

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UT 138/UT 139
PHASE III

In the Matter of Ascertaining the Unbundled)	
Network Elements that must be Provided by)	
Incumbent Local Exchange Carriers to)	ORDER
Requesting Telecommunications Carriers)	
Pursuant to 47 C.F.R. § 51.319.)	

DISPOSITION: APPLICATION FOR RECONSIDERATION DENIED

Introduction and Procedural History.

On February 5, 2003, the Public Utility Commission of Oregon (Commission) entered Order No. 03-085 in Phase III of this proceeding. Phase III was initiated to investigate the compliance filings made by Qwest Corporation (Qwest) and Verizon Northwest, Inc. (Verizon) (collectively, the incumbent local exchange carriers or “ILECs”), as required by Order Nos. 98-444 and 00-316, entered in Phase I of this proceeding. The compliance filings set forth the nonrecurring charges (NRCs) that the ILECs will levy to provision unbundled network elements (UNEs) to competitive local telecommunications carriers (CLECs). Phase III was limited to determining whether the Qwest and Verizon filings complied with Order Nos. 98-444 and 00-316. The parties were not permitted to present new evidence or cost studies.

On February 28, 2003, Qwest Corporation (Qwest), filed an application for reconsideration. Qwest argues that the Commission erred with respect to its decision on Issue 2b regarding Integrated Digital Loop Carrier.

On March 17, 2003, AT&T Communications of the Pacific Northwest, Inc., Electric Lightwave, Inc., Eschelon Telecom of Oregon, Inc., Integra Telecom of Oregon, Inc., WorldCom, Inc., and XO Oregon, Inc., (collectively, the Joint CLECs) filed a response opposing Qwest’s application. On March 24, 2003, Qwest replied to the Joint CLEC comments.

Oregon Administrative Rule 860-014-0095(3) provides that the Commission may grant an application for rehearing or reconsideration if the applicant shows:

- (a) New evidence which is essential to the decision and which was unavailable and not reasonably discoverable before issuance of the order;

- (b) A change in the law or agency policy since the date the order was issued, relating to a matter essential to the decision;
- (c) An error of law or fact in the order which is essential to the decision; or
- (d) Good cause for further examination of a matter essential to the decision.

After reviewing the filings and the record in this proceeding, the Commission finds that Qwest has not satisfied the requirements of OAR 860-014-095. The application should therefore be denied.

Qwest's Application for Reconsideration.

I.

Qwest's application deals only with Issue 2b, regarding the percentage of Integrated Digital Loop Carrier (IDLC) assumed to be present in the ILEC networks for purposes of calculating nonrecurring costs. During Phase I, the parties debated whether some percentage of IDLC should be included in developing the nonrecurring cost of provisioning the loop UNE.¹ AT&T/WorldCom argued that the costs of an efficient, forward-looking telecommunications network should include a significant percentage of TR-303 IDLC. AT&T/WorldCom witness Bonni Petti emphasized that TR-303 IDLC requires, "little or no manual intervention . . . for provisioning or maintenance activities."² The AT&T/WorldCom NonRecurring Cost Model (NRCM) reflected this cost savings by assuming no jumper activity for the portion of the network provisioned by IDLC.

Qwest and Verizon, on the other hand, argued that IDLC comprised only a small portion of their existing networks and therefore should not be considered at all in calculating nonrecurring costs. They further argued that Ms. Petti's testimony and the assumptions in the AT&T/WorldCom NRCM regarding IDLC were incorrect and inconsistent with the provisioning of unbundled loops. Verizon witness Francis Murphy testified that it made no sense to use IDLC when providing unbundled loops because IDLC integrates loops with the switch whereas unbundling requires segregating the loop from the switch. He criticized the NRCM for not including certain equipment and labor costs, including the cost of making cross connections at the main distribution frame.³

In Order No. 98-444, we rejected the ILEC's argument that IDLC should not be considered for purposes of calculating nonrecurring costs. Instead, we concluded that the cost calculations should assume that 25 percent of the ILEC's networks are provisioned by IDLC, consistent with the percentage of IDLC included in the ILEC's recurring cost studies.⁴

¹ For purposes of this analysis, the relevant cost is long run incremental cost, which is designed to compensate an ILEC for efficiently-incurred, forward-looking costs. See, e.g., Order No. 98-444 at 57-59.

