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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

2001 JUL 26 P 4: 23

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AZ CORP COMMISSION
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WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

DOCKETED BY 

IN THE MATTER OF INVESTIGATION
INTO U S WEST COMMUNICATIONS,
INC.'S COMPLIANCE WITH CERTAIN
WHOLESALE PRICING REQUIREMENTS
FOR UNBUNDLED NETWORK ELEMENTS
AND RESALE DISCOUNTS.

Docket No. T-00000A-00-0194

NOTICE OF FILING

Z-Tel Communications, Inc. hereby files the attached Summary and Surrebuttal of
George S. Ford.

Dated: July 26, 2001.

Z-TEL COMMUNICATIONS, INC.

By: 

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1 TELRIC test. Indeed, the rates for these UNEs are 30%-420% higher than the FCC's
2 analysis would permit. The loop and switching rates proposed by Mr. Dunkel, witness
3 for the Commission staff, however, pass the TELRIC test and should be given greater
4 weight by the Commission.

5 In addition, my discussion of unbundled loops includes a short discussion of the
6 impact of Qwest's proposed rate for line-sharing as well as the efficacy of Qwest's line-
7 sharing rate proposal. If a positive price is charged for the high frequency portion of the
8 loop, then the rate for the low frequency portion of the loop rate must be reduced so that
9 loop costs are not over-recovered. A simple formula that computes the loop rate
10 reduction is provided in my testimony. Importantly, though mishandled by virtually
11 every piece of testimony in this proceeding, line-sharing is "sharing." Thus, if a positive
12 price is charged for the high-frequency portion of the loop, then the rate for the low-
13 frequency portion of the loop must be reduced to avoid the over-recovery of loop costs.
14 When adjusting rates to account for a positive charge for line-sharing, the Commission
15 should focus only on the unbundled loop rate, ignoring Qwest's retail revenues.

16 SURREBUTTAL

17 Two Qwest witnesses responded to my testimony: William Fitzsimmons and
18 Garrett Fleming. As discussed in detail below, Dr. Fitzsimmons' responses to my
19 testimony are an amalgam of misquotes and self-contradicting arguments. Mr. Fleming,
20 while providing an excellent description of the relevance of my testimony, likewise
21 misrepresents my position and fails an attempt to replicate the analysis contained in my
22 testimony. The respondents will be dealt with in turn.

23 *Response to William Fitzsimmons*

24 **(i) An Analytical Framework for Determining UNE Rates**

25 First, Dr. Fitzsimmons states that I advocate "setting prices for unbundled network
26 elements (UNEs) at levels that will 'provide a springboard to a competitive future.'"
27 [Fitzsimmons Rebuttal at 4] As an initial matter, this particular quote is not from my

1 testimony. More importantly, my testimony clearly sets forth the opinion that the
2 Arizona Commission has a two-fold obligation in setting UNE rates: (i) UNE rates must
3 comply with the TELRIC standard; and (ii) UNE rates should be set such that the
4 overarching goal of the *Telecommunications Act of 1996* – promoting competition in all
5 markets. In much of his response to my testimony, Dr. Fitzsimmons has chosen to ignore
6 the first part of my two-part analytical framework. Once the first part of the framework
7 is recognized, most of Dr. Fitzsimmons’ responses are rendered moot.

8 As an example, consider Dr. Fitzsimmons’ statement,

9 Dr. Ford says that “the analysis is simple: lower UNE rates
10 promote competition, higher UNE rates deter competition.”
11 This facile view misses the essence of this proceeding. It is
12 not to assist the entry of competitors with rock-bottom prices
13 that fail to compensate Qwest for the use of its network by
14 competitors (sentence fragment in original).

15 [Fitzsimmons Rebuttal at 7] Dr. Fitzsimmons’ quotation from my testimony is taken out
16 of context and misconstrues the point. To illustrate, consider my testimony that states:

17 ... the TELRIC standard establishes a zone of reasonableness,
18 not a particular rate. Once the boundaries of the ‘zone of
19 reasonableness’ are set, the second order of business is to
20 choose rates from that part of the ‘zone of reasonableness’ for
21 which entry is most feasible. In some cases, it may be that
22 costs are simply too high to induce entry, even at the low end
23 of the ‘zone of reasonableness.’ In other cases, however,
24 entry may be feasible for some part of the ‘zone of reason-
25 ableness’ but not for others. It is imperative that this
26 Commission consider the entry impact of the selection UNE
27 rates. The analysis is simple: lower UNE rates promote
28 competition, higher UNE rates deter competition.

