Report and Order*. Qwest maintains that Section 252(d)(1) of the Act establishes ILECs' right to be compensated for UNEs and provides that rates for network elements must be "just and reasonable" and "based on the cost" of providing the network element. Qwest avers that the FCC concluded that "operations support systems and the information they contain fall squarely within the definition of 'network element.'"<sup>208</sup>

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<sup>208</sup> *Local Competition First Report and Order* ¶516.

Qwest argues that this Commission has specifically recognized that ILECs must provide CLECs with access to their OSS and that an ILEC is entitled to recover the costs incurred as a result of efforts to comply with this mandate.<sup>209</sup> According to Qwest, no party to this proceeding disputes Qwest's right to recover such costs.

The costs that Qwest seeks to recover fall into two categories. Namely, start-up costs for developing the electronic interfaces and for modifying its existing downstream OSS to accommodate CLEC activity,<sup>210</sup> and ongoing maintenance and operations expenses associated with the CLECs' use of Qwest's internal OSSs and the electronic interfaces.<sup>211</sup> Qwest Brief at pp. 81-83.

Qwest maintains that it developed two real-time electronic interfaces for the exchange of information relating to pre-ordering, ordering, and provisioning of resale services and line-side UNEs: (1) Interconnect Mediated Access – Graphical User Interface ("IMA-GUI") a human-to-computer electronic interface and (2) Interconnect Mediated Access – Electronic Data Interchange ("IMA-EDI") a computer-to-computer electronic interface. For repair capabilities, Qwest developed two real-time electronic interfaces for CLECs: (1) Customer Electronic Maintenance and Repair ("CEMR"), which provides repair functionality through a human-to-computer electronic interface, and (2) Electronic Bonding/Trouble Administration ("EB/TA") which provides those

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<sup>209</sup> Qwest cites, Supplemental Findings of Fact, Conclusions of Law and Order, Consideration of the Adoption of a Rule Concerning Costing Methodologies (Phase II), Implementation of New Rules Related to the Rural, High Cost, and Low Income Components of the New Mexico Universal Service Fund, NMPRC Docket Nos. 96-310-TC, 97-334-TC ) ¶¶61-62 (Dec. 31, 1998).

<sup>210</sup> Qwest cites Qwest Exhibit 20, Curtis Direct adopted by Albershiem, at p.15 and p. 17.

<sup>211</sup> Qwest cites Qwest Exhibit 20, Curtis Direct adopted by Albershiem, at p. 18.

capabilities through a computer-to-computer electronic interface. Qwest claims that these interfaces provide CLECs with the access they need to compete in the local exchange market, as confirmed by the FCC's section 271 order approving Qwest's 9-state application. Qwest claims to have developed its OSS interfaces solely for the benefit of the CLECs. Qwest Brief at pp. 83-84.

In addition to building the interfaces described above, Qwest claims to have significantly modified its internal OSSs to add data and functionality needed to support the CLECs' OSS needs. Just as with the development of the interfaces, Qwest claims that the changes to its internal systems are for the benefit of the CLECs only; they do not benefit Qwest or its customers. Qwest Brief at p. 84.

To recover the OSS development and enhancement costs described above, Qwest is seeking a start-up service order charge of \$7.07 for IMA-GUI and manual orders and \$4.75 for IMA-EDI orders.<sup>212</sup> Qwest claims to have calculated the start-up charge by dividing the start-up costs for 2000 by an estimate of the number of CLEC orders for the years 2001 through 2006. Qwest avers that the start-up costs for 2000 are actual costs that Qwest has incurred.<sup>213</sup>

Qwest also proposed a per service order charge of \$1.91 for IMA-GUI orders and \$1.42 for IME-EDI orders to recover costs allegedly associated with ongoing maintenance and operations activities associated with the electronic interfaces.<sup>214</sup>

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<sup>212</sup> Qwest cites Qwest Exhibit 5, Million Direct, at p. 99.

<sup>213</sup> Qwest cites Qwest Exhibit 20, Curtis Direct adopted by Albersheim, at p. 18; Qwest Exhibit 5, Million Direct, at pp. 97-98.

<sup>214</sup> Qwest cites, Qwest Exhibit 5, Million Direct, at pp. 101-02.

According to Qwest, these costs arise from the periodic software changes that Qwest must perform on the interfaces and running the OSS and the interfaces on a daily basis. Qwest Brief at pp. 84-85. Qwest claims that Staff's witness admitted that Qwest has adequately established and supported the start-up costs it seeks to recover.<sup>215</sup>

Staff proposes two changes to Qwest's proposal. First, Staff disagrees with Qwest's assumption that maintenance costs will remain constant throughout the time period studied. Staff recommends that Qwest make its maintenance cost estimates forward looking by adjusting them for productivity and inflation using the factors approved by the Commission in this proceeding. Staff Brief at pp. 137-139.

Qwest claims it did not calculate its maintenance cost estimates in the manner proposed by Staff because this expense is labor intensive and over time the process will become less 'people' intensive but increased volume will offset those savings.<sup>216</sup> Staff contends that this explanation is inadequate. Staff also avers that Qwest's position is vague and fails to explain why OSS ongoing maintenance expenditures are exempt from any productivity gains. Staff Brief at p. 138.

According to Staff, the remaining issue is whether OSS is the only use to which Qwest's upgraded system will be put during 2001-2006. While Qwest asserts it would not have undertaken the upgrade but for the need to accommodate CLECs' ability to order UNEs in accord with the Act, Staff suggests that there is nothing to prevent Qwest from using the system in other ways now that it is built. The other ways alluded to by

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<sup>215</sup> Qwest cites, Staff Exhibit 11, Morrison Direct, at p. 104.

<sup>216</sup> See Staff Exhibit 11, Morrison Direct, at p.102, citing Qwest response to Staff Discovery Request 26.

Staff are described by Mr. Morrison, who maintains that Qwest can adjust the OSS interface with little difficulty to facilitate direct interaction with retail customers. To the extent that Qwest does use the upgraded OSS for other purposes, Staff recommends that the expenditure base and consequently the EDI and IMA non-recurring charges be reduced. Staff Brief at p. 140.

Qwest maintains that Staff has offered no evidence that any such adjustment has occurred or that they could be completed with little difficulty. To the contrary, Qwest contends that the evidence shows that the modifications required to augment Qwest's OSS as Staff suggests would be extensive, including modifications to the software that operates between the ordering interfaces and Qwest's service order processors.<sup>217</sup> Qwest Reply Brief at p. 49.

### **Recommendation**

As noted by Qwest, Staff agrees that Qwest has adequately demonstrated the amount it has spent on OSS start-up costs. Staff only recommends two adjustments to Qwest's model. Staff's first recommendation relates to the way in which ongoing maintenance costs are estimated. Staff recommends that Qwest make its actual 1999 maintenance costs forward looking by adjusting them over the time period in question for productivity and inflation using the factors approved by the Commission in this proceeding. The Hearing Examiner agrees with Staff and recommends that the

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<sup>217</sup> Qwest cites Qwest Exhibit 22, Albersheim Rebuttal, at pp. 12-13.

Commission approve its proposal. Qwest's argument that productivity increases will be offset by costs related to an increase in volume is not convincing.

The Hearing Examiner recommends that the Commission reject Staff's second proposal to reduce the amount of OSS start-up costs Qwest is able to recover as it is overly speculative and not supported by the record. However, the Hearing Examiner recommends that the Commission reexamine this issue at a later date should it be shown that Qwest is in fact using any part or functionality of the upgraded OSS for purposes other than accepting orders from CLECs.

## **IX. Line Sharing**

### **A. Rates for High Frequency Portion of Loop**

Qwest proposed a charge for the high frequency portion of the unbundled loop ("HFPL") of \$5.00 per month. According to Qwest, both the Act and the FCC's pricing rules are designed to foster fair and equal competition among providers and to foster technological innovation through investment in telecommunications facilities. Qwest contends that establishing a positive price for the high frequency loop will promote these goals, but a price of zero for this UNE will distort competition and discourage investment in alternative methods of providing high-speed data services. Qwest Brief at p. 86. Moreover, because there is both demand for the HFPL and a limited supply, Qwest contends that a competitive market would assign a positive price to this network element. Qwest Reply Brief at p. 50.

Staff maintains that Qwest did not perform a TELRIC study to support its proposed recurring charge for the HFPL but instead merely asserted that the price is consistent with its monthly retail price for DSL service after an imputation process is carried out. Staff recommends that the Commission reject Qwest's proposal and adopt a recurring price for the HFPL of \$0.00. According to Staff, whatever the costs for loops may be, these costs come into existence when customers order voice services, not when the customer orders the HFPL through a CLEC. Thus, under cost causation principles, Staff believes that zero costs should be assigned to the HFPL.

Staff also claims that if Qwest is allowed to charge a positive price for the HFPL, then over-recovery of loop costs will occur because Qwest will recover the full costs of the loop from the end-user customer to which it is providing voice services plus additional revenues from the CLEC. Staff contends that a zero price for the HFPL eliminates double recovery of loop costs. Staff Brief at p. 143.

### **Recommendation**

Based upon the evidence in the record, the Hearing Examiner recommends that the Commission approve Qwest's proposal to establish a monthly recurring charge of five dollars for access to the HFPL. The Hearing Examiner finds persuasive Qwest's argument that a product or service with limited supply and positive demand would have a positive price in a competitive market. The ultimate goal of the FCC's TELRIC pricing methodology is to emulate the prices observed in a competitive market and Qwest's proposal best fits this criteria. Based on the testimony presented by Qwest and

consideration of the line sharing rates approved by other state commissions, the Hearing Examiner finds Qwest's rate proposal to be reasonable and nondiscriminatory.<sup>218</sup>

#### **B. Line Sharing OSS Rate**

According to Qwest, it seeks recovery only for those costs of the OSS modifications attributable to line sharing that, but for line sharing, would not have been necessary. In all, Qwest claims the line sharing OSS modifications cost \$12,275,260, comprised of \$375,260 for modifications to OSS for which Qwest maintains the systems source code and \$11.9 million for Telcordia's work to support line sharing.<sup>219</sup>

Qwest proposes that these costs be recovered through a recurring monthly rate of \$3.27 per line for each line that is shared with a CLEC.<sup>220</sup> Qwest believes that this approach is consistent with the FCC's guidance in the Line Sharing Order that ILECs can "recover such nonrecurring costs such as these incremental OSS modification costs through recurring charges over a reasonable period of time."<sup>221</sup> Qwest Brief at pp. 87-88.

Staff contests Qwest's proposal on two points. First, Staff argues that the price Qwest paid Telcordia for OSS modifications is exorbitant. Staff asserts that by continuing to use Telcordia systems after US WEST selling its share of the company several years ago, Qwest put itself in the position of being dependent upon a monopoly

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<sup>218</sup> See Qwest Exhibit 5, Million Direct, at pp. 83-87 and Qwest Reply Brief at p. 50.

<sup>219</sup> Qwest cites Qwest Exhibit 20, Curtis Direct adopted by Albersheim, at p. 33.

<sup>220</sup> Qwest cites Qwest Exhibit 5, Million Direct, at p. 95.

<sup>221</sup> Qwest cites Line Sharing Order at ¶144.



supplier for key systems. Thus, when Qwest needed to upgrade its OSS to handle line sharing, Staff claims it could not seek bids for the work so it was forced to pay Telcordia monopoly, rather than competitive rates. According to Staff, the Arizona<sup>222</sup> and Washington<sup>223</sup> Commissions have explicitly stated Qwest should not be allowed to recover those costs, while the Nebraska Commission's<sup>224</sup> rate implicitly indicates they are not recoverable.

Staff also claims that the rate of \$3.27 established in Washington is not the same rate Qwest is proposing in this cost docket because the Washington rate is paid per local service request (LSR) rather than completed service order.<sup>225</sup> According to Staff, Washington also caps the total amount that Qwest can recover, whereas in New Mexico,<sup>226</sup> Qwest allegedly proposes to leave the charge in place indefinitely.

Staff maintains that the Arizona Commission has allowed Qwest a Line Sharing OSS charge of \$0.10 per order,<sup>227</sup> while Nebraska does not have a separate OSS

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<sup>222</sup> Staff cites In the Matter of the Investigation into Qwest Corporation's Compliance with Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts, Phase II Opinion and Order, Arizona Corporation Commission Docket No. T-00000A-00-0194 (June 12, 2002), page 55 (reducing the line sharing OSS charge to \$0.10). ("Arizona Order")

<sup>223</sup> Staff cites In the Matter of the Continued Costing and Pricing of Unbundled Network Elements, Transport and Termination, Thirteenth Supplemental Order; Part A Order Determining Prices for Line Sharing, Operations Support Systems, and Collocation, Washington Utilities and Transportation Commission Docket No. UT-003013 (January 31, 2001), ¶ 154.

<sup>224</sup> Staff cites In the Matter of the Commission, on its Own Motion, to Investigate Cost Studies to Establish Qwest Corporation's Rates for Interconnection, Unbundled Network Elements, Transport and Termination, and Resale, Findings and Conclusions, Nebraska Public Service Commission Application No. C-2516/PI-49 (April 23, 2002), ¶ 232.

<sup>225</sup> The Hearing Examiner notes that the only similarity is the magnitude of the proposed charge. The rate established in Washington is nonrecurring while the rate Qwest proposes in this proceeding monthly recurring.

<sup>226</sup> Staff cites WUTC 13<sup>th</sup> Supplemental Order at pp. 53-54.

<sup>227</sup> Staff cites Arizona Order at p. 54.

charge. Staff believes that this Commission should set a similar nominal OSS line-sharing rate. Based on Staff's calculations, when the \$11.9 million Telcordia expense is removed from Qwest's cost study it yields a per-order rate that rounds to \$0.10.<sup>228</sup> According to Staff, Qwest should be required to apply any OSS line sharing charge ordered by the Commission to its affiliate xDSL provider. Staff Brief at pp. 147-149.

Qwest claims that there is no evidence that it paid monopoly prices for the work Telcordia performed. To the contrary, Qwest argues that the record shows that Telcordia did not mandate the price for OSS modifications, but rather, Qwest negotiated a discount in the rate it paid Telcordia.<sup>229</sup> Moreover, Qwest contends that it is typical for a vendor to retain control over any changes to source code for which it sells licenses so it is entirely reasonable for Qwest to hire Telcordia to make the necessary modifications to Qwest's OSS that support line sharing. Qwest Brief at p. 88.

Staff contends that Qwest has had more than enough time to migrate its systems away from Telcordia's products. Staff Reply Brief at pp. 35-36.

Qwest asserts that Staff's criticism of its continued use of Telcordia-owned systems ignores the fact that Qwest's only alternative to incurring costs to modify its existing systems is to replace all of those systems at far greater cost; which, according to Qwest, the FCC neither required nor anticipated as an appropriate solution. Qwest Brief at p. 88.

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<sup>228</sup> See Exhibit SLM\_015 attached to Staff Exhibit 11, Morrison Direct.

<sup>229</sup> Qwest cites Qwest Exhibit 22, Albersheim Rebuttal, at p. 9.

Qwest disagrees with Staff's characterization of the decisions of the Arizona and Washington Commissions as "explicitly" stating that Qwest should not be allowed to recover its line sharing OSS costs, and the Nebraska Commission rate as "implicitly" indicating that those costs are not recoverable. According to Qwest, both the Arizona and Washington Commissions limited the amount of recovery, but granted Qwest the right to recover OSS costs for line sharing<sup>230</sup> while the Nebraska Commission allowed cost recovery for line sharing OSS, including that cost recovery as a part of the line sharing rate.<sup>231</sup> Qwest Brief at p. 88.

Qwest maintains that Staff failed to show that Qwest overpaid Telcordia for OSS modifications. Furthermore, Qwest claims that even if Staff could prove this claim it would, at most, support some reduction in this expense, not a total elimination of the expense as proposed by Staff. Qwest Reply Brief at p. 54.