² AT&T/MCI/2, Petti.10-11; AT&T/MCI/12, Petti/6-7; *see also*, Order No. 98-444 at 77.

³ Order No. 98-444 at 78; GTE/7, Murphy/10-12. Mr. Murphy did not distinguish between the capabilities associated with TR-008 and TR-303 IDLC technology. At the time Order No. 98-444 was entered, neither Verizon nor Qwest had any TR-303 in their networks. Order No. 98-444 at 32; TR. 1217,1253.

⁴ Order No. 98-444 at 77.

Significantly, we held that TR-303 IDLC represented the most efficient, forward-looking technology, and should be assumed for purposes of calculating nonrecurring costs.

The question presented to the Commission for resolution in Phase III was whether the 25 percent TR-303 IDLC assumption affects the amount of jumper work an ILEC must perform to provision a loop UNE and, consequently, the nonrecurring cost an ILEC incurs. Qwest's Phase III compliance filing assumes that jumper work is necessary 100 percent of the time, notwithstanding the IDLC assumption. The Joint CLECs, on the other hand, argued that including TR-303 IDLC in the nonrecurring cost calculation reduces jumper activity by 25 percent. In Order No. 03-085, we agreed with the Joint CLECs.⁵

In Order No. 98-444, the Commission found that “[i]n general, a greater percentage of IDLC results in lower cost for provisioned loops and thus, lower nonrecurring costs.”⁶ In Order No. 03-085 in Phase III, we clarified that the reduction in jumper activity proposed by the Joint CLECs was consistent with the aforementioned finding and with “the testimony presented by [AT&T/WorldCom witness] Petti regarding the capabilities and reduced provisioning costs associated with using TR-303 [IDLC] systems.”⁷

In its application for reconsideration, Qwest focuses on the statement in Order No. 98-444 that a greater percentage of IDLC will produce lower nonrecurring costs “*in general.*” Qwest argues that this finding does “not have any bearing” on the issue of jumper activity. It further emphasizes that Order No. 98-444 does not “find that costs will be lower for any specific cost components (*e.g.*, the connection of a jumper.)”

In essence, Qwest's argument assumes the Commission did not fully appreciate the consequences of its decision when it included TR-303 IDLC in the calculation of nonrecurring costs. That is incorrect. When we adopted AT&T/WorldCom's position that the costs associated with a forward-looking, efficient network should include TR-303 IDLC, we understood that a network configuration with a greater percentage of IDLC would reduce the nonrecurring cost of provisioning loops. AT&T/WorldCom's testimony and cost model clearly indicated that the associated cost savings would be realized through a reduction in jumper activity.⁸ In Order No. 03-085, we explained that this evidentiary showing was the basis for our observation in Order No. 98-444 that a “greater percentage of IDLC results in lower cost for provisioning loops and thus, lower nonrecurring costs.”⁹

Qwest's claim that Order No. 98-444 does not identify reductions for specific cost components (such as jumper activity) is also unpersuasive. In fact, the parties in Phase I never went so far as to ask the Commission to specify the precise amount of jumper activity that should be included in the nonrecurring cost calculation. Order No. 03-085 is intended to

⁵ Order No. 03-085 at 6-7.

⁶ Order No. 98-444 at 77.

⁷ Order No. 03-085 at 7.

⁸ *See*, footnote 2, *supra*; *see also*, TR. 1215, 1537-1540.