29 [Ford Direct at 8]

30 Clearly, my testimony recommends that any rate chosen by this Commission
31 should, at a minimum, satisfy TELRIC principles. That said, it is important to recognize
32 that a number of UNE rates satisfy TELRIC and these rates define the TELRIC “zone of

1 reasonableness.” Once the TELRIC “zone of reasonableness” is determined, the second
2 part of my analytical framework provides guidance on choosing a specific rate from
3 within that zone. Among a choice of TELRIC compliant rates, choosing from the lower
4 TELRIC compliant values is more conducive to competitive entry. Conversely, choosing
5 rates from the higher part of the range demonstrates a preference for preserving the status
6 quo at the expense of ensuring that consumers reap the benefits of competition.

7 The fact that Dr. Fitzsimmons has misrepresented my position is made most clear
8 by my response to the question “Should rates be established solely to induce competitive
9 entry?” My answer was:

10 No. The Act establishes two standards for rates. First, UNE
11 rates must be set at costs, which (in practice) implies they
12 must comply with the FCC’s TELRIC pricing rules. The
13 establishment of rates conducive to competitive entry is the
14 second, not the only, criterion. The FCC clearly stated that
15 the reasonableness of rates is not determined by the business
16 case of potential entrants (“incumbent LECs are not required
17 ... to guarantee competitors a certain profit margin.” *OK-KS*
18 *271 Order*, ¶ 65). Satisfying the TELRIC standard is, I
19 believe, the first order of business.”

20 However, the TELRIC standard establishes a zone of
21 reasonableness, not a particular rate. Once the boundaries of
22 the ‘zone of reasonableness’ are set, the second order of
23 business is to choose rates from that part of the ‘zone of
24 reasonableness’ for which entry is most feasible.

25 [Ford Direct at 8]

26 My two-part analytical framework is valid and clearly described in my testimony.
27 The fact that Dr. Fitzsimmons has distorted and misstated my position is apparent and his
28 criticisms are largely irrelevant. Most policymakers would agree that promoting
29 competition is an important consideration in establishing UNE rates.

30 Dr. Fitzsimmons’ distaste for considering the effects of this proceeding on
31 competition is particularly odd given the logic contained in his own testimony. Rather

1 than promoting competition, Dr. Fitzsimmons asserts the goal of policy is the “promotion
2 of the investment and innovation (at 5 and 9).” He goes on to say, “[a] fundamental
3 economic concept underlying the decision to transform local telecommunications into a
4 competitive market is that competition will provide the proper incentives for more
5 efficient investment and innovations (at 6).” Thus, according to Dr. Fitzsimmons, in
6 order to promote “investment and innovation” we must promote competition, because
7 competition provides the proper incentives for efficient investment and innovation. Dr.
8 Fitzsimmons’ claim that promoting competition is “contrary to the fundamental goal of
9 public policy,” therefore, is rejected by his own testimony.

10 Consistent with the misrepresentation theme of his rebuttal testimony, Dr.
11 Fitzsimmons’ relies on an FCC Order to support his position that:

12 A central goal of telecommunications public policy is the
13 promotion of the investment and innovation necessary to
14 maintain a dynamic and modern network capable of
15 providing high quality, ubiquitous services to consumers at
16 affordable prices.

17 [Fitzsimmons Rebuttal at 5] The paragraph cited by Dr. Fitzsimmons in
18 support of his position actually reads:

19 One of the fundamental goals of the Telecommunications Act
20 of 1996 (the 1996 Act) is to promote innovation and invest-
21 ment by multiple market participants in order to stimulate
22 competition for all services, including broadband communi-
23 cations services. In this Report, we consider the deployment
24 of broadband capability – what Congress has called
25 "advanced telecommunications capability."

26 FCC, CC Docket No. 98-146, Released Feb. 2, 1999, ¶ 1 (emphasis added).

27 In this paragraph, the FCC claims that the promotion of “innovation and
28 investment by multiple market participants” will “stimulate competition for all services.”
29 Clearly, the FCC considers the presence of multiple market participants and the
30 stimulation of competition as important policy considerations. Further, the FCC’s

1 position here contradicts that of Dr. Fitzsimmons. The FCC asserts that “innovation and
2 investment by multiple market participants” stimulates competition, not that competition
3 stimulates innovation and investment. My two-part framework for establishing UNE
4 rates has clear implications for the realization of “multiple market participants,” and
5 appears to be most consistent with the FCC’s position on regulatory policy in the
6 telecommunications industry.