### **Recommendation**

Staff disputes two aspects of Qwest's proposal. The first dispute relates to the total amount of expenses to be recovered. Staff maintains that Qwest overpaid Telcordia for its services as a result of it being dependent upon a monopoly supplier for

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<sup>230</sup> Qwest cites In the Matter of the Investigation into Qwest Corporation's Compliance with Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts, Phase II Opinion and Order, Before the Arizona Corporation Commission, Docket No. T-00000A-00-0194, June 12, 2002; and In the Matter of the Continued Costing and Pricing of Unbundled Network Elements, Transport and Termination, Thirteenth Supplemental Order, Part A Order Determining Prices for Line Sharing, Operations Support Systems, and Collocation, Before the Washington Utilities and Transportation Commission, Docket UT-003013, January 2001.

<sup>231</sup> Qwest cites In the Matter of the Commission, on its own motion, to investigate cost studies to establish Qwest Corporation's rates for interconnection, unbundled network elements, transport and termination, and resale, Findings and Conclusions, Before the Nebraska Public Service Commission, Application No. C-2516/PI-49, April 23, 2002.

key systems. As a remedy, Staff suggests that Qwest recalculate its line sharing related OSS costs after removing all of the expense that was paid to Telcordia. While Staff's general concern over the amount of expense incurred has merit, the Hearing Examiner does not find its proposed solution to be reasonable. Staff's proposed remedy improperly assumes that 100% of what Qwest paid Telcordia for OSS upgrades could have been avoided had Qwest not been limited to Telcordia's services. The Hearing Examiner finds that while it is reasonable to assume that a competitive bidding process would have resulted in lower cost modifications to Qwest's OSS, it is not logical to assume that a competitive firm (or Telcordia when faced with competitors) would have provided Qwest with the necessary OSS modifications for free.

Although Qwest contends that Staff failed to show that Qwest overpaid Telcordia for OSS modifications, the burden of proof in this proceeding requires Qwest to prove the nature and magnitude of expenses it seeks to recover. As set forth in Commission Rule, 17.11.18.14 NMAC, Costing and Pricing Standard, the ILEC shall offer elements to requesting LECs at rates, terms, and conditions that are just, reasonable, and nondiscriminatory. An ILEC shall not charge different rates for elements based on the class of customers served by the requesting LEC or the type of service provided by the requesting LEC. An ILEC shall conduct a cost study using the methodology set forth in 17.11.18.15 NMAC and shall provide supporting documentation in accordance with 17.11.18.16 NMAC to prove to the Commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element.

The record indicates that the expense figure Qwest used in its calculations is derived from total costs of \$14 million, of which \$11.9 million “represents Telcordia's proprietary estimate of their total costs attributed solely to line sharing.”<sup>232</sup> There is no further breakdown, itemization, or detailed explanation linking specific tasks to costs, and therefore, no way for parties to verify these inputs. Whereas this is Qwest's primary support for its expense, the Hearing Examiner finds that Qwest has failed to demonstrate that the \$14 million it paid Telcordia is a reasonable charge for the work performed or that Telcordia's allocation estimate of 85% to line sharing related work and 15% to other items is appropriate.

Having found both Qwest's and Staff's proposals to be unreasonable, the Hearing Examiner recommends that the Commission require Qwest to rerun its model assuming a 50% reduction in the expenses paid to Telcordia. The Hearing Examiner's adjustment to this input is based on a similar decision made by the State Of Iowa Department Of Commerce Utilities Board.<sup>233</sup> Further, the Hearing Examiner finds that there is no indication of an overstatement of the internal costs incurred by Qwest for modifications to OSSs for which it maintains the systems source code, and therefore 100% of these costs should be included in Qwest's calculations.

Staff also expresses concern over Qwest's proposed rate structure, the duration of this charge, and to whom it should apply. Although Staff notes that the rate Qwest has proposed in this proceeding is different than the \$3.27 OSS rate approved by the

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<sup>232</sup> See Qwest Exhibit 20, Curtis Direct adopted by Albersheim, at footnote 14.

<sup>233</sup> See Docket No. RPU-01-6 Proposed Decision and Order, Issued March 25, 2002, at p.34.

WUTC, Staff fails to adequately explain why this difference is significant or to propose an alternative. Therefore, based upon the record in this case, the Hearing Examiner recommends that the Commission approve Qwest's proposed rate structure.

Regarding the duration of this charge, Staff is correct that Qwest has not established a date upon which this charge would cease. However, Qwest's testimony suggests that it intends to discontinue this rate element when its costs are recovered.<sup>234</sup> Accordingly, the Hearing Examiner recommends that the Commission require Qwest to report the amount of line sharing OSS expenses it has recovered within New Mexico and system wide so that this rate element may be eliminated when Qwest has recovered the level of costs approved by the Commission.

Finally, Staff suggests that the line sharing OSS charge approved by this Commission be applied to Qwest's data affiliate. The Hearing Examiner finds this to be a reasonable proposal as it places Qwest's data affiliate and other CLEC's on equal footing to compete for customers. The Hearing Examiner recommends that the Commission accept Staff's proposal.

## **X. Unbundled Packet Switching**

### **A. Related FCC Requirements**

Qwest asserts that it has agreed to provide unbundled packet switching ("UPS") to connect CLEC customers with a CLEC point of presence via data channels as required by the FCC rules. Qwest is providing costs for a UNE consisting of the

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<sup>234</sup> See TR Day 2 at p.64.

following physical facilities: an ATM port, a virtual channel between the central office and the remote collocation hotel, and DSLAM functionality at the collocation hotel. The ATM port and the channel between the central office and the DSLAM can support multiple loops between the DSLAM and CLEC customers. Qwest Brief at p.90.

## **B. Rates**

Qwest claims to have estimated the efficient replacement cost of overlaying remote DSLAMs on the existing network and installing integrated cabinets in some areas to provide UPS to all customers served by a loop with fiber feeder running to a DLC terminal. Qwest maintains that it based its study on the actual cost of installing remote DSLAMs in environmentally sound cabinets to provide UPS for customers served by DLC. Qwest avers that it agrees with the D.C. Circuit Court of Appeals that recent experiences are the best guide for the efficient cost of replacing the network. Qwest's study suggests that the cost of a customer channel is \$22.83, DSLAM functionality is \$29.83, and the ATM port is \$126.70 for DS1 and \$194.99 for DS3. Qwest Brief at pp. 90-91.

Mr. Morrison claims that Qwest should have used a different design to provide UPS in which the DSLAM is a line card in an NGDLC (Next Generation Digital Line Carrier), which provides a digital signal over the copper between the DLC and the customer premises without the expense of building a DA hotel or installing a standalone DSLAM. However, Qwest avers that Mr. Morrison offered no cost study to support the claim that this architecture would be cheaper than the overlay solution, but instead

relied on general claims about the falling cost of digital telecommunications equipment. However, Qwest claims this Commission need not decide whether an overlay of DSLAMs on the existing network or a replacement of all DLC cabinets is efficient forward-looking architecture that meets TELRIC principles because both architectures yield approximately the same cost numbers.

### **Recommendation**

The Hearing Examiner finds that Qwest's proposal regarding unbundled packet switching, including routers and Digital Subscriber Line Access Multiplexers (DSLAMs), is reasonable and recommends that the Commission approve Qwest's proposal as filed.

### **XI. Issues Relating to Price Squeeze (Including Verification of CLEC Costs and Paragraph 426 of *Final Order in 271 Application* )**

#### **A. This Commission's Prior Price Squeeze Analysis**

In the *Final Order in 271 Application*, this Commission determined that the parties opposing Qwest bear the burden of providing evidence demonstrating that the combination of UNE rates and the additional costs incurred in providing residential service in New Mexico doom competitors to failure<sup>235</sup>. The Commission argued that the burden of proof was not Qwest's because Qwest was not in a position to accurately estimate the additional costs incurred by other firms in providing residential service over and above the costs related to the purchase of UNEs or the UNE-Platform. The Commission also noted that no potential or actual competitor of Qwest took the

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<sup>235</sup> *Final Order in 271 Application* at paras 215-252.



opportunity to provide evidence of its internal costs and how such costs may preclude entry.

After considering the analysis provided by the Attorney General the Commission concluded:

There has thus been no factual showing whatsoever in this docket regarding the internal costs that would be faced by an efficient CLEC in New Mexico. Nor has there been any showing by any party that the current retail, UNE and resale rate structure in New Mexico dooms any and all competitive entry to failure by virtue of the fact that the rates established by the Commission are not correct.

*Para 250 of Final Order in 271 Application.*

The Commission went on to state that such a showing would be difficult to make because the Commission concluded in Utility Case No. 3325 that Qwest's residential telephone service was not subsidized.<sup>236</sup> Thus, the Commission suggested that if a price squeeze did exist it would not be the result of residential rates having been set inappropriately low. The Commission also noted that its pricing decisions have reflected its belief that UNE rates should be priced based on TELRIC principles; a belief that the Commission is continuing to act in accordance with in this proceeding. Taken together, the Commission argued that these facts suggest that a competitor may succeed in some areas of the state and income sectors of the residential market

No party, in its post hearing brief, commented on the FCC's price squeeze analysis.

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<sup>236</sup> *In the Matter of the Identification of All Subsidies in the Existing Rates of Qwest Corporation, f/k/a U S WEST Communications, Inc., Pursuant to HB 400, Utility Case No. 3325, Final Order, at 4-5, 6 (Dec. 19, 2000).*

## **Recommendation**

None of Qwest's current or potential competitors commented on this issue; the only parties to address this issue were the Attorney General and Qwest. Whereas, previous recommendations in this decision require a number of compliance filings that must be submitted and reviewed by the Commission before permanent UNE rates are established, the record does not support a conclusion regarding the possible existence of a price squeeze at this time. Thus, the Hearing Examiner recommends that the Commission affirm the decision reached at ¶ 252 of the *Final Order in 271 Application* and revisit this issue when permanent UNE rates are established at the conclusion of this proceeding.

## **XII. CONCLUSIONS AND RECOMMENDATIONS**

The Hearing Examiner recommends that the Commission **FIND** and **CONCLUDE** that:

1. The Statement of the Case and Discussion and all Findings of Fact and Conclusions of Law contained therein are hereby incorporated by reference herein as findings of fact and conclusions of law.
2. The Commission has jurisdiction over the parties and the subject matter of this case.
3. Due and proper notice of this case has been provided.
4. The Recommendations set forth in each section should be adopted as the Recommendations of the Commission.

5. Qwest and MCI should be ordered to file compliance filings as set forth in the Recommended Decision. These compliance filings should contain the modified cost models, all the rates that emerge from the modified cost models, and a narrative identifying all changes made to the cost models pursuant to the Commission's order including the variable values changed and the location of those variable values in the cost models.

6. Qwest and MCI should file the compliance filings described above within 30 days of the Commission Order on the Recommended Decision.

7. Within 21 days of the filing of the compliance filings, the Parties should be allowed to file comments limited to the accuracy of the compliance filings.

8. This case should be returned to the Hearing Examiner for review of the compliance filings, and any comments, and for the recommendation of final rates.

The Hearing Examiner recommends that the Commission **ORDER** that:

A. The Recommendations set forth in each section are adopted as the Recommendations of the Commission

B. Qwest and MCI are ordered to file compliance filings as set forth in the Recommended Decision. These filings shall contain the modified cost models, all the rates that emerge from the modified cost models, and a narrative identifying all changes made to the cost models pursuant to the Commission's order including the variable values changed and the location of those variable values in the cost models.

C. Qwest and MCI shall file the compliance filings described above within 30 days of the Commission Order on the Recommended Decision.

D. Within 21 days of the filing of the compliance filings, the Parties may file comments limited to the accuracy of the compliance filings.

E. This case is returned to the Hearing Examiner for review of the compliance filings, and any comments, and for the recommendation of final rates.

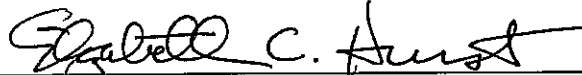
F. This Order is effective immediately.

G. Copies of this Order shall be sent to all persons on the attached Certificate of Service.

H. Phase B of this Docket remains open to consider issues related to the compliance filings.

**ISSUED** at Santa Fe, New Mexico this 13<sup>th</sup> day of February, 2004.

**NEW MEXICO PUBLIC REGULATION COMMISSION**



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**ELIZABETH C. HURST**  
Hearing Examiner

**APPENDIX**

**Model adjustments and compliance filings recommended by the Hearing Examiner. The Appendix is intended for quick reference purposes only. Please refer to the Recommended Decision for all adjustments and recommendations.**

Page	Party	Description
<b>Loop</b>		
57	MCI	<u>Access Line Count</u> - The Hearing Examiner recommends that the Commission require MCI to submit a compliance filing indicating the number and type of lines, by CO, and documentation demonstrating that access lines are counted on a physical pair basis. This filing shall include the raw ARMIS data and a detailed explanation of the calculations used to present line counts on a physical pair basis.
65	Qwest MCI	<u>Structure Sharing</u> - The Hearing Examiner recommends that the Commission adopt, for both Qwest's and MCI's models, the structure sharing inputs approved by the FCC in the USF Inputs Order.
	Qwest	Whereas the structure sharing inputs adopted by the FCC assumes nine density zones, and Qwest's model assumes only five, Qwest must adjust the FCC's inputs to fit its model. The Hearing Examiner recommends that Qwest submit a compliance filing demonstrating how it proposes to apply the FCC's structure sharing inputs in a manner that is consistent with Qwest's model.
70	Qwest	<u>Placement Costs</u> - The Hearing Examiner recommends that the Commission order Qwest to utilize the buried placement costs and percentages adopted by the Commission in the previous cost docket, but on a permanent basis. Because the density zone structure of Qwest's current cost model differs from the model it sponsored in the earlier proceeding, the Hearing Examiner recommends that Qwest submit a compliance filing demonstrating how it maps the recommended placement inputs to the five DGs used in its current study.
71	MCI	Hearing Examiner recommends that the Commission reject MCI's proposed inputs and require MCI to use the buried placement cost and placement percentage inputs adopted by the FCC in the USF Inputs Order.
74	Qwest	<u>Plant Mix</u> - The Hearing Examiner recommends that the Commission approve for use in Qwest's model an aerial plant mix percentage of 17%, the upper end of the range proposed by Qwest.

75	MCI	The Hearing Examiner recommends that the Commission adopt for HAI, the alternative inputs proposed by Qwest, as these values are more consistent with Qwest's current network and TELRIC's forward-looking requirement. See Qwest Exhibit 17, Fitzsimmons Rebuttal at p. 34
79	Qwest	<u>Selection of Loop Technology</u> - The Hearing Examiner recommends that the Commission approve Qwest's proposed loop technology assumptions as filed, with the sole exception that the DLC concentration ratio be reset to 6:1.
83	Qwest	<u>Drop Length</u> - The Hearing Examiner recommends that the Commission adopt the drop length estimates endorsed by Staff, after making the adjustment discussed below. The Hearing Examiner recommends that the Commission adopt for LoopMod drop lengths of 70 feet in DG 3, 150 feet in DG 4, and 200 feet in DG 5 for both aerial and buried drops.
84		The Hearing Examiner recommends Qwest be required to remove all mobilization costs from its study.
83	MCI	The Hearing Examiner recommends that the Commission approve for HAI the drop length input proposed by Qwest. See Qwest Exhibit 17, Fitzsimmons Rebuttal at p. 37.
88	Qwest	<u>Cable Sizing, Fill and Other Issues</u> - The Hearing Examiner recommends that the Commission require Qwest to size distribution cables based on the assumption of 2 distribution pairs per site.
	MCI	The Hearing Examiner recommends that the Commission approve for HAI the distribution cable sizing factors proposed by Qwest. See Qwest Exhibit 17, Fitzsimmons Rebuttal at p. 39
<b>Switching</b>		
95	Qwest	<u>Rate Structure</u> - The Hearing Examiner recommends that HAI's switching cost estimates be recalculated to reflect the flat plus usage sensitive switching rate methodology recommended in this decision. Qwest should be required to show that it has made these calculations in a manner that is consistent with both the recommendations in this order and the methodology employed in Exhibit TKM-5REB.
100	Qwest MCI	<u>Fill Factors</u> - The Hearing Examiner recommends that the Commission approve a switch port fill factor of 90%.
101	MCI	<u>Digital Line Offset</u> - The Hearing Examiner recommends that the Commission set the digital line offset to zero when calculating UNE switching rates in New Mexico.