⁹ *Id.* Qwest reiterates its claim that Order No. 98-444 does not explicitly adopt Ms. Petti's testimony that no jumper activity should be assumed in the case of TR-303 IDLC systems. *See* Order No. 03-085 at 6. We concur with the Joint CLECs that this is the only logical inference to be drawn from our discussion of the IDLC issue in Order No. 98-444. Joint CLEC Response at 3.

clarify what we thought was obvious from Order No. 98-444, *i.e.*, including 25 percent TR-303 IDLC in the network reduces jumper activity by an equal percentage.

In summary, we disagree with Qwest's claim that the Commission did not decide this issue in Order No. 98-444. Although we did not rule directly on the issue of jumper activity, our decision to include TR-303 IDLC in the nonrecurring cost calculation clearly assumes a reduction in the need for jumper activity. Indeed, as the Joint CLECs point out, our conclusions would simply make no sense otherwise.¹⁰

II.

The discussion of Issue 2b in Order No. 03-085 concludes with the following paragraph:

We are not persuaded by Qwest's argument that jumper work is required to provision all loops whether or not IDLC is employed in the network. Not only is this an untimely attempt to reargue evidence from Phase I, it is irrelevant in this case because the determining factor for purposes of calculating TELRIC is not Qwest's current method of operation, but rather the costs associated with an efficient, forward-looking network.

Qwest claims that the Commission erred by “dismissing as untimely and irrelevant Qwest's argument that jumper activity is still required even when loops are provisioned through IDLC technology.”¹¹ Qwest asserts it was entitled respond to comments by the Joint CLECs regarding its NRC compliance filing.

We agree that Qwest is entitled to identify evidence from Phase I in support of its position. The argument advanced in Qwest's Phase III comments, however, does not include a citation to the Phase I record.¹² To the extent that Qwest has offered information not presented in Phase I, it is untimely.¹³

Likewise, it was unclear from Qwest's Phase III comments whether it was addressing the technology used by Qwest at the time of the Phase I proceeding or the more advanced TR-303 IDLC technology approved by the Commission for inclusion in the ILECs nonrecurring cost studies.¹⁴ To the extent that Qwest's argument relates to the jumper activities required by Qwest's then-existing technology, it is irrelevant for purposes of calculating nonrecurring costs. As noted in Order No. 03-085, the TELRIC¹⁵ method of

¹⁰ Joint CLEC Response at 2-3.

¹¹ Qwest Application for Reconsideration at 10.

¹² Qwest Response, August 12, 2002, p. 13.

¹³ In its application for reconsideration, Qwest continues to insist that its argument is supported by the evidence, but still makes no reference to the Phase I record.

¹⁴ As noted above, the Phase I record indicates that neither Qwest nor Verizon used TR-303 IDLC systems. *See* footnote 3.

¹⁵ TELRIC is the acronym for Total Element Long Run Incremental Cost.

calculating costs does not consider Qwest's current operations, but rather the costs associated with an efficient, forward-looking network.

We assume this clarification is sufficient to dispel any confusion regarding the above-quoted paragraph. Furthermore, we emphasize that the observations included therein were not the basis for our decision regarding Issue 2b. As we have explained, the Phase I record clearly supports the conclusion that jumper activity should be reduced by 25 percent to correspond with our decision to include TR-303 IDLC in the nonrecurring cost calculation.

As a final matter, we note that the NRC compliance filing submitted by Qwest on February 28, 2003 does not comply with the Commission's directive in Order No. 03-085 regarding Issue 2b. ORS 756.565 states that "any order made or entered upon any matter within the jurisdiction of the commission shall be in force and shall be prima facie lawful and reasonable until found otherwise in a proceeding brought for that purpose [in Circuit Court] under ORS 756.580 to 756.610." Qwest shall have 30 days from the entry date of this order to revise and resubmit its NRC filing in accordance with the requirements of Order No. 03-085.

ORDER

IT IS ORDERED that the application for reconsideration filed by Qwest Corporation in this matter is denied. Within 30 days of the entry date of this order, Qwest shall submit a revised compliance filing in accordance with the terms of Order No. 03-085.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

A party may appeal this order to a court pursuant to ORS 756.580.