7 There are many more misinterpretations of my testimony in Dr. Fitzsimmons’
8 responses. For example, he observes, “Carefully considering values for inputs and
9 running a model with these inputs is not, as Dr. Ford suggests, a willy-nilly process.”
10 [Fitzsimmons Rebuttal at 9] To evaluate Dr. Fitzsimmons point, consider the entire
11 statement from my filed testimony:

12 It is important that the Commission have an analytical
13 framework within which to evaluate proposed UNE rates.
14 Without such a framework, rates will be determined willy-
15 nilly and may bear neither a relationship to cost nor condu-
16 cive to competitive entry – the dual standards of the
17 *Telecommunications Act of 1996*.

18 [Ford Direct at 4] What is this analytical framework? My testimony states:

19 There are two primary elements in the analytical framework.
20 First, as described in detail by the testimony of Qwest witness
21 Theresa K. Million, the TELRIC standard provides one
22 element of this analytical framework. The second element of
23 the analytical framework – as important as the first – holds
24 that the rates established in this proceeding should satisfy, to
25 the greatest extent possible, the mandate of the 1996
26 *Telecommunications Act* to promote competition in all
27 telecommunications markets.

28 [Ford Direct at 5] How is TELRIC determined? Again, consider my testimony:

29 In most cases, the input values recommended by the various
30 parties to this proceeding will be supported by expert
31 testimony and based, though sometimes loosely, on a
32 reasoned analysis. There should be sufficient evidence on the

1 record to expose those cases where recommendations are void
2 of any merit or are inconsistent with TELRIC.

3 Facing a menu of model assumptions and input values, the
4 Commission will be forced to conclude that, in general, there
5 is no single “right” number but a range of “right” numbers.
6 The first step of the analytical framework defines what this
7 range of “right” numbers is, thereby establishing the TELRIC
8 ‘zone of reasonableness.’ This step is the first step of the
9 analytical framework.

10 [Ford Direct at 10]

11 Clearly, it is not my position that the careful choice of inputs and algorithms for
12 the model is a “willy-nilly process” as Dr. Fitzsimmons claims. Instead, his response to
13 my testimony is based on a misrepresentation of my position. My testimony makes clear
14 my position that this proceeding should be motivated by two goals: (i) setting UNE rates
15 according to TELRIC principles and (ii) promoting competition in Arizona.

16 **(ii) The FCC’s TELRIC Test**

17 Undoubtedly, Qwest will use the rates established in this proceeding in support of
18 its future 271 application for the State of Arizona. If the FCC determines that the UNE
19 rates set in this proceeding are not TELRIC-compliant, then Qwest must “voluntarily”
20 reduce those rates to TELRIC levels prior to approval. Such “voluntary” reductions in
21 UNE rates were components of the Oklahoma, Kansas, and Massachusetts 271
22 proceedings before the FCC.

23 Recognizing the inextricable link between this proceeding and Qwest’s future 271
24 application, most of my testimony is devoted to estimating the boundaries for TELRIC
25 compliance using methods developed and implemented by the FCC in previous 271
26 proceedings. As noted by Dr. Fitzsimmons: “Dr. Ford’s version of the TELRIC
27 compliance test was derived from the test that the FCC used in negotiations with SBC
28 and Verizon prior to granting interLATA relief in several states.” [Fitzsimmons Rebuttal

1 at 20] The FCC has employed the TELRIC compliance test for the last three states
2 receiving 271 approval, so the test's relevance is indisputable.

3 Nonetheless, Dr. Fitzsimmons questions the validity of my application of the
4 TELRIC test to Qwest-Arizona. Although, he questions the cross-company comparisons
5 made in my TELRIC test, his criticism is without merit. The FCC specifically has
6 rejected the relevance of company-specific information in the determination of forward-
7 looking cost for an efficient provider.¹ Furthermore, because no Qwest state has received
8 271 approval, extending the information on TELRIC compliance from past 271
9 proceedings to Qwest seems reasonable.