105	Qwest	<p><u>Switch Upgrades</u> - The Hearing Examiner recommends that the Commission include the cost of switch upgrades in the calculation of UNE switching rates provided Qwest shows that these costs meet the following requirements: First, these costs must have been incurred to provide non line-growth related updates to switches deployed in New Mexico; Second, these costs must pertain to switches installed no earlier than 1998.</p>
106		<p>The Hearing Examiner recommends that the Commission add to HAI's switching cost estimates the per line level of switch upgrade expenses ultimately approved for LoopMod. Qwest should be required to show that it has made these calculations in a manner that is consistent with both the recommendations in this order and the methodology employed in Exhibit TKM-5REB.</p>
109	Qwest	<p><u>Growth Lines</u> - The Hearing Examiner recommends that the Commission require Qwest to assume a net switch line growth of 1% for the purpose of estimating switching investment and costs in this proceeding.</p> <p>The Hearing Examiner recommends that the Commission add to HAI's switching cost estimates the growth line additive proposed by Qwest. Qwest should be required to show that it has made these calculations in a manner that is consistent with both the recommendations in this order and the methodology employed in Exhibit TKM-5REB.</p>
111	Qwest	<p><u>Billing Expenses</u> - The Hearing Examiner recommends that the Commission add to HAI's switching cost estimates the level of billing expenses proposed by Qwest. Qwest should be required to show that it has made these calculations in a manner that is consistent with both the recommendations in this order and the methodology employed in Exhibit TKM-5REB.</p>
113	Qwest	<p><u>Features</u> - The Hearing Examiner recommends that the Commission add to HAI's switching cost estimates the level of features expenses proposed by Qwest. Qwest should be required to show that it has made these calculations in a manner that is consistent with both the recommendations in this order and the methodology employed in Exhibit TKM-5REB.</p>
115	Qwest	<p><u>AMA Expenses</u> - The Hearing Examiner recommends that Qwest be required to show in a compliance filing that the AMA costs it seeks to include in the usage sensitive switching rates established in this docket are not already being recovered in the DUF rates previously approved by this Commission.</p>
<b>High Capacity Loops</b>		
119	Qwest	<p><u>High Capacity Loops</u> - The Hearing Examiner recommends that the Commission require Qwest to modify its high capacity</p>

		loop model to be consistent with the structure sharing and placement cost inputs previously recommended for LoopMod.
<b>Non-recurring Rates</b>		
130	Qwest	<u>Work Time Estimates</u> - The Hearing Examiner recommends that the Commission require Qwest to reduce the work time estimates in its NRC study by 30% across the board.
133	Qwest	<u>Time and Motion Studies</u> – The Hearing Examiner recommends that the Commission require Qwest to perform time and motions studies so that the Commission and interested parties have a verifiable source of data for work times and processes upon which to establish NRCs going forward.
134	Qwest	<u>Time Allowed for Testing Circuits</u> - The Hearing Examiner recommends that the Commission require Qwest to reduce the work time estimates for this element by 30 percent.
135	Qwest	<u>Loop Installations</u> - The Hearing Examiner recommends that the Commission require Qwest to reduce the work time estimates for this element by 30 percent.
140	Qwest	<u>Loop Conditioning</u> - The Hearing Examiner recommends that Qwest be ordered to refile its study assuming 60 minutes of outside plant engineering. Qwest should be required to reduce all other work time estimates for this rate element by 30 percent.
<b>Marketing and Business Fees</b>		
145	MCI	<u>Product Management and Sales Expense</u> - The Hearing Examiner recommends that MCI be required to include in HAI the level of product management and sales expense included by Qwest in its model. Consequently, MCI should be required to show the Commission where and how these costs have been explicitly included in HAI's cost estimates.
<b>Common Costs</b>		
147	MCI	<u>Overhead</u> - The Hearing Examiner recommends that the Commission require MCI to assume an overhead factor of 13.5% for use in this proceeding.
148	MCI	<u>Taxes</u> - The Hearing Examiner recommends that the Commission require MCI to adjust HAI to reflect the adjustment proposed by Qwest. See Qwest Exhibit 17, Fitzsimmons Rebuttal at p. 48.
153	Qwest	<u>Current Cost to Booked Cost Conversions</u> - The Hearing Examiner recommends that the Commission require Qwest to recalculate its maintenance expense factors after restating historic capital investment balances using the appropriate CC/BC ratio and submit the results of these calculations to the Commission as part of a compliance filing.
155	MCI	<u>Network Operations Expense</u> - The Hearing Examiner recommends that the Commission require MCI to reset HAI's



		Network Operations Factor to 100 percent. See Qwest Exhibit 17, Fitzsimmons Rebuttal at p. 46
158	MCI	<u>General Support Asset Expenses</u> - The Hearing Examiner recommends that the Commission adjust MCI's proposed allocator to reflect a 25% reduction in general support assets for use in HAI.
161	Qwest	<u>Productivity Factor</u> - The Hearing Examiner recommends that the Commission approve the productivity factor proposed by Staff.
<b>Collocation</b>		
165	Qwest	<u>BDFB Location</u> - The Hearing Examiner recommends that the Commission require Qwest to resubmit its study after reducing its power cable length estimates by 20%.
171	Qwest	<u>Floor Space Rent Charges</u> - The Hearing Examiner recommends that Qwest be required to assume architectural fees that are 13% of construction costs.
		Qwest must also exclude its estimate of land costs when applying architectural fees. The Hearing Examiner recommends that Qwest be required to reduce its internal project management fee to 2% of construction costs, exclusive of land and architectural fees.
175	Qwest	<u>Quote Preparation Fee</u> - The Hearing Examiner recommends that the Commission order Qwest to recalculate its costs assuming that it should take no more than 6 hours of labor for a Qwest engineer to: a) verify the status of the quantity of collocation space, power, and cable terminations requested by a CLEC; b) review the design requests, and c) compute the price quote based on its SGAT and/or the UNE rates approved by this Commission.
		The Hearing Examiner also recommends that Qwest be required to submit the changes recommended above as part of a compliance filing and include in that filing the hourly labor rate input that applies to this task so it may be reviewed by Staff and MCI because this input was not apparent in Qwest's cost study or support documentation.
177	Qwest	<u>CLEC to CLEC Connections</u> - The Hearing Examiner recommends that the Commission find that Qwest has failed to provide adequate support for the work time estimates in its proposal and require Qwest to resubmit its study after reducing its work time inputs by 30%
179	Qwest	<u>Space Availability Charge</u> - The Hearing Examiner recommends that the Commission require Qwest to resubmit its study after reducing the work time estimates for this rate element by 30 percent.

<b>OSS Issues</b>		
186	Qwest	<u>Ongoing Maintenance Costs</u> - The Hearing Examiner recommends that the Commission require Qwest to make its actual 1999 maintenance costs forward looking by adjusting them over the time period in question for productivity and inflation using the factors approved by the Commission in this proceeding.
187		The Hearing Examiner recommends that the Commission reexamine this issue at a later date should it be shown that Qwest is in fact using any part or functionality of the upgraded OSS for purposes other than accepting orders from CLECs.
194		<u>Line Sharing OSS</u> - the Hearing Examiner recommends that the Commission require Qwest to rerun its model assuming a 50% reduction in the expenses paid to Telcordia.
195	Qwest	The Hearing Examiner recommends that the Commission require Qwest to report the amount of line sharing OSS expenses it has recovered within New Mexico and system wide so that this rate element may be eliminated when Qwest has recovered the level of costs approved by the Commission.
		The Hearing Examiner recommends that the line sharing OSS charge approved by this Commission be applied to Qwest's data affiliate.

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

IN THE MATTER OF THE CONSIDERATION )  
OF COSTING AND PRICING RULES FOR )  
OSS, COLLOCATION, SHARED TRANSPORT, )  
NON-RECURRING CHARGES, SPOT FRAMES, )  
COMBINATION OF NETWORK ELEMENTS )  
AND SWITCHING. )  
\_\_\_\_\_ )  
Utility Case No. 3495  
Phase B

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Recommended Decision of the Hearing Examiner, issued February 13, 2004, was mailed First Class, postage prepaid to the following:

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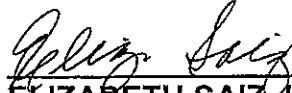
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NM Public Regulation Commission  
224 East Palace Avenue – Marian Hall  
Santa Fe, NM 87501

DATED this 13th day of February, 2004.

**NEW MEXICO PUBLIC REGULATION COMMISSION**



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**ELIZABETH SAIZ, Law Clerk**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE CONSIDERATION  
OF COSTING AND PRICING RULES FOR  
OSS, COLLOCATION, SHARED TRANSPORT  
NON-RECURRING CHARGES, SPOT  
FRAMES, COMBINATION OF NETWORK  
ELEMENTS AND SWITCHING**

**Utility Case No. 3495  
PHASE B**

**ORDER ON RECOMMENDED DECISION**

This matter comes before this Commission upon the Recommended Decision of the Hearing Examiner, issued on February 13, 2004, and upon the Exceptions to the Recommended Decision and the Responses to Exceptions. Having considered the parties' filings, testimony, exhibits, and arguments presented at hearing, and being otherwise fully advised in the premises, the Commission issues this Order on Recommended Decision.

**I. STATEMENT OF THE CASE**

The Recommended Decision, attached to this Order as Exhibit 1, contains a Statement of the Case that summarizes the proceedings in this matter. The Commission accepts and adopts this Statement of the Case through the date it was issued.

The New Mexico Attorney General ("AG") filed exceptions to the Recommended Decision on March 19, 2004.<sup>1</sup> WorldCom, Inc. ("MCI"), Qwest Corporation ("Qwest"), and Staff of the Telecommunications Bureau of the Utility Division of the Commission ("Staff") filed exceptions on March 22, 2004.<sup>2</sup> On April 19, 2004, MCI filed its

<sup>1</sup> See Attorney General's Exceptions to Recommended Decision of the Hearing Examiner ("AG's Exceptions").

<sup>2</sup> See MCI's Exceptions to Recommended Decision of the Hearing Examiner ("MCI's Exceptions"); Qwest Corporation's Exceptions to the Recommended Decision of the Hearing Examiner ("Qwest's Exceptions"); and Staff's Exceptions to the Recommended Decision ("Staff's Exceptions").

Response to Qwest's Exceptions and Qwest filed its Combined Response to the Exceptions of the Staff, the AG, and MCI.<sup>3</sup>

## II. STAFF'S EXCEPTIONS

### A. Qwest's Loop and Switching Cost Models.

Staff excepts that the Recommended Decision fails to consider evidence regarding deficiencies of Qwest's loop and switching cost models<sup>4</sup>

The Recommended Decision finds that, while Qwest's loop and switching models have been criticized, nothing in the record indicates that either model is a black box or fundamentally incapable of producing cost estimates that comply with the Federal Communications Commission's TELRIC ("Total Element Long Run Incremental Cost") methodology.<sup>5</sup> Staff argues, to the contrary, that it provided expert opinion evidence that both Qwest models, loop and switching, have "black box" aspects that impair their capability to produce TELRIC-compliant cost estimates. For example, Staff states that, in the context of LoopMod's digital loop carrier assumptions and their impact on costs and rates, Staff was unable to find the algorithms that spread the various technology assumptions across the various model inputs.<sup>6</sup>

Staff's criticisms do not render either model a black box. It appears that Staff's primary criticism of LoopMod is that LoopMod does not allow a user to assume 100%

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<sup>3</sup> See MCI's Response to Qwest's Exceptions to the Recommended Decision of the Hearing Examiner ("MCI's Response to Exceptions"); and Qwest Corporation's Combined Response to the Exceptions of the Commission Staff, the New Mexico Attorney General, and MCI to the Hearing Examiner's Recommended Decision ("Qwest's Response to Exceptions").

<sup>4</sup> Staff's Exceptions at 1-2. Staff does not, however, ask the Commission to take any action in response to this exception. See *id.* at 8.

<sup>5</sup> Recommended Decision at 30, 33.

<sup>6</sup> Staff's Exceptions at 2. See also Recommended Decision at 28-29 (summarizing Staff's objections to Qwest's loop model); 32-33 (summarizing Staff's objections to Qwest's switching model).

IDLC (“integrated digital loop carrier”).<sup>7</sup> This lack of flexibility is not optimal but does not call for rejection of LoopMod, particularly because Qwest’s response to Bench Request No. 8-004 explains that small DLC (“digital loop carrier”) systems — 32 line capacity — are only available in universal format.<sup>8</sup> No party disputed this evidence. The Hearing Examiner correctly concluded that the evidence indicates that LoopMod assumes the least cost DLC solution depending on the size of the remote terminal modeled. She explains that UDLC (“universal digital loop carrier”) is only used in the limited circumstance where 32 line remote terminals are modeled. The remaining 97.8% of the lines served over DLC are provisioned over IDLC systems that connect directly to the switch at the DS-1 level.<sup>9</sup>

Staff’s criticism of SCM is twofold. First, Staff asserts that SCM results cannot be validated because Qwest fails to adequately identify its current switch vendor contracts and because SCM is not based on current contract prices. Second, Staff asserts that the usage-based rates for switching do not reflect the manner in which Qwest incurs switching costs.<sup>10</sup> Staff’s latter criticism is discussed *infra* Section III.

The Hearing Examiner, in her Recommended Decision, concludes that, although there has been some criticism of SCM, its methods, and assumptions, nothing in the record indicates that SCM is either a black box or fundamentally incapable of producing cost estimates that comport with TELRIC.<sup>11</sup>

This Commission agrees with the Hearing Examiner. Teresa Million, a Qwest witness, explained that Qwest identifies its switch contracts as “SW1” and “SW2”

<sup>7</sup> See Staff Exhibit 9 (Gates Direct) at 10, 86.

<sup>8</sup> See Qwest’s Responses to Bench Requests — Days 6 to 9, filed on Jan. 31, 2003.

<sup>9</sup> Recommended Decision at 79.

<sup>10</sup> See Staff’s Exceptions at 2 (citing Staff Exhibit 8 (Ankum Direct) at 9, 13-16, 17-26).

<sup>11</sup> Recommended Decision at 33.

because, under the terms of its vendor contracts, Qwest cannot disclose vendor proprietary information without permission from the vendor. Additionally, Ms. Million stated that the contracts labeled as “SW1” and “SW2” are the contracts for the two switch vendors present in New Mexico. Ms. Million denied Staff’s assertion that one of those contracts had expired. An exhibit attached to Ms. Million’s testimony shows that Qwest extended the term of the contract through December 20, 2004.<sup>12</sup> Staff did not dispute this testimony.