10 Dr. Fitzsimmons also asserts that comparing rates across geographically dissimilar
11 markets is invalid. I disagree, and the bulk of the evidence supports comparisons across
12 markets that differ geographically. Every TELRIC model is designed to take into
13 account geographic similarities and dissimilarities. Indeed, the recognition of state
14 differences in costs is the motivation for the TELRIC test, which compares cost-adjusted
15 rates across states. The FCC's Synthesis Model employs state-specific information in its
16 calculations and adjusts the costs accordingly. If a model can compare Texas to
17 Oklahoma and New York to Massachusetts, then it is inconceivable that the model would
18 fail to accurately compare New York to Texas. Either the model adjusts for geography,
19 or it does not. The FCC has concluded the Synthesis Model "provides a reasonable basis
20 for comparing cost differences between states (OK-KS 271 Order, ¶84)." Third, the
21 states I employed in the TELRIC test for Arizona were Texas, Oklahoma, and Kansas.

¹ *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, Tenth Report & Order, CC Docket Nos. 96-45, 07-160, FCC 99-304 (rel. Nov. 2, 1999).*

1 These states are the most geographically proximate to Arizona of all the 271 approved
2 states and are the most similar in terms of the distribution of lines across density zones.²

3 As a third criticism, Dr. Fitzsimmons asserts, “Dr. Ford includes UNE prices from
4 Oklahoma and Kansas in his analysis. This introduces a second order error akin to the
5 reduction of clarity caused by re-faxing a fax.” [Fitzsimmons Rebuttal at 22] He goes on
6 to reject his own argument, however. According to Dr. Fitzsimmons only those rates that
7 have “already been found by the FCC to be reasonable” can be included in the TELRIC
8 test. [Fitzsimmons Rebuttal at 22] Dr. Fitzsimmons also observes,

9 “[a]s part of the approval process for Verizon and SBC to
10 provide interLATA service in Oklahoma and Massachusetts
11 pursuant to section 271 of the Telecommunications Act, the
12 FCC applied a test to determine if the agency was satisfied
13 that certain of the companies’ UNE price were in compliant
14 with TELRIC.”

15 [Fitzsimmons Rebuttal at 20-1] As Dr. Fitzsimmons admits, therefore, the FCC found
16 the UNE rates in Oklahoma to be TELRIC compliant. It is also indisputable that the loop
17 rates in Kansas clearly satisfied the TELRIC test. Thus, the rates in Oklahoma and
18 Kansas are TELRIC compliant (according to the FCC) and, consequently, there is no re-
19 faxing problem associated with the use of those rates in the TELRIC test; a TELRIC
20 compliant rate is a TELRIC compliant rate. In any case, removing the rates for
21 Oklahoma and Kansas from the analysis does not materially change the rates
22 recommended for Arizona.³

23 Finally, Dr. Fitzsimmons concludes that my TELRIC test must be flawed because
24 “[t]he loop rate recommended by Dr. Ford as a result of his version of the compliance test

² Based on the Density Zone data from the FCC’s Hybrid Cost Model, the mean absolute percent error across density zones between Arizona and the five states with 271 approval are: New York (83%), Massachusetts (50%), Kansas (42.5%), Oklahoma (43%), and Texas (24.6%).

³ If only Texas is used for the TELRIC test it is not possible to establish upper and lower bounds; only a point estimate is generated from the TELRIC test with only one reference state.

1 is clearly below the forward-looking cost of the loop.” [Fitzsimmons Rebuttal at 23] As
2 proof of this assertion, Dr. Fitzsimmons compares my estimate of loop cost (\$13.30) to
3 his estimate (nearly \$20). Dr. Fitzsimmons conveniently ignores the estimates of loop
4 cost by Mr. Dunkel (\$12.35/\$13.60) and AT&T (\$10.11). His assertion that my proposed
5 loop cost is too low hinges on one critical assumption--that his own estimate is correct.
6 There is sufficient evidence on the record to question the validity of that assumption.

7 **(iii) Line-Sharing and Loop Rates**

8 Notably, no Qwest witness responds to my testimony on line-sharing, which
9 stands as the best explanation on the record of the economic theory of pricing under joint
10 supply in competitive markets. A related response, though not directed at my testimony,
11 is Dr. Fitzsimmons’ observation:

12 To my knowledge, no intervenors in this proceeding provide
13 ... analysis that demonstrates how amortized loop costs are
14 being recovered with current revenues from current
15 customers.

16 [Fitzsimmons Rebuttal at 63] Whether or not “current revenues from current customers”
17 covers amortized loop costs is entirely irrelevant to the issue of line-sharing and the price
18 of the high-frequency portion of the loop. Qwest’s retail service offerings are immaterial
19 to the proper treatment of line-sharing and loop charges. For the provider of unbundled
20 elements, only two services are sold: the low-frequency and high-frequency portions of
21 the loop. If the average total cost (including overhead and reasonable profit) of the loop
22 is determined to be, say, \$13.00, then the revenue from that loop should be \$13.00. If
23 Qwest receives \$13 per loop and also receives \$5 for the high frequency part of some
24 loops (including those sold to itself), then Qwest has over-recovered the cost of the loop.
25 Over-recovery violates the theory of joint-supply under competition, which states that the
26 revenue from the loop (across all products provided by the loop) must equal the average
27 (economic) cost of the loop. [See Ford Direct at 17-18] To remedy this over-recovery,
28 the UNE loop rates must be reduced to avoid excess recovery of loop costs. The method

1 by which this reduction is computed is provided in my testimony. The line-sharing
2 penetration implicit in Mr. Dunkel's allocation of line-sharing OSS costs should be used
3 in the computation.

4 ***Response to Garrett Fleming***

5 Mr. Fleming begins his response to my testimony by noting that my two-part
6 analytical framework is neither required by the Act nor proposed by the FCC. Yet, Mr.
7 Fleming observes that the "Act specifically delegates the task of setting UNE prices to
8 state Commissions." If it is the task of the state Commission to set UNE rates, as Mr.
9 Fleming contends, then it does not matter whether or not the Act included, or the FCC
10 employs or recommends, my two-part framework. Indeed, the testimony to which Mr.
11 Fleming is responding is testimony before a state Commission, and this Commission is
12 perfectly free to consider as much or as little information as possible in setting UNE
13 rates.

14 I do not argue in my testimony that UNE prices should be set at the "bare
15 minimum" of the TELRIC range as Mr. Fleming contends. However, my testimony does
16 make the observation that choosing lower TELRIC estimates over higher estimates
17 certainly is more consistent with the over-arching goal of the Act and, presumably, the
18 goal of the Commission (*i.e.*, to promote competition). Moreover, the Commission will
19 send a clear message that it intends to bring the benefits of competition to consumers by
20 choosing rates from the lower end of the permissible range.

21 Mr. Fleming accuses me of "selectively [applying] the TELRIC test to derive his
22 desired results." [Fleming Rebuttal at 16] Mr. Fleming's accusation is baseless. The
23 TELRIC test is a procedure developed by the FCC in its Section 271 process. The
24 Commission should expect that the FCC will perform this test for a Qwest Arizona
25 application. My testimony describes the FCC calculations, reproduces those calculations
26 for a number of states, and reports the results. There was no "desired result" other than

1 informing Qwest and the Commission what the FCC's TELRIC test establishes as a
2 reasonable range for UNE rates in Arizona.

3 There were five potential states that could be included in the analysis: I included
4 three. Let me explain why certain states were selected as elements of the reference state.
5 First, including Texas, Oklahoma, and Kansas as reference states was based on the
6 relative geographic proximity of those states to Arizona, particularly in relation to New
7 York and Massachusetts.⁴ Along those same lines, based on the Density Zone data from
8 the FCC's Hybrid Cost Model, comparing teledensity between Arizona and the five states
9 with 271 approval suggests Kansas, Oklahoma, and Texas are more similar to Arizona in
10 terms of teledensity than are either Massachusetts or New York. The mean absolute
11 percent errors of line density across density zones are: New York (9.2%), Massachusetts
12 (5.6%), Kansas (4.7%), Oklahoma (4.8%), and Texas (2.7%). Second, and perhaps more
13 importantly, the UNE rates in New York and Massachusetts are currently under review.
14 Recently, the Administrative Law Judge in New York proposed rate reductions for
15 switching elements of about 50%, and those reductions likely will flow through to
16 Massachusetts. When those cost proceedings are complete, adding New York and
17 Massachusetts to the analysis (as recommended by Mr. Fleming) would be (in my view)
18 a reasonable extension of the TELRIC test described in my testimony. Also, the SBC
19 and Qwest states employ "bill-and-keep" for reciprocal compensation; Verizon does not.