B. Staff’s Position on Flat-Rated Switching.

Staff excepts that the Recommended Decision mistakes Staff’s position and recommendations regarding flat-rated switching.<sup>13</sup> The Recommended Decision states that, while both Staff and MCI initially argued for a “flat rated only” rate structure for UNE (“unbundled network element”) switching, Staff appears to have changed its position, and thus, “tacitly withdrawn all such arguments against usage sensitive rates.”<sup>14</sup> The Hearing Examiner relies on the following statement in Staff’s Brief: “The Commission should order Qwest to rerun its SCM based on the assumption of cost recovery primarily on a flat rate, with certain costs allowed for in a minute per use charge that will cover the costs of an increase in CCS [centum call seconds] throughput.”<sup>15</sup> Staff says that it intended this statement to support its position that a minute-of-use (“MOU”) charge would be appropriate to recover only use-based costs (those costs that actually increase the CCS throughput capacity), that Qwest failed to identify any such costs, and

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<sup>12</sup> Qwest Exhibit 8 (Million Rebuttal) at 96-97 (referencing Exhibit TKM-9REB).

<sup>13</sup> Staff’s Exceptions at 2-3.

<sup>14</sup> Recommended Decision at 93.

<sup>15</sup> *Id.* n. 104 (citing Staff’s Phase B Opening Post-Hearing Brief at 78).



that most switching costs are not use sensitive.<sup>16</sup> This Commission accepts Staff's clarification and rejects the Recommended Decision to the extent that it misinterprets Staff's position on this issue.

C. Usage-Based or Flat-Rated Switching.

1. Exceptions and Recommended Decision.

Both Staff and MCI except to the Hearing Examiner's recommendation that switching costs be recovered through a combination of flat-rated charges and usage-sensitive charges. MCI argues that a usage-based rate structure is inefficient because it is inconsistent with the manner in which Qwest incurs switching costs and is anti-competitive.<sup>17</sup> MCI's arguments repeat the arguments it made to the Hearing Examiner.<sup>18</sup> Staff, however, relies on new authority, released after the deadline for filing briefs to the Hearing Examiner.<sup>19</sup> That authority is an order released by the Wireline Competition Bureau of the FCC ("the Bureau") on August 29, 2003 ("*Virginia Arbitration Order*").<sup>20</sup>

Staff and MCI proposed to the Hearing Examiner that costs of switching be recovered through flat-rated charges rather than usage-sensitive charges. The Hearing Examiner did not find any of the arguments in favor of flat-rated only switching to be convincing.<sup>21</sup> The Hearing Examiner stated that, while it appears that the terms of switching vendor contracts have been simplified so that switches are purchased on a per

<sup>16</sup> Staff's Exceptions at 3.

<sup>17</sup> MCI's Exceptions at 15.

<sup>18</sup> See Post Hearing Brief of WorldCom, Inc. at 26.

<sup>19</sup> Staff's Exceptions at 4 n.1.

<sup>20</sup> *In the Matter of Petition of Worldcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration, and In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. ("Virginia Arbitration Case")*, CC Docket Nos. 00-218, 00251, Memorandum Opinion and Order (released August 29, 2003).

<sup>21</sup> Recommended Decision at 94.

line basis, the record indicates that the nature of the underlying costs has not changed. She concluded, "Given that switches are designed to accommodate certain levels of busy hour traffic, and this capacity is both finite and shared, it is appropriate to recover the cost of this usage sensitive investment through a usage sensitive rate structure[.]"<sup>22</sup>

2. The Virginia Arbitration Order.

In the *Virginia Arbitration Order*, the Bureau concluded that four types of switching costs — "getting started" costs, EPHC costs, RTU software costs, and "shared peak-period costs" — should all be recovered through a flat-rated port charge rather than a per minute of use ("per MOU") charge. Getting started costs include central processor and memory capacity costs.<sup>23</sup> The Bureau found that, given the record evidence that modern switches typically have large amounts of excess central processor and memory capacity, the use by any one subscriber is not expected to press so hard on processor or memory capacity at any one time as to cause call blockage, or a need for additional capacity to avoid such blockage. Thus, according to the Bureau, no one subscriber is any more or less causally responsible for the processor or memory capacity costs, and principles of cost causation support a per line port cost recovery approach.<sup>24</sup>

Additionally, the Bureau found that charging a per line port price for getting started costs recovers these costs from CLECs ("competitive local exchange carriers") on a competitively neutral basis, whereas charging a per MOU price would not. The Bureau found that the getting started costs of an ILEC ("incumbent local exchange carrier") do not vary with respect to whether a subscriber is a high or low volume user, a residential or business user, or a peak-period or off-peak-period user. A CLEC faces no advantage

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<sup>22</sup> *Id.*

<sup>23</sup> See *Virginia Arbitration Order*, ¶¶ 463, 464.

<sup>24</sup> *Id.* ¶ 463.

or disadvantage in competing against the ILEC if it pays for use of the getting started costs on a per line port basis. Thus, if the ILEC chooses to recover relatively more of the getting started costs from high volume business users or low volume business users, for example, the CLEC may compete with the ILEC by doing the same.<sup>25</sup> However, if the ILEC recovers getting started costs from the CLEC on a per MOU basis, the CLEC suffers a competitive disadvantage for high volume users relative to the ILEC. The CLEC would pay more to serve the high volume users, while the ILEC could recover the getting started costs on a per line basis from all of its subscribers, including high volume users.<sup>26</sup>

The Bureau disagreed with Verizon's argument that it replaces virtually all of the components of a switch over its life and that, therefore, getting started costs should be recovered on a per MOU basis. Verizon failed to show that it would expect to replace the central processor of a modern switch for the specific reason that usage increases over the life of the switch.<sup>27</sup>

EPHC<sup>28</sup> costs relate only to the Lucent 5ESS switch and are, generally, equipment costs.<sup>29</sup> In support of its conclusion that EPHC costs should be recovered on a per port basis, the Bureau found that the evidence supported a finding that EPHC costs do not vary with usage.<sup>30</sup>

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<sup>25</sup> *Id.* ¶¶ 464.

<sup>26</sup> *Id.* ¶ 465.

<sup>27</sup> *Id.* ¶ 466.

<sup>28</sup> EPHC stands for "equivalent POTS half call." *Id.* ¶ 469 n. 1189.

<sup>29</sup> *Id.* ¶ 469.

<sup>30</sup> *Id.* ¶ 471.

RTU fees are fees that Verizon pays switch vendors for switch software.<sup>31</sup> In support of its conclusion that RTU fees should be recovered on a per port basis, the Bureau found that Verizon generally does not pay RTU fees on a per MOU or on a per line basis, but on a per switch basis.<sup>32</sup>

Shared peak-period costs are incurred for equipment that is engineered and purchased based on peak-period demand.<sup>33</sup> While shared peak-period costs vary with usage, no party proposed to the Bureau a peak-period rate structure because such an approach is extremely difficult to implement in practice. Rather, Verizon and AT&T proposed recovery of these costs through a per MOU price developed by dividing total cost by total annual minutes of use, not peak-period minutes of use, and imposed on all minutes of use. In contrast, WorldCom proposed a flat per port price for recovery of these costs.<sup>34</sup>

The Bureau concluded that the flat per port price proposed by WorldCom was the better approach. It stated that a per MOU price would fail to signal to CLECs that these costs vary with subscribers' usage during the peak period in particular. CLECs paying for subscribers' off-peak usage based on a price developed by spreading costs over all minutes of use would pay too much relative to the costs for which they bear causal responsibility. CLECs paying this same price for subscribers' peak-period usage would pay too little. Thus, the Bureau found that a per-MOU rate could result in underutilization of Verizon's switches during non-peak periods and over-utilization

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<sup>31</sup> *Id.* ¶ 472.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* ¶ 473.

<sup>34</sup> *Id.* ¶ 474.

during peak periods.<sup>35</sup> The Bureau also found that a per MOU price might place CLECs at a competitive disadvantage because, while Verizon might be able to recover shared, peak-period costs by offering a per MOU price for peak-period minutes of use and a zero price for unlimited off-peak minutes of use, a CLEC might not be able to do so because the CLEC's costs would reflect how Verizon bills the CLEC and not how Verizon actually incurs the cost.<sup>36</sup> The Bureau found that a flat per port price avoids the competitive concerns that arise with an MOU charge.<sup>37</sup>

The Bureau found no basis in the record to accept Verizon's argument that flat-rated recovery of costs would result in low volume subscribers subsidizing high volume subscribers. The record did not show the extent to which low or high volume subscribers' usage occurs during the peak period or non-peak periods, and, therefore, the Bureau could not conclude whether a flat per port price or a per MOU price imposed on all subscriber minutes is more likely to recover shared, peak-period driven costs in proportion to their peak-period usage. The Bureau acknowledged that its approach is imperfect in the sense that it would fail to signal to CLECs the cost that Verizon would incur if subscriber usage were to increase, which could result in over-utilization of Verizon's switches, and blocked calls, during peak periods. However, given that Verizon already offered flat-rated calling to its own end-users, the FCC did not believe that offering similar pricing to CLECs would increase the likelihood of blocked calls due to increased calling by CLEC customers.<sup>38</sup>

### 3. Qwest's Response.

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<sup>35</sup> *Id.* ¶ 475.

<sup>36</sup> *Id.* ¶ 476.

<sup>37</sup> *Id.* ¶ 477.

<sup>38</sup> *Id.* ¶ 478.

Qwest argues that the *Virginia Arbitration Order* was “specifically based on the record in that case,” and therefore does not require a modification to the Hearing Examiner’s Recommendation. Qwest, citing to Paragraph 459 of the *Virginia Arbitration Order*, argues that the FCC recognized that a mixed flat rate and per MOU rate structure is permissible.<sup>39</sup> Paragraph 459 of the *Virginia Arbitration Order* states:

The [FCC]’s specific rate structure rule for local switching specifies that costs for this element be recovered through a combination of a flat-rated charge for line ports and one or more flat-rated or per MOU charges for the switching matrix and trunk ports, but it does not specify a particular combination or means for determining the appropriate combination.

In Paragraph 459 of the *Virginia Arbitration Order*, the Bureau was referring to 47 C.F.R. § 51.509(b), which states, “Local switching costs shall be recovered through a combination of a flat-rated charge for line ports and one or more flat-rated or per-minute usage charges for the switching matrix and for trunk ports.” While this Regulation allows recovery of switching costs on a per MOU basis, the Bureau found that switching costs in the case before it should be recovered on a flat-rate basis.

In support of its position, Qwest relies on the FCC’s Order on Verizon’s Application to provide in-region, interLATA services originating in the states of New Hampshire and Delaware.<sup>40</sup> In that case, the FCC concluded that the New Hampshire Commission did not commit clear error in allowing Verizon to recover its getting started costs on a MOU basis.<sup>41</sup> Relying on 47 C.F.R. § 51.509(b), the FCC stated that state commissions have the flexibility to allocate local switching costs to the MOU element

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<sup>39</sup> Qwest’s Response to Exceptions at 13 n.21.

<sup>40</sup> *Id.*

<sup>41</sup> *Application by Verizon New England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Co. (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware*, Memorandum Opinion and Order, WC Docket No. 02-157 (released Sept. 25, 2002) ¶ 60.

and the fixed rate element “within a reasonable range.”<sup>42</sup> The FCC concluded that the New Hampshire Commission’s allocation of the “getting started” costs to the MOU element was not unreasonable when considered in conjunction with other allocations it made to the fixed rate element.<sup>43</sup>

Qwest also relies on decisions of three state commissions that have rejected flat-rated switching.<sup>44</sup> However, all three cases were decided before issuance of the *Virginia Arbitration Order*.

#### 4. Precedential Effect of the *Virginia Arbitration Order*.

While the *Virginia Arbitration Order* is instructive, it is not binding on this Commission for several reasons. First, because the *Virginia Arbitration Order* is currently on appeal, it is not a final order of the FCC. All three parties to the *Virginia Arbitration Order* filed applications for review of the *Virginia Arbitration Order* by the FCC.<sup>45</sup> Apparently, the FCC has not yet ruled on the applications for review. Federal regulations recognize that the precedential value of a decision of the Bureau is limited to the extent that the decision is on review.<sup>46</sup>

Second, the Bureau stated in the *Virginia Arbitration Order* that it “stands in the stead of the Virginia State Corporation Commission (Virginia Commission) for the limited purpose of this arbitration.”<sup>47</sup> Thus, the Bureau emphasized that it had merely stepped into the shoes of the state commission.

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<sup>42</sup> *Id.* ¶ 61.

<sup>43</sup> *Id.*

<sup>44</sup> Qwest’s Response to Exceptions at 13 & n.18.

<sup>45</sup> See *Virginia Arbitration Case*, Memorandum Opinion and Order at 3-4, ¶ 3, n.12 (released January 29, 2004).

<sup>46</sup> See 47 C.F.R. § 0.5(c) (stating that actions of the Bureau have the same force and effect as actions of the FCC, “except for the possibility of review”).

<sup>47</sup> *Virginia Arbitration Order*, ¶ 2.

Third, the Bureau stated that its application of existing FCC rules is narrowly tailored to the detailed evidence in the record before it.<sup>48</sup> This Commission has limited access to the record in the case before the Bureau, which is based on what is presented in the text of the *Virginia Arbitration Order*.

Fourth, in the *Virginia Arbitration Order*, the Bureau employed a form of “baseball style” arbitration that has not been adopted by this Commission.<sup>49</sup>

Additionally, several state commissions have concluded that the *Virginia Arbitration Order* is not binding on them.<sup>50</sup>

#### 5. Discussion.

This Commission agrees with the Hearing Examiner’s recommendations regarding treatment of switching costs. A response by this Commission to each conclusion in the *Virginia Arbitration Order* relating to switching costs is problematic because, in this case, neither Staff nor MCI addressed getting started or EPHC costs as separate items. RTU fees were discussed, but only as they relate to their inclusion or exclusion in HAI. The record in this case differs from the record in the case before the Bureau. Most significantly, in their exceptions, neither MCI nor Staff cites to the record in this case in support of reaching the same conclusions as the *Virginia Arbitration Order*. Nevertheless, some general observations can be made.

This Commission disagrees with the Bureau’s conclusion that, if an ILEC pays a switch manufacturer a per line fee, then the ILEC must recover those switch costs from a

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<sup>48</sup> *Id.* ¶ 3.

<sup>49</sup> *See id.* ¶¶ 24, 104.

<sup>50</sup> *See Global NAPs, Inc.*, Dec. No. 03-07-039 (Cal. Pub. Util. Comm’n July 10, 2003); *Qwest Corp.*, Docket No. 03B-287T, Decision No. C03-1189, ¶ 26 (Colo. Pub. Util. Comm’n Oct. 17, 2003); *Arbitration Order* (N.Y. Pub. Serv. Comm’n Oct. 24, 2003); *Verizon Pa. Inc.*, Rulemaking Proceeding 00016683 (Pa. Pub. Util. Comm’n Dec. 11, 2003).



CLEC on the same basis.<sup>51</sup> Switching costs only appear to be fixed because Qwest does not pay its vendors on an ongoing basis. Qwest does not pay its vendors on an ongoing basis because Qwest pays for more than enough capacity up front, all at once. The timing of the investment, however, does not affect the cause of the cost. Because usage is constrained by capacity that is both finite and shared, usage is a cost driver, regardless of when it is paid for or if it is bundled with other parts of the switch.

This Commission also disagrees with the Bureau's conclusion that, regarding getting started costs, charging a per line port price recovers costs from CLECs on a competitively neutral basis, whereas charging a per MOU price would not. The Bureau found that cost causation principles do not support a per MOU price because it would recover proportionately more of the getting started costs from high usage subscribers than from low usage subscribers.<sup>52</sup> This Commission believes that, to the contrary, traditional cost causation principles *do* support a per MOU price because high volume users cause more switching costs than low volume users, so they should pay proportionally more for the greater capacity consumed. MCI agreed that a switch engineered to handle higher peak usage costs more than a switch designed to service a lower peak traffic volume.<sup>53</sup> It is Qwest's prerogative to employ a retail rate structure that does not follow traditional cost causation principles. The CLECs can do the same. Additionally, CLECs can target

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<sup>51</sup> As noted at page 94 of the Recommended Decision, "[T]he retail rate structure chosen by the vendor does not necessarily reflect the true economic cost of providing the equipment in question." For example, a vendor hypothetically could bill the cost of a switch as \$20,000 multiplied by the average daily high temperature in the location where the switch will be placed. However, it cannot be seriously claimed that the UNE switching rate structure be tied to the daily high temperature simply because this is how Qwest contracted for its switches.