20 Mr. Fleming further asserts that I recommend that the Commission abandon
21 TELRIC principles for the TELRIC test. There are two problems with Mr. Fleming's
22 assertion. First, I did not recommend the Commission make such a substitution. My
23 responses to Dr. Fitzsimmons on this point reflect my true position, as does the following
24 quote from my testimony:

⁴ The model fully accounts for geographic differences, so the FCC's position on this point is a bit of mystery.

1 Facing a menu of model assumptions and input values, the
2 Commission will be forced to conclude that, in general, there
3 is no single “right” number but a range of “right” numbers.
4 The first step of the analytical framework defines what this
5 range of “right” numbers is, thereby establishing the TELRIC
6 ‘zone of reasonableness.’ This step is the first step of the
7 analytical framework.

8 Once these boundaries are established, the second part of the
9 analytical framework is to be applied. Each input value, assumption,
10 or resultant cost estimate should be classified according to its effect
11 on competition. Because higher UNE rates reduce competition and
12 lower UNE rates increase competition, assumptions and/or input
13 values that increase the cost estimates decrease competition and
14 those that decrease cost estimates increase competition. The final
15 input values and assumptions accepted by the Commission should be
16 chosen so that competitive entry is viable, *i.e.*, from that part of the
17 “zone of reasonableness” associated with lower costs. The second
18 part of the framework is certainly easier to implement than the first.

19 [Ford Direct at 10] Clearly, I do not recommend the Commission abandon TELRIC.⁵

20 Second, while I recommend the Commission adhere to TELRIC principles, the
21 FCC’s 271 Orders clearly state that a “range” of rates is permissible and that strict
22 adherence to TELRIC is not required. In the Oklahoma-Kansas 271 Order, the FCC
23 observes” [w]hile the loop rates were not derived in total compliance with our TELRIC
24 rules, this flaw is not fatal to SWBT’s application. The discounts now available in
25 Oklahoma compensate for the ALJ’s use of a fill factor that was not compliant with
26 TELRIC. ...[W]e find that the discounted rates currently available are within a range
27 that could be obtained by using TELRIC. (*OK-KS Order*, ¶ 87).” The FCC makes clear
28 that how the rates are derived is less important than whether the UNE rates “are within

⁵ My position that a number of inputs are reasonable is supported by the FCC’s statement in the Oklahoma-Kansas 271 Order: “we have determined that standard to mean that any of a number of inputs or results from within a certain range could be appropriate (*OK-KS 271 Order*, ¶ 91)”.

1 the range that TELRIC would produce (OK-KS 271 Order, ¶ 86).” Determining whether
2 or not a UNE rate was “within the range that TELRIC would produce” was the specific
3 task of the FCC’s TELRIC test. Thus, both the Oklahoma-Kansas and Massachusetts
4 271 Orders reject Mr. Fleming’s contention that the FCC requires “states to set the prices
5 for UNEs based on TELRIC principles.” [Fleming Rebuttal at 18] Neither the loop rate
6 in Oklahoma nor the switching rates in Massachusetts were the product of a TELRIC
7 model. Both sets of rates, however, were deemed TELRIC compliant by the FCC based
8 on the application of the TELRIC test to those rates.

9 While Mr. Fleming encourages, at times, the wholesale rejection of my testimony,
10 Mr. Fleming makes the utility of my testimony clear when he observes:

11 The FCC developed the test solely as a means for assessing the
12 reasonableness of a company’s UNE prices when those prices were based
13 on assumptions or inputs that did not comport with the TELRIC rules. If
14 the FCC determines that a state Commission erred in its application of
15 TELRIC principles, the FCC uses the test to assess whether the error was so
16 grievous as to result in a price that is outside the range that the reasonable
17 application of TELRIC principles would produce. In other words, it is a
18 test that the FCC uses to determine if a misapplication of TELRIC
19 principles has resulted in prices that are outside a reasonable range.

20 [Fleming Rebuttal at 18]

21 If the FCC uses the TELRIC test “to determine if a misapplication of TELRIC
22 principles has resulted in prices that are outside a reasonable range,” then I would think it
23 would be extremely useful for this Commission to know now, while the proceeding is
24 underway, the upper and lower bounds of this “reasonable range” of TELRIC prices.
25 Providing that information is exactly the purpose of my testimony.