<sup>52</sup> *Virginia Arbitration Order*, ¶ 465.

<sup>53</sup> Recommended Decision at 94.

the same customer base as Qwest and achieve equal footing. The CLECs are not required to serve only high volume customers.

Finally, this Commission disagrees with the Bureau's reasoning in support of its adoption of a flat per port price rather than a usage based price for shared peak-period costs. The Bureau states that a per MOU price would fail to signal to CLECs that these costs vary with usage during the peak period.<sup>54</sup> However, the Bureau fails to explain how a flat per port price will carry this signal. Additionally, the Bureau's ruling does not fix the problem of over-utilization during peak periods. The Bureau implies that if the MOU rate structure is not 100% effective, it should not be used at all. This Commission does not agree.

Absent any record or authority that compels this Commission to prefer the *Virginia Arbitration Order* over the Recommended Decision, this Commission agrees with, and adopts, the Hearing Examiner's recommendations regarding treatment of switching costs.

#### D. Loop Technology.

Staff excepts that the Hearing Examiner's Recommendation regarding loop technology assumptions is inconsistent with the *Virginia Arbitration Order*. Staff proposed to the Hearing Examiner that Qwest assume 100% use of IDLC for those feeder routes that use a DLC.<sup>55</sup> Staff argued that Qwest's failure to assume 100% IDLC overstated the cost of providing loops and was anticompetitive because Qwest would provision its retail services using more efficient, less expensive IDLC technology while provisioning its unbundled loops with less efficient, more expensive universal digital

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<sup>54</sup> *Id.*, ¶ 475.

<sup>55</sup> Staff's Phase B Opening Post-Hearing Brief at 62-67.

loop carrier UDLC technology. Thus, according to Staff, the economic costs incurred by CLECs would be artificially inflated relative to those incurred by Qwest.<sup>56</sup>

The Hearing Examiner found that Staff's concerns were misplaced. The Hearing Examiner found that the evidence presented by Qwest indicated that its model assumes the least cost DLC solution depending on the size of the remote terminal modeled. That is, UDLC is only used in the limited circumstance in which 32 line remote terminals are modeled. The remaining 97.8% of the lines served over DLC are provisioned over IDLC systems that connect directly to the switch at the DS-1 level.<sup>57</sup>

In the *Virginia Arbitration Order*, the Bureau concluded that a TELRIC model should use 100% NGDLC next generation digital loop carrier systems ("NGDLC") and should not assume any UDLC systems.<sup>58</sup> For the purposes of the *Virginia Arbitration Order*, the FCC defined NGDLC as IDLC configured with the GR-303 switch interface standard.<sup>59</sup>

The decision in the *Virginia Arbitration Order* does not persuade this Commission to reject the Hearing Examiner's recommendation. The IDLC/UDLC mix proposed in Virginia is quite different than the mix proposed by Qwest in this case. In Virginia, the mix proposed by Verizon was 70% IDLC and 30% UDLC.<sup>60</sup> In contrast, the mix proposed by Qwest in this case is approximately 98% IDLC and 2% UDLC.<sup>61</sup> Because this mix only applies to loops served by a DLC, less than 2% of all loops are

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<sup>56</sup> Recommended Decision at 76.

<sup>57</sup> *Id.* at 79.

<sup>58</sup> *Virginia Arbitration Order*, ¶ 312.

<sup>59</sup> *Id.* ¶ 305 n. 786.

<sup>60</sup> *Id.* ¶ 312.

<sup>61</sup> Recommended Decision at 79.

actually provisioned with UDLC. Additionally, MCI never demonstrated a cheaper way to provision small remote terminals with DLC.

Therefore, this Commission rejects this Exception.

### III. MCI'S EXCEPTIONS

#### A. The Hearing Examiner's Recommended Procedure.

The Recommended Decision does not recommend adoption of any specific rates. Rather, the Recommended Decision recommends that this Commission adopt the Hearing Examiner's recommended cost models. The Recommended Decision further recommends that, within 30 days of this Commission's order on the Recommended Decision, Qwest and MCI file compliance filings that include all rates that emerge from the approved cost models. The Recommended Decision recommends that the Hearing Examiner then review the compliance filings and recommend final rates to this Commission.<sup>62</sup>

MCI opposes this two-step procedure proposed by the Hearing Examiner, arguing that this Commission and the parties cannot fairly evaluate the Recommended Decision because rates based on the proposed inputs have not yet been identified. For example, according to MCI, if the rates resulting from application of the cost models are not reasonable or acceptable, the cost models proposed in the Recommended Decision will have to be altered and the order reconsidered. MCI urges this Commission to not consider the Recommended Decision until the Hearing Examiner recommends final rates.<sup>63</sup>

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<sup>62</sup> *Id.* at 199-201, § XII (recommended findings, conclusions, and orders).

<sup>63</sup> MCI's Exceptions at 5-8.

Qwest contends that MCI's ripeness argument is meritless. Qwest characterizes MCI's argument as result-driven and argues that this Commission should select models and inputs based on whether they meet established criteria and are supported by evidence, not based on the rates that the models and inputs generate. Qwest asserts that "MCI's approach of starting with rates and then manipulating models and inputs to achieve desired results would . . . almost certainly lead to unlawful rates that do not meet the requirements of TELRIC."<sup>64</sup>

The Commission rejects MCI's argument. The parties do not need to know the rates produced by the models and inputs in order to assert meaningful exceptions to the Recommended Decision, as evidenced by the exceptions in this case. Additionally, if necessary, the Commission and the parties can reasonably project the final rates that will result from application of the inputs into the cost models. The proposed two-step procedure is used by the FCC,<sup>65</sup> and is more efficient than waiting and bringing a single recommended decision to this Commission after final rates are calculated. In the latter case, if this Commission rejected a cost model or inputs to a cost model, then some resources used in developing final rates would be wasted.

MCI's reliance on *Public Service Co. of New Mexico v. New Mexico Public Service Commission*, 111 N.M. 622, 808 P.2d 592 (1991) ("*PNM v. PSC*") is misplaced. *PNM v. PSC* actually supports the Hearing Examiner's proposed two-step process. The order on appeal in *PNM v. PSC* was, like this Order, preliminary to a final order determining rates. It "framed the issues to be considered in the rate case, which will

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<sup>64</sup> Qwest's Response to Exceptions at 1-2.

<sup>65</sup> See, e.g., *Virginia Arbitration Case*, Memorandum Opinion and Order, ¶ 3, n.12 (released January 29, 2004) (ruling on compliance filings, which were made after issuance of the *Virginia Arbitration Order*).

determine the rates PNM may recover . . . .”<sup>66</sup> It permanently excluded some assets from PNM’s rate base. It included some assets in rate base with the precise rate treatment reserved for a later rate case.<sup>67</sup> The propriety of the Public Service Commission’s piecemeal approach was not at issue in *PNM v. PSC*. What was at issue was whether certain of the Public Service Commission’s decisions were ripe for review in the Supreme Court. The Supreme Court refused to consider an issue if it could recur in the subsequent rate hearing before the Public Service Commission.<sup>68</sup> However, an aggrieved party could appeal the issue after issuance of a final order of the Public Service Commission in the rate case. Similarly, in this case, if a decision in this Order is not ripe for judicial review, MCI can appeal that issue after issuance of a final order determining rates. Contrary to MCI’s assertion, this two-step procedure does not deny MCI or any other party its right to appeal.

B. Loop Modules.

Both Qwest and MCI except to the Hearing Examiner’s recommendation that this Commission consider the results of both Qwest’s and MCI’s models when establishing UNE loop rates. MCI argues that this Commission should use only its model to establish rates<sup>69</sup>, while Qwest argues that this Commission should use only its model to establish rates<sup>70</sup>.

The Hearing Examiner concluded that MCI’s model and Qwest’s model are equally flawed.<sup>71</sup> She found that, while MCI proposed a fundamentally sound and

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<sup>66</sup> *PNM v. PSC*, 111 N.M. at 625, 808 P.2d at 595.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 630-32, 636, 808 P.2d at 600-02, 606.

<sup>69</sup> MCI’s Exceptions at 10.

<sup>70</sup> Qwest’s Exceptions at 7.

<sup>71</sup> Recommended Decision at 51.

intuitive approach to solving for customer locations, MCI failed to support its conclusions due to a series of proprietary agreements with Taylor-Nelson-Sofries Telecom (“TNS”), a third party contractor, and the firms providing TNS with the underlying customer location data.<sup>72</sup> This absence of verifiable data, along with MCI’s filing of erroneous data and TNS’ insistence that its representative’s deposition be deemed proprietary, led to the Hearing Examiner’s concerns regarding the efficacy of MCI’s model.<sup>73</sup>

The Hearing Examiner further found that, while Qwest’s approach is arguably better supported than MCI’s because the mechanism it uses to place customers is open to inspection, its approach is ultimately a generic exercise that might or might not reflect actual conditions in New Mexico. The Hearing Examiner found it ironic that Qwest faulted MCI for the use of national inputs, but itself relied on data from Colorado to establish the cost of loops in New Mexico.<sup>74</sup>

While the Hearing Examiner identified multiple reasons to reject both Qwest’s and MCI’s models, she found that the alternative — to forego establishing UNE loop rates at this time — was unacceptable.<sup>75</sup> Therefore, the Hearing Examiner recommended that this Commission consider the results of both models to establish UNE loop rates.<sup>76</sup>

In its Exceptions, MCI does not deny that it has not made data available, but argues that nondisclosure is an acceptable tradeoff for obtaining more precise data. MCI states that earlier versions of the HAI model used publicly available information, but were faulted by state commissions and the FCC for lack of precision. MCI asserts that,

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 51-52.

<sup>75</sup> *Id.* at 41.

<sup>76</sup> *Id.* at 52.

as data become more precise, they become more valuable commercially and therefore more competitively sensitive. MCI argues that its model is far superior to Qwest's model, which, according to Staff, does not use actual customer locations or even estimates of customer locations in calculating the cost of unbundled loops. MCI asserts that Qwest's model is based on five generic loop distribution designs that are based on a combination of expert opinion and loop distribution areas in Colorado.<sup>77</sup>

Qwest, in its Exceptions, argues that this Commission should reject MCI's model because it lacks sufficient openness and transparency to evaluate the accuracy of the model results.<sup>78</sup> Qwest asserts that the HAI model's loop module uses a hidden, unverifiable process to develop investment for feeder and distribution. Further, according to Qwest, because the cost of feeder and distribution accounts for a substantial percent of total investment in a network, HAI's reliance on a hidden process to calculate this cost means that a major portion of the model's cost estimate is unverifiable and unreliable.<sup>79</sup>

To support its position that this Commission should reject the HAI Model's loop module, Qwest relies on orders of the Public Utility Commission of Oregon ("Oregon Commission") and the Washington State Utilities and Transportation Commission ("Washington Commission").<sup>80</sup> However, these orders do not support Qwest's request to completely reject MCI's model.

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<sup>77</sup> *Id.* at 8-10; MCI's Response to Exceptions at 3-4.

<sup>78</sup> Qwest's Exceptions at 7-12.

<sup>79</sup> *Id.* at 7.

<sup>80</sup> *Id.* at 7, 11.



Both the Oregon and Washington Commissions did criticize the HAI Model's loop module for its lack of transparency and verifiability.<sup>81</sup> However, neither Commission completely rejected the HAI Model because of its lack of transparency and verifiability. Rather, the Oregon Commission ruled that it would accord limited weight to those elements of the HAI model that depend on omitted information.<sup>82</sup> In so ruling, the Oregon Commission noted that the parties pointed out that various components of the HAI model do not rely on the disputed data, and that these components serve a useful purpose as a comparison to the Qwest cost model.<sup>83</sup> Similarly, the Washington Commission reasoned that few cost models are perfect, and submitting them to the scrutiny of cross-examination and Commission review reveals both strengths and weaknesses, which add or subtract to the weight the Commission gives to evidence associated with the model.<sup>84</sup>

The orders of the Oregon and Washington Commissions support the Hearing Examiner's recommendation to consider both the MCI and Qwest cost models in establishing UNE loop rates. Neither Qwest nor MCI has cited authority indicating that this Commission must reject either model as a matter of law. Because both models are flawed, it is inappropriate to rely completely on either model, and it is unacceptable to

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<sup>81</sup> See *Investigation to Review Costs and Establish Prices for Certain Unbundled Network Elements Provided by Qwest Corporation*, Case No. UM 1025, Order No. 03-747 (Or. Pub. Util. Comm'n, Dec. 18, 2003); *Review of Unbundled Loop and Switching Rates; the Deaveraged Zone Rate Structure; and Unbundled Network Elements, Transport, and Termination (Recurring Costs)*, Case No. UT-023003, Thirteenth Supplemental Order: Granting, In Part, Motions to Compel (Wa. State Utils. & Transp. Comm'n, Sept. 8, 2003).

<sup>82</sup> *Investigation to Review Costs and Establish Prices for Certain Unbundled Network Elements Provided by Qwest Corporation*, Case No. UM 1025, Order No. 03-748 (Or. Pub. Util. Comm'n, Dec. 18, 2003).

<sup>83</sup> *Id.*

<sup>84</sup> *Review of Unbundled Loop and Switching Rates; the Deaveraged Zone Rate Structure; and Unbundled Network Elements, Transport, and Termination (Recurring Costs)*, Case No. UT-023003, Eighteenth Supplemental Order, Denying Motion to Strike Cost Model and Testimony (Wa. State Utils. & Transp. Comm'n, Dec. 5, 2003).

reject both models and to not establish UNE loop rates. Accordingly, the Hearing Examiner appropriately recommended that the results of both models should be considered when establishing UNE loop rates.<sup>85</sup>

C. Access Line Count.

MCI excepts to the Hearing Examiner's recommendation that the Commission require MCI to populate its model with line count data from 2001 and demonstrate that access lines are counted on a physical pair basis. MCI states that its revised HAI model does use 2001 data and counts lines on a pair-equivalent basis. MCI asserts that the only basis for the Hearing Examiner's recommendation is an assertion by Qwest in its Post-Hearing Brief that the problem has not been completely eliminated. MCI states that this assertion by Qwest has no support in the record.<sup>86</sup>

Qwest, in its Response to Exceptions, does not dispute MCI's assertion that its revised HAI model uses 2001 data. Qwest does argue that MCI's revised HAI model still treats some lines on a channel-equivalent basis.<sup>87</sup> Qwest states, "MCI's 'corrected' run of the model still apparently includes some digital business lines on a channel-equivalent basis."<sup>88</sup>

While it appears that the vintage of line counts is no longer an issue, the method of line counting is still an issue. Contrary to MCI's statement, there is evidence in the record to support Qwest's assertion that MCI's model still treats some lines on a channel-equivalent basis, and Qwest cites to this evidence in its Post-Hearing Brief and its

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<sup>85</sup> Cf. *Public Service Co. of New Mexico v. New Mexico Public Service Commission*, 111 N.M. 622, 635-36, 808 P.2d 592, 605-06 (1991) (Public Service Commission had authority to formulate its own mix of generating plant to be included in rates, by combining aspects of the various proposals presented).

<sup>86</sup> MCI's Exceptions at 10-11 (citing Recommended Decision at 57).

<sup>87</sup> Qwest's Response to Exceptions at 6-7.

<sup>88</sup> *Id.* at 7.

Exceptions.<sup>89</sup> Thus, we reject MCI's Exception and adopt the Hearing Examiner's recommendation.

D. Plant Mix.

MCI excepts to the Recommended Decision's recommendation regarding the relative proportion of feeder, distribution and interoffice plant that should be installed using aerial, buried, and underground structure.<sup>90</sup> MCI proposed to the Hearing Examiner an aerial mix percentage of approximately 28%. Qwest's model proposed an aerial mix percentage of 14%.<sup>91</sup>

The Hearing Examiner recommended an aerial plant mix percentage of 17%, the upper end of the range proposed by Qwest. The Hearing Examiner found that, while aerial plant may offer an economic advantage over buried and underground facilities, "it is clear that the current trend in network development is moving away from aerial plant for both engineering and aesthetic considerations."<sup>92</sup> Thus, the Hearing Examiner found that aerial plant might not be the social cost minimizing solution because there is a higher likelihood of failure with aerial plant, and local ordinances often require buried or underground facilities in order to improve the appearance of the community. The Hearing Examiner further found that MCI's proposal was not supported by evidence in the record. The Hearing Examiner concluded that the input value of 17% is an equitable reflection of Qwest's current network and TELRIC's forward-looking requirement.<sup>93</sup>

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<sup>89</sup> See Qwest's Post-Hearing Brief at 35-36 (citing Qwest's Exhibit 17 (Fitzsimmons Rebuttal) at 25-26); Qwest's Response to Exceptions at 7 (citing Qwest's Exhibit 17 (Fitzsimmons Rebuttal) at 25-26).

<sup>90</sup> MCI's Exceptions at 11-13.

<sup>91</sup> Recommended Decision at 71-73.

<sup>92</sup> *Id.* at 74.

<sup>93</sup> *Id.* at 74-75.

MCI argues that the Hearing Examiner appears to have concluded that the HAI model does not consider the cost penalty due to higher failure rates in aerial rates.<sup>94</sup> MCI also argues that the Hearing Examiner ignored evidence that the default inputs used in the HAI model consider the trend in telephone plant engineering toward increasing use of buried or underground facilities.

Qwest, in its Response to Exceptions, urges this Commission to reject MCI's argument because MCI's aerial plant mix percentage substantially exceeds the aerial plant mix percentage adopted in the first cost docket and exceeds the amount of aerial plant existing today in New Mexico. Qwest states that the Hearing Examiner correctly found that MCI's attempt to minimize costs through large amounts of aerial plant and minimal amount of underground facilities improperly emphasizes cost reduction over realistic network design.<sup>95</sup>

The record belies MCI's argument that the HAI model considers the trend in telephone plant engineering toward increasing use of buried or underground facilities. As Qwest correctly points out in its Post-Hearing Brief, this Commission, in the first cost docket, adopted the aerial plant mix percentage of 18%. The Commission found that this percentage was appropriate because it was similar to the amount of aerial plant that Qwest was deploying in New Mexico at that time.<sup>96</sup> Therefore, if the appropriate aerial plant mix percentage has changed since then, it should be lower based on the Hearing Examiner's finding that "it is clear that the current trend in network development is moving away from aerial plant for both engineering and aesthetic considerations."<sup>97</sup>

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<sup>94</sup> MCI's Exceptions at 12.

<sup>95</sup> Qwest's Response to Exceptions at 7-8.

<sup>96</sup> Qwest Corporation's Post-Hearing Brief at 41.

<sup>97</sup> Recommended Decision at 74.

Thus, the evidence does not support MCI's proposed aerial plant mix percentage of approximately 28%.

E. Cable Sizing.

MCI excepts to the Hearing Examiner's recommendation that the Commission adopt the distribution cable sizing factors proposed by Qwest.<sup>98</sup> MCI proposed to the Hearing Examiner, for the HAI model, a uniform target cable-sizing factor of .75 for all density zones.<sup>99</sup> Qwest proposed to the Hearing Examiner, for the HAI model, target cable sizing factors from HAI 5.0a, which vary across density zones.<sup>100</sup>

The Hearing Examiner recommends, for the HAI model, that the Commission approve the distribution cable sizing factors proposed by Qwest. The Hearing Examiner agreed with Qwest that MCI's approach to sizing distribution cables is inconsistent with the documentation supporting earlier versions of HAI, and the FCC's conclusion that lower density zones should use lower fill factor inputs.<sup>101</sup>

MCI argues that, while the Hearing Examiner mentioned the effect of breakage, she failed to consider evidence presented by MCI regarding the actual fill achieved by the HAI model. This evidence, according to MCI, shows that, in New Mexico, achieved distribution fill ranges by wire center from 25% to 59%, with an average achieved fill of 46%.<sup>102</sup> MCI's argument is a red herring. Actual fill levels will vary with the number of customer locations and the available discrete size of cable.<sup>103</sup> Variance in the actual fill

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<sup>98</sup> MCI's Exceptions at 13.

<sup>99</sup> Recommended Decision at 86.

<sup>100</sup> *Id.* at 85, 88.

<sup>101</sup> *Id.* at 88.

<sup>102</sup> MCI's Exceptions at 14.

<sup>103</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 & *Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket No. 97-160, Tenth Report and Order, ¶ 186, n. 386 (released Nov. 2, 1999) ("*USF Inputs Order*").

factor among wire centers, using the HAI model, does not satisfy the Hearing Examiner's recommendation that lower density zones should use lower fill factor inputs.

This Commission rejects MCI's exception and adopts the Hearing Examiner's recommendation.

F. Digital Line Offset.

MCI excepts to the Hearing Examiner's recommendation that the Commission set the digital line offset to zero when calculating UNE switching rates.<sup>104</sup> MCI proposed to the Hearing Examiner a \$30 per line offset to DLC lines in excess of 18.3%.<sup>105</sup>

The Hearing Examiner agreed with MCI that the general concept underlying HAI's digital line offset makes "intuitive sense."<sup>106</sup> However, the Hearing Examiner expected MCI to be able to better quantify and support its proposal than it has in this proceeding. The Hearing Examiner found that MCI has been aware of problems with its argument since the FCC rejected it in 1999, but MCI offers no new arguments, data, or calculations indicating that the FCC erred in rejecting it. Thus, consistent with Qwest's position and the FCC's findings, the Hearing Examiner recommends that this Commission set the digital line offset to zero when calculating switching rates. The Hearing Examiner found that the record does not support an alternative conclusion.<sup>107</sup>

MCI argues that the Hearing Examiner ignored the evidence presented by MCI to justify the input value used in the HAI model for the digital line offset. Qwest, in its

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<sup>104</sup> MCI's Exceptions at 17.

<sup>105</sup> Recommended Decision at 100.

<sup>106</sup> *Id.* at 101.

<sup>107</sup> *Id.*

Response to Exceptions, argues that MCI's proposed offset is the same offset that was rejected by the FCC.<sup>108</sup>

MCI's exceptions essentially repeat arguments that it raised to the Hearing Examiner. The Hearing Examiner correctly concluded that MCI offers no new data indicating that the FCC erred when it rejected MCI's proposed input.<sup>109</sup> This Commission rejects MCI's exceptions for the reasons discussed in the Recommended Decision at page 101.

G. Billing Costs.

MCI excepts to the Hearing Examiner's recommendation that the Commission include billing related costs in its calculation of the usage sensitive rates for UNE switching.<sup>110</sup> In its exceptions, MCI relies on Staff's presentation of evidence that the cost of billing systems is included in the flat per line rate charged to Qwest by Qwest's switch vendors. Thus, MCI argues that, regardless of whether switching costs are recovered through flat-rated charges or usage-sensitive charges, there is no need for additional costs to be included in the rate for unbundled switching.<sup>111</sup>

Qwest, in its Response to Exceptions, characterizes MCI's exception as "non-sensical." Qwest states that, even if it is true that Qwest's switch vendors charge Qwest for the cost of billing system in the price of the switch, Qwest still needs to recover those billing costs from its wholesale CLEC customers.<sup>112</sup>

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<sup>108</sup> Qwest's Response to Exceptions at 15.

<sup>109</sup> See Tr. Day 9 at 142-44 (Dr. Bryant acknowledges that MCI's digital line offset is the same offset that the FCC rejected and states that MCI continues to believe that the FCC was just in error).

<sup>110</sup> MCI's Exceptions at 18.

<sup>111</sup> *Id.*

<sup>112</sup> Qwest's Response to Exceptions at 16.

The Hearing Examiner stated that MCI largely ignored this topic in its post hearing briefs, but that it appeared that Staff agreed that the costs associated with billing should be included in the UNE cost estimates. The Hearing Examiner rejected Staff's argument that separate consideration of billing costs is unnecessary because they are already included in a flat-rated charge, because the Hearing Examiner rejected Staff and MCI's proposal for flat-rate only switching. The Hearing Examiner also found that, even if a flat-rate only switching rate structure were adopted for UNE switching, it is still necessary to measure and bill for usage regarding shared transport.<sup>113</sup>

MCI presents no evidence that billing costs need not be included in the rate for unbundled switching, regardless of whether switching costs are recovered through flat-rated charges or usage-sensitive charges. To the contrary, the evidence, including evidence from Staff, indicates that billing costs should be included in the UNE cost estimates.<sup>114</sup> The issue was whether those costs should be recovered through a flat-rated charge or a usage-sensitive charge. MCI does not address this latter issue in its Exceptions. Therefore, the Commission rejects MCI's exception.

#### H. Marketing and Business Fees.

MCI excepts to the Hearing Examiner's recommendation that this Commission require MCI to include in HAI the level of product management and sales expense included by Qwest in its model.<sup>115</sup> MCI argued to the Hearing Examiner that product management and sales expenses were included in HAI through the application of its carrier-to-carrier customer operations factor.<sup>116</sup> The Hearing Examiner rejected MCI's

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<sup>113</sup> Recommended Decision at 111.

<sup>114</sup> *Id.*

<sup>115</sup> MCI's Exceptions at 18-19.

<sup>116</sup> Recommended Decision at 144.



argument, concluding that HAI does not allow for these costs in “any quantifiable way.”<sup>117</sup>

In its Exceptions, MCI challenges the Hearing Examiner’s conclusion, stating that MCI’s witness, Mark Bryant, referred to the HM Inputs Portfolio for documentation of costs included in the carrier-to-carrier customer operations factor. According to MCI, the HM Inputs Portfolio shows that the carrier-to-carrier customer operations factor is based on ILEC expenses in ARMIS account 7150 (Service Order Processing), 7170 (Payment and Collections), 7190 (Billing Inquiry), and 7270 (Carrier Access Billing System).<sup>118</sup>

In its Response to Exceptions, Qwest states that Mr. Bryant only testified that he “believes” product management and sales expenses were included in HAI through the application of its carrier-to-carrier customer operations factor. Qwest further states that Mr. Bryant acknowledged that he did not know what activities are specifically accounted for in the carrier-to-carrier customer operations factor.<sup>119</sup>

The Commission agrees with Qwest. Mr. Bryant did testify that he was not aware of any part of the inputs portfolio that explains what activities are covered by the carrier-to-carrier .14¢ monthly charge per line.<sup>120</sup> Additionally, MCI’s assumptions are not well supported. First, MCI’s calculations rely on carrier-to-carrier costs for long distance access service.<sup>121</sup> MCI did not explain why this is an appropriate proxy for the product management and sales expenses an efficient firm will incur to provide UNEs. Second, MCI fails to explain why its product management and sales estimates should be

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<sup>117</sup> *Id.* at 145.

<sup>118</sup> MCI’s Exceptions at 18-19.

<sup>119</sup> Qwest’s Response to Exceptions at 10 (citing Tr. Day 9 at 128-29).

<sup>120</sup> Tr. 1/9/03 at 129 (Bryant Cross).

<sup>121</sup> See Appendix C to MTB-4, HAI Inputs Portfolio at 169, attached by CD-ROM as Exhibit 4 to WorldCom Exhibit 1 (Bryant direct).

multiplied by 70% to reflect forward-looking efficiencies in the provision of unbundled network elements.<sup>122</sup>

I. General Support Asset Expenses.

Both MCI and Qwest except to the Hearing Examiner's recommendation regarding the separation of general support costs between retail and wholesale operations. Qwest argued to the Hearing Examiner that these costs should be spread over the entire demand for the relevant products and recovered from all customers, whether wholesale customers paying UNE rates or retail customers paying retail rates, in proportion to overall demand. Therefore, according to Qwest's proposal, if a carrier has ten lines, three used by wholesale customers and the other seven by retail customers, charging each of those customers a per-line amount for these supports will properly allocate recovery of the costs across wholesale and retail customers: 30% to the former and 70% to the latter.<sup>123</sup> MCI argued for a reduction of general support expenses by 50% to reduce costs associated with general support to the extent those costs are incurred in connection with Qwest's retail operations.<sup>124</sup>

The Recommended Decision found that Qwest had not adequately demonstrated that its methodology excludes costs associated with its retail operations. Further, the Recommended Decision found that Qwest's proposal is unreasonable because it allows Qwest to recover a portion of its retail costs from CLECs who purchase UNEs. The Recommended Decision found MCI's proposal convincing, but lacking adequate support because MCI did not establish why a 50% reduction is reasonable. The Hearing Examiner recommends that the Commission adjust MCI's proposed allocator to reflect a

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<sup>122</sup> *See id.*

<sup>123</sup> Recommended Decision at 156.

<sup>124</sup> *Id.*

25% reduction in general support assets for use in HAI. The Hearing Examiner concluded, "This value represents the Hearing Examiner's best estimate of forward looking efficient costs given the record before her in this case."<sup>125</sup>

In its Exceptions, MCI states that the Hearing Examiner misunderstood the nature of the assignment of general support costs in the HAI model. MCI explains that the 50% used in the New Mexico filing of the model is not an input value, but is calculated based on the ARMIS data used by the model.<sup>126</sup>

Reference to the ARMIS data does not validate MCI's proposal, for several reasons. First, ARMIS data does not break down general support costs between wholesale and retail costs. Thus, MCI breaks down those costs itself and, in doing so, makes assumptions that are not necessarily verifiable.

Second, MCI makes an assumption that is unreasonable. In explaining how it calculates general support expenses, MCI states, in pertinent part:

A portion of general support costs is assigned to customer operations and corporate operations according to the proportion of operating expense in these categories to total operating expense reported in the *ARMIS* data.<sup>127</sup>

This explanation suggests that MCI considers all corporate operations expenses avoidable in the wholesale environment. This assumption is unreasonable because even a company with no retail operations will have corporate operations expenses that it will have to recover from the wholesale products and services it provides.

Third, the ARMIS data is from 1996 so it likely does not include the wholesale expenses that have arisen due to Qwest's responsibility under the Telecommunications

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<sup>125</sup> *Id.* at 157-58.

<sup>126</sup> MCI's Exceptions at 19-20.

<sup>127</sup> See Exhibit MTD-4, HAI Model Description at 71, attached by CD-Rom as Exhibit 4 to WorldCom Exhibit 1 (Bryant Direct).

Act of 1996 to provide UNEs. Thus, MCI's proposal likely understates efficient forward-looking wholesale expenses because it over-allocates all corporate expenses to the retail category and underestimates wholesale expenses related to the provision of UNEs.

Fourth, MCI claims that its proposed 50% reduction comes from the Expense Module of the HAI Model, at the "00 Actuals" tab, cell I116. However, this cell states:

32.79% "Office Worker" General Support Allocator<sup>128</sup>

Thus, the source of MCI's proposed 50% reduction is unclear.

Qwest, in its Exceptions, maintains that the Hearing Examiner's recommendation to reduce the costs of general support assets by a further 25% violates TELRIC, lacks evidentiary support, and is arbitrary and capricious. Qwest states that the HAI model already reduces general support costs to less than one-half of their current level, before application of the 25% reduction recommended by the Hearing Examiner.