26 Mr. Fleming also argues that the rate structures among the states are too variable
27 to allow comparisons using the TELRIC test. I disagree. First, the FCC seeks rate
28 structures that are similar, not identical. The rate structure for loops, for example, differs
29 hardly at all (if any) among the states. Likewise, tandem switching is not an element
30 subject to complex rate structures. Non-recurring charges differ more substantially

1 across states, but my testimony does not address non-recurring charges. Second, the
2 examples of differences provided by Mr. Fleming are irrelevant to the validity of the
3 TELRIC test. Specifically, the TELRIC test uses statewide average rates, so the extent of
4 deaveraging of rates is irrelevant. Observing that Arizona is the only state in the sample
5 charging separately for the switch port and port features is indeed important, but not for
6 the reasons Mr. Fleming asserts. These separate charges increase the cost of switching
7 and contribute to Qwest's gross overstatement of switching rates in Arizona.
8 Discovering this problem is exactly the purpose of the TELRIC test. Application of the
9 test in Arizona reveals quite clearly that a "misapplication of TELRIC principles has
10 resulted in prices that are outside a reasonable range" – the purpose of the test agreed to
11 by Mr. Fleming.

12 Differences in rate structures across states do exist. In the context of the TELRIC
13 test, most of these differences are handled easily by creating price and cost indicia, which
14 is the approach I adopt for unbundled end-office switching. Including multiple states in
15 the TELRIC test so that boundaries are generated, rather than specific rates, also accounts
16 for differences across states in rate structure.

17 Finally, Mr. Fleming attempts to replicate the TELRIC test and make some
18 adjustments to the specific states included in the analysis. This effort is indeed peculiar
19 given his admittance that he has "not been able to replicate Mr. Ford's HCPM cost
20 results." [Fleming Rebuttal at 16]⁶ In any event, an examination of his results shows that

⁶ The computation of average loop costs from the HCPM is straightforward, and the calculations and data sources were provided in Z-Tel response to WD-2-1. The HCPM files provide line count and loop cost estimates by wire center. From these two variables, the weighted average loop cost can be calculated. Overhead expense, provided in Cell C33 of the "Per Line" sheet (described as "Variable Overhead" under the heading "Annual Per-Loop Expense") of the HCPM output file available (free of charge) from the FCC website. The overhead expenses is adjusted by the formula applied to the "Summary" worksheet of the HCPM output: $[\text{Sum}(\text{H3:AA3}) + \text{Sum}(\text{AE3:AI3})]/\text{CF3}$ (as noted in WD-2-1). The FCC provided this specific calculation to me.

1 he did not replicate my analysis, which explains his differing results. First, in comparing
2 loop rates across states, Mr. Fleming has included the costs of switching components.⁷
3 [Fleming Table 2] Obviously, switching costs are irrelevant to the determination of loop
4 costs. Second, if New York, Massachusetts, Kansas, and Texas are used as the reference
5 states, the point estimate for the loop rate in Arizona is about \$14.57 (not \$16.08 as Mr.
6 Fleming claims), with a lower bound of \$13.47. If all 271 approved states are included in
7 the analysis, the point estimate is \$14.39, with a lower bound of \$12.17. Thus, the results
8 of the TELRIC test are not substantially altered by the inclusion of all 271 approved
9 states (approximately an 8% increase in the recommended loop rate and no change in the
10 lower bound). As mentioned above, including New York and Massachusetts in the
11 analysis is perhaps unwise given that UNE rates in those states are currently under review
12 and most likely will change in the very near future.

13 Mr. Fleming's inclusion of New York and Massachusetts in the switching cost
14 comparison is clearly inappropriate. Interestingly, by Mr. Fleming's own standards,
15 Massachusetts should not be included because the switching rates in Massachusetts were
16 not the product of a TELRIC model, but were adopted from New York. Thus,
17 Massachusetts switching rates are subject to the same "circularity" that Mr. Fleming
18 contends plagues the Oklahoma loop rate.⁸ [Fleming Rebuttal at 27] Furthermore, in the
19 current cost proceeding in New York, initiated in part due to Bell Atlantic's "careless
20 errors" regarding switching costs that were "distressing and disruptive of the process,"
21 the Recommended Decision of the ALJ mandated switching cost reduction of about 50%.
22 Recommended Decision by Administrative Law Judge Joel A. Linsider, Case 98-C-
23 1357, May 16, 2001.

⁷ In the HCPM, the "Total Basic Local Svc Cost" includes switching elements in addition to loop costs.

⁸ Interestingly, the \$3.24 switching cost cited in Mr. Fleming's testimony is based on a comparison with Massachusetts.