Qwest relies on the *Virginia Arbitration Order*. In the *Virginia Arbitration Order*, AT&T and WorldCom proposed a reduction of general support expenses by 32%, an amount adopted in the *USF Inputs Order* to reflect costs associated with special access and toll, which were not supported by the universal service support mechanism. The Bureau rejected AT&T and WorldCom's proposal, stating that AT&T and WorldCom did not demonstrate that the 32% reduction correlated to any anticipated reduction in general support expenses beyond the reduction that results from multiplying the expense ratio by TELRIC investment.<sup>129</sup>

The 25% reduction in general support expenses recommended by the Hearing Examiner is to eliminate, from UNE pricing, general support expenses incurred on behalf

<sup>128</sup> See Exhibit MTD-4, Expense Module of HAI Model, attached by CD-Rom as Exhibit 4 to WorldCom Exhibit 1 (Bryant Direct).

<sup>129</sup> *Virginia Arbitration Order*, ¶ 151.

of Qwest's retail customers. The recommendation is the result of a weighing of the evidence presented by both MCI and Qwest. The evidence indicates that MCI's initial ARMIS calculations did include some retail-related GSA expenses. Nonetheless, the Hearing Examiner found that MCI's proposal understated general support expenses. Conversely, the Hearing Examiner found that Qwest's proposal overstated general support expenses because it allows Qwest to recover a portion of its retail costs from CLECs who purchase UNE's. Thus, the evidence supports a recommendation somewhere in between MCI's proposal and Qwest's proposal, and the Hearing Examiner properly recommended a 25% reduction in general support costs.

Qwest's reliance on the *Virginia Arbitration Order* is misplaced. In that case, the Bureau rejected the 32% reduction in general support expense because it was based on a reduction only appropriate in the universal service context.<sup>130</sup> That issue is not present in this case. The 25% reduction recommended by the Hearing Examiner is based on evidence that MCI's initial ARMIS calculations did include some retail-related GSE expenses and therefore should be reduced.

#### IV. ATTORNEY GENERAL'S EXCEPTIONS

The AG excepts to the Recommended Decision insofar as it incorporates portions of this Commission's 271 Final Order<sup>131</sup> dealing with price squeeze issues. The Recommended Decision finds that the record at this time does not support a conclusion regarding the possible existence of a price squeeze. The Hearing Examiner recommends that this Commission affirm its decision in Paragraph 252 of its 271 Final Order and revisit this issue when permanent UNE rates are established at the conclusion of this

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<sup>130</sup> *See id.*

<sup>131</sup> Final Order Regarding Compliance With Outstanding Section 271 Requirements: SGAT Compliance, Track A, and Public Interest, issued on Oct. 8, 2002, in Case Nos. 3269, 3537, 3495, and 3750.

proceeding.<sup>132</sup> Paragraph 252 of the 271 Final Order states that the Commission found no credible evidence demonstrating the existence of a classic price squeeze, but that it might revisit the issue in this Phase B if compelling evidence of a price squeeze is brought to the Commission's attention.

The AG agrees with the Hearing Examiner that the record at this time does not support a conclusion regarding the possible existence of a price squeeze.<sup>133</sup> The AG objects to the Recommended Decision insofar as it adopts for future use the 271 Final Order's conclusions regarding the burden of proof, relevant evidence, and required degree of harm relating to a price squeeze claim.<sup>134</sup>

The Commission considered and rejected the AG's arguments regarding burden of proof and relevant evidence in the 271 Final Order.<sup>135</sup> The AG presents no compelling reason for this Commission to revise its determinations regarding those issues. It appears that the AG is arguing for the first time that a price squeeze claim does not require proof that any and all competitive entry in New Mexico is doomed to failure. The AG may present this argument to the Hearing Examiner during the next stage of this Phase B, in connection with any consideration by the Hearing Examiner of a price squeeze claim. This Commission will not consider the argument at this time.

## V. QWEST'S EXCEPTIONS

### A. Structure Sharing and Placement Costs.

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<sup>132</sup> Recommended Decision at 199.

<sup>133</sup> AG's Exceptions at 7.

<sup>134</sup> *Id.* at 1-2.

<sup>135</sup> 271 Final Order at 103-111, ¶¶ 234-52. *See also* Attorney General's Proposed Findings of Fact, Conclusions of Law, and Proposed Form of Order Regarding the Price Squeeze Issue, filed on August 28, 2002.

Qwest challenges the Hearing Examiner's reliance, in determining inputs for structure sharing and placement costs, on the *USF Inputs Order*. Qwest states that the *USF Inputs Order* assumed that it is appropriate to assume the same opportunity to share structure as when the ILECs first built their networks.<sup>136</sup> Qwest further states, "Largely on this basis, the [Recommended Decision] rejects Qwest's proposed inputs for structure sharing and placement costs[.]"<sup>137</sup> Qwest argues that an FCC order issued after post-hearing briefing in this matter confirms that Qwest's approach is required by TELRIC and that the assumptions in the *USF Inputs Order* may not be used in determining UNE rates.<sup>138</sup>

With regard to both structure sharing and placement costs, Qwest proposed to the Hearing Examiner cost sharing assumptions that rely on the notion that the replacement network in New Mexico must navigate in and around developed neighborhoods, as they exist today.<sup>139</sup> The Hearing Examiner found that this Commission previously determined that similar assumptions were inconsistent and overstated the cost of installing a loop because they contemplate existing structures when they increase costs (i.e., navigating existing sidewalks, streets, etc.), but ignore these features where they result in cost reductions (i.e., using manholes already installed in existing streets).<sup>140</sup> The Hearing Examiner stated that using a structure sharing methodology that skews costs in this

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<sup>136</sup> Qwest's Exceptions at 4.

<sup>137</sup> *Id.* at 5.

<sup>138</sup> *Id.*

<sup>139</sup> Recommended Decision at 62 (structure sharing); 69 (placement costs).

<sup>140</sup> *Id.* at 62-63 (structure sharing); 69 (placement costs).

manner is anticompetitive and encourages too much facilities based entry.<sup>141</sup> Thus, the Hearing Examiner recommends rejection of Qwest's structure sharing proposal.<sup>142</sup>

The Hearing Examiner also recommends rejection of MCI's and Staff's structure sharing proposals.<sup>143</sup> Because she found insufficient evidence in the record to support any of the proposals presented by Qwest, MCI, and Staff, the Hearing Examiner recommends that this Commission adopt, for both Qwest's and MCI's models, the structure sharing inputs approved by the FCC in the *USF Inputs Order*. The Hearing Examiner stated that she finds these inputs "are well documented, fall within the range of values proposed by parties in this proceeding, and reflect the fact that sharing opportunities are likely to vary by structure and density zone."<sup>144</sup>

In its Exceptions, Qwest argues that recent FCC authority "confirms that Qwest's approach is required by TELRIC, and that the assumptions for structure sharing and placement costs adopted by the FCC in the *USF Inputs Order* may not be used in determining UNE rates[.]"<sup>145</sup> The recent FCC authority cited by Qwest is the FCC's Notice of Proposed Rulemaking in its *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers ("TELRIC NOPR")*.<sup>146</sup>

In the *TELRIC NOPR*, the FCC seeks comments on tentative conclusions and modifications to its current UNE pricing regime.<sup>147</sup> In particular, the FCC seeks

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<sup>141</sup> *Id.* at 63.

<sup>142</sup> *Id.* at 64.

<sup>143</sup> *Id.* at 64-65.

<sup>144</sup> *Id.* at 65. The Hearing Examiner also recommends that this Commission adopt, for both Qwest's and MCI's models, the placement assumptions approved by the FCC in the *USF Inputs Order*. *Id.* at 71.

<sup>145</sup> Qwest's Exceptions at 5.

<sup>146</sup> WC Docket No. 03-173, 18 FCC Rcd 18946 (released Sept. 15, 2003).

<sup>147</sup> *Id.*, ¶ 4.



comments on the relevance of Commission statements in the universal service context for specific UNE pricing rules and on the relationship between the two sets of rules.<sup>148</sup> In the *TELRIC NOPR*, the FCC states that while it understands why state regulators might refer to the *USF Inputs Order* in developing forward-looking costs, in at least some cases “there might be unintended and undesirable consequences that result from extrapolating from statements made in the context of universal service funding.”<sup>149</sup> As an example, the FCC quotes its statement in the *USF Inputs Order* that it is necessary “to assume that the telephone industry will have at least the same opportunity to share the cost of building plant that existed when the plant was first built.”<sup>150</sup> The FCC explains that while this statement was intended to address only the issue of structure sharing in the universal service model, it has been interpreted by some states as endorsing a backward-looking approach for other inputs in a TELRIC model, such as the relative frequency of various construction types (e.g., boring through concrete, trenching through dirt). “Applying this particular statement from the *USF Inputs Order* out of context,” says the FCC, “erroneously assumes away not just the features of an incumbent LEC’s existing network but also attributes of the real world in which incumbents and competitors operate.”<sup>151</sup>

MCI, in its Response to Exceptions, first points out that the statements relied on by Qwest from the *TELRIC NOPR* are not statements of current law, but are merely comments in a notice of proposed rulemaking. MCI argues that, while the comments might represent a tentative conclusion of the FCC, the comments are, in fact, only

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<sup>148</sup> *Id.*, ¶ 48.

<sup>149</sup> *Id.*, ¶ 47.

<sup>150</sup> *Id.* (quoting *USF Inputs Order*, ¶ 244 n. 504).

<sup>151</sup> *Id.*

tentative and are not binding on this Commission.<sup>152</sup> Second, MCI argues that the Hearing Examiner's recommendation regarding inputs for structure sharing and placement costs should be followed for reasons independent of the Hearing Examiner's reliance on the assumption, questioned in the *TELRIC NOPR*, that the telephone industry will have the same opportunity to share structure as when the incumbent LEC first built its network.<sup>153</sup>

Qwest is incorrect in arguing that the Recommended Decision rejects Qwest's proposed inputs because it is appropriate to assume the same opportunity to share structure as when the ILECs first built their networks. The only reference in the Recommended Decision to such an assumption is in the summary of Staff's arguments,<sup>154</sup> which were rejected by the Hearing Examiner both for structure sharing and placement. Rather, the Hearing Examiner recommends rejection of Qwest's proposal because Qwest's assumptions are inconsistent, overly conservative, and likely to result in an overstatement of the costs Qwest actually incurs to make loops available to CLECs.<sup>155</sup>

The cautionary language in the *TELRIC NOPR* regarding reliance on the *USF Inputs Order* apparently reflects the FCC's concern that state commissions are relying on the "at least the same opportunity to share" statement to adopt a mix of placement techniques that is backward looking. However, no evidence indicates that the structure sharing percentages adopted in the *USF Inputs Order* are backward looking or fail to consider real world constraints. The *USF Inputs Order* acknowledges that "the forward-looking practice of a carrier does not necessarily equate to the historical practice of the

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<sup>152</sup> MCI's Response to Exceptions at 1-2.

<sup>153</sup> *Id.* at 2-3.

<sup>154</sup> See Recommended Decision at 58.

<sup>155</sup> *Id.* at 62-64.

carrier.”<sup>156</sup> It states, “More than with other input values, our determination of structure sharing percentages requires a degree of predictive judgment.”<sup>157</sup> Moreover, the structure sharing percentages approved by the FCC in the *USF Inputs Order* are similar to the structure sharing percentages developed by the Washington Utilities and Transportation Commission for use in a cost docket comparable to this proceeding.<sup>158</sup> The Hearing Examiner recommends adoption of structure sharing inputs approved by the FCC in the *USF Inputs Order*, not because the FCC adopted them, but because they are the most reasonable. The Commission agrees with the Hearing Examiner and rejects Qwest’s Exception.

B. Loop Lengths.

Qwest excepts to the Hearing Examiner’s Recommendation to use MCI’s MST algorithm to calculate loop lengths. Qwest argues that MST wrongly reduces loop lengths in urban areas and increases them in rural areas. Qwest argues that MST reduces loop lengths in urban areas by ignoring existing roads, rights-of-way and obstacles. Qwest alleges that MST connects customer locations as if they were dots on a page “simply to minimize loop lengths[.]”<sup>159</sup>

Qwest reiterates the arguments it made to the Hearing Examiner. The Hearing Examiner found, while it is true that MST does not explicitly route outside plant around specific obstacles or terrain features, there is no evidence that MST underestimates loop lengths. To the contrary, the Hearing Examiner stated that Qwest’s response to a Bench Request indicates that HAI assumes longer loop lengths than LoopMod with MST turned

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<sup>156</sup> *USF Inputs Order*, ¶ 247.

<sup>157</sup> *Id.* ¶ 245.

<sup>158</sup> *See id.*, ¶ 246, ¶ 247 n. 511 & ¶ 249.

<sup>159</sup> Qwest’s Exceptions at 12-14.

on or off. This comparison indicated no systematic error in loop lengths by density zone. Therefore, the Hearing Examiner found no support for Qwest's claim that HAI understates urban loop costs at the expense of rural locations. In fact, the Hearing Examiner found that the record indicates that HAI appears to overstate loop lengths in urban areas when compared to Qwest's estimates.<sup>160</sup>

In its Exceptions, Qwest argues that, because Qwest's model and MCI's model determine density zones differently, the Hearing Examiner's comparison of average loop lengths in various wire centers does not accurately reflect the effects of MST. Qwest asserts that, to determine whether MST understates cable lengths in urban as opposed to rural areas, the relevant comparison is between HAI without MST and HAI with MST, not between HAI and ICM.<sup>161</sup>

Qwest provides no evidence to show that the difference in wire center groupings between models shows a systematic bias. In fact, the evidence casts doubt on Qwest's argument. Implicit in Qwest's argument is the view that HAI is accurate with MST off but biased toward lowering costs in urban areas and raising costs in rural areas with MST on. However, a comparison of average loop length estimates by wire centers indicates that HAI with MST on usually uses more plant than HAI with MST off, and both runs of HAI usually use more plant than Qwest's model.<sup>162</sup> Because both versions of HAI assume more plant than Qwest's model, and turning MST on results in even longer loop

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<sup>160</sup> Recommended Decision at 55.

<sup>161</sup> Qwest's Exceptions at 14.

<sup>162</sup> See Qwest's Responses to Bench Requests with CD, filed on 12/30/02.

lengths in rural areas,<sup>163</sup> an argument could be made that HAI overstates loop lengths in all areas, but more so in rural areas. However, Qwest has not made this argument.

C. Current Costs to Booked Cost Conversions.

Qwest excepts to the Hearing Examiner's recommendation to use a ratio of current costs to booked costs to calculate maintenance expenses. Qwest argues that the use of this ratio is inconsistent with TELRIC and creates a mismatch that improperly skews the calculation of maintenance expenses.<sup>164</sup>

Qwest essentially repeats arguments that it made to the Hearing Examiner. The Hearing Examiner found that Qwest's arguments are identical to those considered and rejected by the FCC in the *USF Inputs Order*, and that Qwest failed to show why the methodology adopted in the *USF Inputs Order* is inappropriate to this proceeding. The Hearing Examiner also stated that Qwest failed to show why this Commission should reverse its previous decision, which rejected derivation of maintenance expense factors as a ratio of current expenses divided by embedded investments.<sup>165</sup> This Commission agrees with the Hearing Examiner and rejects Qwest's exceptions for the reasons discussed in the Recommended Decision at pages 151-53.

D. Task Times and Verification of Data.

Qwest excepts to the Hearing Examiner's recommendation to reduce almost all the task times used in Qwest's non-recurring cost study by 30% until Qwest completes its

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<sup>163</sup> In this case, rural is defined as central offices where Qwest estimates average loop lengths in excess of 20,000 feet.

<sup>164</sup> Qwest's Exceptions at 18.

<sup>165</sup> Recommended Decision at 151-53.

pending time and motion studies. Qwest argues that the evidence does not support this recommendation.<sup>166</sup>

Qwest and Staff were the only parties that addressed non-recurring cost issues.<sup>167</sup> The Hearing Examiner recommends that this Commission reject both Qwest's and Staff's inputs for lack of support.<sup>168</sup> The Hearing Examiner stated that both Qwest and Staff relied on the unsupported opinions of subject matter experts ("SMEs") for model inputs.<sup>169</sup> In the absence of verifiable data, the Hearing Examiner followed the approach of the Washington Utilities and Transportation Commission ("Washington Commission"). The Washington Commission ordered Qwest to reduce the majority of its work time estimates by a fixed percentage. The Washington Commission justified this reduction based on a review of the supporting documentation for Qwest's non-recurring cost studies, the arguments of interested parties, and because Qwest failed to demonstrate how efficiency gains had been properly accounted for in its study.<sup>170</sup>

The Hearing Examiner found similarities in this proceeding. In particular, she found that Qwest failed to show how its cost study reflects productivity improvements. Although Qwest claimed that its SME inputs are forward looking and continuously updated, the Hearing Examiner found little evidence to support this assertion. In fact, the Hearing Examiner stated that the record indicated that no written instructions were provided to the SMEs regarding how to estimate the forward-looking nature of their responses. Additionally, the Hearing Examiner found that the manner in which these

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<sup>166</sup> Qwest's Exceptions at 19-20.

<sup>167</sup> Recommended Decision at 128.

<sup>168</sup> *Id.* at 130.

<sup>169</sup> *Id.* at 128.

<sup>170</sup> *Id.* at 130.

inputs were collected is predominantly oral and completely undocumented, and a number of inputs are older than the forward-looking component of the estimate claims to be.<sup>171</sup>

In its Exceptions, Qwest argues that its estimates were provided by SMEs, some of who had, on average, twenty years of experience performing or supervising the tasks included in Qwest's model. Qwest says that it offered thousands of pages of support for its SME opinions. Qwest says that it would agree to use its pending time and motion studies, with adjustments applicable to New Mexico, when those studies are complete, but that, in the interim, this Commission should use Qwest's estimates.<sup>172</sup>

The "thousands of pages of support" provided by Qwest consists of written presentations of the opinions of Qwest's SMEs. These pages do not contain data documenting task times, such as time and motion studies. Time and motion studies will provide work time and probability of occurrence data that can be evaluated for efficiencies and adjusted to reflect the operation of a forward-looking efficient network.

The record lacks verifiable task time data. The Hearing Examiner has properly recommended that Qwest provide time and motion studies to cure this deficiency in the record. In the interim, it is reasonable to follow the lead of the Washington Commission. The time to complete a particular task should not vary much, if at all, with the state in which it is performed. For example, if the task time to place a jumper cable in Washington State was overstated by 30%, the task time should be overstated by 30% in New Mexico as well.

E. Battery Distribution Fuse Bay Locations.

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<sup>171</sup> *Id.* at 130-31.

<sup>172</sup> Qwest's Exceptions at 19-20.

Qwest excepts to the Hearing Examiner's recommendation to decrease the power cable lengths included in Qwest's collocation study by 20%. Qwest objects to the Recommended Decision's alleged failure to recognize longer power cables, which are, according to Qwest, necessarily associated with the sharing of battery distribution fuse bays ("BDFBs").<sup>173</sup>

The Hearing Examiner found that the inputs presented by both Qwest and Staff were unacceptable. The Hearing Examiner stated that Qwest's position appears to be elusive and contradictory. For example, the Hearing Examiner found that, while Qwest represented that its collocation inputs are derived from a system-wide sample of 41 actual collocation jobs, the inputs it uses to estimate cable costs are based on only five observations, none of which are from New Mexico. The Hearing Examiner also found that, while Qwest claimed that the cable lengths it used are specific to New Mexico, it appears that they are actually Qwest region-wide values that it believes, but provides no evidence to support, are a sufficient proxy for conditions in New Mexico based upon measurements taken by a Qwest engineer during walkthroughs of central offices in New Mexico. The Hearing Examiner found Staff's alternative inputs unacceptable because they are based on the unsupported opinion of its expert.<sup>174</sup>

Having found Staff's and Qwest's inputs unacceptable, the Hearing Examiner recommended that the Commission require Qwest to resubmit its study after reducing its power cable length estimates by 20%. The Hearing Examiner believed that it is

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<sup>173</sup> *Id.* at 20-22.

<sup>174</sup> Recommended Decision at 164-65.



reasonable to assume that Qwest's cable lengths would be shorter based on data specific to New Mexico and optimal layout of the BDFB.<sup>175</sup>

Qwest, in its Exceptions, argues that the shorter cable lengths proposed by the Hearing Examiner are inconsistent with the sharing of BDFBs. Qwest explains that, when Qwest shares BDFBs with CLECs, the BDFBs must be placed in areas where they are accessible by both Qwest and CLECs. As a result, according to Qwest, the shared BDFBs cannot be placed as close to CLEC collocation areas as dedicated BDFBs, requiring CLECs to use longer power cables than they would use with dedicated BDFBs. Qwest argues that the shorter cable lengths recommended by the Hearing Examiner are only realistic if BDFBs are dedicated to CLECs and are placed in central offices as close as possible to collocation areas. Qwest asserts that its approach of assuming shared BDFBs and somewhat longer cable lengths is the most realistic, cost-efficient method for calculating the cost of power cables. According to Qwest, the Recommended Decision imposes cost-saving assumptions without recognizing the offsetting cost increases those assumptions require.<sup>176</sup>

The Hearing Examiner correctly states that, while optimizing the layout of a BDFB could increase other costs, this does not necessarily lead to the conclusion that total costs have increased or efficiency has been reduced.<sup>177</sup> For example, assume that there are three BDFBs in a central office and that each BDFB costs \$25,000, and that there are 300 power cables on each BDFB, the average cable length is 100 feet, and power cables cost \$1 per foot. Total costs in this example are \$105,000.<sup>178</sup> Further

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<sup>175</sup> *Id.* at 165-66.

<sup>176</sup> Qwest's Exceptions at 20-22.

<sup>177</sup> Recommended Decision at 166 n.193.

<sup>178</sup> \$75,000 (\$25,000 x 3 BDFBs) + \$30,000 (300 cables x 100 feet per cable x \$1 per foot of cable).

assume that, by optimizing the placement of BDFBs, only two BDFBs are needed to serve the central office, but that this, in turn, raises the average cable length to 150 feet. Total costs are now only \$95,000.<sup>179</sup> Thus, contrary to Qwest's arguments, an increase in one cost component does not mean that total costs will increase. The Commission therefore rejects Qwest's exception.

F. Floor Space Rent Charges.

Qwest excepts to the Hearing Examiner's recommendation that the Commission require Qwest to decrease its architectural and internal project management costs that it incurs in making central office space available to CLECs.<sup>180</sup>

Qwest proposed to the Hearing Examiner a floor space rental charge that includes a 15% architectural fee and a 5% project management fee (15% and 5% of total construction costs).<sup>181</sup> The Hearing Examiner found that Qwest did not provide sufficient support for its proposed architectural fees and required Qwest to assume architectural costs that are 13% of construction costs. The Hearing Examiner found this proposed reduction to be reasonable based on the record, especially because the percentage reduction does not lower floor space costs "all that much" and because the resulting rate is comparable with the rate approved by the Washington Utilities and Transportation Commission.<sup>182</sup>

The Hearing Examiner found that Qwest's estimate of its internal project management fees was excessive given that Qwest's cost estimates already include the costs for architecture and general expenses. The Hearing Examiner found it reasonable to

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<sup>179</sup> \$50,000 (\$25,000 x 2 BDFBs) + \$45,000 (300 cables x 150 feet per cable x \$1 per foot of cable).

<sup>180</sup> Qwest's Exceptions at 23.

<sup>181</sup> *Id.*

<sup>182</sup> Recommended Decision at 170-71.

require Qwest to assume project management fees that are 2% of construction costs.<sup>183</sup>

In its Exceptions, Qwest argues that the Hearing Examiner's proposed reductions to the architectural and internal project management costs would result in costs that are not significantly different from costs required for non-specialized, typical commercial buildings. Qwest contends that the architectural and project management fees incurred in designing and building central offices are significantly higher than comparable fees for more typical commercial buildings. Qwest argues that its substantial experience establishes the reasonableness of its proposed rates.<sup>184</sup>

The record belies Qwest's claim that the Hearing Examiner's proposed reductions to the architectural and internal project management costs would result in costs that are not significantly different from costs required for non-specialized, typical commercial buildings. As noted by Staff, Qwest supported a rate of approximately \$38 per square foot per year, while the current real estate market suggests that the asking price for Class A office space is roughly \$20 per square foot per year.<sup>185</sup> The Hearing Examiner's proposed reductions are small reductions to Qwest's proposed rate. As noted in footnote 201 of the Recommended Decision:

The Hearing Examiner believes this reduction reasonable based upon the record especially when considering that the recommended changes and exclusions do not lower floor space costs all that much; the Hearing Examiner estimates the final rate to be \$2.98 instead of \$3.17. Further, the Hearing Examiner notes that these findings result in a rate that is comparable with the rate approved by the WUTC.

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<sup>183</sup> *Id.* at 171.

<sup>184</sup> Qwest's Exceptions at 23.

<sup>185</sup> Staff Exhibit 11 (Morrison Direct) at 77-78.

The resulting rate of \$35 per square foot per year (\$2.98 x 12 months) is much closer to Qwest's proposed rate than the rate for lease of a typical commercial building. Thus, this Commission rejects Qwest's Exception.

## VI. FINDINGS AND CONCLUSIONS

### THE COMMISSION FINDS AND CONCLUDES:

A. The Commission has jurisdiction over the parties and the subject matter of this case.

B. Sections I-V of this Order are adopted as Findings and Conclusions of this Commission.

C. Except as stated in Section II(B) *supra*, the Recommended Decision, attached to this Order as Exhibit 1, is incorporated by reference as if fully set forth herein and its Findings of Fact and Conclusions of Law (as identified in Section XII(1) of the Recommended Decision) are adopted, approved and accepted as Findings and Conclusions of the Commission.

## VII. ORDERS

### IT IS THEREFORE ORDERED:

A. The Orders contained in the Recommended Decision as set forth in Exhibit 1, attached hereto and incorporated by reference as if fully set forth herein, are adopted, approved and accepted as Orders of the Commission.

B. Except as stated in Section II(B) *supra*, the Recommended Decision is adopted, approved and accepted.

C. Except as stated in Section II(B) *supra*, the Exceptions of Staff, MCI, the AG, and Qwest are rejected.

- D. This Order is effective immediately.
- E. This Order shall be mailed to all persons on the attached certificate of service.
- F. This case is returned to the Hearing Examiner for review of the compliance filings and any comments and for the recommendation of final rates.

Issued under the Seal of the Commission at Santa Fe, New Mexico this 31<sup>st</sup>  
day of August, 2004.

NEW MEXICO PUBLIC REGULATION COMMISSION

  
HERB H. HUGHES, CHAIRMAN

  
DAVID W. KING VICE CHAIRMAN

  
JEROME D. BLOCK, COMMISSIONER

EXCUSED

LYNDA M. LOVEJOY, COMMISSIONER

TELEPHONICALLY APPROVED

E. SHIRLEY BACA, COMMISSIONER



**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

Qwest/47

Million/51

IN THE MATTER OF THE CONSIDERATION )  
OF COSTING AND PRICING RULES FOR )  
OSS, COLLOCATION, SHARED TRANSPORT, )  
NON-RECURRING CHARGES, SPOT FRAMES, )  
COMBINATION OF NETWORK ELEMENTS )  
AND SWITCHING. )

Utility Case No. 3495  
Phase B

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of **Order on Recommended Decision**, issued August 31, 2004, was mailed First Class, postage prepaid, to the following:

Judith Ann Moore, Esq.  
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Santa Fe, NM 87504-1508

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David M. Kaufman, Esq.  
David M. Kaufman, P.C.  
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Santa Fe, NM 87501

**and hand-delivered to:**  
Cydney Beadles, Esq.  
Nancy Burns, Esq.  
Legal Division  
NM Public Regulation Commission  
224 East Palace Avenue – Marian Hall  
Santa Fe, NM 87501

**DATED** this 31st day of August, 2004.

**NEW MEXICO PUBLIC REGULATION COMMISSION**



**Mona Varela, Paralegal**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

<b>IN THE MATTER OF THE CONSIDERATION )</b>	
<b>OF COSTING AND PRICING RULES FOR )</b>	
<b>OSS, COLLOCATION, SHARED TRANSPORT )</b>	<b>Utility Case No. 3495</b>
<b>NON-RECURRING CHARGES, SPOT )</b>	<b>PHASE B</b>
<b>FRAMES, COMBINATION OF NETWORK )</b>	
<b>ELEMENTS AND SWITCHING )</b>	

**FINAL PHASE B ORDER**

This matter comes before this Commission upon the document entitled Compliance Review and Calculation of Final Rates for Remaining Phase B Unbundled Network Elements ("Compliance Review"), filed on April 22, 2005, by Hearing Examiner Elizabeth C. Hurst. Based on the record in this case,

**THE COMMISSION FINDS AND CONCLUDES:**

- A. The Commission has jurisdiction over the parties and the subject matter of this case.
- B. The Compliance Review is well taken and should be adopted.
- C. The Compliance Review, attached to this Order as Exhibit 1, is incorporated by reference as if fully set forth herein and its Findings of Fact and Conclusions of Law, and supporting discussion, are adopted, approved and accepted as Findings and Conclusions of the Commission.

**IT IS THEREFORE ORDERED:**

- A. The Orders contained in Compliance Review, attached hereto as Exhibit 1, and incorporated by reference as if fully set forth herein, are adopted, approved and accepted as Orders of the Commission.
- B. The Compliance Review is adopted, approved and accepted.
- C. This Order is effective immediately.



D. This Order shall be mailed to all persons on the attached Certificate of Service.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 24th day of May, 2005.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

EXCUSED

\_\_\_\_\_  
**BEN R. LUJAN, CHAIRMAN**

\_\_\_\_\_  
**JASON MARKS, VICE CHAIRMAN**

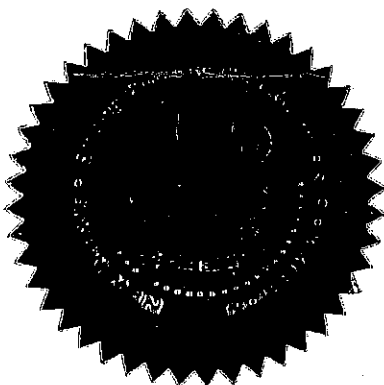
\_\_\_\_\_  
**DAVID W. KING, COMMISSIONER**

TELEPHONICALLY APPROVED

\_\_\_\_\_  
**LYNDA M. LOVEJOY, COMMISSIONER**

EXCUSED

\_\_\_\_\_  
**E. SHIRLEY BACA, COMMISSIONER**



**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

IN THE MATTER OF THE CONSIDERATION )  
OF COSTING AND PRICING RULES FOR )  
OSS, COLLOCATION, SHARED TRANSPORT, )  
NON-RECURRING CHARGES, SPOT FRAMES, )  
COMBINATION OF NETWORK ELEMENTS )  
AND SWITCHING. )  
\_\_\_\_\_ )

Utility Case No. 3495  
Phase B

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the **Final Phase B Order**, issued May 24, 2005, was mailed First Class, postage prepaid, to each of the following:

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126 East De Vargas Street  
Santa Fe, NM 87501

**and hand-delivered to:**

Cydney Beadles, Esq.  
Nancy Burns, Esq.  
Legal Division  
NM Public Regulation Commission  
224 East Palace Avenue – Marian Hall  
Santa Fe, NM 87501

DATED this 24th day of May, 2005.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

  
\_\_\_\_\_  
Alice Lucero, Paralegal

Qwest/48

Million/4

